

(1974) 07 J&K CK 0001

In the Jammu And Kashmir High Court

Case No : Writ Petition No's. 93 and 99 of 1972

Glacier Cold Storage and Ice Mills and Others

APPELLANT

Vs

Assessing Authority, Sales Tax and Another

RESPONDENT

Date of Decision : 22-07-1974

Acts Referred:

Constitution of India, 1950 — Article 14, 19

Citation : (1974) 34 STC 426

Hon'ble Judges : S.M.F. Ali, C.J.; Syed Wasi-Ud-Din, J.; Jaswant Singh, J

Bench : Full Bench

Advocate : I.K. Kotwal and R. Rao, for the Appellant; Additional Advocate-General and Assistant Advocate-General, for the Respondent

Judgement

S.M.F. Ali, C.J.—These are two writ petitions, but I propose to deal with them by one common judgment because the two cases involve

common questions of law. I shall, however, indicate the facts of the two cases separately in order to highlight the individual points arising in each

case. These petitions were in the first instance heard by a single Judge of this Court before whom the correctness of a Division Bench decision of

this Court in Padam Krishan v. Assessing Authority Writ Petition No. 64 of 1968 decided on 2nd May, 1969 (Jammu and Kashmir High Court)

was challenged and he accordingly referred the cases to a Full Bench. This is how the two cases have come up before us.

2. In Writ Petition No. 93 of 1972 the petitioners manufacture and sell Ice under the name and style of the Jammu Cold Storage & Rama Ice

Factory. The main point raised in the petition is that the petitioners were not liable to be assessed to sales tax because according to them ice was

nothing but a frozen form of water and was, therefore, exempt from the

notification made by the Government under the Jammu and Kashmir Sales Tax Act (hereinafter referred to as the Act). The petitioners also took shelter behind a letter written by the Excise and Taxation Commissioner, wherein he appears to have accepted the contention of the petitioners that water included ice. This letter, however, was not written in a quasi-judicial capacity but purely in a private capacity expressing the personal views of the Excise and Taxation Commissioner. The other point raised by the petitioners was that Section 4 of the Act of 1962 as amended up to date was ultra vires and violative of Article 14 of the Constitution of India inasmuch as the section conferred unguided and uncanalised powers on the Government to fix any rate of tax without laying down any guidelines or criteria for determining the tax. Although the petitioners have not specifically taken the question of the vires of Section 4 of the Act in the petition, yet at the time of hearing, since this point was involved in the other writ petition, the petitioners also adopted the same argument. We propose to deal with the second argument while dealing with the other writ petition where this point is involved directly. We would, however, likely to dispose of the first point raised by the petitioners in this petition. It appears that purporting to act u/s 4(1) of the Act, the Government issued Notification No. S. R. O. 157 on 15th May, 1965, comprised in the First and Second Schedules declaring goods to be taxed and those which were exempted from sales tax. Item 37 of Schedule II of the aforesaid notification runs thus: ""Exempted goods... 37. Water."" It was contended before us that as ice was nothing but frozen form of water, therefore it clearly fell within the purview of the exemption of item 37 of Schedule II. The petitioners seek to reinforce their argument by producing the opinion of the Excise and Taxation Commissioner. The letter written by the Commissioner to the petitioners dated 29th September, 1965 (annexure A), ""runs thus: I agree with you that ice is frozen water and should fall under the category 'water and aerated water': item No. 37 of the Second Schedule of S. R. O. 157. Necessary instructions are being issued to the assessing authorities that sale of ice should not be assessed to tax.

Sd./- Ghulam Mohd.

Excise and Taxation Commissioner,

J. & K. Government, Srinagar.

3. This letter appears to have been written to the petitioners on a query made by them on the question in issue. The Assistant Advocate-General

appearing for the State submitted that the letter is nothing but an individual opinion of the Excise and Taxation Commissioner and cannot have any

statutory force so as to negative the real purport and ambit of entry 37 of the notification. We are inclined to agree with the submission made by

the Assistant Advocate-General that the letter is nothing but the personal opinion of the Excise and Taxation Commissioner and as the

Commissioner has not given any reasons in his opinion, this cannot carry us any far and we have to interpret the provisions of entry 37 separately

and according to the context and purport of the notification. It is true that ice is undoubtedly frozen form of water, but before we hold that ice and

water are the same thing., it must be proved that there has been no change of state. In a diverse and democratic society like ours where the market

is flooded with various articles, products and by-products, the source of these articles or their genus is not sufficient to indicate their identity or

similarity. The word "ice" has been defined in the Webster's Third International Dictionary thus:

Water reduced to the solid state by cooling and when pure constituting a nearly colourless brittle substance that in freezing expands about one-

eleventh in volume, that has a specific gravity of 0.9166 as compared with 1.0 for water at 4°C, that under normal atmospheric pressure is

fanned at and has a melting point of 0°C or 32°F, that occurs in the common form as hexagonal crystals, and that in large masses is classed as

a rock....

4. An analysis of this definition would clearly show that although ice derives its source or genus from water by being reduced to a solid state, yet

water on solidification into ice completely changes its state and becomes a distinct entity: the specific gravity is changed, the melting point has a

temperature of 0°C or 32°F and the substance which forms as ice has hexagonal crystals. In these circumstances, therefore, we are unable to

agree with the contention of the petitioners that ice and water are the same things and when the notification includes water in the exemption list, it

will include ice also. Furthermore, even assuming that the argument of the petitioners is correct, the Government was fully alive to the two forms of

water, namely, water simpliciter and ice, and if the intention of the Government was to exempt ice also then either they should have mentioned this substance in item 37 of Schedule II or they should have added that water would be exempted in any form whatsoever. On the other hand, this well-knit distinction between water and ice was present in the mind of the Government when the notification was issued and despite this if ice was not specifically mentioned in the list of exemption, then the only inference would be that the notification did not exempt ice from the province of taxation. Lastly, water is of universal and common use and the Government did not want to make it costly by imposing taxation on its use or supply. On the other hand, ice is undoubtedly an article of luxury and is manufactured by persons who have to instal a factory or machinery for the purpose of making it. The persons producing ice run a lucrative business and it would be against the very concept of sales tax that the Government should exempt ice from the operation of the tax to be imposed on various articles that are manufactured by various persons. For these reasons, therefore, we overrule the main contention of the petitioners in this case, namely, that the word water in item 37 includes ice. With respect we do not agree with the personal opinion of the Excise and Taxation Commissioner, conveyed in his letter annexure A, particularly when his opinion is not based on any reasonable or rational consideration,

5. We now come to Writ Petition No. 99 of 1972. In this case the petitioner is a halwai by profession and runs a halwai's shop at Pacca Danga, Jarrrnu. While giving the entire history of the various notifications passed by the Government from time to time, which is not very germane for the purpose of deciding the question at issue, the petitioner contends that Section 4 of the Act is ultra vires being violative of Article 14 of the Constitution of India inasmuch as it gives uncanalised and unguided powers to the Government to tax any article without drawing any guidelines from the contents of the Act. In other words, the contention is that Section 4 of the Act which confers absolute powers on the Government suffers from the vice of excessive delegation of powers. It was next contended that the impugned notification by which the halwais have been made liable to pay sales tax if their maximum turnover amounts to Rs. 40,000 or above is purely discriminatory inasmuch as similar persons equally placed

have been exempted from Suability to tax and, therefore, there has been an inter se discrimination by virtue of the impugned notification,

comprising No. S. R. O. 729 dated 11th October, 1972. The petition has been resisted by the State on a number of grounds: one of the important

preliminary objections taken by the Additional Advocate-General in support of his reply affidavit is that the petitioners nowhere state in the petition

that their actual turnover amounted to Rs. 40,000 or above so as to attract the penalty of taxation and, therefore, they have no locus standi to file

this petition. On merits it was submitted that the legislature has enunciated the policy very clearly and has laid down sufficient guidelines while

delegating powers to the Government to impose taxes on various articles. It was further submitted that there is no inter se discrimination between

the bakerywallas which formed a class as distinct from the petitioner and from the very nature of their business they fell into a special category.

6. We would first take up the contention relating to the constitutionality of Section 4(1) of the Act which runs thus:

Subject to the provisions of this Act, every dealer except the one dealing exclusively in goods declared tax-free u/s 5, shall pay for each year tax

on his total turnover at a rate not. exceeding twelve per cent of such turnover as may be determined by the Government and notified by the

Government in the Government Gazette and such tax shall be charged on the sale of goods once only:

Provided that the rate of tax shall not exceed three per cent in respect of any goods referred to in Section 14 of the Central Sales Tax Act, 1958.

7. An analysis of this section would manifestly show that the Act contains two clear guidelines. In the first place there is a ceiling on the power of

the Government not to impose any tax exceeding 12 per cent of the turnover determined by the Government, and (2) there is a further limit that the

rate of tax shall not exceed 3 per cent in respect of goods which are taxable under the Central Sales Tax Act. It was however submitted that mere

fixing of ceiling on a rate of tax is not a sufficient guideline so as to render the vice of excessive delegation of powers nugatory. It was contended

that the nature of the articles which are to be taxed or which are to be grouped together have not been mentioned in the Act at all, nor has any

clear policy been enunciated in the preamble to show what is the scope and ambit of the Act. In support of this contention reliance has been placed

on a number of decisions of the Supreme Court and other High Courts. We shall first refer to the decisions before expressing our own opinion on

the subject. In *Ram Krishna Dalmia v. Justice Tendolkar* AIR 1968 S.C. 538 at 547, it was clearly indicated by the Supreme Court that the

legislature appreciates the needs of its people and in determining the constitutionality of a statute the history of times and matters of common report should be taken into consideration. In this connection their Lordships observed as follows:

The decisions of this court farther establish--

(a) that a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable

to him and not applicable to others, that single individual may be treated as a class by himself;

(b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there

has been a clear transgression of the constitutional principles;

(c) that it must be presumed that the legislature understands and correctly appreciates the needs of its own people, that its laws are directed to

problems made manifest by experience and that its discriminations are based on adequate grounds;

(d) that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the

clearest;

(e) that in order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of

common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation; and

(f) that while good faith and knowledge of the existing conditions on the part of a legislature are to be presumed, if there is nothing on the face of

the law or the surrounding circumstances brought to the notice of the court on which the classification may reasonably be regarded as based, the

presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for

subjecting certain individuals or corporations to hostile or discriminating legislation.

8. The above principles will have to be constantly borne in mind by the court when it is called upon to adjudge the constitutionality of any particular

law attacked as discriminatory and violative of the equal protection of the laws.

9. In a later case in Pandit Banarsi Das Bhanot Vs. The State of Madhya Pradesh and Others, , it was clearly pointed out by the Supreme Court

that it is not. unconstitutional for the legislature to leave it to the executive to determine details relating to the working of taxation laws, namely,

selection, of persons on whom the tax is to be laid, etc. In this connection their Lordships observed as follows:

Now, the authorities are clear that it is not unconstitutional for the legislature to leave it to the executive to determine details relating to the working

of taxation laws, such as the selection of persons on whom the tax is to be laid, the rates at which it is to be charged in respect of different classes

of goods, and the like.

10. The principles laid down by the Supreme Court above have been reiterated in Hamdard Dawakhana v. Union of India AIR 1960 S.C. 534.

11. The petitioners have however placed strong reliance on the decision of the Supreme Court in Jyoti Pershad v. Union Territory of Delhi AIR

1901 S.C. 1602 at 1609. This case is clearly distinguishable from the facts of the present case because the provision interpreted by the court was

not a taxing statute but a Rent Control Act. Even so, while illustrating the question of nature and extent of the guidance, their Lordships observed

as follows:

Such guidance may thus be obtained from or afforded by (a) the preamble read in the light of the surrounding circumstances which necessitated the

legislation, taken in conjunction with well-known facts of which the court might take judicial notice or of which it is appraised by evidence before it

in the form of affidavits, Kathi Raning Rawat Vs. The State of Saurashtra, being an instance where the guidance was gathered in the manner above

indicated, (b) or even from the policy and purpose of the enactment which may be gathered from other operative provisions applicable to

analogous or comparable situations or generally from the object sought to be achieved by the enactment.

12. Similarly reliance was placed on a decision of the Supreme Court in Corporation of Calcutta and Another Vs. Liberty Cinema, . This case is

also distinguishable from the facts of the present case, because in that case their Lordships were considering the distinction between fee and tax.

Their Lordships however held that no arbitrary power of taxation was conferred by Section 548 of the Calcutta Municipal Act so as to attract the

operation of Article 19(1)(f) of the Constitution of India. This case does not appear to be of any assistance to the petitioners in the present case.

13. On the other hand, in *Kamla Dal Mills v. State of U.P.* [1966] 18 S.T.C. 204 at 219, a Division Bench of the Allahabad High Court clearly

held that the power conferred on a State Government to select the goods to be subjected to sales tax and the rates at which they are to be taxed

does not amount to unconstitutional delegation of powers. In this case while relying on a decision of the Supreme Court in *Orient Weaving Mills*

(P) Ltd. Vs. The Union of India (UOI), , their Lordships observed as follows:

These observations confirm not only that the State Legislature itself could select some goods for being subjected to purchase tax and the rates at

which the purchase tax is to be levied but also that the power to do so can be exercised by the State Government without Article 14 being

infringed (provided it is conferred on it).

14. The petitioner, however, relied on a decision of the Supreme Court in *Devi Das Gopal Krishnan and Others Vs. State of Punjab and Others*, ,

in support of the proposition that a blanket power given to the Government in that case was struck down. In this case their Lordships observed as

follows:

Under Sections of the Punjab General Sales Tax Act, 1948, as it originally stood, an uncontrolled power was conferred on the Provincial

Government to levy every year on the taxable turnover of a dealer a tax at such rates as the said Government might direct. Under that section the

legislature practically effaced itself in the matter of fixation of rates and it did not give any guidance either under that section or under any other

provisions of the Act.... The minimum we expect of the legislature is to lay down in the Act conferring such a power of fixation of rates clear

legislative policy or guidelines in that regard. As the Act did not prescribe any such policy, it must be held that Section 5 of the said Act, as it

stood before the amendment was void.

15. In this case it will be seen that Section 5 was struck down because the

Supreme Court, came to a clear conclusion that while conferring power on the Government, no guidelines were at all indicated, nor was there any enunciation of policy in any form, with the result that the legislature practically effaced itself in the matter of fixation of rates by not giving any guidelines, criteria, or limit within which tax had to be fixed. It seems to us that the Punjab General Sales Tax Act suffered from a very serious infirmity inasmuch as no ceiling on the rate of tax was at all imposed and, therefore, the Government was given an arbitrary power to impose any amount of tax it liked on any article without any limitation or restriction which, however, is not the case here. As indicated above, two important limitations or curbs are imposed on the power of the Government to levy taxes. In the first place, there is a ceiling of 12 per cent and the Government is therefore prohibited from imposing any tax beyond 12 per cent. Secondly, in respect of goods to which the Central Sales Tax Act applies, the ceiling fixed by the State Act is 3 per cent, which also provides a clear guideline and a framework within which the Government is to exercise its functions. In these circumstances, we are convinced that the provisions of the impugned Act in this case are essentially different from the one which was before their Lordships of the Supreme Court, namely, the Punjab General Sales Tax Act of 1948.

16. We might also mention here that in a later case, in *Delhi Municipality v. B. C. S. & W. Mills* AIR 1968 3 C 1232, the Supreme Court itself clearly indicated that the maximum rate of tax was a sufficient guideline to the Government which would show that no arbitrary power was conferred on the Government. After a review of a large number of authorities including the case of *Devi Das Gopal Krishnan and Others Vs. State of Punjab and Others*, , their Lordships observed as follows:

A review of these authorities therefore leads to the conclusion that so far as this court is concerned the principle is well-established that essential legislative function consists of the determination of the legislative policy and its formulation as a binding rule of conduct and cannot be delegated by the legislature. Nor is there any unlimited right of delegation inherent in the legislative power itself. This is not warranted by the provisions of the Constitution. The legislature must retain in its own hands the essential legislative functions and what can be delegated is the task of subordinate

legislation necessary for implementing the purposes and objects of the Act. Where the legislative policy is enunciated with sufficient clearness or a

standard is laid down, the courts should not interfere,, What guidance should be given and to what extent and whether guidance has been given in a

particular case at all depends on a consideration of the provisions of the particular Act with which the court has to deal including its preamble.

Further it appears to us that the nature of the body to which delegation is made is also a factor to be taken into consideration in determining

whether there is sufficient guidance in the matter of delegation.

What form the guidance should take is again a matter which cannot be stated in general terras. It will depend upon the circumstances of each

statute under consideration.... The guidance may take the form of providing maximum rates of tax up to which a local body may be given the

discretion to make its choice or it may take the form of providing for consultation with the people of the local area and then fixing the rates after

such consultation. It may also take the form of subjecting the rate to be fixed by the local body to the approval of Government which acts as a

watch-dog on the actions of the local body in this matter on behalf of the legislature.

17. These observations, therefore, lay down exhaustively the considerations whereby the constitutionality of a statute has to be judged on the

touchstone of the conferment of arbitrary power.

18. Similarly in *S.B. Dayal v. State of U.P.* AIR 1972 S.C. 1168 at 1170, their Lordships observed as follows:

All that was said was that in empowering the Government to levy tax on goods other than foodgrains at a rate not exceeding 5 paise in a rupee, the

legislature parted with one of its essential legislative functions as the power given to the executive is an unduly wide one. We are unable to accede

to this contention. Whether a power delegated by the legislature to the executive has exceeded the permissible limits in a given case depends on its

facts and circumstances. That question does not admit of any general rule. It depends upon the nature of the power delegated and the purposes

intended to be achieved. Taking into consideration the legislative practice in this country and the rate of tax levied or leviable under the various

sales tax laws to force in this country, it cannot be said that the power delegated

to the executive is excessive.

19. In *Hiralal Rattanlal Vs. State of U.P. and Another etc. etc.*, it was pointed out that, the legislature has wide powers of classification in the case

of taxing statutes and that the power of working details regarding the subjects to be taxed and the rate of taxation has to be left to the Government.

In this connection their Lordships observed as follows:

It is true that the taxing statutes are not outside the scope of Article 14 of the Constitution. But the legislature has wide powers of classification in

the case of taxing statutes....

It must be noticed that generally speaking the primary purpose of the levy of all taxes is to raise funds for public good. Which persons should be

taxed, what transaction should be taxed or what goods should be taxed, depends upon social, economic and administrative considerations. In a

democratic set up it is for the legislature to decide what economic or social policy it should pursue or what administrative considerations it should

bear in mind. The classification between the processed or split pulses and unprocessed or unsplit pulses is a reasonable classification. It is based on

the use to which those goods can be put. Hence, in our opinion, the impugned classification is not violative of Article 14.

20. In *East India Tobacco Co. v. State of Andhra Pradesh* AIR 1982 S.C. 1733 at 1735, their Lordships approved the statement of law made by

Willis in his *Constitutional Law* and endorsed and approved the statement made by him regarding the question that the State has to be given a wide

discretion in the matter of taxation and in selection of persons and objects, etc., for classification. In this connection their Lordships while approving

the statement of law by Willis observed as follows:

But in deciding whether a taxation law is discriminatory or not it is necessary to bear in mind that the State has a wide discretion in selecting the

persons or objects it will tax, and that a statute is not open to attack on the ground that it taxes some persons or objects and not others. It is only

when within the range of its selection, the law operates unequally, and that cannot be justified on the basis of any valid classification, that it would

be violative of Article 14. The following statement of the law in Willis on '*Constitutional Law*', page 587, would correctly represent the position

with reference to taxing statutes under our Constitution:

A State does not have to tax everything in order to tax something. It is allowed to pick and choose districts, objects, persons, methods and even

rates for taxation if it does so reasonably....The Supreme Court has been practical and has permitted a very wide latitude in classification for taxation.

21. The same principle was reiterated in *V. Venugopala Ravi Varma Rajah Vs. Union of India and Another*, wherein their Lordships observed as follows:

Equal protection clause of the Constitution does not enjoin equal protection of the laws as abstract propositions. Laws being the expression of

legislative will intended to solve specific problems or to achieve definite objectives by specific remedies, absolute equality or uniformity of treatment

is impossible of achievement. Again tax laws are aimed at dealing with complex problems of infinite variety necessitating adjustment of several

disparate elements. The courts accordingly admit, subject to adherence to the fundamental principles of the doctrine of equality, a larger play to

legislative discretion in the matter of classification. The power to classify may be exercised so as to adjust the system of taxation in all proper and

reasonable ways; the legislature may select persons, properties, transactions and objects, and apply different methods and even rates for tax, if the

legislature does so reasonably. Protection of the equality clause does not predicate a mathematically precise or logically complete or symmetrical

classification: it is not. a condition of the guarantee of equal protection that all transactions, properties, objects or persons of the same genus must

be affected by it or none at all. If the classification is rational, the legislature is free to choose objects of taxation, impose different rates, exempt

classes of property from taxation, subject different classes of property to tax in different ways and adopt different modes of assessment.

22. It would be seen that here also their Lordships clearly laid down that if the classification was rational the legislature must be given complete

freedom to choose objects of taxation, impose different rates and adopt different modes of assessment. The Punjab High Court in *Shanker Iron*

and *Steel Rolling Mills Vs. Union of India and Others*, at 56 observed as follows:

The only classification which amounts in law to invidious discrimination is the one between the object of which and that of the legislation in question

there is no rational relationship or nexus. Subject to the aforesaid condition, valid classification of persons or objects can be made by a law-making

authority on any approved basis, e. g., occupation, standing, age, locality, point of time, etc. In other words, the basis of classification may be

historical, geographical, in view of difference in time or locality, difference in the nature, the trade, calling or occupation of persons sought to be

affected by the legislation, difference in the position or nature of different business concerns, difference in the category of employers or employees,

difference in length or nature of service, difference in the nature and incidence of particular rights, and various other bases, which it is impossible to

attempt to enumerate exhaustively.

23. In this case their Lordships have clearly indicated the various considerations by which the Government may be swayed in selecting the objects

of taxation and in fixing the rates.

24. In a recent decision of the Supreme Court in V. Nagappa Vs. Iron Ore Mines Cess Commissioner and Another, , their Lordships observed as

follows:

The policy of the Act has been clearly stated; the purposes for 'which the tax collected should be expended have been enumerated and the

purposes are such that it is reasonably possible for the delegate to calculate the amount necessary to meet them. In these circumstances, we think

that the necessary guidance for fixing the rate can be found in the amount of expenditure necessary for carrying out the purposes of the Act. Quite

apart from these circumstances, the fact that Section 2 has fixed the maximum rate would indicate that the delegate is not given an uncontrolled

discretion in the matter of fixing the rate.

25. This decision therefore clearly holds that fixation of a maximum rate would clearly indicate that the delegate is not given an uncontrolled or

uncanalised power to tax. The present case, therefore, clearly falls within the ratio laid down by their Lordships in the aforesaid case.

26. The entire matter was considered by a Division Bench of this Court in Padam Krishan Vohra v. Assessing Authority, S.T. (1) Writ Petition

No. 64 of 1968 decided on 2nd May, 1969 (Jammu and Kashmir High Court). (a case to which I was a party), in all its essential details and after

considering the entire case law on the subject we held as follows:

A review of the above authorities clearly indicates and leads one only to the conclusion that the legislature can give guidelines to the executive

Government within which taxes may be imposed. It can leave it to the executive to determine details relating to the working of the taxation laws,

such as the selection of persons on whom the tax is to be levied, the rates at which it is to be charged in respect of different classes of goods and

the like. Further the guidelines can be provided by fixing a maximum rate of taxes that can be levied under a particular enactment. These conditions

are clearly present in the present legislation, namely, Section 4 of the Act.

27. The ratio decidendi of the aforesaid case is fully in consonance with a long catena of decisions of the Supreme Court,, We are therefore unable

to agree with the petitioner's learned counsel that the aforesaid decision of the Division Bench was wrongly decided. We, therefore, agree with the

Division Bench decision and endorse it.

28. From a review of the authorities the following propositions emerge:

(1) That the question as to whether or not the power conferred by the statute on the delegatee suffers from the vice of excessive delegation

depends on the nature and scope of the statute, the object and the end which is sought to be achieved having regard to the intent and the preamble

of the statute and the nature of the arbitrariness that the delegatee enjoys.

(2) That the legislature cannot efface itself by delegating its essential legislative functions to any authority or delegatee but as the legislature is in the

best position to understand the complex and diverse needs of the people, it can while formulating general guidelines leave the details to be worked

out by the delegatee. As to what form a particular guideline should take in a particular case would naturally depend upon the statute concerned and

the entire object which is sought to be achieved. It is difficult to lay down a hard and fast rule of universal application as to what would be a

sufficient guideline in a particular case.

(3) Before delegating any of its powers the legislature must clearly formulate its policy and lay down necessary guidelines to indicate the extent

within which the delegatee is to exercise its powers.

(4) In taxing statutes the legislature is given wider powers of classification and the power to work out details which must be left to the delegatee.

(5) Where the power is delegated to a higher authority it is presumed that the said authority will act fairly and judiciously.

(6) In case of taxing statutes the fixation of a maximum rate or a ceiling on the limit of the tax to be imposed by itself constitutes sufficient guideline

to the delegatee to exercise its powers.

(7) There is always a presumption in favour of the constitutionality of a statute and the court should not strike down a statute unless it is satisfied

that the powers conferred on the delegatee are really untrammelled, uncanalised, naked and arbitrary and are not subject to any guidelines.

29. Applying these tests, let us see whether Section 4 of the Act can be said to suffer from the vice of excessive delegation of powers. To begin

with, the preamble to this Act clearly enunciates the policy, scope and object of the Act. The preamble runs thus:

...An Act to provide for the levy of a general tax on the sale of goods in the State and for other matters connected therewith....

30. The preamble therefore lays down a clear-cut policy, namely, that the object of the Act is to levy general tax on the sale of goods in the State.

As in a democratic set up it becomes the primary duty of the State to muster financial resources to raise additional revenues in order to meet its

commitments to the people for implementing the plans and projects which it has to complete, therefore the raising of revenues is a very important

function of the Government. The preamble, therefore, clearly enunciates the object and the policy of the Act, namely, the intention to tax sale of

goods in the State and for other matters connected therewith. Apart from this enunciation of the policy, u/s 5, the Government has reserved to itself

the right to exempt certain articles from taxation or to regulate or restrict the trade in these articles. Thus it cannot be said that the Government has

been given unrestricted powers of taxation. Thirdly, Section 4 itself contains two important guidelines: (1) that there is a ceiling of 12 per cent on

the tax on the turnover to be determined by the Government, that is to say, the Government is prohibited from taxing any article beyond the limit of

12 per cent; (2) the proviso itself has provided the rate of tax which shall not exceed 3 per cent in respect of any goods referred to in Section 14

of the Central Sales Tax Act, 1956, which is to avoid double taxation. We have already referred to a large number of authorities of the Supreme

Court and other High Courts which have clearly laid down that even fixation of a maximum rate of taxation constitutes by itself a fairly good

guideline and does not amount to conferment of an absolute, arbitrary or uncanalised power on the Government. For these reasons, we are clearly

of the opinion that the challenge to the constitutionality of Section 4 on the ground that it suffers from the vice of excessive delegation of powers

must fail and we hold that Section 4 is intra vires and is not violative of Article 14 of the Constitution of India. The first contention raised by the

counsel for the petitioners is therefore overruled.

31. I might, however, refer to the preliminary objection taken by the Additional Advocate-General that the petition is not maintainable because the

petitioner has not alleged that his turnover exceeds Rs. 40,000 so as to make him liable to pay tax. It is true that this is so, but the petitioner is

indulging in a running business whose turnover is not fixed but is liable to increase or decrease and, therefore, if the petitioner believes that he may

have to pay tax if his turnover increases, there is undoubtedly an immediate threat to his right for which he can file a writ before this court. In view,

however, of our finding that Section 4 is intra vires, it is not necessary to go into the merits of the preliminary objection any further.

32. The second plank of argument put forward by the petitioner was that even if the provisions of Section 4 of the Act are intra vires, the

notification issued under Sections of the Act bearing No. S.R.O. 729 dated 11th October, 1972, is violative of articles 14 and 19 of the

Constitution of India inasmuch as the petitioner was selected for hostile discrimination by the notification as against the bakerywallas who were

equally circumstanced with the petitioner. Hence the notification had accorded an unequal treatment to equals, namely, the petitioner and the

bakerywallas. In order to appreciate this contention it may be necessary to trace the history of the various notifications issued by the Government

ever since 1962 because this would show that the Government appears to have been in two minds regarding imposition of taxes on the petitioner:

sometimes tax was imposed, sometimes it was withdrawn. To begin with, there was Notification No. S. R. O. 157 dated 15th May, 1965, entry

68 to Schedule II of which ran thus:

Item 68. Articles of food and drinks sold by boarding houses conducted for the

exclusive use of the students or canteens run exclusively for the use of employees of the factories or armed forces and sale of Indian food preparations ordinarily prepared by tandoorwallas, lohwallas and dhabas (when sold by persons running tandoors, lohs and dhabas exclusively) and articles ordinarily prepared by halwais (when sold by halwais not maintaining eating houses).

33 Entry 68 appeared in the exemption list and was, therefore, exempted from payment of sales tax. It will be pertinent to note that in this entry

tandoorwallas, lohwallas and dhabas and halwais were equated. It will be further noticed that articles ordinarily prepared by halwais not

maintaining eating houses were also exempted from payment of sales tax. A month after it appears that this notification underwent another

amendment by S. R. O. 215 dated 18th June, 1965, which runs thus:

In serial No. 68 for the brackets and words '(when sold by halwais not maintaining eating houses)' the brackets and words '(when sold by halwais exclusively)' shall be substituted.

34. By virtue of this amendment the restriction imposed in entry 68 on the exemption limit of the halwais was taken away and they were given a

blanket exemption from sales tax if the articles were sold by them exclusively. Not being satisfied even with this amendment, the Government

introduced another amendment by S. R.O. 432 dated 8th August, 1969, which runs thus:

Articles of food and drink sold in boarding houses conducted for the exclusive use of the students or canteens run exclusively for the use of

employees of the factories or armed forces and sale of Indian food preparations prepared by tandoorwallas, tea stall-holders, lohwallas and

dhabawallas exclusively and sold or served by them within the same room or shop in which it is prepared and articles sold by a halwai in the same

shop in which they are prepared and where there is no arrangement for service, i.e., chairs, tables, benches,, etc.

35. Here also, it would be seen that tandoorwallas, lohwallas, tea stallholders and dhabawallas were equated with the halwais. By another

amendment, namely, S. R. O. 525 dated 8th October, 1971, for the words ""tandoorwallas, lohwallas and dhabas"" the words ""tandoorwallas, tea

stallholders, lohwallas and dhabawallas"" were substituted. Thus by virtue of this

amendment even the tea stall-wallas were brought within the exemption limit. Thereafter the entry was again amended by S. R. O. 729 dated 11th October, 1972, which is the impugned notification by which

a substantial change to the detriment of the petitioner halwai appears to have been made. The relevant portion of this notification which is annexure

A to the petition runs as under:

In exercise of the powers conferred by Section 5 of the Jammu and Kashmir General Sales Tax Act, 1962 (XX of 1962), the Government hereby

make the following amendments in Notification S. R. O. 157 dated 15th May, 1965, namely:....

34. Sales made by dhabawallas, tandoorwallas, lohwallas, tea stallholders and halwais 2 per cent....

(iii) for item 68 the following shall be substituted:

'Articles of food and drink sold in boarding houses conducted for the exclusive use of students or canteens run exclusively for the use of employees of factories or armed forces.'

(iv) In the last para:

(a) for the first and second provisos the following shall be substituted;

Provided that in relation to dealers who run hotel, restaurant, cafe and other similar establishments wherein food preparations including coffee and

tea (but excluding liquor and beer) are served, the maximum turnover not liable to tax shall be Rs 25,000.

Provided further that in relation to dhabawallas, tandoorwallas, lohwallas, tea stall-holders and halwais, maximum turnover not liable to tax shall be

Rs. 40,000....

This notification shall come into force on 16th October, 1972.

By order of the Government of Jammu and Kashmir.

36. From a perusal of this notification particularly the second proviso it would be seen that those halwais whose turnover exceeds Rs. 40,000 were

subjected to levy of sales tax. Thus, for the first time halwais were made liable to payment of tax without any restriction or exception which they

had enjoyed under the previous notifications. It would further be seen that while in the case of halwais, dhabawalias, tandoorwallas, lohwallas and

tea stall-holders, the Government introduced a number of amendments

regarding the liability of these persons to payment of tax from time to time, the bakerywallas were completely exempted from taxation by virtue of their being included in entry 4 of the Second Schedule of S. R. O. 157, which runs thus:

Exempted goods--4. Bakery goods prepared without use of power at any stage when sold by the person dealing exclusively in such goods.

37. In spite of the subsequent amendment of the other provisions of the notification, so far as the bakerywallas were concerned they were left

completely untouched and they enjoyed complete exemption from sales tax. Even S. R. O. 729 does not at all affect the exemption granted to

bakerywallas under item 4 of the Second Schedule. It was thus contended that by virtue of the second proviso to the notification the Government

had made a serious discrimination between halwais and bakerywallas, who are doing the same kind of business, making the same kind of articles

and catering to the same type of customers. If the halwais had been exempted from payment of sales tax before and enjoyed this immunity till

1972, there was no reason to have taken away this blanket exemption and make them pay tax only if the limit of their turnover was over Rs.

40,000, when this restriction did not apply to bakerywallas who could carry on their business without payment of tax irrespective of their turnover.

It has been alleged in paragraph (8) of the petition that the petitioners and bakerywallas are exactly in the same position; both of them manufacture

identical food commodities, like nans, puris, kulchas, mathis, etc., and, therefore, both of them fall in the same category of dealers so far as the

preparation of these articles of food is concerned. It has further been contended that if the provisions of the notification are to be followed then it

will be well nigh impossible to collect sales tax from the purchasers amounting to 2 nP. in a rupee and even if the petitioners do so, they are bound

to suffer in competition because if their turnover is Rs. 40,000 or over they would have to charge more for the very same articles than other

halwais whose turnover is less than Rs. 40,000 as a result of which their business shall come to a standstill and no purchasers will be drawn to

purchase the articles of food from the petitioners. In reply to this argument the Additional Advocate-General submitted that the petitioners catered

to the luxurious and affluent customers and it was, therefore, a reasonable basis

for classification whereas the bakerywallas catered to the general masses, i.e., the hoi polloi. We are not inclined to agree with this argument because there are no reliable materials before us to show as to what is the nature of customers of the halwais and bakerywallas, nor is there any report on which a probe can be made in the matter to show what is the exact position in this regard. In other words, there is nothing to show as to which class of people buys articles of food from the bakerywallas and which class buys from the halwais. If a probe had been ordered by the Government in the matter before issuing the notification and if from such materials collected it would have appeared that the customers of the petitioners came from affluent class of people whereas the customers of the bakerywallas came from the poorer and weaker Sections of the society, then a rationale for the classification could have been found. But as it is, there is no such material on the record and we find that both the bakerywallas and the halwais are doing the same and identical type of business and they are preparing the same kind of articles of food. Unfortunately the petitioners have been treated by the Government with Draconic severity by following the policy of ruthless discrimination so far as the petitioners are concerned. There does not appear to be any reasonable basis for classifying the petitioners in a separate category for the purpose of taxation and leaving out the bakerywallas, who are equally placed and similarly circumstanced with the petitioners. It was also suggested by the petitioners that fixation of a limit of Rs. 40,000 on the turnover itself amounts to discrimination. We, however, do not agree with this submission because after all when the Government choose to tax the people to raise additional resources it has to fix a ceiling somewhere and since in the case of the petitioners the ceiling has been fixed at Rs. 40,000, that by itself would not be violative of Article 14 of the Constitution of India.

38. For the reasons given above, we hold that while Section 4 of the Act is *infra vires* and constitutional, item 34 and the second proviso of the notification passed u/s 5 of the Act, namely, No. S. R. O. 729 dated 11th October, 1972, which run thus:

34. Sales made by dhabawallas, tandoorwallas, lohwallas, tea stallholders and halwais 2 per cent. ""Proviso 2: ""Provided further that in relation to dhabawallas, tandoorwallas, lohwallas, tea stall-holders and halwais, maximum

turnover not liable to tax shall be Rs. 40,000.

are discriminatory and violative of Article 14 of the Constitution of India. As these are the only offending parts of the notification which are severable from the rest of the notification, we strike down and quash the aforesaid parts.

39. The result is that Writ Petition No. 93 of 1972--Glacier Cold Storage & Ice Mills v. Assessing Authority--fails and is dismissed, whereas Writ

Petition No. 99 of 1972--Sain Dass v. State of Jammu & Kashmir--succeeds, and a writ of certiorari is issued striking down and quashing item 34

and the second proviso of Notification No. S. R. O. 729 dated 11th October, 1972. There will be no order as to costs.

Syed Wasi-Ud-Din, J.

40. I agree.

Jaswant Singh, J.

41. I have had the advantage of going through the elaborate and illuminating judgment prepared by the Honourable the Chief Justice after a very

exhaustive and analytical review of the authorities bearing upon the various questions involved in the petitions and agree with the conclusions

arrived at and the order proposed to be made by his. Lordship.