

(1968) 07 RAJ CK 0005

In the Rajasthan High Court

Case No : Writ Petition No's. 1503, 1533, 1732 and 1832 of 1964

Johari Mal and Others

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 29-07-1968

Acts Referred:

Constitution of India, 1950 — Article 14
Rajasthan Municipalities Act, 1959 — Section 104

Citation : AIR 1969 Raj 146 : (1969) RLW 367

Hon'ble Judges : Kansingh, J

Bench : Single Bench

Advocate : G.M. Lodha and J.S. Rastogi, in Nos. 1503 and 1732/64, G.M. Lodha, in No. 1533/64 and J.S. Rastogi, in No. 1832/64, for the Appellant; S.K. Tiwari, Dy. G.A. for the State, R.K. Rastogi, in No. 1533/64, L.R. Mehta, for J.K. Jain, in No. 1739/64, for the Respondent

Judgement

Kansingh, J.—I have before me a group of four writ petitions by which the several petitioners challenge the vires of Sections 104 and 107 of the Rajasthan Municipalities Act, 1959 (Act No. 38 of 1959, hereinafter called the Act), as also certain notifications issued by the State Government in exercise of its powers u/s 104 of the Act imposing octroi in the concerning municipalities. As the writ petitions raise common questions, they can conveniently be disposed of together.

2. I may give the facts with, reference to writ petition No. 1503/64 Joharimal and others v. The State of Rajasthan and another. Writ Petition No. 1533 of 1964 Jaishiv and others v. The State of Rajasthan and another is identical with Joharimal's writ petition. Both these writ petitions relate to Abu Road Municipality. Writ Petition No. 1832 of 1964 Shivcharan Lal and others v. The State of Rajasthan and another is for Bari Municipality in district Bharatpur and the fourth writ petition Prabhu Dayal and others v. The State of Rajasthan and another concerns the Municipal Board Kota.

3. Joharimal states that in the Municipality of Abu Road, the Municipal Board had

imposed octroi duty in the year 1951 after going through the procedure prescribed for imposition of octroi duty. According to the petitioner, the Municipal Board imposed this duty after ascertaining the public opinion. The octroi duty on cloth was 1/9 per cent, and as it was found to be high, the Municipal Board later on reduced it to 50 Paise per cent. The grievance of the petitioner is that the State Government published a notification on 20th August, 1964, imposing octroi duty on various commodities including cloth, silver and gold. The notification has been placed on record and it is Ex. 6. It is dated 10th April, 1964, and has been issued by the State Government in exercise of its powers u/s 104 of the Act. Textiles and yarn occur at items Nos. 62 and 63 respectively of this notification and gold and silver bullion and articles thereof appear at item No. 81 in the Notification. A perusal of these items shows that octroi duty is chargeable on them at the rate of 1 per cent. The petitioner's grievance is that before issuing the notification Ex. 6, neither the State Government nor the Board had ascertained the wishes of the public. The petitioner proceeds to say that Section 104 of the Act is violative of Article 14 of the Constitution and also by this provision, the Legislature has delegated its functions of imposing tax by law to the State Government which, according to the petitioner, amounts to excessive delegation so as to be void. It is pointed out that wide and arbitrary powers have been placed in the hands of the State Government in the matter of imposition of taxes mentioned therein without affording any guidance to the State Government as to how it has to exercise its powers. It is contended that the State Government is left to pick and choose between the various commodities which it may take for imposition of octroi and likewise it may prescribe different rates of taxes for the same commodity for different municipalities. Thus according to the petitioner, the powers granted to the State Government by Section 104 are arbitrary and are in clear contravention of the provisions of Article 14 of the Constitution. Then as regards Section 107 of the Act it is pointed out that the power of granting exemption from taxes is likewise arbitrary.

4. Then in attacking the notification Ex. 6 it is urged that the issuing of different notifications with widely varying rates of taxes for various municipalities, amply demonstrates that Section 104 of the Act has placed unguided powers in the hands of the State Government and further the State Government has abused its powers and there is no reasonable basis for making distinction regarding the incidence of tax for the various commodities and therefore it is maintained that the notification Ex. 6 was bad on account of the violation of Article 14 of the Constitution. The petitioner has submitted a comparative chart with his writ petition regarding octroi on textiles and silver and gold in the various municipalities information about which he could gather. The petitioner on the basis of this information submits that whereas in the municipalities of Abu Road and Sirohi, octroi on gold and silver has been fixed on the basis of value thereof at the rate of 1 per cent, in the case of Abu Road and 50 Paise in the case of Sirohi at Jodhpur, Bikaner, Parbatsar and Jaipur, the rate of octroi for gold and silver has been fixed at per quintal, that is, on the basis of weight of the

commodity. The petitioner contends that this has resulted in a wide disparity regarding the incidence of tax between persons living in the Abu Road Municipality and those living in the areas of other municipal Boards. According to the petitioner, live rupees per quintal or 25 rupees per quintal of gold and silver will result in just a very nominal tax in those municipalities as the value of silver and gold per quintal will run in thousands in the case of silver and lacs in the case of gold; that is one quintal of gold will be about eight lacs in value and one quintal of silver will not be less than rupees ten thousand in any case and hundred rupees worth gold will be about half a tola in weight. It is thus submitted that wide disparity in the imposition of burden on citizens of the same State is wholly understandable and there is no conceivable basis for making distinction between citizens living in one municipality from those living in another municipality in the same State. Similarly about cloth, it is submitted that whereas in the municipality of Abu, octroi is realised on cloth on the basis of percentage of value at one per cent, in other municipalities it is realised on the basis of weight per quintal. For example, in Ganganagar it is 1.50 per quintal of cloth and at Jodhpur it is Rs. 2 per quintal. According to the petitioner, this imposition also works to be discriminatory and for that there is no reasonable basis. Then as regards the municipalities situated in the same district, that is, Sirohi, the petitioner submits that there is difference in the rates applied to Sirohi and those applied at Abu Road, which, according to the petitioner, are higher. As regards Kota Municipality, it is said that octroi on silver is charged at the rate of 50 paise per cent for bullion and 75 Paise per cent on silver ornaments. The fourth writ petition is about the octroi on sugar cane. The petitioners in that case submit that there are a number of municipalities in the Bharatpur district and while in some municipalities no octroi is charged on sugar-cane, in others the rate is considerably low. Thus according to the petitioners, there has been discrimination in the imposition of octroi on sugar-cane. The submissions about the vires or Section 104 of the Act are common in all the four writ petitions.

5. The writ petitions have been opposed both on behalf of the State and the respective Municipal Boards. The learned Deputy Government Advocate who appeared for the State of Rajasthan at the outset prayed for an adjournment as the cases on behalf of the State were to be argued by the Advocate General who could not come on account of some other Government business. However as the writ petitions have been pending since 1964 and have also been appearing both in the weekly cause-lists as well as daily cause-lists for a number of days, I was not inclined to accede to the request of the learned Deputy Government Advocate to adjourn the hearing of the cases,

6. The writ petitions thus raise two questions -- one, regarding the vires of Sections 104 and 107 of the Act and the other about the validity of the Government Notifications imposing octroi in the concerning municipalities. The validity of the notifications is challenged on two grounds. One ground is that if Section 104 itself is struck down, the notifications would fall through ipso facto, and the other ground is that even assuming that Section 104 of the Act was a

valid provision, the exercise of the powers by the State Government under that section was bad on account of the State Government having acted with discrimination. In other words, it is urged that the State Government has in issuing the notifications brought about a difference between the citizens of the same State as regards the incidence of the taxes without there being any reasonable basis for classification and according to the petitioners, the respondents have pointed out none for it in their replies.

7. I have heard learned counsel for the parties. They have placed reliance on a number of cases. Learned counsel for the petitioners has cited Kunnathath Thathunni Moopil Nair Vs. The State of Kerala and Another, , The State of West Bengal Vs. Anwar Ali Sarkar, Shanmugha Oil Mill, Erode Vs. Coimbatore Market Committee and Another, Standard Motor Union (Private) Ltd., Ettumanoor and Another Vs. State of Kerala and Others, and Bhikam Chand and Others Vs. The State and Others, Learned Counsel for the respondents have, on the other hand, placed reliance on Khyerbari Tea Co. Ltd. v. State of Assam AIR 1954 SC 925, Corporation of Calcutta v. Liberty Cinema ATR 1965 SC 1107, Cochin Devasworn Board v. Vamana Setti AIR 1066 SC 1980, Pema Chibar v. Union, of India AIR 1966 SC 442 , Katra Educational Society Vs. State of Uttar Pradesh and Others, , Jalan Trading Co. (Private Ltd.) Vs. Mill Mazdoor Union, A. Noronha v. State of Mysore, AIR 1966 Mys 267 and Kantilal Popatlal Shah and Others Vs. State of Gujarat and Another,

8. It will be convenient at this place to read sections 104 and 107 of the Act.

"104. Obligatory taxes.--Every board shall levy at such rate and from such date as the State Government may in each case direct by notification in the Official Gazette and in such manner as is laid down in this Act and as may be provided in the rules made by the State Government in this behalf, the following taxes namely:--

(1) a tax on the annual letting value of buildings or lands or both, situated within the municipality:

(2) an octroi on goods and animals brought within the limits of the municipality for consumption, use or sale therein; and

(3) a tax on professions and vocations: Provided that-

(a) the tax under clause (1) shall not be levied-

(i) on kham houses, or

(ii) on buildings or lands or both, of which annual letting value is less than one hundred and eighty rupees.

(b) the tax under Clause (2) shall not be on a motor vehicle as defined in the Motor Vehicles Act, 1939, (Central Act IV of 1939) or any other mechanically propelled vehicle, and

(c) the tax under Clause (3) shall not be levied on artisans:

Provided further that, upon a representation made to it by, and at the request of, a board, the State Government, if it is satisfied that circumstances exist which sufficiently provide the justification for a board not to levy, or to stop the levy of, any of the taxes mentioned in this section, may by special order published in the official Gazette, along with the reasons for making such order, permit the board not to levy, or to stop the levy of, any such tax."

"107. Exemptions from taxation.--(1) None of the taxes specified in Sections 104, 105 and 106 shall be leviable by a board in respect of any property belonging to or vested in it.

(2) None of the taxes specified in Clauses (1) and (2) of Section 104 and in Clauses (i), (m), (iv) and (v) of Sub-section (1) of Section 105 shall be leviable in respect of any lands, buildings, goods, vehicles, conveyances, boats or animals belonging to or vested in the Central Government or the State Government:

Provided that, so long as any such tax continues to be levied by the board on like properties of other persons, nothing in this Sub-section shall prevent the board from levying that tax to which, immediately before the 26th day of January, 1950, any lands, buildings, goods, vehicles, conveyances, boats or animals of the Central Government were liable, or treated as liable:

Provided further that any land, building, goods, vehicle, conveyance, boat or animal belonging to or vested in the State Government shall be so exempt from payment of any such tax if the same is used or intended to be used solely for public purposes of profit.

(3) None of the taxes specified in Clauses (1) and (2) of Section 104 and in Clauses (i) and (iii) of Sub-section (1) of Section 105 shall be leviable in respect of.

(a) any land or any building or part of a building exclusively used and meant for the personal occupation of the Ruler of a covenanting State or the members of his family or for the rent free residence, occupation or location of the establishment of such Ruler or members, or

(b) any goods, vehicle, conveyance or animal in and for the exclusive use of such Ruler or members:

Provided that nothing in this Sub-section shall prevent a board from levying such tax on any such land, building or part, goods, Vehicle, conveyance or animal if the same is used or intended or meant to be used for purposes of profit for carrying on any trade or business or if in respect thereof any rent or other income or pecuniary benefit is derived or intended or meant to be derived, so long as the board continues to levy a similar tax on like properties of other persons.

(4) The tax specified in Clause (1) of Section 10-1 shall not be leviable in respect

of lands and buildings used solely as places of public worship or for religious or charitable purposes;

Provided that such lands or buildings shall not be exempt from payment of the said tax if any trade or business is carried on therein or if in respect thereof rent or other income is derived, whether such rent or other income is or is not applied exclusively towards such places of public worship or towards such religious or charitable purposes.

Explanation I: "Charitable purpose" includes relief of the poor, education and medical relief.

Explanation II. When any portion of any land or building is exempt from payment of tax under this Sub-section such portion shall be deemed to be a separate property for the purposes of the said tax.

(5) The State Government may, if in its opinion reasonable grounds exist for so doing, grant and define, by notification in the Official Gazette, such exemptions in exceptional cases from payment of a tax leviable u/s 104 or imposed u/s 105 or u/s 106 as it may consider necessary."

9. When it was pointed out to the learned counsel that Section 107 is about granting of exemptions and even if that were struck down, it cannot help the tax-payers because that section is severable from other sections of the Act, learned counsel gave up his challenge against Section 107 of the Act, and, therefore, I need not say anything more about it.

10. Chapter VII of the Act in which Section 104 occurs is about the imposition of taxes. The scheme of the Chapter appears to be like this. Taxes which could be imposed under the Act have been divided into two categories. One category is covered by Section 104, These taxes, namely, on letting value of the buildings popularly known as house tax, octroi on goods and animals and tax on professions and vocations have been characterised as obligatory taxes. These have to be levied by Municipal Boards when the Government directs the Municipal Boards concerned to levy such taxes, at such rate and from such date as may be mentioned in the notification. Section 105 relates to various taxes which the Municipal Board itself may impose after undergoing certain formalities. It appears that the Act of 1959 was passed to consolidate and amend the law relating to municipalities in the State of Rajasthan. Before the passing of the Act, there were different sets of laws in respect of various municipalities. There was (1) the Rajasthan Town Municipalities Act, 1951, and then there were separate municipal Acts of ex-covenanting States which were applicable to cities like Jaipur, Jodhpur, Udaipur and Bikaner, which were situated in different covenanting States. In the Ajmer area, there was a separate municipal Act and so was Abu area governed by a different municipal law.

11. A perusal of the Rajasthan Town Municipalities Act 1951 shows that it was the Municipal Board itself who could have imposed house-tax, octroi and taxes

on professions and vocations though subject to the approval of the State Government (vide Section 59 and Section 63). But now Section 104 provides that it shall be for the Government to direct from what date and at what rate any of these taxes are to be levied and then the Board has no choice but to levy these taxes. It may be that the Legislature has made this provision in the light of the experience of the working of the different sets of municipal laws for different municipalities in the State of Rajasthan after it came to be formed in the year 1949. One of the considerations might very well have been that many of the municipal boards were unwilling to impose these taxes. It is common knowledge that imposition and levy of a tax is not a pleasant duty for any body. The other consideration might have been that for certain essential taxes the Legislature thought that the mode of taxes should be by and large the same for all municipalities so that to some extent uniformity may be brought about.

12. As has been observed above, the attack against the vires of this section is twofold: (1) that there is delegation of excessive legislative powers in favour of the Government and (2) there is violation of Article 14, Though to some extent the arguments might cover common ground yet they proceed on two distinct concepts.

13. The question of excessive delegation does not emerge from the fundamental rights. Even when they did not exist, a law could be pronounced to be bad if it suffered from excessive delegation. The essence of this concept is that the Legislature has to make the law itself and it cannot entrust that essential function to an extra legislative body. However, by this date the legitimate limits of delegation have been well settled. It has been recognised that the complexity of modern administration and the expansion of the functions of the State to the economic and social sphere has rendered it necessary for the Legislature to resort to new forms of legislation and to give wide powers to various authorities on suitable occasions. Delegated legislation has become the present-day necessity and it has come to stay. it is both inevitable and indispensable. The Legislature has now to make so many laws that it has no time to devote to all the legislative details and some times the subject on which it has to legislate is of such a technical nature that all it can do is to state the broad principles and leave the details to be worked out by those who are more familiar with the subject. Again, when complex schemes of reform are to be the subject of legislation, it is difficult to bring out a self-contained and complete Act straightway, since it is not possible to foresee all the contingencies and envisage all the local requirements for which provision is to be made. Under the circumstances, some degree of flexibility has become necessary so as to permit constant adaptation to unknown future conditions without the necessity of having to amend the law again and again, (vide *In re Article 143, Constitution of India*, etc. AIR 1951 SC 332. In that very case, Fazl Ali J. pointed out what has to be kept in view for seeing the validity of delegation. The learned Judge enunciated four principles: (1) The legislature must normally discharge its primary legislative function itself and not through others; (2) Once it is established that it has sovereign powers within a

certain sphere, it must follow as a corollary that it is free to legislate within that sphere in any way which appears to it to be the best way to give effect to its intention and policy in making a particular law, and it may utilise any outside agency to any extent it finds necessary for doing things which it is unable to do itself or finds it inconvenient to do; (3) It cannot abdicate its legislative functions, and, therefore, while entrusting power to an outside agency it must see that such agency acts as a subordinate authority and does not become a parallel legislature. (4) There are only two main checks in this country on the power of the legislature to delegate, these being its good sense and the principle that it should not cross the line beyond which delegation amounts to "abdication and self-effacement".

14. Now what is the position in the case of a taxing statute ? Can the Legislature empower the Government to decide about the rate of tax and about the goods which can be subjected to tax and from what date tax has to be levied ? Learned counsel for the petitioners submitted that these were essential legislative functions and could not be delegated to an agency outside the Legislature. Learned counsel for the respondents on the other hand submitted that this was not an essential legislative function and could be entrusted to the Government. Learned counsel for the petitioners placed reliance on *Shanmugha Oil Mill, Erode Vs. Coimbatore Market Committee and Another*, and *Standard Motor Union (Private) Ltd., Ettumanoor and Another Vs. State of Kerala and Others*,

15. In the *Shanmugha Oil Mill, Erode Vs. Coimbatore Market Committee and Another*, in considering the provisions of the Madras Commercial Crops Market Act, Ramachandra Iyer J. as he then was observed as follows:

"A taxing provision has essentially three features (1) a declaration of liability, (2) assessment or quantification and (3) machinery for collection. Section 11 (1) of the Madras Commercial Crops Markets Act 1933 declares a liability and provides the machinery. But the rate of tax which is an essential part of the declaration and assessment has been completely delegated to the Executive Government with no principles or basis laid down. Uncontrolled power is vested in the Executive to fix such rate as it pleases. In the absence of a legislative provision regarding any policy or limits of assessment for the guidance of the assessing authority, the provisions of the section amount to excessive delegation of legislative power, and, therefore, are invalid."

According to the learned Judge, fixation of rate of tax could not have been left to the Executive Government.

16. In *Standard Motor Union (Private) Ltd., Ettumanoor and Another Vs. State of Kerala and Others*, the question was about a toll tax which was to be fixed by the Government, Section 12 of the Travancore Cochin Motor Vehicles Act (14 of 1950) came up for consideration and the learned Judges observed as follows:--

"The essential powers of legislation cannot be delegated. The legislature must declare the policy of the law and the legal principles which are to control any

given case and must also provide a standard to guide the officials or the body in power to execute the law. The legislature cannot strip itself of its essential functions and vest the same on an extraneous authority. The primary duty of law-making has to be discharged by the legislature itself; but there can be a delegation resorted to as a subsidiary or ancillary measure. The legislature cannot abdicate its functions in favour of another

There is no indication anywhere in the T. C. Motor Vehicles Act as to what circumstances can be considered to be "special circumstances" u/s 12 justifying the levy of a toll. The decision as to what will constitute a "special circumstance" u/s 12 for levy of a toll, has been completely left to the sole and exclusive discretion of the Government without any guidance or restriction whatsoever. Again, the legislature has not specified on what basis the toll is to be levied on the various vehicles using the bridge or road. The maximum levy, that could be made under the section has not in any way been indicated by the legislature. As it is, it is open to the Government to treat any circumstance as a "special circumstance" and the only requirement is that the Government should be so satisfied. Further, it is also open to the Government to levy toll on any road or bridge as they may think necessary. In the absence of any legislative indication in the Act regarding any policy to govern the Government before taking action u/s 12 or placing any limits of assessment for the guidance of the assessing authority in the matter of fixing of the rates of tolls, the provisions of Section 12 of the Act amount to excessive delegation of legislative power

Hence the notification D/- 28-4-53 issued by the T. C. State Government, u/s 12 of the Act, directing the levy of tolls on vehicles using the bridge at Palal across the Meenachil river was held to be invalid." These two cases do lend support to the contentions of learned counsel; but there is a Supreme Court case to the contrary. It is *Corporation of Calcutta and Another Vs. Liberty Cinema*, Their Lordships were considering there the vires of Section 548 of the Calcutta Municipal Act, which inter alia provided for charging of a licence fee which may be charged at such rates as may from time to time be fixed by the Corporation, and their Lordships observed as follows:--

"No doubt a delegation of essential legislative power would be bad. But the fixation of the rates of taxes is not of the essence of legislative power of taxation. The fixation of rates of taxes may be legitimately left by a statute to a non-legislative authority, for there is no distinction in principle between delegation of power to fix rates of taxes to be charged on different classes of goods and power to fix rates simpliciter, if power to fix rates in some cases can be delegated then equally the power to fix rates generally can be delegated. No doubt when the power to fix rates of taxes is left to another body, the legislature must provide guidance for such fixation. The validity of the guidance cannot be tested by a rigid uniform rule; that must depend on the object of the Act giving power to fix the rate. The specification of the maximum rate does not supply any guidance as to how the amount or the tax which no doubt has to be below the maximum, is

to be fixed. Provision for such maximum only sets out a limit of the rate to be imposed and a limit is only a limit and not a guidance."

Now by the Act autonomous bodies in the shape of municipal boards thereby granting local self-government to the people living in the municipal areas were to be established and certain important functions were assigned to the municipal boards. Their primary and secondary functions are contained in Chapter VI of the Act. The functions are inter alia lighting public streets, watering public streets, cleaning public streets, removing filth, rubbish, night-soil, odour or any other noxious or offensive matter, extinguishing fires and protecting life and property when fire occurs, regulating offensive or dangerous trades or practices, etc. These are all governmental functions. Likewise the Boards have to provide special medical aid and accommodation for the sick in times of dangerous diseases. They have also to give relief in times of famine or scarcity. All these functions need not be enumerated. Suffice it to say that for properly discharging them, resources will be necessary. Therefore, Section 104 when it makes provision for imposition of certain taxes, is in keeping with the legislative policy underlying the Act. Conditions vary from municipal area to municipal area, and, therefore, the Legislature may not find it convenient to decide as to what should be the dates on which the taxes mentioned in Section 104 should be imposed and what should be the rates thereof. Thus by making provision for imposition of tax for the carrying out of the purposes of the Act as mentioned in Section 98 and other connected sections, the Legislature has clearly laid down a policy. What is left in the hands of the outside body namely the Government is the carrying out of that policy. Thus there is no question of there being excessive delegation in enacting Section 104 of the Act. This argument, therefore, fails.

17. I may now consider whether Section 104 violates Article 14 of the Constitution. In *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, which was a unanimous judgment of five Judges, S. R. Das C. J. having made a review of the several decisions enunciated certain principles for seeing whether a particular statute is invalid on account of its violating Article 14 of the Constitution. He observed as follows:

"It is now well established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled namely (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases, namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well established by the decisions of Supreme Court that Article 14 condemns discrimination not only by a substantive law but also by

a law of procedure. The decisions further 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 need 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.

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."

According to the above principles, 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. It is common knowledge that Rajasthan is a vast State and it comprised of no less than 22 Covenanted States and some territory viz. Ajmer Merwara which was formerly British Indian territory. The conditions were so variant that one common uniform mode of tax structure for municipal areas may not have been adopted. For evolving a tax structure local conditions as well as the capacity of the people to pay the tax could legitimately be considered. Learned counsel for the petitioner placed reliance on *Kunnathat Thathunni Moopil Nair Vs. The State of Kerala* and Another, That was a case where certain tax on lands had been imposed at a flat rate and this was found to result in great inequality amongst the land-holders. That Act was found to be confiscatory in character and effect, as inequality was writ large on the Act and was found to be

inherent in the very provisions of the taxing Section, that Act was struck down. However, it is not so in the present case and it cannot be said that inequality is writ large in the Act itself or is inherent in the relevant provisions of the Act. Therefore I do not find any force in the contention of learned counsel for the petitioners that Section 104 of the Act is void either on account of excessive delegation or on account of the alleged violation of Article 14 of the Constitution.

18. Now I may turn to the relevant notifications for the three municipalities of Abu Road, Kotah and Bari. The learned counsel for the petitioners confined his attack only to items relating to gold and silver, cotton textiles and sugar cane. In am, therefore, not called upon to examine the validity of other items covered by these notifications. As noticed above, learned counsel for the petitioners vehemently argued that there is no reasonable basis for such a wide disparity between citizens living in one municipal area and another even regarding the incidence of tax.

19. As I have already discussed above, some allowance has to be made for the variations in local conditions and about the capacity of persons on whom the burden of tax is cast. Even so, the difference between citizens living in one part of the State and those living in another regarding the incidence of tax should not be outrageous. Learned counsel for the respondents has put his case somewhat like this. He submitted that if different municipal boards were to impose their own taxes, then the ground of discrimination would not be available. Making this postulate a spring-board, learned counsel argued that what the Government was really doing u/s 104 of the Act was to act on behalf of the several municipal boards and it could thus impose taxes on different bases by separate notifications for different municipalities. Learned counsel maintains that it what is not bad if done by a municipal board cannot be bad if it is done by the Government on its behalf. I assume for the sake of argument that different municipal boards can within the frame-work of the law provide for different rates of taxes and that it will not be discriminatory. But the position will be materially different when one body namely the Government acts in the matter. Government as one entity, in my view, cannot claim immunity from the impact of Article 14 even when it acts u/s 104 of the Act, I have read Section 104 carefully but am unable to hold that the State Government is acting on behalf of the municipal boards. It is true the tax may benefit only the municipal hoards but it is a far cry to urge that the Government acts on behalf of the municipal boards. The tax is imposed by the Government in its own right and it is only realised by the municipal boards. In enacting Section 104, the consideration, in my view was to have a somewhat uniform pattern for the three kinds of taxes included in Section 104 though there may be some difference due to local conditions. However, in my view, where the Government is the source of authority, the difference cannot be allowed to be outrageous. Shri Rastogi submitted that a person relying upon the plea of unlawful discrimination due to infringement of the guarantee of equality before the law or equal protection of the laws must set out with sufficient particulars his plea showing that between the persons similarly

circumstanced, such discrimination has been made which is founded on no intelligible differentia, and if the claimant for relief establishes similarity between persons who are subjected to a differential treatment, then it may lie upon the State to establish that the differentiation is based on a rational object sought to be achieved by the Legislature. Reliance is placed in this connection on AIR 1066 SC 1980 (supra). He also cited *Katra Educational Society Vs. State of Uttar Pradesh and Others*, AIR 1966 Mys 267 (supra), *Jalan Trading Co. (Private Ltd.) Vs. Mill Mazdoor Union*, and *Kantilal Popatlal Shah and Others Vs. State of Gujarat and Another*,

20. It is true that a petitioner carries the initial burden of showing as to how discrimination has been brought about but where persons similarly situated are subjected to a differential treatment, then it will be open to the State to establish that the differentiation is based on a rational object sought to be achieved by the legislature. This is all the more necessary when it is not the legislative act that is under examination but an executive order of the State Government which is under examination as in the present case. One fails to see how in the matter of silver, gold and cloth, there was justification for such a widely differing impost. In places like Jaipur, Jodhpur and Ganganagar, for one quintal of gold or silver octroi is not more than Rs. 25 per quintal. This comes to Rs. 10,000 or so worth of silver or about rupees eight lakhs of gold for which the duty is Rs. 25. In Abu Road, it comes to 1 per cent, of the price of these commodities. The same thing can be said about cloth. The respondents have not offered any justification for so much divergence in the incidence of tax. It is true the citizens are living in different municipal areas but all the same they are citizens living in one State and the source of authority for imposing the taxes is the State Government. It was in the circumstances absolutely necessary for the State Government to offer justification for this impost which it has completely failed to do. As regards octroi on sugar cane for Municipal Board Bari, it is one rupee per quintal at Bari and at Rajakheda it is 15 paise per quintal. In Bharatpur and Deeg which are bigger towns, it is 50 paise per quintal. In Dholpur there is no octroi on sugar cane. Here also in the same district for municipalities not quite far from one another, the disparity is not easily comprehensible. I may observe that even though the notification may not afford any indication regarding the differentiation in the taxes, it is open to the Government to offer justification by placing proper material before the Court by an affidavit or otherwise. This has, however, not been done.

21. After the arguments were concluded and I had started dictating judgment, learned counsel for the respondents expressed his desire to place before me some notifications. He was permitted to do so. Today Mr. Rastogi invited my attention to a Government notification dated 30th March, 1968, published in the Gazette Extraordinary of even date. This notification shows that octroi duty on silver and gold and articles of silver and gold was fixed at .25 per cent. On the basis of this notification, Shri Rastogi submits that the earlier notification which, is the subject-matter of the writ petition no longer subsists regarding silver and

gold, and, therefore, the petitioners should not be given any relief. It will be observed that the notification of 30th March, 1968, does not call for reconsideration of the rationale of the judgment thus far dictated though the notification may have to be kept in view for the proper relief to be given to the parties under the circumstances. In view of this amendment of item it will not be necessary to strike down the relevant item in the impugned notification for Abu Road regarding silver and gold, and it will be enough if that notification is only pronounced to be bad regarding silver and gold. It will be then for the party to pursue his remedy regarding the consequential relief for refund or otherwise elsewhere. The position even for Abu Road municipality stands as before so far as cloth is concerned.

22. In view of what I have said above, I hold (1) that Sections 104 and 107 of the Act are intra vires and are not bad on any of the grounds urged by the petitioners; (2) that the impugned notification in respect of the three municipal boards namely Abu Road, Kota and Bari, are not bad in respect of items other than silver and gold and articles thereof and cloth in the notification relating to Abu Road Municipality and in relation to the item of silver, bullion and ornaments in the impugned notification relating to Kota Municipality and as regards octroi on sugar-cane in respect of items relating to sugar-cane in the notification relating to Municipal Board Ban and (3) that the notification Ex. 6 relating to Abu Road Municipality is thereby declared to be bad in respect of item No. 81 relating to gold and Silver bullion and articles thereof and as regards item No. 62 relating to all kinds of textiles, cotton, silk, and woollen including rayons, nylon, artificial silk, terylene and articles made of chemical fabrics, ready-made clothes, hosiery, knitting wool, millinery dunes and carpets. In view of the fresh notification having been issued on the 80th March, 1968, it is not necessary to give any direction regarding consequential relief in respect of item No. 81; but in respect of item No. 62, it is hereby ordered that the respondents shall not give effect to this notification in respect of this item qua the petitioners Joharimal and others and Jaishiv and others. Likewise the respondents in D. B. Writ petition No. 1732/64 are hereby restrained from giving effect to items Nos. 57 and 58 in the notification Ex. 6 in that case against the petitioners Prabhudayal and Others. Similarly in writ petition No, 1832 of 1964, the respondents are restrained from giving effect to the item of sugar cane occurring in serial No. 16 of the impugned notification Ex. 1. In other words, they are restrained from realising octroi duty from the petitioners in respect of sugar-cane on the basis of the impugned notification. The Municipal Boards concerned shall refund the amount of octroi duty if realised by them in the meantime to the respective petitioners in respect of the items that have been declared to be null and void, in terms of the stay orders granted by this Court. The parties are left to bear their own costs of these petitions.