

RAJASTHAN HIGH COURT

Narain and another

Vs.

Cantonment Board, Nasirabad

Civil Ref. Nos. 52 and 53 of 1961
(D.S. Dave And L.N. Chhangani, JJ.)

21.02.1963

JUDGMENT

Chhangani, J.

1. These two references have been made by the District Magistrate, Ajmer, under section 84 (2). of the Cantonments Act, 1924 (Act 2 of 1924 hereinafter referred to as the Act). They have arisen in the following circumstances -
2. In Reference No. 52 of 1961 Narain imported a New Chassis of Motor Lorry into the Nasirabad Cantonment Area on 30th November, 1960 and the Cantonment Board (which will hereinafter be referred to as the respondent) charged Rs. 25/- as Terminal Tax for the same. Similarly, in Reference No. 53 of 1961 Ramchandra imported a New Chassis of Motor in Nasirabad Cantonment area on 11-1-1961 and the respondent charged Rs. 25/- as Terminal Tax. Both Narain and Ramchandra filed appeals before the District Magistrate, Ajmer which were numbered as Appeals Nos. 1 and 2 of 1961.
3. After hearing the appeals, the District Magistrate entertained reasonable doubt on the question as to the liability of the appellants to tax and, therefore, drew up the statement of the facts of the case and the point on which doubt was entertained and referred it for the decision of this Court.
4. It may be mentioned here incidentally that under section 84 (2) of the Act the District Magistrate ought to have expressed his own opinion on the point for decision but he has not expressly given any opinion on the point. We, however, do not attach importance to this omission and. propose to examine the question on merits.

5. Section 60 of the Act, which authorizes the imposition of taxes by the respondent, reads as follows : -

"60. General power of taxation.

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

(2) Any tax imposed under this section shall take effect from the date of its notification in the (Official Gazette)."

It is clear from the language of the section that a limitation has been imposed upon the respondent in the matter of imposing taxes and that limitation is that it can impose only such taxes which can be lawfully imposed in any municipality in the State wherein the cantonment is situated. The intention appears to be that the taxation in a cantonment area should be consistent with laws regulating the imposition of taxation by the Municipal Boards in the State where the cantonment is situated.

6. We may now refer to the relevant provisions of law in our State of which the cantonment area is a part, bearing on the point. Section 21 of the Rajasthan Motor Vehicles Taxation Act, 1951 (Act No. XI of 1951 - hereinafter referred to as the Act of 1951) clearly provides that notwithstanding anything to the contrary in any law for the time being in force in any part of Rajasthan, it shall not be lawful for any local authority to levy any tax of toll in respect of any motor vehicle. Sections 104 and 105 of the Rajasthan Municipalities Act, 1959 (hereinafter referred to as the Act of 1959) which authorizes imposition of taxes by the Municipal Board contain provisions prohibiting the imposition of octroi or terminal taxes on motor vehicles vide proviso to section 104 sub-section (3) and section 105 sub-section (1) (i) which read as follows –

"104. Obligatory taxes - Every board shall levy, at such rate and from such date as the State Government may in each case direct by notification in the official Gazette and in such manner as is laid down in this Act and as may be provided in the rules made by the State Government in this behalf, the following taxes, namely : -

(1)

(2)

(3)

Provided that -

(a)

(b) the tax under clause (2) shall not be on a motor vehicle as defined in the Motor Vehicles Act, 1939 (Central Act 4 of 1939) or any other mechanically propelled vehicle, and;"

"105. other taxes that may be imposed - (1) Subject to any general or special orders of the State Government in this behalf, a board may impose and levy in the whole or any part of the municipality for which it is established all or any of the following taxes, namely : -

(i) a tax on vehicles and other conveyances plying for hire or kept within the municipality".

7. Now, if effect is given to these provisions of law, there can be no doubt that on the basis of limitation on the powers of the respondent as contained in section 60 of the Act it cannot impose any tax on the import of motor vehicles. Before the District Magistrate the respondent raised grounds to justify the imposition of taxes which have been summed up by the District Magistrate as follows: -

(1) The Rajasthan Motor Vehicles Taxation Act 1951 was made applicable in the State of Rajasthan in April, 1951 without obtaining, the assent of the President of the Government of India.

(2) The Cantonments Act 1924 is in force in Nasirabad Cantonment area, which is Central Act. It is in force and will remain so till it is repealed by the Central Government.

(3) When there is any conflict, the Central Act will override in view of the provisions of the Constitution of India.

(4) In case the State Government want to enforce the provisions of Rajasthan Motor Vehicles Taxation Act, 1951 in the Nasirabad Cantonment Area they should obtain the assent of the Central Government. It is a Central subject and State Government have no power.

(5) The provision of Article 372 of the Constitution of India says about the continuance of the enactments and laws in force until altered or repealed by a competent authority.

8. In substance, the contention was that as there is a conflict between the provisions of the Cantonments Act (Central Law) and the State laws, the Central Law should prevail

as the State laws were not assented to by the President. While, we have no quarrel with the proposition that the Cantonments Act applies to the area we do not see any conflict between the provisions of the Cantonment Act and the State laws. We have already stated earlier that section 60 of the Act limits the powers of the respondent to impose taxes so as to make imposition of taxes by the Board consistent with the State laws and we may add that thus understood the provisions of section 60 of the Act do not envisage any conflict with the State laws. The State Legislature's jurisdiction to promulgate laws regulating, the imposition of taxes by local authorities remains quite unimpaired and unaffected by section 60 and the respondent is bound to have due regard for the State laws while imposing taxes. There is thus no conflict between the Central and the State laws, and the imposition of the taxes by the respondent has to be in conformity with the above State laws.

9. Now, proceeding to examine the applicability of section 21 of the Act of 1951 on an assumption of an alleged conflict with the provisions of section 60 of the Act, we must point out that the absence of the President's assent to the Act is irrelevant in the present case. At the time when the Act of 1951 was promulgated there was no question of its applicability to the Cantonment area and its being in conflict with the Act. The question could arise only when the act was extended and applied to the areas comprised within the former Ajmer State of which the cantonment area was a part. The Act of 1951 was extended to and made applicable to the cantonment area by Rajasthan Extension of Laws Act No. XXVII of 1959 which had been assented to by the President. Clearly, therefore, the extension and applicability of section 21 cannot be questioned on the ground of alleged conflict. The stand of the respondent before the District Magistrate was thus untenable and cannot justify the imposition of taxes in contravention of section 21 of the Act of 1951.

10. Before us Mr. Gupta adopted a different line of reasoning. He pointed out that there are three stages in the process of taxation - (1) fixing of the liability, (2) assessment or quantification of the liability, and (3) collection of the tax from the tax payers; and contended that the terms "impose" and "levy" which are synonymous embrace the first two stages and cannot include the third stage, namely, the actual collection. In this connection, he invited our attention to the language of Article 265 of the Constitution of India, where the founders of the Constitution used both expressions "levy and "collection" and provided that taxes cannot be levied or collected without authority of law. It was urged that the authors of the Constitution having used both the

terms should be taken to have emphasized the different stages of taxation and to have used the term "levy" to embrace the first two stages only. On this meaning of the terms "levy" and "impose" Mr. Gupta contended that section 21 of the Act of 1951 should be taken to prohibit fresh and new taxation and not to invalidate the existing taxes or collections thereof. Similarly, under section 160 of the Act the respondent is required to have regard for the State laws regulating taxation by local authorities only while introducing new taxes and that the existing taxes cannot be invalidated on the ground of their conflict with the State laws subsequently extended and made applicable to the cantonment area.

11. We have given due consideration to this argument. We agree that the tax process may be treated as having three stages and that sometimes the terms "impose" and "levy" may only refer to the first two stages. But, we cannot accept that these expressions must always be taken to have been used in a narrower sense so as to include the first two stages and to exclude the third stage. According to Webster Dictionary the term "levy" means to raise or to collect as by assessment or execution or other legal process etc. These terms are thus used in varying senses, sometimes in a wider sense to include all the three stages in taxation process and sometimes only the earlier stages, and we should, therefore, be guided by the context in which the terms have been used in order to give proper meanings to them.

12. Now, referring to Article 265 of the Constitution, it will be enough to observe that the founders of the Constitution intended to lay down that not only taxation should be with the authority of law but the mode and procedure for collection must also have the authority of law. It appears to us that in order to emphasize this aspect of the matter and to clarify the position beyond all doubt that the terms "levy" and "collection" both were used in Article 265. We, however, cannot accept that this distinction between "levy" and "collection" should be imported in each and every statute irrespective of the context in which these terms appear.

13. We now propose to consider, the meaning of the terms as used in section 21 of the Act of 1951 and section 60 of the Act with reference to the context. Taking up section 21 of the Act of 1951, we may observe that this Act imposed taxes on the Motor Vehicles and in order to avoid excessive taxation the legislature thought it proper to provide for the exemption of the Motor Vehicles from other taxation and for this purpose enacted section 21 of the Act of 1951. The legislature having used the

expression "Notwithstanding anything to the contrary in any law for the time being in force in any part of Rajasthan, it shall not be lawful for any local authority to levy any tax or toll in respect of any motor vehicle" should be taken to have made it clear that the legislature did not intend the continuance of the taxes on the motor vehicles which were in force at the time of the promulgation of the Act. In this background, it will be hardly fair to hold that the term "levy" has been used in a narrower sense and that section 21 of the Act of 1951 only prohibits fresh taxation and does not prohibit the collection of taxes imposed under the laws in force under the earlier laws in a proper manner. In our opinion, the expression "levy" in section 21 of the Act of 1951 has to be construed widely so as to prohibit even the collection of any other tax on motor vehicles. We may also observe that on an adoption of contrary view section 21 may operate discriminately and this could not have been intended by the legislature.

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

15. In the light of the foregoing discussions, our answer to the reference is that the levy of Terminal Tax is in contravention of the provisions of section 21 of the Rajasthan Motor Vehicles Taxation Act, 1951, and is, therefore, invalid.

Reference answered accordingly.