

CIVIL MISCELLANEOUS

Before Mehar Singh and Inder Dev Dua, JJ.

PEPSU ROAD TRANSPORT CORPORATION,—*Petitioner.*

versus

THE INCOME-TAX OFFICER AND ANOTHER,—*Respondents.*

Civil Writ No. 287 of 1961.

1963
April 24th.

Pepsu Transport Corporation Act (LXIV of 1950)—S. 3—Corporation constituted under—Whether department of State and exempt from the operation of Income-tax Act—Income-tax Act (XI of 1922)—S. 3—Road Transport Corporation—Whether taxable entity—S. 4 (3)(i)—Income of Corporation—Whether exempt from payment of income-tax—Whether can be determined in a writ.

Held, that a Road Transport Corporation constituted under the Road Transport Corporation Act, 1950, cannot be held to be a department of the State in the sense that the State is its owner and its income is the income of the State and, therefore, exempt from the operation of the Income-tax Act. Such a Corporation is taxable as an "individual" under section 3 of the Income-tax Act, 1922.

Held, that it is not possible to hold that the Road Transport Corporation has been established for any religious or charitable purpose, with the result that the whole of its income cannot be considered to fall within section 4(3) (i), Income-tax Act. In so far as the claim in regard to the remainder of net profits which have to be made over to the State Government for the purpose of road development is concerned, it should be made to the Assessing Authorities in accordance with the machinery provided by the Income-tax Act and the writ jurisdiction of High Court cannot be permitted to be invoked for this purpose. Administration of modern taxing statutes in a welfare State has created some complex problems and this factor coupled with the usual difficulties in the assessment and collection of taxes has necessitated the setting up of a specialised machinery for administering them. Normally speaking, therefore, the assessee should not be encouraged to by-pass

that machinery and to invoke the extraordinary jurisdiction of High Court for seeking redress of their grievances. To permit them to do so would go against the legislative intent and scheme. A case for exemption has to be made out by the assessee on whom the onus lies and exemptions from taxes have also to be construed liberally in favour of the revenue and against the tax-payer; they attract a rigid construction against the claimant and in favour of tax-payer.

Petition under Article 226 of the Constitution of India praying that a writ in the nature of Certiorari, Prohibition, Mandamus or any other appropriate writ, order or direction be issued quashing the assessment order dated 13th January, 1961, of the Income-tax Officer, Award, Patiala, (Respondent No. 1), for the assessment year 1957-58 and prohibiting the respondents from passing assessment orders in respect of assessment years 1958-59, 1959-60 and 1960-61.

S. M. SIKRI, ADVOCATE-GENERAL and DHARM CHAND, ADVOCATE, for the Petitioner.

D. N. AWASTHY and H. R. MAHAJAN, ADVOCATES, for the Respondents.

ORDER

DUA, J.—This is an application under Article 226 of the Constitution by the Pepsu Road Transport Corporation for quashing the assessment order, dated 13th January, 1961, passed by the Income Tax Officer, respondent No. 1.

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According to the allegations in the writ petition, the petitioner-Corporation was established on 7th January, 1956, under section 3 of the Road Transport Corporation Act, 1950 (hereinafter called the Act),—*vide* annexure 'B'. This Act had come into force in the State of Patiala and East Punjab States Union on 10th March, 1955,—*vide* annexure 'A'. The petitioner-corporation was reconstituted on 29th October,

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1956,—*vide* annexure 'C', and subsequently the Provincial Transport Controller, Punjab, was appointed a member in place of Joint Provincial Transport Controller. The objects for establishing the petitioner-corporation are stated to have been laid down in section 3 of the Act and its general duty in section 18. The petitioner took over with effect from 16th October, 1956, the undertaking from the Pepsu Roadways which had been operating departmentally the road transport services under the policy of nationalisation of road transport followed by the Pepsu Government. The terms and conditions of this transfer are contained in annexure 'D'. On taking over this undertaking, the capital investment was raised to Rs. 25 lakhs, out of which Rs. 5 lakhs was contributed by the Northern Railway. The Income Tax Officer, respondent No 1 served on the petitioner-corporation notices for submission of returns under sections 22(2) and 38 of the Income Tax Act for the year 1957-58 to 1960-61. The jurisdiction of respondent No. 1 to assess the petitioner-corporation was questioned by the latter, but the returns for the three years 1957-58 to 1959-60 were forwarded under protest in pursuance of the notices. The Income Tax Officer did not agree with the objection and made assessment under the Income Tax Act for the year 1957-58 which is the subject-matter of challenge in the present writ proceedings.

On behalf of the petitioner, Shri Sikri, the learned Advocate-General, has raised four points. According to the first objection the income of the Corporation is stated to be the income of the Punjab State and, therefore, exempt from the Union tax under Article 289 of the Constitution. According to the second objection, the petitioner is not a taxable entity and, therefore, cannot be subjected to the impugned levy. Without prejudice to these two objections, the third objection is based on section 4(3)(i) of the Income Tax Act and

the petitioner claims to be a charitable institution established by the State Government for providing utility service to the public, trade and industry in general within the section. And lastly, the petitioner claims to be a local authority within the meaning of section 4(3)(i) of the Income Tax Act and, therefore, exempt from taxation.

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While developing the first point the learned counsel, to begin with, has referred us to Article 289(1) of the Constitution according to which the property and income of a State is exempt from Union taxation. It is submitted that until the Parliament by law so provides, as contemplated by sub-article (2) of this Article, the income of a State must be held exempt from the operation of the Indian Income Tax Act. The counsel then drew our attention to Article 298 according to which the executive power of a State extends to the carrying on of any trade or business and to the acquisition, holding and disposal of property and the making of contracts for any purpose. After referring to these Articles the counsel has placed reliance on *Rai Sahib Ram Jawaya Kapur, etc. v. The State of Punjab* (1), which, according to the counsel, clearly lays down that the Government can carry on a business through an undertaking. In the reported case, the Government had started publishing, printing and selling text books for educational institutions and challenge to this power was repelled. The counsel then relied on a decision of the Privy Council in a case from Canada in *Montreal v. Montreal Locomotive Works, Ltd.* (2) Reliance has been placed on the observations of Lord Wright at pages 169 and 170. In that case, a commercial corporation sold its property to the Crown (Dominion) under a contract by which it agreed to construct thereon at the expense and subject to the direction and control of the Crown, a new plant for

(1) (1955) 2 S.C.R. 225.

(2) (1947) 1 D.L.R. 161.

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the production of war material, the title to be in the crown and provision was made for possible repurchase by the Corporation of its property. By a further contract the Corporation agreed to manage and operate the plant for a fee in respect of each item produced, provision being made whereby the Corporation in incurring costs and expenses in carrying out its duties would not have to resort to its own funds. In each contract the Corporation's obligations were referred to as "for and on behalf of the Government and as its agent". On these facts it was held that on a proper construction of the contracts (under which it appeared that all land, plant and materials involved in the operation of the factory belonged to the Crown and that the Corporation took no risk of loss and was under no liability save for bad faith or wanton neglect, and that the fees it received were for management services), the Corporation was an agent of the Crown rather than an independent contractor and hence was not assessable either for occupant or business taxes. Now the position there was clearly different from the position in the case before us. Reference by the counsel has, however, been made to certain observations of Lord Wright at pages 169 and 170 and it has been stressed that the tests which the Judicial Committee laid down are helpful and those tests show that in the case before us also the State is the owner and that the petitioner-corporation is merely an agent of the State. In my opinion, the real determining factor by the Judicial Committee is stated at page 170 where it is stated that the factory, the land on which it was built, the plant and machinery were all the property of the Government which had them appropriated or constructed for the very purpose of making the military vehicles and that the materials were the property of the Government and so were the vehicles themselves at all stages up to completion. The respondent in that case had supplied no funds and taken no

financial risk and no liability, with the significant exception of bad faith or wanton neglect and that every other risk had been taken by the Government. The widest powers of management and administration entrusted to the respondent were all completely subjected to the Government's control. A "fee" was payable in respect of each completed vehicle but on considering the whole plan the fee was solely as a reward for personal services in managing the whole undertaking. These observations reflect the considerations which weighed with the Judicial Committee in coming to the conclusion it did. *Quebec Liquor Commission v. Moore* (3), is a judgment of the Supreme Court of Canada to which our attention has next been drawn. According to the head-note of that decision, a person who assumes temporary control of another's servants may be liable for their acts to the exclusion of the real employer, but the mere giving of directions to close windows which necessitated dismantling a scaffolding, does not make the giver of such directions responsible for an accident caused by the negligence of the workmen in taking down the scaffolding. This is apparently unhelpful. Some observations in the body of the judgment relied upon for showing that there is nothing to prevent the Crown being served by a Corporation and nothing to prevent such a Corporation claiming the same immunity as an individual too are of no particular assistance in determining whether in the case before us the Corporation is merely an agent of the State in doing the transport business. The following three cases from Canada were also cited but they are also of little practical assistance in construing the statute with which we are concerned in the case in hand:—

- (1) *Recorder's Court v. Canadian Broadcasting Corp.* (4).

(3) (1924) 4 D.L.R. 901.

(4) (1941) 2 D.L.R. 551.

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(2) *Halifax v. Halifax Harbour Commissioners*,
(5), and

(3) *Regina Industries Limited v. The City of
Regina* (6).

The *Canadian Broadcasting Corporation* case, it may, however, be stated also contains a dissenting judgment by one of the three learned Judges constituting the Bench. After citing these decisions, the petitioner's learned counsel took us through the various provisions of the Road Transport Corporation Act (Act 64 of 1950). This Act was brought on the Statute Book in December, 1950, in order to provide for the incorporation and regulation of Road Transport Corporations. Section 3 which provides for the establishment of Road Transport Corporations in the States lays down that the State Government having regard to—

- (a) the advantages offered to the public, trade and industry by the development of road transport;
- (b) the desirability of co-ordinating any form of road transport with any other form of transport;
- (c) the desirability of extending and improving the facilities for road transport in any area and of providing an efficient and economical system of road transport service therein;

may, by notification in the Official Gazette, establish a Road Transport Corporation for the whole or any part of the State under such name as may be specified in the notification. Under Section 4 every Corporation is to be a body corporate by the name notified under section 3 having perpetual succession and a

(5) (1935) 1 D.L.R. 657.

(6) (1947) Canada Law Reports 345.

common seal, and is capable of suing or being sued by the said name. Subject to the rules made under the Act, a Corporation, according to section 5, consists of a Chairman and such number of other members as the State Government may think fit to appoint, and one of such members may, if considered fit, be appointed as Vice-Chairman. Rule-making power is conferred by section 44 and under section 5(3) the rules shall provide for the representation both of the Central Government and of the State Government concerned in the Corporation in such proportion as may be agreed to by both the Governments and of nomination by each Government of its own representative therein, and where the capital of a Corporation is raised by the issue of shares to other parties under section 23(3), provision has also to be made for the representation of such share-holders in the Corporation including the manner in which the representatives are to be elected by them. Under section 7 the Chairman or any other member of the Corporation can resign his office by giving notice in writing to the State Government and on such resignation being accepted by that Government he is to be deemed to have vacated his office. Section 8 empowers the State Government to remove from office the Chairman or any other member in certain circumstances. No member nominated by the Central Government is, however, removable without the concurrence of that Government. Under section 10 a Corporation may associate with itself for any particular purpose in a manner determined by regulations, any person whose assistance or advice it may desire and the person so associated has a right to take part in the relevant discussion of the Corporation but can have no right to vote at the meetings. Section 11 provides for meetings of Corporation and section 12 for appointment of Committees and delegation of functions. Under section 14 every Corporation has to have a Chief Executive

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Officer or General Manager and a Chief Accounts Officer appointed by the State Government. Other officers and servants may, however, be appointed by the Corporation. The Chief Executive Officer or General Manager is, as provided by section 15, the executive head of the Corporation and all other officers and servants of the Corporation are subordinate to him. No person having any share or interest in any contract by or on behalf of a Corporation or in any other transport undertaking can become or remain officer or servant of the Corporation (*vide* section 16). The State Government is also empowered by section 17 after ascertaining the views of the Corporation to constitute by notification one or more Advisory Councils consisting of such number of persons on such terms and for the purpose of advising the Corporation on such matters as may be specified in the notification. Sections 18 to 21 fall under Chapter III which deals with power and duties of Corporations. Section 18 lays down the general duties of Corporations according to which a Corporation has a general duty so as to exercise its powers as progressively to provide, secure or promote the provision of an efficient adequate, economical and properly coordinated system of road transport services in the State or part of the State for which it is established or in any extended area. Section 19 deals with the powers of a Corporation and is divided into six subsections. Sub-section (1) confers on Corporations powers:—

- (a) to operate road transport services in the State and in any extended area;
- (b) to provide for any ancillary service;
- (c) to provide for its employees suitable conditions of service, etc.;

- (d) to authorise the issue of passes to its employees and other persons; and
- (e) to authorise the grant of refund in respect of unused tickets and concessional passes.

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Sub-section (2) enlarges the scope of sub-section (1) by providing for some subsidiary or ancillary powers being included in the powers conferred by sub-section (1). Sub-section (3) lays down a limitation in respect of certain powers which can be authorised only with the previous approval of the State Government. Sub-section (4) lays down that except as otherwise provided by the Act nothing in the foregoing provisions should be construed as authorising the Corporation to disregard any law for the time being in force. Sub-section (5) deals with the employer of the employees of undertakings acquired by Corporations and according to sub-section (6) section 19 is not to limit the powers conferred on it by or under the succeeding provisions of the Act. Section 20 contemplates extension of the road transport services to areas of other States with the permission of the State Government and section 21 provides for carriage of mails if required by the Central Government. Chapter IV (sections 22—32) deals with Finance, Accounts and Audit. Section 22 enjoins the Corporation to act on business principles. Under section 23 the Central Government and the State Government may provide capital in agreed proportion on terms and conditions consistent with the Act to be determined by the State Government with the previous approval of the Central Government. In case of failure of such provision, the Corporation is empowered on being authorised by the State Government to raise capital by issuing shares; the number of shares to be determined by the State Government, but the contribution of the State Government, the Central Government and other parties is to be determined by the

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State Government in consultation with the Central Government: the approval of shares is controlled by the rules made under the Act and the Corporation can with the previous approval of the State Government redeem the shares of parties other than the two Governments. Additional capital can also be similarly raised with the previous sanction of the State Government,—*vide* section 24. Under section 25 the shares of a Corporation are to be guaranteed by the State Government as to the payment of principal and annual dividend at the minimum rate fixed by it. Borrowing power is conferred by section 26 but to raised working capital, previous approval of the State Government is required whereas for expenditure of capital nature previous approval of the Central Government is also necessary. Section 27 creates a fund of the Corporation to which all receipts of and payments to the Corporation must go and the money belonging to that fund is to be deposited in the Reserve Bank of India or with its agents or invested in the securities approved by the State Government. Section 28 provides for payment of interest on capital provided by the two Governments at a rate to be fixed by the State Government in consultation with the Central Government; such interest is to be deemed to be a part of the expenditure of the Corporation. Payment of dividend of shares issued is similarly provided by sub-section (2), the rate to be fixed by the Corporation subject to general limitations imposed by the State Government in consultation with the Central Government. Under section 29 the State Government can provide for depreciation, reserve and other funds but the monies of the fund cannot be utilised for purposes other than those for which the fund was created without the previous approval of the State Government. Then comes section 30 which deserves to be reproduced in its entirety, for, very strong reliance has been placed on this section by the

petitioner's learned counsel in support of his contention:—

“30. After making provision for payment of interest and dividend under section 28 and for depreciation, reserve and other funds under section 29, a Corporation may utilise such percentage of its net annual profits as may be specified in this behalf by the State Government for the provisions of amenities to the passengers using the road transport services, welfare of labour employed by the Corporation and for such other purposes as may be prescribed with the previous approval of the Central Government and out of the balance such amount as may, with the previous approval of the State Government and the Central Government, be specified in this behalf by the Corporation, may be utilised for financing the expansion programmes of the Corporation and the remainder, if any, shall be made over to the State Government for the purpose of road development.”

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Section 31 confers power on a Corporation to spend such sums as may think fit on objects authorised under the Act and the same is payable out of the Corporation fund as expenditure. Under section 32 annual budget is to be submitted to the State Government for approval. Reappropriation from one head to another within the grant is permissible subject to the restrictions specified by the State Government and expenditure under individual heads may also be exceeded under prescribed limits and conditions. Section 33 provides for keeping of accounts as prescribed by the State Government in consultation with the Comptroller and Auditor-General of India to be annually audited by the latter or his nominee just like Government

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accounts. Accounts certified by the officer auditing the same with his report is to be laid before the State Legislature. Chapter V contains miscellaneous provisions and section 34 with which this chapter begins provides for directions by the State Government after consulting the Corporation to be obeyed by the latter in the performance of its statutory duties and under section 35 every Corporation has to furnish returns and statistics etc., to the State Government. The Corporation is also required to submit annual report of its functions, including on its policy and programme, to the Central and State Governments and the latter is enjoined to lay this report before the State Legislature. Section 36 empowers the State Government to order inquiries into the activities of the Corporation and as a result of such inquiries the State Government may under section 37 direct for administering by taking over of such part of the undertaking of the Corporation as may be specified; the notification containing such directions with details is also to be laid before the State Legislature. Section 38 empowers the State Government in case of default on the part of the Corporation with previous approval of the Central Government to supersede the Corporation but before doing so reasonable notice of show-cause against it has to be given to the Corporation concerned. Upon the publication of notification of superseding, all property vested in the Corporation during the period of supersession is to vest in the State Government. The period of supersession may be extended or on its expiry the Corporation may be reconstituted in the manner provided by section 5. Section 39 exempts the Corporation from the law relating to the winding up of the Companies or Corporations but the State Government may with the previous approval of the Central Government place the Corporation in liquidation. In the event of a Corporation being placed in liquidation, its assets after meeting the liabilities have to be divided among the

Central and the State Governments and such other parties, if any, as may have subscribed to the capital in proportion to their contribution to the total capital. Under section 43, members, officers and servants of a Corporation are to be deemed to be public servants within the meaning of section 21 of the Indian Penal Code. Section 44 empowers the State Government to make rules and under section 45 a Corporation can with the previous sanction of the State Government make regulations consistent with the Act and the rules. So these are the sections of the Act to which the learned counsel at the Bar have referred during the course of the arguments.

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Now the petitioner's learned counsel has forcefully contended that the scheme of the Act clearly shows that the Corporation established under section 3 is intended by the Act to be an agent of the State Government and it carries on the business for and on behalf of its principal. When confronted with the position that under the Act even other parties can be shareholders, the learned counsel modified his stand and contended that in the case of the petitioner-corporation there is no private shareholder and the State and the Northern Railway alone have contributed towards the capital and, therefore, the petitioner should be held to be merely a statutory agent of the State Government doing the business in question on behalf of its principal. Stress has been laid *inter alia* on the provisions of the Act in regard to the constitution of the Corporation, the accounts and particularly obligation to lay the budget and the annual accounts before the State Legislature, the inquiries, the borrowing power, payment of interest and dividend and regarding major expenditure, etc. Guarantee by the State Government with respect to the shares of the Corporation is provided in section 25, making over of the remainder to the State Government under section 30 and exemption from the law

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relating to the liquidation under section 39 also, according to the counsel, support his contention.

As against this, the respondents' learned counsel has submitted that the scheme of the Act clearly suggests that the Corporation is not merely an agent of the State Government but a separate legal entity with a personality of its own and having perpetual succession, competent and entitled to hold property, sue and to be sued and is bound by all laws in force for the time being including law relating to income-tax, though like other statutory bodies its activities are controlled by the statutes creating it and the State Government along with the Central Government have been given wide powers and also subjected to certain obligations to see that the statutory Corporation functions according to its charter. Representation of the State and the Central Governments and, in case of private contribution towards the capital, of the share holders in the Corporation is submitted to be inconsistent with the Corporation being a mere agent of the State. While commenting on the scheme of the Act, it has been pointed out that section 23(2) postulates a situation when capital is not provided in the manner laid under sub-section (1) and this, according to the counsel, is indicative of the fact that the Corporation need not necessarily and as a matter of law be an agent of the State while operating road transport service. Payment of interest and dividend to the State also according to the respondents militates to some extent against the Punjab State being the true owner of the undertaking which is being worked by the Corporation merely as an agent. It has also been emphasised that the Act throughout talks of the profits of the Corporation and not of the State and this also would seem to militate against the theory of the Corporation being a mere agent of the State for in that case the profits would, strictly speaking, be between the principal and the agent to be of

the principal though earned through the instrumentality of the agent. Reference in section 37 to the taking over of the Corporation is also stated to be indicative of the State Government not being the principal owning the undertaking through the agency of the Corporation. Previous approval of the Central Government for superseding a Corporation under section 38 as also the provision relating to show-cause notice to the Corporation have similarly been urged as suggestive of the State not being the real owner of the undertaking which is operated by the Corporation as its agent so as to claim exemption from income-tax. This suggestion or indication is said to gather further strength from section 38(2)(c) which provides for divesting the Corporation of its property and vesting it in the State on the former's supersession. Division of assets of the Corporation among those who contributed towards the capital provided by section 39 furnishes further indication in the same direction. It is then pointed out that if the Corporation were merely an agent of the State then there was no need for enacting the provisions like winding up contained in section 43, for, the officers and servants of the Corporation would automatically be public servants.

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Shri Awasthy then referred to *The Corporation of Calcutta v. The Governors of St. Thomas' School, Calcutta* (7), but that decision appears to me to be of little assistance and I need not discuss it. *Subodh Ranjan Ghosh v. Sindri Fertilisers and Chemicals Ltd., and another* (8), and *Prafulla Kumar Sen v. Calcutta State Transport Corporation* (9), also cited by the respondents relate to the applicability of Article 311 of the Constitution. In the Patna case *Sindri Fertilizers* was held to be a separate entity though completely owned by the Union Government

(7) A.I.R. 1949 F.C. 121.
(8) A.I.R. 1957 Pat. 10.
(9) A.I.R. 1963 Cal. 116.

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and the Company's servants were held not be the servants of the Union Government. In the *Calcutta case* the employees of the Calcutta S.T. Corporation were also held not entitled to the benefit of Article 311. The proposition of law laid in these two decisions has not been seriously contested on behalf of the petitioner but it is contended that the question of the applicability of Article 311 calls for different considerations and that merely because Article 311 is inapplicable to the employees of a Corporation it does not mean that the Corporation is not the agent of the State. It is urged that in the *Patna case* the company was admittedly owned by the State.

Shri Sikri may be and is perhaps right when he says that the inapplicability of Article 311 may not necessarily show that the State is not the owner of the Corporation. In the *Calcutta case*, however, it is pointed out that the Corporation was similar to the one before us and it was observed *inter alia* that in the eye of law a Corporation was its own master and was a separate entity but as urged by the petitioner these observations were made for showing that its employees did not hold civil posts under the State. It may, however, be mentioned that in that case the ownership, control and management was stated to vest in the Union or State and not in the State alone for it is only the State income which is claimed to be exempt from the Union tax like the income-tax.

Shri Awasthy has then cited *J. Y. Kondala Rao and others v. Andhra Pradesh S. R. T. Corporation* (10), which is also a case of a Road Transport Corporation and reliance has particularly been placed on the following passage at page 90:—

“In the above cases the transport department of the Government was the transport

undertaking, but here the State Road Transport Corporation, which is a body corporate having a perpetual succession and common seal, is the transport authority. Though under the provisions of the Act, the State Government has some control, it cannot be said either legally or factually that the said Corporation is a department of the State Government."

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These observations do appear to me to some extent to support Shri Awasthy and negative Shri Sikri's contention. Reference has next been made to *Andhra Pradesh State R. T. Corporation v. Income-tax Officer* (11). Head-note (f) is relied upon which reads as under:—

"It is not the persons contributing the capital or the manner in which capital is contributed that determines the character of the Corporation. That is not the criterion that will determine the status of the corporation. The corporation is a body corporate and is independent legal entity apart from the Government. It is not necessarily owned by the Government though the Government may contribute its capital. It can sue and be sued in its name. It can borrow in its name and under section 31, it has power to spend such sums as it thinks fit on objects, authorised under the Act. The mere fact that the State is given power to say that proportion or percentage should be set apart for depreciation, reserve and other funds, does not take it out of the category of assessee carrying on business, profession or vocation taxed under section

(11) A.I.R. 1962 A.P. 323.

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10 of the Income-tax Act in respect of profits or gains arising out of the trade or business carried on by it. The supervision of the Government by appointing Chairman, and Chief Officer, or by sanctioning the budget or having the accounts audited or directing the provision for depreciation and other funds does not make it a State-owned Corporation, nor can it be said that the income belongs to the State. It is thus clear that the Corporation is not a State-owned corporation nor is the corporation carrying on business on behalf of the Government. In this view of the matter, it is unnecessary to consider the further question whether the business of the Road Transport Corporation is incidental to the ordinary functions of the Government."

This decision appears to me to be almost direct and fully supports the respondents' contention. Next decision cited is *Tamlin v. Hannaford* (12). There, according to the head-note, it was held that the British Transport Commission is not a servant or agent of the Crown, and its property is as much subject to the Rent Restrictions Acts as the property of any other person. In the body of the judgment at page 329 the following observations occur:—

"These are great powers, but still we cannot regard the corporation as being his agent, any more than a company is the agent of the shareholders or even of a sole shareholder. In the eye of the law the corporation is its own master and is answerable as fully as any other person or corporation. It is not the Crown and has none of the immunities or privileges of the Crown. Its

(12) (1949) 2 A.E.L.R. 327.

servants are not civil servants, and its property is not Crown property. It is as much bound by Acts of Parliament as any other subject of the King. It is, of course, a public authority and its purposes, no doubt, are public purposes, but it is not a Government department nor do its powers fall within the province of government."

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These observations in my opinion also go against the petitioner's contention and support that of the respondents.

The cases cited by the petitioner, according to the respondents' counsel, are distinguishable and have no application to the present case. *Montreal Locomotive case* (2), was concerned with the purchase of property by the Crown and the Corporation's obligations in the contract were referred to as "for and on behalf of the Government and as its agent" and the *Quebec Liquor Commission case* (3), shows that the commission was the Crown itself which can be no stretch be said about the Corporation before us; identical would appear to be the position in the case of *Canadian Broadcasting Corporation* (4), *Bank Voor Handel v. Hungarian Administrator* (13), would also appear to be distinguishable. As observed at page 989 of the report the functions of the custodian in receiving and preserving and ultimately disposing of enemy property under the directions of the Board of Trade or Treasury were a necessary part of the machinery of modern government directed to the making and prosecution of war and the making and implementing of treaties of peace and agreements with other States on the termination of hostilities, which functions were formerly the prerogative of Crown. The case of *Halifax Harbour Commissioners* (5), is also distinguishable, for, the question which

(13) (1954) 1 A.E.R. 969.

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precisely arose for consideration there is somewhat different. May be that some observations in the judgment could, if taken in isolation, be of some assistance to Shri Sikri but I do not think they can aptly be applied to the case in hand.

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As a result of the foregoing discussion I am inclined, as at present advised, to agree with the respondents' contention and hold that the Corporation as contemplated by the Act cannot be held to be a department of the State in the sense that the State is its owner and its income is the income of the State and, therefore, exempt from the operation of the Income-tax Act.

Shri Sikri's contention that even if every Corporation under the Act may not as a matter of law be an agent of the State to attract exemption from the Income-tax Act for its income, the petitioner, on the facts disclosed, is certainly such an agent and its income is exempt from the levy under the Income-tax Act. It is emphasised that there is no private shareholder in this case and this factor makes all the difference. I am unable to persuade myself to agree with the contention. Apart from the fact that the statute does not seem to postulate this position the very fact that the Northern Railway has contributed capital and the Central Government has also a controlling hand would seem to negative the contention and then it is not denied that there is no bar to the petitioner at any time allotting shares to other parties. Now if that is so, then this point, dependant as it would be on the facts and circumstances of each case, should be raised before the departmental authorities and not before a writ Court. This seems to be the consistent view taken in this Court.

This brings me to the second point, namely, whether the petitioner is a taxable unit. The petitioner's

counsel has contended that the petitioner is neither an association of persons nor an individual. It is not disputed at the Bar that it is not a firm or Hindu undivided family. For the view that the Corporation is not an association of persons, reference has been made to the decision in the *Andhra Pradesh S. R. T. Corporation case* and for the view that it is not an individual it has been urged that the individual must be an individual person, artificial persons having been dealt with separately in section 3 of the Income-tax Act; the ratio to the contrary of the Andhra Pradesh High Court is criticised and described to be wrong. *Commissioner of Income-tax v. The Bar Council, Madras* (14), has also been adversely criticised by the petitioner's counsel, and it has been submitted that the Bar Council has, by the Madras High Court, been held to be an individual or an association of persons without any reasoning. *Commissioner of Income-tax, Madras v. Salem District Urban Bank* (15), has similarly been criticised by Shri Sikri. The Madras High Court in the reported case noticed the conflict between the *Commissioner of Income-tax, Bombay v. Ahmedabad Millowners' Association* (16), and *Currimbhoy Embrahim Baronetcy Trust v. The Commissioner of Income-tax, Bombay* (17), (both of which judgments, it appears, were prepared by Beaumont, C.J.), and approved the earlier case of 1932. After noticing the conflict Leach, C.J., made the following instructive observations:—

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“While it is true that ordinarily in conversation the use of the word ‘individual’ would be taken to denote a person, the word has in fact a far wider meaning. The first definition of the word given in the Oxford Dictionary is: “one in substance or essence;

(14) (1943 11 I.T.R. 1.

(15) (1940) 8 I.T.R. 269.

(16) I.L.R. 1939 Bom. 451=7 I.T.C. 369.

(17) (1932) 5 I.T.C. 484 A.I.R.=1932 Bom. 108.

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forming an indivisible entity; indivisible". It is also defined as "existing as a separate indivisible entity, numerically one, single". If a corporate body created by a statute is an individual within the meaning of the section and I hold that it is—a co-operative society registered under the Co-operative Societies Act must fall within the same category. It is a corporate body and has perpetual succession. I consider that it is not reasonable to suppose that the Legislature intended that there should be a difference in the meaning of the word 'individual' and the plural 'individuals'. If the word 'individual' includes a corporation, the words 'association of individuals' must embrace an association of corporate bodies, and, therefore, the essence is an 'association of Individuals'."

A little lower down again it was observed—

"To give the word 'individual' the meaning of 'person' only would, it seems to me, be to disregard the scheme of the Act and to rob the word of an accepted meaning. It follows that in my opinion the first question referred should be answered in the affirmative."

My attention has also been drawn to the *Trustees of the Sir Currimbhoy Ebrahim Baronetcy Trust v. Commissioner of Income-tax, Bombay* (18), where the decision of the Bombay Court was affirmed. It has, however, been urged by the petitioner's counsel that the question, whether the trust there was an individual, was not raised or discussed by the Privy Council

(18) A.I.R. 1934 P.C. 116.

and that the point raised before the Board was different. This may be so, but it is clear that the Bombay High Court had clearly held that the Corporation constituted by the said Act was an "individual" within section 3 of the Income-tax Act and this view was not challenged before the Board. Shri Sikri has laid emphasis on a decision of the Pakistan Federal Court in *Punjab Province v. The Federation of Pakistan* (20), where it is laid down that after the amendment of 1939 the word 'individual' in section 3 of the Income-tax Act can only mean a natural person, i.e., a human-being. After noticing the decisions of the Bombay and Madras High Courts mentioned earlier, Munir, C.J., who prepared the judgment of the Court, held that it was on account of the forced interpretation adopted that the amendment in 1939 was effected. According to his view, while every individual must be a person, the converse is not true because an artificial or a legal person, whether it is a corporation aggregate or a corporation sole, is not an individual. Shri Awasthy has pointed out that in the Pakistan case it was the Province of Punjab which was sought to be taxed and the Government of West Pakistan had instituted a suit claiming exemption from being taxed. It was the Province of Punjab or West Pakistan which was held neither to be "an association of persons" nor an "individual" for the purposes of Income-tax Act. It was in this context that the discussion in the judgment is to be construed with the result that, according to the respondent, the ratio of this case is of no direct assistance to us. Besides, the correctness of this view has also been questioned by Shri Awasthy and it has in addition been submitted that being a foreign judgment it is not binding on this Court. My attention has also been drawn to the fact that in the *Bar Council* case before the Madras High Court the imposition of tax on the income of the

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 Pepsu Road Council for the year 1940-41 was also the subject-matter of dispute with the result that that case was not concerned wholly with the assessment before 1939.

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Shri Awasthy has also relied on *Income-tax Commissioner v. Lacmidas Devidas* (21), and *Commissioner of Income-tax, Bombay v. Dwarkanath Harischandra* (22), but in my opinion, these two decisions are of no direct assistance. Counsel has also relied on *The Bar Council, Patna v. Commissioner of Income-tax, Bihar* (23), where also the Bar Council was held to be assessable.

I have considered the arguments addressed at the bar and after devoting my most earnest attention to the rival contentions, I am of the view that the petitioner is a taxable unit. According to section 3 of the Income-tax Act the total income of every individual, Hindu undivided family, Company and local authority and of every firm and other association of persons of the partners of the firm or the members of the association individually is taxable subject to the provisions of the Act. The language clearly reflects that the Parliament intended this section to have a wide scope and except where the exemption is provided by the Act itself income of every unit appears to be within the scope of the charging section. The word "individual", according to the Shorter Oxford English Dictionary means, *inter alia*, a single object or thing, or a group of things regarded as a unit; a single members of a class, group, or number; numerically one, single; existing as a separate indivisible entity; distinguished from others by attributes of its own. According to Webster's New International Dictionary also, the word "individual" means *inter alia*, existing as a separate and distinct entity; single or singular;

(21) A.I.R. 1938 Bom. 41.

(22) A.I.R. 1938 Bom. 353.

(23) (1949) I.T.R. 452.

particular;—opposed to general and universal: of the character of an individual; possessing the distinctness and complexity in unity, characteristics of organised things, concepts, organic beings, and persons. It would thus appear to me that the word “individual” has both width and narrower shades of meaning, depending on the context. It is, therefore, to be seen whether in section 3 this word is to be confined to natural human beings or it is intended to have a wider scope. It may be remembered that the long range objective of tax measures is the accomplishment of good social order and in a welfare State revenue is essential for its very existence. In a democratic set up equality and uniformity among the assesses in the imposition of the tax burden is highly favoured and indeed in our Republic this is one of the basic principles. A too stilted interpretation of tax laws for the benefit of the tax-payer may result in loss of revenue at the expense of the society and thereby operate to the disadvantage of the others contributing to the State revenue. The word “individual”, therefore, in my opinion, must be given a wider meaning than is contended by the petitioner’s learned counsel. This meaning, in my view, clearly seems to accord with the legislative intent.

Shri Awasthy has also, it may be noted, suggested that the petitioner is an association of persons and he has in addition thrown a suggestion that the petitioner might also be considered to be a company. Whether or not the petitioner can be said to fall within the term “association of persons”, I am inclined to agree with the ratio of the Madras decisions mentioned above and hold that the petitioners can reasonably and without stretching the term be described to be an “individual” and, therefore, a taxable unit.

This brings me to the next point, namely, whether the petitioner’s income is exempt under section

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4(3)(i) being income derived from the property held under trust or other legal obligation wholly for religious or charitable purposes. According to the petitioner's learned counsel there is a legal obligation imposed on the petitioner under section 30 of the Corporation Act to hand over the remainder of the net profits after making provisions for the purposes mentioned therein to the State Government for the purpose of road development. This purpose is, according to the counsel, a charitable purpose as defined in the Income-tax Act. In support of this contention, he has referred us to the Privy Council decision in *In re The Trustees of the Tribune* (24). In the reported case running of a newspaper was held to be a charitable purpose. He has in addition relied on a decision of the Lahore High Court in *Charitable Gadodia Swadeshi Stores v. Commissioner of Income-tax, Punjab* (25) and an Allahabad decision in *Commissioner of Income-tax v. Radhaswami Satsang Sabha* (26). Sections 3 and 18 of the Corporation Act, according to the counsel, must be read subject to the provisions of section 30 which provides for the disposal of the net profits.

Shri Awasthy has on the contrary contended that exemptions are for the taxing authority to determine and this Court should not on writ side entertain and adjudicate upon such claims. Assesseees cannot be permitted to abandon resort to the machinery provided by the Income-tax Act for assessment of tax and for obtaining relief in respect of improper orders. *C. A. Abraham v. Income-tax Officer* (27), has been cited in this connection. It would, according to the counsel be open to the petitioner to show to the Income-tax authorities as to how much amount is claimed by way of exemption under section 4(3)(i).

(24) 7 I.T.R. 475.

(25) 12 I.T.R. 385.

(26) 25 I.T.R. 472.

(27) A.I.R. 1961 S.C. 609.

He has strongly contended that the whole of the income of the petitioner cannot be considered to be the income derived from property held under trust or other legal obligation wholly for religious or charitable purposes, within the contemplation of section 4(3)(i)(c). The learned counsel has vehemently contended that there being a provision for payment of dividends to those who have contributed towards the capital of the petitioner-corporation no exemption on the basis of charitable purposes is permissible. Reference has in this connection been made to *Hugh's Settlement, Ltd. v. Commissioner of Inland Revenue* (28), *Raja P. C. Lall Chaudhary v. Commissioner of Income-tax* (29), has also been relied upon in support of his contention. It was held there that the assessee had not created a trust or obligation on any property but had only created a charge over part of the income accruing to him from a particular source, and, therefore, section 4(3)(i) was not applicable and the amount not exempt from taxation. The legal obligation to allocate the sum for the expenses of the idol did not accrue until the income was received by the assessee, the amount was thus assessable in the assessee's hands in the first instance before it was spent. The counsel has contended that the source itself of the income must, according to this case, be held under trust or other obligation. I am not quite sure if the ratio of this case can fully apply to the case before us because before us is the case of a statutory corporation and, therefore, different considerations might well apply. The counsel has also relied on *Ganpatrai Sagarmal (Trustees) For Charity Fund v. Commissioner of Income-tax* (30), where the Calcutta High Court held that it was not enough under section 4(3)(i), Income-tax Act, that the income from the property was held for charitable or religious purposes

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(28) 22 T.C. 281.

(29) 31 I.T.R. 226.

(30) (1963) 47 I.T.R. 625.

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and that the property must itself be held under a trust or other similar obligation for religious or charitable purposes. This case is similar to that of *Raja P. C. Lal* and a question might well arise if its ratio can be considered to be fully applicable to the case of a statutory tribunal. *Commissioner of Income-tax M. P. v. Messrs Vyas and Dhoniwala* (31), also does not improve the position.

In my view, however, in the present case, it is not possible to hold that the Corporation has been established for any religious or charitable purpose, with the result that the whole of its income cannot be considered to fall within section 4(3)(i), Income-tax Act. In so far as the claim in regard to the remainder of net profits which have to be made over to the State Government for the purpose of road development is concerned, in my view, it should be made to the Assessing Authorities in accordance with the machinery provided by the Income-tax Act and the writ jurisdiction of this Court cannot be permitted to be invoked for this purpose. See *The Punjab Woollen Textiles Mills, Chheharta v. The Assessing Authority, Sales Tax, Amritsar* (32), *Messrs Jiwan Singh and Sons v. The Excise and Taxation Officer, Jullundur District* (33), and *Messrs New Model Industries v. The State of Punjab*, Civil Writ No. 1542 of 1961, decided on the 14th of February, 1963. Administration of modern taxing statutes in a welfare State has created some complex problems and this factor coupled with the usual difficulties in the assessment and collection of taxes has necessitated the setting up of a specialised machinery for administering them. Normally speaking, therefore, the assessee should not be encouraged to by-pass that machinery and to invoke the extraordinary jurisdiction of this Court for seeking redress of their grievances. To permit them to do

(31) A.I.R. 1959 S.C. 90.

(32) I.L.R. (1960) 1 Punj. 763 = (1960) P.L.R. 322.

(33) (1960) P.L.R. 562.

so would, in my opinion, go against the legislative intent and scheme. I, however, express no considered opinion, as indeed I am not called upon to do so, on the tenability of the claim. It may, however, be stated that, as contended by Shri Awasthy, case for exemption has to be made out by the assessee on whom the onus lies and exemptions from taxes have also to be construed liberally in favour of the revenue and against the tax-payer; they attract a rigid construction against the claimant and in favour of tax-payer. The contention pressed on behalf of Shri Sikri that charitable nature of the exemption claimed is apparent on the face of the record is difficult to uphold because it is a matter to be determined on the facts and circumstances of each assessment.

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In the end, Shri Sikri has half-heartedly thrown a suggestion that the petitioner is in any case a local authority but this contention was not persisted in.

For the foregoing reasons, this petition fails and is hereby dismissed, but with no order as to costs.

MEHAR SINGH, J.—I agree.

Mehar Singh, J.

B.R.T.

APPELLATE CIVIL

Before Prem Chand Pandit, J.

SITA RAM,—Appellant

versus

JOGINDER KUMAR AND OTHERS,—Respondents.

First Appeal From Order No. 127 of 1961.

Partition Act (IV of 1893)—S. 7—Code of Civil Procedure (V of 1908) Order 21, Rule 89 Whether applicable—Petitioner making a statement before the sale that he was unable to buy the property—Whether estopped from applying for setting aside the sale—Only five per cent of the

1963

May 1st.