

(1970) 04 RAJ CK 0007
In the Rajasthan High Court
Case No : Civil Writ Petition No. 224 of 1969

Mohan Lal Daga	Vs	APPELLANT
The State of Raj. and Others		RESPONDENT

Date of Decision : 14-04-1970

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (1970) WLN 215

Hon'ble Judges : Jagat Narayan, C.J;L.N. Chhangani, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Jagat Narain, C.J.—This is a writ petition under Article 226 of the Constitution of India by one Mohanlal Daga in which the constitutionality of Section 104 of the Rajasthan Municipalities Act, 1959, has been challenged. The petition has been referred for decision by a learned Single Judge to the Division Bench. Section 104 runs as follows:

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 Gaeztte 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 (i) 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.

2. The contention on behalf of the petitioner is that under the section the Legislature has practically effaced itself in the matter of fixation of rates and it did not give any guidance either under the section or under any of the provisions of the Act.

3. Under the Rajasthan Municipalities Act, 1959, taxes have been classified into obligatory taxes and optional taxes. Section 104 deals with obligatory taxes which every Board is required to impose, at such rate and from such date as the State Government may direct. Section 105 deals with optional taxes which the Board may impose or may not impose. With regard to the optional taxes detailed procedure is prescribed for imposing them. The Board is required to pass a resolution at a general meeting proposing the tax. This resolution has to be published and objections invited against it. The Board is required to consider these objections and submit its final proposals to the State Government for approval. The State Government have power to refuse to sanction the proposals or to modify them. It is after undergoing this quasi judicial procedure that the tax can be levied. In the case of obligatory taxes, the State Government is not required to consult the residents of the municipality before imposing them. Several decided cases were referred to by the learned counsel for the petitioner.

4. In Gopal Narain Vs. State of Uttar Pradesh and Another, the validity of Section 131. of the U P. Municipalities Act was upheld inter alia on the ground that the rate to be imposed and the persons or the class of the persons liable to pay the same are ascertained by a quasi judicial procedure after giving opportunity to the parties affected, subject to the revision by the State Government and it cannot, therefore, be said that the power conferred upon the Municipal Board is an arbitrary power offending Article 14 of the Constitution. In Devi Das Gopal Krishnan and Others Vs. State of Punjab and Others, u/s 5 of the Punjab General Sales Tax Act, 1948, as it originally stood, 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. It was held that the Legislature practically effaced itself in the matter of fixation of rates and it did not give any guidance either under the section or under any other provisions of the Act. Section 5 was accordingly declared to be void. In this case a reference was made to the decision in *Corporation of Calcutta and Another Vs. Liberty Cinema*, which related to a levy imposed on cinema houses under the Calcutta Municipal Act. The Act left it to the discretion of the Corporation to fix the rate. The majority held in that case that guidance was found in the monetary needs of the Municipality for discharging the functions entrusted to it under the Act. Sarkar J., speaking for the majority said thus:

It has to perform various statutory functions It is often given power to decide when and in what manner the functions are to be performed. For all this it needs money and its needs will vary from time to time with the prevailing exigencies. Its power to collect tax, however, is necessarily limited by the expenses required to discharge those functions. It has, therefore, where rates have not been specified in the statute to fix such rates as may be necessary to meet its needs. That, we think, would be sufficient guidance to make the exercise of its power to fix the rates valid.

5. With regard to the above decision it was observed that it should be confined to the provisions of the Calcutta Municipal Act, wherein the Supreme Court found a guidance. We may observe here that Subba Rao, C.J., who delivered the judgment in this case had dissented from the decision of the majority in *Corporation of Calcutta* (supra) case. The dissenting judgment was delivered by Ayyangar J.

6. In *Municipal Corporation of Delhi Vs. Birla Cotton, Spinning and Weaving Mills, Delhi and Another*, it was held that Section 150 of the Delhi Municipal Corporation Act did not suffer from the vice of the excessive delegation and was valid. The following circumstances were held to provide a guidance to the Corporation in carrying out the duties imposed upon it u/s 150:

- (1) that the delegation has been made to an elected body responsible to the people including those who pay taxes;
- (2) that the limit to which the Corporation can tax is circumscribed by the needs to finance its obligatory and optional functions;
- (3) that the maximum rates fixed by the Corporation have to be submitted to the Government for its sanction;
- (4) that the Government, which is to approve the rates, is responsible to the Legislature;
- (5) that the exercise of powers by the Corporation can be struck down by the courts if it is unreasonable.

7. In the above case several authorities were reviewed by their Lordships of the

Supreme Court and the learned Advocate General relied upon the observations made on it and on the authorities referred to therein to support the validity of the provisions contained in Section 104.

8. We are of opinion that it is now well established that the Legislature can delegate its legislative power to other bodies subject to its exercising essential legislative function which consisted in laying down a policy or rule of conduct to guide the exercise of the delegated authority. Legislative policy cannot be left to the discretion of the delegate but where such policy is laid down by the Legislature, the rest can be validly delegated. There are difficulties in the practical application of these principles because there is no precise criteria to differentiate essential legislative functions. What form the guidance should take is a matter, which cannot be stated in general terms. It will depend upon the circumstances of each statute under consideration. In some cases guidance in broad and general terms may be enough. In other cases more detailed guidance may be necessary. The purpose of guidance is to see that the delegate fixes reasonable rates of taxes.

9. After the formation of Rajasthan, the Rajasthan Town Municipalities Act, 1951, was enacted. Section 59 of which empowered the Board to impose all taxes specified in Sections 104 and 105 of the present Act. Section 63 of that Act empowered the Government to require any Municipal Board to impose any one or more of the taxes specified in Section 59. When the present Act was framed, the Legislature was of the opinion that every Board should levy the taxes mentioned in Section 104 because house-tax and octroi duty are the major sources of income of a Municipality. The Municipal councillors, as a rule are unwilling to tax in a manner likely to affect themselves. House owners seek to transfer burden to trades man and vice versa. That is why Section 104 was enacted. We are of opinion that the provisions of this section did not suffer from the vice of excessive delegation. The Legislature has laid down in clear terms that every Board shall levy these 3 obligatory taxes. It has also provided for exemptions under Sub-section (3) of Section 104 and u/s 107. All that was left to the Executive Government was to fix the rates of the tax and the date from which it was to be levied. These in turn would depend on the requirement of the Municipalities. A perusal of Sections 93 and 94 goes to show that the obligatory taxes go to the municipal fund and are to be utilised by the municipality in discharging its multifarious duties under the Act. Similar taxes were enforced in several municipalities in the country. House tax and octroi duty were being levied in Jaipur, Ajmer, Beawar, and Abu Road when the 1959 Act was framed. The Legislature could safely rely on the good sense of the executive Government to levy these taxes on reasonable rates having regard to the rates of similar taxes in force in other municipalities. Octroi duty was being levied by several municipalities in Rajasthan even under the Rajasthan Town Municipalities Act, 1951.

10. In *Delhi Municipalities v. B.G.S. and W. Mills* (4) the fact that the Legislature

made Government the watch-dog to control the action of the Corporation in the matter of fixing rates was considered to be an important check to see that reasonable rates were fixed by the Corporation. In doing so, it was observed:

We have a parliamentary system of Government in which the Government is responsible to the legislature. That is also a circumstance which may be taken into account in considering the check imposed by the Act upon the taxing power of the Corporation, namely, that the rates fixed by it have to be sanctioned by Government which in its turn is responsible to Parliament. Though therefore the legislature may not have provided that the rates of tax shall be submitted to it for approval, the fact that it has provided that such rates shall be submitted to Government for approval and the Government in its turn is responsible to the legislature is a factor which has to be taken into account when considering whether the delegation by Section 150 of the Act is excessive or not. It stands to reason that Government which is responsible to the legislature would act with care and circumspection when exercising its function as the watch-dog on behalf of the legislature on the taxing power conferred by the legislature on the Corporation.

We are of opinion that the executive Government, to whom the power to fix the rate has been delegated, can be relied upon to fix reasonable rates as it is responsible to the legislature.

11. u/s 277 of the Rajasthan Municipalities Act, 1959, the Board has to prepare a budget annually, which is to be approved by the State Government. The State Government is, therefore, fully aware of the needs of the Board and will not impose taxes at an unnecessarily high rate. Just as the members of the Municipal Corporation of Delhi have to face electors once in 3? years, so the members of the Government and their supporters also have to face the electors once in 5 years. They cannot afford to act unreasonably in the matter of fixing rates of taxes.

12. The rates of house tax were fixed under Notification Ex A.3. dated 30-9-1962. These rates vary between 4% and 7%. These rates are applicable to all Municipalities except those of Jaipur, Ajmer, Beawar and Abu Road. In Jaipur, Beawar and Abu Road the tax continues to be levied at a uniform rate of 6?%. In Ajmer it is levied at rates varying between 6?% and 10%. The rates at which the house tax ha? been levied by the State Government in the exercise of its delegated powers are, therefore, reasonable.

13. We are accordingly of the opinion that Section 104 of the Rajasthan Municipalities Act, 1959, does not suffer from the vice of the excessive delegation. Delegated power is not unguided and cannot be exercised arbitrarily. The provisions of this section are, therefore, not hit by Article 14 of the Constitution.

14. Learned counsel for the petitioner also challenged the constitutionality of Section 107(5) of the Act which runs as follows:

107. Exemptions from taxation:

(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.

It is contended that the State Government can act discriminatively under the above provisions. We are of opinion that the State Government can be relied upon to make use of this power reasonably in exceptional cases on being satisfied that reasonable grounds exist for doing so. An affidavit has been filed by the Assistant Director of Local Bodies in which it has been stated that no exemption from house-tax has been granted u/s 107(5), but exemptions have been granted from payment of octroi duty to small, medium and large scale industries, to be established in the fourth five year plan, under certain notifications mentioned in the affidavit and also to philanthropic institutions and organizations. These exemptions are given only to be granted by notification in the Official Gazette and if they are granted discriminatively, they can always be challenged before this Court. We are, therefore, of the opinion that the provisions contained in Section 107(5) are also not invalid under Article 14 of the Constitution.

15. One more contention was raised on behalf of the petitioner: That was that it is not open to the Board to make any assessment list for more than once a year at a time Reliance was placed on Section 119 of the Act. It only provides that the assessment list shall be completely revised not less than once in every three years. The list which has been prepared now will need revision at least after three years from now But there is nothing to prevent the Board from preparing the assessment lists for the years 1962 to 1970 at one time.

16. We accordingly hold that there is no force in this writ petition and dismiss it. In the circumstances of the case, we leave the parties to bear their own costs of it.