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# The Indian Civil Liberties Bulletin

[ A MONTHLY REVIEW ]

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## PRINCIPLE OF MINISTERIAL RESPONSIBILITY REPUDIATED IN THE SORRY MUNDHRA AFFAIR

The Government of India plumes itself on having established sound democratic conventions in setting up an independent inquiry into the muddle concerning the purchase of stock by the Life Insurance Corporation from the Mundhra concerns and arranging to take appropriate action against those who would be found to have been responsible for follies and errors in that transaction. But the fact remains that in respect of the larger issue of great constitutional importance which emerged from the report of the commission of inquiry, viz., the application of the doctrine of Ministerial responsibility, the Government failed miserably. It is true that the Minister concerned, Mr. F. T. Krishnamachari, foreseeing that blame would attach to him, offered to resign even before the commission's findings were known, and the Government too eventually accepted his resignation. But "the main factor that compels me" to offer to resign, the Minister said before the commission had reported, was that he would not hereafter be in "a position of strength" to carry out the financial policies of the Government from a position of strength "in these critical times, and after the commission's report was published, he disclaimed not only his personal responsibility even in part for the deals found objectionable by the commission, but also his constitutional responsibility for them (the blame for which he laid on the Principal Finance Secretary), pleading that "the quantum and character of this Ministerial responsibility have not been defined," and that even if such responsibility was to be assumed, it "need not necessarily result in the Minister concerned offering his resignation or in that resignation being accepted." It would not have mattered much if he did not recognize, but the Government did, the constitutional propriety of the Minister having to accept responsibility for the mistakes or failures of the officers under him. But the Government too failed to recognize the principle of Ministerial responsibility in unequivocal terms. It was clear that the Prime Minister was anxious to exculpate the Finance Minister as much as possible, and said that he was convinced that the Minister's part in the affair "was of the smallest" and when asked in Parliament to state categorically

whether or not the Government accepted the conclusion at which the commission had arrived, viz., that the Minister had acquiesced in, if not approved of, the transaction in Bombay of June 23, neither the Prime Minister nor the Home Minister gave a clear-cut reply in the affirmative to the pertinent query.

### "Quantum and Character" of Responsibility

Mr. Krishnamachari may be unaware of the "quantum and character of Ministerial responsibility," but every one knows that it is complete. The relationship that exists between Ministers and their civil servants, as brought up to date, was stated on 20th July 1954 in the House of Commons while dealing with the Crichton Down case, which also showed that members of the civil service had committed grave errors of judgment. The broad principle was picturesquely stated by Mr. Herbert Morrison as Leader of the Opposition, that "A Minister of the Crown is responsible for all the acts of his civil servants — and all the absence of acts required. He is responsible for every stamp stuck on an envelope." The Minister himself fully recognized this constitutional position and was anxious that there should be no departure from it. "I, as Minister," he said, "must accept full responsibility to Parliament for any mistakes and inefficiency of officials in my department, just as, when my officials bring off any successes on my behalf, I take full credit for them. Any departure from this long-established rule is bound to bring the Civil Service right into the political arena, and that we should all, on both sides of the House, deprecate most vigorously." At the same time he pointed out, quite rightly, that it would be wrong for a Minister automatically to defend every act of his officers merely because they belonged to his department. In case they commit mistakes, it would be not only his right but his duty to take suitable disciplinary action against them. In the Crichton Down case it was recognized on all hands that the disclosures of the commissioner's report, which were not half so ugly as those in the Mundhra case, left no alternative to the Minister but to resign and left no alternative to the

Government but to accept the resignation, however unpalatable it might be to do so on personal or political grounds. The Minister cheerfully resigned, though there was no hint in the report or in the speeches of the Opposition in Parliament that he was even remotely connected with the mistakes made by officers under him. The only fault of his was that he was somewhat too lenient towards these erring officers in that he thought that since they were not guilty of corruption or personal dishonesty of any kind, the only penalty that should be inflicted on them was that a stern reprimand should be administered to them. But, however they might be dealt with, he had no illusion that constitutional conventions required him to resign.

The principle of Ministerial responsibility was spelt out in detail by the Home Secretary, Sir David Maxwell Fyfe, who explained how far the principle went. He said :

We all recognize that we must have that principle in existence, and that Ministers must be responsible for the acts of civil servants. Without it, it would be impossible to have a Civil Service which would be able to serve Ministries and Governments of different political faiths and persuasions with the same zeal and honesty which we have always found.

There has been criticism that the principle operates so as to oblige Ministers to extend total protection to their officials and to endorse their acts, and to cause the position that civil servants cannot be called to account and are effectively responsible to no one. That is a position which I believe is quite wrong, and I think it is the cardinal error that has crept into the appreciation of this situation. It is quite untrue that well-justified public criticism of the actions of civil servants cannot be made on a suitable occasion. The position of the civil servant is that he is wholly and directly responsible to his Minister. It is worth stating again that he holds his office "at pleasure" and can be dismissed at any time by the Minister; and that power is none the less real because it is seldom used. The only exception relates to a small number of senior posts, like permanent secretary, deputy secretary, and principal financial officer, where, since 1920, it has been necessary for the Minister to consult the Prime Minister, as he does on appointment.

Sir David then went on to describe four categories of Ministerial responsibility, as follows :

(1) In the case where there is an explicit order by a Minister, the Minister must protect the civil servant who has carried out his order. Equally, (2) where the civil servant acts properly in accordance with the policy laid down by the Minister, the Minister must protect and defend him. (3) Where an official makes a mistake or causes some delay, but not on an important issue of policy and not where a claim to individual rights is seriously involved [that had

assumed the greatest importance in this particular case,] the Minister acknowledges the mistake and he accepts the responsibility, although he is not personally involved. He states that he will take corrective action in the Department. He would not, in those circumstances, expose the official to public criticism.

But when one comes to the fourth category, where action has been taken by a civil servant of which the Minister disapproves or has no prior knowledge, and the conduct of the official is reprehensible, then there is no obligation on the part of the Minister to endorse what he believes to be wrong, or to defend what are clearly shown to be errors of his officers. The Minister is not bound to approve of action of which he did not know, or of which he disapproves. But, of course, he remains constitutionally responsible to Parliament for the fact that something has gone wrong, and he alone can tell Parliament what has occurred and tender an account of his stewardship.

The fact that a Minister has to do that does not affect his power to control and discipline his staff. One could sum it up by saying that it is part of a Minister's responsibility to Parliament to take necessary action to ensure efficiency and the proper discharge of the duties of his department. On that, only the Minister can decide what it is right and just to do, and he alone can hear all sides, including the defence.

Finally, Sir David answered a possible objection to applying the principle of Ministerial responsibility in such a rigorous manner, when the work of Government departments had enormously expanded. He said :

It has been suggested in this debate, and has been canvassed in the Press, that there is another aspect which adds to our difficulties, and that is that today the work and the tasks of Governments permeate so many spheres of our national life that it is impossible for the Minister to keep track of all these matters.

I believe that that is a matter which can be dealt with by the instructions which the Minister gives in his department. He can lay down standing instructions to see that his policy is carried out. He can lay down rules by which it is ensured that matters of importance, of difficulty or of political danger are brought to his attention. Thirdly, there is the control of this House, and it is one of the duties of this House to see that that control is always put into effect.

#### Minister Pleads Ignorance

The Finance Minister should have scented even when the first question was asked in Parliament on 4th September that something was probably wrong with the investments of the Life Insurance Corporation and should have found out all the facts concerning the deals with the

Mundhra concerns. He would have come to know of some of the facts showing that things were going wrong, e. g., that the Investment Committee of the Corporation had not been consulted, and that the investment was made, if not for the purpose of relieving Mr. Mundhra personally, for that of supporting a sagging market, from the letter of the Chairman of the Corporation dated 16th July. This letter was written, it should be remembered, with the express object of supplying the Minister with the necessary information regarding the transactions and of thus enabling him to answer anticipated questions on the subject in Parliament. And yet the Minister pleads ignorance of the letter. Instead, he chose to answer the question put on 4th September in a way which, as the Commissioner, Mr. Chagla, says, was clearly "equivocal." When a further question was asked on 29th November, the Minister said that the investment policy of the Corporation was dictated by its Investment Committee, that the Government had no hand in the purchases of shares, that the investment was made solely with a view to getting a good return and that the Corporation was not interested in the Stock Exchange—all of which was contrary to the brief that had been prepared for the very purpose that he should give correct answers to the questions put to him. Assuming that this brief was not before him, who gave him the false information with which he regaled the House?

Even in the debate in Parliament on 16th December he defended the transaction. Mr. B. G. Verghese says in the "Times of India" of his attitude on this occasion: "He (the Finance Minister) argued that the shares in the six companies were purchased at a net profit. He admitted that the negotiations were concluded between June 23 and June 25 and added that 'for obvious reasons' the Corporation could not keep the deal pending while making elaborate inquiries as to current market quotations as the prices in that event would have steadily gone against it. He further added that if the Corporation had sought to make these purchases in the open market, the quotations would have gone up. On December 16th the 'more important question' in the mind of the Minister was whether or not the purchases were made at prices which were of advantage to the Corporation from the point of view of securing a good return on its investment. Mr. Krishnamachari admitted that the purchases had undoubtedly been made without prior consultation with the Investment Committee. But 'in accordance with the normal procedure' the purchases were reported both to the Investment Committee and the Corporation at the following meeting. He also stated in apparent approval of the transaction that feelers were being made even at that time to the Corporation through reliable brokers for repurchase of these shares at the prices paid by it." He had by this time come to know that the Investment Committee, which was to determine what investments should be

made, had not been consulted and yet he defends this by saying that the normal procedure of reporting to the Committee after the investments had been made was followed, as if this was all that was required in the circumstances of the case. The state of his knowledge about these transactions was obviously better than he had cared to admit, as shown by the "top secret" notes from him to his Principal Finance Secretary which Mr. Firoze Gandhi dramatically produced in Parliament. Mr. Gandhi also said that the Finance Minister had been warned of the existence of spurious shares in the market and should have stopped the deal if he knew of these spurious shares. Mr. Krishnamachari was guilty of a grave dereliction of duty in failing to do so. He appeared to be fully acquainted with the transaction and should have made a clean breast of it all or, if he thought some facts had yet to be ascertained, he should at least have ordered an immediate inquiry. What happened, however, was as Mr. Verghese says, "an angry House had virtually to extract the promise of an inquiry from the Minister."

The conclusion was forced upon Mr. Chagla that the Finance Minister must assume both personal and constitutional responsibility for what had happened. According to the Principal Finance Secretary, Mr. Krishnamachari had expressed his approval of the deal of 24th June, but even assuming that he had not done so, the lack of repudiation on his part when he came to know the full facts could only be interpreted to mean that he had at least acquiesced in the transaction. And, "in any case it is clear that constitutionally the Minister is responsible for the action taken by his Secretary." But the Minister denied both factual and constitutional responsibility. Dr. Kunzru remarked that the Prime Minister, in his letter to Mr. Krishnamachari, had "virtually said that the Commission's conclusions were not sustainable by the facts placed before it," and asked the Prime Minister to say straight out whether the Government accepted the conclusions on this matter. Mr. Nehru lost his temper and said a lot beside the point, but left Dr. Kunzru's question unanswered. It is remarkable that a nominated member, Professor A. R. Wadia, who followed Dr. Kunzru, endorsed the latter's view that Mr. Nehru had been "over-loyal" to a colleague and regretted that he had also "unfortunately passed strictures against the report." He expressed the view that the Prime Minister and Mr. Chagla evidently took different views on Ministerial responsibility and characterized the former's as not in accord with "the democracy to which we have been accustomed."

It is interesting to know what the late Mr. Abul Kalam Azad, noted for his shrewd commonsense and sagacity, thought of this. Mr. Verghese tells us:

The Chagla inquiry was among the more immediate affairs of State weighing on Maulana Azad's mind in the last weeks of his life. He sensed the political significance of the Lok Sabha debate on the Mundhra

transactions last December and pressed for an immediate public inquiry as the best means of restoring confidence in the administration and the party. He is also understood to have held the view that the

Finance Minister's resignation should have been accepted at the start and subsequently counselled Government's full acceptance of Mr. Chagla's findings as a matter of constitutional propriety.

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## DISCLOSURE OF SECRET INTELLIGENCE

### FOR INSPECTION BY THE DEFENCE IN CRIMINAL PROSECUTIONS

One of the bills passed by the U. S. Congress before it adjourned was a bill for narrowing the effect of the Supreme Court's decision in the Jencks' case (vide p. iv : 299). It will be recalled that in this case Mr. Jencks, a labour leader, was charged with perjury in swearing that he was not a Communist. He was convicted on the strength chiefly of two informants of the U. S. A.'s Intelligence Service, the Federal Bureau of Investigation, who were formerly inside the Communist Party. At the trial the defence moved to have the trial judge read the reports that these informants had made to the F. B. I. about Mr. Jencks in order to determine if any portions of the reports had evidentiary value for impeachment purposes and then turn over to the defence those portions of the reports that bore on testimony given at the trial. The judge rejected the motion. The Supreme Court reversed the conviction. It held that when Government witnesses in a criminal case had made prior reports to the F. B. I., the defence was entitled to inspect any of these reports that related to the witnesses' trial testimony, so that it could attack the credibility of the witnesses if their earlier statements were inconsistent with the testimony given by them at the trial.

This was by no means a revolutionary decision though it caused much alarm in Government circles. The decision merely reaffirmed the long-established principle of Anglo-Saxon law that any person on trial for a crime is entitled to information material to his defence so that the defence counsel may be enabled to impeach a prosecution witness by producing any earlier statement of his that was inconsistent with his testimony in court. The only reason why it occasioned so much stir was because the principle was applied in this case to the secret reports of the F. B. I. The Government has always held on the ground of privilege that the F. B. I. reports are confidential and must be so kept if the efficiency of its Intelligence Service is not to be impaired. But the Court refused to recognize any special status for these reports.

The Court rejected the claim made before it by Government that F. B. I. reports are privileged against disclosure on grounds of national security and the confidential character of the reports. The Court said :

It is unquestionably true that the protection of vital national interests may militate against public disclosure of documents in the Government's possession. This has been recognized in decisions of

this Court in civil causes where the Court has considered the statutory authority conferred on the departments of government to adopt regulations "not inconsistent with law, for use of records appertaining" to a department.

But the Court said it could not, in criminal prosecutions, recognize the rules made by the Attorney General for the protection of the privacy of F. B. I. reports, under which all such reports were treated as confidential. It referred to two previous decisions of the Court of Appeals with approval. In one of these Judge Learned Hand said :

While we must accept it as lawful for a department of government to suppress documents even when they will help determine controversies between third persons, we cannot agree that this should include their suppression in a criminal prosecution founded upon those very dealings to which the documents relate, and whose criminality they will or may tend to exculpate. So far as they directly touch the criminal dealings, *the prosecution necessarily ends any confidential character the documents may possess* ; it must be conducted in the open, and will lay bare their subject-matter. The Government must choose ; either it must leave the transactions in the obscurity from which a trial will draw them ; or it must expose them fully.

In the other case the Appeals Court repeated this. It said :

(In criminal causes) the Government can invoke its evidentiary privileges only at the price of letting the defendant go free. The rationale of the criminal cases is that, since the Government which prosecutes an accused also has the duty to see that justice is done, it is unconscionable to allow it to undertake prosecution and then invoke its governmental privileges to deprive the accused of anything which might be material to his defence.

Accordingly, in the Jencks case, the Supreme Court concluded :

We hold that the criminal action must be dismissed when the Government, on the ground of privilege, elects not to comply with an order to produce, for the accused's inspection and for admission in evidence, relevant statements or reports in its possession of government witnesses touching the subject-matter of their testimony at the trial,

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When the Court denied in criminal proceedings the privilege which the Government had claimed of the privacy of F. B. I. reports, the Government reconciled itself to the position. It saw that it must either produce the reports or withdraw the prosecution. Its effort thereafter was directed to limiting the disclosure as much as possible and to ensure that the accused do not by reason of the Court's ruling obtain an opportunity to rove at will through the F. B. I.'s secret files. The Court itself did not intend that such wholesale disclosure should take place. It chose its words carefully. It said :

We hold that the petitioner was entitled to an order directing the Government to produce for inspection all reports of Matusow and Ford ( F. B. I. agents ) in its possession, written and, when orally made, recorded by the F. B. I., touching the events and activities as to which they testified at the trial. And, to leave no doubt about the limited scope of the requirement in the matter of production of secret reports, it quoted with approval a passage from an earlier decision, in which it was said :

The demand was for production of specific documents and did not propose any broad or blind fishing expedition among documents possessed by the Government on the chance that something might turn up. Nor was this a demand for statements taken from persons or informants not offered as witnesses.

But the ruling in the Jencks case was misinterpreted by some lower courts, and they ordered production of entire F. B. I. reports irrespective of their relevancy.

The bill, now passed and signed by the President, reiterates the Court's rule that only those statements to the F.B.I. that related to trial testimony need be produced. It requires production only of the statements signed or approved by the witness and of "substantially verbatim" transcripts of oral statements to F. B. I. agents. Thus to this extent the Court's decision is fully carried out.

But in one respect the bill, now an Act, departs from the ruling of the majority of the Court. It provides that the trial judge shall examine the statements of a witness and determine which of them are related to the testimony at the trial. The Court majority would have the prosecution make the selection. It so ruled because it thought that to sort out and withhold from the defence any portions of the witness's prior statements that were not relevant was not a proper function of the judiciary. It said :

The burden is the Government's, not to be shifted to the trial judge, to decide whether the public prejudice of allowing the crime to go unpunished is greater than that attendant upon the possible disclosure of state secrets and other confidential information in the Government's possession.

In a concurring judgment Justices Burton and Harlan ( with Justice Frankfurter joining ) expressed the view that the relevancy of the statements to be produced should be left to the discretion of the trial judge, as the bill has provided. These Justices said :

The trial judge exercises his discretion with knowledge of the issues involved in the case, the nature and importance of the Government's interest in maintaining secrecy, and the defendant's need for disclosure. By vesting discretion in the trial judge conflicting interests are balanced, and a joint decision is reached in the individual case without needless sacrifice of important public interests.

Another provision in the enacted bill prohibits the pre-trial disclosure of witnesses' statements to the defence. The Supreme Court did not deal in the Jencks decision with this point, but it was one on which the Government had laid great stress. It wanted to exclude the possibility that F. B. I. reports will have to be produced not only for the purpose of impeaching witnesses but also for the much broader purpose of helping the defence to prepare its case generally. It felt that to have to show the defence any material before trial is, for the prosecution, practically to give its case away and that it would make convictions more difficult. Some years ago a Court of Appeals had ordered that the Government must make such pre-trial disclosure in criminal cases in some circumstances. The bill makes such an interpretation of the Federal Rules of Criminal Procedure impossible by providing that the defence would be allowed to examine the secret reports only after the Government had brought in a witness who testified in regard to information contained in the reports.

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## TOPICS

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### U. S. Civil Rights Bill

#### MAIN AIM IS SCHOOL INTEGRATION

A bill sponsored by members belonging to both political parties was introduced in the Senate last month, whose object is to strengthen, by supplementing the provisions of the Civil Rights Act passed last year, the legal protection of an individual's civil rights generally, and that of integrated public schools in particular.

The bill would encourage racial integration in schools in which whites and Negroes are now segregated and would compel local authorities to comply with various Supreme Court rulings that have been made on this subject. The proposed Bill would authorize the appropriation of \$21,500,000 during the next five years as Federal assistance to State and local Governments for developing plans and understanding for integration measures. In addition, it would authorize further Federal grants of \$40 million a year for the next five years, for improving school buildings, providing additional

teachers and any other costs involved in any racial integration programme in schools.

The bill would also give authority to the Attorney General to seek court injunctions to restrain anyone from abusing the civil rights of others. It would be recalled that the last year's Civil Rights Act as originally introduced had made such a provision, but it had later to be cut out on account of the fierce opposition offered to it by segregationists both in the Senate and the House of Representatives. The lack of such a provision had the effect of watering down the measure considerably, and the present bill therefore seeks to remove the defect. There can be no doubt that this part of the bill at any rate would provoke a great deal of controversy, but it would be a gain if the other part is accepted as law.

### Integration of Schools Ordered in Virginia

In Virginia, in which state not a single Negro child has yet been admitted nor proposed to be admitted to a white school, a crisis will arise at the opening of the new school term next September, for in at least four districts the courts have ordered a start to be made in desegregation. Last month the Court of Appeals reaffirmed an order directing admission of seven Negro children to white schools in Arlington County in an appeal by school officials against such an order by a district court. The Appeals Court administered a stern warning to the officials that they would face citations for contempt if they refused to obey court orders for the admission of Negro children. It further admonished them not to put "reliance upon a statute passed after the entry" of the original integration order.

The admonition meant that whatever laws might be passed to delay the inevitable process of desegregation, as there is a talk of such laws being passed, they would not be effective. Virginia has already adopted a law to this end. It provides that any school in which white and Negro pupils are mixed must automatically be closed. The Governor takes control of the school from the local board and is supposed to try to negotiate the withdrawal of the Negroes. If the Governor fails to persuade the Negroes to stay out, he may leave the school closed or return it to the local authority. If it then reopens as an integrated school, the entire system of primary or secondary schools in that locality loses its state aid.

Similarly in another county — that of Prince Edward — which is the centre of Virginia's most bitter resistance to integration, this Court of Appeals has directed a prompt start with integration. Appeals will surely be made from these decisions of the Appeals Court to the Supreme Court, and there can be no doubt that a show-down will come soon upon Virginia before

the Supreme Court's term ends in June and this state, which takes the lead in resistance to school integration, will soon have to decide whether to allow some Negroes to attend white schools or to close the schools.

### System of Communal Representation

#### TO BE MODIFIED IN KENYA

The new Constitution of Kenya, to be soon brought into force by an Order-in-Council, aims at modifying somewhat the system of communal representation now in vogue in the composition of the Colony's Legislative Council. This will be effected by creating twelve new seats in the Council, whose occupants will not come from any purely communal constituencies. These twelve new members will be selected by an electoral college, dominance of which by any one racial group will be constitutionally inhibited. For at least ten years the members will be selected in equal numbers from the three main racial groups.

This is regarded as an important move away from the system of communal electorates. But what is of far greater consequence is the creation of a Council of State to be composed of members of all races. This body is not to be in any sense a second chamber. Its function will be, as the Secretary of State for the Colonies has described it, to act "as a buttress of multi-racial partnership against racial and religious discrimination." It will come into action only when it decides that a measure is *prima facie* "differentiating," and it will be empowered to watch the interests of all communities. The proposed definition of a "differentiating measure" is as follows:

Any Bill or instrument any of the provisions of which are, or are likely in their application to be, disadvantageous to persons of any racial or religious community, and not equally disadvantageous to persons of other such communities, either directly by prejudicing persons of that community, or indirectly by giving an advantage to persons of another community.

Briefly, the suggested procedure is that copies of every Bill introduced into Kenya's Legislative Council shall be sent to all substantive members of the new Council of State. If, then, any member of this Council so demands, its chairman shall convene a meeting to scrutinize the Bill, and an adverse verdict by the Council will have the effect of "killing" the Bill or of compelling its revision before the legislature gives it a third reading.

Besides the chairman, the Council of State will have 10 members drawn from all communities, but they will not sit as communal representatives. They will be nominated by the Governor, four to sit for 10 years, three for seven years, and three for four years.

### The West Indies Federation

#### ON THE ROAD TO FULL SELF-GOVERNMENT

The establishment of a federation of the West Indies, which will unite ten colonies of Barbados, Jamaica, Trinidad and Tobago and the Leeward and Windward Islands, will mark an important stage in the progress of some of Britain's oldest colonies towards full self-government. The mainland colonies of British Guiana and British Honduras and the small Virgin Islands colony have chosen to remain outside the federation for the present, but the Constitution makes provision for their accession later if they should so decide. As at present, the federation will have a total population of approximately 3,000,000, a majority of whom are of African descent, but with a substantial Indian minority, principally in Trinidad, where the capital of the federation will be situated. This is a voluntary union decided upon by the colonies themselves, and it is a very wise decision: for these small islands would never have been able individually to make that progress towards political, economic and social independence which by uniting and pooling their human and material resources they can be expected to do.

The federal Parliament will consist of a nominated upper chamber — the Senate, composed of 19 members appointed by the Governor-General (two representing each territory except Montserrat, a Leeward island, which will have one) — and an elected lower chamber — the House of Representatives, with 45 members (17 elected by Jamaica, 10 by Trinidad, five by Barbados, one by Montserrat, and two by each of the six other colonies).

Executive authority will be vested in the Governor-General, as the Queen's representative, advised by a Council of State consisting of a Prime Minister (elected by the House of Representatives from among its own members) and 10 other Ministers (appointed by the Governor-General on the advice of the Prime Minister, not less than three being members of the Senate and the rest members of the House of Representatives).

In the first instance, the powers of the Federal Government, which have been closely defined in the Constitution, will not be great, and residual legislative and executive authority will rest with the unit governments.

The United Kingdom retains the right to legislate by Order-in-Council only on matters concerned with defence, external relations, or the financial stability of the federation, and the Governor-General retains certain reserve executive powers, although in most matters he is required to act in accordance with the advice of his Council of State.

The advance to federation has not been made at the expense of political progress within the unit territories,

where developments since the end of World War II have been rapid.

Jamaica, Trinidad and Barbados now each has a large measure of internal self-government under a Chief Minister or Premier who is the leader of the majority party in the legislature and who chooses his ministerial colleagues.

All the territories have elected majorities in their legislatures, elected on the basis of universal adult suffrage, and all have elected local people serving as Ministers or "Members" — that is, members specially associated with the conduct of, and responsibility for, particular departments of government.

#### Death Penalty for House-breaking in S. Africa

Apparently in its search for the effective implementation of its apartheid legislation, the Nationalist Government of South Africa has been led to pass an Act for prescribing the death penalty for house-breaking or robbery "in aggravated circumstances." On this the "Statesman" remarks:

The justification is a rise in crime statistics. The main rise, on the statistics, has been in offences against the Pass Laws, and seems not unconnected with the increasing rigor of apartheid. If violent crime has also been on the increase, as the statistics also suggest, the social tensions resulting from apartheid are sublimely ignored. In any event, after the Nationalist Government, in emergency legislation designed to deal with impertinent opposition, lavishly extended the power of the courts to use the whip, it hardly seems out of character to extend later the ambit of the rope.

Nor is such action without precedent. Stalin's Russia both reintroduced capital punishment for highway robbery and made children over twelve capitally liable for that and other offences. Dollfuss's Austria, after a decade without capital punishment, reintroduced it for a variety of crimes including arson; the plight of the first man to suffer ("So many have killed and I must die for 'a haystack") is plainly derisory, if not contemptuous. Equally scandalous would be any suggestion that the South African police are capable of taking cases against those whom it is convenient to put away (as was prima facie proved in the Johannesburg treason trial, but only by persons obviously disreputable, since in custody), and that they can now fix the circumstances (at least for Africans, since Europeans have to be handled just a little more delicately) that the next political dissident is in jeopardy not merely of his back but of his neck.

## BIHAR SALES TAX ACT, 1947

### Duty of Excise or Tax on Sales ?

#### SUPREME COURT'S JUDGMENT

The Tata Iron and Steel Company was assessed to sales tax under sec. 4 of the Bihar Sales Tax Act 1947 on a gross turn-over of Rs. 12 lakhs odd for the period July 1947 to March 1948. The company claimed deductions in respect of receipts from transactions in which the property in the goods did not pass to the purchasers in the State of Bihar. Appeals to higher authorities in this respect did not succeed, and then the matter went to the Patna High Court. Some of the questions considered by the High Court were decided in favour of Tisco and some others against it. Particularly its contention that the Act was ultra vires of the provincial legislature in view of the extended meaning of the expression of "sale of goods" was rejected by the High Court. This happened on 17th October 1955. Thereafter the company moved the Supreme Court by way of special leave.

On 19th February the Constitutional Bench of the Supreme Court, by a majority judgment delivered by the Chief Justice, dismissed the appeal. The main ground of attack on the Act was that the tax levied under sec. 4 (1), read with the second proviso in sec. 2(g), was not a tax on the "sale" of goods within the meaning of the term as used in Entry 48 ("tax on sale of goods") of List II of the Seventh Schedule of the Government of India Act, in virtue of which the provincial legislature of Bihar had passed the Act. Sec. 2 (g) of the Act, after defining the term "sale," goes on to provide:

Notwithstanding anything to the contrary in the Indian Sale of Goods Act, 1930, the sale of any goods which are actually in Bihar at the time when, in respect thereof, the contract of sales as defined in sec. 4 of the Act is made, shall, wherever the said contract is made, be deemed for the purpose of this Act to have been made in Bihar.

Under this provision the transactions of Tisco wherein the goods were sold outside Bihar but were manufactured in the province were held liable to sales tax.

#### LEGISLATIVE COMPETENCE

The appellant company had urged in support of its case that the term "sale of goods" as used in Entry 48 of the Government of India Act had a well-defined meaning at the time when that statute was enacted, and when the legislature used that term it must be taken to have used it in the sense in which it was then understood in legal parlance. This accepted legal meaning, according to the appellant, was that it must be a concluded sale involving the transfer of the property in the goods sold from the seller to the buyer as contemplated in the Sale of Goods Act.

In the submission of counsel for the appellant the legislative competence of the provincial legislature extended to taxing sales in the above sense, and not to imposing a tax on the goods when the sale was incomplete. By the above definition, however, counsel stated, the provincial legislature had extended the meaning of the term "sale" and then proceeded to impose a tax on it and this was in excess of its legislative competence and hence ultra vires.

The Court, while agreeing with the proposition that it was not open to a State legislature to expand the limits of its legislative authority by an arbitrary definition, stated that in the present case the relevant part of sec. 2 (g) did not in fact relate to the definition of the term "sale" at all. The impugned portion was determinative only of the "situs" or location where the sale could be said to have taken place and "it follows, therefore, that the provision of sec. 4 (1) read with sec. 2 (g), second proviso were well within the legislative competence of the legislature of the province of Bihar."

#### TERRITORIAL LIMITS

It was also contended that the theory of "nexus," applying which courts had held that the legislature was competent to legislate in regard to any matter with which the State had a real territorial connection, did not apply to the present case. It was argued that the impugned provisions were in excess of the territorial limits of the taxable jurisdiction of the provincial legislature. It was stated that, firstly, the law of territorial nexus was not applicable to sale tax legislation and, secondly, that no real fact or circumstance relating to the sale was located in Bihar so as to make the sale amenable to the taxing power of that province.

Dealing with these arguments, the judgment of the majority observed that it was not necessary for them on this occasion to lay down any broad proposition as to whether the theory of nexus, as a principle of legislation, was applicable to all kinds of legislation. It would be enough, His Lordship said, for disposing of the point now under consideration, to say that this Court had found no apparent reason to confine its application to income-tax legislation but had extended it to sales tax and to tax on gambling and that they saw no cogent reason why the nexus theory should not be applied to sales tax legislation. The Court said:

In our view the presence of the goods at the date of the agreement for sale in the taxing State or the production or manufacture in that State of goods, the property in which eventually passed as a result of the sale, wherever that might have taken place, constituted a sufficient nexus between the taxing State and the sale.

It was also contended that the tax levied on the alleged "sales" was in the nature of a duty of excise rather than a tax on sales, and that the retrospective levy by reason of the amendment of the Act in 1948 made it a direct tax on the dealer instead of an indirect tax to be passed on to the consumer. The retrospective effect came to be given to sec. 4 in this way. Under the Act of 1947 the taxing provision of sec. 4 was to be brought into force by a Government notification, but this not having been done, the Governor promulgated an Ordinance in 1948 making the charging section effective retrospectively from July 1, 1947, the date of the coming into force of the Act itself. This Ordinance was subsequently replaced by the Bihar Sales Tax Amendment Act of 1948. The Court held that sales tax might be an indirect tax on consumers, but legally it was not so. Under the 1947 Act the primary liability to pay sales tax rested on the dealer. It said:

We do not think there is any substance in the contention of the appellant that sales tax should be passed on to the consumers.

#### DISSENTING JUDGMENT

Mr. Justice Bose who wrote a dissenting judgment expressed the opinion that the taxing provisions did not bear a sufficient nexus to the sales to make them a valid exercise of legislative power under Entry 48. In his view the term "sales" should be authoritatively defined by the Supreme Court as it concerned the exercise of legislative and constitutional powers, and such a matter could not be left to be defined by each State on its own notions of what was desirable or correct.

He felt that the sale in the present case did not take place in Bihar and consequently the Bihar legislature had no power to tax it simply by a statutory provision under which it was deemed to have been located within its territories.

## INDUSTRIAL DISPUTES ACT

### Supreme Court's Interpretation of Sec. 2 (k) APPEAL BY ESTATE WORKERS DISMISSED

Dr. K. P. Banarjee, who was employed as assistant medical officer in the Dimakuchi Tea Estate, was discharged from service on 22nd April 1957, the reasons for his discharge being the "deceitful manner in which certain figures were added by Dr. Banarjee to the requirements of the last medical indent after the indent had been signed by the chief medical officer, Mr. Cox." The case of Dr. Banarjee's discharge was taken up by the Mangaldal circle of the Assam Karmachari Sangh who made a demand for his reinstatement. The Government of Assam referred the matter to the Industrial Tribunal for an adjudication. The management of the estate contested the adjudication on the ground that Dr. Banarjee was not a "workman" as defined in the Industrial Disputes Act and therefore there was no "industrial dispute" which could be the subject of an adjudication by the Tribunal. It was urged by the management that according to the decision of the full bench of the Labour Appellate Tribunal a dispute under the Act could only relate to "workmen."

The Industrial Tribunal came to the conclusion that Dr. Banarjee was not covered by the definition of "workman" and since a dispute could not be raised

about a non-workman there was no industrial dispute in which the Tribunal had jurisdiction to grant any relief or make an adjudication on merits. The Labour Appellate Tribunal in appeal against this decision came to the same conclusion and upheld the decision of the lower tribunal, whereupon the workmen obtained special leave to appeal to the Supreme Court.

The main issue in dispute between the parties before the Supreme Court was whether a dispute in relation to a person who is not a workman falls within the scope of the definition of "industrial dispute" contained in sec. 2 (k) of the Industrial Disputes Act 1947. Determination of this question depended on the true construction of the term "any person" in sec. 2 (k). This section says:

"Industrial dispute" means any dispute or difference between employers and employees or between employers and workmen or between workmen and workmen, which is connected with the employment, non-employment or terms of employment or with the conditions of labour of any person.

"Workman" is defined in sec. 2 of the Act which says:

"workman" means any person employed (including an apprentice) in any industry to do any skilled or unskilled manual or clerical work for hire or reward and includes, for the purposes of any proceedings under the Act in relation to an industrial dispute, a workman discharged during that dispute, but does not include any person employed in naval, military or air force of the Government.

It was contended by the workmen that the present dispute was regarding the non-employment of Dr. Banarjee and that even if he was not a workman within the definition in the Act he fell within the category of "any person" referred to in Clause 2 (k) of the Act. The workmen accordingly submitted that the lower tribunals were in error in holding that the term "any person" did not mean anything more than "workman." The management, on the other hand, relied on the view expressed by the Labour Appellate Tribunal and urged that no dispute could be raised about any person who was not a "workman."

A division bench of the Supreme Court, consisting of the chief justice, Mr. Justice S. K. Das and Mr. Justice Sarkar, dismissed the appeal on 4th February. Mr. Justice S. K. Das delivered the judgment. The Court, relying on earlier decisions and after an analysis of the salient provisions of the Industrial Disputes Act, came to the conclusion that "'any person' cannot mean anybody and everybody in the world." It said:

"In our opinion, the expression 'any person' under the definition clause means a person in whose employment, non-employment or terms of employment or conditions of labour the workmen as a class have a direct or substantial interest—with whom they have under the scheme of the Act a community of interest.

Having regard to the scheme and object of the Act the expression 'any person' in sec. 2 (k) of the Act must be read subject to certain limitations and qualifications which arise from the context, the two crucial limitations being (a) that the dispute must be a real dispute between the parties to the dispute and (b) that the person regarding whom a dispute is raised must be one in whose employment, non-em-

ployment, or terms of employment or the conditions of labour ( as the case may be ) the parties to the dispute have a direct and substantial interest."

Their reason for so holding was, the Court said, not merely that the Act made a distinction between workmen and non-workmen, but because a dispute to be a real dispute should be one in which the parties to the dispute had a direct or substantial interest.

Could it be said, His Lordship observed, that workmen as a class were directly or substantially interested in the employment, non-employment, terms of employment or conditions of labour of persons who belonged to the supervisory staff and were, under the provisions of the Act, non-workmen on whom the Act had conferred no benefit? They ventured to think, His Lordship said, that the answer should be in the negative.

Applying the tests indicated above to the present case the Court said that Dr. K. P. Banerjee was not a "workman." He belonged to the medical or technical staff—a different category altogether from workmen. The appellants, His Lordship said, had no direct nor substantial interest in his employment or non-employment, and even assuming that he was a member of the same trade union, it could not be said, on the tests laid down by them, that the dispute regarding his termination of service was an industrial dispute within the meaning of sec. 2 ( k ) of the Act.

Mr. Justice Surkar dissented, expressing the view that the appeal should be allowed as he did not think that the interest of the workmen in the dispute was a condition of the existence of an industrial dispute.

## LAW OF SEDITION

### Sec. 124-A, I. P. C., Held Void AS IN VIOLATION OF THE RIGHT TO FREEDOM OF EXPRESSION

When towards the close of 1954 Dr. Sampurnanand was elected leader of the Congress party in the U. P. Legislative Assembly in place of Mr. Pant, indicating that the former would be the Chief Minister of the State in succession to the latter, a Delhi weekly "Payam i Mashriqui" published an article on 28th December 1954, which was reproduced in "Nazim," a daily of Rampur, in its issue of 2nd January 1955 in its "Opinions of Others" column. The article contained certain adverse and uncomplimentary comments on Dr. Sampurnanand, expressing the writer's apprehensions about things to come during the leadership of Dr. Sampurnanand as Chief Minister. Mr. Sabir Raza Khan editor, and Mr. Mohibbey Ali Khan, printer of "Nazim" were prosecuted under sec. 124-A, I. P. C., and sentenced to one year's rigorous imprisonment and fines of Rs. 500 for the article. The Khans preferred an appeal against their conviction and sentence in the Allahabad High Court, on 11th February last. Mr. Justice Dayal allowed the appeal and set aside their conviction, holding sec. 124-A void on the ground that it infringed the constitutional guarantee of freedom of speech and expression in Art. 19 (1) ( a ) of the Constitution.

After examining the various paragraphs of the impugned article, His Lordship said that a reading of the entire article made it clear that the writer feared that Dr. Sampurnanand's Chief Ministership was likely to be detrimental to the Muslims in view of his being against Urdu and consequently against the Muslims and their

organizations which advocated the cause of Urdu and that, therefore, his policies would affect the Muslims and Muslim officers.

His Lordship said the mere expressing of opinions, not even about what had been done by Dr. Sampurnanand but about what was apprehended in future, could hardly be said to make an attempt to bring him into hatred or contempt or to excite disaffection against him, what to say of bringing the Government into hatred or contempt, or to excite disaffection against it. Such expressions in communal papers were not expected to go a long way in these days and surely could not go a long way when no concrete facts were referred to in support of the expectation. The article, therefore, in his view, was not of the type which would come within the mischief of sec. 124-A, I. P. C.

His Lordship said there was nothing in the article which was against the Government established by law in India. No particular act of the Government was criticised; no adverse comments were made against the Government as such.

His Lordship referred to certain provisions of the General Clauses Act, 1897 and Arts. 154 and 163 of the Constitution and said that the word "government" in sec. 124-A meant the Governor and did not include the Chief Minister within its scope, howsoever important functions he performed in aiding and advising the Governor in the exercise of his functions. It might be mentioned here that the word 'government' was differently defined in sec. 17, I. P. C., prior to the amendment of the section by the Adaptation of Laws Order, 1950. Then the 'government' denoted the persons authorized by law to administer the executive government in any part of British India. The case law, therefore, of the period prior to 1950 had no bearing on the interpretation of the word 'government' in sec. 124-A, I. P. C., after the amendment in sec. 17, I. P. C.

His Lordship referred to certain decisions and said that the conviction of the appellants was bad. The appeal was allowed.

## MYSORE VILLAGE OFFICES ACT

### Hereditary Patels and Shanbhogs NOT HOLDERS OF "OFFICE OF PROFIT"

In the general elections of last year Mr. Ramappa of the P. S. P. defeated the former Home Minister in the Congress Ministry, Mr. S. Siddaveerappa, in the election to the Mysore Legislative Assembly from the Harihar constituency. In this election Messrs. Hanumanthappa and Siddappa, who were Patels and Mr. Guru Rao, who was a Baravader Shanbhog, had also filed nomination papers as candidates, but the Returning Officer rejected their nomination papers on the ground that they were village officials and as such holders of office of profit under the Government and as such ineligible for election under Art. 191 of the Constitution. Some persons made an application to the Election Tribunal, praying that the election be held void for the reason that the Returning Officer had wrongfully rejected the nomination papers of the hereditary village officers. The Tribunal rejected the contention of the appellants and held that the nominations of the three persons were properly rejected by the Returning Officer as they were holding office of profit under the Government and were therefore disqualified to be members of the Assembly of the State.

An appeal was subsequently filed in the Mysore High Court against this order of the Election Tribunal. A division bench of the High Court consisting of the Chief Justice Mr. S. R. Das Gupta and Mr. Justice Homba Gowda on 26th February allowed the appeal, holding that hereditary offices of Patels and Shanbhogs were not offices of profit under Government as contemplated under Act. 191. The Chief Justice delivered the judgment of the Court. After setting out the position of Patels and Shanbhogs both before and after the Mysore Village Offices Act 1938 came into force, His Lordship said:

On a cogent consideration of the matter, I have to come to the conclusion that these officers could not be described as holders of office under Government. In my opinion, in order to determine whether or not one person is holder of office under another, the following tests are to be applied, whether or not he is appointed by the other and whether or not his services can be terminated by the other. Applying those tests to those cases in the case before us, it appears to me that these village officers cannot be said to be holders of office under the Government. Neither the Government appoints such officers nor can the Government terminate their services at their pleasure. Such offices are essentially hereditary. It may be that the Act lays down certain conditions which have to be fulfilled before a person can be eligible for this office even though he may be the eldest male heir or the last holder. This fact to my mind does not take away the hereditary character of these offices.

It seems to me that the appointments to these offices of Patels and Shanbhogs do not rest with the Government. It is no doubt true that the Government exercise administrative control over such officers, but merely because of the fact that the Government exercise such control, such officers cannot, in my opinion, be held to be officers under the Government as contemplated in Art. 191 of the Constitution. Mere administrative control, in my opinion, cannot be a test for determining whether or not one was an officer under the Government.

Before concluding his judgment His Lordship said that he would make it clear that in the case they were not concerned with the position of stipendiary Patels and Shanbhogs. Counsel for petitioners conceded before them that such Patels and Shanbhogs were holders of office under the Government. So, it was not necessary for them to determine the position of these Patels and Shanbhogs.

In the result, Their Lordships allowed the appeal, setting aside the order of the Election Tribunal.

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## RIGHTS OF GOVERNMENT SERVANTS

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### An Ex-A I. R. Employee's Appeal Dismissed DECISION OF THE CONSTITUTION BENCH OF THE SUPREME COURT

By a majority decision of four to one a Constitution Bench of the Supreme Court dismissed an appeal by Mr. K. S. Srinivasan holding that the appellant's transfer from the post of a public relations officer in All-India Radio to that of an assistant station director and subsequently his

appointment as an assistant information officer in the Press Information Bureau did not involve any violation of the constitutional guarantee under Art. 311 (2) of the Constitution.

The appellant was appointed as a liaison officer, All-India Radio, on May 1, 1946. Later this post was called the post of the public relations officer and the appellant, who was selected by the Union Public Service Commission for the said post, was given a quasi-permanent status in that post.

On September 3, 1952, however, the appellant received an order from the Director-General of A. I. R. that his services would not be required after October 6, 1952. He made representations to the authorities concerned and eventually he was told in writing that his appointment to the post of P. R. O. was purely temporary and that he would be well advised to apply for one of the posts of assistant station directors which had been advertised by the Union Public Service Commission.

The appellant appeared before the U. P. S. C. on March 26, 1953 but he was not selected for the post. In the meantime the Director-General had allowed the appellant to work as A. S. D. and subsequently also permitted him to carry the quasi-permanent status to his new post. But when the U. P. S. C. communicated its decision that this was irregular, the appellant was told so.

Later, however, the appellant was offered the post of the assistant information officer in the Press Information Bureau. Although he refused to accept this lower post, later under orders of the Punjab High Court he accepted the said post without prejudice to his claims on a writ petition filed before the Punjab High Court for an appropriate writ for quashing the orders of the Government dated September 7, 1955 and asking for his reinstatement as assistant station director in the All-India Radio.

This petition was summarily dismissed by the High Court. But on March 16, 1956 the High Court granted him a certificate to move the Supreme Court by way of special leave. Special leave was accordingly granted by the Court on April 23, 1956.

The main question for decision in the appeal as also the Art. 32 petition filed by the appellant before the Supreme Court separately, was whether the impugned orders of the Government "violate the constitutional guarantee given under Art. 311 (2) to the appellant, who is admittedly the holder of a civil post under the Union."

Relying on the true principles in regard to the nature of the scope and effect of this Article as laid down by the Supreme Court in the case of Purshottam Lal Dhingra on November 1, 1957, the Court held that the governing principle to enable Art. 311 (2) to be attracted was that the termination of the service of such a servant or his reduction to a lower post, should by itself be a prima facie punishment. Otherwise Art. 311 (2) could not be attracted.

Analysing the various provisions of the temporary service regulations of the Government in the context of the above decision of the Court, the majority view of the Court was that the appellant had no quasi-permanent status in the post of assistant station director and his service was liable to be terminated when there was a reduction in the number of posts of public relations officers within the meaning of clause (11); nor was he entitled

to the proviso to the said clause, so far as the post of the A. S. D. was concerned.

The Court accordingly dismissed the appeal, holding that the provisions of Art. 311 (2) had not been violated.

The Court, however, observed that apart from the consideration of mere legal rights, this was a hard case. The appellant was in service for about nine years without any blemish and his service was terminated on the reduction of certain posts. He was told wrongly that he had a quasi-permanent status in the post of A. S. D.

"We invite the attention of the authorities concerned to this aspect of the case and hope that they will consider the appellant's case sympathetically and give him proper relief."

The appeal was dismissed. Mr. Justice S. K. Das delivered the majority judgment.

#### DISSENTING JUDGMENT

Mr. Justice Bose, dissenting from the majority judgment, said:

Why should we take a narrower view of a mere set of rules? Why should we give greater sanctity and more binding force to rules and regulations than to our own Constitution? Why should we hesitate to do justice with firmness and vigour?

Here the Government is straining to temper justice with mercy and we, the courts, are out-Shylocking Shylock in demanding a pound of flesh, and why? Because "it is writ in the bond."

I will have none of it. All I can see is that a man has been wronged. And I can see a plain way out. I would take it.

While having no quarrel with the interpretation by the U. P. S. C. of the rules, Mr. Justice Bose said, "The rules are meant to be observed. And I have equally no doubt that there are constitutional sanctions which can be applied if they are flouted."

But the sanction is political and not judicial and an act done in contravention of them cannot be challenged in a court of law. It is legally valid.

Also, the fact that the Government would not have acted in this way if it had realised that it was under directive duty of the Constitution to consult the Union Public Service Commission first cannot alter the character of its act or affect its legal consequences. It had the power and exercised it; consequently, its act became binding despite its mistake. This is how I would interpret the law and administer justice.

I would allow the appeal and the petition with costs.

## SALES TAX

### Assessment on Textiles Mills

#### MYSORE HIGH COURT'S JUDGMENT SET ASIDE

The judgment of the High Court of Mysore holding that sales to persons in India who held export licences and

exported the goods purchased were not liable to sales tax was set aside by the Supreme Court by a judgment delivered on 1st February by Mr. Justice Bose in the appeal preferred by the State of Mysore against the Mysore Spinning and Manufacturing Co. Ltd., and the Minerva Mills Ltd.

Both mills, which were under common management, were engaged in the manufacture of textiles with their factories in Bangalore and their registered offices in Bombay. The bulk of their trade was with exporters at Bombay and other ports and these exporters sold their goods to foreign purchasers. The mills also sold a small portion of their manufactures directly to foreign buyers, but as these deals had not been assessed they did not form the subject of the present appeal.

The sales tax authorities assessed the companies' liability to pay tax on the transactions which they had made with exporters in India, but the mills contested this assessment on the ground that these sales were not taxable because they were made "in the course of export" and so were exempted under Art. 286 (1) (b) of the Constitution. The Sales Tax Officer and the appellate sales tax authorities rejected the contention of the companies and confirmed the assessment by the Sales Tax Officer.

The two companies challenged all the assessments through writ petitions in the High Court of Mysore. The High Court took the view that the sales were exempted because the exporters must "be deemed to be agents of the foreign buyers" and therefore "the sales to the agents must be presumed to be sales in favour of the principals." It, accordingly, held that the sales were not liable to tax but at the same time granted the State of Mysore a certificate of fitness to appeal to the Supreme Court.

The Supreme Court examined the actual marketing procedure involved in these sales and stated "that from first to last the mills have no direct contract with the overseas buyers and the sales that occasioned the export were not the sales by the mills to the exporters". The Court also rejected the contention that the licence holder must be deemed to be an agent of the mills on the view that "this is clearly not a case of agency because a principal does not sell to his agent and even if this was the only way in which an export could be effected, this would not make the exporter the agent of the seller."

The Court further stated that by the very act of purchase of the goods from the mills the exporters became principals and purchased the goods as such. In the judgment of the Supreme Court the judges of the High Court appeared to be under a misapprehension about the facts and their conclusion was liable to be set aside.

The respondents had raised an alternative contention also before the High Court that the sales were exempted from sales tax under Art. 286 (2) of the Constitution, as they were sales in the course of inter-State trade and commerce. The Supreme Court observed that the High Court had not given a decision on this point and as there were insufficient facts before them to enable them to dispose of this point the case must be remanded to the High Court for a decision on the alternative contention by the respondents.