Municipal Corporation of Delhi

Vs

Birla Cotton, Spinning and Weaving Mills, Delhi and Another

Civil Appeals Nos. 1857 and 1858 of 1967

(CJI K. N. Wanchoo, J. M. Shelat J)

23.02.1968

JUDGMENT

WANCHOO, C.J:.

These appeals on certificates granted by the High Court of Delhi raise common questions relating to the constitutionality of delegation of taxing powers to municipal corporations and the effect of the Validation Act, passed by Parliament, in connection with tax on the consumption or sale of electricity levied by the Municipal Corporation of Delhi (hereinafter referred to as the Corporation) from July 1, 1959 to March 31, 1966. The facts are not in dispute and may be briefly narrated. On February 9, 1959, the Corporation passed a resolution purporting to be under sub-section (1) of s. 150 of the Delhi Municipal Corporation Act, No. 66 of 1957. (hereinafter referred to as the Act) for levy of three taxes, including a tax on the consumption or sale of electricity. Section 113 of the Act which confers powers on the Corporation to impose taxes has divided them into two kinds, namely, obligatory taxes, which the Corporation must impose [s. 113(1)], and optional taxes which the Corporation may impose [section 113(2)]. Further s. 150(1) of the Act provides that maximum rate of tax to be levied in the case of optional taxes will be specified by a resolution of the Corporation. After the maximum rate has thus been specified, the resolution has to be submitted to the Central Government for sanction under s. 150(2), and if sanctioned by Government, the rate comes into force on and from such date as may be specified in the Order of sanction. Under sub-section (3) of s. 150 the Corporation then passes another resolution determining the actual rates at which the tax is levied and the tax comes into force on the first day of the quarter of the year next following the date on which such second resolution is passed. The Corporation forwarded the resolution dated February 9, 1959 which was somewhat defective inasmuch as it did not specify the maximum rates, but merely the rates, which were to be enforced for the ensuing year, to Government for sanction. On June 20, 1959, the Central Government sanctioned the tax on consumption or sale of electricity with effect from July 1, 1959. In giving the sanction the Central Government modified the rates. On June 23, 1959, the Standing Committee took the Government sanction into consideration and recommended to the Corporation that rates of tax as sanctioned by Government be determined under sub-s. (3) of s. 150 as the actual rates at which the tax would be leviable for the year 1959-60. On June 24, 1959, the Corporation resolved that the recommendations of the Standing Committee regarding tax on consumption or sale of electricity be approved. Then followed demands by the Corporation on the basis of the imposition of tax from July 1, 1959.

When the tax was demanded from the responded, it filed a writ petition in the High Court challenging the levy of the tax. This writ petition was dismissed by a learned single Judge. The respondent then went in appeal, and the appeal court allowed the appeal holding inter alia (i) that the Central Government could not modify the rates specified in the resolution under s. 150(1) but

could only either withhold sanction thereto or sanction them, and (ii) that the liability to pay tax could not commence earlier than April 1, 1960 in view of the provisions contained in s. 109(2) read with s. 150(4) of the Act.

On December 3, 1966, Parliament passed the Delhi Municipal Corporation (Validation of Electricity Tax) Act, No. 35 of 1966 (hereinafter referred to as the Validation Act). By this Act, it purported to validate the levy of electricity tax from July 1, 1959 to March 31, 1966 (both days inclusive). In view of the Validation Act, fresh demands were made by the Corporation on the respondent.

On February 17, 1965, the Corporation passed another resolution in pursuance of s. 150(1) and this time provided maximum rates for the levy of tax on consumption or sale of electricity. These rates were higher than the rates fixed by the resolution of February 9, 1959. This resolution was submitted to Government and was sanctioned on December 8, 1965. Thereafter the Corporation passed the second resolution under s. 150(3) of the Act resolving the maximum rates should be adopted as the actual rates for the levy of tax. This resolution was passed on December 27, 1965. Then followed two writ petitions by the respondent. By the first writ petition it challenged the levy of tax by resolutions of February 17 and December 27, 1965, and by the second writ petition the appellant challenged the vires of the Validation Act.

We may now refer to the grounds of the challenge. So far as the Validation Act is concerned, it is contended that the Validation Act has failed in its object inasmuch as it did not provide for the levy of tax and merely validated the rates fixed by the resolution of June 24, 1959. Other grounds were also stressed in this connection but it is unnecessary to refer to them as they have not been pressed before us. As to the attack on the resolutions dated February 17, 1965 and December 27, 1965, the main contention is that s. 150 is unconstitutional inasmuch as it suffers from the vice of excessive delegation of legislative power and is therefore ultra vires and no tax could be levied by the Corporation thereunder. There are some other minor points raised in this connection to which we shall refer later.

The High Court held, so far as the Validation Act is concerned, that though it validated the levy and collection of tax from July 1, 1959 to March 31, 1960, it failed to validate the levy and collection from April 1, 1960 to March 31, 1966 on the ground that there was no levy of tax for this latter period, even though the rates were specified in the Validation Act. On the question of excessive delegation, the High Court held that s. 150 suffered from the vice of excessive delegation of legislative power and was therefore ultra vires. In consequence, the two writ petitions succeeded except as to the period from July 1, 1959 to March 31, 1960. The Corporation then applied for and obtained certificates and that is how the matter has come up before us.

Before we deal with the main question that has been argued before us, namely, whether s. 150 of the Act suffers from the vice of excessive delegation, we may briefly refer to certain provisions of the Act which are material for our purposes. Section 3 of the Act creates a Corporation from such date as the Central Government may by notification in the official gazette, appoint and this Corporation is charged with the municipal government of Delhi and is to be known as the Municipal Corporation of Delhi. Section 7 of the Act provides that the persons entitled to vote at elections of councillors shall be the persons registered by virtue of the provisions of the Constitution and Representation of the People Act, No. 43 of 1950, as voters at elections to the House of the People. It will be seen therefore that the Councillors of the Corporation are elected by universal adult suffrage. The total number of councillors is 80 and to these are added 6 eldermen, and they together form the Corporation. Section 42 lays down certain obligatory functions of the Corporation. It is not

necessary to refer to them in detail; it is enough to say that the main obligatory functions of the Corporations are the supply of water for public and private purposes, the construction, maintenance and cleansing of drains and drainage works and of public latrines, the scavenging, removal and disposal of filth, the construction or purchase, maintenance, extension, management and conduct of (i) any undertaking for the generation or supply and distribution of electricity to the public, and (ii) any undertaking for providing road transport services by mechanically propelled vehicles, the establishment and maintenance of hospitals, dispensaries and maternity and child welfare centres and carrying out of other measures necessary for public medical relief, the construction and maintenance of municipal markets and slaughter houses and regulation thereof, the construction, maintenance, alteration and improvements of public streets, bridges, culverts, causeways and the like, the lighting, watering, and cleansing of public streets and other public places, the establishment, maintenance of, and aid to, schools for primary education and maintenance of a fire-brigade and the protection of life and property in case of fire.

Section 43 provides for optional functions of the Corporation which it may in its discretion provide and a large number of such functions are enumerated therein. Some of these optional functions are : the establishment and maintenance of, and aid to, libraries, museums, art galleries, botanical or zoological collections, the providing of music or other entertainments in public places or places of public resort and the establishment of theatres and cinemas, the construction and maintenance of (i) rest houses, (ii) poor houses, (iii) infirmaries, (iv) children's homes, (v) houses for the deaf and dumb and for disabled and handicapped children, (vi) shelters for destitute and disabled persons, and (vii) asylums for persons of unsound mind the organisation or management of chemical or bacteriological laboratories for the examination or analysis of water food, and drugs for the detection of diseases or research connected with public health or medical relief; the provision for relief to destitute and disabled persons; the establishment and maintenance of veterinary hospitals; the organisation, construction, maintenance and management of swimming pools, public wash houses, bathing places and other institutions designed for the improvement of public health; the organisation and management of farms and dairies within or without Delhi for the supply, distribution and processing of milk and milk products for the benefit of the residents of Delhi; the organisation and management of cottage industries, handicraft centres and sales emporia; the provision for unfiltered water supply; the improvement of Delhi in accordance with improvement schemes approved by the Corporation; and the provisions of housing accommodation for the inhabitants of any area or for any class of inhabitants.

These duties, both obligatory and optional, which have been placed on the Corporation require large funds and for that purpose the Corporation has been given the power to levy taxes under s. 113 of the Act. Section 113 consists of two sub-sections; the first sub-section provides for obligatory taxes and they are six in number. These six taxes have been dealt with in detail in sections 114 to 149. It is not necessary to refer to these sections except to say generally that in most cases the Act has fixed a maximum for the obligatory taxes except in the case of water tax, scavenging tax and fire tax, the rates of which have to be fixed at a reasonable amount by the Corporation. Then comes s. 150, which deals with optional taxes and with which we are particularly concerned. It reads thus :

> "(1) The Corporation may, at a meeting, pass a resolution for the levy of any of the taxes specified in sub-section (2) of section 113, defining the maximum rate of the tax to be levied, the class or classes of persons or the description or descriptions of articles and properties to be taxed, the system of assessment to be adopted and the exemptions, if any, to be granted.

(2) Any resolution passed under sub-section (1) shall be submitted to the Central Government for its sanction, and if sanctioned by that Government, shall come into force on and from such date as may be specified in the order of sanction.

(3) After a resolution has come into force under sub-section (2), the Corporation may, subject to the maximum rate, pass a second resolution determining the actual rates at which the tax shall be leviable; and the tax shall come into force on the first day of the quarter of the year next following the date on which such second resolution is passed.

(4) After a tax has been levied in accordance with the foregoing provisions of this section, the provisions of sub-section (2) of section 109, shall apply in relation to such tax as they apply in relation to any tax imposed under sub-section (1) of section 113."

It will be seen that sub-section (1) of s. 150 leaves it to the Corporation, at a meeting, to pass a resolution for the levy of any of the optional taxes by prescribing the maximum rate. The Corporation is also given the power to fix the class or classes of persons or the description or descriptions of articles and properties to be taxed, for this purpose. It has also the power to lay down the system of assessment and exemptions, if any, to be granted. The contention of the respondent is that s. 150(1) delegates completely unguided power to the Corporation in the matter of optional taxes and suffer from the vice of excessive delegation and is unconstitutional.

We may also refer to certain other sections which deal with revenue and expenditure of the Corporation. Section 99 deals with the constitution of the municipal fund, in which all moneys of the Corporation go. Section 109 provides for adoption of budget estimates. It lays down that the Corporation shall on or before the 31st day of March of every year adopt for the ensuing year four budget estimates, namely, (i) budget estimates (general), (ii) budget estimate (electric supply), (iii) budget estimate (transport) and (iv) budget estimate (water supply and sewage disposal). Section 109(2) lays down that on or before the 15th day of February of each year, the Corporation shall determine the rates at which various municipal taxes, rates and ceases shall be levied in the next following year. Section 102 inter alia provides that no payment of any sum out of the municipal fund shall be made unless the expenditure of the same is covered by a current budget-grant.

It is in the light of these provisions that we have to consider whether the delegation made to the Corporation by s. 150 in the matter of imposing optional taxes is within the permissible limits of delegation. The contention on behalf of the appellant is that in view of these provisions there is sufficient guidance to the Corporation in the matter of fixing the rates of optional taxes and levying them on the inhabitants of the area and it cannot be said that Parliament by enacting s. 150 transgressed the limits of permissible delegation.

The question as to the limits of permissible delegation of legislative power by a legislature to a subordinate authority has come before this Court in a number of cases and the law as laid down by this Court is not in doubt now. Considering the complexity of modern life it is recognised on all hands that legislature cannot possibly have time to legislate in every minute detail. That is why it has been recognised that it is open to the legislature to delegate to subordinate authorities the power to make ancillary rules for the purpose of carrying out the intention of the legislature indicated in the law which gives power to make ancillary rules for the purpose of carrying out the intention of the legislature indicated in the law which gives power to frame such ancillary rules. The matter

came before this Court for the first time In re The Delhi Laws Act, 1912 [[1951] S.C.R. 747.], and it was held in that case that it could not be said that an unlimited right of delegation was inherent in the legislative power itself. This was not warranted by the provisions of the Constitution, which vested the power of legislation either in Parliament or State legislatures and the legitimacy of delegation depended upon its being used as an ancillary measure which the legislature considered to be necessary for the purpose of exercising its legislative powers effectively and completely. The legislature must retain in its own hands the essential legislative function. Exactly what constituted "essential legislative function", it was held further, was difficult to define in general terms, but this much was clear that the essential legislative function must at least consist of the determination of the legislative policy and its formulation as a binding rule of conduct. Thus where the law passed by the legislature declares the legislative policy and lays down the standard which is enacted into a rule of law, it can leave the task of subordinate legislation which by its very nature is ancillary to the stature to subordinate bodies, i.e., the making of rules, regulations or bye-laws. The subordinate authority must do so within the frame-work of the law which makes the delegation, and such subordinate legislation has to be consistent with the law under which it is made and cannot go beyond the limits of the policy and standard laid down in the law. Provided the legislative policy is enunciated with sufficient clearness or a standard is laid down, the courts should not interfere with the discretion that undoubtedly rests with the legislature itself in determining the extent of delegation necessary in a particular case.

In Raj Narain Singh v. The Chairman Patna Administration Committee [[1955] 1 S.C.R 290.] the same question arose and it was held that "an executive authority can be authorised by a statute to modify either existing or future laws but not in any essential feature. Exactly what constitutes an essential feature cannot be enunciated in general terms but it is clear that modification cannot include a change of policy. Essential legislative function consists in the determination of the legislative policy and its formulation as a binding rule of conduct."

In Harishankar Bagla v. The State of Madhya Pradesh [[1955] 1 S.C.R. 380.], s. 3 of the Essential Supplies (Temporary Powers) Act, 1946 was attacked as unconstitutional on the ground of excessive delegation of legislative power. In that case reliance was placed on the re in Delhi Law Act [[1951] S.C.R. 747.] where the majority held that "the essential powers of legislation cannot be delegated and that the legislature must declare the policy of the law and the legal principles which are to control any given cases and must provide a standard to guide the officials or the body empowered to execute the law. Applying these principles this Court held that the Act there impugned had laid down the principle and that principle was the maintenance or increase in supply of essential commodities and of securing equitable distribution and availability at fair prices. It was further held that this sufficiently formulated the legislative policy and the ambit and the character of that Act was such that the details of that policy could only be worked out by delegating that power to a subordinate authority within the frame-work of that policy. The Court therefore held that s. 3 of the impugned Act was not ultra vires the legislature on the ground of excessive delegation of legislative power.

In the Western India Theatres Limited v. Municipal Corporation of the City of Poona [[1959] Suppl. 2 S.C.R. 71.], a question arose with respect to the Bombay District Municipal Act, 1901, which gave power to the unicipality to levy "any other tax to the nature and object of which the approval of the Governor in Council shall have been obtained prior to the selection contemplated in sub-cl. (i) of cl. (a) of section 60". This provision was attacked as unconstitutional on the ground that the legislature had completely abdicated its function and delegated essential legislative power to the municipality to determine the nature of the tax to be imposed on the ratepayers and that power was

unguided, uncanalised and vagarant. The delegation was upheld by this Court on the ground that s. 59 authorised the municipality to impose tax thereunder for the purposes of the Act. The Act there under consideration defined the obligations and functions cast upon the municipality and it was observed that taxes could only be levied for implementing those purposes and not for any other purpose. It was finally observed that the impugned section did lay down the procedure which the municipality had to follow in imposing a tax and the legislature could not in the circumstances be said to have abdicated its function in favour of the municipality.

In Hamdard Dawakhana (Wakf) Lal Kuan v. Union of India [[1960] 2 S.C.R. 671.], this Court struck down one provision of the impugned Act as the legislature had established no criterion or standard and had not prescribed any principle on which the particular disease or condition was to be specified. It will be seen that the same principle that the legislature could not delegate unguided power to a subordinate body was the basis of this decision.

In Vasantlal Maganbhai Sanjanwal v. The State of Bombay [[1961] 1 S.C.R. 341.], the question of delegation of legislative power arose. This Court enunciated the principle thus :

> "Although the power of delegation is a constituent element of the legislative power, it is well-settled that a legislature cannot delegate its essential legislative function in any case and before it can delegate any subsidiary or ancillary powers to a delegate of its choice, it must lay down the legislative policy and principle so as to afford the delegate proper guidance in implementing the same. A statue challenged on the ground of excessive delegation must therefore be subjected to two tests, (i) whether it delegates essential legislative function or power and (2) whether the legislature has enunciated its policy and principle for the guidance of the delegate."

In Jyoti Pershad v. The Administrator for the Union Territory of Delhi [[1962] 2 S.C.R. 125.], in connection with the Slum Areas (Improvement and Clearance) Act, 1956, it was observed that "so long as the legislature indicated in the operative provisions of the statue with certainty, the policy and purpose of the enactment, the mere fact that the legislation was skeletal or that very detail of the application of law to a particular case, was not laid down in the enactment itself or the fact that a discretion was left to those entrusted with administering the law, afforded no basis either for the contention that there had been an excessive delegation of legislative power so as to amount to an abdication of its functions, or that the discretion vested was uncanalised and unguided so as to amount to a carte blanche to discriminate."

The last case to which reference may be made is Devi Das Gopal Krishnan v. State of Punjab [A.I.R. [1967] S.C. 1895.]. There the law on the subject of excessive delegation on was summarised thus at p. 1901 :

> "The Constitution confers a power and imposes a duty on the legislature to make laws. The essential legislative function is the determination of the legislative policy and its formulation as a rule of conduct. Obviously it cannot abdicate its functions in favour of another. But in view of the multifarious activities of a welfare State, it cannot presumably work out all the details to suit the varying aspects of a complex situation. It must necessarily delegate the working out of details to the executive or any other agency. But there is danger inherent in such a process of delegation. An over-burdened legislature or one controlled by a powerful executive may unduly overstep the limits of delegation. It may not lay down any policy at all; it may

> declare its policy in vague and general terms; it may not set down any standard for the guidance of the executive; it may confer an arbitrary power on the executive to change or modify the policy laid down by it without reserving for itself any control over subordinate legislation. This self effacement of legislative power in favour of another agency either in whole or in part is beyond the permissible limits of delegation. It is for a Court to hold on a fair, generous and liberal construction of an impugned statue whether the legislature exceeded such limits. But the said liberal construction should not be carried by the Courts to the extent of always trying to discover a dormant or latent legislative policy to sustain an arbitrary power conferred on executive authorities. It is the duty of the Court to strike down without any hesitation any arbitrary power conferred on the executive by the legislature."

It may be added that Devi Das's [A.I.R. [1967] S.C. 1895.] case did not differ from the Liberty Cinema [[1965] 2 S.C.R. 477.] case. What was held there was that there can be no general principle that merely the needs of the delegate can necessarily and always be a guideline. It was further held that each statute has to be examined to find out whether there are guidelines therein which prevent delegation from being excessive.

It is in the light of these general principles which are well-settled that the constitutionality of the delegation in s. 150 has to be considered. However, as we are particularly concerned with the fixation of rates of a tax, we may refer to certain cases which deal with this aspect of the matter. In Pandit Banarsi Das Bhanot v. The State of Madhya Pradesh [[1959] S.C.R. 427.], this Court observed as follows :-

> "Now the authorities are clear that it is not unconstitutional for the legislature to leave it to the executive to determine details relating to the working of taxation laws, such as the selection of persons on whom the tax is to be laid, the rates at which it is to be charged in respect of different classes of goods, and the like."

The appellant relies on this observation to show that the delegation in s. 150 of the Act cannot be said to be excessive as the rates of tax cannot be said to be an essential feature of the law relating to taxation. On the other hand, learned counsel for the respondent contends that this observation is much too wide if it means that it is open to the legislature to delegate without any guidance whatsoever the power to fix the rate of tax. In particular, it is urged on behalf of the respondents that the cases which have been referred to in support of this conclusion in Pt. Banarsi Das case [[1959] S.C.R. 427.] do not support the proposition laid down there if it is to be read as giving unqualified power to fix the rate without any guidance, control or safeguard. With respect it seems to us that if this observation means that it is open to the legislature to delegate the power to fix the rate of tax to another authority without any qualification, guidance, control or safeguard it is too widely stated and does not appear to be supported by the authorities on which it is based, though those authorities do indicate that in certain cases it is open to the legislature to give power to another authority to fix rates under proper guidance, control and safeguard. Take the case of Powell v. Apollo Candle Company Limited [L.R. [1885] X A.C. 282.]. In that case s. 133 of the Customs Regulation Act of 1879 of New South Wales was under attack. That section ran thus :

> "Whenever any article of merchandise then unknown to the collector is imported, which, in the opinion of the collector or the commissioners, is apparently a substitute for any known dutiable article, or is apparently designed to evade duty, but possesses properties in the whole or in part which can be used or were intended to be applied

> for a similar purpose as such dutiable article, it shall be lawful for the Governor to direct that a duty be levied on such article at a rate to be fixed in proportion to the degree in which such unknown article approximates in its qualities or uses to such dutiable article; and such rate thus fixed shall be published in a Treasury order in the Gazette, and one other newspaper published in Sydney, and exhibited in the long room or other public place in the Custom House, and a copy of all such Treasury orders shall, without unnecessary delay, be laid before both Houses of Parliament."

A bare perusal of the section shows that though the power was delegated to the Governor to levy the duties, it gave complete guidance to him in the manner of fixing the rate of duty and finally provided that the order passed by the Governor would be laid before both Houses of Parliament without necessary delay. The observations of the Privy Council in that case have in our opinion to be read in the context of the words of s. 133 where full guidance was provided as to the fixation of the rate.

In J. W. Hampton v. United States [72 Law Ed. 624 : 276 U.S. 624.], the Congress gave power to the President to make changes in the rates provided in the Tariff Act of 1922. That was challenged as a forbidden delegation of legislative power to executive authority. But the challenge was negatived by the Supreme Court of the United States on the ground that the Congress had laid down by legislative act an intelligible principle to which the person authorised to fix the rate of customs duties on imported merchandise was to conform. In that case the President could vary the rates with the aid of his advisers after proper investigation on the ground of differences of cost of production in the United States and abroad and to make such increases and decreases in rates of duty as were found necessary to equalise the cost of production. The limit of such change was also fixed upto 50 per centum of the rates specified in the law. This case does not support the proposition that rates of tax can be delegated to a subordinate authority without any guidance, though it is an authority for the proposition that this can be done if guidance is given for the purpose. The observation in Banarsi Das's case [[1959] S.C.R. 427.] that rates of tax are not essential features of legislation therefore seems, with respect, to be too broadly stated, though it may be admitted that rates of taxation also can in certain circumstances be delegated to a subordinate authority with proper guidance and subject to safeguards and limitations in that behalf.

The next case to which reference may be made is Corporation of Calcutta and Another v. The Liberty Cinema [[1965] 2 S.C.R. 477.] where the majority upheld the fixation of a tax on cinema shows, even though the Calcutta Municipal Act of 1951 prescribed no limits to which the tax could go. In that case the majority referred to the view taken in Pandit Banarasi Das's case [[1959] S.C.R. 427.] and interpreted the dictum in that case to mean that the fixation of rate can be left to a non-legislative body but this was qualified by the observation that when the power to fix the rate of tax was left to another body, the legislature must provide guidance for such fixation. In that case the majority found guidance in various provisions of the statue to which it is not necessary to refer, though the minority was of the opinion that there was no guidance therein.

The question again arose in Municipal Board, Hapur v. Raghuvendra Kripal [[1966] 2 S.C.R. 950.]. There the U. P. Municipalities Act No. 2 of 1916, gave power to the municipality to fix rates of tax and provided an elaborate procedure for doing so and also provided for sanction of Government. But one provision of that statute raised a conclusive presumption that the procedure prescribed had been gone through on a certain notification being issued by Government and the question arose whether by reason of such a conclusive presumption there was not a delegation of essential legislative function. In that case the majority while dealing with the question of excessive delegation

observed that the taxes in question were local taxes for local needs for which local enquiries had to be made and so they were left to the representatives of the local population which would bear the tax. It was further observed that such taxes must vary from town to town, from one Board to another, and from one commodity to another. Regard being had to the democratic set-up of the municipalities which need the proceeds of these taxes for their own administration, (it was observed) it was proper to leave to these municipalities the power to impose and collect those taxes, which were pre-determined along with a procedure for consulting the wishes of the people concerned. Over and above that there was power given to the State Government to check their action. In those circumstances delegation as to the fixing of rate of tax to the Municipal Board was upheld as permissible delegation. The minority judgment also accepted these propositions and observed that though generally speaking, the rate of tax was one of the essentials of taxing power given to the legislature, it must be recognised that there might be situations where the legislature might delegate to a subordinate authority that power under proper safeguards. It was also observed that in the matter of local taxation, like taxation by municipal boards, district boards and bodies of that character, there was pre-eminently a case for delegating the fixation of the rate of tax to the local body, the reason for this being that problems of different municipalities might be different and one municipality might require one kind of tax at a particular rate at a particular time while another municipality might need another kind of tax at another rate at some other time. It was further observed that "the legislature can in the case of taxation by local bodies delegate even the authority to fix the rate to the local body provided it has taken care to specify the safeguards for the purpose." The difference between the majority and the minority only was that the majority thought that the conclusive presumption raised by one of the provision was valid while the minority thought that by reason of the conclusive presumption all the safeguards were wiped out at one stroke and therefore it became a case of excessive delegation.

The last case to which reference may be made is Devi Das Gopal Krishnan [A.I.R. 1967 S.C. 1895.]. This was not a case of municipal taxation. In this case the legislature gave power to the State Government to fix sales tax at such rates as the State Government thought fit. The case of Liberty Cinema [[1965] 2 S.C.R. 477.] was distinguished in this case and it was pointed out that the needs of the State and the purposes of the Act could not give sufficient guidance for the purpose of fixing rate of sales tax by the State Government. There is in our opinion a clear distinction between delegation of fixing the rate of tax like sales tax to the State Government and delegation of fixing rates of certain taxes for purposes of local taxation. The needs of the State are unlimited and the purposes for which the State exists are also unlimited. The result of making delegation of a tax like sales tax to the State Government means a power to fix the tax without any limit even if the needs and purposes of the State are to be taken into account. On the other hand, in the case of a municipality, however large may be the amount required by it for its purpose it cannot be unlimited, for the amount that a municipality can spend is limited by the purposes for which it is created. A municipality cannot spend anything for any purposes other than those specified in the Act which creates it. Therefore in the case of a municipal body, however large may be its needs, there is a limit to those needs in view of the provisions of the Act creating it. In such circumstances there is a clear distinction between delegating a power to fix rates of tax, like the sales tax, to the State Government and delegating a power to fix certain local taxes for local needs to a municipal body.

A review of these authorities therefore leads to the conclusion that so far as this Court is concerned the principle is well established that essential legislative function consists of the determination of the legislative policy and its formulation as a binding rule of conduct and cannot be delegated by the legislature. Nor is there any unlimited right of delegation inherent in the legislative power itself. This is not warranted by the provisions of the Constitution. The legislature must retain in its own

hands the essential legislative functions and what can be delegated is the task of subordinate legislation necessary for implementing the purposes and objects of the Act. Where the legislative policy is enunciated with sufficient clearness or a standard is laid down, the courts should not interfere. What guidance should be given and to what extent and whether guidance has been given in a particular case at all depends on a consideration of the provisions of the particular Act with which the Court has to deal including its preamble. Further it appears to us that the nature of the body to which delegation is made is also a factor to be taken into consideration in determining whether there is sufficient guidance in the matter of delegation.

What form the guidance should take is again a matter which cannot be stated in general terms. It will depend upon the circumstances of each statute under consideration; in some cases guidance in broad general terms may be enough; in other cases more detailed guidance may be necessary. As we are concerned in the present case with the field of taxation, let us look at the nature of guidance necessary in this field. The guidance may take the form of providing maximum rates of tax upto which a local body may be given the discretion to make its choice, or it may take the form of providing for consultation with the people of the local area and then fixing the rates after such consultation. It may also take the form of subjecting the rate to be fixed by the local body to the approval of Government which acts as a watch-dog on the actions of the local body in this matter on behalf of the legislature. There may be other ways in which guidance may be provided. But the purpose of guidance, whatsoever may be the manner thereof, is to see that the local body fixes a reasonable rate of taxation for the local area concerned. So long as the legislature has made provision to achieve that reasonable rates of taxation are fixed by local bodies, whatever may be the method employed for this purpose - provided it is effective -, it may be said that there is guidance for the purpose of fixation of rates of taxation. The reasonableness of rates may be ensured by fixing a maximum beyond which the local bodies may not go. It may be ensured by providing safeguards laying down the procedure for consulting the wishes of the local inhabitants. It may consist in the supervision by Government of the rate of taxation by local bodies. So long as the law has provided a method by which the local body can be controlled and there is provision to see that reasonable rates are fixed, it can be said that there is guidance in the matter of fixing rates for local taxation. As we have already said there is pre-prominently a case for delegating the fixation of rates of tax to the local body and so long as the legislature has provided a method for seeing that rates fixed are reasonable, be it in one form or another, it may be said that there is guidance for fixing rates of taxation and the power assigned to the local body for fixing the rates is not uncontrolled and uncanalised. It is on the basis of these principles that we have to consider the Act with which we are concerned.

We may, before we consider the provisions of the Act, refer to the position prevalent in the United States of America so far as local taxation is concerned. Even though the doctrine of separation of powers prevails in that country, it is recognised there that delegation of power to local authorities for fixing rates of taxes for local purposes does not amount to excessive delegation by the legislature. This conclusion has been reached there on the basis of historical facts. Whenever a municipal corporation is created, and is charged with carrying on certain specified functions, it is necessary to provide it with funds, for otherwise it cannot carry on the purposes for which it has been created. The funds may be provided as grants; but the general pattern has always been that power of local taxation is vested in a municipal body as an essential attribute for all the purposes of its existence. Thus in the United States of America, even though the power of taxation belongs exclusively to the legislative branch of the Government, it may be delegated by the legislature to municipal corporations : [See United States v. City of New Orleans [25 L. Ed. 225.]].

Though delegation as to municipal taxation is held to be permissible under the U.S. Constitution, it is so because of historical reasons peculiar to that country. The American example may not be an apt analogy but the history of municipal Acts in our country indicates that for nearly a century or more power of taxation has been delegated to municipal bodies. In some Acts all taxes delegated to the municipal bodies are compulsory; in other Acts all taxes so delegated are optional : (see U.P. Municipalities Act). In some cases some taxes are compulsory and some taxes are optional as is the case in the present Act. In some cases maximum limits are provided for some taxes and not for others; in some cases no maximum is provided, though there are restrictions and safeguards within which the municipal bodies must act. In all cases however, there has been a large area of delegation of taxing power for local purposes to local bodies subject to control by Government or to such other procedural safeguards as the legislature considers necessary in the matter of imposition of taxes. According to our history also there is a wide area of delegation in the matter of imposition of taxes to local bodies subject to controls and safeguards of various kinds which partake of the nature of guidance in the matter of fixing rates for local taxation. It is in this historical background that we have to examine the provisions of the Act impugned before us.

We have already set out s. 150 of the Act which delegates power to the Corporation to levy any of the optional taxes at such rates as it thinks fit and further gives power to it to specify persons, and articles and properties on which tax will be levied and the system of assessment to be adopted and exemptions if any to be granted. The delegation thus made is certainly wide and the question is whether there is any guidance in the form already indicated to the Corporation in carrying out the duties imposed upon it under s. 150 of the Act.

The first circumstance which must be taken into account in this connection is that the delegation has been made to an elected body responsible to the people including those who pay taxes. The councillors have to go for election every four years. This means that if they have behaved unreasonably and the inhabitants of the area so consider it they can be thrown out at the ensuing elections. This is in our opinion a great check on the elected councillors acting unreasonably and fixing unreasonable rates of taxation. This is a democratic method of bringing to book the elected representatives who act unreasonably in such matters. It is however urged that s. 490 of the Act provides for the supersession of the Corporation in case it is not competent to perform or persistently makes default in the performance of the duties imposed upon it by or under the Act or any other law or exceeds or abuses its power. In such a case the elected body may be superseded and all powers and duties conferred and imposed upon the Corporation shall be exercised and performed by such officer or authority as the Central Government may provide in this behalf. It is urged that when this happens the power of taxation goes in the hands of some officer or authority appointed by Government who is not accountable to the local electorate and who may exercise all the powers of taxation conferred on the elected Corporation by the Act. This however has not happened in the present case and we need not express any opinion on the question whether such officer or authority would be competent to increase the rates of taxes already fixed when the Corporation is superseded or can impose new taxes which were not there at the time of supersession. That is a matter which may have to be considered when such a situation arises; but so long as the power of taxation conferred by s. 150 is exercised by the elected body there will always be a check in the form of the members thereof having to face the electorate after every four years with the liability of being thrown out if they act unreasonably. This check which is inherent in an elected municipal body, must enter into the verdict whether the delegation to such a body, even though it is wide in extent, can be upheld on the basis that this is a method of controlling the actions of the elected body and setting a limit to which it can go in the matter of taxation, even though no maximum as such is provided in the Act.

Another guide or control on the limit of taxation is to be found in the purposes of the Act. The Corporation has been assigned certain obligatory functions which it must perform and for which it must find money by taxation. It has also been assigned certain discretionary functions. It is undertakes any of them it must find money. Even though the money that has to be found may be large, it is not, as we have already indicated, unlimited for it must be only for the discharge of functions whether obligatory or optional assigned to the Corporation. The limit to which the Corporation can tax is therefore circumscribed by the need to finance the functions, obligatory or optional which it has to or may undertake to perform. It will be not open to the Corporation by the use of taxing power to collect more than it needs for the functions it performs. It cannot, for example, raise the rate of taxation to such an extent, as to provide a surplus which is much more than what it needs for its existence in carrying out the functions assigned to it, subject to its having the minimum cash balance of Rs. 4,00,000 as provided in the Act at the end of a year. This is in our opinion another check which will guide the Corporation in fixing its rates of tax under s. 150 after taking into account the yield from obligatory taxes. Though the mere fact that specific purposes and functions are set out in an impugned Act may not be conclusive - it is one of the factors which should be taken into account along with other relevant factors. It cannot therefore be said that there is no guidance to the Corporation in the matter of fixing rates of optional taxes, though it must be admitted that a large discretion is left to it in this behalf. Even so there are limits to which the Corporation can go in fixing these taxes and those limits like the maximum fixed for obligatory taxes are the guidelines within which the taxing power of the Corporation with respect to optional taxes must be exercised. This power is exercised by the Corporation after debate by the elected representatives of the local area which the Corporation administers. In such circumstances we think that there is a limit and guidelines provided by the Act beyond which the Corporation cannot go.

Another limit and guideline is provided by the necessity of adopting budget estimates each year as laid down in s. 109 of the Act. That section provides for division of the budget of the Corporation into four parts i.e., general electricity supply, transport, water and sewage disposal. The budget will show the revenue and expenditure and these must balance so that the limit of taxation cannot exceed the needs of the Corporation as shown in the budget to be prepared under the provisions of the Act. These four budgets are prepared by four Standing Committees of the Corporation and are presented to the Corporation where they are adopted after debate by the elected representatives of the local area. Preparation of budget estimates and their approval by the Corporation is therefore another limit and guideline within which the power of taxation has to be exercised. Even though the needs may be large, we have already indicated that they cannot be unlimited in the case of the Corporation, for its functions both obligatory and optional are well defined under the Act. Here again there is a limit to which the taxing power of the Corporation can be exercised in the matter of optional taxes as well, even though there is no maximum fixed as such in the Act.

Then there is the provision in s. 150 itself which says that the maximum rates fixed by the Corporation at its meeting by a resolution have to be submitted to the Government for its sanction and without such sanction there can be no imposition of tax. As we have already stated the legislature has made Government the watch-dog to control the actions of the Corporation in the matter of fixing rates and other incidents of the taxes and that is also a check to see that reasonable rates are fixed by the Corporation when it proceeds to impose taxes under s. 150. We have a parliamentary system of government in which the Government is responsible to the legislature. That is also a circumstance which may be taken into account in considering the check imposed by the Act upon the taxing power of the Corporation, namely, that the rates fixed by it have to be sanctioned by Government which in its turn is responsible to Parliament. Though therefore the legislature may not have provided that the rates of tax shall be submitted to it for approval, the fact that it has provided

that such rates shall be submitted to Government for approval and the Government in its turn is responsible to the legislature is a factor which has to be taken into account when considering whether the delegation by s. 150 of the Act is excessive or not. It stands to reason that Government which is responsible to the legislature would act with care and circumspection when exercising its function as the watch-dog on behalf of the legislature on the taxing power conferred by the legislature on the Corporation. Under these circumstances do not think that it can be said that there are no guidelines, limits, controls or safeguards provided by the legislature in the matter of the exercise of the power of taxation under s. 150 of the Act by the Corporation. The legislature cannot in the circumstances be said to have abdicated its power for it has indicated the taxes which the Corporation cannot go beyond the taxes the imposition of which has been entrusted to it by the legislature. In the case of obligatory taxes, the legislature itself has provided the maximum in some cases or the fixation of reasonable rates in other cases like water, tax, scavenging tax or fire tax. In the case of optional taxes, however, greater freedom has been left to the Corporation to arrange its budgets and fix rates of taxation; but this freedom is circumscribed and guided and controlled under the various provisions of the Act which we have already referred to and which must be taken to limit the taxing power of the Corporation even though no specific maximum has been fixed in the Act for optional taxes. It seems to us therefore that considering that the power is entrusted to the elected representatives of the local area who are liable to go for election before the local electorate every four years, the nature of guide given by the Act is sufficient for the purpose of keeping the Corporation within limits. In such circumstances, considering the constitution and set up of the municipal corporation, its need for finance to carry out the functions entrusted to it, its elective character, its responsibility to the electors, the safeguards and controls provided in the Act, procedural and otherwise, it is difficult to hold that the power of taxation conferred on it is either uncanalised, arbitrary or without guidance or policy.

Finally there is another check on the power of the Corporation which is inherent in the matter of exercise of power by sub-ordinate public representative bodies, such as municipal boards. In such cases if the act of such a body in the exercise of the power conferred on it by the law is unreasonable, the courts can hold that such exercise is void for unreasonableness. This principle was laid down as far back as 1898 in Kruse v. Johnson [[1898] 2 Q.B.D. 91.] in connection with a bye-law made by a county council. In that case the county council made a certain bye-law and its validity was challenged on the ground that it was unreasonable. The Court held that a bye-law could be struck down on the ground of unreasonableness but took pains to point out that in determining the validity of a bye-law made by a public representative body, such as a county council, the court ought to be slow to hold that the bye-law was void for unreasonableness. The Court further held that "a bye-law so made out ought to be supported unless it is manifestly partial and unequal in its operation between different classes, or unjust, or made in bad faith, or clearly involving an unjustifiable interference with the liberty of those subject to it." The same principle would apply to the fixation of rates of taxation and if per chance the Corporation fixes rates which are unreasonable, there is control in the court to strike down such an unreasonable impost.

On a careful consideration therefore of the various provisions of the Act, we must hold that the power conferred by s. 150 of the Act on the Corporation is not unguided in the circumstances and cannot be said to amount to excessive delegation.

This brings us to two minor points raised before us. It is urged that the tax was imposed on the production of electricity and not on consumption as required by the Act and as provided in item 53, List II of the Seventh Schedule to the Constitution. We cannot accept this contention. The resolution which was passed on February 9, 1959, shows that the tax was imposed inter alia on the

consumption of electricity by a person generating it for his own consumption. The words used in the resolution are somewhat inapt but the meaning in our opinion is quite clear, namely that a tax at the rate of 5 n.p. per KWHR is imposed on the consumption of electricity on a person generating it for his own consumption. The tax is thus on the consumption of electricity where it is generated by a person for his own consumption and not on the production of electricity.

Then it is urged that the sanction by Government was not in accordance with the provisions of the Constitution and that in this case the sanction was given by the Deputy Secretary to Government who obviously had no authority to do so. We are of opinion that there is no force in this contention. The order conveying sanction specifically says that "the Central Government hereby sanctions the resolution passed by the Municipal Corporation of Delhi under sub-section (1) of section 150." It is true that the order is signed by the Deputy Secretary but that does not mean that it was the Deputy Secretary who sanctioned the rates. It is also true that the words "by the order of the Central Government" or "by the order of the President" are not there above the signature of the Deputy Secretary and the authentication therefore is not quite in accordance with the provisions of Art. 77 of the Constitution, but that deficiency has been made up by the affidavit filed on behalf of the Central Government in which it is stated that the resolution was approved by the then Deputy Home Minister and the Minister in the Ministry of Home Affairs to whom the work relating to the Corporation was assigned by the Home Minister. Reliance in this connection was placed on the Government of India (Allocation of Business) Rules, 1961, passed on January 14, 1961 to the effect that "in relation to the business allotted to a Minister, another Minister or Deputy Minister may be associated to perform such functions as may be assigned to him." That in our opinion clearly means that a Cabinet Minister may be assisted in the performance of functions allotted to him by another Minister or Deputy Minister. It is not necessary where business has been assigend by a Cabinet Minister to a Minister or a Deputy Minister that the matter should be put before the Cabinet Minister also after the Minister or the Deputy Minister has approved of it in accordance with the assignment made in his favour. We are therefore of the opinion that the sanction has been given by the Central Government as required by the Act.

That takes us to the question of validation. The Validation Act was passed in December 1966 and section 2 thereof with which we are concerned reads thus :-

> "(1) Notwithstanding anything contained in section 150 read with sub-section (2) of section 109 of the Delhi Municipal Corporation Act, 1957, the resolution of the Delhi Municipal Corporation dated the 24th June, 1959, passed under sub-section (3) of section 150 aforesaid, insofar as the said resolution relates to the determination of the rates at which tax shall be leviable on the consumption or sale of electricity shall be deemed to have been passed in accordance with law and the rates specified in the said resolution in respect of tax on the consumption or sale of electricity shall be deemed to be, and to have been, the actual rates of the tax under the said Act with effect on and from 1st day of July 1959 and up to and inclusive of the 31st day of March, 1966.
>
> (2) Notwithstanding anything contained in any judgment, decree or order of any court to the contrary, all takes on the consumption or sale of electricity levied or collected or purporting to have been "levied or collected in pursuance of the resolution referred to in sub-section (1) shall, for all purposes, be deemed to be, and to have always been, validly levied or collected.."

The argument which found favour with the High Court was that the words of s. 2 only validated the levy and collection of tax for the year ending March 31, 1960 and no further, though the section in terms refers to the period from July 1, 1959 to March 31, 1966. The contention, which was accepted by the High Court, was that though fixation of rate of tax was validated up to March 31, 1966, the levy of the tax was not validated for the whole period by s. 2 of the Validation Act. The same argument was raised before us in support of the contention that the Validation Act felt in its purpose so far as the period from April 1, 1960 to March 31, 1966 is concerned. We are of opinion that the High Court was in error in holding that the levy and collection was not validated for the period from April 1, 1960 to March 31, 1966 and that the Validation Act merely validated the fixation of rate of tax for that period. Section 2(1) which is said to have failed in validating the levy and collection of tax for the period from April 1, 1960 to March 31, 1966 is in two parts. In the first place it validates the resolution of the Corporation dated June 24, 1959 by which rates were fixed under s. 150(3) for the year ending March 31, 1960. As the High Court says - and rightly so - this means that everything that went before the resolution of June 24, 1959 was passed was validated. It was on this ground that the High Court held that the Validation Act validated the levy and collection of tax at the rates fixed for the period from July 1, 1959 to March 31, 1960. The High Court seems to have over-looked the second part of s. 2(1) which lays down that the rates specified in the resolution of June 24, 1959 in respect of tax on the consumption or sale of electricity under the Act with effect on and from the 1st day of July, 1959 and up to and inclusive of the 31st day of March, 1966 shall be deemed to be, and to have been, the actual rates of the tax. By this part of s. 2(1), Parliament has clearly approved the rates deducible from the resolution of June 24, 1959 as the actual rates of tax for the entire period from July 1, 1959 to March 31, 1966. This could only be to validate the levy and collection of tax at that rate for that period, for otherwise we can see no sense in the Validation Act. It is however said that the words "at which tax shall be levied and collected" do not appear after the words "the actual rates of the tax" in s. 2(1) and therefore the section must be taken to have validated the rates only. It has neither provided for levy and collection of tax nor validated its levy and collection for the period mentioned therein. It seems to us that when s. 2(1) lays down that the rates deducible from the resolution of June 24, 1959 shall be the actual rates of tax for the entire period from July 1, 1959 to March 31, 1966, it must be understood to sanction the levy and collection of tax at the rates fixed. This to our mind is implict in the word "actual" which governs the words "rate of the tax". We may add that even if there was some doubt in the matter from the words of s. 2(1), that doubt is resolved by the words of s. 2(2), which lays down that "all taxes on the consumption or sale of electricity levied or collected or purporting to have been levied or collected in pursuance of the resolution referred to in sub-section (1) shall, for all purposes, be deemed to be and to have always been validly levied or collected." This clearly shows that the validation was not merely of the rate of tax but of levy and collection also for the entire period from July 1, 1959 to March 31, 1966. We cannot therefore agree with High Court that only the rates of tax were validated and not levy and collection thereof for the period from April 1, 1960 to March 31, 1966. We may go further and say that as we read s. 2(1) and s. 2(2) together it seems to us that Parliament not only validated what was done but also itself imposed the rates deducible from the resolution of June 24, 1959 and authorised the levy and collection thereof for the entire period from July 1, 1959 to March 31, 1966 notwithstanding anything contained in any judgment, decree or order of any court to the contrary.

We therefore allow the appeals, set aside the order of the High Court insofar as it is against the appellant and dismiss the writ petitions. No order as to costs throughout.

Hidayatullah, J. The Delhi Municipal Corporation in exercise of powers under its constituent Act has levied a tax on the consumption, sale or supply of electricity. This power is expressly conferred

by the Delhi Municipal Corporation Act, 1957 (66 of 1957). Section 113(2)(d) and (3) reads :

> "(2) In addition to taxes specified in sub-section (1) the corporation may, for the purposes of this Act, levy any of the following taxes, namely :
>
> #. . . . . .##
>
> (d) a tax on the consumption, sale or supply of electricity.
>
> (3) The taxes specified in sub-section (2) shall be levied, assessed and collected in accordance with the provisions of this Act and the bye-laws made thereunder".

The Act provides further in s. 150 :

> "150. Imposition of other taxes.
>
> (1) The Corporation may, at a meeting, pass a resolution for the levy of any of the taxes specified in sub-section (2) of section 113, defining the maximum rate of the tax to be levied, the class or classes of persons or the description or descriptions of articles and properties to be taxed, the system of assessment to be adopted and the exemptions, if any, to be granted.
>
> (2) Any resolution passed under sub-section (1) shall be submitted to the Central Government for its sanction, and if sanctioned by that Government, shall come into force on and from such date as may be specified in the order of sanction.
>
> (3) After a resolution has come into force under sub-section (2), the Corporation may, subject to the maximum rate, pass a second resolution determining the actual rates at which the tax shall be leviable, and the tax shall come into force on the first day of the quarter of the year next following the date on which such second resolution is passed.
>
> (4) After a tax has been levied in accordance with the foregoing provisions of this section, the provisions of sub-section (2) of section 109, shall apply in relation to such tax as they apply in relation to any tax imposed under sub-section (1) of section 113".

On February 9, 1959 the Municipal Corporation passed a resolution stating the rate at which the tax would be levied. The resolution was submitted to the Central Government for its approval. The Central Government modified the rate by enhancing it. On June 23, 1959 the Standing Committee of the Corporation recommended the rate sanctioned by the Government as the actual rate to be imposed. The Corporation then resolved on June 24, 1959 that the tax was imposed at that rate.

The respondent challenged the imposition of the tax by a writ petition in the Punjab High Court. A learned single Judge dismissed the petition but on appeal in the High Court the decision was reversed. It was held that the Central Government lacked power to alter the rate. On December 3, 1966, Parliament passed the Delhi Municipal Corporation (Validation of Electricity Tax) Act, purporting to validate the rate of tax. On February 17, 1965, the Municipal Corporation passed another resolution under s. 150(1) stating the maximum rate of tax. This resolution was approved by Government and a second resolution was then adopted under s. 150(3) naming the maximum rate as

the actual rate. This was on December 27, 1965. Two writ petitions were filed by the respondent in the High Court of Delhi. The first questioned the imposition of the tax by the resolutions of February 17 and December 27, 1965 and the second questioned the legality of the Validation Act. These petitions succeeded and the present appeals followed.

The learned Chief Justice in his judgment has upheld the validity of the Validation Act. As we are of opinion that the earlier resolutions were also legal, we need say nothing about the Validation Act. We agree, however, that the Validation Act cannot be questioned. The learned Chief Justice has adequately answered the objections and although we might have stated our reasons separately we do not find it necessary to do so. We agree that the relevant appeal must be allowed.

On the other point we agree with the conclusions of the learned Chief Justice that the other appeal must also be allowed. In our opinion, the Delhi Municipal Corporation was legally invested with the power to levy the electricity tax. We are satisfied that there is no flaw in the conferral of power on the Municipal Corporation by s. 113 and 150 of the Act and the resolutions passed thereunder. The objection in this connection is that the parliamentary Act itself is invalid inasmuch as it amounts to an excessive delegation of essential legislative functions by Parliament to an outside body. The learned Chief Justice has upheld s. 150 by pointing out certain inbuilt safeguards in the Act which, in his view, save it from being characterised as a piece of excessive delegation. With all due respects we think this is not the only approach to the problem. We do not wish to be understood as saying that the conferral of a power of taxation on Municipalities must always be accompanied by a detailed enumeration in the constituent Act of the rate of the tax, the persons to be taxed, the manner of the levy and collection, before it can be said that there are sufficient safeguards. Not do we think that these matters cannot be left to the determination of the Municipal Corporation subject, of course, to such controls as the legislature may think necessary to effectuate its own will. While the provisions which have been characterised as safeguards (where found necessary) are desirable the proper test to apply is not the existence of safeguards but whether the legislative will to impose the tax is adequately expressed so as to bind those who have to pay the tax. This requires an examination of the policy and provisions of the Act with a view to determining whether the legislative will is fully expressed to invest the Municipal Committee with the power to levy the tax subject, of course, to a proper procedure being evolved. We shall briefly indicate reasons which compel us to give our opinion separately.

The charge here is that the power to impose the tax granted by Ss. 113 and 150 amounts to an excessive delegation of essential legislative functions without adequate control or guidance of Parliament and, therefore, the grant is beyond the competence of Parliament. This contention is raised because of the gloss put upon the Delhi Laws Act [[1951] S.C.R. 747.] case in some subsequent cases which seem to carry the observations in that case to fields which, perhaps, were not in the minds of the Judges who gave the Advisory opinion. In those fields other considerations apply which unfortunately have been overlooked more particularly when the question is of investing a Municipal Corporation with the authority to levy taxes.

The Delhi Laws Act [[1951] S.C.R. 747.] case was concerned with certain legislation which conferred a general power on the Executive Government to apply any Act in force in British India, to certain areas with such modifications, amendments, restrictions (involving repeal of laws already in force) as the Executive Government might consider expedient or necessary. The Executive Government was not contained in its discretion by any direction on the subject. This made it free to choose any law and to modify it as it thought fit before applying it and incidentally to repeal such laws as were already in force in those areas. The general observations in the case were that the

proposed measures there considered in several respects amounted to the effacing of the legislature and the setting up of a parallel legislature. The issue obviously was a narrow and a special one. It concerned direct legislation in an area by imposition of laws at the hands of the Executive. The legislature gave too free a hand to the Executive. The Advisory opinion ought, therefore to be read secumdam subjectam materiam and need not be extended to those cases in which the legislature outlines the entire policy of the municipal administration and keeping the control in its own hands authorises the Municipal Committee to levy taxes which it itself determines and sanctions. How deeply must the policy of a law be searched, of course, depends upon the kind of the law and its purpose. This obvious point has got lost in the application of this Delhi Laws Act [[1951] S.C.R. 747.] case, particularly in Devidas Gopal Krishnan v. State of Punjab [A.I.R. 1967 S.C. 1895.] where it received an extension to fields to which the observations could not logically extend. In other cases many points were evolved to get over the difficulties of accepting those observations simpliciter. The observations were, of course, not statutory prescriptions. The result is that the courts seem to struggle to discover what have been variously described as the policy of the law, the guidance, the safeguards, the limits, the standards and the restrictions. These attempts merely show that what is intended to be found out is whether the legislature has expressed its own will in unequivocal terms so as to make the law a binding rule of conduct. The several expressions here enumerated do not, of course, mean the same thing. Nor can it be said that an aggregate of all of them must clearly appear from the impugned statute because if they do there will be no need for the agent. The agent is then only an executing authority and not acting in aid of the legislature which is the underlying principle on which delegated legislation is upheld. The result as noticeable from case to case has been somewhat strange. A search has been made in the various Acts from the policy of law as stated in the preamble to the operative parts, from the positive directive enactments to what may be considered as mere policy statement to sustain the law. No search appears to have been made from the standpoint whether the legislature has or has not expressed its own will completely leaving the application of the law to those circumstances which the legislature has already pre-determined.

The learned Chief Justice resolves the present controversy by highlighting the provisions which indicate that there are "safeguards", "guidelines" and "limits" in the Municipal Corporation Act. In reaching his conclusion the learned Chief Justice emphasises that there are 'safeguards sufficient' to enable the Municipal Corporation to validly impose the tax. If any such "safeguards" (as to which we do not consider it necessary to express an opinion here) were necessary, it is sufficient to point out that the scheme of the Municipal Act as a whole, the functions the Municipality is expected to perform, the resources it must have, the gradation of compulsory taxes, their limits, the control of Government and various other provisions, furnish a sufficient answer. They are safeguards enough to sustain the Act.

But, in our opinion, this matter goes further. Whether a legislature can confer on a Municipal Corporation a power to levy a tax and how, is a very different question from that which was resolved in the Delhi Laws Act [[1951] S.C.R. 747.] case. It involves a consideration of what our Constitution enables to be done under the relevant legislative entry and the nature of the Municipal administration. It must be resolved on the basis of sovereignty which the legislative entries are intended to confer.

The entry in question is Entry No. 5 in the State List. It reads :-

> "5. 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 or village administration."

Under this entry power is given to the legislature to create self-governing units. It has always been understood, as we shall show presently, that such self-governing units must have resources for their own administration and duties. There are only two methods by which money can one made available : one is to give them a grant; and the other is to allow them to raise funds by fees and taxes. The second method is generally followed and the legislatures in India on times out of number have invested these local self-governing units with powers of taxation. No such legislation has been questioned on the ground that it offends against the competency of the legislature. It is now contended that such exercise of power by the legislature offends against the doctrine of separation of powers and also is hit by the maxim delegatus non-protest delegare. We shall now discuss these two questions.

Our Constitution no doubt divides the functions of the State between three organs of the Government but it does not make a clean-cut division of the functions of these three organs as do some other Constitutions. For example, the Constitution of Massachusetts carries the provision -

> "the legislative departments shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them."

Even the Constitution of the United States in Article I section (1) provides :

> "Section 1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representative."

The Australian Constitution also makes a much more rigid cut between the three organs. By reason of such provisions the theory of separation of powers advanced by Montesquieu (who regarded the separation of powers as the best feature of the British Constitution) has played a great part. Montesquieu, of course, was not quite right in imagining that there was a complete separation of powers in England. The other theory, which has played a part flows from the maxim already quoted. In the Bonus case of Jalan Trading Co. Private Ltd. v. Mill Mazdoor Union [[1967] 1 S.C.R. 15 at 59.] we had the occasion to say that that theory was wrongly understood. We may recall here what we then said :

> "This doctrine, it has been accepted on all hands was originated by the glossators and got introduced into English Law by a misreading of Bracton as a doctrine of agency and was applied by Coke in decisions to prevent the exercise of judicial power by another agency and later received its present form in the United States."

This theory has been discountenanced even in America where in spite of a somewhat rigid separation of powers delegated legislation is permitted in various fields. No doubt the Donoughmore Committee in England recommended that delegation should be put within bounds. But the example of the United States is to the contrary. The question was examined by the Moreland Commission, the Brownlow Committee and the Acheson Committee. They permitted the delegation of ancillary powers to instrumentalities other than the legislatures. The Donoughmore Committee had before it the opinion of the First Parliamentary Counsel in these worlds :

> "... it would be impossible to produce the amount and the kind of legislation which Parliament desires to pass and which the people of this country are supposed to want, if it became necessary to insert in the Acts of Parliament themselves any considerable portion of what is now left to delegated legislation."

Therefore, in England and America many writers (for example, Lowell) have pointed out that previously English and American statutes were over-burdened with details and tried to provide in advance for all matters. Things have now changed. Delegated legislation is now held "inevitable" and the criticism of it is only because of 'nostalgic yearnings for an era that had passed'. The result is noticeable in England, America, Australia, Canada and in our country. Take any statute and it will be found that quite a lot of things are left to be done by some other instrumentality. The rule making power, 'the appointed day' clauses, the provisions for extending the Act, for granting exemptions and so on and so forth are to be met with everywhere. Otherwise, how can one justify the controls which have come into existence in India ? The Gold Control Order sprang from the Defence of India Act without there being any statement in the Defence of India Act of any "guidelines" or "safeguards". The Essential Supplies (Temporary Powers) Act, 1946 was sustained by reading the preamble without making a search for "guidelines", "limits" or "safeguard" - see Harishankar Bagla v. The State of Madhya Pradesh [[1955] 1 S.C.R. 380.]. In Raj Narain Singh v. The Chairman Patna Administration Committee [[1955] 1 S.C.R. 290.], the power to modify existing statutes was recognised provided no essential feature was changed. In Western India Theatres Ltd. v. Municipal Corpn. of the City of Poona [[1959] 2 Supp. S.C.R. 71.], a general provision that the Municipality may impose "any other tax" to the nature and object of which the approval of the Governor-in-Council was obtained was held valid only because the tax was imposed "for the purposes of the Municipality." In Hamdard Dawakhana [[1960] 2 S.C.R. 671.] case the selection of diseases or conditions was left to the Executive but was held not to be an instance of excessive delegation. In Pandit Banarsidas Bhanot v. The State of Madhya Pradesh [[1959] S.C.R. 427.], it was observed :

> "Now the authorities are clear that it is not unconstitutional for the legislature to leave it to the executive to determine details relating to the working of taxation laws, such as the selection of persons on whom the tax is to be laid, the rates at which it is to be charged in respect of different classes of goods and the like."

This was justified on the ground that in doing this the legislature could not be considered to have lost its perfect control since it retained the power to interpose its own authority. The principle was accepted on the basis of the decision of the Judicial Committee in Powell v. Apollo Candle Co. Ltd. [[1885] 10 A.C. 282.]. The learned Chief Justice has expressed that the case was wrongly read but with all due respects it has always been understood in this sense. Lastly in Liberty Cinema [[1952] 2 S.C.R. 477.] case the rate of a tax was not considered a part of the essential legislative function.

These cases in themselves cover the present matter. The principle now advocated that the legislature must itself impose the tax by laying down the rate, the person to be affected and the manner of levy and collection when it concedes power to Municipal Corporation appears to be a novel doctrine which has not been accepted even in the land where the doctrine about delegated legislation took its birth. It is not necessary to clog this judgment by many citations but an extract from United States v. City of New Orleans [25 L. Ed. 225 at 226.] may usefully be cited :

> "The position that the power of taxation belongs exclusively to the legislative branch of the government, no one will controvert. Under our system it is lodged nowhere else. But it is a power that may be delegated by the Legislature to municipal

> corporations, which are merely instrumentalities of the State for the better administration of the government in matters of local concern. When such a corporation is created, the power of taxation is vested in it as an essential attribute, for all the purposes of its existence, unless its exercise be in express terms prohibited. For the accomplishment of those purposes, its authorities, however limited the corporation, must have the power to raise money and control its expenditure. In a city, even of small extent, they have to provide for the preservation of peace, good order and health, and the execution of such measure as conduce to the general good of its citizens; such as the opening and repairing of streets; the construction of sidewalks, sewers and drains; the introduction of water, and the establishment of a fire and police department. In a city like New Orleans, situated on a navigable stream, or on a harbor of a lake or sea, their powers are usually enlarged, so as to embrace the building of wharves and docks or levees for the benefit of commerce, and they may extend also to the construction of roads leading to it, or the contributing of aid towards their construction. The number and variety of works which may be authorized, having a general regard to the welfare of the city or its people, are mere matters of legislative discretion. All of them require for their execution considerable expenditure of money. Their authorization without providing the means for such expenditure would be an idle and futile proceeding. Their authorization, therefore, implies and carries with it the power to adopt the ordinary means employed by such bodies to raise funds for their execution, unless such funds are otherwise provided. And the ordinary means in such cases is taxation. A municipality without the power of taxation would be a body without life, incapable of acting, and serving no useful purpose."

It is argued that in America this is held to fall outside excessive delegation because of the history of the municipal corporations in that country. There is no essential difference between the United States and India in this respect. Municipal Corporation have a hoary past in our country also. The first Municipal Corporation was created in India by a Royal Charter in 1687 in Madras. In 1726 three Charters established Municipal Corporations at Bombay Calcutta and Madras. Since then scores of statutes have established municipalities all over India. The Conservancy Act X of 1842, which applied to Bengal, allowed municipalities to tax houses. The Act remained a dead letter. But in 1882 Lord Rippon's Government passed the well-known Resolution extending Local Self-Government in India and the municipalities have since been accepted as a limb of local self-government. Every Municipal Act (whether for a single municipality or for a group) contains almost identical provisions regarding taxation. It is one of the attributes of the local self-government. The various Constitutions which have governed us have always included the power to set up local self-government and provided that it must be financed and must have the power of raising funds. Therefore the constituent Acts have almost in every instance provided for raising of funds through taxes in the local areas subject to control of Government. Today the entry in the Constitution also recognises this power in the legislature. The provisions about taxes have followed the same method as in the Delhi Municipal Corporation Act. Sometimes the provision enables public opinion to be elicited before the tax is imposed but this is not an invariable rule. The exercise of the power has not been questioned as it has been in recent years.

We are concerned here with Parliament which by a concentration of all the powers of legislation derived from all the three Legislative Lists becomes the most competent and potent legislature it is possible to erect our Constitution. The doctrine that it is a delegate of the people which coloured certain American decisions dose not arise here. It has been discarded also in America. The old plea

that the Indian legislatures were delegates of the British Parliament and therefore could not delegate further, (rejected in a string of cases by the Judicial Committee), is not open today. The doctrine that Parliament cannot delegate its powers, therefore, must be understood in a limited way. It only means that the legislature must not efface itself but must give the legislative sanction to the imposition of the tax and must keep the control in its own hands. There is no specific provision in the Constitution which says that the Parliament cannot delegate to certain specified instrumentalities the power to effectuate its own will. The question always is whether the legislative will has been exercised or not. Once it is established that the legislature itself has willed that a particular thing be done and has merely left the execution of it to a chosen instrumentality (provided that it has not parted with its control) there can be no question of excessive delegation. If the delegate acts contrary to the wishes of the legislature the legislature can undo what the delegate has done. Even the courts, as we shall show presently, may be asked to intervene when the delegate exceeds its powers and functions. The observations and theories culled from American cases cannot be applied in our country without reflection. Even in America the doctrine is much watered down especially when it is a question of investing municipalities with power of such taxation. Parliament, when it confers such powers, cannot be said to abdicate or efface itself unless it can be said that it has lost its control over the action of the delegate. In the present case, in addition to prescribing the mode, it keeps a check by making Government, answerable to itself, the supervising authority. This is not a safeguard in the sense in which the matter has been accepted in the opinion of the learned Chief Justice, but is indicative of the exercise of the legislative will by the legislature itself. The details of the tax are to be considered by the supervising authority and if the tax is not what the legislature intended should be imposed, the tax cannot be imposed.

It is no use comparing compulsory taxes with optional taxes in the Municipal Corporation Act. Even in the compulsory taxes [see for example s. 114(1)(a)(b)(c)] much of what may, otherwise, be described as essential is left to the determination of the Municipal Corporation. The percentage in each case is not named and has been left to the determination of the Municipal Corporation. No standards are prescribed nor are there any restrictions to ensure that the percentage will not be unduly high. No doubt in some of the taxes limits are fixed but even below the maximum limit or between the maxima and minima there is still a broad discretion in the Municipal Corporation. In making bye-laws there is no direction, guidance or safeguards except the approval of the Government. If section 150 is to be questioned the other sections must equally be bad. If the Corporation cannot be trusted to do this and the vesting of the power in it is illegal it must be so in the other case. The respondents, however, do not criticise the compulsory taxes as bad. There is nothing to show in what order the optional taxes are to be chosen and imposed. Further, there is no indication of the proportion which the compulsory taxes must bear between themselves. There is no difference in principle between what is intended to be done by s. 150 and that which is to be done by s. 114 and several other sections. In fact, s. 150 is mild when compared with some of the other sections. We cannot agree to the proposition which has been urged before us that s. 150 is excessive delegation when these sections are not characterised as excessive delegation.

Local bodies are subordinate branches of governmental activity. They are democratic institutions managed by the representatives of the people. They function for public purposes and take away a part of the government affairs in local areas. They are political sub-divisions and agencies which exercise a part of State functions. As they are intended to carry on local self-government the power of taxation is a necessary adjunct to their other powers. They function under the supervision of the Government. This supervision is considered necessary, because Municipal Councillors as a rule are unwilling to tax in a manner likely to affect themselves. House-holders seek to transfer burdens to tradesmen and vice-versa. To insist that the legislature should provide for every matter connected

with municipal taxation would make municipalities mere tax collecting departments of Government and not self-governing bodies which they are intended to be. Government might as well collect the taxes and make them available to the municipalities. That is not a correct reading of the history of Municipal Corporations and other self-governing institution in our country.

The tax has not been challenged as unreasonable. If it had been it might have been necessary to consider it from another angle. The delegation to the Municipal Corporation of the power to levy taxes and fees is for the purpose of its own duties under the Act. The power must be reasonably exercised for attainment of those purposes. These purposes include supply of water, running of transport services, lighting of streets and their maintenance, conservancy, establishment of hospitals and so on. The interrelation of taxes with expenditure has to be maintained. This relation must be reasonable. Suppose it were to become unreasonable. Is there no remedy ? Now the rule regarding reasonableness of bylaws was laid down in Kruse v. Johnson [[1898] 2 Q.B. 91.]. This rule has been universally accepted and applied in India and elsewhere.

The same rule is applied to fees and taxes imposed by the Municipal bodies. Since illustrative cases were not cited at the Bar it is not necessary to give a full list. A few representative cases, selected by us at random may be seen in Mewa Ram v. Municipal Board, Mathura [I.L.R. 1939 Allahabad 770.], Corporation of Madras v. Spencer & Co. Ltd [I.L.R. 52 Mad. 764.], V. M. Raghavalu v. Corporation of Madras [I.L.R. 53 Mad. 722.], Municipal Corporation of Rangoon v. Sooratee Bara Bazar Col. Ltd. [I.L.R. 5 Rang. 139.], Municipal Council, Kumbakonam v. Balli Bros. [A.I.R. 1931 Mad. 497.]. Nor is the reasonableness of a tax open to question in relation to municipalities alone. It was even considered in relation to legislatures by the Judicial Committee in Attorney General of Alberta v. Attorney General of Canada [A.I.R. 1939 P.C. 53, 57.]. An unreasonable tax can be considered by the courts but it must be a clearly exorbitant tax which goes so high as to be extortionate.

We do not agree that our view will make it easy for the legislatures to name a tax and leave it to be imposed by the Executive at its sweet will. These horrible imaginings need not detain us because neither dose this flow from our view nor it is possible that such action will go unchallenged. The position of self-governing bodies is different from that of the Executive.

For these reasons we agree with the learned Chief Justice that the tax was validly imposed and the appeal in relation to it must be allowed. We agree in the order regarding costs proposed by him.

Shah, J. The facts which give rise to the appeals have been set out in the judgments just delivered, and need not be repeated.

Two principal questions arise for determination in these appeals :

> (1) Whether the Delhi Municipal Corporation (Validation of Electricity Tax) Act 35 of 1966 effectively imposes liability to pay tax on consumption or sale of electricity for the period April 1, 1960 to March 31, 1966; and
>
> (2) Whether by enacting s. 150(1) of the Delhi Municipal Corporation Act 66 of 1957 which confers authority upon the Corporation by resolution to levy tax in respect of the optional taxes specified in s. 113(2), the Parliament has violated the rule against excessive delegation of legislative authority.

Sub-section (1) of s. 113 of Act 66 of 1957 requires the Corporation to levy for the purposes of the

Act six named taxes - (a) property taxes; (b) a tax on vehicles and animals; (c) a theatre-tax; (d) a tax on advertisements other than advertisements published in the newspapers; (e) a duty on the transfer of property; and (f) a tax on building payable along with the application for sanction of the building plan. By sub-s. (2) the Corporation is authorised, in addition to the taxes specified in sub-s. (1), to levy for the purposes of the Act any of the following taxes, namely :-

> (a) an education cess;
>
> (b) a local rate on land revenues;
>
> (c) a tax on professions, trades, callings and employments;
>
> (d) a tax on the consumption, sale or supply of electricity;
>
> (e) a betterment tax on the increase in urban land values caused by the execution of any development or improvement work;
>
> (f) a tax on boats; and
>
> (g) tolls.

By sub-s. (3) it is provided that the taxes specified in sub-s. (1) and sub-s. (2) shall be levied, assessed and collected in accordance with the provisions of the Act and the bye-laws made thereunder. The Act proceeds by Ss. 114 to 149 to make detailed provisions in respect of the taxes set out in s. 113(1) about the levy and imposition of taxes, the system of assessment, and maximum rates or the standards to guide the determination of the rates of taxes and incidental matters. In respect of the optional taxes it is provided in s. 150 of the Act that :

> "(1) The Corporation may, at a meeting, pass a resolution for the levy of any of the taxes specified in sub-section (2) of section 113, defining the maximum rate of the tax to be levied, the class or classes of persons or the description or descriptions of articles and properties to be taxed, the system of assessment to be adopted and the exemptions, if any, to be granted.
>
> (2) Any resolution passed under sub-section (1) shall be submitted to the Central Government for its sanction, and if sanctioned by that Government, shall come into force on and from such date as may be specified in the order of sanction.
>
> (3) After a resolution has come into force under sub-section (2), the Corporation may, subject to the maximum rate, pass a second resolution determining the actual rates at which the tax shall be leviable; and the tax shall come into force on the first day of the quarter of the year next following the date on which such second resolution is passed.
>
> (4) After a tax has been levied in accordance with the foregoing provisions of this section, the provisions of sub-section (2) of section 109, shall apply in relation to such tax as they apply in relation to any tax imposed under sub-section (1) of section 113."

There is, it is manifest, a significant difference in the schemes relating to the levy and imposition of

compulsory and optional taxes, fixation of rates and systems of taxation. Sections 114 to 149 set out elaborate provisions relating to the maximum rates of tax to be levied, the class or classes of persons or the description or descriptions of articles and properties to be taxed, the system of assessment to be adopted and the exemptions, if any, to be granted. In s. 114 the property taxes are divided under four heads : water tax, scavenging tax, fire tax and general tax. The rates of water tax, scavenging tax and fire tax are to be such percentages of the rateable value of lands and buildings as the Corporation may deem reasonable for providing water supply, for providing scavenging services and for the conduct and management of the Fire Service Undertaking. The Parliament has, besides specifying the persons liable to tax and the system of assessment also set out standards or guidelines for determining the rates of tax. The general tax which is leviable in addition is to be not less than ten per cent and not more than twenty per cent of the rateable value of lands and buildings within the urban areas and such lower rates in the rural areas as may be determined by the Corporation. Sections 114 to 135 enact a complete code relating to the levy of property taxes. Schedules 3 to 6 to the Act set out the maximum rates which may be charged as tax on vehicles and animals, theatre-tax and taxes on advertisements and buildings, and by diverse provisions in Ch. VIII the persons or properties to be charged are specified and the mechanism of assessment is prescribed. The Act also prescribes the maximum rate of duty on transfer of property leviable in the form of a surcharge on the duty imposed by the Indian Stamp Act. But in respect of optional taxes the Parliament has merely enumerated the taxes in sub-s. (2) of s. 113, and has provided by sub-s. (3) of s. 113 that the taxes specified in sub-s. (2) shall be levied, assessed and collected in accordance with the provisions of the bye-laws made thereunder.

Section 109 deals with the adoption of the annual budget estimates of the Corporation. It is provided by the first sub-s. of s. 109 that the Corporation shall, on or before the 31st day of March of every year, adopt for the ensuing year the budget estimates of the income and expenditure of the Corporation to be received and incurred on account of the municipal government of Delhi, Delhi Electric Supply Undertaking, Delhi Transport Undertaking and Delhi Water Supply and Sewage Disposal Undertaking. By sub-s. (2) it is enacted that on before the 15th day of February of each year the Corporation shall determine the rates at which various municipal taxes, rates and cesses shall be levied in the next following year and save as otherwise provided in the Act the rates so fixed shall not be subsequently altered for the year for which they have been fixed. By s. 110 power is reserved to the Corporation to alter the budget estimates in certain circumstances and in the manner provided therein.

The scheme of levy and imposition of taxes reading Ss. 113 to 150 with the provisions relating to the adoption of budget estimates, is that the Corporation determines in the first instance the rates at which the municipal taxes, rates and cesses may be levied in the next following year and then prepares the budget estimates in the light of the estimate of income and expenditure. The compulsory taxes have to be levied subject to the limits or standards prescribed in that behalf by the Statute : in respect of the optional taxes the Corporation is left free to pass a resolution to levy all or any of the optional taxes, prescribing the maximum rates, system of assessment, the incidence of taxation and exemptions, if any. Having noticed the relevant statutory provisions we may deal with the effect of the Validating Act 35 of 1966. The High Court was of the view that by merely fixing the rates of tax on consumption or sale of electricity, for the period April 1, 1960 to March 31, 1966, the Parliament had not effectively imposed liability upon the tax payers to pay that tax. The first sub-section of s. 2 of the Validating Act consists of two parts. It commences with the non-obstante clause and proceed to enact - (a) that the resolution of the Corporation dated June 24, 1959, insofar as it relates to the determination of the rates at which tax shall be leviable on the consumption or sale of electricity shall be deemed to have been passed in acco_dance with law; and

(b) that the rates specified in the said resolution in respect of tax on the consumption or sale of electricity shall be deemed to be, and to have been, the actual rates of tax under the Act "with effect on and from the 1st day of July, 1959 and upto and inclusive of the 31st day of March, 1966". The non-obstante clause plainly governs both the parts of s. 2(1). It is clear the it was the intention of the Parliament to declare that notwithstanding anything contained in s. 150(2) and s. 109(2) of Act 66 of 1957, the resolution dated June 24, 1959, purporting to be made under s. 150(3) shall be deemed to be in accordance with law insofar as it relates to the rates of electricity tax. The effect of the first part of sub-s. (1) of s. 2 is therefore to impose liability on the consumption or sale of electricity purported to be levied under the resolution of the Corporation under s. 150(3). The High Court has accepted that position.

By the second part of sub-s. (1) of s. 2 liability is imposed for payment of tax for the period April 1, 1960 to March 31, 1966, at the same rate, that is the rate which was adopted by the resolution dated June 24, 1959. The function of both the parts is to impose liability for tax levied under resolution of the Corporation under s. 150(2). It is true that the second part dose not expressly levy tax for the period to which the rates were extended, but by sub-s. (2) the Parliament has provided that all taxes on the consumption or sale of electricity "levied or collected or purporting to have been levied or collected in pursuance of the resolution dated June 24, 1959, shall, for all purposes, be deemed to be, and to have always been, validly levied or collected." The Corporation had year after year passed resolutions in purported exercise of authority under s. 150(1) of the Corporation Act for the levy of tax on consumption or sale of electricity, and by virtue of s. 2(1) of the Validating Act notwithstanding anything contained in s. 150 and sub-s. (2) of s. 109 the rates under the resolution dated June 24, 1959, were to be deemed the rates for the years 1960-61 to 1965-66.

Sub-section (2) of s. 2 of the Validating Act in terms deems the tax levied or collected in pursuance of the resolution referred to in sub-s. (1). The resolution referred to in sub-s. (2) is the resolution dated June 24, 1959; the rates prescribed by that resolution are by the terms of sub-s. (1) made rates of tax on the consumption or sale of electricity for the period July 1, 1959 to March 31, 1966; and the tax is deem to be validly levied and collected for the entire period. If the view which found favour with the High Court be correct, the taxes collected by or paid to the Corporation would not be liable to be refunded by the Corporation, suits filed for refund of tax may not be instituted or continued, for the tax already paid, and the acts and proceedings taken in pursuance of the resolution will be deemed to be done in accordance with law, but there being no levy of tax, liability for payment of tax for the period referred to in sub-s. (1) of s. 2 could be enforced. This could not have been the intention of the Parliament.

The Parliament was faced with the decision of the Punjab High Court that the levy of the tax pursuant to the resolution dated June 24, 1959, passed by the Corporation which undoubtedly was restricted to the year 1959-60 was invalid, because the Union Government had modified the rates fixed under the resolution of the Corporation under s. 150(1) for the year 1959-60. Before the High Court decided the dispute, several years had elapsed and the tax was collected on the footing that the resolution dated June 24, 1959, and the resolution subsequently passed were valid. If the Parliament intended to enact an Act only for validating the levy of tax under the resolution dated June 24, 1959, it was plainly unnecessary to enact the second part of s. 2(1). The decision of the High Court which necessitated the enactment of the Validating Act was undoubtedly the judgment of the Punjab High Court which related only to the validity of the resolution levying tax for the year 1959-60, but that is not a ground for implying that the Parliament was seeking to validate the levy of tax only for the year 1959-60.

We may turn now to the second question on which the argument was mainly advanced. It was conceded by the Attorney-General that under our Constitutional scheme, the Parliament cannot abdicate its essential legislative functions and set up another authority or body to perform essential legislative functions either generally or in respect of a particular head of legislation or even in respect of a part of the subject-matter of that particular head. Again the power to enact subordinate or ancillary legislation to carry out the details of parliamentary Acts may undeniably be invested in other bodies. The increasing complexity of modern administration, the difficulty of passing complicated measures through the method of parliamentary debate and discussion, and the number of details and technical matters which must of necessity be provided for in statutes, have led to an increase in the practice of entrusting power to executive or other agencies to make subsidiary or ancillary legislation. By entrusting that power to another body, the Parliament dose not delegate its essential legislative functions.

But the authority to entrust subsidiary or ancillary power is not unrestricted : the power cannot be conferred upon a delegate without setting out some principle, policy, or standard which is to guide the delegate in discharging its delegated functions. If the Parliament lays down by legislative act adequate guidance, whatever from it takes, and the delegate is required to conform to that guidance, entrustment of authority to the delegate to make subordinate legislation will be upheld. The power of delegating legislative authority cannot, however, be extended to investment of authority in another body in respect of matters relating to principle or policy of legislation, to the amendment of Parliamentary Acts so as to affect the substance thereof or to investment in the executive power when no guidance or standard is laid down in that behalf or to authorize the executive to encroach upon the judicial power of the State.

In Panama Refining Company v. A. D. Ryan [293 U.S. 388 : 79 L. ed. 446.], Hughes, C.J., pronouncing the majority opinion of the Supreme Court of the United States observed :

> "The Congress manifestly is not permitted to abdicate, or to transfer to others, the essential legislative functions with which it is thus vested. Undoubtedly legislation must often be adapted to complex conditions involving a host of details with which the national legislature cannot deal directly. The Constitution has never been regarded as denying to the Congress the necessary resources of flexibility and practicality, which will enable it to perform its function in laying down polices and establishing standards, while leaving to selected instrumentalities the making of subordinate rules within prescribed limits and the determination of facts to which the policy as declared by the legislature is to apply. Without capacity to give authorizations of that sort we should have the anomaly of a legislative power which in many circumstances calling for its exertion would be but a futility. But the constant recognition of the necessity and validity of such provisions, and the wide range of administrative authority which has been developed by means of them, cannot be allowed to obscure the limitations of the authority to delegate, if our constitutional system is to be maintained."

Again Chief Justice Hughes observed : (at p. 426)

> "Applying that principle, authorizations given by Congress to selected instrumentalities for the purpose of ascertaining the existence of facts to which legislation is directed, have constantly been sustained. Moreover, the Congress may not only give such authorizations to determine specific facts but may establish

> primary standards, devolving upon others the duty to carry out the declared legislative policy, that is, as Chief Justice Marshall expressed it, "to fill up the details" under the general provisions made by the Legislature."

The observations of the Judicial Committee of the Privy Council made in Archibald G. Hodge v. The Queen [[1883] 9 A.C. 117.] in relation to the nature of delegated powers exercisable by the local legislature of the self-governing dominions do not imply a different rule. In Archibald G. Hodge's case [[1883] 9 A.C. 117.] the Judicial Committee observed that the local legislature was competent under s. 92 of the British North America Act, 1867, to make Regulations in the nature of police or municipal regulations of a merely local character for the good government of taverns. It was contended that assuming that the local legislature of Ontario Province had power to legislate to the full extent of the resolutions passed by the License Commissioners, and to have enforced the observance of their enactments by penalties and imprisonment, the Imperial Parliament had conferred no authority upon the local legislature to delegate those powers to the License Commissioners or any other persons, and therefore the power conferred upon the Imperial Parliament on the local legislature could be exercised in full by the local legislature alone and no body else. The Judicial Committee rejected that contention on the ground that the maxim "delegatus non potest delegare" had no application within the limits of subjects and areas prescribed by s. 92 as the Imperial Parliament in the plenitude of its power possessed and could bestow. Within those limits of subjects and areas the local legislature was supreme, and had the same authority as the Imperial Parliament, or the Parliament of the Dominion, would have had under like circumstances to confide to a municipal institution or body of its own creation authority to make bye-laws or resolution as to subjects specified in the enactment, and with the object of carrying the enactment into operation and effect. The Judicial Committee regarded the power to make the bye-laws as ancillary to legislation, that without it an attempt to provide for varying details and machinery to carry them out might become oppressive or absolutely fail, that entrustment of a limited discretionary authority to others has many illustrations of its necessity and convenience, and that the legislature by "committing important regulations to agents or delegates" does not efface itself.

The Judicial Committee in In re The Initiative and Referendum Act [[1919] A.C. 935.] struck down the Initiative and Referendum Act (6 Geo. 5, c. 59, Manitoba) on the ground that it would compel the Lieutenant-Governor to submit a proposed law to a body of voters totally distinct from the legislature of which he is the constitutional head and would render him powerless to prevent it from becoming an actual law it approved by those voters. The offending provisions of the Act being so interwoven with its scheme as not to be severable, the Colonial Laws Validity Act, 1865, could not be applied to validate any part of the Act.

Opinion in this Court has with the passage of time become crystallized. In re The Delhi Laws Act, 1912 [[1951] S.C.R. 747.] two views were broadly propounded. Patanjali Sastri, J., was of the view that the Indian Parliament acting within the limits circumscribing its legislative powers, intended to have plenary powers of legislation as large and of the same nature as those of 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. The Indian Parliament is therefore competent to make a law delegating legislative power, both quantitatively and qualitatively as is the British Parliament, and in the absence of any constitutional inhibition, delegation of legislative power, however extensive, could be made so long as the delegating body retained its own legislative power intact. But for the effacement of its power a positive enabling provision in the constitutional document was required. The learned Judge further observed that the Court cannot strike down an Act of Parliament as unconstitutional merely because the Parliament decides in a particular instance to entrust its

legislative power to its appointed instrumentality, however repugnant such entrustment may be to the democratic process. Fazl Ali and S. R. Das, JJ., expressed views though not identical closely approximating that opinion.

On the other hand Kania, C.J., was of the opinion that the essentials of legislative function are the determination of the legislative policy and its formulation as a rule of conduct. If the legislature having made its laws leaves the details for working out and for carrying an enactment into operation to another subordinate agency or to some executive officer, there is no delegation of legislative power. While the so-called delegation which empowers the making of rules and regulations has been recognised as ancillary to legislative power, the Constitution Acts in India do not recognise a general power in the legislature to abdicate legislative authority. Abdication of its powers by a legislature need not necessarily amount to complete effacement of itself : it may be partial. If full powers to do everything that the legislature can do are conferred on a subordinate authority, although the legislature retains the power to control the action of the subordinate authority by recalling such power by or repealing the Acts passed by the subordinate authority, there is still an abdication or effacement of the legislature conferring such power.

Mahajan, J., agreed with Kania, C.J. According to him not only the nature of legislative power, but the very existence of representative government depends on the doctrine that legislative powers cannot be transferred. The legislature cannot substitute the judgment, wisdom and patriotism of any other body, for those to which alone the people have seen fit to confide this sovereign trust. Unless the power of the delegation is expressly given by the Constitution, the Legislature cannot delegate its essential legislative function to any other body, and since the Indian Constitution does not give such a power to the Legislature it has no power to delegate the essential legislative functions to any other body and that abdication by a legislative body need not necessarily amount to complete effacement. When in respect of a subject in the Legislative List the legislative body says in effect that it will not legislate but will leave it to another to legislate on that subject, there is abdication of legislative authority.

Mukherjea, J., was of the opinion that the legislature must retain in its own hands the essential legislative functions which consist in declaring the legislative policy and laying down the standard which is to be enacted into a rule of law and what can be delegated is the task of subordinate legislation which by its very nature is ancillary to the statute which delegates the power to make it. Provided the legislative policy is enunciated with sufficient clearness or a standard is laid down, the Courts may not interfere with the discretion that undoubtedly rests with the legislature itself in determining the extent of delegation necessary in a particular case.

Bose, J., without definitely committing himself to either view, observed that the Indian Parliament may legislate along the lines of the judgment of the Judicial Committee in Queen v. Burah [5 I.A. 178.], that is to say, it can leave to another person or body the introduction or application of laws which are, or may be, in existence at that time in any part of India which is subject to the legislative control of Parliament, whether those laws are enacted by Parliament or by a State Legislature set up by the Constitution, and that he saw no reason for extending the scope of legislative delegation beyond the confines which have been hallowed for so long.

Since opinion in that case was delivered, in several cases brought before this Court the extent of the power which the Legislature possesses to delegate legislative authority was discussed. A brief summary of some of those cases may be attempted.

In Rajnarain Singh v. The Chairman, Patna Administration Committee, Patna and Anr. [[1955] 1 S.C.R. 290.] Bose, J., attempted to summarise the effect of the various opinions expressed in the Delhi Laws Act case [[1951] S.C.R. 747.], and speaking for a unanimous Court observed that an executive authority can be authorised by a statute to modify either existing or future laws, but not in any essential features. Exactly what constitutes an essential feature cannot be enunciated in general terms, but it is clear that modification cannot include a change of policy. Essential legislative function consists in the determination of the legislative policy and its formulation as a binding rule of conduct. Modifications which are authorised are limited to local adjustments or changes of minor character and do not mean or involve any change of policy or change in the Act.

In Harishankar Bagla v. The State of Madhya Pradesh [[1955] 1 S.C.R. 380.] in dealing with the validity of cl. 3 of the Cotton Textile (Control of Movement) Order, 1948, promulgated by the Central Government under s. 3 of the Essential Supplies (Temporary Powers) Act, 1946, it was observed that the Legislature must declare the policy of the law and the legal principles which are to control any given cases and must provide a standard to guide the officials or the body in power to execute the law, and where the Legislature has laid down such a principle in the Act and that principle is the maintenance or increase in supply of essential commodities and of securing equitable distribution and availability at given prices, the exercise of the power was valid.

Within the frame-work of the case law so far developed Venkatarama Aiyar J., in Pandit Banarsi Das Bhanot v. The State of Madhya Pradesh & Ors. [[1959] S.C.R. 427.] speaking for the majority observed :

> ".... the authorities are clear that it is not unconstitutional for the legislature to leave it to the executive to determine details relating to the working of taxation laws, such as the selection of persons on whom the tax is to be laid, the rates at which it is to be charged in respect of different classes of goods, and the like."

The learned Judge held that the power conferred on the State Government by s. 6(2) of the Central Provinces and Berar Sales Tax Act, 1947, to amend the Schedule relating to exemptions was in consonance with the accepted legislative practice relating to the topic and was not unconstitutional.

In The Western India Theatres Ltd. v. Municipal Corporation of the City of Poona [[1959] Supp. 2 S.C.R. 71.] it was held that by enacting in s. 59(1)(xi) of the Bombay District Municipal Act, 1901 that the Municipality may levy "any other tax" to the nature and object of which the approval of the Governor-in-Council shall have been obtained prior to the selection the Legislature has not abdicated to the Municipality its legislative authority. Since the section authorised the imposition of taxes alone as were necessary for the purpose of the Act, the taxes could, it was held by the Court, be levied only for implementing those purposes and for no others, and delegation on that account was not unguided.

In Vasantlal Maganbhai Sanjanwala v. The State of Bombay and Ors. [[1961] S.C.R. 341.] the validity of s. 6(2) of the Bombay Tenancy and Agricultural Lands Act 67 of 1948 which authorised the Provincial Government by notification in the Official Gazette to fix a lower rate of the maximum rent payable by the tenants of lands situate in any particular area or to fix such rate on any other suitable basis as it thought fit fell to be determined. Speaking for the majority of the Court, Gajendragadkar, J., observed that although the power of delegation was a constituent element of legislative power, the legislature cannot delegate its essential legislative function in any case and before it can delegate any subsidiary or ancillary powers to a delegate of its choice, it must lay down

the legislature policy and principle so as to afford the delegate proper guidance in implementing the same.

In Corporation of Calcutta and Anr. v. Liberty Cinema [[1965] 2 S.C.R. 477.], it was held that the Calcutta Municipal Corporation had power to levy fee pursuant to a resolution, in exercise of the power under s. 548(2) of the Calcutta Municipal Act, 1951 at such rates as may from time to time be fixed by the Corporation. It was observed by the majority that the fixing of the rate of a tax not being of the essence of legislative power may be left to a non-legislative body, but when it is so left to another body the legislature must provide guidance for such fixation, and that in the case before the Court there was sufficient guidance in the Act for determining the rate of the levy under s. 548.

Two recent cases may also be noticed : In B. Shama Rao v. Union Territory of Pondicherry [A.I.R. 1967 S.C. 1480.] this Court held that a statute which extended the Act passed by another Legislature as it stood immediately before the date on which it was to be brought into force by a notification issued by the Government was "void and still-born", because the Legislature in enacting the Act in that manner had totally abdicated its legislative function and had surrendered it in favuor of another Legislature.

In M/s. Devi Das Gopal Krishnan v. State of Punjab and Ors. [A.I.R. 1967 S.C. 1480.], Subba Rao C.J. speaking for the Court observed in dealing with a case under the Punjab General Sales Tax Act, 1948 :

> "The Constitution confers a power and imposes a duty on the legislature to make laws. The essential legislative function is the determination of the legislative policy and its formulation as a rule of conduct. Obviously it cannot abdicate its functions in favour of another. But in view of the multifarious activities of a welfare State, it cannot presumably work out all the details to suit the varying aspects of a complex situation. It must necessarily delegate the working out of details to the executive or any other agency. But there is a danger inherent in such a process of delegation. An overburdened legislature or one controlled by a powerful executive may unduly overstep the limits of delegation. It may not lay down any policy at all; it may declare its policy in vague and general terms; it may not set down any standard for the guidance of the executive; it may confer an arbitrary power on the executive to change or modify the policy laid down by it without reserving for itself any control over subordinate legislation. This self effacement of legislative power in favour of another agency either in whole or in part is beyond the permissible limits of delegation."

On a review of the cases the following principles appear to be well-settled : (i) Under the Constitution the Legislature has plenary powers within its allotted field; (ii) Essential legislative function cannot be delegated by the Legislature, that is, there can be no abdication of legislative function or authority by complete effacement, or even partially in respect of a particular topic or matter entrusted by the Constitution to the Legislature; (iii) Power to make subsidiary or ancillary legislation may however be entrusted by the Legislature to another body of its choice, provided there is enunciation of policy, principles, or standards either expressly or by implication for the guidance of the delegate in that behalf. Entrustment of power without guidance amounts to excessive delegation of legislative authority; (iv) Mere authority to legislative on a particular topic does not confer authority to delegate its power to legislate on that topic to another body. The power conferred upon the Legislature on a topic is specifically entrusted to that body, and it is a necessary

intendment of the constitutional provision which confers that power that is shall not be delegated without laying down principles, policy, standard or guidance to another body unless the Constitution expressly permits delegation; and (v) the taxing provisions are not exception to these rules.

It was asserted that the doctrine of excessive delegation of legislative power is inapplicable to the conferment of taxing power on local authorities. It was said that the power to tax is in its essence a sovereign power of the State, and since a Municipal Corporation exercises auxiliary in the important business of local self-government, in exercising the power to tax for limited municipal purposes, it is not acting as a delegate, but on behalf of the State. We are unable to accept the broad proposition that when authority is conferred upon a local authority by the Legislature to tax, the local authority exercising power so conferred acts as an agent of the State. A local authority is undoubtedly an instrument of the State in the matter of local government restricted to a particular area in which it functions. By investing a local authority with powers of legislation for administration of the Act relating to local government, sovereign power of the State is entrusted to the body or limited purpose : but the entrustment of power is as a delegate, and must is our view be within the limits of permissible entrustment consistent with the constitutional scheme. The power of the State to legislate in matters of taxation within the allotted field is plenary, but in entrusting that power to a local authority the legislature cannot confer unguided authority.

In our judgment, the constitutional power to legislate in respect of a particular topic such as local government - in Entry 5 List II of the Seventh Schedule - does not carry with it the power to delegate the legislative functions of the State. Entry 5 List II confers upon the State the authority to legislate in respect of 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 or village administration. Authority to legislate in respect of powers of local bodies may encompass authority to confer power upon the local bodies to tax within certain by specific fields in the appropriate list. But the power conferred by the legislative entry cannot override the constitutional limitations against abdication of legislative authority. The expression "power" therefore does not include authority to delegate the essential legislative function without disclosing principles, policy, or standard guiding the local bodies in the exercise of the power.

Again the guidance which saves delegation from the vice of excessiveness may be express or may be implied : and the extent of the guidance must be determined by the subject-matter of legislation and the power entrusted. But in our judgment, the delegation cannot be upheld, merely because of the special status, character, competence or capacity of the delegate or by reference to the provisions made in the statute to prevent abuse by the delegate of its authority. The question is one of the restriction upon the power of the legislative body to delegate the power of legislation and that restriction is not removed because the delegate is a high dignitary of the State or is especially versed in a particular branch of administration or has special information or is in a position to collect that information, or is not likely to abuse its authority. The Constitution entrusts the legislative functions to the legislative branch of the State, and directs that the functions shall be performed by that body to which the Constitution has entrusted and not by some one some one else to whom the Legislature at a given time thinks it proper to delegate the function entrusted to it. A body of experts in a particular branch of undoubted integrity or special competence may probably be in a better position to exercise the power of legislation in that branch, but the Constitution has chosen to invest the elected representatives of the people to exercise the power of legislation, and not to such bodies of experts. Any attempt on the part of the experts to usurp, or of the representatives of the people to abdicate the functions vested in the legislative branch is inconsistent with the constitutional scheme.

Power to make subordinate or ancillary legislation may undoubtedly be conferred upon a delegate, but the Legislature must in conferring that power disclose the policy, principles or standards which are to govern the delegate in the exercise of that power so as to set out a guidance. Any delegation which transgresses this limit infringes the constitutional scheme.

It is necessary then to consider whether in the present case the Parliament has disclosed any policy, principles, standards or guidance in conferring authority upon the Corporation to fix the rates of tax selected by the Corporation out of the list contained in s. 113(2), to select persons to be rendered liable to tax, the system of assessment to be adopted and the exemptions, if any, to be granted. The Act leaves it to the Corporation by resolution to define the maximum limits of tax to be levied, the class or classes of persons, or descriptions or descriptions of articles and properties to be taxed, the system of assessment to be adopted and the exemptions, it any, to be granted. The Act discloses by express enactment no standard, no principle and no policy laid down by the Parliament to guide the Corporation in levying and collecting the optional taxes. By providing in sub-s. (2) of s. 150 that the resolution will come into force on or from the date as may be specified in the order of sanction of the Central Government, an overriding authority is conferred upon the Union Executive, but that is not a substitute for guidance. Counsel for the Corporation and some interveners contended that the Act contained some indications of policy and principles governing the exercise of the power to tax. They relied upon the use of the expression "for the purposes of this Act" in s. 113(2) and contended that this was sufficient guidance to the Corporation. The Corporation is undoubtedly competent to levy tax only for the purposes of the Act, and for no other purpose and by providing expressly what is implicit in a statute relating to municipal taxation no guidance is furnished to the Corporation in the exercise of the power delegated. Even if the expression "for the purposes of this Act" were not used in s. 113(2), the Corporation could not levy or collect taxes for purposes other than those for which it is set up by the Act. The Corporation is a statutory body charged with municipal administration. It is a body corporate with power to acquire, hold and dispose of property in its name, and is charged with municipal government, and can exercise its powers only for the purposes of the Act, and for no other purpose. Again by the use of the expression "for the purposes of this Act" no principle, policy, or standard is disclosed in the matter of the rates of tax, liability of persons, objects or transactions to be taxed, and the scheme or system of taxation to be adopted.

It was then urged that the delegate being the Corporation which is traditionally associated with the exercise of functions in the sphere of local government, it has the same powers which the State has within the limited field allotted to it, and therefore when the Legislature of the State confers upon the Corporation the power to tax, it is not in substance delegating any legislative function but investing the Corporation with the State's power to tax. As we already observed, the power to tax vested in the State is because of the exigencies of administration invested for limited purposes in local bodies, but the investment is as a delegate of, and not as an agency of, the State.

It was also said that the standards or guidance furnished by the Act for exercising the delegated authority are to be found in "the needs of the Corporation", and "needs of the Corporation" are of necessity an adequate guidance. Strong reliance in that behalf was placed upon the judgment of this Court in the Liberty Cinema's case [[1965] 2 S.C.R. 477.], which we have already referred. Sarkar, J., speaking for the majority of the Court observed at p. 494 :

> "It seems to us that there are various decisions of this Court which support the proposition that for a statutory provision for raising revenue for the purposes of the delegate, as the section now under consideration is, the needs of the taxing body for carrying out its functions under the statute for which alone the taxing power was

> conferred on it, may afford sufficient guidance to make the power to fix the rate of tax valid."

The learned Judge proceeded to derive the principle stated by him from the decisions in The Western India Theatres Ltd v. Municipal Corporation of the City of Poona [[1959] Supp. 2 S.C.R. 71.]; Vasantlal Maganbhai Sanjanwala v. The State of Bombay [[1961] S.C.R. 341.]; Union of India v. Bhana Mal Gulzari Mal [[1960] 2 S.C.R. 627.]; Harishankar Bagla v. The State of Madhya Pradesh [[1955] 1 S.C.R. 380.]. But the cases cited did not make the needs of the taxing body a test for determining whether guidance was furnished to the delegate in exercising the power to tax. While we agree with the view expressed by Sarkar, J., that in the case of a self-governing local authority with taxing power, a large amount of flexibility in the guidance to be provided for the exercise of that power must exist, we are unable to hold that because the delegate is a local authority which "needs" large funds, depending upon diverse and changing circumstances, the power conferred upon the Corporation to adjust the tax to its varying needs may be regarded as an adequate guide.

If the needs of a local body be an indication of guidance, the rule against excessive delegation of legislative authority is reduced to a varnishing paint. The requirement of a large degree of flexibility in the matter of municipal taxation can in any event be no guidance in determining the persons, properties or transactions which are to be taxed and the system of taxation to be adopted. Failure to give a guidance in respect of all these matters exposes the legislation to the vice of excessive delegation. In the Liberty Cinema's case [[1965] 2 S.C.R. 477.] the Corporation was invested with the power to fix the rates : the persons who were liable to pay the tax, and the system of assessment were easily determinable by the scheme of the Act and no question of exemption fell to be determined.

In M/s. Devidas Gopal Krishnan's case [A.I.R. 1967 S.C. 1895, 1901.], Subba Rao, C.J., speaking for the Court observed :

> "The argument of the learned Counsel (for the State) that such a policy could be gathered from the constitutional provisions cannot be accepted, for, if accepted, it would destroy the doctrine of excessive delegation. It would also sanction conferment of power by Legislature on the executive Government without laying down any guidelines in the Act."

The Court was concerned with the delegation of uncontrolled power to the executive Government to fix rates of sales tax. In our judgment, in the case of a statute delegating taxing power to a municipality, the same rule applies and a guideline cannot be inferred from the constitutional provision conferring power to tax.

It was also said that the action of the Corporation in levying and imposing optional taxes is subject to a two-fold control : (1) the Act expressly prescribes that the resolution of the Corporation shall be sanctioned by the Central Government before it becomes effective; and (2) that the act of levying tax together with all incidental matters is entrusted to a body elected representatives of the people who are responsible to the electorate. We do not think that the existence of either of these controls warrants a departure from the rule against excessive delegation. They may probably operate as effective safeguards against abuse. But the Constitution has entrusted the power of legislation to the Parliament and has also imposed a restriction against delegation of its authority without setting out guidance to the delegate; the Parliament cannot by providing against abuse of its functions by its

delegate reduce the rigour of the rule against excessive delegation of authority. The rule against excessive delegation of legislative power is a restriction upon the power of Parliament : whether in a given instance the rule is violated must depend on the nature and the extent of delegation and not by the application of the test that delegation of authority to some other body may more effectively administer the Act. If the argument that by imposition of controls which ensure that the power delegated will not be abused by the Corporation is regarded as determinative of the policy or principle guiding the Corporation, it may be open to the Legislature in many other cases e.g. in statutes relating to Income-tax, Wealth-tax, Sales-tax and the like, to delegate the power to tax including the fixation of rates, persons, objects and transactions to be charged, the system of taxation to be adopted and other related matters to persons of unimpeachable credit and undoubted technical competence, with avenues and means for collecting the necessary information and for acting upon it. Whether that scheme of levying a tax may, on practical considerations be deemed better suited to effective administration of the taxing Acts than the vote of the elected representatives of the people is a matter on which no opinion need be expressed. It may suffice to state that such entrustment of legislative power without guidance is in consistent with the basic concept on which our constitutional scheme is founded. Our Constitution-makers have entrusted the power of legislation to the elected representatives of the people so that the power is exercised not only in the name of the people but by the people. The rule against excessive delegation of legislative authority is a necessary postulate of the sovereignty of the people. It is not claimed to be nor intended to be a panacea against the shortcomings of public administration. Governance of the State in manner determined by the people through their representatives being of the essence of our form of government, the plea that a substitute scheme for governance through delegates may be more effective is destructive of our political structure. If it be remembered that legislation on a given topic is intended to be a declaration of the popular will relating to the administration of that topic in the larger public interest, the futility of the argument that a delegate of the Legislature which is invested with the power to determine and announce the popular will, may either because of its special competence, or because of controls on it will be as good as, or even better than, the legislature, becomes obvious.

The circumstance that the affairs of the Corporation are administered by the elected representatives responsible to the people is in our judgment, wholly irrelevant in determining whether the rule against excessive delegation may be departed from. If that exception be true, the Parliament may justifiably delegate its power to enact laws to other bodies merely by the expedient of constituting those bodies from among the representative of the people.

It may also be noticed that under s. 490 of the Delhi Municipal Corporation Act, 1957, in certain eventualities the Central Government may supersede the Corporation for such period as may be specified in the order. When the order of supersession is passed all councillors and aldermen vacate their offices and during the period of supersession of the Corporation, all powers and duties conferred and imposed upon the Corporation are exercisable and performable by such officer or authority as the Central Government may appoint in that behalf, and that would include power of taxation. Certainly during the period that the Corporation remains under supersession, the power to tax would be exercised by a nominee of the Central Government and not by the representatives of the people.

The Parliament has undoubtedly at any given time power to withdraw the delegated power in favour of the Corporation. But by retaining authority to withdraw power from the delegate, no principles, policy, or standards governing the delegate are set out. If an express provision which ensures against abuse is not a substitute for guidance in another garb, the power of the Parliament to withdraw

authority will not for the like reason be a substitute.

It was then said that there has been a long standing practice in the India Legislatures for conferring upon the Corporations and Municipalities power to tax in the form in which it is conferred by s. 113(2). But the issue of constitutional validity of the provisions under challenge cannot be permitted to be clouded by reference to a practice, assuming that it is of a long duration. We have not thought it necessary to, and it would be impossible for us to examine all the statutes under which the power has, it is claimed, been conferred upon the Corporations or Municipalities in the form in which it has been conferred by s. 113(2) of the Act.

It was also said that it is impossible for the Legislature, having regard to the varying needs of the Municipalities to lay down any guidance, principles or policy to govern them in the imposition of diverse taxes. But that argument has, in our judgment little substance. In the Delhi Municipal Corporation Act, 1957, the imposition of major taxes set out in sub-s. (1) of s. 113 is made subject to clear and precise provisions providing for principles, policy and standards. It is only in respect of the optional taxes set out in sub-s. (2) of s. 113 that no such guidance is disclosed. It was also urged that fixing a maximum rate is not any guidance, because it would be possible for the Legislature to fix a maximum rate which is wholly unrelated to the realities, and the formal requirement of guidance may, be prescribing that unreal maximum, be complied with. But it is not suggested that in all cases by fixing a maximum rate, a guidance would be deemed to be supplied. Fixing of maximum rate which prevents the Corporation or Municipality from levying a tax at a rate higher than that rate, to be a guidance, must not be wholly unrelated to the demands of the Corporation, the capacity of the tax-payers to bear the liability and the other relevant matters.

Reliance was sought to be placed upon the minority judgment of this Court in Municipal Board, Hapur v. Raghuvendra Kripal and Ors. [[1966] 1 S.C.R. 950.]. The primary question which fell to be determined in that case related to the validity of s. 135(3) of the U.P. Municipalities Act 2 of 1916, which shut out all enquiry into the regularity of the procedure by which tax has been imposed after the sanction of the Government to a resolution of the Municipality selecting a tax for imposition had been obtained. It was held by the majority that the rule of conclusive evidence in s. 135(3) did not shut out all enquiry by courts. The Court incidentally considered the question whether the enactment of s. 135(3) amounted to delegation of legislative power to tax insofar as the rate and incidence were concerned and in the minority judgment it was observed that the Legislature may delegate to a subordinate authority the power to fix rates under proper safeguards, and it is not necessary to specify all the situations under which this can be done. It was observed at p. 970 :

> "But there can be no doubt that in the matter of local taxation like taxation by municipal boards, district boards and bodies of that character there is pre-eminently a case for delegating the fixation 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 or districts may be different and one municipality may require one kind of tax at a particular rate at a particular time while another municipality may need another kind of tax at another rate at some other time. Therefore, the legislature can in the case of taxation by local bodies delegate even the authority to fix the rate to the local body provided it has taken care to specify the safeguards in the form of procedural provisions or such other forms as it considers necessary in the matter of fixing the rate."

If thereby it is meant that the rule against excessive delegation of legislative power may be departed

from on the ground that the delegate is hedged in by controls or restrictions which will prevent it from abusing its authority, we are unable to agree. Safeguards against abuse do not alter the character of unauthorised delegation of legislative power. They cannot be a substitute for the guidance which the Constitutional Scheme requires that the Parliament must give to a delegate. As the validity of the constitutional protection cannot be judged in the light of what the character, capacity or the special aptitude of the delegate may be, it cannot also be adjudged in the light of the provisions made against abuse of power.

Turning to the terms of s. 113(2) of the Act, we are of the opinion that the Parliament has not set out the limits of the tax which will be levied, persons from whom or the transactions on which the taxes will be levied, the system of taxation which will be adopted, and the exemptions, if any, which will be granted. All these matters are left to the Corporation. In possible cases such a power is capable of the grossest abuse. We may, however, hasten to observe that the vice of delegation lies not in its capacity for abuse, but in its delegation beyond permissible limits and contrary to the constitutional scheme. Undoubtedly delegation of the authority to legislate on those matters is always subject to the rule that the action of the delegate which amounts to unreasonable exercise of the powers will be invalid. But that does not alter the true character of the rule against excessive delegation of legislative authority.

In our view, the provisions of s. 150(1) insofar as they leave to the Corporation to fix the maximum rates of tax to be levied class or classes of persons, or the description or description of articles and properties to be taxed, the system of assessment to be adopted and the exemptions if any to be granted are invalid. We hold that the Validating Act 35 of 1966 validly levies and imposes tax on consumption or sale of electricity till March 31, 1966. It will however be declared that s. 150(1) is void as permitting excessive delegation of legislative authority to the Corporation.

Sikri, J. I have had the advantage of reading the judgments prepared by the learned Chief Justice Hidayatullah, J., and Shah, J. I agree with the learned Chief Justice that the appeals be allowed and with the order regarding costs. I further agree with the reasons given by him for holding (a) that the tax was imposed on consumption of electricity (b) that the sanction by Government was in accordance with the provisions of the Constitution, and (c) that the Validation Act validated the levy and collection for the period April 1, 1960, to March, 1966. But as I hold different views as to the powers of legislatures in India, I would briefly indicate them.

Apart from authority in my view Parliament has full power to delegate legislative authority to subordinate bodies. This power flows, in my judgment, from Art. 246 of the Constitution. The word "exclusive" means exclusive of any other legislature and not exclusive of any subordinate body. There is, however, one restriction in this respect and that is also contained in Art. 246. Parliament must pass a law in respect of an item or items of the relevant list. Negatively this means that Parliament cannot abdicate its functions. It seems to me that this was the position under the various Government of India Acts, and the Constitution has made no difference in this respect. I read Hodge v. R. [9 A.C. 117.] and Powell v. Appollo Candle Co. [10 A.C. 282.] as laying down that legislature like Indian legislatures had full power to delegate legislative authority to subordinate bodies. In the judgments in these cases no such word as "policy" "standard" or "guidance" is mentioned. It is true that in Hodge v. R. [9 A.C. 117.] the words 'ancillary to legislation' are mentioned but if we examine Ss. 4 and 5 of the Liquor License Act, 1877, it would be found that no guidance is contained in these sections for defining the conditions and qualifications requisite to obtain tavern licenses, for limiting the number of tavern and shop licenses, and the nature of the penalty to be imposed for the infraction thereof. Any person drafting these conditions and qualifications and other matters will

find no guidance in s. 4 or s. 5 of the Liquor License Act. It is, however, true that the objective to be achieved is given in the Act and the words "ancillary to legislation" in the context must mean ancillary to the objective underlined in the legislation.

The case of In re : The Initiative and Referendum Act [[1919] A.C. 935.] provides an instance of abdication of functions by a legislature. No inference can be drawn from this case that delegations of the type with which we are concerned amount to abdication of functions.

The question then arises : Is the Delhi Municipal Corporation Act, 1957, a law with respect to any of items in List II ? The answer is plainly in the affirmative. I can see no sign of abdication of its functions by Parliament in this Act. On the contrary Parliament has constituted the Corporation and prescribed its duties and powers in great detail.

But assuming I am bound by authorities of this Court to test the validity of s. 113(2)(d) and s. 150 of the Act by ascertaining whether a guide or policy exists in the Act, I find adequate guide or policy in the expression "purposes of the Act" in s. 113. The Act has pointed out the objectives or the results to be achieved and taxation can be levied only for the purpose of achieving the objectives or the results. This, in my view, is sufficient guidance especially to a self-governing body like the Delhi Municipal Corporation. It is not necessary to rely on the safeguards mentioned by the learned Chief Justice to sustain the delegation.

There is no need to think that delegations of the present type will lead to arbitrary taxation or rules. First, we must have faith in our representative bodies and secondly, I agree with the learned Chief Justice and Hidayatullah, J., that in suitable cases taxation in pursuance of delegated powers by a Municipal Corporation can be struck down as unreasonable by Courts. If Parliament chooses to delegate wide powers it runs the risk of the bye-laws or the rules framed under the delegated power being challenged as unreasonable.

ORDER

In accordance with the opinion of the majority, the appeals are allowed, the order of the High Court is set aside in so far as it is against the appellant and the writ petitions filed by the respondent are dismissed. There will be no order as to costs throughout.

R.K.P.S.

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