

A

JOTHI TIMBER MART & OTHERS

v.

CORPORATION OF CALICUT & ANOTHER

July 18, 1969

B

[J. C. SHAH, S. M. SIKRI AND V. RAMASWAMI, JJ.]

Calicut City Municipal Act 30 of 1961, Section 126—If State Legislature competent to enact under entry 52 List II, 7th schedule to the Constitution.

C

Section 126 of the Calicut City Municipal Act 30 of 1961 provided for the levy of a timber tax on timber brought into the city. The proviso to the section exempted from the levy any timber brought into the city in the course of transit to any place outside the city and directly removed out of the city by rail, road or water. On a petition filed by the appellants, a single bench of the Kerala High Court held that the legislature was incompetent to enact section 126. But this decision was reversed in appeal by a division bench.

D

It was contended in the appeal to this Court the High Court had wrongly considered that entry of timber into the Municipal area could only be for consumption, use, or sale within the Municipality or in the course of transit through the limits of the Municipality; such entry could be for storage or other purposes and a provision levying tax on goods entering the area of the Municipality without specification of the purpose was beyond the legislative powers of the State under entry 52, List II of the 7th schedule to the Constitution.

HELD : Dismissing the appeal,

E

If the State Legislature was competent under Entry 52 List II to levy a tax only on the entry of goods for consumption, use or sale into a local area, the Municipality could not under legislation enacted in exercise of the power conferred by that Entry have power to levy tax in respect of goods brought into the local area for purposes other than consumption, use or sale. The authority of the State Legislature itself being subject to a restriction in that behalf, s. 126 may reasonably be read as subject to the same limitations. When the power of the Legislature with limited authority is exercised in respect of a subject-matter, but words of wide and general import are used, it may reasonably be presumed that the Legislature was using the words in regard to that activity in respect of which it is competent to legislate and no other; and that the Legislature did not intend to transgress the limits imposed by the Constitution. [632 B—E]

F

G

In re Hindu Women's Rights to Property Act, 1937, [1941] F.C.R. 12; referred to.

The expression "brought into the city" in s. 126 was rightly interpreted by the High Court as meaning brought into the municipal limits for purposes of consumption, use or sale and not for any other purpose. [632 E-F]

H

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1079 to 1086 and 1088 to 1099 of 1966.

Appeals from the judgment and orders dated August 31, 1965 of the Kerala High Court in Writ Appeals Nos. 134 of 1964 etc.

H. R. Gokhale, B. Datta, J. B. Dadachanji and O. C. Mathur, for the appellants (in all the appeals). A

C. K. Daphtary, A. S. Nambiar and Lily Thomas, for respondent No. 1 (in all the appeals).

D. P. Singh and M. R. K. Pillai, for respondent No. 2 (in all the appeals). B

The Judgment of the Court was delivered by

Shah, J. In a group of petitions presented before the High Court of Kerala the appellants challenged the validity of the levy of "timber-tax" by the Corporation of Calicut on the grounds, *inter alia*, that the State Legislature is incompetent to impose that tax under the Kerala Act 30 of 1961. Govindan Nair, J., declared that the Legislature was incompetent to enact s. 126 of the Calicut City Municipal Act, 1961 (30 of 1961). The decision of Govindan Nair, J., was reversed in appeal by a Division Bench of the High Court and the petitions were dismissed. C

By virtue of Art. 246 read with Sch. VII, Item 52, List II of the Constitution, the State may legislate in the matter of "tax on the entry of goods into a local area for consumption, use or sale therein." The appellants contend that s. 126 conferring authority to impose timber tax violates the restrictions upon the legislative power imposed by the Constitution and on that account is void. D

Section 98 of the Act enumerates the taxes and duties which the Municipality may levy and one of the taxes described in cl. (e) is "tax on timber brought into the city". Section 126 declares a charge of tax on timber brought into the city : it provides, (insofar as it is material) : E

- "(1) If the Council by a resolution determine that a tax shall be levied on timber brought into the city, such tax shall be levied at such rates, not exceeding five rupees per ton, and in such manner as may be determined by the Council; F

Provided that no tax shall be levied on any timber brought into the city in the course of transit to any place outside the city and directly removed out of the city by rail, road or water. G

- (2) No timber shall, except in the case referred to in the proviso to sub-section (1) be brought into the city unless the tax due thereon has been paid. H

- (3) The tax shall be levied on timber kept within the city for sale if the Commissioner has reason to

- A believe that the tax, if any, due thereon has not been paid :

B Power to make bye-laws for sale and seizure of timber in respect of which tax is not paid and for carrying out the provisions relating to the levy of tax is conferred by s. 126(6) and s. 369(1) of the Act. The Corporation of Calicut has framed bye-laws relating to the levy and collection of timber tax. It is provided by cl. 3 that the tax on timber shall be paid immediately on timber being brought into the city. Bye-law 7 provides :

C “(1) If timber is brought into the city and it is claimed that it is in the course of transit to a place outside the city and not for consumption, use or sale within the city and if in the opinion of the authority or officer authorised to collect the tax on timber, such timber brought into the city is not for the purpose of transit but for the purpose of consumption, use or sale therein, such authority or officer may demand from the person claiming exemption an amount equal to the tax leviable for such timber as security.

D (2) If the person, who has paid the security satisfies the Commissioner within 14 days from the date of payment that the timber in respect of which the amount was paid was brought into the city in the course of transit and not for consumption, use or sale therein

E the Commissioner shall refund the amount to such person. Otherwise the same shall be appropriated towards tax due on such timber.

(3)

(4)

F The High Court held that timber may be imported within the limits of the Corporation for four purposes—(1) for consumption in the city; (2) for use in the city; (3) for sale in the city; and (4) for transit through the city, and since all the four purposes were within the enacting part of the section and the proviso to s. 126(1) having eliminated the right of the Municipality to levy

G tax for transit through the city, “the taxing power conferred by entry 52, List II of the Seventh Schedule was ensured and its constitutional strength and validity upheld” thereby.

H Counsel for the appellants contends that the High Court was in error in holding that entry of timber into the Municipal area may be only for consumption, use, or sale within the Municipality or in the course of transit through the limits of the municipality. He says that the entry may for instance be merely for storage of the goods within the limits of the municipality and a provision levying tax on goods entering the limits of the municipality with-

L14 Sup. CI/69—11

out specification of the purpose is beyond the legislative power of the State.

Entry of goods within the local area for consumption, use or sale therein is made taxable by the State Legislature : authority to impose a general levy of tax on entry of goods into a local area is not conferred on the State Legislature by item 52 of List II of Sch. VII of the Constitution. The Municipality derives its power to tax from the State Legislature and can obviously not have authority more extensive than the authority of the State Legislature. If the State Legislature is competent to levy a tax only on the entry of goods for consumption, use or sale into a local area, the Municipality cannot under a legislation enacted in exercise of the power conferred by item 52, List II have power to levy tax in respect of goods brought into the local area for purposes other than consumption, use or sale. The authority of the State Legislature itself being subject to a restriction in that behalf, s. 126 may reasonably be read as subject to the same limitations. When the power of the Legislature with limited authority is exercised in respect of a subject-matter, but words of wide and general import are used, it may reasonably be presumed that the Legislature was using the words in regard to that activity in respect of which it is competent to legislate and to no other; and that the Legislature did not intend to transgress the limits imposed by the Constitution : see *In re Hindu Women's Rights to Property Act*, 1937⁽¹⁾. To interpret the expression "brought into the city" used in s. 126(1) as meaning brought into the city for any purpose and without any limitations would, in our judgment, amount to attributing to the Legislature an intention to ignore the constitutional limitations. The expression "brought into the city" in s. 126 was therefore rightly interpreted by the High Court as meaning brought into the municipal limits for purposes of consumption, use or sale and not for any other purpose.

While we agree with the ultimate conclusion of the High Court we may observe that we do not agree with the assumption made by the High Court that the entry of goods into the city may be only for the four purposes mentioned by the High Court; nor do we hold that the proviso exempts from taxation timber brought into the city in the course of transit even when it is not directly removed out of the city by rail, road or water. The proviso, in our judgment, has a limited operation. It merely provides that the municipality shall not be entitled to levy a tax on timber brought into the city in the course of transit to any place outside the city and directly removed out of the city by rail, road or water. But on that account we are unable to hold that the proviso is enacted with the object of bring-

(1) [1941] F.C.R. 12.

- A** ing to tax all entry of timber which is not brought into the city in the course of transit to any place outside the city and directly removed out of the city by rail, road or water.

The appeals fail and are dismissed. There will be no order as to costs in these appeals.

- B** R.K.P.S.

Appeals dismissed.