

Suraj Mall Mohta And Co vs A. V. Visvanatha Sastri And Another on 28 May, 1954

Equivalent citations: 1954 AIR 545, 1955 SCR 448, AIR 1954 SUPREME COURT 545, 1967 MADLW 759

Author: Mehar Chand Mahajan

Bench: Mehar Chand Mahajan, Vivian Bose, Natwarlal H. Bhagwati

PETITIONER:
SURAJ MALL MOHTA AND CO.

Vs.

RESPONDENT:
A. V. VISVANATHA SASTRI AND ANOTHER.

DATE OF JUDGMENT:
28/05/1954

BENCH:
MAHAJAN, MEHAR CHAND (CJ)
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MAHAJAN, MEHAR CHAND (CJ)
DAS, SUDHI RANJAN
BOSE, VIVIAN
BHAGWATI, NATWARLAL H.
AIYYAR, T.L. VENKATARAMA

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R 1957 SC 397 (48)
E 1959 SC 149 (4,6,41,44)
RF 1962 SC 92 (6)
R 1962 SC1006 (37,73)
R 1963 SC 222 (51)
R 1963 SC1356 (12,51,52,124)
R 1964 SC1190 (6,7)
R 1965 SC 342 (25)
RF 1966 SC1342 (9)
RF 1967 SC 295 (71)

R	1967 SC1581	(11,22)
D	1968 SC 317	(11)
RF	1968 SC 565	(14)
RF	1970 SC2042	(8)
R	1972 SC 19	(3)
R	1974 SC2009	(4,9,10,15,18,26,31,33)
F	1974 SC2044	(3)
RF	1978 SC1457	(60)
RF	1988 SC1531	(155)
R	1991 SC 855	(35)

ACT:

Taxation on Income (Investigation Commission) Act (XXX of 1947) ss. 5(1), 5(4)-Extent and range different-S. 5(4) and s. 34 of Indian Income-tax Act (XI of 1922)-Deal with same class of persons--Properties and characteristics the same-Procedure under the two Acts different-Section 5(4)-Whether ultra vires Art. 14 of the Constitution.

HEADNOTE:

Sub-section (4) of section 5 of the Taxation on Income (Investigation Commission) Act, 1947, does not deal with the same class of persons as are said to have been grouped together in subsection (1) of section 5 of the Act as persons who to a substantial extent evaded payment of taxation on income. On a plain reading of the section it is clear that sub-section (4) of section 5 is not limited only to persons who made extraordinary profits and to all persons who may have evaded payment of taxation on income irrespective of whether the evaded profits are substantial or insubstantial and therefore the scope of sub-section (4) of section 5 is different from the scope of sub-section (1) of section 5 both in extent and range.

Sub-section (4) of section 5 of the Act, obviously deals with the same class of persons who fall within the ambit of section 34 of the Indian Income-tax Act and are dealt with in sub-section (1) of that section and whose -income can be caught by the proceeding under that section.

It is not possible to hold that all such persons who evaded payment of income-tax and do not truly disclose all particulars or material facts necessary for their assessment and against whom a, report is made under sub-section (4) of section 5 of the impugned

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Act by themselves form a class distinct from those who evade payment of income-tax and come within the ambit of section 34 of the Indian Income-tax Act.

Both section 34 of the Indian Income-tax Act, 1.922, and subsection (4) of section 5 of the Taxation on Income (Investigation Commission) Act, 1947, deal with all persons

who have similar characteristics and similar properties, the common characteristics being that they are persons who have not truly disclosed their income and have evaded payment of taxation on income.

The procedure prescribed by the Taxation on Income (Investigation Commission) Act, 1947, is substantially more prejudicial and more drastic to the assessee than the procedure under the Indian Income-tax Act (XI of 1922).

Held, therefore that sub-section (4) of section 5 and the procedure prescribed by the impugned Act in so far as it affects the persons proceeded against under that sub-section being a piece of discriminatory legislation offends against the provisions of article 14 of the Constitution and is thus void and unenforceable.

JUDGMENT:

ORIGINAL JURISDICTION: Petition No. 196 of 1954. Under article 32 of the Constitution of India for the enforcement of fundamental rights.

P. R. Das and K. P. Khaitan, (B. Sen, A. K. Mukherjea and B. P. Maheswari, with them) for the petitioner. C. K. Daphtary, Solicitor-General for India, (Porus A. Mehta and P. G. Gokhale, with, him) for the respondents. 1954. May 28. The Judgment of the Court was delivered by I MEHR CHAND MAHAJAN C.J.-The principal question canvassed in this case is whether certain sections of the Taxation on Income (Investigation Commission) Act, 1947, i.e., Act XXX of 1947, have become void from the date of the commencement of the Constitution of India by reason of article 14 of the Constitution.

The petitioner, Suraj Mall Mohta & Co. Ltd., is -a company registered under the Indian Companies Act. Suraj Mall Mohta is also the managing director of another company Messrs. Jute and Gunny Brokers Ltd. A reference had been made by the Central Government under the provisions of section 5(1) of the Act before 58 1st September, 1948, of the case of Messrs. Jute and Gunny Brokers Ltd. to the Investigation Commission appointed under Act XXX of 1947. During the investigation of that case which was numbered 831/30 in the records of the Commission, and during the investigation of some other cases similarly referred to the Commission, it was said to have been discovered that the petitioner company had made secret profits which it had not disclosed and had thus evaded taxation. On the 28th August, 1953, a report to this effect was made by the Commission to the Central Government under the provisions of section 5(4) of the Act requesting that the case of the petitioner along with the cases of Suraj Mall Mohta and other members of his family may be referred to the Commission for investigation.

On the 9th September, 1953, the Central Government referred these cases to the Investigation Commission under the provisions of section 5(4) of the Act and these were numbered 831/64-69 on the records of- the Commission. On the 15th of September, 1953, the Commission notified the petitioners that their cases had been referred for investigation and they were called upon to furnish

certain material, as detailed in Annexure "B" of the petition, to the Commission.

On the 12th April, 1954, the present petition under article 32 of the Constitution was filed for the issue of appropriate writs restraining the Commission from taking any action against the petitioner under the provisions of Act XXX of 1947, on the ground that the provisions of sections 5(1), 5(4), 6, 7 and 8 of Act XXX of 1947, had become void, being discriminatory in character after the coming into force of the Constitution of India.

In order to appreciate the respective contentions raised and canvassed before us on behalf of the petitioner company and the State, it is necessary to set out some of the relevant provisions of the Act. The object of the Act as stated in its Preamble was to ascertain whether the actual incidence of taxation on income in recent years had been in accordance with provisions of law and whether the procedure for assessment and recovery of tax, was adequate to prevent evasion thereof. Section 3 authorizes the Central Government to constitute a Commission, to be called the Income-tax Investigation Commission, its duty, being (a) to investigate and report to the Central Government on all matters relating to taxation on income, with particular reference to the extent to which the existing law relating to, and procedure for, the assessment and collection of such taxation is adequate to prevent the evasion thereof; (b) to investigate in accordance with the provisions of this Act any case or points in a case referred to it under section 5. The composition of the Commission is set out in section 4. Section 5 of the Act reads as follows 5(1)-The Central Government may at any time before the first day of September, 1948, refer to the Commission for investigation and report any case or points in a case in which the Central Government has prima facie reasons for believing that a person has to a substantial extent evaded payment of taxation on income, together with such material as may be available in support of such belief, and may at any time before the 1st day of September, 1948, apply to the Commission for the withdrawal of any case or points in a case thus referred.....

(2)..... (3)No reference made by the Central Government under sub-section, (1), at any time before the first day of September, 1948, shall be called in question, nor shall the sufficiency of the material on which such a reference has been made be investigated in any manner by any Court.

(4)If in the course of investigation into any case or points in a case referred to it under sub-section (1), the Commission has reason to believe-

(a) that some person other than the person whose case is being investigated has evaded payment of taxation on income, or

(b) that some points other than those referred to it by the Central Government in respect of any case also require investigation, it may make a report to the Central Government stating its reasons for such belief and, on receipt of such report, the Central Government shall, notwithstanding anything contained in subsection (1), forthwith refer to the Commission for investigation the case of such other person or such additional points as may be indicated in that report."

The powers possessed by the Commission while conducting an investigation are provided for in section 6 which is in these terms:

"6(1)-The Commission shall have power to require, any person or banking or other company to prepare and furnish on or before a specified date written statements of accounts and affairs verified in such manner as may be prescribed by the Commission and, if so required by the Commission, also duly verified by a qualified auditor, giving information on such points or matters as in the opinion of the Commission may, directly or indirectly, be useful for, or relevant to, any case referred to it, and any person or banking or other company so required shall be bound, notwithstanding any law to the contrary, to comply with such requirement. (2)The Commission shall also have power to administer oaths, and shall have all the powers of -a civil court under the Code of Civil Procedure, 1908, for the purposes of taking evidence on oath, enforcing the attendance of witnesses and of persons whose cases are being investigated, compelling the production of documents and issuing commissions for the examination of witnesses. (3)If in the course of any investigation it 'appears to the Commission to be necessary to examine any accounts or documents or to interrogate any person or obtain any statements from any person, the Commission may authorize any income-tax authority not below the rank of Income-tax Officer in that behalf...

(4)The authorized official shall subject to the direction of the Commission have the same powers as the Commission under sub-sections (1) and (2), and any person having charge or custody of accounts or documents required to be examined shall not withstanding anything in any law to the contrary be bound to produce them (5)If any person whose case or the points in whose case is or are being investigated by the Commission refuses or fails to attend in person in compliance with a notice in that behalf duly served upon him or to give any evidence or to answer questions or to produce documents or to prepare and furnish statements when called upon to do so, the Commission may, if satisfied that the refusal or failure was wilful, close the investigation of the case and proceed to draw up its report on the case or on the points to the best of its judgment and may in its discretion also direct that such sum as it may specify in the direction shall be recovered from the person by way of penalty for the refusal or failure, without prejudice to any penalty under the Indian Income-tax Act, 1922 (6)..... (7)Where in the opinion of the Commission any person or banking or other company is likely to be in possession of any information or document which may, directly or indirectly be useful for, or relevant to, any case referred to it or any case likely to be reported by the Commission to the Central Government under the provisions of sub-section (4) of section 5, the Commission and subject to the direction of the Commission any authorized official, may make enquiries in such manner as it or he may deem fit and obtain from such person or banking or other company statements on oath or' otherwise on such points or matters as may be specified; and for the purpose of any such enquiry, the Commission and the authorized' official shall have all the powers conferred on them

by sub-sections (1), (2), (2A), (3) and (4).

(8) All materials gathered by the Commission or the authorised official and materials accompanying the reference under sub-section (1) of section 6 may be brought on record at such stage as. the Commission may think fit."

The procedure to be followed by the Commission is contained in section 7 which provides that subject to the provisions of this Act the Commission shall have power to regulate its own procedure and that the powers of the Commission under sub-sections (1), (2), (3), (7) and (8) of section 6 and sub-sections (2), (4) and (6) of this section, i.e. section 7 may be exercised by any member thereof authorised by the Commission in this behalf. Sub-section (2) of section 7 provides as follows " 7(2)-In making an investigation under clause (b) of section 3, the Commission shall act in accordance with the principles of natural justice, shall follow as far as practicable the principles of the Indian Evidence Act, 1872, and shall give the person whose case is being investigated, a reasonable opportunity of rebutting any evidence adduced against him; and the power of the Commission to compel production of documents shall not be subject to the limitation imposed by section 130 of the Indian Evidence Act, 1872, and the Commission shall be deemed to be a Court and its proceedings legal proceedings for the purposes of sections 5 and 6 of the Bankers' Books Evidence Act, 1891." Sub-section (3) of section 7 is in these terms:

"7(3)-Any person whose case is being investigated by the Commission may be represented by a pleader, a registered accountant or an employee duly authorised to act on his behalf, provided that no person shall be entitled to be present or to be represented in the course of an enquiry under subsections (3) and (7) of section 6."

The result of these provisions is that when the Commission is collecting the materials from different sources against the assessee he is not entitled to be present at those stages and take part in the enquiry, but after the material is ready and is placed on the record then he can be present and has to be given a reasonable opportunity of rebutting any evidence that may have been collected against him. Sub-section (4) of section 7 which came in for considerable criticism provides as follows:-

"7(4)-No person shall be entitled to inspect, call for, or obtain copies of, any documents, statement or papers or materials furnished to, obtained by or produced before, the, Commission or any authorized official in any proceedings under this Act; but the, Commission and after the Commission has ceased to exist such authority as the Central Government may in this behalf appoint, may, in its discretion, allow such inspection and furnish such copies to any person-. Provided that, for the purpose of enabling the person whose case or points in whose case is or are being investigated to rebut any evidence brought on the record against him, he shall, on application made in this behalf and on payment of such fees as may be prescribed by rules made under this Act, be furnished with certified copies of documents, statements, papers and materials brought on the record by the Commission. "

Sub-section (5) of section 7 is in these terms "7(5)-Save in cases in which the Commission may exercise its powers under section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898,

(a)no suit, prosecution or other legal proceedings shall be instituted against any person in any civil or criminal Court for any evidence given or produced by him in any proceedings before the Commission, and ,

(b)no evidence so given or produced shall be admissible in evidence against such person in any suit, prosecution or other proceeding before such Court, except with the previous sanction of the Central Government."

The last section that came in for objection is section 8 which is in these terms:

"8(1)-Save as otherwise provided in this Act, the materials brought on record shall be considered by all the three members of the Commission sitting together and the report of the Commission shall be in accordance With the opinion of the majority.

(2)After considering the report, the Central Government shall by order in writing direct that such proceedings as it thinks fit under the Indian Income-tax Act, 1922, the Excess Profits Tax Act, 1940, or any other law, shall be taken against the person to whose case the report relates in respect of the income of any period commencing after the 31st day of December-, 1938; and upon such a direction being given, such proceedings may be taken and completed under the appropriate law notwithstanding the restrictions contained in section 34 of the Indian Income-

tax Act, 1922, or section 15 of the Excess Profits, Tax Act, 1940, or any other law and notwithstanding any lapse of time or any decision to a different effect given in the case by any Income-tax authority or Income-tax Appellate Tribunal. (3)

(4) In all assessment or reassessment proceedings taken in pursuance of a direction under sub-section (2), the findings recorded by the Commission on the case or on the points referred to it shall, subject to the provisions of sub-sections (5) and (6), be final; but no proceedings taken in pursuance of such direction shall be a bar to the initiation of proceedings under section 34 of the Indian Income-tax Act,, 1922.

(5) In respect of any order made in the course of proceedings taken in pursuance of a direction issued under sub-section (2) the provisions of sections 30, 31, 33 and 33-A of the Indian Income-tax Act, 1922, and the corresponding provisions of the Excess Profits Tax Act 1940, shall not apply so far as matters declared final, by sub- section (4) are concerned; but the person concerned may, within 60 days of the date upon which he is served with a copy of such order, by application in the prescribed form accompanied by a fee of Rs. 100 require the appropriate Commissioner of Income-tax to refer to the High Court any question of law arising out of such order, and thereupon the provisions of sections 66 and 66-A of the Indian Income-tax Act, 1922, shall as far as may be apply, with the modifica- tion that the reference shall be heard by a Bench of not less than three

Judges of the High Court.

(7) Notwithstanding anything to the contrary contained in this Act or in any other law for the time being in force, any evidence in the case admitted before the Commission or an authorized official shall be admissible in evidence in any proceedings directed to be taken under sub-section (2)." It was not and could not be denied that the powers vested in the Commission and the procedure prescribed by the impugned Act is more comprehensive and drastic than those contained in the Indian Income-tax Act. At the time when the impugned statute was passed there could possibly be taken no exception to its contents on the ground of constitutionality of its provisions, and the powers conferred on the Commission and the procedure it was authorized to follow were well within the ambit of the Legislative power of the Central Legislature. The impugned statute admittedly was good law till the coming into force of the Constitution. When India became a sovereign democratic Republic on 26th January, 1950, the validity of all laws had to be tested on the touchstone of the new constitution and all laws made before the coming into force of the Constitution have to stand the test for their validity on the provisions of Part III of the Constitution.

The points that require consideration in the case are whether the provisions of section 5(1), sections 5(4), 6, 7 and 8 or any parts thereof contravene the guarantee of equal protection of the laws and of the equality before the law, or whether the impugned provisions of the Act are based on a valid classification which is rational in view of the objects of the Act. A further point is whether section 6(5) of the Act offends against article 20 (3) of the Constitution.

Mr. P. R. Das for the petitioner attacked the provisions of section 5(1) of the Act on a two-fold ground: (1) That the section was not based on any valid classification; the word "substantial" being vague and uncertain and having no fixed meaning, could furnish no basis for any classification at all; (2) That the Central Government was entitled by the provisions of the section to discriminate between one person and another in the same class and it was authorized to pick and choose the cases of persons who fell within the group of those who had substantially evaded taxation. It could, if it chose, send the case of one person to the Commission and show favoritism to another person, by not sending his case to the Commission though both of these persons be within the group of those who have evaded the payment of tax to a substantial extent.

As regards sub-section (4)- of section 5, the learned counsel contended that this section had no independent existence and was bound to fall with subsection (1) Of section 5, if his contention regarding the invalidity of that section prevailed. In the alternative, he I contended that assuming that sub-section (1) was valid even then sub- section (4) had to be declared void because it gave arbitrary power to the Commission to pick and choose and secondly because the clause was highly discriminatory in character inasmuch as an evasion, whether substantial or insubstantial, came within its ambit as well as within the ambit of section 34 of the Indian Income-tax Act. The learned Solicitor-General combated all these arguments and contended that the Act was based on a broad and rational classification, that it only dealt with a group of persons who had evaded income-tax from the, beginning of the war, 1st January, 1939, to the period ending with 1st September, 1948, as a consequence of war controls resulting in black-marketing activities and huge profits. In other words, it was said that the Act only dealt with that group of persons who came within the class of

war-profiteers. This was a class by itself and needed special treatment and therefore the law did not offend against the equal protection of the laws clause of the Constitution. It was suggested that persons coming under sub-section (4) of section 5 also belonged to the same class and therefore on the same grounds that section also could not be declared void. It was further said that there was no substantial difference in the procedure prescribed under section 34 of the Indian Income-tax Act and the impugned Act and that in any case the procedure prescribed by the Act was a good substitute for that prescribed by the Indian Income-tax Act.

In our judgment, it is not necessary in this case to deal with all the contentions raised by Mr. P. R. Das and combated by the learned Solicitor-General. It will be sufficient, for the decision of this case to examine the respective contentions raised about the validity of sub-section (4) of section 5 of the Act because the case of the petitioner was referred to the Commission under the provisions of this section and was not referred to the Commission by the Central Government under the provisions of section 5(1) and that being so, an enquiry into the validity of that section is really outside the scope of the present case. On the assumption therefore that section 5(1) of the Act is based on a valid classification and deals with a group of persons who came within the class of war-profiteers which required special treatment and that the classification is rational and that reasonable grounds existed for making distinction between those who fell within that class and others who did not come within it, but without in any way deciding or even expressing any opinion on that question, we proceed to examine the question whether sub-section (4) of section 5 under which proceedings had been initiated against the petitioner offends against the guarantee of equal protection of the laws given in article 14 of the Constitution.

The first question that requires consideration is whether sub-section (4) of section 5 deals with the same class of persons as are said to have been grouped together in subsection (1) of section 5 as persons who to a substantial extent evaded payment of taxation on income: in other words, does sub-section (4) of section 5 confer on the Commission the power merely to add to the number of persons included in section 5(1) by, the Central Government or does it confer larger power on the Commission. On the phraseology employed in the sub-section it is difficult to read therein the limitations contained in sub-section (1) of section 5 as contended for by the learned Solicitor-General. Sub-section (4) which has been set out above in clear and unambiguous terms provided that where the Commission "has reason to believe that some person other than the person whose case is being investigated has evaded payment of taxation on income..... it may make a report to the Central Government." It does not repeat the phraseology used in section 5(1) that some person other than the person whose case is being investigated "have to a substantial extent evaded payment of taxation on income." On no principle of construction of statutes can the words to a "substantial extent" be read in sub-clause (a) of section 5(4). On a plain reading of the section it is clear that the subsection is not limited only to persons who made extraordinary profits and to a substantial extent evaded payment of taxation on income, but applies to all persons who may have evaded payment of taxation on income, irrespective of whether the evaded profits are substantial or insubstantial. In other respects also the phraseology of the section is different from that employed in sub-section (1) of section 5. Sub-section (1) of section 5 provided that where the Central Government "has prima facie reasons for believing that a person has to a substantial extent evaded payment of taxation on income", while clause (a) of section 5(4) says that if the Commission "has reason to

believe that some person other than the person whose case is being investigated has evaded payment of taxation on income". The prima facie belief of the Central Government is substituted by the expression "The Commission has reason to believe". The scope of the section is thus different from the scope of section 5(1) of the Act, both in its extent and range. It is not necessarily limited to profits made within any particular period and brings within its range all persons, whether traders, businessmen, professional people, whoever they may be, who may have at any time evaded payment of taxation on income for whatever cause.

That being the true scope or construction of subsection (4), it obviously deals with the same class of persons who fall within the ambit of section 34 of the Indian Income-tax Act and are dealt with in subsection (1) of that section and whose income can be caught by proceeding under that section. Assessee who have failed to disclose fully and truly all material facts necessary for the assessment under section 34 can be equated with persons who are discovered in the course of the investigation conducted under section 5(1) to have evaded payment of income-tax on their incomes. The result is that some of these persons can be dealt with under the provisions of Act XXX of 1947, at the choice of the Commission, though they could also be proceeded with under the provisions of section 34 of the Indian Income-tax Act. It is not possible to hold that all such persons who evade payment of income-tax and do not truly disclose all particulars or material facts necessary for their assessment and against whom a report is made under sub-section (4) of section 5 of the impugned Act by themselves form a class distinct from those who evade payment of income-tax and come within the ambit of section 34 of the Indian Income-tax Act. It is well settled that in its application to legal proceedings article 14 assures to everyone the same rules of evidence and modes of procedure; in other words, the same rule must exist for all in similar circumstances. It is also well settled that this principle does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstance, in the same position. The State can by classification determine who should be regarded as a class for purposes of legislation and in relation to a law enacted on a particular subject, but the classification permissible must be based on some real and substantial distinction bearing a just and reasonable relation to the objects sought to be attained and cannot be made arbitrarily and without any substantial basis. Classification means segregation in classes which have a systematic relation, usually found in common properties and characteristics. There is nothing uncommon either in properties or in characteristics between persons who are discovered as evaders of income-tax during an investigation conducted under section 5(1) and those who are discovered by the Income-tax Officer to have evaded payment of income-tax. Both these kinds of persons have common properties and have common characteristics and therefore require equal treatment. We thus hold that both section 34 of the Indian Income-tax Act and sub-section (4) of section 5 of the impugned Act deal with all persons who have similar characteristics and similar properties, the common characteristics being that they are persons who have not truly disclosed their income and have evaded payment of taxation on income.

The next question that requires determination is whether the procedure prescribed by Act XXX of 1947 for discovering the concealed profits of those who have evaded payment of taxation on their income is substantially different and prejudicial to the assessee than the procedure prescribed in the Indian Income-tax Act by section 34. The learned Solicitor-General contended that the procedure prescribed by the impugned Act was a fair and good substitute for the procedure

prescribed by the Indian Income-tax Act and that there was really no substantial difference between the two procedures. He urged that justice could be fully done to those persons by following the new procedure and as a matter of fact, it would be more truly done by following the procedure under the impugned Act than following the procedure under the Indian Income-tax Act. This argument, in our opinion, begs the question to be decided in all such cases. It is clear that if persons dealt with by the impugned Act are deprived of the substantial and valuable privileges which they would otherwise have if they were dealt with under the Indian Income-tax Act, in that situation it is no defence to say that the discriminatory procedure also advances the course of justice. The matter has to be judged from the point of view of the ordinary reasonable man and not from the point of view of the Government. The ordinary reasonable man would say, when the stakes are heavy and serious charge of evasion of income-tax are made against, him, why one person similarly placed should have the advantage substantially of the procedure prescribed by the Indian Income-tax Act, while another person similarly situated be deprived of it. It is from this aspect that the application of article 14 to the facts of this case has to be considered.

The next question for consideration is whether the procedure prescribed by the impugned Act in regard to persons similarly situate with those who are proceeded with under section 34, is substantially different than under the Act, and operates to the prejudice of those persons. So far as we can see these assesseees have been given discriminatory treatment even from those whose cases are referred to under section 5(1) of the Act to the Commission inasmuch as in the case of persons whose cases are referred to under section 5(1) of the Act it is the prima facie, belief of the Government that enables the reference to be made to the Commission and the Commission has after investigation to form an opinion; while in the case of persons coming within the ambit of sub-section (4) of section 5 the Commission itself finds and gathers reason to believe that, these persons have evaded income-tax and on its report the Government is bound to refer their cases to the same Commission who has, already arrived at the prima facie conclusion that they have evaded payment of income-tax. The investigator and the judge in this situation are rolled into one. That is not so in cases coming under section 5(1). Apart from this circumstance, there are substantial differences between the two procedures, inter alia, in the following matters :-

1. Under the provisions of section 8 of the impugned Act, the findings of fact given by the Commission as to factum and extent of the evasion are final and conclusive and thus the persons against whom proceedings are taken under section 5(4) are deprived of the rights of appeal, second appeal and revision conferred by sections 31, 32 and 33 of the Indian Income-tax Act on assesseees whose cases are dealt with under the procedure of section 34 of the Indian. Income-tax Act.

A person who has evaded payment of income-tax and is proceeded with under section 34 and is held to have escaped income-tax has a right of appeal to the Appellate Assistant Commissioner of Income-tax and can challenge all the findings of fact given by the Income-tax Officer. If he does not get relief from the Appellate Assistant Commissioner, he is entitled to go before the Appellate Tribunal under section 33 and can challenge all the findings of fact given by the Income-tax Officer. On the other hand, a person dealt with under section 5(4) of the impugned Act has no such right. The learned Solicitor-General contended that the constitution of the Commission was such that it

was a good substitute for the rights of appeal, second appeal and revision conferred by the Income-tax Act inasmuch as the Commission is comprised of a High Court Judge and two other responsible persons and these sitting together were as good a tribunal as the totality of persons comprising the Income-tax Officer, Appellate Assistant Commissioner and the Appellate Tribunal. In our opinion, the constitution of the Commission by itself cannot be held to be a sufficient safeguard and a good substitute for the rights of appeal and second appeal and revision given by the Indian Income-tax Act and there can thus be no doubt that the procedure prescribed by the impugned Act deprives a person who is dealt with under that Act of these valuable rights of appeal, second appeal and revision to challenge questions of fact decided by the Judge of first instance. There is thus a material and substantial-difference between the two procedures, one prescribed by the impugned Act and the other prescribed by the Indian Income-tax Act.

2. When an assessment on escaped or evaded income is made under the provisions of section 34 of the Indian Income-tax Act, all the provisions for arriving *at the assessment provided under section 23(3) come into operation and the assessment has to be made on all relevant materials and on evidence and the assessee ordinarily has the fullest right to inspect the record and all documents and materials that are to be used against him. Under the provisions of section 37 of the Indian Income-tax Act the proceedings before the Income-tax Officer are judicial proceedings and all the incidents of such judicial proceedings have -to be observed before the result is arrived at. In other words, the assessee would have a right to inspect the record and all relevant documents before he is called upon to lead evidence in rebuttal. This right has not been taken away by any express provisions of the Income-tax Act but the impugned Act contains a mandate in sub-section (4) of section 7 to the effect that "no person shall 'be entitled to inspect, call for, or obtain copies of, any documents, statement or papers or materials furnished to, obtained by or produced before the Commission or any authorized official in. any proceedings under this Act." There is a proviso to sub-section (4) which says that for the purpose of enabling the person whose case or points in whose case is or are being investigated to rebut any evidence brought on the record against him, he shall, on application made in this behalf and on payment of such fees as may be prescribed by rules, be furnished with certified copies of documents, statements, papers and materials brought on the record by the Commission. This little, mercy shown to the person whose case is being investigated by the Commission is no substitute for the fullest right of inspection which under ordinary law and the Code of Civil Procedure and in a judicial proceeding a person would have in order to meet the case made against him. He is entitled only to get copies of that portion of the materials which is brought on the record and which is going to be used against him and it is clear that portions of the material which are in his favour and which have not been brought on the record may not be available to him at all. He is not even entitled to see all the books of account which may have been impounded under the Act and taken possession of by the Commission. It may well happen that there are entries in those books which contain the rebuttal evidence, but the assessee is not entitled to have their copies. The assessee is not even entitled to see his own books which are in the possession of the Commission and take copies of those entries which are favourable to him and which would completely demolish the case made against the assessee by the Commission. The procedure thus prescribed in this matter by the impugned Act is substantially prejudicial to the assessee than the procedure prescribed under the Indian Income-tax Act. It was not disputed by the learned Solicitor-General that the procedure prescribed by the impugned Act in sections 6 and 7 was more

drastic than the procedure prescribed in sections 37 and 38 of the Indian Income-tax Act. Again, so far as the procedure for reference under subsection (4) of section, 5 is concerned, it is also to a certain extent prejudicial to the assessee. There is no doubt that there is in this matter in the first stages some similarity in the procedure to be followed for catching evaded income both under section 34 of the Indian Income-tax Act and under the provisions of subsection (4) of section 5 of the impugned Act; but the overall picture is that though under the Indian income-tax Act the same officer who first arrives at a tentative conclusion hears and decides the case, his decision is not final but is subject to appeal, while under the provisions of sub-section (4) of section 5 the decision of the Commission tentatively arrived at in the absence of the assessee becomes final when taken in his presence, and that makes all the difference between the two procedures. If there was a provision for reviewing the conclusions of the Investigation Commission when acting both as investigators and judges, there might not have been such substantial discrimination in the two procedures as would bring the case within article 14; but as pointed out above, there is no provision of that kind in the impugned Act.

It may also be pointed out that under the provisions of section 34 investigation into escaped income or evaded income is limited to a maximum period of eight years, while under the provisions of sub-section (4) of, section 5 it is not limited to any period and this certainly operates to the detriment of those dealt with under sub-section (4) of section 5 of the impugned Act, and those dealt with under section 34 of the Indian Income-tax Act.

For the reasons given above we are of the opinion that sub-section (4) of section 5 and the procedure prescribed by the impugned Act in so far as affects the persons proceeded against under that sub-section being a piece of discriminatory legislation offends against the provisions of article 14 of the Constitution and is thus void and unenforceable. In reaching this decision we refrain from expressing any opinion, as above pointed out, on the validity of section 5(1) of the Act or on the question whether section 6(5) of the impugned Act offends against the provisions of article 20 sub-clause (3) of the Constitution. We accordingly direct that an appropriate writ be issued against the Investigation Commission prohibiting it from taking any proceedings under the provisions of the impugned Act against the petitioner. The petitioner will have his costs of these proceedings.

Writ issued,