The Indian Law Reports

Before S. S. Sandhawalia, C.J. & G. C. Mital, J.

CHIEF COMMISSIONER, UNION TERRITORY, CHANDIGARH and others,—*Appellants.*

versus

SUSHIL FLOUR, DAL & OIL MILLS,—*Respondent.*
Letters Patent Appeal No. 139 of 1982.

August 18, 1982.

Constitution of India 1950—Articles 53, 77 and 239—Punjab General Sales Tax Act (40 of 1948)—Section 5(1)—Punjab Reorganisation Act (XXXI of 1966)—Sections 4, 88 and 89—General Clauses Act (X of 1897)—Section 3(8)(b) (iii)—Administrator appointed by the President for the Union Territory of Chandigarh under Part VIII of the Constitution—Such Administrator given powers exercisable by the State Government under laws applicable to the Union Territory—Rate of Sales Tax enhanced by the Administrator under section 5(1) of the Punjab General Sales Tax Act—Administrator while exercising this power—Whether a delegate of the President or only a medium through whom the President acts—Exercise of power by the Administrator—Whether valid—Provisions of the General Clauses Act—Whether applicable.

Held, that under part VIII of the Constitution the power to administer a union territory is admittedly vested in the President. He may exercise that power directly or through an Administrator appointed by him and to such an extent as he thinks fit. An administrator lawfully appointed is thus only a limb, a machinery or a medium through whom the President exercises his constitutional function of administering the union territory. The conferment and entrustment of power on the administrator has been done not merely under Article 239 of the Constitution but expressly in pursuance of all other powers enabling the President in this behalf. Clearly enough the language used herein is of the widest amplitude and would include within its ambit all other constitutional provisions as well which vests the President with the powers and further enabled him to act through officers subordinate to him. It is equally manifest from Article 53(1) of the Constitution that the President is the repository of the executive power of the union and is in terms entitled to exercise the same through officers subordinate to him in accordance with the Constitution. There seems to be, therefore, no gainsaying the fact that an Administrator of a union territory, who is an appointee of the President would undoubtedly come within the terminology of an officer subordinate to him. Similar language is then employed in Article 77. A larger perspective of these constitutional provisions along with other enumerable ones are all indicative of the fact that there is an integral unity of the Central Government and the President in its constitutional and conceptual

aspect. There is indeed a confluence of powers in the President which cannot and need not be separated in water tight compartments. Even apart from the specific provisions of Article 239(1) (and in any case in addition thereto) all other powers would authorise the exercise of the Presidential functions through the medium of the Administrator in a union territory and no question of any delegation arises. (Paras 11 and 12).

Held, that in the context of the creation of the union territory in the appointment and conferring of powers on the Administrator, the provisions of the Punjab Reorganisation Act, 1966 and in particular sections 4, 88 and 89 thereof are directly attracted. By virtue of the provisions of the Punjab Reorganisation Act, the existing laws applicable to the erstwhile State of Punjab were made *ipso facto* applicable to the union territory of Chandigarh. However, a period of two years was provided thereafter for their adaptation and modification, if necessary, on the creation of union territory of Chandigarh. The future legislative function with regard thereto was vested in the Parliament. These laws as now applicable within the union territory of Chandigarh were under the legislative penumbra of the Punjab Re-organisation Act and thus fall squarely within the field of parliamentary jurisdiction. Therefore, in essence these are central laws either by adoption or by way of adoption. That being so, it is plain that the provisions of the General Clauses Act are clearly and directly attracted for the interpretation of these laws.

(Para 13).

Held, that a reading of section 3(8)(b) of the General Clauses Act would make it obvious that after the commencement of the Constitution, the Central Government means the President. It would seem that conceptually by virtue of this provision the Central Government and the President are mathematically equated with each other. Once that is so, it would follow that the action having been taken by the President in the eye of law it must be deemed to have been taken by the Central Government because the two entities have been made synonymous. Both on the concept of the exercise of the sovereign power through a medium and the particular language of section 3(8)(b), conceptually the President and the Central Government are identical and interchangeable terms. Since all executive actions of the Central Government are to be exercised and expressed in the name of the President, it would follow in the converse that whatever is exercised in the name of the President in the particular context may be deemed to be the exercise by the Central Government itself. The impugned notification issued under section 5(1) of the Punjab General Sales Tax Act, 1948 must, therefore, be deemed to be issued by the Central Government itself acting through the medium of the Administrator of the union territory who is an appointee and a limb of the Central Government. (Para 15).

Chief Commissioner, Union Territory, Chandigarh and others *v.* Sushil Flour Dal & Oil Mills (S. S. Sandhawalia, C.J.)

Appeal under Clause X of the Letters Patent Against the Judgment and Order of Hon'ble Mr. Justice I. S. Tiwana, dated 17th November, 1981 passed in Civil Writ Petition No. 2913 of 1972.

P. R. Mridul, Senior Advocate with M. R. Agnihotri & O. P. Goyal, Advocates, *for the appellants.*

M. L. Puri, Advocate with Sudarshan Goel, Advocate, *for the respondents.*

JUDGMENT

S. S. Sandhawalia, C.J.—

(1) The larger question that looms in this set of three appeals under Clause 10 of the Letters Patent is—whether an administrator of a Union Territory appointed under Part VIII of the Constitution is a delegate of the President or only a medium through whom the President acts.

2. The factual matrix giving rise to the issue aforesaid is undisputed and narrow in compass. Under Section 5(1) of the Punjab General Sales Tax Act the power to issue notifications for fixing the rate of sales tax thereunder has been vested in the State Government. On the creation of the Union Territory of Chandigarh on the 1st of November, 1966, the Punjab General Sales Tax Act, 1984 (hereinafter called the Act) was made applicable to the said Union Territory by virtue of sections 88 and 89 of the Punjab Reorganisation Act. On the 18th of April, 1968,—*vide* notification of even date the administrator of the Union Territory of Chandigarh (designated as the Chief Commissioner)* in exercise of the powers conferred under section 5 of the Act enhanced the rate of tax leviable from 2 to 3 per cent. Similar notification was issued on the 11th of June, 1969 and later on 13th of June, 1975 enhancing the tax to 4 per cent, The last notification calls for notice *in extenso* :—

> "No. 3658-UTF II(6)75/8394.—In exercise of the powers conferred by sub-section (1) of section 5 of the Punjab General Sales Tax Act, 1948 *and all other powers enabling him in this behalf,* the Chief Commissioner, Chandigarh, is pleased to make the following amendment in the Punjab Government, Excise and Taxation Department, Notification No. S.D. 175/P.A. 46/48/S.5/66, dated the 30th June,

1966, as amended,—*vide* Chandigarh Administration, Excise and Taxation Department Notification No. 4451-UTFII(6)69/7263, dated the 11th June, 1969, namely:—

AMENDMENT

In the said Notification in proviso (12) for the word 'three' the word 'four' shall be substituted."

3. It is then the admitted stand that on the creation of the Union Territory of Chandigarh, a notification No. 3269, dated the 1st of November, 1966, annexure 'B' to the writ petition was promulgated in exercise of the powers under sections 4 and 88 of the Punjab Reorganisation Act, 1966 by the Central Government. The operative part thereof is as under:—

"Now, therefore, in pursuance of clause (1) of Article 239 of the Constitution and *all other powers enabling him in this behalf, the President hereby directs that, subject to his control and until further orders,* the Administrator of the Union Territory of Chandigarh shall, in relation to the said territory, exercise and discharge, with effect from the 1st day of November, 1966, the powers and functions of the State Government under any such law."

It deserves recalling that section 89 of the Punjab Reorganisation Act empowered the Central Government to make such an adaptation and modification of the relevant laws as may be necessary or expedient, for the purpose of facilitating the application of such laws in relation to the Union Territory of Chandigarh. Acting thereunder the Punjab Reorganisation Act (Chandigarh Adaptation of Laws on State and Concurrent Subjects) Order, 1968 was duly promulgated,—*vide* annexure 'E' to the writ petition. Again on the eve of the expiry of two years period for the adaptation of laws the Central Government,—*vide* annexure 'D' promulgated a notification empowering the Administrator of the Union Territory as under :—

"Now, therefore, in pursuance of clause (1) of Article 239 of the Constitution *and all other powers enabling him in this behalf and in partial modification* of the notification of the Government of India in the Ministry of Home Affairs No. S.O 3269, dated the 1st November, 1966, the

> *President hereby directs that subject to his control and until further orders*, the powers and functions of the Central Government exercisable and dischargeable under laws other than Central Act shall, in relation to the Union Territory of Chandigarh, be also exercised and discharged by the Administrator of that Union Territory."

What calls for pointed notice is the fact that no challenge whatsoever to the validity of the notifications, annexures 'B' and 'D' was at all raised either in the writ petition or before the learned Single Judge and equally before the Letters Patent Bench.

4. Before the learned Single Judge the only argument urged on behalf of the writ petitioner (as expressly noticed in the judgment under appeal) was that the impugned notifications annexures 'C', 'F' and P.11 having been issued by a delegate of the Central Government were bad because the Central Government could not further delegate its power to the Administrator, i.e., Chief Commissioner of Chandigarh, Union Territory. This contention found favour with the learned Judge wholly on the ground that the Central Government having been itself delegated the legislative power under the Punjab General Sales Tax Act could not further delegate this power to the Chief Commissioner. It was also held that the Central Government had at no stage delegated this power to the Chief Commissioner of the Union Territory, in a brief judgment, the writ petition was, therefore, allowed on this solitary ground.

5. The Chandigarh Administration thereafter preferred Review Application No. 71 of 1981 against the aforesaid judgment of the learned Single Judge. Therein, it was particularly pleaded that the Government of India, Ministry of Home Affairs, notification, dated October 30, 1968 (annexure 'D' to the writ petition) had altogether missed consideration and further that by virtue of Section 3, clause (8)(b)(iii) of the General Clauses Act, the impugned notification must be deemed to have been issued by the Central Government itself and not as a sub-delegate thereof. In an elaborate order on the said Review Application, the learned Single Judge held that the same was maintainable but even after taking into consideration the notification, annexure 'D', he reiterated his earlier view. However, he modified his earlier judgment to hold that the writ petitioners would be absolved of liability only prospectively,

that is, from the date of the judgment on November 17, 1981 and not retrospectively. —

6. The appellant-Chief Commissioner, has preferred separate Letters Patent Appeals No. 1154 and 139 of 1982 (*Chief Commissioner, U.T. and Ors.* v. *M/s Sushil Flour Mills*), against the original judgment of the learned Single Judge, as also against the detailed order passed on the Review Application. The writ petitioner, M/s. Sushil Flour Mills have preferred Letters Patent Appeal No. 472 of 1982 (*M/s Sushil Flour Mills* v. *Chief Commissioner, etc.*), against the modification, made in the review order.

7. At the very threshold, it calls for pointed notice that the two conceptual theories which vie for acceptance herein, are the well-known concept of the delegation of powers as against the somewhat subtle yet distinct domain where the President alone acts through a medium for the exercise of the constitutional functions vested in him. To borrow the familiar terminology of English Constitutional Law, it is only the machinery through which the Crown exercises its sovereign power.

8. In fairness to the learned Single Judge, we must notice at the out-set that the matter was not presented before him in the light aforesaid. Mr. Mridul, learned counsel for the appellant Chief Commissioner very fairly stated so. Ordinarily in Letters Patent jurisdiction we would be extremely reluctant to permit the raising of an argument which was not specifically canvassed before the learned Single Judge. However, herein significant constitutional issues stamping specifically from the language of the Articles themselves and going to the very root of the case, arise as pure questions of law without any dispute on facts. On well-settled principle, we would not wish to altogether bar them from consideration. With the greatest respect to the learned Single Judge, we feel impelled to adjudicate on propositions which have obviously wider ramifications.

9. As noticed earlier, the cardinal question herein is whether in promulgating the impugned notification (annexures 'C', 'F' and P/11), the Chief Commissioner of Chandigarh was acting as a delegate or on the other hand was only a medium or machinery through whom the President connoting the Central Government had acted. This somewhat subtle distinction historically speaking has been best highlighted by the Court of Appeal in *Carltona Ltd.*

v. *Commissioners of Works and others,* (1). Therein, an Assistant Secretary acting for the Minister of Works and Planning had issued the order of requisition which was challenged. Rejecting the contention, Lord Greene, Master of Rolls, rendered the following classic exposition :—

> "In the administration of Government in this country the functions which are given to ministers (and constitutionally properly given to ministers because they are constitutionally responsible) are functions so multifarious that no minister could ever personally attend to them. To take the example of the present case no doubt there have been thousands of requisitions in this country by individual ministries. It cannot be supposed that this regulation meant that, in each case, the minister in person should direct his mind to the matter. The duties imposed upon ministers and the powers given to ministers are normally exercised under the authority of the ministers by responsible officials of the department. Public business could not be carried on if that were not the case. *Constitutionally, the decision of such an official is, of course, the decision of the minister. The minister is responsible.....*"

The aforesaid view was quoted with approval and affirmed later in *Lewisham Borough Council and another* v. *Roberts,* (2), and Jenkins, L.J., observed as follows :—

> ".....I think this contention is based on a misconception of the relationship between a Minister and the officials in his department. A Minister must perforce, from the necessity of the case, act through his departmental officials and where, as in the Defence Regulations now under consideration, functions are expressed to be committed to a Minister, those functions must, as a matter of necessary implication, be exercisable by the Minister either personally or through his departmental officials, and *acts done in exercise of those functions are equally acts of the Minister whether they are done by him per-*

(1) (1943) 1 All E.R. 560.
(2) (1949)1 All E.R. 815.

sonally, or through his departmental officials, as in practice except in matters of the very first importance they almost invariably would be done....."

Therein also, the action of an official was challenged on the ground that he was acting as a delegate of his Minister and on the well-known principle of *deltgatus non potest delegare,* the Minister could not make a valid delegation to him. Categorically rejecting the stand, Jenkins' J., observed as follows :—

".....No question of agency or delegation as between the Minister and Mr. O'Gara seems to me to arise at all....."

The authoritative enunciation of the law above, has been formulated as now being a settled constitutional principle in Halsbury's Laws of England, Volume I, 4th Edition, para 748, in the following terms :—

"*Ministers of the Crown and local authorities.*—Where functions entrusted to a minister are performed by an official employed in the minister's department there is in law no delegation because constitutionally the act or decision of the official is that of the minister. Similarly where a local authority appoints a committee for the discharge of certain of its functions, the committee is merely machinery for the discharge by the authority of the business entrusted to the committee all of whose acts are subject to the authority's approval."

10. Because of the fact that the aforesaid constitutional position has been authoritatively approved and accepted by the final Court in India, it is unnecessary to elaborate the matter. The Constitution Bench in *A. Sanjeevi Naidu, etc.* v. *State of Madras and another,* (3), held as under :—

".....When a civil servant takes a decision he does not do it as delegate of his Minister. He does it on behalf of the Government. It is always open to a Minister to call for any file in his Ministry and pass orders. He may also issue directions to the officers in his ministry regarding the disposal of Government business either

(3) A.I.R. 1970, S.C. 1102.

generally or as regards any specific case. Subject to that over all power, the officers designated by the 'Rules' or the standing orders, can take decisions on behalf of the Government. *These officers are the limbs of the Government and not its delegates.*"

And;

"As mentioned earlier in the very nature of things, neither the Council of Ministers nor an individual Minister can attend to the numerous matters that come up before the Government. Those matters have to be attended to and decisions taken by various officials at various levels. When those officials discharge the functions allotted to them, *they are doing so as limbs of the Government and not as persons to whom the power of the Government had been delegated.* In Halsbury Laws of England, Volume 1, 3rd Edition, at page 170, it is observed:

* * *
* * * *".

The aforesaid view has then been reiterated by a Larger Bench of seven Judges in *Samsher Singh* v. *State of Punjab and another* (4), in the following terms :—

".....When a Civil Servant takes a decision, he does not do it as a delegate of his Minister. He does it on behalf of the Government. The officers are the limbs of the Government and not its delegates. Where functions are entrusted to a Minister and these are performed by an official employed in the Ministry's Department, there is in law no delegation because constitutionally the act or decision of the official is that of the Minister."

11. On principle it seems plain enough that what has been said above in the context of a 'Minister' would apply equally and indeed with greater force to a constitutional head like the President or the Governor. It deserves highlighting that the President herein is not envisaged as an individual but as a constitutional functionary. Inevitably the President does not discharge all his

(4) A.I.R. 1974, S.C. 2192.

multifarious duties personally but ordinarily entrusts and allocates them by an established procedure. Therefore when a constitutional head lawfully entrusts or allocates his governmental or executive functions to another then strictly in the eye of law such a person is not to be termed as a delegate but only a limb through which the President acts. To put it in other words it is only a machinery through which the constitutional head functions. This has been authoritatively so held in the context of the allocation of powers by the Rules of Business in the case of the Central Government by the President and in the case of the respective States by their Governors. In *Shamsher Singh's case* (supra), it was in terms observed as under :—

> "* * *. The rules of business and the allocation among the Ministers of the said business all indicate that the decision of any Minister or officer under the rules of business made under these two Articles, viz., Article 77(3) in the case of the President and Article 166(3) *in the case of the Governor of the State is the decision of the President or the Governor respectively.*"

With regard to the Central Government, an identical view has been expressed by the Division Bench in *R. C. Roy* v. *Union of India and others*, (5), in the following words:—

> "* * *. The Central Government is not an individual but an organisation. Whether a function is exercised by the President as the Head of the Union of India or whether a power is vested by the Constitution on the President as such as a *persona designata* the procedure for the exercise of the power would be the same, namely, either the one prescribed by the Rules of Business framed under Article 77(3) of the Constitution or under the law and the rules made under the proviso to Article 309 of the Constitution. *When an authorised officer is acting in the name of the Central Government or the President, he is not acting as a delegate.* He is merely authenticating the order of the President or the Central Government according to the prescribed procedure. The order is that of the President or of the Central Government and not of the officer who authenticates it."

(5) A.I.R. 1971 (Delhi) 196.

The aforesaid view is further buttressed by the language and terminology used in other Articles of the Constitution. A reference in this context may pointedly be made to Aricles 258 nad 258-A and the latter may be quoted for facility of reference:—

> "258-A. *Power of the State to entrust functions to the Union.*—Notwithstanding anything in this Constitution, the Governor of a State may, with the consent of the Government of India, entrust either conditionally or unconditionally to that Government or to its officers functions in relation to any matter to which the executive power of the State extends."

Herein a power is conferred on the Union of India or the respective States to entrust their functions either conditionally or unconditionally to the respective Government or to its officers. The precise language carefully employed herein is that of conferment and entrustment. It would appear that this terminology is designedly used by the Constitution in sharp contra-distinction to the well-known concept of delegating a power by the principal to an agent. Therefore when the Central Government or the State Government under these provisions entrusts its functions then such a person is primarily the medium through which such power is exercised. This was highlighted by the Division Bench in *Nikunja Behari Singh* v. *Duryodhan Pradhan and another* (6) in the context of the entrustment by the Union of the Construction of the Hirakud Dam to the State of Orissa. It was concluded as follows:—

> "The relationship arising by virtue of Article 258A cannot be said to pertain to the law of agency but is only a constitutional statutory entrustment in relation to the exercise of the executive power which is a sovereign power and by virtue of this executive power of the Union, the President through an authorised officer entered into a contract with the appellant with regard to the digging of the canal."

To conclude on this aspect it is manifest that under Part VIII of the Constitution, the power to administer a Union Territory is admittedly vested in the President. He may exercise that power

(6) A.I.R. 1959 Orissa, 58.

directly or through an Administrator appointed by him and to such extent as he thinks fit. Therefore no question of any delegation arises and an Administrator lawfully appointed is only a limb, a machinery or a medium through whom the President exercises his constitutional function of administering the Union Territory.

12. It is equally pertinent to notice the alternative argument of Mr. Mridul, learned counsel for the appellant—Chief Commissioner in this context. Counsel highlighted the fact that the conferment and entrustment of power on the Administrator,—*vide* annexures 'B' and 'D' have not been the subject-matter of any challenge whatsoever both in the writ petition and in the present appeals. This has been done not merely under Article 239 of the Constitution but expressly in pursuance of all other powers enabling the President in this behalf. Clearly enough the language used herein is of the widest amplitude and would, therefore, include within its ambit all other constitutional provisions as well which vest the President with the powers and further enable him to act through officers subordinate to him. Reference in this connection may first be made to Article 53(1) of the Constitution which is in the following terms :—

> "53(1) The executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution."

It is manifest from the above that the President is the repository of the executive power of the Union and is in terms entitled to exercise the same through officers subordinate to him in accordance with the Constitution. There seems to be no gainsaying the fact that an Administrator of a Union Territory, who is an appointee of the President would undoubtedly come within the terminology of an officer subordinate to him. Similar language is then employed in Article 77 which provides that the exercise of the executive power of the Government of India would be in the name of the Central Government. Particular reference herein is called for to clause (3) of Article 77 for making rules for the convenient transaction of the business of the Central Government and for the allocation amongst Ministers of the said business. A larger perspective of the aforesaid constitutional provisions along with Articles 73, 240, 246(4), 258, 258-A and innumerable other ones, to which individual reference is unnecessary, are all indicative of the fact

that there is thus an integral unity of the Central Government and the President in its constitutional and conceptual aspect. Mr. Mridul was apparently on a firm footing in his submission that there is a confluence of powers in the President which cannot and need not be separated in water-tight compartments. Consequently there is plain merit in his stand that even apart from the specific provision of Article 239(1) (and in any case in addition thereto) all other powers would authorise the exercise of the Presidential functions through the medium of the Administrator in a Union Territory.

13. Even assuming (entirely for the sake of argument without holding so) that the stand of the respondents that the power of fixing the rates of sales tax in the Union Territory can only be exercised by the Central Government, the appellant—Chief Commissioner seems nevertheless to be on equally strong footing. Herein Mr. Mridul rightly called in aid the definition of Central Government under section 3(8) of the General Clauses Act. It deserves recalling that the learned Single Judge had expressly noticed the reliance of the Chandigarh Administration on the aforesaid provisions (in his order on the review application) but did not choose to give any categoric finding on the applicability thereof one way or the other. A passing doubt was, however, expressed that these may not *ipso facto* become applicable to the Punjab General Sales Tax Act. What perhaps bears highlighting herein is that the real issue is the applicability of section 3(8) aforesaid for construing annexures 'B', 'D' and 'E' to the writ petition and not to the provisions of the Punjab General Sales-tax Act. Herein what calls for pointed notice is the fact that in the context of the creation of the Union Territory in the appointment and conferring of powers on the Administrator, the provisions of the Punjab Reorganisation Act, 1966 and in particular sections 4, 88, and 89 thereof are directly attracted. In fact in annexures 'B' and 'D' (which, as already noticed, are not the subject-matter of any challenge) these have been specifically invoked. By virtue of the provisions of the Punjab Re-organisation Act, the existing laws applicable to the erstwhile State of Punjab were made *ipso facto* applicable to the Union Territory of Chandigarh. However, a period of two years was provided thereafter for their adaptation and modification, if necessary, with effect from the 1st of November, 1966 on the creation of the Union Territory of Chandigarh. The future legislative function with regard thereto was vested in the Parliament. Learned counsel for the appellant—Chief Commissioner was, therefore, right

in his stand that these laws, as now applicable within the Union Territory of Chandigarh were under the legislative penumbra of the Punjab Re-organisation Act and thus fall squarely within the field of parliamentary jurisdiction. Therefore in essence these are central laws either by adoption or by way of adaptation. That being so it is plain that the provisions of the General Clauses Act are clearly and directly attracted for the interpretation of these laws. Though we do not at all base ourselves on any concession in this context, it calls for notice that the learned counsel for the respondent—M/s Sushil Flour Mills had ultimately very fairly stated that section 3(8)(b)(iii) would indeed be applicable.

14. Once it is held as above, the relevant provisions of section 3(8) directly aid the stand of the appellant and may, therefore, be noticed *in extenso*:—

> "3. In this Act, and in all Central Acts and Regulations made after the commencement of this Act, unless there is anything repugnant in the subject or context,—
>
> (1) to (7) * * *
>
> (8) Central Government shall—
>
> (a) * * * *
>
> (b) in relation to anything done or to be done after the commencement of the Constitution, means the President; and
>
> (i) & (ii)
>
> (iii) in relation to the administration or a Union Territory, the administrator, thereof acting within the scope of the authority given to him under Article 239 of the Constitution."

15. Now on the language of the aforesaid provision, a twin presumption in favour of the appellant plainly arises. Mr. Mridul in the first instance rightly confined his reliance only on section 3(8)(b) without proceeding any further. Reading the same together, it is obvious that after the commencement of the Constitution, the Central Government means the President. It would seem

that conceptually by virtue of this provision the Central Government and the President are mathematically equated with each other. Once that is so, even on the presumption (without conceding) that the stand of the respondents is correct that action herein must be taken by the Central Government, it would still follow that the same having been taken by the President in the eye of law it must be deemed to have been taken by the Central Government because the two entities have been made synonymous. The larger argument herein is that both on the concept of the exercise of the sovereign power through a medium and the particular language of section 3(8)(b), conceptually the President and the Central Government are identical and interchangeable terms. Since all executive actions of the Central Government are to be exercised and expressed in the name of the President, it would follow in the converse that whatever is exercised in the name of the President in the particular context may be deemed to be the exercise by the Central Government itself. The well-known exceptions herein are (though very limited ones), where the President either expressly by the provisions of the Constitution, or by necessary implication, has to act outside the advice of the council of ministers. The well-known examples herein are the dismissal of the council of ministers by the President or the dissolution of the house of Parliament without the express advice of the council of ministers therefor. Clearly enough the appointment of the Administrator of a Union Territory does not come within any such exception. Therefore, herein the act of the President can be squarely equated as that of the Central Government. The impugned notification must, therefore, be deemed to be issued by the Central Government itself acting through the medium of the Adminstrator of the Union Territory. Therefore, even placing the case of the respondent's at the highest the impugned notifications are beyond challenge and can well be construed as having been issued by the Central Government through its appointee and a limb, namely, the Chief Commissioner, of the Union Territory.

16. Though the above finding more than amply meets the case of the respondents yet additional reliance, if necessary, was also placed on sub-clause (iii) of section 3(8)(b) afore-quoted. Thereby the Central Government in relation to the administration of a Union means the Administrator acting within the scope of the authority given to him under Article 239 of the Constitution. Herein what calls for pointed notice in the wide amplitude of the

language used in Article 239(1) which may be quoted for facility of reference :—

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

Herein the President is vested with the power to "administer" the Union Territory. That the whole gamut of the executive function would come well within the ambit of the phrase "administer" seems to be patent. Indeed, the learned counsel for the appellants—Chief Commissioner, etc., went further to contend with same plausibility that the power to administer would include within it the power to make laws and regulations and, therefore, extend over parts of the legislative fields as well. This according to the counsel was evidenced by Article 239(b) empowering the Administrator to promulgate ordinances during recess of the Legislature and the power of the President to make regulations for certain Union Territories. Now without in any way pronouncing on this larger aspect it seems plain that on the limited ground the President is obviously clothed with the widest gamut of the executive functions qua the Union Territory and he may choose to act through the Administrator, to such extent as he thinks fit. Therefore, it appears to me that the scope of Article 239 is wide-ranging and despite pin-pointing the learned counsel for the respondent was unable to point any peculiar construction or limitation thereof.

17. Now in the above context it deserves highlighting that the appointment of the Administrator of the Union Territory under Article 239 has not even remotely been the subject-matter of challenge. In the writ petition, no material was placed or even an allegation was made that the Administrator herein was not lawfully appointed or further that he had in any way acted beyond the scope of Article 239. Obviously one of the criteria herein would be the valid appointment of the Administrator and that being not put in issue he must be deemed to be acting within the para-meters of Article 239 unless conclusively shown otherwise. Therefore, if he was rightly appointed then the actions of the Administrator including the issuance of the impugned notifications would well be within the scope of the

authority given to him under Article 239. Indeed nothing whatsoever has been either established or even contended on behalf of the respondents that the Administrator had in any way transgressed such authority and a reading of para 15 of the petition would point out that there was not even a hint or a suggestion that the action of the Administrator was beyond the scope of his authority under Article 239 or that his appointment as such was in any way outside the same. Therefore, in face of the strong presumption that all official acts are rightly done, both the appointment of the Administrator and his acting within the scope of the Constitution must be presumed and the same has not been even remotely rebutted. On this premises applying sub-clause (iii) the Administrator acting within the scope of his authority is expressly included within the ambit of the word "President" which in terms means the Central Government. Consequently, the impugned notifications are in the eye of law issued by the Central Government and, therefore, devoid of any infirmity on this score as well.

18. Before parting with this judgment it is worth recalling that the theme song of the case for the respondents was sought to be rested on *"delegatus non potest delegare"*. For the detailed reasons delineated above, I would hold that herein no question of delegation indeed arises. The Administrator of a Union Territory lawfully appointed under Article 239 is only a machinery or a limb through which the President acts and in no way is a delegate. However, an added fallacy which seems to permeate the stand on behalf of the respondents is that the case involved any further delegation of a legislative power. This must be pointedly clarified. The relevant part of Section 5 of the Punjab General Sales Tax Act is as under :—

> "5(1) Subject to the provisions of this Act, there shall be levied on the (taxable turnover of a dealer) a tax at such rates not exceeding (seven Paise) in a rupee as the State Government may by notification direct."

19. Now it is manifest from the above as also from the rest of the exhaustive sub-sections thereof that the Legislature has vested the power of fixing the rate of tax on the State Government itself. The Statute itself has, therefore, conferred or entrusted this power on the Executive. It was not disputed before us and indeed the learned counsel for the respondents took the stand that because

of this provision, in the State of Punjab its Governor would have the power to issue a notification for the enhancement, lowering or modifying the rates of sales-tax. By the legislative fiat itself the levy of the rates of tax is vested in the executive head of the Government and, therefore, no question of its further delegation arises. Now if the Governor of the Punjab can validly act thereunder for the territory of the said State (and this was expressly so admitted by the learned counsel for the respondents) a *fortiori* it would follow that the President as the executive head of the Union Territory, Chandigarh, can do the same. It has already been shown that in the issuance of the impugned notification, the Administrator is only a limb or machinery through whom the President himself or the Central Government acts, With respect, therefore, we find ourselves unable to subscribe to the theory that in this case there is any question of a further delegation of legislative power. The legislature having once given its mandate and clothed the executive with the power under section 5, it is the consequent excutive action in pursuance thereto which has to be tested on the anvil of validity. It is the modus of the exercise of such power which in issue and any question of a further delegation of the legislative power indeed does not arise.

20. Before closing, a reference has inevitably to be made to *Satya Dev Bushehri* v. *Padam Dev and others* (7), which had been relied upon by the respondent-Sushil Flour Mills before the learned Single Judge and before us. Therein it was held that part 'C' States, though centrally administered, do not cease to be States and are not merged with the Central Government and further that the President in regard to these States occupies a position analogous to that of a Governor. There is, and possibly cannot be, any quarrel with this proposition. In the light of the aforesaid discussion (and the consequent finding that the Administrator does not act as a delegate of the President) from whichever angle the matter is viewed it does not advance the case of the respondents. If the President is visualised as the executive head of the Union Territory then also he would be merely acting through the medium of the Administrator in the impugned notifications. Similarly if the power is deemed to be vested in the Central Government then also it is exercised rightly in the name of the President acting through the medium of the Chief Commissioner.

(7) A.I.R. 1954 S.C. 587.

21. To conclude finally, the answer to the question posed at the very outset is rendered in the terms that an Administrator of a Union Territory appointed under Part VIII of the Constitution is only a medium or machinery through whom the President acts and not as his delegate.

22. Applying the above rule, Letters Patent Appeal Nos. 139 and 1154 of 1982 preferred by the Chief Commissioner, Union Territory, Chandigarh, are plainly entitled to succeed and are hereby allowed. We are constrained to set aside the judgment of the learned Single Judge as also its modification by the review order and dismiss the writ petitions. As a necessary consequence, L.P.A. No. 472 of 1982 preferred by M/s Sushil Flour Mills must fail and is dismissed. In view of the somewhat ticklish constitutional issues involved we leave the parties to bear their own costs.

N.K.S.

Before I. S. Tiwana, J.

INDU PAL KAUR,—*Petitioner.*

versus

THE UNION TERRITORY OF CHANDIGARH and another,—

Respondents.

Civil Writ Petition No. 3857 *of* 1982.

September 21, 1982.

Constitution of India, 1950—*Article* 14—*Seats in medical college in India reserved for bona fide residents of the Union Territory of Chandigarh—Administration considering applications for nominating candidates for admission—Candidates applying for admission or taking any entrance examination for admission anywhere in India except those taking all India open competition examination declared ineligible—Such ineligibility—Whether violative of Article* 14—*Classification of candidates seeking admission on the basis of domicile and those taking all India Open Competition—Whether constitutionally valid.*

Held, that the condition of declaring the children and depen-nts of residents of Union Territory, Chandigarh, who have applied admission or for taking any entrance examination for admission M.B.B.S. an' B.D.S. courses anywhere in India except on the