
(1962) 02 MAD CK 0029

In the Madras High Court

Case No : Writ Appeal No's. 177 and 182 of 1959

The State of Madras and Another

APPELLANT

Vs

Shanmugha Oil Mills and Another

RESPONDENT

Date of Decision : 05-02-1962

Acts Referred:

Constitution of India, 1950 — Article 226, 266, 286(2)
Madras Commercial Crops Markets (Amendment) Act, 1955 — Section 10, 10(1)
Madras Commercial Crops Markets Act, 1933 — Section 11, 11(1), 11A, 12, 13
Madras Commercial Crops Markets Rules, 1948 — Rule 28, 28(1), 28(3)
Tamil Nadu General Clauses Act, 1891 — Section 18
Tariff Act, 1922 — Section 315

Citation : (1963) ILR (Mad) 12

Hon'ble Judges : Venkatadri, J;Anantanarayanan, J

Bench : Division Bench

Advocate : V.K. Thiruvengkatachari, General, M. Natanasabapathy and M.M. Ismail, Additional Government Pleader, for the Appellant; M.K. Nambiar and V.V. Raghavan, for the Respondent

Final Decision : Dismissed

Judgement

Anantanarayanan, J.—These appeals have been respectively instituted by the State of Madras and the Coimbatore Market Committee, Tiruppur, by its Secretary, against the judgment of Ramachandra Ayyar, J., (as he then was) in Writ Petition No. 606 of 1957, before the learned Judge; that judgment has been fully reported in Shanmugha Oil Mills v. Coimbatore Market Committee ILR (1960) Mad. 171.

2. The proceeding before the learned Judge was under Article 226 of the Constitution for the issue of a writ of mandamus, directing the Market Committee to forbear from enforcing its notice calling upon the Shanmugha Oil Mills (Respondent) to pay cess for groundnut purchases from 23rd November 1955 to 30th June 1957, u/s 11(1) of the Madras Commercial Crops Markets Act, 1933, Rule 28(1) of the Madras Commercial Crops Market Rules, 1948, and bye-law 23

of the Coimbatore Market Committee bye-laws. As will be obvious from a study of the judgment, the validity of the demand was contested on behalf of the Shanmugha Oil Mills (Respondent) by Sri M.K. Nambiar, before the learned Judge, upon the following grounds: Firstly, it was urged that the amendment of Section 11(1) under which what was originally levied and sought to be collected as a fee, was made a tax, was a colourable piece of legislation intended to circumvent the decision of this Court which declared the invalidity of the levy as a fee, in *P.P. Kutti Keya and Others Vs. The State of Madras and Others*, . Secondly, it was argued that the levy u/s 11(1), would be invalid even as a tax, as such a tax would not be included in the Consolidated Fund of the State to which all taxes levied by its Legislature should go, under Article 266. Thirdly, the delegation of the power to fix the rate of tax to the Executive was illegal and unconstitutional, thereby rendering the entire provision void in law. We might also take note of a fourth argument before the learned Judge which, though primarily one based upon an issue of fact, proceeds to the root of the matter as regards the present demand, namely, that the demand itself being for a period anterior to the notification by Government on 28th August 1958, fixing the rate of levy of cess in pursuance of the authority vested in them u/s 11(1), namely, the period 23rd November 1955 to 30th June 1957, it was not saved by the retrospective validation of Section 10 of the amending Act, XXXIII of 1955. The argument is that the liability to pay the tax did not arise until the rates were fixed, and that the Market Committee, therefore, possessed no right to levy any tax or fee, whichever it might be termed, under Rule 28(1) of the Madras Commercial Crops Market Rules, 1948, and bye-law 23 of the Coimbatore Market Committee bye-laws.

3. Of these arguments pressed before the learned Judge, the first two set forth above were rejected by him for the detailed reasons to be found in the reported judgment *Shanmugha Oil Mills v. Coimbatore Market Committee* ILR (1960) Mad. 171. We need not be further concerned with them, for the purpose of these writ appeals. The learned Judge accepted the third argument, to the effect that the unchanneled of power to the Executive to fix the rate of tax as it pleased, was unconstitutional and illegal. The learned Judge also accepted the fourth argument that, upon the facts of this particular demand, the Market Committee could not rely upon the retrospective validation enunciated in Section 10 of the Amending Act XXXIII of 1955. These are the two grounds which have survived, and it is upon these two grounds that the Writ Appeals have been argued before us. We might immediately state that both the learned Advocate-General for Government and the learned Counsel for the Market Committee rely upon the provisions of Section 10 of Act XXXIII of 1955, as well as the principle of Section 18 of the Madras General Clauses Act (Act I of 1891) for the argument that though this demand relates to the anterior period 23rd November 1955 to 30th June 1957, in accordance with Rule 28(1) of the Madras Commercial Crops Market Rules, 1948, and bye-law 23 of the Coimbatore Market Committee bye-laws, as they originally stood, nevertheless it must be held valid and saved by

the operation of the sections of law cited. If this argument is not to be accepted, the Writ Appeals will have to fail upon this broad issue of fact. The question of the constitutionality of the delegated legislation (Section 11(1)) would not be strictly essential for our determination, within the compass of the proceedings.

4. Upon the ground which is mainly an issue of fact, we are inclined to agree with the learned Judge that Section 10 of the Amending Act XXXIII of 1955, will not operate to save the demand in this particular case, even in conjunction with the principle of Section 18 of the Madras General Clauses Act, which has been relied on by the learned Advocate-General. Indeed, we think that it could be shown, without any considerable difficulty, that the attempted assessment in the present case cannot be supported as valid and legal, having reference to the period to which the transactions relate, the fact that Government issued a Notification only much later (28th August 1958) fixing the rates of levy of cess on goods bought and sold within the notified area, and in the light of the actual provisions of the Amending Act XXXIII of 1955. The argument of the learned Advocate-General is that this is an interregnum with reference to which the old Rule 28(1) of the Madras Commercial Crops Markets Rules, 1948, and bye-law 23 of the Coimbatore Market Committee Bye-Laws must be deemed to have continued in operation and effect, vesting the Market Committee with a jurisdiction to levy these old rates. But if Section 10 of the Amending Act XXXIII of 1955, which was definitely enacted to give retrospective validity to levies and collections by the Market Committee u/s 11 prior to its amendment, cannot apply for the grounds stated by the learned Judge (Ramachandra Ayyar, J.) and the principle of Section 18 of the Madras General Clauses Act cannot be invoked here either, we find it very difficult to see how the actual demand by the Market Committee in the present case could be held justified or enforceable. If the grounds for this finding are explicit and undeniable, on the facts, that makes an end of the Writ Appeals, as we earlier observed. However, in view of the considerable importance of the argument, and the particular manner in which it was pressed before us by the learned Advocate-General with regard to the decision of the Supreme Court in Pandit Banarsi Das Bhanot Vs. The State of Madhya Pradesh and Others, , we propose to deal also with the question of the unconstitutionality of the delegated power, affirmed by the learned Judge.

5. A short history of the matter will be sufficient to show that, whatever might be the ultimate view that should prevail on the broader question of the delegation being constitutional, the demand in the present case cannot be supported as legal and enforceable, in view of the provisions of the Amending Act XXXIII of 1955, and the actual facts of the contemplated assessment. A short history of the law and the relevant rules and bye-laws is essential for a comprehension of the argument. The broad facts may be stated as follows:

Under Section 11(1) of the Madras Commercial Crops Markets Act (Madras Act XX of 1933), as it stood, the Market Committee was empowered, subject to such rules as may be made in this behalf, to levy fees on the noticed commercial crop

or crops bought and sold in the notified area at such rates as it may determine. There was a proviso to the effect that until the Market Committee determined these rates, the fees should be levied at the rates specified in the schedule to the Act. Under Rule 28(1) of the Madras Commercial Crops Markets Rules, 1948 (made by the Governor of Madras u/s 18 of the Act), the maximum were indicated. In 1953, came the judgment of this Court in P.P. Kutti Keya and Others Vs. The State of Madras and Others, . As the learned Judge, Ramachandka Ayyar, J., points out, this Court upheld the validity of the Act, subject to certain specific exceptions. The learned Judges there held inter alia that the provisions of the Act under Sections 11 and 11-A and Rules 28(1) and 28(3) providing for the levy of fees on the notified commercial crops bought and sold in the notified area were not repugnant to Article 286(2) of the Constitution, but that the amounts collected were really of the character of taxes and not mere licence fees, they being in the nature of sales-tax. It followed that levies under Rule 28(3) and Section 11-A actually made, could be held valid only to the extent to which they were for services rendered. It was because of this radical distinction emphasised between a tax in the nature of sales-tax, and a fee which has to be rendered equivalent or proportionate, in some form, to services rendered, that the Government brought forward the piece of legislation in November 1955, the Madras Commercial Crops Market (Amendment) Act, 1955 (Act XXXIII of 1955). Before proceeding to this legislation, we may note the terms of bye-law 23(1) of the bye-laws framed by the Coimbatore Market Committee:

Subject to the exceptions in Rule 28(2) and in bye-law 23(2) below, fees on the notified commercial crops u/s 11(1) shall be levied on all quantities bought and sold within the notified area at the rates shown below....

6. The most important provisions of the Amending Act XXXIII of 1955, for our present purpose, are Sections 11(1) of the principal Act as amended and Section 10 of the Amending Act which attempts a retrospective validation of certain levies. We shall consequently set them forth immediately, before proceeding to the facts and considerations that affect the validity of the demand in this case.

7. Section 11(1), as amended by Act XXXIII of 1955, ran as follows:

(1) Notwithstanding anything contained in the Madras General Sales Tax Act, 1939 (Madras Act IX of 1939), the market committee shall, subject to such rules as may be made in this, behalf, levy a cess by way of sales-tax on any commercial crop bought and sold in the notified area at such rates as the State Government may, by notification, determine.

Section 4-A of the principal Act authorised the State Government to establish a Market Committee for every notified area. Section 12 enacted that all monies received by a Market Committee should be paid into a fund to be called the "Market Committee Fund", that all expenditure incurred by the Market Committee under or for the purpose of the Act should be defrayed out of the said fund, and that any surplus remaining should be invested in such manner as may

be prescribed. Section 13 prescribed the purposes for which the Market Committee Fund could be expended. In other words, the power enacted was definitely one to levy a cess by way of sales-tax on the commercial crops bought and sold in the notified area, the object being that the Market Committee should utilise such funds for such purposes as enunciated in Section 13, and there was a prima facie unlimited devolution of power to the State Government to fix rates of the taxation by notification as it may determine. Section 10 of the Amending Act reads as follows:

10(1). Notwithstanding anything contained in any law or in any judgment, decree or order of any Court, all fees levied and collected or purporting to have been levied and collected by Market Committees u/s 11 of the principal Act before it was amended by this Act shall be deemed always to have been levied under the principal Act as amended by this Act as if this Act was in force at all relevant times.

8. In this context itself we might refer to Section 18 of Madras General Clauses Act (1 of 1891), since the learned Advocate-General relies on the principle of the section in support of his argument on this aspect. Section 18 runs as follows:

Where an Act repeals and re-enacts, with or without modification, all or any of the provisions of a former Act, references in any other Act to the provisions so repealed shall be construed as references to the provisions so re-enacted, and if notifications have been published, proclamations or certificates issued, powers conferred, forms prescribed, local limits defined, offices established, orders, rules and appointments made, engagements entered into, licences or permits granted, and other things duly done, under the provisions so repealed, the same shall be deemed, so far as the same are consistent with the provisions so re-enacted, to have been respectively published, issued, conferred, prescribed, defined, established, made, entered into, granted or done under the provisions so re enacted.

9. Certain other facts might be noted before we actually embark upon a discussion of the issue of fact upon which, as we pointed out earlier, if we are in agreement with the learned Judge Ramachandra Ayyar, J., it might be strictly unnecessary to decide the issue of the other limb of the argument, namely, the constitutionality of the delegated power. On 13th March 1956, the Director of Agriculture approved of the amendment of bye-law 23 of the Coimbatore Market Committee bye-laws extracted earlier, by which the word cess was substituted for the words fees and fee wherever they occurred. G.O. Miscellaneous No. 1741, dated 13th July 1956, similarly amended Rule 28 of the Madras Commercial Crops Market Rules, 1948. The Market Committee made the present demand upon the Respondent on 15th July 1957, with regard to transactions in groundnut from 23rd November 1955 to 30th June 1957, at the rates provided for by old Rule 28(1) of the Madras Commercial Crops Market Rules, and the old bye-law 23 of the Coimbatore Market Committee bye-laws. The learned Judge Ramachandra Ayyar, J., has emphasised that no reasonable construction of

Section 10(1) of the Amending Act XXXIII of 1955, would validate this demand. The learned Judge stated:

That section would only apply to the case where a fee had been levied and collected, and not to a case like the present one where the Market Committee is only seeking to enforce a liability.

It is admitted that the notification by Government fixing the rates of tax u/s 11(1) was made only on 28th August 1958, and that those rates would not apply to these transactions at all, nor would they serve to validate this demand by the Coimbatore Market Committee, Both before us and before the learned Judge, the learned Advocate-General emphasised the three features or provisions of a taxing statute, namely (i) a declaration of liability, (ii) an assessment or quantification and (iii) providing a machinery or process for collection. But, since the explicit terms of Section 10(1) are:

All fees levied and collected or purporting to have been levied and collected by market committees u/s 11 of the principal Act before it was amended,

it is very difficult to see how the present demand, which is merely an attempted assessment of the liability, neither as a specific levy nor a collection thereof, could be held saved under this particular section. The learned Advocate-General argues that such a period of interregnum frequently occurs, before rates are published by a competent authority (here the State Government) under an amended statute. Until such time, the unamended Rule 28(1) of the rules and by-law 23 of the bye-laws of the Market Committee must be construed as continuing in full force and effect, by virtue of the principle of Section 18 of the Madras General Clauses Act, 1891. But we see here an obvious and considerable difficulty in the acceptance of the argument in this form. Even the principle of Section 18 would save all prior provisions, notifications, proclamations, certificates or other acts duly done, only so far as the same are consistent with the provisions so re-enacted. But the old Act, and unamended Rule 28(i) and bye-law 23, permitted the Market Committee only to levy fees on the notified commercial crops at the old rates. It is very difficult to see how, unless the aid of Section 10(1) of the Amending Act could be invoked to validate the contemplated assessment in this case, the Market Committee could, with any pretension to validly seek to impose a cess for the purchases of the Respondent between 23rd November 1955, and 30th June 1957, and this too anterior to the notification by Government of the rates, in accordance with the amendment of Section 11. The principle of Section 18 of the Madras General Clauses Act, in our view, cannot be invoked in this context ; for it could certainly be argued, with considerable plausibility and force, as has been actually argued by Sri M.K. Nambiar for the Respondent, that it would be inconsistent with the intendment and purport of amended Section 11 to make valid a contemplated assessment by the Market Committee as a cess with reference to transactions prior to the notification by the Government, and upon the basis of unamended Rule 28(1) and bye-law 23. The learned Advocate-General argues that there are several notifications of the

Central Government, with regard to rates of levy, or acts done, under prior repealed enactments during a period of interregnum which have been held valid: See *M.P.V. Sundararamier and Co. Vs. The State of Andhra Pradesh and Another*, . But obviously, each instance will have to be judged upon its own merits. Upon this aspect of the case, we have no doubt that the learned Judge, Ramachandra Ayyar, J., was justified in holding that the contemplated demand or assessment in this case could not be considered as valid or saved by Section 10(1) of the Amending Act. On this ground alone the Writ Appeals have to fail.

10. However, in view of the considerable importance of the ground relating to the unconstitutional character of the delegation of power, we shall deal with it also before we conclude.

11. As the learned Judge Ramachandra Ayyar, J., has pointed out, the broad principle that delegated legislation would not be valid where it amounts to a total abdication of the function of the Legislature in favour of the Executive Authority, has been laid down in several decisions, both in the United States of America and in this country. Chief Justice Hughes enunciated the principle in *Panama Refining Co. v. Ryan* 79 L. ed. 446. The principle was fully considered in *In Re: The Delhi Laws Act, 1912*, the *Ajmer-Merwara (Extension of Laws) Act, 1947* and the *Part C States (Laws) Act, 1950*, In *Hampton, Jr. & Co. v. United States* 72 L. ed. 624 Taft, C.J., approved a statement of the law to the effect that:

The "true distinction", therefore, is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring an authority or discretion, as to its execution, to be exercised under and in pursuance of the law. The first cannot be done; to the latter no valid objection can be made.

The principle finds expression in several forms, the form of the enunciation of it depending upon the context of facts of the particular piece of legislation assailed as an unconstitutional delegation of power. Apart from other decisions of the Supreme Court, the following passage in *Hamdard Dawakhana and Another, Kalipada Deb and Another, Lakshman Shripati Itpure @ Lakshman Shripati Impore and A.B. Choudhri and Another Vs. The Union of India (UOI) and Others*, might be cited, as the form of the enunciation of the principle is of particular significance, in the context before us. Their Lordships" observed citing *Locke's Appeal* 72 Pa. 491, and *Field v. Clark* 36 L. ed. 294:

The Legislature cannot delegate its power to make a law, but it can make a law to delegate a power to determine some fact or state of things upon which the law makes or intends to make its own action depend. There are many things upon which wise and useful legislation must depend, which cannot be known to the law making power, and, must therefore be subject of enquiry and determination outside the hall of Legislature.

Their Lordships then added this observation, which, if we may say so with respect, is greatly pertinent and invested with a rich significance in the context of

the facts here:

But the discretion should not be so wide that it is impossible to discern its limits. There must instead be definite boundaries within which the powers of the administrative authority are exercisable. Delegation should not be so indefinite as to amount to an abdication of the legislative function.

Sri Nambiar argues that, in the amendment of Section 11 under Madras Act XXXIII of 1955, no such limits can be discerned. The powers of the State Government to tax at such rates as they may be pleased, are unlimited. Where the sky is the limit with regard to the exercise of such a power which the Legislature delegates to the Executive, can it be contended that this delegation is constitutional and within the ambit of the principle enunciated above?

12. In *American Administrative Law*, by Bernard Schwartz (1950 Edition), page 21, the canon has been set forth in the following words of Justice Cardozo in *Schechter v. United States* 79 L. ed. 1570:

The delegated power of legislation which has found expression in this code is not canalized within banks that keep it from overflowing. It is unconfined and vagrant.... This is delegation running riot. No such plenitude of power is capable of transfer.

13. In the same work (page 24) the principle is embodied in this form, as taken from an essay of Professor Hart:

The ideal statute steers a middle course between the Scylla of attempting to anticipate every possible situation and the Charybdis of embodying no policy at all except that contained in an empty formula.

It is because no limits to the power of taxation can at all be discerned in the impugned section, that we are inclined to feel that the learned Judge Ramachandra Ayyar, J., was justified in holding that the delegation was unconstitutional. The learned Advocate-General no doubt contends that the Legislature had thought it fit to invest the State Government with the power instead of an organization like the Market Committee, as formerly and that the limits must be discerned in the purposes for which the monies so paid are to be expended, as set forth in Section 13. But we are quite unable to see how, from these specified purposes, any limits of taxation to any extent can be gleaned and held as binding upon the Executive authorities. It is true that the general policy of the legislation, and extraneous circumstances, may be admitted as an aid to the interpretation of a statute. As Lord Halsbury L.C, in *Herron v. Rathmines and Rathgar Improvement Commissioners* (1892) A.C. 498, 502 has observed:

...the subject-matter with which the Legislature was dealing and the facts existing at the time with respect to which the Legislature was legislating, are legitimate topics to consider in ascertaining what was the object and purpose of the Legislature, in passing the Act they did.

We would also add that we should ordinarily expect the State Government to exercise its power to fix the rates or tax in a reasonable, and not in an arbitrary and excessive, manner. Broadly speaking, it may be true that the actual turnover and the rates which prevailed in the prior schedules, would all influence the authorities of the State Government in determining the rates. Alternatively, the learned Advocate-General has contended that an individual exercise of this power by the Executive, in an arbitrary, capricious or excessive manner, could also be struck down as not a bona fide exercise of the power at all, in relation to the object of the delegation. But, in our view and as far as we can ascertain from the authorities, this does not detract even by a jot from the valid and binding principle that the limits to a delegated power, particularly one like a taxing power, must be generally discernable, even if not in minute particulars, in the act of delegation itself. Where this is not the case, the delegation would appear to be plainly unconstitutional, since the Legislature is abdicating an essential function. Since this tax would not be included in the Consolidated Fund of the State, the argument applies with greater force to the present facts.

14. But the main argument of the learned Advocate-General is that the Supreme Court itself gave an indication to a contrary effect in *Pandit Banarsi Das Bhanot Vs. The State of Madhya Pradesh and Others*, and that the learned Judge Ramachandra Ayyar, J., failed to realise the true import of these dicta, and to give effect to them. In order to appreciate this argument, it is essential to refer to the facts of that case. The Appellant in that case was a contractor doing business in the construction of buildings and roads for the Military and Public Works Department in the State of Madhya Pradesh. He challenged the validity of the assessment which the State proposed to make on him under the provisions of the Central Provinces and Berar Sales Tax Act, 1947. The two main grounds were, (i) that the Provincial Legislature had no authority under entry 48 of list II, Schedule VII of the Government of India Act, 1935, to impose a tax on the supply of materials in works-contracts and that the provisions of the Central Provinces and Berar Sales Tax Act which sought to impose this tax, treating the contract as a sale, were ultra vires and (ii) that he was entitled to exemption under item 33 in Schedule II to the Act, and that the notification of the Government withdrawing that exemption was bad as being an unconstitutional delegation of legislative authority. It is important to note that the first ground itself found favour with their Lordships of the Supreme Court, upon the clear authority of *The State of Madras Vs. Gannon Dunkerley and Co., (Madras) Ltd.*, which concluded the question. Their Lordships stated that the second ground might appear academic, in view of this finding,

...but as there may be building contracts in which it is possible to spell out agreements, for the sale of materials as distinct from contracts for work and labour, it becomes necessary to express our decision thereon.

The judgment then refers to *Hampton, Jr. & Co. v. United States* 72 L. ed. 624, 630, and the question that arose in that case whether Section 315(b) of the

Tariff Act, 1922, under which the President had been empowered to make such increases and decreases in the rates of duty, as were found necessary for carrying out the policies declared in the statute, was an unconstitutional delegation. The case was authority for the view that such delegation was not unconstitutional. We are wholly unable to spell out from the reference in this context, any view of their Lordships to the effect that it would be constitutional to delegate a power of taxation to the Executive, without any limits at all being discernable in the act of delegation. *Hampton Jr. & Co. v. United States* 72 L. ed. 624, 630, which is the authority cited, certainly did not proceed to any such length. On the contrary, in dealing with the facts of that case, Taft, C.J., pointed out:

Again, one of the great functions conferred on Congress by the Federal Constitution is the regulation of inter-State Commerce and rates to be exacted by inter-State carriers for the passenger and merchandise traffic. The rates to be fixed are myriad. If Congress were to be required to fix every rate, it would be impossible to exercise the power at all. Therefore, common sense requires that in the fixing of such rates, Congress may provide a Commission, as it does, called the inter-State Commerce Commission, to fix those rates...all in accord with a general rule that Congress first lays down that rates shall be just and reasonable considering the service given and not discriminatory.

We desire to emphasise these concluding words of the passage in particular. They make it clear beyond doubt that the delegation comprised certain limits to the exercise of the power, as well as the power itself.

15. In this context, Sri Nambiar for the Respondent, has attempted an argument that the observations of the Supreme Court in *Pandit Banarsi Das Bhanot Vs. The State of Madhya Pradesh and Others*, that we have referred to were not merely observations in passing, but of the nature of *Obiter dicta*, and not at all decisive of the main ground on which the appeal was allowed. He also, points out that in his concurring judgment, Bose, J., expressly reserved his view about the validity of the delegated legislation. On that aspect, our attention has further been drawn to the Full Bench decision of this Court in *Dawood v. Collector of Central Excise* ILR (1960) Mad. 961 (F.B.), upon the character and legal effect of *obiter dicta*, and also to the decision of the Supreme Court in *Ranchhoddas Atmaram Vs. The Union of India (UOI)*, , with regard to the effect of any passing observations upon a question that the Court was not actually required to decide in the judgment. In our view, it is not at all necessary to canvass this position, for meeting the actual argument of the learned Advocate-General for the State. *Hampton, Jr. & Co. v. United States* 72 L. ed. 624, was itself not an instance of a delegation of an unlimited power to tax; on the contrary the passage we have extracted earlier shows that the limits were very definitely indicated. We are unable to construe any observations in *Pandit Banarsi Das Bhanot Vs. The State of Madhya Pradesh and Others*, , either, as lending support to the view that the delegated power would be constitutional where it is a taxing power, even if no limits were

prescribed or indicated at all. Actually, such an interpretation would be contrary to what the Supreme Court itself has laid down as a canon in *Hamdard Dawakhana and Another*, *Kalipada Deb and Another*, *Lakshman Shripati Itpure @ Lakshman Shripati Impore and A.B. Choudhri and Another Vs. The Union of India (UOI) and Others*, , particular reference being had to the passage that we have set forth.

16. For these reasons, we are in agreement with the view of the learned Judge Ramachandra Ayyar, J., with regard to the other ground also. Some indication of a limit, or some principle with reference to which the Executive should determine the rates, must be evident in a section of law delegating the power of taxation, before the delegation could be held constitutional. Otherwise, since, as we observed earlier, the sky would be the only conceivable limit, and the Executive might act in the exercise of an altogether unchanneled , power and still claim legality, this should be interpreted as amounting to a virtual abdication of its function by the Legislature, and hence as unconstitutional. As we have earlier stressed, this is really not necessary for the decision of the Writ Appeals, which fail upon the shorter ground of fact itself. But, in view of the importance of the question and the arguments before us, we have indicated our own view, as being in conformity with that of the learned Judge.

17. The writ Appeals fail and are dismissed. The parties will bear their own costs here.