Before D. S. Tewatia & S. S. Sodhi, JJ.

PYARE LAL SALDI AND OTHERS,—*Petitioners.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Petitioners.*

Civil Writ Petition No. 6738 *of* 1975.

July 16, 1984.

Punjab Municipal Act (III of 1911)—Section 62 & 62-A—Tax imposed by State Government under Section 62-A without complying with procedure as laid down in Section 62—Such tax—Whether valid—Procedure prescribed in Section 62—Whether to be followed only by a Committee while imposing tax—Power conferred on State Government by Section 62-A—Whether suffers from the vice of excessive delegation—Tax under Section 62-A—Whether can be imposed only in times of financial stringency.

Held, that the reading of the provisions of sub-section (3) of Section 62-A of the Punjab Municipal Act, 1911 shows that the necessity of complying with the procedure prescribed by section 62 of the Act for the imposition of a tax has been dispensed with and that the procedure of section 62 is meant for the Municipal Committee and not the State Government exercising power under sub-section (3) of section 62-A.

(Para 10).

Held, that the reading of section 62-A of the Act would show that the only taxes that the State Government has been empowered thereby to impose are those mentioned in section 61 of the Act. Thus section 61 specifies not only the taxes which may be imposed but also the rate at which these taxes can be levied. This, must clearly be taken to provide the necessary guidance to the State Government both with regard to the taxes which can be levied as also the rates thereof. Further before the State Government can exercise its power of imposing a tax under sub-section (3) of section 62-A of the Act, it must by special or general order notified in the Official Gazette require the Municipal Committee to impose such tax which has not already been imposed at such rate and it is only in the case of the failure of the Municipal Committee to impose such tax that the State Government is empowered to take action under sub-section (3) of section 62-A of the Act. The Legislature in its wisdom has of course left it to the judgment of the State Government, whether or not and when to use this power for imposition of any such tax. A discretion which was perfectly legitimate for the Legislature to leave to the State Government. The aforesaid section, therefore, cannot be considered as conferring unguided and unfettered power upon the State Government rendering it unconstitutional on the ground of excessive delegation.

(Paras 14 & 15).

Held, that a reading of section 62-A of the Act does not show that the tax can be imposed only on account of financial stringency of the Committee and to read such a limitation would clearly be unwarranted.

(Para 16).

Petition under Articles 226/227 of the Constitution of India praying that :—

(i) a writ in the nature of certiorari quashing the orders of the State Government Annexure P-5, P-9 and the resolution of of the Municipal Committee Annexure P-10, be issued.

(ii) a writ in the nature of mandamus directing the respondents not to recover the house-tax from the petitioner from July, 1965 *to* 31*st March*. 1974, be issued;

(iii) any other writ, order or direction as this Hon'ble Court may deem fit and proper, under the circumstances of the case, be issued;

(iv) the record of the case be ordered to be sent for;

(v) the cost of the petition be awarded to the petitioners;

It is further prayed that :—

(a) the conditions of attaching original/certified copies the annexures be ordered to be dispensed with ;

(b) that during the pendency of the writ petition the operation of the impugned orders may kindly be stayed;

(c) that during the pendency of the writ petition the preparation, the finalization of the assessment lists and the realization of the house-tax for the period from July, 1965 *to* 31*st March,* 1974, *be stayed.*

M. M. Kumar, Advocate,—*for the Petitioner.*

H. S. Bedi, D.A.G. Punjab,—*for respondents.*

A. N. Mittal & Viney Mittal Advocates,—*for* respondents.

JUDGMENT

S. S. Sodhi, J.

(1) The challenge here is to the vires of section 62-A of the Punjab Municipal Act, 1911 (hereinafter referred to as the Act) in the context of the imposition of house tax in the area of Municipal Committee, Gobindgarh by a notification issued by the State Government on March 10, 1965 under sub-section (3) thereof.

Section 62-A of the Act reads as under:—

"62-A POWER OF GOVERNMENT IN TAXATION (1).— The State Government may, by special or general order notified in the Official Gazette, require a Committee to impose any tax mentioned in section 61, not already imposed at such rate and within such period as may be specified in the notification and the Committee shall thereupon act accordingly.

(2) The State Government may require a Committee to modify the rate of any tax already imposed and thereupon the Committee shall modify the tax as required within such period as the State Government may direct.

(3) If the Committee fails to carry out any order passed under sub-section (1) or (2) the State Government may by a suitable order notified in the Official Gazette impose or modify the tax. The order so passed shall operate as if it were a resolution duly passed by the Committee and as if the proposal was sanctioned in accordance with the procedure contained in section 62."

(2) On October 23, 1964, the State Government by a notification issued under sub-section (1) of section 62-A called upon the Municipal Committee to impose house tax. The Municipal Committee declined to do so on the plea that its income was more than its expenditure. It was so resolved at its meeting held on November 17, 1964. It was thereafter that the impugned notification of March 10, 1965 (Annexure P. 2) was issued imposing this tax.

(3) Some residents of Gobindgarh challenged the imposition of this house tax in writ proceedings—C.W.P. No. 2495 of 1965. This writ petition was eventually dismissed on August 1, 1974.

(4) It appears that during the pendency of the writ petition, no action had been taken by the Municipal Committee in the matter of the imposition and recovery of the house tax so much so that the Executive Officer of the Municipal Committee wrote to the State Government on March 23, 1974, suggesting that the notification of March 10, 1965 (Annexure P. 2) be withdrawn and a fresh notification issued as all the members were opposed to it and the Municipal Committee was not taking any interest in the matter.

(5) Later, after the dismissal of the writ petition, a unanimous resolution was passed by the Municipal Committee on September 30, 1974, that house tax be imposed only from the year 1974-75 onward. A copy of the resolution was forwarded to the State Government by the letter of October 4, 1974 (Annexure P. 4), a reading of which would suggest that as per the legal advice given to it, the Municipal Committee was of the view that assessment and recovery of house tax could only be from 1974-75 and not prior thereto. The State Government in reply, however, informed the Municipal Committee by its letter of December 5, 1974 (Annexure P. 5) that house tax could be recovered according to the prescribed procedure with effect from the date specified in the notification of March 10, 1965, the specified date there being July 1, 1965.

(6) The Municipal Committee then passed another resolution on December 9, 1974, whereby it was decided that some office bearers thereof should contact the State Government to request that there should be no imposition of house tax from 1965 to 1974 and in the meanwhile it was decided that no proceedings in respect of assessment of tax covering this period be taken up. This decision was conveyed to the Government and the President of the Municipal Committee and others are then said to have met the Minister concerned and also submitted representations requesting exemption from imposition of house-tax for the period July 1, 1965, to March 31, 1974.

(7) In the meanwhile, by another resolution passed on January 6, 1975, it was decided that work be commenced on the preparation of assessment lists for the recovery of house tax for the year 1974-75 while that for the period prior thereto, be postponed.

(8) There was, however, no change in the decision of the State Government in the matter and on August 20, 1975, the Municipal Committee was again advised by it to recover arrears of house tax for the period commencing from July 1, 1965. It was thereafter that the Municipal Committee eventually relented when on October 21, 1975, it passed a resolution that it would comply with the directions of the State Government and would impose house tax from July, 1965. In pursuance thereof, preparation of assessment lists for the relevant period commenced.

(9) This represents the factual background to the challenge to the legality of the imposition of house tax under section 62-A of the Act.

(10) It was in the first instance contended that there was an inherent defect in the imposition of house tax, inasmuch as, the procedure prescribed under section 62 of the Act had not been followed. The argument being that compliance with the procedural provisions of section 62 was a condition precedent to the imposition of tax under section 62-A of the Act. A complete answer to this is provided by the judgment of the Division Bench in *Shri Krishan Kumar Sanan and others* v. *The Punjab State and another,* (1), where it was held that by virtue of the provisions of sub-section (3) of section 62-A of the Act, the necessity of complying with the procedure prescribed by section 62 of the Act for the imposition of a tax had been dispensed with and that the procedure of section 62 was meant for the Municipal Committee and not the State Government exercising power under sub-section (3) of section 62-A of the Act. It was observed:—

> "As the Legislature has done away with the necessity of pursuing the course of procedure in case the tax is sought to be imposed by the State Government, no exceptions could be taken to the notification on the ground that in case the tax is imposed by a resolution of a Municipal Committee that procedure has to be followed and that the same has been rendered unnecessary, when it is to be imposed by the State Government under sub-section (3) of Section 62-A of the Act."

It was then said that the provisions of Section 62-A of the Act gave unfettered powers to the State Government without any guidelines being prescribed for the exercise thereof and were thus arbitrary and undemocratic. The argument being that the State Government could under this provision of law impose any tax, at any rate and on any persons as it may choose to impose this burden upon by its whim or fancy. In other words, the provisions suffer from the vice of excessive delegation. This is indeed a contention wholly devoid of merit. It is no-doubt well-settled that there is no unlimited right of delegation inherent in legislative power and that the legislature must retain in its own hands the essential legislative functions, but it is open to the legislature to delegate the task of subordinate legislation necessary for implementing the purpose and object of the

(1) 1972 P.L.R. 149.

Act. It would also be pertinent to refer here to the observation of K. N. Wanchoo, C.J. in the *Municipal Corporation of Delhi* v. *Birla Cotton, Spinning and Weaving Mills, Delhi and another*, (2):—

> "— — — Where the legislative policy is enunciated with sufficient clearness or a standard is laid down, the courts should not interfere. What guidance should be given and to what extent and whether guidance has been given in a particular case at all depends on a consideration of the provisions of the particular Act with which the Court has to deal including its preamble. Further, it appears to us that the nature of the body to which delegation is made is also a factor to be taken into consideration in determining whether there is sufficient guidance in the matter of delegation."

(11) In the same strain, dealing with the charge of excessive delegation under the U. P. Sales Tax Act, 1948, the Supreme Court in *M/s Hira Lal Ratan Lal* v. *The Sales Tax Officer, Section III, and another*, (3), while reiterating that the legislature cannot delegate its legislative functions to any other body, held that subject to this qualification, it was permissible for the legislature to delegate the power to select the persons on whom the tax is to be levied or the goods or the transactions on which the tax is to be levied. Reference was also made to the earlier case of *Banarsi Das Bhanot* v. *State of Madhya Pradesh*, (4), where is was held that it is not unconstitutional for the legislature to leave it to the executive to determine the details relating to the working of tax laws, such as selection of persons on whom the tax is to be levied, the rates at which it is to be charged in respect of different classes of goods and the like.

(12) Counsel also cited *M/s Devi Das Gopal Krishan etc.* v. *State of Punjab and others*, (5); where it was observed that the court had in more than one decision, approved the conferment of a reasonable area of discretion by a fiscal statute and consequently upheld the provisions of the Punjab General Sales Tax Act which left it to the government to fix the rates of Sales Tax on various commodities between 1 pice and 2 pice in a rupee.

(2) A.I.R. 1968 S.C. 1232.
(3) A.I.R. 1973 S.C. 1034.
(4) A.I.R. 1958 S.C. 909.
(5) A.I.R. 1967 S.C. 1895.

(13) Even nearer in point to the present case is the precedent provided by *Ram Bachan Lal* v. *The State of Bihar and another,* (5). This concerned the levy of Profession Tax under the Bihar and Orissa Municipal Act, 1922. It was said that the rate of tax to be levied had been left to the discretion of the Commissioners under Section 82(1)(ff) of the Act and of the Government under proviso (iv) to Section 82(1) without giving any guidance as to the amount of tax. This contention was repelled with the observation that Schedule IV of the Act specifies the maximum amount of tax that could be levied while Section 150-D laid down the purpose for which it could be utilized and this provided sufficient guidance to the Commissioner and the government to fix the rate of tax. Reference in this behalf was also made to the following observations of Sarkar, J. in *The Corporation of Calcutta* v. *Liberty Cinema,* (6):—

> "It seems to us that there are various decisions of this Court which support the proposition that for a statutory provision for raising revenue for the purposes of the delegate, as the section now under consideration is, the needs of the taxing body for carrying out its functions under the statute for which alone the taxing power was conferred on it, may afford sufficient guidance to make the power to fix the rate of tax valid."

(14) Coming back to Section 62-A of the Act, a reading thereof would show that the only taxes that the State Government has been empowered thereby to impose are those mentioned in Section 61 of the Act. This Section 61 specifies not only the taxes which may be imposed but also the rate at which these taxes can be levied. This, thus must clearly be taken to provide the necessary guidance to the State Government both with regard to the taxes which can be levied as also the rates thereof. Section 62-A of the Act cannot, therefore, be considered as conferring unguided and unfettered power upon the State Government rendering it unconstiutional on the ground of excessive delegation.

(15) Further, before the State Government can exercise its power of imposing a tax under sub-section (3) of section 62-A of the Act, it must by special or general order notified in the Official

(6) A.I.R. 1967 S.C. 1404.
(7) A.I.R. 1965 S.C. 1107.

Gazettee require the Municipal Committee to impose such tax which has not already been imposed at such rate and it is only in the case of the failure of the Municipal Committee to impose such tax that the State Government is empowered to take action under sub-section (3) of Section 62-A of the Act. The Legislature in its wisdom has of course left it to the judgment of the State Government, whether or not and when to use this power for imposition of any such tax. A discretion which was perfectly legitimate for the Legislature to leave to the State Government.

(16) The point next canvassed was that a tax under section 62-A of the Act could be imposed by a State Government only in the case of financial stringency. This argument was founded upon the statement of Objects and Reasons for the enactment of the Punjab Municipal (Amendment) Act, 1953, by virtue of which Section 62-A of the Act came to be enacted. There, it was stated that the object of this Act was "to empower Government to require a Municipal Committee to impose any tax, not already imposed, or to modify the rate of any tax already imposed; and to levy the tax and modify the rate themselves, in case of default of a Municipal Committee with a view to improving and stablizing the financial condition of local bodies, besides enabling them to play an adequate role in the First Five-Year Plan." Great stress was in this behalf laid upon the averment made in the petition that the Municipal Committee was in a sound financial position and it was argued, therefore, that there was thus no need for raising any additional funds by the imposition of this house tax. To agree to this contention would be to read a limitation in the power of the State Government to impose a tax under Section 62-A of the Act which the Legislature has not prescribed. This would clearly be unwarranted. The house tax imposed cannot therefore, be questioned on this ground.

(17) Finally, it was contended that the provisions of Section 62-A of the Act did not empower the State Government to impose any tax with retrospective effect and consequently the house tax so far as it pertained to the period prior to 1974-75 could not be sustained. The reason put-forth being that the imposition of such tax could be made effective only when the work relating to preparation and settlement of assessment lists had been completed and as this had been done only with effect from 1974-75 no tax for the earlier period could be recovered. There is no merit in this contention either. The notification of March 10, 1965, clearly made the

house tax imposed thereby prospective inasmuch as, the tax was leviable only from July 1, 1965. The preparation and settlement of the assessment lists has nowhere been laid down as a precondition for fixing the date for the imposition of such tax. The house tax imposed cannot, therefore be, held to be invalid on this ground.

The challenge to the vires of section 62-A of the Act cannot thus be sustained and this writ petition is accordingly hereby dismissed. There will, however, be no order as to costs.

H. S. B.

Before D. S. Tewatia & G. C. Mital, JJ.

RAVDEEP KAUR,—*Petitioner.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ Petition No. 3128 *of* 1981.

July 28, 1981.

Evidence Act (I of 1872)—Section 115—Admission to Medical Colleges from quota reserved for sportsmen and sportswomen—Candidate qualifying entrance test and applying for admission on criteria published in the prospectus—Criteria changed after passing of qualifying test making such candidate ineligible for admission—Government—Whether competent to change criteria for admission at such stage—Rules for admission published in the prospectus—Whether have the force of law.

Held, that the eligibility for admission has to be seen according to the prospectus issued before the Entrance Examination and that the admission has to be made on the basis of the instructions given in the prospectus as the instructions issued have the force of law. (Para 5).

Petition under Article 226 of the Constitution of India praying that:—

(*a*) *A writ of mandamus may be issued thereby directing the respondents Nos.* 1 *and* 2 *to determine the grade of the petitioner in Archery/Handball and further direction be*