CIVIL MISCELLANEOUS

Before A. N. Grover and Inder Dev Dua, JJ.

M/S. MANSA ROADWAYS (P) LTD., AND ANOTHER,—*Petitioners*

versus

THE ASSESSING AUTHORITY, PASSENGERS AND GOODS TAXATION, PATIALA DIVISION AND ANOTHER,—*Respondents.*

Civil Writ No. 1028 of 1963.

1964

October, 20th

Punjab Passengers and Goods Taxation Act (XVI of 1952)—Ss. 6(4) and 22(1)—Punjab Passengers and Goods Taxation Rules (1952)—Rule 29—Whether ultra vires *the provisions of the Act—Interpretation of Statutes—Validity of a statute delegating power—How determined—Rule of necessary implication—Meaning and scope of.*

Held, that the power conferred by Rule 29 of The Punjab Passengers and Goods Taxation Rules (1952), exercised after sending a notice in Form P.T.T. involves no question of policy or principle. Section 6(4) of the Punjab Passengers and Goods Taxation Act empowers the State Government to make rules for securing the payment of tax and generally for the purposes of carrying into effect the provisions of the Act. Sub-section (2) of the same section gives an equally wide power to provide for any other matter than the matters covered by clauses (a) to (h) for which rules may or can be prescribed. Rule 21, which relates to assessment of the tax, is meant for carrying into effect what is provided for by section 6(4). Rule 29 though appearing in Chapter VII is a general rule relating to assessment or re-assessment and rectification of clerical or arithmetical mistakes and includes the power to assess tax after hearing the owner and making such enquiry as the Assessing Authority may consider necessary. Without assessment of tax the prescribed authority cannot carry out the duty with which it is charged under section 6(4) and, therefore, not only that rule 29 is directly connected with the aforesaid provision but it could also validly be promulgated under the general and wide powers conferred by section 22(1) of the Act and any omission in sub-section (2) of section 22 of a particular head under which rule 29 could be brought would not render that rule void. The impugned rule is essentially meant for securing the payment of tax for carrying into effect the provisions of the Act and hence is not *ultra vires* any provisions of the Act.

Held (per Dua, J.)—That the validity of a statute delegating power depends upon:—

(i) the agency to which the power is delegated;

(ii) the subject-matter of the regulation; and

(iii) the character of the delegated power.

Because all these three considerations interweave, it is difficult to discuss the validity of one independently of the others. The validity of the delegation of rule-making power depends today upon the legislative creation of adequate standards to guide administrative action. What constitutes adequate standards, however, depends primarily upon the nature of the subject-matter regulated. If the Legislature lays down in the statute an intelligible principle to which the delegate is directed to conform, such legislative action is not a forbidden delegation of legislative power, for what is constitutionally prohibited is abdication of the power, which is also the duty to enact the primary legislative policy, and not securing assistance from the administrative agency in the form of subordinate rules within the framework of enacted principles to make the legislative policy operative. In other words, when a valid statute otherwise complete in itself, enacted

the general outline of a legislative scheme, policy or purpose, and confers upon the executive wing, charged with the duty of assisting in administering the law, authority within defined intelligible limits to make rules, such conferment of authority may not be unconstitutional delegation or abdication of legislative power.

Held, further that the rule of necessary implication means that if a statute is enacted for enabling something to be done, omission to mention in terms some detail of importance to the effectual and proper achievement of the contemplated purpose, even though the omitted detail may not be considered absolutely essential, the Court can appropriately and legitimately infer that the statute by necessary implication empowers such detail to be carried out for properly and effectively accomplishing the ultimate statutory object. An express statutory grant of power or imposition of a definite duty by implication carries with it, in the absence of a limitation, authority to imply all usual means that are necessary to the exercise of the power of the performance of the duty, for what is clearly implied is as much a part of a law as what is expressed. Such necessary implication may more easily be inferred in case of details pertaining to matters of procedure, particularly when it tends to help prevent dishonest evasion of taxes lawfully authorised. The problems and difficulties involved in the assessment and collection of taxes are matters of common knowledge and statutory provisions relating to procedure for assessment deserve, if reasonably permissible on the language, to be so construed as to include within their fold methods which would effectuate assessment. A statutory provision conferring, in general terms, power and imposing duty to make assessment includes by implication, in the absence of limitation, the incidental and necessary power and duty of making an assessment on best judgment basis, if circumstances so warrant, for, it means no more than power to construct procedural machinery to make assessment; of course it must not violate rules of natural justice.

Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of certiorari or any other appropriate writ, order or direction be issued quashing the order of respondent No. 1, dated 29th March, 1963 and further praying that pending the decision of the writ petition, the recovery of the amount demanded may be stayed.

BHAGIRATH DASS AND B. K. JHINGAN, ADVOCATES, for the petitioners,

C. L. LAKHANPAL, ADVOCATE, for the Respondents.

ORDER

GROVER, J.—Petitioner No. 1, which is a private limited company, is engaged in the business of transport and it plies **Grover, J.**

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stage carriages between Mansa-Rayia and Mansa-Sardulgarh. Petitioner No. 2 is its managing director. It is alleged that for the year, 1959-60 ending on 31st March, 1960 petitioner No. 1 paid tax under the Punjab Passengers and Goods Taxation Act, 1952 (to be referred to as the Act) and the rules framed thereunder by stamping the tickets issued to the passengers. These tickets were obtained by depositing the amount in the treasury and at the close of every month a return was filed in form P.T.T. 7-A prescribed under rule 16 of the Rules. Monthly returns were also filed showing the value of the stamps consumed which represented the amount of tax paid during the particular month. Respondent No. 1 issued a notice on 28th February, 1963, in form P.T.T 10 under section 6(4) of the Act directing the petitioners to produce accounts and other relevant documents. The petitioners say that on the dates fixed for hearing they could not attend and intimated to the Assessing Authority their inability to do so but respondent No. 1 proceeded to make what is known a best-judgment assessment under rule 29 of the Rules by order, dated 29th March, 1963. It created a liability of Rs. 2,500 over and above the value of the stamps which had been purchased during the relevant period. In the return which has been filed on behalf of the respondents, it has been stated that returns had not been filed relating to the months of December, 1959, January, February and March, 1960. It is further stated that the petitioners avoided production of accounts for the relevant period and although several opportunities were given for their production and verification, but every time the petitioners obtained adjournments on one excuse or the other. In these circumstances the Assessing Authority had no alternative left except to frame an assessment according to the material collected by it.

Although a number of grounds were taken in the petition, the learned counsel for the petitioners has confined himself solely to challenging the validity of rule 29. This rule appears in Chapter VII of the Punjab Passengers and Goods Taxation Rules, 1952 and is in the following terms:—

> "If, in consequence of definite information which has come into his possession, the appropriate Assessing Authority discovers that an owner has

been under-assessed or has escaped assessment for any year, or tax less than the amount of tax due has been levied in the form of stamps through inadvertence, error or mis-construction or otherwise, the Assessing Authority may, at any time, within a period of three years following the close of the financial year to which it pertains send a notice to the owner in form P.T.T 10/P.T.T 12 and after hearing him and making such enquiry as he considers necessary, may proceed to assess or re-assess, as the case may be, and recover the tax payable by him."

It may be mentioned that Chapter VI of the Rules relates to assessment and rule 21 provides apart from other matters that if at the close of the year or at any time during the year, the Assessing Authority without requiring the presence of an owner or the production of evidence by him is not satisfied with the returns furnished or the tax paid in respect of any period, by him, it shall serve on such owner, a notice in form P.T.T 10, requiring him on a date and at a place to be furnished therein, either to attend in person or to produce or cause to be produced any evidence on which such owner may reply in support of such returns. On the day specified in the notice, the Assessing Authority after hearing such evidence as the owner may produce and such other evidence as the Assessing Authority may require on specified points, shall assess the amount of tax due from the owner. An appeal lies under rule 23 with which Chapter VII commences to the Deputy Excise and Taxation Commissioner. The other rules appearing in that Chapter relate to the presentation of the memorandum of appeal and its contents, etc., and the manner in which the appeal is to be decided. Rule 28 makes the provisions of rules 25 and 26 applicable *mutatis mutandis* to every application for revision. The provisions of the Act have next to be noticed. Section 3 relates to the levy of passenger tax, 4 to the method of collection, 5 to the method of levy and 6 to the keeping of accounts and submission of returns. Sub-section (4) of section 6 is to the effect that if the prescribed authority is satisfied that the tax has not been correctly levied, charged and paid, he may after giving the owner a reasonable opportunity of being heard, proceed to levy the amount of tax due and recover the same. Section 15 relates to appeals,

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16 to revisions and 22 to the power to make rules. The material part of section 22 may be reproduced: —

"22(1) The State Government may make rules, consistent with this Act, for securing the payment of tax and generally for the purposes of carrying into effect the provisions of this Act.

(2) * * * *

(i) to provide for any other matter for which rules can be or may be prescribed."

Mr Bhagirath Dass contends that there is no substantive provision in the Act itself which empowers the Assessing Authority to make what he calls a best-judgment assessment. According to him, such an assessment involves a question of policy which could not be delegated to the rule making authority and, therefore, rule 29 deserves to be struck down on the principles laid down in the well-known case in *In re The Delhi Laws Act, 1912* (1). His other argument is that in sub-section (2) of section 22 there is no head under which rule 29 could be promulgated by the State Government.

It is not possible to see how the power conferred by rule 29 which in the present case was exercised after sending a notice in form P.T.T 10 in the matter of assessment of the tax due from the petitioners involves any question of policy or principle. Section 6(4) clearly provides that if the prescribed authority is satisfied that the tax has not been correctly levied, etc., it can proceed to levy the amount of tax due after giving a reasonable opportunity to the owner of being heard. Section 22(1) empowers the State Government to make rules for securing the payment of tax and generally for the purposes of carrying into effect the provisions of the Act. Sub-section (2) of the same section gives an equally wide power to provide for any other matter than the matters covered by clauses (a) to (h) for which rules may or can be prescribed. It has not been denied that rule 21, which relates to assessment of the tax, is meant for carrying into effect what is provided for by section 6(4). Rule 29 though appearing in Chapter VII is a general rule relating to assessment or re-assessment and rectification of clerical

(1) 1957 S.C.R. 747.

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or arithmetical mistakes and includes the power to assess tax after hearing the owner and making such enquiry as the Assessing Authority may consider necessary. In the Income-tax law the relevant provisions are section 143 which provides for assessment, section 144 which relates to what may be called best-judgment assessment, section 146 which deals with the reopening of assessment, section 147 which relates to income escaping assessment and section 154 which confers powers for rectification of mistakes. In the present case the rule making authority apparently combined all these matters in rule 29 together with the rule 21(ii) and (iii). Without assessment of tax the prescribed authority cannot carry out the duty with which it is charged under section 6(4) and, therefore, not only that rule 29 would be directly connected with the aforesaid provision but it could also validly be promulgated under the general and wide powers conferred by section 22(1) and it is not possible to understand how any omission in sub-section (2) of section 22 of a particular head under which rule 29 could be brought would render that rule void. The impugned rule is essentially meant for securing the payment of tax and for carrying into effect the provisions of the Act.

Lastly, Mr Bhagirath Dass, endeavoured to raise certain questions on the merits but it is neither possible nor desirable for this Court to examine them in these proceedings particularly in the presence of specific provisions in the Act providing for appeal and revision. The learned counsel for the respondents was under the impression that the point which has been agitated before us. is covered by a Bench decision of this Court in *M/s. Kotkapura Bus Service Private Ltd.* v. *The Excise and Taxation Officer and others* (2) but its perusal shows that the question of validity of rule 29 was not decided in that case.

For all the reasons given above this petition fails and it is dismissed, but in the circumstances there will be no order as to costs.

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DUA, J.—I am in complete agreement with my learned brother both in his reasoning and the conclusion. I may

(2) I.L.R. (1964) 2 Punj. 181=A.I.R. 1964 Punj. 438.

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add a few words of my own not because I intend or hope to usefully add to or improve on his lucid and well-reasoned judgment but principally because of the seriousness with which the constitutionality of Rule 29 has been pressed on behalf of the petitioners by a very senior counsel.

The problem of delegation of powers appears to be a refinement of the broader doctrine of separation of powers. The petitioners' learned counsel has tried to give to his objection the shape of a constitutional challenge rather than stress the point as a mere matter of statutory construction. The theory of separation of powers may well be traced to the desire both to describe a functionally satisfactory division of labour and to avoid accumulation of executive and legislative power in the same person, body or institution. This theory is apparently a practical device consistently with democratic principles, particularly the rule of law, to achieve practical ends, for any function would be better fulfilled by a special organ than by one charged with multifarious functions. Since efficiency of governmental administration has always been the cherished end, with the governmental activities becoming varied and complex, the theory of separation of power has come, of necessity, to be reasonably relaxed, in that rigid enforcement of this theory must tend to jeopardise the efficiency of governmental administration. In our democratic welfare set-up accordingly, this doctrine is far from rigid and the necessity of governmental practices and the constant increase of socio-economic legislation has rendered almost indispensable inceasing assistance from the administrative or executive wing in the shape of formulation of supplemental provisions facilitating smooth working of legislative policy and scheme as laid by the Legislature. Indeed, delegated legislation as distinguished from abdication is now treated in our jurisprudence as a constituent element of Legislative Power as a whole. The validity of a statute delegating power, however, depends upon:—

(i) the agency to which the power is delegated;

(ii) the subject-matter of the regulation; and

(iii) the character of the delegated power.

Because all these three considerations interweave, it is difficult to discuss the validity of one independently of

the others. The validity of delegation of rule-making power depends today upon the legislative creation of adequate standards to guide administrative action. What constitutes adequate standards, however, depends primarily upon the nature of the subject-matter regulated. If the Legislature lays down in the statute an intelligible principle to which the delegate is directed to conform, such legislative action is not a forbidden delegation of legislative power. for what is constitutionally prohibited is abdication of the power, which is also the duty to enact the primary legislative policy, and not securing assistance from the administrative agency in the form of subordinate rules within the framework of enacted principles to make the legislative policy operative. In other words, when a valid statute otherwise complete in itself, enacts the general outline of a legislative scheme, policy or purpose, and confers upon the executive wing, charged with the duty of assisting in administering the law, authority within defined intelligible limits to make rules, such conferment of authority may not be unconstitutional delegation or abdication of legislative power.

Examined in this background, we find that the Punjab Passengers and Goods Taxation Act, 1952, is designed to provide for levying a tax on passengers and goods carried by road in certain motor vehicles. As discussed by my learned brother in his detailed judgment, the various sections of the Act clearly lay down intelligible principles to which the rule-making authority as a delegate must conform. Challenge to the validity of Rule 29 on the ground that it does not [illegible] within any specific clause of section 22(2) is plainly untenable as the rule-making power is manifestly conferred by section 22(1), the function of sub-section (2) being merely illustrative. This is obvious from the opening words of sub-section (2). The "rules" referred to in the opening sentence of this sub-section *prima facie* mean the rules authorised by and made under sub-section (1). The various clauses contained in sub-section (2) are accordingly not restrictive of the scope of sub-section (1), and indeed this appears to be expressly clarified by the words "without prejudice to the generality of the foregoing power" used in sub-section (2). In any event, clause (i) of sub-section (2), which is apparently intended by the Legislature, in its wisdom, to be a sort of a residuary clause is comprehensive and wide enough

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to cover the subject-matter of rule 29. It thus seems obvious that the rule-making power is not uncanalised or uncontrolled and it can by no means be reasonably described to be abdication of the legislative power or duty. The rules authorised by section 22 must be consistent with the Act and must be confined to the purpose of securing the payment of tax and for the purpose of carrying into effect the provisions of the statute. It may in passing be pointed out that the task of declaring unconstitutional an enacted provision of law is both delicate and solemn and unless it is not reasonably possible to uphold its constitutionality, it should not be lightly struck down.

In so far as Rule 29 is concerned, as its heading or marginal note suggests, it is concerned with the assessment or re-assessment of tax and rectification of clerical or arithmetical mistakes. It has not been shown how this rule falls outside the scope of the rule-making power contained in section 22. The contention that there must be an express power for authorising assessment on best-judgment basis and in the absence of such express power, the Assessing Authority has no jurisdiction to estimate on best-judgment basis the value of stamps used during the year in question, as has been done in the case in hand, is unsustainable, for such power seems to me to be necessarily implied in the Assessing Authority when making assessment, on the language of Rule 29 read with other rules in the background of the provisions of the Act. When an Act confers a jurisdiction, it seems impliedly also to grant the power of doing all such acts and employing such means as are essential to its effective execution. To elaborate this rule of necessary implication, if a statute is enacted for enabling something to be done, omission to mention in terms some detail of importance to the effectual and proper achievement of the contemplated purpose, even though the omitted detail may not be considered absolutely essential, the Court can appropriately and legitimately infer that the statute by necessary implication empowers such detail to be carried out for properly and effectively accomplishing the ultimate statutory object. An express statutory grant of power or imposition of a definite duty by implication carries with it, in the absence of a limitation, authority to imply all usual means that are necessary to the exercise of the power or the performance of the duty, for what is clearly implied is as much a part of a

law as what is expressed. Such necessary implication may more easily be inferred in case of details pertaining to matters of procedure, particularly when it tends to help prevent dishonest evasion of taxes lawfully authorised. The problems and difficulties involved in the assessment and collection of taxes are matters of common knowledge and statutory provisions relating to procedure for assessment deserve, if reasonably permissible on the language, to be so construed as to include within their fold methods which would effectuate assessment. A statutory provision conferring, in general terms, power and imposing duty to make assessment includes by implication, in the absence of limitation, the incidental and necessary power and duty of making an assessment on best judgment basis, if circumstances so warrant, for, it means no more than power to construct procedural machinery to make assessment; of course it must not violate rules of natural justice.

I am accordingly inclined to hold that Rule 29 is intended to include within its purview making an assessment to the best of the Assessing Authority's judgment when the owner declines assistance by producing all the relevant material with him: in other words, when he obstructs the assessment by, what may be described as: non-co-operation. It would, in my view, frustrate the whole object of the Act if by his obstructive conduct the owner can successfully throttle an assessment and thereby evade payment of tax, on the other hand to accede to the Assessing Authority power to make assessment in such a situation on best-judgment basis on the material before him, would effectuate and promote the statutory purpose and thus may accordingly be reasonably held to be necessarily implied. Revenue being indispensable for a welfare State, it is the policy of the law properly to ensure reasonably smooth assessment and collection of lawful taxes. The submission that it is in terms not provided in what circumstances assessment on best-judgment basis may be resorted to and that the Assessing Authority is given no guidance, can be disposed of on the short ground that this power, like all power affecting citizens' right, is exercisable in this Republic subject to the well recognized rules of natural justice.

Reference to sections 143 to 147 and 154 of the Indian Income-tax Act by way of analogy is unhelpful to the

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petitioner because the fact that the Legislature has for solving the problems under the Income-tax Act adopted a different scheme for making best-judgment assessment does not mean that in a different statute no other method can be adopted, and in any event, we derive from the Income-tax Act little assistance on the question of constitutional validity of Rule 29 which forms part of a different statutory scheme and is apparently designed to solve somewhat different problem.

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With these observations, I fully agree with the order made by my learned brother.

K.S.K.