

**ALLAHABAD HIGH COURT**

Municipal Board of Bareilly

Vs.

Kundan Lal

Civil Misc. Ref. No. 67 of 1954

(O.H. Mootham, C.J., Raghubar Dayal and A.P. Srivastava, JJ.)

19.03.1959

**JUDGMENT**

**Mootham, C.J.**

1. This is a reference under Section 113 of the Code of Civil Procedure made by the Judge of the Court of Small Causes, Bareilly.

2. Sri Kundan Lal, who resides in the Civil Lines, Bareilly, was assessed to tax in the sum of Es. 300 by the Municipal Board of Bareilly on two houses owned by him and situated in Ward No. 2, Bareilly. Demand was made for payment of this amount but Sri Kundan Lal refused to pay and a suit was filed against him in the Court of the Judge of Small Causes by the Municipal Board for the recovery of the tax.

3. The tax had been imposed a number of years earlier by the Municipal Board in exercise of its powers under Section 128(1) of the U.P. Municipalities Act, 1916, which provides that

"128(1) Subject to any general rules or special orders of the State Government in this behalf, the taxes which a board may impose in the whole or any part of a municipality are

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- (i) a tax on the annual value of buildings or lands or of both;
- (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;
- (iii) a tax on trades, callings and vocations including all employments remunerated by salary or fees;
- (iv) a tax on vehicles and other conveyances plying for hire or kept within the municipality or on boats moored therein;
- (v) a tax on dogs kept within the municipality;

- (vi) a tax on animals used for riding, driving draught or burden, when kept within the municipality;
- (vii) a toll on vehicles and other conveyances, animals, and laden coolies entering the municipality,
- (viii) an octroi on goods or animal brought within the municipality for consumption or use therein;
- (ix) a tax on inhabitants assessed according to their circumstances and property;
- (x) a water tax on the annual value of buildings-or lands or of both;
- (xi) a scavenging tax;
- (xii) a tax for the cleansing of latrines and privies;
- (xiii) a tax on goods imported into, or exported from, any municipality in which an octroi was in force on the sixth of July 1917 or with the previous sanction of the Central Government any other Municipality;
- (xiv) any other tax which the State Legislature has power to impose in the State, under the Constitution."

It is not in dispute that the tax in question is imposed only on buildings or lands in Ward No. 2 of the Bareilly Municipality, and it was Sri Kundan Lal's contention that upon the coming into force of the Constitution the tax had become illegal. In the written statement which he filed in the suit he contended that it was no longer legal for the Municipal Board to recover tax on the annual value of buildings and lands (commonly called 'house tax') from the owners of houses in one Ward alone without providing for special amenities to the residents of that Ward, but at the hearing before the learned judge Sri Kundan Lal was allowed to raise the wider question whether the power conferred upon a municipal board by Section 128(1) of the Act to unpose taxes "in.....any part of a municipality" was valid, the contention being that this provision conferred upon the board a wholly unfettered and arbitrary right to impose a tax on any group of residents within municipal limits that it might choose. The learned Judge was of opinion that for the purposes of the suit it was necessary for him to decide the question of the validity of Section 128(1) of the Act, and in his opinion that Sub-Section, to the extent that it enabled the municipal board to impose a tax in a part of a municipality, was invalid as contravening Art 14 of the Constitution. He was further of opinion that no house-tax could accordingly be recovered from Sri Kundan Lal. It is in these circumstances that the learned judge has referred to this Court the following question :

"Whether Section 128 of the Municipalities Act is void in so far as it authorizes a Municipal Board to impose certain taxes mentioned in it on any part of the municipality and whether the house-tax imposed on the plaintiff, who is resident in the Civil station Bareilly, in pursuance of the power given by Section 128 of the Municipalities Act is invalid and ultra vires of the Municipal Board, Bareilly, due to Article 14 of the Constitution of India ?"

4. The submissions of the parties can be shortly stated. For Sri Kundan Lal it is contended that the impugned section leaves it entirely to the discretion of the Municipal Board to determine upon whom it will impose a tax or taxes and that as the Act lays down no principle or policy for the guidance of the Municipal Board in the exercise of that discretion Article 14 is infringed. For the Municipal Board it is argued, first, that no question of any contravention of Article 14 of the Constitution arises; secondly, that the discretion vested in the Board is not unfettered but is controlled by the policy underlying the Act.

5. The scope of Article 14 has been considered<sup>1</sup> on a number of occasions by the Supreme Court. In the recent case of *Ram Krishna Uahnia v. Justice Tendolkar*<sup>1</sup>, the Court cited with approval a passage from *Budhan Choudary v. State of Bihar*<sup>2</sup> in which the Court had said :

"It is now well established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration".

The learned Chief Justice who delivered the judgment in *Ram Krishna Dalmia's case*, AIR 1958 Supreme Court 538 then summarized the decisions of the Court in which Article 14 had been considered. He pointed out that they fall into five classes. Learned counsel for Sri Kundan Lal submits that the present case falls within the third of these classes with regard to which the learned Chief Justice said :

"A statute may not make any classification of the persons or things for the purpose of applying its provisions but may leave it to the discretion of the Government to select and classify person or things to whom its provisions are to apply. In determining the question of the validity or otherwise of such a statute the Court will not strike, down the law out of hand only because no classification appears on the face or because a discretion is given to the Government to make the selection or classification but will go on to examine and ascertain if the statute has laid down any principle or policy for the guidance of exercise of discretion by the Government in the matter of the selection or classification.

After such scrutiny the Court will strike down the statute if it does not lay "down any principle or policy for guiding the exercise of discretion by the government in the matter of selection or classification, on the ground that the statute provides for the delegation of arbitrary and uncontrolled power to the Government so as to enable it to discriminate between persons or things similarly situated and that, therefore, discrimination is inherent in the statute itself. In such a

case the Court will strike down both the law as well as the executive action taken under such law...."

6. The contention in the present case is that there is not to be found in Section 128 or elsewhere in any Act any statement of policy or principles which would serve as a guide to the Board in selecting the part of the municipality in which it will impose one or more of the taxes referred to in Section 128(1). It is clear that Section 128 does not

<sup>1</sup> AIR 1958 SC 538

<sup>2</sup> 1955-1 SCR 1045

itself provide any guide, but that however does not conclude the matter. It is necessary to examine the Act as a whole to ascertain, if possible, the policy underlying it, for that policy may itself suffice to provide a guide for the exercise of discretionary powers which the Act confers. This is now, I think, well settled : see for example *Hari Shankar Bagla v. State of Madhya Pradesh*<sup>3</sup> : *A.T.K. Musaliar v. M. Venkatachalam Potti*<sup>4</sup> The U.P. Municipalities Act, 1916 is a consolidating Act and replaces the North Western Province and Oudh Municipalities Act, 1900 the purpose of which was to make better provision for the organization and administration of municipalities, obviously for the benefit of the residents within municipal areas. The Act imposes on a municipal board the duty to make provision for numerous matters of general public interest (S. 7) and also confers upon it wide discretionary powers, including inter alia, the laying out of new public streets and acquiring land for that purpose, the construction, establishment and maintenance of public parks, libraries, orphanages and other works of public utility and the reclaiming of unhealthy localities (S. 8). The provisions of the Act with regard to taxation were in my opinion designed to enable a municipal Board to achieve the purpose for which it was created; and it is therefore in my judgment legitimate to conclude that the power vested in the Board to select part of the municipality within which to levy a tax is not an arbitrary power but one which is to be controlled by the purpose which is intended to be achieved by the Act itself. In *Pannalal Binjrai v. Union of India*<sup>5</sup> the validity of Section 5(7A) of the Indian Income-tax Act, which empowered the Commissioner of Income Tax and the Central Board of Revenue to transfer a case from one Income-tax Officer to another, was challenged on the ground that the power of transfer vested in these authorities was a naked and arbitrary power unguided and uncontrolled by any rules. That contention was rejected by Bhagwati, J., who, speaking on behalf of the Court, said at page 407 :

"It has to be remembered that the purpose of the Act is to levy income tax, assess and collect the same...It follows, therefore, that all the provisions contained in the Act have been designed with the object of achieving that purpose....."

and at page 410

"It is, therefore, clear that the power which is vested in the Commissioner of Income-tax

or the Central Board of Revenue, as the case may be, under Section 5(7A) of the Act is not a naked and arbitrary power, unfettered, unguided or uncontrolled so as to enable the authority to pick and choose one asses-see out of those similarly circumstanced thus subjecting him to discriminatory treatment as compared with others who fall within the same category. The power is guided and controlled by the purpose which is to be achieved by the Act itself, viz., the charge of income-tax the assessment and collection thereof, and is to be exercised for the more convenient and efficient collection of the tax".

<sup>3</sup> AIR 1954 SC 465    <sup>5</sup> AIR 1957 SC 397 : 1957 SCR 233

<sup>4</sup> AIR 1956 SC246

7. The exercise by the Board of the powers vested in it under Sections 7 and 8 of the Act will not necessarily benefit the residents in different parts of the municipality to the same extent; the reclamation of an unhealthy locality, the construction of a sewage system, the laying out of new streets or the construction of a public park, for example, may directly benefit only those residents living in a particular locality, and prima facie it appears unfair that the cost involved in these undertakings should necessarily be borne by all the residents of the municipality. That would be the consequence if the law prohibits a municipal board from imposing a tax in a part only of the municipality. As pointed out in *Hagar v. Reclamation*<sup>6</sup>

"There would often be manifest injustice in subjecting the whole property of the city...  
....to taxation for an improvement of a local character".

8. I am of opinion that if a municipal board decides to impose a tax on the annual value of buildings it is not under an obligation to impose that tax on every building within municipal limits or at the same rate on ail the buildings, but every differentiation to be valid must be founded on a classification which passes the two tests laid down in Budhan Choudhary's case AIR 1955 Supreme Court 191.

9. Learned counsel for the Board has however contended that the Board has a right to select a taxing area within municipal limits and that, provided the tax is imposed equally on all persons resident in that area, no question of discrimination would arise which would attract the provisions of Article 14. He has cited no Indian authority in support of this proposition but has relied on passages to be found in the books on American constitutional law, and in particular on two passages in Willis on Constitutional Law to be found at pages 587 and 589. In the former of these passages the learned author says :

"The Supreme Court permits a wider discretion in classification under the power of taxation, if possible, that it does under the police power. One reason for this undoubtedly is the urgent need for revenue by the various governmental agencies. A state does not have to tax everything in order to tax something. It is allowed to pick and choose districts, objects, persons methods, and even rates for taxation if it does so reasonably".

and at page 589 the author says :

"The equality clause does not forbid geographical classification. A state, if it desires, may levy taxes over the entire state and thus make the state the unit; but "if the state desires, it may establish taxing districts or other sub-divisions, like a city or territory within a city. In such cases all that is required is the same basis of classification within the district of subdivision. Inequality of apportionment between the state as a whole and such district or sub-division will not invalidate the tax". The principal authorities cited by the learned author in support of these statements are *Forsyth v. Hammond*<sup>7</sup> *Fall-brook Irrigation District v. Bradley*<sup>8</sup> *Myles Salt Co. Ltd v. Iberia and St. M Drainage*<sup>9</sup>

<sup>6</sup> District No. 108 (1884) 111 US 701 : 28 Lad Ed 569    <sup>8</sup>(1896) 164 US 112 : 41 Law Ed 369

<sup>7</sup>(1897) 166 US 506 : 41 Law Ed 1095                      <sup>9</sup>Dist. (1916) 239 US 478: 60 Law Ed 392

and *Kelly v. Pittsburg*<sup>10</sup>

I do not think that the passages cited by learned counsel or the authorities referred to therein really support the proposition for which learned counsel contends. The learned author, in my opinion, says no more than that as regards matters of taxation. The U.S. Supreme Court permits a very wide degree of classification but nevertheless there must be a classification whether it be as regards districts, objects, persons, methods or the like, and that that classification must be reasonable. None of the cases goes so far as even to suggest that the authority upon whom the state has conferred the power of taxation can itself discriminate between persons subject to taxation on a geographical basis- unless that basis can be justified as a reasonable classification.

10. I would accordingly answer the first part of the reference in the negative, and the second part by saying that the particular house tax imposed by the Municipal Board, Bareilly, on the plaintiff in respect of his building in Ward No. 2 can be void only if it cannot be justified by the Board on the ground already stated by us. Whether it can be so justified will depend on evidence which is still to be produced in the case.

**R. Dayal, J.**

11. I have had the advantage of reading the judgment of My Lord the Chief Justice and with respect I do not agree that the U.P. Municipalities Act, 1916, (hereinafter called the Act) provides the requisite guide for the exercise of the discretionary power vested in the Municipal Board to impose any of the taxes motioned in Sub-Section (1) of Section 128 of the Act in any part of the Municipality.

12. Section 128 itself does not lay down any guide. It just provides that a Board may impose in the whole or any part of the Municipality the taxes mentioned therein. On what principle the Board is to select a part of the Municipality for the imposition of a tax the section is silent. It is contended for the appellant that the requested guide for such selection is to be found in the purpose of the Act, which controls the exercise of this power to impose a tax in any part of the Municipality, that the purpose of taxation is to provide funds for the Municipal Board so that it be in a position to discharge its various duties mentioned in Sections 7 and 8 of the Act, that the

impugned tax on a portion of the Municipality was imposed for this purpose, and that it would be a valid tax unless it be established by the respondent that there exists no good reason for the separate classification of his ward for the purpose of this tax. Reliance is placed on the case of 1957 SCR 233 : AIR 1957 Supreme Court 397 which in my opinion, is distinguishable and does not cover the present case.

13. In Parma Lal Binjraj's case AIR 1957 Supreme Court 397, the virus of Section 5(7A) of the Indian Income Tax Act were questioned. This section just authorized the Commissioner of Income Tax to transfer any case from one Income Tax Officer subordinate to him to another, and authorized the Central Board of Revenue to transfer any case from one Income Tax Officer to another. Such transfers could be made at any stage. Section 64 of the Income Tax Act provided for the assessment to

<sup>10</sup>(1882) 104 US 578 : 26 Law Ed 658

be made by the Income Tax Officer of the area in which the place of business was situate. These provisions had been construed to confer a right 611 the assessee; in earlier decisions.

14. The contention for the petitioner therefore was that Section 5(7A) invested the Commissioner of Income Tax and the Central Board of Revenue with, naked and arbitrary power to transfer any case from one Income Tax Officer to another without any limitation in point of time, a power which was un-guided and uncontrolled and was discriminatory in its nature and that it was open to the Commissioner of Income Tax or the Central Board of Revenue to pick out the case of one assessee from those of others in a like situation and transfer the same from one State to another or from one end of India to the other without specifying any object and without giving any reason, thus subjecting the particular assessee to discriminatory treatment whereas the other assessees similarly situated with him would continue to be assessed at the places where they resided or carried oil business. It was contended that the discrimination involved was substantial in character and therefore infringed the fundamental right enshrined in Article 14 of the Constitution.

15. The reply for the State was (i) that the provisions contained in Section 5(7A) of the Act was a measure of administrative convenience enacted with a view to more conveniently and effectively deal with the cases of the assessee; (ii) that the assessee was not subject to any discriminatory procedure in the matter of his assessment on account of the transfer of his case from one Income Tax Officer to another; (iii) that the right, if any, conferred upon the assessee under Section 64(1) and (2) of the Act was not an absolute right but was circumscribed by the exigencies of the tax collection; (iv) that the power which was thus vested was a discretionary power and it was not necessarily discriminatory in its nature and that abuse of power was not to be easily assumed where discretion was vested in such high officials of the State. Even if abuse of power sometimes occurred the validity of the provision cannot be contested because of such apprehension.

16. With respect to the right of the assessee to be assessed by the Income Tax Officer of a certain

place Bhagwati, J. observed at p. 252 (of SCR) :

"This right, however, according to the authorities above referred to, is hedged in with the limitation that it has to yield to the exigencies of tax collection.

The position, therefore, is "that the determination of the question whether a particular Income-tax Officer should assess the case of the assessee depends on (1) the convenience of the assessee as posited in Section 64(1) and (2) of the Act, and (2) the exigencies of tax collection and it would be open to the Commissioner of Income-tax and the Central Board of Revenue who are the highest amongst the Income-tax Authorities under the Act to transfer the case of a particular assessee from the Income-tax Officer of the area within which he resides or carries on business to any other Income-tax Officer if the exigencies of tax collection warrant the same".

17. He further observed :

"that the infringement of such right by the order of transfer under Section 5(7A) of the Act is not a material infringement. It is only a deviation of a minor character from the general standard and does not necessarily involve a denial of equal rights for the simple reason that even after such transfer the case is dealt with under the normal procedure which is prescribed in the Act."

and finally observed at p. 253 (of SCR) :

"There is thus no differential treatment and no scope for the argument that the particular assessee is discriminated against with reference to others "similarly situated".

He again observed at p. 280 (of SCR) :

"There is no fundamental right in an assessee to be assessed in a particular area or locality. Even considered in the context of 64(1) and (2) of the Act this right which is conferred upon the assessee to be assessed in a particular area or locality is not an absolute right but is subject to the exigencies of tax collection. The difference, if any, created in the position of the assessee qua others who continue to be assessed by the Income-tax Officer of the area in which they reside or carry on business is not a material difference but a minor deviation from the general standard and would, therefore, not amount to the denial of equal rights".

18. Dealing with the contention that the power vested in the Commissioner of Income Tax and the Central Board of Revenue under Section 5(7A) was a naked and arbitrary power unguided and uncontrolled by any rules Bhagwati, J. said at p. 255 (of SCR) :

"It has to be remembered that the purpose of the Act is to levy income tax, assess and

collect the same. The preamble of the Act does not say so in terms, it being an Act to consolidate and amend the law relating to income-tax and super-tax "but that is the purpose of the Act as disclosed in the preamble of the First Indian Income-tax Act of 1886 (Act II of 1886). It follows, therefore, that all the provisions contained in the Act have been designed with the object of achieving that purpose".

19. It is to be noted that the purpose of the Act is not gathered from the preamble of the Indian Income-tax Act of 1922 which is "To consolidate and amend the law relating to income tax and super-tax", but from the preamble of the First Indian Income-tax Act of 1886 which is "An Act for imposing a tax on income. ....

20. The preamble of the U.P. Municipalities Act (2 of 1916) is to consolidate and amend the law relating to Municipalities and that of the North Western Provinces and Oudh Municipalities Act (1 of 1900) is "to make better, provision for the organisation and administration of municipalities".

21. After mentioning certain provisions of the Act he observed at page 236 (of SCR) .

"There is, therefore, considerable force in the contention which has been urged on behalf of the State that Section 5(7A) is a provision for administrative convenience".

This power is to be exercised in a manner which is not discriminatory. Bhagwati, J. observed :

"No rules or directions having been laid down in regard to the exercise of that power in particular cases, the appropriate authority has to determine what are the proper cases in which such power should be exercised having regard to the object of the Act and the ends to be achieved .....

In such cases the Commissioner of Income-tax or the Central Board of Revenue, as the case may be, has to exercise its discretion with due regard to the exigencies of tax collection. Even though there may be a common attribute between the assessee whose case is thus transferred and the assessee who continues to be assessed by the Income-tax Officer of the area within which they reside or can do business, the other attributes would not be common..... Even if there is a possibility of discriminatory treatment of persons falling within the same group or category, such possibility cannot "necessarily invalidate the piece of legislation."

It was further observed at p. 25Y (of SCR) .

"This power is discretionary and not necessarily discriminatory and abuse of power cannot be easily assumed where the discretion is vested in such high officials."

Mr. Justice Bhagwati further observed at p. 261 (of SCR) :

"It is, therefore, clear that the power which is vested in the Commissioner of Income-tax or the Central Board of Revenue as the case may be, under Section 5(7A) of the Act is not a naked and arbitrary power, unfettered, unguided or uncontrolled so as to enable the authority to pick and choose one assessee out of those similarly circumstanced thus subjecting him to discriminatory treatment as compared with others who fall within the same category. The power is guided and controlled by the purpose which is to be achieved by the Act itself, viz., the charge of income-tax, the assessment and collection thereof, and is to be exercised for the more convenient and efficient collection of the tax."

Finally he observed :

"There is a broad distinction between discretion which has to be exercised with regard to a fundamental right guaranteed by the Constitution and some other right which is given by the statute. If the statute deals with a right which is not fundamental in character the statute can take it away but a fundamental right the statute cannot take away. Where, for example, a discretion is given in the matter of issuing licenses for carrying on trade, profession or business or where restrictions are imposed on freedom of speech, etc., by the imposition of censorship, the discretion must be controlled by clear rules so as to come within the category of reasonable restrictions.

Discretion of that nature must be differentiated from discretion in respect of matters not involving fundamental rights such as transfers of cases..... In other words, the discretion vested has to be looked at from two points of view, viz., (1) does it admit of the possibility of any real and substantial discrimination, and (2) does it impinge on a fundamental right guaranteed by the Constitution ? Article 14 can be invoked only when both these conditions are satisfied. Applying this test, it is clear that the discretion which is vested in the Commissioner of Income-tax or the Central Board of Revenue, as the case may be, under Section 5(7A) is not at all discriminatory."

22. In this case, the right conferred on the petitioner by Section 64, Income-tax Act was not a fundamental right, was subject to the exigencies of tax collection and had not been materially infringed. There was no likelihood of any two cases under that Act to be exactly similar.

23. It was in connection with the alleged discriminatory administrative power vested in an authority with respect to a matter affecting a right conferred upon a person under a particular statute that it was considered that the power was guided and controlled by the purpose which is to be achieved by the Act. It is not to be so when the discretion vested impinges on a fundamental right guaranteed by the Constitution. In that case, the discretion must be controlled by clear rules so as to come within the category of reasonable restrictions.

24. In the present case the power vested in the Board to impose a tax in a part of the Municipality

affected a fundamental right to hold and dispose of property and had to be controlled by clear provisions in the Act. Thus to impose a tax is not an administrative power and even if it be such a power it is not at par with the power to transfer a case of assessment under the Income-tax Act. It cannot be in every case that the validity of a provision of an Act will depend on the consideration that the provision is enacted to achieve the purpose of the Act and that the purpose of the Act is to be gathered from the provisions of the Act or its preamble. Every Act must be enacted with a definite purpose and every provision of an Act must be enacted in order to achieve that purpose. If these were the sole considerations for considering a certain provision to be valid, I hardly imagine any case in which a provision can be said to be such that the power it confers is a naked and arbitrary power unfettered by any rule of guidance for the exercise of that power. I am, therefore, of opinion that Pannalal Binjraj's case AIR 1957 Supreme Court 397 is not apposite to the present case and cannot be a useful guide in determining the question before us.

25. Further the purpose of the Municipalities Act as gathered from the preamble of the North-Western Provinces and Oudh Municipalities Act, 1900 is to make better provision for the organization and administration of the Municipalities in the State. This purpose hardly gives any guide as to how the Taxing powers are to be exercised.

Sections 7 and 8 of the Municipalities Act lay down the duties and discretionary functions of the Municipal Board respectively. To discharge its functions and duties the Board must raise funds. For this purpose Section 128 vests it with the taxing power. All taxes mentioned in that section except the taxes mentioned in clauses (x), (xi) and (xii) of Sub-Section (1) have to meet the general expenses of the Board. The taxes, that is, water tax, scavenging tax and the tax for cleansing of latrines and privies, mentioned in clauses (x), (xi) and (xii) are to be imposed solely with the object of defraying the expenses connected with water supply, with the scavenging or the cleansing of latrines and privies respectively. I do not find any guidance, from the purpose and the nature of duties and functions of the Municipal Board and its need to raise money, in the matter of the Board's deciding as to whether one of the general taxes is to be levied in the whole of the Municipality or in any part of it. It would be in the interest of raising the funds and thus consistent with the object of providing funds to the Board that the incidence of a tax be widespread and be not restricted to any particular locality.

26. I can imagine circumstances which may possibly justify imposing a particular tax on a particular part of the Municipality. In general such circumstances would be when the tax is imposed to meet the specific costs, initial or recurring, of some work which benefits that particular portion of the Municipality alone. The Legislature has to say in the Act that a tax can be imposed on a part of the Municipality in such and such circumstances. This the Legislature failed to do with respect to the provision authorizing the Board to impose a tax on any part of the Municipality. It is within the unfettered discretion of the Municipality to impose any of the taxes mentioned in sub-section (1) of Section 128 in any part of the Municipality. This provision therefore comes within category (iii) of the five categories mentioned in paragraph 12 in the case of AIR 1958 Supreme Court 538 which is :

"A statute may not make any classification of the persons or things for the purpose of applying its provisions but may leave it to the discretion of the Government to select and classify persons or things to whom its provisions are to apply. In determining the question of the validity or otherwise of such a statute the Court will not strike down the law out of hand only because no classification appears on its face or because a discretion is given to the Government to make the selection or classification but will go on to examine and ascertain if the statute has laid down any principle or policy for the guidance of the exercise of discretion by the Government in the matter of the selection or classification. After such scrutiny the Court will strike down the statute if it does not lay down any principle or policy for guiding the exercise of discretion by the Government in the matter of selection or classification, on the ground that the statute provides for the delegation of arbitrary and uncontrolled power to the Government so as to enable it to discriminate between persons or things similarly situated and that, therefore, the discrimination is inherent in the statute itself. In such a case the Court will strike down both the law as well as the executive action taken under such law."

The Municipalities Act does not make any classification and leaves it to the discretion of the Municipality to select any part or any portion of the Municipality for the purpose of imposing any tax. No principle or policy for guiding the exercise of this discretion in the matter of selecting that portion of the Municipality is laid down in the Municipalities Act. The statute itself therefore provides the delegation of arbitrary and uncontrolled power to the Board so as to enable it to discriminate between persons or things similarly situated. It follows that the discrimination is inherent in the statute itself and that therefore this provision of Section 128(1) vesting the Board with power to impose any tax in any part of the Municipality is to be struck down as discriminatory and violative of the fundamental right conferred by Article 14.

27. It is next contended for the appellant that even if the provision in Section 128 of the Act empowering a Municipal Board to impose a tax on any part of the Municipality be void, the Municipality can still impose a tax on a portion of the Municipality provided it could be justified on the basis of reasonable classification in the exercise of its power to impose the tax in the Municipality. The contention would have had force if the taxing provision had provided that the Board could impose the taxes in a Municipality. In that case there would not have been any particular restriction on the power of the Board with respect to the imposition of the tax. In the exercise of its power to impose a tax it could impose it within the entire Municipality or within a portion of it on the basis of reasonable classification. The relevant portion of Sub-Section (1) of Section 128 of the Municipalities Act is :

"Subject to any general rules or special orders of the State Government in this behalf, the taxes which a board may impose in the whole or any part of a municipality are."

In view of what I have said above about the power to impose a tax in any part of the Municipality to be void, the valid portion in Sub-Section (1) of Section 128 would be

"subject to any general rules or special orders of the State Government in this behalf, the taxes which a board may impose in the whole Municipality are."

There is thus a limitation on the power of a Board to impose a tax and the limitation is that it must be imposed within the whole municipality. On account of the voidness of the expression "or any part of Municipality" in Sub-Section (1) of Section 128 of the Act the word 'whole' too does not deserve to be deleted or struck down. Article 13 of the Constitution provides that a law shall be void to the extent of its inconsistency with the provisions of part III of the Constitution. The provision enacted in sub-section (1) of Section 128 of the Act is therefore void to the extent that it provides for the imposition of a tax by the Board in any part of the Municipality. It is not void in so far as it empowers the Board to impose a tax in the whole of a Municipality. I therefore hold that the Board cannot impose a tax on a portion of the Municipality on the basis of reasonable classification when sub-section (1) of Section 128 provides for the imposition of a tax in the whole of a Municipality.

28. My answer to the question referred to would be that Section 128 of the Municipalities Act is void in so far as it authorizes a Municipal Board to impose certain taxes mentioned in it on any part of the Municipality and that the house tax imposed upon the plaintiff in respect of his building in Ward No. 2 in pursuance of the power given under Section 128(1) is invalid and ultra vires of the Municipal Board, Bareilly, due to Article 13 of the Constitution.

**Srivastava, J.**

29. I am grateful to my Lord the Chief Justice and to my brother Dayal for their making available to me the judgments which they have prepared in this reference. I am in respectful agreement with the view taken by the former.

30. It is true that under Section 128(1) of the U.P. Municipalities Act it has been left to the discretion of the Municipal Board to determine whether a tax is to be imposed on the whole or only a part of the area over which it has jurisdiction. But on that account alone the provision cannot be struck down as discriminatory. According to my brother Dayal, the Legislature should have itself provided in the Act "that a tax can be imposed on a part of the Municipality in such and such circumstances." The circumstances in which a tax could be imposed on a part of the Municipal area only could however be infinite and from the very nature of things all of them could not have been anticipated. The Legislature therefore appears to have advisedly left it to individual Municipal Boards to decide over which area a tax is to be imposed. It was not necessary that the principles to guide the exercise of the discretion should have been mentioned in the Act itself. Ever since the decision in the case of AIR 1954 Supreme Court 465, a decision which has been followed in several subsequent cases including AIR 1956 Supreme Court 246,

*Inder Singh v. State of Rajasthan*<sup>11</sup> and *Virendra v. State of Punjab AIR 1957 Supreme Court 896* it has been taken to be settled law that the policy underlying an Act may itself provide a guide for the exercise of the discretion which the Legislature vests under the Act in a particular authority. As my Lord the Chief Justice has pointed out, the policy underlying the Act, the purposes for which Municipal Boards have been created and the duties which they have to perform really furnish the necessary guide. The discretion given cannot therefore be said to be entirely unfettered. It may be that the decision to impose a particular tax in a particular area may be open to the objection that it is discriminatory and the classification on which it is based is not reasonable. In that case that particular decision may be liable to be challenged, but on that account Section 128(1) itself cannot be held to be void.

31. I therefore agree that the reference should be answered in the manner proposed by my Lord the Chief Justice

BY THE COURT

32. We answer the first part of the reference in the negative, and the second part by saying that the particular house tax imposed by the Municipal Board, Bareilly, on the plaintiff in respect of his building in Ward No. 2 can be void only if it cannot be justified by the Board on the ground already stated by us. Whether it can be so justified will depend on evidence which is still to be produced in the case.

Answer accordingly.

<sup>11</sup> AIR 1957 SC 510