GOPAL NARAIN

v.

STATE OF UTTAR PRADESH & ANR.

1963

September 3

(P. B. GAJENDRAGADKAR, K. SUBBA RAO, K. N. WANCHOO, N. RAJAGOPALA AYYANGAR AND J. R. MUDHOLKAR, JJ.)

Constitution of India, Arts. 14, 19(1)(*f*)—*Municipality—Arbitrary power to make classification—Policy and guidance—Express or implied—To be gathered from the statute—Geographical division of a town—Special taxes in that part—Whether discriminatory—Validity—Mention of wrong clause in Notification Does not affect the power—Uttar Pradesh Municipalties Act,* 1916 (*U.P. Act No. II of* 1916), *ss.* 128(1), 131(1)(h).

The city of Bareilly was originally composed of two parts. In 1870, the vacant area between these two parts was developed into a new residential area by the Municipality at a considerable cost. Special amenities for the residents of this area were provided and house tax was imposed. After the coming into force of Uttar Pradesh Municipalities Act, 1916, the Municipality imposed, first, a latrine tax and later a scavenging tax in this area from 1939. The petitioner who is a resident and house owner in this area filed the present petition questioning the validity of the taxes imposed by the Municipality.

The main contentions raised by the petitioner were : (i) s. 128(1) of the U.P. Municipalities Act, in so far as it authorised the Municipal Board to impose the taxes mentioned therein in part of the Municipality, offended Art. 14 of the Constitution and, therefore, was void ; (ii) even if the section did not violate the said article, the notification issued by the Municipal Board imposing the two taxes namely, house tax and scavenging tax, confining them only to the new area (civil lines) was void in as much as such imposition could not be justified on the basis of the doctrine of classification, (iii) the taxes were imposed in violation of the statutory provisions of the Act and, therefore, the imposition on him in respect of his building infringed his right under Art. 19(1)(f) of the Constitution ; and (iv) s. 131(1)(b) of the Act also violated Art. 14 of the Constitution inasmuch as it conferred an arbitrary power on the Municipal Board to impose taxes of any amount on any person or class of persons without laying down any clear policy for classification.

Held : (i) While a court should be on its guard not to enter into the domain of speculation with a view to cover up an obvious deficiency in a legislation, it may legitimately discover such a policy, if it is clearly discernible on a fair reading of the relevant provisions of the Act. But it is neither possible nor advisable to lay down precisely how a court should cull out such a policy from an Act in the absence of an express statutory

1963

Gopal Narain v. *State of Uttar Pradesh and Anr.*

declaration of policy. It would depend upon the provisions of each Act, including the preamble. But what can be posited is that the policy must appear clear either expressly or by necessary implication from the provisions of the statute itself.

Ram Krishna Dalmia v. *Shri Justice S. R. Tendolkar,* [1959] S.C.R. 279, *State of West Bengal* v. *Anwar Ali Sarkar,* [1952] S.C.R. 284, *Dwarka Prasad Laxmi Narain* v. *State of Uttar Pradesh,* [1954] S.C.R. 803, *Dhirendra Krishna Mondol* v. *Superintendent and Remembrancer of Legal Affairs,* [1955] 1 S.C.R. 244, *Kathi Raning Rawat* v. *State of Saurashtra,* [1952] S.C.R. 435, *P. Balakotaih* v. *Union of India,* [1958] S.C.R. 1052 and *M/s. Pannalal Binjraj* v. *Union of India* [1957] S.C.R. 233, referred to.

(ii) A fair reading of ss. 7, 8 and 128 of the Act makes it clear that the amounts collected by the Municipal Board by way of taxes are mainly intended to enable the Board to discharge its duties in the Municipal area or part of the Municipal area, as the case may be. These duties and functions need not necessarily be discharged or performed in the entire area of the municipality at once. If different parts of a municipality may require special treatment in the matter of provisions of amenities, it would be reasonable to collate the power of taxation in a part of a municipality with such separate treatment. This legislative guidance is apparent from the three sections.

(iii) Looking at the policy disclosed by ss. 7, 8 and 128 of the Act and applying the liberal view a law of taxation receives in the application of the doctrine of classification, it is not possible to say that the policy so disclosed infringes the rule of equality.

Khandige Sham Bhat v. *Agricultural Income-tax Officer, Kasaragod,* [1963] 3 S.C.R. 809, *Purshottam Govindji* v. *B. M. Desai,* [1955] 2 S.C.R. 887, *K. T. Moopol Nair* v. *State of Kerala,* [1961] 3 S.C.R. 77 and *Bareilly Municipality* v. *Kundan Lal A.I.R.* 1959 All. 562 (*F.B.*), referred to.

(iv) The difference between the old city and the civil lines area is so pronounced in the matter of amenities that there is a reasonable relation between the taxes imposed and the geographical classification made for the purpose of taxation and, therefore, the notification imposing the said taxes does not infringe Art. 14 of the Constitution.

(v) It will be seen from ss. 131, 132 and 133 of the Act that the rate of tax to be levied and the persons or the class of persons liable to pay the same have a reasonable relation to the subject taxable under the Act. The said rate to be imposed and the persons or the class of persons liable to pay the same are ascertained by a quasi-judicial procedure after giving opportunity to the parties affected, subject to revision by the State Government. Therefore, it cannot be said that the power conferred upon the Muni-

cipal Board is an arbitrary power offending Art. 14 of the Constitution.

(vi) Though no tax could be levied or collected except in accordance with law, in the present case, it has not been established that the impugned taxes have been imposed in violation of any of the provisions of s. 131 and other relevant sections of the Act.

The question of the validity of the tax depends upon the existence of power to tax in respect of a subject. In the present case, the Muncipal Board had certainly power to impose scavenging tax. The mention of cl. (xii) of s. 128 of the Act in the notification appears to be a mistake for cl. (xi) and that does not affect the power of the Board to impose the tax.

ORIGINAL JURISDICTION : Petition No. 12 of 1962.

Petition under Art. 32 of the Constitution of India for the enforcement of fundamental rights.

J. P. Goyal, for the petitioner.

C. B. Agarwala and *C. P. Lal,* for respondent no. 1.

G. S. Pathak and *C. P. Lal,* for respondent no 2.

September 3, 1963. The Judgment of the Court was delivered by

Subba Rao, J.

SUBBA RAO J.—This petition fined under Art. 32 of the Constitution raises the question of the constitutional validity of s. 128(1) of the Uttar Pradesh Municipalities Act, 1916 (U.P. Act No. II of 1916), hereinafter called the Act, insofar as it authorizes a Municipal Board to impose all or any of the taxes mentioned therein in any part of the municipality.

Bareilly is an old City in the State of Uttar Pradesh. In the middle of the 19th century it consisted of small houses situated in congested localities with narrow lanes. At some distance away from the said City area there existed even then a cantonment area. Between the City area and the Cantonment area there was a tract of uneven and undeveloped land. The Municipal Board of Bareilly acquired a part of the said land and, together with some *nasul* land, developed it at a considerable cost. The newly developed area came to be known as the Civil Lines. The Municipal Board has provided special amenities for the residents of that area. The said facts and the particulars of the amenities provided are given in the counter-affidavit filed on behalf of the Municipal Board and

1963

Gopal Narain v. *State of Uttar Pradesh and Anr.*

Subba Rao, J.

a map of the Bareilly City and the Cantonment area is also annexed thereto. A glance at the map discloses that the City of Bareilly is divided into three separate blocks—the old City, the Cantonment and the Civil Lines. The Civil Lines area is situated between the old City and the Cantonment. We have no reason not to accept the said facts given in the counter-affidavit as representing the division of the City of Bareilly based on its geographical features and strata of development.

In the Civil Lines area, which the Municipal Board acquired and developed, the said Board imposed house tax from January 31, 1870. In the year 1916 the Act was passed in order to consolidate and amend the laws relating to municipalities in the State of Uttar Pradesh. The Act came into force on July 1, 1916. After the Act came into force, the old tax was abolished and a new house tax was imposed by the Municipal Board of Bareilly in the Civil Lines area with effect from January 1, 1918. A latrine tax was also imposed with effect from May 25, 1918, but it was replaced by scavenging tax with effect from April 1, 1939. The petitioner, a resident of the Civil Lines area, who owns a house bearing door No. 43 therein, filed this writ petition in this Court for a declaration that s. 128(1) of the Act, insofar as it authorizes the Municipal Board to impose a tax in any part of the municipal area, is void and for the issue of a writ of *mandamus* against the Municipal Board, Bareilly, directing it not to realize the said house tax and scavenging tax from him. To the said petition, the State of Uttar Pradesh and the Municipal Board, Bareilly, are made respondents 1 and 2 respectively.

Mr. Goyal, learned counsel for the petitioner, raised before us six contentions, but they may be broadly classified under the following four heads: (1) Section 128(1) of the Act, insofar as it authorizes the Municipal Board to impose the taxes mentioned therein in any part of the municipality, offends Art. 14 of the Constitution and, therefore, is void. (2) Even if the section does not violate the said article, the notification issued by the Municipal Board imposing the said two taxes, namely, house tax and scavenging tax, confining them only to the Civil Lines area was void inasmuch as the taxes could not

be justified on the basis of the doctrine of classification. (3) The said taxes were imposed in violation of the statutory provisions of the Act and, therefore, the said imposition on him in respect of his building infringes his fundamental right under Art. 19 (1)(f) of the Constitution. And (4) section 131(1)(b) of the Act also violates Art. 14 of the Constitution in as much as it confers an arbitrary power on the Municipal Board to impose taxes of any amount on any person or class of persons without laying down any clear policy for classification.

Mr. Pathak, learned counsel for the Municipal Board, controverts the said arguments of the petitioner. We shall deal with his contentions in appropriate places.

To appreciate the first contention it would be convenient to read at the outset the relevant part of s. 128 of the Act. It reads :

> *Section* 128. (1) Subject to any general rules or special orders of the State Government in this behalf, the taxes which a board may impose in the whole or any part of a municipality are—
>
> (i) a tax on the annual value of buildings or lands or both;
>
> * * * * * *
>
> (xi) a scavenging tax ;
>
> * * * * * *

No general rules were made or special orders issued by the State Government in the matter of imposition of a tax in any part of a municipality. It is argued that the power conferred on the Municipal Board to impose a tax on any part of the municipality is a naked and arbitrary power, that the Act does not disclose any policy or give any guidance for making a valid classification and that, therefore, the section, to the said extent, violates the provisions of Art. 14 of the Constitution. The law on the subject is well settled. Das C.J., in *Ram Krishna Dalmia* v. *Shri Justice S. R. Tendolkar*(1), after a consideration of the earlier decisions, pointed out that a statute which may come up for consideration on a question of validity under Art. 14 of the Constitution might be placed in one of the five classes mentioned therein. Classes (iii) and (iv), which are relevant to the present enquiry, reads :

(1) [1959] S.C.R. 279.

1963

Gopal Narain v. *State of Uttar Pradesh and Anr.*

Subba Rao, J.

"(iii) A statute may not make any classification of the persons or things for the purpose of applying its provisions but may leave it to the discretion of the Government to select and classify persons or things to whom its provisions are to apply. In determining the question of the validity or otherwise of such a statute the court will not strike down the law out of hand only because no classification appears on its face or because a discretion is given to the Government to make the selection or classification but will go on to examine and ascertain if the statute has laid down any principle or policy for the guidance of the exercise of discretion by the Government in the matter of selection or classification, on the ground that the statute provides for the delegation of arbitrary and uncontrolled power to the Government so as to enable it to discriminate between persons or things similarly situate and that, therefore, the discrimination is inherent in the statute itself. In such a case the court will strike down both the law as well as the executive action taken under such law, as it did in *State of West Bengal* v. *Anwar Ali Sarkar*(1), *Dwarka Prasad Laxmi Narain* v. *The State of Uttar Pradesh*(2) and *Dhirendra Krishna Mandal* v. *The Superintendent and Remembrancer of Legal Affairs*(3)."

"(iv) A statute may not make a classification of the persons or things for the purpose of applying its provisions and may leave it to the discretion of the Government to select and classify the persons or things to whom its provisions are to apply but may at the same time lay down a policy or principle for the guidance of the exercise of discretion by the Government in the matter of such selection or classification, the court will uphold the law as constitutional as it did in *Kathi Raning Rawat* v. *The State of Saurashtra*(4)."

The question, therefore, to be considered is whether the Act has laid down a policy for the guidance of the Municipal Board in the matter of selection of any part of the

(1) [1952] S.C.R. 284.
(2) [1954] S.C.R. 803.
(3) [1955] 1 S.C.R. 224.
(4) [1952] S.C.R. 435.

municipality for the purpose of imposition of any of the taxes mentioned in s. 128 of the Act.

In this context, because of a Legislature's reluctance or inadvertence to express itself clearly of its policy, a heavy and difficult burden is often placed on courts to discover it, if possible, on a fair reading of the provisions of the Act. Some Acts expressly lay down the policy to guide the exercise of discretion of an authority on whom a power to classify is conferred. Some Acts, though they do not expressly say so, through their provisions may indicate clearly, by necessary implication, their policy affording a real guidance for the exercise of discretion conferred on an authority thereunder. While a court should be on its guard not to enter into the domain of speculation with a view to cover up an obvious dificiency in a legislation, it may legitimately discover such a policy, if it is clearly discernible on a fair reading of the relevant provisions of the Act. This Court, in *Kathi Raning Rawat* v. *The State of Saurashtra*(1), found the clear policy of the Legislature on the basis of the premable of the Act taken along with the surrounding circumstances; in *P. Balakotaish* v. *Union of India*(2), on an examination of the Act read as a whole ; and in *M/s. Pannalal Binjraj* v. *Union of India*(3), from the preamble itself. This view was accepted in later decisions. But it is neither possible nor advisable to lay down precisely how a court should cull out such a policy from an Act in the absence of an express statutory declaration of policy. It would depend upon the provisions of each Act, including the preamble. But what can be posited is that the policy must appear clearly either expressly or by necessary implication from the provisions of the statute itself.

Now, does the Act provide any real guide to the Municipal Board to exercise its discretion under s. 128(1) of the Act? The Act is a consolidating and amending Act relating to muncipalities in the State of Uttar Pradesh. Section 7 of the Act narrates the duties of a municipal board. It directs the municipal board to discharge duties connected *inter alia* with sanitation, drainage, laying of roads, schools, health, water supply, hospitals, maternity

(1) [1952] S.C.R. 435. (2) [1958] S.C.R. 1052.
(3) [1957] S.C.R. 233.

1963

Gopal Narain v. *State of Uttar Pradesh and Anr.*

Subba Rao, J.

centres and similar others. Section 8 enables a municipal board to provide, in its discretion, special amenities and undertake other duties mentioned therein, which involve heavy expenditure.

The duties cannot be discharged and the discretionary functions cannot be performed unless the municipality has power to collect money by way of taxes. Section 128 of the Act confers such a power on the Municipal Board. It says that the Municipal Board may impose in the whole or any part of the municipality the taxes mentioned therein. A fair reading of these three provisions makes it clear that the amounts collected by the Municipal Board by way of taxes are mainly intended to enable the Board to discharge its duties in the municipal area or a part of the municipal area, as the case may be. It is contended that while no doubt a combined reading of the said provisions may indicate the purpose of taxation, it does not disclose any policy how and under what circumstances the Municipal Board can select a part of the municipal area for the imposition of a tax or taxes. We do not agree. Sections 7 and 8 enumerate the obligatory duties and discretionary functions of a municipality. These duties and functions need not necessarily be discharged or performed in the entire area of the municipality at once. They may have to be introduced gradually, starting from one part of the area in the municipality with a view to cover the entire area in due course. It may also be that the amenities required in one part of the municipal area may be different from those required in another part of the municipality. It may also be that a part of the area, because of the nature of the soil, distance from the well-developed part of the city or for historical reasons, calls for a larger investment for development compared to other parts of the municipality. If so much is conceded, that is, different parts of a municipality may require special treatment in the matter of provisions of amenities, it would be reasonable to collate the power of taxation in a part of a municipality with such separate treatment. While the former two sections, by necessary implication, enable a municipality to provide special amenities in a part of the municipality, the latter section empowers it to impose tax-

es in that part. If so understood the legislative guidance is apparent from the said three provisions ; that is to say, a municipality can impose a tax in a part of a city, if that part, because of its peculiar situation or otherwise, has to be provided with special amenities throwing a heavy financial burden on the municipality.

The next question is, whether the said policy offends Art. 14 of the Constitution. It is said that all the citizens of a city would directly or indirectly partake in the amenities provided in any part of the city and, therefore, the classification underlying the policy has no reasonable nexus with the object sought to be achieved. It is argued that amenities, such as good roads, extensive parks, electrification, water supply etc., provided in one part of the city could equally be taken advantage of by residents of other parts of the city and, therefore, the expenditure on such amenities should be met from the general revenues. It may be so ; but the indirect benefit cannot be equated with the direct benefit conferred upon a part of the city treated as a separate unit for the purpose of taxation. This Court, in *Khandige Sham Bhat* v. *Agricultural Income-tax Officer, Kasaragod*(1), in dealing with a law of taxation in the context of the doctrine of classification observed :

> "Taxation law is not an exception to this doctrine : vide *Purshottam Govindji* v. *B. M. Desai*(2) and *K. T. Moopol Nair* v. *State of Kerala*(10). But in the application of the principles, the courts, in view of the inherent complexity of fiscal adjustment of diverse elements, permit a larger discretion to the Legislature in the matter of classification, so long it adheres to the fundamental principles underlying the said doctrine. The power of the Legislature to classify is of "wide range and flexibility" so that it can adjust its system of taxation in all proper and reasonable ways."

Looking at the policy disclosed by ss. 7 and 8 and s. 128 of the Act and applying the liberal view a law of taxation receives in the application of the doctrine of

(1) [1963] 3 S.C.R. 809. (2) [1955] 2 S.C.R. 887.
(3) [1961] 3 S.C.R. 77.

1963

Gopal Narain v. *State of Uttar Pradesh and Anr.*

Subba Rao J.

classification, it is not possible to say that the policy so disclosed infringes the rule of equality. This Court in more than one decision held that equality clause does not forbid geographical classification, provided the difference between the geographical units has a reasonable relation to the object sought to be achieved. This principle has been applied to a taxation law in *Khandige Sham Bhat's Case*(1). In that case, this Court also accepted the principle that the legislative power to classify is of wide range and flexibility so that it can adjust its system of taxation in all proper and reasonable ways. It is indicated in "Willis, *Constitutional Law*", at p. 590, that a State can make a territory within a city a unit for the purpose of taxation. So, the impugned section in permitting in the matter of taxation geographical classification, which has reasonable relation to the object of the statute, namely, for providing special amenities for a particular unit the peculiar circumstances whereof demand them, does not in any way impinge upon the equality clause.

The very question that we are now called upon to decide received the attention of a Full Bench of the Allahabad High Court in *Bareilly Municipality* v. *Kundan Lal*(2). The Full Bench, by a majority, held on a construction of the provisions of the Act that the power vested in the Board to select part of the municipality within which to levy a tax was not an arbitrary power but one which is controlled by the purpose which was intended to be achieved by the Act itself. We agree with this view.

The next question is whether the notification issued by the Municipal Board imposing the said taxes in the area of the Civil Lines offends Art. 14 of the Constitution. It is clear from the affidavit filed on behalf of the Municipal Board and the map annexed thereto that the area covered by the Civil Lines has been treated as a separate unit in the matter of development from the year 1870. The Municipal Board acquired the land in that area, laid out roads, carved out good sized building plots, and provided special amenities for the residents by way of broad roads, open and bigger plots for construction of

(1) [1963] 3 S.C.R. 809. (2) A.I.R. 1959 All. 562.

houses, parks and gardens, special lighting arrangements, foot-path with cement benches, water booths with waterman for giving water to the public and special sanitary arrangements ; whereas the old city area of Bareilly consisted of small plots of land with small houses thereon situated in congested localities with narrow lanes. The Municipal Board imposed house tax in the Civil Lines area from as early as January 31, 1870 and, after the Act came into force, reimposed the impugned tax in accordance with the provisions of the Act. In the case of scavenging tax, there appears to be different methods adopted in the two areas. In the Civil Lines area night-soil and rubbish are collected by the Municipal Board from each bungalow, while in the City area they are collected from one common place in each ward. The former certainly involves higher expenditure than the latter. It will, therefore be seen that for about 90 years the Civil Lines area has been treated as a separate geographical unit for the purpose of taxation, having regard to historical reasons and the extra amenities provided for the residents of that locality and the heavy expenditure incurred by the Municipal Board in doing so. The differences between the old city and the Civil Lines area are so pronounced in the matter of amenities that there is a reasonable relation between the taxes imposed and the geographical classification made for the purpose of taxation. We, therefore, hold that the notification imposing the said taxes does not infringe Art. 14 of the Constitution.

The next question is whether s. 131 of the Act violates Art. 14 of the Constitution. Section 131 of the Act reads :

> "(i) When a board desires to impose a tax, it shall by special resolution frame proposals specifying—
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> (a) the tax, being one of the taxes described in sub-section (1) of section 128, which it desires to impose ;
>
> (b) the persons or class of persons to be made liable, and the description of property or other taxable thing or circumstances in respect of which they are to be made liable, except where and in so far as any such class or description is already suffi-

1963

Gopal Narain
v.
State of
Uttar Pradesh
and Anr.

Subba Rao J.

ciently defined under clause (a) or by this Act;

(c) the amount or rate leviable from each such person or class of persons;

(d) any other matter referred to in section 153, which the State Government requires by rule to be specified."

The argument is that this section enables the Board to impose a tax of any amount and against any persons or class of persons without giving any guide in regard to the fixation of rate of tax or the persons or class of persons liable to pay the tax. It is said that the said power conferred upon the Municipal Board is an unguided and naked power. Section 131 does not confer any power on the Board to impose a tax. Section 128 confers such a power and that section with meticulous care enumerates the subjects of taxation. Section 131 provides a machinery for imposing the said taxes. The said taxes cannot be imposed in vacuum. There should be some machinery for acsertaining the rate of taxation and the persons or the class of persons liable to pay the same. If s. 131 stood alone, there may be some justification for the coment, but if it is read along with s. 128, it posits a reasonable nexus between the tax in respect of a subject and the rate payable and the person or class of persons liable to pay the same. To illustrate: s. 128 empowers the Municipal Board to levy a tax on the annual value of a building and to make a person, who should obviously be a person connected with the building, liable to pay the same. For deciding those questions a quasi-judicial procedure is prescribed under s. 131 and the succeeding sections of the Act. Under s. 131 the Municipal Board makes the proposals specifying the tax, the rate and the persons or the class of persons liable to pay the tax and such other details prescribed thereunder. The Board thereupon publishes in the manner prescribed the said details. Under s. 132 any inhabitant of the municipality may within a fortnight from the publication of the said notification, submit his objections thereto. Thereupon the Board shall take any objection so submitted into consideration and pass orders thereon by special resolution. If the Board decides to modify its proposals, it shall publish the modified proposals and the modified proposals may also be objected

to. After the final orders are made by the Board, it shall submit the proposals along with the objections, if any, to the prescribed authority. Under s. 133 the prescribed authority shall then submit the proposals and the objections to the State Government, which will make the final orders. When the proposals are sanctioned by the prescribed authority, or the State Government, the State Government shall make rules having regard to the draft rules submitted by the Board ; when the rules are sanctioned by the State Government, they will be sent to the Board and thereupon the Board by special resolution shall direct the imposition of the tax with effect from a date specified in the resolution. Thereafter the said resolution will be notified by the State Government in the Gazette. It will be seen from the aforesaid provisions that the rate of tax to be levied and the persons or the class of persons liable to pay the same have a reasonable relation to the subjects taxable under the Act. The said rate to be imposed and the persons or the class of persons liable to pay the same are ascertained by a quasi-judicial procedure after giving opportunity to the parties affected, subject to revision by the State Government. We cannot therefore, say that the power conferred upon the Municipal Board is an arbitrary power offending Art. 14 of the Constitution.

The next question of learned counsel is that the said taxes were imposed in violation of the procedure prescribed by the Act. At the outset it may be noticed that the house tax was imposed with effect from January 31, 1870 and the latrine tax was imposed with effect from May 23, 1918 and the latter tax was replaced by scavenging tax with effect from April 1, 1939. Though decades have passed by, no one has questioned till now the validity of those taxes on the ground that the procedure was not strictly followed. There is a presumption, when a statutory authority makes an order, that it has followed the prescribed procedure. The said presumption is not in any way weakened by the long acquiescence in the imposition by the residents of the Civil Lines. Nonetheless no tax shall be levied or collected except in accordance with law. If it is not imposed in accordance with law, it would infringe the fundamental rights guaranteed un-

1963

Gopal Narain
v.
State of Uttar Pradesh and Anr.

Subba Rao J.

der Art. 19(1)(f) of the Constitution. While the long period of time that lapses between the imposition of the tax and the attack on it may permit raising of certain presumptions where the evidence is lost by afflux of time, it cannot exonerate the statutory authority if it imposes a tax in derogation of the statutory provisions. We will, therefore, proceed with the specific objections raised by the petitioner.

Sections 131 to 136 give the procedural steps to be followed for imposing a tax. We have already given a gist of those sections in a different context. Learned counsel for the petitioner contends that the Municipal Board violated the provisions of s. 131(1) of the Act inasmuch as, (i) it did not give all the necessary details in the proposals made under s. 131(1) of the Act, and (ii) the Government did not make the rules after the Act came into force in accordance with the procedure prescribed under s. 131 and the succeeding sections of the Act. In regard to the first objection, there is an allegation in the affidavit filed by the petitioner, but there is none in respect of the second objection. In a matter like this, we are not prepared to permit the petitioner to question the validity of the tax on the second ground in the absence of any specific allegation in regard to the same in the affidavit. There is a specific allegation in regard to the first ground, but it is denied in the counter-affidavit filed by the Municipal Board. On April 5, 1917, the Municipal Board passed the following special resolutions :

> "Draft proposals under Section 128(1) (i) for revising the Government Notification No. 135 dated 13-1-1870 levying tax on the buildings and lands in the Civil Lines Station of the Bareilly Municipality. Resolution : Resolved that Draft Proposals be notified."

Ex facie this resolution shows that there were draft proposals ; those draft proposals are not before us and they must have contained all the details required by the section. We reject this contention. We, therefore, hold that is has not been established that the impugned taxes have been imposed in violation of any of the provisions of s. 131 and other relevant sections of the Act.

The last argument relates to the scavenging tax. Section 128(1)(xi) empowers the Municipal Board to impose a scavenging tax. Clause (xii) of that section may also be noticed. It reads : "a tax for the cleaning of latrines and privies". The relevant notification imposing the tax reads :

> "It is hereby notified under sub-section (2) of Section 135 read with section 136 of the United Provinces Municipalities Act, 1916 (II of 1916) that the Municipal Board of Bareilly, in exercise of the powers conferred by section 128(1) (xii) of the said Act, has imposed the following scavenging tax in the Bareilly Municipality published with notification No. 3298/XI-18 H, dated the 20th September 1933, in supersession of notification No. 628/XI-18H, dated the 24th January, 1923, with effect from 1st April 1939.
>
> Description of the tax.
>
> A tax for the removal of nightsoil and rubbish at the rate mentioned below to be realized from the occupier or the owner of the buildings (bungalows) situated within the Civil Lines ward of the municipality."
>
> * * * * * *

In accordance with the said notification, nightsoil and rubbish are collected by the Municipal Board from each bungalow in the Civil Lines area. The contention is that the Municipal Board had no power to impose a scavenging tax under cl. (xii) of s. 128(1) of the Act and, therefore, the imposition of the tax is illegal. The Municipal Board says in its counter-affidavit that cl. (xii) mentioned in the notification is a mistake for cl. (xi). The question is whether the Municipal Board has power to impose scavenging tax. There must be some distinction between scavenging tax and a tax for cleaning of latrines and privies. Presumably cl. (xi) is more comprehensive than cl. (xii). In the counter-affidavit it is stated that nightsoil and rubbish are collected by the Municipal Board from the bungalows in the Civil Lines. Though a part of that function is covered by cl. (xii), the combined function is covered by cl. (xi) of s. 128 of the Act. The question of the validity of the tax depends upon the existence of power to tax in respect of a subject. The

1963

Gopal Narain v. *State of Uttar Pradesh and Anr.*

Subba Rao, J.

Municipal Board had certainly power to impose the scavenging tax. The mention of cl. (xii) in the notification appears to be a mistake for cl. (xi) and that does not effect the power of the Municipal Board to impose the tax. There are no merits in this contention either.

In the result, the petition is dismissed with costs.

Petition dismissed.

1963

September, 4

SMT. KAUSHALYA DEVI

v.

SHRI MOOL RAJ AND OTHERS

(P. B. GAJENDRAGADKAR, K. SUBBA RAO, K. N. WANCHOO, N. RAJAGOPALA AYYANGAR AND J. R. MUDHOLKAR, JJ.)

Practice—Application by accused for transfer—Affidavit by trying Magistrate opposing application—Propriety.

Criminal proceedings were started against the petitioner and three others on an complaint made by the first respondent alleging that the four accused persons had committed offences under s. 420 read with s. 120B of the Indian Penal Code. Originally the Magistrate had dispensed with the personal appearance of the petitioner in court, but on application made by the complainant, the Magistrate made an order directing the petitioner to be present in court in order to give an opportunity to the complainant's witness to identify her. Apprehending that this order would lead to her prejudice, she made an application in the Supreme Court for transfer of the case to some other court, on the grounds, *inter alia*, that the facts alleged by the complainant might perhaps constitute a civil dispute but the said facts had been deliberately twisted and a criminal complaint had been made to harass the petitioner. After the petition was admitted and interim stay granted to the petitioner pending the hearing and final disposal of the main petition, an affidavit was filed on behalf of the Delhi Administration, by the Magistrate himself, opposing the application and stating, *inter alia*, that the clause indemnifying the purchaser contained in the sale deed on which the petitioner relied on would not absolve the petitioner from criminal liability. Thus it was clear that the deponent Magistrate had adopted the argument which might probably be urged by the complainant at the trial.