
(1959) 10 MAD CK 0033
In the Madras High Court

The Tirukuthalanathaswarni Devasthanam by Executive Officer

APPELLANT

Vs

The Township Committee by Executive Officer, T. Shanmughasundaram

RESPONDENT

Date of Decision : 17-10-1959

Acts Referred:

Tamil Nadu District Municipalities Act, 1920 — Section 83(a)

Citation : (1960) ILR (Mad) 341 : (1960) 73 LW 145 : (1960) 2 MLJ 332

Hon'ble Judges : Ramachandra Iyer, J; Ramachandra Aiyar, J

Bench : Division Bench

Judgement

Ramachandra Iyer, J.—W.P. No. 1467 of 1956. This is a petition under Article 226 of the Constitution for the issue of a writ of certiorari or other appropriate writ to call for the records connected with the assessment of property tax in the Courtallam Township and the demand notice, dated 31st August, 1956, and to quash the same.

2. The petitioner is Sri Tirukuthalanathaswami Devasthanam at Courtallam, and it owns a number of buildings, sites, and lands within the limits of the Courtallam Township. Originally, Courtallam came within the purview of the Madras Village Panchayats Act (Act X of 1950), and its affairs were managed by a Panchayat Board constituted under that Act. In 1954 Courtallam was constituted a township and provision made for its administration and governance. u/s 2 of the Act, the area, which was comprised within the jurisdiction of the erstwhile Courtallam Panchayat, was declared to be within the Courtallam Township as and from the appointed day to be declared by notification by the Government. By G.O. No. 1323, L.A., dated 29th October, 1953, the State Government declared that the Act would come into force in Courtallam from 1st October, 1955. By the same notification, the Government constituted u/s 3 of the Act, as and from that date a Committee to be called Courtallam Township Committee for the purpose of administering the municipal affairs of the newly constituted township. The notification also appointed the members of the Committee. Section 4 of the Act

enables the State Government, by notification, to direct that any of the provisions of the Madras District Municipalities Act, 1920 (which shall hereafter for brevity be referred to as the Act) or any of the rules made thereunder, or any other enactment for the time being in force elsewhere in the State of Madras, shall apply to the Courtallam Township to such extent and subject to such modification, additions and restrictions as may be specified in the notification. G.O. 1323, L.A., dated 29th October, 1953, referred to above also included a notification u/s 4. As the present case is concerned only with the levy of property tax, it would be sufficient to notice that Sections 78(1) and (3) and 80 to 91 and Schedule IV, excepting Rules 43(1)(a) and 43(2) of the Act, were made applicable to the township. Section 4(2)(a) of the Courtallam Township Act enables the Township Committee to levy all or any of the taxes and fees which may be levied by virtue of the provisions of the District Municipalities or other Acts which applied to the township. Section 4(3) declares that the notification made by the State Government under Sub-section (1) shall have effect as if enacted in the Act itself. The result is that the provisions of the Madras District Municipalities Act, referred to above, should be deemed to be incorporated and form part of the Courtallam Township Act.

3. The Township Committee resolved on 6th December, 1955, to levy taxes u/s 78 of the Madras District Municipalities Act, and published the same on 23rd December, 1955. The resolution was to this effect:

The Township Committee, Courtallam, resolved to levy the following taxes with effect from 1st October, 1955. Objections and suggestions in this regard, if any received from the public within one month from the date of publication of notification, will be taken up for consideration.

The various taxes proposed to be levied and the rates at which such taxes were to be collected were then set out. They related to property, profession, carriage and animals and carts. The first item which related to a tax on property under Sub-sections (1), (3) and (4) of Section 81 of the District Municipalities Act comprised (1) tax for general purposes, (2) water and drainage tax and (3) lighting tax and scavenging tax at specified rates. On 8th February, 1955, after hearing the representations from those who showed cause, the Township Committee, acting u/s 80 of the Act, resolved to levy the taxes aforesaid. The rates originally proposed were, however, reduced and certain exemptions were also granted. But the taxes were made payable as and from 1st October, 1955. This resolution was published on 19th March, 1956, specifying the rate and the period for which the taxes and fees were to be levied, and also specifying that they were to be paid from 1st October, 1955, the date of the constitution of the Township. The assessment books were then prepared for the first time in the prescribed form showing the persons, the property liable to taxation and the detailed particulars relating to the assessment. Notices were duly published. Revision petitions were filed by some rate-payers under Rule 9 of the Schedule IV in respect of the first and succeeding half years. Some of them were rejected

and some others are said to be still pending. Demand notices for the payment of the taxes were issued on 26th August, 1956. Although the resolutions under Sections 78 and 80 of the Act then given did not warrant it, the demand notices included library cess payable under Act XXIV of 1948. It is the legality of the demand notices and the antecedent assessments that are challenged in this and th.2 connected writ petitions.

4. The contention on the part of the petitioner was that the levy and assessment on property were contrary to the provisions of the statute, and that, therefore, they were illegal. The illegality pointed out was that the levy of the taxes, being made retrospective, that is, as and from 1st October, 1955, some months anterior to the resolutions under Sections 78 and 80 of the Act, would be contrary to the provisions of the Act and beyond the powers of the Township Committee. The learned Government Pleader, appearing for the Township Committee, on the other hand, contended that the provisions of the Act authorised a retrospective levy, and that even if it were otherwise, as the levy was complete before the end of the first half year after the coming into existence of the Township, it should not be considered a retrospective one.

5. It would be convenient, at this stage, to set out the relevant provisions of the Act, which have to be considered in appreciating the contentions advanced.

Section 78.--(1) Every Municipal Council may levy,

(a) Property-tax....

(b)...

(3) Any resolution of a municipal council determining to levy a tax shall specify the rate at which any such tax shall be levied and the date from which it shall be levied.

Provided that before passing a resolution imposing a tax for the first time or increasing the rate of an existing tax, the council shall publish a notice in at last one vernacular newspaper, on the notice board of the municipal office and in such other places within municipal limits as may be specified by the council and by beat of drum of its intention, fix a reasonable period not being less than one month for submission of objections and consider the objections if any, received within the period specified:

Provided also....

Provided also that, where any resolution under this section has taken effect for a particular year, no proposals to alter the rates or date fixed in such resolution so far as that year is concerned shall be taken into consideration by the council.

Section 80.--When a municipal council shall have determined subject to the provisions of sections 78 and 79 to levy any tax for the first time or at a new rate, the executive authority shall forthwith publish a notification in the District Gazette and by beat of drum specifying the rate at which, the date from which

and the period of levy, if any, for which such tax shall be levied.

Schedule IV of the Act contains the Taxation and Finance Rules framed under Sections 303 and 304. Section 303 invests the State Government with power to make rules to carry out all or any of the purposes of the Act, and Section 304 provides for such rules being published and on such publication having effect as if enacted in the Act. Schedule IV, Rules 2 to 5 apply to all taxes and relate to the preparation and maintenance of assessment books, the determination of tax by the executive authority and the amendment of the assessment books, etc. Rules 6 to 15 relate to property tax. Rule 6 provides that the value of any land or building for purposes of property tax shall be determined by the executive authority. Rule 7 obliges the executive authority to enter the annual or capital value of all lands and buildings determined by him and the tax payable thereon in the assessment books to be kept for the purpose at the municipal office. Rule 8 provides for revision of assessment once in five years. It also provides for the amendment of assessment books at any time, inter alia altering the valuation of any property. Such assessment, when made, is deemed to take effect from the first day of the half-year in which it is made. Rule 9 prescribes that, after the completion of assessment books, the executive authority shall give public notice, stating that revision petitions will be considered within a period of 60 days therefrom. The other rules are:

Rule 13.--Immediately after the disposal of a revision petition, the executive authority shall inform the petitioner or his authorised agent either orally or in writing, of the orders passed thereon, shall direct him to pay the amount fixed on revision within fifteen days after the date of receipt of such intimation, or, if the amount is not yet due within fifteen days from the date on which it becomes due, and shall, if necessary, cause the assessment books to be corrected

Rule 14(1).--On the establishment of a municipality, assessments shall have effect from the date specified in the notification u/s 80.

Rule 15.--The first payment of tax shall, save as provided in Rule 13, be made within thirty days of the date or day specified in Rule 13.

As per resolution referred to above, the assessment, and the demand covered a period from 1st October, 1955, it has to be considered whether the provisions set out above authorised such a course.

6. There is nothing in the aforesaid provisions, expressly authorising the Municipality, in the instant case, Township Committee, to levy any tax so as to have retrospective operation.

7. The first question to be considered then is whether a necessary intendment to authorise a retrospective levy could be inferred and whether the provisions of the statute are sufficient to warrant such an implication and levy.

8. The general rule is that a statute, except when it relates to procedural matters, could not be construed as having a retrospective effect, unless so

expressed by the very terms thereof, or by necessary implication. This rule will apply with greater force in regard to taxation, or fiscal statutes. A subject cannot be taxed except under law. Enactments imposing pecuniary burdens on the subject should be strictly construed in favour of the tax-payer, and, unless he is brought within it, he could not be made liable. As taxation does not exist apart from a law authorising the tax no liability could be enforced by inference or analogy. It is well settled that an intention to impose a tax must be shown by clear and unambiguous language, and in the absence of plain declaration by the legislature, a tax should not be considered to have been imposed.

9. In Maxwell on "Interpretation of Statutes", 10th edition, at page 288, it is stated:

Statutes which impose pecuniary burdens also, are subject to the same rule of strict constructs? It is well settled rule of law that all charges upon the subject must be imposed by clear and unambiguous language because in some degree they operate as penalties. The subject is not to be taxed unless the language of the statute clearly imposes the obligation.

In *Canadian Eagle Oil Co. Ltd. v. The King* L.R. (1946) A.C. 119, Lord Simon, L.G., observed thus:

Rut the opinions delivered by Lord Macnaghten and Lord Devey in that well-known case (*LondonCounty Council v. Attorney-General* L.R. (1901) A.C. 26 proceed upon a meticulous construction of those particular provisions and not upon the supposition of any general principle underlying them, and remaining unexpressed. No such supposition is legitimate. In the words of the late Rowlatt J., whose out-standing knowledge of this subject was coupled with a happy conciseness of phrase, m a taxing Act one has to look merely at what is clearly said. There is no room for any internment. There is no mpresumption as to tax. Nothing is to be read m, nothing is to be implied. One can only look fairly at the language used." (*Cape Brandy Syndicate v. Inland Revenue Commissioners* L.R. (1921) 1 K.B. 64.

The principles would apply with equal force to the municipal taxation, firstly because it is a piece of delegated legislation and secondly it is a recurring tax liability.

10. In Maxwell on "Interpretation of Statutes", 10th edition, at page 204, it is stated:

Although there is no positive rule against a retrospective rate, enactments which authorise the imposition of rates and similar burdens on the inhabitants of a locality have been repeatedly held not to authorise, without express words, a retrospective charge on the ground of the injustice of throwing on one set of persons a burden which ought to have been borne by another at a former period.

11. *Bradford Union v. Clerk of the Peace of Wills* L.R. (1868) 3 Q.B. 604, related to a case of a rate levied on a county for the maintenance of a lunatic. Cockburn,

C.J., considering whether on the terms of a statute it was open to the Justices to make a retrospective order for the payment of costs of maintenance, observed:

Prima facie this language is prospective, there is nothing which treats of past maintenance, and we start with the proposition that in all such cases the rate must be prospective and not retrospective, so that the expenses shall fall on the rate-payers who are rate-payers at the moment of the expenses being incurred; whereas by doing effect would amount to the same thing as making a retrospective rate, the expenses of past years are made to fall on the rate-payers of the present year. That being a principle adopted long ago and long acted on, whenever the legislature has thought it expedient to authorize the making of respective rates or orders, it has fixed the period as to which the rate or order may be retrospectively made.

The observations of the learned Chief Justice would apply with particular emphasis in a case of property tax by a municipality. By way of example let us suppose that a property in a municipality is sold by the owner and, after the sale, the Authority levies a property tax retrospectively operating from a time long anterior to the date of sale. The tax will be a charge on the property: the purchaser who bought when there was no levy would be obliged to pay for a period when his vendor was the owner and would be left with the doubtful remedy of proceeding personally against his vendor for contribution. Principle and convenience alike point to the fact that a taxing statute should be only prospective: it is *prima facie* construed, as not having a retrospective operation. That does not, however, mean that a legislature cannot impose a retrospective pecuniary liability: the legislature can also legislate vesting such power in a local or municipal authority within the limits in which there can be a delegated legislation. Whether the legislature has so done is a matter of interpretation. The rule of interpretation is stated by Lord Halsbury L.G., in *Tennant v. Smith* L.R. (1892) A.C. 150, thus:

In various cases the principle of construction of a taxing Act has been referred to in various forms, but I believe they may be all reduced to this that inasmuch as you have no right to assume that there is any governing object which taxing Act is intended to attain other than that which it has expressed by making such and such objects the intended subject for taxation, you must see whether a tax is expressly imposed.

Cases, therefore, under the taxing Acts always resolve themselves into a question whether or not the words of the Act have reached the alleged subject of taxation.

It has, therefore, to be seen whether the words of Sections 78 and 80 of the Act, which authorise the levy of the taxes set out in the former section, are sufficiently-expressed to give a power of retrospective levy. *Prima facie* Section 78 can have only prospective operation. Sub-section (3) makes it mandatory for the municipal council to specify the date from which the tax would be levied.

Section 80 conforms to Section 78, as the resolution and the consequential publication are as a result of the resolution u/s 78. Further the rules contained in Schedule IV, which are deemed to be part of the enactment, can be reasonably referred to as interpreting the object of the Act. Rules 8 and 14(2) for instance specifically provide for a limited retrospective operation. That would imply that in regard to other matters there should be no retrospective operation of the taxes. Rule 15, to which we have made reference, states that the first payment of tax shall be made within 30 days of the date specified in Rule 14. Rules 13 and 14 deal with two classes of cases : (1) the first levy, and (2) levy on the basis of a general revision. In the present case we are concerned only with the former. Rule 14(1), to which reference has been made already, states that the assessments would have effect only from the date specified in the notification. It may be and it was so contended before us that on the terms of Sections 78 and 80 there would be no express ban on the municipality fixing some day anterior to the notification as the date from which tax would be payable: but that is not enough. That the date specified in the resolution under Sections 78 and 80 should be only a future date, is clear from the provisions of Rule 15. That directs that the tax assessed should be paid within 30 days of the date specified in Section 80. If the date specified in Section 80 is anterior to the date of the resolution itself, would it be possible for any tax-payer to pay within 30 days thereof when even none of the necessary preliminaries contemplated under the Act for the levy and assessment could have been completed, the quantum of tax itself would not have been known. This case itself illustrates the difficulty. The assessment was finalised only by 26th August, 1956. The rate-payer would not have known before that date what he had to pay. If Rule 15 were to be complied with according to its tenor, it would mean that the tax was payable within 30 days from 1st October, 1955, at a time when the tax itself had not been levied, ascertained or assessed. It is not possible to assume that the legislature would have intended such a result. Sections 78 and 80 should, therefore, be held to authorise only the fixing of a future date from which any tax has to be paid.

12. The levy of all or any of the taxes mentioned in Section 78 is made optional to the municipality. If a municipality had, therefore, omitted to levy in earlier years it should be held that they exercised the option of not levying the tax for those years. There could, therefore, be no intention on the part of the legislature to invest the municipality with power of retrospective levy. In *Bates v. The Municipal Commissioner, Bellary* (1873) 7 M.H.C.R. 249, legality of a professional tax which was imposed for the first time was challenged. The tax was levied from 1st May, 1871, while the sanction of the Governor-in-Council was obtained only on 4th July, 1871. It was held that there was no legal authority whatever for the imposition of the tax at the commencement of the year. In *Sir Gulam Muhammad Ali Sahib Bahadur Khan Bahadur Vs. The Corporation of Madras*, a question arose whether it was open to the Corporation to levy professional tax retrospectively. The learned Judges held that the tax being based on assessment should not be held to be due till it was so assessed, and that there was no power

of backward assessment, and that the careful prohibition of retrospective assessment in the revision of property tax would indicate that there was no power to levy retrospectively. It is true that the Courtallam Township could not have taken steps earlier than it did to levy a tax from the date when it came into existence. But the power of taxation conferred on it are only those of a municipal council under Sections 78 and 80, and if those provisions did not confer a right to levy taxes retrospectively, it should be held that the Township Committee had no such power. There is nothing in Sections 78 and 80 expressly justifying a retrospective levy of the tax, and we find that there is nothing in those provisions to authorise or justify backward assessment. We are, therefore, of the opinion that the resolutions of the respondent Committee, dated 6th December, 1955 and 8th February, 1956 which levied the tax as and from 1st October, 1955, were not authorised, but contrary to the provisions of Sections 78 and 80 of the Act, and should be held to be illegal.

13. The learned Government Pleader contended that, under the provisions of Sections 86 to 90, the property tax would be a half-yearly tax, a half-year being taken as a unit, and that as the levy was complete in the present case by 8th February, 1955, within the first half-year after the Township came into existence, there was no retrospective levy as such, but a levy for the then current half-year. According to him, the levy was complete by 6th February, 1955, the subsequent assessment being independent of the levy which though necessary for ascertaining the quantum of tax would have no relevance to the charge or liability of the tax-payer. But the question is not so much as to whether the levy was completed within a particular half-year but whether the resolutions of the Township Committee under Sections 78 and 80 are valid. We have already held that the resolutions could under the law only fix a future date from which the tax proposed could be levied. The resolutions being invalid, the question of completion of levy within the half-year cannot arise. Rules 8 and 14(2) of Schedule IV specifically provide that the amendment or a general revision of tax would date back to the beginning of half-year in which it was made. That would imply that in all other cases, the present case being under Rule 14(1) no tax could be levied even from the beginning of the half-year in which it was levied. A similar-attempt was made in the case reported in *C.E. Bates v. The Municipal Commissioner, Bellary* (1873) 7 M.H.C.R. 249, where a tax was sought to be levied from a date anterior to the sanction thereof by the Governor-in-Council. The learned Judges observed:

The sanctions as to notice enforce the construction that there is only one legal period of imposition of the tax, and at that period there was no tax legally in existence. We answer, therefore, that the levy from the plaintiff was illegal.

The learned Government Pleader relied on the decision in *The Municipal Council Vs. Sangsali Vasudeva Rao*, . There, proceedings were taken by the municipal council to enhance the rate of tax from 1st April, 1928. The resolution was passed in January, 1928 and the same confirmed on 17th March, 1928. The

notification u/s 80 was, however, made only in April, 1928. That was in the next fiscal year. The validity of the tax was sought to be questioned. The learned Judges upheld the same on the ground that the tax was assessed by the resolution, and that the publication in the District Gazette was not vital for its validity. It must be noticed that the levy in that case was for enhanced tax and the terms of Rules 8 and 14 specifically enabled such enhanced tax to become operative from the beginning of the half-year, in which the resolution was passed. The learned Government Pleader then called in aid the Third Proviso to Section 78 as indicating a power to tax retrospectively. But, in our opinion, that Proviso would rather indicate that the date to be fixed u/s 78 should only be a future one, and not an anterior one as it contemplated a levy not coming into force and expressly negated a right of amendment of a resolution during the particular year in which the resolution had taken effect.

14. It was then contended that the resolution relating to the levy of the assessment in pursuance thereof should be deemed to be severable, comprising two periods, one, the first half-year, and the other, the future half-years, and that while the resolution relating to the former period would be invalid it could be confined so as to validly operate in respect of the latter. Reliance was placed, in this connection, on *A.K.A.A. Audiappa Chetti and Others Vs. The Taluk Board of Devakottah and Others*, , and on certain observations made by one of us in *V.S.T. Thanusthaseem Hammepalli Madarasa Vs. Melapalayam Municipality*, , to support the contention that where part of assessment was severable, the invalid part could be separated from the valid one. We are of opinion that there is nothing in the resolution to warrant such a distinction. To read them in the way contended for, would be to read it differently from what it purports to be. There being no valid resolution to support the assessments there could be no rated demand of the tax.

15. The result is, no doubt, unfortunate. The tax payer is relieved of paying from 1st October, 1955, even the tax which he paid to the Panchayat Board, as the Panchayat had been abolished : he cannot be compelled to pay the Township Committee from the date when the Panchayat Board ceased to exist, as there is no valid levy. That result is by reason of the fact that the Gourtallam Township Act failed to make a transitory provision, authorising the levy of tax till the Township Committee lawfully levied the same under Sections 78 and 80. Section 368(1) of the Madras District Municipalities Act contains provisions to apply to new and reconstituted municipal councils; it authorises the Special Officer to exercise the powers to discharge duties and perform the functions of a municipal council until the council has been constituted. That provision has been excluded by the notification under the Court allam Township Act. Even otherwise, we are of opinion that it was for the legislature, if it thought fit, to have conferred express powers on the Township Committee to levy taxes as and from 1st October, 1955. This, however, was not done. The Township Committee could act only under the powers vested in it under Sections 78 and 80 and Schedule IV of the Act and levy the tax from a future date in accordance therewith. This too was

not done.

16. Section 5 of the Township Act, which purports to transfer all property, rights and liabilities of the Courtallam Panchayat Board to the Township, cannot be held to authorise the levy of taxes which, as we pointed out, should be specifically conferred by the statute. A power to tax cannot be deemed to be a right enjoyed by the former Panchayat and later transferred by virtue of Section 5 of the Township Act. To hold otherwise, would lead to the result that the Township Committee would have two distinct authorities to tax, one inherited from the Panchayat Board by virtue of Section 5 and the other conferred upon it by Section 4.

17. Apart from the invalidity of the assessment proceedings, complaint is made that, in the demand notices in addition to the property tax, library cess is included. Act XXIV of 1948, which authorises levy of library cess, could only apply to an area covered by municipal council. Vide Section 12(2)(b). Therefore the Township Committee would have no right to collect or include in its demand a library cess. The demand notice, in so far as it included the library cess which was not authorised by the statute, should be held to be illegal. That by itself is enough to invalidate the demand. We have held that the demand of property tax was also invalid.

18. No other point was urged on behalf of the petitioner in regard to the invalidity of the levy and assessment of property tax.

19. Rule nisi is, therefore, made absolute.

20. W.P. No. 1489 of 1956.--This petition relates to the assessment of a nandavanam owned by Sri Thirukuthalaswami Devasthanam. Flowers grown in the nandavanam are exclusively used for the purpose of the temple. Section 83 (a) of the Madras District Municipalities Act exempts from property tax places set apart for public worship and either actually so used or used for no other purpose. In The Municipal Council of Tirupati Vs. Sree Mahant Prayag Dossjee Varu, , certain buildings were used by Tirupati Devasthanam for stabling the Devasthanam coaches and horses which were employed in carrying drums in temple processions or allowed for use of respectable pilgrims to whom such honour was shown by the Mahant. It was held that the buildings were exempt from taxes, as the use was for religious purposes. That decision was approved in The Municipal Council Vs. Sri Dhandayuthapani Devasthanam, . That was a case where a power-house was erected by the Palni Devasthanam at the foot of the hill. The power house supplied energy not merely to the hill and the temple but also to certain shops and a hotel on the hill, for consideration yielding a profit. The learned Chief Justice, delivering the judgment of the Bench, held that the decision in the Municipal Council of Tirupati v. Sree Mahant Prayag, was not open to criticism, because the buildings were used for purposes connected with worship in a public place, but that the principle of that decision was inapplicable to the case before him, as the power-house was being used for commercial, as

well as religious purposes. A nandavanam is a necessary adjunct to a temple. The flowers grown there are used for the worship in the temple. In the present case it is stated that the flowers grown in the nandavanam are exclusively used for the temple. It would, therefore, follow that the petitioner would be exempt from paying the property tax (even if properly levied) by virtue of Section 83 (a) of the Act.

21. Rule nisi is, therefore, made absolute.

22. W.P. Nos. 126 to 134, 278, 689 and 690 of 1957 5 191 to 196 of 1958; 1227 and 1228 of 1956 and 708 to 710 of 1958.--Following our decision in W.P. No. 1467 of 1956, rule nisi has to be made absolute. We may, however, state that the various other objections **** were taken in respect of legality of the levy of the property tax in these case have not been pressed before us.

23. Rule nisi is made absolute.

24. No order as to costs in the above petitions.