PRAKASH CHAND MAHESHWARI & ANR.

v.

ZILA PARISHAD, MUZAFFARNAGAR & ORS.

May 7, 1971

[S. M. SIKRI, C. J., G. K. MITTER, C. A. VAIDIALINGAM, A. N. RAY AND P. JAGANMOHAN REDDY, JJ.]

Professions Tax Limitation (Amendment and Validation) Act 1949—Retrospective validation of levy under U. P. District Boards Act, 1922 contravening limit of Rs. 50 laid down in Profession Tax Limitation Act XX of 1941—Validity—Procedure under r. 3 of Rules made under U.P. District Boards Act, 1922 whether unworkable under U.P. Kshetra Samithis and Zila Parishads Adhiniyam 33 of 1961—Time limit for assessment procedure under rr. 4 and 5 of Rules under 1922 Act whether mandatory—Rules whether not properly framed—Kar Adhikari appointed without consulting Public Service Commission as required by s. 43 of U.P. Kshetra Samithi and Zila Parishads Adhiniyam Act 1961—Mere sending of papers to Commission after making of appointment not sufficient compliance with s. 43—Appointment is temporary and good only for two years—Assessment made after two years invalid.

Tax on circumstances and property we levied in 1928 on persons residing in or carrying on business in the rural areas of District Muzaffarnagar under the provisions of the U.P. District Boards Act, 1922. In 1942, the Central Legislature passed the Professions Tax Limitation Act which laid down that no tax on circumstances and property levied by a local authority should exceed Rs. 50 except in cases where it was already being levied. The Act was passed in accordance with the provisions of s. 142-A of the Government of India Act, 1935. In 1948 s. 108 of the U.P. District Boards Act was amended to provide that a board may continue a tax already imposed on persons assessed according to their circumstances and property, and that the tax so imposed shall not be abolished or altered without the previous sanction of the State Government. In order to get over the decision of the High Court of Allahabad in *District Board of Farrukhabad* v. *Prag Dutt,* (I.L.R. 1949 All. 26) the Central Legislature passed the Professions Tax Limitation (Amendment and Validation) Act 61 of 1949. This Act retrospectively exempted the circumstances and property tax levied by local bodies in U.P. from the upper limit of Rs. 50 laid down by the 1941 Act. On August 22, 1958 the U.P. Antarim Zila Parishad Act 22 of 1958 was passed by the U.P. Legislature. The said Act was extended to December 31, 1962 by successive legislation. The U.P. Kshetra Samithis and Zila Parishads Adhiniyam 33 of 1961 repealed the United Provinces District Board Act 1922 in relation to a district as from the date on which the establishment of Kshetra Samithis under the new Act was completed and as from the date on which the U.P. Antarim Zila Parishad Act was to stand repealed in relation to that district. Kshetra Samithis and Zila Parishad were constituted in the District of Muzaffarnagar under the Act. The circumstances and property tax levied under the repealed Acts was continued under the new Act. The taxing officer called Kar Adhikari was to be appointed according to the procedure laid down in s. 43 of the new Act. The appellants who carried on 'khandsari' and 'gur' business in the rural area of Muzaffarnagar District were, for the year 1967-68, assessed to pay a sum of Rs. 2,000 as circumstances and property tax. They filed a writ petition under Art. 32 of the Constitution challenging the levy on

A the following grounds; (i) Central Act LXI of 1949 was beyond the legislative competence of the Federal Legislature because the power of the Federal Legislature having been once exercised to reduce the imposts over Rs. 50 per annum to that sum it was exhausted and could not be exercised a second time; (ii) Even assuming the said Act was within the competence of the legislature, as a result of the amendment of s. 108 of the U.P. Districts Boards Act in 1948 the board could only continue to levy the tax which was lawfully being imposed in 1948 on persons assessed according to their circumstances and properties in accordance with s. 114 and inasmuch as the tax had been reduced to Rs. 50 by the Central Act of 1941 the validation under the Professions Tax Limitation (Amendment and Validation) Act, 1949 would not serve to raise the limit of the tax to beyond Rs. 50 per annum, (iii) under r. 3 framed by the local self government of the U.P. under s. 172 of the Act of 1922 the tax was to be assessed by an assessing officer appointed by the District Board with the help of the members of the circle but since under the Zila Parishad Act there was no circle or members, the old rule had become unworkable; (iv) the prescribed time schedule mentioned in rr. 4 and 5 in the relevant notification not having been adhered to the assessment was illegal. (v) the rules of 1928 were not properly framed inasmuch as the procedure laid down in the relevant Chapter of the Act of 1922 was not followed strictly; (vi) the appointment of the Kar Adhikari was not made in accordance with the provisions of s. 43 of the U.P. Act XXXIII of 1961 and therefore the assessment made by him was illegal.

HELD: (i) The proviso to s. 142-A(2) of the Government of India Act, 1935 could not be read to give the legislature power to alter the quantum of assessment once for all. Clearly it gave power to the federal legislature to fix a rate of such tax in substitution for the one which was already prevailing on the 31st March, 1939 and it could do so not only once but from time to time. The use of the words 'unless for the time being' indicates that the legislature could at any point of time substitute a fresh rate of tax for the one prevailing. It follows that it was open to the federal legislature to make such substitution more than once. [771F-772B]

(ii) The amendment of s. 108 of the U.P. District Boards Act of 1922 in 1948 only allowed the continuance of the tax already imposed on persons assessed according to their circumstances and property. The argument that validation of the imposition of a tax by the Professions Tax Limitation (Validation and Amendment) Act, 1949 with retrospective effect was not possible could not be accepted. In the case of *M. P. Sundararamier & Co.* this Court clearly laid down that a law authorising imposition of tax could be both retrospective and prospective. It necessarily followed that if the Act of 1949 was valid the imposition was saved even after 1950 under the proviso to cl. (2) of Art. 276 of the Constitution. [772H-773F]

B. M. Lakhani v. *Malkapur Municipality*, A.I.R. 1970 S.C. 1002 distinguished.

M.P.V. Sundararamier & Co. v. *State of Andhra Pradesh*, [1958] S.C.R. 1422, relied on.

(iii) The argument that the rules framed under the District Boards Act became inconsistent with and unworkable under the U. P. Zila Parishads Act could not be accepted. The assessment was to be done by the assessing officer appointed by the District Board. Even if there was a circle but the members of the circle refused to co-operate with him, the assessment would not be invalid. The help which they could render would only

be limited to giving information about the assesses. It was quite competent for the assessing officer to proceed with the assessment even if the members refused to help him. The situation was not altered by reason of the fact that the circle and the members had disappeared. [773G-774A] A

(iv) Rules 4 and 5 which laid down certain dates by which the work was directed to be taken in hand and completed were merely directory and not mandatory. There was nothing in these rules to suggest that if the dates were not strictly observed any prejudice would be caused to the assessee. [774B-C] B

Judgment of Allahabad High Court dated January 8 1963 in Civil Misc. Writ Petition No. 3160 of 1962, *disapproved.*

(v) Even if there was any irregularity in the framing of the rules under the 1922 Act the same was cured by the publication of the notification under s. 120(3) of the Act of 1922. [774G] C

(vi) The appointment of Kar Adhikari (respondent no. 2 in this case) took place on 8th August 1965, the impugned assessment was made on 6th March 1968 i.e. more than two years after the date of appointment. Under s. 43 the appointment of this officer to the post which carried an initial salary of more than Rs. 200 p.m. could be made by the Parishad in consultation with the Public Service Commission or other Commission or selection Body as might be constituted by the State Government and if there was a difference of opinion between the Commission and the Parishad the matter was to be referred to the State Government whose decision was to be final. In the present case the State Public Service Commission had been notified of the appointment and they had not expressed any disapproval of the same. Appointing respondent no. 2 as Kar Adhikari and merely sending the papers relating to such appointment to the Public Service Commission would not be compliance with s. 43 of the Act. Even if it be regarded as a temporary appointment, it could only be effective for two years, and as the assessments in the present case was made beyond that date it must be held that the assessment was made by a person not competent to make it. [774H-775H] D E

Chandramouleshwar Prasad v. *Patna High Court*, [1970] 2 S.C.R. 666, applied.

The position was not improved by the inclusion of the name of respondent no. 2 in List 'C' under paragraph 9(4) of the U.P. Zila Parishad Central Transferable Cadre Rules, 1966 which came into force with effect from December 20, 1966. In terms of s. 47 of U.P. Act of 1961 the appointment ceased to be valid after two years, the period having expired long before the hearing of this matter. The order of assessment of Rs. 2,000 on the petitioners dated 25th March 1968 must therefore be quashed. [776E-H] F G

ORIGINAL JURISDICTION : Writ Petition No. 435 of 1968.

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

E. C. Agarwala, for the petitioners.

C. B. Agarwala, Uma Mehta, S. K. Bagga and *S. Bagga*, for respondents Nos. 1 and 2. H

O. P. Rana, for respondent No. 3.

A The Judgment of the Court was delivered by

Mitter, J.—By this petition the petitioners challenge the validity of (1) the Professions Tax Limitation (Amendment and Validation) Act, 1949, (2) s. 131 of the U. P. Zila Parishad Act, (3) an order of assessment of Rs. 2,000/- dated 25th March, 1968 made by the Kar Adhikari, Zila Parishad Muzaffarnagar and B pray for incidental reliefs.

The petitioners carry on the business of manufacture and sale of "khandsari" and "gur" in the District of Muzaffarnagar, U. P. They own a crusher in village Morna in the said district where the manufacture of khandsari as sugar is carried on. They C challenge the imposition of "Circumstances and Property" tax of Rs. 2,000/- imposed on their business under the order of assessment passed by respondent No. 2, Kar Adhikari, Zila Parishad Muzaffarnagar for the year 1967-68. As they did not produce their accounts for their business in khandsari the Kar Adhikari, an officer appointed by the Zila Parishad of Muzaffar- D nagar assessed them to Rs. 2,000/- as "Circumstances and Property" tax on the estimated income of Rs. 96,000/- from their property and business for the year.

To appreciate how the Zila Parishad (a district authority) E came to have the power to levy the tax, it is necessary to take an account of some past legislation. The Local body to administer the district of Muzaffarnagar in U. P. until the year 1958 was the District Board of Muzaffarnagar constituted under the U. P. District Boards Act, 1922 (U. P. Act X of 1922). Chapter VI of the Act containing sections 108 to 132 gave the Board certain powers of taxation, local rates etc. and prescribed the procedure for F imposition and recovery of the levy. Under s. 114 the Board had the power to impose a tax on "circumstances and property" subject to certain conditions, *inter alia,* that the tax could be imposed only on persons residing or carrying on business in the rural area with an income above a certain minimum limit. The rate of tax was not to exceed Rs. 0—0—4 in the rupee on the G total income and the total amount of tax was not to exceed the maximum which might be prescribed by rule. By s. 115 a Board deciding to impose a tax had to frame proposals by special resolution, specifying the particular tax out of those prescribed in s. 108 which it desired to impose, the persons or classes of persons to be made liable and the description of the property or other H taxable thing or circumstance in respect of which they were to be made liable, the amount of rate leviable from such persons or classes of persons and any other matter which the State Government required by rule to be specified. S. 116 enabled any person

ordinarily residing or carrying on business in the district to raise objections to the proposal which had to be considered by the Board. Under s. 117 the Board had to submit the finally settled proposals to the State Government which could either sanction the same or return them to the Board for further consideration. When the State Government had sanctioned the proposals of the Board, it had to frame rules under s. 172 in respect of the tax as for the time being it considered necessary after taking into consideration the draft rules submitted by the Board. Following on the above, the Board was required to direct the imposition of the tax with effect from a date to be specified by special resolution. Under s. 120(1) a copy of the resolution passed by the Board was to be submitted by it to the State Government. Government was required to notify in the official gazette the imposition of the tax from the appointed day upon receipt of the copy of the board's resolution and the imposition of a tax was in all cases to be subject to the condition that it had been so notified. Under sub-s. (3) of s. 120 a notification of the imposition of a tax under sub-s. (2) was to be conclusive proof that the tax had been imposed in accordance with the provisions of the Act. Matters mentioned in clauses (a) to (f) including *inter alia* the assessment and collection of taxes was under s. 123 to be governed by rules except in so far as the provision therefor was made by the Act. S. 172 empowered the State Government to make rules consistant with the Act in respect *inter alia* of matters mentioned in s. 123.

On the 1st of March 1928, the U. P. Local Self Government issued a notification prescribing rules for the assessment and collection of a tax on circumstances and property in the rural area of the Muzaffarnagar District under s. 172 of the Act after the previous publication thereof as required by s. 176. Rule 3 provided that "the tax shall be assessed by an assessing officer appointed by the District Board with the help of the members of the circle concerned". Rules 4 and 5 laid down a time schedule for the work of the assessing officer and the submission of the list of persons within the district who appeared to be liable to pay the tax to the board. He was first required to prepare a list on or before 15th December of each year of all persons who appeared to him to be so liable. He was then to consider the circumstances and property of every person entered in the list and to determine the amount of the tax to which such person should be assessed. The name of every person assessed and the amount of tax to which he was assessed was to be entered in an assessment list in the form attached to the rules and was to be completed on or before the 20th of January next. After the preparation of the list and the submission thereof to the Board the latter could take action to revise the list by a resolution and

A the Board was to return the list to the assessing officer by the 15th February.

In terms of the U. P. District Boards Act, 1922 rules were framed on the 1st March 1928 and the State Government issued a notification on the 20th April, 1928 under s. 120(2) of the Act B to the effect that the District Board Muzaffarnagar had in exercise of powers conferred by s. 108(2) imposed with effect from May 15, 1928 a tax on all persons ordinarily residing or carrying on business in the rural area of Muzaffarnagar District according to their circumstances and property at the rate of Rs. 0-0-3 in the rupee on incomes of Rs. 300/- but not exceeding Rs.1200 C per annum and Rs. 0-0-4 in the rupee on incomes of over Rs. 1200/- per year provided that in the case of persons residing in notified and town areas and paying tax on circumstances and property to their respective committees, the rate of tax was to be Rs. 0-0-2 on the income of Rs. 300 but not exceeding Rs. 1200 and Rs. 0-0-3 on the income of over Rs. 1200/- per annum.

D In 1935 the Government of India Act of that year was enacted whereby the Legislative Lists were defined in the Seventh Schedule to the Act in terms of ss. 99 to 107 in Chapter I of Part V. Certain restrictions on legislative powers were also defined in Chapter II of the said Part containing ss. 108 to 110. Item 46 of the Provincial Legislative List was amended in 1940 E to read : .

> "Taxes on professions, trades, callings and employments, subject, however, to the provisions of section 142-A of this Act."

F The said section which also came into force under the same Amending Act ran as follows :—

> "142-A. (1) Notwithstanding anything in section one hundred of this Act, no Provincial law relating to taxes for the benefit of a Province or of a municipality, G district board, local board or other local authority therein in respect of professions, trades, callings or employments shall be invalid on the ground that it relates to a tax on income.
>
> (2) The total amount payable in respect of any person to that Province or to any one municipality, district H board, local board, or other local authority in the Province by way of taxes on professions, trades, callings and employments shall not, after the thirtyfirst day of

March nineteen hundred and thirty-nine, exceed fifty rupees per annum : A

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

(3) The fact that the Provincial Legislature has power to make laws as aforesaid with respect to taxes on professions, trades, callings and employments, the generality of the entry in the Federal Legislative List relating to taxes on income." E

In exercise of the powers conferred by the above section the Central Legislature passed the Professions Tax Limitation Act, 1941 (Act XX of 1941) on 26th November 1941. The preamble to the Act shows that its object was to limit the total amount payable in respect of any person in respect of his profession, trade or calling etc. by way of tax to fifty rupees per annum notwithstanding the provision to the contrary in s. 142-A of the Government of India Act, 1935. The Act which contained only three sections and a Schedule provided by section 2 that the amount of tax payable in respect of any one person to a Province, municipality, district board etc. was to cease to be levied to the extent to which such taxes exceeded Rs. 50 per annum. The section ran as follows : F G

"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 to which such taxes exceed fifty rupees per annum." H

A S.3 was a saving provision whereby the provisions of s. 2 were not to apply to the taxes specified in the Schedule. All the five items in the Schedule related to taxes on professions, trades or callings by certain municipalities.

S. 108 of the U. P. District Boards Act, 1922 was amended B in 1948 to read :

"A board—

(a) shall, by notification in the official Gazette, impose a local rate under section 3 of the United Provinces Local Rates Act, 1914, as modified by this Act; and

C (b) may continue a tax already imposed on persons assessed according to their circumstances and property.....in accordance with section 114 :

Provided that the tax on circumstances and property so imposed shall not be abolished or altered without the previous sanction of the State Government." D

It will be noticed that after the Professions Tax Limitation Act of 1941 the District boards in U. P. were not allowed to collect a tax on circumstances and property of any person in excess of Rs. 50. The situation was however altered in 1949 when the Professions Tax Limitation (Amendment and Validation) Act, 1949 was passed with the assent of the Governor-General on 26th December 1949 (Act LXI of 1949). This was really to get over the decision of the Allahabad High Court in *District Board of Farrukhabad* v. *Prag Dutt* (1). The Act was passed to amend the Professions Tax Limitation Act, 1941 and to validate the imposition in the United Provinces of certain taxes F on circumstances and property. Section 2 of the Act purported, to add items 3-A and 3-B in the Schedule to the Professions Tax Limitation Act, 1941 with retrospective effect. Items 3-A and 3-B read as follows :—

"3-A. The tax on inhabitants assessed according to their circumstances and property, imposed under G clause (ix) of sub-section (1) of section 128 of the United Provinces Municipalities Act, 1916 (U. P. Act II of 1916).

3-B. The tax on persons assessed according to their circumstances and property, imposed under clause (b) of section 108 of the United Provinces District Boards H Act, 1922 (U. P. Act X of 1922)."

(1) I. L. R. [1949] Allahabad 26.

The usual clauses for validation with retrospective effect were contained in s. 3 of the Act. A

Taxes on professions, trades, callings and employments again came to be dealt with by Art. 276 of the Constitution in 1950. Clause (1) of the article laid down that

> "Notwithstanding anything in article 246, no law of the Legislature of a State relating to taxes for the benefit of the state or of a municipality, district board, local board or other local authority therein in respect of professions, trades, callings or employments shall be invalid on the ground that it relates to a tax on income." B

C

Cl.(2) was aimed at limiting the maximum amount in respect of such taxes subject to certain qualifications. It ran as follows :—

> "The total amount payable in respect of any one person to the State or to any one municipality, district board, local board or other local authority in the State by way of taxes on professions, trades, callings and employments shall not exceed two hundred and fifty rupees per annum : D
>
> Provided that if in the financial year immediately preceding the commencement of this Constitution there was in force in the case of any State or any such municipality, board or authority a tax on professions, trades, callings or employments the rate, or the maximum rate, of which exceeded two hundred and fifty rupees per annum, such tax may continue to be levied until provision to the contrary is made by Parliament by law, and any law so made by Parliament may be made either generally or in relation to any specified States, municipalities, boards or authorities." E F

On August 22, 1968 the U. P. Antarim Zila Parishad Act (XXII of 1958) was passed by the U. P. Legislature. Under section 1(3) of the Act it was to come into force on 29th day of April 1959 and to expire on 31st December 1959. The said Act was purported to be extended to 31st December 1962 by successive legislation. Under s. 3 (1) of the Act of 1958 all district boards in U. P.....and all committees of such boards constituted under the District Boards Act of 1922 were to cease to function and all members and the President of each board and all members of each committee were to vacate and be deemed to have vacated their respective offices. G H

The U. P. Kshettra Samithis and Zila Parishads Adhiniyam, 1961 repealed the United Provinces District Boards Act 1922

A in relation to a district as from the date on which the establishment of Kshettra Samithis under the new Act (XXXIII of 1961) was completed and as from the date on which the U. P. Antarim Zila Parishad Act was to stand repealed in relation to that district. The Kshettra Samitis and Zila Parishad were constituted in the District of Muzffarnagar under the Act. This Act was a comp-
B rehensive Act which prescribed *inter alia* for dividing all the rural areas of each district into khands, the establishment of Kshettra Samithis for each khand, their composition and establishment and incorporation of Zila Parishads. Each Zila Parishad was to be a body corporate having perpetual succession and a common seal with power to acquire, hold and dispose of property and to
C discharge its functions under the Act. The powers and functions of Kshettra Samitis and Zila Parishads were specified in Chapter III of the Act. Chapter IV of the Act containing ss. 39 to 55 laid down provisions for the appointment of officers and servants of the Zila Parishads. Under s. 43(1) appointments to the posts of Karya Adhikari, Abhiyanta and Kar Adhikari and the posts created under sub-section (2) of s. 39 carrying an initial salary
D of Rs. 200 or more per month were to be made by the Parishad in consultation with the State Public Service Commission or such other Commission or Selection Board as might be constituted by the State Government in this behalf in the manner prescribed provided that if there was a difference of opinion between the Commission and the Parishad the matter was to be referred to the
E State Government whose decision was to be final. Under s. 47

> "Notwithstanding anything contained in s. 43..... officiating and temporary appointments to posts mentioned in sub-section (1) of section 43, may be made by the appointing authority specified in section 43 or in the
F rules made under section 44, without consulting the Commission, but no such appointment shall, except as provided in sub-section (2), continue beyond a period of one year save after consultation with the Commission."

Under sub-s.(2) the appointments made under sub-s.(1) might in
G special circumstances and where the appointing authority was the Parishad, with the approval of the State Government be continued without consulting the Commission for a period not exceeding two years. Chapter VII of the Act of 1961 contains provisions for taxation and levy of fees and tolls in ss. 119 to 146. S. 120 sanctioned the continuance of imposition of circum-
H stances and property tax which was imposed or continued under the U. P. District Boards Act 1922 until abolished or altered and all rules, regulations and bye-laws, orders, notifications were continue in force as if enacted under the Act of 1961. S. 131(1)

enabled the Zila Parishad to exempt for a period not exceeding one year, from the payment of a tax or any portion of a tax imposed under the Act, any person who was in its opinion, by reason of poverty unable to pay the same and renew the exemption as often as it deemed necessary. Sub-ss. (2) and (3) allow other such exemptions either by the Zila Parishad or the State Government.

The main plank of the argument on behalf of the petitioners was that the Central Act LXI of 1949 was beyond the legislative competence of the Federal Legislature, but even assuming the said Act was within the competence of the legislature as a result of the amendment of s. 108 of the U. P. District Boards Act in 1948 the board could only continue to levy the tax which was lawfully being imposed in 1948 on persons assessed according to their circumstances and properties in accordance with s. 114 and inasmuch as the tax had been reduced to Rs. 50 by the Central Act of 1941 the validation under the Professions Tax Limitation (Amendment and Validation) Act, 1949 would not serve to raise the limit of tax to beyond Rs. 50 per annum. In our view, none of these contentions have any force.

On the first branch of his submission, counsel relied on a passage in Craies on Statute Law (sixth edition, page 283) reading:

> "If a power is given to the Crown by statute for the purpose of enabling something to be done which is beyond the scope of the royal prerogative, it is said to be an important constitutional principle that such a power, having been once exercised, is exhausted and cannot be exercised again."

It was said that the effect of sub-s. (2) read with the proviso to s. 142-A of the Government of India Act was that although a tax in respect of professions, trades and callings might have been leviable after the 31st March 1939 if it was being levied before, the power of the Federal Legislature having been once exercised to reduce the imposts over Rs. 50/- per annum to that sum, it was exhausted and could not be exercised a second time. The argument is patently fallacious. Here there is no question of any prerogative and the proviso cannot be read to give the legislature power to alter the quantum of assessment once for all. Clearly it gave power to the Federal Legislature to fix a rate of such tax in substitution for the one which was already prevailing on the 31st March 1939 and it could do so not only once but from time to time as is apparent from the use of the expression:

> "unless for the time being provision to the contrary is made by a law of the Federal Legislature."

A The words "unless for the time being" indicate that the Legislature could at any point of time substitute a fresh rate of tax for the one prevailing. It follows that it was open to the Federal Legislature to make such substitution more than once. Having reduced the rate of Rs. 50 by the Professional Tax Limitation Act the Legislature took power again to substitute the old rate B to tax for the sum of Rs. 50. This substitution became effective as from the date of the Professions Tax Limitation Act, 1941 by the insertion of items 3-A and 3-B to the Schedule to the said Act. S. 3 of the Act of 1949 validated imposts for the period intervening between 1941 and 1949.

C Counsel sought to rely on a decision of this Court in *B. M. Lakhani* v. *Malkapur Municipality* (1) in aid of his contention that a fresh Act had to be re-enacted after 1949. In that case the appellants had filed a suit to restrain the municipality from recovery of "Bale and Bhoja" tax for the season 1953-54 and for the subsequent seasons and for a decree for refund of the amount paid contending that the tax was *ultra vires* the municipality. D One of the points there canvassed was, whether the levy of the tax by the municipality was valid in law. The municipality was constituted in 1905 under s. 41(1) cls.(a) and (b) of The Berar Municipal Act, 1886. It purported to levy, with effect from October 1, 1912, a tax known as the Bale and Boja tax on cotton ginned and pressed in Ginning and Pressing factories at E certain rates. On the 2nd October 1939 the municipality resolved to revise the rates and by notification dated January 2, 1940 under s. 67(5) of the C. P. and Berar Municipalities Act, 1922 tax was permitted to be levied at the rate of four annas per bale with effect from October 1, 1939. The Court observed that the notification of 1940 was not saved by the proviso to s. 142-A but the municipality collected tax at the rates set out F in the said notification. Accordingly the Court held that if the notification of 1940 was ineffective under the Government of India Act, 1935 it could not be revived under the Constitution by virtue of Art. 276(2) proviso.

Clearly, that case is distinguishable from the facts of the G case before us. In this case the impost remained the same between the passing of the Government of India Act, 1935 and the commencement of the Constitution. The amendment of s. 108 of the U. P. District Boards Act of 1922 in 1948 only allowed the continuance of the tax already imposed on persons assessed according to their circumstances and property. We cannot accept H the argument that validation of the imposition of a tax by the Professions Tax Limitation (Validation and Amendment) Act

(1) A. I. R. 1970 S. C. 1002.

1949 with retrospective effect was not possible. An argument similar to that raised by the counsel for the petitioners was raised and negatived in *M. P. V. Sundararamier & Co.* v. *The State of Andhra Pradesh* (1). There it was contended on behalf of the assessees that s. 2 of the Sales Tax Laws Validation Act, 1956 which provided that no law of a State imposing or authorising the imposition of tax on inter-State sales during the period between April 1, 1951 and September 6, 1955 shall be deemed to be invalid or ever to have been invalid merely by reason of the fact that sales took place in the course of inter-State trade, did not authorise the initiation of fresh proceedings for the imposition but only validated levies already made. Rejecting this contention it was observed (see p. 1460) :

> "What is material to observe is that the power conferred on Parliament under Art. 286(2) is a legislative power, and such a power conferred on a Sovereign Legislature carries with it authority to enact a law either prospectively or restrospectively, unless there can be found in the Constitution itself a limitation on that power."

and at p. 1461 :

> "While a law prohibiting transfers (the subject matter of the appeal before the Privy Council in *Punjab Province* v. *Daulat Singh*—73 I. A. 59) must be prospective, a law authorising imposition of tax need not be. It can be both prospective and retrospective."

It necessarily follows that if the Act of 1949 was valid the imposition was saved even after 1950 under the proviso to cl. (2) of Art. 276 of the Constitution.

It was next argued that the rules framed under the District Boards Act became inconsistent with and unworkable under the U.P. Zila Parishads Act. It was said that under rule 3 framed by the Local Self Government of the U. P. under s. 172 of the Act of 1922 the tax was to be assessed by an assessing officer appointed by the District Board with the help of the members of the circle. As under the Zila Parishad Act there were no circle or members, the old rule was said to have become unworkable. In our view this argument has no force. The assessment was to be done by the assessing officer appointed by the District Board. Even if there was a circle but the members of the circle refused to cooperate with him, the assessment would not be invalid. After all the help which they could render would only be limited to

(1) [1958] S. C. R. 1422.

A giving information about the assessees. It was quite competent for the assessing officer to proceed with the assessment even if the members refused to help him. The situation was not altered by reason of the fact that the circle and the members had disappeared.

The next argument of counsel that the time schedule mentioned in rules 4 and 5 in the notification of January 28 not B having been adhered to, the assessment was illegal, must be rejected on the face of it. These rules laying down certain dates by which the work was directed to be taken in hand and completed were merely directory and not mandatory. There was nothing in these rules to suggest that if the dates were not strictly observed any prejudice would be caused to the assessee. C We find ourselves unable to accept the observations to the contrary in a judgment of the Allahabad High Court dated 8th January 1963 rendered in Civil Miscellaneous Writ Petition No. 3160 of 1962 to which reference was made in this connection.

In paragraph 21 of the petition, a complaint is made that the Zila Parishad had changed the rate of tax to 3 paise per rupee D which is equivalent to 6 pies (old) per rupee being the rate which was in force under the District Boards Act and the minimum amount on income for levy of tax had also been raised under the Zila Parishad Act to Rs. 600 from Rs. 300 under the District Boards Act. It is pointed out in the counter affidavit of respondent No. 2 that the above statement is not correct and that the rate E of 3 paise per rupee provided under s. 121 of the Zila Parishad Act was not applicable by virtue of s. 120 of the Act. The respondent further pointed out that the maximum amount on which the tax was leviable had been raised from Rs. 300 to Rs. 600 before the commencement of the Zila Parishad Act the change working in favour of the assessee. We are therefore not satisfied about the genuineness of the petitioners' complaint.

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A faint attempt was made to argue that the rules of 1928 were not properly framed inasmuch as the procedure laid down in the relevant chapter of the Act of 1922 was not followed strictly and the rules were not sent to Government for approval. In our view, even if there was any such irregularity in the framing of the rules, the same were cured by the publication of the noti- G fication under s. 120(3) of the Act of 1922.

The last point raised by the petitioners relates to the appointment of the Kar Adhikari on the ground that it was not done in consultation with either the Public Service Commission of the State or any other Commission or body appointed in that behalf by the State Government under s. 43 of the U. P. Kshettra Samithis and Zila Parishads Adhiniyam, 1961 i.e. U. P. Act XXXIII of 1961. The appointment of respondent No. 2 in this case took place on 8th August 1965; the impugned assessment

was made on 6th March 1968 i.e. more than two years after the date of appointment. Under s. 43 the appointment of this officer to the post which carried an initial salary of more than Rs. 200 p.m. could be made by the Parishad in consultation with the Public Service Commission or other Commission or Selection Body as might be constituted by the State Government and if there was a difference of opinion between the Commission and the Parishad the matter was to be referred to the State Government whose decision was to be final. Counsel for the respondents on the materials before this Court was only in a position to inform us that the State Public Service Commission had been notified of the appointment and they had not expressed any disapproval of the same. We do not think that this was sufficient compliance with s. 43. In *Chandramouleshwar Prasad* v. *Patna High Court* (1) this Court had to consider the question of "appointment of persons to be and the posting and promotion of District Judges" in the State of Bihar which under Art. 233(1) of the Constitution were to be made by the Governor of the State in consultation with the High Court. It appeared that there was some difference of opinion between the High Court and the Government of Bihar with regard to certain appointments and promotions of District Judges in the State of Bihar and the Government issued a notification on 17th October 1968 appointing the petitioner as temporary District and Sessions Judge Singhbhum until the appointment of a permanent officer in the vacancy caused by the retirement of an incumbent to that office. This Court found that before issuing the said notification the Government never attempted to ascertain the views of the High Court with regard to the petitioner's claim or gave the High Court any indication of its views with regard thereto. It was observed that (p. 674) :

> "The Governor cannot discharge his functions under Art. 233 if he makes an appointment of a person without ascertaining the High Court's views in regard thereto.....Consultation or deliberation is not complete or effective before the parties thereto make their respective points of view known to the other or others and discuss and examine the relative merits of their views."

Appointing respondent No. 2 as Kar Adhikari and merely sending the papers relating to such appointment to the Public Service Commission would not therefore be in compliance with s. 43 of the Act. Even if it be regarded as a temporary appointment, it could only be effective for two years and as the assessment in this case was made beyond that date it must be held that the assessment was by a person not competent to make it.

(1) [1970] 2 S. C. R. 666.

A After the conclusion of the arguments of both parties, the respondents had an affidavit affirmed by one K. D. Banerjee, an Assistant in Panchayat Raj II Department, Government of U. P. to the effect that the State Government had created a Central transferable cadre of the class of officers, acting under s. 44 of Act XXXIII of 1961 and that the Government had also B framed rules known as U. P. Zila Parishad Central Transferable Cadre Rules, 1966 which came into force with effect from December 20, 1966. According to paragraph 8 of the rules, appointments for the first time to the cadre were to be made from amongst the officers who on the 26th April 1966 were holding the posts, *inter alia*, Kar Adhikari. Further, according to paragraph C 9(4) of the rules, a list known as List 'C' was to be prepared containing the names of officers who as on 26th April 1966 are holding the posts of Secretary or Kar Adhikari etc. in a temporary or officiating capacity and the list was to be arranged in order of seniority. According to the affidavit the respondent No. 2 having been appointed in a temporary officiating capacity continued to be on that post under sub-r. (4) of rule 9 and his name D was included in list 'C' and was being considered by the Government for permanent appointment in consultation with the State Public Service Commission.

In our view the matters relied on in the affidavit do not alter the situation or improve the position of respondent No. 2 E in any way. The *non-obstante* clause in s. 44 of Act XXXIII of 1961 only relates to sections 41, 42 and 43 and not to s. 47 which deals with officiating and temporary appointments to certain posts. It would therefore appear that by the inclusion of the name of respondent No. 2 in list 'C' he still continued to be in his officiating and temporary capacity. In terms of s. 47 there- F fore the appointment ceased to be valid after two years, the period having expired long before the hearing of this matter.

No argument was advanced to us on the question of the validity of s. 131 of the U. P. Zila Parishad Act and we do not express any opinion thereon.

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Although the major points raised by the petitioners are of no substance, we find ourselves unable to uphold the validity of the levy as it has not been shown to us that Kar Adhikari's appointment was valid in law. The order of assessment of Rs. 2,000/- on the petitioners dated 25th March, 1968 will therefore be quashed. In view of the divided success in the writ petition, we make no H order as to costs.

Assessment order quashed.

G. C.