

MUNICIPAL COMMITTEE, AKOT

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v.

MANILAL MANEKJI PVT. LTD. AND ANOTHER

November 17, 1966

[K. SUBBA RAO, C. J., J. C. SHAH, S. M. SIKRI, V. RAMASWAMI
AND C. A. VAJDIALINGAM, JJ.]

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Constitution of India, Article 276—Municipal taxes levied by two notifications under the Berar Municipal Law, 1886,—after its repeal notifications continued in operation by saving clause in C.P. Municipalities Act, 1922—which was later amended and re-named C.P. and Berar Municipalities Act, 1922—Central Profession Tax Limitation Act, 1941 limiting municipal taxes—s. 3 read with item 4 of Schedule saving taxes levied under C.P. Municipalities Act, 1922—Whether taxes under two notifications saved and in force at commencement of Constitution—or whether hit by Art. 276(2).

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The appellant Municipality which was constituted and empowered to impose certain taxes under the Berar Municipal Law, 1886, by one notification in 1899 imposed a tax on professions and trades practised in the Municipality; and by another issued in 1908, imposed a tax on the ginning and pressing of cotton.

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The Berar Municipal Law was repealed in 1924 and in its place the C.P. Municipalities Act (II of 1922), with certain modifications, was applied to Berar. By virtue of a saving provision in s. 65(6) of the Act, any taxes previously imposed by a Municipality continued in operation even if they were not specified in the Act. After Berar became a part of British India, by the Berar Laws (Provincial) Act (XV of 1941), which came into force on August 1, 1941 and which was passed by the Governor of the Central Provinces and Berar under s. 93 of the Government of India Act, 1935, various acts including the C.P. Municipalities Act, 1922, were amended and extended to Berar. The title of Act II of 1922 became the Central Provinces and Berar Municipalities Act, 1922, and although the Act as previously applied to Berar was to cease to have effect, notifications etc. deemed to have been made or issued under the C.P. Municipalities Act, 1922 were saved.

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In the meantime, by the Profession Tax Limitation Act (XX of 1941), passed by the Central Assembly, which came into force on April 1, 1941, taxes payable to a Municipality were restricted by s. 2 of the Act in respect of any one person to Rs. 50 per annum. However, by s. 3 read with item 4 of the Schedule to the Act, any tax levied by a Municipality in respect of any profession, trade, calling etc. imposed under s. 66(1)(b) of the C.P. Municipalities Act, 1922, was exempted from the restriction contained in s. 2.

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The respondents filed writ petitions under Arts. 226 and 227 challenging certain demands made on them by the Municipal Committee, Akot, in respect of tax levied under the two notifications of 1899 and 1908. It was contended by them that in view of Art. 276, the notifications under which the tax was imposed could not be enforced except to the extent provided under Art. 276(2) of the Constitution. The case of the Municipal Committee was that the notifications were in force immediately before the commencement of the Constitution and therefore were not hit by Art. 276(2). The High Court rejected this contention and allowed the petition.

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A In the appeal to this Court it was contended on behalf of the appellant committee that item 4 in the Schedule to Act XX of 1941 covered the impugned tax because the Act was the same under which the tax was being imposed and recovered and the fact that the title of the C.P. Municipalities Act, 1922, was changed by the Berar Laws (Provincial) Act, 1941, did not make any difference; that if a tax was deemed to be imposed under the C.P. and Berar Municipalities Act, 1922, it was still a tax imposed under s. 66(1) of the C.P. Municipalities Act, 1922; and that it was a case of mis-description that the word Berar had not been mentioned in item 4 of the Schedule.

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HELD : Dismissing the appeal :

Item 4 in the Schedule to Act XX of 1941 must be construed strictly because, firstly, it is an exemption from the limitation imposed by s. 2 of the Act and, secondly, the effect of s. 3 and item 4 of the Schedule is to continue the leviability of a tax and must therefore be construed like a taxing statute.

Various taxes must have been imposed by the Municipalities in the Central Provinces by virtue of notifications issued under s. 66(1)(b) and they would fall within the ambit of item 4. Item 4 would not therefore be otiose even if it was not treated as a case of mis-description but given the plain meaning *i.e.*, that the C.P. Municipalities Act, 1922, did not mean the C.P. and Berar Municipalities Act, 1922.

The word 'imposed' in item 4 meant that the taxes which can be continued to be levied should have been imposed before Act XX of 1941 came into force. This would be in consonance with s. 142A(2) of the Government of India Act, 1935, restricting municipal taxes in respect of any one person to Rs. 50 per annum from March 31, 1939. The proviso to this Section enabled the Dominion Legislature to make a contrary provision where a higher rate was previously in force, but it could not under the proviso authorise a fresh imposition exceeding Rs. 50. [106 H-107 D]

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1611 and 1612 of 1966.

From the judgment and order dated April 29, 1964 of the Bombay High Court, Nagpur Bench in Special Civil Applications Nos. 470 of 1962 and 447 of 1963.

S. V. Gupte, Solicitor-General and Naunit Lal, for the appellant (in both the appeals).

M. C. Setalvad, N. D. Kharkhanis and A. G. Ratnaparkh for respondent No. 1 (in C.A. No. 1611 of 1966).

R. Ganapathy Iyer, S. P. Nayyar and R. H. Dhebar for respondent No. 2 (in C.A. No. 1611 of 1966).

S. N. Kherdekar and A. G. Ratnaparkhi, for the respondent (in C.A. No. 1612 of 1966).

H The Judgment of the Court was delivered by

Sikri, J. These two appeals involve the same point and can be conveniently disposed of by one common judgment. The relevant facts may be given from one appeal only.

The respondents, Manilal Manekji Pvt. Ltd., filed a petition under arts. 226 and 227 of the Constitution in the High Court of Judicature at Bombay, Nagpur Bench, praying that certain demands made by the Municipality of Akot be quashed and that the Municipality be ordered to refund the advance deposit which the respondent had made. These demands and advance deposits were in respect of a tax known popularly as 'the gin tax and press tax' levied by the Municipality of Akot. In brief, the case of the respondent was that in view of art. 276 of the Constitution, the notifications under which the tax was imposed could not be enforced except to the extent provided under art. 276(2) of the Constitution. The case of the Municipal Committee, in brief, was that the notifications were in force immediately before the commencement of the Constitution and, therefore, were not hit by art. 276(2).

It is now necessary to set out the history of the notifications and the various municipal laws which were made applicable to the Municipal Committee, Akot, from time to time. It appears that the Municipal Committee, Akot, was constituted under the Berar Municipal Law, 1886, and under section 41 of the Berar Municipal Law, 1886, the Committee was empowered to impose certain taxes. It may be mentioned that the Berar Municipal Law, 1886, was promulgated by Notification No. 3938-1 dated November 5, 1886, by the Viceroy and Governor-General in Council. Berar, at the relevant time, was not part of the British India. The Municipal Committee, Akot, issued notification No. 98, dated March 14, 1899, regarding levy of profession tax. The relevant part of the notification reads as follows:

"With reference to section 44, clause (9) of the Berar Municipal Law 1886, it is hereby notified that the Municipal Committee of Akot has, with the sanction of the Resident, directed the imposition with effect from the 1st April 1899, of a tax under section 41(1) A(b) of the law, on professions and trades practised in that Municipality subject to the following rule.

(1) The tax shall, subject to the following provision, be assessable on every person who practises any profession or art or any trade in the Akot Municipality the whole or any part of whose income derived from any sources other than agriculture is not less than Rs. 100 per annum, at the rate of one and a quarter per cent on the taxable portion of his estimated income derived from any such source provided that,

(i) No person or firm shall be assessed at a sum exceeding Rs. 500 per annum or less than eight annas..."

Another notification was issued on July 13, 1908, in the following terms:

A "No 1063—With reference to section 44, sub-section (7) and (8), of the Berar Municipal Law, 1886, it is hereby notified that the Municipal Committee of Akot, in Akola district, has with the sanction of the Chief Commissioner, directed the imposition with effect from 1st August 1908 of a tax on the Ginning and Pressing of Cotton under section 41(1) (A) (b) of the said law to be levied from all persons carrying on within the limit of the Akot Municipality, the trade of ginning cotton and pressing the same into bales by means of steam or mechanical process, at the following rates:

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- (1) For each *boja* of ten maunds ginned 8 pies.
- (2) For each *bale* of fourteen maunds pressed 10 pies.

The tax is payable in one instalment on the first of August each year."

D On January 22, 1924, the following notification was issued by the Governor-General in Council :

E "No. 58-1. In exercise of the powers conferred by the Indian (Foreign Jurisdiction) Order in Council, 1902 and of all other powers enabling him in that behalf, the Governor-General in Council is pleased to direct that the following further amendments shall be made in the First Schedule to the Notification of the Government of India in the Foreign Department, No. 3510-I. B. dated the 3rd November, 1913, applying certain enactments to Berar, namely:

After Entry No.149 the following entry shall be inserted, namely:

F "150. The Central Provinces Municipalities Act, 1922 (II of 1922). (1) In Section 2 (a) for sub-section (1) the following shall be substituted, namely:

G "(1) The Berar Municipal Law, 1886, is hereby repealed." (b) in sub-section (2), for the words "Acts" the word "Law" shall be substituted."

H It is not necessary to set out all the amendments made by the notification in the Central Provinces Municipalities Act, 1922. The effect of this notification, in brief, was to apply the Central Provinces Municipalities Act, 1922, with certain modifications, to

Berar and to repeal the Berar Municipal Law, 1886, and further to save the taxes imposed and other acts done by the Municipalities by deeming them to have been made, imposed or assessed under the Central Provinces and Berar Act, 1922 (2 of 1922) as applied to Berar. It was further provided by sub-s. (6) of s. 66 that "any tax imposed in a Municipality before the date on which this Act comes into force shall continue in operation notwithstanding that it is not a tax specified in sub-section (1)", and sub-s. (7) of s. 66 enabled a committee to abolish any tax to which sub-section (6) applied as if it were a tax imposed under this Act but may not vary the amount or rate thereof.

The law as applied to Berar, although called the Central Provinces Municipalities Act, 1922, was not the same law as the Central Provinces Municipalities Act, 1922, as in force in the Central Provinces.

On August 1, 1941, the Central Provinces and Berar Act (XV of 1941)—called the Berar Laws (Provincial) Act, 1941—came into force. This Act was passed by the Governor under s. 93 of the Government of India Act, 1935, Berar having become part of the Governor's Province of the Central Provinces and Berar. Section 47 of the Government of India Act, 1935, provided that "Berar shall continue to be governed together with the Central Provinces as one Governor's Province under this Act by the name of the Central Provinces and Berar and in the same manner as immediately before the establishment of the Dominion; and any reference in this Act to the Dominion of India shall be construed as including a reference to Berar." By this Act the Governor extended various acts to Berar including the Central Provinces Municipalities, Act, 1922 (II of 1922). The following amendments were made in the Central Provinces Municipalities Act, 1922:

"(1) To sub-section (2) of section 12, the following proviso shall be added, namely:—

"Provided that in the case of two adjacent Municipalities in Berar the State Government may by a general or special order exclude the residents of one municipality from voting in a special constituency of the other municipality."

2) After sub-section (5) of section 66, the following sub-s. 66 shall be inserted, namely:

"(5A) Any tax imposed in a municipality in Berar before the date on which this Act comes into force shall continue in operation notwithstanding that it is not a tax specified in sub-section (1)."

A (5B) A committee in Berar may abolish any tax to which sub-section (5A) applies as if it were a tax imposed under this Act but may not vary the amount or rate thereof."

B As a result of s. 2(2) of the Central Provinces and Berar Act (XV of 1941), the title of the Central Provinces Municipalities Act, 1922 (II of 1922) became the Central Provinces and Berar Municipalities Act, 1922 (II of 1922). Section 3 of this Act provided *inter alia* that the Central Provinces Municipalities Act, 1922, which had been applied to Berar by order under the Indian (Foreign Jurisdiction) Order in Council, 1902, shall cease to have effect "provided that all appointments, delegations, notifications, orders, byelaws rules and regulations which have been made or issued, or deemed to have been made or issued and all other things done or deemed to have been done under, or in pursuance of, any provision of any of the said Acts as applied to Berar by order under the said Order in Council, and which are in force at the commencement of this Act, shall be deemed to have been made or issued or done under or in pursuance of the corresponding provision of that Act as now extended, to, and in force in, Berar."

In the meantime a bill was introduced in the Central Assembly on March, 21, 1941, which was ultimately passed as The Professions Tax Limitation Act, 1941 (XX of 1941). This Act came into force on April 1, 1941. This Act provided:

E "S. 2. Notwithstanding the provisions of any law for the time being in force, any taxes payable in respect of any one person to a Province, or to any one municipality, district board, local board, or other local authority in any Province, by way of tax on professions, trades, callings or employments, shall from and after the commencement of this Act cease to be levied to the extent in which such taxes exceed fifty rupees per annum."

3. The provisions of section 2 shall not apply to any tax specified in the Schedule."

G The Schedule is as follows:

THE SCHEDULE (See section 3)

Taxes to which section 2 does not apply.

H 1. The tax on professions, trades and callings, imposed through fees for annual licences, under Chapter XII of the Calcutta Municipal Act, 1923.

2. The tax on trades, professions and callings, imposed under clause (f) of sub-section (1) of section 123 of the Bengal Municipal Act, 1932.

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3. The tax on trades and callings carried on within the municipal limits and deriving special advantages from, or imposing special burdens on, municipal services, imposed under clause (ii) of sub-section (1) of section 128 of the United Provinces Municipalities Act, 1916.

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4. The tax on persons exercising any profession or art, or carrying on any trade or calling, within the limits of the municipality, imposed under clause (b) of section (1) of section 66 of the Central Provinces Municipalities Act, 1922.

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5. The tax on companies, imposed under section 110 of the Madras City Municipal Act, 1919.*"

On behalf of the Municipality it was *inter alia* contended before the High Court that the impugned tax fell within item 4 of the Schedule to the Profession Tax Limitation Act, 1941, but the High Court negatived the contention following an earlier judgment of the High Court in an unreported case (*Bidarbha Mills Berar Limited v. The City Municipal Committee of Achalpur*)⁽¹⁾.

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The learned Solicitor-General, appearing for the appellant Municipal Committee, contended that item No. 4 in the Schedule covers the impugned tax because the Act is the same under which the tax is being imposed and recovered and the fact that the title of the Central Provinces Municipalities Act, 1922, was changed by the Berar Laws (Provincial) Act, 1941, does not make any difference. He says that there is nothing in the Profession Tax Limitation Act, 1941, to show that the exemption was intended to be given only to a particular territory. He further urges as follows: The fact that this notification, No. 98 dated March 14, 1899, is now deemed to be issued under the Central Provinces and Berar Municipalities Act, 1922, does not make it any the less imposed under the Central Provinces Municipalities Act, 1922, within item 4; if a tax is deemed to be imposed under the Central Provinces and Berar Municipalities Act, 1922, it is still a tax 'imposed' under s. 66⁽¹⁾ of the Central Provinces Municipalities Act, 1922; it is a case of misdescription that the word 'Berar' has not been mentioned in item 5 of the Schedule to the Profession Tax Limitation Act, 1941; the item will be otiose if any other meaning is ascribed to it.

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In our opinion the High Court came to the correct conclusion. First item No. 4 is an exemption from the limitation imposed by s. 2

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*Ins. by s. 2 of the Professions Tax Limitation (Amendment) Act, 1946 (V of 1946) (retrospectively)

(1) High Court of Judicature at Bombay (Nagpur Branch) Special Civil Application No. 104 of 1960—judgment delivered on August 9, 1960.

- A of the Professions Tax Limitation Act, 1941, and the exemption must be construed strictly. Secondly, the effect of s. 3 and item 4 of the Schedule is to continue the leviability of a tax and, in our opinion, this item must be construed strictly like a taxing statute. If Mr. Gupte had been able to convince us that the item would be otiose if this interpretation is put there would be something to say in his favour. But the item will not be otiose even if we do not treat item 4 as a case of misdescription but give the plain meaning that the Central Provinces Municipalities Act, 1922, means the Central Provinces Municipalities Act, 1922, and not the Central Provinces and Berar Municipalities Act, 1922. Various taxes must have been imposed by the Municipalities in the Central Provinces by virtue of notifications issued under s. 66(1) (b) of the Central Provinces Municipalities Act, 1922, and they would fall within the ambit of item 4. Further if we accept Mr. Gupte's argument we will not be giving full effect to the word "imposed". This, in our view, means that the taxes which can continue to be levied should have been imposed in the past before the Profession Tax Limitation Act, 1941, came into force. This is in consonance with s. 142 A(2) of the Government of India Act, 1935, which was in the following terms:

"142A(2). The total amount payable in respect of any one person to the Province or to any one municipality, district board, local board, or other local authority in the Province by way of taxes on professions, trades, callings and employments shall not, after the thirty-first day of March nineteen hundred and thirty nine, exceed fifty rupees per annum;

- F Provided that, if in the financial year ending with that date there was in force in the case of any Province or any such municipality, board or authority a tax on professions, trades, callings or employments the rate, or the maximum rate, of which exceeded fifty rupees per annum the preceding provisions of this sub-section shall, unless for the time being provision to the contrary is made by a law of the Dominion Legislature, have effect in relation to that Province, municipality, board or authority as if for the reference to fifty rupees per annum there were substituted a reference to that rate or maximum rate, or such lower rate, if any (being a rate greater than fifty rupees per annum), as may for the time being be fixed by a law of the Dominion Legislature; and any law of the Dominion Legislature made for any of the purposes of this proviso may be made either generally or in relation to any specific Provinces, municipalities, boards or authorities."
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The proviso clearly shows that the section enabled the Dominion Legislature to make a contrary provision if in the financial year ending March 31, 1939, there was in force a tax on professions, trades, callings or employments the rate of which exceeded Rs. 50/-. The Dominion Legislature could not authorise under the proviso a fresh imposition exceeding Rs. 50/-.

In view of our above conclusions it is not necessary to deal with the point whether the word "imposed" in item 4 of the Schedule to the Profession Tax Limitation Act, 1941, would include "deemed to be imposed" because by virtue of s. 3 of the Berar Laws (Provincial) Act, 1941, the tax would be deemed to be imposed not under the Central Provinces Municipalities Act, 1922, but the Central Provinces and Berar Municipalities Act, 1922.

In the result the appeals fail and are dismissed with costs. One hearing fee.

R. K. P. S.

Appeals dismissed.