(1978) 06 MP CK 0003

Madhya Pradesh High Court (Indore Bench)

Case No: Miscellaneous Petition No. 199 of 1976 connected with Miscellaneous P. No. 200 of 1976

Ganesh Ginning and Pressing Factory		APPELLANT
	Vs	
Municipal Council, Anjad and others		RESPONDENT

Date of Decision: June 26, 1978

Acts Referred:

- Minimum Wages Act, 1948 - Section 27

Citation: (1978) JLJ 622 : (1979) MPLJ 85

Hon'ble Judges: P.D. Mulye, J; G.L. Oza, J

Bench: Division Bench

Advocate: K.A. Chitale, for the Appellant; S.D. Sanghi for Respondents 1 and 2, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

G.L. Oza, J.

This petition and Misc. Petition No. 200 of 1976 have been filed challenging the imposition of tax on cotton bales which was increased from 24-11-1973.

It is alleged that the respondent Anjad Municipality which originally fell within the erstwhile State of Barwani had imposed a tax at the rate of Re. 1 per cotton bale and that continued till 24-11-1973 when it was increased to Rs. 2 per bale. It is alleged that during this period the Municipal Council was superseded and the Naib Tahsildar, Rajpur, was the Administrator of the Municipality who passed a resolution on 24-11-1973 increasing this tax from Rs. 1 to Rs. 2 per bale. This was notified in the Madhya Pradesh Gazette dated 1-12-1973. The petitioners went up in appeal before

the Collector, West Nimar, Khargone, and the Collector by his order dated 16-6-75 rejected the appeal as being incompetent. When this municipality was reconstituted it passed a resolution on 22-3-1976 (Resolution No. 129) and by this resolution again the municipality directed the recovery of the tax arrears at the increased rate, i.e. Rs. 2 per cotton bale. After this resolution the recovery proceedings were launched.

The petitioners contend that as the State Government has not prescribed the limits u/s 127 of the Madhya Pradesh Municipalities Act 1961 (herein-after referred to as "the Act"), the rate could not be increased exercising jurisdiction u/s 130 of the Act. Learned Counsel for the petitioners placed reliance on the decisions reported in Madanlal v. Municipal Council, Tarana 1974 MPLJ 251 and Dhanraj v. Stats of M.P. Misc. Petition No. 118 of 1973 decided on 30-7-1975 (Indore) (1975 M P L J 114). Learned Counsel for the respondents on the other hand contended that when powers to levy tax have been delegated to the Municipal Council it could not be said that as the maximum and minimum limits were not fixed by the Government the municipal counsel could not exercise the delegated functions as it was contended that because the policy was clearly enunciated in the statute itself it could not be said that there was excessive delegation. Learned Counsel for the respondents relied on the decisions reported in Gulabchand Bapalal Modi Vs. Municipal Corporation of Ahmedabad City, ; Municipal Board, Hapur Vs. Raghuvendra Kripal and Others, and Mohammad Hussain Gulam Mohammad and Another Vs. The State of Bombay and Another,

In Gulabchand Bapalal Modi v. Municipal Corporation, Ahmedabad (supra) it was observed :

The point for consideration is whether the absence of a provision laying down the maximum rate is by itself sufficient to render the delegation of the power excessive. As already stated, section 127 (1) expressly provides that taxes can be levied only for the purposes of the Act. They cannot thus be raised for any function other than the one provided by the Act. Section 82 requires all monies received by the Corporation under the Act to be credited to the Municipal Fund held by the Corporation in trust for the purposes of the Act. By reason of section 86, no payment can be made out of the Municipal Fund unless it is covered by the current budget grant. Further more, section 88 lays down that the moneys credited in the Municipal Fund shall be applied in payment of sums, charges and costs necessary for carrying the Act into effect, or payment directed or sanctioned by or under the Act. Section 89 restricts expenditure by the Corporation within the city except when provided by the Act or by a resolution by not less than half the total number of councillors. u/s 95, the Commissioner is required annually to lay before the Standing Committee estimate of income and expenditure, and u/s 96, the Standing Committee has to prepare budget Estimate ''A'' "having regard to all the requirements of this Act." The budget estimate then has to be laid before and passed by the Corporation. Similar provisions are made in sections 97 and 98 for budget estimate ''B'' prepared by the

Transport Manager. It is after all this has been done that the Corporation u/s 99 determines, on or before the 20th of February of each year, the rates at which property taxes u/s 127 (1), but subject to the limitations and conditions laid down in Chapter XI, are to be levied for the next ensuing official year. u/s 100, the Corporation either sends back the budget estimates ''A'' or ''B'' for further consideration, or adopts them with such alterations it deems expedient. The conditions and limitations subject to which the Corporation can fix. u/s 99, the rates at which the proprety taxes are to be levied are those provided in section 127 (3) and (4), i.e., they can be assessed and levied in accordance with the provisions of the Act and the rules. These provisions clearly show that the ultimate control, both for raising the taxes and incurring expenditure, lies with the councillors chosen by and responsible to the people.

As aforesaid, the assessment and levy of the property taxes have to be in conformity with the Act and the rules. These rules contain inter alia Taxation Rules, which are part of the Act. Section 454 no doubt, empowers the Corporation to amend, alter and add to those rules, but such power is made u/s 455 subject to the sanction of the State Government. u/s 456, the State Government can at any time require the Corporation to make rules u/s 454 in respect of any proposed or matter specified in section 457, which includes item "(7) Municipal Taxes, (a) The assessment and recovery of municipal taxes". Thus, although the Act does not prescribe the maximum rate at which the property taxes can be raised, the ultimate control for raising them is with the councillors responsible to the people. It is difficult, therefore, to sustain the plea that the power to levy the property tax is so unbridled as to make it possible for the Corporation to levy it in an arbitrary manner or extent.

In all statutes dealing with local administration municipal authorities have inevitably to be delegated the power of taxation. Such power is a necessary adjunct to a system of local self-Government. Whether such delegation is excessive and amounts to abdication of an essential legislative function has to be considered from the scheme, the objects, and the provisions of the statute in question.

It was on this, that reliance was placed by Learned Counsel for the respondents. Similarly, in Municipal Board, Harpur v. Raghavendra Kripal and others (supra) the question of excessive delegation was considered and it was observed:

It was, however, contended that there has been excessive delegation, inasmuch as the State Government has been given the power to condone breaches of the Act and thus to set at naught the Act itself. This is not a right reading of the relevant provisions. We have already pointed out that the power to tax is conferred on the State Legislature but is exercised by the local authority under the control of the State Government. The taxes with which we are concerned are local taxes for local needs and for which local inquiries have to be made. They are rightly left to the representatives of the local population which would bear the tax. Such taxes must vary from town to town, from one Board to another, and from one commodity to

another. It is impossible for the Legislature to pass statutes for the imposition of such taxes in local areas. The power must be delegated. Regard being had to the democratic set up of the municipalities which need the proceeds of these taxes for their own administration, it is proper to leave to these municipalities the power to impose and collect these taxes. The taxes are, however, predetermined and a procedure for consulting the wishes of the people is devised. But the matter is not left entirely in the hand of the Municipal Boards. As the State Legislature cannot supervise the due observance of its laws by the Municipal Boards, power is given to the State Government to check their actions. The imposition of the tax is left to the Municipal Boards but the duty to see that the provisions for publicity, and obtaining the views of the persons to be taxed are fully complied with is laid upon the State Government. The proceedings for the imposition of the tax, however, must come to a conclusion at some stage after which it can be said that the tax has been imposed. That stage is reached, not when the special resolution of the Municipal Board is passed, but when the notification by Government is issued. Now it is impossible to leave the matter open so that complaints about the imposition of the tax or the breach of this rule or that may continue to be raised. The door to objections must at some stage be shut and the Legislature considers that, if the State Government approves of the special resolution, all enquiry must cease. This is not a case of excessive delegation unless one starts with the notion that the State Government may collude with the Municipal Board to disregard deliberately the provisions for the imposition of the tax. There is no warrant for such a supposition. The provision making the notification conclusive evidence of the proper imposition of the tax is conceived in the best interest of compliance of the provisions by the Boards and not to facilitate their breach. It cannot, therefore, be said that there is excessive delegation.

In Mohammad Hussain v. State of Bombay (Supra) their Lordships also considered the question of excessive delegation in paragraph 6 of their judgment which reads:

The next attack is on section 29 of the Act, which provides that the State Government may by notification in the Official Gazette, add to, amend or cancel any of the items of agricultural produce specified in the Schedule. It is submitted that this gives a completely unregulated power to the State Government to include any crop within the Schedule without any guidance or control whatsoever. We are of opinion that this contention must also fail. It is true that section 29 itself does not provide for any criterion for determining which crop shall be put into the Schedule or which shall be taken out therefrom but the guidance is in our opinion writ large in the various provisions of the Act itself. As we have already pointed out, the scheme of the Act is to leave out of account retail sale altogether; it deals with what may be called whole sale trade and this in our opinion provides ample guidance to the State Government when it comes to decide whether a particular agricultural produce should be added to, or taken out of, the Schedule. The State Government will have to consider in each case whether the volume of trade in the produce is of

such a nature as to give rise to wholesale trade. If it comes to this conclusion it may add that produce to the Schedule. On the other hand if it comes to the conclusion that the production of a particular produce included in the Schedule has fallen and can be no longer a subject-matter of wholesale trade, it may take out that produce from the Schedule. We may in this connection refer to The Edward Mills Co. Ltd., Beawar and Others Vs. The State of Ajmer and Another, In that case section 27 of the Minimum Wages Act, 1948 which gave power to the appropriate Government to add to either part of the Schedule any employment in respect of which it is of opinion that minimum wages shall be fixed by giving notification in a particular manner was held to be constitutional. It was observed in that case that the legislative policy was apparent on the fact of the enactment (impugned there); it was to carry out effectively the purposes of the enactment that power had been given to the appropriate Government to decide with reference to local conditions whether it was desirable that minimum wages should be fixed in regard to a particular trade or industry which was not included in the list. The same considerations in our opinion apply to section 29 of the Act and the power is given to the State Government to add to or amend, or cancel any of the items of the agricultural produce specified in the Schedule in accordance with the local conditions prevailing in different parts of the State in pursuance of the legislative policy which is apparent on the face of the Act. Therefore, in enacting section 29, the Legislature had not stripped itself of its essential powers or assigned to the administrative authority anything but an accessory or subordinate power which was deemed necessary to carry out the purpose and policy of the Act. We therefore reject the contention that section 29 of the Act gives uncontrolled power to the State Government and is therefore unconstitutional.

It therefore cannot be doubted that where power has been delegated and ultimate control is retained by elected Councillors it could not be said that the delegation was unbridled. But in the present case we are not really concerned with whether the delegation was excessive or not but concerned with the provisions contained in section 130 of the M.P. Municipalities Act which empowers the Municipal Council to raise the tax if it was imposed earlier under certain circumstances only. Section 130 reads:

130. A Council may abolish any tax already imposed under this Act or may within the limits prescribed under sub-section (2) of section 127, vary the amount or rate of any such tax.....

The language of this section clearly indicates that the Council has been empowered to abolish any tax already imposed under this Act and also is empowered to vary the amount or rate of any such tax within the limits prescribed under sub-section (2) of section 127. It is therefore clear from the reading of this section that the Council is authorized to vary the tax within the limits prescribed under sub-section (2) of section 127. Subsection (2) of section 127 reads :

127 (2) The State Government may, by rules made under this Act,--

(a) regulate the imposition, assessment and collection of taxes under this Act;

(b) prevent the evasion of taxes imposed under this Act; and

(c) prescribe the maximum and minimum limits as to the amount or rate of any tax.

It is not disputed that the State Government have not prescribed the maximum and minimum limits of the amount of rate of any tax as required by sub-section (2) of section 127 of the Act. If these limits are not prescribed, the Municipal Council exercising powers u/s 130 could not vary the tax as that variation could only be within the limits so prescribed. Consequently, it could not be doubted that where the limits have not been prescribed the Municipal Council could not exercise the powers conferred on it u/s 130 of the Act.

In Madanlal v. Municipal Council, Tarana (supra) a Division Bench of this Court considered the powers of the Municipal Council u/s 130 in view of Government not having prescribed the limits as required u/s 127 (2). It was held :

The second point raised on behalf of the petitioner is that the Council (Administrator) had no jurisdiction to increase the rates of octroi, since the State Government has not made any rules under clause (c) of sub-section (2) of section 127. In our opinion, it has much force. The Council has power under sub-section (1) of section 130 to increase the rates of octroi, but the said power is subject to the limits prescribed under sub-section (2) of section 127. This means unless the State Government makes rules for the purpose, the Council would not be in a position to increase the rate of octroi by exercising the powers u/s 130. It is only under the rule making power when the State Government has made rules for the purpose by prescribing maximum and minimum limits, the Council can exercise the power to increase the rate of octroi and levy the said rate u/s 130. Thus, it is quite apparent that there are two restrictions on the powers of the Council before it embarks to increase the rates of octroi. The first is that the maximum must be prescribed by the rules made under the rulemaking power of the State Government and the second is that the increase of levy must be confined to the limits prescribed under the rules. Since no rules have been framed for the purpose as admitted by the learned Advocate General, we are of the opinion that the increase of rates of octroi vide order dated 23-12-1969 (Annexure-P-6) and the Gazette notification with the Schedule of rates of tax (Annexure-P-7) was wholly without legal authority and as such without jurisdiction and not enforceable.
Similarly, another Division Bench of this Court in Dhanraj v. State of M.P., has taken the same view. In this decision their Lordships have also considered the decision reported in Gulabchand Bapalal Modi v. Municipal Corporation, Ahmedabad (Supra).

In the light of the discussion above, therefore, in our opinion the contention advanced by the petitioners has to be accepted. The petition is accordingly allowed

and the respondents are directed not to recover the impugned tax at the enhanced rate as this imposition is illegal and without the authority of law. The petitioners shall be entitled to costs of this petition. Counsel fee Rs. 150 (One hundred fifty) if certified. The security deposit may be refunded to the petitioner after verification.