

RAJASTHAN HIGH COURT

Mewar Chamber of Commerce

Vs.

Mpl. Council, *Bhilwara*

Civil Writ Petn. No. 95 of 2002
(N.N. Mathur and D.N. Joshi, JJ.)

03.06.2002

JUDGEMENT

Mathur, J.

1. By way of this writ petition under Article 226 of the Constitution of India, the petitioner Mewar Chamber of Commerce and Association of Industries has challenged the validity of Nagar Parishad *Bhilwara* (Pradushan Janya Vyavsay Kar) Niyam 2001, hereinafter referred to as 'the Rules of 2001' whereby tax has been imposed on trades, callings engaged in *inter alia* activity of the textile processing or trading of the raw materials for the purpose of entry of transporter/trader within the boundaries of the Municipal Council, *Bhilwara* with effect from 1-1-2002. The tax has been levied at the rate of Rs. 20/- per quintal of grey cloth/fibre/yarn or half per cent of value of the chemicals.

2. The *Bhilwara* town is known as Manchester of Rajasthan because of existence of large number of textile industries. There are about 450 weaving Units operating within the municipal limits of *Bhilwara*. It is reported that millions of gallons of waste and effluents are discharged by the industrial Units. The entire polluted water is discharged by the said Units in the drainage and on open land within the municipal limits of *Bhilwara*. Even the two rivers Banas and Kothari passing through the limits of public surroundings of *Bhilwara* town have been badly affected by the polluted water. The Kothari river is at the low level point of *Bhilwara* city and, therefore, the entire effluent discharged by the aforesaid Industrial Units while passing through the different drainages/nalas ultimately fall in the said river. It has created health hazard and drinking water problem for the inhabitants of the surrounding villages. There are about thirty five thousand laborers earning livelihood, while working in the said industrial Units. Sixty per cent pollution of the City relates in one way or the other

from the said industrial Units. The Municipal Council is under the statutory obligation under the Rajasthan Municipalities Act as well as under Environment (Protection) Act, 1986 to make necessary arrangement so that the effluent discharged by the various manufacturing Units may not be scattered over the various places in the City and the same are properly treated so as to save the public at large from its adverse effect. The Municipal Council is under an obligation to set up waste processing and disposal facilities and to undertake number of other measures, which will cause heavy burden on it. Section 105 of the Act of 1959 empowers the Board to impose and levy, in the whole or any part of the Municipality, a tax on traders and callings carried on within the municipality and deriving special advantage from, or imposing special burden on municipal services. Thus, to ease the burden in exercise of powers conferred by Section 88(h) and clause (xi) of sub-section (1) of Section 105 of the Act of 1959, the Municipal Council, *Bhilwara* has framed the impugned Rules.

3. Challenging the validity of the Rules of 2001, it is submitted by Mr. Manish Singhvi, learned counsel for the petitioner, that the State Government by virtue of Entry 52 of List II of Schedule VII of the Constitution of India has enacted the Act known as Rajasthan Tax on Entry of Goods into Local Areas Act, 1999, hereinafter referred to as 'the Act of 1999'. Section 5 of the said Act provides that a tax shall be levied, collected and paid to the State Government on entry of any goods brought into the local area for consumption, use or sale therein with effect from such date and at such rates not exceeding 10% of the value of goods, as may be specified by the State Government. It is also submitted that the Government of Rajasthan by virtue of Entry 66 of List II of Schedule VII of the Constitution of India, has enacted Rajasthan Tax on Professions, Trades, Callings and Employments Act, 2000, hereinafter referred to as 'the Act of 2000'. Section 3 of the Act of 2000 empowers the State Government to levy and collect a tax on professions, trades, callings and employments at such rates not exceeding Rs. 2500/- per annum per individual person, as may be notified by the State Government in the Official Gazette. The said levy is subject to the provisions of Article 276 of the Constitution of India, and the Act of 2000.

In the aforesaid background, it is submitted by Mr. Manish Singhvi, learned Counsel for the petitioner, that Section 105(1)(xi) of the Act of 1959 stands repealed by the subsequent legislation of the State viz.; the Act of 2000. Advancing the argument, it is submitted that the State Government by its subsequent legislation has occupied the field by taxing on professions, trades, callings and employments and its earlier law delegating the tax on professions, trades, callings and employments stands repealed. He has placed reliance on a decision of the Apex Court reported in *Ratanlal Adukia v.*

Union of India, reported in ¹ wherein it is held that two tests are laid down and one of them is that the two acts must be in direct conflict with each other and intention of the latter legislation must be to occupy the same field. It is also argued that there cannot be two acts which levy the same tax twice. He has placed reliance on a decision of the Apex Court in *Gobind Sugar Mills Ltd. v. State of Bihar, reported in*, ² wherein it is held that tax on Sugarcane Act being a special Act shall displace the purchase tax under the Finance Act, which was general in nature. According to Mr. Singhvi, applying the same principles, the latter legislation of the Act of 2000 shall prevail and displace Section 105 (1) (xi) of the Act of 1959. He has also placed reliance on a decision of the Apex Court in *Belsund Sugar Co. Ltd. v. State of Bihar, reported in* ³ wherein it is held that the transaction of purchase of sugarcane cannot be taxed twice i.e. one under the Market Act and another under the Sugarcane Act. The authorities acting under the different Acts of the same State but dealing with the same subject matter and covering the same transactions cannot exist and there are chances of head-on collision between the two Acts. Thus, it was held that the Sugarcane Act shall prevail over the Market Act as the Sugarcane Act is the special Act. Another contention of the learned counsel is that source of power to legislate emanates out of Articles 245 and 246 of the Constitution of India. However, the power to tax under Articles 245 and 246 of the Constitution of India is subject to other constitutional limitations. The entries of the Seventh Schedule merely delineate the fields of legislation but they are not source of power to legislate. As such, the power to legislate under Article 245 is subject to provisions like Article 276 (2) of the Constitution of India, which specifically provides that if there is a tax on trades, employments, callings or professions, then the rate of taxation cannot exceed Rs. 2,500/- per annum. Per contra, it is submitted by Mr. Sagar Mal Mehta, learned Advocate General, that in view of Entry 5 of List II of Seventh Schedule and Article 2430-X of the Constitution of India, the legislative competence to impose the impugned tax and authority of the municipality to levy, collect and appropriate such tax simply cannot be doubted. It is submitted that the entire edifice of the writ petition raised by the petitioner is misdirected and without foundation.

4. We have given thoughtful consideration to the rival contentions. The Rajasthan Municipalities Act, 1959 provides a scheme of taxation for imposition of various categories of taxes by the local authorities classified as obligatory tax under Section 104 and other tax that may be imposed under Section 105. Section 88 (h) empowers the Municipal Council to make rules for the purpose of levying tax under Section 105

of the Act of 1959. Section 105 (1) (xi) reads as follows :

"Section 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

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.....

(xi) a tax on trades and callings carried on within the municipality and deriving special advantages from, or imposing special burden on, municipal services."

A reading of Clause (xi) of sub-section (1) of Section 105 clearly shows that the provision empowers to the State Government to levy tax on the trades and callings carried on within the municipality and deriving special advantages from, or imposing special burdens on municipal services.

5. In the instant case, the impugned Rules have been framed and the tax has been levied with a view to meet its special burden and to provide services. Thus, it is also wrong to say that by subsequent legislation, the State has occupied the field by taxing on professions, trades, callings and employments. In fact, the learned counsel for the petitioner has raised the contentions completely overlooking the words imposing special burdens on municipal services" employed in Clause (xi) of sub-section (1) of Section 105 of the Act of 1959 and missing in the Act of 2000 and Act of 1999. The Municipal Council has power under Entry No. 5 of List II of Schedule VII and Article 243-X of the Constitution of India to impose the impugned tax or to levy, collect and appropriate such tax, Article 243-X is extracted as follows :

"Article 243X. The Legislature of a State may, by law,-

(a) authorise a Municipality to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits;

(b) assign to a Municipality such taxes, duties, tolls and fees levied and collected by the State Government for such purposes and subject to such conditions and limits;

(c) provide for making such grants-in-aid to the Municipalities from the Consolidated Fund of the State; and

(d) provide for constitution of such Funds for crediting all moneys received, respectively, by or on behalf of the Municipalities and also for the withdrawal of

such moneys there from, as may be specified in the law."

The Entry No. 5 of the List II of the Schedule VII is also extracted as follows:

"5. Local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self- government or village administration."

Thus, the three Acts i.e. the Act of 1999, the Act of 2000 and the Rules of 2001 operates in different fields as per the demarcation of powers provided under the different entries in the Constitution. Thus, there is no repugnancy or overlapping the field. The burden of the municipal service is onerous and the levy is justifiable in view of Entry No. 5 of the List II of Schedule VII and Article 243-X of the Constitution of India, may it be in the name of pollution tax or any other name. The purpose of such levy is to ease the burden of the local body from the pollution created by such industries.

6. As far as Article 278 of the Constitution of India is concerned, it is carved out as an exception to Article 246 of the Constitution of India which deals with the subject-matter of laws made by the Parliament and by the Legislature of the State. The Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I of the Schedule VII referred in the Constitution of India as Union List. As per the Entry No. 82 of the Union List, the Parliament has exclusive powers to make law for levy of tax on income other than agricultural income. By virtue of Article 276 (1), no law of the Legislature of a State relating to taxes for the benefit of the State or of a municipality, district board, local board or other local authority therein in respect of professions, trades, callings or employments shall be invalid on the ground that it relates to tax on income. Therefore, Article 276 only deals with a particular situation that the law enacted by the State Legislature imposing tax on professions, trades, callings and employments shall not be invalid notwithstanding that it relates to tax on income for which the Parliament has exclusive power to enact the law by virtue of Entry No. 82 of the Union List under the Constitution of India. Article 276 (2) has to be read in context of Article 276 (1) and it simply cannot be read in isolation. A careful reading of the provisions will show that the ceiling provided in Article 276 (2) of the Constitution of India does not operate if any tax is sought to be imposed by the State on professions, trades, callings and employments which does not

relate to tax on income. In the instant case, the impugned tax has been imposed under the Rules of 2001 on particular professions, trades and callings carried on within the municipality which are generating pollution and, as such, creating special burden on municipal services. Therefore, the provisions of Article 276 does not divest the State Government from imposing the liability of tax on profession, trades, calling and employments beyond Rs. 2500/- per annum by virtue of Entry No. 60 of the State List of the Constitution of India. The Rajasthan Tax on Professions, Trades, Callings and Employments Act enacted by the State Legislature simply does not preclude the municipal board from imposing the tax on trades and callings carried on within the municipality deriving special advantages from and imposing special burden on municipal services in exercise of powers conferred under Section 105 of the Act of 1959.

7. In view of the aforesaid, the levy of tax under the Rules of 2001 is within the legislative competence of the State. Accordingly, the Rules of 2001 are held to be *intra vires* of the Constitution of India.

8. Consequently, we find no merit in this petition and the same is dismissed.

Petition dismissed.

Cases Referred.

1. 1989 (3) SCC 537
2. (1999) 7 SCC 76
3. 1999 (9) SCC 620