

Cantonment Board, Mathura

Vs

Krishna Bricks and Lime Factory

Civil Appeals Nos. 799-802 of 1981

(N. P. Singh, S. B. Majmudar JJ)

12.09.1996

JUDGMENT

N.P. SINGH, J. –

1. These appeals have been filed on behalf of the Cantonment Board, Mathura (hereinafter referred to as 'the Board') for setting aside the judgment of the Allahabad High Court, declaring notification dated 22-11-1958, by which tax at the rate of 0.75 p. per thousand bricks had been fixed by the Board within the cantonment area as invalid.
2. The respondent is the owner of a brick-kiln and was carrying on the business of manufacturing and selling of bricks. A suit was filed on behalf of the said respondent for restraining the appellant-Board from realising tax from the said respondent at the rate of 0.75 per thousand bricks. It was alleged that previously the Board was realising the tax from the manufacturers of bricks at the rate of 0.19 per thousand. But by the impugned notification, it raised the rate of the tax at 0.75 per thousand bricks. It was alleged and asserted that the respondent as the manufacturer of bricks was neither deriving any advantage from the Board nor was any service being provided by the Board. As such, the realisation of the tax at the aforesaid rate was in contravention and in violation of Section 60 of the Cantonments Act, 1924 read with Section 128(1)(ii) of the U.P. Municipalities Act, 1916 (2 of 1916). The suit filed on behalf of the respondent was dismissed by the trial court. That judgment was affirmed by the court of appeal. However, on second appeal being filed on behalf of the said respondent, the High Court came to the conclusion that the ceiling and restriction imposed by Article 276(2) of the Constitution, as applicable to the State, any municipal, district board, local board or other local authority within such State in respect of imposition of taxes on professions, trades and callings, was applicable even on the Board which had been established under the aforesaid Cantonments Act. On that finding the notification was declared to be invalid being hit by Article 276(2) of the Constitution.
3. Section 3 of the Cantonments Act provides that the Central Government may, by notification in the Official Gazette, declare any place or places in which any part of the forces is quartered or which, being in the vicinity of any such place or places, is or are required for the service of such forces to be a cantonment for the purposes of the said Act and may by a like notification, declare that any cantonment shall cease to be a cantonment. In view of sub-section (4) of Section 3 the Central Government may, by notification in the Official Gazette, direct that in any place declared a cantonment under sub-section (1) the provisions of any enactment relating to local self-government other than this Act shall have effect only to such extent or subject to such modifications, or that any authority constituted under any such enactment shall exercise authority only to such extent, as may be specified in the notification. Section 6 provides that when, by a notification under Section 3, any

cantonment ceases to be a cantonment and the local area comprised therein is immediately placed under the control of a local authority, the balance of the cantonment fund and other property vesting in the Board shall vest in such local authority, and the liabilities of the Board shall be transferred to such local authority. Similarly, Sections 7 and 8 make provisions in respect of cantonment fund and its property which is placed under the control of some other local authority, in view of the notification under Section 4, because of which any local area forming part of cantonment ceases to be under the control of a particular Board. Section 60 of the Cantonments Act provides :

"60. General power of taxation. - (1) The Board may, with the previous sanction of the Central Government, impose in any cantonment any tax which under any enactment for the time being in force, may be imposed in any municipality in the State wherein such cantonment is situated :

(2) Any tax imposed under this section shall take effect from the date of its notification in the Official Gazette or where any later date is specified in this behalf in the notification, from such later date."

Because of aforesaid Section 60 the Board may with previous sanction of the Central Government impose in any cantonment, any tax "which under any enactment for the time being in force, may be imposed in any municipality in the State where such cantonment is situated". For imposing any tax in exercise of the power under Section 60, two conditions have to be fulfilled and complied with (i) there must be a previous sanction of the Central Government to impose such tax and (ii) the tax to be imposed must be such which under any enactment for the time being in force may be imposed in any municipality in the State wherein such cantonment is situated.

4. So far the municipality within any State is concerned, its power to impose a tax in respect of professions, trades or callings is governed and controlled by Article 276 of the Constitution, which says :

"276. Taxes on professions, trades, callings and employments. - (1) Notwithstanding anything in Article 246, no law of the legislature of a State relating to taxes for the benefit of the State or of a municipality, district board, local board or other local authority therein in respect of professions, trades, callings or employments shall be invalid on the ground that it relates to a tax on income.

(2) The total amount payable in respect of any one person to the State or to any one municipality, district board, local board or other local authority in the State by way of taxes on professions, trades, callings and employments shall not exceed two thousand and five hundred rupees per annum.

(3) The power of the legislature of a State to make laws as aforesaid with respect to taxes on professions, trades, callings and employments shall not be construed as limiting in any way the power of Parliament to make laws with respect to taxes on income accruing from or arising out of professions, trades, callings and employments."

There is a non obstante clause in Article 276(1) of the Constitution saying that notwithstanding anything contained in Article 246 no law made by the legislature of a State relating to taxes for the benefit of the State or of a municipality, district board, tonal board or other local authority therein in

respect of professions, tracings, callings or employments shall be invalid on the ground that it relates to a tax on income. Having said so a ceiling on the amount of tax has been imposed by Article 276(2), which was Rs. 250 earlier and has been raised to Rs. 2500 by the Constitution (Sixtieth Amendment) Act, 1988 with effect from 20-12-1988. In the case of Bharat Kala Bhandar Ltd. v. Municipal Committee [AIR 1966 SC 249 : (1965) 3 SCR 499 : (1966) 59 ITR 73] a Constitution Bench in its majority judgment said :

"Before we deal with these cases it is necessary to point out the rationale upon which Section 142-A of the Government of India Act, 1935 was enacted and on which Article 276 of the Constitution now rests. It is that the legislative spheres of the Provinces and the Centre came to be clearly demarcated in regard to items falling within Lists and II of Schedule VII of the Government of India Act and now to those falling within the same lists of Schedule VII of the Constitution. Taxes on professions, trades, callings and employments are taxes on income and are thus outside the provincial/and now State list and belong exclusively to Parliament and before that to the Central Legislature. Yet under a large number of laws enacted before the Government of India Act, 1935 came into force, power was conferred on local Governments and local authorities to impose taxes on such activities. This was obviously in conflict with Section 100 of the Government of India Act. When this was realised Section 142-A was enacted by the British Parliament which saved the power conferred by pre-existing laws but limited the amount payable to Rs. 50 after 31st March, 1939. A saving was made however, of pre-existing laws subject to certain conditions with which we are not concerned. The provisions of this section have been substantially reproduced in Article 276 of the Constitution with the modification that the upper limit of such tax payable per annum would be Rs. 250 instead of Rs. 50. A tax can be recovered only if it is 'payable' and it would be payable only after it is assessed. It is, therefore, futile to contend that the ban placed by the aforesaid provisions extends only to recoveries and not to an earlier stage.

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We may further observe that where there is an express prohibition in a statute against a local authority from imposing a tax, as for instance, the recovery in the Statute construed by this Court in the Poona City Municipal Corpn. case [Poona City Municipal Corpn v. Dattatraya Nagesh Deodhar, AIR 1965 SC 555 : (1964) 8 SCR 178] or where prohibition can be implied - whether it be with regard to an item of taxation or with regard to the rate of tax or the quantum of tax payable by an individual assessee - the action of a local authority or of any of its instrumentalities in transgressing that prohibition must be regarded as being in excess of its jurisdiction. Here there is a prohibition in Section 142-A of the Government of India Act and now in Article 276 of the Constitution, which precludes a State Legislature from making a law enabling a local authority to impose a tax on 'professions, trades, callings and employments' in excess of Rs. 250 per annum. These provisions have to be read in the Act or to be deemed by implication to be there as the Constitution is the paramount law to which all other laws are subject as was the Government of India Act, 1935 before January 26, 1950. If therefore, after the date specified in Section 142-A of the Government of India Act or after the commencement of the Constitution a local authority or any of its instrumentalities imposed or imposes a tax which is in excess of the permissible amount, it would be exceeding its jurisdiction

and a provision like Section 84(3) of the Act will not bar the jurisdiction of a civil court to entertain a suit instituted by a person from whom it is collected for the repayment of the money recovered from him in excess of the permissible amount.

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Here since the Assessing Officer had no authority to levy a tax beyond what Section 142-A of the Government of India Act, 1935 permitted or what Article 276 permits his proceedings are void insofar as they purport to levy a tax in excess of the permissible amount and authorise its collection and the assessment order is no answer to the suit for the recovery of the excess amount. To this extent, even the order of assessment cannot obtain the protection of Section 84(3) of the Act and, therefore, the appellant's suit is maintainable."

5. Again in the case of *Mahapalika of the city of Agra v. Agra Brick Kiln Owners' Assn.* [(1976) 3 SCC 42] the scope of Article 276(2) was considered by this Court in connection with the aforesaid U.P. Municipalities Act, 1916. The State Government issued a notification in the year 1947 imposing a tax under Section 128(1)(ii) of the said Act, at the rate of 14 annas per thousand bricks. Brick-kiln owners who were affected by the said notification filed a suit for declaration that the tax was void and as such could not be realised in view of Section 142-A of the Government of India Act, 1935 and Article 276 of the Constitution. This Court said : (SCC pp. 43-45, paras 5-10)

"The Government of India Act, 1935, certainly set a maximum on the tax on trades and callings and we agree that the High Court was right in holding that the Municipal Board's right to levy tax under the notification Ex. H could be valid only up to Rs. 50 per year and, to the extent it went beyond that limit, was void. So we affirm the High Court's holding for the period up to January 26, 1950 that no sum higher than Rs. 50 as set out in the Government of India Act, 1935 can be exacted under Section 128 of Act II of 1916.

From the Raj to the Republic was a big break in constitutional law, but there was some continuity maintained. A certain ceiling on taxes on professions, trades, callings and employments had been set by Article 276 of the Constitution of India, but this maximum was not Rs. 50 as in the Government of India Act, 1935 but Rs. 250.

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Inevitably, it follows that during the post-Constitution period nothing by way of taxes on trades or callings above the limit so set is recoverable and hence the maximum levy from each person under the notification issued under Act II of 1916 rises to Rs. 250.

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This does not mean that anything beyond Rs. 250 [the tax freeze under Article 276(2)] can be levied. No. The constitutional maximum prevails as it covers all taxes on trade or calling even today. Therefore, until Parliament makes any other law, as contemplated in the proviso to Section 172 of the Adhiniyam, the maximum of Rs. 250 binds. We have to read down the notification Exhibit H for the post-Constitution

period, in tune and conformity with the Constitution and uphold its validity to the extent of constitutional permissibility."

In the case of *Mahapalika of Agra v. Agra Brick Kiln Owners' Assn.* [(1976) 3 SCC 42] the validity of a notification issued under Section 128(1)(ii) of the U.P. Municipalities Act, 1916 in respect of Agra Municipal Board imposing a tax on brick manufacturers at the rate of 14 annas per thousand bricks was considered by this Court and it was held that any such notification must conform and fulfil the requirement of the ceiling fixed by Article 276(2) of the Constitution.

6. In view of Article 276, it has to be held that no law of legislature of a State relating to imposition of taxes for the benefit of the State or of a municipality, district board, local board or other local authority therein in respect of professions, trades, callings shall be valid, if it provides the total amount payable in respect of any one person to the State or to any one municipality, district board, local board or other local authority in the State, exceeding the limit fixed by Article 276(2) of the Constitution.

7. Now the question which is to be answered is whether the ceiling prescribed by Article 276(2) of the Constitution shall also be applicable to the Board which has been established under the Cantonments Act. It need not be pointed out that the Board has been established under the Cantonments Act which is a Central Act. So far Article 276 is concerned, it relates to the power of the legislature of a State to make law for the benefit of the State or of a municipality, district board, local board or other local authority in respect of taxes on professions, trades, callings saying that it shall not be invalid on the ground that it relates to tax on income. But at the same time, by Article 276(2) a ceiling has been fixed in respect of the amount payable to the State, or any one municipality, district board, local board or other local authority in the State. This was necessary because the power to tax on income has been provided under Entry 82 of List I in the Seventh Schedule and only Parliament can enact a law in respect thereof. The State Legislature cannot make a law in respect of taxes on the income of individuals within the State. It can be said that Article 276 of the Constitution within a prescribed limit, enables the legislature of a State to make law for imposition of taxes on income for the benefit of the State or municipality, district board, local board or other local authority from professions, trades, callings saying that such law shall not be invalid on the ground that it relates to a tax on income.

8. So far the Board is concerned which has been established under the Cantonments Act, it has issued the impugned notification in exercise of the power under Section 60 of the Cantonments Act. As such the said notification shall not be deemed to have been issued in exercise of power under a law enacted by the legislature of a State for the objects mentioned in Article 276. To that extent, we are not in agreement with the opinion expressed by the learned Judge of the High Court. Whether the provisions of Article 276 shall be applicable, has to be examined by construing the scope of Section 60 of the Cantonments Act. Section 60 of the Cantonments Act prescribes two conditions for imposition of tax by the Board. Firstly, that there must be a previous sanction of the Central Government and secondly that only such tax can be imposed within any cantonment which under any enactment for the time being in force may be imposed in any municipality in the State wherein such cantonment is situated. The framers of the Cantonments Act did not desire to delegate and authorise the Board to impose any tax. The power of the Board to impose a tax was circumscribed by prescribing a limitation that the Board may impose in the cantonment any tax which under any enactment for the time being in force, may be imposed in any municipality in the State wherein such cantonment is situated.

9. Section 128(1)(ii) of the U.P. Municipalities Act, 1916 provides :

"28. (1)(ii) A tax on trades and callings carried on within the municipal limits and deriving special advantages from, or imposing special burdens on, municipal services."

In exercise of the power under Section 128(1)(ii), the Municipal Board of any municipal with for State of Uttar Pradesh could impose a tax on trades and callings carried on within the municipal limits. Therefore, any Board within the State of U.P. can also impose such tax within the cantonment area because of Section 60 of the Cantonments Act. In view of the clear and unambiguous provision of Section 60, the learned counsel appearing for the appellant-Board did not contest this position. But according to him, it does not mean, that the Board is also bound by the rates of the taxes so imposed by the municipality or the local board within that State. It can prescribe its own rates of taxes on the trades and callings. According to us, it is difficult to accept this contention. If the farmers of the Constitution did not give this liberty and latitude to the legislature of a State in respect of taxes on professions, trades or callings for the benefit of the State or municipality, district board, local board or other authority under Article 276 of the Constitution, how an unlimited power so far the rate of tax is concerned, can be conceded in favour of the Board which is a creature and authority established under the Cantonments Act ? When Section 60 links the power to impose tax with any enactment for the time being in force in respect of any municipality in the State where the cantonment is situated, then it shall be deemed that it has also prescribed the limit of the ceiling of such tax with reference to the said enactment in force in respect of any municipality in that State. If it is held otherwise, it will lead to an anomalous position, so far the nature of tax is concerned, because of Section 60 the power of the Board is circumscribed with reference to any enactment for the time being in force in respect of municipality in that State whereas so far the rate such tax which is more vital, has been left to the discretion of the Board.

10. On behalf of the appellant-Board it was pointed out that the Board cannot exercise arbitrary power under Section 60 because any such tax including the rate thereof, has to be first sanctioned by the Central Government. According to us, because of Article 276 if the State Legislature cannot tax on professions, trades or callings for the benefit of the State, municipality district board local board or other local authority, beyond the limit prescribed by Article 276(2) as it amounts to tax on income, then how it can be held that the Board has unlimited power without any ceiling to tax on professions, trades or callings being carried on within the cantonment area ? When Section 60 provides that the Board may with previous sanction of the Central Government impose in any cantonment any tax which under any enactment for the time being in force may be imposed in any municipality in the State wherein such cantonment is situated, such restriction shall not be only in respect of the nature of the tax, but also in respect of the ceiling on rates prescribed under the enactment, relating to the municipality.

11. On behalf of the appellant, reference was made to the judgment of the Allahabad High Court in the case of Punjab Lime and Lime-stone Co. v. Cantonment Board [AIR 1967 All 15]. A learned Judge in connection with Section 60 of the Cantonments Act said :

"Section 60 of the Cantonments Act nowhere says that Cantonment Boards can levy taxes which can be levied by municipalities subject to the same limitations. It simply provides that the taxes which are realisable by Municipal Boards are also realisable by Cantonment Boards. This does not mean that the limitations on the powers of Municipal Boards to levy their taxes must also be applied to taxes levied by

Cantonment Boards."

12. A contrary view was expressed in the case of Madan Lal v. Cantonment Board [1978 All LJ 1147] by a learned Judge of the same High Court saying that the Cantonment Board while imposing a tax on per thousand of bricks must fix the maximum limit which does not contravene the provisions of Article 276 of the Constitution. A Division Bench of the Rajasthan High Court in the case of Narain v. Cantonment Board [AIR 1963 Raj 190 : 1963 Raj LW 258] said :

"Considering Section 60 of the Act, we may point out that the legislature empowering the respondent to levy and collect taxes used the word 'impose' only and evidently, therefore the term should be taken to have been used in a wider sense. Besides the object and purport underlying Section 60 appears to be that the taxes to be imposed by the respondent (Cantonment Board) should be consistent with and should conform to the State laws relating to imposition of taxes by the local authorities. Section 60 further does not refer to State laws in force at a particular point of time but the State laws generally as might be from time to time have been referred to. It will be hardly in keeping with the object and policy underlying Section 60 that the respondent should be permitted to continue taxes in contravention of State laws. The term 'impose' should, therefore, be taken to have been used in wider sense in Section 60 and that being so, the respondent cannot collect taxes in contravention of State laws."

In the case of Hira Lal v. Union of India [1972 Tax LR 2051 : (1971) 2 SLJ 53 (HP)] the Himachal Pradesh High Court has also come to the conclusion that under Section 60 of the Cantonments Act, while imposing a profession tax, Article 276(2) of the Constitution cannot be violated.

13. Accordingly, the appeals fail and are dismissed. There shall be no order as to costs.