(1965) 01 BOM CK 0004

In the Bombay High Court

Case No : Special Civil Application No. 677 of 1963 with C.A. No. 1219 of 1963

Kisan Supdu Ingale APPELLANT

Vs

Bhusawal Borough Municipality, Bhusawal and Another RESPONDENT

Date of Decision : 06-01-1965

Acts Referred:

Bombay Municipal Boroughs Act, 1925 — Section 73, 75, 79(1)
Constitution of India, 1950 — Article 14, 245, 246(3), 276

Citation : AIR 1966 Bom 15 : (1965) 67 BOMLR 286 : (1965) ILR (Bom) 552

Hon'ble Judges : Chainani, C.J;Gokhale, J

Bench : Division Bench

Advocate : Godiwala and M.S. Ramamurthy, for the Appellant; S.B. Bhasme and T.R. Ahdyaruajina, instructed by Little and Co. Attorneys, for the Respondent

Judgement

Chainani, C.J.

(1) The petitioner is employed in the carriage and Wagon Depot of the Central Railway at Bhusawal. This Railway Depot is situated within the limits of the Bhusawal Borough Municipality. This municipality is governed by the Bombay Municipal Boroughs act 1925, Section 73 of this Act specifies the Taxes, which a municipality may impose sub - section (1) of this section state that subjects to any general or special order, which he state Government may make in this behalf an to the Municipality may impose for the purposes of this Act any of the following taxes, namely.

X X X X X

(XIV) any other tax which under the constitution the state legislature has power to impose in the state.

Section 75 lays down the procedure which the Municipality has to follow before imposing a tax. One of the taxes which the state legislature has power to impose is a tax on profession, trades calling and employments under entry No. 60 List II in the seventh Schedule to the constitution. In 1959 the Bhusawal Municipality decided to impose this tax. It framed rule and by - laws for levying this tax. These rules and by - laws were sanctioned by the state Government on 22nd June 1960 clause (c) in rule 3 of the Bhusawal Trades, profession, calling and Employments Taxes Rules, state the.

"Every person who hold any officer of profit under any Government or any do by or authority within the local area for not less than four months in any year shall pay the tax ever year on employment at the rate specified in scheduled A provided of any company or person to the Municipality by way of the tax shall not exceed Rs. 250/- per annum."

The rates of tax are specified in schedule A to the Rules. Except in the case of owners of cotton ginning and pressing factories, in whose case the maximum tax payable is Rs. 100/- the maximum tax which any other person is liable to pay under these rules is Rs. 10/- per year. On 17th October 1962 the petitioner was called upon by the chief officer of the municipality to pay Rs. 6 being the amount of the tax for the year 1962-63 due from him. The petitioner did not pay this tax. A union of the railway employee made representations against the tax to this Municipality but it did not succeed. The petitioner then filed the present special civil application. In which the he has challenged the validity of the tax as well has of notice issued to him by the chief office calling upon him to pay the tax.

(2) Mr. Ramamurthy on behalf of the petitioner has first urged that the Municipality was not competent to levy a tax on any employment in the nature of service in which a person is employed to work for another. He has contended that the word "employments" should be construed ejusdem generis with the offer works mentioned in entry 60 in List II in schedule VII of the constitution, professions trades and callings and that is means "Such employments which are akin to in the nature of profession trades and callings" we have carefully considered this argument. But we do not think that there is much merit in it. If entry to was intended to include every occupation other than service it is difficult to see why the word "employments" was used at all. The words are used in any entry in the constitution. Every word must therefore be deemed to have been used with some object and the word can be held to redundant. The words "profession trade and calling" are also general words which according to the dictionary have wide can be held to be wide meaning. "Profession" as defined in the Oxford English Dictionary means "A business or profession which that one publicly words the occupation which one professes to be skilled by and to follow a vocation in which a professed knowledge of some department of learning or science is used in its application to the affairs of others, or in the practice of art founded upon it in a wider sense and calling or occupation by which "the practice of some occupation business or profession habitually carried on especially when practiced as means of livelihood or gain a calling now usually applied to mercantile occupation and to a skilled handicraft, as distinct from a profession and especially restricted to a skilled handicraft was distinguished from a professional or mercantile occupation on the one hand and from unskilled

occupation on the one hand and from unskilled in the labours in the other "calling" is defined in the dictionary as meaning "position estate, or station in life rank; ordinary occupation means by which livelihood is earned business trade" Any occupation by which livelihood is earned would therefore fall within the word "profession trades and callings" Consequently even if we were to accept the argument that the words "employment " must be restricted to the same genus as these works and the at is draws it meaning from them, it will be difficult to hold that section in which a person is employed to work the another would not be employment with in the meaning of entry 60 in List II in schedule VII to the constitution.

(3) In this connection I may refer to the decision of Punjab High court in Waliati Ram v. Rupar Municipality AIR 1960 pun 699. Section 61 of the punjab Municipal Act empowered the municipal committee to levy a tax on person practising any profession or art on carrying on any trade or calling in the Municipal committee to impose a tax an employments. The question which arose for consideration by the punjab High Court was whether he was consequently liable to the tax imposed u/s 61 of the Act. It was argued that "employment" was not covered by the other three expression used in the section, profession large or calling. This arguments was negative and it was held that as the words were under used in entry in the constitutions they must be construed in their widest amplitude and consequently the person employed by the Bus syndicate must be held to have been carrying on profession or calling. At page 672 it was observed.:

"It is very difficult to hold that the framers of the constitutions while using these words of were using them as terms of art. The object of the entry is to enable the state Legislature to tax person, who are carrying on any profession, trades callings and employments... These four words do not seem to be used a mutually exclusive sense. These words over lap one another and appears to have been to used by way of abundant caution is order to make these provisions broadbased and comprehensive .... The object of putting them all together is to ensure that no particular category of persons is being eliminated"

(4) "Employment" according to the same Oxford English Dictionary means "the service (of a person) a person regular occupation or business a trade or profession. Another meaning of this word given in the dictionary is "an official position in the public service" In Websters Dictionary same of the meaning in which one engages and employs his time and energies work (as customary trade craft service or vocation) in which one''s labours or services are paid for by in an employment therefore is also words of wide import and the object of including this word also in the relevant entry in the constitution evidently was to bring within the scope of the this entry every activity or occupation, in which a person engages in order to earn a livelihood, whether it be trade business profession or service. In any case the words "employment" would include service or occupation, in which a person works for another and in which there is relationship in which the petitioners is employed could therefore be imposed

under entry 60 referred to above.

(5) The next ground of attach is that there has been excessive delegation by the state legislature inasmuch as while authorising the Municipalities to levy this tax, the legislature has not laid down any policy or rules of guidance which a Municipality should be follow in levying the tax. It has been argued that the power conferred on Municipality is not regulated or controlled in any manner that is has been left the municipalities to levy the tax at any rate the deem proper and that consequently section 73 of the Act, is no far as it empower s a Municipality to levy this tax, in unconstitutional Entry 5 in List II of the seventh Schedule to the constitution in so far as is relevant reads.

"Local Government, that is to say the constitution and powers of municipal corporations..... for the purposes of local self - government ....."

This entry is very wide in its terms and article 246(3) of the constitution read with the this entry empowers a state legislature to make laws in regard to any subject of local government including the constitution and powers to municipalities. The power which a state Legislature may confer on Municipality can one be those powers which it is possession. A law made by state legislature to may therefore empower municipalities to levy one or more of the taxes specified in the List II in the seventh Schedule to the constitution. Article 276 of the constitution also contemplates that a tax on profession trades calling and employments may be levied by a municipality.

(6) The rate at which this tax may be levied u/s 73 of the Municipal Boroughs Act has been left to each municipality to decide. Mr. Ramamurthy has therefore contended that clause (xiv) in section 73 of the Act is invalid. He has relied on Shanmugha Oil Mill, Erode Vs. Coimbatore Market Committee and Another, , in which it has been held that the rate of tax is an essential part of taxing provision and where power is vested in the executive to fix such rate as the pleases the taxing provision would be invalid. Since, however the power to levy taxes is conferred on Municipality for carrying on the local government, it seems to us doubtful whether merely because of the legislature has left each Municipality to determined the rate at which is should levy the tax., in can be said that the legislature has made excessive delegation of powers vested in it. Moreover the power given to the Municipality to levy this tax on profession trades callings and employments is not absolute or uncontrolled as has been argued. The maximum rate at which the tax can be levied is determined at Article 276 of the constitution and is it cannot exceed Rs .250/- per annum. The tax can be levied only for purpose of the Act.,that is in order to enable the Municipality to discharge the obligations imposed upon it by the act. It must therefore have some relation to the need and requirement of the Municipalities. The circumstances and conditions of Municipality vary. In fixing the rate of tax into consideration. A rate of tax which residents of large and prosperous city may be able to bear may be too heavy for people residing in small town. Every town and city is also growing and as the duties and responsibilities of municipality increase

that need for additional taxation will arise. It is probably on account to these and other similar considerations that it has been left to each municipality to decide the rate at which it should levy the tax. Since, however the rate of tax is to be determined having regard to performing its statutory duties, it cannot be said that the power given to a municipality to fix he rate is entirely unfettered or uncontrolled.

(7) In Hirabhai Ashabhai Patel Vs. The State of Bombay, , the challenge was to section 169 of the Bombay Municipal corporation act which empowered the municipal commissioners to charge for water according to measurement at such rate shall from time to time be prescribed by the standing committee in this behalf. Whereas in the case of some other taxes such as the general tax and the halakhor tax, the Act has specified the a maximum rate to which the tax can be levied to limit has been prescribed in regard to the water rate. It was therefore contended that section 169 was invalid as "the Legislature has given no indication of its policy as to the ceiling of the rate which can be charged for the supply of water," and as "it was left entirely to the absolute and unfettered was discretions" of the corporation. This argument not intended that there should be relationship between the rate charged and the cost of providing a water supply.

(8) It may also be pointed out that the before a municipality imposes any tax, it has to follow the procedure laid down in section 75. If has to invite objections from the inhabitants of the Municipal Borough to the levy of the tax. It is required to take into considerations any objections which any inhabitant of the municipal Borough may raise to the imposition of the tax or to the amount of rate proposed or to the classes of persons of property to be made liable thereto or to any exemptions proposed and unless it decides to abandon the proposed tax, it has to submit such objections with its opinion thereof and any modifications proposed it accordance''s therewith to the state Government. No tax can also to be imposed without the sanction of the state Government. Limitations have therefore been placed on the powers of a Municipality and it does not enjoy absolute powers in this behalf.

(9) Mr. Ramamurthy has relied on the decision of a singly judge of the Calcutta High Court in Sarat Chandra Ghatak and Others Vs. Corporation of Calcutta and Another, , that section 229 of the Calcutta Municipal Act, which empowers the Municipal corporation to levy a licences fee on certain classes of advertisement ''at such rate and in such manner and subject to such exemptions as the corporation may prescribe by rules with the approval of the state Government'' was invalid. There was an appeal against this decision. The appeal was heard by a Division Bench of the High Court see The Corporation of Calcutta and Others Vs. Sarat Chandra Ghatak and Another, . The two learned judges who heard the appeal differed on the question whether the delegation made by section 229 of the Calcutta Municipal Act was constitutionally permissible. Das Gupta C.J. held that the legislation is so far as it left the determination of the rate of the tax to the corporation with the approval of the state Government was beyond the limits

of permissible delegations and was invalid bachawat J. Took a different view and held that the legislation was valid. At p. 714 Bachawat j. observed .

"The Calcutta Municipal Act... is a law with regard to local Government. It provides for the Municipal affairs of Calcutta including levy and collection of taxes by the corporation of Calcutta ..... It empowers the corporation of Calcutta to prescribe the rate of taxation of by rule with the approval of the State Government. Subject so such approval the corporation may fix such rate as it thinks fit. The objects of the section is to increase the resources of the corporation. The Legislature intended that the rate would be so fixed as would best serve that purpose. The corporation is expected to impose such taxations as may be necessary or expedient for the fulfilment of several or duties imposed on it by the Act. The power of taxation is given for purposes of Local self Government. Such a delegation is permissible in law".

With respect, we are inclined to agree with these observations. Any doubt on the question of the tax being ultra vires on the ground of excessive delegations by the state legislature of it powers is removed by the decisions of the supreme Court in The Western India Theatres Ltd. Vs. Municipal Corporation of The City of Poona, In that case the Supreme Court had to consider the validity of clause (xi) in sub section (1) of section 59 of the Bombay District Municipal Act. This clause empowered the Municipality to levy any other tax, to the nature and object of which the approval of the Governor is council shall have been obtained prior to the selection contemplated in sub = clause (1) of the clause (a) of section 60. The supreme court held that the delegation to power to impose the tax could not be struck down as being in excess of the permissible limits of delegation of legislative function. The supreme court has given three reasons for arriving at this conclusion. The first is that the municipality could not impose and tax which the provincial legislature could not itself impose. Secondly section 59 authorised the municipality could there fore levy taxes only for implementing those purpose and for no other purpose. The tax to the imposed to duties cast on the municipalities by the act. Thirdly the taxing power of the Municipality was subject to the approval of the governor in council.

(10) For similar reason, we must hold the delegation of the power to the Municipalities governed by the Bombay Municipality Boroughs act to impose a tax on profession treads, callings and employments it not unconstitutional.

(11) The last argument which has been advanced by Mr. Ramamurty is that as the other Municipality''s in which railway employees work have not imposed a similar tax, there is unreasonable discrimination against the railway employees working any substance. The taxis levied by the Bhusawal Municipality. This arguments is without and substance.; the tax is levied by the Bhuswarl Municipality not only on persons employed in the railway but also on all employed person including persons employed in private service consequently it cannot be said that the railway employees alone have been selected for the purposes of imposing the burden of tax upon them. Section 73 of the

Municipality Boroughs Act specified several taxed which every Municipality is competent to impose. Each Municipality therefore to decide having regard to the conditions prevailing in its municipalise area and other circumstances what taxes and at what rates it should impose. The mere fact that some other municipality have not levied a similar tax will not therefore be a sufficient ground for holding the article 14 of the constitution has been contravaned.

(12) These are all the grounds on which the validity of the tax has been questioned. For the reasons which I have given, we see fore fails. Rule discharged. No order as to costs.

(13) Application dismissed.

