(1994) 04 MP CK 0002

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 2002 of 1993

Sindhi Sahiti Multi Purpose and Transport Co-operative Society Ltd. and Another	APPELLANT
Vs	
State of Madhya Pradesh and Another	RESPONDENT

Date of Decision : 15-04-1994

Acts Referred:

Constitution of India, 1950 — Article 265
Madhya Pradesh Municipal Corporation Act, 1956 — Section 427, 430, 87

Citation : (1995) ILR (MP) 149 : (1995) JLJ 387 : (1994) 2 MPJR 306 : (1995) 40 MPLJ 176 : (1995) MPLJ 176

Hon'ble Judges : U.L. Bhat, C.J;P.P. Naolekar, J;M.V. Tamaskar, J

Bench : Full Bench

Advocate : S.K. Rawat, for the Appellant; Anoop Choudhary, for the Respondent

Judgement

M.V. Tamaskar, J.

This petition stands referred to the Full Bench, by Hon. the Chief Justice, to consider, whether the decisions given in case of Indore Bhed-Bakra Vikreta Sangh and Ors. v. Municipal Corporation, Indore and others 1992 MPLJ 781 and Indore Nagar Nigam Karmachari Congress, Indore v. State of M. P. and others 1993 MPLJ 847 lay down correct law, in interpreting the provisions of Sections 86, 87, 88 and other connected provisions under the M. P. Municipal Corporation Act, 1956. It was also noted that in regard to similar provisions under Sections 105, 127 and 160 under the M. P. Municipalities Act, a contrary view has been taken to in M. P. No. 1316/93 and M. P. No. 890/92.

Since important questions of law are involved, notice was given to the Bar Association that all counsel who desire to address the Court on the questions arising in the case will be heard. We heard Shri Sudhir Rawat, learned counsel for the petitioners, Shri Anoop Choudhary, Additional Advocate General, counsel for respondent No. 2/Municipal Corporation of Bhopal and also for the State of M. P./ respondcnt No. 1, Shri Nirmal Chand Jain, Advocate, made useful contribution.

Shri Njrmal Chand Jain, supported Shri Sudhir Rawat, in his submissions that the decisions reported in Indore Bhed-Bakra Vikreta Sangh and Ors. v. Municipal Corporation, Indore and others (supra) and Indore Nagar Nigam Karmachari Congress, Indore v. Stale of M. P. and others (supra) lay down correct law and deserve to be affirmed by the Full Bench.

For understanding the real controversy, we refer to following salient facts :

The petitioner No. 1 is a Co-operative Society registered under M. P. Co-operative Societies Act, 1960 and petitioner No. 2 is a travel agency, booking passenger buses for hire or reward to carry passengers to various destinations from Bhopal. The petitioner No. 1 operates buses on regular permits granted to it under the Motor Vehicles Act, 1988. The respondent No. 2/Municipal Corporation, Bhopal has framed Byelaws, known as Bhopal Municipal Corporation Terminal Tax, Assessment and Collection Byelaws, 1970. The said byelaws were amended vide notification published in M. P. Gazette, Part II, dated 27th January 1988, Page 82, which is reproduced below :

"Bhopal, the 27th January, 1988

No. 39-5063-XVIII-III-88. In exercise of the powers conferred by sub-section (1) of Section 430 of the Madhya Pradesh Municipal Corporation Act, 1956 (No. 23 of 1956), the State Government under sub-sections (2) and (3) of Section 427 of the said Act, hereby confirms the following amendments in the Bhopal Municipal Corporation Terminal Tax, (Assessment and Collection) Byelaws, 1970, the same having been previously published as required by clause (a) of Section 429 of the said Act and are now published as required by Section 434 of the said Act :

AMENDMENTS

1. The byelaw No. 2(c) and (f) may be substituted with the following :-

(e) "Nakedar or Collection Clerk" means the official or any other, who is authorised by the Corporation for Collection of Terminal Tax, on the places established for the Collection of Terminal Tax;

(f) "Naka" means a place established by the Corporation for Collection of Terminal Tax.

In byelaw No. 4 the words "Octroi Nake" may be substituted with the word "Nake".

In byelaw No. 6 the word "Octroi" before the word "Naka" may be omitted.

In byelaw No. 11 after the word "employee" "or any other person" may be added.

After byelaw No. 12 the following byelaw may also be added :-

(12-A) For the recovery of Terminal Tax, the Municipal Corporation, Bhopal may auction the Nakas by open bid and authorise the contractor and his employees under byelaw No. 2(e) and byelaw No. 11 for the recovery of Terminal Tax. The

Commissioner, Municipal Corporation, Bhopal shall have the power to prescribe the terms and conditions of the auction of Nakas.

By order and in the name of the Governor of Madhya Pradesh,

R.K. KASHYAP, Spl. Secy."

By the above amendment introduced in Byelaw 12 as 12(a), the Municipal Corporation adopted the procedure of auctioning the Nakas to collect terminal tax by open bid and authorising the contractor and employees under Byelaw No. 2(e) and Byelaw No. 11 for the Collection of Terminal Tax. The rate of tax is prescribed on the basis of distance covered at the rate of 0-50 paisa per passenger and rupee 1 by a service running under a permit granted to it, entering the limits of municipal council.

The payment of tax is to be made at the Naka on a bill issued by the Nakedar or Collection Clerk or any person authorised. At the barrier the staff of the buses operating on the route, stop their buses and pay the terminal tax for which receipt is given. The Naka is defined to mean "the place established by the Corporation for Collection of Terminal Tax".

The imposition of the terminal tax on passengers under the Byelaw has not been challenged in this petition, but the right of municipal corporation to part with the right to collect tax by auction in favour of the contractor and his agents is challenged :

1. It is submitted that the right to collect tax is a sovereign function and cannot be delegated, much less auctioned.

It is further submitted that the byelaws framed by the Corporation are ultra vires provisions of Article 265 of the Constitution, inasmuch as, levy and collection have to be under the authority of Law.

It is argued that the scheme of Act does not authorise direct payment to anyone of any tax collected without the same being deposited in the treasury u/s 87 of the M. P. Municipal Corporation Act, and as such by auctioning the right, tax collected which ought to come to Government treasury as a municipal fund is being diverted, i.e. the amount is utilised without following the mode, prescribed by the Act.

It is also said that the byelaws are in excess of the authority conferred on the Corporation by law and are against the specific legislative intendment. The contractor or his staff cannot be dealt with for violation of byelaws, as they are not bound by obligations and restrictions under the Act, like the Municipal Servants.

In addition to above submissions made by Shri Sudhir Rawat, Shri Nirmal Chand Jain submitted that by auctioning the right to collect tax, what is conferred is not a legitimate legal right conferred, but a right in the nature of business in favour of contractors who make large profits, depriving the Corporation of its legitimate dues.

One more aspect which requires consideration is the statements made in the return, i.e. :

1. That the amount of terminal tax realised for the year 1990-91 from 8 Nakas before the byelaws were amended was Rs. 52,26,207/-.

There are eight Nakas established, whereas auction money in respect of five Nakas for the period 1991-92 was Rs.

There can be no dispute that the amount received through auction is much more than the tax collected for the earlier period. But the question is, is it permissible under the Law ?

Before referring to the two decisions which led to this reference, it will be appropriate to refer to the provisions in Part-III-Finance Chapter VII-Municipal Fund under the Municipal Corporation Act, 1956 :

"86. Municipal fund to be sole and to be held in trust - There shall be one Municipal Fund and it shall be held by the Corporation in trust for the purposes of this Act, subject to the provisions therein contained.

Credit of moneys to Municipal Fund. (1) There shall be credited to the Municipal fund -

(a) all moneys received by or on behalf of the Corporation under the provisions of this Act or of any other law for the time being in force or under any contract;

(b) balance standing to the credit of the Municipality of the city for which the Corporation is constituted;

(c) all proceeds of the disposal of property by, or on behalf of the Corporation;

(d) all rents accruing from any property of the Corporation;

(e) all moneys raised by any tax levied for the purposes of this Act;

(f) all fees payable and levied under this Act, or any rules or byelaws made thereunder;

(g) all fines imposed by a Court under this Act or any rules or byelaws made thereunder or under any other Act, the administration of which is entrusted to the Municipal Corporation;

(h) all moneys received by way of compensation or for compounding offences under the provisions of this Act;

(i) all moneys received by, or on behalf of the Corporation from the Government, public bodies, private bodies or private individuals by way of grant or gift or deposits; and

(j) all interests and profits arising from any investment or from any transaction in connection with any money belonging to the Corporation; and

(k) all loans raised by the Corporation.

(2) Nothing in this section or in the last foregoing section shall in any way affect any obligations accepted by or imposed upon the Municipality concerned, by any declaration of Trust executed by or on behalf of the Municipality or by any scheme settled under the Charitable Endowments Act, 1980, for the administration of the Trust.

Application from Municipal fund- All the moneys from time to time credited to the Municipal fund shall be applied in the following order of preference -

Firstly, in making due provisions for repayment of all loans payable by the Corporation under the provisions of Chapter IX.

Secondly, in discharge of all liabilities imposed on the Corporation by Section 3.

Thirdly, in payment of all sums, charges and cost necessary for the purposes specified in Sections 66 and 67 and for otherwise carrying this Act into effect, or of which the payment shall be duly or directly sanctioned under any of the provisions of this Act inclusive of-

(a) The expenses of every election of Councillor held under this Act;

(b) the salaries, allowances and contributions to pensions and leave salaries of the Commissioner and of any other officer ''whose services may at the request of the Corporation be placed by the Government at the disposal of the Corporation;

(c) the salaries, allowances of Municipal Officers and Servants and all pensions, gratuities, contributions and compassionate allowances payable under the provisions of this Act;

(d) the salaries and fees of experts for service or advice in connection with any matter arising out of the administration or undertaking of the Corporation;

(e) all expenses and costs incurred by the Corporation or by any Municipal Officer on behalf of the Corporation in the exercise of any power conferred or the discharge of any duty imposed on it or them by this Act, including moneys which the Corporation is required or empowered to pay by way of compensation;

(f) every sum payable-

(i) by order of the Government or under an award made under the Arbitration Act, 1940;

(ii) under a decree or order of a civil or criminal court passed against the Commissioner;

(iii) under the compromise of any suit or other legal proceeding or claim;

(g) contributions to public institutions functioning in the interest of the inhabitants of the City;

(h) the cost of auditing the municipal accounts."

"PART IV-CHAPTER XI-TAXATION

Taxes to be imposed under this Act.- (1) For the purpose of this Act, the Corporation shall impose;

xxx xxx xxx (2) In addition to the taxes mentioned in sub-section (1) the Corporations, for the purposes of this Act, may impose any of the following taxes namely :-

(k) a terminal tax on passengers carried by road or inland waterways;

Recovery of taxes - A municipal tax may be recovered by one or more of the following processes or in accordance with the byelaws made for the purpose :-

(1) by presenting a bill;

(2) by serving a written notice of demand;

(3) by distraint and sale of movable property for the person concerned;

(4) by attachment and sale of his immovable property; o

(5) in the case of octroi and toll, by attachment and sale of goods and vehicles;

(6) in the case of property tax, by the attachment of rent due in respect of the property;

(h) by a suit".

We do not intend to deal with other provisions regarding recovery by coercive process and distress, as the present controversy centres round the above sections only.

The case requires consideration of the basic principles of taxation in relation to imposition, levy and collection. What is meant by word Imposition? Is there any distinction between imposition and levy ? We may refer to Ramprasad v. War Profits Tax Officer, Gwalior AIR 1953 M.B. 20, wherein His Lordship Justice P.V. Dixit as he then was, slated thus :

"There is a distinction between "imposition" and "the levy i.e. assessment and collection" of a tax. The imposition of a tax is by an Act of the competent Legislature and is purely a legislative Act. The levy and the collection of a tax is a process subsequent to the imposition of the tax by the statute. A tax cannot be levied or collected before it is actually imposed by an Act of the competent Legislature. This is clear from Article 265".

In the instant case there is imposition of terminal tax by framing byelaws validly by following the prescribed procedure. No infirmity has been pointed out in creating the charge i.e. imposition, under the rule of byelaws. The relevant provision authorising such imposition has been referred to earlier.

We will examine the terms "Levy" and "Collection" as interpreted and understood by courts. It will be useful to refer to R. Constructions v. Dy. Commercial Tax Officer AIR 1959 Mad 382 :

"(a) Constitution of India, Article 265 - Levy and Collection - Scope.

The word "levy" is frequently used to include both of the first two stages involved in the process of taxation, viz., the levy properly so called and the determination of the amount of the tax. The words "levy" and "collection" are used in Article 265 of the Constitution in a comprehensive manner and they are intended to include and envelop the entire process of taxation commencing from the taxing statute to the taking away of the money from the pocket of the citizen. And, what Article 265 enjoins is that every stage in this entire process must be authorised by the law".

That is to say, every stage should be authorised by Law. There is more caution to be exercised in interpreting the word "Levy". In Assistant Collector of Central Excise, Calcutta Division Vs. National Tobacco Co. of India Ltd., the Supreme Court stated as under :

"20. The term "levy" appears to us to be wider in its import than the term "assessment". It may include both "imposition" of a tax as well as assessment. The term "imposition" is generally used for the levy of a tax or duty by legislative provisions indicating the subject matter of the tax and the rates at which it has to be taxed. The term "assessment", on the other hand, is generally used in this country for the actual procedure adopted in fixing the liability to pay a tax on account of particular goods or property or whatever may be the object of the tax in a particular case and determining its amount. The Division Bench appeared to equate "levy" with an "assessment" as well as with the collection of a tax when it held that "when the payment of tax is enforced, there is a levy". We think that, although the connotation of the term "levy" seems wider than that of "assessment", which it includes, yet, it does not seem to us to extend to "collection". Article 265 of the Constitution makes a distinction between "levy" and "collection". We also find that in N.B. Sanjana, Assistant Collector of Central Excise, Bombay and Others Vs. The Elphinstone Spinning and Weaving Mills Company Ltd., at P. 2045, this Court made a distinction between "levy" and "collection" as used in the Act and the Rules before us. It said there with reference to Rule 10 :

"We are not inclined to accept the contention of Dr. Syed Mohammed that the expression "levy" in Rule 10 means actual collection of some amount. The charging provision of Section 3(1) specifically says : ''There shall be levied and collected in such a manner as may be prescribed the duty of excise.....'' It is to be noted that sub-section (i) uses both the expressions "levied and collected" and that clearly shows that the expression "levy" has not been used in the Act or the Rules as meaning actual collection"."

In Ashok Singh Vs. Assistant Controller of Estate Duty, Calcutta and others, the Supreme Court found the meaning of the word "levy" as under :

"The word ''levy'' in Black''s Law Dictionary (fifth edition) at page 816 is stated thus :

"Levy, v. To assess; raise; execute; exact, tax, collect; gather; take up; seize. Thus, to levy (assess, exact, raise, or collect) a tax; to levy (raise or set up) a nuisance; to levy (acknowledge) a fine; to levy (inaugurate) war; to levy an execution, i.e. to levy or collect a sum of money on an execution."

As a matter of fact, in Padampat Singhania the meaning of this word under this very Act came to be laid down which is extracted as under :

"The word ''levy'' has been interpreted by the Supreme Court in the case at Assistant Collector of Central Excise v. National Tobacco Co. of India Ltd., (supra),- as embracing within it the process of assessment and also the imposition of tax"."

We have examined the question on a somewhat larger aspect as we want to set at rest the doubt in relation to the powers in relation to taxation. We may usefully refer to statement of Law from Corpus Juris Secundum Vol. 84 (Taxation) page 679 dealing with "Levy and Assessment" :

"Definition, Nature, and Necessity of Levy"

"The word "levy" as applied to taxation has been given a variety of meanings; it is sometimes used, in an administrative sense, as referring to the mere ministerial or executive acts of ascertaining and entering the taxes on the tax book and collecting them, but in its proper sense, as applied to the determination of the amount or rate to be charged, it is the formal and official action of a legislative body invested with the power of taxation, whether national, state, or local, whereby it determines and declares that a tax of certain amount, or of a certain percentage on value, shall be imposed on persons and property subject thereto. It is a unilateral act of a superior power, and does not depend for its effect on the concurrence of the person taxed, and hence it does not create a fixed and tract or a debt, although it creates a fixed and certain demand in favour of the state or a subordinate governmental agency and a definite and positive obligation on the part of person taxed.

Necessity. A levy by the proper legislative authorities is the first step in taxation, and no taxes can be assessed or collected unless and until a legal levy is ordered by such authorities, and therefore until such levy has been ordered no taxes accrue, but taxes become due and payable from the moment of the levy and assessment".

"Page 697 : Allowance for loss, cost of collection, and contingencies. For the purpose of insuring that the amount actually needed for the purpose to which it is to be applied will be raised and in the treasury, the levying authorities, in fixing the rate of taxation, may allow a reasonable rate for loss and cost of collection, that is, for uncollected taxes, and commissions of the taxing collector, for delinquencies, or to meet unforeseen contingencies. No hard and fast rule for determining the percentage to be allowed can be laid down, but in making such allowance, sound business judgment should be exercised in estimating the amount necessary to be raised for such loss and costs of collection, and this amount must be small in proportion to the entire tax, and cannot be added to so as to extend the rate beyond the limit fixed by statute, or in excess of that necessary to produce the several amounts authorised to be raised and expended; and where it is clearly shown that the board has abused its discretion and levied a greater rate than necessary for such loss and cost, the rate will be held invalid to the extent shown to be unnecessary. The loss-and-cost item is to be included in the minimum rate and is subject to reduction".

"Page 1233 : To whom payment made- A payment of taxes, in order to be effective, must be made to the officer primarily authorised to receive them or someone legally delegated to act for him.

A payment of taxes, in order to be effective in relieving a person and his property from liability, must be made to the officer primarily authorised to receive them,, or to someone legally delegated to act in his behalf in receiving and receipting for the taxes. Where payment is made to a tax assessor, and his unofficial receipt is given therefore, the payment is valid even though the assessor embezzles the money.

640 - Collection Generally :

The power to collect taxes on persons and property is an attribute of sovereignty, and is essential to the maintenance and operation of Government. Tax collection is a governmental function which vitally affects the public interest.

Page 1315 : Within the constitutional limitations, the legislature may determine the method which will be employed to enforce the collection of taxes, and any valid means deemed appropriate may be selected, since in prescribing the means by which taxes shall be collected the power of the legislature is exclusive and discretionary.

A State may collect a tax only if legal authority for the collection is to be found either in the constitution or statutes of the State. Accordingly, taxes are collectable only in the mode provided by statute, since the entire matter of tax collection is statutory and does not exist apart from statute. As a general rule the laws regulating the collection of taxes are sui generis, and constitute a system to which the general provisions of the law have little if any application and a special statutory method of tax collection must be pursued to the exclusion of other methods based on general legal rules, since laws which specify one method for the collection of taxes, by implication at least, forbid resort to other methods, and it has been held that a tax cannot be enforced by common-law proceedings unless a statute so provides.

Page 1317 : It is the policy of the law to favour the collection of all taxes, and whenever it is possible on any theory to do so, the courts will construe the statutes to accomplish that result, and any statute which limits the rights of the State to collect taxes must be strictly construed, in favour of the State. Thus, many of the provisions relating to the collection of delinquent taxes are merely directory, and need not be adhered to meticulously, and a tax will not be rendered illegal by mere irregularities, informalities, omissions, and defective acts of officers in the collection of the tax where they do not affect the substantial justice of the tax itself".

We may refer Assistant Collector of Central Excise, Calcutta v. National Tobacco Co. of India Ltd. AIR 1972 SC 2263, which explains certain principles of interpretation :

"D. Interpretation of Statutes - Doctrine of implied powers.

It is well established rule of construction that a power to do something essential for the proper and effectual performance of the work which the statute has in contemplation may be implied.

E. Interpretation of Statutes - Law laying down mode of duly in any other mode.

The rule of construction that, where a mode of performing a duty is laid down by law it must be performed in that mode or not at all, is subservient to the basic principle that Courts must endeavour to ascertain the legislative intent and purpose, and then adopt a rule of construction which effectuates rather than one that may defeat these. Moreover, the rule of prohibition by necessary implication could be applied only where specified procedure is laid down for the performance of a duty".

Having analysed the law on the subject, we may refer to decisions under consideration i.e. Indore Bhed-Bakra Vikreta Sangh v. Municipal Corporation, Indore 1992 MPLJ 781 and Ibadatali Abbas Ali v. Municipal Corporation, Khargone 1993 MPLJ 640.

The decision in Indore Nagar Nigam Karmacharis'' Congress case (supra) turned on the view that the entire money received as municipal fund by way of tax, has to be credited in treasury. Thus, auctioning the right to collect tax was against the specific legislative prohibition. Yet another reason given by the Court is that the authority can act only in the mode prescribed. The passage quote from Prof. H. W.R. Wade, Administrative Law 5th Edi., Pages 319 and 329 is in line with the extracts reproduced from Corpus Juris Secundum, (supra). Similar is the case is Bhed-Bakra Vikreta Sangh (supra).

The principles of taxation extracted from authorities and case law do go to establish that :

(i) Right to recover tax is sovereign and governmental function and cannot be delegated unless authorised by legislature. Question therefore to be considered is whether the amendment of byelaw permitting auction can be legally held valid.

(ii) The Tax Collectors have statutory duty and also liability for their acts and omissions.

Another aspect which can be considered is whether the act performed is to facilitate the mode of collection, which is distinct from levy of tax. The principles of taxation permit adding of cost or expenditure or establishment charges of machinery for recovery. A fair and reasonable interpretation of Sections 86, 87 and 88 of the Act is necessary with particular attention to Section 88, thirdly, (e) which reads as under :

"88. Application from Municipal fund - All the moneys from time to lime credited to the Municipal fund shall be applied in the following order of preference -

Thirdly, in payment of all sums, charges and cost necessary for the purposes specified in Sections 66 and 67 and for otherwise carrying in this Act into effect, or of which the payment shall be duly or directly, sanctioned under any of the provisions of this Act inclusive of -

(e) all expenses and costs incurred by the Corporation or by any Municipal Officer on behalf of the Corporation in the exercise of any power conferred or the discharge of any duty imposed on it or them by this Act, including moneys which the Corporation is required or empowered to pay by way of compensation".

If the auction can be said to cover the cost of recovery or collection of tax, which ex facie has been paid by way of bid money, can it not be held to be valid? It was submitted by the learned counsel for the respondent No. 2/Municipal Corporation that the amount realised through auction was much more than the actual recovery of tax in the year 1990-91 and could improve in subsequent years.

In the instant case, the Municipal Corporation has framed byelaws which were framed by exercising its powers conferred u/s 430 read with Section 424 of the Municipal Corporation Act. The law authorises framing of byelaws. It is not an act which can be said to be unauthorised. Byelaws have also not been challenged; even assuming that the byelaws could be challenged, there can be no doubt that it is for the Municipal Corporation to decide in which particular method or mode the tax should be collected. No doubt Section 87 requires that all the moneys should be credited to the municipal fund i.e. in the instant case the terminal tax. There can be two methods of collecting the tax, one in advance and another by assessment and quantification where the amount of tax to be recovered is known i.e. the rate is prescribed and the amount is not in dispute, the same can be recovered by way of auction and payment can either be prompt or deferred. Under the scheme of taxation Law, the tax due can be deposited or the collection can be deferred till quantification. In the instant case, when the auction is held the bid amount is deposited that can well be said as an amount credited to the municipal fund under Sections 87 and 88 of the Act. In each case, there has to be a tax collecting machinery which could either be the servant of the municipal corporation, as well as the persons authorised by the same. A perusal of the byelaws shows that the collection clerk means an official or any other person authorised by the Municipal Corporation for collection of terminal tax.

"Byelaw No. 2(e) - "Nakedar or Collection Clerk" means the official or any other, who is authorised by the corporation for collection of terminal tax, on the places established for the collection of terminal tax".

Thus, there is no lack of authority to collect the tax.

A perusal of "Paras 697 and 1317" of the Corpus Juris Secundum, reproduced earlier, speaks about allowances for loss, cost of collection and contingencies. It is stated that a sound business judgment should be exercised in estimating the cost of collection. Further perusal of Para 1317 indicates that the provisions for collection of taxes arc merely directory and need not be meticulously adhered to, that means, any reasonable mode of collection can be adopted. That tax cannot be imposed if there is no right to do so. But the right to collect accrues after it has been levied. We may refer to Municipal Corporation of Delhi Vs. Children Book Trust, which reads as under :

"45. Every municipality is a local self-government. Therefore, in order that it may sustain itself a power of taxation has been delegated to municipal bodies. The taxes are local taxes for local needs. Such taxes must obviously differ from one municipality to another. It is impossible for the Legislature to pass statute for the imposition of such taxes in local areas. In a democratic set up the taxes for their own administration, it would be but proper to leave to these municipalities the power to impose and collect taxes.

The local authorities do not act as Legislature when they impose a tax but they do so as the agent of State Legislature. The powers and the extent of these powers must be found in the statute which creates them with such powers.

Local bodies being subordinate branches of governmental activities are democratic institutions managed by the representatives of the people. They function for public purpose. They bear the burden of Government affairs in local areas as they are required to carry on local self-Government. The power of taxation is a necessary adjunct to their other powers".

Further question is whether the mode of collection by auction is not permissible ? Part X- Chapter XXXVII of the Municipal Corporation Act, 1956 deals with framing of Byelaws :

"Section 427. Byelaws - The Corporation may, and if so required by the Government shall, make byelaws consistent with the provisions of this Act, and the rules made thereunder for carrying out the provisions and intentions of this Act, and in particular and without prejudice to the generality of the foregoing power, it may make byelaws to regulate all or any of the following matters, namely :-

xxxx xxxx xxxx (3) Assessment, collection, remission, refund and recovery of taxes, cesses etc.-

(c) the date, place and manner of paying tax or instalment of tax payable under this Act and the person to whom it shall be paid".

Section 430 invests State Government with power to sanction which reads as under:

"430. Byelaws to be subject to sanction of Government- (1) No byelaw made by the Corporation under this Act shall have any validity until it is confirmed by the Government.

(2) Before sanctioning any such byelaw the Government may modify it.

(3) The Government may cancel its confirmation of any such byelaw and thereupon the byelaws shall cease to have effect".

Thus, when the byelaws are framed, a proper check and control is exercised by State Government. Unless the byelaws can be challenged on any valid reasons, the right to collect the tax by holding auction cannot be assailed. The scheme of the Act (Section 88 Thirdly) contemplates appropriation of tax for carrying out the purposes of the Act as also for expenses and costs in discharge of duly. The collection of a tax is one of the functions. The provisions arc to be construed to accomplish the results. Reading Sections 87 to 88 harmoniously makes the scheme of sections workable. When Section 87 speaks that all sums should be credited to municipal fund, the collection of amount of bid money, worked out on the actual collection of tax in earlier years, should be deemed to have been realised and credited. There may be occasions when the regular employees of the Corporation may not be able to realise the whole tax dues. Inefficiency or corruption may adversely affect tax collection, but by method of auction at least the amount of tax expected to be collected is realised in advance. Where there is no ambiguity about the rate of tax and person from whom to be recovered, any method of collection can be adopted. Mode of collection by auction is not prohibited on the other hand, the provisions of the M. P. Municipalities Act impliedly and Rules expressly permit the same. The Scheme for collection of tax by auction is not unknown. The collection of Toll Tax by auction is not uncommon. The provisions of M. P. Municipalities Act, 1961 are reproduced below :

"Section 105. Credit of moneys to Municipal Fund - (1) There shall be credited to the Municipal Fund -

(a) all moneys received by or on behalf of the Council under the provisions of this Act or of any other law for the time being in force or under any contract;

(b) the balance, if any, standing at the commencement of this Act at the credit of the Municipal Fund;

(c) all proceeds of the disposal of property by, or on behalf of the Council;

(d) all rents accruing from any property of the Council;

(e) all moneys raised by the tax levied for the purposes of this Act;

(f) all fees payable and levied under this Act;

(g) all moneys received by way of compensation or for compounding offences under the provisions of this Act;

(h) all moneys received by, or on behalf of, the Council from the State Government or private individuals by way of grant or gift or deposits; and

(i) all interest and profits arising from any investment of, or from any transaction in connection with, any money belonging to the Council.

(2) Nothing in this section or in this Act shall affect any obligation of a Council arising from a trust legally imposed upon or accepted by the Council.

(3) A Council may, for the purpose of efficient discharge of any of the duties imposed upon it under clauses (d), (j) and (1) of Section 123, by a resolution passed in that behalf, earmark for each purpose a specified portion of its income every year for a specified number of years for being credited to a Fund called the Police Utility Scheme Fund. The amount so credited shall be expended for the purposes for which it has been earmarked.

Section 160. Lease of levy of tolls, market dues and fees - (1) The council, may by public auction or private contract, lease the levy of tolls, market dues and fees which may be imposed under this Act :

Provided that the lease shall give security for the due fulfilment of the conditions of the lease.

(2) When lease has been given under sub-section (1) the lessee and any person employed by him to collect any tolls, market dues and fees shall, subject to the conditions of the lease, have the power referred to in sub-sections (8) and (5) of Section 157.

Rule 12 : M. P. Municipal Terminal Tax on Passengers (Regulation of Assessment and Collection) Rules, 1988 - The Council may with the previous sanction of the State Government, by public auction of private contract, lease the assessment and collection of the said tax :

Provided that the State Government shall have power to determine the conditions of lease".

The scheme of Municipal Taxation and Mode of Collection of tax do not appear to be contrary but uniform. It may be that it may not be possible to recover tax. Say for example, when there is procedure for compounding tax, a competent authority may even compound it on lower side. An example of this is to be found in Sri Srinivasa Theatre and Others Vs. Government of Tamil Nadu and Others, which reads thus :

"Even under the composition system, the formula evolved is supposed to represent the amount really collected by way of entertainment tax. It may be that in a given case or probably in many cases the exhibitors may be saving a part of the amount collected by way of entertainment tax by paying only the compounded amount. But it may not necessarily be so. There may be theatres where the formula may work to their prejudice because of their low occupancy rate. In any event, the mere fact that an exhibitor is able to save a part of the tax by paying the compounded amount cannot be treated as a benefit in law which he is deprived of by following the admission system".

Similarly the mode of auction to collect tax actually is intended to collect tax likely to be received. May be that in a given case the contractor may be saving a part of collection for himself. But, then, he has to be remunerated for his exertion. For that reason alone, mode to collect tax by auction cannot be held to be ultra vires of the provisions of the Act.

The Division Bench in Indore Bhed-Bakra Vikrela Sangh''s case and Indore Nagar Nigam Karmchari Congress''s case (supra) while discussing the scheme of the Act under the Municipal Corporation observed in para 11 of the judgment thus :

"There is one more important factor involved in the matter. Recovery of tax is a sovereign function. Can such a function be transferred to private individuals or private bodies ? If on the ground that the normal machinery created by the statute permits diversion and syphoning of amounts realisable towards taxes transfer or delegation of sovereign functions like recovery of tax is permitted, it will play a havoc with the entire administration. Right to collect income tax, wealth tax, excise duties and custom duties can then be auctioned. The Government may realise the maximum amount towards these taxes but at what cost ? The contractors who take up the job would obviously not be armed with the statutory powers and duties with which the Government officers and servants charged with the duty to recover taxes are armed. The recovery of taxes would then be effected through extra-constitutional and extra-legal methods".

The reasoning given by the Division Bench assumes that there can be no bye-law framed or law made for collection of tax except through the employees of the Municipal Corporation or local bodies. True that irregularities and informalities, omissions and defective acts of officers in the collection of the tax play a very important role; if the officers of the department commit the breaches, the local body does not realise the entire tax dues. By auctioning, maximum amount of tax may be realised but it is an extra legal method according to the Division Bench..

We do not consider that auctioning the right to recover tax really can be said to be illegal. We are also of the view that the contractor who is appointed under the Municipal Corporation is not immune from the provisions of the statute. It is also not correct to say that the contractors will have to keep a private army to effect recoveries or arraying tax-payers. The right to collect tax has been exercised in the field where the quantification of the tax is prima facie made, based on broad data and the recovery of expected tax is also worked out. Thus, there is no loss to the exchequers nor it can be said that the amount collected by way of tax has been appropriated or misappropriated or that more than what is due can be collected.

The argument that the amount is not credited to the municipal fund and this makes the whole scheme of the mode of collection illegal, void and contrary to law is based on a misconstruction of the provisions of the law. By reading down the provisions of Sections 87 and 88 and construing them harmoniously, the whole scheme of law is workable. It is always open to any subject to challenge an illegal action of the authority and in the instant case, of the contractor and such right has not been taken away.

Taxation and collection of tax are no doubt sovereign functions. The sovereign himself or itself cannot collect the tax. Tax has to be collected through appropriate agency. The agency can be a permanent cadre of employees. The agency can also be temporary agents on whom is conferred the authority to collect the lax, however, of course subject to the control of the sovereign or the local body. Under the bye-laws, what is intended is creation of such an agency. The agent cannot be expected to attend to the job without any remuneration. Where the employees collect the tax, they deposit the entire amount in the municipal fund and draw their pay. The same method could be followed under the scheme of auction. The successful bidder could be required to deposit the entire collection in the municipal fund and he may be separately paid for his exertion. Under the bye-laws, instead of depositing the entire amount and taking back the remuneration, the net amount is required to be deposited. Where the collection agency has to be remunerated, remuneration may be fixed on any reasonable basis including percentage or a lump sum. At the same time, the local body may secure guarantee of minimum collection. All these factors are taken into consideration in devising the mode of collection by auction. The local body is assured of minimum collection which is as a matter of fact the maximum possible amount realisable. The local body is secured from loss likely to cause by inefficiency of the collection agent. At the same time, the same agent is assured of remuneration. We are unable to agree that the scheme propounded by the bye-laws is contrary to any of the provisions of the Act. The fact that collection of tax is made through an agency which necessarily has to work under the authority of the local body cannot contravene the provisions of Article 265 of the Destitution. There is no specific provision in the Act requiring collection of tax to be made only through permanent employees of the local body. Arrangement for collection is left to be made by the local body subject to the broad scheme of the Act. The local body has made bye-laws providing for collection of tax by auction. We are unable to agree that this mode of collection is contrary to the Act and the intention of the legislature. We arc also unable to agree that the contractor and the staff are beyond the restrictions of law. There is no data in support of the contention that the arrangements secured by the contractor would fetch him undue profit. On the other hand, the data provided by the local body shows that the mode of auction is really beneficial to the local body. We, therefore, reject the contention of the petitioners and uphold the mode of collection challenged by the petitioners.

The decisions rendered in Ibadat Ali''s case 1993 MPLJ 640 as also in Indore Bhed-Bakra Vikreta Sangh''s case 1992 MPLJ 781 and Indore Nagar NIgam Karmachari Congress, Indore''s case 1993 MPLJ 847, do not lay down correct law.

