
(1977) 03 MAD CK 0002
In the Madras High Court

Mahaveer Prasad Prasan Kumar Jain, represented by its
Proprietor, Mahaveer Prasad Jain

APPELLANT

Vs

The Tahsildar and Another

RESPONDENT

Date of Decision : 24-03-1977

Acts Referred:

Citation : (1978) 91 LW 55 : (1977) 2 MLJ 481

Hon'ble Judges : S. Mohan, J

Bench : Division Bench

Judgement

S. 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 (XI of 1966). The Collector of Pondicherry inspected the petitioner's shop on 9th May, 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 10th May, 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 20th May, 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 31st May,

1974. It is at this stage, the present writ petition has been preferred.

3. The only contention that is urged in the affidavit in support of the writ petition is that the Pondicherry Pawn Brokers Act, 1966, hereinafter called

as the Act, is a still-born legislation. The Act was passed by the Legislative Assembly of Pondicherry on 3rd June, 1966. Section 2(1) of the said

Act read as follows:

The Madras Pawn Brokers Act (XXIII of 1943) (hereinafter referred as the said Act) as is 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 notifications and

adaptations namely.

The Act was notified in the Gazette of Pondicherry on 15th October, 1966. In so far as the Legislative Assembly of Pondicherry 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 Government 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 was 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. The decision in B. Shama Rao Vs. The Union Territory of Pondicherry, , struck down legislation which

chose to - adopt all the future amendments which is not present in this case. Since the decision of the Supreme Court in Shama Rao v. Union

Territory of Pondicherry, forms the only basis of the petitioner's arguments, 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. Upto 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 3rd June, 1965 after the President's assent on 25th May,

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 1st April,

1966. Section 2(1) provided that:

The Madras General Sales Tax Act (I 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 force in 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

1st April, 1966. In dealing with this contention it was held by Their Lordships of the Supreme Court at page 104:

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 direct 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 dearly 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 abdication 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 these 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. Gobaloussamy Vs. The Union of India (UOI) and Others, , 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 incompetency, 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 that Madras Legislature, in respect of its Act, would be ipso facto applicable to the Pondicherry measure, or read as incorporated with 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. It is exactly the situation 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.