

(1955) 05 CAL CK 0035
In the Calcutta High Court
Case No : Civil Revn. No. 2704 of 1953

Burmah Shell Oil Storage and Distributing Co. of India Ltd.	APPELLANT
Vs	
Licensing Officer of Tamluk Municipality and Others	RESPONDENT

Date of Decision : 17-05-1955

Acts Referred:

Bengal Municipal Act, 1932 — Section 123, 182
Constitution of India, 1950 — Article 14, 245

Citation : AIR 1956 Cal 397 : 60 CWN 170

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : B. Das, Sankar Ghosh and Surathi Mohan Sanyal, for the Appellant; Sarat Chandra Jana and Arun Kumar Jana, for the Respondent

Judgement

Sinha, J.—The facts in this case are very short and they are as follows : The petitioner is the Bunnah Shell Oil Storage & Distributing Co. of India Ltd., a company with limited liability, having its Head Office for India at Calcutta. As is well known, the Company manufactures and distributes petrol and petroleum products as also kerosene, throughout the country. Sometime in August 1952, the petitioner Company received a notice from the Licensing Officer of Tamluk Municipality calling upon it to take out a trade licence and pay the necessary tax. The Company disputed its liability to pay trade-tax, and there was correspondence with the Municipality, ending in the Company making payments under protest.

2. The Rule was issued on 17-8-1953 calling upon the opposite parties to show cause why the notices and demands for the payment of trade-tax as mentioned in the petition should not be cancelled and/or recalled and why they should not be directed to refrain from demanding the same from the petitioner and also why a Writ in the nature of Prohibition should not issue as also a writ in the nature of Certiorari, and/or why such further or other order or orders should not be made as to this Court may seem fit and proper.

3. So far as the petitioner is concerned, the case shortly is that under the provisions of the Bengal Municipal Act, 1932 (hereinafter called the "Act") it is not liable to pay trade-tax. The foundation for this is said to lie in the fact that according to the petitioner it does not carry on any trade or business within the jurisdiction of the Tamluk Municipality. According, to the respondent Municipality, the petitioner Company does carry on a trade within the precincts of the Municipality and as such is liable to pay trade-tax. There are several facts which fall to be considered upon this point of controversy. To start with, it is an admitted fact that the petitioner Company has taken lease of a plot of land within the precincts of the Municipality, and has constructed thereon a petrol-pump with provision for storage of petrol. The second fact is that the petitioner Company has taken out a licence for the storage of petrol, which it must do under the provisions of the Act. It has not only taken out such a licence, but continues to hold it from year to year. The nature of the actual trade that is carried on in the leasehold premises is a matter of controversy. The Company enters into agreements with dealers for the sale of petrol as also kerosene. Copies of such agreement have been relied on by both sides and annexed to the affidavits. It appears from a casual reading of the agreements that there is something to be said on either side. So far as the kerosene agreement is concerned, it describes the dealer as an "agent". The matter is less clear with regard to the agreement relating to petrol, but nevertheless there is ground for arguing that the agreement is no more than an agent's agreement. Several other facts also are not disputed, e.g. that in calendars printed by the Company, such dealers are described as "agents". It is however said that there is no particular significance to be attached to the word "agent", which expression is only used to confer a greater dignity or status upon the dealer. So far as the Act is concerned, the trade-tax that is sought to be levied is payable by virtue of Sections 123 and 182 read with Item No. 1 of Schedule IV of the Act. In Section 182, there has been an amendment, by which it is provided that the storage of goods within the precincts of a Municipality for the purpose of carrying on business outside the Municipality shall be deemed to be carrying on a trade or calling within the Municipality. The fact that the Company admittedly is in possession of a licence for storage of petrol within the jurisdiction of the Municipality, makes it very difficult for the Company to state that it has taken out a licence, but the storage is being effected by a stranger. Such an action would be a violation of the provisions of the Act. These however are some of the questions which have to be considered. There are other questions Which are also controversial. The Company says that it does not deliver any goods to its constituents at Tamluk but it does so in Calcutta, namely, at Budge Budge. It is said on behalf of the Municipality that the goods are taken by boat and delivered at Tamluk. To come to a proper finding on these disputed questions, it would be necessary to take further evidence, and I think that it would not be right to decide them in an application under Article 226. In order to establish the fact that the petitioner Company does not carry on trade within the precincts of the Municipality and as such, is not liable to pay trade-tax, it can institute an appropriate action in the

proper jurisdiction, wherein evidence may be taken. As a matter of fact, at the hearing of this application, Mr. Das appearing on behalf of the petitioners, realised this, and took his stand on two constitutional questions.

4. The first point taken by Mr. Das is that in Schedule IV of the Act, the trade-tax that is levied is graduated. Companies which have a paid-up capital of more than Rs. 10 lacs have to pay Rs. 200/-, those who have a paid-up capital of more than Rs. 5 lacs and not more than Rs. 10, lacs, have to pay Rs. 100/-, and so on. He argues that this is discrimination which offends against the provisions of Article 14 of the Constitution. It is argued that the object of the imposition of a trade-tax, is to tax a trade and not the quantum of a trade. He says that all traders in a particular trade are thus in the same category, and therefore a graduated table of taxation was not permissible. If the Company carries on a trade (assuming of course that the disputed question of fact is found in favour of the respondents) then there is no doubt that the Company comes within the provision of Schedule IV, Item No. 1. That I think is evident from the decision of -- "Bata Shoe Co. Ltd. v. Commissioners of the Burdwan Municipality" AIR1949 PC 12 (A). The question is, whether a graduated table is permissible, and whether it is necessarily discriminatory. In my opinion, it is not so. The object of taxation is to raise revenue, and one of the ingredients of this power is that the tax is levied according to the paying capacity of the tax-payer (see, " The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt., . In this, it is distinguishable from a pure licensing fee, which has no relation to the paying capacity of the tax-payer. Thus, if the imposition of a trade-tax is permissible, I do not see why more should not be raised from a Company which has a greater paid-up capital, and therefore presumed to have the capacity of paying more taxes, than a Company which has a less paid-up capital and might be expected to have a lesser capacity for paying taxes. The analogy of Income Tax naturally comes into one's mind. Mr. Das has argued that there is a clear distinction between Income Tax and a trade-tax, inasmuch as, in Income Tax it is the quantum which is taxed. That may be so, but similar arguments would apply so far as graduated or block-rates are concerned. If the provision of Article 14 apply, the realisation of Income Tax at block-rates would not be permissible. As I have stated above, the foundation for this action lies in the nature of taxation, which permits revenue to be raised according to the capacity of the person paying. It is of course a fundamental principle of discrimination that it can only apply amongst equals.

5. The next point that is raised by Mr. Das is that Section 123 appears under Chap. V of the Act, and is headed "Municipal Taxation, Imposition of taxes". It is argued that the power to impose a trade-tax is in the Legislature, and it is not open to the Municipality to impose such a tax. In the first instance, I was rather impressed by this argument. But having considered the matter, I think that the objection is not sound. The Legislature undoubtedly has the power of imposing a tax on trades, and also to lay down the constitution of a Municipality. Reference may be made to List 2 of the Seventh Schedule, Item Nos. 5 and 60. It has now

been held that the Legislature in suitable cases might delegate powers to other bodies, and in this instance it seems that it has delegated the power of levying trade-tax within the jurisdiction of a particular Municipality to the Commissioners of that Municipality. The circumstances under which such powers of delegation can be exercised have been discussed by me in detail in the case of -- "Gopal Chandra Mukherjee v. B.C. Das Gupta" 93 Cal LJ 304 (C). I have explained there how the power of delegation is a necessary incident to the exercise of legislative power, and is based on the Legislature's lack of time and convenience to shape all legislative details in respect of certain kinds of legislation. By such delegation, the Legislature cannot of course delegate its essential legislative functions, but as long as it keeps control over a particular piece of legislation in which power is delegated, it comes within the competence of the Legislature to delegate. This is the kind of legislation which is known as "subordinate legislation". It is clear that the Legislature in this instance has provided for a great deal of control. For example, by Section 215, the State Government may make rules regulating any matter relating to taxes, tolls, fees or rates. In Schedule IV, the rates at which the trade-tax is to be imposed, has been laid down. u/s 557, the State Government has been given the power to alter, add to or cancel any rule or modify the schedules. The Legislature can at any time, alter modify the provisions of Sections 123 and 182, upon which is based the power of the Commissioners of the Municipality to impose the taxation. In short, the Act contemplates an imposition of tax on trades. The rate is fixed, and the procedure by which a licence has to be taken out in respect of a trade is laid down in the Act. Only the power is given to the Commissioners to decide as to whether in a particular Municipality, the tax is to be levied. That of course will depend upon the necessity for raising revenue, and so far as this is concerned, the Commissioners would be the best persons to judge as to whether an occasion has arisen for the imposition of the tax. In my opinion, such a delegation is permissible and that Sections 123 and 182 or Schedule IV of the Act are not ultra vires. The two constitutional points having been decided against the petitioner, this application must fail.

6. The Rule is discharged. Interim orders are vacated but this will be without prejudice to the right of the petitioner to institute appropriate proceedings, such as it may be advised.

7. The interim order will continue for a period of three weeks, as prayed for, but any further direction, if necessary, must be obtained from the Appeal Court, if any appeal is preferred.