without taking into consideration the value of non-agricultural improvements made after that date, must be regarded as invalid.

We are not called upon to express any opinion on the question whether the power reserved under s. 17 of the Land Acquisition Act as amended by s. 2 of Madras Act XI of 1953 to take possession of lands under the emergency clause for the purpose of working lignite mines in the areas to which the Madras Lignite (Acquisition of Land) Act, 1953, extends is invalid. No argument has been advanced by either side before us on this question. Nor was the High Court called upon to consider the validity of that provision.

The appeals therefore fail and are dismissed. The respondents in this group of appeals, except in appeal No. 11 of 1963, have not appeared in this Court. Therefore in appeal No. 11 of 1963 alone, the State of Madras will pay the costs of the respondent. There will be no order as to costs in other appeals.

Appeals dismissed.

THE TOWN MUNICIPAL COMMITTEE, AMRAVATI

v.

RAMCHANDRA VASUDEO CHIMOTE AND ANOTHER

1964

March 3

(P. B. GAJENDRAGADKAR, C.J., K. N. WANCHOO, K. C. DAS GUPTA, J. C. SHAH AND N. RAJAGOPALA AYYANGAR, JJ.)

Terminal Tax—Imposition of terminal tax by Municipality on silver and silver jewellery, gold and gold jewellery and precious stones in 1960—*These taxes not levied before by Municipality—Whether saved by Art.* 277 *of the Constitution—"Continue to be levied and to be applied to the same purposes"—Meaning of—C.P. and Berar Municipalities Act,* 1922, *s.* 55—*Government of India Act,* 1935, *s.* 143(2)—*Constitution of India, Art.* 277.

1964

Town Municipal Committee v. Ramchandra

A terminal tax on goods imported by road or rail was imposed by the Amravati Municipality by virtue of a notification dated August 10, 1916. This notification exempted silver, bullion and coins from the operation of this tax. When terminal taxes on goods imported by rail were assigned exclusively to the Federal Centre under the Government of India Act. 1935, the municipality was authorised by s. 143 to continue to levy the terminal taxes which were actually levied before the enforcement of the Act. Likewise, the terminal taxes imposed by the pre-Constitution notification were allowed to be levied and collected even after the Constitution came into force by virtue of Art. 277 of the Constitution. In 1960, the Municipality levied terminal taxes on three new items, *viz.*, silver and silver jewellery, gold and gold jewellery and precious stones.

In a writ petition filed under Art. 226 of the Constitution, the validity of the newly imposed terminal tax was challenged by the respondent who was carrying on business, within the limits of the Municipality, in gold, silver and precious stones on the ground of legislative incompetence. The writ petition was granted by the High Court and the appellant came to this court after obtaining a certificate of fitness from the High Court.

Dismissing the appeal:

Held: The newly imposed terminal taxes on silver and silver jewellery, gold and gold jewellery and precious stones had never been imposed by the Municipality and hence it could not be said that those were "being lawfully levied" by the Municipality and "applied to the same purposes" before the commencement of the Constitution as required by Art. 277 of the Constitution. Art. 277 was not intended to confer an unlimited legislative power to impose what in effect were new taxes, though of the same type or nature as existed before the Constitution.

Rama Krishna Ramanath v. *The Janpad Sabha, Gondia,* [1962] Supp. 3 S.C.R. 70 and *Chuttilal* v. *Bagmal and Balwantrai, I.L.R.* [1956] M.B. 339, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 598 of 1962.

Appeal from the judgment and order dated March 18, 1961 of the Maharashtra High Court (Nagpur Bench) at Nagpur in Special Civil Application No. 30 of 1960.

WITH

Civil Appeals Nos. 695 and 700 of 1962.

Appeals from the judgment and orders dated October 12, 1961 and March 18, 1961 of the Madhya Pradesh High Court in Misc. Petitions Nos. 122 of 1961 and 319 of 1960 respectively.

M. C. Setalvad and *S. Shaukat Hussain*, for the appellant (in C.A. No. 598/62).

W. S. Barlingay and *A. G. Ratnaparkhi*, for respondent No. 1 (in C.A. No. 598 of 1962).

S. G. Patwardhan, Udai Pratap Singh and *M. S. Gupta*, for the appellant (in C.A. No. 695/62).

A. N. Goyal, for respondent No. 1 (in C.A. No. 695/62).

I. N. Shroff, for respondent No. 2 (in C.A. No. 695/62).

M. C. Setalvad and *M. S. Gupta*, for the appellant (in C.A. No. 700/62).

G. S. Pathak, J. B. Dadachanji, O. C. Mathur and *Ravinder Narain*, for the respondents Nos. 1 to 4 and 6 to 9 (in C.A. No. 700/62).

I. N. Shroff, for respondent No. 10 (in C.A. No. 700/62).

March 3, 1964. The Judgment of the Court was delivered by

Ayyangar J.

AYYANGAR, J.—These three appeals which are on certificates of fitness granted by the High Courts—the first by the High Court of Bombay at Nagpur and the two others by the High Court of Madhya Pradesh—raise a common question as regards the construction of Art. 277 of the Constitution and the validity of certain terminal taxes imposed by the respective appellant-municipal authorities under notifications issued under Ch. IX of the C.P. & Berar Municipalities Act, 1922, subsequent to the coming into force of the Constitution, and so have been heard together.

Civil Appeal 598 of 1962 is an appeal from the High Court of Bombay at Nagpur and has been filed by the Municipal Committee of Amravati against a decision of the High Court allowing the 1st respondent's petition under Arts. 226 and 227 of the Constitution. The Municipal Committee of Amravati has been established under the

1964

Town Municipal Committee v. Ramchandra

Ayyangar J.

C.P. & Berar Municipalities Act, 1922 (C.P. & Berar Act II of 1922) hereinafter referred to as the Act. Chapter IX of the Act deals with the imposition, assessment and collection of taxes which might be imposed by the Municipal Committee. Section 66 specifies the taxes which, subject to the provisions of the Chapter, the Committee may from time to time impose. Its first sub-section specifies in its several clauses 15 varieties of taxes and among them is cl. (o) which reads :

> "The terminal tax on goods or animals imported into or exported from the limits of the municipality provided that terminal tax under this clause and an octroi under cl. (e) shall not be in force in any municipality at the same time;"

The other sub-clauses which are relevant for the consideration of the question arising in the appeal are sub-cls. (2), (3) and (4) of s. 66 and they read :

> (2) The State Government may, by rules made under this Act, regulate the imposition of taxes under this section, and impose maximum amounts of rates for any tax.
>
> (3) The first imposition of any tax specified in sub-section (1) shall be subject to the previous sanction of the State Government.
>
> (4) Subject to the control of the State Government, a committee may abolish any tax already imposed and specified in sub-section (1) clauses (a) to (m) inclusive, or may, within the limits imposed under sub-section (2), vary the amount or rate of any such tax :
>
> Provided that in the case of any municipality indebted to the Government, the abolition of any tax or a reduction in the amount or rate thereof shall be subject to the previous sanction of the State Government."

Section 67 lays down the procedure for the imposition of taxes and it provides :

"67. (1) A committee may, at a special meeting, pass a resolution to propose the imposition of any tax under section 66.

(2) When such a resolution has been passed, the committee shall publish, in accordance with rules made under this Act, 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 system of assessment to be adopted.

(3) .....

(4) .....

(5) The State Government, on receiving such proposals, may sanction or refuse to sanction the same, or sanction them subject to such modifications as it may think fit, or return them to the committee for further consideration.

(6) No modification affecting the substance shall be made under sub-section (5), unless and until the modification has been accepted by the committee at a special meeting.

(7) .....

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

The procedure for the variation of the taxes is to be found in s. 68 and it reads :

"68. (1) A committee may, at a special meeting, pass a resolution to propose the abolition of any tax already imposed, or a variation in the amount or rate thereof.

(2) .....

1964

Town Municipal Committee v. Ramchandra

Ayyangar J.

(3) If the proposal is to increase the amount or rate of any tax, the committee shall publish, in the manner prescribed by rules made under this Act, a notice showing in detail the effects of the proposal.

(4) Any inhabitant of the municipality objecting to the proposed increase may, within thirty days from the publication of the notice, submit his objection in writing to the committee.

(5) The committee shall take the proposal and all objections received thereto into consideration at a special meeting, and may modify the proposals as it may think fit, and may pass a final resolution on the proposal.

(6) If the proposal requires the previous sanction of the State Government under the provisions of section 66, sub-section (4) or sub-section (5), the committee shall forward it to the State Government and it shall be dealt with in the manner provided in section 67, sub-sections (4), (5) and (6).

(7) .....

(8) .....

(9) The publication in the manner prescribed of the abolition or variation of any tax under this section shall be conclusive proof that such abolition or variation has been made in accordance with the provisions of this Act."

From even before the constitution of the municipality under the Act and at a time when the municipal committee was governed by the Berar Municipal Law of 1886 which was in force prior to the Act and whose taxation provisions were continued by the Act of 1922, a terminal tax on goods imported by road or rail had been imposed by the Municipality by virtue of a notification dated August 10, 1916 on several specified kinds of goods. This notification exempted silver, bullion and coin from the operation of this tax. This was superseded by a notification of June 2, 1921 under which the Schedules were modified and the terminal tax

imposed was confined to goods imported into or exported out of the Municipal area by rail. The notification of June 1921 was amended from time to time by other items being added and the rates being increased but no change was effected in the taxes imposed after 1936. Under the scheme of the distribution of taxing powers between the provinces and the Central Government under the Government of India Act, 1935 terminal taxes on goods carried by rail were assigned exclusively to the Federal Centre under item 58 of List I to Sch. VII, but the validity of the levy and collection of the terminal tax in force, before the 1st April, 1937 was continued by s. 143 of the Government of India Act, 1935 and it was by virtue of this continuance that these taxes were continued to be levied after April 1, 1937. Their continuance after January 26, 1950 when after the repeal of the Government of India Act, 1935, the Constitution came into force with the same scheme of distribution of taxing power on the relevant item identical with that under the Government of India Act, was by reason of Art. 277 which was practically in the same terms as s. 143 of the Government of India Act, 1935. The taxes imposed by the pre-Constitution notification could, therefore, be legally levied and collected even after the Constitution came into force.

Subsequent to January 26, 1950 there was a notification on December 1, 1959, under which to the list of goods liable to terminal tax imported into or exported out of the Municipal area, not merely by rail, but also by road were added three new items—silver and silver jewellery, gold and gold jewellery, and precious stones, and these three specified items were subjected to the tax at the same rates as had been imposed on other articles by the notifications which were in force from before the Constitution. Before the notification was issued the procedure indicated by s. 67 was gone through and the Government accorded their sanction to the rules made by the Municipal Committee for the imposition of the tax on the newly added articles. The validity of the tax imposed by this notification was challenged by the 1st respondent who was carrying on business within Amravati municipality in gold, silver and precious stones

1964

Town Municipal Committee v. Ramchandra

Ayyangar J.

on the ground of legislative incompetency which had not been saved by Article 277 of the Constitution, in a petition under Article 226. The learned Judges of the High Court by a majority accepted the contention raised by the respondent and allowed the petition but granted a certificate of fitness and hence this appeal. The facts of the other two appeals are nearly similar but we shall refer to them after dealing with the common question which arises in these appeals.

It is common ground that the right to levy a terminal tax is now vested in the Union Parliament under Entry 89 of the Union List which reads :

> "Terminal taxes on goods or passengers carried by railway, sea or air; taxes on railway fares and freights",

so that if the levy by the appellant of the terminal tax on the newly added items, and the same principle would apply to an increase in the rate of the duty, had to rest on the independent taxing power of the State, the same would have to be struck down for want of legislative competence. Besides it is necessary to add that whereas under the notifications in force prior to 1st April 1937—when Part III of the Government of India Act was brought into force, articles imported into or exported out of the municipal area by road were not subject to the tax, and that state of affairs continued till long after the Constitution came into force, a terminal tax was imposed by the impugned notification of December 1959 on goods imported or exported by road—a tax which it was not open to the State to impose even with the aid of Art. 277. But ignoring this feature of the impugned notification, insofar as it brought in goods carried by road within the scope of the terminal tax, it is admitted that the validity of the imposition cannot be justified if it was a fresh imposition. What is, however, urged in support of the validity of the imposition is that the same is saved by Art. 277 which runs:

> "277. Any taxes, duties, cesses or fees which, immediately before the commencement of this Constitution, were being lawfully levied by the

Government of any State or by any municipality or other local authority or body for the purposes of the State, municipality, district or other local area may, notwithstanding that those taxes, duties, cesses or fees are mentioned in the Union List, continue to be levied and to be applied to the same purposes until provision to the contrary is made by Parliament by law."

If learned Counsel for the appellant is right in his contention that the impugned tax which he is now seeking to sustain, was the tax which "was being lawfully levied" by the municipality before the commencement of the Constitution he would certainly be well-founded in the submission that the fact that the terminal taxes are under the distribution of taxing powers under the Constitution assigned to the Union would make no difference for the valid continuance of the levy. The question, therefore, is whether this was the tax which was being levied by the municipal authority before the Constitution and for whose continuance the Article provides.

The first submission of Mr. Setalvad for the appellants was that this condition would be satisfied whenever *a terminal tax* (without reference either to the article on which it was levied or the rate) was being lawfully levied by the municipality prior to the commencement of the Constitution and as in this case admittedly a terminal tax was being levied on certain articles that condition was satisfied. His argument was that the words 'tax or duty' in the opening part of Art. 277 should be read as meaning a tax or duty under a specified legislative Entry, and if such a tax or duty was being levied before the commencement of the Constitution other duties of the same type or falling within the same category might be imposed after the Constitution notwithstanding that such duties or taxes were mentioned in the Union List by reason of the words "shall continue to be levied". Secondly, he said that the word 'levy' meant not merely the ascertainment, *i.e.*, assessment and collection of the tax but included its imposition, *i.e.*, also the charging and if that expression were understood in that wide sense it would comprehend a case where other

1964

Town Municipal Committee v. Ramchandra

Ayyangar J.

items than those originally specified were brought into the fold of the taxing provision. The learned Attorney-General who appeared for the State and supported Mr. Setalvad, however, went a step further and submitted that it was not even necessary that a terminal tax should be actually imposed and was being collected prior to the Constitution, but that it was sufficient if the State enactment had vested in the municipality a power to levy such a tax. The argument of the learned Attorney-General has to be rejected as lacking any substance, for on no construction, wide or narrow, of the expression 'levy' in the phrase 'continue to be levied' can such a case be comprehended. From the mere fact that a State enactment has authorised a municipality to levy a tax it cannot be said that a tax which had never been imposed was "being lawfully levied" by the municipality, not to speak of the tax etc. collected being "applied to the same purposes" before the commencement of the Constitution as contemplated by the concluding portion of the Article.

Coming next to what one might term the narrower submission of Mr. Setalvad we do not find it possible to agree with it either. His first submission may be expanded thus: The expression "taxes, duties, cesses" with which Art. 277 opens, has to be read in the context of Part XII in which the Article occurs and so read has to be understood as referring to the class or category of taxes which were levied and collected by the State, municipality etc. before the commencement of the Constitution. In other words, the reference here is to the entries in the legislative lists which permit such taxes to be levied, and so read and taken in conjunction with the circumstance that the Article is one designed to prevent the dislocation of the finances of the State or other local authorities, the terms of the Article would be satisfied and the legislative power to continue to levy the tax would be conferred "notwithstanding that the tax, etc. are mentioned in the Union List". This argument, in our opinion, proceeds on ignoring the terms of Art. 277. If, as is admitted, the sole object sought to be achieved by this provision for "continuance" is to avoid dislocation of the finances of the State and local authorities,

by depriving them of the revenues which they were deriving at the commencement of the Constitution, it would mean that the intention was to permit the existing range of taxes to be continued, not that the Article conferred on them authority to expand the range of their taxation by subjecting new items to taxation or by increasing the rates of duty. This consideration apart, it is not possible to read the words "notwithstanding that the taxes etc. are mentioned in the Union List" as conferring an unlimited legislative power to impose what in effect the argument involves new taxes, though of the same type or nature as existed before the Constitution. The question of the proper construction of s. 143(2) of the Government of India Act, 1935 which is for all practical purposes identical with Art. 277 came up for consideration before this Court in *Rama Krishna Ramanath* v. *The Janpad Sabha, Gondia*(1). There it was submitted on behalf of the respondent-local authority that by virtue of s. 143(2) of the Government of India Act the Provincial Legislature was vested with a plenary power to legislate in respect of every tax which was being lawfully levied by local authorities prior to the commencement of the Government of India Act. This Court rejected that contention and observed :

> "Section 143(2) which is a saving clause and obviously designed to prevent a dislocation of the finances of Local Governments and of local authorities by reason of the coming into force of the provisions of the Government of India Act distributing heads of taxation on lines different from those which prevailed before that date, cannot be construed as one conferring a plenary power to legislate on those topics till such time as the Central Legislature intervened. Such a construction would necessarily involve a power in the Provincial Legislature to enhance the rates of taxation—a result we must say from which Mr. Sanyal did not shrink, but having regard to the language of the section

(1) [1962] Supp. 3 S.C.R. 70.

1964

Town Municipal Committee v. Ramchandra

Ayyangar J.

providing for a mere continuity and its manifest purpose this construction must be rejected."

No doubt, even the words "continue to be levied and to be applied to the same purposes" might import and imply a limited legislative power in the State. The scope of this limited power was also examined by this Court in the same case and it was stated :

> "In the context the relevant words of the sub-section could only mean 'may continue to be levied if so desired by the Provincial Legislature' which is indicated by or is implicit in the use of the expression 'may' in the clause 'may be continued until provision to the contrary is made by the Federal Legislature.' This would therefore posit a limited legislative power in the Province to indicate or express a desire to continue or not to continue the levy. If in the exercise of this limited power the Province desires to discontinue the tax and effects a repeal of the relevant statute the repeal would be effective. Of course, in the absence of legislation indicating a desire to discontinue the tax, the effect of the provision of the Constitution would be to enable the continuance of the power to levy the tax but this does not alter the fact that the provision by its implication confers a limited legislative power to desire or not to desire the continuance of the levy subject to the overriding power of the Central Legislature to put an end to its continuance and it is on the basis of the existence of this limited legislative power that the right of the Provincial Legislature to repeal the taxation provision under the Act of 1920 could be rested. Suppose for instance, a Provincial Legislature desires the continuance of the tax but considers the rate too high and wishes it to be reduced and passes an enactment for that purpose, it cannot be that the legislation is incompetent and that the State Government

must permit the local authority to levy tax at the same rate as prevailed on April 1, 1937 if the latter desired the continuance of the tax. If such a legislation were enacted to achieve a reduction of the rate of the duty, its legislative competence must obviously be traceable to the power contained in words 'may continue to be levied' in s. 143(2) of the Government of India Act."

Dealing next with the import ot the words 'may continue to be levied' the same was summarised in these terms: (1) The tax must be one which was lawfully levied by a local authority for the purpose of a local area, (2) the identity of the body that collects the tax, the area for whose benefit the tax is to be utilised and the purposes for which the utilization is to take place continue to be the same, and (3) the rate of the tax is not enhanced nor its incidence in any manner altered, so that it continues to be the same tax. It is obvious that if these tests were applied the submission on behalf of the appellant cannot be accepted.

But authority apart, we cannot, even if this decision were put aside, accede to the construction for which Mr. Setalvad contends. It is not disputed that in ultimate analysis the answer to the question raised should turn on the meaning of the word 'levied' in the phrase 'continue to be levied' which is the operative word conferring a power. Mr. Setalvad submits that 'levied' is a word of wide and varying import and includes in its denotation not merely the actual collection of the tax, but the imposition in the sense of the creation of the charge by the statute, as well as the ascertainment of the amount due from the tax payer. Mr. Setalvad is right, for before a tax can be collected from any tax payer, its quantum must be ascertained and assessed, and for this to be lawfully done there must be legislative sanction—in other words an imposition of the charge—because it is the charge under the Statute that is quantified by the authorities acting under the taxing enactment. The acceptance of this construction however does not lead to the result desired, for what can "continue to be levied" is what "was being lawfully levied" in the same sense of the

1964

Town Municipal Committee v. Ramchandra

Ayyangar J.

word "levied", prior to the Constitution. Admittedly, there was no imposition of the charge now sought to be recovered prior to the Constitution, *i.e.*, the Act did not impose the charge by s. 66 but merely enabled the Municipal Committee by appropriate procedure to impose the tax. If, of course, this power had been availed of and a charge had been imposed it would be a different matter. So long as the Municipal Committee did not pass the necessary resolutions and impose the tax there was no charge levied on the commodity, so that it could not be said that the tax "was *being* lawfully levied" before the commencement of the Constitution. The words "*was being lawfully levied*" obviously mean "was actually levied" and it would not be sufficient to satisfy those words that the Municipal authority could lawfully levy the tax, but had not availed itself of that power.

There is another circumstance to which also reference may be made. The last portion of Art. 277 uses the words "continue to be levied" and "to be applied to the same purposes". By reason of this collocation between the concept of the levy and of application of the proceeds of the tax, the Constitution makers obviously intended the word 'levy' to be understood as including the collection of the tax, for it is only when a tax is collected that any question of its application to a particular purpose would arise. It is apparent that if the word "levied" were understood in the sense which Mr. Setalvad contends, there could be no "application" of the proceeds of the tax to the same purposes as at the commencement of the Constitution. For *ex concessis* at that date there were no proceeds to be applied. In this connection learned Counsel for the respondent referred us to the decision in *Chuttilal* v. *Bagmal and Balwantrai*(1) where the relationship between the levy and the application of the tax has been referred to as an aid to the construction of the expression "continue to be levied" in Art. 277. We find ourselves in agreement with the views there expressed.

The decision of the High Court is, therefore, correct and the appeal fails.

(1) I.L.R. [1956] Madhya Bharat 339.

CIVIL APPEAL NO. 695 OF 1962.

In this appeal a notification was issued under sub-ss. (5) and (7) of s. 67 of the C.P. & Berar Municipalities Act, 1922, on December 9, 1960 imposing a terminal tax on gun-powder imported into or exported out of the municipal area by rail. It is admitted that previous to the Constitution there was no tax imposed on gun-powder. The position in this case is, therefore, identical with that in Civil Appeal No. 598 of 1962 which we have just disposed of and it follows that this appeal also fails and should be dismissed.

CIVIL APPEAL NO. 700 OF 1962.

In Civil Appeal 700 of 1962 the original notification imposing terminal taxes in respect of goods coming into or going out of the municipal area by rail was one dated March 17, 1926 which was operative from April 1, 1926. This was amended by a notification under s. 67(5) of the C.P. Berar Municipal Act, 1922 dated September 23, 1960 by which new articles were included to the list of items imported into or exported from the municipal area by rail subject to the terminal tax and besides the rate of tax on the previously existing items was also increased. It was this inclusion of new articles for the levy of terminal tax by the notification of 1960 and the increase in the rate of duty on articles already subjected to tax, that was impugned in the writ petition filed by the respondent before the High Court. On our reasoning on the basis of which we have dismissed Civil Appeal 598 of 1962 it would follow that this appeal should also fail. We can see no difference between the inclusion of new items and the increase in the rate of duty because if there is an increase it would not be a mere continuance of the duty which had been lawfully levied which is the only purpose and function of Art. 277. The judgment of the High Court allowing the writ petition of the respondent was therefore correct.

In the result, all the three appeals fail and are dismissed with costs of the contesting respondent or respondents in each appeal.

Appeals dismissed.