ALLAHABAD HIGH COURT

Lala Jagdish Prasad

Vs.

Municipal Board

Civil Misc. Writ No. 2451 of 1957

(S.N. Dwivedi, J.)

26.08.1960

ORDER

S.N. Dwivedi, J.

1. These petitions, which proceed on similar facts and questions of law, are being disposed of by a common judgment.

2. The petitioners are owners of lands and buildings situate within the municipal limits of Saharanpur. They are required by Saharanpur Municipal Board (hereinafter called the Board) to pay various sums due from them as water-tax on their lands and buildings, and they seek to challenge the legality of the municipal demand on a number of grounds. The demand is made at the rate of 10 per cent on the annual valuation of lands and buildings.

3. The Board imposed water-tax on lands and buildings with effect from January 1, 1957. It appears from paragraph 17 of the counter-affidavit of Sri Anand Prakash Mittal that the assessments for the period between January 1 and March 31, 1957 were made On the basis of the quinquennial assessment list of buildings and lands ending on March 31, 1957, while the assessments for the financial year 1957-58 were made on the basis of the assessment list of buildings and lands for the quinquennial period beginning from April 1, 1957. It is further said in the counter-affidavit that the two assessment lists were validly prepared in accordance with the material provisions of law. No water-tax assessment list prepared, but Sections 142 and 143 of the U.P. Municipalities Act (hereinbelow called the Act) do not require the Board to do so.

4. Clause (f) of Sub-Section (1) of Section 128 of the Act empowers the Board to impose a tax on the annual valuation of buildings or lands. Clause (s) thereof provides for the imposition of water-tax on the annual valuation of buildings or lands. Land and building tax (this nomenclature is coined by me) as well as water-tax are thus both levied on the annual valuation of buildings or

lands. Section 140 defines the annual valuation of lands and building. Section 141 (1) reads :

> "When a tax on buildings or lands or both is imposed, the board shall cause an assessment list of all buildings or lands or both in the municipality to be prepared, containing -
> (a) the name of the street or mohalla in which the property is situated;
> (b) the designation of the property, either by name or by number sufficient for identification -
> (c) the names of the owner and occupier if known;
> (d) the annual letting value or other particulars determining the annual value; and
> (e) the amount of the tax assessed thereon. Section 142 requires the Board to publish notice of the place where the assessment list or copy thereof, when prepared, may be inspected, and confers a right on owners and occupiers of lands and buildings and their agents to inspect the list and to make extracts therefrom without charge. Section 143 (1) requires the Board to give notice of a date, not less than one month after the publication of the assessment list, when it will proceed to consider the valuation and the assessments entered therein. The Board is further enjoined, in all cases in which any property is for the first time assessed, to give notice of the valuation and assessment to the owner or occupier of the property. Sub-Section (2) of Section 143 needs to be materially quoted :
> "All objections to valuations and assessments shall be made to the board.....by application in writing stating the grounds on which the valuation and assessment are disputed..." The Board will, after giving the objectors an opportunity of being heard, investigate and dispose of the objections. After objections have been disposed of and necessary amendments have been incorporated in it, the assessment list shall, as provided by Section 144, be authenticated by the signature of the President or the authority designated in the section.

5. Clause (b) of Section 146, which is important, needs now to be set out :

> "An entry in an assessment list shall be conclusive proof .....
> (b) for the purpose of assessing any other municipal tax, of the annual value of any building or land during the said period."

The expression in Sub-Section (1) of Section 141 "a tax on buildings or lands" refers, to put it in my own words, to the land and building tax and not to the water-tax, and consequently the assessment list, required to be prepared under that section, of all buildings and lands is the assessment list for the purpose of assessing tax on lands and buildings under clause (i) of Sub-Section (1) of Section 128. Section 141 does not, in my opinion, require the Board to prepare an assessment list in regard to water-tax.
Having regard to the circumstance that water-tax is also assessed on annual valuation of lands and buildings, clause (b) of Section 146 and Sub-Section (2) of Sea 143 would also support my view. Since the assessment list of buildings and lands, prepared for assessing-tax on buildings

and lands, is conclusive proof, for the purpose of assessing water-tax of the annual value of any building or land entered therein, the entry regarding the annual value of any building or land in the list cannot be disputed under Sub-Section (2) of Section 143, and there is no sense in requiring the Board to prepare and publish an assessment list in regard to water-tax. The annual value of any building or land being definite and the rate of water-tax which is 10 per cent on the annual value of buildings or lands in this case, being certain, it is a mere matter of arithmetic to calculate the amount of water-tax that would be payable by the owner or occupier of a particular building or laud. Accordingly, apart from mere slips in calculation (which may be set right on appeal under Section 160), there can be no basic challenge to the amount assessed as water tax. These considerations lead me to the conclusion that Sections 142 and 143 do not require the Board to prepare an. assessment list in regard to water-tax. The first contention of the petitioners, therefore, fails.

6. It is then contended that since persons, who were not using water supplied by the Board's water-works, were also assessed to water-tax, the imposition and assessment of water-tax by the Board on the petitioners is invalid. It is admitted that the petitioners' affidavits do not show that they were some of the persons who were not using during the material time water supplied by the Board's water-works. They have accordingly no locus standi to challenge the imposition and assessment of water-tax on the ground that some other persons, who did not take water from the water-works, were required to pay water-tax. They have also not taken this ground in their petitions. For these two reasons I am not inclined to permit the petitioners to raise this objection
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7. It is next contended that since the water-tax has been imposed in contravention of the provisions of clause (b) of Section 129 of the Act, the assessments of water-tax on the petitioners are illegal. It is complained that the water-tax has not been imposed solely with the object of defraying the expenses connected with the construction, maintenance, extension or improvement of municipal water-works. The contention of the petitioners is liable to fail for two reasons. Section 131 provides that when a Board desires to impose a tax, it shall by special resolution, frame proposals and rules in regard to it and publish them in the prescribed manner for public information. Section 132 gives a right to any inhabitant of the municipality to submit, within a fortnight from the publication of the proposals and the rules, to the Board an objection in writing to all or any of the proposals and rules. The Board is required to consider the objections and pass orders thereon by special resolution. It appears from paragraph 3 of the counter-affidavit of Sri Anand Prakash Mittal that the Board published proposals and the rules regarding water-tax in September 1955. The inhabitants of the municipality were invited to raise objections to the proposals and rules within 15 days of the publication. Paragraph 4 of the counter-affidavit stated that only six persons raised objections, three of them being filed beyond time. Paragraph 6 of the counter-affidavit stated that the objections mainly questioned the right of the Board to levy water-tax on the ground that the water-works scheme of the municipality was financed by Government in the Second Five Year Plan. The objections were rejected by the Administrator of the Board by his order dated 23rd February 1956. It does not clearly appear from the affidavits of

the petitioners that they had objected to the imposition of water-tax on the ground that it was imposed not solely with the object of defraying expenses connected with the construction, maintenance etc., of municipal water-works but for increasing the municipal revenues. The issue is essentially one of fact, and I would not permit the petitioners to raise the objection for the first time in the wild proceedings.

8. Secondly, it would be presumed that the Board has not transgressed its statutory powers and has imposed water-tax in conformity with the provisions of Section 129 (b) solely with the object of defraying expenses connected with the construction, maintenance, etc. of municipal water-works, and the onus of showing the contrary rests heavily on the petitioners. The counter-affidavit of Sri Anand Prakash Mittal denies that the water-tax has been imposed by the Board not for the purposes specified in clause (b) of Section 129 but for the purpose of enhancing its revenue.
The counter-affidavit gives facts and figures to refute the petitioners assertion. It appears that the Government sanctioned a loan of Rs. 39,50,000/- to the Board for its water-works scheme repayable in thirty equal installments with 4? per cent compound interest. The Board has so far borrowed Rs. 29,50,000/-, and the amount of annual installment on a loan of Rs. 39,50,000/- repayable in thirty years with 4? per cent compound interest would be Rs. 2,34,347/-. Water mains have been laid in only three fourth, portion of the city, and even there 40 per cent of water-posts are yet to be erected. In hardly 10 per cent of the houses water mains have been requisitioned and laid. Even though the water-works scheme has not gone in its full swing, the expenditure for the financial year 1957-53 on water pumping, water connection and water supply would, according to estimate, amount to Rs. 32,000/-. Paragraph 21 of the counter-affidavit gives the actual receipts of water tax and the establishment charges excluding collection charges for the period between January 1 and March 31, 1957 and between April, 1 and September 30, 1957. In the first period the first amount was Rs. 210/- and the second amount was Rs. 8608/- in the second period the corresponding figures were Rs. 3619/- and Rs. 10639/-. Paragraph 22 of the counter-affidavit states that in view of the said actual figures the estimated receipts of water-tax upon which the petitioners have relied, have been drastically reduced in the proposed revised budget in the financial year 1957-58. Alter carefully reading the affidavits of the petitioners and the counter-affidavit I am not satisfied that the petitioners have discharged the onus of proving that the Board has imposed water-tax not for the purposes specified in clause (b) or Section 129 but for the purpose of enhancing its revenue. This contention of the petitioners, therefore, also fails.

9. It is then urged on behalf of the petitioners that the provisions of Clause (x) of Section 128 (1) are beyond the legislative competence of the U.P. Legislature. It is pointed out that Entry 49 in List II of the Seventh Schedule to the Constitution cannot be read to include water-tax, and that there is no other entry in List II, which would enable the State Legislature to enact a law regarding levy of water-tax. One may agree that the subject of water-tax is not included in Entry 49, which deal with the topic of "Taxes on lands and .buildings." This entry perhaps deals with a

tax which may popularly be described as the land tax. But that does not conclude the matter. The U.P. Municipalities Act, of which clause (x) of Section 128 (1) is a part, was enacted in June, 1916 and was published in the Gazette under Section 81 of the Government of India Act, 1915 on June 24, 1916. The U.P. Legislature was then not a legislature of enumerated powers, and could, under Section 79 (1) of the constituting instrument, make laws for the peace and good Government of the province, and the entire Municipalities Act was then legitimately enacted by the U.P. Legislature in exercise of its powers under that provision. The impugned enactment was continued in force by Section 292 of the Government of India Act, 1935, and Section 18 (3) of the Indian Independence Act, 1947, and is even now in force by virtue of the provisions of Article 372 of the Constitution, and its constitutionality on the ground of want of power in the appropriate legislature to enact it is not open to challenge. (See *Sheo Shankar v. State of M.P*[1]*., Sagar Mal v. The State*[2]*, Binoy Bhusan v. State of Bihar*[3]*, Kanpur Oil Mills Harriesganj v. Judge, Sales Tax*[4]*, State v. Yash Pal*[5]*,* and *R.L. Aurora Ram Ditta Mai v. State of Uttar Pradesh*[6]*,*

10. It is then contended that the conjoint effect of Sub-Section (3) of Section 128, which provides that nothing in Sub-Section (1) thereof shall authorise the imposition of any tax which the State legislature has no power to impose in the State under the Constitution, and Article 277 of the Constitution is to render invalid the imposition in January 1957 of water-tax in Saharanpur municipality, because on that date the U.P. State legislature had no legislative power to impose the impugned levy in the State under the Constitution. I am quite clear that this contention also has no force. The State Legislature, as I would presently show, has power to impose the levy in question in the State. Entry 5 of list II in the Seventh Schedule to the Constitution empowers the State Legislature to legislate with respect to local government. The entry is very comprehensive, and I think a law with respect to the maintenance of a water-works by a municipality may be enacted under this entry by the State Legislature. Similarly entry 17 of List II in the Seventh Schedule empowers the State Legislature to legislate with respect to "water, that is to say, water supplies, irrigation and canals, drainage and embankment, water storage and water power subject to the provisions of entry 56 of List I." We are not concerned in this case with entry 56 of List I. It is clear from entry 17 that the State Legislature can legislate with respect to the subject-matter of water, which could include a provision for municipal water works for supplying water to the inhabitants of the municipality. Entry 66 of List II in the Seventh Schedule deals with the topic of "Fees in respect of any of the matters in this List, but not including fees taken in any court." From a conjoint reading of entries 5, 17 and 66 it would be clear beyond doubt that the U.P. Legislature was competent on the relevant date to enact a law with respect to fees in relation to water-supply by a municipality to its inhabitants. The pertinent question, therefore, is whether the water tax authorised by Section 128 (1)(x) is a fee within the meaning of that word in entry 66. If it appears that the subject-matter of clause (x) of Section 128 (1) is not fee but a tax, entry 6fi will not protect the imposition of water-tax by the Board in January 1957. If, on the other hand, it appears that the subject-matter of clause (x) of Section 128 (1) is fee, then I have no doubt that the imposition of water-tax by the Board in January 1957 would be valid. It is, therefore, now necessary to determine whether the imposition in question is a tax or fee. One filing should be

said at the outset. The imposition is no doubt described by clause (x) of Section 128 (1) as water-tax, but the nomenclature of an imposition alone is not decisive. One has to ascertain the true nature and character of the imposition. If in its true nature and character the imposition is a fee, then despite its nomenclature if cannot be held to be a tax.

11. The distinction between tax and fee has recently been pointed out by their

[1] AIR 1951 Nag 58 (80) (FB) 3 AIR 1954 Pat 346 [5] AIR 1957 Pun 91 (92)
[2] AIR 1951 All 816 (817) 4 AIR 1955 All 99 (104) [6] AIR 195S All 126 (131 and 132)

Lordships of the Supreme Court in The *Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshinindra Thirtha Swamiar*[7]*, Sri Jagannath Ramanuj Das v. State of Orissa*[8]*,* and *Rati Lal Pana Chand v. State of Bombay*[9]*,* In the first case, the levy was held to be a tax and not a fee, while, in the other cases, it was held to be a fee and not a tax. While pointing out that there was no generic difference between a tax and a fee and that both were different forms in which the taxing power of a State manifested itself, Mukerji, J. pointed out that a tax was imposed for public purposes to meet the general expenses of the State without reference to any special benefit to be conferred upon the payers of the tax, while, a fee was a payment for some special service rendered or some special work done for the benefit of those from whom payments are demanded, Mukerji, J. observed at page 1053 (of SCR) :

> "Two elements are thus essential in order that a payment may be regarded as a fee. In the first place, it must be levied in consideration of certain services which the individuals accepted either willingly or unwillingly. But this by itself is not enough to make the imposition a fee, if the payments demanded for rendering of such services are not set apart or specifically appropriated for that purpose but are merged in the general revenue of the State to be spent for general public purposes".

Having formulated the test his Lordship, at page 1054 (of SCR) , went on to observe :

> "Judged by this test, the contribution that is levied by Section 49 of the Orissa Act will have to be regarded as a fee and not a tax. The payment is demanded only for the purpose of meeting the expenses of the Commissioner and his office which is the machinery set up for duo administration o[the affairs of the religious institution, The collections made are not merged in the general public revenue and are not appropriated in the manner laid down for appropriation of expenses for other public purposes. They go to constitute the fund which is contemplated by See. 50 of the Act and this fund, to which also the Provincial Government contributes both by way of loan and grant, is specifically set apart for the rendering of services involved in carrying out the provisions of the Act. .... The fact that the amount of levy is graded according to the capacity of the payers though it gives it the appearance of an income tax, is not by any means a decisive test."

12. Mukerji, J., who delivered the judgment of the Supreme Court in the third case also,

reiterated the test already formulated by him in the second case. It was said by him that in fees there was always an element of quid pro quo which was absent in a tax and that there must be co-relation between the levy imposed and the expenses incurred by the State for the purpose of rendering services.
At page 1075 (of SCR) of the Report his Lordship observed,

> "But in order that the collections made by the Government can rank as fees, there must be co-relation between the levy imposed and the expenses incurred

[7]1954 S.C.R. 1005 [9]1954 SCR 1055
[8]1954 SCR 1046

> by the State for the purpose of rendering such services. This can be proved by showing that on the face of the legislative provision, itself, the collections are not merged in the general revenue but are set apart and appropriated for rendering these services.
> "Thus two elements are essential in order that a payment may be regarded as a fee. In the first place, it must be levied in consideration of certain services which the individuals accepted either willingly or unwillingly and in the second place, the amount collected must be car-marked to meet the expenses of rendering these services and must not go to the general revenue of the State to be spent for general public purposes."

At page 1076 (of SCR) it was further observed by him :

> "..... According to the concept of a modern State, it is not necessary that services should be rendered only at the request of particular people, it is enough that payments are demanded for rendering services which the State considers beneficial in the public interests and which the people have to accept whether they are willing or not."

In the light of the test formulated by him, Mukerji, J. held that Section 58 of the Bombay Trust Act, which imposed a levy of contribution upon public trust was intra vires the State Legislature, as it fell within entry 47 of list 3 in Schedule VII of the Constitution.

13. In the first case, however, Mukerji. J., while accepting the test set out above, held that Section 76 (1) of the Madras Hindu Religious and Charitable Endowments Act, 1951, which made a levy of contribution upon every religious institution, in the State for the services rendered by the Government and their Officers, was ultra vires the Madras Legislature, because, in this view, there was total absence of any co-relation between the expenses incurred by the Government and the amount raised by contribution under Section 76.

14. The instant case is, in my view, covered not by the first decision but by the subsequent two decisions of their Lordships of the Supreme Court. The water-tax is imposed upon the owners of lands and buildings within the Municipality for the water works service rendered by the Municipal Board. The tax is also co-related on the face of the legislative provision itself to the expenses incurred by the Municipality for purposes of rendering waterworks service. Clause (b)

of Section 129 expressly directs that the water-tax would be imposed solely with the object of defraying the expenses connected with construction, maintenance, extension or improvement of Municipal water-works, and that all monies derived there from would be expended solely on the aforesaid objects. The receipts of water tax are thus earmarked by the legislative provision for expenses in connection with the Municipal water-works service. By enjoining upon the Municipalities in plain language that the receipts should be expended solely on the water-works service, the Legislature has clearly manifested its intention that the receipts would not go to augment the general revenues of the Municipal Board but would be allocated by it, towards efficient maintenance of a water-works for the supply of water to the inhabitants of the Municipality. The Legislature has not itself fixed the rate of water-tax, but has left it to be determined by Municipalities and the State Government. This fact indicates that the Legislature intended that Municipalities and the State Government should be free to vary and adjust from time to time the rate of water-tax to the expenses required for maintaining an efficient water-works. This fact is, therefore, an evidence of the legislative intention that the rate of water-tax should, in fact, also bear co-relation with the expenses required for maintaining the water-works service. The idea of quid pro quo is, therefore, there.

15. In the first Supreme Court case at page 1041 (of SCR) : (at P. 295 of AIR) Mukherjee, J. made the remarks : The house tax has to be paid only by those who own houses, the land tax by those who possess lands, Municipal taxes or rates will fall on those who have properties within a Municipality. Persons, who do not have houses, lands or properties within Municipalities, would not have to pay those taxes, but nevertheless these impositions coma within the category of taxes and nobody can say that it is a choice of these people to own lands or houses or specified kinds of properties, so that there is no compulsion on them to pay taxes at all." These remarks were made by Mukerji, J. while discussing whether the element of compulsion or coerciveness was an exclusive characteristic of taxes or was also common to fees. These remarks should, I think, be read in the light of their context, and they do not appear to me to support the contention that the levy of water-tax under clause (s) of Sub-Section (1) of Section 128 read with clause (b) of Section 129 of the U.P. Municipalities Act is a tax and not a fee within the meaning of that expression in entry 66 of list II in Sch. VII of the Constitution.

16. I am therefore, of opinion that clause (x) of Sub-Section (1) of Section 128 of the Act is not ultra vires the U.P. Legislature even after the commencement of the Constitution. The provision in question is covered by items 5 and 17 read with item 68 of list II in Schedule VII of the Constitution.

17. The last argument of the petitioners assailed the constitutionality of a portion of Section 129, the pertinent part of which reads thus :

> "The imposition of a tax under clause (x) of Sub-Section (1) of Section 128 shall be subject to the following restrictions, namely,

(a) that the tax shall not be imposed .....

where the unit of assessment is a plot of land or a building as hereinafter defined, on any such plot or building of which no part is within a radius, to be fixed by rule in this behalf for each Municipality, from the nearest stand-pipe or other water-work whereat the water is made available to the public by the Board."

18. The contention was that the Legislature has abdicated to the State Government the essential legislative function of fixing by rule the radius, and this amounts to impermissible delegation of legislative power to the executive. I am unable to-agree to this contention for more than one reason. Firstly, I am of the view that the Legislature has not delegated to the State Government any essential legislative function. It has provided that a Municipality may levy a water-tax for maintaining water-works. It has also indicated the incidence of the tax. It has also defined in broad terms the standard of the water-tax, in that it is co-related with the expenses required for maintaining the water-works service. The power of the State Government to determine the radius cannot, therefore, be characterized as an essential legislative function in relation to the levy of water tax; it is, in my view, ancillary or subordinate to the main power of imposing water-tax. Clause (iii) of Sub-Section (1) of Section 228 obligates every Municipal Board, in which a water-tax is imposed, to supply, in all the chief streets in which mains have been laid, water to stand-pipes or pumps situated at such intervals as may be prescribed. The word 'prescribed' is defined in Section 2 (17)(1) of the Municipalities Act to mean prescribed by or under the Act or rules made there under. The State Government is, therefore, required to make rules fixing the distance at which stand-pipes or pumps would be fixed by the Municipal Board, which has imposed a water tax. The radius would accordingly be determined by the State Government having regard to the location of the stand-pipes or pumps. The distance of the radius would naturally vary according to the number of the stand-pipes or pumps within a Municipality, and the number of stand-pipes or pumps would vary according to the dynamic financial resources of a Municipality and the exigencies of the moment. The Legislature, while enacting clause (x) of Sub-Section (1) of Section 128 and clause (a) of Section 129, could not have foreseen and concealed the different and classic financial resources of Municipalities which existed at the time of the enactment of the Act. and which may be created thereafter. Naturally, therefore the Legislature contented itself with laying clown the policy and principles in broad and flexible terms, for an attempt to provide for the varying details in reference to water-tax might have become oppressive or might have absolutely tailed. (See *A.G. Hodge v. The Queen*[10]

, 19. It is also significant that the State Government's power to fix by rule the radius is not to be exercised in an insulated chamber but is made subject to the scrutiny of those who are required to pay water-tax. Section 131 (1) and (2) provides that when a Board desires to impose a water-tax, it shall, by special resolution frame proposals specifying the nature and the rate of the tax, the persons upon whom and the property upon which the tax would be imposed and any other matter referred to in Section 153, which the State requires by rules to be specified. Clause (f) of Section

153 provides that rule shall be made with respect to any other matter relating to taxes in respect of which the Act makes no provision or insufficient provision, and provision is, in the opinion, of the State Government necessary. Sub-Section (3) of Section 131 requires the Board to publish the proposals and rules framed under Section 131(1) and (2). Section 132(1) gives a right to an inhabitant of the Board to raise objections to ,ill or any of the proposals and rules framed under Section 131(1) and (2) and requires the Board to hear and consider the objections. When the Board, after considering the objections, has finally settled its proposals it shall submit them, along with the objections, to the appropriate authority which, in certain cases, would be the State Government and in other cases may be some other authority. Section 134(1) provides that, when the proposals have been sanctioned by the appropriate authority, the State Government, after taking into' consideration the draft rules submitted by the Board, shall make under Section 296 such rules in respect of the tax as for the time being it considers necessary. When the rules have been made, the order of sanction and a copy of the rules are sent to the Board, and thereafter the Board may, by special resolution, direct the imposition of the tax with effect from a date specified in the resolution. The resolution is then published in the official Gazette, as required by Section 135.

20. In the instant case, it appears from the counter-affidavit of Anand Prakash Mittal, Water Works Engineer, Municipal Board, Saharanpur, that the Saharanpur Municipal Beard had framed proposals and rules in regard to water-works as required by Section 131, and then it published those proposals and rules for public information, as required by Sub-Section (3) of Section 131. Rule 8 of the rules proposed fixing the radius as 600 ft. The petitioner had an opportunity under Section 132 of objecting to the radius proposed to be fixed by the Board. It does not appear from the facts on the record that the petitioners or any other inhabitant of the Board raised any objection to the limit of radius. It would thus appear that the determination of the limit of radius is on the face of the legislative provision subject to an important safeguard, namely, the negative right of the prospective tax payers of objecting to the proposed limit of radius fixed by the Board and to get it changed according to their wishes. No doubt, the chance of revision of the proposed radius limit will vary according to the magnitude of popular pressure and opposition to it. But what may be significant here is that the rule-making power in regard to the limit of radius is not unfettered and uncontrolled, but is made subject to the negative check of the persons who would he directly affected by it. This special feature (vide *Charles Russell v. Queen*[11], may, I think, be legitimately taken into consideration when deciding whether the impugned legislation amounts to delegated legislation.

21. The rule that essential legislative function cannot be delegated by the Legislature to any person appears to be subject to several exceptions. One of those exceptions is with reference to the delegation of powers to local self Governments. As to this it has been held that the giving by the Legislature of law-making powers with reference to local matters to subordinate local bodies being a time-hallowed Anglo-Saxon practice, and the right of local self Government being so fundamental to democratic Government, a Constitution should, in the absence of any express

prohibition to the contrary, be construed as permitting it. (See *W.H. Stoutenburgh v. W.J. Hennick*[12],)Foot-note to paragraph 1076 in Vol. 3 of the Constitutional Law of the United States by Willoughby, II Edition, 1929, cites the following Quotation from *State v. Noyes*[13], "It seems to be generally conceded that powers of local legislation may be granted to cities, towns, and other Municipal Corporations and it would require strong reasons to satisfy us that it could have been the design of the framers of our Constitution to take from the Legislature the power which has been exercised in Europe by Governments of all classes from the earliest history, and the exercise of which has probably done more to promote civilisation than all the other causes combined; which has been constantly exercised in every paid of our country from its earliest settlement, and which has raised up among us many of the most valuable institutions."

22. In *Ram Kishan v. State*[14], a Full Bench of our Court gave recognition to certain exceptions to the rule of non-delegation of essential

[10](1883) 9 A.C. 117 and In re Article 143, Constitution of India and Delhi Laws Act, 1912 etc. 1951 SCR 747 at pp. 798-99 : (AIR 1951 SC 332 at p. 347).
[11](1882) 7 A.C. 829 [12](1889) 32 Law ED 637 (638) [13]30 N.H. 279
[14] AIR 1951 All 181

legislative powers. At page 192 Wali Ullah, J., who gave the leading judgment, observed :

> "A limited power of legislation conferred on Municipalities and other local bodies which enjoy a certain measure of local self-Government has also been recognised as an exception to the general rule. Indeed such a delegation of power is not regarded ay a transfer of "general legislative power" but rather as the grant of the authority to prescribe local regulations. This is sanctified by immemorial practice both in England and in America".

23. In *Suryapal Singh v. U.P. Government*[15], another Full Bench, case, the Court gave recognition to this well-known exception to the rule of non-delegation of legislative powers. At page 697 the Court observed,

> "These considerations lead us to the further conclusion that if the power of delegation possessed by a Legislature is of a more limited character than we have stated earlier, there are nevertheless certain classes of legislation which a Legislature must have power to entrust to another authority. Such classes will include : ....
> (3) Power may be conferred on a local or other territorial authority to make rules and regulations for local self-Government or for other local purposes. This power is well

established and the necessity for it is obvious."

24. In view of these authorities, it must be held that the impugned provision in Section 129 regarding the fixation of the radius by rule does not amount to delegation of legislative power.

25. Since all the contentions of the petitioners have been repelled, there is no force in these petitions and they are accordingly dismissed. The petitioners in each case shall pay to the Municipal Board, Saharanpur, Rs. 201/- as costs.
Petitions dismissed.
[15] AIR 1951 All 674