

BOMBAY HIGH COURT

Cantonment Board Poona

Vs.

Western India Theatres Ltd

First Appeal No. 742 of 1951 with F. A. No. 953 of 1851, in Special Suit No. 89 of 1950

(Bavdekar and Chainani, JJ.)

10.02.1953

JUDGMENT

Bavdekar, J.

1. These two appeals arise from two companion suits filed by the plaintiffs who are lessees of certain theatres situated within the limits of Poona and of two theatres known as West-End and Capitol situated within, the limits of Poona Cantonment.

2. The question which comes up for determination in these two appeals is with regard to the legality of the tax which is levied by the two bodies, the Poona Municipality and the Cantonment Board of Poona, upon shows which are given at the Cinema Theatres situated within their local limits. It appears from the evidence that in the year 1920 the City Municipality was desirous of levying the tax which subsequently came to be known by the rules framed by the Municipality as a theatre tax. The tax was not, however, a tax which could be levied by the Municipality under the power conferred upon it under Section 59, Sub-Section (1), Clauses (i) to (x). It was a tax which could be levied by the Municipality if at all under the provisions of sub-Clause (xi) which at that time ran as follows :

"(xi) any other tax to the nature and object of which the approval of the Governor-in-Council shall have been obtained prior to the selection contemplated in sub-clause (i) of clause (a) of Section 60."

3. The Municipality thereupon approached the Governor-in-Council, and it is not in dispute that the Governor-in-Council first of all gave the approval necessary under Section 59(1), Clause (xi), for the Municipality to select the tax and after the proper procedure was followed ultimately the tax was approved by the Governor-in-Council in July 1920. The tax was at first levied at the rate of Rs. 2 per day, but subsequently in the year 1941 the Bombay Municipal Boroughs Act having

been passed in the meanwhile in 1925, the Municipality followed the procedure provided by the provisions of the 1925 Act for imposition of a new tax, and the sanction of the Provincial Government having been obtained, it started levying the tax at the increased rate of Re. 1 per show from 15th August 1941. The tax was similarly increased from 15th August 1943, to Rs. 5 per show.

4. In the meanwhile the Cantonment Board of Poona started levying a similar tax upon shows given at the cinemas located within the limits of the Poona. Cantonment from 31st May 1947. It purported to levy this tax under the power conferred upon it by Section 60 of the Cantonments Act, 1924. That section runs as follows :

"The Board may with the previous sanction of the Local Government impose, in any Cantonment any tax which, under any enactment for the time being in force may be imposed in any municipality in the province wherein the Cantonment is situated."

The Cantonment Board had, therefore, to point out a provision under which any Municipality situated anywhere within the Province of Bombay would be entitled to levy this tax and it pointed out the provisions of Section 73, Sub-Section (xiv), of the Bombay Municipal Boroughs Act, 1925 which ran as follows :

"any other tax (not being a toll on motor vehicles and trailers, save as provided by Section 14 of the Bombay Motor Vehicles Tax Act, 1935) which under the Government of India Act, 1933, the Provincial Legislature has power to impose in the Province".

The position, therefore, at the time when the Poona Cantonment Board started levying the tax, was that the Borough Municipalities situated within the Province of Bombay could levy any tax other than the one mentioned in the exception in Sub-Section (xiv) of Section 73 which could be levied by the Provincial Legislature itself in the Province. The Cantonment Board contended that such a tax could be levied by the said Legislature itself under the power conferred by the Government of India Act, 1935, Entry No. 50 of List II, Provincial Legislative Lists :

"Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling".

5. The appellants who challenged the legality of the taxes levied by the Poona Municipality and the Poona Cantonment Board in this manner contended in the first instance that the tax which was levied, whether by the Poona Municipality or by the Poona Cantonment Board, was not an entertainment tax within the meaning of that term as used in Entry No. 50 of List II of the taxes leviable by the Provincial Legislature under the Government of India Act. In the second instance, they contended that assuming that there was power in the Provincial Legislature and consequently in the Municipality and the Poona Cantonment Board to levy a tax on shows there was no power in them to levy an entertainment tax so as to throw any liability upon the exhibitor

instead of upon the persons who obtained admission to the entertainments upon payment for admission. So far as the tax has been levied upon cinemas situated within the local limits of the Poona Municipality, it was assumed that at the time when the tax was increased in 1941 and again in 1948 the Poona Municipality was acting under the power conferred upon it by Clause (xiv) of Section 73 of the Municipal Boroughs Act. The learned trial Judge who came to the conclusion that it was not permissible for the Municipality to levy the tax under that provision consequently went into the question as to whether it could not be held that the tax was a legal tax inasmuch as it was levied within the Municipal limits of Poona from before the enactment of the Bombay Municipal Boroughs Act of 1925. It is not in dispute that if the tax was levied properly before that enactment, then the Municipality could continue to levy the tax irrespective of any provisions of the Municipal Boroughs Act, 1925. What was contended, however, on behalf of the plaintiff was that the Municipality had, after coming into force of the Bombay Municipal Boroughs Act, 1925, no power to increase the tax which had been levied till then. At any rate, that is the argument which has been addressed to us in appeal.

6. The learned trial Judge came to the conclusion that the tax did not fall within the term tax on entertainments, which, the Provincial Legislature was entitled to levy in the Province. He has, therefore, so far as the Poona Cantonment is concerned, given the plaintiff a decree declaring that the tax was illegal and invalid and an injunction permanently restraining the Poona Cantonment Board from levying, collecting, or recovering the said tax from the plaintiff. The plaintiff had also further asked for a refund of the tax levied and the learned trial Judge has made a decree in favour of the plaintiff for a sum of Rs. 45,802 with interest thereon at 4 per cent, per annum from the date of the decree till realization.

7. So far as the suit against the Poona Municipality is concerned, the learned trial Judge came to the conclusion that the tax was 'intra vires' at the time when it was imposed for the first time in the year 1920. He held, however, that the tax could not be increased subsequently in the years 1941 or 1948. He has, therefore, made a decree in favor of the plaintiff in his suit filed against the Poona Municipality upon that basis.

Both the Poona Municipality and the Poona Cantonment Board have appealed.

8. The principal question in both the appeals is whether the tax which is levied by the Poona Municipality and the Poona Cantonment Board is a tax which, can be said to be a tax on entertainments. It is contended on behalf of the plaintiffs that the tax is not a tax upon entertainments because the Provincial Legislature was authorized by the second list to levy the tax on luxuries. It may or may not be a luxury for a person who goes to a cinema to see the show, but it is contended that it is not a luxury whatsoever for an exhibitor to exhibit the film at the show, and the tax consequently is not a tax on entertainments within the meaning of the word as used in entry No. 50 in the Provincial Legislative List (List II).

9. Now, the first thing to be noticed when interpreting the words "tax on entertainments" which occur in Entry No. 50 in the Provincial Legislative List is that the word "entertainments" there is used in the plural. It is impossible to accept a contention therefore that "entertainment" means the receipt of entertainment. The plural necessarily indicates that the word is used as a common noun and not an abstract one. The entertainment as a common noun must necessarily mean in the case of a cinema a show, in the case of a drama a performance, in the case of cricket a match. The learned counsel who appears on behalf of the plaintiffs in both the appeals being faced with this difficulty has raised another question before us. That is that even assuming that we come to the conclusion that the tax which has been levied in this case is a tax upon entertainments, there was no power in the Provincial Legislature and consequently in the Municipality or in the Cantonment Board to levy the tax from an exhibitor. The first point, however, to be determined obviously is as to where the incidence of the tax must fall if it is levied under item No. 50; and in our view the incidence in this case has necessarily got to fall upon a show. It cannot possibly be contended that it must fall upon entertainment as an abstract noun that is upon the receipt of entertainment.

10. Mr. Banaji who appears for the plaintiffs contends, however, that the meaning of the word "entertainments" is controlled so to speak by the word "luxuries" in item No. 50 of the Provincial Legislative List. He says that the reason why Parliament has thought fit to allow the Provincial Legislatures to levy the tax on entertainments obviously is that it regarded them as luxuries. Now, a show is not a luxury if we looked at it from the point of view of the person who exhibits the film. On the other hand, even though there may be two opinions possible upon the question, it is possible to hold that it is a luxury from the point of view of the person who obtains admission to it upon payment. Now, here again we can understand this argument in case it is made for the purpose of saying that even when the tax can be said to be a tax upon entertainments, the levy ought to be from the person who obtained an admission to the show and not from the exhibitor, for example, of a film. We are not prepared to accept the contention that the meaning of the word "entertainments" is controlled by the word "luxuries". In the first instance whenever anything is denoted by an enactment as inclusive of something, it is obvious that the provision is made because there are two views possible. In this case, for example, it is obvious that if Parliament thought fit, after mentioning that the Provincial Legislature has power to levy a tax on luxuries, to mention specifically that the word luxuries would include entertainments and amusements that was with a view to set at rest all controversy as to whether an entertainment in the sense of a show was or was not a luxury; it is not possible, therefore, to say that the meaning of the word "entertainments" should be controlled by the word "luxuries" which precedes it. In the second instance even apart from the fact that the word "entertainment" is used in plural, it is necessary to remember that the word is used in a statute of the Imperial Parliament and there was a tax leviable in regard to entertainments in England from before the enactment of the Government of India Act, 1935. The Finance (New Duties) Act, 1916, shows that in England the tax which was levied was known as an entertainments duty and the word entertainment was defined in the Act as confining ourselves to cinema, a show to which persons obtained admission. In the second

instance so far as we can see the tax was livable from the proprietor. It appears that the tax was livable in two ways :

(1) by placing a stamp upon the ticket of admission, and (2) in the second instance where admission was obtained to a show for example by a turnstile then the tax was livable with the help of the turnstile.

11. But in either case the tax was livable from the proprietor. It is obvious that in case the tax was levied by means of a stamp affixed to a ticket of admission, the stamp would have to be purchased in the first instance by the proprietor or the exhibitor of the cinema or the theatre at which it was shown. In the second instance there was no provision in the English Act throwing the liability for payment of the tax whoever paid it in the first instance, upon the person who paid for admission to any entertainment. In case admission was obtained by any person by any place of entertainment without complying with the provisions of the statute, the proprietor was guilty of an offence and so was the person who obtained admission, but the statute made the duty which had not been paid leviable only from the proprietor. It is obvious, therefore that in item No. 50 of the Provincial Legislative List the Imperial Parliament used the word "entertainments" in the sense of a show, an exhibition, performance and so on.

12. Then we come to the question whether, even if we come to the conclusion that this was a tax upon entertainments, there was anything which prevented the Provincial Legislature, when it was levying the provincial tax or a Municipality when it was levying a municipal tax from making the tax payable by the person who gave the show. Now, once the incidence was upon an entertainment, i.e., a show, we cannot understand what there is to compel the Legislature or compel the Municipality when it was levying the tax to make the tax livable from the person who obtains admission to the entertainment rather than from the person who gave it. A similar question arose in the case of - *Ralla Ram v. East Punjab Province*¹. In the Province of East Punjab, the Legislature of the Province levied a tax known as the Punjab Urban Immoveable Property Tax, 1940. The tax was made leviable not from the occupants of properties but from the owners of properties. A question was raised as to whether there was power in the Legislature which was legislating under powers given to it by item No. 42 of List II which uses the expression 'tax on buildings.' to levy a tax from the owners of buildings rather than from their occupants. It was pointed out in this connection that the practice in England was to levy such a tax from the occupiers of the buildings and not from the owners of the buildings. The Federal Court pointed out that the question for determination was whether or not it was actually a tax on buildings; It said that if in the course of dealing with properties the Legislature did something else, that means in substance it imposed a tax on income as was the argument in that case, it would be a different matter. But if, the tax imposed was a tax on buildings, it did not make any difference whatsoever whether the Legislature levied the tax from owners or from occupants, and the practice in England in such cases had no bearing upon the question as to whether the tax would be within the competence of the Provincial Legislature or not. In our view, the same

principle must be followed in dealing with the argument which has been made before us. If in substance the tax was a tax upon the show or in the case of the regular theatre upon the performance given therein, it makes no difference whatsoever as to whether the tax is levied from the person who obtains admission to the entertainment or from the person who gives it. It is quite true as Mr. Banaji pointed out that the tax is supposed to be a tax upon luxury, the word "entertainment" falling within the meaning of the word luxury as it was understood by the Legislature. It is also perfectly true that it cannot be said that the exhibitor of a cinema film gets any luxury whatsoever from exhibiting the film. He is merely following an occupation. It may be that he deals in luxury but that does not alter the fact that it is no luxury for him to give a show. But when the question is as to whether the tax is really speaking a tax upon the performance, it is immaterial whether the exhibitor is enjoying any luxury himself. It has got to be remembered that Entry No. 50 does not empower the levying of a tax only upon the consumption of luxuries. If the entry had been that the tax was to be tax upon consumption of luxuries, there may have been some force in the contention made on behalf of the plaintiff, though even then we do not propose to commit ourselves that the tax could not have been levied from the exhibitor of the cinema show in the first instance. It is after all always open to an exhibitor, if the tax is levied from him, to pass it on to the person who obtains admission on payment or otherwise to a place of entertainment. As a matter of fact that is what the entertainers do under the Finance (New

¹ AIR 1949 FC 81

Duties) Act, 1916, in England and that is as a matter of fact what is done in respect of entertainments tax which is levied in Bombay under the provisions of the Bombay Entertainments Duty Act, 1923. There again the duty is livable confining ourselves to cinemas from the exhibitor of the films. He may pass it on, as he actually does pass it on, to the person who obtains admission to the show. But the legal liability is not on the person who obtains admission. Supposing for example a person obtains admission to a cinema show without the tax being paid in the first instance, the duty would be livable by the Provincial Government from, the person who exhibits the cinema show. But there is nothing whatsoever in the Act which would permit the Provincial Government to recover the tax from the person who obtains admission to the performance. It is quite true that it does not follow from the fact that the entertainments duty livable under Bombay Act 1 of 1923 is levied from the exhibitors that the Municipality can levy the tax called the theatre tax under the power conferred upon it whether by the District Municipal Act or by the Bombay Municipal Boroughs Act from the exhibitors. As a matter of fact Mr. Banaji says that he would contend that even the entertainments duty levied under Bombay Act 1 of 1923 from the exhibitor is not legal. But the fact remains that it being always permissible for a person from whom the charge is levied to pass on the duty to a person who obtains admission for example to a cinema performance upon payment, it is impossible to contend that the tax could not be levied whether by the Legislature or by the Municipality! under the words "tax on entertainments" in entry No. 50 of List No. II of the Government of India Act.

13. It is contended, however, that in that case an entertainments duty or tax was already levied by the Bombay Government upon all entertainments given in cinema theatres under the provisions

of the Act of 1923; and it would no longer be permissible for the Cantonment Board to levy another entertainment duty because this would be double taxation. But we fail to understand that there is anything in our Constitution which prevents double taxation being levied. It is quite true that if ordinarily a Provincial Legislature wanted to levy for itself a tax, it would not pass two laws levying two different duties in respect of the same subject-matter, in this case an entertainment. There is nothing to prevent the Provincial Legislature from charging in respect of entertainments as much tax as it likes. It would not therefore dream of passing of two Acts levying two separate entertainments duties. But instances are not wanting in this country, in which taxes are levied twice upon the same thing, once for the benefit of the Provincial Government and in the second instance for the benefit of the Local Self-Government bodies, for example, the District Local Board or the Municipality. The two instances which occur to one, at once are that of land revenue and local fund cess and the urban property tax levied in the City of Bombay for the purpose of Provincial Government and the house tax which is levied by the Municipality at Bombay for its own finances. When a similar question arose before the Judges of the Nagpur High Court in the case of - '*Mulji Sicka and Co. v. Dist. Council, Bhandara*²', they found themselves unable to accept the contention that there was anything in the Constitution which required them to hold that a tax was illegal on the ground that it involved double taxation in respect of the same subject-matter, and with respect we are in agreement with the view which had been expressed in that case.

14. It is contended next that the tax is 'ultra vires' of the present Constitution, inasmuch as

² AIR 1945 Nag 171

the Cantonment Board was not authorized to levy taxes at West-End and Capitol Cinemas at rates different from those which are livable at the, other cinemas. It has to be remembered, however, that so far as taxation is concerned, classification is always permissible. Not only does the Constitution permit taxation being related to the capacity to pay, but it is obvious that it is always desirable that it should be so related. Mr. Banaji; says that there is no evidence to show that there is anything in the circumstances of the West-End and Capital Cinemas which would justify the levying of a higher rate in the case of performances given at those cinema theatres. But in this case evidence presumably was not led, because West-End and Capitol were well-known theatres in Poona where the trial of these cases took place. We are not prepared to accept the contention, therefore, that the taxes are 'ultra vires', on the ground that they offended against Article 14 of the Constitution.

15. In that view of the case, the appeal which, has been filed by the Poona Cantonment Board must succeed and the plaintiff's suit must be dismissed with costs throughout.

16. Then we come to the tax which has been levied, by the Municipality of Poona. The tax was originally levied, under the power given to the Municipality under Section 59, Sub-Section (1), item No. (xi), of the Bombay District Municipal Act, 1901; and the first point which has been made on behalf of the plaintiff is that in tills case the section is 'ultra vires' of the Governor in Council, who enacted the Bombay District Municipal Act, 1901, because it involves delegation

of the function of legislation to the Governor in council, i.e., the executive of the Province. It has got to be remembered that Section 59(1) in the first instance allowed the Municipalities which are governed by the Bombay District Municipal Act, 1901, to levy the taxes, falling within Clauses (i) to (x) of Section 59, Sub-Section (1). It was realized, however, that the Municipality might find it necessary or at any rate convenient to levy a tax which would not fall within the provisions of Clauses (i) to (x). That was why the Legislature seems to have enacted clause (xi). At the time when the Act was enacted, however, there was no division of taxes between the Provincial Government and the Central Government. There were a number of restraints upon the power of the Provincial Government to levy taxes. The Provincial Government was not allowed to levy new taxes and even though the power to levy taxes was there, there was a check always available to the Central Government in the form of withholding of the assent of the Governor General which was necessary before any Provincial law, including a taxation Act, came into force. The Provincial Government was forced, therefore, in practice to obtain beforehand the sanction of the Governor General in Council whenever any question of extension of their finances by taxation was involved. But that does not alter the fact that the Provincial Legislature, namely the Governor in Council as it was then called, had got power to impose any tax and there was no division of taxation between the Provincial Government and the Central Government. We do not find, therefore, in clause (xi) of Section 59(1) any words qualifying the tax which could be levied by the Municipality in the Province similar to those which we find in the Bombay Municipal Boroughs Act enacted after the coming into force of the Devolution Rules or legislation enacted after the coming into force of the Government of India Act, 1935. The limitation was that the Municipality would be entitled to levy any tax but only provided it was a tax which was in the competency of the Legislature itself to levy within the Province. Mr. Banaji who appears on behalf of the plaintiffs contends however that that does not alter the fact that there has been a delegation by the Legislature when power was given to the Governor in Council, to decide the nature or object of any other tax which could be imposed by the Municipality, and he says that in case there was any such delegation, then the legislation is bad. In the first instance it is bad even upon the footing that the Provincial Legislature was a sovereign legislature, but the Provincial Legislature was not a sovereign Legislature because the sanction of the Governor General was required to any Act which it passed.

17. Now, it would be convenient to deal with the matter first upon the footing that the Provincial Legislature in 1901 was a Sovereign Legislature. It has got to be remembered that whenever any question of the sovereignty of a Legislature arose before their Lordships of the Privy Council whether in India or in the Dominion or Colonies, they have been at pains to point out that the Legislatures whether constituted at the Centre or in the Province and whether in a Dominion, dependency or a Colony were Sovereign Legislatures, sovereign, that is, within the sphere to which their activity was limited. They again pointed out that the expediencies of legislation required that in the first instance there should be power in such Legislatures to pass what is called conditional legislation which was conditional upon the exercise of powers or a limited discretion given to some outside authority, for example, an executive officer of the Government. They have

also pointed out that both in England and in India particularly in the latter country the Legislature had delegated considerable powers, after laying down a policy, to outside bodies enabling them to undertake legislation going by the name of subordinate legislation. They have then observed that Parliament must have been aware of what had happened both in England and elsewhere, and when therefore it was constituting Sovereign Legislatures, it cannot possibly be said that it was not in its contemplation that subordinate legislation of the kind which, was mentioned by their Lordships would be permitted by the Legislatures which they had constituted.

18. It would appear, therefore, that in the case of a Legislature which is a Sovereign Legislature there is power to permit others after declaring the policy to fill up details. It would be impossible otherwise for a Legislature to legislate efficiently. This question was raised recently before the Supreme Court in - 'Art. 143, Constitution of India, Etc., In re', AIR 1951 Supreme Court 332, and even though there was a certain amount of difference of opinion, there was unanimity upon the point that where the Legislature had laid down a policy or in other words where in the first instance the Legislature had legislated itself upon the subject-matter of the statute, it was permissible to allow others, may be a Provincial Government, may be an outside body, to undertake subordinate legislation within the powers conferred, and no legislation could be impugned on the ground that this had been permitted.

19. The rule against delegation as a matter of fact is stricter in the United States where it is derived under a theory that both the Congress as well as the State Legislatures are delegates of the people and the maxim that a delegate cannot delegate further the powers which had been conferred upon him applied. The rule against delegation is derived there besides from the theory of separation of powers also. But even there it has been recognized that it is essential that certain powers can be delegated to administrative officers or to outside bodies. and even though an attempt is made to justify the delegation on the ground that powers which are delegated are not legislative powers, it has been recognized that where the Legislature has laid down the policy, there is nothing illegal in delegating certain legislative powers to an agency like the State Government or other outside bodies. It was thus observed in - '*Schechter v. United States*³':

"So long as a policy is laid down and a standard established by a statute, no unconstitutional delegation of legislative power is involved in leaving to selected instrumentalities the making of subordinate rules within prescribed limits and the determination of facts to which the policy as declared by the legislature is to apply."

To quote the words of Justice Cardozo in - '*Panama Refining Co. v. Ryan*', (1934) 293 US 388, the discretion which has been left to the subordinate legislative authority must not be unconfined and vagrant. It must be canalized within even banks which keep it from overflowing. This 'ipso facto' must hold good in the case of a Legislature which is sovereign.

20. It appears to us that applying this test, there is nothing in Section 59(1), clause (xi), which renders that section 'ultra vires' of the Governor in Council because of legislative power having

been delegated. The Governor in Council in this case was legislating upon the subject of local self-government. It was deemed desirable that Municipalities should be constituted within the province, and if Municipalities are to be constituted within the Province, it was necessary to allot to them sources of taxation. The sources of taxation, mentioned, in Clauses (i) to (x) of Section 59(1), therefore, were in the first instance allotted to them. Then it was considered necessary apparently either because these sources may be insufficient or because sometimes the Municipalities might prefer to levy another tax in lieu of taxes mentioned in Clauses (i) to (X) that they should have power to levy other taxes also. The question, then arose what other taxes the Municipalities can be empowered to impose. Section 59(1), clause (xi), provides that they had the power to impose any other tax provided that the previous approval of the Governor in Council to the nature and object of the tax had been obtained. It cannot possibly be said, therefore, in this case that the Legislature had not itself legislated at all on the subject-matter. As I have already mentioned the subject of the legislation was the constitution of Municipalities. If the Municipalities were constituted, then they had to be allotted certain sources of revenue. A policy was consequently laid down to a very large extent. Even apart from the fact that of the whole subject matter of legislation, namely the constitution of the Municipalities the sources of taxation which were to be allotted to them were only a small part, though an important part with regard to the taxes which the Municipality was entitled to levy a policy had been laid down. It was mentioned that the Municipalities were entitled to levy the taxes which were mentioned in Clauses (i) to (x) of Section 59(1). It is true, as Mr. Banaji points out, that if it pleased the Governor in Council to allow the Municipalities, for example, to levy an income-tax or in the alternative an estate duty, there was nothing in Section 59(1) which would have prevented the Governor in Council from sanctioning it. But on the other hand it cannot possibly be said that the local Government was left without any guidance as to what should be the sources of taxes which could be levied by the Municipalities. There was ample guidance in Clauses (i) to (x) of Section 59(1). The argument that the conferment of power is bad on the ground that the power may possibly be misused has never appealed to Courts of law. The question as to what powers the Municipalities should have with regard to the imposition of taxes was in consequence not left to the unguided discretion of the Governor in Council; and it is

³(1934) 295 US 495

impossible therefore even upon the strict view against delegation of legislative powers to say that the power which was left to the Governor in Council was not the power of subordinate legislation.

21. It will be convenient at this place to mention an argument which was advanced on behalf of the Municipality of Poona. It is contended on their behalf that there is in this case no delegation at all. It is pointed out that it is not as if it was left to the Municipality to levy even the taxes mentioned in Clauses (i) to (x) of Section 59(1). It was necessary to obtain the sanction of the Provincial Government for the levy of those taxes also. The Provincial Government at the time when the Act of 1901 was enacted was the Governor in Council. It is said that the only difference which was made by clause (xi) is that whereas in the case of a tax which fell within the purview

of Clauses (i) to (x) it was sufficient for the Municipality in the first instance to follow the procedure laid down when any tax had to be imposed afresh and then submit the rules which it proposed to make on the subject to the Governor in Council for sanction, the Municipality had, when it proposed to levy any tax which was not included in Clauses (i) to (x) of Section 59(1), in addition, to obtain the approval of the Government to the nature and object of the tax even before the Municipality took into consideration, a proposal to select that particular tax. It is said that this is merely a question of procedure differentiating one set of taxes from others and really speaking consequently there was no delegation. Now, we can understand that the Legislature might have, without delegating to anybody any powers, made it incumbent in case of certain taxes which were leviable by Municipality, to obtain the sanction of the Governor in Council not only after the tax rules were framed by the Municipality but before any question, was considered as to whether the Municipality should or should not select that particular tax. But it is impossible to accept the contention that this is all that Section 59(1), clause (xi), does. The clause in the first instance lays down what taxes were within the power of the Municipality to impose. It is obvious, therefore, that when the Governor in Council approved any tax which the Municipality proposed to take into consideration for the purpose of selection, not only did he permit the taking into consideration the tax but he also added to the section of the Act which said what the taxes which were livable by the Municipality Were, a new tax. The tax became a tax which the Municipality could take into consideration because the condition precedent to that was removed, and it became in the first instance a tax which was livable by the Municipality because of the action which was taken by the Governor in Council in approving of the nature and object of the tax. In our view, therefore, it is impossible to accept the contention that there was in this case no power of legislation given to the Governor in Council.

22. In any case, however, inasmuch as the delegation was within the limits permissible to a Sovereign Legislature, no question of legality of the tax would be involved in case the Legislature which in this case enacted the Bombay District Municipal Act was a Sovereign Legislature.

23. Mr. Banaji who appears on behalf of the plaintiff contends, however, that the Governor in Council in this case was not a Sovereign Legislature for the reason that after he enacted any particular law the law did not come into force, as a matter of fact the law did not become a law at all unless in the first instance the assent of the Governor General was obtained. He says that that rendered the Governor in Council a non-sovereign legislative body. In case he was a non-sovereign legislative body, then the principle that the delegate cannot delegate the powers which are conferred upon him would apply.

24. Now, the powers which were conferred upon the Governor in Council in this case by the Act of 1861 were as plenary as that of the Imperial Parliament itself. The power which was given to the Governor in Council to make laws extended to the making of all necessary laws for the peace and good government of the Presidency. The actual words used in Section 42 which conferred

the powers are :

".....to make Laws and Regulations for the Peace and good Government of such Presidency, and for that Purpose to repeal and amend any Laws and Regulations made prior to the coming into Operation of this Act by any Authority in 'India', so far as they affect such Presidency : Provided always, that such Governor in Council shall not have the Power of making any Laws or Regulations which shall in any way affect any of the Provisions of this Act, or of any other Act of Parliament in force, or hereafter to be in force, in such Presidency."

It is obvious, therefore, that the powers were plenary and the Governor in Council could repeal any Act of the Governor General in Council in the Presidency .of Bombay. But if any further authority was needed upon this point, it would be furnished by the case of - '*Riel v. The Queen*⁴', The question there arose with regard to the sovereign character of the legislature of the Dominion of Canada and the powers which were conferred upon it and which were called into question in that case were those conferred upon it by stat. 34 and 35 Vie. c. 38. It enacted that the Parliament of Canada may from time to time make provision for the administration, peace, order and good government of any territory not for the time being included in any province. Their Lordships pointed out that the Words of the statute were apt to authorize the utmost discretion, of enactment for the attainment of the objects pointed to. They then pointed out similar words were used in the statutes then in force constituting legislative bodies in India and said (at p. 679) :

"....Forms of procedure unknown to the English common law have there been established and acted upon, and to throw the least doubt upon the validity of powers conveyed by those words would be of widely mischievous consequence."

If we look, therefore, at the question from the point of view of the powers which were conferred upon the Provincial Legislature, there is not the least doubt that the Legislature was sovereign, and the argument that it was not a Sovereign Legislature is merely based upon the fact that before any laws which were enacted by the Governor in Council attained the force of law, previous sanction of the Governor General was necessary. The only question which remains is whether the necessity of obtaining such assent makes the Legislature a non-sovereign legislative body. Now, it has got to be remembered that the word "sovereign" has been used as was pointed out by the Supreme Court in the - '*Delhi Laws Case (C)*' in different senses. When considering the law of constitutions, theorists have drawn a distinction between a body like the Imperial Parliament in England and the Dominion Legislature as they were before the Statutes of Westminster were passed, and they have characterized as non-sovereign, bodies which had to function within the limits which are set upon their powers by an Act which can be regarded as the Constitution Act.

⁴ (1886) 10 AC 675

Now, looked at from this point of view many bodies are non-sovereign bodies making laws. But as their Lordships of the Privy Council have pointed out these bodies are nevertheless sovereign

legislatures, and a body does not become a non-sovereign legislature merely because there are limits upon its powers. It may not be sovereign in one particular sense but from the point of view which we are considering at present, it does not make any difference to the sovereign character of a legislature that it must function within certain specified limits, and in our view it does not make any difference to the sovereign character of the legislature if an Act which is passed by it requires the sanction of some outside body. The sanction of some authority which was a part of the Legislature obviously does not make any difference to the sovereign character of the Legislature; nor is it contended that it does. But even when to the laws which are made by a Legislature which, has been invested with powers which are as plenary as those of the Imperial Parliament itself the sanction of an outside person or body like the Governor in Council is required, that does not make the Legislature a non-sovereign legislature; nor does it prevent it from delegating certain powers of subordinate legislation to some one else.

It has got to be remembered that the question of the sovereign character of the Central Legislature constituted by the Act of 1861 came up before their Lordships of the Privy Council in - *'The Queen v. Burah'*⁵, at p. 193 (PC), and they held that the Legislature was a Sovereign Legislature. Now, even in the case of the Indian legislature constituted by the Act of 1861 there was a provision that in case they passed an Act it had got to be placed before the Houses of Parliament and under the provisions of Section 21 of the 1861 Act, it was permissible for Her Majesty to signify through the Secretary of State for India in Council her disallowance of, such law. Now, it is true that there is a difference between the two. Whereas the law which was enacted by the Governor General in Council became a law immediately upon the passing of the Act, it ceased to have force only when it was disallowed by Her Majesty. The law which was enacted by the Governor in Council would become a law only upon the assent of the Governor General being obtained. The power given to the Governor General was not however essentially different from the veto which was reserved for Her Majesty by Section 21 of the 1881 Act. It has got to be remembered, that; the Governor General in whom the veto was then reserved was a representative of Her Majesty not in the sense of a personal representative but in the sense that he was responsible to the Parliament at Westminster. Then again under Section 75 of the Government of India Act, 1935, the Governor had power to reserve a Bill for the consideration of the Governor General, and when he had done so, it was open, to the Governor-General under Section 76 of the Government of India Act to withhold his assent therefrom. Even so, the Provincial Legislature was held to be a Sovereign Legislature : see - *'Fram Nusserwanji Balsara v. State of Bombay'*⁶, It is obvious, therefore, that it makes no difference that to all laws which were passed by the Governor in Council sanction of the Governor General was necessary. The Governor in Council was still sovereign within the sphere which was given to him by the Act of 1861. The argument that Section 59, Sub-Section (i), clause (xi), was 'ultra vires' of the Governor in Council on the principle that that involved a delegation of legislative power to the Governor in Council which in this case might mean a different entity is not, therefore, sound.

25. Then we come to the contention that when subsequently in 1941 and then again in

⁵ Ind App 178

⁶ AIR 1951 Bom 210 (FB)

1948 the Poona Municipality increased the incidence of taxes after following the procedure which had been laid down by the Bombay Municipal Boroughs Act for imposition of fresh taxes, it had got no power to do so. I have already mentioned that in the trial Court the plaintiff attacked the taxes which were levied upon the footing that the power to levy those taxes was not conferred either by Section 60 of the Cantonment Boards Act or in the alternative by Section 73, Sub-Section (xiv), of the Bombay Municipal Boroughs-Act. It was only when the learned trial Judge came to the conclusion that the Municipality and the Cantonment Board had no power to levy the taxes as entertainments taxes that the Municipality relied upon the levy of the tax before the Bombay Municipal Boroughs Act was enacted and argued that when subsequently the tax which was originally levied was increased, there was no fresh tax imposed. It was then contended on behalf of the plaintiff that in case the Municipality attempted to justify the levy of the tax by the fact that the tax had already been levied under the powers conferred upon the Municipality by the District Municipal Act, 1901, then it was beyond the powers of the Municipality to increase the tax in 1941 and in 1948 there being no power in the Municipality to impose a similar tax under the 1925 Act which then had application. Mr. Banaji who appears on behalf of the plaintiff contends, however, before us that even if the tax was within the powers of the Municipality after 1925, still the increase of the tax was not permissible because all that the Municipality could do under the provisions of 1925 Act if it wanted to levy the tax under the provisions of that Act was to abolish in the first instance the tax which was levied then under the Act of 1901 and then to impose a fresh tax under the powers conferred by the 1925 Act. He argued that it was not within the power of the Poona Municipality in 1941 or in 1948 unless in the first instance it abolished the tax which was already levied and imposed a new tax to increase the rates of the tax which had been already levied. It is necessary to consider, therefore, what the powers of the Poona Municipality in 1941 and in 1948 were in regard to the increase of tax which had already been levied under the powers conferred by the old Act of 1901.

26. Now, it appears from the comparison of the two Acts, that the 1901 Act empowered the Municipality to impose the tax. It also permitted the Municipality provided sanction of the local Government was obtained to suspend, to reduce or to abolish the tax which had already been levied. In, such a case it was unnecessary to follow the same procedure which is followed at the time of the imposition of new taxes. But the Act of 1901 itself does not make any reference specifically to any power to enhance a tax which had already been imposed and the contention of the plaintiffs consequently is that there was no power under the 1901 Act to enhance tax which had already been imposed. But we have to consider in this case really speaking the power of the Municipality not under the 1901 Act but under the 1925 Act. Now, under that Act there was given to the Municipality the power not only to suspend, to reduce or to abolish a tax which had already been levied but also to modify that tax, and the question which we have got to determine is what is the meaning which is to be given to the word "modify" which occurs in Section 60, Sub-Section (1), of the Municipal Boroughs Act. Now, it is an ordinary canon of interpretation that words have got in the first instance to be taken in their popular meaning, and in order to ascertain as to what the popular meaning of the word is one has recourse to the dictionary. Now,

the dictionary gives two meanings to the verb "modify". One is the root meaning and that is the Municipality may moderate or reduce the tax which had already been levied. The other meaning is to make partial change or to alter without radical transformation.

Mr. Banaji contends that the popular meaning of the word is really speaking "to limit or to reduce". But we are unable to accept this contention. The meaning which is relied upon by Mr. Banaji is the root meaning of the word. But a word does not always keep up its root meaning. Instances are not unknown when the word, in course of time, comes to mean' exactly the opposite of the root meaning with which it had been brought into use in the first instance. and we think that if an ordinary person was asked as to what the meaning of the word "modify" is and if he does not know what the root meaning of the term was, he would say that the meaning was to make partial changes or to alter without making any radical transformation. Then in the second instance the dictionary gives both the meanings of the word, and Roland Burrows in "Words and Phrases" points out instances in which it has been used in the sense of making partial changes so as even to include the meaning of extending or enlarging. It is true of course that the context may show that the word has got either one meaning or the other. But in that case the popular meaning would have been controlled by the context. Now, the first thing which we note in interpreting the words in its present context is that the Bombay Municipal Boroughs Act has been modeled upon the District Municipal Act, 1901. The words which the latter Act used when conferring powers similar to those conferred by Section 60(1) were to suspend, to reduce and to abolish. It is obvious, therefore, that the word "modify" has been used instead of the word "to reduce". and if we accept the contention of Mr. Banaji, it would mean that the Legislature altered the word for no reason. Mr. Banaji says in this connection that the marginal note to Section 60 of the Municipal Boroughs Act is still "to suspend, reduce or abolish" and it can be taken into consideration in determining the meaning of the section. But in any case it would not control the meaning to be given to it as determined by the ordinary rules of construction. Mr. Banaji says that it may possibly be of course that the Legislature wanted to change the provision in the old Act and give the Municipality fresh powers, but the word "modify" might have been used because some times when one tax is substituted for another it may not be possible to say that there is as a matter of fact reduction though on the other hand there may have been no enhancement. For example, supposing an octroi duty was levied, if it was originally levied on some articles and subsequently some of these articles were dropped and other articles were substituted instead, there may possibly be an argument that there was as a matter of fact no reduction of the duty. Similarly there may be a difference in the ways in which the tax was calculated. He says the word "modify" is used to show an alteration of a tax but not in such manner as to allow its enhancement which is admittedly what the Municipality did in this case in 1941 and 1948. That undoubtedly is one possible reason for which the Legislature might have used the word "modify" in Section 60(1). But if we were to accept the contention that that was all what the word intended to mean, then it would appear that there was no power conferred upon the Municipality to increase a tax which it had already once levied. If at all it wanted to increase the tax, it would necessarily have in the first instance to abolish the tax by following a particular procedure. Then it would have again to start the procedure prescribed for imposing the tax afresh

and levy the increased tax as a fresh tax. Now, it is quite true that it is after all a question of interpreting a statute in order to find out the powers conferred upon the Municipality, and if by following the ordinary rules of interpretation we arrive at no other result but the one which is contended on behalf of the plaintiffs, then we must give effect to the meaning. But in the first instance both in the 1901 Act and in the 1925 Act we find that the Legislature itself contemplated that the Municipality had the power of increasing taxes.

For example, in the 1901 Act Section 74 empowers the Provincial Government to require a Municipality to impose a new tax or to enhance any existing tax. The section provides that the provincial Government may require the Municipality to impose a new tax or to enhance any existing tax which had already been imposed, and the Municipality shall then forthwith proceed to impose or enhance it in accordance with the requisition as if a resolution of the Municipality had been passed for the purpose under Section 60. The Legislature clearly contemplated, therefore, that the procedure which had been laid down in Section 60(1) for imposing a new tax should be followed at the time when the Municipality was proposing to enhance the tax upon the requisition by Government. Mr. Banaji contends, however, that it is that is so, that is because it is Section 74 which really speaking empowers the Municipality to enhance the tax by following the procedure laid down in S 60 when the Provincial Government required the Municipality to do so. There is no power in the Municipality to enhance a tax otherwise. But the first thing to be noted is that Section 74 does not provide that when the Provincial Government required a Municipality to enhance the tax the Municipality shall have power to do so. If it had, then Mr. Banaji's argument would be good. Section 74 really speaking proceeds upon the assumption that the Municipality would have power to enhance a tax even ordinarily, and it then provides only for the- absence of a resolution which would come in the way of the Municipality for increasing the tax when Government required it to do so if that part of the section which says that the Municipality should proceed as if a resolution of the Municipality had been passed for the purpose had not been enacted. If we inquire as to how the Legislature came to such a conclusion, it is obvious that the Legislature must have understood the word "impose" in the section, which empowered the Municipality to impose taxes, to mean not only to impose a tax anew but also to mean to impose an additional burden by enhancing the tax.

27. Similarly when we come to the Bombay Municipal Boroughs Act, 1925, we find that power was conferred upon the Provincial Government under Section 103 to require the Municipality to impose a fresh, tax or to enhance a tax which had already been existing. It has also got a provision that upon, such requisition being received from the Provincial Government the Municipality shall forthwith proceed to impose or to enhance the tax in accordance with the requisition as if a resolution of the Municipality has been passed for the purpose under Section 75. This section also proceeds on the assumption that there was power in. the Municipality to enhance the tax which had already been once imposed, and if we bear in mind that we must either interpret the words "to impose" to mean impose an additional burden by way of enhancing the tax or in the alternative to interpret the word "modify" to mean not only to alter the tax which had already been levied but not so as to increase the same but also to mean to increase the tax.

We interpret the word "modify" in this sense. In our view, therefore, a Municipality which is governed by the Bombay Municipal Boroughs Act has got power to enhance a tax which it has already levied, provided only it follows the procedure which has been laid down in 8. 60. In that view of the case, the action which was taken by the Municipality to increase the tax in 1941 and again in 1943 was 'intra vires'.

28. The plaintiff's suit against the Municipality must also be dismissed with costs throughout.

Cross-objections are not pressed and are also dismissed with costs.

Order accordingly.