B. Shama Rao

Vs

The Union Territory of Pondicherry

Writ Petition No. 123 of 1966

(CJI K. Subha Rao, V. Bhargava, G. K. Mitter, J. M. Shelat, J. C. Shah JJ)

20.02.1967

JUDGMENT

SHELAT, J. –

On August 16, 1962 the administration of Pondicherry became vested in the Government of India by virtue of de jure transfer. The Pondicherry Administration Act, 42 of 1962 constituted that territory as a separate centrally administered unit and under the Union Territories Act, 20 of 1963 a legislative assembly was set up for that area. The assembly under that Act acquired the power of enacting laws in respect of items in Lists II and III of the Seventh Schedule to the Constitution. The assembly thereafter passed the Pondicherry General Sales Tax Act, 10 of 1965 (hereinafter referred to as the Principle Act) which was published on June 3, 1965 after receiving the President's assent on May 25, 1965. Section 1(2) of that Act provided that the Act would come into force on such date as the Government may by notification appoint Section 2(1) provided that :-

> "The Madras General Sales Tax Act, 1959 (No. 1 of 1959) (hereinafter referred to as the Act) as in force in the State of Madras immediately before the commencement of this Act shall extend to and come into force in the Union Territory of Pondicherry subject to the following modifications and adaptations,....."

Then follow certain modifications and adaptations which are not relevant for our purposes except that cl. (ix) of sec. (2)(1) substituted Sec. 30 of the Madras Act and provided for an Appellate Tribunal. The substituted section laid down that the Government shall appoint a Judicial Officer who is otherwise qualified to be appointed as a Judge of the Tribunal Superieur d'Appeal to be the Appellate Tribunal and to exercise the functions conferred under the Act. The Act also enacted as Schedule with description of goods, the point of levy and the rates at which the tax was to be levied. Sec. 2(2) provided that the Madras General Sales Tax Rules, 1959 and any other Rules made or issued under the said Act and similarly in force were to apply to Pondicherry. As provided by section 1(2) the Pondicherry Government issued a notification dated March 1, 1966 bringing into force the Madras Act as extended by the Act to Pondicherry as from April 1, 1966. In the meantime the Madras legislature had amended the Madras Act and consequently it was the Madras Act as amended upto April 1, 1966 which was brought into force under the said notification.

The petitioner is a merchant carrying on business in liquor and would be a dealer within the meaning of the Madras Act. Upto March 1966 he was liable and was paying certain taxes similar to the sales tax under the French regulations till then in force in Pondicherry. With the coming into force of the Principal Act he was served with a notice to register himself as a dealer. Thereupon he filed this petition challenging the validity of the Principal Act.

Mr. S. T. Desai for the petitioner contended that the Principal Act was void and was a still-born legislation by reason of the Pondicherry legislature having abdicated its legislative function in favour of the Madras State Legislature, that such abdication resulted from the wholesale adoption of the Madras Act as in force in the State of Madras immediately before the commencement of the Principal Act and that Sec. 2(1) read with sec. 1(2) meant that the legislature adopted not only the Madras Act as it was when it enacted the Principal Act but also such amendment or amendments in that Act which might be passed by the Madras Legislature upto the time of the commencement of the Act, i.e., upto April 1, 1966. Mr. Setalvad, on the other hand, relied on the majority decision in in re. Delhi Laws Act, 1912, etc. case ([1951] S.C.R. 747) and in particular on the summary by Bose J. in Raj Narain Singh's case ([1955] 1 S.C.R. 290) of the diverse views expressed by the learned Judges in that decision. As heading (4) in the said summary shows the learned Judges inter alia held by a majority of 5 to 2 that authorisation to select and apply future Provincial laws was not invalid. To ascertain the principle deducible from that conclusion, it becomes necessary to examine the observations made by the five learned Judges. But before we do that it is also necessary to remind oneself of the principles governing the exercise of legislative power.

In what has come to be known as the Referendum case ([1919] A.C. 935), Lord Haldane dealing with sec. 92 of the British North America Act, 1867 observed that that section entrusted the legislative power in a Province to its legislature and to such legislature only but added that a body with a power of legislation on the subjects entrusted to it so amply as that enjoyed by a provincial legislature in Canada could, while preserving its own capacity intact, seek the assistance of subordinate agencies as had been laid down in Hodge v. The Queen (9 App. Cases 117), where the legislature of Ontario was held entitled to entrust to the Board of Commissioners the authority to enact regulations relating to taverns. But it did not follow that it could create and endow with its own capacity a new legislative power not created by the Act to which it owed its existence. The principle laid down by Lord Haldane is stated in Street's Doctrine of Ultra Vires at p. 430 as follows :-

> "The decision in this case that the statute was ultra vires did not turn precisely on the ground of delegation but these remarks suggest that a legislature will not ordinarily be permitted to shift the onus of legislation, though it my legislate as to the main principles and leave details to subordinate agencies."

Cooley in "Constitutional Law" (4th ed.) 138, states that the reason against delegation of power by the legislature is found in the very existence of its power." This high prerogative has been entrusted to its own wisdom, judgment and patriotism and not to those of other persons and it will act ultra vires if it undertakes to delegate the trust instead of executing it." This principle is neither the corollary of the doctrine of separation of powers nor is it based on the maxim 'delegatus non potest delegare' as sometimes misunderstood. In Empress v. Burah (5 I.A. 178) the Privy Council held that the Indian legislature had plenary powers within its own field and therefore has the same power to pass conditional legislation as the Imperial Parliament itself. But the possession of plenary powers within the ambit laid down only means that within that particular field it can make any laws on those subjects. It would not mean that it can shirk its duty by making a law that it shall not operate on that field but somebody else will operate on its behalf. There was no dispute in the Delhi Laws Act case ([1951] S.C.R. 747) about this principle. The questions on which divergence of opinion arose were as to whether the impugned laws were delegated legislation, and if they were, whether the legislature could delegate its legislative power and if so to what extent.

The reference in that case arose because of the decision in Jotindranath Gupta v. State of U.P.

([1949-50] F.C.R. 595) where Section 1(3), proviso, of Bihar Act V of 1947 was held invalid on the ground that there was delegation of legislative power to the executive. As summarised by Bose J. in Raj Narain Singh's case ([1955] S.C.R. 290) the reference raised the following problems :-

> "In each case, the Central Legislature had empowered an executive authority under its legislative control to apply at its discretion, laws to an area which was also under the legislative way of the Centre. The variations occur in the type of laws which the executive authority was authorised to select and in the modifications which it was empowered to make in them. The variations were as follows :
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> (1) Where the executive authority was permitted at its discretion, to apply without modification (save incidental changes such as name and place), the whole of any Central Act already in existence in any part of India under the legislative way of the Centre to the new area;
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> (2) Where the executive authority was allowed to select and apply a Provincial Act in similar circumstances;
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> (3) Where the executive authority was permitted to select future Central laws and apply them in a similar way."

The learned Attorney-General had canvassed the proposition that a plenary legislative power included in it the power of delegation. The divergence of opinion on that question was (1) as to whether the British theory of "supremacy within limits" could apply after the Constitution came into force; (2) whether the impugned legislation was delegated or conditional legislation and (3) if it was delegated legislation whether such delegation could be only of subsidiary and ancillary power. Kania C.J. and Mahajan J. (as he then was) reiterated their views expressed in Jotindranath Gupta's case ([1949-50] F.C.R. 595), the learned Chief Justice holding that section 7 of the Delhi Laws Act and section 2 of the Ajmer-Merwara Act, 1947 were ultra vires to the extent that power was given thereunder to the Government to extend Acts other than the Central Acts inasmuch as to that extent the Central legislature had abdicated its function and delegated it to the executive government and Mahajan J. holding that the said sections were ultra vires (i) inasmuch as they permitted the executive to apply to Delhi and Ajmer-Merwara laws enacted by legislatures not competent to make laws for those territories and which those legislatures might make in their own legislative field, and (ii) inasmuch as they clothed the executive with coextensive legislative authority in the matter of modification of laws made by legislative bodies in India. (see pp. 794 to 797 and 938 and 946 of the report). Patanjali Sastri and Das JJ. (as they then were) took the other extreme view accepting the Attorney-General's contention. Patanjali Sastri J. held that the Indian legislature enjoyed plenary powers of legislation of the same nature and amplitude as the British Parliament and no constitutional limitation on the delegation of legislative power to a subordinate unit was to be found in the Constitution Acts from 1861 to 1935 or the present Constitution and therefore it was competent for the Indian legislature to make a law delegating legislative power, both quantitatively and qualitatively, as it was for the British Parliament to do so, so long as it acted within its field. Das J. held that the principle of non-delegation of legislation of legislative powers founded either on the doctrine of separation of powers or the theory of agency has no application to the British Parliament or the legislature constituted by an Act of British Parliament, that the operation of the act performed under delegated power is directly and immediately under and by virtue of the law by which the power is delegated and its efficacy is referable to that antecedent law, that if the legislature acts within its prescribed sphere there is no limit to its power of delegation, it being for

the legislature to determine how far it should seek the aid of subordinate agencies. The only limitation to such power is that the legislature may not abdicate or efface itself, that is, it may not, without preserving its own capacity intact create a new legislative power not constituted by the Act under which it is set up. He was also of the view that the impugned legislation could be supported as an instance of conditional legislation as held in Empress v. Burah (5 I.A. 178). Fazl Ali J. on the other hand was of the view that the legislature itself must formally discharge its primary function and not through others but that it can utilise outside agency to any extent it finds necessary to do things which it is not able to do itself or finds it inconvenient to do. He upheld the validity of the impugned laws but on the ground that the delegation was not of legislative but of ministerial power. He did not accept the contention that there was inherent in the legislative power the power to delegate the legislative function. Mukherjea J. took up an intermediate posture holding that essential legislative function consists in determination of legislative policy or of formally enacting that policy into a binding rule of conduct. This policy must be laid down in definite terms so as to guide the delegate in implementing it. If that is done the court is not concerned with its merits. At p. 977 of the report he laid down the principle that abdication of legislative function can be whole or partial or even with reference to a particular matter and does not necessarily mean either the creation of a parallel legislature or total effacement and rejected the proposition that legislative power necessarily includes power of delegation. (cf. observations at pages 982, 984, 985, 997 and 1000 of the report). Bose J. adopted what he called a pragmatic and a practical view declining to join in the juristic differences between delegated legislation and conditional legislation. So far as the Delhi Laws Act and the Ajmer-Merwara Act were concerned, he based his opinion on the decision in Empress v. Burah (5 I.A. 178) and the view therein that according to the British theory the Indian legislature under the Constitution Acts from 1861 to 1935 had plenary powers, that within its field it was as supreme as the British Parliament and could exercise its power in any manner it thought best. Therefore it could take the assistance of outside agencies in exercise of its legislative power and to delegate that power to any extent possible. Regarding the C States laws, however, he thought that on the one hand the Constitution-makers hand the experience before them of the aforesaid British theory and on the other experiences of the American and other federal constitutions. On this reasoning he upheld the validity to adopt existing laws or the authority to alter even in essential features laws already in existence. (see observations at pages 1121 to 1124). Thus, amongst the five learned Judges who upheld the validity either wholly or partially, Fazl Ali, Mukherjea and Bose JJ. who tipped the balance were not whole-heartedly with Patanjali Sastri and Das JJ. who accepted the contention that power of delegation was inherent in legislative power. Even amongst these three learned Judges there was considerable variance both of opinion and reasoning. Fazl Ali J. was of the opinion that abdication was not permissible but authorisation short of it was permissible. The opinion of Mukherjea J. was that delegation of essential legislative function was not permissible and that abdication need not be total but can be partial and even in regard to a particular matter and Bose J. founded his view on the fact that the Privy Council would have decided the case in the same way as it did in the Burah's case (5 I.A. 178) basing its decision its decision on the theory of supremacy within limits and that that theory was presumably recognised by the Constitution-makers. In view of the intense divergence of opinion except for their conclusion partially to uphold the validity of the said laws it is difficult to deduce any general principle which on the principle of stare decisis can be taken as binding for future cases. It is trite to say that a decision is binding not because of its conclusion but in regard to its ratio and the principle laid down therein. The utmost therefore that can be said of this decision is that the minimum on which there appears to be consensus was (i) that legislatures in India both before and after the Constitution had plenary power within their respective fields; (2) that they were never the delegates of the British Parliament; (3) that they had power to delegate with certain limits not by reason of such a power being inherent in the legislative power but

because such power is recognised even in the United States of America were separatist ideology prevails on the ground that it is necessary to effectively exercise the legislative power in a modern state with multifarious activities and complex problems facing legislatures and (4) that delegation of an essential legislative function which amounts to abdication even partial is not permissible. All of them were agreed that it could be in respect of subsidiary and ancillary power.

It is not without significance that three of them emphasised the extraordinary situation existing in the newly formed Part C States. At page 838 Fazl Ali J. stated as follows :

> "The situation with which the respective legislatures were faced when these Acts were passed, was that there were certain State or States with no local legislature and a whole bundle of laws had to be enacted for them. It is clear that the legislature concerned, before passing the Acts, applied their mind and decided firstly, that the situation would be met by the adoption of laws applicable to the other provinces inasmuch as they covered a wide range of subjects and hence the requirements of the State or States for which the laws had to be framed could not go beyond those for which laws had already been framed by the various legislatures, and secondly, that the matter should be entrusted to an authority which was expected to be familiar and could easily make itself familiar with the needs and conditions of the State or States for which the laws were to be made. Thus, everyone of the Acts so enacted, was complete law, because it embodied a policy, defined a standard, and directed the authority chosen to act within certain prescribed limits and not to go beyond them. Each Act was a complete expression of the will of legislature to act in a particular way and of its command as to how its will should be carried out."

This passage suggests that the impugned legislation was a conditional legislation as in Empress v. Burah (5 I.A. 178) and the power conferred on the government was ministerial and not legislative. The following observations of Mukherjea J. also indicate that he reached his conclusion from the same situation. At p. 1001 of the report he observed :

> "The policy behind the Delhi Laws Act seems to be that in a small area like Delhi which was constituted a separate province only recently and which had neither any local legislature of its own or was considered to be of sufficient size or importance to have one in the future, it seemed to the legislature to be quite fit and proper that the laws validly passed and in force in other parts of India should be applied to such area, subject to such restrictions and modifications as might be necessary to make the law suitable to the local conditions."

He too held that the impugned Acts contained a policy with sufficient precision as to furnish guidance to the executive who was to implement them. The delegation of legislative power thus was not uncontrolled or unguided. At page 1121 Bose J. remarked :-

> "Had it not been for the fact that this sort of practice was blessed by the Privy Council as far back as 1878 and has been endorsed in a series of decisions ever since, and had it not been for the practical necessities of the case, I would have held all the three Acts ultra vires".

Thus it would not be incorrect to say that three of the learned Judges out of five who held in favour of validity did so because of the necessity of the situation. One of them held that the legislation was

complete and the power therefore was conditional as held in Burah's case (5 I.A. 178) and the other held that there being a precise policy the delegation was not outside permissible limits.

We may at this stage observe that such was not the situation in Pondicherry as the Pondicherry legislature was at all material times already functioning. Indeed, it was in the purported exercise of its legislative function that it sought to extend the Madras Act.

The question then is whether in extending the Madras Act in the manner and to the extent it did under sec. (2) (1) of the Principal Act the Pondicherry legislature abdicated its legislative power in favour of the Madras legislature. It is manifest that the Assembly refused to perform its legislative function entrusted under the Act constituting it. It may be that a mere refusal may not amount to abdication if the legislature instead of going through the full formality of legislation applies its mind to an existing statute enacted by another legislature for another jurisdiction, adopts such an Act and enacts to extend it to the territory under its jurisdiction. In doing so, it may perhaps be said that it has laid down a policy to extend such an Act and directs the executive to apply and implement such an Act. But when it not only adopts such an Act but also provides that the Act applicable to its territory shall be the Act amended in future by the other legislature, there is nothing for it to predicate what the amended Act would be. Such a case would be clearly one of non-application of mind and one of refusal to discharge the function entrusted to it by the Instrument constituting it. It is difficult to see how such a case is not one of abdication or effacement in favour of another legislature at least in regard to that particular matter.

But Mr. Setalvad contended that the validity of such legislation has been accepted in Delhi Laws Act's case ([1951] S.C.R. 747) and particularly in the matter of heading No. 4 as summarised by Bose J. in Raj Narayan Singh's case ([1955] 1 S.C.R. 290). In respect of that heading the majority conclusion no doubt was that authorisation in favour of the executive to adopt laws passed by another legislature or legislatures including future laws would not be invalid. So far as that conclusion goes Mr. Setalvad is right. But as already stated, in arriving at that conclusion each learned Judge adopted a different reasoning. Whereas Patanjali Sastri and Das JJ. accepted the contention that the plenary legislative power includes power of delegation and held that since such a power means that the legislature can make laws in the manner it liked if it delegates that power short of an abdication there can be no objection. On the other hand, Fazl Ali J. upheld the laws on the ground that they contained a complete and precise policy and the legislation being thus conditional the question of excessive delegation did not arise. Mukherjea J. held that abdication need not be total but can be partial and even in respect of a particular matter and if so the impugned legislation would be bad. Bose J. expressed in frank language his displeasure at such legislation but accepted its validity on the ground of practice recognised ever since Burah's case (5 I.A. 178) and thought that that practice was accepted by the Constitution-makers and incorporated in the concept of legislative function. There was thus no unanimity as regards the principles upon which those laws were upheld.

All of them however appear to agree on one principle, viz., that where there is abdication or effacement the legislature concerned in truth and in fact acts contrary to the Instrument which constituted it and the statute in question would be void and still-born.

In the present case it is clear that the Pondicherry legislature not only adopted the Madras Act as it stood at the date when it passed the Principal Act but also enacted that if the Madras legislature were to amend its Act prior to the date when the Pondicherry government would issue its notification it would be the amended Act which would apply. The legislature at that stage could not

anticipate that the Madras Act would not be amended nor could it predicate what amendment or amendments would be carried out or whether they would be of a sweeping character or whether they would be suitable in Pondicherry. In point of fact the Madras Act was amended and by reason of section 2(1) read with section 1(2) of the Principal Act it was the amended Act which brought into operation in Pondicherry. The result was that the Pondicherry legislature accepted the amended Act though it was not and could not be aware what the provisions of the amended Act would be. There was in these circumstances a total surrender in the matter of sales tax legislation by the Pondicherry Assembly in favour of the Madras legislature and for that reason we must agree with Mr. Desai that the Act was void or as is often said 'still-born.'

It was however argued that the Act cannot be said to be still-born as it contained certain provisions independent of the Madras Act, viz., the section which provides for the Appellate Tribunal and the said Schedule. But the core of a taxing statute is in the charging section and the provisions levying such a tax and defining persons who are liable to pay such tax. If that core disappears the remaining provisions have no efficacy. In our view, Act 10 of 1965 was for the reasons aforesaid void and still-born.

After the petitioner field this writ petition the Pondicherry legislature passed the Pondicherry General Sales Tax (Amendment) Act, 13 of 1966. It received the President's assent on November 2, 1966 and was published on November 7, 1966. This Act amended the principal Act in several matters. The title of the Amendment Act is the Pondicherry Sales Tax (Amendment) Act 1966 and was passed "further to amend the Pondicherry General Sales Tax Act, 1965" therein called the principal Act. The Amendment Act altered sec. 1(2) of the Principal Act by sec. 2 so as to read as follows :

> "It shall come into force on the 1st day of April 1966".
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> Section 2(1) of the principal Act was likewise amended and instead of the words "commencement of this Act" words "1st day of April 1966" were substituted. Section 2(2) was also amended and so amended it reads as follows :
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> "The Madras General Sales Tax Rules, 1959 and any other Rules made or issued under the said Act and similarly in force in so far as their application is required for the purpose of effectively applying the provisions of the said Act shall also extend to and be in force in the Union territory of Pondicherry until such time rules are framed under Sec. 53 of the said Act."
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> Section 1(2) of the Amendment Act provides that Amendment Act shall be deemed to have come into force on April 1, 1966 except certain clauses which were to come into force at once. Section 5 of the Amendment Act provides that all taxes levied or collected in pursuance of the Principal Act and all acts, proceedings or things done in connection with the levy or collection of such taxed shall, for all purposes, be deemed to be and to have always been validly levied or collected, as if the principal Act as amended by the Amendment Act had been in force at all material times. The effect of the amending section 1(2) and sec. 2(1) of the principal Act was that it would come into force not by reason of the notification issued by the Government but by reason of the deeming provisions of sections 1(2) and 2(1) of the Amendment Act.

Mr. Desai's contention was that since the principal Act was ab initio void, the Amendment Act cannot resuscitate that which was still-born. In support of this contention he relied on the decisions in Deepchand v. State of U.P. ([1959] Supp. 2 S.C.R. 8) and Mahendralal v. State of U.P. ([1963] Supp. 1 S.C.R. 912) Against that contention it was submitted that assuming that the principle Act suffered from the said defect the said defect was removed by the Amendment Act in as much as the Pondicherry legislature re-enacted the said Act extending the Madras Act as amended up to April 1, 1966 to Pondicherry. Put it differently, the contention was that the Amendment Act was an independent legislation, that the Pondicherry Assembly has power to enact a retrospective law and has re-enacted the provisions of the principal Act extending as from April 1, 1966 the Madras Act as amended upto that date.

But the question is can the Amendment Act be said to be an independent re-enactment of the principal Act and has the Pondicherry legislature extended the Madras Act by this Act ? If that was what the legislature intended to do it would have either repealed the principal Act or even without repealing it on the footing that it was void enacted the Amendment Act as an independent legislation extending the Madras Act retrospectively as from April 1, 1966. The Amendment Act, as is clear from its long title was passed to amend the Principal Act. That can only be on the footing that it was a valid Act and still on the statute book. Under sec. 2 what the legislature purports to do is to amend sec. 1(2) of the principal Act by substituting the words "It shall come into force on the 1st day of April 1966" in place of the words "It shall come into force on such date as the Government may by notification in the Official Gazette appoint". The only result is that instead of the principal Act having been brought into force under the said notification, it is deemed to have come into force on April 1, 1966. This is done by a deeming provision as if the new clause was there from the beginning when the Act was passed. That being so, it is as if the Pondicherry legislature has extended the Madras Act together with such amendments which might be made into that Act upto April 1, 1966. Since the Amendment Act was thus passed on the footing that there was in existence a valid Act, viz., the said Principal Act, it is impossible to conceive that it was or intended to be an independent legislation extending thereunder the Madras Act. The Amendment Act was and was intended to be an amendment of the Principal Act and it would be stretching the language of the Amendment Act to a breaking point to construe it as an independent legislation whereby the Madras Act was retrospectively brought into operation as from April 1, 1966. That being so, and on the view that the principal Act was still-born, the attempt to revive that which was void ab initio was frustrated and such an Act could have no efficacy. In that view, the petition is allowed with costs. One hearing fee only.

BHARGAVA, J.

The petitioner, B. Shama Rao, is a merchant, carrying on the business of selling liquor in Pondicherry, and has, by this petition, challenged proceedings being taken against him under the Madras General Sales Tax Act, 1959 (Act I of 1959) (hereinafter referred to as "the Madras Act") as applied to Pondicherry by the Pondicherry General Sales Tax Act, 1956 (Act No. 10 of 1965) (hereinafter referred to as "the principal Act"). Pondicherry was a French possession, but was transferred to the suzerainty of the Government of India. The de jure transfer became effective on 16th August, 1962, when the administration of the territory vested in the Government of India. On 5th December, 1962, Parliament enacted the Pondicherry Administration Act (No. 42 of 1962) constituting it as a separate centrally-administered Unit. On 10th May, 1963, a Legislative Assembly was set up for Pondicherry under the Government of Union Territories Act (No. 20 of 1963). Under section 18(1) of this Act, the Legislative Assembly was given the power of making laws for the territory of Pondicherry in respect of matters enumerated in Lists II and III of the Seventh Schedule

to the Constitution. In pursuance of this power, the Legislative Assembly enacted the principal Act which received the assent of the President on the 25th May, 1965. It was published in the Gazette on 30th June, 1965. Sub-s. (2) of s. 1 of the principal Act lays down that the Act shall come into force on such date as the Government may, by notification in the Official Gazette, appoint. Under sub-s. (1) of s. 2 of the principal Act, it was laid down that the Madras Act as in force in the State of Madras immediately before the commencement of the principal Act shall extend to and come into force in the Union Territory of Pondicherry, subject to the modifications and adaptations enumerated therein. Amongst the modifications and adaptations laid down, two provisions contained in s. 2(1)(ix) and s. 2(1)(x) substituted a new section 30 for the original section 30 of the Madras Act and a new First schedule for the First schedule to the Madras Act respectively. Section 2(2) of the principal Act laid down that "the Madras General Sales Tax Rules, 1959 and any other rules made or issued under the said Act and similarly in force, in so far as their application is required for the purpose of effectively applying the provisions of the said Act, are also hereby applied to, and shall be in force, in the Union Territory of Pondicherry." Section 3 of the principal Act permitted the Government of Pondicherry to make provisions or give directions as may be necessary for removal of difficulty in giving effect to the provisions of the Madras Act in so far as the provisions made or the directions issued were not inconsistent with the provisions of the Madras Act or the Rules made thereunder.

Under section 1(2) of the principal Act, a notification was issued by the Government of Pondicherry on the 1st of March, 1966, directing that the principal Act shall come into force with effect from 1st April, 1966. Thereafter, various proceedings were sought to be taken under the Madras Act as applied to Pondicherry in respect of persons covered by the principal Act, including the petitioner. The petitioner then moved this petition on 4th May, 1966. In the petition, the validity of the proceedings was challenged on the ground that the principal Act was void because of excessive delegation of legislative functions by the Pondicherry Legislature to the Madras Legislature. In fact, it was urged that the Pondicherry Legislature had, by enacting the principal Act in the form mentioned above, abdicated its legislative functions and had given the power to the Madras Legislature to enact for Pondicherry, because, after the principal Act had been enacted on 25th May, 1965, and before it was enforced on 1st April, 1966, it was open to the Madras Legislature to make any amendments it liked in the Madras Act, and by virtue of s. 2(1) of the principal Act, the Madras Act that was to come into force in Pondicherry would be as amended by the Madras Legislature and not as it was originally at the time when the principal Act was enacted. The submission was that the principal Act, on this ground, was a nullity and a dead letter. It was further urged that material parts of the principal Act were vague and unintelligible and, therefore, void. The principal Act being void, it was claimed that proceedings being taken under it for imposition of sales-tax on the petitioner amounted to proceedings for depriving him of property without any authority of law and, consequently, infringed the fundamental right of the petitioner guaranteed by Article 31 of the Constitution.

It may, however, be mentioned that, subsequent to the filing of this writ petition, the Pondicherry Legislature passed the Pondicherry General Sales Tax (Amendment) Act, 1966 (No. 13 of 1966) (hereinafter referred to as "the Amending Act") which received the assent of the President on 2nd November, 1966 and was published in the Gazette dated 9th November, 1966. By this Amending Act, a number of amendments were made in the principal Act. Sub-s. (2) of s. 1 of the principal Act was altered by s. 2 of the Amending Act so as to read as follows :-

"(2) It shall come into force on the 1st day of April, 1966."

A number of amendments were made in s. 2 of the principal Act also by s. 3 of the Amending Act. One of the amendments was that for the words "commencement of this Act" in sub-s. (1) of s. 2 of the principal Act, the words "1st day of April, 1966" were substituted. There were a few other amendments in sub-s. (1) of s. 2 by which various clauses were added, the effect of which was to make alterations in the provisions of the Madras Act as applied to Pondicherry by the principal Act. A further amendment substituted the following for sub-s. (2) of s. 2 of the principal Act :

> "(2) The Madras General Sales Tax Rules, 1959 and any other rules made or issued under the said Act and similarly in force, in so far as their application is required for the purpose of effectively applying the provisions of the said Act, shall also extend to and be in force in the Union Territory of Pondicherry until such time rules are framed under section 53 of the said Act".

By section 5 of the Amending Act, provision was made for validating imposition of taxes, its collection and other proceedings taken in pursuance of the principal Act which had been brought into force on 1st April, 1966, and it was laid down that all such action taken shall be deemed to be, and to have always been, validly levied and collected, as if the principal Act, as amended by the Amending Act, had been in force at all material times. Sub-s. (2) of s. 1 of the Amending Act further laid down that this Amending Act shall be deemed to have come into force on 1st April, 1966, with the exception of two sub-clauses of sub-s. (1) of section 3 of the Amending Act which are not material to the present case. The effect of this provision was that the Amendments introduced by sections 2, 3 and 4 of the Amending Act (with the exception of the amendments introduced by the two sub-clauses mentioned above) in the principal Act took effect from 1st April, 1966. When this petition came to be argued, Mr. S. T. Desai on behalf of the petitioner challenged the validity of the Amending Act also on the ground that this Amending Act could not revive the principal Act which was already null and void and which had to be treated as still-born. A further point taken on behalf of the petitioner was that, even if the Amending Act be otherwise valid, the amended sub-section (2) of s. 2 of the principal Act must still be held to be void, because, even after the amendment, the power was allowed to vest in the Madras Government to frame Rules under s. 53 of the Madras Act.

The main stay of the challenge to the validity of the principal Act on behalf of the petitioner was that the effect of sections 1(2) and 2(1) of that Act, as originally enacted and published on 30th June, 1965, was that the Madras Legislature had the option of amending the Madras Act at any time before the commencement of the principal Act under the notification issued by the Pondicherry Government, and this amounted to delegation by the Pondicherry Legislature of its power of legislating on this subject for Pondicherry to the Madras Legislature. It appears to us that this submission is not quite correct. Under sub-s. (2) of s. 1 the delegation was to the Pondicherry Government to fix the commencement of the Act by specifying the date by a notification issued by it. The Pondicherry Government could always choose such a date for bringing into force the principal Act that it should fall before any amendment in the Madras Act could be made by the Madras Legislature. If the Madras Legislature proposed any amendment in the Madras Act after the publication of the principal Act, the Pondicherry Government would certainly come to know as soon as the Bill for the purpose of that amendment was introduced in the Madras Legislature, and in such circumstances, the Pondicherry Government has the option of immediately issuing a notification commencing the operation of the principal Act, whereupon the unamended Madras Act would have come into force. In the alternative, the Pondicherry Government could wait till the Madras Legislature passed the Act amending the Madras Act, in which case, by a subsequent notification, the Pondicherry Government could ensure that the Madras Act which came into force

in Pondicherry would be as thus amended by the Madras Legislature. The choice as to the nature of the Madras Act which should come into force in Pondicherry was, therefore, at the option of the Pondicherry Government and not at the option of the Madras Legislature. It is thus clear that there was delegation of power by the Pondicherry Legislature to the Pondicherry Government to the extent that the latter could either bring into force the Madras Act as it stood when the principal Act was published on 30th June, 1965, or could, at its option, enforce the Madras Act as subsequently amended by the Madras Legislature, which would amount to giving it the discretion to apply a future law to be passed by the Madras Legislature. In these circumstances, Mr. Setalvad, appearing on behalf of the respondent, relied on the views of this Court expressed in In re The Delhi Laws Act, 1912, the Ajmer-Merwara (Extension of Laws) Act 1947, and the Part C States (Laws) Act, 1950 ([1951] S.C.R. 747). In that case, the seven learned Judges of this Court constituting the Bench delivered separate opinions, but the effect of their opinions was subsequently summarised by this Court in Rajnarain Singh v. The Chairman, Patna Administration Committee, Patna, and Another ([1955] 1 S.C.R. 290). In that case, Bose J., speaking for the Court, summarised the views of the Court in re The Delhi Laws Act, 1912 ([1951] S.C.R. 747) as follows :-

> "The Court had before it the following problems. In each case, the Central Legislature had empowered an executive authority under its legislative control to apply, at its discretion, laws to an area which was also under the legislatives way of the Centre. The variations occur in the type of laws which the executive authority was authorised to select and in the modifications which it was empowered to make in them. The variations were as follows :
>
> (1) Where the executive authority was permitted, at its discretion, to apply without modification (save incidental changes such as name and place), the whole of any Central Act already in existence in any part of India under the legislatives way of the Centre to the new area :
>
> This was upheld by a majority of six to one.
>
> (2) Where the executive authority was allowed to select and apply a Provincial Act in similar circumstances :-
>
> This was upheld, but this time by a majority of five to two.
>
> (3) Where the executive authority was permitted to select future Central laws and apply them in a similar way :
>
> This way upheld by five to two.
>
> (4) Where the authorisation was to select future Provincial laws and apply them as above :
>
> This was also upheld by five to two.
>
> (5) Where the authorisation was to repeal laws already in force in the area and either substitute nothing in their places or substitute other laws, Central or Provincial, with or without modification :
>
> This was held to be ultra vires by a majority of four to three.

(6) where the authorisation was to apply existing laws, either Central of Provincial, with alterations and modifications; and

(7) Where the authorisation was to apply future laws under the same conditions :

The views of the various members of the Bench were not as clear cut here as in the first five cases, so it will be necessary to analyse what each Judge said."

Mr. Setalvad relied on proposition No. (4) which was to the effect that where the authorisation to a Government was to select future Provincial laws and apply them to the Centrally-administered territory, the provision containing that authorisation was upheld by a majority of 5 Judge to 2. It was urged by him that this decision is binding on us and, on its basis, we should hold that the delegation of its legislative power, amounting to authorisation to the Pondicherry Government to choose whether the Madras Act should come into force in Pondicherry unamended or as subsequently amended, was valid. Apart from the fact that attempt was made to cast doubt on the correctness of this proposition relied upon by Mr. Setalvad, Mr. Desai on behalf of the petitioner referred to the decision of this Court in Vasantlal Maganbhai Sanjanwala v. The State of Bombay and Others ([1961] 1 S.C.R. 341) and urged that the principal Act should be held invalid on the principle laid down in that case on the ground that, in the case before us, the legislation passed by the Pondicherry Legislature amounted to complete abdication of its functions in favour of the Madras Legislature. It was further urged by Mr. Desai that in re the Delhi Laws Act, 1912 case ([1951] S.C.R. 747) at least two of the Judges, who enunciated the proposition relied upon by the respondent, had emphasised the aspect that delegation of power in the three Acts, which came up for consideration in that case, was justified on the ground that the power was being granted to Governments of new or small territories which had no proper legislative machinery and for which it was not possible to make detailed provision providing for a legislative machinery and procedure separately. He drew our attention to the fact that, in Pondicherry, a Legislature had already been brought into existence by s. 18(1) of the Government of Union Territories Act No. 20 of 1963, and, consequently, the basis on which the opinion in re the Delhi Laws Act, 1912 case ([1951] S.C.R. 747) was expressed did not exist in Pondicherry. It was also argued by him that the decision in that case should be read in the background of the facts of that case which showed that the principle laid down was meant to apply to small pockets of land spread all over India, viz., the State of Delhi, Ajmer, Merwara and Part C States, and should not be read as laying down a principle of general applicability. In our opinion, it not at all necessary for us to enter into this controversy in the present case, because of our view that, even if it be held that the principal Act was bad for excessive delegations of powers when it was enacted and published, the subsequent Amending Act passed by the Pondicherry Legislature had the effect of bringing into force in Pondicherry a valid Act, under which proceedings sought to be taken against the petitioner were fully justified. We proceed to give our reasons for this view.

The Amending Act, as we have indicated earlier, was brought into operation retrospectively with effect from 1st April, 1966, except in respect of two sub-clauses of s. 3(1). The two important amendments introduced in the principal Act by the Amending Act were those in s. 1(2) and s. 2(1) of the principal Act which had the effect that the principal Act was to come into force in Pondicherry not by virtue of the notification issued by the Pondicherry Government, but by virtue of the terms contained in that Act itself. When the Pondicherry Government issued the notification on 1st March, 1966, laying down that the Principal Act was to come into force with effect from 1st April, 1966, that power did, in fact, vest in the Pondicherry Government under that Act as it stood at that time. However, on 1st April, 1966, the position completely changed as a result of the retrospective operation of the Amending Act. On that date, s. 1(2) of the principal Act, because of

the retrospective operation of the Amending Act, had to be read as if it laid down that that Act was to come into force on 1st April, 1966 as a result of the amendment of s. 2(1) of that Act. It has not been urged before us and could not be urged on behalf of the petitioner that the Pondicherry Legislature did not have the power to legislate retrospectively. This retrospective legislation thus resulted in the notification issued by the Pondicherry Government on 1st March, 1966 becoming ineffective and inoperative. After this legislation, it has to be held that the principal Act came into force in Pondicherry not as a result of the notification, but as a result of the provision contained in that Act itself in s. 1(2). Similarly, the effect of the retrospective amendment of s. 2(1) of the principal Act was that the Madras Act which was to be extended to Pondicherry was as it stood on 1st April, 1966, and this policy was laid down by the Pondicherry Legislature itself by passing the Amending Act subsequently in November, 1966. It is true that the Madras Act was in fact amended to some extent by the Madras General Sales Tax (Second Amendment), Act, 1965 (No. 3 of 1965) which came into force with effect from 1st December, 1965. Initially, when the principal Act came into force in Pondicherry with effect from 1st April, 1966, this Amendment Act passed by the Madras Legislature also became effective in Pondicherry, because the Pondicherry Government notified that the principal Act was to commence with effect from 1st April, 1966; but, subsequently, when the Amending Act was passed by the Pondicherry Legislature, it became clear that the Pondicherry Legislature itself decided that the Madras Act which should come into force in the territory of Pondicherry should be as it stood amended by the Madras General Sales Tax (Second Amendment) Act No. 30 of 1965. Thus, the effect of this subsequent Amending Act was that the Pondicherry Legislature unequivocally and in clear terms itself laid down the policy as to the provisions of the Madras Act which were to be extended to Pondicherry and were to govern the levy of sales tax in that territory. There was, therefore, no uncertainty left as to the intention of the Pondicherry Legislature. The Act, as ultimately applicable to Pondicherry, was the Act which the Pondicherry Legislature approved of in the Amending Act enacted subsequently in November, 1966. Our attention was also drawn to the Madras General Sales Tax (Second Amendment) Act, 1966 (No. 18 of 1966) which was passed by the Madras Legislature on 22nd November, 1966, under which a retrospective amendment was made in the Madras Act to take effect from 1st April, 1959. It was urged that this retrospective amendment made by the Madras Legislature would be effective in Pondicherry also, because the Madras Act, which was brought into force in Pondicherry by the principal Act, must be deemed to have stood amended in accordance with this Act with effect from 1st April, 1959. We are unable to accept this contention. The Madras Act, which was extended to Pondicherry, was as it stood on 1st April, 1966, and the Pondicherry Legislature made it effective in Pondicherry by passing the retrospective Amending Act, which Act itself was published on 9th November, 1966. Any subsequent amendment made by the Madras Legislature, even if it purported to be retrospective, could only apply to the Madras Act as it continued in force in Madras and could not, thereafter, have any effect on the Madras Act which had already been brought into force in Pondicherry with effect from 1st April, 1966.

In this connection, Mr. Desai urged that the principal Act being void on the ground of excessive delegation of powers, it should be treated as still-born and non-existent and, consequently, the Amending Act could not revive it and should also be held to be ineffective. This point raised by him fails on two grounds. One ground is that the effect of the Amending Act was to amend the principal Act before that principal Act could become void on the ground of excessive delegation of powers. It is true that that Act was published on June 30, 1965, but it did not come into operation on that date. Its commencement was postponed and, consequently, it was brought into operation with effect from 1st April, 1966. By the time that it was brought into effect, the so-called defect of excessive delegation of powers was already removed because of the retrospective operation of the Amending

Act. On 1st April, 1966, when the principal Act came into force by virtue of the amendment made in s. 1(2) by the Amending Act, the defect of excessive delegation already stood cured. The principal Act must, therefore, be held to have been brought into force only after the defect of excessive delegation had already been removed and, consequently, it cannot be said that the Amending Act could not validly operate and cure the defect. Mr. Desai referred us to the decisions of this Court in Deep Chand v. The State of Uttar Pradesh and Others, ([1959] Supp. 2 S.C.R. 8) and Mahendra Lal Jaini v. The State of Uttar Pradesh and Others ([1963] Supp. 1 S.C.R. 912) where it was held that a law made in contravention of Art. 13(2) of the Constitution was void ab initio and the defect could not be cured even by a subsequent amendment of the Constitution. For the same principle, reference was also made to be the case of The State of South Australia and Another etc. v. The Commonwealth and Another (65 C.L.R. 373). The principle laid down in these cases is not applicable to the case before us. In those cases, the law that came up for consideration was void, because it had been made by the Legislature in excess of its legislative powers. In the present case, the principal Act was clearly without the competence of the Pondicherry Legislature and is being attacked as void only on the ground that it was defective inasmuch as it contained excessive delegation of its legislative powers by the Pondicherry Legislature to the Madras Legislature. There is nothing in the Constitution which prohibits the substitution of a defective law by a law which is not subject to any infirmity.

The second ground is that, in any case, it cannot be held that the whole of the principal Act was void even when it was published on 30th June, 1965 and was purported to be brought into force by the notification of the Pondicherry Government dated 1st March, 1966. Under the principal Act, there was no doubt, the general provision that the Madras Act was to be extended to Pondicherry as it stood immediately before the commencement of the principal Act, but there were at least some provisions of the Madras Act which were to come into force in Pondicherry in the form laid down by the Pondicherry Legislature in the principal Act itself, and any amendments made in those provisions by the Madras Legislature in the interregnum would have been totally ineffective. By s. 2(1)(ix) of the principal Act, for section 30 of the Madras Act, an entirely new section 30 was substituted. Similarly a new First Schedule was substituted for the First Schedule contained in the Madras Act by s. 2(1)(x) of the principal Act. The result was that, even if the Madras Legislature had made any amendments in s. 30 and the First Schedule of the Madras Act, those amendments would not have been effective in Pondicherry, because, on the commencement of the principal Act in Pondicherry, under the notification issued by the Pondicherry Government, section 30 and the First Schedule of the Madras Act, as extended to Pondicherry, were to stand in the form laid down in the principal Act itself and not either in the form in which they were originally contained in the Madras Act, or in the form in which they might have stood as a result of a subsequent amendment made by the Madras Legislature before the commencement of the principal Act. Consequently, it must be held that at least the provisions contained in s. 2(1)(ix) and s. 2(1)(x) of the principal Act did not contain any element of delegation of legislative power and must, therefore, be held to have been valid from the very beginning. If at least these provisions of the principal Act were valid, the whole of the principal Act could not be treated as still-born and void ab initio. Some parts of that Act were validly in force when the Amending Act was passed in November, 1966. If the principal Act was, to some extent, validly enforced, there could be no bar to the Pondicherry Legislature amending it retrospectively so as to validate those parts of the principal Act which might have been invalid on the ground of excessive delegation of legislative power. The Amending Act, thus, effectively cured the defect in the principal Act on the basis of which its validity was challenged on behalf of the petitioner before us.

Lastly, Mr. Desai challenged the validity of sub-s. (2) of section 2 of the principal Act as it now

stands after the enforcement of the Amending Act on the ground that, even under this provision, there is delegation of legislative power to the Madras Government which is totally unjustified. His submission was that under the amended sub-s. (2) of s. 2 of the principal Act, the power to frame fresh Rules under the Madras Act as extended to Pondicherry is still vested in the Madras Government. This submission is based on the fact that the amended sub-s. (2) of s. 2 lays down that the Madras General Sales Tax Rules, 1959, were to remain in force until such time as Rules are framed under s. 53 of the "said Act". Reliance is placed on the expression "of the said Act", because the expression "said Act" under sub-s. (1) of s. 2 of the principal Act is indicated as referring to the Madras General Sales Tax Act, 1959. We do not, however, think that this interpretation sought to be placed by Mr. Desai is correct. When the amended sub-s. (2) of the principal Act refers to the Madras Act by using the expression "said Act" at the end of that provision, it is clear that the reference is to the Madras General Sales Act, 1959 as extended to the territory of Pondicherry, and, under s. 2(1)(ii), the reference in the Madras Act as extended to Pondicherry to "Government" has to be construed as a reference to the "Administrator" appointed by the President under Article 239 of the Constitution of India for Pondicherry. The result is that, under the amended provisions of the principal Act, the Rules are to be framed by the Administrator of the Territory of Pondicherry and not by the Madras Government. No such defect, as urged by learned counsel, thus remains after the enforcement of the Amending Act.

The result is that we must hold that the principal Act as amended by the Amending Act now in force in the State of Pondicherry is validly in force and the proceedings that were taken against the petitioner, which were challenged by this petition have been validated by s. 5 of the Amending Act and are no longer open to challenge. The petition fails and is dismissed with costs.

ORDER

In accordance with the opinion of the majority, the petitions are allowed with costs. One hearing fee.

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