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mentioned and, as before, a second order setting out the purpose, housing a person without accommodation, was made in August, 1951. For the reasons already given, we hold that there was a public purpose and that the orders here were valid.

The only other question, namely whether a *mandamus* can issue now, becomes unnecessary. Civil Appeals Nos. 145 and 147 of 1952 are allowed and the petitions in these two cases will be dismissed but here also there will be no order about costs throughout.

Civil Appeal No. 146 of 1952 will be dismissed because of the undertaking given by the learned Attorney-General, and the order of the High Court will stand. In view of this we need not decide whether a *mandamus* can or should have been issued. As we have said, this appeal will be dismissed but there will be no order about costs throughout.

Appeal dismissed.

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October 21.

SHREE MEENAKSHI MILLS LTD., MADURAI

v.

SRI A. V. VISVANATHA SASTRI AND ANOTHER.

(With Connected Petitions.)

[MEHR CHAND MAHAJAN C.J., S. R. DAS, GHULAM HASAN, BHAGWATI and VENKATARAMA AYYAR JJ.]

Constitution of India, Art. 14—Taxation on Income (Investigation Commission) Act, 1947 (XXX *of 1947), s. 5(1)—Whether* ultra vires *the Constitution—S. 5(1) of Act XXX of 1947 and Indian Income-tax Act (XI of 1922), s. 34 as amended by Indian Income-tax (Amendment) Act, 1954—Whether cover the same field—Discriminatory procedure before the date of Constitution and after the date of Constitution—Validity thereof.*

Parliament by amending s. 34 of the Indian Income-tax Act, 1922, by passing the Indian Income-tax (Amendment) Act (XXXIII of 1954) has now provided that cases of those very persons who originally fell within the ambit of s. 5(1) of Taxation on Income (Investigation Commission) Act, 1947 (XXX of 1947) and who, it

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was alleged, formed a distinct class, can be dealt with under the amended s. 34 and under the procedure provided in the Indian Income-tax Act. Both categories of persons, namely, those who came within the scope of s. 5(1) as well as those who came within the ambit of s. 34, now form one class.

Held, that after the coming into force of the Indian Income-tax (Amendment) Act, 1954 (XXXIII of 1954) which operates on the same field as s. 5(1) of Act XXX of 1947 the provisions of s. 5(1) of Taxation on Income (Investigation Commission) Act, 1947 (XXX of 1947), assuming they were based on a rational classification, have become void and unenforceable as being discriminatory in character.

Article 14 of the Constitution not only guarantees equal protection as regards substantive laws but procedural laws as well.

When an Act is valid in its entirety before the date of the Constitution the part of the proceedings regulated by the special procedure and taken during the pre-Constitution period cannot be questioned however discriminatory it may have been but the discriminatory procedure after the coming into force of the Constitution cannot be continued.

Suraj Mal Mohta v. *Sri A. V. Visvanatha Sastri* (A.I.R. 1954 S.C. 545), *Keshava Madhava Menon* v. *The State of Bombay* ([1951] S.C.R. 228), *Lachmandas Kewalram Ahuja and Another* v. *The State of Bombay* ([1952] S.C.R. 710), *Syed Qasin Razvi* v. *State of Hyderabad* ([1953] S.C.R. 589) and *Habeeb Mohammad* v. *State of Hyderabad* ([1953] S.C.R. 661) referred to.

ORIGINAL JURISDICTION: Petitions Nos. 330 to 333 of 1954.

Under article 132 of the Constitution of India for the enforcement of Fundamental Rights.

P. R. Das (*B. Sen, Balaprasad Singh* and *Ganpat Rai,* with him) for the petitioner.

M. C. Setalvad, Attorney-General for India, and *C. K. Daphtary, Solicitor-General for India* (*G. N. Joshi, Porus A. Mehta* and *P. G. Gokhale,* with them) for the respondents.

1954. October 21. The Judgment of the Court was delivered by

MEHR CHAND MAHAJAN C.J.—Writ Petitions Nos. 330 to 333 of 1954, though presented by different persons, raise identical questions for consideration and decision and can be conveniently disposed of by one judgment.

In April, 1947, Taxation on Income (Investigation Commission) Act, 1947 (Act XXX of 1947), was passed by the Central Legislature. By section 3 of the Act the Central Government was empowered to constitute an Income-tax Investigation Commission for investigating matters relating to taxation on income with particular reference to the question whether the existing law was adequate for preventing the evasion thereof. Section 5(1) of the Act further empowered the Central Government to make a reference by the 30th June, 1948, to the Commission for investigation and report of any cases wherein it had *prima facie* reason for believing that a person had, to a *substantial extent,* evaded payment of taxation on income. The date for making the reference was subsequently extended to 1st of September, 1948. By an Amendment Act passed in 1948 it was provided that the life of the Commission, in the first instance, would be up to the 31st of March, 1950, but that it could be further extended to 31 of March, 1951. By subsequent legislations the life of the Commission has been extended to December, 1955.

The procedure prescribed by the Act for making the investigation under its provisions is of a summary and drastic nature. It constitutes a departure from the ordinary law of procedure and in certain important aspects is detrimental to the persons subjected to it and as such is discriminatory. The substantial differences in the normal procedure of the Income-tax Act for catching escaped income and in the procedure prescribed by Act XXX of 1947, were fully discussed by this Court in *Suraj Mal Mohta* v. *Sri A. V. Visvanatha Sastri* (1) and require no further discussion here.

Sub-section (4) of section 5 of the Act provided that the Central Government could refer to the Commission cases of persons other than those whose cases had been referred to it by the 1st of September, 1948, under section 5(1) if, after investigation, the Commission made a report to that effect. Thus, two categories of cases under Act XXX of 1947 could be referred to the investigation Commission by the Central Government,

(1) [1955] 1 S.C.R. 448.

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namely, those falling under section 5(1) and those falling under section 5(4) of the Act.

In accordance with the provisions of section 5(1) of the Act the Central Government on the 31st of December, 1947, referred to the Investigation Commission the cases of the four petitioners for investigation and report. It is alleged by each of these petitioners that no action was taken by the Commission on these references during the original period of its life or even during the extended period provided by the Amendment Act of 1948. If a report had been submitted in these cases during the original period of the life of the Commission, the problems that now arise would not have arisen, because the Act being a pre-Constitution Act was good law before the Constitution and acts done thereunder before the commencement of the Constitution could not be impugned on the basis of the provisions of Part III of the Constitution which came into force on the 26th January, 1950. Those provisions had no retrospective operation and could not affect the validity of this law or the completed proceedings taken thereunder. Be that as it may, it appears that nothing happened in these cases till January, 1952, when it is alleged an official of the Commission summoned the petitioners for a preliminary discussion which took place in February, 1952, and since then the petitioners have from time to time been called upon to produce a number of statements and books of account, but the investigation has not proceeded beyond the preliminary stages and the Commission itself has admittedly not commenced any proceedings in these cases, though a period of nearly seven years has elapsed since the references were made, with the result that subsequent events have intervened and, in our opinion, have made these references to the Commission abortive.

As already stated, the Constitution of India came into force on the 26th January, 1950, and the pre-Constitution laws had then to stand the test for their validity on the provisions of Part III of the Constitution. Article 14 of this Part guarantees to all persons the right of equality before the law and equal protection of the laws within the territory of India. This article not

only guarantees equal protection as regards substantive laws but procedural laws also come within its ambit. The implication of the article is that all litigants similarly situated are entitled to avail themselves of the same procedural rights for relief, and for defence with like protection and without discrimination. The procedural provisions of Act XXX of 1947 had therefore to stand the challenge of article 14 and could only be upheld provided they withstoood that challenge. The question was canvassed in this Court in April, 1954, in *Suraj Mal Mohta* v. *Sri A. V. Visvanatha Sastri* (*supra*). What happened in that case was that the Investigation Commission, while dealing with the case of another assessee referred to it under section 5(1) of the Act, reported to the Central Government that Suraj Mal Mohta and other members of the family had evaded income-tax and their cases should be referred to it under the provisions of sub-section (4) of section 5. The reference was accordingly made with the result that Suraj Mal Mohta applied to this Court under article 32 for an appropriate writ restraining the Commission from taking any action against him under the provisions of Act XXX of 1947. It was there contended that the provisions of sections 5(1), 5(4), 6, 7 and 8 of the Act had become void after the coming into force of the Constitution, being discriminatory in character, and that these provisions contravened the guarantee of article 14 of the Constitution. This Court upheld this contention and granted an appropriate writ to Suraj Mal Mohta. It there expressed the opinion that sub-section (4) of section 5, on its plain reading, was not limited to cases of persons who, to a substantial extent, had evaded taxation but that it dealt with all those persons whose cases fell within the ambit of section 34 of the Indian Income-tax Act, and that being so, there was no justification for discriminating them in matters of procedure from those dealt with under the Indian Income-tax Act, and thus sub-section (4) of section 5 was hit by article 14 of the Constitution and was void and unenforceable. The result of this decision was that the Commission was restrained from dealing with Mohta's case. The provisions of section 5(1)

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of the Act were also attacked in that case as contravening article 14 of the Constitution, but the Court refrained from expressing any opinion about their constitutionality as that question had no relevancy then. The consequence of that decision was that a certain provision of Act XXX of 1947 was declared void and unenforceable to the extent of its repugnancy to the provisions of Part III of the Constitution under article 13(1) thereof. Its validity however during the pre-constitution period was beyond question.

What this Court said in its judgment in *Suraj Mal Mohta* v. *Sri A. V. Visvanatha Sastri* (*supra*) has perhaps resulted in the filing of these petitions which were presented to this Court on the 16th of July, 1954, after the decision in that case had been pronounced. In the petitions, as originally drafted, the provisions of section 5(1) of Act XXX of 1947 were impugned on the ground that they contravened the guarantee of equal protection of the laws enacted in article 14 of the Constitution and for that reason the Commission had no jurisdiction to deal with the cases of the petitioners by applying the discriminatory and drastic procedure of the impugned Act. It was alleged that the petitioners belonged to the same class of persons as were dealt with under the ordinary law enacted in section 34 of the Indian Income-tax Act. Before these petitions could come to a hearing and a day after they were presented to this Court, the Indian Income-tax (Amendment) Ordinance VIII of 1954 was promulgated by the President and this was subsequently made into an Act on the 25th of September, 1954. The Indian Income-tax (Amendment) Act, XXXIII of 1954, though assented to by the President on the 25th of September, 1954, came into force with effect from the 17th of July, 1954. The provisions of this Act furnished an additional ground of attack to the petitioners on the continuance of proceedings by the Commission in these cases under the provisions of Act XXX of 1947. An application was therefore made seeking permission to urge additional grounds. This was not opposed by the learned Attorney-General and was allowed. In the additional grounds it was urged that the relevant

sections of Act XXX of 1947, which affected the petitioners, had been impliedly repealed by the amended Act of 1954 and ceased to have any legal force and that the Commission could no longer proceed under those provisions against the petitioners. It was further contended that the amended section 34 of the Indian Income-tax Act was comprehensive in its scope, and all persons that were dealt with under section 5(1) of Act XXX of 1947 had been brought within its ambit, and that being so, there was no basis left for giving them discriminatory or special treatment different from those similarly situated, and who were to be dealt with under section 34 of the Indian Income-tax Act as amended. It was said that assuming but without admitting that section 5(1) of Act XXX of 1947 was based on a rational classification and was not hit by article 14 of the Constitution because of that circumstance, it had now, because of the amendment in section 34 of the Income-tax Act, become void, as the classification which saved it from the mischief of article 14 if at all, had become ineffective, its distinctive characteristics having disappeared, and that the persons falling within the class defined in section 5(1) now belong to the same class as is dealt with by section 34 as amended.

Two questions were thus canvassed before us :

(1) Whether section 5(1) of Act XXX of 1947 infringes article 14 of the Constitution inasmuch as it is not based on a rational classification ?

(2) Whether, after the coming into force of the Indian Income-tax (Amendment) Act, 1954, which operates on the same field as section 5(1) of Act XXX of 1947, the provisions of section 5(1) of Act XXX of 1947, assuming they were based on a rational classification, have not become void and unenforceable, as being discriminatory in character ?

In our opinion, for the purpose of deciding these petitions, it is not necessary to express any opinion on the first question because we think the second contention is well founded and is sufficient to determine the case in favour of the petitioners.

The provisions of section 5(1) of Act XXX of 1947 could only be supported, if at all for a differential

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treatment of persons dealt with in that section in matters of procedure, on the ground that these persons constituted a separate class, and the classification was rational. Parliament has, however, by amending section 34 of the Indian Income-tax Act, now provided that cases of those very persons who originally fell within the ambit of section 5(1) of Act XXX of 1947, and who it was alleged formed a distinct class, can be dealt with under the amended section 34 and under the procedure provided in the Income-tax Act. Both categories of persons, namely, those who came within the scope of section 5(1) as well as those who came within the ambit of section 34, now form one class. In other words, substantial tax-dodgers or war profiteers who were alleged to have formed a definite class according to the contention of the learned Attorney-General under section 5(1), and whose cases needed special treatment at the hands of the Investigation Commission, now clearly fall within the ambit of amended section 34 of the Indian Income-tax Act. That being so, the only basis for giving them differential treatment, namely, that they formed a distinct class by themselves, has completely disappeared, with the result that continuance of discriminatory treatment to them comes within the mischief of article 14 of the Constitution and has thus to be relieved against. All these persons can now well ask the question, why are we now being dealt with by the discriminatory and drastic procedure of Act XXX of 1947 when those similarly situated as ourselves can be dealt with by the Income-tax Officer under the amended provisions of section 34 of the Act. Even if we once bore a distinctive label that distinction no longer subsists and the label now borne by us is the same as is borne by persons who can be dealt with under section 34 of the Act as amended ; in other words, there is nothing uncommon either in properties or in characteristics between us and those evaders of income-tax who are to be discovered by the Income-tax Officer under the provisions of amended section 34. In our judgment, no satisfactory answer can be returned to this query because the field on which amended section 34 operates

now includes the strip of territory which previously was occupied by section 5(1) of Act XXX of 1947 and two substantially different laws of procedure, one being more prejudicial to the assessee than the other, cannot be allowed to operate on the same field in view of the guarantee of article 14 of the Constitution.

The learned Attorney-General attempted to combat this contention on a two-fold ground: (1) That the class of persons dealt with under section 5(1) of Act XXX of 1947 was not only the class of substantial tax-dodgers but it was a class of persons whose cases the Central Government, by 1st of September, 1948, had referred to the Commission and that class had thus become determined finally on that date, and that that class of persons could be dealt with by the Investigation Commission under the drastic procedure of Act XXX of 1947, while section 34 of the Indian Income-tax Act as amended empowered the Income-tax Officer to deal with cases other than those whose cases had been referred under section 5(1) to the Investigation Commission: (2) That in any case the proceedings having started before the Commission in pursuance of the reference under section 5(1) of Act XXX of 1947 those proceedings cannot be affected by the amendment, it having no retrospective operation.

Both these contentions, in our opinion, are not well founded.

As regards the first contention canvassed by the learned Attorney-General it seems to us that it cannot stand scrutiny. The class of persons alleged to have been dealt with by section 5(1) of the impugned Act was comprised of those unsocial elements in society who during recent years prior to the passing of the Act had made substantial profits and had evaded payment of tax on those profits and whose cases were referred to the Investigation Commission before 1st September, 1948. Assuming that evasion of tax to a substantial amount could form a basis of classification at all for imposing a drastic procedure on that class, the inclusion of only such of them whose cases had been referred before 1st September, 1948, into a class for being dealt with by the drastic procedure, leaving other tax evaders

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to be dealt with under the ordinary law will be a clear discrimination for the reference of the case within a particular time has no special or rational nexus with the necessity for drastic procedure. Further it seems that this very class of persons is now included within the ambit of the amended section 34 of Act XXXIII of 1954. The draftsman of this section has apparently attempted to remedy whatever defects in the classification made under section 5(1) of Act XXX of 1947 had been pointed out during the discussion in *Suraj Mal Mohta's* case in this Court. The preamble of the Act states that the Act is intended to provide for assessment or re-assessment of persons who *to a substantial extent had evaded payment of tax during a certain period* and for matters connected therewith. The language employed here bears close likeness to that employed in section 5(1) of the impugned Act. The Act has inserted the following sub-section in section 34 of the Indian Income-tax Act :

"(1-A) If, in the case of any assessee, the Income-tax Officer has reason to believe—

(i) that income, profits or gains chargeable to income-tax have escaped assessment for any year in respect of which the relevant previous year falls wholly or partly within the period beginning on the 1st day of September, 1939, and ending on the 31st day of March, 1946 ; and

(ii) that the income, profits or gain which have so escaped assessment for any such year or years amount or are likely to amount to one lakh of rupees or more ; he may, notwithstanding that the period of eight years or, as the case may be, four years specified in sub-section (1) has expired in respect thereof, serve on the assessee.....a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 22, and may proceed to assess or reassess the income, profits or gains of the assessee for all or any of the years referred to in clause (1) and thereupon the provisions of this Act.....shall, so far as may be, apply accordingly....."

It was argued in *Mohta's* case as well as in these petitions that the classification made in section 5(1) of

the impugned Act was bad because the word "substantial" used therein was a word which had no fixed meaning and was an unsatisfactory medium for carrying the idea of some ascertainable proportion of the whole, and thus the classification being vague and uncertain, did not save the enactment from the mischief of article 14 of the Constitution. This alleged defect stands cured in the amended section 34 inasmuch as the Legislature has clearly indicated in the statute what it means when it says that the object of the Act is to catch persons who to a substantial extent had evaded payment of tax, in other words, what was seemingly indefinite within the meaning of the word "substantial" has been made definite and clear by enacting that no evasion below a sum of one lakh is within the meaning of that expression. Again, the classification of section 5(1) was criticized on the ground that it did not necessarily deal with persons who during the period of war had made huge profits and evaded payment of tax on them. The amendment made in section 34 has remedied this defect also. The amended section clearly states that the amended section will operate on income made between the 1st September, 1939, and the 31st March, 1946, and tax on which has been evaded. It is thus clear that the new sub-section inserted in section 34 by the provisions of Act XXXIII of 1954 is intended to deal with the class of persons who were said to have been classified for special treatment by section 5(1) of Act XXX of 1947. The learned Attorney-General frankly conceded that to a certain extent the two sections overlapped, but he urged that the overlapping was not complete and that those remained still outside it whose cases had already been referred to the Investigation Commission. We are unable to uphold this contention in view of the clear language employed in the amended Act and this contention is therefore negatived.

The second contention raised by the learned Attorney-General is, in our opinion, concluded by a number of earlier decisions of this Court wherein it has been held that when an Act is valid in its entirety before the date of the Constitution, the part of the proceedings regulated by the special procedure and

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taken during pre-Constitution period cannot be questioned however discriminatory it may have been, but that if the discriminatory procedure is continued after the date of the Constitution, then a person prejudicially affected by it can legitimately ask why he is now being differently treated from others similarly situate—vide *Kesava Madhava Menon* v. *The State of Bombay*(1), and *Lachmandas Kewalram Ahuja and Another* v. *The State of Bombay*(2). The same propositions were re-stated by this Court in *Syed Quasim Razvi* v. *State of Hyderabad*(3), and in *Habeeb Mohammad* v. *State of Hyderabad*(4). In the cases of these petitioners, as already pointed out, the proceedings taken by the Investigation Commission against them under the discriminatory procedure of the impugned Act against them have not been completed and are pending and that being so, no justification remains for continuing these proceedings against them under the procedure of the impugned Act when other persons of their class and having the same common characteristics can be dealt with by the Income-tax Officer under the provisions of the amended Act and the procedure of the ordinary law of the land.

For the reasons given above we are of the opinion that assuming the provisions of section 5(1) of Act XXX of 1947 could be saved from the mischief of article 14 of the Constitution on the basis of a valid classification, that defence is no longer available in support of it after the introduction of the new sub-section in section 34 of the Income-tax Act, which sub-section is intended to deal with the same class of persons dealt with by section 5(1) of the impugned Act. The result is that proceedings before the Investigation Commission can no longer be continued under the procedure prescribed by the impugned Act. We therefore direct that an appropriate writ be issued against the Commission prohibiting it from proceeding further with the cases of these petitioners under the provisions of Act XXX of 1947. In the peculiar circumstances of this case we make no order as to costs in these petitions.

Writ issued.

(1) [1951] S.C.R. 228.
(2) [1952] S.C.R. 710.
(3) [1953] S.C.R. 589
(4) [1953].R. 661.