Rama Krishna Ramanath

Vs

The Janpad Sabha, Gondia

Civil Appeals Nos. 188 to 191 of 1956

(CJI B. P. Sinha, T. L. Venkatarama Ayyar, K. Subha Rao, N. Rajgopala Ayyangar, J. R. Mudholkar)

07.02.1962

JUDGMENT

AYYANGAR, J. -

Section 143(2) of the Government of India Act, 1935 enacted.

> "143 (2). Any taxes, duties, cesses or fees which, immediately before the commencement of Part III of this Act, were being lawfully levied by any Provincial Government, municipality or other local authority or body for the purposes of the Province, municipality, district or other local area under a law in force on the first day of January, nineteen hundred and Thirty-five, may, notwithstanding that those taxes, duties, cesses or fees are mentioned in the Federal Legislative List, continue to be levied and to be applied to the same purposes until provision to the contrary is made by the Federal Legislature."

The precise import, significance and effect of the words "continue to be levied and to be applied to the same purposes until provision to the contrary is made by the Federal Legislature" is the common question which arises in these four appeals which come before us by virtue of certificates under Art. 132 of the Constitution granted by the High Court of Madhya Pradesh at Nagpur.

Section 51 of the Central Provinces and Berar Local Self Government Act, 1920 enacted :

> "51. (1) Subject to the provisions of any law or enactment for the time being in force a District Council may, by a resolution passed by a majority of not less than two-thirds of the members present at a special meeting convened for the purpose, impose any tax, toll or rate other than those specified in sections 24, 48, 49 and 50.
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> #(2) .....(3) ....."##

By virtue of the power thus conferred to the District Council of Bhandara which was "a local authority" constituted under this Act of 1920 imposed a tax on the export of bidis and bidi-leaves by rail out of the Bhandara district by a resolution dated May 14, 1925, as amended by another dated April 18, 1926. The tax was at the rate of 4 annas per maund on bidis and 2 annas per maund on bidi-leaves. The Local Government framed rules for the collection of the tax under s. 79 of the Act

of 1920, and the said tax was being collected by this local authority on April 1, 1937, when Part III of the Government of India Act came into force. It is now common ground that the tax thus levied and collected was "a terminal tax on goods carried by railway" covered by entry 58 in the Federal Legislative List - List I - in the Seventh Schedule to the Government of India Act of 1935. The result of this tax being in the Federal Legislative List, it is manifest, is that the Provincial Legislature could not thereafter freshly impose such a tax under its legislative power. By reason of the provision however of s. 143(2) of the Government of the India Act, 1935, extracted earlier, the local authority continued to retain the authority to levy and collect the said tax and the tax continued to be collected by the District Council even after April 1, 1937 when part III of the Government of India Act, came into force. While so, the Central Provinces and Berar Local Self Government Act, 1920 was repealed and was replaced by the Central Provinces and Berar Local Government Act, 1948 which came into force on June 11, 1948. District Councils which were the units of local government administration under the Act of 1920 were replaced by Janpads which comprised smaller areas and as a result the area which was under the jurisdiction of the District Council of Bhandara under the Local Self Government Act of 1920, came to be constituted into the three Janpads, viz., those of Gondia, Bhandara and Sakoli - these being the three Tahsils comprised in the district and the three Janpads were administered by three Janpad Sabhas formed under the act of 1948. There were provisions in the later enactment providing for the continuity in the powers to be exercised by the District Councils whom the former replaced. But what is of relevance to the points arising in the present appeals are those continued in s. 192 of the Act of 1948 which, as originally enacted, ran :

> "On and from date on which this Act comes into force, the Central Provinces and Berar Local Self Government Act, 1920, shall be repealed :
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> Provided that -
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> (a) all local authorities constituted under the said Act shall continue to function thereunder for such time till the constitution of the Sabhas as the Provincial Government may, by notification, specify;
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> (b) all rules and byelaws made, all notifications published, all orders issued and all licences and permissions granted under the said Act and in force immediately before the commencement of this Act shall, so far as they are consistent with this Act, be deemed to have been respectively made, published, issued and granted thereunder;
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> (c) all rates, taxes and cesses due to the district Council or Local Board shall be deemed to be due to the Sabha to whose area they pertain; and
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> (d) all references made in any Act of the Provincial Legislature to the said Act shall be read as if made to this Act or to the corresponding provision thereof."

Pausing here, two matters which figured largely in the arguments require to be noticed in the provisions of this section. The first is that there was an express repeal of the Local Self Government Act of 1920 effected by the main part of the section. The second is that the repeal was not absolute and unconditional but was modified by a saving which continued the operation of certain of the provisions of the repealed Act. But the terms in which the right to collect the rates, taxes and cesses was continued in favour of the Janpad Sabhas which replaced the District Councils under cl. (c) was capable of being construed as not enabling the future imposition of the rate, cess etc, by the Janpad

Sabhas. The scope and meaning of this clause which is one of the principal matters to be considered in these appeals we shall reserve for later consideration but at this stage it might be mentioned that the clause is certainly capable of being understood as transferring to the Sabhas only the right to collect the rates, taxes or cesses which had accrued due to the District Councils which had remained unpaid on the date when by the virtue of the first part of s. 192 the Act of 1920 stood repealed and the District Councils ceased to exist. If this were the proper meaning of this clause it is obvious that the Janpad Sabhas could no longer levy the terminal tax on bidis and bidi-leaves where the export was effected on or after June 11, 1948, on which date by virtue of the Act of 1948, coming into the force the earlier Act of 1920, stood repealed.

The Janpad Sabhas were, however, continuing the levy and the Provincial Legislature sought to put the matter beyond doubt by an amending Act of 1949 by which cl. (b) of the proviso to s. 192 was replaced by a new clause reading :

> "All rules and byelaws and orders made, notifications and notices issued, licences and permits granted, taxes imposed or assessed, cesses (other than additional cesses imposed in accordance with section 49 of the said Act), fees, tolls or rates levied, contracts entered into and suits instituted and proceedings taken under the said Act and in force immediately before the commencement of this Act shall continue to be in force and in so far as they are not inconsistent with this Act, they shall be deemed to have been respectively made, issued, granted, imposed or assessed, levied, entered into, instituted and taken under this Act until new provisions are made under the appropriate provisions of this Act."

and by s. 39 of the Amending Act this amendment was given retrospective effect from the commencement of the Local Government Act of 1948. It was not in dispute that if the terms of cl. (b) as amended by the Act of 1949 had found a place in the Local Government Act of 1948 when originally enacted, the levy of this tax by the Janpad Sabhas would have been valid. It is only necessary to add that if this tax had been lawfully levied by the Janpad Sabhas immediately before January 26, 1950, they could continue to be levied after Constitution came into force notwithstanding the repeal of the Government of India Act by the Constitution and notwithstanding terminal taxes being a tax solely leviable by the Union List in Sch. VII by reason of the provision contained in Art. 277 of the Constitution reading :

> "277. Any taxes, duties, cesses or fees which, immediately before the commencement of this Constitution, were being lawfully levied by the Government of any State or by any municipality or other local authority or body for the purposes of the State, municipality, district or other local area may, notwithstanding that those taxes, duties, cesses or fees are mentioned in the Union List, continue to be levied and to be applied to the same purposes until provision to the contrary is made by Parliament by law."

It would thus be seen that in order to sustain the claim of the respective Janpad Sabhas who are the respondents in these four appeals to continue to lawfully levy the terminal tax it should be established either that cl. (c) to the proviso to s. 192 enabled them to do so or that the amendment effected to proviso (b) to s. 192 of the Act of 1948 was validly enacted.

Before considering this question it would be of advantage if we set out the facts of the cases under appeal. It is sufficient to refer to the facts in Civil Appeal 188 of 1956 because, except for the

identity of the appellants and the amounts involved, the matter in controversy is exactly similar, Rama Krishna Ramanath - appellants in Civil Appeal 188 is a proprietary concern carrying on business, inter alia, in manufacturing and selling bidis. In the course of that business they export bidis to various places outside the territorial limits of the Janpad Sabha, Gondia. The Janpad Sabha, Gondia demanded and collected taxes when the export took place from railway stations within its territorial jurisdiction. Between January 26, 1950 and June 30, 1952 the respondent Sabha had collected tax totalling Rs. 3,818/15/3, the appellant concern contending that from the date of the coming into force of the Constitution the imposition and collection of the terminal tax by the respondent Sabha was illegal, because the right to levy terminal taxes was vested exclusively in the government of the Union under the entry 89 in the First List to the 7th Schedule to the Constitution and sought the refund of this sum of tax from the respondent Sabha and also required that it should desist from continuing the imposition and levy of this tax, and when the request was not needed, served notice on the Sabha. In consequences of this notice though the Sabha discontinued the collection of the tax, it refused to refund the tax already collected. Thereupon the appellant instituted a civil suit in the court of the Civil Judge at Gondia praying for a decree for the sum of Rs. 3,818/15/3 and costs. The suit was resisted and thereafter this alongwith several similar suits including three by the appellants in the other three appeals were all withdrawn to the High Court under Art. 228 of the Constitution for deciding the substantial question of law as to the interpretation of the Constitution and of the Government of India Act as to whether the levy of the tax by the respondent Sabha was lawful or not. These suits were consolidated and were disposed of by a common judgment dated April 13, 1955, by which all the suits were dismissed but a certificate was granted under Art. 132 of the Constitution. On the strength of the certificate four of the aggrieved plaintiffs filed appeals to the Courts and that is how the matter is before us.

Before considering the submissions made to us by the learned Attorney-General for the appellant it would be convenient to state the exact factual position relating to the levy of the impugned tax :

> (1) The tax being one on goods exported out of the local area by rail would answer the description of a terminal tax falling within the exclusive jurisdiction of the Central Legislature under the Government of India Act, 1935. The position has continued to be the same under the distribution of the legislative power in relation to taxes under the Constitution. The result would, therefore, be that but for the saving contained in s. 143(2) of the Government of India Act, 1935 it would not have been legally competent for the local authority to continue to levy the tax after the Government of India Act came into force; similarly but for Art. 277 that levy could not have been continued beyond January 26, 1950. On the facts stated earlier it would be seen that the right of the local authority to levy the tax would be ultimately dependent on the same being authorised by s. 149 (2) of the Government of India Act.
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> (2) The tax that was sought to be levied by the respondent-Sabhas and which was challenged as unauthorised and illegal was identical in the incidence as the tax which the District Council of Bhandara lawfully levied just prior to the commencement of Part III of the Government of India Act, 1935. By incidence we mean the subject-matter of the tax, the taxable event as well as the rate of the duty. In other words, the tax now sought to be levied and that which was lawfully imposed and collected prior to April 1, 1937 were exactly identical in their effect and operation. Similarly there was no controversy as regards either the identity of the area in aid of whose local administration the tax was now sought to be collected, nor as regards the purposes for

which they were utilised as compared with what prevailed on April 1, 1937.

The principal contention however, raised on behalf of the appellant before the High Court was based upon a denial of the identity of the authorities - three Janpad Sabhas with the District Council, Bhandara which levied and collected the tax prior to April 1, 1937. The learned Judges of the High Court rejected this contention and held that the three Janpad Sabhas which replaced the District Council of Bhandara were in substance identical with the latter principally for the reason that the area covered by the three newly created Janpads was the same as that for which the District Council functioned and that the purposes for which the tax collected would be utilized which are the criteria specified in s. 143(2) - were exactly the same. Just as it could not be disputed that if there were any change in the composition of the District Council the identify of a local authority would not be altered for the purposes of s. 143(2), the mere splitting up of that local area for being administered by a plurality of Local Government Units would not effect any change material for the purposes of the continued exigibility of the tax under s. 143(2). The learned Attorney-General therefore very properly did not the press before us this point based upon the disappearance of the District Council and its being replaced by the respondent-Sabhas as any ground for denying to the respondent-Sabhas the right to levy the tax.

The only point that was urged before us in challenge of the right of the respondent-Sabhas to continue the levy of this terminal tax may be formulated thus : The Provincial Legislature of Central Provinces & Berar in exercise of its legislative power under item 13 of the Provincial Legislative List enacted the Local Government Act, 1948 and validly repealed the Act of 1920 under which this tax was levied. As part of the same legislation and taking effect at the same time it was open to that Legislature to have continued the pervasions of the repealed Act of 1920 under which the impugned tax was levied so as to enable the newly created Janpad Sabhas to exercise the fiscal powers of the District Councils which they replaced, thus so to speak modifying or qualifying the repeal. Such a continuance could be provided by a saving clause couched in appropriate phraseology to effectuate such an intention. If this had been done the source of legal authority to levy the tax would, even after the Act of 1948 came into force, have been the repealed Act of 1920 which to the extent of the saving would be deemed to have continued in force. But this was not done. There was, no doubt, a saving under the proviso to s. 192 but the saving in respect of the taxes which was contained in sub-cl. (c) to the proviso was confined to the recovery of taxes which had accrued due on the date of the repeal but which still remained uncollected and the purpose of the sub-clause was to effect a distribution of those assets, viz., of the accrued arrears among the several Janpad Sabhas which replaced each District Council, so that when on June 11, 1948, the Act of 1948 came into force, the effect of it was that the repeal of the Act of 1920 was for all purposes relevant to the matter now in controversy complete and with it the power to levy the tax in future stood extinguished, save only as regards the right to collect the arrears which had accrude due to the District Councils before that date. No doubt, the Provincial Legislature effected an amendment to s. 192 in 1949 by which the saving was extended to include the right of the Janpad Sabhas to continue to levy the impugned tax and this amendment was given retrospective effect as from June 11, 1948, but this amendment was beyond the legislative competence of the Provincial Legislature since in pith and substance it was virtually a legislation expressly conferring upon the Janpad Sabhas the right to levy a terminal tax - a right which they did not possess before that date and unless the Legislature was competent to enact a law in relation to such a tax it could not validly confer upon the local authority what in legal effect should be considered to be a fresh right to levy the tax. The argument was also presented in a slightly different form by saying that on the terms of s. 143(2) of the Government of India Act there was a provision only for the continuance of the tax and that when once that continuity was broken by a valid piece of legislation such as took place in this case when that Local Self Government Act

1920 was repealed without a properly drafted saving clause enabling the continued levy of the tax, the discontinuity created thereby could not thereafter be repaired and the gap filled by further legislation even though it purported to be with retrospective effect.

Mr. Sanyal - learned Additional Solicitor-General who appeared for the respondent-Sabhas submitted several answers to sustain the validity of the continued imposition of the tax. He first urged that the effect of s. 143(2) of the Government of India Act, 1935 was in effect to vest in Provincial Legislatures a plenary power to legislate in respect of every tax which was being lawfully levied by local authorities etc. in the Province prior to the commencement of Part III of the Government of India Act so much so that even if the amendment effected to s. 192 by the Local Government (Amendment) Act of 1949 be treated as itself a fresh imposition of the tax its validity could not be challenged. We must express our inability to accept this extreme contention. Section 143(2) which is a saving clause and obviously designed to prevent a dislocation of the finances of Local Governments and of local authorities by reason of the coming into force of the provisions of the Government of India Act distributing heads of taxation on lines different from those which prevailed before that date, cannot be construed as one conferring a plenary power to legislate on those topics till such time as the Central Legislature intervened. Such a construction would necessarily involve a power in the Provincial Legislature to enhance the rates of taxation - a result we must say from which Mr. Sanyal did not shrink, but having regard to the language of the section providing for a mere continuity and its manifest purpose this construction must be rejected.

The next point urged by Mr. Sanyal was based on the construction which he sought to put on cl.(c) of the proviso to s. 192 of the Local Government Act of 1948. He submitted that the words "due to the District Council" were wide and apt enough to include not merely the taxes that had accrued due on the date of the repeal of the Act of 1920 but even the amounts which accrued later and became payable subsequent to that date - "Due" he said meant "payable" and as the words of the sub-section did not specifically limit the period when the cess became payable to some time anterior to the repeal of the Act of 1920, it ought to be read as including those amounts which accrued due and became payable even thereafter. We find it difficult to accept this submission either. The difficulty in accepting it is created only in part by the use of the expression "due" but the main hurdle in the way of the respondent is that what is saved by the sub-clause (and is distributed among the Janpad Sabhas which replaced the District Councils), is specified as a cess, rate etc. due to a District Council. The rate, cess or duty due to a District Council could obviously be only that which had accrued due to a District Council while that body was in existence and with the extinction of the District Councils by the repeal of the Act of 1920 there could be no question of any further sums being due to such a body. Mr. Sanyal however sought to get over this situation by suggesting that the words "due to a District Council" were merely descriptive of the nature of the tax and did not predicate that it was an amount due to a particular body on the date when it became due. In our opinion this is not an interpretation which the words could reasonably bear and we have, therefore, no hesitation in rejecting this argument.

It was then submitted that even if the words of cl. (c) of the proviso would not ordinarily include a saving as regards the right of the Janpad Sabhas to levy the tax in the future, still we should adopt that construction as being in consonance with and for giving effect to the intention of the legislature which made it clear that that was so by enacting the amendment to s. 192 by the Act of 1949 within a year or so after the Act of 1948. We consider that this submission also deserves, in the circumstances of the present case, to be rejected. It is a cardinal principle of statutory construction that the intention of the legislature should be gathered from the words of the enactment. If, as we have held, those words are incapable of the construction that there was a saving of the right of the

Janpad Sabhas to impose and collect the tax - apart from the right to collect the arrears of tax which accrued due while the District Council was in existence, that construction cannot be modified and the legislative intent with which that proviso was enacted supplemented by a reference to what the legislature did later. No doubt, there is authority for the position that when the meaning of the words used in an enactment it ambiguous or obscure, subsequent statutes might sometimes be used as what has been termed "a parliamentary exposition" of the obscure phraseology. It is hardly necessary to discuss the permissible limits of this mode of construction for the purpose of the present case, because the prime conditions for invoking that rule are absent here - there is no obscurity or ambiguity in the words of cl. (c) and secondly if the learned Attorney-General is right, the Provincial Legislature had no legislative capacity to enact the Amending Act of 1949 - and this must include legislation either by way of explanation or exposition, and of course by positive enactment. If there is incapacity to enact retrospective legislation on the matter, the position is not rendered different by viewing it as parliamentary exposition. The validity of the amendment effected by the Act of 1949 must be judged independently and on its own merits and its terms cannot be used as a guide to the interpretation of what the legislature in enacting s. 192 of the Act 1948 intended by the words in cl. (c).

The next submission was that as the Act of 1949 amended the terms of s. 192 so as to save the power of the Janpad Sabhas to levy the cess with retrospective effect from the date when the Act of 1920 stood repealed, there was in the eye of the law a continuity in the levy of the cess or rate and so no hiatus or period of discontinuity existed such as had been suggested by the learned Attorney-General and the existence of which was the entire foundation of his argument. It must, however, be mentioned that the learned Attorney-General was not oblivious of this feature of the legislation of 1949, viz., that it purported to operate as it were to close the gap, but his submission was that if, in fact, the gap existed and there was factually a period of discontinuity, the legislature which had no authority to enact positive legislation with reference to the topic in May 1949 was incompetent to pass an enactment with retrospective effect.

In our opinion, this argument of Mr. Sanyal requires serious consideration and the answer would turn on the proper construction of the terms of s. 143(2) of the Government of India Act. The first matter to be considered would be the source of the legislative power to enact the Local Government Act of 1948. In so far as the constitution of local authorities, their territorial distribution, the endowing them with powers, jurisdiction and authority in general are concerned, the legislative power therefore is to be found in entry 13 of the Provincial Legislative List II to Sch. VII of the Government of India Act, 1935 reading :

> "Local Government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government on village administration."

It must however be observed that merely because the legislature is empowered under this entry to constitute local authorities and vest them with powers and jurisdiction it would not follow that these local bodies could be vested with authority to levy any and every tax for the purpose of raising revenue for the purposes of local administration. They could be validly authorised to raise only those taxes which the Province could raise under and by virtue of the relevant entries in the Provincial Legislative List. This is on the principle that the Province could not authorise local bodies crated by it to impose taxes which it itself could not directly levy for the purposes of the Provincial Government. Now comes the question whether the Provincial Legislature was competent,

by legislation, to discontinue the levy of the tax by effecting a repeal of the taxing provision contained in the Local Self Government Act of 1920. There is no doubt that the general principle is that the power of a legislative body to repeal a law is co-extensive with its power to enact such a law, as would be seen from the following passage in the judgment by Lord Watson in Attorney-General for Ontario v. Attorney-General for the Dominion ((1896) A.C. 348, 366.) :

> "Neither the Parliament of Canada nor the provincial legislatures have authority to repeal statues which they could not directly enact."

But obviously its application in particular instances would be controlled by express constitutional provision modifying the same. We have such provision in the case on hand in s. 143(2) of the Government of India Act, 1935. In the context the relevant words of the sub-section could only mean "May continue to be levied if so desired by the Provincial Legislature" which is indicated by or is implicit in the use of the expression "May" in the clause "may be continued until provision to the contrary is made by the Federal Legislature". This would therefore posit a limited legislative power in the Province to indicate or express a desire to continue or not to continue the levy. If in the exercise of this limited power the Province desires to discontinue the tax and effects a repeal of the relevant statute the repeal would be effective. Of course, in the absence of legislation indicating a desire to discontinue the tax, the effect of the provision of the Constitution would be to enable the continuance of the power to levy the tax but but this does not alter the fact that the provision by its implication confers a limited legislative power to desire or not to desire the continuance of the levy subject to the overriding power of the Central Legislature to put an end to its continuance and it is on the basis of the existence of this limited legislative power that the right of the Provincial Legislature to repeal the taxation provision under the Act of 1920 could be rested. Suppose for instance, a Provincial Legislature desires the continuance of the tax by considers the rate too High and wishes it to be reduced and passes an enactment for that purpose, it cannot be that the legislation is incompetent and that the State Government must permit the local authority to levy tax at the same rate as prevailed on April 1, 1937 if the latter desired the continuance of the tax. If such a legislation were enacted to achieve a reduction of the rate of the duty, its legislative competence must obviously be traceable to the power contained in words "may continue to be levied" in s. 143(2) of the Government of India Act. If we are right so far it would follow that in the exercise of this limited legislative power the Provincial Legislature would also have a right to legislate for the continuance of the tax provided, if of course, the other conditions of s. 143(2) are satisfied, viz., (1) that the tax was one which was lawfully levied by a local authority for the purposes of a local area at the commencement of Part III of the Government of India Act., (2) that the identity of the body that collects the tax, the area for whose benefit the tax is to be utilised and the purposes for which the utilisation is to take place continue to be the same and (3) the rate of the tax is not enhanced nor its incidence in any manner altered, so that it continues to be same tax. If as we have held earlier there is a limited legislative power in the Province to enact a law with reference to the tax levy so as to continue it, the validity of the Act of 1949 which manifested the legislative intent of Continue the tax without any break, the legal continuity being established by the retrospective operation of the provision, has to be upheld.

The appeals therefore fail and are dismissed with costs - one set of hearing fees.

Appeals dismissed.

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