

PETITIONER:
MAHE BEACH TRADING CO. & ETC.

Vs.

RESPONDENT:
UNION TERRITORY OF PONDICHERRY AND ORS.

DATE OF JUDGMENT: 04/04/1996

BENCH:
KIRPAL B.N. (J)
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KIRPAL B.N. (J)
AHMADI A.M. (CJ)
MANOHAR SUJATA V. (J)

CITATION:
1996 SCC (3) 741 JT 1996 (4) 45
1996 SCALE (3)306

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

KIRPAL, J.

The appellants are the dealers in petrol and diesel oil in the former french Establishment of Mahe now in the Union Territory of Pondicherry. The Erstwhile French Establishments in India were divided by the French Government into 17 communes approximating to Municipalities or Local Self Government. Mahe was one such Commune.

A French Decree dated 12 3 1880 governed and regulated the municipal body of each commune. It inter alia provided for setting up of a mayor and elected Municipal Council Paragraph 46 of the said Decree inter alia contemplated the Municipal Councils to deliberate the budget of the Communes as well as the mode of assessment, rates and rules regarding collection of all municipal revenues etc. The deliberations of the Municipal Councils were required to be forwarded to the Governor and would become enforceable only after the approval by the Governor in Privy Council.

By an agreement dated 21.10.1954 there was a de facto transfer by the French Government of all its French Territories to the Indian Government. Thereafter the Government of India in exercise of the powers conferred by Section 4 of the Foreign Jurisdiction Act, 1947 made the French Establishments (Application of Laws) Order, 1954 and the French Establishments (Administration) Order, 1954. On 28.5.1956, there was a treaty of cession between the President of India and the President of French Republic in respect of the French Establishments in India including Mahe.

On 16.8.1962, de jure merger of the French Establishments with India was carried out through an Instrument of Ratification between the two countries as a result of which France ceded to India the sovereignty of its territories namely: Pondicherry, Karikal, Mahe and Yaman.

The aforesaid four territories constituted the Pondicherry Union Territory.

On 16.8.1962. the Pondicherry Administration Ordinance, 1962 was passed which was replaced by the Pondicherry Administration Act, 1962. By Section 4 of this Act, all laws in force immediately before the appointed day in the former French Establishments were continued to be in force in the Pondicherry Union Territory, until they were amended or repealed by a competent Legislature or other competent authority. By Section 7, all taxes, duties, cases and fees being lawfully levied in the former French Establishments were continued to be levied in Pondicherry Union Territory and were required to be applied for the same purpose until other provisions are made by a competent Legislature or other competent authority. The result of this was that the Municipal Decree dated 12.3.1880 could continue to be in force. Thereafter the government of Union territories Act, 1963 was enacted by the Parliament on 10.5.1963, in exercise of powers under Article 239 A (1). This Act provided for the establishment of a local Legislature and Council of Ministers and their powers, procedure and other matters.

The Municipal Council of Mahe on 7.8.1969 decided to levy a Municipal Tax of 5 paise on each litre of petrol and diesel oil sold at the petrol pump situation Mahe. The Mayor, based on that decision of the Municipal Council and considering the Decree dated March 12, 1880, issued an "arrete" with effect from 13.1.1970 for the Receveur Municipal, or the agent appointed by him. On a representation by the appellant, the Municipal Council by another Resolution dated 15.5.70 decided to reduce the rate of tax from five paise to two paise on each litre of petrol and diesel oil with effect from 24.2.1970 and an "arrete" to that effect was issued on 16.10.1970.

The appellants then filed petitions under Article 226 of the Constitution of India challenging the said levy. A Single Judge of the Madras High Court struck down the said levy by holding that the tax was on the sale of goods and that it was levied in excess of the Municipality's power of taxation and the said levy also violated section 7 of the Pondicherry (Administration) Act, 1962. Lastly, it was held that the Pondicherry Legislature had itself enacted a General Sales Tax Act applicable to the Union Territory and, therefore, the Municipal Council, in any case, possessed no power to levy a parallel sales tax for municipal purposes.

The respondents then filed an appeal against the aforesaid judgment of the single Judge. During the pendency of this appeal, the Administrator of Pondicherry, on 18.3.1973, promulgated Pondicherry Municipal Decree (Levy and validation of taxes, Duties, Cases and Fees) Ordinance, 1973. This was replaced by the Act (hereinafter referred to as 'the Validation Act') and it became the law on 21.3.1973 when it received the assent of the President of India and was published in the Pondicherry Gazette. This Act was given retrospective operation from 18.1.1973, the day of Ordinance. This Validation Act was again challenged by the appellants before the Madras High Court by filing a fresh writ petition.

The Division bench of the High Court heard the Appeals against the Single Judge order as well as the new Writ petition which was filed challenging the Validation Act. By a common judgment, the High Court allowed the Writ Appeals and dismissed the Writ Petitions. It, inter alia, held that the Validation Act was intra vires.

The Division bench, however, granted leave to appeal to his Court because in its opinion, substantial question of

law of general importance arose in the case. Hence, these appeals.

On behalf of the appellants, the learned counsel attacked the validity of the Validation Act on three main grounds:

- (i) There was excessive delegation of legislative power. There was, it was submitted, total abdication and effacement by the Pondicherry Legislature of its essential legislative functions and from the terms of Section 3, no guidelines of policy was discernible;
- (ii) Sections 3 & 4 of the validation Act were repugnant to Section 7 of the Pondicherry (Administration) Act, 1962 and Section 21 of Government of Union Territories Act, 1963;
- (iii) The Pondicherry Legislature had no plenary powers and hence, could not legislate with retrospective effect or make laws contrary to the law made by the Parliament under Article 239 and 239A.

While relying upon the decisions in Hamdard Dawakhana (Wakf) Lal Kuan, Delhi and Another Vs. Union of India and others 1960(2) SCR 671, Devi Das Gopal Krishnan & Ors. Vs. State of Punjab & Ors., 1967(3) SCR 557, Municipal Corporation of Delhi Vs. Birla Cotton, Spinning and Weaving Mills, Delhi and another, 1968 (3) SCR 251 and Gwalior Rayon silk Mfg (WVG,) Co. Ltd. Vs. The Asstt Commissioner of Sales Tax and others. 1974 (2) SCR 879, it was contended by the learned counsel for the appellants that the provisions of the Validation Act do not contain any guidelines and the power of the municipality is absolute and unbridled and, therefore, the said Sections 3 & 4 of the Validation Act suffer from the vice of excessive delegation and is bad in law.

The principle which emanates from the aforesaid decisions relied upon by the appellants is very clear namely; that if there is abdication of legislative power or there is excessive delegation of if there is a total surrender of transfer by the Legislative power or there is excessive delegation of if there is a total surrender or transfer by the Legislature of its legislative functions to another body than that is not permissible. There is, however, no abdication, surrender of legislative functions of excessive delegation so long as the Legislative functions of excessive delegation so long as the Legislature has expressed its will on a particular subject matter, indicated its policy and left the effectuation of the policy to subordinate of subsidiary of ancillary legislation, provided the Legislature has retained the control in its hand with reference to it so that it can act as a check or a standard and prevent or undo the mischief by subordinate legislation when it chooses to or thinks fit. It is however, not necessary for us to go into these aspects in any great detail because this question of excessive delegation does not really arise in the present case.

The tax had been levied in the year 1970 under the Municipal Decree of 1880. The items to be taxed and the rate of tax to be levied were specifically determined. After the learned Single Judge held the said levy to be ultra

virus, the Legislative Assembly of Pondicherry passed the Validation Act. Sections 3 & 4 of the said Act are as follows:

"3: Levy of taxes etc. for the purpose of Municipal Decree:- Any tax, duty, cess or fee which the Legislature of the Union Territory of Pondicherry has power to levy may, subject to any general or special order which the Government may make in this behalf, also be levied, assessed and collected for the purposes of the Municipal Decree in accordance with the provisions contained in or made under the Municipal Decree and notwithstanding the provisions of Section 7 of the Pondicherry (Administration) Act, 1962 (Central Act 49 of 1962), or of any provision of any Act passed by the Legislature of the Union Territory of Pondicherry, the Municipal Decree shall have, and shall be deemed to have had on and from the 16th day of August, 1962, effect accordingly.

4: Validation of certain taxes, etc. levied assessed or collected in municipal communes Notwithstanding any judgment, decree or order of any court, all taxes, duties, Cesses and fees (being taxes, duties, cesses and fees which the Legislature of the Union Territory of Pondicherry has power to levy) levied, assessed or collected or purporting to have been levied, assessed or collected under the Municipal Decree before the commencement of this Act shall be deemed to have been validly levied, assessed or collected in accordance with law as if the provisions of Section 3 had been in force at all material times when any such tax, duty, cess or fee was levied, assessed or collected; and accordingly:-

(a) all acts, proceedings or things done or taken by the municipal councils or by any authority, officer or person in connection with the levy, assessment or collection of any such tax, duty, cess or fee shall, for all purposes, be deemed to be, and to have always been done or taken in accordance with law;

(b) no suit or other proceedings shall be maintained or continued in any court against the municipal councils or any other authority, officer or person whatsoever for the refund of any tax, duty, cess

or fee so collected; and
(c) no court shall enforce any decree of order directing the refund of any tax, duty, cess or fee so collected:

Provided at no act of omission on the part of any person shall be punishable as an person shall be punishable as an offence which would not have been so punishable if this Act had not been passed."

The question whether Sections 3 & 4 are ultra virus on the ground of excessive delegation would have been relevant if by virtue of the said provisions any subordinate of delegated legislation had to follow or any decision by the delegatee had to be taken. That question does not arise in the present case. Section 0 of the Validation Act has been enacted by the competent Legislature and it specifically empowers the levy of any tax, duty, cess or fee which the Legislature of a Union Territory had the power to levy. It further provides the tax to be assessed and collected for the purposes of the Municipal Decree in accordance with the provisions contained in the said municipal decree, and notwithstanding the provisions of Section 7 of the Pondicherry (Administration Act) 1962 of any other provision in that regard. This Section has to be read with Section 4 of the Validation Act which specifically validates the taxes which had already been levied, assessed or collected in the municipal communes, including the tax in question. At the time when the validation Act was passed, all the essential ingredients of the levy and assessment of tax of petrol and diesel oil were known and available to the Legislature. The tax had been levied at the rate of 2% on the sale of diesel and petrol and the Legislative Assembly of the Pondicherry Union Territory in effect, levied this tax itself when it passed the Validation Act. As a result of this Validation Act, no further act of subordinate legislation had to be performed by any one. The effect of this Act, as already observed, clearly was that a specific levy which had been made in 1970, with the issuance of the "arrete" by the Mayor of Mahe, was reenacted, with retrospective date, by the competent legislature. Therefore, the question of Section 3 and Section 4 of the Validation Act suffering from excessive delegation does not really arise in this case.

Before dealing with the Second contention raised by the learned counsel for the appellant, it would be more appropriate to deal with the third contention. It was submitted that the Pondicherry Legislature had no plenary powers as the same vested only in the Parliament. The submission was that the Pondicherry Legislature could not make retrospective laws, or laws contrary to the laws made by the Parliament, under Articles 239 and 239 A of the Constitution. Elaborating further it was submitted that the Pondicherry Legislature did not have the power to pass the Validation Act which had the effect of re-enacting and imposing restrictions on diesel and petrol with retrospective effect.

Article 239 a of the Constitution provides for the Parliament Creating by law, for the Union territory of Pondicherry, a body to function as a Legislature with such constitution, powers and functions as may be specified in the law. It was in pursuance of this that [The] Government of Union Territories Act, 1963 was passed by the Parliament and the said Act was made applicable to the Union Territory of Pondicherry from 1.7.1963. This Act provided for the

setting up of Legislative Assemblies and council of Ministers for the Union Territories and it was under this Act that the Legislative Assembly for the Pondicherry Union Territory was constituted. Section 18 of [The] Government of Union Territories Act, 1963 deals with the extent of the Legislature's power and it reads as follows:

"Extent of legislative powers - (1)
Subject to the provisions of this Act the Legislative Assembly of a Union Territory may make laws for the whole or any part of the Union Territory with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution in so far as any such matter is applicable in relation to Union territories.

(2) Nothing in sub-section (1) shall derogate from the powers conferred on Parliament by the Constitution to make laws with respect of any matter for the Union territory or any part thereof".

Reading Article 239 A and Section 18 of [The] Government of Union Territories Act, 1963 together, is clear that the Pondicherry Assembly had the power to make laws for the whole or part of Pondicherry with respect to any of the matters enumerated in the State List or the Concurrent List. Levy of sales tax would undoubtedly be within its legislative competence by virtue of Entry 54 of List II of the Seventh Schedule. The effect of Validation Act being promulgated was that the levy on diesel and petrol would no longer be regarded as one being made under Municipal decree of 1880 by the Municipal Council but in law, will have to be regarded as being a levy made by a competent Legislature exercising its powers by virtue of Section 18 of [The] Government of Union Territories Act, 1963 read with Article 239 A of the constitution.

By virtue of [The] Government of Union Territories Act, 1963, the Pondicherry Legislature had to enact laws with respect to the matters enumerated in the State List or the Concurrent List of course, sub-section (2) of Section 18 provides that the powers conferred under sub-section (1) shall not derogate from the powers conferred on Parliament by the Constitution to make laws with respect to any matter for Union Territory. But, there is no such law relating to the imposition of sales tax on diesel and petrol which has been enacted by the parliament, while the validation Act has imposed such a tax. It is not in dispute, and now it is well settled, that the State Legislature as well as the Parliament has the power to legislate with retrospective effect and also to pass a validation Act, This being so, and the powers of the legislature of Pondicherry being co-extensive with the powers of a State Assembly, by virtue of Section 18 of [The] Government of Union Territories Act, 1963 there is no reason for this Court to hold that the Pondicherry Legislature could not enact a law with retrospective effect. In other words by virtue of Section 18 of [The] Government of Union Territories Act, 1963, there is no reason for this court to hold that the Pondicherry Legislature could not enact a law with retrospective effect. In other words, by virtue of Section 18 of [The] Government of Union Territories Act, 1963, the Parliament vested with the Pondicherry Legislature the plenary powers to legislate

with respect to the matters said power has been validly exercised with the enactment of the Validation Act.

It was next contended by the learned counsel that Sections 3 and 4 of the Validation Act are repugnant to or are in derogation of Section 7 of Pondicherry administration Act, 1962 and Section 21 of [The] Government of Union Territories Act, 1963, which were both enacted by the Parliament. In this connection it was further submitted that the expression 'lawfully levied under Section 7' means that the levy under the Municipal decree had been validly and actually levied. In this connection it was also submitted that the tax authorized by the Validation Act did not come under Section 7 which prohibited a new levy and the Validation Act made by the Pondicherry Legislature could not over ride Section 7 of the Pondicherry Administration Act, 1962 and Section 21 of [The] Government of Union Territories Act, 1963. There is no merit in this submission. Section 7 of the Pondicherry Administration Act merely continues the existing taxes. Assuming that there was no valid levy of the tax under the Municipal decree of 1880 a competent Legislature could impose a tax and Section 7 of the Pondicherry Administration Act does not in any way prohibit such imposition. Furthermore, in Section 3 of the Validation Act itself it is stated that the tax may be levied notwithstanding the provisions of Section 7 of the Pondicherry Administration Act or any other provision of any Act passed by the Legislature or the Union Territory of passed by the Legislature or the Union Territory of Pondicherry. The levy under Sections 3 and 4 of the Validation Act cannot be said to be repugnant to Section 7 of the Pondicherry Administration Act, 1962. For that very reason there is also no merit in the contention that the Validation Act is repugnant to Section 21 of [The] Government of Union Territories Act, 1963, which section deals with inconsistency between the laws made by the Parliament and the laws made by the Legislative Assemblies.

For the aforesaid reasons, we find no merit in these appeals and the same are dismissed with costs.