PETITIONER:
NARINDER CHAND HEM RAJ & ORS.

Vs.

RESPONDENT:
LT. GOVERNOR, ADMINISTRATOR, UNION TERRITORY,HIMACHAL PRADES

DATE OF JUDGMENT05/10/1971

BENCH:
HEGDE, K.S.
BENCH:
HEGDE, K.S.
GROVER, A.N.

CITATION:
1971 AIR 2399 1972 SCR (1) 940

ACT:
Sales Tax-Deputy Commissioner giving impression to bidders at auction for licence for sale of liquor that Indian made foreign liquor would be exempt from sales-tax-Higher bids given as a result of such impression-Exemption not actually given-Court cannot issue writ to State Government to make change in law and to grant exemption-Executive cannot be asked not to enforce a provision of law.

HEADNOTE:
Under the Punjab General Sales Tax Act, 1948, no sales tax was payable on goods specified in the first column of Schedule B to the Act subject to certain conditions and exceptions. Up to August 31, 1966 Indian made foreign liquor was in Schedule B. But on that date the Government of Punjab in exercise of its powers conferred under proviso to S. 5 deleted Indian made foreign liquor from Schedule B and included the same in Schedule A which made it exigible to sales tax. Simla was part of Punjab tiff, reorganisation of Punjab in 1966. Simla and two other districts of the former State of Punjab were added on to the Union Territory of Himachal Pradesh under the Punjab Reorganisation Act, 1966. Under the provisions of that Act the laws in force, immediately before the appointed day namely October 1, 1966 in those districts were to continue in operation till the appropriate legislature or competent authority altered the same. Accordingly in Simla and other areas thus transferred to Himachal Pradesh Indian made foreign liquor was liable to sales tax. In the auction for sale of Indian made foreign liquor and beer held on March 31, 1967 the appellant, a firm of wine merchants, was the highest bidder for dealing in liquor under L-2 licence as provided in the Punjab Liquor Licence Rules as applicable to certain parts of the then Union Territory of Himachal Pradesh. When the State of Himachal Pradesh took steps against the firm for realising sales-tax on liquor and beer sold by it the appellant firm filed a writ petition in the High Court. It was alleged in the petition that the Deputy Commissioner Simla, who was also Collector of Excise and Taxation, announced at the time of auction that no sales tax would be liable to be paid on the sale of Indian made foreign liquor and beer. Accordingly the appellant prayed that because of the equities of the case the court should issue a writ,

direction or order restraining the respondents from enforcing the levy of sales tax on the sales of Indian made foreign liquor at Simla. In the firm's appeal to this Court against the judgment of the High Court,

HELD : (i) The averments in the petition did not show that the Deputy Commissioner gave an assurance to the bidders that the Himachal Pradesh Government had decided to abolish sales tax on the sale of Indian made foreign liquor. If the statement in the writ petition was correct the Deputy Commissioner merely gave a wrong interpretation of law. On behalf of the respondent it had been denied that the Deputy Commissioner had made such a representation. According to them all that the Deputy Commissioner stated was that "the Government was considering to abolish the tax on the line of the Haryana Government". it further appeared from the correspondence between the State Government and the Central Government that the Government of Himachal Pradesh

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wanted to bring their sales tax law relating to the sale of Indian made foreign liquor in line with the law in force in Haryana State. Obviously, the Government of Himachal Pradesh was of the opinion that it could not alter the law without the concurrence of the Central Government. That being so it was difficult to accept the contention of the appellant hat the Deputy Commissioner had represented that the Himachal Pradesh Government had decided to remove sales-tax on the sale of Indian made foreign liquor. The only thing which the Deputy Commissioner could have announced was that the Himachal Pradesh Government was considering to abolish the tax in question. Such a representation cannot be considered as a condition of the auction assuming that such a condition could be imposed orally by the Deputy Commissioner., [943 B-H]

(ii)The power to impose tax is undoubtedly a legislative power. That power can be exercised by the legislature directly or subject to certain conditions, the legislature may delegate that power to some other authority. But the exercise of that power whether by the legislature or by its delegate is an exercise of a legislative power. The fact that the power was delegated to the executive does not convert that power into an executive or administrative power. No court can issue a mandate to a legislature to enact a particular law. Similarly no court can direct a subordinate legislative body to enact or not to enact a law which it may be competent to enact. [945 F-G]

Article 265 of the Constitution lays down that no tax can be levied and collected except by authority of law. Hence the levy of a tax can only be done by the authority of law and not by any executive order. Unless the executive is specifically empowered by law to give any exemption, it cannot say that it will not enforce the law as against a particular person. No Court can give a direction to a Government to refrain from enforcing a provision of law. Under these circumstances, it must be held that the relief asked for by the appellant cannot be granted. [945 H-946 B]

Collector of Bombay v. Municipal Corporation of the City of Bombay and Ors., [1952] S.C.R. 443, Union of India and Ors. v. M/s. Indo Afghan Agencies Ltd [1968] 2 S.C.R. 366, distinguished.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1313 of 1970.

Appeal from the judgment and order dated January 13, 1970 of the Delhi High Court Himachal Bench in Letters Patent Appeal No. 10 of 1969.

H. L. Sibal, Advocate-General, Punjab, N. N. Goswami and S. N. Mukherjee, for the appellants.

V. C. Mahajan and R. N. Sachthey, for the respondents.

The Judgment of the Court was delivered by

Hegde, J. The appellant-firm are wine merchants, carrying on business at the Mall in Simla. In the auction for sale of the Indian made foreign liquor and beer held on March 31, 1967, the appellant was the highest bidder for dealing in liquor under a L-2 licence as provided in the Punjab Liquor Licence Rules as applicable to certain parts of the then Union Territory of Himachal Pradesh. The case for the appellant is that at the time of

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the auction, Deputy Commissioner, Simla who is also the Collector of Excise and Taxation, announced that no sales tax will be liable to be paid on the sale of the Indian made foreign liquor and beer but despite this assurance the Government has levied and collected from the appellant firm a sum of Rs. 26,798/26 P. and further it is taking steps against the firm for realising sales tax on the liquor and beer sold by it. Hence it filed a writ petition in the Delhi High Court (Himachal Pradesh Bench at Simla) seeking various reliefs. Several contentions were taken in the writ petition but at the time of the hearing only one of the reliefs prayed for in the writ petition was pressed. Many of the contentions taken in the writ petition were given up. Hence it is not necessary for us to refer to the facts relating to the other reliefs prayed for in the writ petition. The appellant pleaded that in view of the representation made by the Deputy Commissioner, it was induced to increase its bid as a result of which the Govern-ment had substantially benefited. The case for the appellant is that because of the equities of the case, the Court should issue a writ, direction or order restraining the respondents from enforcing the levy of sales tax on the sales of Indian made foreign liquor and beer at Simla.

In the counter-affidavit filed on behalf of the respondents, it was denied that the Deputy Commissioner had represented to the bidders before the auction commenced that no sales tax was liable to be paid on the sale of Indian made foreign liquor or beer. The case of the respondents is that all that the Deputy Commissioner told the bidders was that the Government was considering tile question of removing sales tax on the sale of Indian made foreign liquor. In fact, the Himachal Pradesh Government took a decision to remove sales tax on sale of Indian foreign liquor but they could not enforce that decision without approval of the Union Government; the Union Government did not accord the approval asked for hence the Government was not able to remove the sales tax in respect of the sale of Indian foreign liquor. It was urged oil behalf of the respondent that sales tax "as imposed by law. The Government cannot refuse to implement the mandate of the law. Any chance in the provisions of tile Punjab General Sales Tax Act could be affected only according to the provisions of the law in force. No Court can issue a mandate to a legislature or to a subordinate legislative body to make or change any law; further the Himachal Pradesh Government is incompetent to change the law without the approval of the Union Government which is not a party to tile writ petition.

The first question that we have to decide is as to what was the representation made by the Deputy Commissioner it the

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of the auction. As seen earlier the parties are not agreed on this point. The relevant allegation in the writ petition is found in paragraph 3 thereof. It reads : ..... it was also announced that no sales tax would be liable to be paid on the sales of Indian made foreign liquor and beer.....
This statement does not show that the Deputy Commissioner gave an assurance to the bidders that the Himachal Pradesh Government had decided to abolish sales tax on the sale of Indian made foreign liquor or beer. If the statement in the writ petition is correct, the Deputy Commissioner merely gave a wrong interpretation of the law. Apart from that, as mentioned earlier, it was denied on behalf of the respondents that the Deputy Commissioner had made such a representation. According to them all that the Deputy Commissioner stated at that time was that "the Government was considering to abolish the tax on the line of Haryana Government". Barring asserting that the Deputy Commissioner had made a representation that "no sales tax would be liable" on the sales of Indian made foreign liquor and beer, the appellant has produced no material in support of that assertion. It appears from the letter written by the Secretary, Excise to Government of Himachal Pradesh to the Deputy Secretary, Government of India, Ministry of Home Affairs on June 24, 1967 and from the letter written by the Chief Secretary to the Himachal Pradesh Government to the Additional Secretary (U.T.) to the Government of India, Ministry of Home Affairs on January 16, 1968 that the Government of Himachal Pradesh wanted to bring their sales tax law,: relating to the sale of Indian made foreign liquor in line, with the law in force in Haryana State. But it is clear from those letters that, the Himachal Pradesh Government was of the opinion that it could not do so without the concurrence of the Central Government. Whether the Himachal Pradesh Government was competent to alter the Sales Tax law as desired by it without the concurrence of the Central Government, as contended on behalf of the appellant or whether it could do so only with the concurrence of the Central Government as contended on behalf of the respondents, the fact remains that the Government of Himachal Pradesh was of the opinion that it could not alter the law without the concurrence of the Central Government. That being so, it is difficult to accept the contention of the appellant that the Deputy Commissioner had represented that the Himachal Pradesh Government had decided to remove sales tax on the sale of Indian made foreign liquor. The only thing which the Deputy Commissioner could have announced was that the Himachal Pradesh Government was considering the abolition of the tax in question. The learned single judge who
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hear the writ petition came to conclusion that "there is no positive evidence on record to support the contention that this announcement (that the Government of Himachal Pradesh had decided to remove sales tax on sale of Indian made foreign liquor) was actually made by the Collector conducting the auction as a condition of the auction". Before coming to this conclusion, the learned single judge had considered all the relevant material bearing on the, point. But the Division Bench while hearing the appeal of the appellant did not analyse the evidence bearing on the point nor did it consider the effect of the material before it. It held "it is clear from the admission contained in

paragraph 2 of the letter dated the 16th of January 1968, that there was some announcement on the 31st of March, 1967, when the auction was held and it was not an ambiguous announcement. It was presumably specific to the effect that either the Government of Himachal Pradesh had decided to abolish the sales tax or that they were going to achieve its abolition in respect of the merged areas." This is at best a speculative conclusion.

Our attention has not been invited to any material on record on the basis of which that conclusion could have been arrived at by the Division Bench. The two letters referred to earlier do not support that conclusion. The averment in the writ petition, as seen earlier does not accord with the case taken at the time of the arguments. The Government has denied that the Deputy Commissioner had either been authorised or he had made the representation at the time of the auction that the Government had decided to abolish the sales tax on sale of Indian made foreign liquor. According to the respondents, all that, the Deputy Commissioner had represented to the bidders was that the Government was considering the abolition of the sales-tax on sale of Indian made foreign liquor; such a representation cannot be considered as a condition of the auction, assuming that such a condition can be imposed orally by the Deputy Commissioner. Hence in our opinion the Division Bench erred in its conclusion about the alleged representation by the Deputy Commissioner.

This finding alone is sufficient to dismiss the appeal but as Mr. Sibbal, learned Counsel for the appellant has elaborately argued the question of law to which we shall presently refer, we shall examine the same.

Simla was a part of Punjab till reorganization of Punjab in 1966. Simla and two other Districts of the former State of Punjab were added on to the Union Territory of Himachal Pradesh under the Punjab Reorganization Act, 1966. Under the Provisions of that Act, the laws in force, immediately before the appointed day namely October 1, 1966, in those districts were to continue in

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operation till the appropriate legislature or competent authority altered the same. One of the laws that was in force in those areas is the Punjab General Sales Tax Act, 1948. Section 6(1) of that Act provides :

> "No tax shall be payable on the sale of goods specified in the first column of Schedule B subject to the conditions and exceptions, if any, set out in the corresponding entry in the second column thereof and no dealer shall charge sales tax on the sale of goods which. are declared tax free under this section."

Till August 31, 1966, Indian made foreign liquor was ill Schedule B. But on that date the Government of Punjab in exercise of its powers conferred under proviso to s. 5 deleted Indian made foreign liquor from Schedule B and included the same in Schedule A to that Act. Thus the sale of the said liquor became exigible to sales tax. This was the law in force in Punjab when re-organization took place. Hence Simla and other areas which were formerly parts of the State of undivided Punjab continued to be governed by that law even after reorganization. Our attention has not been drawn to any provision in that Act empowering the Government to exempt any assessee from payment of tax' Therefore it is clear that appellant was liable to pay the tax imposed under the law. What the appellant really wants is I mandate from the court to the competent authority to delete the concerned

entry from Schedule A and include the same, in Schedule B. We shall not go into the question whether "he Government of Himachal Pradesh on its own authority was competent to make the alteration in question or not. We shall assume for our present purpose that it had such a power. The power to impose a tax is undoubtedly a legislative power. That power can be exercised by the legislature directly or subject to certain conditions, the legislature may delegate that power to some other authority. But the exercise of that power, whether by the legislature or by its delegate is an exercise of a legislative power. The fact that the power was delegated to the executive does not convert that power into an executive or administrative power. No court can issue a mandate to a legislature to enact a particular law. Similarly no court can direct a subordinate legislative body to enact or not to enact a law which it may be competent to enact. The relief as framed by the appellant in his writ petition does not bring out the real issue calling for determination. In reality he wants this Court to direct the Government to delete the entry in question from Schedule A and include the same in Schedule B. Art. 265- of the Constitution lays down that no tax can be levied and collected except by authority of law. Hence the levy of a tax can only be done by the authority of law and not by any executive

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order unless the executive is specifically empowered by law to give any exemption, it cannot say that it will not enforce the law as against a particular person. No court can give a direction to a Government to refrain from enforcing a provision of law. Under these circumstances, we must hold that the relief asked for by the appellant cannot be granted.

In support of its contention, the appellant relied on two decisions of this Court. The first is Collector of Bombay v. Municipal Corporation of the City of Bombay and ors.(1) The facts of that case are as follows

In 1865, the Government of Bombay called upon the predeces-sor in title of the Corporation of Bombay to remove some markets from a certain site and vacate it. On the application of the then Municipal Commissioner, the Government passed a resolution approving and authorising the grant of another site to the Municipality for the purpose if running a market. The resolution passed by the Government stated further that "the Government do not consider that any rent should be charged to the Municipality as the markets will be like other public buildings, for the benefit of the whole community." The Corporation gave up the sites on which the old markets were situated and spent a sum of over 17 lacs in erecting and maintaining markets on new site. It continued to be in possession of the site in question without paying any rent, openly and to the knowledge of Government for a period of seventy years. In 1940 the Collector of Bombay, overruling the objection of the Corporation, assessed the new site under s. 8 of the Bombay City Land Revenue Act to land revenue rising from Rs. 7,500 to Rs. 30,000 in 50 years. The Corporation sued for a declaration that the of assessment was ultra vires and that it was entitled to the land for ever without payment of any land-reservenue. The High Court of Bombay held that the Government has lost its right to levy land revenue on the land in question ’by of the equity arising, in favour of the Corporation. By a majority his Court affirmed the decision of the Bombay High Court. Therein this Court was not called upon to issue a mandate to alter any

law.
Section 8 of the Bombay City Land Revenue Act provide,,
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"it shall be the duty of the Collector, subject to the orders of the Provincial Government, to fix and to levy the, assessment for land revenue.
Where there is no right on the part of the superior holder in limitation of the right of the Provincial Government to assess, the assessment shall be fixed at the discretion of the Collector subject to the control of the Provincial Government.
(1) [1952] S.C.R. 443.
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When there is a right on the part of the superior holder in limitation of the right of the Provincial Government, in consequence of a specific limit to assessment having been established and preserved, the assessment shall not exceed such specific limit."
Section 8 did not impose any land revenue. It only imposed a duty on the Collector to fix and to levy the assessment. Power to levy land revenue was the prerogative of the Government. 'Me Court held that in view of the seventy years possession of the land by the Corporation openly and in assertion of a right to hold that land free of rent, it had acquired an adverse title to the property though the right acquired was a limited one. This is what the court observed (p. 52 of the report) :

> "Such possession being not referable to any legal title it was prima facie adverse to the legal title of the Government as owner of the land from the very moment the predecessor in title of the respondent Corporation took possession of the, land under an invalid grant. This possession was continued, openly as of right, uninterruptedly for over 70 years and the respondent Corporation had acquired the limited title in it and its predecessor in title had been prescribing during all this period, that is to say, the right to hold the land in perpetuity free from rent but only for the purpose of a market in terms of the Government resolution of 1865. The, immunity from the liability to pay rent is just a,, much an integral part of an in severable incident of the title so acquired, is the obligation to hold the land for the purposes of market and for no other purpose."

From these observations, it is clear that in that case the court was only considering tile relationship between a landlord and a tenant. It was,sought to be argued in that case that even if the Government be precluded from enhancement- the "rent" in view of the terms of the Government Resolution, it cannot be held to have disentitled itself from the prerogative right to assess revenue". The Court refused to entertain that plea as it was non raised in the written statement, nor made the subject matter of an issue on which the parties went to trial. Hence the ratio of that decision has no relevance for our present purpose.
The other decision relied upon by the appellant is Union of India and Ors. v. M/s. Indo Afghan Agencies Ltd.(1) Therein in exercise of the powers conferred on the Government under s. 3 of the Imports and Exports (Control) Act, 1947, the Central
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Government issued the Imports (Control) Order, 1955 and

other orders setting out the policy governing the grant of import and export licences. The Central Government also evolved an Import Trade Policy to facilitate the mechanism of the Act and the orders issued thereunder. The scheme was modified from time to time by issuing fresh schemes in respect of new commodities. In 1962, the Central Government promulgated the Export Promotion Scheme providing incentives to exporters of woollen-textiles and goods. It provided for the grant to an exporter, certificates to, import raw materials of a total amount equal to 100% of the F.O.B. value of his exports. Clause 10 of the Scheme provided that the Textile Commissioner could grant an import certificate for a lesser amount if he is satisfied, after holding an enquiry, that the declared value of the goods exported was higher than the real value of the goods. The Scheme was extended to exports of woollen textiles and goods to Afghanistan. The Textile Commissioner without holding an enquiry is required by cl. 10 of the scheme, arbitrarily reduced the import quota of some of the exporters on the basis of some private enquiry. One such exporter moved the High Court for the issuance, of a writ-to the Government to abide by the terms of the scheme. On behalf of the Government, it was urged that the scheme contained only administrative instructions and the Government was competent to change the scheme depending upon the exigencies of situation. On facts this Court came to the conclusion that the scheme, was not changed because of any ,exigencies of situation and the import quota of some of the exporters was reduced on the basis of some private enquiry. Under those circumstances this Court held that the Government was bound by the representation that it made regarding the quota to which the exporters were entitled under the scheme. The ratio of that decision again cannot have any bearing on the point under consideration. So long as that scheme was in force, the Government was bound to implement the same. This Court did not hold that the Government was not competent to change the scheme. If the scheme, had statutory force, it bound the Government as much as it bound the exporters. In that event the Court was competent to compel, the Government to act ,according to the scheme. If on the other hand the scheme contained merely administrative instructions then the Government having made the representation referred to earlier, on the basis of which the exporters bad exported certain goods, the Government was estopped from going back on the representation made by it. In this case, again, there was no question of issuing any direction to make a law or abrogate an existing law.

For the reasons mentioned above this appeal fails. But in the circumstances of the case. we think this is eminently a fit

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case where the parties should be asked to bear their own costs both before the-High Court as well as in this Court. There is no doubt that the Deputy Commissioner did give an impression to the bidders that the Government was considering the abolition of sales-tax on the sale of Indian made foreign liquor. Relying on that information the bidders must have given very high bids. The Government of Himachal Pradesh tried its best to persuade the Central Government to agree to change the law but it failed. In the process, the appellant must have suffered financially. That being so, we order this appeal to be dismissed but at the same time direct the parties to bear their own costs both in this Court as well as in the High Court.

G.C. Appeal

dismissed.
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