

(1996) 01 MP CK 0136
In the Madhya Pradesh High Court
Case No : Writ Petition No. 3161 of 1995 (J)

Smt. Meera Khandelwal

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 09-01-1996

Acts Referred:

Madhya Pradesh Municipalities Act, 1961 — Section 129

Citation : (1997) 1 MPJR 221

Hon'ble Judges : A.K. Mathur, Acting C.J.; S.C. Pandey, J

Bench : Division Bench

Advocate : N.S. Kale, for the Appellant; Anoop Choudhary, A.G., for the Respondent

Final Decision : Dismissed

Judgement

A.K. Mathur, Ag. C.J.

All these three writ petition Nos. 3161/95, and 3469/95, 2793/95 involve common question of law; therefore, they are disposed of by a common order. For convenient disposal of all these writ petitions, facts given in W.P. No. 3161 of 1995 are taken into consideration.

The petitioner has by this petition prayed that the provisions of Section 129 of M.P. Municipalities Act 1961, as amended by the provisions of the M.P. Nagar Palika Vidhi (Snashodhan) 1995 may be declared as ultra-vires. It is also prayed that imposition of export-tax by the respondent Municipality by resolution dated 20.7.1996 be declared invalid.

Petitioner Smt. Meera Khandelwal is the wife of Shri Vinod Khandelwal and Proprietor of Khandelwal Industries, Industrial Ward, Dhamtari, District Raipur. The petitioner challenges by this petition the Constitutional validity of Section 129 as amended by Act No., 12 of 1995. It is submitted that there is no procedural safeguard in the exercise of powers for imposition of tax. It is also contended that the power has been conferred by the said proviso without inviting

objections. It is further alleged that imposition of export tax violates Art. 301 of the Constitution of India and also violates the freedom of trade throughout the territories of India. The provision also suffers from the vice of excessive delegation as no maximum limit has been fixed for the imposition of export tax.

Before we deal with the arguments urged by the learned counsel for the petitioners, it would be relevant to quote here Section 129 of the Municipalities Act, 1961 which has been amended by the recent amendment Act No. 12/95, Sec. 129 as amended reads thus :

Section 129

(1) The Council may, by a resolution, at the time of final adoption of the budget estimates for the next financial year, subject to the provisions of this Act and subject to such limitations and conditions" as may be prescribed by the State Government in this behalf:-

(a) impose any of the taxes or fees specified in this Act; or

(b) increase the rates of taxes or fees already imposed.

(2) The resolution as referred to in sub-section (1) shall contain-

(a) in case of imposition of any tax or fee, the provisions under which such tax or fee is being imposed, class of persons or description of property to be taxed, the amount or rate of tax or fee being imposed, system Of assessment and collection to be adopted and the date from which imposition of such tax or fee shall take effect;

(b) In case of increase of rate of any tax or fee, the prevailing rate of such tax or fee, the proposed increased rate of such tax or fee and the date from which increase of rate or such tax or fee shall take effect.

(3) The resolution, as passed shall be conclusive evidence of the imposition of a new tax or fee, or increase of rate of any tax or fee, as the case may be:

Provided that if the Council decides to have supplementary taxation during the financial year, it may do so from such date as the council may resolve, subject to the provisions of this Act and subject to such limitations and conditions, as may be prescribed by the State Government in this behalf.

(4) Nothing contained in this section shall apply to tax mentioned in clause (i) of sub-section (1) of Sec. 127 which shall be charged and levied in accordance with Section 127-A.

By this amendment Act, various other provisions of the Municipalities Act were amended; but, at present, we are concerned with the Constitutional validity of Section 129 of the Act only. This amendment has been brought about in order to confer wide powers to the local bodies and remove some of the anomalies in the M.P. Municipal Corporation Act, 1956 and the M.P. Municipalities Act, 1961, as pointed out by the State Election Commission. Rest of the amendment have been

proposed as a measure of consequential nature. With this statement of object, the Act was amended. Section 127 of the M.P. Municipalities Act, 1961 (for short the Act of 1961) enables a Municipal Council to impose taxes on various subjects which have been mentioned in the various sub-sections of Section 127 of the Act of 1961. Section 127(1)(xvi), which empowers the Municipality to impose terminal tax, reads as under:

127 - Taxes which may be imposed-

(1).....

(xvi) a terminal tax on goods or animals imported into or exported from the limits of the Municipality.

Therefore, u/s 127(1)(xvi), Municipal Councils are competent to impose terminal tax on goods or animals imported into or exported from the limits of the Municipalities.

Section 129 of the Act of 1961 only lays down the procedure. It says that the Council may, by a resolution, at the time of final adoption of the budget estimates for the next financial year, subject to the provisions of this Act and subject to such limitations and conditions, as may be prescribed by the. State Government in this behalf, impose any of the taxes or fees specified in the Act, or increase the rates of taxes or fees already imposed. It further lays down that in case of such impost, class of persons or description of property to be taxed and also rate of tax or fee imposed, system of assessment and collection to be adopted and the date from which such tax shall take effect should be specified. Such rate or fee, increased or decreased shall come into effect from the date notified. A resolution shall be passed to this effect and that would be conclusive evidence of the imposition of tax or fee, as the case may be. It also makes a provision for supplementary taxation during the financial year. There is another significant change which has been made in Section 129 that now, no approval of the State Government is required in the matter. This Section 129 of the Act of 1961 (as amended by Act No. 12/95) has brought about a change in the original section 129 which contemplated inviting of objections and thereafter consideration of the objections and same have to be got ratified by the State Government with or without modification as the case may be. This major change has been brought about because of the amendment in the Constitution of Art. 243 which was inserted by 74th Amendment in the Constitution as Part-IX/A which gives more autonomy to the local bodies.

State Government has also issued a notification 5th April 1995 as per sub-sec. (1) of Sec. 129 of the Act of 1961 prescribing the conditions in this behalf, which is placed on record as Annexure - P1 which reads as under:

Therefore, now the Municipal Councils can impose the export tax on the articles which are exported from the municipal limits. It further lays down that the tax should be on percentage basis. It also lays down that the rate should be so fixed

so that the price of the goods may not be unduly affected and the maximum rate which has been prescribed is 1/2 percent. It also directs that the State should also be informed about the levy of tax on the export items. Therefore, the State Government has issued general guidelines that the export tax shall be imposed on the items which are exported from the municipal limits and tax should not be unduly excessive so as to increase the prices of the goods and maximum ceiling has been prescribed to the extent of 1/2 percent. These guidelines have been prescribed by the State in exercise of powers conferred on the State under Sub Sec. (1) of S. 129 of the Act. Thus, in this background, the Municipal Council can impose export tax within the framework laid down by the State.

Learned counsel for the petitioner submitted that imposition of export tax is in violation of Art. 301 of the Constitution as it infringes the free flow of the trade and intercourse throughout the territory of India. It was also submitted that the power under sub-section (xvi) of Section 127(1) should be exercised without violating Art. 301 of the Constitution and no restriction or no barrier should be imposed. It was also submitted that this violates Art. 19(1)(g) of the Constitution i.e. freedom of trade. In this connection, learned counsel invited our attention to the cases *Atiabari Tea Co., Ltd. Vs. The State of Assam and Others*, ; *Chhotabhai Jethabhai Patel and Co. Vs. State of Uttar Pradesh*, and *Jindal (India) Limited and another vs. State of West Bengal and others* 96 S.T.C. 53.

So far as the validity of Section 129 of the Act 1961 vis-a-vis Art. 19(1)(g) and Art 301 of the Constitution is concerned, that is without any basis. In order to augment the revenue of the Municipal Council, taxation is necessary. Municipal Councils are, as a matter of fact, constituted to provide necessary facilities to the area. They cannot survive on simple grants from the State. They have to explore their own sources for increasing their revenue so as to provide necessary municipal facilities to the residents of their area. Therefore, this was one of the sources available to the Municipal Councils as provided under Sections 126 and 127 of the Act of 1961. This imposition of a small rate of tax was for public interest only which is saved under Art. 304 (B) of the Constitution. Art. 304 (B) of the Constitution lays down that the State may by law impose such reasonable restriction on freedom of trade, commerce or intercourse with or within the State as may be required in the public interest. Therefore, this small tax i.e. at the rate of 1/2 percent has been imposed by the Municipal Councils in public interest so as to augment their revenue and such reasonable restriction cannot offend Art. 301 of the Constitution. In this connection, case referred by the learned counsel is the case of *Atiabari Tea Co. Ltd. (supra)*. Their Lordships have observed that-

The provisions contained in Art. 301 guaranteeing the freedom of trade, commerce and intercourse is not a declaration of a mere platitude, or the expression of a pious hope of a declaratory character; it is not also a mere statement of directive principle of State Policy it embodies and enshrines a principle of paramount importance that the economic unity of the country will provide the main sustaining force for the stability and progress of the political

and cultural unity of the country.

It has been further observed-

Though the power of levying tax is essential for the very existence of the government, its exercise must inevitably be controlled by the Constitutional provisions made in that behalf. It cannot be said that the power of taxation per se is outside the purview of any constitutional limitations.

Suffice it to say that Section 127(6) of the Act of 1961 is covered by Entry 56 of the IIInd List of VII Schedule of the Constitution which reads as under:

Entry 56 - Taxes on goods and passengers carried by road or on inland waterways.

Therefore, so far as the Constitutional sanction is concerned, this provision is squarely covered by Entry 56 of the II List of Seventh Schedule of the Constitution and this Court has already upheld the Constitutional validity of that provision in the case of Monji Kalyanji and Others Vs. State of Madhya Pradesh, which reads as under:

Section 127(1)(xvi) of the M.P. Municipalities Act which empowers a Municipal Council to impose terminal tax both the import and export is covered by Entry 56 of List II of the Seventh Schedule of the Constitution. Terminal (ax on export of goods by road from within municipal limits imposed by the Municipal Committee, Vidisha u/s 127(1)(xvi) of the M.P. Municipalities Act is hence valid. Such tax cannot fall under Entry 89 of List I inasmuch as the said Entry contemplates only such goods or passengers which are carried by railway, sea or air. It does not contemplates any terminal tax on goods or passengers carried by road or on inland waterways. The imposition of terminal tax could not be held discriminatory on the ground that other municipal councils had not imposed it, because the consideration for imposition of terminal tax may differ from municipal council to municipal council.

So far as the competence of the State Legislature is concerned, there cannot be two opinions. Learned counsel has also invited our attention to the case of The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others, . In this case also, their Lordships observed -

The taxes imposed under the Rajasthan Motor Vehicles Taxation Act, are compensatory taxes which do not hinder the freedom of trade, commerce and intercourse assured by Art. 301 and hence, the Act does not violate the provision of this Articles.

It was further observed-

Regulatory measures or measures imposing compensatory taxes for the use of trading facilities do not come within the purview of the restrictions contemplated by Art. 301 and such measures need not comply with the requirements of the proviso to Art. 304(b) of the Constitution.

The tax which is being sought to be imposed by the Municipal Councils for augmenting their revenue so as to provide municipal facilities to the citizens residing therein which are also availed by the exporters. Therefore, it is more of a compensatory in nature and justified under both the Articles i.e. under Art. 301 of the Constitution because it is compensatory as well as Art. 304(b) of the Constitution because it is in public interest also to augment resources of Municipal Councils so as to provide necessary municipal facilities to the exporters as well as the residents of that area. Thus, in this view of the matter, we are of the opinion that the imposition of export tax does not violate Art. 301 of the Constitution.

In fact, the main source of the taxing event is Section 127(1)(xvi) and that is not violative of Art. 301 of the Constitution and Sec. 129 of the Act of 1961 only lays down the procedure. The main question is the event of the taxation and that even having been held to be valid, next question is the procedure to levy this tax. This procedure is contained in Sec. 129 of the Act of 1961. The unlamented provision of Section 129 of the Act of 1961 was also upheld by this Court in the case of *Monji Kalyanji and Others Vs. State of Madhya Pradesh*, . Section 129 amended by Act No. 12 of 1995 because of the 74th Amendment in the Constitution, whereby the Municipalities have been given more autonomy by inserting part IX-A from Art. 243-P to Art. 243 Z.G. In order to give effect to his Constitutional mandate which has been brought about by Amendment Act No. 12 of 1995, the procedure which existed earlier was amended so as to make these local bodies more effective and autonomous. Therefore, now the more autonomy has been given to these local bodies for augmenting their revenue and for effectively discharging their duties being local bodies. The earlier procedure laid down a detailed procedure for inviting objections, consideration of objections and thereafter finalizing the same. That procedure has now been dispensed with and now autonomous bodies like Municipal Councils have been given power to impose tax on the subjects given in Section 127 of the Act of 1961 with certain limitations which may be prescribed by the State Government. The State Government has prescribed the limitations and provided guidelines which have been reproduced above and in accordance with the frame work, the Municipal Council is competent to impose tax. This procedure contained in Section 129 of the Act of 1961 does not in any way violate Art. 301 of the Constitution.

Learned Counsel further submitted by virtue of the amended provision, a citizen will not have a right to object to this impost and to represent whether such an imposition will be proper or not. It may also be relevant to point out that in the matter of impost, it is not necessary to hear citizens and it is suffice to refer to the decision of their Lordships of the Supreme Court in the case of *M/s. Shri Sitaram Sugar Co. Ltd. and another Vs. Union of India and others*, it was observed-

Price fixation of levy sugar is in the nature of a legislative action even when it is based on objective criteria founded on relevant material. No rule of natural

justice is applicable to any such order. It is nevertheless imperative that the action of the authority should be inspired by reason. The Government cannot fix any arbitrary price. It cannot fix prices on extraneous consideration.

Similarly in the case of D.K. Trivedi and sons and others vs. State of Gujarat and another AIR 1986 S.C. 1323, it was observed by their Lordships as under:

The enhancement in the rates of royalty and dead rent is made in the exercise of the power to amend the rules framed u/s 15(1). It is thus made in the exercise of statutory power. There is no such principle of law that before such a statutory power is exercised, persons who may be affected thereby should be heard. Whether any opportunity is to be given to persons affected to make representation to the Government would depend upon the form in which the rule-making power is conferred. It is for the legislative body which confers the rule-making power to decide in what form such power should be conferred. It is, therefore, for Parliament to decide whether rules and notifications made by the State Government u/s 15(1) should be laid before Parliament or the Legislature of the State or not. It, however, thought it fit to do so with respect to minerals other than minor minerals since these minerals are of vital importance to the country's industry and economy, but did not think it fit to do so in the case of minor minerals because it did not consider them to be of equal importance.

Thus, in the matter of imposition of tax, it is not necessary that principle of natural justice should be applied and it is not necessary to hear all persons who are going to be subjected to such tax. Therefore, the contention of the learned counsel for the petitioner is of no avail.

Shri Kale, learned counsel for the petitioner further contended that the Legislature cannot delegate its essential power to executive to lay down the guidelines. It is contended that the State Legislature alone is competent to lay down such guidelines. So far as competence of Legislature is concerned, it can delegate its power to the Executive and there cannot be any exception to this. The Legislature has laid down a broad policy and Art. 243 of the Constitution has prescribed that it is for the Legislature under Art. 243-X to make law authorizing a Municipality to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits as may be specified in the law, and the State Legislature in exercise of its power under Art. 243-X has amended the Act and has laid down the procedure for collecting the tax. It is not possible for the Legislature to regulate day to day business. Therefore, the Legislature thought it proper to father delegate this power to the State Government to lay down the guidelines as to within what para-meters the Municipalities can exercise the power of imposes. As it is not possible for the Legislature to every now and then amend the guidelines, it was thought proper to delegate this power to the State Government to issue such guidelines which are necessary. But the procedure which is required to be followed to collect these taxes has been laid down by the State Legislature and it delegated the power to State Government to lay down the para-meters within which this tax is to

imposed. Therefore, it cannot be said that the Legislature has delegated its essential functions to the Executive. Essential function was to lay down the procedure and that procedure has been laid down in order to effect the recovery of tax but the para-meters within which a Municipal Council can exercise that power have been given in the guidelines. That power this been delegated to the State so that the Government looking to the needs modulate the guidelines for facilitating the recovery of the tax. Such delegation of power to the Government to lay down guidelines does not amount to delegating the essential legislative function of the Government. Therefore, this contention of the learned counsel has no force whatsoever.

In this connection, learned counsel invited our attention to the case of A.N. Parasuraman Etc. Vs. State of Tamil Nadu, . In this case, it was held :

It is well established that determination of legislative policy and formulation of rule of conduct are essential legislative functions which cannot be delegated. What is permissible is to leave to the delegated authority the task of implementing the object of the Act after the legislature lays down adequate guide-lines for the exercise of power.

In the instant case, the Legislature has laid down the procedure by amending section 129 of the Act and left the State Government to implement the same by laying down the guidelines and which have been laid down in terms of Ex. P. 1.

The learned counsel also cited me case of Ahmedabad Urban Development Authority Vs. Sharadkumar Jayantikumar Pasawalla and others, . This was a case in which regulations were framed under Gujarat Town Planning and Urban Development Act, 1976 and by these regulations certain imposition like development fee was made. This was objected to as delegating the legislative function. In the present case, the impost is covered by Section 127 and 126 of the Act of 1961 and the power has been conferred on the Municipal Council to impose that and the maximum ceiling limit has been prescribed as 1/2 percent. Therefore, here the impose is not by the Executive but it is by me statutory body like Municipality on which the power has been conferred to impose the tax. In order to bring uniformity all over the State, certain guidelines have been given so that various Municipalities in the State may not impose the tax arbitrarily and uniformity all over the State is maintained giving maximum ceiling limit. The Legislature has not delegated its legislative function of impost. The impost continues to be within the statutory body i.e. Municipal Council. Therefore, this case does not provide any assistance whatsoever. Similar view has been held in the case of Devi Das Gopal Krishnan and Others Vs. State of Punjab and Others, . Therefore, the contention of learned counsel is devoid of merits.

Learned counsel submitted that the notification dated 5th April 1995 Ex. PI should be read down to mean that the Municipal Council can only impose levy on the goods which are manufactured in the Municipal limits. That interpretation put by the learned counsel on clause (1) of the notification dated 5th April 1995 is

absolutely misconceived. What it means to say is that any good which has been exported from the municipal limits, that is goods which originates from the municipal limits and is being exported outside, that would be subjected to the export taxes. It does not necessarily mean that it should be produced within the municipal limits. What it intends to convey is that the goods should originate from the Municipal limits and sent outside the Municipal limits, that is subjected to export tax. To construe this provision to mean that it should necessarily be produced within the municipal area is not the correct interpretation. Therefore, the contention of the learned counsel is misconceived.

It may be relevant to mention here a recent decision of their Lordships of the Supreme Court in the case of *Amrit Banaspati Co. Ltd. Vs. Union of India and others*, wherein it is observed that the terminal tax on goods carried by railway or road applies only where intra-State or Inter-State movement of goods are impeded directly and immediately but it was not held to be violative of Art. 301 and Art. 14. It was also observed that there is presumption in favour of its constitutionality of the provision and there is a presumption that the imposition of tax is in public interest. Similarly in another case of *Bhagat Ram Rajeev Kumar vs. Commissioner of Sales Tax, Madhya Pradesh and others* 1995 Suppl 1 S.C.C. 673, their Lordships observed while dealing with entry tax of the State of M.P. i.e. M.P. Sthaneya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam 1976 while upholding the validity of this provision, that it is not violative of Art. 301 of the Constitution as it is compensatory in nature. In the present case, it is more than apparent that there is definite connection of providing facilities to the exporters by the Municipality. By providing necessary sanitary facilities in the town, they are also benefited by it. Therefore, it is more of a compensatory nature. In this view, the contention of the learned counsel has no merit and it is overruled.

Shri S.C. Jain, learned counsel for the petitioner in W.P. No. 2793 of 1995 contended that it is discriminatory that if the goods are exported by railway or by through transit, then tax is not charged. It was submitted that highways are covered by entry 23 of List-I and Entry 42 and Entry 89 of List-I of Seventh Schedule. Entry 23 of List-I of Seventh Schedule reads as under:-

23. Highways declared by or under law made by Parliament to be national highways.

Entry 42 relates to inter-State trade and commerce and Entry 89 related to terminal taxes on goods or passengers, carried by Railway, sea or air, taxes on railway fares and freights. All these three entries of List-I of the Seventh Schedule of the Constitution have no impact whatsoever on the present entry 56. As a matter of fact, Section 129 of the Act of 1961 only lays down the procedure and the charging section is section 127(1)(xvi) validity of which has already been upheld by this Court and in that connection, Division Bench of this Court had occasion to consider the impact of Entry 89 of List-I, Seventh Schedule. It was observed by the Division Bench that such tax does not fall under Entry 89 of List-I Seventh Schedule because this entry contemplates only such goods which are

carried by railway, sea or air. Therefore, there is no question of discrimination and these all the three Entries of List-I Seventh Schedule do not in any way bring any conflict with the procedure laid down in Section 129 of the Act of 1961.

So far as the validity of Sections 127 and 126 is concerned, that has already been upheld by this Court in the case of *Monji Kalyanji (supra)*. Therefore, the same arguments cannot again be raised for challenging the validity of sub-section 1 (xvi) of Section 127 of the Act of 1961 and suffice it to say that once the validity of a provision has already been upheld, it is not open to be re-agitated; and in this connection, reference may be made to observation made in the case of *Kesho Ram and Co. and Others etc. Vs. Union of India (UOI) and Others*, . It has been held that:

Once validity of a provision or notification is upheld by Court, all grounds, must be presumed to have been considered by the Court and fresh litigation challenging validity of the same provision on some additional grounds would be barred by principle of *res-judicata*.

Therefore, once the validity has been upheld by this Court, it is not open to be challenged again with reference to List-I.

Similarly, the argument of discrimination is also not sustainable for the simple reason that the goods which are exported through railways are a class apart and likewise the goods which passes through highways are also class apart and they are not similarly situated so as to violate Art. 14 of the Constitution. Reference can also be made to the case of *Kunwar Ram Nath and Others Vs. Municipal Board, Pilibhit*, . This was a case under the U.P. Municipalities Act. In this case, certain bye-laws were framed under Sec. 133. By bye-law 1, octopi was imposed u/s 128 in 1936 and at that time exemption to sugar factories from payment of octopi was given and octopi was imposed after 1960. Therefore, it was contended that the exemption granted by the said notification still continues and hence non-payment of octopi on cane delivered at the Railway siding inside factory premises after 1960 was not attracted and prosecution was not warranted. This was a case which has a peculiar facts and does not provide any assistance so far as the present case is concerned, as it was found that the petitioners therein were enjoying benefits of the notification issued under the Act of 1936. As such, this case has no relevance so far as the present case is concerned.

Likewise is the case of *Bhikamchand vs. M.C.C. Chhindwara* 1961 M.P.L.J. 937. As against this, in *International Tourist Corporation and Others Vs. State of Haryana and Others*, , their Lordships had occasion to consider Entries 23 and 24 of the List-I as well as Entry 89 List-I Seventh Schedule while examining Section 3 of the Haryana Passengers and Goods Taxation Act and their Lordships held that the Haryana Passengers and Goods Taxation Act is a valid law made under the Powers conferred by Entry 56 of List-II of Seventh Schedule and there is sufficient nexus between tax and passengers and goods carried through national

highways to justify the imposition and held that Section 3 (3) of the Haryana Passengers and Goods Taxation Act is intra-vires as it is found to be regulatory and compensatory in nature. Likewise in the case of Man Mohan Tuli Vs. Municipal Corporation of Delhi and Others, , their Lordships upheld the validity of Section 178 of Delhi Municipal Corporation Act and held that levy of terminal tax on goods meant for destination other than Delhi and passing through Delhi is not in valid. Their Lordships held that such action is not invalid and is justified. It was observed by their Lordships that the terminal tax would be livable because in this case there are two separate transactions - one by which the goods are meant for Delhi and the other by which after having reached and having been unloaded at Delhi they are re-booked and reloaded for some other place and which therefore is a fresh and different transaction. In such a case, terminal tax would be livable al the entry point in the territory of Delhi. The contention of learned counsel therefore that levy of export tax is discriminatory is not sustainable.

Upshot of the above discussion, we do not find any merit in any of the contention raised by the learned counsel for the parties and hence, we dismiss all the three writ petitions with cost, of Rs. 1000/- each.