SUPREME COURT OF INDIA

B. Krishna Bhat

Vs.

State of Karnataka

C.A.No.7791 of 1997

(S.P. Bharucha, N. Santosh Hegde and Y.K. Sabharwal JJ.)

30.03.2001

JUDGMENT

Santosh Hegde, J.

1. The appellant before us along with some other petitioners had filed Writ Petition Nos.4394-4410/88 before the High Court of Karnataka at Bangalore contending, inter alia, that the Bangalore Development Authority (the BDA) had no sanction under Section 29 of the Bangalore Development Authority Act, (for short the BDA Act) to levy any tax, cess or fee on the owners of lands and buildings situated outside the corporation limits of the Bangalore City Corporation. They had also contended that Section 29 of the Act was unconstitutional, ultra vires and void. A learned Single Judge who heard the said writ petition after examining the various provisions of the Act as well as the Bangalore Municipal Corporation Act, 1949 (the Corporation Act) came to the conclusion that under the BDA Act, there was no inherent power to assess, impose and recover taxes, cess and fees other than the betterment tax. The court also held that the power to levy and recover taxes, cess and fees has to be expressly conferred on the BDA by the BDA Act and such power cannot be presumed by mere implication. It further held that there was no material on record to hold that the BDA has been rendering any service to the members of the public who own lands and/or buildings which service should correspond to taxes, cess and fees recoverable because such tax is service related. The said finding of the learned Single Judge came to be affirmed by the appellate Bench in Writ Appeal Nos.223-39/92. After the said judgment of the Division Bench, an Ordinance was promulgated which later became an Act of the Legislature whereby the principal BDA Act came to be amended by the *Bangalore Development Authority (Amendment) Act, 1993*. By this Amending Act, Sections 28- A, 28-B and 28-C were incorporated in the said Act. By these amendments, the BDA was statutorily entrusted with the obligation of providing certain civic amenities specified in Section 28A of the Act and in Section 28B, the BDA was specifically empowered to levy and collect property tax in the same manner and at the same rate as was provided in the Corporation Act. Under Section 28C, the BDA was given the status of a local body to collect the cess payable under the various Acts specified in the said Section and Section 7 of the Amending Act validated all the collection made by the BDA which was declared as without authority of law by the earlier judgment of the High Court.

2. The Amending Act was challenged again by the appellant in a writ petition on the ground that the Amending Act suffered from the vice of excessive delegation and was also arbitrary and violative of Article 14 of the Constitution. It was also argued that the Amending Act not having removed the vice pointed out by the High Court, it was beyond the legislative power to validate an invalid collection of tax. The said challenge being negatived by the High Court, the appellant is before us in this appeal.

3. Before us, the appellant contends that the delegation of power to the BDA is bad because the BDA is only a statutory body and not being an elected body, could not have been entrusted with any taxing power. For this proposition the appellant strongly placed reliance on a judgment of this Court in *Municipal Corporation of Delhi v. Birla Cotton, Spinning and Weaving Mills, Delhi & Anr.*[1]. In the said judgment the majority, while upholding the validity of the delegated legislation and negativing the contention of excessive delegation, among other factors, found that delegation to an elected body was in itself a safe way of delegation because an elected body responsible to the people including those who pay taxes would act responsibly in the exercise of the said delegated power. But this Court in that case nowhere held that delegation of a taxing power to a non-elected body would suffer from the vice of excessive delegation. Therefore, the argument of the appellant grounded solely on the ratio laid down in Birla Cotton Mills case (supra) should fail.

4. In re the *Delhi Laws Act, 1912, The Ajmer-Merwara (Extension of Laws) Act, 1947* and *The Part C States (Laws) Act, 1950* (1951 SCR 747 at 750), the main requirement of delegation of legislative power was explained by Patanjali Sastri, J. as follows :

5. It is now established beyond doubt that the Indian Legislature, when acting within the limits circumscribing its legislative power, has and was intended to have plenary powers of legislation as large and of the same nature as those of the British Parliament itself and no constitutional limitation on the delegation of legislative power to a subordinate unit is to be found in the *Indian Councils Act, 1861*, or the Government of India Act, 1935, or the Constitution of 1950. It is therefore as competent for the Indian Legislature to make a law delegating legislative power, both quantitatively and qualitatively, as it is for the British Parliament to do so, provided it acts within the circumscribed limits (ii) Delegation of legislative authority is different from the creation of a new legislative power. In the former, the delegating body does not efface itself but retains its legislative power intact and merely elects to exercise such power through an agency or instrumentality of its choice. In the latter, there is no delegation of power to subordinate units but a grant of power to an independent and co-ordinate body to make laws operative of their own force. For the first, no express provision authorising delegation is required. In the absence of a constitutional inhibitation, delegation of legislative power, however extensive, could be made so long as the delegating body retains its own legislative power intact. For the second, however, a positive enabling provision in the constitutional document is required. (iii) The maxim delegatus non protest delegare is not part of the constitutional law of India and has no more force than a political precept to be acted upon by legislatures in the discharge of their function of making laws, and the courts cannot strike down an Act of Parliament as unconstitutional merely because

Parliament decides in a particular instance to entrust its legislative power to another in whom it has confidence or, in other words, to exercise such power through its appointed instrumentality, however repugnant such entrustment may be to the democratic process. What may be regarded as politically undesirable is constitutionally competent. (iv) however wide a meaning may be attributed to the expression restrictions and modification, it would not affect the constitutionality of the delegating statute.

6. The abovesaid observations of this Court in the said Delhi Laws' case (supra) have been consistently followed by this Court in all the later cases. Applying the said principles to the facts of this case, we must hold that the delegation in question has been made to a statutory body which is entrusted with the duty of development of the City of Bangalore and the areas adjacent thereto. The process of development is statutorily controlled and in the said process certain developmental activities under Sections 29 and 30 of forming lay out, maintaining roads, bridges, sewer etc. are also contemplated. Therefore, the BDA as such cannot be treated as a stranger for the purpose of being delegated the authority to levy property tax in property which is situated within its jurisdiction. These levies and collections are not left to the arbitrary wisdom/discretion of the delegated authority but are governed by the procedure to be adopted under the Corporation Act which itself has provided an elaborate machinery for determining such levy and collection thereof. Therefore, by no stretch of imagination can it be contended that this delegation is either beyond the scope of the legislative power or is in excess of the same. It cannot also be argued that the said delegation is unguided or arbitrary.

7. Another limb of the appellants argument in challenging the Amending Act is that the Legislature has blindly incorporated the machinery provisions of the Corporation Act under Section 109, for the purpose of levying and collecting the tax which, according to the appellant, is arbitrary inasmuch as the tax collected by the Corporation was to be utilised for large number of functions enumerated in Section 59 of the Corporation Act while the amount so collected under the BDA Act is to be utilised for limited functions specified under Section 28A of the Amending Act. We do not find any force in this argument also. It is true that under Section 59 of the Corporation Act, the Corporation is obligated to perform as many as 23 functions specified therein while under Section 28A of the BDA Act, the BDA has to perform only 3 or 4 functions. But on behalf of the respondents, it is pointed out to us that a complete reading of the BDA Act shows that the BDA also has to perform many other functions which are similar to those enumerated in Section 59 of the Corporation Act. That apart, it is pointed out that under the Corporation Act the Corporation is empowered to collect other revenues also apart from those enumerated in Section 109 of the Corporation Act while the BDA can collect only that tax which it is authorised to collect under Section 28B of the Act, hence there can be no comparison of the collection of the BDA and its expenditure with that of the Corporations revenue and expenditure. Therefore, we are in agreement with the respondents and hold that the authorisation of collection of property tax by the BDA based on the procedure laid in the Corporation Act is neither arbitrary nor in excess of the power of delegation. Therefore, the challenge to this Section should also fail.

8. The next argument of the appellant is in regard to Section 7 of the Amending Act whereby the past collection of property tax made by the BDA which was declared to be without

authority of law by the High Court is sought to be validated. In support of this contention the appellant submits that in the previous writ petition the High Court not only found that there was lack of statutory authority to collect the property tax but also held that such property tax can be collected only if the BDA provided certain civic amenities which the High Court on facts had found that the BDA was not providing. Hence, it is argued that the said finding of the High Court having become final for the period prior to the date of the Amending Act, such collection of tax could not have been validated. Relevant part of Section 7 of the Amending Act reads thus:

9. Notwithstanding anything contained in any judgment, decree or order of any Court, Tribunal or other authority to the contrary, levy, assessment or collection of any tax on land or building or on both and levy and collection of cesses on such tax on land or building made or purporting to have been made and any action or thing taken or done (including any notice or orders issued or assessment made and all proceedings held and any levy and collection of tax or cess or amount purported to have been collected by way of tax or cesses) in relation to such levy, assessment or collection under the principal Act before the twenty fourth day of July, 1992 shall be and shall be deemed to be valid and effective as if such levy, assessment or collection or action or thing, had been made, taken or done under the principal Act as amended by this Act and accordingly .---

10. It is seen from the said Section in the Amending Act that the collection which was held to be invalid and was directed to be refunded under the High Court judgment in the previous proceeding was sought to be validated without indicating how the Legislature has remedied the want of services pointed out by the High Court. In the earlier case, the High Court had held that in the principal Act there was no specific provision to levy taxes similar to those leviable under the Corporation Act. It also came to the conclusion that any such tax even if it were to be levied by the BDA with the sanction of the Legislature, could be levied only if the BDA performed certain functions mentioned in the said judgment. The Court further came to the conclusion that such functions not being performed by the BDA, collection of tax, apart from being unauthorised for want of statutory sanction, is also bad because the BDA did not render any service in lieu of such collection. Therefore, it is seen that by the said judgment the High Court had held that the collection of tax by the BDA was service-related. In other words, such power of levy can be vested in the BDA only if the BDA renders certain services to the subscribers to such tax and it is in this context that the High Court gave a specific finding that no such services had been rendered. This finding not having been challenged by the BDA had become final. Therefore, so far as collections made prior to the coming into force of the Amending Act being a collection without any service rendered, the same cannot be validated even by the introduction of Section 7 of the Amending Act. The finding of the High Court in regard to want of services could not have been either ignored or reversed by the Legislature while validating the earlier collection because it has no such power to reverse the finding of a court. This Court in a catena of cases has laid down that when a Legislature sets out to validate a tax declared by a court to be illegally collected, it is not sufficient for the Legislature to merely declare that the decision of the court shall not be binding because that would amount to reversing the decision rendered by a court in exercise of judicial power which authority the Legislature does not possess. It is also a settled principle in law that

when invalidity of collection of levy is pointed out by the court based on non-existence of certain necessary facts, it is not open to the Legislature to merely controvert that finding of the court and validate such collection by proceeding on the basis that such finding of the court is incorrect. In the case of *Shri Prithvi Cotton Mills Ltd. & Anr. v. Broach Borough Municipality & Ors.*[1] this is what a Constitution Bench of this Court had held :

11. When a legislature sets out to validate a tax declared by a court to be illegally collected under an ineffective or an invalid law, the cause for ineffectiveness or invalidity must be removed before validation can be said to take place effectively. The most important condition, of course, is that the legislature must possess the power to impose the tax, for, if it does not, the action must ever remain ineffective and illegal. Granted legislative competence, it is not sufficient to declare merely that the decision of the Court shall not bind for that is tantamount to reversing the decision in exercise of judicial power which the legislature does not possess or exercise. A courts decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances. Ordinarily, a court holds a tax to be invalidly imposed because the power to tax is wanting or the statute or the rules or both are invalid or do not sufficiently create the jurisdiction. Validation of a tax so declared illegal may be done only if the grounds of illegality or invalidity are capable of being removed and are in fact removed and the tax thus made legal.

12. This above ratio laid down in the said case has been consistently followed by this Court in all subsequent cases where this question arose for consideration. See *M/s. Hindustan Gum & Chemicals Ltd. v. State of Haryana & Ors.*[3].

13. Applying the said principles to the facts of the present case, it is seen that the invalidity pointed out by the High Court about the lack of services rendered at the relevant point of time is an invalidity which was not capable of being removed to justify the levy of tax by an Amending Act and the Legislature could not have either ignored this finding of fact by the High Court or overruled the same. Therefore, in our opinion, in respect of the tax collected for the period before the date of the Amendment there could have been no validation of such collection. Hence, the Amending Act so far as it validates the collection of property tax by the BDA, cannot be sustained for a period prior to the date of the Amending Act.

14. We however make it clear that in this appeal we have not decided the nature of levy under Section 28B after it was introduced by the Amending Act as to whether it is a tax simpliciter requiring no service at all or whether it is a tax in the nature of a fee requiring services as held by the learned Single Judge in the earlier round of litigation. Our examination of the validity of the Amending Act has been confined only to the arguments addressed before us. In regard to the validation of the past collection, our finding is based on the finding given by the High Court in the earlier judgment which has become final and as a consequence of such finding the validation of such collection is impermissible. Therefore, Section 7 of the Amending Act so far as it validates collection of property tax made by the BDA prior to the introduction of Section 28B has to be declared as invalid and beyond the legislative power.

15. This declaration of ours in regard to the illegality of the validation of the property tax collected prior to the Amendment, however, does not apply to the collection made by the BDA of the cesses required to be collected by it under Section 28C of the Act. The collection contemplated under Section 28C is not a levy under the BDA Act. It is a levy imposed under the Acts mentioned in that Section, namely, the Karnataka Compulsory Primary Education Act, 1961; Karnataka Health Cess Act, 1962; Karnataka Public Libraries Act, 1965; and the Karnataka Prohibition of Beggary Act, 1975. The cess in question is not for the benefit of the BDA but the same is collected by the BDA only as an agent. It is for this purpose that under Section 28A the BDA was deemed to be a local authority so that it could collect the cess under the said respective Acts. These collections as an agent do not suffer from want of legislative sanction. The only lacking part was that under the respective Acts referred to hereinabove, the said collection could be made by a local authority only, which the BDA was not until Section 28C was introduced. This lacuna was removed by introduction of Section 28C and the BDA has been made a deemed local authority for the purpose of such collection. Therefore, once the BDA has been declared as a deemed local authority with retrospective effect, we find no difficulty in accepting the validity of this collection. Hence, the validity of Section 28C has to be upheld and consequently all the cesses collected by the BDA under the Acts referred to under Section 28C have to be declared as validly collected.

16. For the reasons stated above, we uphold the validity of Sections 28B and 28C of the BDA Act which are under challenge while we declare that that part of Section 7 of the Amending Act which validates the collection of property tax by the BDA before the introduction of Sections 28A and 28B as invalid; consequently the said collection is liable to be refunded as directed by the court in earlier proceedings. Accordingly, this appeal is partly allowed to the extent indicated hereinabove. No costs.

[1]*(1968 (3) SCR 251)*
[2]*(1970 (1) SCR 388*
[3]*(1985 (Supp.) 2 SCR 630)*