
(1990) 06 KAR CK 0039

In the Karnataka High Court

Case No : Writ Petns. No"s. 6062 to 6170, 1028 to 1032, 11490, 10024 to 10027, 10595, 10654, 8718 to 8722, 6669 and 6700, 11261, 11262, 11690, 1134, 1426, 1427, 1793 to 1798, 1799, 1834, 2218, 2488, 3475, 7345 and 3769 of 1987

V.S. Alevoor and

APPELLANT

Vs

State of Karnataka and another

RESPONDENT

Date of Decision : 25-06-1990

Acts Referred:

Constitution of India, 1950 — Article 265

Karnataka Municipal Corporations Act, 1977 — Section 103 (ix), 104, 105, 187, 542

Citation : AIR 1991 Kar 111

Hon'ble Judges : S. Rajendra Babu, J

Bench : Single Bench

Advocate : Smt. Kumud C. Rao, Jayakumar S. Patil, R.V. Jayaprakash, H. Thipperudrappa, Basavarajaiah N. Hiremath, Subhash B. Adi, H.N. Srinivasa Anand, G.V. Latha, S.W. Arbatti, S.S. Rangaraj and R. Gururajan, for the Appellant; Satish Doddamani, Government Pleader and H.K. Vasudeva Reddy, for the Respondent

Judgement

1. The petitioners who are residents of Hubli-Dharwad Municipal Corporation fall into three categories, namely, those who utilise the water supplied by the Corporation for their domestic purpose, nursing homes and hotels and lodgings. By a resolution dated 5-7-86 the Corporation proposed an increase in the water rates at graded rates from 0.25 paise to Rs. 1.60 per 1000 litres with a minimum of Rs. 4/- in respect of domestic users and in respect of boarding, lodging, restaurants, hotels, factories and nursing homes at the rate of Rs. 8/- per every thousand litres with a minimum of Rs. 25/-. In respect of those consumers who do not have a meter certain other rates were proposed. During the year 1961-62 the Corporation fixed water rate at 25 paise per every thousand litres in respect of domestic consumer and at the rate of 66 paise in respect of non-domestic consumer. The Corporation was supplying water between the years 1961 to 1983 from Unkal Water Works which is wholly owned and maintained by the

Corporation with an average drawal of water at 41.04 lakh litres per day. However, Neerasagar Water Works is maintained by the Water Board (considered for the purpose of supply of water other than Bangalore) which supplied 381.09 lakh litres of water per day on a payment of 0.18 paise per every thousand litres. When these two sources were not sufficient to meet the growing needs of the residents within the Corporation area it took up the Malaprabha Project in the year 1974-75 and was completed at a cost of Rs. 11.71 crores. The cost having been borne entirely by the Corporation the water from Malaprabha is made available to Dharwad city from 1-4-83 and the Hubli City from 1-10-1983 the average drawal being about 300 lakh litres per day. It is stated by the Corporation that they incur an expenditure of 4.75 lakhs per annum for procurement and distribution of water from the said source. The annual collection from water rate had been at Rs. 48.43 lakhs. Having found the return from this head of activity of Corporation was not even broadly meeting the expenditure thereto, the Corporation took steps to revise the water rates. They proposed revision of water rates by publishing a notification on 6-10-1985 calling for objections from those who are likely to be affected by the enhancement. The said notification was published in the gazette dated 10-10-1985, and in the local newspapers too. The Corporation authorised its Taxation and Finance Committee to look into the objections that were filed by the users and make a report. The Standing Committee not only considered the objections filed by the various persons but also examined orally several persons including some of the petitioners and thereafter submitted a report to the Corporation to accept the original proposal overruling all objections. Subsequently, the Corporation in the general body meeting held on 13-5-86 held a detailed discussion and considered the objections again independently and resolved to fix the water rates. The sanction of the Government was obtained thereafter to the said resolution by orders dated 16-9-1986 and 22-10-1986. The Corporation through its statement of objections placed material before this Court to the effect that the Corporation had worked out the actuals taking into account all factors like cost of production, procurement and supply including through public taps and repayment of loans and interest contribution to sinking fund and also the cost of maintenance of water works. The Corporation has furnished figures in regard to various water tap connections as follows: --

"Domestic tap connections

(a)

No. of low consumers in the economically weaker sections consuming 15000 litres p.m.

19,356 taps

(b)

No. of lower groups consuming 25000 litres p.m.

6,589 taps

(c)

Consuming 50,000 litres p.m.

4,173 taps

(d)

No. of middle class groups consuming 75000 litres p.m.

805 taps

(e)

No. of higher class groups consuming 1 lakh and above litres p.m.

481 taps

31,404 taps

Non-domestic tap connections

(a)

For building construction

1,214 taps

(b)

For commercial use (Hotels, shops, industries, etc.)

1,997 taps

3,311 taps

The Corporation has also furnished figures of its anticipated income at the enhanced rates as also the expenditure that will be incurred by the Corporation deducing that they would incur loss of Rs. 72.17 lakhs per annum.

2. The learned Counsel for the petitioners contended that a perusal of the relevant provisions in relation to levy of water rate would disclose that the levy is compensatory in character and therefore must have a rational nexus to the expenditure incurred in relation to water supplied and the computation of water rate cannot include the cost of capital expenditure. Without disputing the calculations made by the Corporation and the figures furnished by them, it is submitted that it is fallacious to include the cost of construction of water works and therefore it is submitted that the levy is exorbitant, excessive and arbitrary in character. It is also submitted that due procedure provided under Ss. 104 and 105 of the Karnataka Municipal Corporations Act has not been followed by the Corporation. It is lastly contended that even if water rates levied under S. 103(ix) is deemed to be a tax, the legislature having delegated its essential

function of levying tax is unconstitutional and invalid. Elaborating this submission the learned Counsel for the petitioners contended that delegation of levy of tax was impermissible without providing for any maximum rates at which the tax could be levied, water rate being levy pursuant to the delegation of powers. In the absence of a maximum rate being prescribed to levy the tax and discretion having been given to the municipal body, the State Legislature has abdicated its functions and hence S. 103(ix) of the Act is unconstitutional.

3. Before I can embark upon the consideration of various contentions advanced by the learned Counsel on either side it is necessary to briefly survey the various provisions of the Act having relevance to the present cases. The Karnataka Municipal Corporations Act has been enacted for the purpose of establishment and regulation of Municipal Corporations in the State of Karnataka, Chapter V thereof deals with the powers and functions of the Corporation. S. 58 enumerates obligatory functions of the Corporation. Among other functions enumerated under S. 58 of the Act sub-section (21) thereof requires the Corporation to carry out construction, acquisition, management and maintenance of water works for sufficient supply of water for public and private purposes. Under Sec. 103 of the Act subject to the control of the Government a Corporation after observing the procedure laid down under S. 104 and with the sanction of the Government, can levy taxes including water rate for water supplied either in the form of a tax or in any other form including charges for such supply fixed in such mode or modes as shall best be adopted in varying circumstances of any class of cases or of an individual case. Section 104 requires the proposal for levy or increase of any tax to be duly notified to the public in the Official Gazette and also any other mode as may be prescribed and provides for objections being filed with the Corporation which may be considered by the Corporation or any of its Committees and requires submission of proposals unless abandoned along with the objections, its opinion and any modification proposed therewith to the Government. When such proposal is submitted to the Government, the Government under S. 105 of the Act may accept the same or modify it without involving any increase in the amount of tax to be imposed subject to such other conditions as may be imposed in regard to the application of the same in any part or area of the Corporation. Chapter XIII of the Act provides for water supply and sewerage and S. 187 thereof enjoins the Corporation to construct works for supply of water to the city by providing tanks, reservoirs, machinery, mains, fountains and other conveniences and also to maintain the existing water works and regulate certain other activities in regard to such works. It also empowers under S. 191 of the Act the Corporation to specify by bye-laws rates that may be prescribed for all water supplied. In the present case, it is not in dispute that the power exercised to levy water rate falls under S. 103 of the Act and not under Chapter XIII of the Act.

4. Learned Counsel for the respondents refuting the contentions advanced on behalf of the petitioners submitted that the tax levied under S. 103(b)(ix) of the Act is a tax and not fee to be compensatory in character. But even assuming it to

be compensatory in character when the figures furnished by the Corporation are not in dispute enhanced levy falls well within the limits of law. The contention that the capital outlay for the purpose of construction of a water works cannot be included in the matter of calculation of water rate is strongly refuted.

5. A similar submission in relation to levy of motor vehicles tax which is compensatory in character was raised then it is not logical to include capital costs of new high ways or other capital expenditure as the basis of computation of G.K. Krishnan and Others Vs. State of Tamil Nadu and Others, . The Supreme Court held that in capital expenditure for construction of new roads can be taken into account in levy of motor vehicles tax. The Supreme Court relying upon the observations in The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others, , stated that in computing the compensatory character of the tax the cost of making roads would also go into it and referred to a decision of the Supreme Court of United States of America in Inter-State Transit Incorporation v. Lindse (1930) 283 US 183, that the State may impose even upon motor vehicles engaged in inter-State commerce a charge, as compensation for the use of public highways which is a fair contribution to the cost of constructing and maintaining them on regulating traffic thereon. The Supreme Court further noticed that this view was subsequently followed in Capitol Greyhound Lines v. Brice (1949) 339 US 542 and upheld the tax though the allocation was towards the construction and maintenance of the State roads. Hence, it is clear that the cost of construction of a water works can be included even if the tax leviable under S. 103(b)(ix) is compensatory in character and so the contention advanced by the learned Counsel for the petitioners has got to be rejected.

5A. The statement of objections filed by the respondent-Corporation clearly indicates the procedure followed by them in the matter of enhancement of water tax impugned herein. The only objection advanced on behalf of the petitioners is that there has been no due consideration of the objections raised. But this contention cannot stand any serious scrutiny inasmuch as there has been due publication of the proposal made by the Corporation and the objections filed by those who are likely to be affected by that proposal has been considered after hearing the objectors by the Finance & Taxation Committee who reported to the Corporation and Corporation has once again in detail considered the objections as well as the various aspects of the matter before finally submitting the proposal for the sanction of the Government. However, the learned Counsel for the petitioners urged that the Government while making the sanction under S. 105 of the Act, cannot increase the amount to be imposed and in the present case while the Corporation had proposed levy of water rates at graded rates between 0 to 15000 at one rate and thereafter between 15000 to 25000 at another and so on, the Government while accepting the proposal made by the Corporation has modified the same as to commence each of the cases at different classes from 0 to 15000 at one rate and 0 to 25000 at another rate and so on in respect of domestic consumers. The argument that the Government by

this process has actually increased the levy does not stand to reason. The various classifications proposed by the Corporation have been accepted by the Government and the rate fixed is also the same, but the modification is made only in regard to the mode of calculation of the same which fits in with the modern methods of accountancy reducing lot of paper work. Therefore, the contention advanced on behalf of the petitioners that the modification made by the Government in regard to domestic consumers cannot be stated to be in violation of S. 105 of the Act. Thus, the second argument raised on behalf of the petitioners in regard to the procedure followed or the sanction granted by the Government being defective has got to be rejected.

6. So far as the last argument is concerned the law on this aspect can be taken to be fairly well settled. The delegation of legislative power to administrative authorities or local bodies though not permissible, by a process interpretation of laws and the Constitution the view expressed is that power of legislature cannot be and should not be delegated at all though with the increasing complexity of modern administration and the need for flexibility for quick readjustment to meet the varying circumstances that cannot be foreseen, the practicalities demand the legislatures to resort to the practice of subsidiary and ancillary powers to be delegated to achieve their objectives, the condition being that there should be proper checks and balances or safeguards to ensure the democratic process of legislation as far as possible. This aspect particularly assumes significance in the context of taxation as Art. 265 of the Constitution bars levy and collection of tax except by authority of law. The legislature can lay down the guidelines for the delegate in regard to the functions that have been delegated and in such matters the standard procedural safeguards are provisions for consultation of affected interests, concurrence or sanction of a higher authority or even laying before the House of Legislature with affirmative or negative resolutions. In *Municipal Corporation of Delhi Vs. Birla Cotton, Spinning and Weaving Mills, Delhi and Another*, , Chief Justice Wanchoo spelt out the safeguards in such cases in the following terms :

- (1) Delegation is to a body of elected representatives of people taxed;
- (2) Financial needs of the authority in discharge of its statutory obligations;
- (3) Rates fixed by the statute itself in respect of obligatory taxes provided guidance;
- (4) Provision for sanction by Government;
- (5) The Court could interfere if the rate of tax fixed was unreasonable.

As in the present case, the delegation in the above referred case was to a municipal body which is a body of elected representatives. In the instant case, all these safeguards are available as discussed earlier in the course of this order while making a survey of the relevant provisions of the Act. In *Corporation of Calcutta and Another Vs. Liberty Cinema*, , challenge was to S. 542 of the

Calcutta Municipal Corporation Act which authorised the Corporation to levy licence fee at such rate as may from time to time be fixed by the Corporation. Upholding this provision and interpreting the same to be in the nature of a tax the Supreme Court stated that its power to collect tax is necessarily limited by the expenses required to discharge the statutory functions. It was also stated in that decision that merely fixing a maximum rate of tax in the statute by itself does not afford any guideline. This view is reiterated in the case of *Gulabchand v. Ahmedabad Municipality* MR 1971 SC 2100 , that the mere fact that the statute delegating taxing power refrained from providing a maximum rate did not itself render the delegation invalid. Similar view is reiterated in the case of *Avinder Singh and Others Vs. State of Punjab and Others*, . I may point out that the Corporation could levy tax only for the purposes mentioned in the Statute, the ultimate control both for raising tax and incurring the expenditure lay with the councillors chosen by and responsible to the people and that the State Government, should sanction the proposals by the Corporation levying taxes and logical conclusion is that the power to levy tax is not uncontrolled or unguided as to make it possible for the Corporation to levy in an arbitrary manner. Therefore, the last argument also having failed, I have no hesitation in dismissing these petitions.

7. At this stage it is brought to my notice that this Court while granting an interim order had allowed the petitioners to pay taxes in regard to non-domestic users at the rate of Rs. 4 per every thousand litres of water and they require time to pay the arrears. It is difficult to say as to how much arrears is there in respect of each of the petitioners and therefore it would be proper to direct the respondent to give reasonable time up to one year depending upon the extent of arrears due to be paid at rates upheld by this order, by granting such instalments as they think reasonable.

Rule is discharged accordingly.

8. Petitions dismissed.