

(1977) 03 MAD CK 0020

In the Madras High Court

Case No : Writ Petition No. 1889 of 1974

Mahaveer Prasad Prasan Kumar Jain

APPELLANT

Vs

The Tahsildar, Pondicherry and Another

RESPONDENT

Date of Decision : 24-03-1977

Acts Referred:

Constitution of India, 1950 — Article 245
Pondicherry Pawn Brokers Act, 1966 — Section 2(1)
Tamil Nadu Pawnbrokers Act, 1943 — Section 2(1)

Citation : AIR 1978 Mad 171 : (1977) 90 LW 55

Hon'ble Judges : Mohan, J

Bench : Single Bench

Advocate : C. Masilamani, for the Appellant; T. Somasundaram, Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Mohan, J.—The writ petition is to prohibit the respondents, the Territory of Pondicherry represented by the Collector of Pondicherry, from

enforcing the provisions of the Pondicherry Pawn Brokers Act, 1966 as against the petitioner.

2. The petitioner has been carrying on the business of Pawn Broking at Villiyanur Road, Nellitope, Pondicherry after obtaining a licence under the

Pondicherry Pawn Brokers Act, 1966 (Act 11 of 1966). The Collector of Pondicherry inspected the petitioner's shop on 9-5-1974 and checked

some of the account books and also enquired one of the customers. After the said inspection the petitioner was issued with a notice on 10-5-

1974, to show cause why action should not be taken against him for those irregularities. The petitioner submitted an explanation. Not being

satisfied with the explanation, the Tahsildar, by an order dated 20-5- 1974,

cancelled the licence of the petitioner. Aggrieved by the same, the petitioner preferred an appeal to the Deputy Collector, Revenue, Pondicherry. Pending the appeal, he prayed for stay which was refused on 31-5-1974. It is at this stage, the present writ petition has been preferred.

3. The only question that is urged in the affidavit in support of the writ petition is that the Pondicherry Pawn Brokers Act, 1966 hereinafter called the Act, is a still-born legislation. The Act was passed by the Legislative Assembly of Pondicherry on 3-6-1966. Section 2(1) of the said Act reads as follows:--

The Madras pawn Brokers Act 1943 (Madras Act 23 of 1943) (hereinafter referred to as the said Act) as in force in the State of Madras

immediately before the commencement of the Act shall extend to and come into force in the Union territory of Pondicherry subject to the following

notification and adaptations namely"".

The Act was notified in the Gazette of Pondicherry on 15-10-1966. In so far as the Legislative Assembly of Pandicherry extended and adapted

the Madras Pawn Brokers Act of 1943 with all its future amendments that may be made upto the date of commencement, it had abdicated its

Legislative functions to the Legislative Assembly of Tamil Nadu. Therefore, in view of the decision of the Supreme Court in B. Shama Rao Vs. The

Union Territory of Pondicherry, this Act cannot be enforced against the petitioner. It is this contention which is also urged during the hearing of the

writ petition.

4. The learned Govt. Pleader of Pondicherry would say that this is not a case in which future amendment to the Tamil Nadu Pawn Brokers Act

was made applicable, but the Pawn Brokers Act, as it stood, on the date of adoption was alone adopted by the Legislature which it is well

competent to do. Therefore, the decision in B. Shama Rao Vs. The Union Territory of Pondicherry, is clearly distinguishable. On the contrary, in

D. Gobaloussamy Vs. The Union of India (UOI) and Others, it has been categorically laid down that it is open to the Pondicherry Legislature to

adopt any legislation of the Tamil Nadu viz, the decision in B. Shama Rao Vs. The Union Territory of Pondicherry, which chose to adopt all Its

future amendments which is not present in this case. Since the decision of the Supreme Court in B. Shama Rao Vs. The Union Territory of

Pondicherry, forms the only basis of the petitioner's argument, let me refer to that decision, in that case, the petitioner was a merchant carrying on business in liquor and was a dealer within the meaning of the Madras General Sales Tax Act. Up to March 1966 he was liable and was paying certain taxes similar to the sales tax under the French Regulations till then in force in Pondicherry. With the coming into force of the Principal Act, viz, the Pondicherry General Sales tax Act X of 1965 which was published on 3-6-1965, after the President's assent on 25-5-1965, he was served with a notice to register himself as a dealer and thereupon he filed a petition challenging the validity of the principal Act. It was contended on behalf of the petitioner that the principal Act was void and was still-born legislation by reason of the Pondicherry legislature having abdicated its legislative assembly function in favour of the Madras State Legislature, such abdication resulted from the wholesale adoption of the Madras Act as in force in the State of Madras immediately before the commencement of the principal Act and that Section 2 (1) read with Section 1 (2) meant that the Legislature adopted not only the Madras Act as it was when it enacted the Principal Act, but also such amendment or amendments in that Act which might be passed by the Madras legislature upto the time of the commencement of the Act, i.e., upto 1-4-1966. Section 2 (1) provided that:--

The Madras General Sales Tax Act 1959 (1 of 1959) hereinafter referred to as the Act) as in force in the State of Madras immediately before the commencement of this Act shall extend to and come into the Union territory of Pondicherry subject to the following modifications and adaptations.....

Read with Section 1 (2) meant that the legislature adopted not only the Madras Act as it was when it enacted the principal Act but also such amendment or amendments in that Act which might be passed by the Madras legislature upto the time of the commencement of the Act i.e., upto 1-4-1966. In dealing with this contention it was held by their Lordships of the Supreme Court at page 104 (of Mad LJ) : (at p. 1487 of AIR SC).

The question then is whether in extending the Madras Act in the manner and to the extent it did u/s 2 (1) of the principal Act, the Pondicherry Legislature abdicated its legislative power in favour of the Madras legislature. It

is manifest that the Assembly refused to perform its legislative function entrusted under the Act constituting it. It may be that a mere refusal may not amount to abdication if the legislature instead of going through the full formality of legislation applies its mind to an existing statute enacted by another legislature for another jurisdiction, adopts such an Act and enacts to extend it to the territory under its jurisdiction. In doing so, it may perhaps be said that it has laid down a policy to extend such an Act and directs the executive to apply and implement such an Act, But when it not only adopts such an Act but also provides that the Act applicable to its territory shall be the Act amended in future by the other legislature, there is nothing for it to predicate what the amended Act would be. Such a case would be clearly one of non-application of mind and one of refusal to discharge the function entrusted to it by the instrument constituting it. It is difficult to see how such a case is not one of abdications or effacement in favour of another legislature at least in regard to that particular matter.

Again at page 105 it is observed as follows:

In the present case, it is clear that the Pondicherry Legislature not only adopted the Madras Act as it stood at the date when it passed the

Principal Act but also enacted that if the Madras Legislature were to amend its Act prior to the date when the Pondicherry Government would

issue its notification it would be the amended Act which would apply. The Legislature at that stage could not anticipate that the Madras Act would

not be amended nor could it predicate what amendment or amendments would be carried out or whether they would be of a sweeping character

or whether they would be suitable in Pondicherry. In point of fact, the Madras Act was amended and by reason of Section 2 (1) of the Principal

Act, it was the amended Act which was brought into operation in Pondicherry. The result was that the Pondicherry Legislature accepted the

amended Act though it was not and could not be aware what the provisions of the amended Act would be. There was in those circumstances a

total surrender in the matter of sales tax legislation by the Pondicherry Assembly in favour of the Madras Legislature and for that reason we must

agree with Mr. Desai, that the Act was void or as is often called "still-born".

In construing the scope of the decision, a Division Bench of this court in *D. Gobalousami v. Union of India*, 1969-2 Mad LJ 62 laid down thus:--

In *B. Shama Rao Vs. The Union Territory of Pondicherry*, it has to be carefully noticed that the power of the Pondicherry Legislature to extend the Madras Act to Pondicherry State was, in itself, never in doubt, the relevant enactment was struck down, not on the ground of in-competency, but because the Pondicherry Legislature adopted the Madras Act, as it stood, on the date when it passed the: principal Act, but also enacted that future, amendments of the Madras Legislature, in respect of its Act, would be ipso facto applicable to the Pondicherry measure, or read as incorporated in it. This was held by the Supreme Court to be an abdication by the Assembly, of its legislative function, which could not be supported. Indeed, the argument of Mr. Setalvad was accepted that there could be valid delegation to adopt other State Laws by extension"".

5. It is exactly the situation as was mentioned in the Madras case cited above that is obtainable in this instant case. Therefore, it does not suffer from the vice of the Pondicherry General Sales-tax Act. Hence I hold the argument of the petitioner cannot be accepted. Consequently, this writ petition will stand dismissed with costs. Counsel's fee Rs. 150/-.