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obeyed Contravention of its provisions are unnecessary and neither the prosecution nor the Courts of trial should ignore its provisions in the hope that they might find shelter under sections 535 and 537 of the Code. Where the contravention is substantial and a retrial becomes necessary, public time is wasted and the accused is put to unnecessary harassment and expense.

I agree that the appellant's conviction be altered from section 302 of the Indian Penal Code to 304 of the Indian Penal Code and that he be sentenced to five years' rigorous imprisonment.

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December 20.

A. THANGAL KUNJU MUSALIAR

v.

M. VENKITACHALAM POTTI AND ANOTHER

(with connected appeal)

[S. R. DAS, ACTING C.J, VIVIAN BOSE, BHAGWATI, JAGANNADHADAS and B. P. SINHA JJ.]

Constitution of India—Article 14—Travancore Taxation on Income (Investigation Commission) Act, 1124 (Act XIV of 1124), s. 5(1)—Whether ultra vires *the Constitution —Read along with s. 47(1) of Travancore Income-tax Act, 1121 (Act XXIII of 1121)—High Court—Jurisdiction—Article 226 of the Constitution—Writ Petition against authorised Official—Appointed under s. 6 of the Travancore Act (XIV of 1124)—Investigation Commission—Whether competent under the provisions of the Travancore Act XIV of 1124 to investigate cases not referred to it by Government.*

The petitioner—a native of Quilon within the Travancore State —had been assessed to income-tax for the years 1942 and 1943, the final orders in his assessment having been passed by the Chief Revenue authority of Travancore in December 1946 and November 1946 respectively. Travancore Taxation on Income (Investigation Commission) Act, 1124 (Act XIV of 1124) modelled on the Indian Act XXX of 1947 was passed by the Travancore Legislature, to provide for an investigation into matters relating to taxation on income. In July 1949, the United State of Travancore and Cochin was brought into existence as a result of integration between the two States. All existing laws of Travancore were to continue in force by virtue of Ordinance I of 1124 which was later enacted as Act VI of 1125. In November 1949 the Government of the United State of Travancore-

Cochin issued orders under s. 5(1) of the Travancore Act XIV of 1124 referring the cases of the petitioner for the years 1942 and 1943 (called Evasion Cases Nos. 1 & 2 of 1125) for investigation by the Travancore Income-Tax Investigation Commission. Before the Commission could make its report the Constitution of India came into force and the United State of Travancore-Cochin became a part of India (Part B State) and the Travancore Act XIV of 1124 was continued in force until altered, amended or repealed by a competent authority. In April 1950 Parliament passed Act XXXIII of 1950 whereby Taxation on Income (Investigation Commission) Act, (Act XXX of 1947) was extended to Travancore-Cochin and the law of Travancore corresponding to Act XXX of 1947 was to continue in force with certain modifications. In October 1951, a notification issued by the Indian Investigation Commission appointed Respondent No. 1 as an authorised official under s. 6 of Travancore Act XIV of 1124 read with Act XXXIII of 1950. Respondent No. 1 sent a copy of that notification to the petitioner on 21st November, 1951 for his information and further intimated to him that the investigation proposed to be conducted will not be confined to the years 1942 and 1943 but that it would be necessary for him to investigate the petitioner's income for the period from 1940 to the last completed assessment year.

The petitioner filed a writ petition in the Travancore High Court against Respondent No. 1 and Respondent No. 2 (Indian Income-Tax Investigation Commission) for a writ of prohibition or any other writ prohibiting the Respondents from holding an enquiry into the cases registered as Evasion Cases Nos. 1 & 2 of 1125 or from holding an investigation into the income of the petitioner from the year 1940 to the last completed assessment year. The Travancore High Court held that the Respondent No. 2 had all the powers that the Travancore Commission had under Travancore Act XIV of 1124 and no more and granted the writ prohibiting respondents from conducting an enquiry into years other than 1942 and 1943. Both the parties appealed to the Supreme Court against the order of the High Court. A preliminary objection to the jurisdiction of the High Court to entertain the writ petition was repeated in the Supreme Court by the Attorney-General.

Held, that the High Court had jurisdiction under Art. 226 of the Constitution to issue a writ against Respondent No. 1 because under the provisions of s. 6 of the Travancore Act XIV of 1124 the authorised official (Respondent No. 1) had considerable powers conferred upon him in the conduct of the investigation, and if he did anything as authorised official which was not authorised by law or was violative of the fundamental rights of the petitioner as in the present case he would be amenable to the jurisdiction of the High Court under Art. 226 of the Constitution.

Held, further that under the provisions of the Travancore Act XIV of 1124 the Commission had no authority to investigate any case *suo motu*. It could only investigate cases referred to it by

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Government. All that was done in the present case was that by two separate orders made under s. 5(1) of the Act the Government referred two cases of the petitioner for the two years 1942 and 1943 to the Commission. There was no other order under s. 5(1) at any time before 16th February 1950 and none could be made under that sub-section after that date. Therefore neither Respondent No. 2 nor Respondent No. 1 who had been appointed as authorised Official by Respondent No. 2 had jurisdiction to cover any period beyond the two specific years 1942 and 1943 and the notice dated 21st November 1951 issued by Respondent No. 1 to investigate the petitioner's income for the period from 1940 to the last completed assessment year was clearly illegal and without jurisdiction.

Held, also that s. 5(1) of the Travancore Act XIV of 1124 which is to be read in *juxta-position* with s. 47 of the Travancore Income-Tax Act, 1121 (XXIII of 1121) is not discriminatory and violative of the fundamental right guaranteed under Art. 14 of the Constitution.

Section 47(1) of the Travancore Act XXIII of 1121 was directed only against those persons concerning whom definite information came into the possession of the Income-tax Officer and in consequence of which the Income-tax Officer discovered that the income of those persons had escaped or been under-assessed or assesssed at too low a rate or had been the subject of excessive relief. The class of persons envisaged by s. 47(1) was a definite class about which there was definite information leading to discovery within 8 years or 4 years as the case may be of definite item or items of income which had escaped assessment. The action to be taken under Travancore Act XXIII of 1121 was not confined to escapement from assessment of income made during the war period (September 1939 to 1946). Action could be taken in respect of income which escaped assessment even before the war and also more than 8 years after the end of the war.

On the other hand under s. 5(1) of the Travancore Act XIV of 1124 the class of persons sought to be reached comprised only these persons about whom there was no definite information and no discovery of any definite item or items of income which escaped taxation but about whom the Government had only *prima facie* reason to believe that they had evaded payment of tax to a substantial amount. Further, action under s. 5(1) read with s. 8(2) of the Travancore Act XIV of 1124 was definitely limited to the evasion of payment of taxation on income made during the war period and therefore s. 5(1) of the Travancore Act XIV of 1124 was not discriminatory in comparison with s. 47(1) of the Travancore Act XXIII of 1121.

Election Commission, India v. *Saka Venkata Rao* ([1953] S.C.R. 1144), *K. S. Rashid & Son* v. *The Income-tax Investigation Commission, etc.* ([1954] S.C.R. 738), *Azmat Ullah* v. *Custodian, Evacuee Property, U.P., Lucknow* (A.I.R. 1955 All. 435), *Burhanpur*

National Textile Workers Union, Burhanpur v. *Labour Appellate Tribunal of India at Bombay and others* (A.I.R. 1955 Nag. 148), *Joginder Singh Waryam Singh* v. *Director, Rural Rehabilitation, Pepsu, Patiala and others* (A.I.R. 1955 Pepsu 91), *Chiranjit Lal Chowdhuri* v. *The Union of India* ([1950] S.C.R. 869), *Budhan Chowdhury and others* v. *The State of Bihar* ([1955] 1 S.C.R. 1045), *Suraj Mall Mohta & Co.* v. *A. V. Visvanatha Sastri and another* ([1955] 1 S.C.R. 448), *Shree Meenakshi Mills Ltd.* v. *Sri A. V. Visvanatha Sastri and Another* ([1955] 1 S.C.R. 787), *Aswini Kumar Ghose's case* ([1953] S.C.R. 1), *Subodh Gopal Bose's case* ([1954] S.C.R. 587, 628), *Kathi Raning Rawat* v. *The State of Saurashtra* ([1952] S.C.R. 435), *Palser* v. *Grinling* ([1948] A.C. 291) and *Kedar Nath Bajoria* v. *The State of West Bengal* [1954] S.C.R. 30), referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 21 and 22 of 1954.

Appeals under Article 133(1) (c) of the Constitution of India from the judgment and order dated the 18th September 1953 of the Travancore-Cochin High Court at Ernakulam in O. P. No. 41 of 1952.

M. K. Nambiar, (N. Palpu, Sri Narain Andley and *Rajinder Narain)* for the appellant in C. A. No. 21 of 1954 and respondent in C. A. No. 22 of 1954.

M. C. Setalvad, Attorney-General of India (G. N. Joshi), R. Ganapathy Iyer, Porus A. Mehta and *R. H. Dhebar)*, for the respondents in C. A. No. 21 of 1954 and appellants in C. A. No. 22 of 1954.

1955. December 20. The Judgment of the Court was delivered by

BHAGWATI J.—These two appeals with certificates under article 133 of the Constitution are directed against a judgment of the High Court of Travancore-Cochin in a writ petition filed by one A. Thangal Kunju Musaliar, hereinafter called the petitioner.

The petitioner is a native of Quilon within the Travancore State which was originally under the sovereignty of the Maharaja of Travancore. He is the Managing Director of Messrs. A. Thangal Kunju Musaliar & Sons Ltd., Quilon, and had been assessed to income-tax for the years 1942 and 1943 and the final orders in his assessment for the said years were

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passed by the Chief Revenue Authority of Travancore on the 6th December 1946 and 30th November 1946 respectively.

On the 7th March 1949, the Travancore Legislature passed Act XIV of 1124 (M.E.) modelled on our Act XXX of 1947, styled the Travancore Taxation on Income (Investigation Commission) Act 1124, to provide for an investigation into matters relating to taxation on income. Section 1(3) of the Act provided that it was to come into force on such date as the Travancore Government may by notification in the Government Gazette appoint. Under section 3, a Commission to be called the Income-tax Investigation Commission was to be constituted *inter alia* to investigation in accordance with the provisions of the Act cases referred to it under section 5 and report thereon to the Government. The Commission was to be appointed to act in the first instance up to the last day of Karkadakom 1125 (16-8-1950) but the Government was empowered to extend its appointment to any period up to the last day of Karkadakom 1126 (16-8-1951). Section 5(1) enacted that the Government might, at any time before the last day of Makaram 1125 (15-2-1950) refer to the Commission for investigation and report any case or points in a case in which the Government had *prima facie* reasons for belief that a person had to a substantial extent evaded payment of tax on income together with such material as might be available in support of such belief. Section 6 prescribed the powers of the Commission and *inter alia* provided for the appointment by the Commission of an authorised official to examine accounts or documents, interrogate persons or obtain statements from persons.

On the 1st July 1949, the Travancore State and the Cochin State integrated with each other and there was brought into existence the United State of Travancore and Cochin. By virtue of Ordinance I of 1124 promulgated on the same day, called the United State of Travancore and Cochin Administration and Application of Laws Ordinance, 1124 (Ordinance I was enacted later as Act VI of 1125),

all existing laws of Travancore were to continue in force till altered, amended or repealed by competent authority. The existing law of Travancore was defined to mean any law in force in the State of Travancore immediately prior to the 1st July 1949.

On the 26th July 1949, a notification was published in the Travancore-Cochin Government Gazette whereby, in exercise of the powers conferred by section 1(3) of the Travancore Taxation on Income Investigation Commission) Act XIV of 1124 as continued in force by the United State of Travancore and Cochine Administration & Application of Laws (Ordinance, 1124 (I of 1124), the Government appointed the 7th Karkadakom 1124 (22-7-1949) to be the date on which the said Act was to have come into force.

On the 26th November 1949 the Government of the United State of Travancore and Cochin issued orders under section 5(1) of the Travancore Act XIV of 1124 referring the cases of the petitioner for the years 1942 and 1943 for investigation by the Travancore Income-tax Investigation Commission. These orders had specific reference to the years 1942 and 1943 and the investigation to be made by the Commission was with reference to the alleged evasion of tax by the petitioner for those respective years. The cases were registered as Evasion Cases 1 and 2 of 1125.

On the 10th December 1949 the petitioner received from the Secretary of the Commission a notice in regard to the said cases. The relevant portion of the said notice stated:

"Whereas the Income-tax Investigation Commission having been informed that a substantial portion of your income for 1942 and 1943 has escaped assessment, has ordered investigation into the matter, you are hereby required to produce the following on or before 21-12-1949 before the Commission.

1. The account books (day books and ledgers) for the years 1942 and 1943.
2. ....
3. ....
4. ....

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5. ....
6. ....

Pursuant to this notice the petitioner produced the relevant books and the Commission duly completed its investigation under the terms of the Travancore Act XIV of 1124.

Before the Commission could, however, make its report, the Constitution of India came into force on the 26th January 1950 and the United State of Travancore and Cochin became a part of the territory of India, forming a Part 'B' State. Under article 372(1) of the Constitution, the Travancore Taxation on Income (Investigation Commission) Act, 1124 (Travancore Act XIV of 1124) was continued in force "until altered, amended or repealed by a competent authority".

An Indian States Finance Enquiry Committee had been appointed in 1948-49 and it had made its recommendations regarding the agreements to be entered into between the President of the Union and the Rajpramukhs in regard to financial arrangements. In accordance with the recommendations of the Committee, an agreement was entered into on the 25th February 1950 between the President of the Union and the Rajpramukh of Travancore-Cochin in regard to these matters and on the 31st March 1950 the Finance Act, 1950 (Act XXV of 1950) came into force and the Indian Income-tax Act, 1922 (XI of 1922) was extended to Travancore-Cochin.

On the 18th April 1950, the Opium and Revenue Laws (Extention of Application) Act, 1950, being Act XXXIII of 1950, was passed by Parliament extending to Travancore-Cochin Taxation on Income (Investigation Commission) Act, 1947 (XXX of 1947) and section 3 of that Act provided that the law of Travancore corresponding to the Taxation on Income (Investigation Commission) Act, 1947 (XXX of 1947) shall continue to remain in force with the following modifications, viz.,

(a) that all cases referred to or pending before the State Commission (by whatever name called) in respect of matters relating to taxation on income

other than agricultural income shall stand transferred to the Central Commission for disposal; and

(b) that the State law shall, so far as may be, apply to determine the procedure that may be followed and powers that may be exercised by the Central Commission in the disposal of cases transferred under clause (a).

The Travancore Commission had been appointed in the first instance to act up to the last day of Karkadakom 1125 (16-8-1950). Neither the Travancore Commission nor the Indian Commission to which the pending cases before the Travancore Commission were transferred as aforesaid made any report on these cases of the petitioner before the expiry of this period nor was any extension of the term of appointment of the Travancore Commission made up to the last day of Karkadakom 1126 (16-8-1951) as originally contemplated. On the 25th August 1951, therefore, the Opium and Revenue Laws (Extension of Application) Amendment Act, 1951, being Act XLIV of 1951, was passed amending Act XXXIII of 1950 whereby it was provided that in the place of clause (b) of section 3 of Act XXXIII of 1950, the following clause shall be substituted and shall be deemed always to have been substituted, viz., "in the disposal of cases transferred to the Central Commission the Commission shall have and exercise the same powers as it has and exercise in the investigation of cases referred to it under the Taxation on Income (Investigation Commission) Act, 1947 (XXX of 1947) and shall be entitled to act for same term as under sub-section (3) of section 4 of that Act" and it was furher provided that any decision given by the Chief Revenue Authority of Travancore or of Travancore-Cochin shall be deemed a decision of the Income-tax Authority for the purposes of sub-section (2) of section 8 of the Travancore Act XIV off 1124.

On the 18th October 1951, a notification was issued by the Indian Income-tax Investigation Commission appointing M. Venkitachalam Potty, Income-tax Officer on Special Duty, Trivandrum, as an

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authorised official under section 6 of the Travancore Taxation on Income (Investigation Commission) Act, 1124 read with Act XXXIII of 1950. The authorised official, hereinafter referred to as respondent 1, forwarded to the petitioner on the 21st November 1951 for his information a copy of that notification investing him with the powers of an authorised official and intimated that the investigation proposed to be conducted will no be confined to the years 1942 and 1943, the two years originally covered by Evasion Cases Nos. 1 and 2 of 1125 but that it would be necessary for him to investigate the petitioner's income for the period from 1940 to the last completed assessment year notwithstanding the fact that the erstwhile State Commission had not specifically intimated to him that they proposed to cover the full period.

The petitioner, by his registered letter dated the 23rd February 1952 pointed out to respondent 1 the illegality of the steps proposed to be taken by him to which, however, the latter replied by his letter dated the 13th March 1952 stating that he proposed to consider income for the full investigation period, viz., from 1940 to the last completed assessment year.

The petitioner thereupon filed on the 6th May 1952 a writ petition in the High Court of Travancore-Cochin, being O. P. 41 of 1952 against respondent 1 as also the Indian Income-tax Investigation Commission, hereinafter called respondent 2, for a writ of prohibition or any other appropriate writ or direction prohibiting the respondents from holding any enquiry into the cases registered as Evasion Cases Nos. 1 and 2 of 1125 on the file of Income-tax Investigation Commission of Travancore or from holding any investigation into the income of the petitioner from 1940 to the last completed assessment year or for any other period.

Respondent 1 filed a counter-affidavit in which it was *inter alia* submitted:

"that the Commission by these proceedings is not trying to clutch at non-existent jurisdiction. They are fully prepared to shape their proceedings in accordance with the direction of this Hon'ble Court".

This affidavit was stated to have been filed as the answer of both the counter-petitioners, viz., respondents 1 and 2 and respondent 1 stated that he had been fully authorised to do so.

The writ petition was heard by a Bench of three Judges of the High Court consisting of K. T. Koshi C. J. and P. K. Subramonia Iyer and M. S. Menon, JJ. The learned Judges held that respondent 2 had all the powers that the Travancore Commission had under the Travancore Act XIV of 1124 and no more and accordingly issued a writ prohibiting respondent 1 from conducting an investigation into years other than 1942 and 1943 observing that any attempt to enlarge the scope of the enquiry was without legislative warrant.

The petitioner appealed in so far as the order of the High Court was against him permitting the enquiry for the years 1942 and 1943, his appeal being Civil Appeal No. 21 of 1954. Respondents 1 and 2 appealed against the order of the High Court in so far as it prohibited respondent 1 from conducting investigation for the years which were not covered by the Evasion Cases Nos. 1 and 2 of 1125, their appeal being Civil Appeal No. 22 of 1954.

Both these appeals came for hearing and final disposal before us on the 20th September 1955. After the argument had proceeded for some time Shri Nambiyar, for the petitioner, asked for leave to urge additional grounds, viz., (a) that section 5(1) of Travancore Act XIV of 1124 was *ultra vires* under articles 14 and 19 of the Constitution, and (b) that in particular the said section 5(1) infringed article 14 of the Constitution inasmuch as it was not based on any rational classification whatsoever, and the word "substantial" therein could not possibly be deemed to be any form of classification. On our giving him such leave the learned Attorney-General, appearing for respondents 1 and 2 asked for time to put in an affidavit showing the background against which Travancore Act XIV of 1124 had been passed by the Travancore Legislature. An affidavit was accordingly filed before us by Gauri Shanker, Secretary of

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respondent 2 setting out facts and events as and by way of answer to these new contentions of the petitioner.

A preliminary objection to the jurisdiction of the High Court to entertain the writ petition may be dealt with first. This objection was not taken in the counter-affidavit filed by the respondents, they having expressed their readiness to shape their proceedings in accordance with the directions of the Court. The learned Advocate-General of Travancore-Cochin however, urged before the High Court that the Court was not competent to entertain the petition in view of the that that respondent 2 was not amenable to its jurisdiction and the argument was that as respondent 2 functioned outside the State of Travancore-Cochin and respondent 1 was a mere subordinate of respondent 2, it was beyond the competence of the High Court to grant the prayer embodied in the petition. The High Court overruled the objection observing that respondent 1 was resident within the State of Travancore-Cochin, his office was situated at Trivandrum, all his communications to the petitioner had emanated from within the State and the activities complained about were activities confined to the State. It was of the opinion that the prayer in the petition was, in essence, a prayer to paralyse the hands of respondent 1 and thus prevent the mischief and that, by his residence and the location of his office within the State, respondent 1 was clearly amenable to the jurisdiction of the Court under article 226 of the Constitution. It was further of opinion that the writ against respondent 1, if issued, was sufficient for stopping the mischief complained about and therefore it was unnecessary for it to decide whether or not a writ could be issued so far as respondent 2 was concerned. It, therefore, issued the necessary writ of prohibition against respondent 1.

The learned Attorney-General pressed this preliminary objection at the outset while arguing Civil Appeal No. 22 of 1954. He pointed out that respondent 2 had its office in New Delhi and was permanently located there and the mere fact of its having appointed res-

pondent 1 to function and carry on the investigation within the State of Travancore under its direction did not make it amenable to the jurisdiction of the High Court. He, therefore, contended that the High Court had no jurisdicion to entertain the writ petition against respondent 2. He further contended that the High Court could not do indirectly what it was not able to do directly and that it could not issue any writ of prohibition against respondent 1 either even though he had his office at Trivandrum and had a permanent location within the jurisdiction of the High Court inasmuch as he was merely an arm of respondent 2 and any writ issued against him would have the indirect effect of prohibiting respondent 2 from exercising its legitimate functions within the ambit of its powers under the Travancore Act XIV of 1124 read with Act XXX of 1950 and Act XLIV of 1951.

Reliance was placed by him on the decision of this Court in *Election Commission, India* v. *Saka Venkata Rao*(1). The respondent in that case had applied to the High Court of Madras under article 226 for a writ restraining the Election Commission, a statutory authority constituted by the President and having its office permanently located at New Delhi from enquiring into his alleged disqualification for membership of the Assembly, and a single Judge of the High Court had issued a writ of prohibition restraining the Election Commission from doing so. The Election Commission filed an appeal to this Court and agitated the question of the jurisdiction of the High Court under article 226 to issue the writ against it. While discussing this question, Patanjali Sastri C. J., who delivered the judgment of the Court, observed as under:—

"But wide as were the powers thus conferred, a two-fold limitation was placed upon their exercise. In the first place, the power is to exercised "throughout the territories in relation to which it exercises jurisdiction", that is to say, the writs issued by the Court cannot run beyond the territories subject to its jurisdiction. Secondly, the person or authority to

(1) [1953] SCR 1144.

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whom the High Court is empowered to issue such writs must be "within those territories", which clearly implies that they must be amenable to its jurisdiction either by residence or location within those territories".

The learned Chief Justice then traced the origin and development of the power to issue prerogative writs as a special remedy in England and observed at page 1151:—

"These writs were thus specifically directed to the persons or authorities against whom redress was sought and were made returnable in the Court issuing them and, in case of disobedience, were enforceable by attachment for contempt. These characteristics of the special form of remedy rendered it necessary for its effective use that the persons or authorities to whom the Court was asked to issue these writs should be within the limits of its territorial jurisdiction".

The mere functioning, of the tribunal or authority permanently located and normally carrying on its activities elsewhere, within the territorial limits was not considered sufficient to invest the High Court with jurisdiction under article 226 nor was the accrual of the cause of action within the territories considered sufficient for the purpose. The residence or location within the territories of the person or authority was considered a condition of the High Court being empowered to issue such writs with the result that the Election Commission having its office permanently located at New Delhi was held not amenable to the jurisdiction of the High Court for the issue of a writ under article 226.

This decision in *Saka Venkata Rao's case* was followed by this Court in *K. S. Rashid & Son* v. *The Income-tax Investigation Commission, etc.*(1). In that case, the assessees who were within the State of U.P. and whose original assessments were made by the income-tax authorities of that State had filed writ petitions in the Punjab High Court for the issue of writs under article 226 to the Income-tax Investigation Commission located in Delhi and investigating

(1) [1954] SCR 738.

their cases under section 5 of the Taxation on Income (Investigation Commission) Act, 1947. The Punjab High Court had sustained the objection urged on behalf of the respondents to the effect that the assessees having belonged to the State of U.P. their assessment was to be made by the Income-tax Commissioner of that State and the mere fact that the location of the Investigation Commission was in Delhi would not confer jurisdiction on the Punjab High Court to issue writs under article 226 and had dismissed the petitions. This Court, on appeal, distinguished the decision in *Parlakimidi's case* which was sought to be relied upon by the respondents before it and followed the position in law as it had been enunciated in *Saka Venkata Rao's case* supra, and held that the Punjab High Court had jurisdiction to issue a writ under article 226 to the Investigation Commission which was located in Delhi in spite of the fact that the assessees were within the State of U.P. and their original assessments were made by the income-tax authorities of that State.

The principle of these decisions would, it was urged by the learned Attorney-General, eliminate respondent 2 and the High Court of Travancore-Cochin would have no jurisdiction to entertain the writ petition against it.

It was, however, urged on behalf of the petitioner that, in the affidavit filed by the respondents, both the respondents had submitted that they were fully prepared to shape their proceedings in accordance with the directions of the Court. This, it was submitted, was a voluntary submission to the jurisdiction of the High Court investing the High Court with jurisdiction to issue the appropriate writ against respondent 2. We need not, however, express any opinion on this point because no writ was in fact issued by the High Court against respondent 2 nor was any appeal filed by the petitioner against that part of the decision of the High Court.

The real question, however, is whether a writ could issue against respondent 1 who is, it was submitted, a mere arm of respondent 2 and a writ against whom

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would be equivalent to a writ issued by the High Court against respondent 2 which it had no jurisdiction to do.

An authorised official derives his appointment from the Commission under section 6 of the Travancore Act XIV of 1124. Section 6(4) of the Act provides that if in the course of any investigation conducted by the Commission it appears to the Commission to be necessary to examine any accounts or documents of to interrogate any person or to obtain any statement from any person the Commission may authorise any income-tax authority not below the rank of an income-tax officer (called the "authorised official") in that behalf subject to such directions as may be issued by the Commission from time to time and the authorised official shall examine the accounts or documents, interrogate the persons and obtain the statements from the persons. The authorised official is invested, under section 6, sub-section (5), subject to the direction of the Commission, with the same powers as the Commission under sub-sections (1), (2) and (3) which empower the Commission to require any person or banking or other company to prepare and furnish written statements of accounts and affairs giving information on such points or matters as in the opinion of the Commission may directly or indirectly be useful or relevant to any case referred to it; to administer oaths and exercise all powers of a Civil Court under the Code of Civil Procedure for the purpose of taking evidence on oath, enforcing attendance of witnesses and of persons whose cases are being investigated, compelling the production of documents and issuing commissions for the examination of witnesses and to impound and retain in its custody for such period as it thinks fit any documents produced before it. The authorised official is, under section 6, sub-section (10), to have full and free access to all documents, books and other papers which in his opinion are relevant to the proceedings in any case or cases under the Act and if specially authorised in this behalf by the Commission to any buildings and places where he may have reason to believe that such books,

documents or papers may be found and also to have power to place identification marks on such books, documents or papers and to make extracts or copies therefrom or if he considers it necessary to take possession of or seize such books, documents or papers. Under section 6, sub-section (11), the authorised official is deemed to be a public servant wihin the meaning of section 16 of the Travancore Penal Code (I of 1074).

It is clear from the above provisions that the authorised official has considerable powers conferred upon him in the conduct of the investigation and even though he could be called a mere arm of the Commission or an authorised agent of the Commission, he has important functions to discharge and is not merely a mouth-piece of the Commission or a conduit-pipe transmitting the orders or the directions of the Commission. He is no doubt under the general control and supervision of the Commission but he performs the various functions assigned to him on his own initiative and in the exercise of his discretion. If, therefore, he does anything in the discharge of his functions as authorised official which is not authorised by law or is violative of the fundamental rights of the petitioner, he would be amenable to the jurisdiction of the High Court under article 226.

Even though this is the *prima facie* position, it was urged that he is acting under the directions of the Commission as its authorised agent and as such no writ can issue against him, because the principal who directs the activities and not the agent would be liable for the same. This contention is unsound. There can be no agency in the matter of the commission of a wrong. The wrong doer would certainly be liable to be dealt with as the party directly responsible for his wrongful action. The relationship between principal and agent would only be relevant for the purpose of determining whether the principal also is vicariously liable for the wrong perpetrated by his agent. On the *analogy* of criminal liability, the

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offender could certainly not be heard to say that he was committing the offence under the behest or directions of his principal. On the *analogy* of a civil wrong, the tortfeasor could certainly not protect himself against liability on the ground of having committed the tort under the directions of his principal. The agent could in no event exculpate himself from liability for the wrongful act done by him and if he is thus amenable to the jurisdiction of the High Court the High Court could certainly issue an appropriate writ against him under article 226. The jurisdiction under article 226 is exercised by the High Court in order to protect and safeguard the rights of the citizens and wherever the High Court finds that any person within its territories is guilty of doing an act which is not authorised by law or is violative of the fundamental rights of the citizen, it exercises that jurisdiction in order to vindicate his rights and redress his grievances and the only conditions of its exercise of that jurisdiction are those laid down in the passage from Patanjali Sastri, C. J.'s judgment cited above. The argument that by issuing a writ against the agent under those circumstances the High Court would be putting him in a position whereby he would be compelled to disobey the directions of his principal is also of no avail for the simple reason that an agent is bound to obey all lawful directions of his principal and not directions which the High Court holds to be unlawful or not justified in law. The agent could certainly be prohibited from obeying the unlawful directions of his principal and even if the principal cannot be reached by reason of his being outside the territories, the arm of the law could certainly reach the agent who is guilty of having committed the wrong and the High Court could certainly issue a writ against him under aricle 226.

It was further contended that by issuing such a writ against the authorised official the High Court would be indirectly prohibiting the Commission from conducting the investigation within the territories even though it could not directly prohibit the Com-

mission from doing so. If the Commission was doing something within the territories through its authorised official which was not justified in law, it would not lie in the mouth of the Commission to urge that the High Court could not issue a writ of prohibition against its agent, the authorised official, who had his residence or permanent location within the territories merely because it would be indirectly prohibited from perpetrating a wrong within the territories. The principal could, in no event urge that his agent should be allowed to function for him wihin the territories in a manner which was not warranted by law or had no justification in law. It is expected that once this Court has declared the law the Investigation Commission would comply with it and not place its agent in the wrong by directing him to act contrary to the law so declared.

Our attention was drawn by the learned Attorney-General in this connection to three recent decisions of the High Courts of Allahabad, Nagpur and Pepsu which, according to him, supported his contention, viz., *Azmat Ullah* v. *Custodian, Evacuee Property, U.P., Lucknow* (1), *Burhanpur National Textile Workers Union, Burhanpur* v. *Labour Appellate Tribunal of India at Bombay and others* (2) and *Joginder Singh Waryam Singh* v. *Director, Rural Rehabilitation, Pepsu, Patiala and others* (3). These decisions, however, are clearly not in point for, in each of them, the order passed by the authority within the territories and accordingly wihin the jurisdiction of the High Court concerned had merged in the order of the superior authority which was located outside the territories and was, therefore, beyond the jurisdiction of that High Court. In that situation, a writ against the inferior authority within the territories could be of no avail to the petitioner concerned and could give him no relief for the order of the superior authority outside the territories would remain outstanding and operative against him. As, therefore, no writ could be issued against that outside authority and as the

(1) A.I.R. 1955 All 435. (2) A.I.R. 1955 Nag. 148.

(3) A.I.R. 1955 Pepsu 91.

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orders against the authority within the territories would, in view of the orders of the superior authority, have been infructuous, the High Court concerned had, of necessity, to dismiss the petition. Such, however, was not the position in the present petition before the High Court of Travancore-Cochine. There was here no question of merger of any judicial order of respondent 1 into the judicial order of respondent 2. In this case respondent 1 was actually claiming to exercise powers conferred upon him by certain sections of the Travancore Act XIV of 1124 which it was submitted, were contrary to law or discriminatory and consequently *ultra vires* the Constitution. The fact that respondent 1 was the agent of respondent 2, which being beyond its jurisdiction could not be reached by the High Court, could not make his acts any the less objectionable or discriminatory and *ultra vires*. It is sufficient to say that if his action was contrary to law or if the provisions of law under which he was claiming to act became, after the commencement of the Constitution, void under article 13(1) as being repugnant to article 14 and the doer of the illegal act was within the reach of the High Court, the High Court had jurisdiction under article 226 to issue a writ against respondent 1 and thereby prevent further infringement of the petitioner's fundamental rights. The preliminary objection urged by the learned Attorney-General against the jurisdiction of the High Court, therefore, fails.

The next question canvassed in Civil Appeal No. 22 of 1954 was that respondent 2 was entitled to investigate the alleged evasion of tax by the petitioner not only for the years 1942 and 1943 but also the other years from 1940 to the last completed assessment year. The decision of this question turns on a construction of the terms of the references made by the Government of the United State of Travancore and Cochin under section 5(1) of the Travancore Act XIV of 1124. A report dated the 17th November 1949 had been made by the Board of Revenue in regard to the income-tax assessment of the petitioner for the years 1119 and 1120 (M.E.) and two orders were passed

on the 26th November 1949 by the Government on the strength of that report. The first of these orders related to taxation on the petitioner's income for 1119 and the second related to the taxation on his income for 1120. The return of income for the year ending the 31st December 1942 was the subject-matter of the first order and after setting out the materials in the order the Government stated that they had *prima facie* reasons for believing that the petitioner had to a substantial extent evaded payment of tax on his income for 1119 and they considered that this was a fit case for reference to the Income-tax Investigation Commission under section 5(1) of the Act. The second order referred to the petitioner's return of income for the year ending the 31st December 1943 and after setting out the materials, wound up similarily by stating that the Government had *prima facie* reasons for believing that the petitioner had to a substantial extent evaded payment of tax on his income for 1120 and they considered that this was a fit case for reference to the Income-tax Investigation Commission under section 5(1) of the Act.

A cursory perusal of the Travancore Act XIV of 1124 will show that the Commission had no authority to investigate any case *suo motu*. It could only investigate cases referred to it by the Government. Thus under section 5(1), Government might refer to it for investigation and report any case or points in a case in which the Government had *prima facie* reasons for believing that a person had to a substantial extent evaded payment of taxation on income. Such reference, however, could be made at any time before the 16th February 1950 but not later. Again, under sub-section (4) of the same section, if in the course of investigation into any case or points in a case referred to it under sub-section (1) the Commission had reason to believe that some other person had evaded payment of taxation on income or some other points required investigation, it might make a report to the Government and the Government would forthwith refer to the Commission for investigation the case of such other person or such additional points as might

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be indicated in that report. All that was done in the present case was that by two separate orders made under section 5(1) of the Act the Government referred two cases of the petitioner for the two years 1942 and 1943 to the Commission and they were registered as Evasion Cases Nos. 1 and 2 of 1125. There was no other order under section 5(1) at any time before the 16th February 1950 and none could be made under that sub-section after that date. It was not suggested that there was any report by the Commission or any reference of any case or additional points in a case under section 5(4). It was, therefore, contended for the petitioner that the Commission had no jurisdiction to enquire into any alleged evasion in any year prior or subsequent to the years 1942 and 1943. The learned Attorney-General, on the other hand, contended that the Government could, under section 5(1) of the Act, only refer the case of the petitioner who was reasonably suspected to have evaded the tax and, therefore, the whole case of the petitioner for all the years referred to in section 8(2) of the Act was the subject-matter of the investigation which had been entrusted to the Commission.

We are unable to accept this contention. Under section 5(1) the Government could refer any case or points in a case. There is nothing in that sub-section which requires that a "case" referred thereunder must cover the entire period mentioned in section 8(2). Indeed, the Government might have reason to believe that an assessee evaded the tax only in, say, two years and not in others and in such a case the Government could only refer the case for investigation of evasion during those two years only but could not refer any case for other years as to which they had no reasonable belief. Therefore, in such a situation the reference must be limited to the particular years in which the evasion was believed to have taken place. It makes no difference whether one calls the matter referred a "case" or "points in a case". It follows, therefore, that, in order to ascertain whether, in a given case the reference covers the entire period or only a shorter period, one has only to look at the order

of reference. The operative parts of the two orders of reference dated the 26th November 1949 in the present case clearly record the fact that the Government had *prima facie* reasons for believing that the petitioner had to a substantial extent evaded payment of taxation on his income for 1119 and 1120 (M.E.) and that they considered that "this was a fit case for reference to the Income-tax Investigation Commission under section 5(1) of Act XIV of 1124". What was a fit case for reference was described as "this" which clearly referred back to the evasion of payment on taxation on income for the two specific years in the two orders. It is, therefore, clear that neither respondent 2 nor respondent 1 who was appointed an authorised official by respondent 2 had jurisdiction to cover any period beyond those specific years 1942 and 1943 and the notice which was issued by respondent 1 on the 21st November 1951 was, therefore, not warranted by law. Respondent 1 had no warrant or authority whatever for issuing the said notice and we are of the opinion that the High Court was right in the conclusion to which it came that the action of respondent 1 was clearly illegal, without jurisdiction and unsupported by law. The writ of prohibition issued against respondent 1 was, therefore, in order and Civil Appeal No. 22 of 1954 must stand dismissed with costs.

As regards Civil Appeal No. 21 of 1954, the petitioner contended that respondent 2 had no power or authority to conduct an investigation in regard to the alleged evasion of tax by the petitioner for the years 1942 and 1943 also. Shri Nambiyar urged that:

(1) The Travancore Act XIV of 1124 was not a law in force prior to the integration and was not an "existing law" continued in force by Ordinance I of 1124;

(2) The notification dated the 26th July 1949 which purported to bring the Travancore Act XIV of 1124 into force from the 22nd July 1949 was ineffective and invalid;

(3) Even if the Travancore Act XIV of 1124 was

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in force, it could not apply to or override the assessment orders concluded by the Chief Revenue Authority, Travancore;

(4) The Rajpramukh's agreement read with article 245 of the Constitution precluded any investigation except in accordance with the Travancore Act XIV of 1124 and Act XXXIII of 1950 amended by Act XLIV of 1951 was invalid to the extent that it authorised investigation otherwise than in accordance with the Travancore Law;

(5) Assuming all the foregoing points were held against the petitioner, section 5(1) of the Travancore Act XIV of 1124 was in any event unconstitutional and void as being inconsistent with article 14 of the Constitution.

Re. (*1*) : The Travancore Act XIV of 1124 was passed by the Travancore Legislature on the 7th March 1949. It was, however, under section 1(3) to come into force on such date as the Travancore Government might by notification in the Government Gazette appoint. No such notification was issued by the Travancore Government up to the 1st July 1949 when the Travancore State and the Cochin State integrated into the United State of Travancore and Cochin. On the 1st July 1949, the United State of Travancore and Cochin promulgated Ordinance I of 1124 thereby all existing laws of Travancore were continued in force till altered, amended or repealed by competent authority and the "existing law of Travancore" was therein defined to mean any law in force in the State of Travancore immediately prior to the 1st July 1949. It was only on the 26th July 1949 that a notification was issued under section 1(3) by the United State of Travancore and Cochin bringing Act XIV of 1124 into force retrospectively from 22nd July, 1949.

The contention put forward on behalf of the petitioner was that as no notification under section 1(3) of Act XIV of 1124 had been issued up to the 1st July 1949, that Act had not been brought into force and was not in force on that date and, therefore, was not then an "existing law" which alone was given conti-

nuity by Ordinance I of 1124 which was promulgated on that very day. The contention further was that in the circumstances the Act was not continued by Ordinance I of 1124 but had lapsed and, therefore, the subsequent notification issued on the 26th July 1949 was wholly ineffective and consequently the reference of the cases of the petitioner to the Commission for investigation under section 5(1), the appointment of respondent 1 as the authorised official and the notices issued by him were unauthorised and wholly devoid of any authority of law. The question for our consideration is whether Act XIV of 1124 or any part of it was, on the 1st July 1949, an existing law.

The general rule of English law, as to the date of the commencement of a statute, since 1797, has been and is that when no other date is fixed by it for its coming into operation it is in force from the date when it receives the royal assent (33 Geo. 3, c. 13). The same rule has been adopted in section 5 of our General Clauses Act, 1897. We have not been referred to any Travancore Law which provides otherwise. If, therefore, the same principle prevailed in that State, Travancore Act XIV of 1124 would have come into force on the 7th March 1949 when it was passed by the Travancore Legislature. What prevented that result? The answer obviously points to section 1(3) which authorises the Government to bring the Act into force on a later date by issuing a notification. How could section 1(3) operate to postpone the commencement of the Act unless that section itself was in force? One must, therefore, concede that section 1(3) came into operation immediately the Act was passed, for otherwise it could not postpone the coming into operation of the Act. To put the same argument in another way, if the entire Act including section 1(3) was not in operation at the date of its passing, how could the Government issue any notification under that very section? There must be some law authorising the Government to bring the Act into force. Where is that law to be found unless it were in section 1(3)? In answer, Shri Nambiyar referred

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us to the principle embodied in section 37 of the English Interpretation Act which corresponds to section 22 of our General Clauses Act. That section does not help the petitioner at all. All that it does is to authorise the making of rules or bye-laws and the issuing of orders between the passing and the commencement of the enactment but the last sentence of the section clearly says that "rules, bye-laws or orders so made or issued shall not take effect till the commencement of the Act or Regulation". Suppose Shri Nambiyar is right in saying that the Government could issue a notification under section 1(3) by virtue of the principle embodied in section 22 of the General Clauses Act, it will not take his argument an inch forward, for that notification by reason of the last sentence of section 22 quoted above, will not take effect till the commencement of the Act. It will bring about a stalemate. It is, therefore, clear that a notification bringing an Act into force is not contemplated by section 22 of the General Clauses Act. Seeing, therefore, that it is section 1(3) which operates to prevent the commencement of the Act until a notification is issued thereunder by the Government and that it is section 1(3) which operates to authorise the Government to issue a notification thereunder, it must be conceded that that section 1(3) came into force immediately on the passing of the Act. There is, therefore, no getting away from the fact that the Act was an "existing law" from the date of its passing right up to the 1st July 1949 and was, consequently, continued by Ordinance I of 1124. This being the position, the validity of the notification issued on the 26th July 1949 under section 1(3), the reference of the case of the petitioner, the appointment of respondent 1 as the authorised official and all proceedings under the Travancore Act XIV of 1124 cannot be questioned. on the ground that the Act lapsed and was not continued by Ordinance I of 1124.

Re. (2) : It is urged that the notification issued on the 26th July 1949 was bad in that it purported to bring the Act into operation as from the 22nd July 1949. The reason relied upon is that the Govern-

ment could not, in the absence of express provision, authorising it in that behalf, fix the commencement of the Act retrospectively. The reason for which the Court disfavours retroactive operation of laws is that it may prejudicially affect vested rights. No such reason is involved in this case. Section 1(3) authorises the Government to bring the Act into force on such date as it may, by notification, appoint. In exercise of the power conferred by this section the Government surely had the power to issue the notification bringing the Act into force on any date subsequent to the passing of the Act. There can therefore, be no objection to the notification fixing the commencement of the Act on the 22nd July 1949 which was a date subsequent to the passing of the Act. So the Act has not been given retrospective operation, that is to say, it has not been made to commence from a date prior to the date of its passing. It is true that the date of commencement as fixed by the notification is anterior to the date of the notification but that circumstance does not attract the principle disfavouring the retroactive operation of a statute. Here there is no question of affecting vested rights. The operation of the notification itself is not retrospective. It only brings the Act into operation on and from an earlier date. In any case it was in terms authorised to issue the notification bringing the Act into force on any date subsequent to the passing of the Act and that is all that the Government did. In this view of the matter, the further argument advanced by the learned Attorney-General and which found favour with the Court below, namely, that the notification was at any rate good to bring the Act into operation as on and from the date of its issue need not be considered. There is no substance in this contention also.

Re. (3) : It was urged that, even if the Travancore Act XIV of 1124 was in force on the 1st July 1949 and was validly brought into operation from the 22nd July 1949, the terms of section 8(2) of the Act could not apply to or override the assessment orders of the petitioner for the years 1942 and 1943 which

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were concluded by the Chief Revenue Authority of Travancore. Section 8(2) of the Act provided that, after considering the report of the Commission, the Government shall, by an order in writing direct that such proceedings as they think fit under the various Income-tax Acts of Travancore therein mentioned 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 last day of Karkadakom 1115 (16-8-1939) and upon such a direction being given such proceedings may be taken and completed under the appropriate law notwithstanding any decision to a different effect given in the case by *any income-tax authority* or Income-tax Appellate Tribunal. It was contended that the Chief Revenue Authority was not included in the description of "any income-tax authority" and, therefore, even if the report of respondent 2 was adverse to the petitioner the assessment orders which were concluded by the Chief Revenue Authority could not be affected by the provisions of section 8(2) and could not be reopened.

This argument is based on a misconception of the true position of the Chief Revenue Authority. The Chief Revenue Authority was an income-tax authority mentioned in the hierarchy under the Travancore Act VIII of 1096. When the Travancore Act XXIII of 1121 came to be passed, the income-tax authorities enumerated therein included the Board of Revenue at the apex, substituting the Board of Revenue for the Chief Revenue Authority which occupied a similar position in the old Act. By section 10 of the Travancore Act XIV of 1124, the Travancore Act VIII of 1096 was deemed to be in force for the purpose of the Act and to the extent necessary, with the result that in construing the provisions of section 8(2) of the Act, the words "any income-tax authority" would include the Chief Revenue Authority which was an income-tax authority under the Travancore Act VIII of 1096. It may also be noted that section 4 of the Travancore Act XVII of 1122 continued all proceedings and petitions pending before the

Chief Revenue Authority and provided that the same may be disposed of by the said authority or by such authority as may be appointed by the Government for the purpose as if the said Travancore Act VIII of 1096 had not been repealed. It, therefore, follows that the Chief Revenue Authority was included within the expression "any income-tax authority" in section 8(2) of the Act and the assessment orders of the petitioner for the years 1942 and 1943 which were concluded by the Chief Revenue Authority could be affected or overridden by any order which might be passed by the Government under section 8(2) of the Act. This contention of the petitioner also, therefore, does not avail him.

Re. (*4*): The Indian States Finance Enquiry Committee 1948-49 made two interim reports. It recommended in the first interim report that subject to certain limitations indicated therein which were designed to secure legal "continuity" of pending proceedings and "finality and validity" of completed proceedings under the pre-existing State legislation, the whole body of State legislation relating to "federal" subjects should be repealed and the corresponding body of Central legislation extended *proprio vigore* to the States with effect from the prescribed date or as and when the administration of particular "federal" subjects was assumed by the Centre. All matters and proceedings pending under or arising out of pre-existing States Acts should be disposed of under those Acts by, so far as may be, the "corresponding authorites" under the corresponding Indian Acts. The income, profits and gains accruing and arising in States of all periods which were 'previous years' of the States' assessment years 1949-50 or earlier should be assessed wholly and in accordance with the States' laws and at the States' rates respectively, appropriate to the assessment years concerned. Except in Travancore, there was no Income-tax Investigation Commission in any State. Should the Travancore Commission still be functioning at the time of the federal financial integration, all cases pending before it should be taken over by

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the Indian Commission. The disposal of those cases should, however, (as in the case of pending assessments) be in accordance with the pre-existing Travancore Law. It recommended in the Second Interim Report that the Travancore Commission should be wound up and the cases referred to it should be transferred to the corresponding Commission in India.

These recommendations of the Committee in so far as they applied to Travancore-Cochin were accepted by and incorporated into the agreement entered into between the President of India and the Rajpramukh of Travancore-Cochin on the 25th February 1950 subject to certain modifications which are not relevant for the purpose of the present enquiry. The result of the agreement was the enactment of Act XXXIII of 1950 which extended to Travancore-Cochin the Act XXX of 1947 and section 3 of that Act provided that the law of Travancore corresponding to Act XXX of 1947 shall continue to remain in force with the modification that all cases referred to or pending before the Travancore Commission shall stand transferred to the Central Commission for disposal and that the State law shall determine the procedure to be followed and the powers to be exercised by the Central Commission in the disposal of those cases. Evasion Cases Nos. 1 and 2 of 1125 which were pending before the Travancore Commission thus became transferred to respondent 2 and were to be disposed of in accordance with the procedure laid down and the powers conferred on the Travancore Commission by the Travancore Act XIV of 1124. Two questions, however, arose in the matter of this investigation by respondent 2, viz., (1) whether the life of the Travancore Commission, not having been extended beyond 16-8-1950, respondent 2 had the power and authority to continue the investigation of the cases of the petitioner after 16-8-1950, and (2) whether any orders passed by the Government on the report made by respondent 2 would have the effect of overriding the assessment orders concluded by the Chief Revenue Authority, Travancore, in cases of the petitioner for the years 1942 and 1943.

In regard to the first question, it was urged by Shri Nambiyar that the life of the Travancore Commission having come to an end on the 16th August 1950, respondent 2 also, which was its successor and to which the pending cases of the petitioner were transferred, could not function beyond 16-8-1950. Parliament, however, passed, on the 26th August 1951, Act XLIV of 1951 amending Act XXXIII of 1950 whereby it provided with retrospective effect that, in the disposal of cases transferred to respondent 2, it shall have and exercise the same powers as it has and exercises in the investigation of cases transferred to it under Act XXX of 1947 and shall be entitled to act for the same term as under sub-section (3) of section 4 of that Act thus extending the life of respondent 2 beyond 16-8-1950. This, it was submitted, Parliament was not competent to do by reason of the terms of the agreement dated the 25th February, 1950, the effect of the enactment of Act XLIV of 1951 being to amend the law of the Travancore State which was to govern the investigation of pending cases by respondent 2. The agreement was one which was contemplated under article 295 of the Constitution and, being provided by the Constitution itself, was a bar to the legislative competence of the Central Legislature under article 245. The Central Legislature, it was submitted, was, therefore, not competent to pass Act XLIV of 1951 extending the life of respondent 2 beyond 16-8-1950 and respondent 2 was, therefore, not entitled to carry on any further investigation in the Evasion Cases Nos. 1 and 2 of 1125.

Considerable argument was addressed to us on the effect of the agreement on the legislative competence of the Central Legislature under article 245. We do not, however, consider it necessary to decide this question as, in our opinion, the life of respondent 2 was not a part of the law of Travancore State which was to govern the procedure followed or the powers exercised by it in the investigation of the cases of the petitioner. Respondent 2 to which the pending cases of the petitioner were transferred, was a body with a longer lease of life and the fact that the Travancore

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Commission had a shorter lease could not have the effect of curtailing the life of respondent 2. The life of respondent 2 depended upon the law which established it and it was extended from time to time by subsequent legislation up to December, 1955, and that accident which gave to respondent 2 a longer lease of life did not contravene any provision of the Travancore law which determined the procedure to be followed and the powers to be exercised by the Travancore Commission. The transfer to respondent 2 of the cases pending before the Travancore Commission, of necessity involved that those cases would be dealt with by respondent 2 which had a longer lease of life and respondent 2 could conduct the investigation of these cases and complete the same within the span of life which had been allotted to it by the relevant provisions of the Indian Law, the only limitations imposed upon the conduct of such investigation being that the procedure to be followed as also the powers to be exercised by it would be those obtaining in the Travancore Law. Act XLIV of 1951 merely accepted this position and there was nothing in that Act which ran counter to the agreement.

As regards the second question also, the Chief Revenue Authority, as observed before, was an income-tax authority within the meaning of the term as used in section 8(2) of the Travancore Act XIV of 1124 read with section 10 of that Act which continued in force the provisions of the Travancore Act VIII of 1096 so far as it was necessary for the purpose of the Act. There also Act XLIV of 1951 did not make any changes in the existing Travoncore Law which was to govern the investigation of the pending cases by respondent. 2. This contention of the petitioner, therefore, is equally untenable.

Re. (*5*) : This contention urged by Shri Nambiyar questions the *vires* of section 5(1) of the Travancore Act XIV of 1124. This section provides:

"*Section 5(1)*: Our Government may at any time before the last day of Makaram 1125 refer to the Commission for investigation and report any case or

points in a case in which our Government have *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 last day of Meenam 1125 apply to the Commission for the withdrawal of any case or points in a case thus referred, and if the Commission approves of the withdrawal, no further proceedings shall thereafter be taken by or before the Commission in respect of the case or points so withdrawn".

It corresponds to section 5(1) of the Taxation on Income (Investigation Commission) Act, 1947 (XXX of 1947) which reads as under :

"*Section 5 (1)* : The Central Government may at any time before the last 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 first day of September 1948 apply to the Commission for the withdrawal of any case or points in a case thus referred, and if the Commission approves of the withdrawal, no further proceedings shall thereafter be taken by or before the Commission in respect of the case or points so withdrawn."

We may also at this stage refer to the provisions of section 47 of the Travancore Act XXIII of 1121 which relates to income escaping assessment:

"*Section 47 (1)* : If in consequence of definite information which has come into his possession the Income-tax Officer discovers that income, profits or gains chargeable to income-tax have escaped assessment in any year, or have been under-assessed, or have been assessed at too low a rate, or have been the subject of excessive relief under this Act the Income-tax Officer may, in any case in which he has reason to believe that the assessee has concealed the particulars of his income or deliberately furnished inaccu-

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rate particulars thereof, at any time within eight years, and in any other case at any time within four years of the end of that year, serve on the person liable to pay tax on such income, profits or gains, or, in the case of a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 29, and may proceed to assess or re-assess such income, profits or gains, and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section:....."

The corresponding provision of the Indian Income-tax Act was contained in section 34 which provided

"*Section 34(1)*: If in consequence of definite information which has come into his possession the Income-tax Officer discovers that income, profits or gains chargeable to income-tax have escaped assessment in any year, or have been under-assessed, or have been assessed at too low a rate, or have been the subject of excessive relief under this Act the Income-tax Officer may, in any case in which he has reason to believe that the assessee has concealed the particulars of his income or deliberately furnished inaccurate particulars thereof, at any time within eight years, and in any other case at any time within four years of the end of that year, serve on the person liable to pay tax on such income, profits or gains, or, in the case of a company, on the principal officer thereof, 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 re-assess such income, profits or gains, and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section:....."

Section 34 of the Indian Income-tax Act was amended by Act XLVIII of 1948 which received the assent of the Governor-General on the 8th September 1948. It was further amended by the Indian Income-tax Act, 1954 (XXXIII of 1954) which was assented to by the President on the 25th September

1954 and introduced sub-sections (1-A) to (1-D) therein.

It may, however be noted that no amendment was made in section 47 of the Travancore Act XXIII of 1121 at any subsequent period and the question as to whether the provisions of section 5(1) of the Travancore Act XIV of 1124 became discriminatory and violative of the fundamental right guaranteed under article 14 of the Constitution will have to be determined with reference to the provisions of that section set out above.

The true nature, scope and effect of article 14 of the Constitution have been explained by this Court in a series of cases beginning with *Chiranjit Lal Chowdhuri* v. *The Union of Indian* (1) and ending with *Budhan Chowdhury and others* v. *The State of Bihar* (2). It is, therefore, not necessary to refer to the earlier cases and it will suffice to quote the principle as summarised in the decision of the Full Court in the last mentioned case at page 1049 in the following terms:

"It is now well-established that while article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases, namely, geographical, or according to objects of occupations or the like What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well-established by the decisions of this Court that article 14 condemns discrimination not only by a substantive law but also by a law of procedure."

The principles underlying article 14 of the Constitution are well-settled. The only difficulty which

(1) [1955] S. C. R. 869. (2) [1965] 1 S. C. R. 1045.

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arises is in regard to the application of those principles to the facts of a particular case and the Court has to consider the terms of the impugned legislation having regard to the background and the surrounding circumstances so far as it may be necessary to do so in order to arrive at a conclusion whether it infringes the fundamental right in question.

Section 5(1) of Act XXX of 1947 (which is in *pari materia* with section 5(1) of the Travancore Act XIV of 1124) was impugned in the case of *Suraj Mall Motha & Co.* v. *A. V. Visvanatha Sastri and another*(1). The references for investigation in that case had been made in pursuance of a report 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 other cases may be referred to the Commission for investigation. The contention urged on behalf of the petitioner was 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. The attack made against the provisions of section 5(1) of the Act was two-fold: "(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 authorised 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 favouritism to another person by not sending his case to the Commission though both of these persons be within the group of those who had evaded the payment of tax to a substantial extent".

As regards section 5(4), it was urged that it had no independent existence and was bound to fall with section 5(1) if his contention regarding its invalidity

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

prevailed. In the alternative, it was urged that assuming that section 5(1) was valid, even then section 5(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(1) of the Indian Income-tax Act.

This Court considered it sufficient for the decision of that case to examine the contentions urged against the validity of section 5(4) of the Act because the case of the petitioner was referred to the Commission under those provisions of the Act and not under section 5(1) and decided that case on the assumption that section 5(1) of the Act was based on a valid classification and dealt with a group of persons who came within the class of war-profiteers which required special treatment, that the classification was rational and that reasonable grounds existed for making a 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.

This Court compared the provisions of section 5(4) of the Act with those of section 34(1) of the Indian Income-tax Act and came to the conclusion that section 5(4) dealt with the same class of persons who fell within the ambit of section 34(1) of the Indian Income-tax Act and were dealt with in sub-section (1) of that section and whose income could be caught by a proceeding under that section. It held that there was nothing uncommon either in properties or in characteristics between persons who had been discovered as evaders of income-tax during an investigation conducted under section 5(1) of the Act and those who had been discovered by the Income-tax Officer to have evaded payment of income-tax. Both those kinds of persons had common properties and had common characteristics and therefore required equal treatment. The Court thus held that both section 34(1) of the Indian Income-tax Act and sub-sec-

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tion (4) of section 5 of the impugned Act dealt with persons who had similar characteristics and similar properties, the common characteristics being that they were persons who had not truly disclosed their income and had evaded payment of taxation on income.

The court then considered whether the procedure prescribed by Act XXX of 1947 for discovering the concealed profits of those who had evaded payment of taxation on their income was substantially different and prejudicial to the assessees than the procedure prescribed in the Indian Income-tax Act. After comparing the provisions of section 8 of Act XXX of 1947 and those of sections 31, 32 and 33 of the Indian Income-tax Act, this court came to the conclusion that there was material and substantial difference between the two procedures and there was no doubt that the procedure prescribed by the impugned Act deprived a person who was dealt with under that Act of those rights of appeal, second appeal and revision to challenge questions of fact decided by the judge of first instance. The procedure prescribed by the impugned Act in sections 6 and 7 was also compared with the procedure prescribed in sections 37 and 38 in the Indian Income-tax Act and this Court held that the procedure prescribed by the impugned Act was substantially more prejudicial to the assessee than the procedure prescribed under the Indian Income-tax Act. It was thus clear that persons dealt with under Act XXX of 1947 were submitted to a procedure which was more drastic and prejudicial than the procedure which was available to those who were dealt with under section 34 of the Indian Income-tax Act.

This Court, therefore, was of the opinion that section 5(4) and the procedure prescribed by the impugned Act in so far as it affected the persons proceeded against thereunder being a piece of discriminatory legislation offended against the provisions of article 14 of the Constitution and were thus void and unenforceable.

It was after this decision of this Court in *Suraj*

Mall Mohta's case, supra, that Parliament enacted the Indian Income-tax Amendment Act, 1954 (XXXIII of 1954) introducing sub-sections (1-A) to (1-D) in section 34 of the Indian Income-tax Act. Though Act XXXIII of 1954 received the assent of the President on the 5th September 1954 it was to come into effect from the 17th July 1954.

Section 34(1-A) purported to meet two criticisms which had been, in the main, offered against the constitutionality of section 5(1) of the Act in *Suraj Mall Mohta's case.* One criticism was that the classification made in section 5(1) of the 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. That alleged defect was cured in section 34 (1-A) inasmuch as the Legislature clearly indicated there what it meant when it said that the said object of Act XXX of 1947 was 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' had been made definite and clear by enacting that no evasion below a sum of one lakh was within the meaning of that expression. The other criticism was that section 5(1) did not necessarily deal with the persons, who, during the war, had made huge profits and evaded payment of tax on them. Section 34(1-A) remedied this defect also. It clearly stated that it would operate on income made between the 1st September 1939 and 31st March 1946 tax on which had been evaded.

Section 5(1) was again attacked in the case of *Shree Meenakshi Mills Ltd.*, v. *Sri A. V. Visvanatha Sastri and Another*(1). This was a petition under article 32 of the Constitution filed on the 16th July 1954 after the decision in *Suraj Mall Mohta's case,* supra, had been pronounced. Section 5(1) of the Act was attacked on the very same grounds which were mentioned in

(1) [1955] 1 S.C.R. 787.

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the judgment in *Suraj Mall Mohta's case,* supra, but had not been dealt with by this Court it being considered sufficient to strike down section 5(4) of the Act without expressing any opinion on the *vires* of section 5(1). Even in this case, section 5(1) was not struck down as void on a comparison of its provisions with those of section 34(1) of the Indian Income-tax Act as was done in the case of section 5(4) in *Suraj Mall Mohta's case,* supra. By the time this petition came to be heard by this Court, the Parliament had enacted Act XXXIII of 1954 which, as stated above, introduced section 34(1-A) in section 34 of the Indian Income-tax Act and this Court came to the conclusion on a comparison of the provisions of section 5(1) of the Act with section 34(1-A) of the Indian Income-tax Act that the new sub-section inserted in section 34 by Act XXXIII of 1954 was 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. This Court reiterated the conclusions to which it had come in *Suraj Mall Mohta's case,* supra, that the procedure prescribed by the Act for making the investigation under its provisions was of a summary and drastic nature and it constituted a departure from the ordinary law of procedure and in certain important aspects was detrimental to the persons subjected to it and as such was discriminatory. It did not again express an opinion on the validity of section 5(1) as being based on a valid classification and being thus saved from the mischief of article 14 of the Constitution, but on a comparison of the provisions of section 5(1) of the Act with those of section 34(1-A) of the Indian Income tax Act which came into effect from the 17th July 1954, came to the conclusion that this defence of the provisions of section 5(1) being saved from the mischief of article 14 of the Constitution on the basis of a valid classification was no longer available in support of it after the introduction of the new sub-section in section 34 of the Indian Income-tax Act which sub-section dealt with the same class of persons dealt with by section 5(1) of the impugned

Act. The result was that proceedings could no longer be continued under the procedure prescribed by the impugned Act and section 5(1) was thus struck down as unconstitutional and void after the coming into operation of section 34(1-A) of the Indian Income-tax Act.

These two cases, viz., *Suraj Mall Mohta's case* supra, and *Shri Beenakshi Mills'* case, supra, did not directly pronounce upon the *vires* of section 5(1) of the Act in comparison with section 34(1) of the Indian Income-tax Act though the *vires* were the subject-matter of a direct challenge therein. The ratio of these decisions is, however, helpful in the determination of the question that arises directly before us, viz., whether section 5(1) of the Act is discriminatory in its character and thus violative of the fundamental right guaranteed under article 14 of the Constitution. In both these cases, this Court was of the opinion that the procedure for investigation prescribed by Act XXX of 1947 (corresponding with the Travancore Act XIV of 1124) was of a summary and drastic nature and constituted a departure from the ordinary law of procedure and in certain aspects was detrimental to persons subjected to it as compared with the procedure prescribed by the corresponding provisions of the Indian Income-tax Act (corresponding to the Travancore Act XXIII of 1121) and was as such discriminatory. The provisions of sections 5(4) and 5(1) of the Act were compared respectively with the provisions of section 34(1) and section 34(1-A) of the Indian Income-tax Act and, on a comparison of these provisions, this Court came to the conclusion that the classes of persons who were said to have been classified for special treatment by those respective sections of the Act were intended to be and could be dealt with under section 34(1) and section 34(1-A) of the Indian Income-tax Act and there could, therefore, be no basis of a valid classification for special treatment under the provisions of Act XXX of 1947 (corresponding with the Travancore Act XIV of 1124).

The procedure prescribed by the Travancore Act XIV of 1124 being thus discriminatory as compared

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with the procedure prescribed in the Travancore Act XXIII of 1121, the questions that arise for our consideration are, (1) whether there is a rational basis of classification to be found in the enactment of section 5(1) of the Act, and (2) whether the same class of persons were intended to be and could be dealt with under the provisions of section 47 of the Travancore Act XXIII of 1121.

In order to ascertain the scope and purpose of the impugned section reference must first be made to the Act itself. The preamble of a statute has been said to be a good means of finding out its meaning and as it were a key to the understanding of it. The preamble to the Travancore Act XIV of 1124, like that of Act XXX of 1947, runs thus: "Whereas it is expedient for the purpose of ascertaining whether the actual incidence of taxation on income is and has been in recent years in accordance with the provisions of law and the extent to which the existing law and procedure for the assessment and recovery of such taxation is adequate to prevent the evasion thereof, to make provision for an investigation to be made into such matters. It is hereby enacted as follows". It does not unfortunately give any assistance in the solution of the problem before us.

Section 5(1) itself, however, gives some indication as to the real object of it. The condition on which the action of the Government under that section is made dependent is that the Government must have *prima facie* reasons for believing that a person has to a substantial extent evaded payment of taxation on his income. The powers conferred on the Commission by section 6 and the procedure prescribed for the Commission by section 7 are clearly very drastic and harsh. This unmistakably shows that the legislative authority took the view that these stringent measures were necessary for unearthing the tax evasions which had gone unnoticed before when the usual procedure under the Income-tax law was applied. Then comes section 8(2) which authorises the Government after perusal of the report of the Commission to direct proceedings to be taken against the person to whose

case the report relates in respect of the income of any period commencing after the 16th August 1939. This provision clearly evinces that the intention of the legislative authority is to catch the income evaded from after the 16th August 1939. Section 5(1) also provides that the reference thereunder of a case must be made at any time before the 16th February 1950. From these sections it will appear that the object of this law was to uncover the evasion of tax on income made after the 16th August 1939 and before the 16th February 1950 about the existence of which evasion the Government had *prima facie* reason to believe.

The question at once arises as to why it was that the legislative authority took the view that there were possible cases of tax evasion. It has been said that although the statement of the objects and reasons appended to a bill is not admissible as an aid to the construction of the Act as passed (see *Aswini Kumar Ghose's case* (1), yet it may be referred to only for the limited purpose of ascertaining the conditions prevailing at the time which necessitated the making of the law (see *Subodh Gopal Bose's case*(2)). Similar observations were made by Fazal Ali, J. with reference to legislative proceedings being relevant for the proper understanding of the circumstances under which an Act was passed and the reasons which necessitated it in *Chiranjit Lal Chowdhuri* v. *The Union of India*(3). Indeed, in the case of *Kathi Raning Rawat* v. *The State of Saurashtra*(4), this Court permitted the State to file an affidavit stating in detail the circumstances which prevailed at the time when the law there under consideration had been passed and which necessitated the passing of that law. In the present case also, an affidavit has been filed by Gauri Shanker, Secretary of respondent 2, stating the reasons why it was thought necessary to enact the impugned Act including section 5(1). This affidavit clearly brings out the serious problem that faced the revenue authorities. A war of unprecedented magnitude had raged from September 1939 to 1946. The

(1) [1953] S.C.R. 1.
(2) [1954] S. C. R. 587, 628.
(3) [1950] S.C.R. 869, 879.
(4) [1952] S.C.R. 435.

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war conditions brought in their train a sudden rise in the demand of all kinds of goods, both consumer and industrial, which, naturally pushed up the prices to abnormal heights affording a great opportunity to the producers, manufactures and merchants to reap huge profits. There was good reason to believe that these abnormal profits were not being brought into regular accounts but were being concealed. Faced with this situation, means had to be devised to enquire into the tax evasions and to realise the legitimate dues of the State. If regard be had to this background it is obvious that section 5(1) had reference to a class of substantial evaders of income-tax who required to be specially treated under the drastic procedure provided by Act XXX of 1947.

It was, however, urged that the words "substantial extent" were of such vague import that they did not afford any reasonable basis of classification. Reference was made to Stroud's Judicial Dictionary, 3rd ed., Vol. 4, page 2901, where the word "substantial" has been described to be:

"A word of no fixed meaning, it is an unsatisfactory medium for carrying the idea of some ascertainable proportion of the whole (*Terry's Motors, Ltd.* v. *Rinder,* [1948] S.A.S.R. 167)".

The word "substantial" has been used in various legislative enactments and even though it is said to be a word of no fixed meaning, Viscount Simon in *Palser* v. *Grinling*(1) observed:

"One of the primary meanings of the word is equivalent to considerable, solid, or big. It is in this sense that we speak of a substantial fortune, a substantial meal, a substantial man, a substantial argument or ground of defence. Applying the word in this sense, it must be left to the discretion of the judge of fact to decide as best he can according to the circumstances in each case...."

and it has been described at page 2902 of Stroud's Judicial Dictionary to be "equivalent to considerable, solid or big".

Even though the word "substantial" by itself might

(1) [1948] A.C. 291,317.

not afford a definite measure or yard-stick for including particular individuals within the classification, the background and the circumstances mentioned in the aforesaid affidavit of Gauri Shanker indicate with reasonable certainty the class of persons who are intended to be subjected to this drastic procedure. It does not require much effort to pick out persons who would fall within this group or category of substantial evaders of income-tax and even though a definite amount be not specified in section 5(1) of the Act as constituting a substantial evasion of income-tax the Government, to whom the process of selection for the purposes of reference of the cases for investigation to the Commission is entrusted, would not have any difficulty in finding out the persons coming within this group or category. To use the language of Viscount Simon, the income-tax which has been evaded would have to be considerable, solid or big, and once that conclusion was reached by the Government, the cases of such persons would indeed be referred by them for investigation by the Commission under section 5(1) of the Act.

It was, however, urged that it would be open to the Government within the terms of section 5(1) of the Act itself to discriminate between persons and persons who fell within the very group or category; the Government might refer the case of A to the Commission leaving the case of B to be dealt with by the ordinary procedure laid down in the Travancore Act XXIII of 1121. The possibility of such discriminatory treatment of persons falling within the same group or category, however, cannot necessarily invalidate this piece of legislation. It is to be presumed, unless the contrary were shown, that the administration of a particular law would be done "not with an evil eye and unequal hand" and the selection made by the Government of the cases of persons to be referred for investigation by the Commission would not be discriminatory.

This question was considered by this Court in two cases, viz., *Kathi Raning Rawat* v. *The State of Sau-*

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rashtra(1) and *Kedar Nath Bajoria* v. *The State of West Bengal*(2). Mr. Justice Mukherjea, as he then was, dealt with the argument in *Kathi Raning Rawat* v. *The State of Saurashtra*(1) as under:—

"It is a doctrine of the American courts which seems to be well-founded on principle that the equal protection clause can be invoked not merely where discrimination appears on the express terms of the statute itself, but also when it is the result of improper or prejudiced execution of the law. (Vide Weaver on Constitutional law, p. 404). But a statute will not necessarily be condemned as discriminatory, because it does not make the classification itself but, as an effective way of carrying out its policy, vests the authority to do it in certain officers or administrative bodies.....In my opinion, if the legislative policy is clear and definite and as an effective method of carrying out that policy a discretion is vested by the statute upon a body of administrators or officers to make selective application of the law to certain classes or groups of persons, the statute itself cannot be condemned as a piece of discriminatory legislation. After all "the law does all that is needed when it does all that it can, indicates a policy....and seeks to bring within the lines all similarly situated so far as its means allow" (Vide *Buck* v. *Bell,* 274 U.S. 200, 208). In such cases, the power given to the executive body would import a duty on it to classify the subject-matter of legislation in accordance with the objective indicated in the statute. The discretion that is conferred on official agencies in such circumstances is not an unguided discretion, it has to be exercised in conformity with the policy to effectuate which the direction is given and it is in relation to that objective that the propriety of the classification would have to be tested. If the administrative body proceeds to classify persons or things on a basis which has no rational relation to the objective of the legislature, its action can certainly be annulled as offending against the equal protection clause. On the other hand if the statute

(1) [1952] S.C.R. 435, 459. (2) [1954] S.C.R. 30, 41.

itself does not disclose a definite policy or objective and it confers authority on another to make selection at its pleasure, the statute would be held on the face of it to be discriminatory irrespective of the way in which it is applied....."

The same line of demarcation was also emphasized by Patanjali Sastri , C. J., delivering the judgment of the Court in *Kedar Nath Bajoria* v. *The State of West Bengal*(1).

It, therefore, follows that the mere fact that the Government is entrusted with the power to select cases of persons falling within the group or category of substantial evaders of income-tax for reference to the Commission would not render section 5(1) discriminatory and void.

The object sought to be achieved by the impugned piece of legislation is quite definite and that is to catch substantial evaders of income-tax out of those who have made huge profits during the war period. They form a class by themselves and have to be specially treated under the procedure laid down in the Act. Being a class by themselves, the procedure to which they are subjected during the course of investigation of their cases by the Commission is not at all discriminatory because such drastic procedure has reasonable nexus with the object sought to be achieved by the Act and therefore such a classification is within the constitutional limitations. The selection of the cases of persons falling within that category by the Government cannot be challenged as discriminatory for the simple reason that it is not left to the unguided or the uncontrolled discretion of the Government. The selection is guided by the very objective which is set out in the terms of section 5 (1) itself and the attainment of that object controls the discretion which is vested in the Government and guides the Government in making the necessary selection of cases of persons to be referred for investigation by the Commission. It cannot, therefore, be disputed that there is a valid basis of classification to be found in section 5(1) of the Act.

(1) [1954] S.C.R. 30, 41.

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The validity of the classification was further attacked on the ground that the limitation of the period within which the cases of the substantial evaders of income-tax falling within this group or category may be referred for investigation by the Government to the Commission, viz., 16th February 1950 imports a discrimination in so far as those persons whose cases are referred before that date would be treated under the procedure laid down in the Travancore Act XIV of 1124 whereas those whose cases have not been referred by that date would not be subjected to the same treatment even though they fell within the same category. This would bring about a discrimination between the same class of persons some of whom would be subjected to that special treatment and others who would escape the same. Section 5(4) of the Act also would not cure this defect because the cases contemplated therein are either the cases which have been already referred for investigation to the Commission under section 5(1) of the Act or cases of other persons about whose alleged evasion of income-tax the Commission has gathered information during the course of their investigations. Even if these other persons be thus subjected to the special procedure prescribed in the Act there would remain, outside the jurisdiction of the Commission, numbers of persons whose cases are not covered by sections 5(1) or 5(4) but who nonetheless are comprised within the class of substantial evaders of income-tax. They would have to be dealt with under the ordinary law and presumably under section 47 of the Travancore Act XXIII of 1121 if they could be dealt with thereunder. If they could not be so dealt with, the only result would be that they would escape the surveillance of the Government and the escapement of income-tax in their cases would be without any remedy. This, it was urged, was discriminatory and was enough to strike down section 5(1) of the Act.

It would be impossible in the normal course to reach all substantial evaders of income-tax. Those persons falling within that category in respect of whom the

Government had received the requisite information and in whose cases the Government had *prima facie* reasons for believing that they had to a substantial extent evaded payment of taxation on income would have their cases referred by the Government for investigation by the Commission. Those persons in respect of whom no such information was available to the Government would certainly escape detection but that is the position with regard to each and every law which may be passed in order to detect evasion of payment of income-tax. Even under the provisions of section 47 of the Travancore Act XXIII of 1121 (corresponding to section 34 of the Indian Income-tax Act as it stood before the amendment in 1948), those persons in respect of whom the Income-tax Officer had gathered definite information and consequently discovered that income, profits or gains chargeable to income-tax had escaped assessment in any year could be dealt with under the relevant provisions of that Act. Those persons in respect of whom no such information had been received by the Income-tax Officer could not be reached at all. The fact that some persons failing within a particular category may escape detection altogether is not necessarily destructive of the efficacy of the particular legislation. The only thing required is that, as between persons who fall within the same category and who can be dealt with under the same procedure, there should be no discrimination, some being treated in one way and others being treated in another.

It was also urged that discrimination was inherent in the terms of section 5(1) itself by reason of its operation being limited only to those persons whose cases were referred to the Commission on or before the 16th February 1950. It thus arbitrarily left out persons who evaded payment of taxation on income made during the war period but whose cases were not discovered or referred to the Commission on or before that date although they were otherwise similarly situated. Reliance was placed in support of this position on the following passage from the judgment of Mahajan, C. J. in *Shree Meenakshi Mills' case,*

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supra, at pages 795-796:

"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 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....."

These observations were made to repel the first argument of the learned Attorney-General that the class of substantial evaders who fall within section 5(1) were only those whose cases had been referred within the date fixed. It was pointed out that if the class was so circumscribed then that by itself would make the classification discriminatory by leaving out those substantial evaders whose cases had not been referred by that date. By that passage, however, this Court did not hold that in fact section 5(1) was confined to such a limited class. We are of the opinion that the fixation of the date for references for investigation by the Government to the Commission, *viz.*, the 16th February 1950 was not an attribute of the class of substantial evaders of income-tax which were intended to be specifically treated under the dractic procedure prescribed in the Travancore Act XIV of 1124 but was a mere accident and a measure of administrative convenience. The date of such references could, without touching the nature and purpose of the classification, be extended by the Travancore Legislature by a necessary amendment of the Travancore Act, XIV of 1124, and if such an amendment had been grafted on the Act as originally passed, no one belonging to the particular class or category of substantial evaders of income-tax could have complained against the same.

The next question to consider is whether the same class of persons dealt with under section 5(1) of the Travancore Act XIV of 1124 were intended to and

could be dealt with under the provisions of section 47 of the Travancore Act XXIII of 1121. Because, if that was the position at any particular period of time, section 5(1) of the Travancore Act XIV of 1124 would certainly be discriminatory in so far as there will be two distinct provisions simultaneously existing in the statute book, one of which could be applied to some persons within the same class or category and the other could be applied to others also falling within the same class or category, thus discriminating between the two groups.

Section 47 of the Travancore Act XXIII of 1121, as already observed, was in the same terms as section 34(1) of the Indian Income-tax Act as it stood before its amendment in 1948. Each of the following conditions had to be fulfilled before the Income-tax Officer could take action under this section, viz.:

(i) that definite information had come into the possession of the Income-tax Officer that income, etc. had escaped;

(ii) that in consequence of such definite information the Income-tax Officer discovered that income, etc.

(a) had escaped assessment, or

(b) had been under-assessed, or

(c) had been assessed at too low a rate, or

(d) had been the subject of excessive relief;

(iii) that the Income-tax Officer had reason to believe that—

(a) the assessee had concealed the particulars of his income, or

(b) deliberately furnished inaccurate particulars thereof.

It is, therefore, abundantly clear that section 47(1) of the Travancore Act XXIII of 1121 was directed only against those persons concerning whom definite information came into the possession of the Income-tax Officer and in consequence of which the Income-tax Officer discovered that the income of those persons had escaped or been under-assessed or assessed at too low a rate or had been the subject of excessive relief. The class of persons envisaged by

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section 47(1) was a definite class about which there was definite information leading to discovery within 8 years or 4 years as the case may be of definite item or items of income which had escaped assessment. The Travancore Act XXIII of 1121 was passed on the 9th July 1946. The action to be taken under it was not confined to escapement from assessment of income made during the war period (September 1939 to 1946). Action could be taken in respect of income which escaped assessment even before the war and also more than 8 years after the end of the war. Turning now to section 5(1) it will be noticed that the class of persons sought to be reached comprises only persons about whom there was no definite information and no discovery of any definite item or items of income which escaped taxation but about whom the Government had only *prima facie* reason to believe that they evaded payment of tax to a substantial amount. The class of persons who might fall within section 5(1) of the Travancore Act XIV of 1124 was, therefore, not the same class of persons who may come under section 47(1) of the Travancore Act XXIII of 1121. Further, action under section 5(1) read with section 8(2) of the Travancore Act XIV of 1124 is definitely limited to the evasion of payment of taxation on income made during the war period. It cannot, therefore, be urged that section 5(1) of the Travancore Act XIV of 1124 was discriminatory in comparison with section 47(1) of the Travancore Act XXIII of 1121, for the persons who came under section 5(1) were not similarly situated as persons who came under section 47(1). Section 5(1) of Act XXX of 1947 was struck down in *Shree Meenakshi Mills' case,* supra, as it comprised the same class of persons who were brought in in the amended section 34(1-A) of the Indian Income-tax Act, 1922 but the same cannot be said about section 5(1) as compared to section 47(1). These two section do not overlap and do not cover the same class of persons.

The result, therefore, is that section 5(1) of the Travancore Act XIV of 1124 which has to be read for

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this purpose in juxta-position with section 47 of the Travancore Act XXIII of 1121 cannot be held to be discriminatory and violative of the fundamental right guaranteed under article 14 of the Constitution. The proceedings which took place in the course of investigation by the Commission up to the 26th January 1950 were valid and so also were the proceedings during the course of investigation which took place after the inauguration of the Constitution on the 26th January 1950 under which the petitioner, as a citizen of our Sovereign Democratic Republic acquired *inter alia* guarantee of the fundamental right under article 14 of the Constitution.

The result, therefore, is that all the contentions urged on behalf of the petitioner fail and Civil Appeal No. 21 of 1954 must be dismissed with costs.

Civil Appeals Nos. 21 and 22 of 1954 will accordingly be dismissed with costs. There will be a set off for costs.

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v.

THE COMMISSIONER OF INCOME-TAX, MADRAS & ANOTHER.

[S. R. DAS, ACTING C.J, VIVIAN BOSE, BHAGWATI, JAGANNADHADAS and B. F. SINHA JJ.]

Constitution of India, Art. 14—Taxation on Income (Investigation Commission) Act, 1947 (Act XXX of 1947), s. 5(1)—Whether ultra vires *the Constitution in view of s. 34 of Indian Income-Tax Act,* 1922 *(Act XI of* 1922) *as amended by the Income-Tax and Business Profits Tax (Amendment) Act, 1948 (Act XLVIII of 1948) and the Indian Income-Tax (Amendment) Act, 1954 (Act XXXIII of 1954).*

Held (*Per* S. R. DAS, ACTING C.J., VIVIAN BOSE, BHAGWATI and B. P. SINHA, JJ. JAGANNADHADAS J., *dissenting*) that s. 5(1) of the Taxation on Income (Investigation Commission) Act, 1947 (Act XXX of 1947) is *ultra vires* the Constitution as it is discriminatory and violative of the fundamental right guaranteed by Art. 14 of the Constitution by reason of two amendments which were made in s. 34 of the Indian Income-Tax Act, 1922 (Act XI of 1922) one in 1948 by the enactment of the Income-Tax and Business Profits Tax