

(1961) 03 MP CK 0018
In the Madhya Pradesh High Court
Case No : M.P. No. 319 of 1960

Bhikamchand

APPELLANT

Vs

Municipal Committee, Chhota Chhindwara

RESPONDENT

Date of Decision : 18-03-1961

Acts Referred:

Central Provinces and Berar Municipalities Act, 1922 — Section 66(1)(o)

Citation : (1961) JLJ 792

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

Bench : Division Bench

Advocate : R.S. Dabir, V.S. Dabir and A.P. Sen, for the Appellant; Y.S. Dharmadhikari and M. Adhikari, Advocate General, for the Respondent

Final Decision : Allowed

Judgement

P.V. Dixit, C.J.—The petitioners in this case carry on business at Gotegaon which is within the limits of the Municipal Committee, Chhota-Chhindwara. By a notification dated the 17th March 1926 the Government sanctioned the imposition by the said Municipal Committee u/s 66 (1) (o) of the C. P. and Berar Municipalities Act, 1922, of a terminal tax at the rates and on the Articles specified in the Schedule to the notification, exported from and imported in to the said Municipality by rail. The terminal tax came into force from 1st April 1926. In 1960 the Municipal Committee amended the Schedule specifying the rates of tax and the articles taxed. This amendment was confirmed by the Government u/s 67 (5) of the Act by a notification dated the 23rd September 1960 published in the Gazette of the 4th November 1960. The notification ran as follows:-

"In exercise of the powers conferred by Section 67 sub-Section (5) of the Central Provinces and Berar Municipalities Act 1922 (II of 1922) the State Government is pleased to confirm the following amendment made by the M. C. Chhota Chhindwara in the Narsimhpur District u/s 66 Sub-Section (1) clause (o) of the said Act for the imposition of the Terminal Tax on import and export of goods by

rail within the Chhota-Chhindwara M. C. sanctioned under the Local Self Government department of the former State of Madhya Pradesh Notification No. 972-609-VIII dated the 17th March 1926. The amendment shall come into force from the 1st April 1960:-

Amendment

In the said rules for the existing schedule, the following schedule shall be substituted; namely:-

.....

The notification then proceeded to set out the Schedule. The Schedule which superseded the Schedule of 1926, included some articles which were not included in the taxable articles given in the Schedule of 1926. Thus a terminal tax was imposed for the first time in 1960 on bidi leaves, matches, cigarettes, tobacco, gold, silver, medicines, all soaps, gunny bags and certain other articles. It also enhanced the rate of tax on taxable articles included in the previous Schedule. The petitioners claim that the taxes the imposition of which was notified on 4th November 1960 were terminal taxes on goods carried by railway and as such were not imposable after the coming into force of the Constitution by any State of local authority by reason of item No. 89 in List-1 of the seventh Schedule which gives to the Union Government alone the power to levy terminal taxes on goods and passengers carried by Railway sea or air. They, therefore, contend that the imposition of the tax notified on 4th November 1960 is illegal and pray that appropriate direction be issued restraining the opponents from imposing or collecting terminal taxes in accordance with this notification.

2. In the return filed by the opponents opposing the petition, it is not disputed that on certain articles a terminal tax was imposed for the first time in 1960 and that the rate in respect of some others has been enhanced. It is, however, averred that despite item No. 89 in List-1 of the seventh Schedule of the Constitution the State and the Municipal Committee have the power to impose the tax under Article 277 of the Constitution which saves the levy of terminal tax in the case of a Municipal Committee which has been imposing one prior to the commencement of the Constitution. It is further submitted by the respondents that in 1926 the Municipal Committee could u/s 66 (1) (o) of the Act, with the sanction of the local Government, impose the terminal tax it did; that as on the date of the commencement of the Constitution it was a tax which was being lawfully levied by the Municipal Committee, the Municipal Committee could continue to levy it under Article 277; and that the inclusion of certain Articles in the list of taxable articles or the enhancement of rates on some other articles did not amount to a fresh imposition of the tax. The Municipal Committee has further stated in the return that the tax is being collected only from 8th November 1960 after the publication of the notification dated the 23rd September 1960 on 4th November 1960.

3. It is not disputed that after the coming into force of the Constitution a new

terminal tax could not be imposed by the Municipal authority as the imposition of such a tax was not within the legislative competence of a State Legislature. There is also no dispute that the tax notified on 4th November 1960 was a terminal tax within the meaning of item No. 89. It is evident from the notifications issued in 1926 and 1960 that the impugned tax is a terminal tax confined to certain articles carried and imported within the municipal limits or exported outside them by rail; It is not a tax falling under item No. 52 of the State List, that is, a tax on the entry of goods into a local area for consumption, use or sale therein. The main question which arises for decision, and which was debated before us, is whether by substituting a new Schedule subjecting certain articles to the terminal tax for the first time and enhancing the rate of tax on others for the Schedule issued in 1926 the Municipal Committee was imposing a new terminal tax or was merely continuing to levy the terminal tax lawfully imposed by it from 1926 onwards. The respondents contend that this is no fresh imposition but merely a continuation of the old one, and that the Municipal Committee has the power to include new articles in the Schedule and enhance the original rate of tax on others under Article 277 of the Constitution.

4. Before considering the contention whether the terminal tax imposed by the notification published on 4th November 1960 is in substance a continuation of the old tax, it is necessary to examine the provisions of Article 277.

That article runs as follows-

"Any taxes, duties, cesses or fees which, immediately before the commencement of this Constitution, were being lawfully levied by the Government of any State or by any municipality or other local authority or body for the purposes of the State, Municipality, district or other local area may, notwithstanding that those taxes, duties, cesses or fees are mentioned in the Union List, continue to be levied and to be applied to the same purposes until provision to the contrary is made by Parliament by law."

This Article saves existing taxes, duties, cesses or fees levied by State or local authorities on subjects which are now included in the Union List, and only those taxes, duties, cesses or fees have been saved which immediately before 26th January 1950 were being lawfully levied. Article 277 is a saving provision. It does not give a right to any State or any municipal or other authority to impose a tax, duty, cess or fee mentioned in the Union List. It is a provision for the continuance of taxes, duties, cesses or fees which immediately before the commencement of the Constitution were being lawfully levied, that is to say, which were being actually collected under some law sanctioning the collection. The word "levy" as used in Article 277 does not mean the imposition of a tax but the collection of a tax. Article 277 is grouped with the provisions which deal with the allocation between the Union and the State of the proceeds of taxes and duties which can only be imposed by the Government of India. Articles 268 to 373 deal with (a) the appropriation by the States of certain duties imposed by the Union but collected by the States, (b) the appropriation by the States of the proceeds of

certain duties and taxes imposed and collected by the Government of India; (c) the distribution between the Union and the States of the yield of certain taxes and duties imposed and collected by the Union Government, and (d) the appropriation by the Union Government of surcharge on certain duties and taxes. Article 277 is concerned with the application and collection of taxes, duties, cesses or fees of those taxes now included in the Union List which before the commencement of the Constitution could be validly imposed by any State or by any municipality for other local authority or body and were so imposed. That Article does not either give continuity to laws imposing taxation which were in force before 26th January 1950. The continuance of such laws is under Article 372. When Article 277 says that the taxes, duties, cesses or fees mentioned earlier therein shall "continue to be levied and to be applied to the same purpose", it emphasizes the question of collection and application of proceeds of such taxes and duties and not the imposition or the continuation of laws imposing them. Now, there cannot be any question of the application of the proceeds of any tax unless there is first collection. The imposition of a tax is not a continuous or a periodical act. It is one which has to be done once for all. In the expression "continue to be levied and to be applied" occurring in Article 277 the word "levy" can, therefore, mean only collection. If the word "levy" as used in the latter part of Article 277 means collection, then according to the ordinary rules of construction it would have the same meaning in the expression used earlier in the article, namely, "were being lawfully levied". Again, the word "continue" in the expression "continue to be levied and to be applied" also points to the fact that if in this expression "levy" means collection, then it must have the same meaning when it is used earlier in the Article. For, there can be no question of the continuation, after the commencement of the Constitution, of collection and application of any tax if before the commencement of the Constitution there has never been any collection or application. It is thus clear that the only natural and proper construction that can be placed on the expression "which immediately before the commencement of the Constitution were being lawfully levied" is "which immediately before the commencement of the Constitution were being actually collected under some law sanctioning the collection". This is the view which was expressed by one of us in *Chhuttillal vs. Bagmal* 1956 MBLJ 1088: AIR 1956 M. B. 177 and in *Ramprasad vs War Profits Tax Officer* 1952 MBLJ 175: AIR 1953 M. P. 20.

5. This view is also supported by the decision of the Madras High Court in *J. Nageswara Rao Vs. The State of Madras*, . That was a case in which the State Government levied certain duties on medicinal preparations prior to the Constitution. After the coming into force of the Constitution a new duty was imposed by a notification dated 18th November 1952. In the meantime the subject of duty on medicinal preparations was transferred to the Union List. While considering the legality of the levy of duty under the aforesaid notification Venkatarama Aiyar J. referred to Article 277 of the Constitution and expressed himself thus:-

"This provision would enable the Government to continue to levy such duties on medicinal preparations as were being levied by them prior to the Constitution and that would save the levy of duty under Notification No. 473. But we are here concerned with a new duty imposed for the first time by the notification, dated 18-11-1952. As neither the Legislature nor the Government of Madras had on that date any competence to impose a duty on medicinal preparations, the imposition under Notification No. 941 is not within the saving of Art. 277 and must be held to be ultra vires."

In this connection a reference may also be made to the decision in *Daulat Ram vs. Municipal Committee*, Lahore AIR 1940 Lah. 40, where, with reference to the words "were being lawfully levied" occurring in an analogous provision contained in Section 143 (2) of the Government of India Act, 1935, it was said that what was saved under that provision was the tax that was actually being levied and not a tax that could be levied.

6. On this construction of Article 277, the respondent Municipal Committee cannot claim the power to impose a terminal-tax on goods on which no such tax was being levied immediately before the commencement of the Constitution or the power to vary the rate of tax. For, in neither case can it be said that there was in existence a levy on the date of the commencement of the Constitution which has been continued under Article 277 of the Constitution. This is plain enough in the case of goods which were never subject to any terminal-tax at the commencement of the Constitution. That the variation in the rate of tax on goods already subjected to a terminal-tax is also not permissible under Article 277 becomes clear when it is remembered that the rate at which a tax is imposed is an integral part of the imposition of a tax and that what is continued under Article 277 is the levy, that is, the collection and application of the proceeds of a tax which immediately before the commencement of the Constitution was being lawfully levied and not the liability of goods or persons in general to any tax, duty, cess or fee to which they were subject on 26th January 1950.

Shri Dharmadhikari, learned counsel appearing for the Municipal Committee, however, contended that there was no fresh imposition of any terminal-tax when new articles were added to the schedule published at the time of the imposition of the tax in 1926 or when the original rates of tax were varied. It was said that the terminal-tax had already been imposed in 1926 and the addition of new item or the variation of the rate of tax was only a matter of detail which the Legislature had validly delegated to the Municipal Committee. Learned counsel referred to Sections 67 & 68 of the C. P. and Berar Municipalities Act, 1922, to show that the variation in the rate of tax is not an imposition of the tax. He also relied on *Sukumar Bose Vs. Emperor*, , in support of his contention that the liability of rates that existed in respect of particular goods prior to 26th January 1950 included any future variation in the rate of tax. We are unable to accept this contention. It is now well settled that the Legislature cannot abdicate its legislative functions, that is to say, the determination of the legislative policy and

its formulation as a rule of conduct. It can, however, formulate the policy broadly and with as little or as much detail as it thinks proper in the circumstances and exigency, delegating the rest of the legislative work to subordinate authority for working out the details within the frame work of that policy. But the Legislature must itself lay down the policy and the standard. These cannot be surrendered to a subordinate authority [see *In re Art. 143, Constitution of India etc.* AIR 1951 S. C. 332]. Now in the imposition of a tax the goods or persons subjected to the tax, the principles of assessment, and the rate at which they are to be assessed are not matters of detail but are matters of principle. If under a taxing law certain goods or persons are not liable to pay any tax or are liable to pay tax at a certain specific rate, the subordinate authority cannot in the exercise of its power of filling in the details for the working of the Act impose a tax on goods or persons which the Legislature excluded under the statute or vary the rate. A tax is imposed with reference to persons and goods or things and particular rates. The rate at which a tax is imposed is as much an integral part in the imposition of a tax as the persons or goods subjected to the tax. The inclusion of new items in the schedule in 1960 was nothing but an imposition of a terminal-tax for the first time on them. The variation of the rate in the case of other articles also resulted in the imposition of a new terminal-tax at the varied rate. In doing so, the respondent Municipal Committee attempted to legislate and could not be said to have filled in any details within the frame-work of the terminal-tax imposed in 1926.

8. The decision in *G. G. in Council vs. Corporation of Calcutta* (supra) cited by the learned counsel for the Municipal Committee is not an authority supporting the contention that under Article 277 the Municipal Committee has the power to vary the rate of terminal-tax. That case was decided with reference to Section 154 of the Government of India Act, 1935. which was somewhat analogous to Article 285 of the Constitution, and it was held that property vested in His Majesty for the purposes of the Federation would be exempted from taxation u/s 154 unless it was liable to tax on 31st March 1937 and ex hypothesi a property which was not in existence on that date could not be said to be liable to tax, and consequently new buildings which were non-existent on 31st March 1937 would be exempt from taxation by virtue of Section 154. In that case it was observed that u/s 154 the liability for rates that existed in respect of a particular property prior to April 1937 and which was to continue according to Section 154 would include any future variation resulting from alteration in the valuation of the property or the rate of assessment but would not include any future liability on account of any new property being added to it. The variation resulting from alteration in the valuation of the property or the rate of assessment was held to be included on the reasoning that the liability that was continued under the proviso to Section 154 was the liability of a particular property, which was subject to tax on 31st March 1937, by the use of the words "shall so long as that tax continues, continue to be liable, or to be treated as liable, thereto". Thus the liability to tax in respect of such property was continued as distinguished from

the tax which was actually being lawfully levied on that property on 31st March 1937. The Calcutta decision only emphasizes the material distinction between Section 143 (2) and Section 154 of the Government of India Act, 1935, and lends support to what we have said earlier, namely, that what is continued under Article 277 is the levy that is, the collection and application of the proceeds of a tax which immediately before the commencement of the Constitution was being lawfully levied and not the liability of goods or persons in general to any tax, duty, cess or fee to which they were subject on 26th January 1950. Where the liability is continued by a statutory provision, that would no doubt include the liability to pay the original tax or the tax as varied.

9. The argument of the learned counsel for the Municipal Committee that the notification and the schedule issued in 1960 in so far as they enhanced the terminal-tax on certain goods did not impose a new tax but merely continued the levy of tax which existed on the date of the commencement of the Constitution is founded on the facts that the C. P. and Berar Municipalities Act lays down in Sections 67 and 68 different procedure for imposition of taxes and variation thereof. It is no doubt true that Section 67 deals with the procedure for the initial imposition of taxes and Section 68 prescribes the procedure to be followed where a tax already imposed is intended to be varied in the amount or rate thereof. But it will be noticed that where the proposal is to increase the amount or the rate of any tax the procedure under sub-sections (3) to (9) of Section 68 is substantially the same as that prescribed in Section 67 for the imposition of a tax for the first time. This only shows that the levy of a tax at an enhanced rate is not a mere continuation of the levy at the original rate but is in substance the imposition of a new tax. When the rate of a terminal-tax on certain goods is enhanced, the identity as to the form of the tax, namely, of its being a terminal-tax, is no doubt retained. But in substance the enhanced tax becomes a new terminal-tax on those goods. A conclusion as to the real identity of the tax cannot be based merely on the nomenclature given to the procedure for the enhancement of the tax but on the substance of it.

10. For these reasons, we are disposed to think that the terminal-tax imposed by the Municipal Committee in 1960 is a fresh imposition of the tax which it was not competent to do by reason of item No. 89 of List-1 of the Seventh Schedule and that the said tax cannot be said to be one saved under Article 277. The notification dated 23rd September 1960 published on 4th November 1960 by superseding the previous terminal-tax of 1926 imposed a new tax and was not one merely continuing the levy of the terminal-tax which was being lawfully levied at the commencement of the Constitution. The imposition of the terminal-tax in 1960 and the notification issued on 23rd September 1960 are, therefore, illegal. It follows, therefore, that the terminal-tax imposed in 1926 and which was being lawfully levied before the commencement of the Constitution would continue to be levied and to be applied in accordance with Article 277. That article expressly says that such levy shall continue to be levied and to be applied to the same purposes until provision to the contrary is made by Parliament

bylaw. There is no such provision to the contrary.

11. In the result, this petition is allowed and the notification dated 23rd September 1960 published in the Gazette of 4th November 1960 is declared to be illegal and quashed and the opponents are restrained from giving effect to it. The respondent Municipal Committee is of course entitled to collect the terminal-tax in accordance with the notification issued in 1926. The petitioners have made a prayer for a refund of the tax collected from them under the notification issued in 1960. The petitioners are entitled to the refund claimed by them, On 15th December 1960 when the petitioner's application for the issue of an ad interim direction came up for hearing, learned counsel for the respondent Municipal Committee had agreed to the refund of tax collected from the petitioners during the pendency of this application in the event of this application being allowed. The Municipal Committee, therefore, shall refund the amount of tax collected from the petitioners. The petitioners shall have costs of this application. Counsel's fee is fixed at Rs 100. The outstanding amount of security deposit shall be refunded to the petitioners.