
(1972) 12 MAD CK 0005
In the Madras High Court

Narayana Thevar

APPELLANT

Vs

Arantangi Panchayat Union Council and Another

RESPONDENT

Date of Decision : 18-12-1972

Acts Referred:

Tamil Nadu Panchayats Act, 1958 — Section 115

Citation : (1973) 86 LW 603 : (1973) 2 MLJ 326

Hon'ble Judges : T. Ramaprasada Rao, J

Bench : Division Bench

Judgement

T. Ramaprasada Rao, J.—The petitioner is a landholder and resident of Ayingudi village, Aranthang Taluk. He own lands which are subject

to land revenue, u/s 115 of the Tamil Nadu Panchayat Act, 1958 (Madras Act XXXV of 1958) (hereinafter preferred to as the Act),a local cess

at the rate of forty five paise on every rupee of land revenue is payable to the Government in respect of any land for every fasli. The content of land

revenue as explained in the section is easily understandable. In addition to the local cess u/s 115 of the Act it is ""open to the Panchayat Union

Council within whose jurisdiction the lands are situate, to levy on every person liable to pay land revenue to the Government in respect of any land

.within the panchayat union, a local cess surcharge at such rate as may be prescribed subject, ""however, to a maximum which also has to be

prescribed. This is u/s 116 of the Act. The petitioner's case is that no maximum has been prescribed as contemplated u/s 116 of the Act, and in

that sense, the respondents have no authority to levy local cess surcharge. The circumstances under which the petitioner has come to this Court can

be summarised thus.

2. It was no doubt true that prior to August, 1970 no maximum rate was prescribed as contemplated in Section 116 of the Act. In fact, this Court, when it considered the legality and propriety of such a levy without such a maximum being prescribed as amended in Section 116 of the Act, was of the view in *The Trichinopoly Mining Works (P.) Ltd. Vs. The Collector of Tiruchirapalli and Others*, that as the basis for the levy of the impost was absent, no such impost at all could be levied. This prompted the authorities to prescribe the maximum under a rule made on 1st August, 1970, which was published in the official gazette on 6th August, 1970. The question, however, arose as to how to validate prior imposts made or collect such levies by then not imposed but collectable u/s 116 of the Act. The State Legislature, therefore, enacted Act XII of 1971 so as to amend the Tamil Nadu-Panchayat Act, 1958. The purport of this Amending Act inter alia was to validate certain Irregular situations, for example, the lacuna created by Section 116 of the Principal Act, which suffered from an infirmity due to the absence of prescription as to the maximum rate of local cess surcharge. In order to get over certain situations which by then arose not only by reason of the judgment of this Court in *The Trichinopoly Mining Works (P.) Ltd. Vs. The Collector of Tiruchirapalli and Others*, , but also to validate certain local cess surcharges by then made and collected when the position was nebulous, Section 116 of the Principal Act was amended by Section 3 of the amending Act, and Section 6 of the amending Act provided for validation of the local cess surcharge levied under the Principal Act. In Section 116 of the Principal Act, for the words "shall be subject to such maximum" as may be prescribed occurring at the end, the words "shall not exceed one rupee and fifty paise on every rupee of land revenue" were substituted by Madras Act XII of 1971. The prescribed maximum was subsequently increased, but this element is not essential for purposes of our case. Effectively, therefore, the legislature intervened in order to make the position more obvious and in order to obviate any technical defects in the unamended Section 116 of the Act. Though no doubt under a rule, the maximum was prescribed as on 1st August, 1970, it was incorporated in the main provision of the statute itself by Section 3 of the amending Act of 1971, and by Section 6 of the amending Act, the usual validation section, it was provided that all acts, proceedings or things done or taken by the Panchayat Union Council or

authority in connection with the levy or collection of any local cess surcharge shall for all purposes be deemed to be and to have always been done

or taken in accordance with law. The language of Section 6 is similar to the language employed by the Legislature under similar circumstances to

validate retrospectively any levy or collection of taxes made by the State under irregular and improper situations.

3. On the basis of the rule which was introduced on 1st August, 1970 prescribing the maximum local cess surcharge leviable u/s 116 of the Act,

the Panchayat Union Council, as a delegated authority, passed a resolution on 26th October, 1970 imposing a levy of eighty paise on every rupee

of land revenue as local cess surcharge. This resolution Was published on nth November, 1970. A peculiar feature of this resolution is that it made

the content and purport of it effective from 1st July, 1970. It is this resolution of the Panchayat Union Council, which is the first respondent in the

instant petition, that is the subject-matter of this writ petition.

4. Mr. R.G. Rajan, learned Counsel for the petitioner submitted three contentions, one of which no doubt is not available to him after the rule

referred to above was made fixing the maximum impost under the head "local cess surcharge" and after the passing of Madras Act XII of 1971.

The contention is that the maximum not having been prescribed, the levy cannot be made, and after the rule fixing the maximum has been

introduced, the Council cannot pass a resolution so as to make it effective retrospectively from 1st July, 1970. " It is said that a part of the

argument is not available to the petitioner for the reason that a maximum has already been prescribed and Act XII of 1971 enables the panchayat

union council to make such a retrospective levy. But reference was made by Mr. R.G. Rajan to a decision of the Supreme Court in Income Tax

Officer, Alleppey Vs. M.C. Ponnose and Others, . The incidental contention is that the panchayat union council is only a delegated authority and

such a delegate can act only within its periphery of power and such power is traceable to the language in Section 116 of the Act, and if such

language did not expressly or by necessary implication provide for a retrospective levy of such a local cess surcharge, an attempt to do so would

be illegal. No doubt, in certain matters the Legislature can undertake the imposition of taxes either through a named statutory functionary or through

its delegates. But if once the subject-matter of levy of an impost is delegated, the delegatee cannot exceed the limits of authority, but should act

strictly within the sphere of authority. No doubt, Section 116 as it stood before it was amended by Act XII of 1971 did not expressly or by

necessary implication provide for such a contingency enabling the Council to impose the levy in question with retrospective effect. Such an attempt

on the part of a delegated authority was decried by the Supreme Court in the authority cited above. The Supreme Court in that case, as noted in

the headnote, held as follows:

The Courts will not ascribe retrospectivity to new laws affecting rights unless by express words or necessary implication it appears that such was

the intention of the Legislature. The Parliament can delegate its legislative power within the recognised limits.... It will depend on the language

employed in the statutory provision which may in express terms or by necessary implication empower the authority concerned to make a rule or

regulation with retrospective effect.

5. Undoubtedly, Mr. R.G. Rajan would be correct if Section 116 of the Act remained in the statute book unamended. But by Sections 3 and 6 of

the amending Act XII of 1971, the position has been made different. u/s 6, the proceedings or things done by a panchayat union council in

connection with the levy or collection of any local cess surcharge shall for all purposes be deemed to be and to have been done or taken in

accordance with law. This directive of the Legislature, for our present purpose, is sufficient to make the resolution dated 26th October, 1970

passed by the panchayat union council in question as thing deemed to have been taken in accordance With law. No doubt, Section 3 read With

Section 1 (2) (6) gives .the impression that Section 3 is prospective. But in order to fill up the hiatus the maximum has already been prescribed

under the rules. Therefore, the provision in Section 1(2) (b) of the amending Act would not make the position any the different for the only reason

that Section 1 (2) (6) speaks of prospectivity of operation of Section 3 of the Act. Having regard to the rule which Was made on 1st July, 1970

and Section 6 of the amending Act XII of 1971, I am not inclined to accept the Wide contention of Mr. R.G. Rajan that the Council cannot give

retrospective operation to the resolution dated 26th October, 1970 from 1st July,

1970.

6. The other contention against such retrospectivity is based on comparing the present Act with the provisions of the Income Tax Act, that is by

referring to the language of Section 115 in conjunction with the text of Section 116, I shall come to the provisions of the Income Tax Act presently.

7. u/s 115 of the Madras Act XXXV of 1958, local cess is levied at the rate of 45 paise on every rupee of land revenue payable to the

Government In respect of any land for every fasli. The local cess surcharge, on the other hand, is on every person liable to pay land-revenue to the

Government in respect of any land in the panchayat union. The argument is that telescoping the local cess surcharge with the local cess, which latter

cess has reference to every fasli of the year, the local cess surcharge levied in this case by a resolution dated 26th October, 1970 in any event can

only be prospective and not retrospective. The contention is that it might be operative on and from 26th October, 1970, but it cannot be taken

back to have effect from 1st July, 1970. Prima facie the argument is undoubtedly attractive. But the language of Section 116 does not give me the

impression that the local cess surcharge imposed for the first time by the resolution of the Council on 26th October, 1970 could only be

prospective in operation. The levy u/s 116 is on the person liable to pay land revenue to the Government. u/s 115, local cess is payable at the rate

of forty-five paise on every rupee of land revenue payable to the Government in respect of any land for every fasli. Therefore, the reference to fasli

in Section 115 is only for the purpose of reckoning the quantum of local cess u/s 115 and it serves no other purpose. If therefore the local cess is

arrived at by adopting the formula prescribed in Section 115, then the purpose of Section 115 is fully served. In juxtaposition to this, Section 116

contemplates the levy of local cess surcharge on every person liable to pay land revenue. The person who is liable to pay such land revenue can

easily be identified and there will be no difficulty. The charging section provides With such a definite hypothesis under which the levy can be

processed through. It is only for the purpose of quantification, the local cess surcharge is made relatable to the local cess. As already stated, the

person liable to pay land revenue should suffer the local cess surcharge at such rate as may be prescribed. The rate prescribed under the rule and

later accepted by the amending statute is that it should not exceed Rs. 1 .50 on every rupee of land revenue payable in respect of such land. It is significant to note that the text of both the rule which fixed the maximum and the amending section which also served the same purpose did not refer to the word "fasli". But on the other hand they say that the rate of levy of local cess surcharge u/s 116 shall be subject to a maximum of Rs. 1 .50 on every rupee of land revenue Payable in respect of such land. In a different way, but serving the same purpose, is the language in Section 3 of the amending Act. Therefore, I am unable to agree with the learned Counsel for the petitioner that the word "fasli" appearing in Section 115 gives the clue for making the local cess surcharge itself, and as the resolution is dated 26th October, 1970 which is in the midst of a fasli, the levy can only be operative Only for a part of the fasli or for the next fasli. For a taxing statute", there is no intendment, but the salient principle is that if there is a doubt in the language employed, then the benefit of such a doubt should go to the tax payer. In the instant case, in the rule made when the quantum Was fixed and in Section 116 when it Was amended, the reference to fasli was avoided. The levy is on the person, and the measure of taxation is With reference to the land revenue paid by that person. By a mere simple arithmetical process, the land revenue paid by that person can be reckoned and if so reckoned, eighty paise on every rupee of land revenue can easily be deduced. In this sense, there is no doubt inherent in the language of Section 116 as amended read with the earlier rule which was in force, and therefore I am unable to accept the contention that the levy can only be prospective and not retrospective in the sense that it could be effective from 1st July, 1970.

8. So far as the Income Tax Act is concerned, there are certain peculiar situations Which govern the said Act. The Income Tax Act by itself is a bare code which lays down the broad principles, under Which the income of an individual, firm, company, association of persons, joint family, etc. could be brought to tax. But it is only the Finance Act which is passed at or about the time when the budget is passed by Parliament, which fixes the rates of tax. There is always an element of variability in the features of the Income Tax Law so far as the rates are concerned. But the local cess surcharge, on the other hand, is a tax referable to a fixed mathematical figure, and in that sense, the provisions of the Income Tax Act and the law

relating to an impost under the Tamil Nadu Panchayat Act, are not easily comparable for the purpose of ascertaining the intent and scope of the local cess surcharge. The argument on the basis of the Income Tax Act is that the assessment year referred to under that Act is equatable to a fasli which is referred to in the Tamil Nadu Panchayat Act. From the perspective of a calendar it may be so; but the assessment year used in the Income Tax Act has a peculiar meaning and purpose to serve on different occasions. I have already referred to the fact that the word "fasli" does not occur in Section 116 or in the rule which was introduced just prior to the amendment of that section. As the local cess surcharge can easily be ascertained without reference to the fasli, and as it is based upon the local cess paid by a person owning land within the jurisdiction of the panchayat union council, I am unable to accept the argument of Mr. R.G. Rajan that the levy in the instant case can either be operative from 26th October, 1970 or from 1st July, 1971. In the view that I hold, the petitioner cannot question the resolution of the panchayat union council dated 26th October, 1970. The writ petition is dismissed. There will be no order as to costs.