
(1959) 06 GAU CK 0006
In the Gauhati High Court
Case No : Civil Rule No. 42 of 1957

Ajoy Kumar Mukherjee

APPELLANT

Vs

Local Board of Barpeta and Others

RESPONDENT

Date of Decision : 08-06-1959

Acts Referred:

Assam Local Self-Government Act, 1953 — Section 62
Constitution of India, 1950 — Article 14, 19, 245, 246

Citation : AIR 1959 Guw 221

Hon'ble Judges : C.P. Sinha, C.J;H. Deka, J;G. Mehrotra, J

Bench : Full Bench

Advocate : N.M. Lahiri, for the Appellant; S.M. Lahiri, General and D.N. Medhi, Sr. Govt. Advocate for Opposite Parties (Nos. 2 and 3), for the Respondent

Final Decision : Dismissed

Judgement

Mehrotra, J.—This Rule was issued on an application under Article 226 of the Constitution praying for a writ of certiorari or any other writ of like nature quashing the order passed by the Local Board of Barpeta Sub-division and further for a writ of mandamus directing the Barpeta Local Board not to give effect to its order for payment of license fees fixed by the Local Board, Barpeta, hereinafter called the Board, in respect of Kharma Hat owned by the petitioner.

The petitioner states that he is the proprietor of Nisf Khiraj land covered by Patta No. 2 at village Ata, Mouza Bhawanipur in the district of Kamrup. In the year 1936 he opened a Hat on the aforesaid land in order to meet the needs of the neighbouring people. After sometime the Hat was settled by public auction with different people who realised the dues from the persons who carried on their business in the said Hat. The petitioner further states that he had to incur huge expenditure for upkeep and maintaining the Hat and developed the area by constructing bridges and approach roads to the Hat.

He claims that he constructed a 1 1/4 mile long road at a cost of Rs. 8,500/- connecting the Hat with the Barpeta--Bhawanipur P.W.D. Road in 1951.

Sometime back the Board opened a Hat at Chaparbari about two miles off from the Kharma Hat the one opened by the petitioner. Without any earlier intimation the petitioner was asked by the Board to pay a License Fee of Rs. 600/- for the year 1953-54 within two weeks of the receipt of the notice. A protest was lodged by the petitioner to the Chairman of the Board who has been arrayed as respondent No. 2 to the present petition; but he expressed his inability to give any relief to the petitioner as the fee had been fixed by the Board.

Thereupon the petitioner moved the members of the Board for consideration of the matter. No orders were passed on his representation and distress warrant was issued for the realisation of the alleged amount of license fee for the year 1953-54 and the amor had to be paid under protest. The position of the petitioner's Hat deteriorated and a rival Hat was opened on the northern boundary of Kharma Hat by one Safaruddin Sarkar. The petitioner was served with a notice on the 26th April, 1956 purported to have been issued by respondent No. 2 asking the petitioner to pay a sum of Rs. 700/- as license fee for the year 1955-56.

The petitioner by an application dated the 29th May, 1956 moved the respondent No. 2 for remission of the license fee. The petitioner was however, served with two notices on 17-7-1956--one to pay a sum of Rs. 600/- for the year 1954-55 and the other to pay a sum of Rs. 700/- for the year 1955-56, as license fee. On the failure of the petitioner to do so proceedings were instituted against the petitioner to recover the amount and distress warrants were issued.

Thereafter the present petition was. filed in this court on the 17th of July, 1958 challenging, the validity of the order imposing license fee on the petitioner. In response to the notice issued by this Court an affidavit has been filed in opposition on behalf of the Board. In the counter affidavit it is denied that the petitioner's Hat was opened in 1936 and it is asserted that this Hat was established as the rival of the Local Board Hat at Kayakuchi (Kuriha) village one and a half miles off from Kharma Hat a few years back. It is denied that the petitioner spent about Rs. 8,500/- in connecting the Hat with the P.W.D. Road.

The Local Board has developed two roads Tapa-Kharma Road connecting the Kharma Hat with Barpeta Bhawanipur P.W.D. Road and Kayakuchi-Kharma-Fingua Road to the Kharma Hat for the convenience of the people visiting the Hat and has further constructed a ring well for water supply to the Hat at the expense of nearly Rs. 6,356/-. The Government, according to the respondent, by means of a notification dated 23rd of August, 1951 prescribed the maximum license fee which could be imposed by the Board and the Board by a resolution dated the 15th November, 1951 fixed a license fee of Rs. 600/- per annum on the petitioner for his Hat.

The sanction of the Government was obtained for the aforesaid license fee. In its special meeting the Board again passed a resolution on the 5th of July, 1952 to the effect that no land could be used as a market without a license to be granted

by the Board. This information was made known to the public by issue of notice as prescribed under the Rules and thereafter the Board adopted another resolution on the 20th of September, 1952 fixing a license fee of Rs. 600/- per annum for the Kharma Hat belonging to the petitioner.

By another resolution dated the 27th February, 1953 the Board in its special meeting again imposed a license fee of Rs. 600/- per year for tile Kharma Hat for the year 1953-54. The petitioner, when the processes were issued, paid up the aforesaid amount. The same amount was assessed for the year 1954-55, which was not paid by the petitioner, Subsequently, by a resolution of the 18th January, 1956, the Board in its special meeting increased the license fee to Rs. 700/- for the year 1955-56.

But as this increased fee could not be notified in time this was not assessed and the petitioner was liable to pay Rs. 600/- for the year 1955-56 This resolution was, however, given effect to in the year 1956-57 and the petitioner is thus liable to pay Rs. 700/- for this period.

2. The power to impose market tax is claimed u/s 62 of the Assam Local Self-Government Act, 1953 and it is urged that the imposition of the fee is not without the authority of law. The validity of the levy has been assailed on various grounds. Mr. Nirendra Mohan Lahiri, who appears for the petitioner has canvassed five points before us. First, it is urged by him that there is no legislative competence in the Assam, Legislature to enact Section 62 of the Assam Local. Self-Government Act, 1953, hereinafter called the Act, as it is not covered by any of the items of either the State List or the Concurrent List.

Secondly, it is urged that even if the State had power to legislate in respect of this matter the Board could not legislate it by a mere resolution. Thirdly, it is contended that the power of imposing tax in respect of the market conferred on the Board by Section 62 is hit by principle of excessive delegation. Fourthly, it is contended that if the levy is claimed to be a fee and not a tax, it is an illegal levy inasmuch as there is no quid pro quo and that under the garb of imposing a license fee the Board is really taxing the petitioner.

No expense is incurred by the Board towards the maintenance of the approach roads. There is no relation between the amount spent by the Board over the maintenance of approach roads and providing other facilities to the persons using the Hat and the fee imposed. In this connection it was also contended that the amount of license fee has been arbitrarily fixed and is unreasonable. It was lastly urged that the amount of fee charged being unreasonable, arbitrary and excessive, it is an unreasonable restriction on the fundamental right guaranteed to the petitioner, under Article 19(1)(g) of the Constitution.

It is further contended that Section 62 of the Act gives wide and arbitrary powers to the Board to fix any amount of tax. No procedure is provided for the imposition of the tax and no maximum limit has been placed on the rights of the Board to impose tax and that it is open to the Board to discriminate between

persons placed in similar situation. The section is thus violative of Article 14 enshrined in the Constitution.

3. Coming to the first point urged by the counsel, it is necessary to refer to some of the provisions of the Act. Section 62 of the Act provides as follows :--

"62. (1) The Local Board may, at a meeting convened expressly for the purpose of which due notice shall have been given, order that within the jurisdiction of the Local Board, no land shall be used as a market otherwise than under a license to be granted by the Board, other than lands used as markets established by, vested in or placed under its control or administration.

(2) On the issue of an order as in Sub-section (1), the Board at a meeting may grant within the local limits of its jurisdiction a license for the use of any land as a market and impose an annual tax thereon and such conditions as prescribed by rules.

(3) When it has been determined that a tax shall be imposed under the preceding sub-section, the Local Board at a meeting shall make an order that the owner of any land used as a market specified in the order within the local limits of the Board's jurisdiction shall take out a license and cause such order to be published in the manner prescribed.

Such order shall be published at least one month before it shall take effect and shall specify the taxes not exceeding such amounts as may be prescribed by rule, which shall be charged for the financial year.

4. Taxes so fixed by any order of the Local Board under the last preceding sub-section shall continue in force until the Board at a meeting held not less than one month before the end of the financial year make and publish an order specifying any different taxes within the limit prescribed by rule, which shall be charged for the ensuing financial year.

5. Upon the imposition of such tax by the Local Board the owner of any land used as market shall pay to the Local Board taxes specified in the order and within one month of such order."

4. Sections 58 to 64 deal with the imposition of taxes by the Board. Section 63 provides as follows :--

"63 (1) With the previous sanction of the State Government, the Local Board may, from time to time at a meeting convened expressly for the purpose of which due notice shall have been given, impose within the local limits of its jurisdiction, any tax.

(2) Nothing in this section shall authorise the imposition of any tax which the State Legislature has no power to impose in the State under the Con situation."

5. Section 64 empowers the imposition of taxes or license fee on certain items and Clause (2) of Section 64 fixes the maximum limits of such taxes or license

fee. Section 94 (1) of the Act gives power to the State Government to make rules for the purpose of carrying out the provisions of the Act, and Sub-section (2) of Section 94 enumerates certain specific subjects on which the State Government can frame rules. Section 94 (2) (xxxii) gives power to the State Government to prescribe the maximum amount of tax which may be levied by the Board under Sections 59 and 62.

After coming into force of the Act, by Section 2 the Assam Local Self Government Act, 1951 stood repealed, except all rules and bye-laws, orders and appointments made, notifications and notices issued, licenses and permits granted, taxes imposed or assessed, cesses fees, tolls or rates levied, contracts entered into and suits instituted and proceedings taken under the said Act and in force immediately before the commencement of this Act and they were deemed to have been respectively made, issued, granted, imposed or assessed, levied, entered into, instituted and taken under the Act until new provisions were made.

On the 23rd August, 1951, certain rules were framed by the State Government in the exercise of its powers conferred by Section 89 (2) (xxxix) of the Assam Local Self Government Act, 1915 as subsequently amended, read with Section 52cc of the said Act. These rules gave power to the Board to impose certain conditions on the license. On the same date a notification was issued by the Governor in the exercise of his powers u/s 89 (2) (xxxviii b) of the Assam Local Self-Government Act, 1915 as subsequently amended by which the Governor was pleased to prescribe Rs. 1000/- per annum as the maximum amount of license fee which could be levied by the Local Boards u/s 52cc of the said Act.

It was further provided by the notification that any Local Board with the previous approval of the Government could impose a license fee within this maximum according to the sue and importance of a market. It appears that by an amending Act, Section 52cc was introduced in the Assam Local Self Government Act, 1915 more or less in similar terms as Section 62 of the Act. It empowers the Board to levy license fee on the market and that the maximum amount of such license fee was fixed by the Governor in the exercise of powers u/s 89 (2) (xxxviii b) which corresponds to Section 94 (2) (xxxii) of the Act.

It was contended by the counsel for the petitioner that no rules have so far been framed u/s 94 of the Act by the State Government, and in the absence of any such rules it cannot be said that any maximum limit has so far been fixed by the Government. We have already referred to Section 2 of the Act which saves all rules framed under the earlier Act in so far as they are not inconsistent with the present Act and till steps have been taken to frame rules under the present Act.

In view of this provision it cannot be said that the rules framed under the earlier Act will not be binding and valid under the present Act, Section 2 not only saves the rules framed under the earlier Act but also validates the imposition of any tax under the earlier Act and further provides that the tax will be deemed to have been levied under the present Act. The petitioner, therefore, gets no support

from the failure of the Government to frame rules under the present Act.

Mainly, in this connection the counsel has contended that there is no item in any of the Lists II or III of the Seventh Schedule to the Constitution under which the State Legislature could impose the present tax. The contention is that from a close examination of the provisions of the Act, specially when they are contrasted with the provisions of the earlier Act it is clear that the levy in question is a tax and not a fee.

It will, therefore, not be covered by item No. 66 of List II of the Seventh Schedule to the Constitution read with item No. 28 of the said list. Item No. 28 is "Markets and Fairs" and item No. 66 is "Fees in respect of any of the matters of this list, but not including fees taken in any Court." Section 62 comes within the Chapter headed as "Imposition of Taxes". Sub-clause (2) of Section 62 itself provides that the Board may grant a license for the use of any land as market and impose an annual tax thereon.

The word "fee" and "tax" have been indiscriminately used in the Act and the provisions of the Act do not seem to make any distinction between tax and fee. Under these circumstances it has been rightly contended by the counsel for the petitioner that the levy imposed by the Board is really a tax, and unless it is justified by any of the items of List II of the Seventh Schedule of the Constitution, the Board can have no power to levy any such tax. The Act comes within item No. 5 of List II of the Seventh Schedule which is as follows :

"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."

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.

It is no doubt true that the legislature cannot confer any power on the subordinate bodies such as local boards, in the exercise of its powers under item No. 5 of the List II of the Constitution to levy taxes which it cannot impose itself under its taxing powers. It will, therefore, have to be seen whether the legislature itself could impose any such tax. The contention of the counsel for the applicant in short is that the levy is not a fee and therefore it is not covered by Item No. 66.

The Act is covered by item No. 5 but the power to impose a market tax is not covered by any of the items in the State List. Reliance has been placed by the

counsel for the State on item No. 49 of List II of the Seventh Schedule which provides for "taxes on lands and buildings". It is contended that the tax in question is one on land.

It may be that the tax is to be realised from the owner of the land, on his using the land in a particular manner, but nonetheless it is a tax on the land and is covered by item No. 49 of the State List. It is not necessary to reiterate that in interpreting the legislative list a broad and comprehensive interpretation is to be given and the lists are not to be interpreted in pedantic and narrow sense. There are overlappings also in the lists. In the case of *M'Culloch v. State of Maryland*, (1857) 4 L Ed 579, it was observed by Chief Justice Marshall of the Supreme Court of America as follows :

"A constitution, to contain an accurate detail of all the sub-divisions of which its great powers will admit, and of all the means by which they may be carried into execution, would partake of a prolixity of a legal code, and could scarcely be embraced by the human mind. It would probably never be understood by the public. Its nature, therefore, requires, that only its great outlines should be marked, its important objects designated, and the minor ingredients which compose those objects be deduced from the nature of the objects themselves."

6. In the case of *United Provinces v. Mt. Atiq Begum* AIR 1941 SC 16 it was observed by Chief Justice Gwyer as follows :--

"The subjects dealt with in the three legislative lists are not always set out with scientific definition. It would be practically impossible for example to define each item in the Provincial List in such a way as to make it exclusive of every other item in that list and Parliament seems to have been content to take a number of comprehensive categories and to describe each of them by a word of broad and general import. In the case of some of these categories, such as "Local Government," "Education", "Water", "Agriculture" and "Land", the general word is amplified and explained by a number of examples or illustrations, some of which would probably on any construction have been held to fall under the more general word while the inclusion of others might not be so obvious. Thus "Courts of Wards" and "treasure-trove" might not ordinarily have been regarded as included under "land", if they had not been specifically mentioned in Item 21. I think however that none of the items in the lists is to be read in a narrow or restricted sense, and that each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it."

7. It was again laid down by the Supreme Court in *The State of Rajasthan Vs. G. Chawla and Dr. Pohumal*, as follows:

"The legislatures in our country possess plenary powers of legislation. This is so even after the division of legislative powers, subject to this that the supremacy of the legislatures is confined to the topics mentioned as Entries in the Lists conferring respectively powers on them. These entries, though meant to be

mutually exclusive, are sometimes not really so. They occasionally overlap, and are to be regarded as enumeratio simplex of broad categories. Where in an organic instrument such enumerated powers of legislation exist and there is a conflict between rival lists, it is necessary to examine the impugned legislation in its pith and substance, and only if that pith and substance falls substantially within an Entry Or Entries conferring legislative powers, is the legislation valid, a slight transgression upon a rival List, notwithstanding.

The power to legislate on a topic of legislation carries with it the power to legislate on an ancillary matter which can be said to be reasonably included in the power given."

8. A satisfactory test will be if this tax was directly imposed by the State Legislature, could it be justified under item No. 49 of List II of the Constitution. In the case of AIR 1930 129 (Privy Council) , the question arose about the nature of certain impost of one half penny in the pound under a statute of Parliament of New South Wales, the Sydney Harbour Bridge Act 1922 and it was held by the Privy Council that the land tax includes a yearly impost laid upon real property by Parliamentary enactment for the provision of public revenue and the Bridge tax being a tax on land directly imposed by the legislature of the State is a land tax.

There is no authority for the proposition that an impost laid by statute upon property within a defined area, or upon specified classes of property, or upon specified classes of persons, is not within the true significance of the term "a tax" nor can it be contended that revenue raised by statutory imposts for specific purposes is not a tax.

9. In the case of Sir Byramjee Jeejeebhoy, Kt. Vs. The Province of Bombay, the question arose about the validity of the Urban Immovable property tax levied by Section 22 forming part of Part 6 Bombay Finance Act. It was observed by Kania, J. as he then was as follows :

"The crucial question is this : Is the tax on the lands and buildings or on income of the lands and buildings? * * * If lands and buildings are treated as investments and the return, as income, is taxed it is a tax on the income. On the other hand, if the tax is on the lands and buildings themselves and the assessment is on a standard named by the Legislature which may fluctuate or vary on the produce or income from it, it would be a tax on the property. . As has been pointed out in A Reference under the Government of Ireland Act, 1920, In re (1936) AC 352, the measure of the tax is not itself the test. In determining the nature of the tax consideration may be given to the standard on which the tax is levied, but that is not the determining factor. The contention of the plaintiff must be that the impugned Act is for the purpose of taxing the owner's income. According to him that is the essential nature and character of this tax. I do not find adequate words in the impugned Act to support that contention. Section 22 of the Act in terms states that it is a tax on buildings and lands. The other words used in that section by themselves or read with the other sections do not

displace this character of the tax. An inanimate object cannot pay the tax. Therefore a tax on property must be paid by the owner or occupier. From the fact that the owner is liable to pay the tax it does not follow that the tax is Income Tax. * * * *

The attempt to classify taxes on property under heads like capital, income and occupation is not profitable, as the list is not exhaustive. On the other hand, as pointed out by the learned Advocate-General taxes on lands and buildings have been known to Indian Legislatures for over fifty years, and find place as such in the Municipal Acts passed by the different provinces. Under the Government of India Act of 1915 (as amended by the Act of 1919) and the Devolution Rules framed thereunder the Provincial Legislatures had authority to levy the tax on lands and buildings for municipal purposes only. Under the Constitution Act of 1935 the power to levy the tax remains, while the limitation to the power is removed. It is difficult to believe that when enacting the Constitution Act the Legislature intended to and did deprive the Provinces of this power."

10. Bearing this broad principle in mind it cannot be said that the present enactment is not covered by item No. 49. The counsel for the petitioner has contended that there are general items like land, trade and commerce and market and fairs and if the taxation on a market was to be included in the term "land" there was no necessity to have an independent item of tax on land. We do not think that there is any substance in this contention. The taxing power is a special power conferred on the legislature by the Constitution and has to be indicated by a separate item in the List from the general power to legislate on land. Moreover, as has been pointed out earlier there may be overlapping in some cases; but that by itself is no ground to hold that it does not come within any of the items.

The scheme of Section 62 also indicates that it is a tax on the land. In Clause (1) of Section 62 power has been given to the Board to declare that no land within its jurisdiction will be used as a market except on obtaining a license. After such declaration has been made if an individual intends to use the land as a market he has to obtain a license which can be granted to him only on payment of certain tax. The scheme of this section clearly indicates that the incident of tax falls on the land, and the tax is to be levied only if the land is used for a particular purpose.

11. In the case of AIR 1949 81 (Federal Court) , the appellant was called upon to pay Rs. 67/8/- as property tax for the year 1943-44 in respect of a shop owned by him in the town of Amritsar under the provisions of the Punjab Urban Immovable Property Tax Act. The validity of the provision of the Act was challenged on the ground that it was not covered by item No. 42 of List II of the Seventh Schedule of the Government of India Act, 1935.

The said item deals with "taxes on lands and buildings, hearths and windows". It was contended that in interpreting the word "taxes on lands" regard is to be

given to the legislative practice, and the subsequent words "hearths and windows". It was further contended that as such taxes were, generally speaking, in the nature of an occupation tax payable by the occupier in England, the British Parliament could not have intended by using the expression "taxes on buildings" to tax the owner.

These arguments were repelled and it was held that when the words used in the Act are clear and unambiguous, and they are not unfamiliar or uncommon words or such words as may be aptly described as terms of art, it is unnecessary to travel beyond the Act for the purpose of construing them. Item No. 42 of List II deals with taxes on "lands and buildings, hearths and windows". There are no words in the Act to suggest that the tax is to be paid only by the occupier and not by the owner, and it seems to us to be wholly wrong to read into Item 42 words which do not occur there and thereby to limit the scope and meaning of the expressions used.

This is a complete answer to the argument of the counsel for the petitioner that the tax is really imposed on the petitioner as the owner of the Hat and is in the nature of a restriction on his right to carry on trade and commerce; and thus it could not be a tax on the land or building. In the case of *Hirabhai Ashabhai Patel Vs. The State of Bombay*, the validity of the water charges imposed by the Bombay Municipal Corporation was challenged.

Dealing with the argument that there was no legislative competence to enact the particular provision of the Corporation Act, it was observed by Chief Justice Chagla as follows :

"Turning to the first ground, the competence of the Legislature must clearly be looked at from the point of view of the Constitution Act in force when the Municipal Act of 1888 was passed. Referring to Entry 5 in the State List of the present Constitution it was observed that 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."

12. 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 Item 5 of List II of the Constitution.

13. The second contention of the applicant has no substance either. If Section 62

of the Act is valid and it is competent for the Legislature to delegate the authority of imposing tax to the local body, the procedure followed by the Board, if in accordance with the provisions of the Act, cannot be held to be illegal. Section 62 empowers the Board to grant a license to use land as a market and further to impose an annual tax thereon. The Board is a statutory body and it can act by passing resolutions at its meeting. It cannot, therefore, be said that no tax could be imposed by passing a resolution. In cases of legislation by legislative bodies relating to taxation, procedure has been provided under the Constitution and unless that procedure is followed it could be said that the Act has not been validly passed. But in the case of local bodies if they have been empowered by a valid legislation to impose tax, and procedure is provided in the Act itself, it cannot be said that the imposition is invalid so long as the procedure provided under the Act has been followed.

14. Coming to the question as to whether Section 62 is hit by the rule of excessive delegation, it is not necessary to examine, in detail the various authorities cited by the counsel for the petitioner before me. The principle had now been fully laid down in several decisions of the Supreme Court. The difficulty only arises in the application of those principles. In the case of AIR 1949 175 (Federal Court) , it was for the first time laid down that there was a prohibition against delegation of legislative powers by the Legislature in the Indian Constitution. The next case where the matter was authoritatively dealt with by the Supreme Court is what is known as the Delhi Laws Case, Article 143, Constitution of India and Delhi Laws Act (1912) etc., In re AIR 1951 S. C. 332 under Article 143 of the Constitution. It was held In this case by the majority decision that there is a prohibition in the Indian Constitution to delegate legislative function by the legislature to any other body. Chief Justice Kania, Mahajan, J. and Mukherjea took the view that while a legislature has power to delegate its functions considering the un-avoidability of delegation of such power, it was broadly to be confined to two types of legislation: (1) A conditional legislation, (2) a subsidiary legislation. The general principle is that the legislature cannot delegate its power to a law making authority or to any other body. It was observed by Mahajan, J. in Delhi Laws case AIR 1951 SC 332 as follows:

"In my opinion, the correct proposition, on the other hand, is that unless expressly or impliedly authorised, such delegation is not permissible. The underlying principle on which the exceptions are allowed is that whether the legislature lays down principles or policies of the legislature itself in details in essential matter to another body."

Chief justice Kania observed as follows:

"As a result of considering all these decisions together it seems to me that the legislature in India, Canada, Australia and U. S. of America has to discharge its legislative functions, i. e, to lay down a rule of conduct. In doing so it may, in addition, lay down conditions, or state facts which on being fulfilled or

ascertained according to the decision of another body or the executive authority, the legislation may become applicable to a particular area. This is described as conditional legislation. The legislature may also, in laying down the rule of conduct, express itself generally if the conditions and circumstances so require. The extent of the specific and detailed lines of the rule of conduct to be laid down may vary according to the circumstances or exigencies of each case. The result will be that the legislature does not choose to lay down detailed rules of regulations, that work may be left to another body which is then deemed to have subordinate legislative powers. The Legitimacy of delegation depends entirely upon its being used as an ancillary measure which the legislature considers to be necessary for the purpose of exercising its legislative powers effectively and completely. The legislature must retain in its own hands the essential legislative functions which consist in declaring the legislative policy and laying down the standard which is to be enacted into a rule of law, and what can be delegated is the task of subordinate legislation which by its very nature is ancillary to the statute which delegates the power to make it provided the legislative policy is enunciated with sufficient clearness of a standard laid down the Courts cannot and should not interfere with the discretion that undoubtedly rests with the legislature itself in determining the extent of delegation necessary in a particular case."

15. In the case of *Rajnarin Singh Vs. The Chairman, Patna Administration Committee, Patna and Another*, , mostly summarised the view in the *Delhi Laws* case, AIR 1951 SC 332 as follows :

"In our opinion, the majority view was that an executive authority can be authorised to modify either existing or future laws but not in any essential feature. Exactly what constitutes an essential feature cannot be enunciated in general terms, and there was some divergence of view about this in the former case, but this much is clear from the opinions set out above; it cannot include a change of policy."

16. In the case of *Harishankar Bagla and Another Vs. The State of Madhya Pradesh*, , Chief Justice Mahajan observed as follows :

"It was settled by the majority judgment in AIR 1951 SC 332 that essential powers of legislation cannot be delegated. In other words the legislature cannot delegate its function of laying down legislative policy in respect of a measure and its formulation as. a rule of conduct. The legislature must declare the policy of the law and the legal principles which are to control any given cases and must provide a standard to guide the officials or the body in power to execute the law. The essential legislative function consists in the determination or choice of the legislative policy and of formally enacting that policy into a binding rule of conduct.""

17. It is not necessary to multiply authorities on the point. The essential limitations on the power of the legislature to delegate have been summarised by

me in my earlier decision *Bajranglal Nandalal Vs. Commissioner of Taxes*, .

18. The contention of the counsel for the petitioner is that to impose tax is an essential legislative function. It is not open to the legislature, therefore, to delegate the power of imposing a tax to a subordinate body. In the Act no principles are laid down on which the tax is to be imposed. No clear standards have been provided in the Act and no policy has been laid down to constitute a guiding rule of conduct for the subordinate body.

The maximum has not been fixed nor has any particular rate been fixed in the Act itself. Wide powers have been given to the Board in the matter of imposition of taxes and in the matter of the amount of tax and in the selection of the individual who could be made the subject of taxation. No procedure has been provided which may constitute a check and a control over the power of the Board.

19. Under Item 5 of List II, the State Legislature can make laws relating to the constitution and power of the local bodies. Having regard to the nature of the duties imposed on such local bodies, they have to be provided with some funds and the legislature, therefore, had to confer power on the local bodies to impose taxes. The taxing power, therefore, has to be exercised having regard to the financial requirements of the Board and it cannot be said that the Act does not lay down standards and policy for the guidance of the local Board.

The Local Board has to construct, repair and maintain roads, embankments, bridges, water-channels and other works of communication u/s 40 of the Act. Section 66 of the Act makes it obligatory for the Board to establish, maintain and manage all middle vernacular schools under public management within the sub-division and also to bear the cost of construction and repairs of all buildings connected therewith. u/s 67 any public charitable dispensary or hospital within the sub-division can be placed under the management of the Board.

Section 69 gives power to the Board to close markets or shops for a specified time to avoid spreading of infectious or contagious disease. The Local Board is to provide for the sanitation of the sub-division. An examination of the various sections of the Act discloses that the Board has been charged with the obligation to perform many acts of public utility within its sub-division. Sections 58 to 64 then deal with the power of the Board to impose taxes.

Section 31 provides that every Local Board shall submit through the Deputy Commissioner to the State Government a statement of the requirements and an estimate of the probable expenditure of the Local Board for the ensuing financial year, and under Clause (4) of the said section the State Government has been given power to approve of the estimate. Section 33 then provides for a fund called the "Local Fund" and it further provides under Clause (2) that-

"There shall be placed to the credit thereof-

(a) all sums levied by, or accruing within the sub-division to the Board;

(b) all receipts in respect of any schools, hospitals, transport services, bazars, bridges, pounds, buildings, institutions or works, constructed by or vested in the Board under Chapter IV;

(c) all proceeds from tolls on bridges, roadways or foot-ways levied u/s 46;

(d) such sums as may be allotted to the Board from the Consolidated Fund of the State by the State Government for any purpose;

(e) such sums as may be contributed to the Board by local authorities or private persons;

(f) all proceeds from taxes levied under Sections 58, 62 and 64;

(g) all sums received by the Board in respect of any property under its control not being the property of Government;

(h) all sums received under any loan raised u/s 34; and

(i) all sums received on account of fees on boats including, steam boats and other vessels, mooring within the jurisdiction of the Local Board."

20. The Local Fund is to be applied u/s 35 to the payment of expenses incurred by the Board in the performance of the duties imposed, or in the exercise of the powers conferred, under Chapter IV besides other objects to which the fund may be applied. Section 62 occurs in Chapter IV. It is, therefore, clear that the tax realised from the market land u/s 62 is credited to the Local Fund account and is to be used for meeting the expenses incurred by the Board in the performance of the duties imposed on it under Chapter IV.

The tax is thus to be utilised for specific objects enumerated in the Act. The legislature has also specified that the tax is to be levied only when the land is to be used as a market. Section 94 which gives the Board power to frame" rules has also given power to the State Government to fix the maximum. Having regard to the complexities of the problems before a welfare State, the legislature has to delegate many, of its functions to a subordinate body. The" legislature could not have itself fixed the amount of the tax.

It has to be left to the Board to deal with these matters of detail, having regard to the exigencies of the situation. It cannot, therefore, be said that the policy has not been laid down in the Act and that the Act is hit by the doctrine of excessive delegation.

21. Reliance has been placed on the case of Jyotish Chandra Sen Vs. Rukmini Ballav Sen and Others, , in which the Calcutta Corporation in exercise of its powers u/s 229 of the Calcutta Municipal Act, 1951, framed certain rules by a resolution dated 27th August, 1954 which was approved by the State Government for the levy of license fee on advertisements.

Section 230 of the Calcutta Municipal Act further provided that after rules have been prescribed for the levy of license fee u/s 229, no advertisement for which a

license fee is leviable shall be erected, exhibited, fixed or retained upon or over any land, building, wall holding or structure, or shall be displayed to public view in any manner whatsoever, in any place, without a license from the Commissioner. It was held in this case that the legislature having authorised imposition of the tax upon advertisements displayed in certain manner at certain places had not proceeded further to fix the rate or the manner of imposition but had delegated the power to the Corporation.

It gave power to the Corporation not only to levy tax at such rates as it liked but it also gave the Corporation power to tax any person or body of persons it liked. Such a delegation was unconstitutional. Mr. Justice Sinha was of opinion that in deciding the manner in which a tax should be levied and the rate at which it was to be levied and the persons or classes of persons upon whom it should be imposed, what was involved was principally a matter of policy.

The subject of taxation was not purely abstract but consisted of important questions of policy, namely, as to who should be taxed, in what manner the tax should be imposed and at what rate. The operation of levying a tax without a consideration of such matter was meaningless. In any event to delegate the power of imposing a tax without laying down the policy upon which such matters should be decided, was to delegate the power of legislation without a formulation of the policy to be followed, and thus infringed the test laid down for upholding the delegation of power by the legislature. It was pointed out by Sinha, J. that

"the result of such delegation might take curious form. For example, the Corporation may levy a tax calculated upon the income of the advertiser, which would thus become a new species of Income Tax. It may charge tax at the rate of, say 15 annas in the rupee. Then, again, there is no indication given by the legislature as to who should be exempted, the matter being left completely to the will of the Corporation and the Government."

22. That taxation is a legislative function cannot be denied. But it cannot be said that the legislature in every case must itself fix the rate of the tax and the manner in which it is to be imposed. If a rule of conduct can be deduced from the examination of the statute and the policy can be ascertained the extent of delegation cannot be questioned. In the instant case there is no arbitrary power given to the Board to levy tax and discriminate between people of the same class. Anyone who wishes to use his land as a market has to take license and necessarily will have to pay tax. There is no arbitrary discretion given to the Board to pick and choose between people within the same category. It is also not permissible under the Act to assess the tax on the income of the individual owner.

The maximum has been fixed by the State Government and it has been further laid down in the notification fixing the maximum that the tax will have to be assessed having regard to the size and importance of the market. In the case of Cantonment Board, Poona Vs. Western India Theatres Ltd., , the constitutionality of certain taxes levied by the Poona Municipality and the Cantonment Board of

Poona on shows which were given at the Cinema Theatres situated within their local limits was in question. In 1920 the City Municipality intended to levy a tax which it had no power to levy under the provisions of Section 59 Sub-section (1), Clauses (i) to (x).

Under Sub-clause (xi) of Section 59 the Board was empowered to impose any other tax to the nature and object of which the approval of the Governor-in-Council had to be obtained prior to the selection contemplated under Sub-clause (i) of Clause (a) of Section 60. The Board approached the Governor-in-Council for its sanction and it was ultimately approved of by the Governor-in-Council in 1920. Subsequently the tax was imposed under the provisions of the Bombay Municipal Boroughs Act at an enhanced rate. In the meantime the Cantonment Board of Poona started levying a similar tax upon shows given at the cinemas located within the limits of the Poona Cantonment in the exercise of its powers u/s 60 of the Cantonments Act.

The validity of the tax was challenged on the ground firstly that the tax was not covered "by Entry No. 50 of List II of the Seventh Schedule of the Government of India Act. It was further contended that no tax could be levied imposing a liability upon the exhibitor instead of upon the persons who obtained admission to the entertainments upon payment for admission and that Section 59(xi) was an excessive delegation of the legislative authority. All the contentions were repelled. Dealing with the question of excessive delegation it was observed that

"the Governor-in-Council was legislating upon the subject of local self-Government. It was deemed desirable that the Municipalities should be constituted within the province and if the Municipalities were to be constituted it was necessary to allot to them sources of taxation. The sources of taxation mentioned in Clauses (i) to (x) of Section 59(1), therefore, were in the first instance allotted to them. Then it was considered necessary that they should have power to levy other taxes also and the question arose what other taxes the Municipalities can be empowered to impose. The residuary power was conferred on the Board to tax on any other subject provided any previous sanction of the Governor-in-Council in regard to the nature of the subject of the tax had been obtained. It cannot, therefore, be said that the legislature had not itself legislated at all on the subject matter. The subject of the legislation was the constitution of the Municipalities and if the Municipalities had to be constituted then they had to be allotted sources of taxation. A policy was consequently laid down to a very large extent."

23. In the present case as we have already pointed out under Item No. 5 power was given to legislate on the subject of the local self government, its constitution and powers. These words are of widest amplitude. The legislature having conferred the power on the local body to tax on land, if used for market, has indicated its policy in the Act itself and has itself exercised the essential legislative function, it cannot be said to have abdicated itself.

24. In *Hirabhai Ashabhai Patel Vs. The State of Bombay*, , the constitutionality of the levy of water rates by the Bombay Municipal Corporation was challenged. It was observed by Chief Justice Chagla that

"the Entry 5 in List II Schedule 7, Constitution of India, 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. 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."

25. Dealing with the challenge of Section 169 on the ground that it is an excessive delegation, and that no policy is laid down in the Act as to the ceiling of the rate which could be charged for supply of water, it was held by Chief Justice Chagla that

"A delegation of certain functions is bad only if it amounts to abdication by the legislature. If the legislature instead of legislating itself, which is its own function, permits legislation by some other authority, or if the Legislature without laying down the policy, permits the carrying out of a particular activity or a particular function by some authority, then it might be said that the Legislature has abdicated its own functions."

26. The water tax was to be levied for the specific purpose for providing water supply for Bombay and it was left to the corporation to decide what was the ratable value at which the water tax should be levied. The Legislature no doubt intended that there should be a relationship between the rate charged and the cost of providing water supply. This case has been distinguished by Justice Sinha in the case of *Sarat Chandra Ghatak and Others Vs. Corporation of Calcutta and Another*, , referred to earlier on the ground that in this case upon consideration of the Bombay Act it was held that though the Acts do not expressly lay down the ceiling as to the rates which was chargeable for water tax, it must be implied that the legislature intended that there should be relationship between the rate charged and the cost of providing the water supply.

In other words the matter was not left unspecified because such relationship would be a matter of calculation. The learned Chief Justice did not uphold the proposition that the delegation of power which was unfettered and absolute would be valid, but upheld the particular statute because the policy of the

legislature could be found by implication. In the case *D.S. Garewal Vs. The State of Punjab and Another*, the constitutionality of All India Services Act (LXI of 1951) was challenged.

Section 3(2) of the Act conferring power on the Central Government after consultations with the Governments of the States concerned, to make rules for the regulation of recruitment and conditions of services of persons appointed to all-India was held to be valid. Section 4 of that Act laid down that all rules in force immediately before the commencement of the Act and applicable to all-India Services shall continue to be in force and shall be deemed to be rules made under this Act. There were already existing rules and it was held by the Supreme Court that as by virtue of Section 4 all the existing rules were to be regarded as having been passed under this Act, the policy was fully laid down in the Act when the Act was read in the light of the rules in existence at the time of "the passing of the Act.

27. After carefully considering the provisions of this Act, we are of opinion that the Act clearly lays down the policy and the nature of the tax and it cannot be said that Section 62 gives an unfettered power to the Local Board to impose any tax and has not laid down the policy.

28. In the view which we have taken of the matter, it is not necessary to consider the question whether the levy fulfils all the requirements of a valid fee. It was urged that the imposition of tax bears no relation to the amount of services rendered by the Board in maintaining the market nor has it earmarked the fee realised from the market for expenses towards the maintenance of the market. The amount is brought in the general revenue of the Board and is thus not a fee. The legislation, therefore, cannot be justified on the ground that it comes under Item No. 66 of List II of the Seventh Schedule of the Constitution of India. Section 62, in our opinion, is covered by Items Nos. 5 and 49 of the Second List of the Seventh Schedule of the Constitution and it is not necessary to examine the cases dealing with the question of fee,

29. Lastly, it was contended that the section imposes an unreasonable restriction on the right of the petitioner to carry on business. It is also urged that the provision is hit by Article 14 of the Constitution as it gives very wide powers to the Board to discriminate between persons in similar situation. Section 62 consists of two parts, the first part gives power to the Board at its special meeting to lay down that no land will be used as market without obtaining a license. The second part deals with the power of the Board to levy tax on the land in case a license was applied for. It cannot be said that any restriction placed on the right of a person to obtain license before putting the land to a particular use is in itself an unreasonable restriction. Moreover, the taxing power has been given to the Board and the Legislature having laid down the policy in the Act itself, it cannot be said that the imposition of tax is unreasonable and discriminatory so as to be violative of Articles 14 and 19 of the Constitution.

In the end it was contended that the amount of tax imposed is so unreasonable that this Court should quash the order imposing such a tax. The power being there to impose tax and the maximum having been fixed by the Government, this Court can set aside the order only if it can be shown that the order is mala fide. No materials have been placed before us to come to the conclusion that the amount of Rs. 600/- is so unreasonable and so much out of proportion to the expenses incurred by the Board that it can be said that the Board in imposing Rs. 600/- as tax acted mala fide.

30. In the result, therefore, we see no force in this petition and it is rejected with costs which we assess at Rs. 200/-.

C.P. Sinha, C.J.

31. I agree.

H. Deka, J,

32. I agree.

BY THE COURT

33. Leave to appeal to the Supreme Court prayed for is granted under Article 132(1) of the Constitution of India.