
(1971) 11 AHC CK 0040

In the Allahabad High Court

Case No : Criminal Rev. No's. 55 and 56 of 1969

Surendra Kumar Agarwala

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 17-11-1971

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 353
Uttar Pradesh Sales Tax Rules, 1948 — Rule 18(2)

Citation : (1972) 42 AWR 51

Hon'ble Judges : Yashoda Nandan, J

Bench : Single Bench

Advocate : K.N. Misra and Deoki Nandan, for the Appellant;

Final Decision : Allowed

Judgement

Yashoda Nandan, J.—These are two connected revisions in which most of the questions arising for consideration are common and are consequently being disposed of by this common judgment. The Applicants in Cr. Rev. No. 55 of 1969 originally were Lala Dau Dayal and Sri Surendra Kumar Asrarwala. During the pendency of the revision in this Court, Lala Dau Dayal has died and the revision has consequently abated as far as he is concerned. In the connected Cr. Rev. No. 56 of 1969 the Applicants are Sri Shree Gopal Chandra and his son Sri Surendra Kumar Agarwala.

2. The relevant facts giving rise to these two revisions are that Sri Shree Gopal Chandra and his son Sri Surendra Kumar Agarwala (the Applicants in Cr. Rev. No. 56 of 1969) are alleged to be Directors of a Firm known as "Firozabad Glass and Chemical Industries Ltd." situate at Kotla Road, Firozabad. Sri Dau Dayal, who has died and Sri Surendra Kumar are alleged to have been the Directors of another concern (sic) as "Madan Mohan Dam ma Mal (P) Ltd." also carrying on business at Firozabad. On the 5th May, 1964, two raids were organised by the officers of the Sales Tax Department assisted by some subordinate members of their staff and the police at the premises of the two Firms. The raid at the

premises of Firozabad Glass and Chemical Industries Ltd. is alleged to have been led by Sri C.M. Lamgora, Sales Tax Officer (Investigation) while the raid at the premises of the other Firm Madan Mohan Damma Mal (P) Ltd. is said to have been headed by Sri M.D. Chauhan, Sales Tax Officer, Firozabad. It is alleged that the Applicants in the two revisions by show and use of force prevented the officers above mentioned from carrying out their duties and wrongfully confined them. Reports were lodged by the officers heading the raiding parties at P.S. Firozabad. After investigation the police submitted two separate charge-sheets against the Applicant in the two revisions.

3. By an order dated 8th August, 1967, Sri B.D. Dubey, a Magistrate of the First Class, framed charges against Sarvasri Gopal Chandra and Surendra Kumar Under Sections 353 and 342 of the IPC in respect of the raid at the premises of Firozabad Glass and Chemical Industries Ltd. Aggrieved by the order of the learned Magistrate, Sri Gopal Chandra and Sri Surendra Kumar preferred Cr. Rev. No. 74 of 1967 in the court of session at Agra. Against Sri Dau Dayal, who has since died and Sri Surendra Kumar, the learned Magistrate framed charges for offences punishable Under Sections 147 and 353 of the IPC in respect of the occurrence alleged to have taken place at the premises of Madan Mohan Damma Mal (P) Ltd. Sri Dau Dayal and Sri Surendra Kumar filed Cr. Rev. No. 75 of 1967 against the order. The two revisions were heard by the learned Addl. Sessions Judge, Agra, together and were dismissed by a common judgment.

4. By means of Cr. Rev. No. 55 of 1969 Lala Dau Dayal and Sri Surendra Kumar, who were the Applicants in the court below in Cr. Rev. No. 75 of 1967 and by means of Cr. Rev. No. 56 of 1969 Sri Gopal Chandra and Sri Surendra Kumar Agarwala, who were the Applicants in Cr. Rev. No. 74 of 1967 in the court below, have challenged the orders of the learned Addl. Sessions Judge and the learned Magistrate.

5. In support of the two revisions, it has been firstly contended that Rule 4 of the U.P. Sales Tax Rules relied upon by the State did not invest either Sri Lamgora or Sri Chauhan with powers to conduct a search of the two premises and to seize documents therefrom and consequently the Applicants were legally justified in offering resistance to them in their illegal acts and are not liable to be tried for the offences of which they have been charged. In order to appreciate this submission, a survey of the relevant provisions of the U.P. Sales Tax Act, hereinafter referred to as the Act--and the Rules framed thereunder is necessary.

6. Section 13 of the Act as originally enacted consisted of three sub-sections and was as follows:

13 (1) Any officer empowered by the State Govt. in this behalf, may for the purposes of this Act, require any dealer to produce before him the accounts and other documents and to furnish any other information relating to his business.

(2) All accounts and registers maintained by any dealer in the ordinary course of his business, the goods in his possession and his office, shop, godown, vessel or

vehicle shall be open to inspection at all reasonable times by such officers as may be authorized in this behalf.

(3) Any such officer shall have power to enter, for the purposes referred to in Sub-section (2), any office, shop, godown, vessel, vehicle or any other place in which business is done.

7. The Act was amended a number of times in between but Section 13 remained unaltered till the coming into force of the U.P. Sales Tax (Amendment) Act, 1954 (U.P. Act No. VIII of 1954). By Section 14 of the Amending Act, Section 13 of the Act, as it then stood, was substituted and as far as it is material for us is as follows:

13 (1) Any officer not below the rank of Assessing Authority empowered by the State Govt. in this behalf, may, for the purposes of this Act, require any dealer to produce before him any book, document of account relating to his business and may inspect, examine and copy the same and make such enquiries from the dealer relating to his business, as may be necessary:

Provided that books, documents and accounts of a period more than four years prior to the assessment year shall be so required, unless in any special case for reasons to be recorded such officer considers necessary.

(2) All books, documents and accounts maintained by any dealer in the ordinary course of his business, the goods in his possession and his office, shop, godown, vessel or vehicle shall be open to inspection at all reasonable times by such officers as may be authorized by the State Govt. in this behalf.

(3) Any officer empowered Under Sub-section (2) may enter any premises, vessel or vehicle specified in the sub-section at all reasonable times for the purpose of this Act.

(4)... ..

(5) If the Commr. of Sales Tax has reasonable grounds for believing that any dealer is trying to evade liability for payment of any Sales Tax under this Act and that anything necessary for the purpose of an investigation into his liability may be found in any account, register or documents, he may for reasons to be recorded in writing, by written order, authorize any Assessing Authority to enter any office, shop, godown, vessel or vehicle in the possession of the dealer and to seize the account, register or document, as may be necessary. The Authority seizing the account, register or document shall forthwith grant a receipt for the same and shall be bound to return them to the dealer or the person from whose custody they were seized within a period of fifteen days from the date of such seizure after having such copies or extracts taken therefrom as may be considered necessary provided the dealer gives a receipt, in writing, for the account, register, or document returned to him. The Assessing Authority may, before returning the account, register, or document to the dealer, affix his signature and his official seal at one or more places thereon and in such case the

dealer will be required to mention in the receipt given by him, the number of places where the Assessing Authority's seal or signature, or both, have been affixed on each account, register or document.

8. By the U.P. Sales Tax (Amendment) Act, 1958 (UP Act No. XIX of 1958) while Sub-sections (1) and (4) of Section 13 were left untouched while Sub-section (5) thereof was amended and after the amendment stood as follows:

If any Assessing Authority not below the rank of Sales Tax Officer has reasonable grounds for believing that any dealer is trying to evade liability for tax under this Act and that anything necessary for the purpose of an investigation into his liability may be found in any account, register, or documents, he may enter any office, shop, godown, vessel or vehicle in the possession of the dealer and seize such account, register or document, as may be necessary. The Authority seizing the account, register, or document shall forthwith grant a receipt for the same and shall be bound to return them to the dealer or the person from whose custody they were seized within a period of ninety days from the date of such seizure after having such copies or extracts taken therefrom as may be considered necessary, provided the dealer gives a receipt, in writing, for the account, register or document returned to him. The Assessing Authority may, before returning the account, register or document to the dealer, affix his signature and his official seal at one or more places thereon and in such case the dealer will be required to mention in the receipt given by him the number of places where the Assessing Authority's seal or signature, or both, have been affixed on each account, register or document.

9. As a result of Section 12 of the U.P. Sales Tax (Amendment) Act, 1959 (U.P. Act No. VII of 1959), which came into force on the 1st April, 1959, Sub-sections (3) to (5) of Section 13 of the Act were substituted and stood as follows:

(3) If any officer authorised Under Sub-section (2), not being an Asstt. Sales Tax Officer or an officer below that rank has reasonable grounds for believing that any dealer is trying to evade liability for tax or other dues under this Act and that anything necessary for the purposes of an investigation into his liability may be found in any account, register or document, he may seize such account, register, or document as may be necessary. The officer seizing the account, register or document shall forthwith grant a receipt for the same and shall be bound to return them to the dealer or the person from whose custody they were seized, within a period of ninety days from the date of such seizure, after having such copies or extracts taken therefrom as may be considered necessary, provided the dealer or the aforesaid person gives a receipt, in writing, for the account, register or document returned to him. The officer may, before returning the account, register or document affix his signature and his official seal at one or more places thereon and in such case the dealer or the aforesaid person will be required to mention in the receipt given by him the number of places where the signature and seal of such officer have been affixed On each account, register, or document.

(4) For the purposes of Sub-section (2) or Sub-section (3) the officer authorised to act thereunder may enter and search any office, ship, godown, vessel or vehicle or any other place of business or any building or place where such officer has reason to believe that the dealer keeps or is, for the time being, keeping any account, register, document or goods relating to his business.

(5)... ..(a)... ..(b)... ..

10. The section continued to exist in this form till the two raids in question took place and consequently with the subsequent amendments of Section 13 we are not concerned in the present cases.

11. Section 24 empowers the State Govt. to frame rules to carry out the purposes of the Act and in exercises of those powers, it framed rules. Rule 4 of the U.P. Sales Tax Rules, 1948, as originally framed was as follows:

All assessing, appellate and revising authorities shall exercise the powers mentioned in Section 13 within their respective jurisdiction.

Provided that the Sales Tax Officer shall not, for the purposes referred to in Sub-section (2) of Section 13, enter any office, shop, godown, vessel, vehicle or any other place in which business is done unless he has within him an authority duly signed by the Asstt. Commr., Dy. Commr., or Commr. and bearing his seal permitting him to make such an entry.

By a notification dated 7th May, 1959, Rule 3-A was added to the Rules and by the same notification Rule 4 was amended by deletion of the proviso.

12. The contention of Shri Shanti Bhushan, learned Counsel for the Applicants, is that in Section 13 of the Act as originally enacted there was no provision for search of any premises of a dealer or for seizure of any documents, registers, or other things. It was urged that the State Govt. in exercise of its rule-making power could not consequently by Rule 4 have intended to authorize the authorities mentioned in the rule to exercise the power of searching any premises or of seizing any documents etc. found therein. It was submitted that it was incumbent on the State Govt. to have reframed Rule 4 when the power to search and seize was introduced by an amendment to Section 13. Learned Counsel went on to submit that since the search and seizure by the officers of the Sales Tax Department was without the authority of the law, the Applicants had every right to prevent them from illegally searching their premises and from taking possession of registers etc. belonging to them. The contention in substance is that the subsequent amendment of Section 13 incorporating the powers of search and seizure could not operate to enlarge the powers of the officers Under Rule 4.

13. Rule 4 instead of specifying the powers that may be exercised by the officers mentioned therein makes a reference to the powers mentioned in Section 13. It is a common legislative practice to adopt one or more provision of an existing statute by reference. If a subsequent legislation introduces within itself by

reference some of the clauses of pre existing Act, the legal effect of the incorporation is, in the words of Lord Fsher in re-Woods Estate [(1886) 31 Ch.D. 607 at p. 615], "to write those sections into the new Act just as if they had been actually written in it with the pen, or printed in it and the moment you have those clauses in the later Act, you have no occasion to refer to the former Act at all."

14. As to what is the effect of a subsequent amendment in the former Act on the provisions of the subsequent Act came up for consideration before the Privy Council in AIR 1931 149 (Privy Council) in an appeal from a judgment of the Calcutta High Court. The Calcutta Improvement Act (Bengal Act 5 of 1911) incorporated by reference certain provisions of the Land Acquisition Act, 1894, a Central Act. The Land Acquisition Act was subsequently modified by Act No. 19 of 1921 and the Privy Council was called upon to decide to what extent the Bengal Act was influenced by the amendment of the Central Act. The contention before the Privy Council was that when amendments were made in the relevant provisions of the Land Acquisition Act, those provisions as amended automatically became incorporated in the Local Act. The contention was repelled and Sir George Lowndes delivering the opinion of the Judicial Committee observed as follows:

But their Lordships think that there are other and perhaps more cogent objections to this contention of the Secretary of State and their Lordships are not prepared to hold that the sub-section in question, which was not enacted till 1921, can be regarded as incorporated in the Local Act of 1911. It was not part of the Land Acquisition Act when the Local Act was passed, nor in adopting the provisions of the Land Acquisition Act is there anything to suggest that the Bengal Legislature intended to bind themselves to any future additions which might be made to that Act. It is at least conceivable that new provisions might have been added to Land Acquisition Act which would be wholly unsuitable to the local code.... Their Lordships regard the local Act as doing nothing more than incorporating certain provisions from an existing Act and for convenience of drafting doing so by reference to that Act, instead of setting out for itself at length the provisions which it was desired to adopt.

In a later part of the same judgment, it was held as follows:

It seems to be no less logical to hold that where certain provisions from an existing Act, have been incorporated into a subsequent Act, no addition to the former Act, which is not expressly made applicable to the subsequent Act, can be deemed to be incorporated in it, at all events if it is possible for the subsequent Act to function effectually without the addition.

The decision was followed by B.K. Mukherjea and Sharpe, JJ. in *Akubali Hooladar v. Najrmali Howladar* AIR 1946 Cal. 326, by Chagla C.J. and Dixit, J. in *Jethalal Nagji Shah v. Municipal Corporation for Greater Bombay* 1954 ITR 207 and by M.C. Desai, C.J. and R.S. Pathak, J. in *Chhagan Lal Rathi v. income tax Officer*

Distt. III (I) Kanpur 1955 ITR 777.

15. The principle laid down in the above mentioned decisions has been held to apply also to notifications issued under the statute or statutory rules. The relevant facts giving rise to the decision in *Emperor v. Rayangouda Lingangouda Patil* AIR 1944 Bom. 259 were that in 1941 the Govt. of Bombay delegated its power Under Rule 26, Defence of India Rules, to all the Distt. Magistrates. The rule was subsequently amended widening its scope and the question arose whether the additional powers stood delegated to the Distt. Magistrates or not. It was held by Macklin and Sen, JJ. that the delegation of its powers under a particular rule by the provincial Govt. cannot be deemed to cover the delegation of such powers as might subsequently be brought into existence by amendment of the rule. Accordingly, it was ruled that when the Provincial Govt. delegated its powers Under Rule 26 to all the District Magistrates in 1941 and Rule 26 was subsequently amended in 1942, the Distt. Magistrates held no authority to exercise the additional powers introduced as a result of the amendment. A Division Bench of the Madhya Pradesh High Court in *Amar Singh Rajendra Singh Vs. State of Madhya Pradesh and Others*, took a similar view and followed with approval the decision in *Emperor v. Rayangouda Lingangouda Patil* (supra). A Full Bench of this Court in *Mani Ram v. State through the Notified Area Mahoba* AIR 1952 All. FB has also followed with approval the Privy Council decision in *Secretary of State v. Hindustan Cooperative Insurance Society Ltd.* (supra) and that of the Bombay High Court in *Emperor v. Rayagouda Lingangouda Patil* (supra) and held that the principles laid down in the decisions were applicable to notifications issued under an enactment. M.C. Desai, J., as he then was, delivering the leading judgment held that the principles laid down in *Secretary of State v. Hindustan Cooperative Insurance Society Ltd.* (supra) "should govern the present case, though it deals with incorporation of certain provisions of an Act into a Notification issued thereunder and not into a subsequent Act. It makes no difference whether the incorporation is into a Notification or bye-law or into a subsequent Act." The other learned Judges constituting the Bench agreed with the view.

16. The principles laid down in the above mentioned decision will, in my opinion, apply with equal force to a rule framed under an enactment. In "The Interpretation of Statute" (Eleventh Edition at p. 290), Maxwell observes as follows:

But if a statute is repealed and re-enacted in a wider form, the old rules, in so far as they are continued, are not thereby enlarged.

17. The broad principles enunciated by Mr. Shanti Bhushan that the authorisation Under Rule 4 will not be enlarged in its scope and operation by any subsequent additions to the powers in Section 13 of the Act must consequently be accepted. Mr. Ram Manohar Sahai, who appeared on behalf of the State, however, contended that the acceptance of this principle has no impact on the instant case since the power of search was provided for even by Section 13(2) as originally

enacted. There is, in my opinion, force in this contention. u/s 13(2) of the Act as it stood when Rule 4 was framed an officer authorised by the State Govt. in that behalf had the power to inspect not only the accounts and registers maintained by a dealer in the ordinary course of his business but also the goods in his possession and his office, shop, godown, vessel or vehicle at all reasonable time. The power to inspect not only the accounts and registers of a dealer but also his shop, godown etc. by necessary implication included the power to enter into and to search the shop, godown etc. for relevant accounts and registers maintained by a dealer. I find support for this view from the decision of the Supreme Court in Commr. of The Commissioner of Commercial Taxes and Others etc. Vs. R.S. Jhaver and Others etc., Section 41 Sub-section (2) of the Madras General Sales Tax Act No. 1 of 1959, the scope of which came up for consideration before the Supreme Court, was as under:

All accounts, registers, records and other documents maintained by a dealer in the course of his business, the goods in his possession and his offices, shops, godowns, vessels or vehicles shall be open to inspection at all reasonable times by such officer:

Provided that no residential accommodation (not being a place of business-cum residence) shall be entered into and searched by such officer except on the authority of a search warrant issued by a Magistrate having jurisdiction over the area and all searching under this sub-section shall, so far as may be made in accordance with the provisions of the Code of Criminal Procedure, 1898 (Central Act V of 1898).

The High Court of Madras had held that, on a proper construction, under the above quoted provision the officers of the department had no authority to search the premises. The Supreme Court overruled the view taken by the High Court and held as follows:

The main dispute centres round the interpretation of Sub-section (2) of Section 41. The contention on behalf of the Respondents is that that provision did not authorised search of premises but merely provided for inspection thereof at all reasonable times by the empowered officer. We shall first deal with the main part of Sub-section (2) to see what it provides without reference to the proviso. Clearly Sub-section (2) provides for three things, namely (i) all accounts, registers, records and other documents maintained by a dealer in the course of his business shall be open to inspection at all reasonable times, (ii) the goods in the possession of the dealer shall also be open to inspection and (iii) the dealer's offices, shops, godowns, vessels or vehicles shall also be open to inspection. There is no doubt that there are no specific words in Sub-section (2) giving power of search. But if we read the three powers conferred by Sub-section (2) it should not be difficult to hold that search is included therein. It will be seen that Sub-section (2) differs from Sub-section (1) in one respect. In Sub-section (2) the dealer is required to produce his accounts etc. and to furnish other information relating to his business and it is left to the dealer to produce what

accounts he may say he has. The legislature was however cognizant of the fact that a dealer may not produce all accounts or furnish all information even though required to do so Under Sub-section (1). Therefore, Sub-section (2) provides that all accounts etc. of the dealer shall be open to inspection. It also provides that the dealers' offices, shops, godowns, vessels or vehicles shall be open to inspection. It is true that generally speaking a power, to inspect does not necessarily give power to search. But where, as in this case, the power has been given to inspect not merely accounts, registers, records and other documents maintained by a dealer but also to inspect his offices, shops, go-downs, vessels or vehicles, it follows that the empowered officer would have the right to enter the offices etc., for purposes of inspection. Naturally his inspection will be for purposes of the Act i.e. for the purposes of seeing that there is no evasion of tax. If therefore during his inspection of offices etc., the empowered officer finds any accounts, registers records or other documents in the shop, those accounts etc. will also be open to inspection. Reading therefore these two provisions together, it is clear that the empowered officer has the right to enter the offices etc. and to inspect them and if on such inspection he finds accounts etc., he has also the power to inspect them and to see if they relate to the business. These two powers taken together in our opinion mean that the empowered officer has the power to search the office etc. and inspect accounts etc., found therein. Though therefore the word "search" has not been used in Sub-section (2) these two powers of entering the offices etc. for inspection and of inspecting every kind of account maintained by a dealer with respect to his business together amount to giving the officer concerned the powers to enter and search the offices etc. and if he finds any account in the offices, shops etc., to inspect them. Otherwise we can see no sense in the legislature giving power to the empowered officer to enter the offices etc., for the purpose of inspection as the officer concerned would only do so for the purpose of finding out all accounts etc., maintained by the dealer and if necessary to inspect them for the purposes of the Act. We cannot therefore agree with the High Court that there is no power of search whatsoever in Sub-section (2) because the sub-section in terms does not provide for search.

It may be noted that the view of the Supreme Court was based on the main provision of Section 41 Sub-section (2) of the Madras Act disregarding the proviso and that Sub-section (2) of Section 13 of the U.P. Sales Tax Act as it stood before the amendment of Section 13 in 1954 was practically in terms identical with it. Thus when Rule 4 authorized the assessing, appellate or revising authorities to exercise the powers mentioned in Section 13, it invested the authorities mentioned therein with power not only to require any dealer to produce before them goods and accounts etc. relating to his business but also to enter and search any office, shop, godown etc. of his concern. An inspection of the premises evidently cannot be carried without the power to enter it. It is thus clear that the powers to enter any premises of a dealer and to search for account books etc. therein and to inspect them existed in Section 13 as it was when Rule 4 was framed.

18. The question remaining for consideration is as to whether the officers empowered in Rule 4 had also the power to seize books of accounts and documents of the Applicants. The two raids in question were carried out on the 4th May, 1964 and on that date Section 13 stood as amended by U.P. Act No. VII of 1959. On the date of the raids under consideration by reason of Sub-section (3) of Section 13 any officer authorized u/s 13(2) not being an Asstt. Sales Tax Officer or an officer below that rank could, if he had reasonable grounds for believing that any dealer was trying to evade liability for tax or other dues under the Act and that anything necessary for the purpose of an investigation into his liability may be found in any account, register or documents, seize such account, register or document as might be necessary. Sri Lamgora and Sri Chauhan were both officers who by reason of Rule 4 had the authority contemplated by Sub-section (2) of Section 13 and since they were officers holding ranks superior to an Asstt. Sales Tax Officer, they by reason of Sub-section (3) of Section 13, as it stood on the date of the raids, had in my judgment the power to seize any account books, registers or documents found by them during the search, provided the other requirements of Sub-section (3) of Section 13 were satisfied. Their authority to seize relevant account books, registers and documents rested not on the authorization Under Rule 4 but basically on Section 13(3) itself.

Learned Counsel appearing for the Applicants, however, contended that Sub-section (3) of Section 13 of the Act as it stood after the amendment brought about by U.P. Act No. VII of 1959 came into force on the 1st April, 1959, while the proviso to Rule 4 was deleted by a notification dated 7th May, 1959. On the 1st April, 1959, hence, according to the learned Counsel for the Applicants though as a result of Rule 4 as it existed on that date all assessing, appellate and revising authorities were authorized Under Sub-section (2) of Section 13, their powers were subject to the limitations placed by the proviso and could be exercised only on the basis of a written, signed and sealed authorization from the Asstt. Commr., Dy. Commr. or Commr. It was urged that consequently when Sub-section (3) of Section 13 of the Act as it stood after the amendment brought about by U.P. Act No. VII of 1959 referred to "any officer authorized Under Sub-section (2)" it could have reference only to assessing, appellate and revising authorities exercising the powers mentioned in Section 13 subject to the proviso. It was submitted that the legislature while enacting Sub-section (3) of Section 13 could not have contemplated assessing, appellate and revising authorities exercising the powers mentioned in Section 13 uncontrolled by the proviso. In my opinion, a plain reading of Sub-section (3) of Section 13 as introduced by U.P. Act No. VII of 1959 does not lend any support to the contention. The sub-section empowers every officers authorized Under Sub-section (2) to seize relevant registers, accounts etc. subject to the other conditions of the provisions being satisfied and makes no reference to any limitations on the authorization introduced by the Rules. There can be no doubt that the officers mentioned in Rule 4 were authorised u/s 13(2) within the meaning of Section 13(3) as it stood after the 1959 Amendment though subject to the limitation of the proviso.

19. It was further contended by the learned Counsel appearing for the Applicants that Section 13(3) of the Act as it stood after the amendment brought about by U.P. Act No. VII of 1959 must be construed as contemplating prospective authorization for the exercise of powers Under Sub-section (2) and not existing authorization. Neither the context nor the language of Sub-section (3) of Section 13 justifies this narrow interpretation of that provision. When the legislature amended Section 13 of the Act by Act No. VII of 1959 it must undoubtedly have been aware of the fact that by means of Rule 4 certain officers already stood authorized to exercise such powers as were contemplated by Sub-section (2). I find no reason for holding that the legislature while amending Sub-section (3) of Section 13 did not intend to invest those officers with the powers contemplated by Sub-section (3) of Section 13. In this view of the matter, the contention of Sri Shanti Bhushan must be repelled and I have no hesitation in holding that both Sri C.M. Lamgora and Sri M.D. Chauhan, Sales Tax Officers, were empowered by reasons of Sub-section (3) of Section 13 as introduced by U.P. Act No. VII of 1959 read with Rule 4 and Rule 3-A to seize such documents as were contemplated by the sub-section.

20. It was urged in the alternative by Mr. Ram Manohar Sahai appearing for the State that according to Sub-section (2) of Section 24 all rules made under that provision had the same effect as if enacted in the Act itself and consequently Rule 4 when framed must be deemed to have been engrafted in the Act and must be read as a provision of the Act itself. He contended that if Rule 4 is treated as a provision of the Act itself, any reference in the rule to Section 13 must be construed as including any subsequent amendments brought about in that section. There is, in my opinion, no substance in this contention. Merely because Sub-section (2) of Section 24 enacts that the rules shall have the same effect as if enacted in the Act it does not mean that the rules lose their character of a piece of subordinate legislation and are to be treated for all purposes as an enacted provision of the Act itself. The scope of a similar provision under the Mines Act of 1923 came up for consideration before the Supreme Court in *The Chief Inspector of Mines and Another Vs. Lala Karam Chand Thapar etc.*, . Section 29 of the Mines Act of 1923 empowered the Central Govt. to make regulations for the purpose of carrying out the provisions of the Act. In exercise of those powers the Central Govt. framed regulations. The 1923 Act was repealed and re-enacted with modifications as the Mines Act, 1952. The contention of Mr. G.S. Pathak, who appeared on behalf of the Respondent before the Supreme Court was that Section 24 of the General Clauses Act did not operate to keep alive the regulation after the repeal of the 1923 Act. His submission was that according to Section 31 Sub-section (4) of the 1923 Act the regulations framed u/s 29 of that Act on publication were to have effect as if enacted in the Act consequently when the 1923 Act was repealed the regulations also stood repealed since they were to be treated as part of the enactment itself. Das Gupta, J. speaking for the Court repelled the contention in the following terms:

The true position appears to be that the Rules and Regulations do not lose their character as rules and regulations, even though they are to be of the same effect as if contained in the Act. They continue to be rules subordinate to the Act and though for certain purposes including the purpose of construction they are to be treated as if contained in the Act, their true nature as subordinate rule is not lost. Therefore, with regard to the effect of a repeal of the Act, they continue to be subject to the operation of Section 24 of the General Clauses Act.

21. The next contention on behalf of the Applicants was that the language employed in Rule 4 reasonably leads to the conclusion that the rule did not actually confer any powers on the assessing, appellate and revisional authorities but merely provided that the powers u/s 13 if conferred by the State Govt. by a separate rule or notification could be exercised by the officers concerned only within the limits of their jurisdiction. According to Mr. Shanti Bhushan thus the effect of Rule 4 was merely to define the territorial limits within which the powers u/s 13 could be exercised provided there was conferment of such powers by another distinct Act on the part of the State Govt. It was urged that the use of the word "shall" in Rule 4 irresistibly led to the conclusion that the rule itself conferred no powers on the assessing, appellate and revisional authorities but merely stated in imperative language that the exercise of the powers if conferred was to be limited within the territorial jurisdiction of the officer concerned. There is, in my opinion, no merit in this submission. Section 13 itself gave power to the State Govt. to authorize any officer not below the rank of an assessing authority to exercise the powers mentioned in the section. u/s 24(1)(e) the State Govt. has the power to make rules providing for the appointments, duties and powers of officers appointed for the purposes of enforcing the provisions of the Act. It is apparently in exercise of these powers that the State Govt. framed Rule 4. The principle part of Rule 4 as it originally stood mentioned the officers, the powers that they could exercise as also the territorial area within which those powers could be exercised by them. It is obviously an exhaustive rule not contemplating another separate rule or notification on the subject. If the conditions contemplated by Section 13 are found to exist then the officers mentioned in rule who are public officers entrusted with public duties are evidently under a duty to exercise the powers in public interest. In my opinion the State Govt. used the word "shall" while framing the rule with a view to emphasise that the officers were under a duty to exercise the power in appropriate cases. There is yet another consideration which leads to the same conclusion. Prior to the amendment of Rule 4 by the notification dated 7th May, 1959, there was a proviso to the rule which has already been quoted in an earlier part of this judgment. Provisos usually have the effect of explaining or limiting the principal part of a legislative provision. The court below rightly, in my opinion, has observed that if the principal part of Rule 4 did not have the effect of conferring any power at all, there was no occasion for the proviso which provides for conditions and limitations for the exercise of the powers. Necessity for the proviso could arise only if the main part of the rule had the effect of conferring

the powers u/s 13 of the Act.

22. It was next contended that an examination of the statements recorded during the investigations clearly indicated that the charge against the accused-Applicants is groundless and consequently these are fit cases in which the powers u/s 251-A(2) of the Code of Criminal Procedure should have been exercised. My attention was invited to certain documents on record which according to the learned Counsel for the Applicants clearly indicate that the charges as framed against the Applicants were groundless and could not be substantiated. There is, in my opinion, no force in the contention. The documents to which my attention was invited are capable of being explained. No evidence has yet been recorded and the prosecution has had no opportunity of explaining those documents. The contention consequently fails.

23. Apart from the contentions dealt with above which are common to both the revisions, a further submission has been made in Cr. Rev. No. 55 of 1959, which is concerned with the raid conducted by Sri M.D. Chauhan, who was at the relevant time Sales Tax Officer, Firozabad, at the premises of firm Madan Mohan Damma Mal (P) Ltd. My attention was invited to Annexure B to the counter-affidavit sworn to by Sri C.M. Lamgora. The annexure is a copy of an order passed by Sri R.C. Goel, Asstt. Commr. (Executive), Sales Tax, Agra range, dated 22nd April, 1964, transferring all pending cases of Messrs Madan Mohan Damma Mal (P) Ltd. from the file of the Sales Tax Officer Asstt. Sales Tax Officer, Firozabad to that of Sri S.S. Chaubey, Sales Tax Officer, Etah, for disposal. It was submitted that after this order passed by the Asstt. Commr. in exercise of powers Under Rule 18(2) of the U.P. Sales Tax Rules, Sri Chauhan who was the Sales Tax Officer, Firozabad ceased to be the assessing authority in respect of pending cases of Messrs Madan Mohan Damma Mal (P) Ltd. and consequently he had no authority to search the premises of the said Firm and to seize any documents, registers etc. of the Firm. On the other hand, it was urged by the learned Counsel for the State that the order merely transferred pending cases from the file of Sri Chauhan to Sri S.S. Chaubey, Sales Tax Officer, Etah, but did not effect his jurisdiction in respect of future assessments. It was submitted that the material on record did not justify the conclusion that the raids were conducted for the purposes of seizing any documents relating to pending cases only. It has in my opinion rightly not been contended that as a result of the order passed by Sri R.C. Goel, Sri Chauhan did not cease to be the Assessing Authority as far as Messrs Madan Mohan Damma Mal (P) Ltd. is concerned with regard to the assessments of the Firm pending on the 5th May, 1964, which was the date on which the raid was carried out. It will be noticed that the search of the premises of Messrs Madan Mohan Damma Mal (P) Ltd. was effected by Sri Chauhan within a period of about 12 days of the order of Sri Goel. I was taken through the statement of Sri R.C. Goel recorded during the investigation. An examination of the statement leaves no room for doubt that the raid at the premises of Messrs Madan Mohan Damma Mal (P) Ltd. was carried out in order to inspect and seize documents, registers and account books etc. with respect to the pending cases of

the Firm. The relevant part of the statement of Sri Chauhan u/s 161, Code of Criminal Procedure is as follows:

Sri R.C. Goel, Asstt. Commr. (Executive) Sales Tax, Agra, me badariyaft zahir kiya ki 22-4-64 ko maine Messrs. Firozabad Glass and Chemical Industries Ltd. Messrs Kunwar Pharmaceutical Works, va Messrs Madan Mohan Damma Mal (P) Ltd. ke mamle Sri M.D. Chauhan, Sales Tax Officer, Ferozabad, va Sri K.N. Agarwala, Assistant Sales Tax Officer, Firozabad, se Sri S.S. Chaubey, Sales Tax Officer, Etah, ko transfer kar diye the aur mamle ki taftish Sri C.M. Lamgora, Sales Tax Officer Agra, ke supurd kar dee. Jaisa ki Addl. Sales Tax Commr., UP Lucknow, ne hidayat dee thi Sales Tax Officer (S.B.I.) Agra ko khabar milj ki yehn Firms hisab ke duhre kJhate. rakhtj hain jo karkhane ki had se bararoad ho sakte hain. S.T.O. (S.B.I.) ko hidayat ki gai ki voh in hadood men javen aur yadi kitaben va khaten milen to unko kabje men len our is kaam ke liye unko Sri S.S. Chaubey, Sales Tax Officer, Etah, va kuuch anya Sales Tax Officers Agra ki madad di gai. 4-5-64 ki subah ko Firozabad jane se pahle Sri Lamgora ne mujhe khabar di ki (aspasth) muaina Messrs Madan Mohan Damma Mal Cher Gokal ka bhi zaroori hai kyonki kuchh sambandhit kitaben whahan bhi mil sakti hain. Sri M.D. Chauhan S.T.O. Firozabad ko telephone par bataya gaya ki en hadood ka muaina bhi eek (aspasth) hoga." The material on record before the learned Magistrate consequently only disclosed that Sri Chauhan had been prevented from inspecting and seizing documents etc. of the Firm Messrs Madan Mohan Damma Mal (P) Ltd. in respect of pending assessment proceedings over which Sri Chauhan had ceased to have any jurisdiction and with regard to which he had ceased to be the Assessing Authority. On the date of the raid he had consequently no legal authority to search the premises of that Firm for account books etc. relating to pending assessment proceedings and to seize them. The Applicants in Cr. Rev. No. 5 of 1969 hence cannot be charged for any criminal offence for having prevented Sri Chauhan from seizing such documents. The learned Magistrate consequently was not legally justified in framing charges against the Applicants in Cr. Rev. No. 55 of 1969.

24. In the result Cr. Rev. No. 55 of 1969 is allowed and the charges framed against the Applicants of that revision are quashed. The connected Gr. Rev. No. 56 of 1969 is, however, dismissed. The interim orders passed by this Court are hereby vacated. The record of the two cases will be sent down at an early date to enable further proceedings being taken in accordance with law.

25. Before parting with the cases, I must express my gratitude to Mr. Shanti Bhushan and Mr. Deoki Nandan, who represented the Applicants and Mr. Ram Manohar Sahai, who appeared for the State, for the valuable assistance they have rendered.