

v
DAULAT RAM KAPUR

[SIR MAURICE GWYER, C. J., SIR SRINIVASA VARADACHARIAR
and SIR MUHAMMAD ZAFRULLA KHAN, JJ.]

Punjab Municipal Act, 1911, s. 36 (2)—Attempt by Municipality to levy octroi duty on salt—Power of the Provincial Legislature to impose tax or duty on salt—Government of India, Act, 1935, Schedule VII, entries Nos. 44, 45 and 47 of List I and entry No. 49 of List II—Effect of s. 100 (1) of the Government of India Act.

Whether the power of the Central Legislature to impose duties or taxes on salt be derived from entry No. 47 of List I of the Seventh Schedule to the Constitution Act or from entries Nos. 44 and 45, the effect of the combined operation of entry No. 47 of List I and of section 100(1) of the Constitution Act is to deny to the Provincial Legislature the power to make laws with respect to salt.

Section 61(2) of the Punjab Municipal Act, 1911, does not empower a Municipality in the Punjab to levy an octroi duty on salt, since it only authorizes the Municipality to impose any tax which a Provincial Legislature has power to impose in the Province under the Constitution Act.

APPEAL from the High Court at Lahore.

The material facts are stated in the opening paragraph of the Judgment.

Rai Bahadur Harish Chandra (Radhe Mohan Lal with him) for the respondent.—There is a preliminary objection to the form of the appeal. A party to the proceedings in the Court below can alone appeal to the Federal Court and that party being the Municipal Committee, Lahore, it is not open to the Administrator in his own name now to prefer the appeal. While it is admitted that the Municipal Committee, Lahore, had been suspended by the Local Government, the Committee having been constituted, under s. 18 of the Punjab Municipal Act, as a body corporate with perpetual succession, the supersession of the Committee did not terminate the corporation as such and consequently all proceedings should be taken in the name of the corporation only. He referred to *Sadhu Mal-Khazana Mal v. Devi Chand* (1), and relevant sections of the Punjab Municipal Act, particularly s. 238. When another Committee was constituted in place of the superseded Committee it would mean the revival of the old corporation only and not the creation of a new one. Consequently the appeal should have been lodged by the Municipal Committee of Lahore and in the name of the Municipal Committee alone.

[The Court over-ruled the objection and stated that they would give their reasons later.]

M. Sleem, A.-G. of the Punjab (Kanwal Kishore Raizada with him) for the appellant.—In the Legislative Lists the taxing entries always figure separately from the other entries and therefore the Federal Legislature could only tax

(1) A. I. R. 1937 Lah. 347.

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salt under the taxation entries and not under the entry " salt ". If this view is correct, the Federal Legislature has no power to levy a cess on the entry of salt into a local area for consumption, use or sale therein. As the expression " goods " is comprehensive enough to include salt, the Provincial Legislature is competent under entry No. 49 to levy on salt the duty in question. It is clear from the chapter in which s. 140 figures and from the language of s. 140 that this is not a charging section and, therefore, no power had been conferred on the Federal Legislature under this section to levy any duty on salt. Also, that the expression " duties on salt " which figures in s. 140 was used because at that time under the Salt Act the Central Government was levying a duty both on salt manufactured in any part of British India and on salt imported by land into any part of British India.

Rai Bahadur Harish Chandra (Radhe Mohan Lal with him) for the respondent. On the main appeal reference is made to passages in Craies' Statute Law, pp. 68, 107 and 110, and to the following cases: *Barrell v. Fordree*⁽¹⁾; *Pakala Narayana Swami v. Emperor*⁽²⁾; *Oriental Bank Corporation v. Wright*⁽³⁾; and *Whiteley v. Burns*⁽⁴⁾.

The provisions of s. 100 of the Constitution Act are mandatory. Under s.s. (1) of that section a Provincial Legislature has no power to make laws with respect to any of the matters enumerated in List I. In view of entry No. 47 in the said List, it is not open to a Provincial Legislature to legislate in respect of salt. In answer to the arguments of the Advocate-General of the Punjab, that entry No. 49 in List II covers the present case, it is urged that that entry cannot be read as being applicable to salt as salt is wholly included in List I. Reference may be made to certain other entries in List I to show that Parliament adopted different language wherever it allowed the Provincial Legislature to legislate about matters covered in List I. Section 140 further clarifies the position. As far as duties, of any kind whatsoever, on salt are concerned, they can only be levied and collected by the Centre and not by the Province. Counsel also gave a historical survey of the duties on salt, and referred to the agitation against attempts in the past by the Central Legislature to enhance the duty on salt.

Sir Brojendra Mitter, A.-G. of India (H. R. Kazimi with him) for the Government of India.—Section 140 does not deal with legislative power at all. " Federation " in that section means the Executive or the Governor-General in Council. Where is the legislative power in respect to taxation on salt? The contention that it is in entries Nos. 45 and 46 in List I, *i.e.*, customs and excise, is not valid, because, then, the expression " duties on salt " in s. 140 would have been

(1) [1932] A. C. 676, at p. 682.

(2) A. I. R. 1939 P. C. 47, at p. 51.

(3) [1880] 5 App. Cas. 842, at 856.

(4) [1809] I. K. B. 705, at p. 709.

qualified by the word "Federal" or some such words as used in s. 137. The word "salt" in entry No. 47 in List I should be interpreted to include all taxation. Indian legislative practice has been to use the word "salt" as a source of central revenue, as including duties on salt: see Devolution Rules under the 1919 Act, Section I, Pt. I, entry No. 11. In Indian legislative practice taxation on salt, whether customs, excise or octroi, has always been the business of the Centre. On all these grounds the Provincial Legislature is incompetent to impose any duty on salt. Reference was made to the Salt Duties Act (Act No. X of 1908) and to the following cases: *Croft v. Dunphy*⁽¹⁾ and *Gallagher v. Lynn*⁽²⁾.

M. Sleem, A.-G. of the Punjab, in reply.

Cur. adv. vult

The Judgment of the Court was delivered by

VARADACHARIAR J.—This appeal arises out of proceedings taken by the respondent to challenge the validity of an octroi duty on salt imposed by the municipal administration of Lahore. Under s. 61 (2) of the Punjab Municipal Act, 1911⁽³⁾, the municipal administration is empowered, with the previous sanction of the Provincial Government, to impose any "tax which the Provincial Legislature has power to impose in the Province under the Government of India Act, 1935". In April, 1938, the appellant who, under s. 238 of the Municipal Act, had been exercising the powers of the superseded Municipality of Lahore published a notification imposing octroi duties at varying rates on goods imported into Lahore, and salt was one of the commodities specified in the schedule under the heading "articles of food and drink". In October 1939, the respondent brought two maunds of salt into the municipal limits and, with the evident object of making it a test case, he paid the duty under protest and later applied for refund of the amount. When the matter was taken on appeal to the Deputy Commissioner, under s. 84 of the Punjab Municipal Act, he referred to the High Court the question whether the notification above referred to was authorized by law so far as it related to the impost on salt. The learned Judge who heard the reference held that in imposing a tax on salt the appellant had transgressed the limits of his authority under the law. The appellant now appeals to this Court.

On behalf of the respondent, a preliminary objection was taken to the form of the appeal. It was contended that only a party to the proceedings in the court below could appeal to this Court and that the Municipal Committee, and not the Administrator, was the party in the High Court. It was also urged that as the Municipal Committee had been constituted by s. 18 of the Municipal Act a body corporate with perpetual succession, its supersession did not put an end to the

⁽¹⁾ [1933] A. C. 156.

⁽³⁾ Punjab Act No. 111 of 1911.

⁽²⁾ [1937] A. C. 863.

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corporation and that all legal proceedings by or against the corporation must, as provided in that section, be instituted only in the name of the corporation. These objections seem to us devoid of substance. The proceedings before the Deputy Commissioner and the reference by him to the High Court were not framed on the lines of formal pleadings ; but taking them as a whole it would appear that it was the Administrator who was treated therein as the opposite party though in the title of the judgment of the High Court the " Municipal Committee, Lahore " is described as the respondent. The provisions of s. 18 of the Punjab Municipal Act relating to the corporate character of the Committee and the manner of suing must be read subject to the provisions of s. 238(2) which lays down the consequences of a supersession. It may be (as held in *Mahamahopadyaya Rangachariar v. The Municipal Council of Kumbakonam*⁽¹⁾) that a supersession has not the effects of a dissolution and that when another Committee is constituted in the place of the superseded Committee, it is a revival of the old corporation and not the creation of a new one. But during the period when the order of supersession is in force, the statute makes it clear that all the members of the Committee vacate their seats and that all the powers and duties of the Committee are to be exercised and performed by the Administrator. It seems to us that we should be carrying the legal fiction to a needless length if we insisted that, even in this state of facts, proceedings must be taken only in the name of the dormant corporation. It has not been disputed that the person competent to take proceedings is the Administrator ; and even if the true view should be that he should take proceedings in the name of the Committee, the defect is one purely of a formal character which can be cured by amendment.

The decision of the question of law arising in the case turns on the combined effect of entry No. 47 of List I and entry No. 49 of List II of the Seventh Schedule to the Constitution Act. Under the latter, a Provincial Legislature is entitled to levy " cesses on the entry of goods into a local area for consumption, use or sale therein " ; and the appellant claims that the octroi duty in question falls within this description. The respondent contends that this entry must be interpreted in the light of entry No. 47 in List I which makes salt a subject within the exclusive control of the Federal Legislature. One way of putting the respondent's argument is to say that, reading the two Lists together, the general description " goods " in entry No. 49 of List II must be understood as referring to goods other than salt. It is also contended that under s. 100(1) of the Constitution Act, the Provincial Legislature has expressly been denied the power to make laws with respect to salt, since " salt " is one of the matters enumerated

(¹) [1906] I. L. R. 29 Mad. 539.

in List I. Both these contentions were upheld by the learned Judge who dealt with the case in the High Court and he was also of the opinion that s. 140(1) of the Constitution Act lent some support to this view.

In support of this appeal, it has been contended by the Advocate-General of the Punjab that the learned Judge erred in treating entry No. 47 in List I as the source of the Central Legislature's authority to impose any duty or tax on salt, and that he also erred in relying upon s. 140 as though it were a charging section. By a reference to various entries in Lists I and II counsel attempted to show that, whenever a power to tax was intended to be conferred, it was expressly given ; and he urged that a general mention of a subject as in entry No. 47 was only meant to give a general power of control and had no relation to powers of taxation. He invited attention in this connection to entries Nos. 19, 26, 28 and 33 of List I and compared them with entries Nos. 44, 58, 57 and 46. He likewise compared entries Nos. 21 and 36 of List II with entries Nos. 43 and 50 in the same List, and entry No. 52 of List II with entry No. 32 of List III. On this footing he argued that so far as the levy of tax or duty on salt was concerned, the subject must be deemed to be provided for only in entries Nos. 44 and 45 of List I and that, as the impost now in question was not in the nature of a customs duty or excise duty, there was no reason for restricting the scope of the general language used in entry No. 49 of List II or for bringing into operation the prohibition enacted in s.s. (1) of s. 100 of the Constitution Act.

An examination of the entries in the three Lists lends some support to counsel's contention as to the lines on which the Lists have been framed. But we are not prepared, nor do we think it necessary for the purpose of this case, to accept that contention in its generality. We hesitate at any rate to say that the powers of the Central Legislature to impose duties or taxes on salt must be limited to those derivable under entries Nos. 44 and 45 of List I. It is true that s. 140 of the Constitution Act is not a charging section and that it occurs in a chapter dealing with the distribution of revenues between the Federation and the federal units. But the express mention in that section of "duties on salt" separately from "federal duties of excise" and "export duties" rather suggests that duties on salt were not contemplated as falling under entries Nos. 44 and 45 of List I. Counsel suggested that the separate reference to duties on salt might have been made with a view to include import duties thereon under the heads of revenue divisible among the federal units. This is a possible explanation ; but it is nevertheless difficult to get rid of the impression that duties on salt were regarded as a category by themselves not comprised under the headings of excise or customs duties. Such separate treatment would indeed seem to be justified by the fact that, unlike other goods which may form the subject

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of excise or customs duties, salt is in a sense a state monopoly in this country and its manufacture, transport and sale are subject to state control. It was for this reason clearly that entry No. 47 of List I included salt in the exclusive jurisdiction of the Central Legislature.

Assuming however for the sake of argument that the Central Government's power to levy any impost on salt must be derived only from entries Nos. 44 and 45 of List I and that entry No. 47 was not intended to include the power of levying taxes or duties, the objection based upon s. 100(1) of the Constitution Act would nevertheless remain, so long as salt is an entry specifically included in the exclusive Federal List. The appellant's counsel would read entry No. 47 as though it said in terms, " salt except taxation ". We do not think that this is legitimate or permissible. It is one thing to say that the entry does not authorize taxation, but it is a different thing to say that taxation is excluded, as that will make a material difference in the operation of s.s. (1) of s. 100. If taxation is specifically excluded from entry No. 47 in List I, the effect will be to take away *pro tanto* the prohibition against provincial legislation imposed by s. 100(1). It is on the other hand quite conceivable that, even without the power of taxation, Parliament should have desired that the Central Government and the Central Legislature should retain exclusive control over salt and to prohibit any kind of interference with it by Provincial Legislatures. It is, for instance, common knowledge that public opinion in this country has always insisted that salt should be made available to the people at the lowest possible price ; but the recognition of a power in the Provincial Legislature to impose duties on salt, whether for the benefit of provincial revenues or for the benefit of local authorities, might materially affect the policy of the Central Government in this respect.

It is noteworthy that in respect of opium and petroleum, the exclusive jurisdiction of the Centre is limited by the words " so far as regards cultivation and manufacture or sale for export " in entry No. 31 and the words " so far as regards possession, storage and transport " in entry No. 32. Such a limitation justifies the view (confirmed by entry No. 40 of List II) that the Provincial Legislatures are not wholly deprived of jurisdiction with reference to these goods. But the reference to salt in entry No. 47 is unqualified ; and therefore it is not possible to put any limitation upon the extent of exclusion of provincial interference, so far as this item is concerned. A comparison of entry No. 2 in List I with entry No. 10 of the same List is instructive in this connection, as showing an instance of the total exclusion of provincial jurisdiction in respect of naval, military and air force works while recognizing the possibility of provincial legislation even in respect of works, lands and buildings belonging to the Federation, if and

so far as they are not naval, military or air force works. In the view above stated, it is unnecessary to discuss the distinction sought to be drawn between cesses and taxes, because, if the Provincial Legislature is wholly precluded from dealing with salt, it is immaterial whether the proposed impost is one by way of tax or one by way of cess.

It may be a question whether, notwithstanding the generality of entry No. 47 in List I, a Provincial Legislature may not enact legislation which only incidentally affects salt (see *Gallagher v. Lynn*⁽¹⁾, and see also observations in *Att.-Gen. for the Dominion of Canada v. Atts.-Gen. for the Provinces of Ontario, Quebec and Nova Scotia*⁽²⁾). But that question does not arise in the present case. When taxes are imposed specifically upon a number of items, only some of which are within the jurisdiction of the Legislature which imposes them, the validity of each impost can be dealt with by itself and there is no question of the one affecting the other. The situation is not parallel to one in which legislation whose main object or pith and substance is legitimate is sought to be invalidated merely on the ground that it incidentally affects something outside the sphere permitted to the Legislature which has enacted it.

The appeal fails and is dismissed with costs

Appeal dismissed.

Agent for Appellant : *B. Banerji.*

Agent for Respondent : *Ganpat Rai.*

Agent for Government of India : *K. Y. Bhandarkar.*

(1) [1937] A. C. 863.

(2) [1898] A. C. 700, at p. 716.