
(1984) 07 P&H CK 0016

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 6738 of 1975

Pyare Lal Saldi and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 16-07-1984

Acts Referred:

Punjab Municipal Act, 1911 — Section 61, 62

Citation : AIR 1985 P&H 37 : (1985) 1 ILR (P&H) 335

Hon'ble Judges : S.S. Sodhi, J;D.S. Tewatia, J

Bench : Division Bench

Judgement

S.S. Sodhi, J.—The challenge here is to the vires of s. 62-A of the Punjab Municipal Act, 1911 (hereinafter referred to as the Act) in the context of the imposition of house tax in the area of Municipal Committee, Gobindgarh by a notification issued by the State Government of Mar. 10, 1965 under sub-section (3) thereof.

Section 62A of the Act reads as under:-

"62-A, Power of Government in Taxation--(1) The State Government may, by special or general order notified in the Official Gazette, require a Committee to impose any tax mentioned in S. 61, not already imposed at such rate and within such period as may be specified in the notification and the Committee shall thereupon act accordingly.

(2) The State Government may require a Committee to modify the rate of any tax already imposed and there upon the Committee shall modify the tax as required within such period as the State Government may direct.

(3) If the committee fails to carry out any order passed under sub-section (1) or (2) the State Government may by a suitable order notified in the Official Gazette impose or modify the tax. The order so passed shall operate as if it were a resolution duly passed by the Committee and as if the proposal was sanctioned in accordance with the procedure contained in S. 62".

2. On Oct. 23, 1964, the State Government by a notification issued under Sub,sec(1) of S. 62-A called upon the Municipal Committee to impose house tax. The Municipal Committee declined to do so on the plea that its income was more than its expenditure. It was so resolved at its meeting held on Nov. 17, 1964. It was thereafter that the impugned notification of Mar. 10, 1965 (Annex. P. 2) was issued imposing this tax.

3. Some residents of Gobindgarh challenged the imposition of this house tax in writ proceedings--C. W. P. No. 2495 of 1965. This writ petition was eventually dismissed on Aug. 1, 1974.

4. It appears that during the pendency of the writ petition, no action had been taken by the Municipal Committee in the matter of the imposition and recovery of the house tax so much so that the Executive Officer of the Municipal Committee wrote to the State Government on Mar. 23, 1974, suggesting that the notification of Mar. 10, 1965 (Annex. P. 2) be withdrawn and a fresh notification issued as all the members were opposed to it and the Municipal Committee was not taking any interest in the matter.

5. Later, after the dismissal of the writ petition, a unanimous resolution was passed by the Municipal Committee on Sept. 30, 1974, that the house tax be imposed only from the year 1974-75 onward. A copy of the resolution was forwarded to the State Government by the letter of Oct. 4, 1974 (Annex. P. 4), a reading of which would suggest that as per the legal advice given to it, the Municipal Committee was of the view that assessment and recovery of house tax could only be from 1974-75 and not prior thereto. The State Government in reply, however, informed the Municipal Committee by its letter of Dec. 5, 1974 (Annex. P. 5) that house tax could be recovered according to the prescribed procedure with effect from the date specified in the notification of Mar. 10, 1965. The specified date there being July, 1, 1965.

6. The Municipal Committee then passed another resolution on Dec. 9, 1974 whereby it was decided that some office bearers thereof should contact the State Government to request that there should be no imposition of house tax from 1965 to 1974 and in the meanwhile it was decided that no proceedings in respect of assessment of tax covering this period be taken up. This decision was conveyed to the Government and the President of the Municipal Committee and others are then said to have met the Minister concerned and also submitted representations requesting exemption from imposition of house tax for the period of July 1, 1965 to Mar. 31, 1974.

7. In the meanwhile, by another resolution passed on Jan 6., 1975, it was decided that work be commenced on the preparation of assessment lists for the recovery of house tax for the year 1974-75 while that for the period prior there to be postponed.

8. There was, however, no change in the decision of the State Government in the matter and on Aug. 20, 1975, the Municipal Committee was again advised by it

to recover arrears of house tax for the period commencing from July 1, 1965. It was thereafter that the Municipal Committee eventually relented when on Oct. 21, 1975, it passed a resolution that it would comply with the directions of the State Government and would impose house tax from July, 1965. In pursuance thereof, preparation of assessment lists for the relevant period commenced.

9. This represents the factual background to the challenge to the legality of the imposition of house tax under S. 62-A of the Act.;

10. It was in the first instance contended that there was an inherent defect in the imposition of house tax, inasmuch as, the procedure prescribed under S. 62 of the Act had not been followed. The argument being that compliance with the procedural provisions of S. 62 was a condition precedent to the imposition of tax under S. 62-A of the Act. A complete answer to this is provided by the judgment of the Division Bench in *Krishna Kumar Saman v. Punjab State* 1972 74 PLR 149 where it was held that by virtue of the provisions of sub-section (3) of S. 62-A of the Act, the necessity of complying with the procedure prescribed by S. 62 of the Act for the imposition of a tax had been dispensed with and that the procedure of S. 62 was meant for the Municipal Committee and not the State Government exercising power under sub-sec.(3) of S. 62-A of the Act. It was observed--

"As the Legislature has done away with the necessity of pursuing the course of procedure in case the tax is sought to be imposed by the State Government, no exceptions could be taken to the notification on the ground that in case the tax is imposed by a resolution of a Municipal Committee that procedure has to be followed and that the same has been rendered unnecessary, when it is to be imposed by the State Government under sub-section (3) of S. 62-A of the Act".

It was then said that the provisions of s. 62-A of the Act gave unfettered powers to the State Government without any guidelines being prescribed for the exercise thereof and were thus arbitrary and undemocratic. The argument being that the State Government could under this provision of law impose any tax, at any rate and on any persons as it may choose to impose this burden upon by its whim or fancy. In other words, the provisions suffer from the vice of excessive delegation. This is indeed a contention wholly devoid of merit. It is no doubt well-settled that there is no unlimited right of delegation inherent in legislative power and that the legislature must retain in its own hands the essential legislature functions, but it is open to the legislature to delegate the task of subordinate legislation necessary for implementing the purpose and object of the Act. It would also be pertinent to refer here to the observation of K. N. Wanchoo, C. J. in *Municipal Corporation of Delhi Vs. Birla Cotton, Spinning and Weaving Mills, Delhi and Another*, ;

"..... Where the legislative policy is enunciated with sufficient clearness or a standard is laid down, the Courts should not interfere. What guidance should be given and to what extent and whether guidance has been given in a particular case at all depends on a consideration of the provisions of the particular Act with

which the Courts has to deal including its preamble. Further, it appears to us that the nature of the body to which delegation is made is also, a factor to be taken into consideration in determining whether there is sufficient guidance in the matter of delegation".

11. In the same strain, dealing with the charge of excessive delegation under the U. P. Sales Tax Act, 1948, the Supreme Court in *Hira Lal Ratan Lal v. Sales Tax Officer, Section III, Kanpur* AIT 1973 SC 1034 while reiterating that the legislature cannot delegate its legislative functions to any other body, held that subject to this qualifications, it was permissible for the legislature to delegate the power to select the persons on whom the tax is to be levied or the goods or the transactions on which the tax is to be levied. Reference was also made to the earlier case of *Pandit Banarsi Das Bhanot Vs. The State of Madhya Pradesh and Others*, , where it was held that it is not unconstitutional for the legislature to leave it to the executive to determine the details relating to the working of tax laws, such as selection of persons on whom the tax is to be levied, the rates at which it is to be charged in respect of different classes of goods and the like.

12. Counsel also cited *Devi Das Gopal Krishnan and Others Vs. State of Punjab and Others*, where it was observed that the Court had in more than one decision, approved the conferment of a reasonable area of discretion by a fiscal statute and consequently upheld the provisions of the Punjab General Sales Tax Act which left it to the government to fix the rates of sales tax on various commodities between 1 pice and and 2 pice in a rupee.

13. Even nearer in point to the present case is the precedent provided by *Ram Bachan Lal Vs. The State of Bihar*, . This concerned the levy of Profession Tax under the Bihar and Orissa Municipal Act, 1922. It was said that the rate of tax to be levied had been left to the discretion of the Commissioners under S. 82(1) (ff) of the Act and of the Government under proviso (iv) to S. 82(1) without giving any guidance as to the amount of tax. This contention was repelled with the observation that Sch. IV of the Act specifies the maximum amount of tax that could be levied while S. 150-D laid down the purpose for which it could be utilized and this provided sufficient guidance to the Commissioner and the government to fix the rate of tax. Reference in this behalf was also made to the following observations of Sarkar, J, in *Corporation of Calcutta and Another Vs. Liberty Cinema*, :--

"It seems to us that there are various decisions of this Court which support the proposition that for a statutory provision for raising revenue for the purposes of the delegate, as the section now under consideration is, the needs of the taxing body for carrying out its functions under the statute for which alone the taxing power was conferred on it, may afford sufficient guidance to make the power to fix the rate of tax valid ".

14. Coming back to S. 62-A of the Act, a reading thereof would show that the only taxes that the State Government has been empowered thereby to impose

are those mentioned in S. 61 of the Act. This S. 61 specifies not only the taxes which may be imposed but also the rate at which these taxes can be levied. This, thus, must clearly be taken to provide the necessary guidance to the State Government both with regard to the taxes which can be levied as also the rates thereof. S. 62-A of the Act cannot, therefore, be considered as conferring unguided and unfettered power upon the State Government rendering it unconstitutional on the ground of excessive delegation.

15. Further, before the State Government can exercise its power of imposing a tax under sub-section (3) of S. 62-A of the Act, it must by special or general order notified in the Official Gazette require the Municipal Committee to impose such tax which has not already been imposed at such rate and it is only in the case of the failure of the Municipal Committee to impose such tax that the State Government is empowered to take action under sub-section (3) of S. 62-A of the Act. The legislature in its wisdom has of course left it to the judgment of the State Government, whether or not and when to use this power for imposition of any such tax. A discretion which was perfectly legitimate for the Legislature to leave to the State Government.

16. The point next canvassed was that a tax under S. 62-A of the Act could be imposed by a State Government only in the case of financial stringency. This argument was found upon the Statement of Objects and Reasons for the enactment of the Punjab Municipal (Amendment) Act, 1953, by virtue of which S. 62-A of the Act came to be enacted. There, it was stated that the object of this Act was "to empower Government to require a Municipal Committee to impose any tax, not already imposed, or to modify the rate of any tax already imposed; and to levy the tax and modify the rate themselves, in case of default of a Municipal Committee with a view to improving and stabilizing the financial condition of local bodies, besides enabling them to play an adequate role in the First Five-Year Plan". Great stress was in this behalf laid upon the averment made in the petition that the Municipal Committee was in a sound financial position and it was argued, therefore, that there was thus no need for raising any additional funds by the imposition of this house tax. To agree to this contention would be to read a limitation in the power of the State Government to impose a tax under S. 62-A of the Act which the Legislature has not prescribed. This would clearly be unwarranted. The house tax imposed cannot, therefore, be questioned on this ground.

17. Finally, it was contended that the provisions of S. 62-A of the Act did not empower the State Government to impose any tax with retrospective effect and consequently the house tax so far as it pertained to the period prior to 1974-75 could not be sustained. The reason put forth being that the imposition of such tax could be made effective only when the work relating to preparation and settlement of assessment lists had been completed and as this had been done only with effect from 1974-75, no tax for the earlier period could be recovered. There is no merit in this contention either. The notification of Mar. 10, 1965,

clearly made the house tax imposed thereby prospective, inasmuch as, the tax was leviable only from July 1, 1965. The preparation and settlement of the assessment lists has nowhere been laid down as a pre-condition for fixing the date for the imposition of such tax. The house tax imposed cannot, therefore, be held to be invalid on this ground.

18. The challenge to the vires of S. 62-A of the Act cannot thus be sustained and this writ petition is accordingly hereby dismissed. There will, however, be no order as to costs.

D. S. Tewatia, J.

I agree.

19. Petition dismissed.