MISCELLANEOUS CIVIL

Before M. R. Sharma and S. S. Sidhu, JJ.

SANTOSH KUMAR CHANDER SHEKHAR,—*Petitioner.*

versus

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

Civil Writ Petition No. 3596 of 1976

December 17, 1976

Punjab Panchayat Samitis and Zila Parishads Act (III of 1961)—Section 66—Whether suffers from the vice of excessive delegation—East Punjab General Sales Tax Act (XLVI of 1948)—Section 6 and Schedule 'B' Entry 31—Country liquor vends auctioned and price of bottled liquor fixed by State Government—State Government not imposing a tax on the sale of such liquor—Panchayat Samiti—Whether can levy such a tax.

Held, that section 66 of the Punjab Panchayat Samitis and Zila Parishads Act, 1961, does not suffer from the vice of excessive delegation simply because the rate of tax has not been quntified therein.

(Para 10)

Held, that sales-tax or the purchase-tax imposed under the Panjab General Sales Tax Act, 1948, appropriated towards the Consolidated Fund of the State and is used for the general benefit of all the people of the State. A tax which is imposed by a Panchayat Samiti is collected for a smaller section of the people who reside in the area of such a Samiti. The tax imposed by it under section 65 of the Act cannot be equated with the sales-tax or purchase-tax imposed under the Punjab General Sales Tax Act. Whatever might be incidence of taxation, it would remain a tax under that section. Any dealer while collecting this tax would be acting under the command of an appropriate Legislature and not doing anything in contravention of the provisions of the sales-tax law. The jurisdiction of the Legislature to auhorise a unit of a local self-Government to impose a particular tax does not depend upon the voluntary action of the legislature to grant exemptions from taxation under a statute framed by it. It depends upon its capacity to impose a particular tax in accordance with the provisions of the Constitution of India. The main thing to be seen is the capacity of the State Legislature to impose a tax under the constitutional provisions. Its inaction to impose such a tax or its desire not to impose such a tax are wholly immaterial. A Panchayat Samiti acting squarely within the four corners of the statute which creates it has absolute freedom of action. It cannot be confronted with the bar of estoppel on the

ground that another body like the State Government has declined to impose a particular tax on a particular item or has granted it an exemption under the taxing statute.

(Para 11)

Held, that the fact that the tax has been imposed by the Samiti after the vends have been auctioned by the Government under a condition that the country liquor would be sold at a specific price cannot detract from the powers of the Samiti to take such action as it is authorised to take under the law. It is now well settled that there can be no question of estoppel against the government in the exercise of its Legislative, Sovereign or Executive powers.

(Para 12)

Amended Petition under Articles 226 and 227 of the Constitution of India praying that the petition be accepted, records of the case called for and the petitioner given the following relief :—

(a) *a writ in the nature of certiorari be issued quashing the impugned resolutions dated March 18, 1976, Annexure P. 1 and the resolution dated May 3, 1976, Annexure P. 3, along with the impugned notification Annexure P. 4 levying the impugned tax, which in fact is a fee ;*

(b) *any other writ, order or direction issued which this Hon'ble Court deems fit and proper in the circumstances of the case ;*

(c) *production of the certified, original/photostat copies of Annexure P. 2 and P. 4 exempted ;*

(d) *operation of the impugned notification Annexure P. 4 stayed during the pendency of the writ petition, as otherwise the very purpose of the petition would be frustrated; and*

(e) *costs of the petition awarded to the petitioner and against the respondents.*

H. L. Sibal, Senior Advocate with Kuldip Singh, G. C. Mittal, S. C. Sibal and Arun Jain, Advocates, *for the petitioners.*

I. S. Tiwana, D.A.G. (Punjab), *for Respondent No.* 1.

Bhagirath Dass, Advocate with Malook Singh, and S. K. Hirajee, Advocates, *for Respondent No.* 3.

B. S. Bindra, Advocate in C.Ws. Nos. 8215, 8216 of 76 *for respondents No.* 2.

JUDGMENT

M. R. Sharma, J.

(1) This judgment will dispose of Civil Writs Nos. 3598, 8214, 3697, 4168, 7278, 8290, 8252 to 8262, 8283, 8245, 8247, 8215, and 8216 of 1976; as common questions of law and fact are involved in all of them.

(2) For facility of reference, the facts giving rise to Writ Petition No. 3598 of 1976 may briefly be stated as under. The petitioner-firm is a licensee of the country liquor vends of village Kandhala Jattan and Deriwala in the area of Panchayat Samiti, Tanda, tehsil Dasuya, District Hoshiarpur. These vends were auctioned in favour of the petitioner-firm on March, 20, 1976, by the Deputy Excise and Taxation Commissioner, Jullundur, exercising powers of the Collector under the Punjab Excise Act.

(3) On March 21/22, 1976, the petitioner-firm read in the newspapers that the Panchayat Samiti, Tanda, respondent No. 3, passed a resolution on March 18, 1976, to the effect that the Panchayat Samiti shall impose a tax on the sale of country Liquor by the licensees operating in the area of Panchayat Samiti, Tanda. Even though no notice as required under section 67(2) of the Punjab Panchayat Samitis and Zila Parishads Act, 1961 (hereinafter called the Act) had been given to the petitioners, yet they by way of abundant caution lodged objections to the proposal of the Samiti to impose the tax. A copy of the objections raised by the petitioner-firm has been attached to the petition as Annexure P. 2 and it has been stated therein that since the price of the country-liquor has been fixed by the State Government, no tax can be imposed by the Samiti unless and until the Government re-fixes the sale-price of bottled liquor. It is then alleged that the Samiti without considering the objections raised in a legal and judicious manner rejected the same. The State Government issued a notification on June 3, 1976, whereby it accepted the proposal of the Panchayat Samiti. A copy of this notification is attached as Annexure P. 4, which reads as under:—

"Punjab Government Gaz. (Extra) June 3, 1976.
(JYST 13, 1898 Saka).

Development and Panchayat Department.

Notification—

The 3rd June, 1976.

No. 1855-BA&C-V-75/8758.—In pursuance of the provisions of sub-section (5) of section 67 of the Punjab Panchayat Samitis and Zila Parishads Act, 1961, the Governor of Punjab is pleased to notify that Panchayat Samiti, Tanda, District Hoshiarpur, has, in exercise of the powers conferred by section 65 of the said Act, read with Punjab Government Memo. No. 1854-B.A.C. 5-76/4334, dated the 5th March, 1976, issued under section 66 of the said Act, imposed a tax on the sale of country liquor, within the area subject to its authority, at the rates given below, and is further pleased to direct that the said tax shall come into force with effect from 4th July, 1976:—

Quart one rupee per bottle.

Pint Fifty paise per bottle.

Nip Twenty-five paise per bottle."

(4) The aforementioned notification and the levy of tax made by the Samiti have been challenged *inter alia* on the grounds that the auction of the vends having been conducted on March 20, 1976, and the sale-price of bottled liquor having been fixed by the State Government, no further tax could have been levied by the Samiti on the sale of liquor. The impugned tax was a fee and since there was absence of an element of *quid pro quo*, the same should be held as illegal. If it is held that the impugned levy was tax, the same could not be imposed because the State Government had exempted the levy of sales-tax on liquor. In the course of arguments, constitutional validity of section 66 of the Act was also challenged on the ground that the Legislature had completely abdicated its essential legislative functions in favour of the Executive Government by allowing it to authorise the levy of any tax even though the same had not been quantified. It was further submitted that section 67(2) of the Act envisaged taxes to be imposed on persons or property only and the impugned tax having been imposed on the incidence of sale was outside the scope of the Act. The last mentioned arguments though not mentioned in the writ petition were allowed by us to be raised because they were based on pure questions of law, and we propose to dispose them of first of all.

(5) Under Article 40 of the Constitution, which appears in Part IV relating to the Directive Principles of State Policy, the State

is enjoined upon to take steps to organise Village Panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-Government. To enable the State to carry out this laudable object, Entry No. 5 has been included in List II of the Seventh Schedule to the Constitution, so that the State Legislature may in exercise of its jurisdiction under Article 246 of the Constitution pass appropriate laws. This Entry reads as under:—

> "Local Government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration."

(6) It is no doubt true that the function of the Lists is only to demarcate legislative field between the Parliament and the States instead of conferring any power on them, but these Entries have to be interpreted in their plain, natural and grammatical meaning. They have to be read in their fullest and widest amplitude so as to extend their scope to all ancillary and subsidiary matters which can be reasonably and fairly comprehended in them. There is some authority for the proposition that taxation is to be considered as a distinct matter for the purpose of legislative competence and the power to tax cannot be deducted from a general legislative entry as an ancillary power, but the application of this general principle cannot be properly extended to the interpretation of the aforementioned Entry, because if that course is adopted the word "government" appearing in this Entry would have to be given a restricted meaning in violation of the settled principle of interpretation of the Entries. It is a matter of common knowledge that the Government exercises executive, legislative and judicial functions through its appropriate organs. The imposition of tax for carrying out day-to-day functions of the Government is a necessary attribute of the exercise of governmental function. However, the tax imposed has to have the sanction of the legislature behind it. As observed by Latham, C.J., of the High Court of Australia in *Mathews* v. *Chicory Marketing Board* (1):—

> "A tax is a compulsory exaction of money by public authority for public purposes enforceable by law and is not payment for services rendered."

(1) 60 C.L.R. 263.

In short, whenever an Entry demarcates the area of jurisdiction of a legislature to make laws for local self-government, it by a necessary implication authorises that legislature to confer authority on the local-body created to impose taxes in accordance with law. This is precisely what has been envisaged in our Constitution. The Punjab Legislature while passing the Act merely followed the Directive Principles which are fundamental in the governance of the country. When a Court talks of a legislature effacing itself or abdicating its functions, it means that the legislature who is charged with the duty of framing laws for the people under the Constitution is not performing that duty. But this principle cannot be invoked where the State Legislature frames a law as envisaged by Entry No. 5 of List II of the Seventh Schedule pursuant to the principle enshrined in Article 40 of the Constitution, for, in that case the Court instead of disobeying the Constitution acts in obedience to the provisions contained therein. Such a law made by the State Legislature can only be challenged on the ground that it is opposed to the fundamental rights or other constitutional provisions and the action purported to have been taken under such a law can be challenged if it does not squarely fall within the ambit of such a law. It may be that the State Legislature in its wisdom does not choose to bestow full legislative powers on a unit of local self-government and makes its actions amenable to the overall supervisions of the State Government, but where sufficient guidelines are given in an Act itself about the extent of powers to be exercised by a unit of the local self-government and the control vested in the executive authority of the Government is hedged in by proper safeguards, the law cannot be declared as invalid simply because the State Government has also been introduced in the picture.

(7) In order to see whether the State Legislature has laid down proper guidelines for the conduct of the Samitis' action, the provisions of the Act deserve to be examined in some detail. Section 5 lays down that a Panchayat Samiti is to consist of primary members to be elected in the manner prescribed and co-opted members who are elected by a process of indirect election contained in section 16. Section 26 lays down that the decision of a Samiti will be made by a majority of votes of the members present and voting. Section 29 lays down that the minutes of each meeting of a Panchayat Samiti shall be drawn up and recorded in a book kept for the purpose and shall be signed by the authority presiding at the meeting or of the

next ensuing meeting and shall be published in such manner as the Panchayat Samiti may, by bye-laws, direct, and shall at all reasonable times be open to inspection by any inhabitant of the tehsil or block as the case may be. Section 41 gives details of the duties to be performed by a Panchayat Samiti in the sphere of agriculture, communications, social, education and co-operation, etc. Section 78 lays down that there shall be formed for every Panchayat Samiti a fund to be called the 'Samiti Fund' to the credit of which shall be placed grants made by the Government, Zila Parishad, the proceeds of all taxes and other profits accruing to the Samiti. Section 79 relates to the vesting, custody and development of Samiti Fund. Section 80 enumerates the heads under which this fund may be expended. Under section 82 every Panchayat Samiti is enjoined upon to frame a budget for the next financial year. Section 83 lays down that accounts of the receipts and expenditure of every Samiti shall be audited by such persons as the Government may appoint in that behalf. Section 85 lays down that the Executive Officer of the Panchayat Samiti shall prepare a statement of accounts of the Panchayat Samiti for each financial year showing its income and expenses incurred for works undertaken. An abstract of this statement has to be published in the Official Gazette and in such other manner as the Panchayat Samiti may direct.

(8) In short, a Panchayat Samiti is a statutory body consisting of elected members whose decisions are to be taken on the basis of a majority vote. Its functions are defined by the statute. It has to have a statutory fund out of which money can be withdrawn for being spent on specific statutory purposes. A Panchayat Samiti has been vested with the power to impose taxes under sections 65, 66 and 67 of the Act, which read as under:—

> "65. Subject to the general direction and control of the Government, a Panchayat Samiti may with the previous permission of the Zila Parishad concerned, impose any tax which the Legislature of the State has power to impose under the Constitution of India:
>
> Provided that no tax under this section shall be imposed in respect of any property subject to the local rate.
>
> 66. Notwithstanding anything contained in section 65, the Government may empower any Panchayat Samiti to

impose without such permission any tax referred to in that section subject to such limitation as it may direct.

67. (1) A Panchayat Samiti may at a special meeting pass a resolution to propose the imposition of any tax under section 65.

(2) When a resolution referred to in sub-section (1) has been passed, the Panchayat Samiti shall publish a notice defining the class of persons or description of property proposed to be taxed, the amount or rate of the tax to be imposed and the manner of assessment to be adopted.

(3) Any person likely to be effected by the proposed tax, and objecting to the same, may, within thirty days from the publication of the notice, send his objection in writing to the Panchayat Samiti, and the Samiti shall at a special meeting take his objection into consideration.

(4) If no objection is received within the said period of thirty days, or the objection received is considered to be unacceptable, the Panchayat Samiti shall—

(a) where the proposed tax is a tax in respect of which the Government has empowered the Panchayat Simiti under section 66 to impose it without the permission of the Zila Parishad, submit its proposal to the Government; and

(b) in any other case, submit its proposal to the Zila Parishad, concerned, with the objections, if any, which have been received along with its decision thereon.

(5) Where a proposal for the imposition of a tax has been received by the Government under clause (a) of sub-section (4), the Government may notify the imposition of the tax in accordance with proposal and shall, in the notification, specify a date, not less than thirty days from the date of its publication, on which the tax shall come into force.

(6) On receiving the proposal under clause (b) of sub-section (4), the Zila Parishad may within the prescribed period sanction or refuse to sanction it or return it to the Panchayat Samiti for further consideration.

(7) If the Zila Parishad permits the imposition of the proposed tax, it shall forward the proposal to the Government for taking action in accordance with the provisions of sub-section (5).

(8) If the Zila Parishad refuses permission to impose the proposed tax or returns it to the Panchayat Samiti for further consideration, the Zila Parishad shall forward, the proposal of the Panchayat Samiti in its original form or as further considered by the Panchayat Samiti, as the case may be, to the Government and the Government may then decide whether a tax is or is not to be imposed or imposed in accordance with the proposal as further considered by the Panchayat Samiti.

(9) After a decision has been taken by the Government under sub-section (8) that the proposed tax is to be imposed as originally proposed or as proposed after further consideration, the Government shall take action in accordance with the provisions of sub-section (5).

(10) A notification for the imposition of a tax under this Act shall be conclusive evidence that the tax has been imposed in accordance with law."

(9) All the three sections have to be read together because they form a compact code containing the powers of a Samiti to impose taxes. A Panchayat Samiti has to obtain the previous permission of the Zila Parishad concerned before it initiates measures to impose a tax. The procedure for the imposition of taxes is given in section 67 of the Act. Section 66 has been designed to obviate the stalemate which might be caused because of some difference of opinion between a Panchayat Samiti and the concerned Zila Parishad. In that case alone, a superior authority, namely, the Government, has been vested with the power to have the final say in the matter. In the very nature of things, a Panchayat Samiti cannot initate and successfully adopt measures of tax which may be regarded as unreasonable because a Zila Parishad which has more than one Samiti under its control exercises a check. The Government comes into the picture only when the Zila Parishad refuses to grant permission to

a Panchayat Samiti to impose a particular tax. In such a situation, it is not necessary for the State Legislature to quantify the maximum or the minimum limit of a tax to be imposed by a Panchayat Samiti in the Act itself. Nor can it be said with any justification that the Legislature by introducing the State Government in the picture in section 66 of the Act has conferred any authority or arbitrary powers on it. The measure regarding the imposition of a tax has to emanate from the Panchayat Samiti itself. The exercise of this power by the Panchayat Samiti is subject to the general direction and the control of the Government which implies that only such taxes would be allowed to be levied as are reasonable and proper and not unduly burdensome. The requirement of the previous permission of the concerned Zila Parishad is an important safeguard and the Government acts only if the Zila Parishad does not properly perform its duty by refusing permission in respect of a reasonable proposal. In *Gulabchand Bapalal Modi* v. *Municipal Corporation of the City of Ahmedabad and another* (2), the Court was concerned with the interpretation of section 127 of the Bombay Provincial Municipal Corporation Act, 1949. This section authorised the Corporation to impose property tax which was not less than 12 per cent of the rateable value of the buildings and lands. After quoting with approval *Municipal Corporation of Delhi* v. *Birla Mills* (3), the Court summarised the following factors pointed out by Wancho, C.J., which were held to furnish sufficient guidance preventing the delegation from becoming invalid—

"(1) That the delegation was to an elected body responsible to the people including those, who pay taxes and to whom the councillors have every four years to turn to for being elected.

(2) That the limits of taxation were to be found in the purposes of the Act for the implementation of which alone taxes could be raised and though this factor was not conclusive, it was nevertheless relevant and must be taken into account with other relevant factors.

(3) That the impugned section 150 itself contained a provision which required that the maximum rate fixed by the Corporation should have the approval of the Government.

(2) A.I.R. 1971 S.C. 2100.

(3) A.I.R. 1968 S.C. 1232.

(4) That the Act contained provisions which required adoption of budget estimates by the Corporation annually.

(5) That there was a check by the courts of law; where the power of taxation is used unreasonably or in non-compliance or breach of the provisions and objects of the Act".

Thereafter the Court held as under:—

"Thus, the majority view in this decision, which is binding on us, shows that the mere fact that an Act delegating taxing power refrains from providing a maximum rate does not by itself render the delegation invalid."

(10) The provisions of the Act are *pari materia* with the salient provisions of the Bombay Provincial Municipal Corporation Act, 1949, and for the reasons mentioned in that judgment we hold that the Act does not suffer from the vice of excessive delegation simply because the rate of tax has not been quantified therein.

(11) We shall now examine the argument based on section 6 of the Punjab General Sales Tax Act, 1948, and Entry No. 37 appearing in Schedule 'B' of that Act. Section 6 of the Punjab General Sales Tax Act, 1948, lays down that no tax shall be payable on the sale of goods specified in the first column of Schedule 'B' subject to the conditions and exceptions if any set out in the corresponding Entry in the second column thereof and no dealer shall charge sales-tax on the sale of goods which are declared tax-free from time to time under this section. Entry No. 37 appearing in Schedule 'B' of the Punjab General Sales Tax Act, 1948, reads as under:—

"37. All goods except Indian made foreign liquor on which duty is or may be levied under the Punjab Excise Act, 1914, or the Opium Act, 1878".

The submission made is that since country-liquor is a tax-free item under section 6 of the Punjab General Sales Tax Act, the State Legislature has made a declaration that it shall be incumbent for the State itself to charge any tax on the sale of country-liquor and since section 65 of the Act empowers a Panchayat Samiti to impose only

those taxes which the State has the power to impose under the Constitution of India, it should be held that it was neither competent for the Panchayat Samiti to initiate a measure for imposing a tax on the sale of country-liquor nor was it competent for the State Government to accord its approval to the Samiti under section 66 of the Act. The argument advanced does look attractive on the face of it, but a deeper probe demonstrates its utter hollowness. The sales-tax or the purchase-tax imposed under the Punjab General Sales Tax Act, 1948, is appropriated towards the Consolidated Fund of the State and is used for the general benefit of all the people of the State. A tax which is imposed by a Panchayat Samiti is collected for a smaller section of the people, who reside in the area of such a Samiti. The tax imposed by it under section 65 of the Act cannot be equated with the sales-tax or purchase-tax imposed under the Punjab General Sales Tax Act, 1948. Whatever might be the incidence of taxation, it would remain a tax under that section. Any dealer while collecting this tax would be acting under the command of an appropriate Legislature and not doing anything in contravention of the provisions of the sales-tax law. The jurisdiction of the Legislature to authorise a unit of a local self-government to impose a particular tax does not depend upon the voluntary action of the legislature to grant exemptions from taxation under a statute framed by it. It depends upon its capacity to impose a particular tax in accordance with the provisions of the Constitution of India. For instance the State Legislature, who has the admitted jurisdiction to impose a toll tax might not impose this tax for the benefit of the State and yet authorise the Panchayat Samitis to impose this tax. The main thing to be seen is the capacity of the State Legislature to impose a tax under the constitutional provisions. Its inaction to impose such a tax or its desire not to impose such a tax are wholly immaterial. A Panchayat Samiti acting squarely within the four corners of the statute which creates it has absolute freedom of action. It cannot be confronted with the bar of estoppel on the ground that another body like the State Government has declined to impose a particular tax on a particular item or has granted it an exemption under the taxing statute.

(12) Similarly, the fact that the tax has been imposed by the Samiti after the vends have been auctioned by the Government under a condition that the country-liquor would be sold at a specific price cannot detract from the powers of the Samiti to take such

action as it is authorised to take under law. In *Excise Commissioner U. P., Allahabad etc., etc.*, v. Ram Kumar, etc., etc.; (4) sales tax was imposed by the Government on the sale of liquor after the vends had been sanctioned. While repelling the challenge against the imposition of sales-tax, the Supreme Court observed:—

> "The fact that sales of country liquor had been exempted from sales tax,—*vide* notification No. ST 1149/X-802(33)-51, dated April 6, 1959, could not operate as an estoppel against the State Government and preclude it from subjecting the sales to tax if it felt impelled to do so in the interest of the Revenues of the State which are required for execution of the plans designed to meet the ever increasing pressing needs of the developing society. It is now well settled by a catena of decisions that there can be no question of a estoppel against the Government in the exercise of its legislative sovereign or executive powers".

(13) The aforementioned observations apply with full vigour to the facts and circumstances of the instant case.

(14) Last of all, it was submited that because of the imposition of the tax by the Samiti during the current year for which the vends have been sanctioned in favour of the petitioner-firm, the latter would suffer irreparable loss and at least for the sake of equity we should quash the impugned levy. It is settled law that equitable considerations cannot be taken into consideration by a Court while interpreting a taxing statute.

(15) No other point was urged before us.

(16) For the reasons mentioned above, we see no force in these petitions and dismiss the same with costs. Counsel fee Rs. 200 in each case. The costs shall be recoverable by the concerned Panchayat Samiti only.

K. T. S.

(4) A.I.R. 1976 S.C. 2237.