has said that the inviting of objections is not a mere farce and that the owners or occupiers are entitled for the proper disposal of their objections to be informed of the formula on which it was proposed to base the new assessments. I am afraid, no such guiding principle is to be found in the impugned order of assessment.

(12) The contention of Mr. Aggarwal, learned counsel for the respondent Municipal Committee, that the tax was imposed under the Small Towns Act, 1921, and not under the Punjab Municipal Act warranting the applicability of sections 61 to 68 of the Act is to be noted only to be rejected. The Punjab Small Towns Act was repealed by the Punjab Municipal Amendment Act (XXXIV of 1954) and with effect from 11th December, 1954, the Punjab Municipal Act became applicable. Notices were also issued under the Punjab Municipal Act.

(13) For the foregoing reasons, the writ petition is allowed and the impugned order of enhanced assessment passed by the Municipal Committee, Dhariwal, as affirmed by the appellate authority, in quashed. The Municipal Committee can, however, if so advised, make a fresh assessment in the light of the observations made above by taking into consideration the provisions contained in the Rent Control Act for fixation of fair rent. There will be no order as to costs.

K.S.K.

CIVIL MISCELLANEOUS

Before Bal Raj Tuli, J.

MANOHAR SINGH SETHI AND OTHERS,—*Petitioners.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ No. 2215 of 1964.

January 31, 1969.

Punjab Passengers and Goods Taxation Act (XVI of 1952)—Section 6(2)—Penalty under—Whether can be imposed without assessment of tax—Assessee not producing accounts—Assessing authority—Whether relieved of its duty under section 6—Consolidated sum—Whether can be imposed as penalty.

Held, that section 6(2) of Punjab Passengers and Goods Taxation Act, 1952, provides for a penalty to be imposed in addition to the amount of tax,

which makes it incumbent on the Assessing Authority to make assessment as to the tax due from the defaulter. Without making the assessment of the tax due, the penalty cannot be imposed. Merely because an assessee does not produce his accounts or does not attend the office of the Assessing Authority in response to notice issued to him, does not relieve the Assessing Authority of the duty cast upon him by section 6 of the Act. (Para 5)

Held, that a consolidated sum cannot be imposed as penalty. The days of default have to be determined and the rate at which the penalty is imposed has also to be prescribed in the order so that the Appellate Authority may come to the conclusion whether the penalty imposed is in order. Unless the number of days in default have been found and the rate of penalty has been determined, the order imposing penalty under section 6(2) of the Act cannot be passed. (Para 4)

Petition under Articles 226/227 of the Constitution of India praying that a writ in the nature of certiorari, mandamus or any other appropriate writ, order or direction be issued quashing orders dated 26th September, 1964 and 10th July, 1964 of respondents Nos. 2 and 3 respectively and directing the respondents to do their duty according to law and not to recover illegal and without jurisdiction penalty imposed on the petitioner.

N. K. SODHI, ADVOCATE,—for the Petitioners.

S. K. JAIN, ADVOCATE FOR ADVOCATE-GENERAL (PUNJAB), for the Respondents.

JUDGMENT

TULI, J.—Manohar Singh Sethi petitioner was an operator of bus service on Bhatinda-Khara via Bajakhana route for which he was granted a route permit on 27th December, 1958. This route permit was cancelled by the Supreme Court in 1962. He did not file any returns under the Punjab Passengers and Goods Taxation Act, 16 of 1952 (hereinafter called the Act), although he had got himself registered under the Act with effect from 10th June, 1961,—*vide* R.C. No. 375 On the route permit issued to him, he was authorised to run motor vehicle P.N.T. 3339 from Bhatinda to Khara via Bajakhana Later on this vehicle was replaced by vehicle P.N.T. 4129 with effect from 10th April, 1962. The case of the petitioner is that he filed returns under the said Act regularly but the case of the respondents is that he did not file any return with regard to the vehicle which he was plying on the route for which he had been issued route permit on 27th December, 1958. The petitioner even got his vehicle registered on the route on 27th

May, 1961. The Assessing Authority under the said Act issued notices to the petitioner for filing returns and producing the account-books for the determination of the passenger tax due from him but he never attended his office in spite of service. The Assessing Authority, Bhatinda, passed an order on 10th July, 1964 imposing a consolidated penalty of Rs. 5,000 under section 6(2) of the said Act for not filing the returns. The petitioner filed an appeal before the Deputy Excise and Taxation Commissioner, Patiala Division, Patiala, with an application that his appeal may be heard without requiring him to deposit the amount of penalty imposed. *vide* order, dated 26th September, 1964, the Appellate Authority directed him to deposit the sum of Rs. 4,000 by the 15th of October, 1964, if he wanted to have his appeal heard. If no deposit was made by that date, the appeal was to be dismissed *in limine* without any further reference to him. The petitioner filed a revision petition against that order before the Revisional Authority on 8th October, 1964 but before it could be decided, he filed the present writ petition in this Court as the date 15th October, 1964, was drawing near. It is stated in the return that the revision of the petitioner was dismissed in his absence on 13th October, 1964. He himself went to the Revisional Authority on that date and requested that the revision might be heard on the same day. He was asked to wait for a little while and when the papers were placed before the Revisional Authority, the petitioner was called but he was absent. The *ex parte* order dismissing his revision was passed in these circumstances.

(2) The petitioner died during the pendency of this writ petition and his legal representatives were brought on the record who have prosecuted this writ petition. The penalty imposed under section 6(2) of the Act has been challenged as arbitrary, illegal and *mala fide* for the following reasons :—

"(i) That the impugned order does not fall within the ambit of Section 6 of the Act. It cannot be said that the petitioner did not file the returns at any time during the six years and the Assessing Authority by deliberately shutting his eyes to the true facts has given a distorted bersion to assume jurisdiction to impose the penalty.

(ii) That the penalty had to be worked up on an objective data and in the manner prescribed in Section 6(2) of the

Act. The Assessing Authority was bound by law to first determine the tax payable by the petitioner and then to decide if any sum not exceeding Rs. 5 per day during which the default was alleged to have been committed should be imposed by way of penalty or not. The impugned order is a clear negation of observance of the rule of law.

(iii) That notice under form PTT 10 could not be issued in the matter of imposition of penalty and such a notice is contemplated by Rule 29 of the Punjab Passengers and Goods Taxation Rules, 1952, (hereinafter called the rules). According to this rule, no assessment for a period of more than three years following the close of the financial year to which the assessment relates could be made. The claim for assessment of tax, if any, was clearly barred by time under the said rules.

(iv) That the penalty of Rs. 5,000 imposed in an arbitrary manner cannot at all be said to be the best judgment assssment which type of assessment is not recognised under the Act.

(v) That Section 6 which purports to give power to impose a penalty and also to recover escaped tax is *ultra vires* of the Constitution inasmuch as it offends Article 14 thereof. There is no guiding factor in the Act to regulate unbridled power given by the said section. A rule made under the Act like Rule 29 is also *ultra vires* since no rule can go against the Statute or make a provision not warranted by the law under which the rule is claimed to have been made."

(3) The return to the petition has been filed by the Assessing Authority in which it has been contended that the petitioner had not filed to returns for any period and, therefore, the penalty was imposed on him for good reasons.

(4) In my opinion, the impugned order imposing the penalty, dated 10th July, 1964, copy Annexure 'E' to the writ petition deserves to be quashed on the simple ground that it has not been

passed in accordance with law. Section 6 of the Act which authorises the imposition of penalty is in the following terms :—

> "6. (1) An owner may be required to keep such accounts and to submit such returns at such intervals and to such authority as may be prescribed.
>
> (2) If any owner fails, without reasonable cause, to submit return or pay the tax due according to such return within fifteen days of the due date, the assessing authority may direct that such owner shall, by way of penalty, pay, in addition to the amount of tax payable by him, a sum not exceeding five rupees for every day during which the default ontinues.
>
> (3) Any penalty imposed under sub-section (2) shall be without prejudice to any punishment that may be imposed under the provision of Section 17.
>
> (4) If the prescribed authority is satisfied that the tax has not been correctly levied, charged and paid, he may after giving the owner a reasonable opportunity of being heard, proceed to levy the amount of tax due and recover the same.

According to the rules, the return period is one month and the return can be filed within fifteen days of the closure of the month. The penalty under section 6(2) of the Act has to be imposed in respect of every day of default and at a rate not exceeding Rs. 5 per day. It is, therefore, evident that a consolidated sum cannot be imposed as penalty as has been done by the Assessing Authority. The days of default have to be determined and the rate at which the penalty is imposed has also to be prescribed in the order so that the Appellate Authority may come to the conclusion whether the penalty imposed is in order. The Assessing Authority has taken the date of issue of the route permit to the peittioner as the date of operation of the motor vehicle on that route permit by him. There was no evidence before the Assessing Authority to that effect. It has been stated at the Bar by the learned counsel for the petitioner that a rival transport company, namely, Gandhara Motor Transport Company Limited, filed an appeal against the issue of the route permit to the petitioner and obtained a stay order. The appeal was dismissed and thereafter Gandhara Transport Company filed a writ petition in this Court and thereafter a Letters Patent Appeal was filed and finally

the appeal was filed in the Supreme Court of India which cancelled the route permit granted to the petitioner somewhere in 1962. It is claimed that during this period of litigation the petitioner had not plied his motor vehicle on the said route for considerable time. In view of this averment as to facts, it was the duty of the Assessing Authority to find out as to when the petitioner had started operation of his motor vehicle on the said route permit. Unless the number of days in default had been found and the rate of penalty had been determined, the order imposing penalty under section 6(2) of the Act could not be passed. It is not permissible to impose a consolidated amount by way of penalty.

(5) Section 6(2) of the Act provides for a penalty to be imposed in addition to the amount of tax which makes it incumbent on the Assessing Authority to make assessment as to the tax due from the defaulter. Without making the assessment of the tax due the penalty cannot be imposed. Merely because the petitioner did not produce his accounts nor did he attend the office of the Assessing Authority in response to the notice issued to him, did not relieve the Assessing Authority of the duty cast upon him by Section 6 of the Act. For all these reasons. I hold that the order of the Assessing Authority is not in accordance with law and there is an error apparent on the face of it. The order, therefore, deserves to be quashed.

(6) For the reasons given above, this petition is accepted with costs. The impugned order of assessment, dated 10th July, 1964 and the appellate order, dated 26th September, 1964 are hereby quashed. The respondents will be at liberty to make fresh assessment in accoradnce with law keeping in view the observations made above. Counsel's fee Rs. 100.

K. S. K:

FULL BENCH

Before Mehar Singh, C.J., D. K. Mahajan and R. S. Narula, JJ.

DHAUNKAL,—*Appellant.*

versus

MAN KAUR AND ANOTHER,—*Respondents.*

Letters Patent Appeal No. 572 of 1968.

April 10, 1970.

Punjab Security of Land Tenures Rules (1956)—*Rules* 6(5) *and* 6(6)—*Collector making an order declaring surplus area of a land-owner—Notice to the tenant of such land-owner—Whether necessary—Order declaring*

has said that the inviting of objections is not a mere farce and that the owners or occupiers are entitled for the proper disposal of their objections to be informed of the formula on which it was proposed to base the new assessments. I am afraid, no such guiding principle is to be found in the impugned order of assessment.

(12) The contention of Mr. Aggarwal, learned counsel for the respondent Municipal Committee, that the tax was imposed under the Small Towns Act, 1921, and not under the Punjab Municipal Act warranting the applicability of sections 61 to 68 of the Act is to be noted only to be rejected. The Punjab Small Towns Act was repealed by the Punjab Municipal Amendment Act (XXXIV of 1954) and with effect from 11th December, 1954, the Punjab Municipal Act became applicable. Notices were also issued under the Punjab Municipal Act.

(13) For the foregoing reasons, the writ petition is allowed and the impugned order of enhanced assessment passed by the Municipal Committee, Dhariwal, as affirmed by the appellate authority, in quashed. The Municipal Committee can, however, if so advised, make a fresh assessment in the light of the observations made above by taking into consideration the provisions contained in the Rent Control Act for fixation of fair rent. There will be no order as to costs.

K.S.K.

CIVIL MISCELLANEOUS

Before Bal Raj Tuli, J.

MANOHAR SINGH SETHI AND OTHERS,—*Petitioners.*

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Civil Writ No. 2215 of 1964.

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Punjab Passengers and Goods Taxation Act (XVI of 1952)—Section 6(2)—Penalty under—Whether can be imposed without assessment of tax—Assessee not producing accounts—Assessing authority—Whether relieved of its duty under section 6—Consolidated sum—Whether can be imposed as penalty.

Held, that section 6(2) of Punjab Passengers and Goods Taxation Act, 1952, provides for a penalty to be imposed in addition to the amount of tax,

which makes it incumbent on the Assessing Authority to make assessment as to the tax due from the defaulter. Without making the assessment of the tax due, the penalty cannot be imposed. Merely because an assessee does not produce his accounts or does not attend the office of the Assessing Authority in response to notice issued to him, does not relieve the Assessing Authority of the duty cast upon him by section 6 of the Act. (Para 5)

Held, that a consolidated sum cannot be imposed as penalty. The days of default have to be determined and the rate at which the penalty is imposed has also to be prescribed in the order so that the Appellate Authority may come to the conclusion whether the penalty imposed is in order. Unless the number of days in default have been found and the rate of penalty has been determined, the order imposing penalty under section 6(2) of the Act cannot be passed. (Para 4)

Petition under Articles 226/227 of the Constitution of India praying that a writ in the nature of certiorari, mandamus or any other appropriate writ, order or direction be issued quashing orders dated 26th September, 1964 and 10th July, 1964 of respondents Nos. 2 and 3 respectively and directing the respondents to do their duty according to law and not to recover illegal and without jurisdiction penalty imposed on the petitioner.

N. K. SODHI, ADVOCATE,—for the Petitioners.

S. K. JAIN, ADVOCATE FOR ADVOCATE-GENERAL (PUNJAB), for the Respondents.

JUDGMENT

TULI, J.—Manohar Singh Sethi petitioner was an operator of bus service on Bhatinda-Khara via Bajakhana route for which he was granted a route permit on 27th December, 1958. This route permit was cancelled by the Supreme Court in 1962. He did not file any returns under the Punjab Passengers and Goods Taxation Act, 16 of 1952 (hereinafter called the Act), although he had got himself registered under the Act with effect from 10th June, 1961,—*vide* R.C. No. 375 On the route permit issued to him, he was authorised to run motor vehicle P.N.T. 3339 from Bhatinda to Khara via Bajakhana Later on this vehicle was replaced by vehicle P.N.T. 4129 with effect from 10th April, 1962. The case of the petitioner is that he filed returns under the said Act regularly but the case of the respondents is that he did not file any return with regard to the vehicle which he was plying on the route for which he had been issued route permit on 27th December, 1958. The petitioner even got his vehicle registered on the route on 27th

May, 1961. The Assessing Authority under the said Act issued notices to the petitioner for filing returns and producing the account-books for the determination of the passenger tax due from him but he never attended his office in spite of service. The Assessing Authority, Bhatinda, passed an order on 10th July, 1964 imposing a consolidated penalty of Rs. 5,000 under section 6(2) of the said Act for not filing the returns. The petitioner filed an appeal before the Deputy Excise and Taxation Commissioner, Patiala Division, Patiala, with an application that his appeal may be heard without requiring him to deposit the amount of penalty imposed. *vide* order, dated 26th September, 1964, the Appellate Authority directed him to deposit the sum of Rs. 4,000 by the 15th of October, 1964, if he wanted to have his appeal heard. If no deposit was made by that date, the appeal was to be dismissed *in limine* without any further reference to him. The petitioner filed a revision petition against that order before the Revisional Authority on 8th October, 1964 but before it could be decided, he filed the present writ petition in this Court as the date 15th October, 1964, was drawing near. It is stated in the return that the revision of the petitioner was dismissed in his absence on 13th October, 1964. He himself went to the Revisional Authority on that date and requested that the revision might be heard on the same day. He was asked to wait for a little while and when the papers were placed before the Revisional Authority, the petitioner was called but he was absent. The *ex parte* order dismissing his revision was passed in these circumstances.

(2) The petitioner died during the pendency of this writ petition and his legal representatives were brought on the record who have prosecuted this writ petition. The penalty imposed under section 6(2) of the Act has been challenged as arbitrary, illegal and *mala fide* for the following reasons :—

"(i) That the impugned order does not fall within the ambit of Section 6 of the Act. It cannot be said that the petitioner did not file the returns at any time during the six years and the Assessing Authority by deliberately shutting his eyes to the true facts has given a distorted bersion to assume jurisdiction to impose the penalty.

(ii) That the penalty had to be worked up on an objective data and in the manner prescribed in Section 6(2) of the

Act. The Assessing Authority was bound by law to first determine the tax payable by the petitioner and then to decide if any sum not exceeding Rs. 5 per day during which the default was alleged to have been committed should be imposed by way of penalty or not. The impugned order is a clear negation of observance of the rule of law.

(iii) That notice under form PTT 10 could not be issued in the matter of imposition of penalty and such a notice is contemplated by Rule 29 of the Punjab Passengers and Goods Taxation Rules, 1952, (hereinafter called the rules). According to this rule, no assessment for a period of more than three years following the close of the financial year to which the assessment relates could be made. The claim for assessment of tax, if any, was clearly barred by time under the said rules.

(iv) That the penalty of Rs. 5,000 imposed in an arbitrary manner cannot at all be said to be the best judgment assssment which type of assessment is not recognised under the Act.

(v) That Section 6 which purports to give power to impose a penalty and also to recover escaped tax is *ultra vires* of the Constitution inasmuch as it offends Article 14 thereof. There is no guiding factor in the Act to regulate unbridled power given by the said section. A rule made under the Act like Rule 29 is also *ultra vires* since no rule can go against the Statute or make a provision not warranted by the law under which the rule is claimed to have been made."

(3) The return to the petition has been filed by the Assessing Authority in which it has been contended that the petitioner had not filed to returns for any period and, therefore, the penalty was imposed on him for good reasons.

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the appeal was filed in the Supreme Court of India which cancelled the route permit granted to the petitioner somewhere in 1962. It is claimed that during this period of litigation the petitioner had not plied his motor vehicle on the said route for considerable time. In view of this averment as to facts, it was the duty of the Assessing Authority to find out as to when the petitioner had started operation of his motor vehicle on the said route permit. Unless the number of days in default had been found and the rate of penalty had been determined, the order imposing penalty under section 6(2) of the Act could not be passed. It is not permissible to impose a consolidated amount by way of penalty.

(5) Section 6(2) of the Act provides for a penalty to be imposed in addition to the amount of tax which makes it incumbent on the Assessing Authority to make assessment as to the tax due from the defaulter. Without making the assessment of the tax due the penalty cannot be imposed. Merely because the petitioner did not produce his accounts nor did he attend the office of the Assessing Authority in response to the notice issued to him, did not relieve the Assessing Authority of the duty cast upon him by Section 6 of the Act. For all these reasons. I hold that the order of the Assessing Authority is not in accordance with law and there is an error apparent on the face of it. The order, therefore, deserves to be quashed.

(6) For the reasons given above, this petition is accepted with costs. The impugned order of assessment, dated 10th July, 1964 and the appellate order, dated 26th September, 1964 are hereby quashed. The respondents will be at liberty to make fresh assessment in accoradnce with law keeping in view the observations made above. Counsel's fee Rs. 100.

K. S. K:

FULL BENCH

Before Mehar Singh, C.J., D. K. Mahajan and R. S. Narula, JJ.

DHAUNKAL,—*Appellant.*

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MAN KAUR AND ANOTHER,—*Respondents.*

Letters Patent Appeal No. 572 of 1968.

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