

(1982) 02 P&H CK 0038

In the Punjab And Haryana At Chandigarh

Case No : Review Application No. 71 of 1981 in C.W.P. No. 2913 of 1972

Sushil Flour, Dal and Oil Mills

APPELLANT

Vs

The Chief Commissioner, Union Territory and Others

The Chief Commissioner, Union Territory and Others Vs Sushil
Flour, Dal and Oil Mills

RESPONDENT

Date of Decision : 05-02-1982

Acts Referred:

Constitution of India, 1950 — Article 226, 239
General Clauses Act, 1897 — Section 3
Punjab General Sales Tax Act, 1948 — Section 5
Punjab Reorganisation Act, 1966 — Section 89

Citation : (1982) 50 STC 222

Hon'ble Judges : I.S. Tiwana, J

Bench : Single Bench

Advocate : M.L. Puri, for the Appellant; Anand Swaroop and Sunil Parti, for the Respondent

Judgement

I.S. Tiwana, J.—The respondents seek the review of my order dated 17th November, 1981, in Civil Writ No. 2913 of 1972 whereby the impugned notifications issued by the Chief Commissioner, Union Territory, Chandigarh, enhancing the rate of sales tax have been quashed on the ground that at the time of passing of the said order the provisions of Section 3(8)(b)(iii) of the General Clauses Act, 1897 (for short, the Act), and the notification, annexure D, were not brought to my pointed notice by the learned counsel for the respondents, and had that been done, the result of the petition, according to the learned counsel, would have been otherwise. For the disposal of this application I need not recapitulate the detailed facts of the case over again as this order has to be read in the context of the earlier order.

2. On hearing the learned counsel for the respondents and perusing the above-noted provision of the Act and the notification, annexure D, I feel reassured about the legality and correctness of the said order of mine. Vide that order I

have held that the power to determine or to enhance the rate of sales tax is a legislative power and the same could not be further delegated nor has it in fact been delegated by the Central Government or the President of India to the Chief Commissioner of the Union Territory.

3. The contention of the learned counsel is that in view of the above-noted provision of the Act, the Chief Commissioner or the Administrator of the Union Territory constitutes the Central Government and he had been duly authorised vide notification dated 30th October, 1968 (annexure D), to discharge all the powers and functions of the Central Government. To make the argument more intelligible it is necessary to notice the phraseology of the above-noted provision of the Act and the relevant part of the said notification.

4. Section 3(8)(b)(iii) reads as follows :

3. In this Act, and in all Central Acts and Regulations made after the commencement of this Act, unless there is anything repugnant in the subject or context,-

...

(8) "Central Government" shall,

...

(b) in relation to anything done or to be done after the commencement of the Constitution, mean the President ; and shall include,-

...

(iii) in relation to the administration of a Union Territory, the Administrator thereof acting within the scope of the authority given to him under Article 239 of the Constitution.

5. The operative part of the notification, annexure D, read as follows :

Now, therefore, in pursuance of Clause (1) of Article 239 of the Constitution and all other powers enabling him in this behalf, and in partial modification of the notification of the Government of India in the Ministry of Home Affairs No. S.D. 3269 dated the 1st November, 1966, the President hereby directs that, subject to his control and until further orders, the powers and functions of the Central Government exercisable and dischargeable under laws other than Central Act shall, in relation to the Union Territory of Chandigarh, be also exercised and discharged by the Administrator of that Union Territory.

[No. F. 2/9/68-UTL-(i)] K. R. Prabhu, Joint Secretary to Government of India.

6. As the above-noted provision of the Act and the notification, annexure D, make a reference to the provisions of Article 239 of the Constitution of India, it is but essential to notice the relevant part of that article too.

239. (1) Save as otherwise provided by Parliament by law, every Union Territory shall be administered by the President acting, to such extent as he thinks fit, through an administrator to be appointed by him with such designation as he may specify."

7. Though I have my doubts about the correctness of the submission that the President, while authorising the Chief Commissioner, vide annexure D, to exercise all the powers and discharge the functions of the Central Government, acts as the executive head of the Central Government and the applicability of the above-noted definition of "Central Government" in the Act to the facts of this case, yet I have to examine the argument of the learned counsel in full depth. The reasons for this doubt of mine are as under :

(i) It has been held by the Supreme Court in *Satya Dev Bushahri Vs. Padam Dev and Others*, , as follows :

The President who is the executive head of the Part C States (now Union Territory) does not function as the executive head of the Central Government, but as the head of the State under powers specifically vested in him under Article 239. The authority conferred under Article 239 to administer Part C States has not the effect of converting those States into the Central Government. Under Article 239, the President occupies in regard to Part C States; a position analogous to that of a Governor in Part A States and of a Rajpramukh in Part B States. Though the Part C States are centrally administered under the provisions of Article 239, they do not cease to be States and become merged with the Central Government.

(ii) The opening words of Section 3 of the Act as reproduced above make it manifestly clear that the definition of "Central Government" provided for in the Act applies only to Central Acts and Regulations made after the commencement of the Act and has nothing to do with the State Acts. This definition in the Act is intended for a proper interpretation of all Central Acts made after the commencement of the statute.

8. Though as has been held in my order dated 17th November, 1981, that in view of the Adaptation Order dated 20th November, 1968 (annexure E), issued by the Government of India u/s 89 of the Punjab Reorganisation Act, 1966, for the words "Punjab Government" occurring in Sub-section (1) of Section 5 of the Punjab General Sales Tax Act, the words "Central Government" have to be read, yet that does not mean that either the President while issuing the notification, annexure D, authorising the Chief Commissioner to exercise and discharge the functions of the Central Government acted-as the executive head of the Central Government or the definition of "Central Government" given in the Act would ipso facto become applicable to the Punjab General Sales Tax Act.

9. Now coming to the argument of the learned counsel, a bare reading of the above-noted article of the Constitution indicates, that it provides that in administering a Union Territory, the President may act through the Administrator

to such extent as the President thinks fit. In regard to matters not falling within the authority conferred on the Administrator, the President has essentially to act directly. u/s 3(8)(b)(iii) of the Act, the Administrator-the Chief Commissioner in the case in hand-of a Union Territory only while acting within the scope of the authority given to him under Article 239 of the Constitution, constitutes the Central Government with reference to the administration of the Union Territory. Various provisions of the Constitution of India bring out a clear-cut and well-defined differentiation between the various branches of the Government, that is, executive, legislative and judicial. This distinction is made more explicit by the following explanation noticed in Wharton's Law Lexicon, 14th Edition, page 388 :

Executive, that branch of the Government which puts the laws into execution as distinguished from- the legislative and judicial branches. The body that deliberates and enacts laws is legislative ; the body that judges and applies the laws in particular cause is judicial; and the body that carries the laws into effect or superintends the enforcement of them, is executive.

10. Reading the provisions reproduced above [Article 239(1) and Section 3(8)(b) (iii) of the General Clauses Act] and particularly the words underlined*, in the light of the above distinction between the various powers of the State, it becomes manifestly clear that what has been delegated by the President for the administration of the Union Territory of Chandigarh, is his administrative or executive power. The extent of this power to be exercised by the Chief Commissioner is well-defined by the notification, annexure D, itself and it is only when the Chief Commissioner acts within the scope of the authority given to him under Article 239 of the Constitution that he represents or constitutes the Central Government.

11. As has already been held by me in the light of the Supreme Court judgment in Sita Ram Bishambhar Dayal v. State of U. P. [1972] 29 STC 206 (SC), the power to enhance the rate of sales tax is a legislative power and has been delegated by the legislature to the executive, that is, the executive head of the Central Government. The said power could neither be further delegated by the President to the Administrator nor has it been so delegated.

12. In all fairness to the learned counsel for the petitioners it is observed that he was of the view that no case for review is made out in this petition filed by the respondents and it is only the merits of the earlier order dated 17th November, 1981, are being assailed. This, according to the learned counsel, does not constitute a ground for review. I do not see any merit in this contention of the learned counsel for the short reason that in case an order has been passed by a court in ignorance of a material provision of law which is likely to affect the merits of the order, then that by itself makes out a good ground for review of the order. It is a different matter that in spite of a reference to those provisions, the party seeking review may not succeed.

13. Having failed on the legal plan, the learned counsel for the respondents

pleads that there is no equity in favour of the petitioners who have assailed these notifications for the reason that the tax which they have been asked or made to pay has already been collected by them from the consumers and any relief given to them by quashing these notifications would virtually amount to robbing the taxpayers or the consumers. In a nutshell, the learned counsel suggests that the tax which has either been paid or is sought to be recovered from the petitioners under the abovesaid notifications has already been passed on by them to the consumers at the time of the sales made in the latter's favour. In view of that he pleads that the petitioners should not be made entitled to the refund or non-payment of that tax which they have already collected on behalf of the State authorities. This submission of the learned counsel, to my mind, is not devoid of merit. The net result of quashing these notifications would be that the petitioners would not only be absolved of the liability to pay the tax but would also be entitled to claim refund of the one already paid by them in spite of the fact that they have already realised that tax from the consumers. This aspect of the matter was neither highlighted at the time of the passing of the order dated 17th November, 1981, nor was noticed by me. It is axiomatic that discretionary relief under Article 226 of the Constitution may be declined to a person who though entitled to it on technical grounds yet the non-grant of the same does not result in loss or injustice to that person. This is so because the ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The applicability of this principle is, however, to vary from case to case. As in the instant case, I am clearly of the view that the petitioners have already passed on their liability to pay the tax to the consumers, they, to my mind, are not to be made entitled to either not to pay the same to the authorities or to claim refund of the same. Thus I vary that last part of my order wherein I have held after quashing the impugned notifications that the petitioners would only be liable to pay tax in accordance with the rate prevalent prior to the coming into force of the impugned notifications and hold that they would not be made liable to pay tax in the light of the impugned notifications after the date of the said order of mine, that is, 17th November, 1981. To make it more clear it is pointed out that though the impugned notifications have, as already indicated, been held to be bad, yet on account of that declaration the petitioners would be absolved of their liability only prospectively, that is, after 17th November, 1981, and not retrospectively. Since the respondents have partially succeeded in these proceedings, I do not pass any order as to costs.