
(1962) 09 MP CK 0019

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 86 of 1961

Achchelal Lohar

APPELLANT

Vs

Janpada Sabha and Another

RESPONDENT

Date of Decision : 06-09-1962

Acts Referred:

Central Provinces and Berar Local Government Act, 1948 — Section 90
Constitution of India, 1950 — Article 245, 265

Citation : AIR 1963 MP 74 : (1963) ILR (MP) 777 : (1963) JLJ 5

Hon'ble Judges : P.V. Dixit, C.J;Shrivastava, J;Pandey, J

Bench : Full Bench

Advocate : Y.S. Dharmadhikari, for the Appellant; R.S. Dabir, for Respondent 1, M. Adhikari, General and R.J. Bhawe, Government Advocate for Respondent 2, for the Respondent

Final Decision : Dismissed

Judgement

Pandey, J.—This case comes before us because it raises the question of validity of Section 90 of the Central Provinces and Berar Local Government Act, 1948, and the Division Bench seized of the case was of opinion that, in view of the importance of the question, it should be heard by a Full Bench.

2 Before proceeding to the points arising in the case, we may briefly state the facts of the case. By a resolution dated 10 June, 1957 passed in a special meeting convened for the purpose, the Janapada Sabha, Sihora, decided to impose on persons engaged in the business of manufacture of bidis within the Janapada area an annual tax. In due course, the resolution was forwarded to the State Government. In exercise of the powers under Sub-section (2) of Section 90 of the Central Provinces and Berar Local Government Act, 1948 (hereinafter called the Act), the State Government, by a Gazette Notification No. 6165-8889-R dated 4 November 1960, sanctioned, with effect from 1 April 1961, the imposition of the tax at the following rates:

(1) Bidi-makers or persons otherwise engaged in the process--Rs. 3/- per year.

(2) Bidi contractors...Rs. 25/- per year.

(3) Owners of Bidi manufacturing factory of firm . Rs. 200/- per year.

The Janapada Sabha subsequently confirmed the imposition by a resolution dated 15 February, 1961 passed in a general meeting. Even before that, by a notice dated 15 December 1960, the petitioner was required to pay the tax for the year 1961-62. He has moved this Court for a writ of certiorari to quash the resolution dated 10 June 1957, and the Notification dated 4 November 1960. He has also prayed for a writ of mandamus directing the Janapada Sabha to forbear from giving effect to the aforesaid Notification and the notice dated 15 December, 1960. He has called in question the imposition of the tax u/s 90 of the Act mainly on the ground that by enacting that section, the Legislature abdicated its essential legislative function.

3. Section 90 of the Act reads:

"(1) Subject to the provisions of any law or enactment for the time being in force, a Sabha may, by a resolution at a special meeting convened for the purpose, impose any tax, toll or rate other than those imposed under Sections 85 and 89.

(2) The first imposition of any tax, toll or rate under Sub-section (1) shall be subject to the previous sanction of the State Government."

4. On the basis of Article 265 of the Constitution, it is urged that no tax can be levied or collected without the authority of law. "Law", as contemplated by that Article, means statute law: *P. J. Joseph v. Asst. Excise Commissioner* ILR (1952) Tra Co. 960: (AIR 1953 Trav Co. 146). If the impugned tax had been levied prior to the commencement of the Constitution, it would have been saved under Article 277. Not having been so levied, Section 90 of the Act must, in view of Article 372, be regarded as subject to other provisions of the Constitution. Under Article 13, the section can be valid only in so far as it is not inconsistent with other provisions of the Constitution including Article 265. The section suffers from the infirmity of excessive delegation of legislative power and is not, therefore, a valid law within the meaning of Article 265.

5. Since the challenge to the validity of Section 90 of the Act is grounded upon excessive delegation of legislative power, it is necessary to consider the nature and extent of constitutionally permissible delegation of such power. In *In Re: The Delhi Laws Act, 1912, the Ajmer-Merwara (Extension of Laws) Act, 1947 and the Part C States (Laws) Act, 1950*, , Mukherjea, J. observed:

"These I consider to be the fundamental principles and in respect of the powers of the Legislature the constitutional position in India approximates more to the American than to the English pattern" (p. 985 (of SCR): (p. 401 of AIR)).

6. In America, the rule which inhibits the delegation of legislative power is mainly grounded Upon the theory of separation of powers. Since the different classes of

power have been apportioned to different departments and as all derive their authority from the same written constitution, there is implied exclusion of each department from exercising the functions conferred upon the others. Another theory involved is based on the maxim "Delegatus non potest delegare". The Legislature is supposed to be a delegate deriving its power from the people, who are the ultimate repository of all powers, and hence it is considered incapable of transferring such powers to any other authority. In his treatise on Constitutional Law, Willis observes at page 137:

"The rule against the delegation of legislative powers, if there is such a rule, is broader than any doctrine of separation of powers. That part of it which forbids the delegation of powers to other branches of the Government comes within the doctrine of separation of powers. That part of it which forbids the delegation of powers to independent boards or commissions rests upon the maxim, *Delegata potestas non potest delegari*."

7. Despite the two theories, which are calculated to restrain the delegation of legislative power, a large amount of flexibility has been permitted in the practical application of these theories. In his treatise on Constitutional Limitation (Volume I, Eighth Edition, page 224), Cooley enunciates the rule in these words:

"One of the settled maxims in constitutional law is that the power conferred upon the legislature to make laws cannot be delegated by that department to any other body or authority. Where the sovereign power of the State has located the authority, there it must remain; and by the constitutional agency alone the laws must be made until the constitution itself is changed. The power to whose judgment, wisdom, and patriotism this high prerogative has been entrusted cannot relieve itself of the responsibility by choosing other agencies upon which the power shall be devolved, nor can it substitute the judgment, wisdom, and patriotism of any other body for those to which alone the people have seen fit to confide this sovereign trust."

He proceeds to say at pages 228-30:

"The maxim that power conferred upon the Legislature to make laws cannot be delegated to any other authority does not preclude the Legislature from delegating any power not Legislative which it may itself rightfully exercise. It may confer an authority in relation to the execution of a law which may involve discretion, but such authority must be exercised under and in pursuance of the law. The Legislature must declare the policy of the law and fix the legal principles which are to control in given cases; but an administrative officer or body may be invested with the power to ascertain the facts and conditions to which the policy and principles apply. If this could not be done, there would be infinite confusion in the laws, and in an effort to detail and to particularize, they would miss sufficiency both in provision and execution."

Willoughby, in his Constitution of the United States, refers to the rule enunciated by Cooley and states at page 1636:

"The principle as thus absolutely stated is subject to one important exception, and to several qualifications, or at least explanations."

Willis states:

"It is a dogma (in harmony with our definition) that legislative power cannot be delegated either to other branches of the Government or to independent boards or commissions, or even back to the people; but the rule of the dogma has so many exceptions that it is difficult to decide whether the dogma or the exceptions state the true rule." (pages 136-7)

Crawford states in his Statutory Construction at (pages 24-5):

"Inasmuch as the legislative power of the Government is vested exclusively in the Legislature in accordance with the doctrine of the separation of powers, the general rule is that the Legislature cannot surrender or abdicate such power. As a result, any attempt to do so, is unconstitutional and void. Nor can this power to make laws be delegated by the Legislature to any other authority--delegatus non potest delegare. A power, however, which is not legislative in character may be delegated. If the power, on the other hand, is clearly legislative in nature and exclusively belong to the legislative department of the Government, its delegation by the Legislature will be unconstitutional. Obviously, the difficulty lies in determining what powers belong exclusively to the legislative department. The Courts have, however, announced a number of principles by which the legality of any delegation of legislative power may be determined, but the application of these principles is not and has not been easy, as will appear from the further discussion in this chapter. As a general rule, it would seem to be the nature of the power rather than the manner in which it is exercised by the administrative officer, which determines whether the delegation is lawful."

Referring to the celebrated opinion of the United States Supreme Court in *Youngstown Sheet and Tube Co. v. Sawyer* (1952) 343 US 579 to the effect that the law-making power was entrusted to the Congress alone in both good and bad times, Bernard Schwartz in his *American Administrative Law* states at page 26:

"Despite this categorical judicial assertion, it can hardly be gainsaid that the administrative agency today is a law-making agency. More and more, in recent years, the Legislature has been delegating to the administration significant powers of law-making. The modern administrative agency is, as has been emphasized, characterized by its possession of authority to make rules and regulations having the force of law. Nor should it be thought that the law-making powers thus vested in the administration are powers of slight import. On the contrary, administrative law-making powers have become fully comparable (both quantitatively and qualitatively speaking) to those exercised directly by the legislature."

8. The position obtaining in America was examined in *In Re: The Delhi Laws Act, 1912*, the *Ajmer-Merwara (Extension of Laws) Act, 1947* and the *Part C States*

(Laws) Act, 1950, (supra). Kania, C. J. stated:

"The complexity of this question of delegation of power and the consideration of the various decisions in which its application has led to the support or invalidation of Acts has been somewhat aptly put by Schwartz on American Administrative Law. After quoting from *Wayman v. Southard* (1825) 10 Wheat 1 the observations of Marshall C. J. that the line has not been exactly drawn which separates those important subjects which must be entirely regulated by the Legislature itself from those of less interest in which a general provision may be made and power given to those who are to act under such general provision to fill up details, the author points out that the resulting judicial dilemma, when the American Courts finally were squarely confronted with delegation cases, was resolved by the judicious choice of words to describe the word "delegated power". The authority transferred was, in Justice Holmes' felicitous phrase, "softened by a quasi", and the Courts were thus able to grant the fact of delegated legislation and still to deny the name. This result is well put in Prof. Cushman's syllogism:

Major premise: Legislative power cannot be constitutionally delegated by Congress.

Minor premise : It is essential that certain powers be delegated to administrative officers and regulatory commissions.

Conclusions : Therefore the powers thus delegated are not legislative powers. They are instead administrative or quasi-legislative powers"., (pages 789-90)

Fazl Ali, J. stated:

"I have quoted these extracts at the risk of encumbering my opinion for two reasons: firstly, because they show that notwithstanding the prevalence of the doctrine of separation of powers in America, the rule against delegation of legislative power is by no means an inelastic one in that country, and many eminent Judges there have tried to give a practical trend to it so as to bring it in line with the needs of the present-day administration, and secondly, because they show that the rule against delegation is not a necessary corollary from the doctrine of separation of powers. (pages 814-5) Patanjali Sastri, J. stated:

"After considerable confusion and fluctuation of opinion as to what are "essentially" legislative powers which cannot be delegated and what are mere "administrative" or "ancillary" powers, the delegation of which is permissible, the recent decisions of the Supreme Court would seem to place the dividing line between laying down a policy or establishing a standard in respect of the subject legislated upon on the one hand and implementing that policy and enforcing that standard by appropriate rules and regulations on the other: (vide *Schechter Poultry Corporation v. United States* (1934) 295 US 495 and *Panama Refining Co. v. Ryan* (1934) 293 US 388 a test which inevitably gives rise to considerable divergence of judicial opinion as applied to the facts of a given case." (page 864)

Mahajan, J. stated:

"These decisions seem to indicate that judicial opinion in America is against delegation of essential powers of legislation by the Congress to administrative bodies or even to independent commissions." (page 919)

Mukherjea, J. stated:

"The Supreme Court of America has held in more cases than one that the policy of the law-making body and the standards to guide the administrative agency may be laid down in very broad and general terms. It is enough if the Legislature lays down an intelligible principle which can be implemented by the subordinate authorities for specific cases or class of cases." (page 983)

"As said above, these are the only two cases up till now in which the statutes of Congress have been declared invalid because of delegation of essential legislative powers. In the later cases the Court has invariably found the standard established by the Congress sufficiently definite to satisfy the prohibition against delegation of legislative powers and in all such cases a most liberal construction has been put upon the enactment of the legislature." (page 984)

S. R. Das, J. stated:

"The net result is that even in the land of separation of powers all that now remains of the doctrine is simply that the Legislature itself must lay down the policy (per Hughes, C. J.) or fix a primary standard (per Sutherland, J.). What will amount to sufficiently laying down policy or setting up a primary standard will, of course, vary with the length of the foot of the learned Judges who deliver the opinion of the Supreme Court of the United States. The elaborate formulation of policy purported to be made by Congress in Section 1 of the National Industrial Recovery Act did not appear to the American Supreme Court which decided the *Panama Refining Co.*'s case (1934) 293 US 388 to be sufficient laying down of policy so as to be constitutional whereas, as will be seen hereinafter, the mere enumeration of the different subjects with respect to which the Governor-General was given power to make rules by the Canadian Parliament in the War Measures' Act, 1914, and by the Australian Parliament in the National Security Act, 1939, for the defence and effectual prosecution of the war, without laying down any specific policy with regard to any of those subjects, was accepted as perfectly constitutional". (page 1032)

9. Our Supreme Court has consistently held that the essentials of the legislative function are the determination of the legislative policy and the formulation of that policy as a binding rule of conduct and these cannot be delegated to any outside agency: In *Re: The Delhi Laws Act, 1912, the Ajmer-Merwara (Extension of Laws) Act, 1947 and the Part C States (Laws) Act, 1950*, (supra), *Rajnarain Singh Vs. The Chairman, Patna Administration Committee, Patna and Another*, : *Rajnarain Singh Vs. The Chairman, Patna Administration Committee, Patna and Another*, , *Harishankar Bagla and Another Vs. The State of Madhya Pradesh*, : *Harishankar Bagla and Another Vs. The State of Madhya Pradesh*, , *The Edward Mills Co. Ltd., Beawar and Others Vs. The State of Ajmer and Another*, : ((S) The

Edward Mills Co. Ltd., Beawar and Others Vs. The State of Ajmer and Another, , Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others, , Pandit Banarsi Das Bhanot Vs. The State of Madhya Pradesh and Others, , Shri Ram Ram Narain Medhi v. State of Bombay 1959 Supp (1) SCR 489: Sri Ram Ram Narain Medhi Vs. The State of Bombay, , D.S. Garewal Vs. The State of Punjab and Another, , The Western India Theatres Ltd. Vs. Municipal Corporation of The City of Poona, , Union of India v. Messrs. Bhana Mal Gulzari Mal, 1960-2 SCR 627 : (AIR 1960 SC 475), Hamdard Dawakhana and Another, Kalipada Deb and Another, Lakshman Shripati Itpure @ Lakshman Shripati Impore and A.B. Choudhri and Another Vs. The Union of India (UOI) and Others, , Vasantlal Maganbhai Sanjanwala Vs. The State of Bombay and Others, and Mohammad Hussain Gulam Mohammad and Another Vs. The State of Bombay and Another, . As in America, so in this country, the rigid tests laid down in the earlier cases were later applied in a generous and liberal spirit. This may be illustrated by referring to the facts of some of the above-mentioned cases. In Harishankar Bagla and Another Vs. The State of Madhya Pradesh, , the validity of Cotton Textiles (Control of Movement) Order, 1948, was challenged on the ground of excessive delegation. That Order was passed u/s 3 of the Essential Supplies (Temporary Powers) Act, 1946, which empowered the Central Government, in so far as it appeared to it to be necessary or expedient for maintaining or increasing supplies of any essential commodity, or for securing their equitable distribution and their availability at fair prices, to provide, by licences, permits or otherwise, for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein. In upholding the validity of the Order, Mahajan, C. J. observed:

"In the present case the Legislature has laid down such a principle and that principle is the maintenance or increase in supply of essential commodities and of securing equitable distribution and availability at fair prices. The principle is clear and offers sufficient guidance to the Central Government "in exercising its powers u/s 3." (page 388)

Another case is Union of India (UOI) and Others and State of Delhi (Now Delhi Administration) and Others Vs. BhanaMal GulzariMal Ltd. and Others, (supra) in which Iron and Steel (Control of Production and Distribution) Order, 1941, was called in question on the ground of unconstitutional delegation. In circumstances similar to those in the last case, the Iron and Steel Controller fixed the prices of iron and steel. Repelling the challenge to the constitutionality of the delegation, Gajendragadkar, J. observed:

"When the Legislature delegated its authority to the Central Government to provide by order for regulating or prohibiting the production, supply and distribution of steel and iron, it had not surrendered its essential legislative function in favour of the Central Government. The preamble to the Act and the material words used in Section 3(1) itself embody the decision of the Legislature in the matter of the legislative policy, and their effect is to lay down a binding rule of conduct in the light of which the Central Government had to exercise its

powers conferred on it by Section 3." (pages 635-6)

Yet another case is *The Western India Theatres Ltd. Vs. Municipal Corporation of The City of Poona*, (supra) which we would hereafter consider at some length. In each of those cases, the discretionary authority delegated was not canalised within banks and there was nothing to prevent it from overflowing.

10. In *Cantonment Board, Poona Vs. Western India Theatres Ltd.*, , the legality of what was called theatre tax as imposed by the Poona Municipality and also by the Cantonment Board of Poona was called in question. After following the prescribed procedure, the Municipality imposed the tax in 1920 under Clause (xi) of Section 59(1) of the Bombay District Municipal Act, 1901, which was as under:

"(xi) any other tax to the nature and object of which the approval of the Governor-in-Council shall have been obtained prior to the selection contemplated in Sub-clause (i) of Clause (a) of Section 60."

The Cantonment Board levied that tax from 31 May 1947 u/s 60 of the Cantonment Act, which reads:

"The Board may, with the previous sanction of the Local Government, impose in any cantonment any tax which, under any enactment for the time being in force may be imposed in any municipality in the province wherein the Cantonment is situated."

The Cantonment Board relied upon the following, provision contained in Section 73(xiv) of the Bombay Municipal Boroughs Act, 1925:

"any other tax (not being a toll on motor vehicles and trailers) save as provided by Section 14 of the Bombay Motor Vehicles Tax Act, 1935, which, under the Government of India Act, 1935, the Provincial Legislature has power to impose in the Province."

Bavdekar and Chainani, JJ. repelled the contention, that these provisions made an excessive delegation of legislative power. In *Hirabhai Ashabhai Patel Vs. The State of Bombay*, the water rate charged u/s 169 of the Bombay Municipal Corporation Act, 1888, was challenged, on the ground that the Legislature had given no indication of its policy as to the ceiling of the rate and the matter was left to the absolute unfettered discretion of the Standing Committee. Repelling this contention, Chagla, C. J. stated:

"Now it may be pointed out, as was rightly indicated by the Solicitor General, that even with regard to the levying of a water-tax, no limit has been placed by the Legislature. In the case of halalkhor-tax the limit is there; it cannot exceed 5 per cent of the rateable value. In the case of general tax also there is both a floor and a ceiling: it cannot be less than 8 per cent or more than 21 per cent. But curiously, with regard to the water-tax the Legislature has not indicated any limit to the tax which the Municipality can levy. Now there is a very good reason why the Legislature did not do so in the case of the water-tax. To supply water to

a city like Bombay, with its growing needs and its growing population, is a tremendous task, and the Legislature which passed this law in 1888 could not possibly decide what it would cost the Municipality to provide a water supply for Bombay; and, therefore, the only indication that the Legislature gave as to the limit of the power of taxation of the Municipality with regard to water-tax was that it shall levy a water-tax of so many per centum of the rateable value as the Corporation shall deem reasonable for providing a water supply for Greater Bombay.

Therefore, the water-tax was to be levied for the specific purpose of providing a water supply for Bombay and it was left to the Corporation to decide what was the reasonable percentage of the rateable value at which the water-tax should be levied. There can be no doubt that the Legislature intended that there should be a relationship between the rate charged and the cost of providing a water supply. Therefore, it would be true to say that, in one sense, even in the case of a water-tax there is an implied limitation upon the power of the Municipality."

11.The first of the two cases noticed in the last paragraph was taken to the Supreme Court. In *The Western India Theatres Ltd. Vs. Municipal Corporation of The City of Poona*, their Lordships upheld the validity of the theatre tax and stated:

"The second point urged before us in support of this appeal is that Section 59(1) (xi) is unconstitutional in that the Legislature had completely abdicated its functions and had delegated essential legislative power to the municipality to determine the nature of the tax to be imposed on the rate-payers. Learned counsel for the appellant urges that the power thus delegated to the municipality is unguided, uncanalised and vagrant, for there is nothing in the Act to prevent the municipality from imposing any tax it likes, even, say, Income Tax. Such omnibus delegation, he contends, cannot on the authorities be supported as constitutional. We find ourselves in agreement with the High Court in rejecting this contention.

"In the first place, the power of the municipality cannot exceed the power of the provincial Legislature itself and the Municipality cannot impose any tax, e.g., Income Tax which the provincial Legislature could not itself impose. In the next place, Section 59 authorises the municipality to impose the taxes therein mentioned "for the purposes of this Act". The obligations and functions cast upon the municipalities are set forth in Chapter VII of the Act. Taxes, therefore, can be levied by the Municipality only for implementing those purposes and for no other purpose. In other words, it will be open to the Municipality to levy a tax for giving any of the amenities therein mentioned. The matter may be illustrated by reference to Section 54 which enumerates the duties of municipalities. The first duty mentioned in that section is that the Municipality should make provision for lighting public streets and nobody can object if it imposes a lighting tax, which, indeed, is item (ix) in Section 59(1).

Take another example: it is the duty of the Municipality to arrange for supply of drinking water and it may legitimately charge a water rate which, again, is item (viii) in Section 59(1). We do not for a moment suggest that the Municipalities may only impose a tax directly in connection with the heads of duties cast upon it. What we say is that the tax to be imposed must have some reasonable relation to the duties cast on it by the Act. In the third place, although the rule of construction based on the principle of *ejusdem generis* cannot be invoked in this case, for items (i) to (x) do not, strictly speaking belong to the same genus, but they do indicate, to our mind, the kind and nature of tax which the Municipalities are authorised to impose. Finally, the Provincial Legislature had certainly not abdicated in favour of the Municipality, for the taxing power of the Municipality was quite definitely made subject to the approval of the Governor-in-Council.

Under the Indian Council Act, 1861 (24 and 25 Vic. c. 67), the Governor-in-Council might mean the Governor in Executive Council or the Governor-in-Legislative Council. If the reference in Section 59(1) (xi) is to the Governor's Legislative Council, then there was no improper delegation at all, for it was subject to the Legislative control of the Governor in Legislative Council. The Governor's Legislative Council was composed of all the members of the Governor's Executive Council besides a few other persons. Therefore, if the reference was to the Governor in his Executive Council even then, from a practical point of view, the ultimate control was (sic) with the Governor's Legislative Council. We need not labour this point any further, for on the first three grounds the delegation of legislative authority, if any, is not excessive so as to make the exercise of it unconstitutional. In our opinion, the impugned section did lay down a principle and fix a standard which the Municipalities had to follow in imposing a tax and the Legislature cannot, in the circumstances, be said to have had abdicated itself and, therefore, the delegation of power to impose any other tax cannot be struck down as being in excess of the permissible limits of delegation of legislative functions." (pages 75-77)

"Now, if the three tests laid down by the Supreme Court are contra-indicative of excessive delegation of the legislative power, we are of opinion that Section 90 of the Act too does not suffer from the vice of excessive delegation of such power.

12. A Janapada Sabha is a body corporate constituted under the provisions of the Act. Section 49 specifies its compulsory duties and Section 50 enumerates its optional duties. u/s 75, the proceeds of all taxes, fees, tolls, cesses and rates imposed under the Act are required to be credited to the Janapada fund, which has to be applied to the payment of the charges and expenses incidental to the several matters specified in Sections 49 and 50 and also for certain other specified ancillary purposes. u/s 85, a cess is imposed for the maintenance of schools or roads or "for any other purpose under the Act". For the same purposes, a Janapada Sabha may, with the previous sanction of the State Government, impose u/s 86 an additional rate and u/s 87 an additional cess. With like sanction, a Janapada Sabha may impose u/s 88 a special school rate. u/

s 89, it is authorised to impose in any public market certain licence fees, tolls, market fees and fees on the registration of animals sold in the market.

This is followed by the impugned Section 90 which empowers a Janapada Sabha to impose "any tax, toll or rate other than those imposed under Sections 85 and 89". This power has two restrictions. It is Subject to the provisions of any law or enactment for the time being in force. Further, the first imposition can be made with the previous sanction of the State Government. The first contention that the expression "any tax, toll or rate" is so wide in its sweep that it is not necessarily limited to the heads of taxation enumerated in List II of Schedule VII of the Constitution is met by the first restriction. This is even apart from the consideration that Section 90 occurring in the law of a State must be regarded as limited to the field entrusted to it. As we have shown, the impugned tax could be imposed only for the purposes of the Act and its proceeds have to be applied for the purposes of the Act as specified in Section 75.

As the Supreme Court has pointed out, it is not necessary that a tax should be imposed directly in connection with the heads of duties cast upon a Janapada Sabha. It is also clear that the other two tests laid down by the Supreme Court, which are of a general nature and not peculiar to the Bombay enactment impugned in that case, apply equally to Section 90 of the Act. In this connection, we may mention that, for taxes on profession, trades and callings, Article 276 of the Constitution has fixed a ceiling, which controls such a tax imposed u/s 90. For these reasons, we are of opinion that, in the instant case, the delegation of legislative power, if any, is not in excess of the constitutionally permissible limits.

13. In our opinion, there is another ground also for regarding Section 90 of the Act to be a valid enactment. In his Constitutional Limitations, Eighth Edition, pages 235-6, Cooley observes:

"We have elsewhere spoken of municipal corporations, and of the powers of legislation which may be and commonly are bestowed upon them, and the bestowal of which is not to be considered as trenching upon the maxim that legislative power must not be delegated, since that maxim is to be understood in the light of the immemorial practice of this country and of England, which has always recognized the propriety and policy of vesting in the Municipal organizations certain powers of local regulation, in respect of which the parties immediately interested may fairly be supposed more competent to judge of their needs than any central authority. As Municipal organizations are mere auxiliaries of the State Government in the important business of Municipal rule, the Legislature may create them at will from its own views of propriety or necessity, and without consulting the parties interested; and it also possesses the like power to abolish them, without stopping to inquire what may be the desire of the corporators on that subject". (pages 235-6)

At pages 388-9, he states:

"The system is one which almost seems a part of the very nature of the race to

which we belong. A similar subdivision of the realm for the purposes of Municipal Government has existed in England from the earliest ages; and in America, the first settlers, as if instinctively, adopted it in their frame of Government, and no other has ever supplanted it, or even found advocates. In most of the colonies the central power created and provided for the organization of the towns; in one at least the towns preceded and created the central authority; but in all, the final result was substantially the same, that towns, villages, boroughs, cities and counties exercised the powers of local Government, and the Colony or State the powers of a more general nature."

Professor Willis, in his Constitutional Law, pages 137-8, observes:

"The rule against non-delegation of legislative powers does not forbid the delegation of powers of local self-government. This exception rests on historical grounds. This is especially true of Municipal corporations. For this reason, Municipal home rule charters are generally constitutional, as is also a commission form of Government. The delegation of authority to counties, townships, and school districts is also sometimes upheld for the same reason that a delegation of power to Municipalities is upheld, but such delegation of power is more frequently put upon the basis that these local subdivisions are simply determining conditions. It has also been held that Congress may delegate general legislative power to territories."

Crawford, in his Statutory Construction, pages 40-1,

"Under the American system of Government, it is a cardinal principle that local affairs shall be managed and controlled by local authorities and general affairs by the central authority. It has been an immemorial practice for the central authority or general Government to vest some portion of the policy power in subordinate Governmental branches or municipal corporations for the local self-Government of such branches or units. Legislation delegating such power is not regarded as a transfer of general legislative power but as the grant of authority to prescribe local regulations in accord with immemorial practice, subject to the interposition of the superior authority in cases of necessity. This does not violate the inhibition against the delegation of legislative power.

In fact, it has never been held to intrench upon the rule of delegates non potest delegare. As a result, the State Legislature may empower a municipal corporation to make police regulations concerning local matters, to regulate public utilities locally, to make regulations for the local public health and safety, and to levy taxes for local purposes. The delegation of such power by the Legislature to a municipal corporation does not divest the state of its sovereign right to exercise the power itself or to take it away from the local unit at any time it sees fit. And the same restrictions which rest upon the State Legislature regarding the delegation of legislative power and functions, are also imposed on the political sub-divisions or municipal corporation as to the powers granted to them by the Legislature."

In the United States, the justification for this exception to the rule against the delegation of legislative power is the ancient Anglo-Saxon practice antedating the Constitution, which is regarded as fundamental to the system of governance. This was noticed in *In Re: The Delhi Laws Act, 1912*, the *Ajmer-Merwara (Extension of Laws) Act, 1947* and the *Part C States (Laws) Act, 1950*, (*supra*), by Fazl Ali, J. at p. 812 (of SCR) (at p. 350 of AIR), by Mukherjea, J. at pages 964-5 (of SCR): (at p. 395 of AIR) and by Das, J. at p. 1018 (of SCR): (at p. 411 of AIR) in these words:

"It should be noted that in the above passage Willoughby recognises this delegation of power to local bodies as "the giving by the Central legislative body of extensive law-making powers with reference to local matters". "

In *Ram Kishan Vs. State*, the learned Judges stated:

"A limited power of legislation conferred on municipalities and other local bodies which enjoy a certain measure of local self-Government has also been recognised as an exception to the general rule. Indeed such a delegation of power is not regarded as a transfer of "general legislative power" but rather as the grant of the authority to prescribe local regulations. This is sanctified by immemorial practice both in England and in America." (page 412 (of ILR All): (at p. 192 of AIR)).

14. In this - country also, Municipalities and other local bodies, enjoying limited powers of law-making and taxation, have existed for more than a century. While the Courts in the United States presume, without there being any foundation for it in the American Constitution, that the inhibition against the delegation of legislative power does not preclude the conferral of local powers of Government, including powers of taxation, upon the local authorities, it appears to us that the Government of India Act, 1935, and the present Constitution recognised the obvious need for conferring such powers on municipal corporations, district boards and other local authorities for the purpose of local self-Government and expressly provided for it. Item 13 of List II of the Seventh Schedule to the Government of India Act, 1935, which has been reproduced as Entry 5 of List II of the Seventh Schedule to the Constitution reads:

"5. Local Government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-Government or village administration."

Now the word "powers" is a large word and there is no reason for limiting its meaning. The Privy Council stated in AIR 1935 158 (Privy Council) at p. 162).

"Indeed, in interpreting a constituent or organic statute such as the Act, that construction most beneficial to the widest possible amplitude of its powers must be adopted."

This was also accepted by the Supreme Court in *Navinchandra Mafatlal Vs. The*

Commissioner of Income Tax, Bombay City, : ((S) Navinchandra Mafatlal Vs. The Commissioner of Income Tax, Bombay City, , Thakur Amar Singhji Vs. State of Rajasthan, : ((S) Thakur Amar Singhji Vs. State of Rajasthan, and Sri Ram Ram Narain Medhi Vs. The State of Bombay, . We think that the word "powers", which is unqualified, includes the powers of making laws and imposing taxes. In our opinion, when the Government of India Act. 1935, and the Constitution enabled the Legislature of a State to make laws about the constitution and "powers" of local authorities for the purpose of local self-Government, they authorised the Legislature to confer on the local authorities, by such laws made for that purpose, limited powers of making laws and imposing taxes. In this view, the validity of Section 90 cannot be challenged on the ground of excessive delegation of the legislative power. This is not a case of delegation of the legislative power in the ordinary sense. It is a case of entrustment by law of limited powers of taxation permitted by the Government of India Act, 1935, and the Constitution.

15. The view we have taken is supported by observations made in some of the decided cases. In *Raja Suryapalsingh and Others Vs. The U.P. Govt.*, the Court stated:

"These considerations lead us to the further conclusion that if the power of delegation possessed by a Legislature is of a more limited character than we have skated earlier, there are nevertheless certain classes of legislation which a Legislature must have power to entrust to another authority. Such classes will include:

(3) Power may be conferred on a local or other territorial authority to make rules and regulations for local self-Government or for other local purposes. This power is well established and the necessity for it is obvious.

.....

This was followed in *Lala Jagdish Prasad and Another Vs. Administrator, Municipal Board, Saharanpur and Another*, . In *(S) Hirabhai Ashabhai Patel Vs. The State of Bombay*, , Chagla, C. J. referred to Entry 5 in the State List and stated:

"The Entry is very wide in its terms and legislation is permissible to the State Legislature with regard to any subject of local Government and it is also permissible to the State Legislature to confer powers upon a local authority provided the power is for the purpose of local self-Government. Now, there can be no doubt that the power of taxation conferred upon the Bombay Municipality is for the purpose of local self-Government. Mr. Purshottam is right when he contends that the State Legislature cannot confer upon a local authority the power to tax, which power it itself does not possess. Therefore, the power to tax must be found in the list which would make the Legislature itself competent to impose the tax. If the Legislature is competent, it can, for the purposes of local self-Government, instead of levying the tax itself, confer that power upon the local authority.....

If the State Legislature is competent to confer upon the local authority the power to tax, its competency cannot be affected because the power that has been conferred" is an unlimited power."

In Nagpur Kshatriya Khatik Samaj v. Corporation of the City of Nagpur AIR 1956 Nag 152 Hidayatullah, C. J. and Kotwal, J. quoted with approval the following passage from Rex ex rel. Morris v. Stimmel (1923) 4 DLR 955 (Can).

"The whole scheme of the Municipal Act is the delegation to the local Municipalities within the prescribed limits of the full and plenary jurisdiction possessed by the Legislature itself." (page 153) In Ajoy Kumar Mukherjee Vs. Local Board of Barpeta and Others, their Lordships held that if the State Legislature had power to tax the land under Item 49, such a power could be conferred by the Legislature on a local body under Entry 5 of List II of the Constitution. In The Corporation of Calcutta and Others Vs. Sarat Chandra Ghatak and Another, , Bachawat, J. stated:

"quite apart from the American precedent, I think that there are indications in our Constitution showing that powers of local self-Government and taxation may be delegated to municipal corporation and other local authorities. It is well recognised that extensive powers of making bye-laws and of levying taxation for purposes of local self-Government may be delegated to municipal bodies. Entry 5 of the State List is

"Local Government, that is to say, the constitution and power of municipal corporations improvement trusts, district boards, mining settlement authorities and other authorities for the purpose off local self-Government or village administration. Under this entry powers of local self-Government including powers of taxation may be conferred by the State Legislature on municipal corporation and other local authorities. Sources of revenue through taxation are essential for the existence of a municipal corporation. A municipal body without powers of taxation is incapable of serving any useful purposes. Delegation of the power of taxation may well include delegation of the incidental power to fix the rate of taxation. The local authority is the best judge of its needs and of the capacity of the local people to bear the burden of taxation. The State Legislature can of course give only such power of taxation as it itself has and possesses. Article 199(2) as also Article 110(2) of the Constitution provide that a Bill shall not be deemed to be a Money Bill by reason only that

"it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes."

These articles of the Constitution clearly contemplate that a law may provide for imposition and alteration of tax by a local authority or body for local purposes. The power to impose or alter a tax implies the power to fix and alter the tax rate. Article 277 of the Constitution recognises that taxes and duties authorised by law may be "levied" by a municipality or other local authority or body for purposes of the municipality, district or other local area. The power to levy a tax includes the

power to determine and declare the rate of tax. Though the levy of a tax is a legislative function, that function may be delegated to a quasi-legislative local body. It should be remembered that the Constitution does not expressly prohibit the delegation by the Legislature of its legislative functions. Bearing that in mind, I think that the provisions of the State List, Item 5, Article 110(2), Article 199(2) and Article 277 of the Constitution sufficiently indicate that the delegation to a municipality or other local authority of the power to impose and levy a tax enumerated in the State List for purposes of local self-Government is permitted by the Constitution." We may also mention that in *The Amalgamated Coalfields Ltd. and Others Vs. The Janapada Sabha, Chhindwara*, the coal tax imposed under a similar provision in the Central Provinces Local Self-Government Act, 1920, was not challenged on the ground of unconstitutional delegation of the legislative power. In *Rama Krishna Ramanath Vs. The Janpad Sabha, Gondia*, the terminal tax imposed under the same provision was also not questioned on that ground. Referring to Item 13 of List II of the Government of India Act, 1935, their Lordships stated:

"It must however be observed that merely because the legislature is empowered under this entry to constitute local authorities and vest them with powers and jurisdiction, it would not follow that these local bodies could be vested with authority to levy any and every tax for the purpose, of raising revenue for the purposes of local administration. They could be validly authorised to raise only those taxes which the province could raise under and by virtue of the relevant entries in the provincial Legislative List. This is on the principle that the Province could not authorise local bodies created by it to impose taxes which it itself could not directly levy for the purposes of the Provincial Government," (pages 1079-89)

Although the point did not directly arise for consideration before the Supreme Court, this statement of the law that, under item 13 of List II, local bodies could be authorised to raise only those taxes which the province could raise supports our opinion.

16. Since no other point was pressed before us, we are of opinion that this petition should be dismissed.

Dixit, C.J.

17. I agree that Section 90 of the C. P. and Berar Local Government Act, 1948 cannot be held to be invalid as being in excess of the permissible limits of delegation of legislative functions. A complete answer to the sole contention advanced on behalf of the petitioner that by Section 90 the Legislature had completely abdicated its functions and had delegated the essential legislative power to the Janapad Sabhas and that power was unguided and unbridled, is to be found in the decision of the Supreme Court in *The Western India Theatres Ltd. Vs. Municipal Corporation of The City of Poona*, , on which some reliance was placed by the learned counsel for the petitioner also.

That was a case in which the validity of Section 59(1)(XI) of the Bombay District

Municipal Act, 1901, giving to the municipal committees the power to impose "any other tax" after obtaining the prior approval of the Governor-in-Council to the nature and object of the tax, was challenged on the ground of excessive delegation of legislative functions. The Supreme Court held that the provision cannot be struck down as being in excess of the permissible limits of the delegation of the legislative functions. The validity of the provision was upheld on three considerations, namely, (i) the power of the municipality could not exceed the power of the provincial Legislature itself, (ii) the municipality could impose taxes only for the purposes of the Act, and (iii) though the principle of ejusdem generis did not apply, yet Clauses (i) to (x) of Section 59 (1) indicated the kind and nature of tax which the municipalities were authorised to impose. These three general considerations as pointed out by my learned brother Pandey, J., are equally applicable here.

Learned Counsel for the applicant said that there was a distinction between the present case and the case of *The Western India Theatres Ltd. Vs. Municipal Corporation of The City of Poona*, (supra), in that Section 59 of the Bombay Act contained an express provision to the effect that the municipality could impose the taxes therein mentioned for the purposes of the Act and the taxing power of the municipality was made subject to the approval of the Governor in Council which meant the Governor in Legislative Council. I am unable to regard this as a valid distinction. Having regard to the various provisions of the C. P. and Berar Local Government Act, 1948, explained by my learned brother, there can be no doubt as to the true legal position that under that Act a Janapad Sabha can impose taxes, tolls or rates only for the purposes of the Act. It is true that in the Act there is no express provision that taxes, tolls or rates mentioned in Section 90 shall be only for the purposes of the Act. But an express recital of the true legal position is not necessary for limiting the power of the Janapad Sabhas in the matter of imposition ,of taxes, tolls or rates only for the purposes of the Act Equally unnecessary is the recital of the legal position that the power of a Janapad Sabha cannot exceed the power of the State Legislature itself.

In the case of *The Western India Theatres Ltd. Vs. Municipal Corporation of The City of Poona*, (supra), the Supreme Court did not rest its conclusion that Section 59(1) (XI) of the Bombay Act was valid on the feature of the taxing power of the municipality being made subject to the approval of the Governor-in-Council. This is clear from the observation of Das, C. J., made after discussing the import of the provision with regard to the approval of the Governor-in-Council. He said:

"We need not labour this point any further, for on the first three grounds the delegation of legislative authority, if any, is not excessive so as to make the exercise of it unconstitutional."

He then proceeded to say:

"In our opinion the impugned section did lay down a principle and fix a standard which the municipalities had to follow in imposing a tax and the legislature

cannot, in the circumstances, be said to have had abdicated itself and, therefore, the delegation of power to impose any other tax cannot be struck down as being in excess of permissible limits of delegation of legislative functions."

18. As learned counsel for the petitioner has not questioned the competency of the State Legislature to confer upon the Janapad Sabhas power to tax, it is really not necessary to consider the scope and extend Item 13, List II, Schedule 7 of the Government of India Act, 1935 -- or Entry 5, List II, Sch. 7 of the Constitution, or to consider the nature and principles of legislation made by the State Legislature under those entries. Suffice to say that under those entries it is permissible for the State Legislature to create Janapad Sabhas or municipal corporations and to authorise them to levy taxes, rates or tolls for the purpose of raising revenue in order to enable those bodies to perform the various duties imposed upon them by the statute creating them. The power of taxation is obviously subject to the limitation that the State Legislature cannot authorise these local bodies to impose a tax which the State itself has no right to levy. The local bodies can be validly authorized to raise only those taxes which the State could raise under and by virtue of relevant entries (See Rama Krishna Ramanath Vs. The Janpad Sabha, Gondia,). When the State Legislature has this power to constitute local authorities and vest them with powers and jurisdiction, then in the creation of local authorities by a statute and in vesting them with powers and jurisdiction including the power to tax there is no "delegation of power" in the strict sense of the expression, that is to say, in the sense of the Legislature completely abdicating its functions and setting up a parallel Legislature transferring all its power to it.

In *Hodge v. The Queen* (1883) 9 AC 117 the Privy Council considered the question whether the Legislature of Ontario had or had not the power of entrusting to a local authority the power of making regulations with respect to the Liquor License Act, 1877, which, among other things, created offences for the breach of those regulations and annexed penalties thereto. The Privy Council held that the Ontario Legislature had that power and pointed out that the Ontario State Legislature was not a delegate of, or acting under mandate from, the Imperial Parliament, and that its authority was "as plenary and as ample within the limits prescribed, by Section 92" (British North America Act, 1867) "as the Imperial Parliament in the plenitude of its power possessed and could bestow." Their Lordships of the Privy Council then observed:

"It is obvious that such an authority is ancillary to legislation, and without it an attempt to provide for varying details and machinery to carry them out might become oppressive, or absolutely fail. The very full and very elaborate judgment of the Court of Appeal contains abundance of precedents for this legislation, entrusting a limited discretionary authority to others, and has many illustrations "of its necessity and convenience. It was argued at the bar that a Legislature committing important regulations to agents or delegates effaces itself. That is not so. It retains its powers intact, and can, whenever it pleases, destroy the agency

it has created and set up another, or take the matter directly into his own hands."

The Privy Council said later :

"The provincial Legislature having thus the authority to impose imprisonment, with or without hard labour, had also power to "delegate similar authority" to the municipal body which it created" (Underlining (here into " ") is mine).

It is thus plain that when the State Legislature enacts a statute creating local authorities and investing them with powers and jurisdiction, including the power to tax, though there is no delegation in the strict sense of the term, there is delegation in a loose sense. The word "delegation", as generally used, does not imply a parting with powers by a person who grants the delegation, but points rather to the conferring of an authority to do things which otherwise that person would have to do himself (See *Huth v. Clarke* (1890) 25 QBD 391 . The delegation by the Legislature in general terms of the power to impose taxes, tolls or rates, after following certain prescribed procedure and after obtaining the previous sanction of the Government to it, to a municipal corporation or other local bodies, which are nothing but mere auxiliaries of the State Government, in the matter of local administration, and which bodies are more competent to judge the local needs than any central authority, is, as has been held by the Supreme Court in the case of *The Western India Theatres Ltd. Vs. Municipal Corporation of The City of Poona*, (supra), valid according to the principles laid down by the Supreme Court with regard to permissible delegation.

19. For the reasons I have given, I would dismiss this petition with costs.

Shrivastava, J.

20. Having perused the reasons for the order prepared by my learned brother Pandey J., I concur that this petition should be dismissed with costs for both the reasons, namely, (i) that the provisions contained, in Section 90 of the Central Provinces and Berar Local Government Act, 1948, are not open to attack on the ground of excessive delegation; and (ii) that the power to impose tax can be conferred upon local bodies Under Item 13 of List II of the Government of India Act (corresponding to Entry 5 in List II of the Constitution of India). However, I would add one or two observations.

21. The learned counsel for the petitioner has attacked Section 90 of the Local Government Act on the ground that there is excessive delegation by the Legislature Inasmuch as no principles on which the tax is to be imposed by the Janapada Sabha have been stated in that section. No doubt, if the section is read by itself, this criticism is justified. However, it has to be read as a part of the Act in the light of other provisions therein. The power has been granted to the Janapada Sabhas to enable them to perform the functions entrusted to them u/s 53 of the Act. This cannot be done without the necessary finances, and accordingly power has been given to the Janapada Sabhas to impose taxes. In exercising this power the Janapada Sabha is of course limited to the taxes which

can be imposed by the State Legislature itself, as that Legislature cannot confer powers on local bodies any more than it possesses.

A local authority like the State Government has first to ascertain the amount of funds which would be needed for performing its functions in a reasonable manner and then raise the necessary finances by taxation. These are matters of detail which cannot be conveniently considered by the State Legislature, and it is therefore necessary that the powers must be delegated to the local authority. The fact that the proceeds of the taxes imposed is to be spent for the purpose of performing the functions of local bodies is sufficient formulation of the legislative policy as has been held in (S) *Hirabhai Ashabhai Patel Vs. The State of Bombay*, and *Ajoy Kumar Mukherjee Vs. Local Board of Barpeta and Others*, . The first imposition of the tax has been made subject to the sanction of the local Government and this acts as a sufficient check to prevent arbitrary use of the power by the Janapada Sabha. The State Legislature has entrusted the necessary control to its nominee, the State Government, as in the nature of things it was impossible for the Legislature to control every detail relating to the imposition of the tax. Even after this, the final control rests in the Legislature inasmuch as any tax imposed by the Janapada Sabha, if unreasonable, can always be abolished by the Legislature.

22. The validity of Section 90 can also "be supported on the basis of Item 13 in List II of the Government of India Act (Entry 5 in List II of the Constitution). That entry gives the State Legislature power to make laws defining the powers of local bodies constituted by it. The expression "power" used in that entry is comprehensive enough to include the power to impose taxes. Pandey, J. has already referred to *Hirabhai Ashabhai Patel Vs. The State of Bombay*, (supra), in which Chagla, C. J. has observed that "If the State Legislature is competent, it can, for the purposes of local self-Government, instead of levying the tax itself, confer that power upon the local authority", I may add the observations on Entry 5 in List II in *Ajoy Kumar Mukherjee Vs. Local Board of Barpeta and Others*, supra):

"The State Legislature has been thus given power in very wide terms to legislate with regard to constitution and powers of local bodies and other local authorities for the purpose of local self-Government. The Act, therefore, comes within the ambit of item No. 5. Item No. 5 is very widely worded and it embraces within its ambit power to authorise Local Boards to impose taxes and thus provide for its revenue. There is no limitation placed on the legislative power of the States in this behalf."

23. It may be useful to refer to some passages in *The Law of Canadian Municipal Corporations* (Vol. 1) by Rogers. Explaining the nature of a municipal corporation, the learned author observes on page 215:

"Unlike Parliament or the Legislature, which confine themselves to matters of policy, municipal councils combine both legislative and administrative functions.

The council of a municipal corporation is its law-making body or Legislature in the sense that it evolves policy within the ambit of the powers delegated to the corporation and adopts by-laws and resolutions based on this policy of by-law passed by a council is as binding, within the municipal territorial limits, as an Act of Parliament upon the subjects at large."

Further, on page 301 the learned author goes on to say:

"Within the ambit of their jurisdiction, local authorities exercise powers which are plenary and absolute in their nature. In so far as their legislative and administrative acts are intra vires and are exercised in good faith and in the public interest, they are not subject to control by their inhabitants or by any other person or by the judiciary. As declared by the late Chief Justice Meredith: "The trend of modern judicial decisions is. ... to recognize the right of such bodies, which acting bona fide and within the limit of the powers conferred upon them by the legislature, to transact their business without interference by the Courts." "

Regarding the grant of power of taxation to the local bodies, the learned author states on page 289:

"Provinces and their creatures are limited by The B. N. A. Act to the imposition of direct taxation within the province. A statute authorizing a "fee or charge" to be levied by municipalities on the operations of transportation systems is within provincial competence under this head of power. Likewise municipal councils may be authorized to impose a tax on every person attending a place of amusement."

24. In (1883) 9 AC 117 a question arose whether Ontario Legislature had power under the British North America Act, 1867, to confer a power on the License Commissioners to define offences and impose penalties in connection with the regulation of taverns and shops. The exercise of the power was attacked on two grounds, namely, (i) that the Ontario Assembly was not competent to legislate in regard to licences for the sale of liquor; and (ii) that even assuming that there was such a power, the Assembly should have exercised that power itself and could not delegate it to any other authority. On the first question, their Lordships observed:

"When the British North America Act enacted that there should be a legislature for Ontario, and that its legislative assembly should have exclusive authority to make laws for the Province and for provincial purposes in relation to the matters enumerated in Section 92, it conferred powers not in any sense to be exercised by delegation from or as agents of the Imperial Parliament, but authority as plenary and as ample within the limits prescribed by Section 92 as the Imperial Parliament in the plenitude of its power possessed and could bestow. Within these limits of subjects and area the local legislature is supreme, and has the same authority as the Imperial Parliament, or the Parliament of the Dominion, would have had under like circumstances to confide to a municipal institution or body of its own creation authority to make by-laws or resolutions as to subjects

specified in the enactment, and with the object of carrying the enactment into operation and effect."

On the question of delegation, their Lordships said:

"It was argued at the bar that a legislature committing important regulations to agents or delegates effaces itself. That is not so. It retains its powers intact, and can, whenever it pleases, destroy the agency it has created and set up another, or take the matter directly into his own hands. How far it shall seek the aid of subordinate agencies, and how long it shall continue them, are matters for each legislature, and not for Courts of Law, to decide."

I may here point out that in *Attorney-General for Ontario v. Attorney-General for Dominion*, 1896 AC 348 it was held by the Judicial Committee that the extent of the powers which a local Legislature can delegate to a municipality constituted by it depends upon the authority which the province derives from the powers of Section 92 other than under sub-head 8 thereof. The jurisdiction over "municipal institutions" assigned to the provinces by sub-head 8 is simply that of the right to create a body for management of municipal affairs. The extent of the powers which a legislature could commit to municipal institutions called into existence by it was held to depend upon the legislative authority derived by it from the enumerated heads of Section 92 other than head 8. (Vide pages 271 and 276 of *The Law of Canadian Municipal Corporations* by Rogers). The power in Item 13 of the Government of India Act which is given to the State Legislatures in relation to municipal corporations is much wider, as it extends not only to constituting such corporations but also to defining their powers. It must be assumed that the Parliament in enacting the Government of India Act was aware of the narrow nature of the corresponding provision in the British North America Act and deliberately widened the scope of entry 13.

25. In my opinion, therefore, apart from the power which the State Legislature has to delegate its functions to the local authorities generally, the validity of the impugned provision can be supported independently on the specific entry in List II.

26. Lastly, Shri Y. S. Dharmadhikari for the petitioner contended that even if the power to tax could be conferred upon the local bodies under the Government of India Act, such a power could not now be conferred under the Constitution because of the provision in Article 265 which provides that "No. tax shall be levied or collected except by the authority of law". It is pertinent to observe that the expression used in that Article is "authority of law" and not "law". It follows that the tax need not be imposed directly by the law of the Legislature. All that is necessary is that it should have the "authority of law". This view finds support from the decision in *Maharaja Shri Umair Mills Ltd. Vs. State of Rajasthan and Another*, . In that case, the validity of the imposition of fees by State Government under rules made under the Factories Act has been upheld as covered by the "authority of, law". The imposition of the tax by the Janapada

Sabha with the sanction of the State Government u/s 90 of the Local Government Act is undoubtedly under the "authority of law". The relevant law existed before the Constitution and it is on its authority that the Janapada Sabha has imposed the professional tax which is being challenged. The requirements of Article 265 of the Constitution are fully satisfied in the present case.

THE COURT

27. The petition fails and is dismissed. The petitioner shall bear his own costs and pay out of the security amount those incurred by the respondents. The remaining amount of security shall be refunded. Hearing fee Rs. 100/-.