1961

March 29.

MST. JADAO BAHUJI

v.

MUNICIPAL COMMITTEE, KHANDWA AND ANOTHER

(S. K. DAS, J. L. KAPUR, M. HIDAYATULLAH, J. C. SHAH and T. L. VENKATARAMA AIYAR JJ.)

Tax on Trade—Maximum limit imposed by Constitution Act —Validating Act for period prior to imposition of limit—If affected by limit—Khandwa Municipality (Validation of Tax) Act, 1941 (16 of 1941)—Government of India Act, 1935, s. 142-A.

In 1922, the Municipal Committee, Khandwa imposed a tax on the trade of ginning and pressing cotton by means of steam or mechanical process. Certain suits were filed challenging the validity of the tax and ultimately in 1937, the Privy Council held that the tax had not been validly imposed. In 1941, the Governor enacted the Khandwa Municipality (Validation of Tax) Act, 1941, which sought to validate the tax imposed in 1922. In the meantime, s. 142-A was introduced in the Government of India Act, 1935, sub-s. (2) of which provided that the 'total amount payable in respect of any one person by way of taxes on professions, trades, callings and employments shall not, after March 31, 1939, exceed Rs. 50 per annum'. The appellant contended that the validating Act was hit by s. 142-A(2) and to the extent that it imposed a tax above Rs. 50 per person per annum it was invalid.

Held, that the Validating Act was not hit by s. 142-A (2) Government of India Act, 1935. The powers of the Indian Legislatures included a power to pass retrospective and validating laws. Section 142-A(2) which put a limit on the amount of tax did not affect laws relating to a period prior to March 31, 1939, but affected only those relating to periods after that date. It circumscribed the legislative power by putting a date-line after which a tax in excess of Rs. 50 for a period after the date-line could not be collected unless it came within the proviso. The Validating Act imposed the tax in excess of Rs. 50 not after March 31, 1939, but before it.

The United Provinces v. *Atiqa Begum*, [1940] F.C.R. 110 and *Piare Dusadh* v. *King Emperor*, [1944] F.C.R. 61, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 180 of 1959.

Appeal from the judgment and order dated June 30, 1955 of the former Nagpur High Court in Misc. First Appeal No. 162 of 1949.

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N. C. Chatterjee and *B. P. Maheshwari*, for the appellant.

G. C. Mathur, for the respondents.

1961. March 29. The Judgment of the Court was delivered by

HIDAYATULLAH, J.—This appeal, by certificate under Arts. 132(1) and 133(1)(c) of the Constitution, has been filed against an order of the High Court at Nagpur dated June 30, 1955.

Though the facts necessary to decide the appeal lie within a comparatively narrow compass, the case itself has had a long and somewhat unique history. In July, 1922, the Municipal Committee, Khandwa, resolved to impose a tax on the trade of ginning and pressing cotton by means of steam or mechanical process, and after sundry procedure, a notification was published on November 25, 1922 in the Central Provinces and Berar Gazette, imposing the tax. Certain traders including the appellant, affected by the tax, filed suits seeking injunction against the Municipal Committee on the ground that the tax was invalid and illegal. Meanwhile, the Municipal Committee had served notices on the present appellant, and demanded and recovered the tax for 1923-24. The appellant then filed a second suit for refund of the tax paid by her on the ground that the imposition of the tax was illegal and *ultra vires*. The suits had varying fortunes in the Courts in India, till they reached the Privy Council. The Judicial Committee by its first decision remitted the cases for additional evidence, while the appeals were kept pending. The decision of the Judicial Committee is reported in *Radhakishan Jaikishan* v. *Khandwa Municipal Committee* (1). After the additional evidence was received, the Judicial Committee pronounced its decision, which is reported in *Radhakishan Jaikishan* v. *Municipal Committee, Khandwa* (2). The Judicial Committee held that the tax was not validly imposed by the Municipal Committee, and reversing the decree of the Judicial Commissioner, decreed the suits.

(1) (1933) L.R. 61 I.A. 125. (2) (1937) L.R. 64 I.A. 118.

The Provincial Legislature then passed the Khandwa Ginning and Pressing Cotton Tax Validating Act 8 of 1938, validating the tax. The Act contained only one operative section, which read as follows:

"2. Notwithstanding anything contained in the Central Provinces Municipal Act, 1903, or the Central Province Municipalities Act, 1922, or any decree or order of a civil court, the tax on the trade of ginning and pressing cotton by means of steam or mechanical process within the limits of the Khandwa municipality which was imposed by Notification No. 2639-1298-VIII, dated the 21st November, 1922, shall be deemed to have been legally imposed from the date of its imposition to the date on which this Act comes into force.

Explanation.—All decrees or orders of a civil court directing a refund of the tax already recovered by the committee of the said municipality or restraining the committee from recovering the tax shall be deemed to have no legal effect."

The appellant had, in the meanwhile, applied for the execution of the decrees, and the Validating Act was pleaded in bar. This plea was upheld by the executing Court, but the High Court at Nagpur, on appeal, rejected it and ordered the executions to proceed. The decision of the High Court is reported in *Firm Radhakishan* v. *Municipal Committee, Khandwa* (1). The reason given by the High Court was that the Explanation, though not the operative part of the Validating Act, conflicted with O. 45 R. 15 of the Code of Civil Procedure, and that the assent of the Governor-General had not been obtained, as required by s. 107(2) of the Government of India Act, 1935.

Meantime, the Provincial Legislature had been dissolved, and the Governor had assumed all the powers of the Provincial Legislature under s. 93 of the Government of India Act, 1935. The Governor, with the assent of the Governor-General, enacted the second Validating Act intituled the Khandwa Municipality (Validation of Tax) Act, 1941, (16 of 1941), which received the assent of the Governor-General on June

(1) (1940) N.L.J. 638.

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30, 1941, and was published in the C. P. and Berar Gazette on July 11, 1941. That Act, omitting parts not relevant here, read as follows:

"2. The tax the imposition of which purported to be sanctioned in the Notification of the Local Government (Ministry of Local Self-Government) No. 2639-1298-VIII, dated the 21st November 1922, shall be, and shall be deemed always to have been, validly recoverable by the Municipal Committee of Khandwa in respect of the period from the 21st November 1922 to the 31st March 1938 (both dates inclusive).

3. Where the net sum recovered from any person before the commencement of this Act on account of the said tax is less than the aggregate of the sum recoverable from such person, the balance shall be payable to the said Municipal Committee on demand made at any time after the commencement of this Act and, if not paid within fifteen days from the date of the demand, shall be recoverable by any method available under the Central Provinces Municipalities Act, 1922, for the recovery of a tax imposed thereunder or by such other method as the Provincial Government may by rule prescribe."

4. For the purposes of section 3 the net sum recovered from any person means the aggregate sum recovered from such person less any sum refunded to him and less so much of the amount of any decree or order for the payment of money executed by him against the said Municipal Committee as represents an amount previously paid by him on account of the said tax.

5. Nothing in this Act shall preclude the execution against the said Municipal Committee of any decree or order for the payment of money arising out of a payment on account of the said tax but upon the execution of such decree or order so much of the amount thereof as represents a sum previously paid on account of the said tax shall be payable to and recoverable by the said Municipal Committee in accordance with section 3.

6. The Khandwa Ginning and Pressing Cotton Tax Validating Act, 1938, is hereby repealed."

The Provincial Government framed a rule, which, shortly stated, provided for the recovery of the amount by way of execution application made to the very Court, which executed the decree.

The Municipal Committee deposited the decretal amount in Court, which was withdrawn by the appellant on furnishing security. On August 7, 1947, the Municipal Committee filed its application under the rule for execution of the decree. Objections were raised by the appellant, but were disallowed, and the Municipal Committee realised the amount of the tax from the surety. The appellant had raised many objections, but we are concerned with one only, viz., that the Act was *ultra vires* the Provincial Legislature and consequently the Governor, being repugnant to s. 142-A, which was introduced in the Government of India Act, 1935, and which imposed a limit of Rs. 50 on taxes on professions, trades and callings after March 31, 1939.

On November 16, 1949, an appeal was taken by the present appellant to the High Court at Nagpur. This appeal was heard by Sinha, C. J., and Mudholkar, J. (as they then were). Mudholkar, J. held that by the second Validating Act which was passed after March 31, 1939, the limit of Rs. 50 per annum imposed by the second sub-section of s. 142-A was exceeded, and that the Act was thus *ultra vires,* the Governor. Sinha, C. J., was of the contrary opinion. The case was then laid before Deo, J., who agreed with Sinha, C. J., and the appeal was dismissed. The appellant then obtained the certificate, and filed this appeal.

Section 142-A of the Government of India Act, 1935, is as follows:

> "142-A. (1) Notwithstanding anything in section one hundred of this Act, no Provincial Law relating to taxes for the benefit of a Province or of a municipality, district board, local board or other local authority therein in respect of professions, trades, callings or employments shall be invalid on the ground that it relates to a tax on income.
>
> (2) The total amount payable in respect of any

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one person to the Province or to any one municipality, district board, local board, or other local anthority in the Province by way of taxes on professions, trades, callings, and employments shall not, after the thirty-first day of March nineteen hundred and thirty-nine, exceed fifty rupees per annum:

Provided that if in the financial year ending with that date there was in force in the case of any Province or any such municipality, board or authority a tax on professions, trades, callings, or employments the rate, or the maximum rate, of which exceeded fifty rupees per annum, the preceding provisions of this sub-section shall, unless for the time being provision to the contrary is made by a law of the Federal Legislature, have effect in relation to that Province, municipality, board or authority as if for the reference to fifty rupees per annum there were substituted a reference to the rate or maximum rate, or such lower rate, if any, (being a rate greater than fifty rupees per annum) as may for the time being be fixed by a law of the Federal Legislature; and any law of the Federal Legislature made for any of the purposes of this proviso may be made either generally or in relation to any specified Provinces, municipalities, boards or authorities.

(3) The fact that the Provincial Legislature has power to make laws as aforesaid with respect to taxes on professions, trades, callings and employments, shall not be construed as limiting, in relation to professions, trades, callings and employments, the generality of the entry in the Federal Legislative List relating to taxes on income."

Simultaneously with the introduction of s. 142-A, Entry No. 46 in the Provincial Legislative List, which had till then stood as "Taxes on professions, trades, callings and employments" was amended by the addition of the words "subject, however, to the provisions of section 142-A of this Act".

The impugned Act was passed by the Governor under s. 90 of the Government of India Act, 1935. Under sub-s. (3) of that section, it had the same force and

effect and was subject to disallowance in the same manner as an Act of the Provincial Legislature assented to by the Governor. The impugned Act was enacted with the concurrence and assent of the Governor-General and thus complied with all the formalities required for such enactment.

The powers of the Provincial Legislatures under the Legislative Lists have been the subject of numerous decisions by the Federal Court and also by this Court. It has been pointed out that these powers are as large and plenary as those of Parliament itself. These powers, it has been held, include within themselves the power to make retrospective laws; and as pointed out by Gwyer, C.J. in *The United Provinces* v. *Atiqa Begum* (1), the burden of proving that Indian Legislatures "were subject to a strange and unusual prohibition against retrospective legislation lay upon those who asserted it". This has not been asserted in this case, as, indeed, it could not be, after the decision of the case cited by us. In the case before the Allahabad High Court, out of which the appeal before the Federal Court had arisen [*sub nom Mst. Atiqa Begum* v. *U. P.* (2)], it was held that retrospective legislation was not possible in view of the provisions of s. 292 of the Government of India Act, 1935, which continued all law in force in British India immediately before the commencement of Part III of the Act, until altered or repealed or amended by a competent Legislature or other competent authority. This view was not accepted by the Federal Court, which held that s. 292 of the Act did not prevent Legislatures in India from giving retrospective effect to measures passed by them. There have been numerous occasions on which retrospective laws were passed, which were upheld by the Federal Court and also by this Court. It is not necessary to cite instances, but we refer only to the decision in *M. P. V. Sundararamier & Co.* v. *The State of Andhra Pradesh* (3), where this Court approved the dictum of the Federal Court.

Retrospective legislation being thus open to the

(1) [1940] F.C.R. 110. (2) A.I.R. (1940) All. 272.
(3) [1958] S.C.R. 1422.

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Provincial Legislatures, the Act of the Governor had the same force. Retrospective laws, it has been held, can validate an Act, which contains some defect in its enactment. Examples of Validating Acts which rendered inoperative, decrees or orders of the Court or alternatively made them valid and effective, are many. In *Atiqa Begum's* case (1), the power of validating defective laws was held to be ancillary and subsidiary to the powers conferred by the Entries and to be included in those powers. Later, the Federal Court in *Piare Dusadh* v. *King Emperor* (2) considered the matter fully, and held that the powers of the Governor-General which were conterminous with those of the Central Legislature included the power of validation. The same can be said of the Provincial Legislatures and also of the Governor acting as a Legislature.

The only question thus is whether the power to pass a retrospective and validating law was taken away by the enactment of s. 142-A and the amendment of the Entry in the Government of India Act. It is on this point that the difference in the High Court arose. The amendment of the Entry is of no special significance, because it only subjects the otherwise plenary powers to the provisions of s. 142-A. Apart from the implications arising from that section, the supremacy of the Legislature to pass retrospective and validating laws was unaffected. We have thus to see what s. 142-A enacted and to what extent it trenched upon the powers of the Provincial Legislature and the Governor.

Mr. N. C. Chatterjee, in arguing the case, adopted the line of reasoning of the minority view in the High Court. He pointed out that s. 142-A was enacted to achieve three purposes. The first was that it removed doubts whether the charge of tax on professions, etc., would be regarded as income-tax. The second was that it put a limit upon the powers of the Provincial Legislature to enact a law imposing a tax in excess of rupees fifty after March 31, 1939; and thirdly it preserved only existing valid laws already in force, which imposed a tax in excess of the amount indicated. He

(1) [1940] F.C.R. 110. (2) [1944] F.C.R. 61.

contended that the second sub-section and the proviso covered the entire field, and a law passed after March 31, 1939, could not freshly impose a tax in excess of the limit and this was such a law.

Under the scheme of the Government of India Act, 1935, income-tax, though a Central levy, was, under s. 138 (1), distributable among the Provinces and for which an elaborate scheme prepared by Sir Otto Niemyer was accepted and embodied in the Government of India (Distribution of Revenues) Order in Council, 1936. The Centre could levy a surcharge for federal purposes. Taxes on trades, professions and callings, which were taxes already leviable by the Provinces under Schdule II of the Rules made by the Governor-General in Council under s. 80A(3)(a) of the Government of India Act, were also included in the Provincial Legislative List as a source of revenue for the Provinces. It was, however, felt that these taxes might come into clash with tax on income in the Federal List, and also if unlimited in amount, might become a second tax on income to be levied by the Provinces. It was to remove these contingencies that s. 142-A was enacted. Sub-section (1) provided that a tax on professions, etc., would not be invalid on the ground that it related to a tax on income. Sub-section (3) was a counter-part of sub-s. (1), and provided that the generality of the Entry in the Federal Legislative List relating to taxes on income would not be construed as in any way limited by the power of the Provincial Legislature to levy a tax on professions, etc. The fields of the two taxes were thus demarcated. No other implication arises from these two sub-sections.

It was also apprehended that under the guise of taxes on professions, etc., the Provincial Legislatures might start their own scheme of a tax on income, thus subjecting incomes from professions etc., to an additional tax of the nature of income-tax. A limit was therefore placed upon the amount which could be collected by way of tax on professions, etc., and that limit was Rs. 50 per annum per person. The second

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sub-section achieved this result. It was, however, realised that the tax being an old tax, there were laws under which the limit of Rs. 50 was already exceeded in relation to a Province, municipality, board or like authority, and the imposition of such a limit might displace their budgets after March 31, 1939. A proviso was, therefore, added to the second sub-section that if in the financial year ending with the thirty-first day of March, nineteen hundred and thirty-nine there was in force in the case of any Province, etc., a tax on professions, trades, callings or employments the rate or the maximum rate of which exceeded Rs. 50 per annum, the provisions of the second sub-section shall have effect, (unless for the time being provision to the contrary was made by a law of the Federal Legislature) as if instead of Rs. 50 per annum there was substituted a reference to the rate or maximum rate exceeding Rs. 50. Where no such law was passed by the Federal Legislature, the tax even in excess of Rs. 50 continued to be valid.

There can be no doubt that if a law was passed after the amendment and sought to impose taxes on professions etc., for any period *after* March 31, 1939, it had to conform to the limit prescribed by s. 142A (2). The prohibition in the second sub-section operated to circumscribe the legislative power by putting a date-line after which a tax in excess of Rs. 50 per annum per person for a period after the date-line could not be collected unless it came within the proviso. But neither sub-s. (2) nor the proviso speaks of a period prior to March 31, 1939. The sub-section speaks only of "the total amount payable.....after the thirty-first day of March, nineteen hundred and thirty-nine". These words are important. They create a limit on the amount leviable as tax *for a period* after that date. But if a law was passed validating another which imposed a tax for a period prior to the date indicated, it would be taxing professions etc., in excess of Rs. 50 not *after* March 31, 1939, but *before* it. Neither the Entry nor the section either directly or indirectly prohibited this, nor did they create any limit for the prior period. The Validating Act, though

passed in 1941, can be read only as affecting a period for which there was no limit. If the sub-section said that tax shall not be payable in excess of Rs. 50 without indicating the period or date, the argument would have some support, but it puts in a date, and the operation of the prohibition is confined to a period after that date.

The Validating Act, being thus completely within the powers of the Governor, could remove retrospectively the defect in the earlier Act. Though it reimposed the tax from the date of the earlier Act, it took care to impose the tax for a period ending with March 31, 1938. The impugned Act did not need the support of the proviso, because it did not fall within the ban of the second sub-section. In our opinion, the Validating Act of 1941 was within the powers of the Governor, and was a valid piece of legislation.

The appeal fails, and is dismissed with costs.

Appeal dismissed.

SHEW BUX MOHATA AND ANOTHER

v.

SM. TULSIMANJARI DASI AND ANOTHER

1961

March 29.

(P. B. GAJENDRAGADKAR and K. N. WANCHOO, JJ.)

Practice—Security for costs—Appeal to Supreme Court—Certificate granted by High Court—Power of High Court to extend time—Code of Civil Procedure, 1908 (Act 5 of 1908), O. 45, rr. 7, 10, 11—Supreme Court Rules, 1950, O. XII, r. 3.

On an application made by the appellant, the Calcutta High Court granted a certificate on May 18, 1956, enabling him to appeal to the Supreme Court against the judgment and decree of the High Court. Under O. 45, r. 7(1)(a), of the Code of Civil Procedure, 1908, the appellant had to deposit the security amount for costs of the respondent within ninety days or such further period, not exceeding sixty days, as the court may upon cause shown allow, from the date of the decree complained of, or within six weeks from the date of the grant of the certificate, whichever was the later date. Being unable to deposit