

Municipal Board, Hapur

Vs

Raghuvendra Kripal and Others

Civil Appeal No. 583 of 1962

(CJI P. B. Gajendragadkar, M. Hidayatullah, K. N. Wanchoo, J. C. Shah, S. M. Sikri JJ)

23.09.1965

JUDGMENT

HIDAYATULLAH. J. –

The Municipal Board, Hapur [shortly the appellant Board] passed a Special Resolution [No. 296] on September 28, 1956 imposing water tax in Hapur from April 1, 1957 and a notification by the Government of Uttar Pradesh was published in the Uttar Pradesh Gazette under s. 135 [2] of the U. P. Municipal Act [Act 2 of 1916] dated December 11, 1956 notifying the resolution. Fifteen house owners of Hapur who received notice from the appellant Board for the payment of the tax assessed in respect of their houses, petitioned to the High Court at Allahabad under Art. 226 of the Constitution and asked for a writ or order preventing the appellant Board from realising the tax. Their contention of the provisions of the Municipalities Act. The main grounds of objection were [a] that the resolution of the appellant Board framing the proposal was not published in a local paper of Hapur printed in Hindi, and [b] that the rules framed for the imposition of the tax did not accompany the resolution which was a

The petition was heard by Mr. Justice James who decided all the points against the appellant Board. He held that the tax was illegal inasmuch as the mandatory requirements of the Municipalities Act were not complied with by the appellant Board while imposing the tax, and that s. 135 [3] of the Act [Which cures all defects in the imposition of tax by making the notification of Government conclusive evidence of the legality of the imposition] was ultra vires Art. 14 of the Constitution because it created a bar against proof and left no remedy to the tax payers thereby making a discrimination between them and other litigants. He further held that the sub-section by making Government the sole judge of compliance with the Act conferred judicial power on Government contrary to the intendment of the Constitution. The appellant Board was accordingly ordered not to collect the tax from the petitioners. The appellant Board appealed under the letters patent. The Divisional Bench hearing the special appeal agreed with M

Section 128 of the Municipalities Act confers on the Municipalities in Uttar Pradesh the power to levy taxes and enumerates the kinds of taxes. One such tax mentioned in cl. [x] of sub-s. [1] of the section reads : ' a water tax on the annual value of the building or land or both; This was the tax which the Municipalities had attempted to impose in Hapur. There can be no question that the appellant Board had the competence to impose this tax and so that first question is whether it went about the business in the wrong way and, if it did, what is the effect. Section 129 specifies certain restrictions on the imposition of water tax. We need not refer to them because no objection was raised that the restrictions there prescribed had not been observed. Section 131 to 135 lay down the procedure for the imposition of the tax. Section 131 provides that when a board desires to impose a

tax it shall, by special resolution, frame a proposal specifying the tax, the person or class of persons to be made liable and the d

" 135. Imposition of tax :

(1) A copy of the resolution passed under Section 134 shall be submitted to the State Government if the tax has been sanctioned by the State Government, and to the Prescribed Authority, in any other case.

(2) Upon receipt of the copy of the resolution the State Government or Prescribed Authority, as the case may be, shall notify in the official Gazette, the imposition of the tax from the appointed date, and the imposition of a tax shall in all cases be subject to the condition that it has been so notified.

(3) A notification of the imposition of a tax under sub-section [2] shall be conclusive proof that the tax has been imposed in accordance with the provisions of this Act."

The appellant Board passed a special resolution in terms of s. 131 [1] of the Act. The publication of the resolution was made by affixing a copy of the resolution on the notice board as provided by a notification dated July 5, 1916 and by beat of drum in the town of Hapur. The resolution was, however, not published in a local paper published in Hindi as required by s. 94 [3] of the Act. It is admitted that two Hindu weeklies entitled Janmat and Bharatvarsh and one Hindi daily entitled Vyapar were published the notice etc. in these journals because, in its opinion, none of these papers was a suitable local paper having wide circulation in the town at the time. Notification of the 5th July, 1916 provides that, where, in a Municipality, there is no local paper, a copy of every resolution passed by a Board at a meeting shall, within ten days from the date of the meeting be passed up and for thirty days be kept pasted up on a notice board to be exhibited for public information at the building in which the meeting

Two objections against the tax found favour with the High Court, The first objection arose from the non-observation of s. 94 [3] which, as already noticed, requires that the publication of the proposal etc. should be in a local newspaper published in Hindi. The High Court held that there was no need to take recourse to the notification of the 5th of July 1916, because the first part of s. 94 [3] could be complied with. The next objection against the tax was that even if the special Resolution under s. 131 was properly published, the rules which ought to accompany the Resolution were not exhibited. The appellant Board claimed that the court was precluded from making an enquiry by reason of s. 135 [3], which made the notification conclusive evidence that the tax was imposed in accordance with the provision of the Municipalities Act. The respondents met this by challenging the legality of the sub-section. They pleaded that it was discriminatory inasmuch as it did allow one set of litigants to prove their allega

There can be no doubt that the language of s. 135 [3] is as wide as it is peremptory. Read literally it can lead to the conclusion that even an illegal tax cannot be questioned. Prima faice, if appears that even if a Municipal Board goes outside the categories of taxes mentioned in s. 128 and if the Government is persuaded to notify the imposition, all will be will. This cannot be the intent and hence not the meaning. We must, therefore, see if the words are susceptible of another construction obvitating such a patently absurd result.

There is at the very start the fundamental fact that the power to tax in a State can only be exercised

by the State Legislature, the extent of the power being fixed by the Constitution. The taxes which the state Legislatures are allowed to raise are enumerated in the Seventh Schedule to the Constitution. The State Legislature can impose all these taxes itself but it is usual to authorise the levy of some of them by local authority are not imposed by it as a legislature but as a delegate of the legislature. What is done is binding by the authority of the legislature and the tax is valid only if it is one of the taxes the delegate can raise and the delegate imposes it in accordance with the condition laid down by the legislature.

It is thus that we find an elaborate procedure prescribed by all the Municipal Acts. In the U. P. Municipalities Act also, as we have seen, a Board must first pass a special resolution framing a proposal and the draft rules, invite objections, consider them, and then get them approved by Government. After this approval there must be a final special resolution imposing the tax from a particular date and the Government to see that the various steps laid down for the imposition of the tax are followed. Before it notifies the resolution Government satisfies itself about the requirements. The notification is made conclusive proof that the tax is imposed in accordance with the provision of the Act. The question arises: Is this rule of conclusive evidence such as to shut out all enquiry by courts? We have no hesitation in answering the question in the negative. There are certain matters which, of course, cannot be established conclusively by a notification under s. 135[3]. For example, no notification can issue un

It would thus appear that at the very start the selection of the tax must be with reference to the delegated powers. The Municipal Board of the State Government cannot select a tax which the legislature has not mentioned in s. 128 of the Municipalities Act. As the state Government cannot itself impose the tax it must have before it, the special resolution of the Board before notifying the imposition. Between the special resolution selecting a tax for imposition and the special resolution imposing it sundry procedure is gone through and section 135 [3] says that the notification by Government is conclusive proof that the procedure was correctly followed.

It is argued that ss. 131 to 134 use mandatory language and it is the intention of the legislature to secure obedience to its wishes and therefore it is for the courts to say whether those provisions were followed by the Municipal Board and the State Government. There can be no doubt that some of the provisions are mandatory. But all provisions are not of the same character. In *Raza Bunland Sugar Co. Ltd. v. The Municipal Board, Rampur* ss. 131 to 134 were considered in the light of the tests usually applied to determine whether a provision of law is mandatory or directory. It was there pointed out that all the sections in spite of the language used in them were not mandatory. The majority opinion considered that the first part of s. 131 [3] requiring publication of proposals was mandatory and the second part which required that publication should be in the manner required by s. 94[3] was only directory. In one of the minority opinions no such distinction was made but s. 94 [3] was held to be directory. In th

In *Berar Swadeshi Vansapati v. Municipal Committee Sheogaon and Anr.* the Municipality passed a resolution under s. 67 [1] of the C. P. and Berar Municipalities Act, 1922, sub section [1] to [7] incorporated provision similar to ss 131-135 of the U. P. Municipalities Act. An attempt to question the tax on the ground that the procedure prescribed by s. 67 was not followed was repelled. It was observed:

"..... This notification therefore clearly is one which directs imposition of octroi and falls within sub. s. [7] of s. 67 and having been notified in the Gazette it is conclusive evidence of the tax have been imposed in accordance with the

provisions of the Act and it can not be challenged on the ground that all the necessary steps had not been taken."

The defect in the imposition of the tax here being of the same character as in the two cases of this Court above cited, the imposition would have the protection of s. 135 [3] and the tax must be deemed to be imposed according to the procedure laid down in the Act.

As observed already, some of the provision controlling the imposition of a tax must be fully complied with because they are vital and therefore mandatory, and the others may be complied with substantially but not literally, because they are directory. In either case the agency for seeing to this compliance is the state Government. It is hardly to be expected that the State Government would not do its duty or that it would allow breaches of the provision to go unrectified. One can hardly imagine that an omission to comply with the fundamental provisions would ever be condoned. The law reports show that even before the addition of the provision making the notification conclusive evidence of the proper imposition of the tax, complaints brought before the courts concerned provisions dealing with publicity or requiring ministerial fulfillment. Even in the two earlier cases which reached this court and also the present case, the complaint is of a breach of one of the provision which can only be regarded as directo

It was, however, contended that there has been excessive delegation, in much as the State Government has been given the power to condone breaches of the act and thus to set at naught the Act itself. This is not a right reading of the relevant provisions. We have already pointed out that the power to tax is conferred on the State Legislature but is exercised by the local authority under the control of the State Government. the taxes with which we are concerned are local taxes for local needs and for which local inquiries have to be made. They are rightly left to the representatives of the local population which would bear the tax. Such taxes must vary from town to town, from one board to another, and from one commodity to another. It is impossible for the legislature to pass statutes for the imposition of such taxes in local areas. The power must be delegated. Regard being had to the democratic set up of the municipalities, need the proceeds of these taxes for their own administration, it is proper to leave t

The matter may be looked at from another point of view. Excessive delegation is most often found when the Legislature does not perform all the essential legislative functions and leaves them to some other agency. The Legislature here performs all essential functions in the imposition of the tax. The selection of tax of imposition in a Municipal area is by the legislative will expressed in s. 128. Neither the Municipal Board, nor the Government can go outside the list of taxes therein included. The procedure for the imposition of the tax is also laid down by the Legislature for the Municipal Bard to follow and the State Government is there to ensure due observance of that procedure. We have already shown above that it would be impossible for the legislative to legislate for the m=numerous Municipal Boards and local authorities with a view to raising taxes for them. The provisions, such as they are, are the best means of achieving consultation of the local population and close scrutiny of the action of their r

It remains to consider two other arguments in the case. The first is the question of discrimination which is said to arise from the proviso which makes the notification conclusive in respect of the procedure by which the tax is imposed. There are numerous status, including the Evidence Act, in which a fact is taken to be conclusively proved from the existence of some other fact. The low is full of fictions and irrebuttable presumptions which also involve proof of facts. It has never been suggested before that when the legislature says that enquiry into the truth or otherwise of a fact shall

stop at a given stage and the fact taken to be conclusively proved, a question of discrimination arises. The tax payers in the Municipality are allowed under the Municipalities act to object to the proposal for the tax and the rules and to have their objections considered. They cannot, of course, be allowed to keep on agitating and a stage must come when it may be said that the provisions of the Act have been duly observe

The next objection that the impugned sub-section involves the exercise of judicial functions not open to the legislature, is wholly erroneous. The sub-section only shuts out further enquiry and makes the notification final. There is no exercise of a judicial function. In our country there is no rigid separation of powers and the legislature often frames a rule such as is incorporated in the third sub-section of s. 135. The Evidence act is full of such provisions. In the United States of America where the separation of powers is extremely rigid in some of the constitution of the state it may be open to objection that the legislature in shutting out enquiry into the truth of a fact encroaches upon the judicial power of the state. Such disability has never been found to exit in our country although legislation of this type is only too frequent. The objection is, therefore without substance.

In the result we are of opinion that the judgment of the High Court under appeal must be set aside. We accordingly set it aside and order the dismissal of the petition under Arts. 226 and 227 of the Constitution form which the present appeal has arisen. In the circumstances of the case there shall be no order as to costs.

WANCHOO J. –

I regret I am unable to agree.

This appeal by special leave from the judgment of the Allahabad High Court raises the question of vires of s. 135 [3] of the U. P. Municipalities Act, No. 2 of 1916, [hereinafter to as the Act.]. The facts in the case are not in dispute and may be briefly stated. The appellant, namely, the Municipalities Board Hapur, decided to impose water tax from April 1, 1957. In consequence, steps were taken under ss. 131 to 135 of the Act to effectuate that purpose. However, proposals and draft rules were never published as required by s. 131 [3] of the Act. All that was done was that a notice in the form set forth in Sch. III was pasted on the notice- board and there was some beat of drum with respect to the notice. Even so, the draft rules were not appended to the notice which was put up on the notice board and in effect there was more or less no compliance with the provisions relating to the publication of proposals and draft rules. Eventually a notification of proposals and draft rules. Eventually a notification wa

The petition was heard by a learned Single Judge who found, as already indicated that the provisions of s. 131 [3] relating to publication had not been complied with, consequently, the residents of Hapur had no opportunity of making objections to the proposals and draft rules. Reliance however was placed on behalf of the appellant on s. 135 [3] of the Act, which is in these terms:-

" A notifications of the imposition of a tax under subsection [2] shall be conclusive proof that the tax has been imposed in accordance with the provisions of this Act."

In reply to this, the respondents contended that s. 135 [3] was ultra vires , and this contention was accepted by the learned Single Judge. He therefore allowed the petition and directed the appeal not to collect water tax from the respondent until such time as the tax was imposed in strict compliance

with the provisions of the Act.

Then there was in appeal by the appellant to a Divisional Bench. There also reliance was placed on s. 135 [3] of the Act. The Division Bench upheld the order of the learned Single Judge, though its approach to s. 135 [3] was different. It held that s. 135 [3] as not a provision for validating anything done without complying with the provisions of the Act and it could not protect the invalidity of a tax if it was invalid on account of its being imposed without following the legal procedure. Then there was an application by the appellant for a certificate to appeal to this court, which was refused by the High Court. The appellant thereupon got special leave and that is how the matter has come up before this court.

The main contention on behalf of the appellant before this court is that s. 135 [3] which lays down that the notification under s. 135 [2] would be conclusive proof that the tax had been imposed in accordance with the provisions of the Act bars any enquiry into the various procedural steps taken of the imposition of the tax and the court where such a question is raised must hold that the tax has been imposed in accordance with the provisions of the Act. Once the court comes to that conclusion it would mean that it must assume that the necessary procedural steps for imposing tax had all been properly complied with and therefore there could not be any invalidity of the tax on the ground that all steps necessary for the valid imposition of the tax had not been taken. It is further submitted that s. 135 [3] bars enquiry as to the procedural steps necessary for imposing the tax which are contained in ss. 131 to 133 of the act, and it is urged that what a court can enquire is whether the special resolution as re

On the other hand, learned counsel for the respondents contends that if s. 135 [3] is to be given the meaning for which the appellant contends it will be ultra vires because then there will be an abdication of its essential legislative functions by the legislature with respect to imposition of tax and therefore s. 135 [3] would be bad on the ground of excessive delegation. It is further urged on behalf of the respondents steps necessary for the imposition of the tax, which according to learned counsel, are contained in ss. 131 to 135 [1] but also bars enquiry as to whether the tax is in accordance with ss. 128 to 130, which are substantive provisions with respect to taxes which can be imposed by Municipal board. Learned counsel for the respondents thus urges that s. 135 [3] would give blanket power for the imposition of any tax whether it is contained in s. 128 or not and would also permit violating the restrictions contained in ss. 129 and 130; and if that be so, it would be a case of complete abdication of

Before I come to s. 135 [3] I may indicate the scheme of Municipal taxation contained in ss. 128 to 135 of the Act. Section 128 mentions the taxes which a board may impose subject to any general rules or special orders of the State Government in this behalf. Section 129 lays down certain restrictions on the imposition of water-tax and s. 130 lays down certain restrictions on the imposition of certain other taxes. Section 130-A Specifies the powers of the State Government to require a board to impose taxes. Then comes section 131 to 135 which are obviously procedural provisions with respect to imposition of any tax mentioned in s. 128. That these are procedural provisions is clear from s. 136 of the Act which lays down that the procedure for abolishing a tax or for altering a tax in respect of certain matters shall, so far as may be, be the procedure prescribed by ss. 131 to 135 for the imposition of a tax. The essentials of the procedure contained in ss. 131 to 135 may be briefly summarised thus. When a board

It will be seen from the above procedural provisions that the legislature has taken great care to see that the tax is imposed after the inhabitants of a municipality have had a chance to make

representations in that behalf and after the tax has been approved at all stages including the disposal of objections by means of special resolutions, which require a special quorum for the meeting in which they are passed. Further the legislature has taken care to provide that the disposal of objections by a board even by special resolution is not sufficient and it has required that the objections shall be sent to the proper authority, presumably for its consideration before it sanctions the tax. These provisions to my mind indicate the safeguards the legislature intended in a case of this kind where the legislature itself has not indicated the rate of tax but has merely indicated the heads of taxation and the fixation of rate of tax and all incidental matters have been delegated to the board subject to the supervision

This brings us to s. 135 [3] which has already been set out. The first question that arises is the interpretation of this provisions. As I have already indicated two different submissions have been made in this connection on behalf of the parties. The appellants submits that this section only bars enquiry by the court into the procedural provisions contained in s. 131 to s. 133. On the other hand, the respondents contend that this provision bars enquiry into all matters contained in s. 128 to s. 135 [1]. If the words of this provision were to be literally interpreted they lay down that the notification under s. 135[3] shall be conclusive proof that the tax has been imposed in accordance with the provision of the Act. The last words are very wide and it is contended on behalf of the respondents that they would include all the provisions of the Act. I feel however that even though the words may be capable of such a wide interpretation, as is being put upon them on behalf of the respondents, it would not be rig

This brings me to the next question namely whether the bar created by this provision is only with respect to s. 131 to s. 133 as urged on behalf of the appellant or goes further. I have already indicated that the procedural provisions for the imposition of a tax by the board are contained in ss. 131 to 135 [1]. It is after these procedural provisions are complied with that a notifications under s. 135 [2] is issued. I can understand s. 135 [3] being restricted in its application to procedural provisions only with respect to the imposition of a tax; but I cannot understand how that provision an be read down further so that it bars enquiry only into some procedural provisions i.e. from s. 131 to s. 133, and not into the other procedural provision i.e., s. 134 and s. 135 [1]. I can see no way of reading s. 135 [3] in the manner suggested on behalf of the appellant. I must therefore hold that s. 135 [3] bars enquiry by courts into all procedural provision relating to imposition of taxes and therefore it bars enq

This brings me to another question namely, what it the nature of the provision contained in s. 135 [3] of the Act. It is merely a rule of evidence as urged on be half of the appellant or is it more than that and is a substantive provision in Itself? This Court had occasion to consider the question whether a rule of irrebuttable presumption was a rule of evidences or substantive provision in *Ishar Ahmad Khan v. Union of India* and observed that the proper approach to adopt would be to consider whether Act A from the proof of which a presumption is required to be drawn about the existence of fact B is inherently relevant in the matter of proving value in that behalf or not. If fact A is inherently relevant in proving the existence of fact B and to any rational mind it would bear a probative or persuasive value in the matter of proving the existence of fact B. Then a rule prescribing either a rebuttable presumption or an irrebuttable presumption in that behalf would be a rule of evidence. On the other hand, if f t to the imposition thereof. In other words, the effect of the substantive provisions contained in s. 135 [3] really comes to this, namely, that all the provisions from s. 131 to s. 135 [1] are wiped out and the notification issued under s. 135 [2] becomes the sole basis of the imposition of tax. it has been said that there is no reason to suppose that the proper authority will not see that the provisions of s. 131 to s. 135 [1] are complied with and that there is

no reason to presume that the provisions of s. 135 [3] will be abused. So far as the first aspect is concerned it is obvious in this very case that the proper authority has not seen that the provision of s. 131 to s. 133 have been complied with. As to the second I do not say that the proper authority will abuse the provisions of s. 135 [3]; but that does not in my opinion make any difference to the devastating effect of that provision on compliance of s. 135 [3]; but that does not in my opinion make any difference to the devastating effect of that

On this interpretation of s. 135 [3] a serious question arises whether it is a provision which can be said to be intra vires. As I have already indicated, this is a case of delegation of power to impose tax in so far as its rate and incidence is concerned. Generally speaking, I am of opinion that it is the duty of a legislature when imposing a tax to specify the rate at which the tax is imposed, for the rate of tax, again speaking generally, is one of the essentials of the taxing power given to the legislature. But I cannot fail to recognise that there may be situations where the legislature may delegate to a subordinate authority the power to fix the rate under proper safeguards. It is not necessary to specify all the situations where this can be done. But there can be no doubt that in the matter of local taxation like taxation of the rate of tax to the local body, be it a municipal board or a district board or some other board of that kind. The reason for this is that problems of different municipalities o

In these two cases the question arose whether certain laws could be applied to certain areas with such modifications as the executive authority deemed fit to make. It was held that where the executive authority was permitted, at its discretion, to apply with out modification [save incidental change such as name and place], the whole of any law already in existence in any part of India, that would be good. Further the executive authority could even be authorised to select future laws in a similar way and to apply them to certain areas. But where the authorisation was to repeal laws already in force in the area and either substitute other laws with or without modifications, this was held to be excessive delegation and ultra vires. Further where the modification in a law to be applied did not affect any essential change in the law and alter its policy it could be modified to that extent and applied by the executive authority under delegated authority. But where a modification affects a radical change in the pol

It is on the basis of these principles that I have to see whether s. 135 [3] can be upheld. There is no doubt that the legislature delegated its power of imposing taxes, including the power to fix the rate, to the municipal taxes, including the power to fix the rate, to the municipal board by s. 128 with respect to taxes specified therein. I have already said that generally speaking the fixation of rate of tax is one of the essential legislative functions but there may be situations where it may not be considered to be an essential legislative function and may be delegated by the legislature to subordinate authorities with proper safeguards. I have also said that in the field of local taxation relating to municipal boards and district boards and similar other bodies there are reasons for delegating fixation of the rate to such bodies there are reasons for delegating fixation of the rate to such bodies subject to proper safeguards. This is exactly what has been done under the act subject to the safeguards con

The question then is whether in the present case I should save the delegation contained in s. 128 read with the safeguards provided in s. 131 to s. 135 [1] for the imposition of various taxes mentioned therein or uphold s. 135 [3] which in one sweep does away with all the safeguards. In my opinion s. 135 [3] is severable and the legislature would have provided for various safeguards contained the fixation of rate to municipal boards. It would therefore in my opinion be right to hold that section 128 to 135 [2] indicate proper delegation of the authority of the legislature to impose taxes specified in s. 128 and that it is sub-s. [3] 135 which should be struck down because it is the

only provision which makes the delegation excessive. I would therefore hold that s. 135 [3] inasmuch as it makes the delegation contained in ss. 128 to 135 [2] excessive must be severed from the rest of the sections which are otherwise a proper exercise of delegation of legislature authority and should be struck down on the ground

I would therefore dismiss the appeal with costs and uphold the order of the High Court holding that the tax imposed by the appellant had not been validly imposed, though on a different ground.

ORDER BY COURT

In accordance with the opinion of the majority the appeal is allowed. No order as to costs.

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