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May 21.

RAJNARAIN SINGH

v.

THE CHAIRMAN, PATNA ADMINISTRATION COMMITTEE, PATNA, AND ANOTHER.

[MEHR CHAND MAHAJAN C.J., MUKHERJEA, VIVIAN BOSE BHAGWATI and VENKATARAMA AYYAR JJ.]

Delegation of Legislative power—Limit and extent of—Essential Legislative feature—Change of policy—Patna Administration Act, 1915, (Bihar and Orissa Act I of 1915) as amended by Patna Administration (Amendment) Act, 1928 (Bihar and Orissa Act IV of 1928), s. 3(1) (f)—Whether intra vires—*Bihar and Orissa Municipal Act, 1922—Notification by Governor—Beyond s. 3(1)(f)—* Ultra vires.

An executive authority can be authorised by a statute to modify either existing or future laws but not in any essential feature. Exactly what constitutes an essential feature cannot be enunciated in general terms but it is clear that modification cannot include a change of policy. Essential legislative function consists in the determination of the legislative policy and its formulation as a binding rule of conduct. Modifications which are authorised are limited to local adjustments or changes of minor character and do not mean or involve any change of policy or change in the Act.

Section 3(1)(f) of the Patna Administration Act of 1915 (Bihar and Orissa Act I of 1915) as amended by Patna Administration (Amendment) Act of 1928 (Bihar and Orissa Act IVof 1928) is *intra vires* because any section or sections of the Bihar Municipal Act of 1922 can be picked and applied to Patna (whether with or without modification) *provided that does not effect any essential change in the Act or alter its policy and the words "restriction" and "modification" are used in the restricted sense.*

The notification dated 23rd April, 1951 by which the Governor of Bihar picked s. 104 out of the Bihar and Orissa Municipal Act of 1922, modified it and extended it in its modified form to the Patna Administration and Patna Village areas is *ultra vires* as it effects a radical change in the policy of the Act and thus travels beyond the authority conferred by s. 3(1)(f).

In re *The Delhi Laws Act* 1912, *etc.* ([1951] S. C. R. 747) applied.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 202 of 1953.

Appeal under article 132(1) of the Constitution of India from the Judgment and Order dated the 22nd day of December, 1952, of the High Court of Judicature at Patna in Miscellaneous Judicial Case No. 78 of 1952.

Basant Chandra Ghose (*P. K. Chatterjee,* with him) for the appellant.

Mahabir Prasad, Advocate-General of Bihar, (*S. P. Varma,* with him) for respondent No. 2.

1954. May 21. The Judgment of the Court was delivered by

BOSE J.—The High Court of Patna granted the petitioner before it leave to appeal under article 132(1) of the Constitution on the ground that a substantial question of law relating to the interpretation of the Constitution was involved.

The appellant is the Secretary of the Rate Payers' Association at Patna. He and the other members of his Association reside in an area which was originally outside the municipal limits of Patna and was not liable to municipal and cognate taxation. On 18th April, 1951, this area was brought within municipal limits and was subjected to municipal taxation. This was accomplished by a notification of that date. By reason of this the appellant and the others whom he represents were called upon to pay taxes for the period 1st April, 1951, to 31st March, 1952. The notifications were issued under sections 3(1)(f) and 5 of the Patna Administration Act of 1915 (Bihar and Orissa Act I of 1915). The appellant claims that the notifications are delegated legislation and so are bad and prays that sections 3(1)(f) and 5 of the Act which permitted this delegation be condemned as *ultra vires.*

In order to appreciate the points raised it will be necessary to go back to the year 1911 when the Province of Bihar and Orissa was formed. It will also be necessary to bear in mind that we have to deal with three separate sections in the area which is now called Patna. In order to avoid confusion we will call them Patna City, Patna Administration and Patna Village respectively. It must be understood that this is a purely arbitrary nomenclature adopted by us for the purposes of this judgment and that they are neither so called nor so recognised anywhere else. Their boundaries have not been static but it will be necessary to keep them nationally distinct.

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When the new Province was formed in 1911 the Bengal Municipal Act of 1884 applied to the whole of it. At that time one of three portions of Patna with which we are concerned (namely, the portion we have called Patna City) was under a Municipality (the Patna City Municipality) created under the Bengal Act. This Municipality continued to function in the Patna City area after the creation of the new Province. The other two sections were not born as distinct entities till later and the areas which they now cover were not under any municipal or cognate jurisdiction.

The new Province required a new capital and Patna was chosen for the purpose. Quite naturally the City expanded and, following the general pattern in India, a new area grew up (distinct from the old City) which housed the headquarters of the new Government. Before long, it was thought expedient to bring this area under municipal jurisdiction and give it a municipality of its own rather than place it under the old city municipality. Accordingly, the Legislature of the new State passed the Patna Administration Act of 1915 (Bihar and Orissa Act I of 1915) to enable this to be done. This Act came into force on 5th January, 1916. The petitioner impugns sections 3(1)(f) and 5 of the Act and the notifications made under it on the ground that they permit delegated legislation which has hurt him and wrongly rendered him liable to municipal taxation.

Broadly speaking, the Act empowered the Local Government to create a new municipality (later called the Patna Administration Committee) for this new area which, in our arbitrary classification, we have called Patna Administration. The Act called this new area "Patna" and defined its boundaries in the schedule to the Act. This area did not include either the section which we have called Patna City or the one we have dubbed Patna Village.

Now the Legislature of this new State did not draw up a new Municipal Act nor did it apply the existing Bengal Municipal Act of 1884, which was at that time in force in the Province, to this new area which the Act of 1915 called "Patna" and which we have called

Patna Administration. Instead, by section 3(1) (f) it empowered the Local Government to

"extend to Patna the provisions of any section of the said Act" (the Bengal Municipal Act of 1884) "subject to such restrictions and modifications as the Local Government may think fit."

This is a part of the impugned portion. Section 5, which is also impugned, runs—

"The Local Government may at any time cancel or modify any order under section 3."

Section 6(b) is also relevant, though it is not challenged. It says, omitting unnecessary words, that—

"The Local Government may.........

....

(b) ....include within Patna any local area in the vicinity of the same and defined in the notification."

We refer to this here because the area we have called Patna Village was later brought under the jurisdiction of a new municipality called the Patna Administration Committee by action taken under this section.

Armed with the powers which this Act conferred, the Local Government created the new Municipality and called it the Patna Administration Committee and, by a series of notifications with which we are not concerned, extended certain sections of the Bengal Municipal Act of 1884 to the area which we have called Patna Administration.

The result of all this was that up to 1922 there was in existence the Patna City Municipality with jurisdiction over the area we have called Patna City : the whole of the Bengal Municipal Act of 1884 applied there. Side by side was the new municipality called the Patna Administration Committee holding sway over the new area which we have called Patna Administration. The Bengal Municipal Act did not apply to this area of its own force ; only certain sections which the Local Government had picked out under powers conferred by the Patna Administration Act of 1915 were applied there. The third area, which we have called Patna Village, and which is the area which really concerns us, was free from municipal control.

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In 1922 the Provincial Legislature enacted the Bihar and Orissa Municipal Act, 1922 (Bihar and Orissa Act VII of 1922). It repealed the whole of the Bengal Municipal Act of 1884 and substituted the new Act of 1922 for it. This only affected the Patna City area and did not affect the Patna Administration area because the Bengal Act was never applied to that area as such. The portions of it which were picked out to have force there were applied by reason of the Patna Administration Act, 1915, and that constituted, in truth and in fact, independent legislation. The result was that the new Act of 1922 came into effect in the Patna City area and the sections of the Bengal Act which were applied by reason of the Patna Administration Act continued in force in the Patna Administration area. The area which we have called Patna Village was still unaffected.

Understandably, the new Province preferred its own legislation to that of Bengal. But despite the passing of the Bihar and Orissa Municipal Act in 1922, the Local Government, acting under section 3(1) (f) of the Patna Administration Act, 1915, could only extend sections of the Bengal Act to the Patna Administration area and not sections of its own Act. This was because of section 3(1) (a) whose provisions we need not examine. To set this right the Bihar and Orissa Legislature passed an amending Act in 1928 (Bihar and Orissa Act IV of 1928) called the Patna Administration (Amendment) Act of 1928. But that only provided for the future. So far as the present and the past were concerned, section 4 of the amending Act provided—

"Any section of the Bengal Municipal Act, 1884, extended to Patna under clause (f) of sub-section (1) of section 3 of the said Act" (that is, the Patna Administration Act, 1915) "shall be deemed to continue to extend to Patna until the extension of such section to Patna is expressly cancelled by notification."

Three years later, the Governor cancelled all previous notifications extending sections of the Bengal Act of 1884, and the Bihar and Orissa Act of 1922, to the Patna Administration area. In their places he picked out certain sections of the Bihar and Orissa Act of 1922, modified others, and extended the lot so selected and

modified to the Patna Administration area. This was done by Notification No. 4594 L.S.G. dated 25th April, 1931. It gave a sort of fresh Municipal Code to this area. There were, however, significant differences between this and the Act of 1922; for example, sections 4, 5, 6, 84 and 104 of the Act of 1922 were omitted altogether.

Nothing further happened till 1951. In the meanwhile, the Constitution of India came into force on 26th January, 1950. We refer to this because before the Constitution the Local Government was empowered to act under section 3(1) (f) and section 6(b) of the Patna Administration Act, 1915. After the Constitution these powers were transferred to the Governor of Bihar.

During this interval Patna was expanding and the area which we have called Patna Village, originally just a village area, began to be built upon. It adjoined the Patna Administration area; only a road separated the two. It was therefore felt that this should also be brought under municipal control. But instead of creating a third municipality the authorities thought it best to place it under the jurisdiction of the Patna Administration Committee. Here again, instead of legislating direct they fell back on the Patna Administration Act, 1915, as amended in 1928. On 18th April, 1951, a notification was published in the Gazette by order of the Governor of Bihar. It is Notification No. MVP-45/50-3645 L.S.G. dated 11th April, 1951. It runs as follows:

"In exercise of the powers conferred by clause (b) of section 6 of the Patna Administration Act, 1915, (Bihar and Orissa Act I of 1915), the Governor of Bihar is pleased to declare that the area defined below is included within Patna.................."

The area referred to is the third of the areas we are considering, namely the one we have called Patna Village. The effect of this was to bring Patna Village under the municipal control of the Patna Administration Committee.

Five days later, the Governor of Bihar picked section 104 out of the Bihar and Orissa Municipal Act of

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1922, modified it and extended it in its modified form to the Patna Administration and Patna Village areas. This was by Notification No. M/A1-201-51-406 L.S.G. dated 23rd April, 1951. The modified version ran as follows :

"104. *Assessment of taxes*—When the Patna Administration Act, 1915, (B & O Act I of 1915), is first extended to any place, the first tax on holdings, latrines or water may be levied from the beginning of the quarter next to that in which the assessment of the tax has been completed in the area to which the Act is extended."

The High Court, purporting to apply *In re The Delhi Laws Act, 1912*(1) held that the impugned sections and the notifications complained of are *intra vires.*

We are only concerned with the Patna Village area in this case. The appellant and those he represents all live in that area and are the ones who impugn the validity of the taxes levied on them. They were brought under Municipal control on 18th April, 1951. The Bengal Municipal Act of 1884 was no longer one of the existing laws in the State of Bihar on that date. It was repealed in full in 1922 and was replaced by the Bihar and Orissa Municipal Act of 1922. The selected sections of the Bengal Act of 1884 which the Local Government had picked out and applied to Patna Administration were also repealed on 25th April, 1931, and in their place was substituted another set of sections picked out by the Local Government from the Bihar and Orissa Act of 1922 and modified in places. The facts accordingly narrow down to this.

In 1928 an executive authority (the Local Government of Bihar and Orissa), subject to the legislative control of the Bihar and Orissa Legislature, was empowered by that Legislature (because of Act I of 1915 amended by Act IV of 1928) to do the following things :—

(1) to cancel or modify any existing Municipal laws in the Patna Administration area ;

(2) to extend to this area all or any of the sections of the Bihar and Orissa Municipal Act of 1922

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subject to such restrictions and modifications as it considered fit;

(3) to add to the Patna Administration area other areas not already under municipal control.

This, in short, is the effect of sections 3(1) (f), 5 and 6(b) of the Patna Administration Act of 1915 as amended in 1928. Armed with this authority, the Local Government (and later the Governor) exercised all three powers.

On 25th April, 1931, the Local Government repealed the existing law in the Patna Administration area, namely the sections of the Bengal Act of 1884 which had been applied there from time to time. In its place, it introduced a new set of law culled from the Bihar and Orissa Act of 1922 with such restrictions and modifications as it thought fit. Then on 18th April, 1951, the Governor added Patna Village to the Patna Administration area. And finally, on 23rd April, 1951, he added a modified version of section 104 of the Bihar and Orissa Municipal Act of 1922 to the Municipal laws in these two combined areas.

The first question is whether the notification of 25th April, 1931, can be attacked by the petitioner. In our opinion, it cannot. As we have already pointed out, this notification gave a sort of fresh Municipal Code to the Patna Administration area. But it did not affect the area with which we are concerned namely, the Patna Village area. It was limited to Patna Administration. The petitioner therefore cannot challenge it because it does not affect him and the question whether it is open to challenge by other persons does not arise. We are accordingly unable to give him the declaration which he seeks regarding that notification.

We turn next to the notification of 23rd April, 1951. This does affect him because it subjects him to taxation. It was made under section 3(1) (f), therefore, it will be necessary to examine (1) whether the notification travels beyond the impugned portion of the Act and (2) if not, whether section 3(1) (f) is itself *ultra vires*. But we cannot do this until we examine the decision of this Court in the *Delhi Laws Act* case(1).

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Because of the elaborate care with which every aspect of the problem was examined in that case, the decision has tended to become diffuse, but if one concentrates on the matters actually decided and forgets for a moment the reasons given, a plain pattern emerges leaving only a narrow margin of doubt for future dispute.

The Court had before it the following problems. In each case, the Central Legislature had empowered an executive authority under its legislative control to apply, at its discretion, laws to an area which was also under the legislative sway of the Centre. The variations occur in the type of laws which the executive authority was authorised to select and in the modifications which it was empowered to make in them. The variations were as follows :

(1) Where the executive authority was permitted, at its discretion, to apply without modification (save incidental changes such as name and place), the whole of any Central Act already in existence in any part of India under the legislative sway of the Centre to the new area :

This was upheld by a majority of six to one.

(2) Where the executive authority was allowed to select and apply a Provincial Act in similar circumstances :

This was also upheld, but this time by a majority of five to two.

(3) Where the executive authority was permitted to select future Central laws and apply them in a similar way :

This was upheld by five to two.

(4) Where the authorisation was to select future Provincial laws and apply them as above :

This was also upheld by five to two.

(5) Where the authorisation was to repeal laws already in force in the area and either substitute nothing in their places or substitute other laws, Central or Provincial, with or without modification :

This was held to be *ultra vires* by a majority of four to three.

(6) Where the authorisation was to apply existing laws, either Central or Provincial, with alterations and modifications ; and

(7) Where the authorisation was to apply future laws under the same conditions :

The views of the various memebers of the Bench were not as clear cut here as in the first five cases, so it will be necessary to analyse what each Judge said.

The opinion of Kania C.J. will be found at pages 794-797. Put briefly his view was that only Parliament can effect modifications in any "essential legislative function" *viz.,* "the determination of the legislative policy and its formulation as a rule of conduct." For this reason he was prepared to uphold what he called "conditional" or "subsidiary" or "ancillary" legislation, but not the application by an executive authority of Provincial Acts to which the Central Legislature had not applied its mind at all (page 801) ; and for the same reason he excluded the application of all future legislation.

The present Chief Justice (Mahajan J. as he then was) took an even stricter view. He was prepared to authorise delegation of ancillary or ministerial powers (pages 938 and 946) but except for that he said—

"Parliament has no power to delegate its essential legislative functions to others, whether State Legislatures or executive authorities, except, of course, functions which really in their true nature are ministerial."

As against this, three of the Judges were more liberal. Das J. was of the opinion that so long as Parliament did not abdicate or efface itself and retained control in the sense of retaining the right to recall or destroy or set right or modify anything its delegate did, it could confer on the delegate *all* the rights of legislation which it itself possessed (page 1068). Patanjali Sastri J. (as he then was) took the same extreme view (pages 857, 858 and 870). Fazl Ali J. did not go as far though he upheld all the Acts which were impugned in that case. At page 830 he said that—

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"the Legislature must normally discharge its primary legislative function itself and not through others, but that it may

"utilise any outside agency to any extent it finds necessary for doing things which it is unable to do itself or finds it inconvenient to do. In other words, it can do everything which is ancillary to and necessary for the full and effective exercise of its power of legislation."

He dealt with the power to modify at page 846 and said—

"The power of introducing necessary restrictions and modifications is incidental to the power to apply or adapt the law........The modifications are to be made within the framework of the Act and they cannot be such as to affect its identity or structure or the essential purpose to be served by it. The power to modify certainly involves a discretion to make suitable changes, but it would be useless to give an authority the power to adapt a law without giving it the power to make suitable changes."

The other two Judges took an intermediate view. Mukherjea J. said that essential legislative functions cannot be delegated and at pages 982 to 984 he indicated what he meant :

"The essential legislative function consists in the determination or choosing of the legislative policy and of formally enacting that policy into a binding rule of conduct,"

and at page 1000—

"With the merits of the legislative policy, the Court of law has no concern. It is enough if it is defined with sufficient precision and definiteness so as to furnish sufficient guidance to the Executive Officer who has got to work it out. If there is no vagueness or indefiniteness in the formulation of the policy, I do not think that a Court of law has got any say in the matter."

Dealing with the word "modification" he said at page 1006—

"The word 'modification'..........does not, in my opinion, mean or involve any change of policy but is confined to alteration of such a character which keeps the policy of the Act intact and introduces such changes as are appropriate to local conditions of which the executive Government is made the Judge........"

At pages 1008 and 1009 he explained this further and limited the modifications to "local adjustments or changes of a minor character."

Bose J. contended himself at page 1121 by saying that the delegation cannot extend to the "altering in essential particulars of laws which are already in force in the area in question." But he added at page 1124—

"My answers are, however, subject to this qualification. The power to 'restrict and modify' does not import the power to make essential changes. It is confined to alterations of a minor character such as are necessary to make an Act intended for one area applicable to another and to bring it into harmony with laws already in being in the State, or to delete portions which are meant solely for another area. To alter the essential character of an Act or to change it in material particulars is to legislate, and that, namely the power to legislate, all authorities are agreed, cannot be delegated by a Legislature which is not unfettered."

In our opinion, the majority view was that an executive authority can be authorised to modify either existing or future laws but not in any essential feature. Exactly what constitutes an essential feature cannot be enunciated in general terms, and there was some divergence of view about this in the former case, but this much is clear from the opinions set out above: it cannot include a change of policy.

Now coming back to the notification of 23rd April, 1951. Its *vires* was challenged on many grounds but it is enough for the purposes of this case to hold that the action of the Governor in subjecting the residents of the Patna Village area to municipal taxation without observing the formalities imposed by sections 4, 5 and 6 of the Bihar and Orissa Municipal Act of 1922, cuts

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across one of it essential features touching a matter of policy and so is bad.

The Act of 1922 applied to the whole of Bihar and Orissa and one of its essential features is that no municipality competent to tax shall be thrust upon a locality without giving its inhabitants a chance of being heard and of being given an opportunity to object. Sections 4, 5 and 6 afford a statutory guarantee to that effect. Therefore, the Local Government is under a statutory duty imposed by the Act in mandatory terms to listen to the objections and take them into consideration before reaching a decision. In our opinion, this is a matter of policy, a policy imposed by the Legislature and embodied in sections 4, 5 and 6 of the Act. We are not able to brush this aside as negligible and it cannot, in our opinion, be left to an executive authority to tear up this guarantee in disregard of the Legislature's solemnly expressed mandate. To do so would be to change the policy of the law and that, the majority in the *Delhi Laws Act* case(1) say, cannot be done by a delegated authority. But the notification cannot be *ultra vires* if it does not travel beyond the powers conferred by a law which is good. It will therefore be necessary to examine the *vires* of section 3(1)(f) in the light of the *Delhi Laws Act* decision.

Now what exactly does section 3(1)(f) authorise? After its amendment it does two things: first, it empowers the delegated authority to pick any section it chooses out of the Bihar and Orissa Municipal Act of 1922 and extend it to "Patna"; and second, it empowers the Local Government and later the Governor) to apply it with such "restrictions and modifications" as it things fit.

In the *Delhi Laws Act* case(1), the following provision was held to be good by a majority of four to three:

"The Provincial Government may......extend with such restrictions and modifications as it thinks fit...... any enactment which is in force in any part of British India at the date of such notification."

Mukherjea and Bose JJ., who swung the balance, held that not only could an entire enactment with

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modification be extended but also a part of one; and indeed that was the actual decision in *Burah's* case(1) on which the majority founded: (see Mukherjea J. at page 1000 and Bose J. at pages 1106 and 1121). But Mukherjea and Bose JJ., both placed a very restricted meaning on the words "restriction" and "modification" and, as they swung the balance, their opinions must be accepted as the decision of the Court because their opinions embody the greatest common measure of agreement among the seven Judges.

Now the only difference between that case and this is that whereas in the former case the whole of an enactment, or a part of it could be extended, here, any section can be picked out. But to pick out a section is to apply a part of an Act, and to pick out a part is to effect a modification, and as the previous decision holds that a part of an Act can be extended, it follows that a section or sections can be picked out and applied, as in *Burah's* case (1) where just that was done; also, for the same reason that the whole or a part of an Act can be modified; it follows that a section can also be modified. But even as the modification of the whole cannot be permitted to effect any essential change in the Act or an alteration in its policy, so also a modification of a part cannot be permitted to do that either. If that were not so, the law, as laid down in the previous decision, could be evaded by picking out parts of an Act only, with or without modification, in such a way as to effect an essential change in the Act as a whole. It follows that when a section of an Act is selected for application, whether it is modified or not, it must be done so as not to effect any change of policy, or any essential change in the Act regarded as a whole. Subject to that limitation we hold that section 3(1)(f) is *intra vires,* that is to say, we hold that any section or sections of the Bihar and Orissa Municipal Act of 1922 can be picked out and applied to "Patna" *provided that does not effect any essential change in the Act or alter its policy.*

The notification of 23rd April, 1951 does, in our opinion, effect a radical change in the policy of the Act.

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Therefore, it travels beyond the authority which, in our judgment, section 3(1)(f) confers and consequently it is *ultra vires*.

It is not necessary to examine the *vires* of section 5 of the Act of 1915 which was also impugned because no action taken under it has hurt the appellant and so he cannot question its *vires*.

The result is that the appeal succeeds. We hold—

(1) that section 3(1)(f) is *intra vires* provided always that the words "restriction" and "modification" are used in the restricted sense set out above ; and

(2) that the notification of 23rd April, 1951, is *ultra vires*.

The question about the *vires* of the notification of 25th April, 1931, and of section 5 does not arise.

The respondents will pay the appellant's costs here and in the High Court.

Appeal allowed.