SRI KRISHNA DAS

v.

TOWN AREA COMMITTEE, CHIRGAON

MARCH 20, 1990

[K.N. SAIKIA AND P.B. SAWANT, JJ.]

Town Areas Act 1914—Section 38 and Bye Laws of the Town Area Committee Chirgaon—Weighing dues—Payment of—User of market committee—Validity of weighing dues—Whether 'tax' or 'fee'!

The appellant is a commission agent, engaged in the business of sale and purchase of grains, rice, oil-seeds etc. in Chirgaon, District Jhansi. By a notification issued under s. 38(1) of the United Provinces Town Areas Act, 1914, the provisions of Section 298(2)(F)(d) of the U.P. Municipalities Act, 1916 were extended to the Town Area of Chirgaon, as a result of which, the Panchayat of Chirgaon was empowered to make bye-laws for the establishment, regulation and inspection of market and for the proper and cleanly conduct of business therein. Later by Section 4 of the U.P. Provinces Town Area (Amendment) Act, the word "Panchayat" wherever it occurred in the Principal' Act was substituted by the word 'Committee'. In pursuance of the powrs conferred on him the District Magistrate, Jhansi framed bye-laws dated 18.11.1934 for the regulation of the market in Chirgaon which *inter alia* provided that weighing dues shall be charged at different rates on various articles that came to the Town Area for sale at rates specified therein. Since the appellant was a dealer in some of these commodities, he was served with a notice calling upon him to pay Rs.1892/26 as weighing dues for the period from 1.5.1962 to 30.6.1962. The appellant challenged the notice by means of a writ petition in the Allahabad High Court. A learned single Judge of the High Court dismissed the writ petition taking the view that the demand made by the respondent was purely a measure of taxation. Special Appeal against the said order was also dismissed by the High Court. Hence this appeal by special leave.

The main contentions of the appellant, as urged before the High Court, as have been repeated before this Court are; (i) that the bye-laws were invalid; (ii) that the Town Area Committee had no power to impose such tax; as the Act did not empower the TAC to levy and collect weighing dues; (iii) that the weighing dues were discriminatory because of the exemptions; (iv) that the weighing dues were not a tax but a fee which could not be charged without *quid pro quo* and (v) that there was

A double taxation. It was also urged that the imposition of weighing dues is tantamount to illegal extraction without the authority of law. The respondent, on the other hand, supported the judgment of the High Court;

Dismissing the appeal, this Court,

B

HELD: Under the Indian Constitution the State Government's power to levy a tax is not identical with that of its power to levy a fee. While the powers to levy taxes is conferred on the State Legislatures by the various entries in List II, in it there is Entry 66 relating to fees, empowring the State Government to levy fees 'in respect of any of the matters in this List, but not including fees taken in any Court'. The

C result is that each State Legislature has the power, to levy fees, which is co-extensive with its powers to legislate with respect to substantive matters and it may levy a fee with reference to the services that would be rendered by the State under such law. The State may also delegate such a power to local authority. [21C-D]

D

A fee is a payment levied by an authority in respect of services performed by it for the benefit of the payer, while a tax is payable for the common benefits conferred by the authority on all tax payers. [21F]

While there is no *quid pro quo* between a tax payer and the

E authority in case of a tax, there is a necessary co-relation between fee collected and the service intended to be rendered. Of course the *quid pro quo* need not be understood in mathematical equivalence but only in a fair correspondence between the two, a broad co-relationship is all that is necessary. [21G]

F Courts cannot reveiw the wisdom or advisability or expediency of a tax as the court has no concern with the policy of legislation, so long they are not inconsistent with the provisions of the Constitution. It is only where there is abuse of its powers and transgression of the legislative function in leving a tax, it may be corrected by the judiciary and not otherwise. [24B]

G

Taxes may be and often are oppressive, unjust and even unnecessary but this can constitute no reason for judicial interference. When taxes are levied on certain articles or services and not on others it cannot be said to be discriminatory. [24C]

H *Avinder Singh* v. *State of Punjab,* [1979] 1 SCR 845, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 748 of 1975. A

From the Judgment and Order dated 3.12.1971 of the Allahabad High Court in Special Appeal No. 289 of 1963.

R.K. Maheshwari for the Appellant. B

Rachna Gupta, (NP) and Mrs. Rani Chhabra for the Respondent.

The Judgment of the Court was delivered by

K.N. SAIKIA, J. This appeal by special leave is from the Judgment and order dated 3.12.1971 of the Allahabad High Court in Special Appeal No. 289 of 1963 dismissing the appeal and consequently the writ petition. C

The appellant is a (Pacca Arahatiya) commission agent engaged in the sale and purchase of grains, rice, oil-seeds and jaggery in the town of Chirgaon, District Jhansi. D

On March 4, 1933, the Government of U.P. published a Notification purported to have been issued under secton 38(1) of the United Provinces Town Areas Act 1914 (Act II of 1914), hereinafter referred to as 'the Town Areas Act', which read as under: E

> "No. 690/XI-158-T. It is hereby notified that the Governor acting with his Ministers, in exercise of the powers conferred by s. 38(1) of the United Provinces Twon Areas Act 1914 (II of 1914) is pleased to extend the provisions of s. 298(2)(F)(d) of the United Provinces Municipalities Act 1916 to the Twon Area of Chirgaon in the Jhansi District in the modified form set forth below: F
>
> Modified section of the United Provinces Municipalities Act, 1916 (II of 1916) s. 298(2)(F)(d) "The Panchayat may make bye-laws for the establishment, regulation and inspection of market and for the proper and cleanly conduct of business therein." G

Later by section 4 of the United Provinces Town Area (Amendment) Act, 1934 (U.P. Act II of 1934) the word 'Panchayat' wherever H

A it occurred in the Principal Act was substituted by the word 'Committee'.

It may be noted that the Town Area Panchayat was superseded for a period of one year with effect from 20.10.1933 to 19.10.1934 and was revived thereafter.

B

The District Magistrate, Jhansi promulgated a set of bye-laws dated 18.11.1934 for the establishment, regulation and inspection of the market in the Town Area of Chirgaon and for the proper and cleanly conduct of business therein. Under Bye-law (1), sellers and purchasers of the commodities mentioned thereunder were required to pay weighing dues. It said:

C

> "1(a) Weighing dues shall be charged at the rate of 1/4/6 per cent (eight-/8/-annas per cent from the sellers and twelve and a half annas per cent from the purchaser) on the following articles which comes to the Town Area for sale:

D

> Grains, oilseeds, oil cakes, cotton, vegetables for wholesale, Dhania for wholesale and gur etc.

> (b) Weighing dues on Ghi shall be charged at the rate of /2/6/ two and half annas per maund half from the seller and half from the purchaser.

E

> N.B. In recovery of weighing dues fraction of a pie shall be omitted and more the figure adjusted to the nearest price.

F

> (c) The purchaser shall be responsible for the full amount of weighing dues. He shall deduct the seller's share from the price.

> (d) No weighing dues shall be charged on any article imported by rail nor on rice, salt, gur and sugar imported from Jhansi and Moth by rail or road.

G

> (e) On refusal to pay the weighing dues it shall be recoverable as arrears of tax on circumstances and property."

Since the appellant was a dealer in some of these commodities, H he was served with a notice dated 27.7.1962 demanding Rs.1892.26 as weighing dues for the period from 1.5.1962 to 30.6.1962.

The appellant challenged the aforesaid notice filing a writ petition on 18.8.1962 in the Allahabad High Court being Civil Misc. Writ Petition No. 2400 of 1962. A learned Single Judge by his order dated 29.4.1963, dismissed the same taking the view that the demand made by the respondent was purely a measure of taxation. The appellant filed therefrom Special Appeal No. 289 of 1963, which was dismissed by the impugned judgment and order.

Before the High Court the appellant contended, *inter alia*, that the Bye-laws were invalid as the Town Area Committee, shortly 'the TAC', did not frame them; that the TAC had no power to impose such tax; that the U.P. Town Areas (Amendment) Act 1952 did not empower the TAC to levy and collect weighing dues; that the weighing dues were discriminatory because of the exemptions; that the weighing dues were not a tax but a fee which could not be charged without *quid pro quo*; that there was double taxation; and in the alternative, that the weighing dues amounted to neither a fee nor a tax but an illegal extraction without the authority of law. All the arguments were rejected by the High Court.

Before us Mr. R.K. Maheshwari, the learned counsel for the appellant, submits, *inter alia,* that the Bye-laws were invalid at the time when those were framed and could not have been validated by mere adoption by the TAC in 1935; that the weighing dues were merely in the nature of purchase tax and were illegal inasmuch as the TAC had no right or authority to levy the same when it had already been imposed by the State of Uttar Pradesh under section 128(1)(xiv) of the U.P. Municipalities Act; that the TAC did not render any special service to the 'Arhatias' or farmers who came to the town to conduct their business, nor did it incur any expenditure in this regard; that the charging of weighing dues was discriminatory inasmuch as there were no weighing charges on some articles imported from Jhansi or Moth Tehsil by rail and on rice, salt, jaggery or sugar brought either by road or by rail; that goods coming from villages situate between Chirgaon and Jhansi were not required to pay weighing dues while goods from other places in the State of U.P. were being subjected to the dues; that similar tax had already been imposed by the State Legislature under the Provisions of the U.P. Sales-tax Act under Entries 52 and 54 of List II and there was double taxation by the TAC; that the goods arriving by car have been subjected to the weighing dues while goods arriving by rail from Jhansi and Moth were exempted; that the levy of weighing dues by the Town Area Committee Chirgaon is arbitrary and discriminatory and is grossly violative of Article 14 of the Constitution;

A that the levy, though called tax is actually a fee and is collected in the disguise of tax; that double taxation in the form of sales tax by the State Government and weighing dues by the TAC is unjustified and it imposes unreasonable restriction on the rights guaranteed under Article 19(1)(g) of the Constitution; and that the High Court erred in dismissing the appeal and the writ petition.

B

The learned counsel for the respondent refutes all the submissions of the appellant and supports the impugned judgment.

The first question that needs examination is the validity of the Bye-laws promulgated by the District Magistrate on 18.11.1934 after C the Notification published by the Government of U.P, issued under section 38(1) of the Town Areas Act. That section, as it stood at the relevant time, empowered the Provincial Government to extend, by notification in the Gazette, to all town areas or to any town area or to any part of a town area any enactment for the time being in force in any municipality in the United Provinces subject to such restrictions D and modifications, if any, as it thought fit. By the instant Notification dated March 4, 1933 the Provincial Government extended the Provisions of section 298(2)(F)(d) of the United Provinces Municipalities Act, 1916, hereinafter referred to as the Municipalities Act, to the town area of Chirgaon in the Jhansi District in the modified form set forth in the Notification itself. The word 'Panchayat' was substituted E by the word 'Committee' by section 4 of the United Provinces Town Areas (Amendment) Act. There could, therefore, be no doubt that the TAC could make the Bye-laws.

The question then is the nature and extent of the empowerment under the above Notification. The empowerment would naturally be F what a Municipality could do under that provision, namely, section 298(2)(F)(d). Section 298 was includes in Chapter IX of the Municipalities Act and it dealt with rules, regulations and bye-laws. There could, therefore, be no doubt that the TAC was empowered to make bye-laws "for the establishment, regulation and inspection of market and for the proper and cleanly conduct of business therein."

G

The Bye-laws dated 18.11.1934 were promulgated by the District Magistrate. The contention that the District Magistrate had no power to promulgate the Bye-laws was rightly rejected by the learned courts below holding that the District Magistrate was at that time functioning as TAC as it then remained suspended and those were ratified on H 9.1.1935 by the TAC after it was revived.

A

Section 298(2)(F)(d) as modified in the Notification did not *ex facie* authorise the imposition of any tax. The Municipalities Act, Chapter V, (Sections 128 to 165) dealt with municipal taxation, imposition and alteration of taxes. Chapter VII of that Act which included section 298(2)(F)(d) did not deal with taxation. section 298(2)(F)(d) dealt with markets, slaughter houses, sale of food etc. Cluase (d) thereunder did not *ex facie* envisage imposition of any tax. The Town Areas Act, Chapter III (Sections 14 to 25) dealt with taxation and town fund. Under section 14, subject to any general rules or special orders of the Provincial Government in that behalf, the taxes which a TAC could impose had been stated. It did not mention weighing dues as such.

B

C

The Bye-laws envisaged by section 298((2)(F)(d), therefore, could not *ex facie* be said to have empowered the TAC to impose a tax on the subject matter of that clause. It was contended before the High Court that the U.P. Town Areas (Amendment) Act, 1952 (U.P. Act 5 of 1953) cured the defects in the bye-laws, if any, inasmuch as section 12 of that Amending Act added clause (g) to section 14(1) of the Town Areas Act in the following terms:

D

> "Any other tax being one of the taxes mentioned in sub-section (1) of section 128 of the U.P. Municipalities Act, 1916."

E

Section 128(1) of the Municipalities Act did not mention weighing dues as such. But Clause (xiv) of that section provided:

> "Any other tax which the State Legislature has power to impose in the State under the Constitution."

F

At the relevant time, after the amendment of section 14(1)(g) of the Town Areas Act, the TAC was thus empowered to levy any other tax, being one of the taxes mentioned in sub-section (1) of section 128 of the U.P. Municipalities Act, 1916.

G

The High Court on the basis of the above provision concluded that the TAC became empowered to levy all those taxes which the State Government could levy under sub-section (1) of section 128 of the Municipalites Act; and the TAC could impose any tax which the State legislature could impose under the Constitution. Further, it was concluded that Entry 52 of list II empowered the State Government to impose tax on the entry of goods into local area for consumption, use

H

A or sale therein and Entry 54 of list II empowered the State Goovernment to impose a tax on the sale or purchase of goods and hence the TAC could impose tax on the entry of goods as well as on the sale or purchase of goods in view of the Entries 52 and 54 of list II. Referring to the Bye-law No. 1, the High Court concluded that this imposition was upon the entry of the mentioned articles into Town area for sale B and it was clearly covered by entry 52 of list II of the 7th schedule and hence it could not be said that the TAC did not possess the requisite power to levy this tax. In other words, the weighing dues were construed as entry tax and sale or purchase of goods tax combined.

The High Court also held that the defect, if any, in this regard C was cured by section 13 of the U.P. Town Areas (Amendment) Act, 1952 as section 13 of that Act provided:

> "Notwithstanding anything contained in the principal Act,
>
> (1) where any tax of the nature described in clause (g) of D Sub-section (1) of Section 14 of the Principal Act & *by whatever name or description called has been imposed, levied or assessed by any Town Area Committee* prior to the commencement of this Act, the same shall be and is hereby declared to be good and valid in law as if this Act had been in force on all material dates and the tax had been imposed, E levied and assessed under and in accordance with the appropriate provision in that behalf."

(Emphasis supplied by us)

The High Court concluded, and we think rightly, that the imposition of this tax (weighing dues) had ben validated retrospectively, as if F the Amending Act had been in force even in 1934, when the bye-laws were framed. The validity of the provision having not been challenged, it cannot be held that the imposition of this tax was without authority of law if it could be brought within any of the taxation entries of List II of the Seventh Schedule of the Constitution. However, if the weighing dues did not amount to a tax but a fee, then the question would be G whether the TAC could levy such a fee. In fact one of the submissions of the appellant is that it was a fee and not a tax as claimed by the respondent.

A fee is paid for performing a function. A fee is not ordinarily considered to be a tax. If the fee is merely to compensate an authority H for services performed or as compensation for the services rendered, it

can hardly be called a tax. However, if the object of the fee is to provide general revenue of the authority rather than to compensate it, and the amount of the fee has no relation to the value of the services, the fee will amount to a tax. In the words of Cooley, "A charge fixed by statute for the service to be performed by an officer, where the charge has no relation to the value of the services performed and where the amount collected eventually finds its way into the treasury of the branch of the Government whose officer or officers collect the charge is not a fee but a tax."

Under the Indian Constitution the State Government's power to levy a tax is not identical with that of its power to levy a fee. While the powers to levy taxes is conferred on the State Legislatures by the various entries in list II, in it there is Entry 66 relating to fees, empowering the State Government to levy fees "in respect of any of the matters in this List, but not including fees taken in any Court." The result is that each State Legislature has the power, to levy fees, which is co-extensive with its powers to legislate with respect to substantive matters and it may levy a fee with reference to the services that would be rendered by the State under such law. The State may also delegate such a power to a local authority. When a levy or an imposition is questioned, the Court has to inquire into its real nature inasmuch as though an imposition is labelled as a fee, in reality it may not be a fee but a tax, and vice versa. The question to be determined is whether the power to levy the tax or fee is conferred on that authority and if it falls beyond, to declare it *ultra vires*.

We have seen that a fee is a payment levied by an authority in respect of services performed by it for the benefit of the payer, while a tax is payable for the common benefits conferred by the authority on all tax payers. A fee is a payment made for some special benefit enjoyed by the payer and the payment is proportional to such benefit. Money raised by fee is appropriated for the performance of the service and does not merge in the general revenue. Where, however, the service is indistinguishable from the public services and forms part of the latter it is necessary to inquire what is the primary object of the levy and the essential purpose which it is intended to achieve. While there is no *quid pro quo* between a tax payer and the authority in case of a tax, there is a necessary co-relation between fee collected and the service intended to be rendered. Of course the *quid pro quo* need not be understood in mathematical equivalence but only in a fair correspondence between the two. A broad co-relationship is all that is necessary.

A Where it appears that under the guise of levying a fee the authority is attempting to impose a tax, the Court has to scrutinise the scheme to find out whether there is a real co-relation between the services and the levy whether it is so co-extensive as to be a pretence of a fee but in reality a tax, and whether a substantial portion of the fee collected is spent in rendering the service.

B

In the instant case replying to paragraph 9 of the writ petition in paragraph 6 to 9 of the Counter Affidavit in the High Court the TAC stated that it used to realise the amount of weighing dues as tax and not as a fee and that no question of *quid pro quo* was involved in the matter. Most of the carts of the cultivators who brought their produce were parked in the cart-park which was on the land of the TAC 'and it C maintained sanitary staff in order to keep the place clean as bullocks and carts made the place dirty. Arrangement for lighting the patromax lamps and for keeping the place clean was made by the TAC. To ensure correct weighment and to prevent cheating and defrauding bakshis and peons of TAC were deputed to supervise the daily weigh- D ing of the goods and the TAC maintained standard weights and measures in case of any dispute which were to be settled. The weights of persons were also checked and verified by the TAC and its seal was affixed to those weights in order to prevent cheating. In paragraph 12 it was stated that TAC employed about 40 sweepers out of which about half were especially deputed for keeping the places where the sale E transactions took place clean. One bakshi, one jamadar and one peon were also deputed to supervise the selling in order to see that the bye-laws in respect of weighment were carried out and that there was no cheating. Thus, the TAC justified the charging of weighing dues, but conceded that the same was a tax as there was no *quid pro quo*.

F The respondent having thus conceded that there was no *quid pro quo*, we have to hold, as also was rightly held by the High Court, that the weighing dues constituted a tax and not a fee.

We do not find any merit in the appellant's submission that there was double taxation in this case. The expression "double taxation" is G often used in different senses, namely, in its strict legal sense of direct double taxation and in its popular sense of indirect double taxation. Double taxation in the strict legal sense means taxing the same property or subject matter twice, for the same purpose, for the same period and in the same territory. To constitute double taxation, the two or more taxes must have been (1) levied on the same property or H subject matter, (2) by the same Government or authority, (3) during

the same taxing period, and (4) for the same purpose. "There is no double taxation, strictly speaking" says Cooley, "where (a) the taxes are imposed by different States, (b) one of the impositions is not a tax, (c) one tax is against property and the other is not a property tax, or (d) the double taxation is indirect rather than direct." A

In the instant case there cannot be said to be double taxation as there is no such taxation imposed by the TAC for the same period on the same goods at the same time and for the same purpose. B

Where more than one legislative authority, such as the State Legislature and a local or municipal body possess the power to levy a tax, there is nothing in the Constitution to prevent the same person or property being subject to both the State and municipal taxation or the same legislature exercising its power twice for different purposes. In *Avinder Singh* v. *State of Punjab,* [1979] 1 SCR 845, the State of Punjab in April, 1977 reqired the various municipal bodies in the State to impose tax on the sale of India made foreign liquor @ Rs.1 per bottle w.e.f. 20.5.1977. The municipal authorities having failed to take action pursuant to the directive the State of Punjab directly issued a Notification under section 90(5) of the Punjab Municipal Corporation Act, 1976 and similar provision of the Municipal Act 1911. The petitioner challenged the Constitutional validity of the said statutes and the levy on the, *inter alia* ground of double taxation. Krishna Iyer, J. speaking for the Court held: "There is nothing in Article 265 of the Constitution from which one can spin out the Constitutional vice called double taxation. (Bad' economics may be good law and vice versa). Dealing with a somewhat similar argument, the Bombay High Court gave short shrift to it in Western India Theatres (AIR 1954 Bom. 261). Some undeserving contentions die hard, rather survive after death. The only epitaph we may inscribe is: Rest in peace and don't be re-born! If on the same subject matter the legislature chooses to levy tax twice over there is no inherent invalidity in the fiscal adventure save where other prohibitions exist." We do not find materials in this case to allow the contention to be re-born. The submission is accordingly rejected. C D E F

G

The contention that the tax is discriminatory in view of the exemptions granted to some of the products and to those that enter the TAC by rail or motor transport is equally untenable. It is for the legislature or the taxing authority to determine the question of need, the policy and to select the goods or services for taxation. The courts cannot review these decisions. In paragraph 16 of the counter affidavit H

A the TAC tried to explain the reason of not taxing salt, sugar and rice stating that they were not local produce but were imported from distant places and that the tax was levied only on the local produce which came from the neighbouring places. Courts cannot review the wisdom or advisability or expediency of a tax as the court has no concern with the policy of legislation, so long they are not inconsistent with the B provisions of the Constitution. It is only where there is abuse of its powers and transgression of the legislative function in levying a tax, it may be corrected by the judiciary and not otherwise. Taxes may be and often are oppressive, unjust, and even unnecessary but this can constitute no reason for judicial interference. When taxes are levied on certain articles or services and not on others it cannot be said to be C discriminatory. Cooley observes: "Every tax must discriminate; and only the authority that imposes it can determine how and in what directions." The TAC having decided to impose weighing dues on the goods mentioned in the Bye-Laws it is not for the court to question it on the ground that some similar commodities or commodities arriving by rail or road were not subjected to the tax.

D

The tax having not been found to have been discriminatory or otherwise illegal we do not find any force in the submission that it imposed any unreasonable restriction on the appellants' rights guaranteed under Article 19(1)(g) of the Constitution of India.

E

In the result, we find no merit in this appeal and it is accordingly dismissed. Considering the facts and circumstances of the case we, however, make no order as to costs. Interim orders, if any, stand vacated.

Y. Lal Appeal dismissed.