

(1955) 07 BOM CK 0011

In the Bombay High Court

Case No : Special Civil Application No. 976 of 1955

Municipality of Anand

APPELLANT

Vs

State of Bombay and Another

RESPONDENT

Date of Decision : 19-07-1955

Acts Referred:

Bombay District Municipal Act, 1901 — Section 59
Constitution of India, 1950 — Article 14, 226, 245
Income Tax Act, 1961 — Section 34
Taxation on Income (Investigation Commission) Act, 1947 — Section 5(1), 5(4)

Citation : AIR 1956 Bom 368 : (1955) 57 BOMLR 1088

Hon'ble Judges : Shah, J;Bavdekar, J

Bench : Division Bench

Advocate : Purshottamdas Tricumdas, D.V. Patel, S.N. Patel and S.B. Vakil, for the Appellant; A.G., V.S. Desai, Asst. Govt. Pleader, Rajni Patel and V.B. Patel, for the Respondent

Judgement

Bavdekar, J.—The petitioner -- the Municipality of Anand -- being desirous of levying an octroi upon goods imported for consumption within the municipal limits of the town of Anand obtained approval of the Government to the imposition of Octroi and imposed octroi with effect from 1-1-1955.

One of the articles upon which it was imposed was milk and the octroi imposed was 4 annas per maund. Some of the milk is milk brought within the municipal limits by societies which supply it to respondent 2 Union, who processes it and subsequently supplies it to the Government of Bombay for being sold in Bombay.

Sometime after the imposition it appears that the Milk Commissioner, Bombay as well as respondent 2 Union raised a contention before the Municipality with regard to the milk being property of Government inasmuch as respondent 2 Union was collecting it merely as its agent.

The Director of Local Authorities, Northern Division, Ahmedabad, also raised a Question as to whether the Municipality was entitled to levy the octroi upon the

combined Weight of the milk and cans and whether it could levy it upon portions of maund of milk. The Municipality seems to have thought that these objections were fair ones and they were thinking of changing the rules for which certain procedure laid down by the Bombay District Municipal Act, 1901 had to be followed.

The Director of Local Authorities also appears to have thrown out a suggestion that as there was a Dairy Scheme likely to come into force soon, the Municipality might consider reducing the duty which it was levying, inasmuch as when the Scheme came into force the Municipality, would obtain sufficient income even with a reduced octroi on milk.

In this state of affairs the Government of Bombay passed an order u/s 59, Bombay District Municipal Act prohibiting the Municipality of Anand from levying octroi upon milk brought into the municipal limits of Anand for consumption therein. The legality of this order is the subject matter of this petition.

2. Now the contention that such an order could not be passed under the opening words of Section 59, Bombay District Municipal Act, inasmuch as it is the imposition which has got to be subject to the general or special orders of Government and that once a tax has been imposed with the sanction of the Government there can be no question of the Government passing a special order which can only effect subsequent levy and not the imposition of the tax, which has already been made is concluded by the decision of this Court in -- Vijapur Municipality Vs. State of Bombay and Another, .

3. The second ground of attack is levelled against the section itself; and it is contended that so far as Section 59 allows a social order to be passed, to which the power of the Municipality to impose an octroi duty or any other duty or any other tax will have to be subject, the section is ultra vires of Article 14 of the Constitution.

It is contended that it would be permissible under these provisions for the Provincial Government to pass an order which will prevent a particular Municipality from levying any of the taxes which have been mentioned, in Section 59.

Even if the Provincial Government permits a particular tax to be levied, if the tax is to be levied on goods, it can direct that the tax shall not be levied by a particular Municipality upon a particular article, like milk in the present case. It may also direct that a particular tax or a particular tax upon a particular article shall not be levied within a particular geographical area, which may include part of a city or part of an area within the Municipal limits.

Finally, Mr. Purshottam who appears on behalf of the petitioner says that Government may under the powers conferred under this section also pass an order directing that a person or a body like respondent 2 Union, shall not be liable to pay any tax upon milk which it imports within the municipal limits of a

town for consumption therein. The section, therefore, by the words "special order" confers discretion upon Government which is unguided and uncontrolled, and consequently 16 is discriminatory.

4. NOW, in America-there has been a conflict upon the question, whether it is a proper classification to put in one class those who get the consent of a board or of an official and into another class those who do not, where no standard is set up to control the action of the Board or Official.

Willis in his book on Constitutional Law, 1936 Edn. at page 686, says that the best view on this subject is that due process and equality are not violated by the mere conference of unguided power, but only by its arbitrary exercise by those upon whom it is conferred; and he goes on to say that it seems, if that is the correct position, the only question that would then arise would be the delegation of legislative power.

5. It is said, however, that two cases of the Supreme Court in India are against the view which has been propounded by Willis in his book on Constitutional Law. The first is the case of -- The State of West Bengal Vs. Anwar Ali Sarkar, and the other is the case of -- Suraj Mall Mohta and Co. Vs. A.V. Visvanatha Sastri and Another, .

6. In the case of The State of West Bengal Vs. Anwar Ali Sarkar, , u/s 5(1), West Bengal Special Courts Act, 1950, the State Government was empowered to direct what offences or classes of offences or cases or classes of cases a special Court constituted under the Act was to try.

It was held that the provisions resulted in persons accused of offences being divided into two classes. Those who would be tried by the ordinary Courts by the ordinary procedure and those who would be tried by the Special Court following a procedure which was considerably disadvantageous to the persons who were tried by that Court. The classification depended upon an act of the State Government who had uncontrolled discretion in the matter and the statute offended against Article 14.

7. In the case of Suraj Mall Mohta and Co. Vs. A.V. Visvanatha Sastri and Another, . Taxation on Income (Investigation Commission) Act, 1947, empowered the Central Government to refer to a commission constituted under the Act for investigation and report any cases in which it had prima facie reason for believing that a person had to a substantial extent evaded payment of taxation on income.

Section 5(4) empowered the Central Government to refer to the Commission the cases of other persons if after investigation the Commission made a report to that effect. It was held that Section 5(4) was not limited to cases of persons, who to a substantial extent, had evaded taxation and who therefore all fell within the ambit of Section 34 Income Tax Act, and that that being so there was no justification (or discriminating against them in matters of procedure as compared

to those who could be dealt with under the Indian Income Tax Act.

8. The latter case has obviously no bearing on the question before us but the former does establish the proposition that where the Legislature confers uncontrolled or unguided discretion on another authority resulting in a classification which subjects one class to substantially unequal treatment, the legislation is discriminatory and "void".

9. But even upon the footing that in case there is any discretion left to an executive authority howsoever high, the legislation would be discriminatory and offending against Article 14 of the Constitution merely because the discretion is either unguided or uncontrolled and it results in substantially unequal treatment of people in one class it has got to be remembered that in this country legislation is not uncommon where authority e.g. to give licenses to conduct hotels, is given to executive officers.

Similarly, sanction e.g. to prosecute is left to the discretion of an executive authority. Their Lordships of the Privy Council have held that where sanction of an executive authority is necessary for prosecution, it was open to that authority to refuse to sanction prosecution not only on what may be called legal grounds but also on economic grounds or political grounds.

It may be that, If after the Indian Constitution came into force, sanction is refused, e.g. on the ground that the person who was to be prosecuted was a follower of the party in power, the exercise of the discretion may be arbitrary. But that does not alter the fact that legislation of this type is not uncommon in this country; and it is necessary to be very careful before saying that a particular piece of legislation is discriminatory on the ground that discretion is left to an executive officer, and so far as one can see, it is unguided discretion.

10. Then again what we are concerned with in this case is discretion with regard to taxation, Willis says that in the United State of America a wider discretion in classification under the powers of taxation is held valid when it is made in, what is called in America "police power". In the second Instance, according to the same authority it has been established there that the equality clause does not forbid geographical classification.

The State, if it desires, may levy taxes over the entire State and thus make the State the unit; but if the State desires, it may establish taxing districts or other sub-divisions, like a city or a territory within a city. When therefore it is argued on behalf of the petitioner that Section 59, Bombay District Municipal Act empowers Government to pass a special order permitting one particular municipality to levy a tax, but depriving another municipality, which would naturally be constituted in another geographical area, of the power to levy it, resulting in different people being liable to pay different taxes, the argument is not a valid one.

If at all therefore the statute is open to attack under Article 14 it must be upon

the ground that it discriminates between municipality and municipality.

How, before the protection under Article 14 is invoked it must be shown that not only does the statute make a classification but persons which may include municipalities similarly circumstanced are subject to unequal treatment and it can hardly be contended that all the Municipalities governed by the District Municipal Act are from the point of view of Municipal taxation similarly circumstanced.

11. Nor would it as a matter of fact be possible to say that there is no guidance whatsoever to the State Government in deciding in which cases it will pass an order prohibiting a municipality from levying a tax, and in which case it will not.

It has to be remembered that this power is conferred upon the Government not only by the opening words of Section 59, District Municipal Act, but the section confers the same powers upon the Provincial Government, or the Commissioner, as the case may be when a municipality selects a particular tax for imposition and proceeds to obtain as it is required to obtain the sanction of the Government or the Commissioner for imposition of that tax,

It is obvious that when such a proposal is submitted to Government the Government can in the case of one municipality direct that it shall not levy any Octroi, whereas in the case of another Municipality it may permit its imposition. Similarly, it may direct that the Municipality may levy a particular tax like octroi, but at the same time-it shall not levy octroi on any particular article such as e.g. milk.

It is not contended before us that the section is ultra vires in so far as it gives discretion to the Government to refuse to sanction imposition of a particular tax, or when the tax itself is sanctioned, to refuse to sanction imposition of a particular tax, or when the tax itself is sanctioned, to refuse permission to levy it upon a particular commodity. But Mr. Purshottam says that that case is different, because the discretion in that regard is controlled. When the Municipality selects a particular tax for imposition it has got to follow a particular procedure. It has, e.g. to invite objections.

The matter will have been discussed in the public press; and he says that this procedure does to some extent act as a control over the exercise of the power given to sanction or to refuse to sanction either a particular tax or a tax upon a particular commodity.

12. Now, it may be that where the procedure which has been laid down in the District Municipal Act is followed objections have to be invited and the municipality while making its proposal for permission to impose a particular tax in spite of the objections would be meeting the case which has been put forward in the objections.

We do not intend to say that a democratic Government, which has got before it the objections as well as the reply of the municipality to the objections, will not

be affected by the pros and cons against the imposition of the tax which the municipality proposes to levy ascertained in this manner. But that does not alter the fact that apart from the words impugned, Section 59 permits the same discretion to the State Government or the Commissioner to give sanction to the imposition of any of the taxes mentioned in that section by the municipality.

It would not show that so far as the section makes the power of the municipality to impose a particular tax subject to the power of the Government to direct by a general or special order that it shall not levy a particular tax or a particular tax upon a particular commodity, it is *intra vires* of the Constitution.

But I have mentioned what happens when a Municipality selects a particular tax for imposition in order to show where the argument, which has been advanced against the opening words of Section 59 would lead one, if one were to accept it.

13. Now, it is obvious that the section recognises that different municipalities in the State would have different circumstances. It is undoubtedly true that the Act does not apply to all the municipalities in the State e.g. it does not apply to the Municipal Corporations of Bombay and Poona.

But even as between the municipalities to which the Act applies there would be bigger municipalities, municipalities whose circumstances are obviously such that, they can easily forego octroi upon a commodity. On the other hand there may be municipalities to which the same sources of income are not available.

The Legislature might well have invested the Presidents of the Municipalities with the power of veto which the State Government or the Commissioner now possesses. The section has no reference to the power of the Government to call upon the municipality to levy a particular tax.

There is another section in the Act which refers to such power; but so far as Section 59 itself is concerned, the only power which is conferred upon Government by that section is either to sanction a particular tax or to refuse to sanction it and in so far as the imposition of a particular tax is concerned, to make it subject to any special or general order which it passes in that behalf.

Now if the section had given the President a veto over the imposition of a tax it could hardly be argued that there was a discrimination, though undoubtedly that would be due to the fact that a President at any rate ordinarily would be concerned with only one municipality.

A little reflection would show that so far as the imposition of taxes is concerned, the local authority in the limits of the municipalities governed by the District Municipal Act comprises two entries (1) The Municipality and (2) the State Government or Commissioner. The former alone can impose a tax, the latter has the power of veto or modification.

The Legislature has not made it obligatory upon any municipality to impose any one of the taxes mentioned in Section 59 expecting the municipalities to take

into consideration their varying circumstances and the State Government or the Commissioner to correct its action also upon consideration of the same circumstances.

14. Then again it is permissible to take into consideration whether any further guidance was possible: see -- "Plymouth Coal Co. v. Pennsylvania" (1913) 232 US 531 (D) and I do not think that it was possible for the legislature to give any further guidance to the State Government.

Where power of taxation is given to a local authority discretion must be left to it and the legislature has left the State Government to decide the question upon a consideration of all the circumstances as it has left the municipalities themselves.

15. Now the body of the section shows what its policy is and that policy gives sufficient guidance to Government in determining as to whether in any particular case sanction should or should not be given or any veto should be imposed. It is true of course, that when discretion is left to any authority, whether the authority is executive or otherwise, there must be chances of the discretion being abused.

But if an enactment is constitutional, it would not be rendered unconstitutional because it gives to an authority which may even be an executive authority, discretion which is capable of abuse. There is no presumption that when discretion is left to an executive authority, it will be abused.

On the other hand, when the legislature has in its wisdom left the discretion to a particular authority it obviously thought that the authority was worthy of its confidence, and the presumption therefore is that the discretion will not be abused.

16. The argument that the section is ultra vires of the Constitution as offending against Article 14 of the Constitution consequently fails.

17. Mr. Purshottam who appears on behalf of the petitioner says, however, that in this case the exercise of discretion is discriminatory inasmuch as the Government has passed a special order which prevents the petitioner municipality alone from levying an octroi on milk imported within the municipal limits of Anand for consumption therein.

18. Now, it is quite true that in the petition a contention has been raised that the order which has been passed by the Government in this case is discriminatory. But beyond that no details whatsoever have been given.

As I have already mentioned, whether Government would in any particular case sanction the imposition of a particular tax or its being levied upon a particular commodity, must depend on all the circumstances of the case; and if the petitioner wanted to make out that the order in this case was discriminatory, it was not enough to point out that it has been prevented from levying octroi on milk, or as a matter of fact pointing out that there are some municipalities which are allowed to levy octroi upon milk.

It was necessary for the petitioner to show further that the municipalities which are similarly circumstanced have been allowed to levy octroi on milk. It might then have been necessary for the Government to justify its order and to point out in what circumstances, when municipalities which were prima facie similarly circumstanced were allowed to levy octroi upon milk imported within the municipal limits, the petitioners were only prevented from levying it.

19. It is true that Government have filed an affidavit in answer. In that there seems to be an implied admission, that there are municipalities in the State which are allowed to levy an octroi upon milk imported within the municipal limits and which are so levying it now. But that does not matter.

The Government have further filed an affidavit that they are thinking of imposing a general ban upon levying octroi upon milk. One can well understand a general order of that kind, because milk is an article which is wanted by the children of all, whether rich or poor. That, of course, would not afford any defence or any reply to a charge if it had been properly made out that the prohibition directed against the Anand Municipality was discriminatory.

But, as I have already mentioned, the petitioner has not made out that whereas octroi on milk has been allowed to be levied by municipalities similarly circumstanced, it has not been allowed to be levied by the petitioner municipality alone.

20. Finally there is the contention that in this case the order which has been passed is mala fide. In the first place it has been passed because of malice which the Government bears against the petitioner municipality.

Secondly, it is mala fide because it is not passed upon the merits of the case as to whether it would be proper to allow the Anand Municipality to levy tax upon milk imported in the Municipal limits or not, but with a view to enable respondent 2 Union, which supplies Government with milk for being sold in Bombay, to make higher profits.

21. It is argued that if the Municipality is allowed to levy an octroi on milk imported within the municipal limits, the societies which supply milk to respondent, 2 Union will charge higher prices to the Union, because they would have to pay the octroi levied by the Municipality; respondent 2 Union has, however, entered into a contract with Government to supply milk to them at a particular rate, and respondent 2 Union will obviously therefore not be able to make as much profit as they would in case they can purchase milk from the Societies at the same rate at which they are doing at present.

We find, however, that in both these regards the petitioner states nothing whatsoever in its petition. There is no allegation in the petition that the Government of Bombay bears any malice towards the petitioner, or that the Government, of Bombay, has passed the order which is challenged with a view to enable respondent 2 Union to make more profits. It is obvious that whether that

is the object of the order will depend upon the nature Of the contract between respondent 2 Union and the Government.

If the case had been made, respondent 2 Union might have been able to show that the societies which are supplying it with milk would supply them at the same rate as they are doing at present. The societies may of course refuse to sell to respondent 2 at the same rate, but whether they would be able to do so would depend upon how strong a position the societies are now in this respect.

In any case it is obvious that one cannot say, merely because an argument is made at the Bar, that the object with which the order has been passed was to enable respondent 2 Union to realise higher profits that that was the object. Before doing so one would have to investigate the nature of the contract between respondent 2 Union and the Government and consider the probabilities as to who will have to bear the tax in case the petitioner is allowed to levy it.

When the petitioner failed to make out in its application that the object with which the tax was levied was to favour respondent 2 Union, there was no opportunity given to Government or to respondent 2 Union to meet the contention which is being raised now. It is obvious therefore that no such point can be allowed to be taken up at the time of the arguments. The petition consequently fails.

22. We must observe, however, that in this case the Government had sanctioned the imposition of octroi duty, including an octroi upon milk, only in the month of November 1954. The Government has passed the impugned order within five months of the sanction which it gave.

It is true that it is mentioned in the affidavit which has been filed on behalf of Government, that the question of prohibiting imposition of an octroi upon milk imported within the municipal limits of other cities for consumption therein is also under consideration.

But considering that the imposition of an octroi was sanctioned by the Government in this case only a short time before, and the object with which that sanction has been now rescinded not being quite clear upon these proceedings, we think that it would be but a graceful act on the part of Government to suspend their order pending the consideration of the general question which is before them as to whether octroi should be allowed to be levied upon milk imported within the municipal limits of the municipalities of the State of Bombay.

22a. The petitioner having failed will pay the costs of both the opponents.

Shah, J.

23. On 4-4-1955 the Government of Bombay, passed the order which is impugned in this application. The order in so far as it is material pro-vides that no octroi shall be leviable on milk imported within the municipal limits of the Anand Municipality for consumption, use or sale therein. The order purports to

have been passed u/s 59, Bombay District Municipal Act, 1901.

The validity of the order has been challenged before us on three grounds: (i) that the State Government had no authority to pass the order purporting to act u/s 59, Bombay District Municipal Act, 1901; (ii) that Section 59 permits discrimination to be made to the prejudice of a Municipality, and is void under Article 14 of the Constitution; and as a corollary to that argument it is submitted that the impugned order which discriminates to the prejudice of the Anand Municipality is void as infringing Article 14 of the Constitution; and (iii) that the order is passed mala fide.

24. Now the State Government has sanctioned imposition of octroi duty on milk by the Anand Municipality by order passed in November 1954 and the tax was imposed from 1-1-1955 and the tax was being levied by the Municipality as from that date. By order dated 4-1-1955 the State Government has Prevented the Municipality from levying the tax.

It was urged on behalf of the Municipality that Section 59 only authorises the Government to pass an order at the stage of imposition of a tax and not for restraining levy of a tax after it is duly imposed with the sanction of the Government. Reference was made in support, of that argument to Section 73 of the Act.

Section 73 lays down that the Government may pass an order preventing recovery of a tax which is unfair in its incidence, or which is obnoxious to the general interest of the public. Under that section before the State can pass an order declaring a tax to be unfair in its incidence or obnoxious to the general interest of the public, it has to require the municipality within a period, which may be fixed by the order, to take measures for removing any objections, which may appear to the State to exist against the tax.

Section 73 therefore appears to set out the Circumstances and the manner in which the state may suspend levy of objectionable taxes, whereas Section 59 in terms appears to confer upon the Government power which may be exercised in relation to imposition of taxes. In other words Section 73 confers authority upon the Government to suspend levy of objectionable taxes and lays down the circumstances in which that authority is to be exercised.

Section 59 confers authority upon the Government by special or general order to restrain imposition of taxes and does not expressly lay down principles which should govern the State in the exercise of that authority.

This difference between the content of the powers may be a legitimate ground for holding that Section 69 was intended to apply only at the stage of initial imposition of the tax, and not after the tax has been imposed and the levy or collection thereof is sought to be restrained.

But in a recent judgment of this Court in *Vijapur Municipality Vs. State of Bombay and Another*, a Division Bench of this Court has taken the view that the

general or special orders which the Government is authorised to pass u/s 59, Bombay District Municipal Act, 1901, may be passed even after the tax has been imposed.

That decision is binding upon us, and it must be held that in exercise of the power u/s 59 of the Act, it is open to the State Government, even after a tax is selected by a Municipality and is imposed with the requisite sanction, to issue directions restraining the municipality from levy-ing or collecting the tax. on the question whether the order is ultra vires on the ground that it is passed mala fide, I do not propose to and anything to what my learned brother has slated in his judgment.

25. On the question, whether Section 59 contemplates discrimination to be made so as to deprive the Anand Municipality of the benefit of the equal protection clause of the Constitution, I propose briefly to state my reasons for holding that the contention advanced has no substance,

26. Article 14 of the Constitution gives a right of equality to all persons, before the law or equal protection of the laws within the territory of India. The Article is framed in very wide terms. But in its application to any concrete problem which may arise before the Courts as has often been said, a doctrinaire approach has to be avoided.

Equal protection of laws does not mean that all laws must be general or universal in their character and application. The State in the process of legislation is entitled to classify persons or things to be brought under the operation of law, and if the basis of classification is just, and has a reasonable relation to the object which the legislature has in view, it is not open to the Courts to sit in judgment over the wisdom of the legislature in making the classification.

Even if the law makes a special provision with regard to a class, it must be regarded as good, provided the classification is founded upon a real and substantial distinction and is not made arbitrarily. Again, entrustment of authority by law to select for special treatment a person or object to an executive authority is by itself not a ground for holding that the equal protection clause is violated.

Section 59 enables the State Government to pass orders which may be general -- in the sense that they are applicable to all municipalities to which the Act applies, or to pass orders which relate to one or more but not to all municipalities governed by the Act and restrict the course of action of such municipality or municipalities in the matter of imposition of taxes.

The section does not lay down in express terms any principles for guidance of the State Government in exercising its authority, nor does it set out the circumstances in which the authority of the State may be invoked. It may at first blush appear when the State Government is authorized to pass an order, which in its application may put a restraint upon a municipality in the matter of imposition

of taxes that the Municipality may be singled out for discriminatory or hostile treatment.

But in considering the question of discrimination, Section 59 cannot be isolated from the rest of the provisions of the Act. The Bombay District Municipal Act was passed by the Legislature authorizing the Government to incorporate municipalities and to confer powers upon them, which are essentially powers of the State relating to local self-Government.

In certain matters such as supply of water, drainage facilities, lighting, scavenging, public health, education and allied matters the state Government has conferred its powers upon municipalities. But by the Municipal Act the Government is authorised to exercise a strict control over municipal administration.

By Chap. 12, Bombay District Municipal Act detailed provisions are made for effective exercise of that control. The Director of Local Authorities or the Collector of a District is given the power of inspection and of supervision over municipal administration and to call for any extract from the proceedings of any municipality or of any committee or of any book, or document in the possession of or under the control of a municipality and to require a municipality to take into consideration any objection which appears to him to exist to the doing of anything which is about to be done or is being done by such municipality.

The Director of Local Authorities or the Collector is authorised to suspend execution of orders of Municipalities; see Section 174. Sections 175 and 176 confer certain extraordinary powers upon the Director of Local Authorities and the Collector in case of emergency and in the matter of extravagant expenses in the employment of the staff.

By Section 177 the State is entitled to require certain municipalities, which are called City Municipalities, to appoint Chief Officers, Health Officers, or engineers. By Section 177A the State Government is entitled to enquire into any matters concerning the administration of any municipality or in any matters in respect of which its sanction, approval or consent is required under the Act, and for that purpose very wide powers are conferred upon the State Government.

Section 178 enables the State Government to direct performance of duties imposed by or under the Act upon municipalities in default of compliance with them by a municipality. Similarly, Section 179 enables the State Government to supersede a municipality where there is abuse of the powers by a municipality.

Section 180 confers upon the State Government power to exercise control over the Director of Local Authorities, the Commissioner and the Collector who are entitled to maintain supervision over the Municipality. It is evident that even though the power of the State in certain matters is conferred upon the municipality, the State has reserved to itself very wide powers of supervision over municipal administration.

27. It is in the context of the nature of powers which the municipality exercises and the authority to control and supervise the municipal administration which is reserved to the State Government, that the challenge to the validity of Section 59 has to be Judged.

The State Government is made responsible for the due, proper and effective performance of the duties, and functions and exercise of the powers by a municipality. By the Act the Municipality is authorized to select, impose and levy certain taxes. The tax must be selected in the first instance in the manner prescribed by the Act. In exercise of its supervisory powers the State Government has reserved to itself the power to control imposition of taxes which are described in Section 59.

In directing which of the taxes described in Section 59 shall be collected by a municipality the State Government would evidently be concerned with the interest of the Municipality applying for sanction to impose the tax and with interest of the residents within the municipal limits, having regard to the general public interest. For that purpose the Legislature has reserved to the State Government power of issuing general or special orders in the matter of imposition of taxes.

Section 59 which subjects the imposition of taxes to general or special orders of the State is only an additional provision for the exercise of supervisory powers of the State Government. Validity of a law which confers authority upon an executive authority to select for special treatment a person or a body of persons must be judged in the light of the general scheme of the law and the object which it is intended to achieve, and having regard to the extent and nature of the authority conferred.

Section 59 undoubtedly enables the State Government to pass orders in the matter of imposition of taxes which apply to one municipality only and which may apparently discriminate that municipality against other municipalities governed by the Act.

But when in exercise of its supervisory powers the State has to pass orders having regard to the interest of the municipality, of the residents within the area of the municipality and the general public interest, the provision of the Act which contemplates the possibility of an order which prejudicially affects one municipality and not other municipalities governed by the Act cannot be regarded as infringing the equal protection clause of the Constitution.

Section 59 does not provide that the State Government in passing a special order in the matter of imposition of a tax will be guided by any principles expressly set out in the Act or that it will exercise its authority in a specified contingency, but the scheme of the Act clearly suggests that the Legislature intended the State Government to exercise its powers u/s 59 having regard to the interest of the general public for securing the interest of the residents within the limits of the municipality.

It cannot in the circumstances be said that the exercise of the power, u/s 59 to impose restrictions upon a municipality is left to the arbitrary and uncontrolled discretion of an executive authority. It must therefore be held that Section 59 which enables a special order to be passed in the matter of imposition of a tax does not offend against the equal protection clause of the Constitution.

28. The order which has been passed by the State Government in this case is evidently an order which it is permissible for the State to pass u/s 59. There is nothing on the record which even suggests that the order has been passed without taking into consideration the interests of the municipality against which it is passed, the interests of the residents within the municipal area, and the general interest of the public.

If the State Government has taken, into consideration all these matters at the time of passing the order in question as we must assume in the absence of evidence to the contrary that it has. we cannot hold that the exercise of authority of the State by the passing of the order contravenes Article 14 of the Constitution.

29. Strong reliance was sought to be placed by counsel for the petitioner upon a judgment of the Supreme Court in *The State of West Bengal Vs. Anwar Ali Sarkar*, in support of the contention that a provision whereby power is conferred upon the State Government to select out of cases of persons similarly situated, the case of one person and to subject it to special treatment must be regarded as contravening the provisions of Article 14 of the Constitution.

Now, in "Anwar Ali's case (B)" by the West Bengal Special Courts Act, 10 of 1950, the State Government was authorized to pass orders enabling special Courts constituted under that Act to try such offences or classes of offences or class or classes of cases, as the State Government may, by general or special order in writing direct.

The Supreme Court held that when under the Criminal Procedure Code every defender was liable to be tried by the procedure provided there-under and the Legislature permitted the Government under the West Bengal Special Courts Act to select the offences committed or classes of offences committed to be sent for trial to a Special Court, the authority vested in the Government under the Act contravened the provisions of Article 14 of the Constitution.

There is evidently no analogy between "Anwar Ali's case (B)" and the present case. The Criminal Procedure Code lays down the procedure to be followed in the trial of persons charged with having committed offences.

The West Bengal Special Courts Act authorized the Government to deprive without reference to any rational or intelligible principle a person or class of persons of the rights conferred by the Code of Criminal Procedure, and subjected them to a trial by procedure which deprived them of several important safeguards. It was held by the Supreme Court that such a provision contravened

Article 14 of the Constitution.

30. in this case we have got a municipality which in the exercise of its authority to administer its affairs is subject to supervision of the state Government and its officers. If in the exercise of its jurisdiction the State Government requires the municipality to impose or not to impose a particular tax, it cannot be said that the municipality is being singled out for any discriminatory treatment, which is not based on any rational or intelligible principle.

In my view the principle of "Anwar All's case (B)" can have no application to the facts of the present case.

31. Similarly the other judgment of the Supreme Court in *Suraj Mall Mohta and Co. Vs. A.V. Visvanatha Sastri and Another*, on which reliance was sought to be placed in support of the contention that Section 59 is discriminatory, can have no application. That was a case in which under Sub-section (4) of Section 5, Taxation on Income (Investigation Commission) Act, 1947, it was open to the Income Tax authorities in the matter of assessment of taxes which were suspected to be evaded to deal with two sets of persons differently.

Where on an enquiry made by the Income Tax Investigation Commission set up under the Act a report was made that the Commission had reason to believe that a person other than the one whose case was referred u/s 5(1) had evaded payment of tax, the Income Tax Officer was not required to proceed with the case of that person according to the normal rules u/s 34, Income Tax Act, but had to follow a special procedure provided by the Taxation on Income (Investigation Commission) Act, 1947.

But other persons who were suspected of having evaded the tax, but regarding whom no report was made under Sub-section (4) of Section 5 of the Act of 1947, were required to be proceeded against u/s 34, Indian Income Tax Act.

The Supreme Court held that as Section 5, sub-Section (4) contemplated an arbitrary classification and discrimination between different tax payers similarly interested in the application of the normal rules of evidence and modes of procedure, it contravened Article 14 of the Constitution.

32. To this case the principle of "*Suraj Mall Mohta & Co.*"s case (C)" can have no application. It is not by reason of a mere accidental circumstance that any discrimination is intended to be made in the law to be applied between one Municipality and another municipality.

In "*Suraj Mall Mohta*"s case (C)" the discrimination in the application of law was founded upon what was essentially an accidental circumstance. In exercise of the authority by the Government u/s 59, District Municipal Act differentiation between one Municipality from another is not based on accident.

The state Government in the exercise of its authority has to pass orders to achieve the purpose already stated. The classifications contemplated is therefore

not arbitrary or capricious nor conditioned upon accidental circumstances but is based on rational and intelligible principle.

33. I therefore agree with the order proposed by my learned brother.

34. Order accordingly.