

(1953) 09 KL CK 0003
In the High Court Of Kerala
Case No : O.P. No. 41 of 1952

Thangalkunju Musaliar

APPELLANT

Vs

Venkitachalam Potti and Another

RESPONDENT

Date of Decision : 18-09-1953

Acts Referred:

Constitution of India, 1950 — Article 133, 226, 226(1), 372(1)
Opium and Revenue Laws (Extension of Application) Act, 1950 — Section 3
Travancore Taxation on Income (Investigation Commission) Act, 1124 — Section 1(3),
22, 4(3), 5, 5(4)

Citation : (1953) 09 KL CK 0003

Hon'ble Judges : Koshi, C.J;Subramania Iyer, J;M.S. Menon, J

Bench : Full Bench

Advocate : S. Narayanan Potti, M. Palpu and M.K. Nambiar, for the Appellant;
Advocate-General, T.N. Subramania Iyer and G. Rama Iyer, for the Respondent

Final Decision : Allowed

Judgement

Menon, J.—This is a petition for "a Writ of prohibition or any other appropriate writ or direction prohibiting the Respondents from holding any enquiry into, the cases registered as Evasion Cases Nos. 1 and 2 of 1125 on the file of the Income Tax Investigation Commission of Travancore or from holding any investigation into the income of the Petitioner from 1939 to the last completed assessment year or for any other period".

2. The first Respondent is the "Authorised Official and Income Tax Officer on Special duty, Trivandrum" and the second Respondent, "the Income Tax Investigation Commission, by its Secretary, New Delhi". The enactment under which the investigation is being made is the Travancore Taxation on Income (Investigation Commission) Act, 1124 (Travancore Act 14 of 1124) and the first notice issued to the Petitioner dated 10-12- 1949 (Ex. A) reads as follows:

Notice.

Whereas the Income Tax Investigation Commission having been informed that a substantial portion of your income for 1942 and 1943 has escaped assessment, has ordered investigation into the matter, you are hereby required to produce the following on or before 21-12-1949 before the commission.

- (1) The account Books (Day Books and Ledgers) for the years 1942 and 1943.
- (2) Kurippu books, invoices, vouchers, bills of lading and customs duty receipts for 1942 and 1943.
- (3) Bank pass books showing dealings with banks for 1942 and 1943.
- (4) Stock books for the years 1942 and 1943.
- (5) Statement of properties purchased by you either in your name or in the names of your relatives or dependents during 1942 and 1943 showing such particulars as acreage, price paid, annual yield, Sirkar tax, etc.
- (6) Statement of house properties constructed . or purchased in 1942 and 1943 showing the cost thereof and municipal valuation.

3. On 21-11-1951 the first Respondent forwarded to the Petitioner for information a copy of the notification dated 18-10-1951 (Ex. B1) investing him with the powers of an "Authorised Official".

Notification.

It is notified for general information that the Income Tax authority mentioned in Col. (1) of the table attached to this notice has been authorised by the Income Tax Investigation Commission, without prejudice to his regular duties, to be authorised official u/s 6 of the Travancore Taxation on Income (Investigation Commission) Act, 1124, read with Act 33 of 1950 (Indian Act) and that under the provisions of the said Act, any person (including a person whose case is not under investigation) who is required by the said authorised official, in the course of his investigation,

- (1) to produce accounts or documents,
- and/or (2) to give information in respect of such accounts, or documents,
- and/or (3) to attend in person and answer question on oath;
- and/or (4) to make or prepare statements on oath giving information on specified matters.

shall be bound to comply with his requirements notwithstanding anything in any law to the contrary. Failure to comply with the requirements of the said authorised official may amount to an offence under Chapter X of the Indian Penal Code.

Name and Designation of the Authorised Official. Address of the Headquarters Office of the Authorised Official.

Sri M. Venkitachalam Poti, Income Tax Officer on Special duty. income tax Officer on Special duty, Trivandrum.

and the subsequent correspondences ending up with his letter dated 13th March 1952 (Ex. C), the opening paragraph of which is extracted below, made it clear that the investigation proposed to Joe conducted will not be confined to the years 1942 and 1943, the two years originally covered by Evasion Cases Nos. 1 and 2 of 1125;

You would have observed from the requisition for the statements of wealth made by the Central Commission, that they propose to consider your income for the full investigation period, viz., from 1940 to the last completed assessment year. I would, therefore, like to make it clear to you that it would be necessary for me to investigate your income for the said period notwithstanding the fact that the erstwhile State Commission had not specifically intimated you that they propose to cover the full period.

4. The main contentions urged on behalf of the Petitioner are:

(a) that the Income Tax Investigation Commission has no power to conduct an investigation regarding his income in respect of any year whatsoever; and

(b) that at any rate the said Commission cannot go beyond the two years, 1942 and 1943, covered by the Evasion Cases Nos. 1 and 2 of 1125.

5. Before dealing with those contentions, however, we would like to dispose of a preliminary objection raised by the learned Advocate General that this Court is not competent to entertain the petition in view of the fact that the second Respondent is not amenable to its jurisdiction. Under Article 226 (1) of the Constitution the power of a High Court to issue directions, orders or writs is confined to the territories in relation to which it exercises, jurisdiction and to persons or authorities, including in appropriate cases any Government, within those territories and the contention was that as the second Respondent functions outside the State of Travancore-Cochin and the 1st Respondent is a mere subordinate of the second, it is beyond our competence to grant the prayer embodied in the petition.

6. This argument was sought to be supported by a recent decision of the Supreme Court of India in Election Commission, India Vs. Saka Venkata Subba Rao and, in which their Lordships emphasised the two-fold limitation upon the exercise of the powers of a High Court;

(a) that the writs issued by a High Court cannot run beyond the territories subject to its jurisdiction; and

(b) that the person or authority to whom a High Court is empowered to issue such writs must be within those territories or in other words that they must be amenable to its jurisdiction either by residence or location within those territories.

7. It was an appeal from an order of a single Judge of the High Court of Madras issuing a writ of prohibition restraining the Election Commission, a statutory authority constituted by the President and having its offices permanently located at New Delhi, from enquiring into the alleged disqualification of the Respondent for a membership of the Madras Legislative Assembly and the following extracts from the judgment will give a clear idea of the contentions raised and the conclusions reached in that case;

(a) We are unable to agree with the learned Judge below that if a tribunal or authority permanently located and normally carrying on its activities elsewhere exercises jurisdiction within those territorial limits so as to affect the rights of parties therein, such tribunal or authority must be regarded as "functioning" within the territorial limits of the High Court and being therefore amenable to its jurisdiction under Article 226.

(b) It was, however, urged by the Respondent's Counsel that the High Court had jurisdiction to issue a writ to the Commission at New Delhi because the question referred to it for decision related to the Respondent's right to sit and vote in the Legislative Assembly at Madras and the parties to the dispute also resided in the State of Madras. The position, it was claimed, was analogous to the Court exercising jurisdiction over persons outside the limits of its jurisdiction provided the cause of action arose within those limits AIR 1943 164 (Privy Council) on which reliance was placed "is no authority for" dispensing with the necessity of the presence or location, within the local limits of the Court's jurisdiction, of the person or authority to whom the writ is to be issued, as the basis of its power to issue it....

In any case, the decision did not turn on the construction of a statutory provision similar in scope, purpose or wording of Article 226 of the Constitution and is not of much assistance in the construction of that Article.

(c) It was said that it could not have been contemplated that an inhabitant of the State of Madras, feeling aggrieved by a threatened interference with the exercise of his rights in that State by an authority located in Delhi and acting without jurisdiction, should seek his remedy under Article 226 in the Punjab High Court. It is a sufficient answer to this argument of inconvenience to say that, the language of the article being reasonably plain, it is idle to speculate as to what was or was not contemplated.

(d) Our attention has been called to certain decisions of High Courts dealing with the situation where the authority claiming to exercise jurisdiction over a matter at first instance is located in one State and the appellate authority is located in Anr. State. It is not necessary for the purposes of this appeal to decide which High Court would have jurisdiction in such circumstances to issue prerogative writs under Article 226.

8. In a recent English case "Regina v. Industrial Disputes Tribunal" (1953) 1 WLR 411 (C) - it was decided Unit where a factory in which a dispute arose was

situated in Scotland the Courts of Scotland had jurisdiction to issue a writ of certiorari and that as the company which owned the factory was registered in England and the Tribunal concerned had sat in England the English Courts also had jurisdiction to do the same.

At the same time, speaking for myself", said Lord Goddard, C.J., "I cannot help thinking that it would be much better, where the whole subject-matter of the dispute has arisen in Scotland, that the proceedings should be taken in the Scottish and not the English Courts, but, as I have said, we hold that, from the point of view of comity, there is no objection to our going into the matter.

This decision also like the "Parlakkimedi Case (B)" may not be of much avail for the construction of the provisions of Article 226 of the Constitution.

9. The first Respondent in this case is resident within the State of Travancore-Cochin and his office is situate at Trivandrum. All his communications to the Petitioner have emanated from within the State and the activities complained about are activities confined to the State. The prayer in the petition is in essence a prayer to paralyse his hands and thus prevent the mischief, and we are of the opinion that by his residence and the location of his office within the State he is clearly amenable to the jurisdiction of this Court under Article 226 of the Constitution. As a writ against the first Respondent, if issued, is sufficient for stopping completely the mischief complained about, it is unnecessary for us to decide whether a writ can be issued or not as far as the 2nd Respondent is concerned.

10. In the light of what is stated above we over-rule the preliminary objection to jurisdiction raised by the learned Advocate General.

11. That the objection to jurisdiction is only an alter-thought and that there has been a submission to, the jurisdiction of this Court by the Second counter-Petitioner are clear from the affidavit of the first counter-Petitioner dated 3-7-1952 wherein he affirmed that the affidavit was filed "as the answer of both the counter-Petitioners to this application"; (paragraph 1), that he has been "fully authorised to do so" (para 1), and that the Commission is "fully prepared" to shape its proceedings "in accordance with the directions of this Hon'ble Court" (para 15).

12. When we were discussing the draft of the order to be pronounced it struck us that there was an aspect of the case which had not been dealt with at the Bar and on which we should hear Counsel before we dispose of this petition. The following extract from our order dated 22-5-1953 summarises the questions involved.

The proceedings of the Income Tax Investigation Commission are based on the Travancore Taxation on Income (Investigation Commission) Act; 1124 (Travancore Act 14 of 1124) and the following legislative sequence will underlie the importance of its validity for a proper adjudication of the contentions urged

before us;

(1) 26-7-1949. Notification issued by the Government of Travancore-Cochin bringing into force the Travancore Taxation on Income (Investigation Commission) Act, 1124 (Travancore Act 14 of 1124) with effect from 22-7-1949 u/s 1(3) of that enactment as continued in force by the Travancore-Cochin Administration and Application of Laws Ordinance, 1124 (Travancore Ordinance I of 1124).

(2) 26-1-1950. The Constitution of India came into force. Travancore-Cochin became a Part B State and by Article 372(1) of the Constitution the Travancore Taxation on Income (Investigation Commission) Act, 1124 (Travancore Act 14 of 1124) was continued in force "until altered or repealed or amended by a competent Legislature or other competent authority".

(3) 31-3-1950. The Finance Act, 1950 (Central Act 25 of 1950) came into force and the Indian Income Tax Act, 1922 (Central Act 11 of 1922) was extended to Travancore-Cochin.

(4) 18-4-1950. The Opium and Revenue Laws (Extension of Application) Act, 1950 (Central Act 33 of 1950) extended to Travancore-Cochin the Taxation on Income (Investigation Commission) Act, 1947. (Central Act 30 of 1947) and continued in force the Travancore Taxation on Income (Investigation Commission) Act, 1124 (Travancore Act 14 of 1124).

(5) 16-8-1950. The date on which the term of the appointment of the Commission would have expired u/s 4(3), Travancore Taxation on Income (Investigation Commission) Act, 1124 (14 of 1124) unless extended by Government u/s 4(3) of that enactment "for any period up to the last day of Karkadagom 1126". (16-8-1951).

(6) 24-8-1951. The Opium and Revenue Laws (Extension of Application) Amendment Act, 1951 (Central Act 44 of 1951) amended the Opium and Revenue Laws (Extension of Application) Act, 1950 (Central Act 33 of 1950).

Section 1(3), Travancore Taxation on Income (Investigation Commission) Act, 1124 (Travancore Act 14 of 1124) provides that " it shall come into force on such date as Our Government may, by, notification in Our Government Gazette, appoint". The notification issued on the subject is dated 26-7-1949 (Travancore-Cochin Government Gazette dated 26-7-1949, Part I, page 151) and reads as follows:

In exercise of the powers conferred by Sub-section (3) of Section 1, Travancore Taxation on, Income (Investigation Commission) Act, 1124 (14 of 1124) as continued in force by the United State of Travancore and Cochin Administration and Application of Laws Ordinance, 1124 (1 of 1124) the Government are pleased to appoint the 7th Karkadagom 1124 to be the date on which the said Act shall come into force.

The 7th Karkadagom 1124 corresponds to 22-7-1949. According to Section 3(1), United State of Travancore and Cochin Administration and Application of Laws Ordinance, 1124 (1 of 1124) what are continued in force are "the existing laws of Travancore.

Subject to the provisions of this Ordinance, the existing laws of Travancore shall, until altered, amended or repealed by competent authority, continue to be in force mutatis mutandis in that portion of the territories of the United State which before the appointed day formed the territory of the State of Travancore.

The preamble to the Ordinance also emphasises that what are continued in force are the laws which were in force in Travancore immediately prior to the appointed day, namely, 1-7-1949:

Whereas, for the peace and good government of the United State of Travancore and Cochin, it is necessary to make provisions for the continuance, in that portion of the territory of the United State, which, before the 1st day of July 1949 (hereinafter in -this Ordinance referred to as "the appointed day") formed the State of Travancore and the laws which were in force in that State immediately prior to the appointed day.

It is clear from the above that unless the Travancore Taxation on Income (Investigation Commission) Act, 1124 (Travancore Act 14 of 1124) was "an existing law" for the purposes of the United State of Travancore and Cochin Administration and Application of Laws Ordinance, 1124 (1 of 1124) it .may have no continued existence under the provisions of Section 3(1) of that Ordinance.

Section 2(b) of the Ordinance defines the "existing law of Travancore" as follows:

"Existing law of Travancore" shall mean any Proclamation, law, order, bye-law, rule or regulation in force in the State of Travancore immediately prior to the appointed day, except the Travancore Interim Constitution Act, 1123.

The question that arises, therefore, is whether an enactment which according to the notification extracted above was brought into force only with effect from 22-7-1949 can be considered to have been in force on "the appointed day" namely, the 1st July 1949, and thus an "existing law of Travancore" for the purposes of Section 3(1), United State of Travancore and Cochin Administration and Application of Laws Ordinance; 1124 (1 of 1124). If the answer is in the negative, no other question may arise for consideration as the very foundation of the entire proceedings which have given rise to the applications for the writs of prohibition is the Travancore Taxation on Income (Investigation Commission) Act, 1124 (Travancore Act 14 of 1124).

A further question also may have to be considered, namely whether u/s 1(3), Travancore Taxation on Income (Investigation Commission) Act, 1124 (Travancore Act 14 of 1124) it is possible, even if that Act was an "existing law of Travancore", to notify a date anterior to the date of the notification as the date on which the Act shall come into force. In other words, when Section 1(3)

provides that the enactment shall come into force on such date as the Government may, by notification in the Government Gazette appoint, can it mean such date in the past as it may specify? If the conclusion is that only the date of the notification or a date subsequent thereto can be appointed as the date on which the Act shall come into force, it will also have to be decided whether the notification is of any avail and if it is the date from which the Act should be deemed to be operative.

13. We have since heard the learned Advocate General, and Mr. M.K. Nambiar on behalf of the Petitioner, and have come to the conclusion that Sub-section (3) of Section 1, Travancore Taxation on Income (Investigation Commission) Act, 1124 came into force immediately on the passing of the Act u/s 22 of Act 6 of 1123 by His Highness the Maharaja of Travancore on the 24th Kumbhom 1124 (7-3-1949) and that the operation of the other sections of the Act alone was postponed to such date as the Government may by notification in the Government Gazette appoint. According to us what Sub-section (3) of Section 1 really means is that that Sub-section shall come into force immediately and the remaining provisions of the Act on such date as the Government may by notification in the Government Gazette appoint. The rules of statutory interpretation, the long legislative practice of the State and the resultant absurdity of Anr. inference, all alike compel such a conclusion, and if the conclusion is right, Sub-section (3) of Section 1 will be an existing law coming within the definition of that term in Section 2(b), United State of Travancore and Cochin Administration and Application of Laws Ordinance 1124 (1 of 1124), it will have its existence continued under the provisions of Section 3(1) of that Ordinance, and it will have sufficient potency to bring the rest of the enactment into force on 22-7-1949 when the notification concerned was issued by the Government of Travancore-Cochin.

14. We do not, however, agree that the Government had the right to notify a date anterior to the date of the notification as the date on which the Act shall come into force. But this can only be of academic importance in this case as we take the view that even though such a notification may be of no avail for the period between the anterior date notified and the date of the notification itself the Act should be deemed to have come into force at any rate on and "from the date of the notification. All action taken in this case is subsequent to the date of the notification and hence it is unnecessary for us to state categorically whether the Act was in force between the date notified, namely, the 1st July 1949 and the date of the notification, that is, the 22nd July 1949.

15. As stated in our order of 22-5-1953 the legislative sequence sketched therein is important in evaluating the contentions of the Petitioner summarised in paragraph 4 above and which we propose to deal with in the paragraphs that follow.

16. Section 3, Opium and Revenue Laws (Extension of Application) Act, 1950 (Central Act 33 of 1950) as amended by the Opium and Revenue Laws

(Extension of Application) Amendment Act, 1951 (Central Act 44 of 1951) provided that the Travancore Taxation on Income (Investigation Commission) Act, 1124 (Travancore Act 14 of 1124) shall continue to remain in force with certain modifications, the modifications being:

(a) All cases referred to or pending before the State Commission (by whatever name called) in respect of matters relating to taxation on income other than agricultural income shall stand transferred to the Central Commission for disposal; provided that the Central Commission shall not by reason merely of the transfer of any case under the provisions of this section, be bound to recall or rehear any witness who has given evidence in the case, and may act on the evidence already recorded by or produced before the Commission which was originally investigating into, the case;

(b) in the disposal of cases transferred to the Central Commission under Clause (a) it shall have and exercise the same powers as it has and exercises in the investigation of cases referred to it under the Taxation on Income (Investigation Commission) Act, 1947, (30 of 1947), and shall be entitled to act for the same term as under Sub-section (3) of Section 4 of that Act;

(bb) any decision given, whether before or after the commencement of this Act, by the Chief Revenue Authority of Travancore or of Travancore- Cochin in the exercise or purported exercise of any powers conferred on it by any law for the time being in force in the State shall be deemed to be a decision given by the Income Tax Authority for the purposes of Sub-section (2) of Section 8 of the Travancore Taxation on Income (Investigation Commission) Act, 1124 (Travancore Act 14 of 1124),

(c) Any reference in the State law, by whatever form of words, to the State Government, or the State Commission snail, in relation to income other than agricultural income, be construed as a reference to the Central Government or the Central Commission, as the case may be;

(d) the report of the. Central Commission shall be submitted to the Central Government, and the Central Government may, by order in writing, direct that such proceedings as it thinks fit under the law in force in the State relating to income tax, super tax or excess profits tax or any other law, shall be taken against the person to whose case the report relates in respect of his income other than agricultural income, and upon such a direction being given, all such proceedings may be token end completed under the appropriate law applicable in the State, as if the direction had been given and the proceedings had been institute thereunder;

(e) where under any law in force in the State the agricultural income of an assesses is to be included in his total income for the purpose of determining the tax payable by him, the tax payable in respect of his income other than agricultural income shall be an amount bearing to the total amount of tax which would have been payable under the appropriate law in force in the State if a

combined assessment had been made, the same proportion as such income bears to the total income including the agricultural income; Provided that for this purpose any reduction of tax allowed on the agricultural income by the appropriate law in force in the State shall not be taken into account;

and the "Explanation" to the section made it clear that the term "Central Commission" means the Income Tax Investigation Commission constituted under the Taxation on Income (Investigation Commission) Act, 1947 (Central Act 30 of 1947).

17. It is clear from the above:

(a) that the Travancore Taxation on Income (Investigation Commission) Act, 1124 (Travancore Act 14 of 1124) is still in force by virtue of Article 372(1) of the Constitution;

(b) that it has been amended twice by the Central Legislature which after 26-1-1950 is the competent Legislature as far as legislation regarding income other than agricultural income is concerned;

(c) that as a result of the action of the Central Legislature the Act did not lapse on 16-8-1950 or on any date subsequent thereto; and

(d) that the second cr. Petitioner has all the powers this day that the Travancore Commission had under the enactment and no more.

18. Section 5, Travancore Taxation on Income (Investigation Commission) Act, 1124 is of primary importance in deciding whether the ambit of the Evasion Cases Nos. 1 and 2 of 1125 can be enlarged or whether the Central Commission should be confined solely to 1942 and 1943. Under that section any reference by the Government had to be made before the last day of Makarom 1125 (11-2-1950) and no reference was possible after that date. The only reference in this case prior to the last day of Makarom 1125 (11-2-1950) was the reference of Evasion Cases Nos. 1 and 2 of 1125. It follows that the Income Tax Commission had no jurisdiction to go beyond the years covered by those cases and that any attempt to enlarge the scope of the enquiry is without legislative warrant. It has hence to be prohibited as prayed for in the petition and a writ to that effect will issue as far as the first Respondent is concerned.

19. That the above is the correct position will be clear from a bare reading of Section 5:

(1) Our Government may at any time before the last day of Makarom 1125 refer to the Commission for investigation and report any case or points in a case in which our Government have prima facie reasons for believing that a person has to a substantial extent evaded payment of taxation on income, together with such material as may be available in support of such belief, and may at any time before the last day of Meenam 1125 apply to the Commission for the withdrawal of any case or points in a case thus referred, and if the Commission approves of

the withdrawal no further proceedings shall thereafter be taken by or before the Commission in respect of the case or points so withdrawn.

(2) The Commission may after examining the material furnished to it by Our Government with reference to any case or points in a case and making such investigation as it considers necessary, report to Our Government that in its opinion further investigation is not likely to reveal any substantial evasion of taxation on income and on such report being made the investigation shall be deemed to be closed.

(3) No reference made by Our Government under Sub-section (1), at any time, before the last day of Makarom 1125 shall be called in question, nor shall the sufficiency of the material on which such a reference has been made be investigated in any manner by any court.

(4) If in the course of investigation into any case or points in a case referred to it under Sub-section (1) the Commission has reason to believe

(a) that some person other than the person whose case is being investigated has evaded payment of taxation on income, or

(b) that some points other than those referred to it by Our Government in respect of any case also require investigation, it may make a report to Our Government stating its reasons for such relief and on receipt of such report, Our Government shall notwithstanding anything contained in Sub-section (1), forthwith refer to the Commission for investigation the case of such other person or such additional points as may be indicated in that report.

20. The learned advocate general has specially requested us not to decide in this case whether the reference made was of two specific cases of evasion, namely, of the years 1942 and 1943, or of two points in a case, the case itself being the evasion of Income Tax by the Petitioner during. The whole period for which enquiry under the Travancore Taxation on Income (Investigation Commission) Act, 1124 (Travancore Act 14 of 1124) is permitted. His point was that if the decision goes against him as far as the ambit of the present enquiry is concerned, as it has done, he would like to investigate whether action is possible under Sub-section 4 of Section 5 of Act 14 of 1124 untrammelled by any observation of ours and as it is unnecessary for us to decide that point for dealing with this petition, we see no reason why we should not accede to his request. We would also leave open the argument of Mr. Nambiar that the Income Tax authority referred to in Section 8(2), Travancore Taxation on Income (Investigation Commission) Act, 1124 (Travancore Act 14 of 1124) will not take in "the Chief Revenue Authority of Travancore" who dealt with the assessment of the Petitioner and that Sub-section (bb) of Section 3 of the Opium and Revenue Laws (Extension of Application) Act, 1950 (Central Act, 83 of 1950) introduced by the Opium and Revenue Laws (Extension of Application) Amendment Act, 1951 (Central Act 44 of 1951), will be of no avail for the purpose as the amendment will have only prospective operation in spite of the provision in the

Amending Act that Sub-section (bb) "shall be deemed always, to have been substituted."

21. In the result we allow the petition to the extent indicated in para. 18 above and direct that in the circumstances of the case the parties shall bear their respective costs.

22. Immediately after the judgment was pronounced Mr. S. Narayanan Potti on behalf of the Petitioner and the Advocate General on behalf of Respondents 1 and 2 applied for certificates that the case is a fit one for appeal to the Supreme Court under Article 133 of the Constitution.

23. We are satisfied that the case involves substantial questions of law, that it is a fit one for appeal to the Supreme Court, and we certify accordingly.