

PETITIONER:
CANTONMENT BOARD, MHOW, SAUGOR & ANOTHER

Vs.

RESPONDENT:
M.P STATE ROAD TRANSPORT CORPN, REWA TRANSPORT SERVICES, REWA

DATE OF JUDGMENT: 10/04/1997

BENCH:
G.N. RAY, G.B. PATTANAIAK

ACT:

HEADNOTE:

JUDGMENT:

WITH
CIVIL APPEAL NOS.6160, 6161, 6162, 6242, 6243/83
J U D G M E N T

PATTANAIAK, J.

These six appeals raise a common question and are directed against the judgment of the Madhya Pradesh High Court, the said common question of law being whether the Cantonment Board is entitled to levy entry tax on Motor Vehicles? The High Court of Madhya Pradesh by the impugned judgments has come to the conclusion that in view of the bar of imposition of tax by any local authority contained in Section 6(1) of the Madhya Pradesh Motor Vehicles Taxation Act, 1947 (hereinafter referred to as the 'Municipality could not have imposed the entry tax on Motor Vehicles conferred under Section 127 of the Madhya Pradesh Municipalities Act, 1961 (hereinafter referred to as the 'Municipalities Act') and consequently the Cantonment Board in exercise of its power under Section 60(1) of the Cantonment Act cannot impose the entry tax on motor vehicles, the said power be co-extensive with the power of a Municipality under Section 127 of the Municipalities Act.

The broad facts leading to the impugned judgments of Madhya Pradesh High Court may be briefly stated as under:-

To consolidate and amend the law relating to the administration of cantonments the cantonments Act 1924 (Act 2 of 1924) was enacted in place of the earlier Cantonment Act (Act 15 of 1910 and the Cantonment Code of 1912) to bring the law relating to the Administration of Cantonments in conformity with the ordinary Municipal Law. Cantonments is defined in Section 3 of the said Act to mean any place or places in which any part of the Forces is quartered to be declared and notified in the official Gazette by the Central Government. Under Section 10 of the said Act for every Cantonment there shall be a Cantonment Board and the said Board is a body corporate having perpetual succession and a common seal with power to acquire and hold property both moveable and immovable as provided under Section 60 of the Act is a General Power of taxation which may be extracted herein Below:-

60. General Power of taxation: (1)

The Board may, with the previous sanction of the 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 state wherein such cantonment is situated.

(2) Any tax imposed under this section shall take effect from the date of its notification official Gazette or where any later date specified in this behalf in the notification, from such later date.

The Madhya Pradesh Motor Vehicles Taxation Act, 1947 (M.P. Act No. VI. of 1947) provide for the levy of a tax on Motor Vehicles in Madhya Pradesh. Section 3(1) the said Act entitled the Taxation Authority to levy tax on motor vehicles used or kept for use at the rate specified in the First Schedule read with sub-section (2) of section 3 of the said Act. While the Taxation Act was in force the Madhya Pradesh legislatures enacted the law relating to Municipalities and to make better provision for organisation and administration of Municipalities in Madhya Pradesh Called the Madhya Pradesh Municipalities Act, 1961 (M.P. Act No. 37 of 1961). The aforesaid municipalities Act repealed the earlier law relating to Municipalities in different parts of Madhya Pradesh, namely, the central Provinces and Berar Municipalities Act, 1922, the Madhya Bharat Municipalities Act, 1954, the Vindhya Pradesh Municipalities Act, 1946, and the Bhopal State Municipalities Act, 1955. Section 127(1)(iii) of the said municipalities Act which has direct bearing in deciding the controversy that has arisen in these appeals may be extracted hereinafter in extenso for better appreciation of the point in issue.

127. Taxes which may be imposed-(1)

A council may, from time to time, and subject to the provisions of this Chapter, and any general or special order which the state Government may make in this behalf, impose in the whole or in any part of the Municipality any of the following taxes, for the purposes of the Act, namely:-

(iii) a tax on vehicles, boats and animals used as aforesaid entering the limits of the Municipality but not liable to taxation under clause (ii).

The Cantonment Board Saugor by Notification No. 344 dated November 24, 1973 in exercise of power under section 60 of the Cantonment act made provision for imposition of Vehicles Entry Tax at the rates specified in the said Notification. Similarly the Cantonment Board, Mhow by Notification dated 19.12.1979 imposed similar entry tax on Motor Vehicles. The Cantonment Board, Jabalpur by notification dated 6th May, 1978 also imposed the entry tax on motor Vehicles in exercise of power under section 60 of the cantonment Act. All these Notifications issued by different Cantonment Boards were challenged before the Madhya Pradesh High Court by filing writ petitions were allowed by the impugned judgments of the High Court and it was held that the Cantonment Board has no power to levy entry tax on motor vehicles so long as the prohibitions

contained in section 6 of the Taxation Act continues and accordingly notifications issued by the Cantonment Board were quashed and thus the present appeals.

Mr. Lekhi, learned senior counsel appearing for the different cantonment Boards as well as Mr. Subba Rao, learned counsel appearing for some of the cantonment Boards challenged the correctness of the judgment of the Madhya Pradesh High Court *inter alia* on the ground that the Municipalities Act being a later Act than the Taxation Act, the provisions of the later Act would prevail if there is any repugnancy between these two. In this view of the matter the imposition of entry tax having been provided for section 127 (iii) of the Municipalities Act, the same could be lawfully levied by the Cantonment Board under Section 60 of the Cantonment Act. It was further contended that though the Municipalities Act did not expressly repeal the provisions of the Taxation Act but the same being a later Act the principles of implied repeal should be applied and therefore, any embargo contained in the Taxation Act for levy of entry tax because of section 6 of the Taxation Act will have no application. It was also urged that the proviso to section 7 of the Taxation Act would indicate that the embargo contained in Section 6 of the said Act would apply only if the Cantonment Board agrees not to recover any tax and in the absence of any consent of the Cantonment Board the embargo contained in imposition of tax under Section 6 of the Taxation Act will not apply. Mr. Lekhi, learned senior counsel also urged that the Taxation Act having not provided for any levy on the entry of Motor Vehicles as is provided under Section 127 (1)(ii) of the Municipalities Act there is infact no repugnancy between tow provisions and, therefore, so far as the levy of entry tax on motor vehicles is concerned, it must be held that the prohibitions contained in Section 6 of the Taxation Act will not get attracted. Lastly Mr. Lekhi argued that doctrine of desuetude should apply in the present case in as much as the provisions of section 7 of the Taxation Act though enacted since 1947 has not been in use so far and no grant has ever been given to the appellants cantonment Boards or for that matter to any other local authorities.

Mr. Agrawal, learned senior counsel appearing for the respondents and Mr. S.K. Mehta, learned counsel appearing for some of the respondents on the other hand contended that the statutory interpretation contained in the latin maxim: *leges posteriores priores contrarias abrogant* is subject to the exception embodied in the maxim: *generalia specialibus non derogant*. in other words the theory that the later laws abrogate earlier contrary laws is subject to the exception that the general law does not derogate from a special one and applying the said principle the Motor Vehicles Taxation Act being a special Act dealing with levy of tax on Motor Vehicles the later law, namely, the Municipalities Act cannot be said to have repealed the earlier provisions of the Taxation Act and on the other hand it must be presumed that the situation was intended to continue to be dealt with by the specific provision contained in the Taxation Act rather than the later general provisions contained in the Municipalities Act and , therefore the High Court was fully justified in coming to the conclusion that the Cantonment board could not have issued the Notification levying tax on entry on Motor Vehicles. The learned counsel also urged that the duty of the court being to put a construction by which both the provisions could be sustained, the expression 'vehicle' in the Municipalities Act should be interpreted to mean all vehicles other than Motor Vehicles for which a

special provision has been made in the Taxation Act and so construed the Cantonment Board would not have any jurisdiction to levy entry tax on Motor Vehicles. The relevant Sections of the Madhya Pradesh Motor Vehicles Taxation Act may quoted hereunder :

"3. Levy of Tax- (2) The tax leviable under subsection (1) shall be paid by the owner of the motor vehicle used or kept of use-

(i) for a whole quarter at one-fourth of the annual rate specified in the First Schedule , and for two or more whole quarters, pro rata; or

(ii) for any period expiring on the last day of quarter and not exceeding two months at one-sixth or one-twelfth of the rate specified in the First Schedule, according as the period exceeds, or does not exceed one month.

6. Bar of imposition of tax by any local authority.-(1) Notwithstanding anything contained in any other enactment for the time being in force, no local authority shall, after the commencement of this Act, impose for enhance a tax, toll or licence fee in respect of a motor vehicle and if any local authority has imposed sch tax. toll or licence fee since before the 1st day of April, 1942 and the same is still in force all the commencement of this Act any person who is liable to pay such tax, toll or licence fee to such authority shall be deemed to have paid it.

(2) Nothing contained in subsection (10) shall affect the imposition, enhancement or recovery of an octroi tax levied hereafter by any local authority or a terminal tax levied and in force on the 1st January , 1937 within the local area under the jurisdiction of any local authority .

(7) Grant to local authorities-(1) The state Government shall at the close of the financial year 1947-48 and of each financial year thereafter make to every Cantonment Board, Municipal Committee and notified area committee which was imposing a tax, toll or licence fee in respect of motor vehicles, before the 1st day of April, 1942, a grant of the same as was being paid by the state Government to such board or committee immediately before the commencement of this Act:

Provided that no sum shall be payable to cantonment Board unless it agrees not to recover any tax,

toll or licence fee in respect of motor vehicles.

(2) Any sum payable under sub-section (1) shall be charged on the Consolidated Fund of the State."

The rival submission require careful examination of different provisions of both the Acts and certain principles of interpretation of a statute.

The admitted position that emerges from the facts already narrated are that the cantonment Act, 1924 is the earliest in point of time which empowered the Cantonment Board to impose tax with the previous sanction of the Central Government which tax could be imposed in any Municipality in the State where such Cantonment is situated. The Madhya Pradesh Motor Vehicles Taxation Act, 1947 is a special provision dealing with levy of tax on motor Vehicle which is used or kept for use. There is no provision in the aforesaid Taxation Act for levy of any tax on entry of Motor Vehicles alone. The Municipality Act of 1961, however, authorises imposition of tax on vehicles, boats and animals entering the limits of the Municipality as provided in Section 127(1)(iii) of the said Act. In the aforesaid premises it is required to be considered and decided as to whether the Cantonment Board could impose tax on vehicles entering the limits of the Cantonments which could have otherwise been levied by the Municipality in exercise of power under Section 127(1)(iii) of the Municipalities Act. It may be further noticed that the Motor vehicles Taxation Act as well as the Municipalities Act are both enacted by the State Legislature. The first question that arises for consideration is whether there is any repugnancy between the provisions of the Motor Vehicles Taxation Act and the Municipalities Act in relation to imposition of tax on Motor Vehicles entering the limits of the Municipality. As has been stated earlier under the Taxation Act, Tax could be imposed on the Motor Vehicles which is used or Kept for use as provided in Section 3(2) of the said Act and there is no provision for imposition of tax on vehicles which is neither used nor kept for use but for mere entry into any municipal limits. When the legislatures imposed a ban on levy of tax by any local authority under section 6 of the Taxation Act what is prohibited is levy of tax which is leviable under section 3(2) of the Taxation Act. When the same legislature enacted the Municipalities to impose tax on vehicles entering the limits of the Municipality under Section 127(1)(iii) they must be presumed to be aware of the provisions of the Taxation Act and leviability of the tax thereunder in respect of Motor Vehicles used or kept for use. The expression 'vehicle' having been defined in Section 2(38) to include a bicycle, a tricycle, motor car and ever wheel conveyance which is used or capable of being used on a public street, it is not possible for us to accept the contention of Mr. Agrawal, learned counsel appearing for the respondents to interpret the same expression to mean vehicles other than the 'motor vehicles'. Since the Taxation Act does not provide for any imposition of tax on entry of the Motor vehicles within Municipal limits whereas the municipal Act authorises fr such levy under Section 127(1)(iii) we do not find any inconsistency or repugnancy between the two provisions. In other words while under the Motor Vehicle Taxation Act a tax could be imposed on Motor Vehicles used or kept for use by the registering authority including the Municipalities under section 127(1)(iii) of the Municipalities Act. But so far as the imposition of tax motor Vehicle entering into the Municipal limits is

concerned, which is provided under section 127(1)(iii), of the Municipalities Act the said provisions cannot be said to be repugnant to the special statute in respect of Motor Vehicles, namely the Motor Vehicles Taxation Act. It has been stated by this court in the case of Ashoka Marketing Ltd. And another etc. etc. vs, Punjab National Bank and others etc. etc. (1990) 4 SCC 406 that the principal of statutory interpretation, namely, later laws abrogate earlier contrary laws is subject to exception that a general provision does not derogate from a special one. This would mean that where a literal meaning of the general enactment covers a situation for which specific provision is made by another enactment contained in the earlier Act, it is presumed that the situation was intended to be continued to be dealt with by the specific provision rather than the later general one. In other words if the Taxation Act would have contained a provision authorising imposition of Entry Tax on Motor Vehicle than certainly the later general Act, namely the municipalities Act even if by making a provision of imposition of entry tax on Vehicles entering in to the Municipal limits would not have operated. But since the special law, namely, the Taxation Act does not have any provision authorising imposition of tax on entry of Motor Vehicles. The said provision would remain valid and would be applicable and there would be no bar for the municipality to impose entry tax on all vehicles including Motor Vehicles including Motor Vehicles for entering in to the limits of the Municipalities. This construction being the only harmonious construction by which both the provisions remain operative it is the duty of the court adopt such construction. There is no dispute with the proposition advanced by Mr. Lekhi, learned senior counsel with regard to theory of implied repeal.

This theory the learned the senior counsel advanced since the Municipalities Act did not repeal the provisions of the Motor Vehicles Taxation Act. It was held by this Court in the Case of Yogender Pal Singh & others vs. Union of India & Ors. (1987) 1 SCC 631;

"It is well settled that when a competent Authority makes a new law which is totally inconsistent with the earlier law and the two cannot stand together any longer it must be construed that the earlier law has been repealed by necessary implication by the later law."

In considering the applicability of section 6 of the General Clause Act 1897 in the case of State Of Orissa Vs. M.A Tuloch and Co. (1964) 4 SCR 461 this court had observed:-

"The entire theory underlying implied repeals is that there is no need for the later enactment has been repealed by using any particular set of words or form of drafting but that if the legislative intent to supersede the earlier law is manifested by the enactment provisions as to effect such supersession, then there is law a repeal notwithstanding the absence of the words 'repeal' in the later statute."

The aforesaid observation no doubt has been made while analysing the effect of Section 6 of the General Clauses Act

and the continuance of rights accrued and liabilities incurred under the superseded enactment and thus has no direct application to the case in hand.

In the case Commissioner of Income Tax, Bombay City I vs. Godavari sugar Mills Ltd. (1967) 1 SCR 798 on which Mr. Lekhi learned senior counsel placed strong reliance, the question for consideration was whether the ordinance be repugnant to section 23A of the Income Tax Act, 1922 it can be said that there is an implied repeal of section 23A of the Act. In this connection it was held by this court:-

"there is a manifest repugnancy between the provisions of the Ordinance and of section 23A if the Act and it must be taken that there is a implied repeal of Section 23 of the Act to the Extent of that repugnancy created by Section 3 of the Ordinance and so long as the ordinance remain in force."

But in view of our conclusion that there is no repugnancy between Section 3 read with Section 6 of the Motor Vehicles Taxation Act and the provisions of Section 127(1)(iii) of the Municipalities Act and both the provisions operate in two different fields the principle of implied repeal will have no application. In the connection it would be appropriate for us to notice one decision of this court in the Case of The Western India Theatres Ltd. vs. The Cantonment Board, Poona, Cantonment 1959 Supp. (2) SCR 63, where the validity of levy of entertainment tax under Entry 50 in Schedule VII of the Government of India Act. 1935 was under consideration. The Entry in question was to the effect:-

"taxes on luxury or entertainment or amusement"

It was contended before the Court that the tax in question was really a tax imposed for the privilege of carrying on any trade or calling under Entry 46 and, therefore, the same cannot exceed Rs.100 per annum as provided under Section 142A of the Government of India Act 1935 and Rs.250 per annum under Article 276(2) of the Constitution. The Court repelling the argument held:-

"The entry contemplates luxuries, entertainment, and amusements as objects on which the tax is to be imposed. If the words are to be so regarded, as we think they must, there can be no reason to differentiate between the given and the receiver of the luxuries, entertainment's or amusements and both may, with equal propriety, be made amenable to the tax. It is true that economists regards an entertainment, it does become a tax on expenditure, entertainment's or amusements . The entry, as we have said, contemplates a law with respect to these matters regarded as objects and a law which imposes tax on the act of entertaining is within the entry whether it falls on the giver or receiver of that entertainment. Nor is the impugned tax a tax imposed for the privilege of carrying on any trade or calling."

Thus considered, the tax leviable on Motor Vehicles when used or kept for use under section 3(2) of the Madhya Pradesh Motor Vehicles Taxation Act is different from the tax leviable on Motor Vehicles. Entering the limits of the Municipality under Section 127(1) (iii) of the Madhya Pradesh Municipalities Act, 1961 and there is no repugnancy between the two and both the provisions can therefore operate in its own field. Since under Section 127(1)(iii) of the Madhya Pradesh Municipality Act, Municipality could levy a tax on Motor Vehicles entering the limits of the Municipality, the same could be levied by the Cantonment Board in exercise of its power under Section 60 of the Cantonments Act with the previous sanction of the Central Government. Consequently, notifications issued by the Cantonment Boards of Mhow, Jabalpur and Saugar were valid notifications issued under section 60 of the cantonments Act and imposition of tax on motor Vehicles entering into the limits of the Cantonment Boards cannot be said to be invalid or inoperative. The High court in our opinion committed error in striking down those notifications on the ground of repugnancy with this special legislation, namely, the Madhya Pradesh Motor Vehicles Taxation Act.

So far as the contention of Mr. Lekhi, the learned senior counsel with regard to the proviso to Section 7 of the Taxation Act is concerned, we however, do not find any force in the same inasmuch as Section 7 deals with the grant to the local authorities and it provides that if a grant was being paid by the State Government to any such Board or Committee immediately before the commencement of the Taxation Act then the said grant shall be continued to be paid. But the Cantonment Board by virtue of the Proviso will not be entitled to receive the said grant unless it agrees not to recover any tax, toll or licence in respect of the Motor Vehicles. In other words, Section 7 and proviso thereto deals with right of the Cantonment Board and the Municipality to receive a grant which was being paid by the State Government prior to the commencement of the Taxation Act and the said provision has no connection with the imposition of tax on Motor Vehicle which is governed by section 3 (2) and the bar on such imposition which is contained in Section 6 of the Taxation Act. In this view of the matter, we are unable to accept the contention of Mr. Lekhi, the learned senior counsel that conjoint reading of section 6 and 7 and its proviso would lead to the conclusion that even under the Taxation Act a Cantonment Board was entitled to impose tax on Motor Vehicles used or kept for use notwithstanding the bar under Section 6.

Coming to the conclusion of the applicability of doctrine of desuetude Mr. Lekhi, the learned senior counsel strongly relied upon the decision of this Court in Municipal Corporation for City of Pune and another vs. Bharat Forge Company Ltd. and other (1995)3 SCC 434 and submitted that the provisions of the Motor Vehicles Taxation Act must be held to be of disuse as no grant as provided in Section 7 of the Taxation Act has ever been made at any point of time after the enactment of the said Act in 1947. This contention is wholly unsustainable in law inasmuch as we are not concerned with the question of grant to local authorities and Cantonment Board as provided under Section 7 of the Taxation Act but we are concerned with the leviability of tax on Motor Vehicles under Section 3(2) of the Taxation Act. It is nobody's case that no tax was being levied on Motor Vehicles which is used or kept for use under Section 3(2) of the Madhya Pradesh Motor Vehicle Taxation Act, 1947. That apart to apply the principle of desuetude it is

necessary to establish that the state in question has been in disuse for long and the contrary practice of some duration has evolved. In other words to make the aforesaid principle applicable in the case in hand it is required to be established that the provisions of Section 3(2) of the Motor Vehicles Taxation Act has been in disuse for a long period and that the imposition of tax on entry of Motor Vehicles into the Cantonment limit has been in operation for a fairly long period. Neither of these two ingredients has been satisfied in the case in hand and therefore the aforesaid principle of desuetude is of no application to the case in hand.

In the aforesaid premises, these appeals are allowed. The impugned judgments of the Madhya Pradesh High Court are set aside and it is held that the respective cantonment Boards Pursuant to the notifications issued by the Cantonment Boards in exercise of power under Section 60 of the Cantonments Act. But in the circumstances there will be no order as to costs.