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110, "the distinction between civil wrongs and crimes relates to the legal consequences of acts..... Criminal proceedings, if successful, result in one of a number of punishments, ranging from hanging to a fine." In a civil proceeding, a person comes to seek relief for himself while in a criminal action nothing is demanded for oneself but merely punishment of the accused for the wrong committed by him. It may be that in some cases a wrong is both civil and criminal capable of being made the subject-matter of proceedings of both kinds. As stated in Words and Phrases, Volume 10, page 464, punishment is an essential feature of a crime. Punishment is annexed to a breach or disobedience of the order of the Gram Panchayat calling upon a person to remove the encroachment. In my judgment, when a Panchayat is authorised to levy the punishment of fine under section 23 for breaches committed under section 21, the proceedings under these provisions at once become "criminal" in nature. The policy of the Legislature that a case whether civil or criminal is liable to be transferred by an appropriate authority indicates that no distinction between the two on this aspect was intended to exist. For these reasons I do not find it possible to agree with the view expressed by Grover, J., in an unreported judgment, *Mukh Ram* v. *The Gram Panchayat Mullana* (Civil Writ No. 1074 of 1959) decided on 27th October, 1960.

In my view, the learned Magistrate was within the bounds of his authority to make the order of transfer which is sought to be impugned. The recommendation of the learned Sessions Judge cannot, therefore, be accepted and the petition for revision would stand dismissed.

*B.R.T.*

FULL BENCH

*Before S. S. Dulat, Inder Dev Dua, and D. K. Mahajan, JJ.*

MESSRS MANGAT RAM-ROSHAN LAL AND OTHERS,—
*Appellants.*

*versus*

THE PUNJAB STATE AND OTHERS,—*Respondents.*

**Regular Second Appeal No. 1526 of 1959**

1962

January, 31st.

*Punjab District Boards Act (XX of 1883)—Section 30—Whether valid—Tax imposed on timber carried over two*

*roads only—Whether a colourable piece of legislation and discriminatory—Previous sanction of the State Government—At what stage required—District Board dropping a proposal to impose a tax—Whether can impose the same or similiar tax on a subsequent occasion.*

*Held,* that section 30 of the Punjab District Boards Act, 1883, does not offend against the rule of excessive delegation of legislative functions and is perfectly valid. This section places various limitations on the power of the District Board to impose taxes which are—

(i) that a tax can be imposed by the District Board only for the purposes of the District Boards Act;

(ii) that the power to impose a tax does not exceed the power of the State Legislature in the same matter, and there is then the factor of control also clearly expressed that the imposition of a tax is to be effective only with the previous sanction of the State Government; and

(iii) Proviso (b) to section 30 of the Act debars a District Board from imposing a tax on any property subject to local rate.

In the face of these clear limitations and guiding principles, it is idle to suggest that by enacting section 30 the State Legislature has set up a parallel legislature or that the State Legislature has abdicated its essential legislative function.

*Held,* that a tax imposed on the timber carried over two specified roads only is a tax on goods, namely, timber sleepers carried over those two roads and item 56 of the State List clearly authorises the imposition of such a tax. It is in no sense a tax on roads, although of course it has to be paid by those persons who transport timber sleepers along certain roads. Again, if the maintenance of these roads is the duty of the District Board, that Board is entitled to raise revenue necessary for its purpose. The mere fact, therefore, that some of the revenue accruing as a result of this particular tax will be spent for the maintenance of the roads in question, cannot make the tax illegal or dishonest or colourable.

*Held,* that the imposition of a tax on timber carried over two roads only cannot be said to be unlawful or arbitrary or unconstitutional discrimination, in the absence of evidence that any timber in sufficient quantity, to make the collection worth-while, is actually carried over any other road in that neighbourhood or in the district.

*Held,* that the meaning of the words "may with the previous sanction of the State Government impose any tax "in section 30 of the District Boards Act is that previous to the imposition of the tax there must be the State Government's sanction in existence.

There is no warrant for a conclusion that the sanction of the State Government is required before the District Board considers a proposal to impose a tax.

*Held,* that the District Board is fully competent to drop the proposal for a tax at one time and equally competent to reconsider the matter and impose the same or similar tax on a subsequent occasion.

*Case referred by the Hon'ble Mr. Justice Daya Krishan Mahajan, on the 10th February, 1961, to a Division Bench for decision of questions of constitutional importance involved in the case. The Division Bench consisting of Hon'ble Mr. Justice Inder Dev Dua, and Hon'ble Mr. Justice Daya Krishan Mahajan, further referred the case to a larger Bench. The case has been finally decided by a Full Bench consisting of Hon'ble Mr. Justice S. S. Dulat, Hon'ble Mr. Justice Inder Dev Dua, and Hon'ble Mr. Justice Daya Krishan Mahajan on the 31st January, 1962.*

*Regular Second Appeal from the decree of the Court of Shri Radha Krishan Baweja, Additional District Judge, Gurdaspur, dated the 5th day of August, 1959, affirming with costs that of Shri Gyan Dass Jain, Senior Sub-Judge, Gurdaspur, dated the 30th January, 1959, dismissing the plaintiffs' suit and leaving the parties to bear their own costs.*

D. N. AWASTHY AND NAGINDER SINGH, ADVOCATES, for the Appellants.

M. R. SHARMA, FOR ADVOCATE-GENERAL, S. D. BAHRI, AND V. C. MAHAJAN, ADVOCATES, for the Respondents.

JUDGMENT

DULAT, J.—This is a second appeal by the plaintiffs who have failed in both the Courts below. The appeal came up for hearing before a Single Judge of this Court in the first instance, but he referred it to a Division Bench and that Bench referred it for decision to a larger Bench as certain questions touching the interpretation of the Constitution and the validity of a statute were involved. Dulat, J.

The facts are not in doubt and have not been disputed, and the whole argument in the case turns on questions of law. In Pathankot, which is in the Gurdaspur District, there exists a fairly prosperous timber market and several timber merchants, including the 8 plaintiffs-appellants, have their businesses there. The timber is brought down the river, Ravi, and is collected mainly at two places, namely, Madhopur which is the head of the Upper Bari Doab Canal, and Shahpur Kandi which is a few miles above Madhopur. Both these places are connected with Pathankot by road, and these roads are of course subjected to fairly heavy traffic. Sometime in 1940 a proposal was made in the District Board, Gurdaspur, for the imposition of a tax on timber passing over Shahpur Kandi-Pathankot Road. In the meantime, however, while the proposal was still pending, one of the big timber merchants, Messrs Spedding Dinga Singh and Company, made an offer to pay Rs. 1,200 per annum as a voluntary contribution for the maintenance of the Shahpur Kandi-Pathankot Road, and, in view of this offer, the proposal to levy a tax was for the time being shelved. For a number of years Messrs Spedding Dinga Singh and Company, kept on paying this amount to the District Board. During 1952-53, however, that Company felt disinclined to pay the whole amount and paid only half of it, suggesting that the other half should be collected from other timber merchants. This led to the revival of the proposal to levy a tax. In September, 1953, therefore, the District Board adopted a resolution proposing a tax at the rate of two annas per sleeper

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carried over the two roads, Shahpur Kandi-Madhopur Road and Shahpur Kandi-Pathankot Road. Objections were invited and in due course the proposal was sent up to the State Government. After considering the proposal the State Government approved it in part, suggesting that the tax should be at the rate of one anna per sleeper. The matter was again considered by the District Board after objections had been invited, and once again the resolution to impose a tax on timber at the rate of one anna per sleeper was sent up to Government. This was approved and a notification imposing the tax was published on the 9th October, 1956, by the State Government. By this notification, tax was imposed on sleepers at the rate of one anna per sleeper transported along the Shahpur Kandi-Madhopur Road and Shahpur Kandi-Pathankot Road with effect from the 1st of February, 1957. This led to the present suit by the timber merchants, claiming a declaration that the imposition of this particular tax was illegal. Several grounds in support of the alleged illegality were taken but they were all found unacceptable by the trial Court which, therefore, dismissed the suit. The conclusions were affirmed by the learned Additional District Judge on appeal which was dismissed with costs. Most of the same objections have been again taken before us.

The tax has been imposed by virtue of section 30 of the Punjab District Boards Act which runs thus—

[His Lordship read section 30 and continued:]

Then follows section 31 in these words—

[His Lordship read section 31 and continued:]

It will be observed that while section 30 contains the power of taxation, section 31 lays down the procedure for imposing a tax.

Mr. Awasthy's first contention before us is that section 30 of the District Boards Act is invalid because here the State Legislature has given power

to the District Board to legislate on the question of taxation without laying down any guiding principle, and the Legislature has thus abdicated its essential function and the delegation is so unbounded that it amounts to the setting up of a parallel legislature. This argument ignores the limitations placed by section 30 on the power of the District Board. The first limitation, which is inherent in the provision, is that a tax can be imposed by the District Board only for the purposes of the District Boards Act. The second limitation, and that of course is expressly stated, is that the power to impose a tax does not exceed the power of the State Legislature in the same matter, and there is then the factor of control also clearly expressed that the imposition of a tax is to be effective only with the previous sanction of the State Government. Then there is a further limitation in proviso (b) to section 30 of the Act which debars a District Board from imposing a tax on any property subject to local rate. In the face of these clear limitations and guiding principles, it is, in my opinion, idle to suggest that by enacting section 30 the State Legislature has set up a parallel legislature or that the State Legislature has abdicated its essential legislative function. It has to be remembered that the main purpose of the District Boards Act is, as its preamble states, to make a better provision for local self-government in the districts of Punjab, and District Boards in all the districts have been set up for that purpose. For the proper functioning of such District Boards, it is necessary to provide them with funds, and that of course has been done, but, as the needs of a District Board cannot in their nature be static, a provision had to be made for extension of revenue, and it was for this purpose that power had to be given to the District Boards to impose taxes within their jurisdiction. That power has been given by section 30 of the Act, but the limits within which the power has to be exercised have been clearly indicated. It is not seriously suggested that the State Legislature could not have authorised the District Boards to impose certain specified taxes, and, if that be so,

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then I can see no objection to the State Legislature authorising the District Boards to impose all or any of the taxes contained in the State List occurring in the Constitution. It was obviously impossible for the State Legislature to visualise beforehand what kind of tax would be suitable for the purposes of a particular District Board, and, instead of arbitrarily limiting the scope of taxation to named items, the State Legislature appears to have thought it proper and covenient to leave the whole field open to the District Boards, and I can see nothing unreasonable about this decision when, at the same time, the State Legislature has taken care to impose certain restrictions in that respect. The argument, therefore, that section 30 results in the abdication of essential legislative function by the State Legislature cannot, in my opinion, hold good. Very similar power has been given to the Municipal Committees under the Punjab Municipal Act, and it is pertinent to notice that in connection with somewhat similar power exercisable by a Municipal Committee under the Bombay District Municipalities Act, 1901, an argument on the lines adopted by Mr. Awasthy before us was found unacceptable by the Supreme Court in *Western India Theatres Limited* v. *Municipal Corporation of the City of Poona* (1). S. R. Das, C. J., said there—

> "The second point urged before us in support of this appeal is that section 59(1) (xi) is unconstitutional in that the Legislature had completely abdicated its functions and had delegated essential legislative power to the municipality to determine the nature of the tax to be imposed on the rate payers. Learned counsel for the appellant urges that the power thus delegated to the municipality is unguided, uncanalised and vagrant, for there is nothing in the Act

(1) A.I.R. 1959 S.C. 586

to prevent the municipality from imposing any tax it likes, even, say, income-tax. Such omnibus delegation, he contends, cannot on the authorities be supported as constitutional. We find ourselves in agreement with the High Court in rejecting this contention.

In the first place, the power of the municipality cannot exceed the power of the provincial legislature itself and the municipality cannot impose any tax, e.g., income-tax which the provincial legislature could not itself impose. In the next place, section 59 authorises the municipality to impose the taxes therein mentioned 'for the purposes of this Act'. The obligations and functions cast upon the municipalities are set forth in Chapter VII of the Act. Taxes, therefore, can be levied by the municipality only for implementing those purposes and for no other purpose.

In the present case, the restrictions are even more stringent and the guiding principles more clearly stated, and I cannot find any ground for holding that section 30 of the Punjab District Boards Act offends against the rule of excessive delegation of legislative function, and, in my opinion, the courts below were right in repelling this contention.

Mr. Awasthy then says that the tax imposed is a colourable piece of legislation as the tax has in reality been imposed for maintaining two particular roads and is thus a tax not on goods carried by road but a tax for the maintenance of the roads. There is little substance in this contention. The tax is on goods, namely, timber sleepers carried over two roads. Item 56 of the State List clearly authorises the imposition of such a tax. It is in no sense a tax on roads, although of course it has to be paid by those persons, who transport timber sleepers along certain roads. Mr. Awasthy, in

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this connection, emphasises what he calls the underlying purpose of the tax which, according to him, was the maintenance of these two particular roads. Obviously, if the maintenance of these roads is the duty of the District Board, that Board is entitled to raise revenue necessary for its purpose. The mere fact, therefore, that some of the revenue accruing as a result of this particular tax will be spent for the maintenance of the roads in question, cannot make the tax illegal or dishonest or colourable as it has been called. This is apart from the fact that the evidence in the case shows, and that is the finding of the courts below, that this tax was imposed in order to increase the revenue of the District Board and the resolution imposing it expressly says that it will be used for development works in the Tehsil. The proceeds of the tax go into the general revenue of the District Board and the proceeds thereafter have no necessary link with the maintenance of the roads. The suggestion, therefore, that the District Board has in the guise of a tax on goods imposed in fact another kind of tax, is without any substance.

Reliance was then placed by Mr. Awasthy on the circumstance that timber carried over only two roads has been taxed, leaving out timber carried over other roads, and in this way there has been arbitrary and unconstitutional discrimination, and the imposition is, therefore, unlawful. Again, I find, there is no force in this contention. There is no evidence that any timber in sufficient quantity, to make the collection of tax worth-while, is actually carried over any other road in that neighbourhood or in the district, the fact, on the other hand, being that the bulk of the timber that goes to the Pathankot market is carried over the two roads, that is, Shahpur Kandi-Madhopur Road and Shahpur Kandi-Pathankot Road. It is, therefore, understandable why the District Board confined the imposition of the tax to the carriage of timber sleepers over these two roads, and the two roads have been singled out not arbitrarily but because of sound reason, and the classification thus made is entirely rational.

Mr. Awasthy's next contention is that the necessary procedure for the imposition of the tax was not followed in this case and the imposition is, therefore, illegal. What is suggested in this connection is that a tax can be imposed only with the 'previous sanction' of the State Government and not merely with the 'sanction' of the State Government, and that in the present case previous sanction was not obtained in so far as the District Board proceeded to consider the proposal for the tax before the State Government's sanction. According to Mr. Awasthy, sanction has to be obtained at two stages, first before the District Board considers the proposal and secondly after the proposal is adopted by the District Board. There is nothing in section 30 of the District Boards Act to warrant such a conclusion, for all it says is that the District Board 'may with the previous sanction of the State Government impose any tax' and the meaning obviously is that previous to the imposition of the tax there must be the State Government's sanction in existence. The tax in the present case was imposed by notification issued on the 9th October, 1956, and before then, of course, the sanction of the State Government had been obtained. In principle there seems to me no point in insisting on two sanctions by the State Government at two stages, for all that is necessary for the lawful imposition of a tax is that it must be acceptable both to the District Board and the State Government. Section 31 provides the procedure for the imposition of the tax, and the entire procedure was in the present case gone through, and the suggestion that, apart from the various steps mentioned in section 31 of the Act, something else had also to be done is, in my opinion, unwarranted. It is unnecessary to pursue the matter further because, as it happens in the present case, there was in fact the sanction of the State Government both before and after the District Board decided to impose the tax now in question. What happened was that the District Board sent up a proposal to the State Government. That proposal was for the imposition of a sleeper-tax at the rate of two annas per sleeper. The State Govern-

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ment accorded approval to the imposition of a sleeper-tax at the rate of one anna per sleeper. It was this proposal which the District Board subsequently considered and decided to adopt and thereafter once again there was the sanction of the State Government. In the present case, therefore, there is no substance at all in this particular submission.

Finally, Mr. Awasthy urged, although this argument could not be seriously pressed, that the District Board had at one stage accepted another kind of arrangement that had been made with Messrs Spedding Dinga Singh and Company, and that the District Board should be held bound by that arrangement. It has been found by the Courts below that there was in fact no binding arrangement made in this connection, but, apart from that, it is obvious that in a matter of this kind the District Board cannot possibly be held to have precluded itself from imposing the tax merely because some years before then it had, in view of certain circumstances, decided to drop the proposal for such a tax. We are here dealing with statutory obligations and statutory powers and the exercise of such powers and the discharge of such obligations cannot be subordinated to any arrangement which might, for the time being, be found convenient. The District Board was, in my opinion, fully competent to drop the proposal for a tax at one time and equally competent to reconsider the matter and impose the same or a similar tax on a subsequent occasion, and Mr. Awasthy's argument in this connection cannot possibly be accepted.

No other question has been raised before us. The present appeal must, in the circumstances, fail, and I would dismiss it with costs.

Dua, J.

INDER DEV DUA, J.—I agree.

Mahajan, J.

DAYA KRISHAN MAHAJAN, J.—I agree.

*B.R.T.*