Gulabchand Bapalal Modi vs Municipal Corporation Of Ahmedabad ... on 4 March, 1971

Equivalent citations: 1971 AIR 2100, 1971 SCR (3) 942, AIR 1971 SUPREME COURT 2100, 1971 TAX. L. R. 1360

Author: J.M. Shelat

Bench: J.M. Shelat, C.A. Vaidyialingam

PETITIONER:
GULABCHAND BAPALAL MODI

Vs.

RESPONDENT:
MUNICIPAL CORPORATION OF AHMEDABAD CITY

DATE OF JUDGMENT04/03/1971

BENCH:
SHELAT, J.M.
BENCH:
SHELAT, J.M.
VAIDYIALINGAM, C.A.

CITATION:
1971 AIR 2100 1971 SCR (3) 942

ACT:
Bombay Provincial Municipal Corporation Act, 59 of 1949, s. 129 of Act whether bad for excessive delegation and absence of guidelines Rule 10 of Taxation Rules whether mandatory or directory-Maintenance of ward-wise assessment books whether-essential-Tax levied on basis of one assessment book for whole Municipal area whether invalid-Effect of rr. 13, 15 and 19 under the Act, on the interpretation of r. 10.

HEADNOTE:
The appellant was owner of immovable property situate within the limits of the municipal corporation, Ahmedabad City. Under the power reserved to it by s. 127 of the Act the Corporation served on the appellant as also on the other rate payers, bills and demand notices for payment ,of property tax in respect of the assessment year 1962-63. These were challenged by the appellant and also certain

other rate payers in writ petitions before the High Court. The High Court inter alia held (i) that s. 129 of the Act did not suffer from the vice of excessive delegation by reason ,of the fact that no maximum rate of tax was laid down; (ii) that it was permissible under r. 10 to maintain only one assessment book and the levy could not be held invalid on the ground that ward-wise assessment books as contemplated by rr. 13, 15 and 19 were not maintained. In appeal to this Court by certificate,

HELD : The High Court rightly held that the charging sections of the Act were not without guidelines. The assessment and levy of the property taxes have to be in conformity with the Act and the rules. These rules contain inter alia Taxation Rules which are part of the Act. Section 454, no doubt, empowers the corporation to amend, alter and add to those rules but such power is made under s. 455 subject to sanction of the State Government. Under s. 456 the State Government can at any time require the Corporation to make rules under s. 454 in respect of any purpose or matter specified in s. 457 which includes item "Municipal Taxes-The assessment and recovery of Municipal Taxes." Although the Act did not during the relevant period prescribe the maximum rate at which the property taxes could be raised, the ultimate control for raising them was with the councillors responsible to the people, It was difficult therefore to sustain the plea that the power to levy the property tax was so unbridled as to make it possible for the Corporation to levy it in an arbitrary manner or extent. [951 G 852 B]

The proposition that when a provision requiring sanction of the Government to the maximum rate fixed by the Corporation is absent, the rest of the factors which exist in the Act lose their efficacy and cease to be guidelines cannot be accepted. Further, if the Corporation has the flexibility of power given to it in fixing the rates, the State Legislature can at any moment withdraw that flexibility by fixing the maximum limit up to which the Corporation can tax. Indeed the State Legislature had done so by s. 4 of the Gujarat Act, 8 of 1968. In view of the decisions of this Court it is not possible to agree with the contention that the Act conferred on the Corporation such arbitrary and uncontrolled power as to render such conferment an excessive delegation. [954 F-G]

943

Corporation of Calcutta v. Liberty Cinema, [1965] 2 S.C.R. 477, Municipal Corporation of the City of Ahmedanwd v. Zaveri Keshavia, 6 Guj. L.R. 701, Western India Theatres Ltd. v. Municipal Corporation of the City Poona, [1959] Supp. 2 S.C.R. 71, Pandit Banarsi Das Bhanot v. Madhya Pradesh, [1959] S.C.R. 427 and Devi Das v. Punjab [1967] 3 S.C.R. 557. referred to.

Municipal Corporation of Delhi v. Birla Mills, [1968] 3 S.C.R. 251 followed.

(2) The tax levied on the basis of one assessment book was not invalid, Rule 10 differs from s. 157 of the Bombay Municipal Corporation Act, 1888, in that, whereas, it gives an option to the Commissioner either to maintain one assessment book for the entire city or separate assessment books, Sec. 157 gave no such option and provided only for ward assessment-book which collectively constituted, as in r. 10(2), "the assessment book'. The legislature deliberately made a departure from s. 157 by leaving it to the discretion of the Commissioner either to maintain one book or several books ward-wise. Such a departure was presumably made because the Act was to apply not to one city only, as did the Bombay Act of 1888, but to an unknown number of cities where Municipal Corporations might in future be set up, each having different conditions from the other and not being certain whether one assessment book or separate ward assessment books would be suitable for each of them. [955 G; 956 A]

The contention that r. 10 should be, construed as mandatory ignores (1) the permissive language of the rule and (2) the deliberate departure made by the legislature from s. 1-57 of the Bombay Corporation Act, 1888. If it intended that assessment-books for each ward shoud be kept, there was no necessity for it to depart from the language of s. 157 of that Act. The fact that it made such departure is a sure indication that it did not. Unless compelled by the context and content of the other rules, there would be no justification not to give to r. 10 the plain meaning of its language, particularly in view of the fact that the Act intended to apply not to one but to an indefinite number of cities, each differing in conditions from the other a factor which, as aforesaid, led the legislature to make a departure from the said s. 157. [958 H-959 B]

Certain anomalies would arise from the High Court's interpretation that rr. 13, 15 and 19 would not apply in the case of one assessment book. Rule 19 was intended to enable the Corporation to proceed to makedemands so soon as entries were made as provided by cl. (e) of r. 9 and the Commissioner had given thereafter his authentication that there existed no valid objection to the ratable values entered under the said cl. (e). Since the object of r. 19 was to make the entry as to the amount of tax conclusive evidence so as to enable the Commissioner to issue the bills, the legislature could not have intended to apply the rule only when ward assessment-books were kept and not when, one assessment-book was maintained, especially when in r. 10 it had deliberately given discretion to the Commissioner to maintain either one assessment-book or several ward assessment books. Further if r. 19 were to be so construed, rr. 13, and 15 also would have on the same reasoning to be likewise construed. That would mean that the notice to enable the rate payers to take inspection under r. 13 and the notice under r. 15 fixing the date on or before which

complaints against 'ratable value can be made, would have to be given only where ward assessment books are kept and not where one
L1100 SupCI/71
944
assessment book is kept. it goes without saying that the right to inspect provided under r. 13 and the right to file a complaint under r. 15 are vital matters. That being so it is hardly conceivable that the legislature intended these rules to apply only where the Commissioner kept ward assessment-books. Since r. 10 has to be construed as permissive and not mandatory, and the construction adopted by the High Court in regard to rr. 13, 15 and 19 is bound to create anomalies, the conclusion must be that it was through inadvertence that the old language used in ss. 157 to 168 of the Bombay Corporation Act was allowed to be retained without carrying out the change. of language necessitated as a result of r. 10 giving discretion to the Commissioner either to maintain one book or several books ward-wise. In the result the assessment book in question must be held to be valid and no objection as to the validity of the bills and demand notices can be raised on the ground that only one assessment book and not warding books were kept. [959 C-960 E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1090 of 1967. Appeal from the judgment and decree dated May 5, 1966 of the Gujarat High Court in S.C.A. No. 877 of 1962. B. R. L. lyengar, N. J. Modi, P. C. Bhartari and K. N., Desai for the appellant.

1. N. Shroff, for respondent No. 1.

K. L. Hathiand S. P. Nayar, for respondent No.

2. The Judgment of the Court was delivered by Shelat, J. This appeal, by certificate, arises out of one of the seventy Special Civil applications filed in the High Court of Gujarat by several- rate payers challenging the Validity of the assessment of property tax made by the respondent-Corporation under the Bombay Provincial Municipal Corporations Act, LIX of 1949 (hereinafter referred to as the Act).

The appellant is the owner of an immovable property situate within the limits of the Corporation. Until March 31, 1961, two kinds of taxes were being levied on buildings and lands situate within the Corporation's municipal limits : (1) the general tax levied by the Corporation under the Act, and (2) the urban immovable property tax levied under the Bombay Finance Act, 1932 by the State Government, but collected on its behalf by the Corporation. At the request of the Corporation made in 1960, an arrangement was arrived at between the Government and the Corporation where under

the Government agreed not to levy the U.I.P. tax provided the Corporation increased the rate at which it was till then levying the property tax. Accordingly, in January 1961 the Corporation passed a resolution in,creasing the rate of the property tax with effect from April 1, 1961 under the power reserved to it by S. 127 of the Act. In 94 5 pursuance of the said resolution and in accordance with the raised percentage of the general tax the Corporation served on the appellant, as also on the other rate payers, bills and demand notices. In this appeal we are concerned with the bills and ,notices in respecter the assessment year 1962-63.

The appellant, as also certain other rate payers, challenged the said bills and notices in their said writ petitions mainly on the grounds (1) that the Corporation had no authority to amend the rates with the object of including the said U.I.P. tax in the general tax so far levied by the Government under a different statute and given up by it under the said arrangement; (2) that the said bills and notices were illegal as the assessment-book kept by the Cor- poration was not in accordance with the rules made under the Act and was not authenticated by the Commissioner as required thereunder; (3) that ss. 99, 123 and 129(c) of the Act were unconstitutional in that they suffered from Other vice of excessive, delegation in so far as they did not fix the maximum rate at which the Corporation could levy the property tax, and (4) that the said sections were also violative of Art. 19(1) (f) and Art. 31 as the tax was confiscatory in character.

By its judgment dated May 5, 1966, the High Court first dis- posed of fifty two out of the said seventy writ petitions rejecting the contentions raised therein. There after the judgment under review separately disposed of the remaining 18 petitions, including that of the appellant, as, besides the points raised in the said 52 writ petitions, these 18 writ petitions raised some additional points. The High Court in this judgment did not deal afresh the points already disposed of by it in the larger group of writ petitions and based its judgment in respect of them on its earlier judgment dated May 5, 1966.

In its judgment, dated the May 5, 1966, the High Court elaborately examined the scheme and the objects, of the Act and the rules and came to the following conclusions :

> (1) that the Corporation need not maintain separate assessment-book for each of the wards and could legally maintain one assessment-book covering all the wards;
>
> (2) that the authentication provided for by r. 19 of the said rules in Ch. VIII to Sch.
>
> A of the Act ,*as not mandatory;
>
> (3) that the liability to pay the tax arose when entry under r. 9(e) was made in the assessment-book; and 9 46 (4)that s. 129 (c) read with ss. 99 and 127 did not suffer from the vice of excessive delegation as the legislature had provided in the Act both its policy and principles guiding the Corporation in levying the said tax.

The High Court also negatived the contention that s. 129(c) by giving power to tax without laying down the maximum rate was violative of Art. 19(1) (f) and/or Art. 31 or Art. 14. The High Court also

rejected the additional contentions raised in the petitions left over from the earlier batch of 52 petitions and dismissed all of them. The correctness of the views expressed by-the High Court in this judgment, as also in its earlier judgment by the combined effect of which altogether 70 writ petitions were negatived, is challenged in this appeal.

We need not go into all the diverse contentions raised before the High Court as counsel for the appellant raised before us the following three questions only (1) that while making the, assessment the procedure contemplated by ss. 127, 129(c) of the Act and rr. 9 to 20 of the Taxation Rules was not cornplied with inasmuch as no ward assessment-books were maintained, and consequently, the entries therein were not authenticated as required by r. 19;

(2) that S. 129 suffers from the vice of excessive delegation of legislative powering as-the Act fails to provide either the maximum rate leviable by the Corporation or the guidelines for levying the tax;

(3) that in any view of the matter, in the circumstances in which the resolution raising the rate was passed, it did not impose the enhanced rate on the property of the appellant as the same was ,not, prior to April 1961' subjected to the U.I.P. tax.

Later, Mr. lyengar gave up, the third contention. We are, there fore, left with his contentions (1) and (2) only for determination.

Broadly stated, the facts regarding the assessment-book and its authentication are as follows : Each year the Commissioner either prepared or continued the assessment- book required to be maintained by him under the Taxation Rules. Each year he went through the procedure for authentication of the assessment-book purporting to do so under r. 19 of the Taxation Rules. After 9 4 7 the assessment-book was authenticated, as aforesaid, and a certificate was issued by him that no valid objection had been received in respect of the rateable values entered in the assessment-book as required by cl. (e) of r. 9 of the said rules, the Corporation issued bills and demand notices requiring the owners or occupiers of the properties to pay the said tax. The Act and the rules provide for objections to the rateable values entered in the assessment-book under Cl. (b) of r. 9, which objections would be heard and decided by the Commissioner. There are provisions in the Act, such as ss. 406, 4 1 0 and 41 1, for appeals to the Judge, Small Causes Court, both against the rateable value fixed under the Taxation Rules as also against the amount of tax demanded in the bills.

As aforesaid, the High Court dismissed the contention as to the constitutionality of s. 129(c) basing its decision mainly on the authority of the Corporation of Calcutta v. Liberty Cinema,(1) wherein the validity of s. 548(2) of the Calcutta Municipal Act, authorising the Corporation to levy a fee (held by this Court to be a tax) for every licence and permission at such rate as may be fixed from time to time by the Corporation'. but which did not lay down the maximum rate, was challenged. The High Court in particular relied on the observations in that decision (1) that fixation of the rate was not an esserxtial legislative function and could be delegated, and (2) that the provisions in the Act, which limited the power to levy taxes to the extent of the statutory needs of the Corporation, furnished sufficient control and guidance. Reliance was also placed on the following observation relating to the absence of maximum rate "It is said that the delegation of power to fix rates of taxes authorised for

meeting the needs of the delegate to be valid, must provide the maximum rate that can be fixed, or lay down rules indicating that maximum. We are unable to see how the specification of the maximum rate supplies any guidance as to how the amount of the tax, which no doubt has to be below the maximum, is to be fixed.

Provision for such maximum only sets out a limit of the rate to be imposed and a limit is only a limit and not a guidance."

Besides deriving support from this judgment, the High Court examined various provisions of the Act and reached the conclusion that under the Act, as under the Calcutta Act, the tax, which the Corporation could collect, would have to be for the purposes of the Act only and that fact, together with certain other controls embodied in the Act, furnished sufficient guidance preventing the vice of arbitrariness or excessive delegation.

(1) 1962 S.C.R. 477.

Before the High Court, the contention also was that for each. of the relevant years there was no valid assessment- book on the basis of which the property tax could be levied. The argument was that the Taxation Rules required the Commissioner to prepare ward assessment-book for each of the wards and not one assessment-book for the whole of the municipal limits, that being so, the assessment made on the properties was not in accordance with the rules prescribed for that purpose and was therefore in breach of Art. 265 of the Constitution and s. 127(2) of the Act which lays down that the taxes shall be assessed and levied in accordance with the provisions of the Act and the rules. The High Court, on a reading of the rules, found : (1) that r. 10 gave discretion to the, Commissioner to prepare either one assessment book or ward assessment-books, and (2) that the rules used both the expressions, namely, 'assessment-book' and 'ward assessment books the latter expression being used only in rr. 13 (1), 15 f and 1 9 (1) and (2). According to the High Court, the contention as to the validity of the assessment-book and the construction of the rules suggested on behalf of the appellant were not correct. The object of r. 9, according to the High Court, was to provide for the preparation and maintenance of the assessment-book wherein would be entered the amount of property tax against each of the buildings and lands set out therein. The rule provided that the Commissioner shall first make entries under cls.

(a) to (d) of the rule. An entryunder cl. (e), as its language plainly shows, is to be made after :(1) the rates of property tax are fixed, (2) the period fixed forreceipt of complaints against the rateable values has expired, and (3) after such complaints, if any, are disposed of by the Commissioner. An entry under cl. (e) having to be made only after the events in (1), (2) and (3) above stated have happened, r. 9 takes in, by using the expression "as herein- after provided", the public notice provided by rr. 13 and

15. According to the High Court, the liability to pay the property tax arises as soon as entry under cl. (e) of r. 9 is made in the assessment-book in the manner therein provided and is not dependent on authentication and certification provided in r. 19 in respect of ward assessment-books. Authentication and certification in such ward assessment-books provides a rule of evidence in the

sense that the entries therein become conclusive evidence as regards the amount of tax therein set out against each property and is not an event on the happening of which the liability to pay arises. Such liability arises as soon as entry under cl. (e) of r 9 is made.

The High Court distinguished its earlier decision in the Municipal Corporation of the City of Ahmedabad v. Zaveri Keshavtal(1) by pointing out that that decision was under

> the Bombay (1) 6 Guj. L.R.701.

Municipal Boroughs Acts, 1925 which had a scheme and pro- visions different from the present Act and the rules thereunder made. That decision had laid down that the liability of the rate payer would arise only after authentication of the assessmentbook. For distinguishing that decision the High Court, firstly, relied on r. 30 of the Taxation Rules which provides that property tax shall accrue clue on the 1st of April of each official year, and secondly, on the ground that the Boroughs Act and the rules thereunder did not have a rule corresponding to r. 9(e) which, when read with r. 30, shows that the liability to pay the amount of tax arises on entry under cl. (e) of that rule being made. According to the High Court, r. 19,)which provides for authentication applies only to ward assessment- books and not to a single asscssment-book, that such authentication has nothing to do with the accrual of liability and is a mere rule of evidence which is not available to the Corporation where the Commissioner does not prepare ward assessment-books and keeps only one assessment-book. The High Court in this connection observed "If a single assessment-book is prepared, then the amount of tax entered in the assessment-book will not be the conclusive evidence. In an appeal, it would be open to a rate payer to challenge the amount on any legal ground, possibly including the challenge to the rateable value of the property in respect of the fact that had not been done before by him."

On this interpretation, the High Court dismissed the entire batch of the said 70 writ petitions including that of the appellant. Though the earlier judgment is not under review in this appeal, we have set out its conclusions as the judgment under review followed the earlier judgment,- delivered by the same learned Judges and rejected the conclusions raised by the appellant. In effect, therefore, both the judgments are under challenge to the extent that they decided questions raised in this appeal. Sec. 127(1) lays down that "for the purposes of this Act"

> the taxes which the Corporation has compulsorily to levy are property taxes and a tax on vehicles, boats and animals. The second subsection authorises the Corporation to levy the taxes set out therein in addition to the aforesaid two taxes. Sec. 129 deals with property taxes. Cl. (c) there of provides that property taxes shall comprise inter alia of a general tax of not less than 12% of the rateable value of buildings and lands. We may note that the Gujarat State Legislature, by Act 8 of 1968, has recently amended cl. (c) by inserting therein the maximum rate of 30%, so that the question as to the absence of maximum rate is relevant only for the assessment years prior to the amendment. The Legislature itself has framed elaborate rules contained in Sch. A to the Act of which the Taxation Rules in Ch. VIII thereof are part and which under s. 453 form part of the Act. Besides the said rules, ss. 454 and 455 authorise the

Corporation to add to, amend, alter ,or rescind those rules subject to their being not inconsistent with the provisions of the Act, sanction of the State Government and to the condition of their being made after previous publication. The other relevant provisions of the Act are ss. 63 to 66 which lay down the obligatory functions which the Corporation must perform and certain discretionary functions which it can perform.

The argument was that thought s. 127 (1) lays down that property taxes can be levied by the Corporation only for the purposes ,of the Act, that is to say, for and in respect of the functions which the Corporation must and can carry out, the Act being silent as to the maximum rate upto which the Corporation can levy, it gives unbridled and arbitrary power to levy the property tax as much and to any extent it may desire. Mr. Iyengar pointed out that amongst the discretionary functions which the Corporation can undertake under s. 66 there are such things as swimming pools, public parks, gardens, recreation grounds, construction of dwellings, for municipal officers and servants, libraries, museums etc. for undertaking which the Corporation can spend huge, amounts and impose extravagant and burdensome rate of tax. According to the argument, there are no guidelines or controls in the Act which can place any limits to the spending by the Corporation on such discretionary objects, and therefore, the rate payers are exposed to being taxed in an arbitrary and uncontrolled fashion. The question. thus is whether the Act contains any policy or' guidelines or control over the taxing power of the Corporation without which the delegation of power to tax would be excessive, arbitrary and violative of Art. 14. The Act, as its preamble and the long title show, was passed for establishment of municipal corporations in the city of Ahemedabad and Poona and certain other cities for ensuring better municipal government. It was apparently modelled after the Bombay Municipal Corporation Act, 1888. The Act does not lay down any maximum rate in s. 127 probably because its operation was not confined to any particular city in which the municipal corporation would be set up. The Legislature, while passing it, could not envisage in which particular cities such corporations would be set up. Nor could it envisage what their financial needs would be; nor which of the discretionary functions, under S. 66, such ,corporations would feel they must undertake. Such needs being variable and incapable of uniform specification, the Legislature might have felt if inexpedient to restrict the fiscal powers of the corporations to be established in furture.

The point for consideration is whether the absence of a pro- vision laying down the maximum rate is by itself sufficient to render the delegation of the power excessive. As already stated, s. 127(1) expressly provides that taxes can be levied only for the purposes of the Act. They cannot thus be raised for any function 'other than the one provided by the Act. Sec. 82 requires all monies received by the Corporation under the Act to be credited to the Municipal Fund held by the Corporation in trust for the purposes of the Act. By reason of s. 86, no payment can be made out of the Municipal Fund unless it is covered by the current budget grant. Furthermore, s. 88 lays down that the moneys credited in the Municipal Fund shall be applied in payment of sums,

charges and costs necessary for carrying the Act into effect, or payment directed or sanctioned by or under the Act. Sec. 89 restricts expenditure by the Corporation within the city except when provided by the Act or by a resolution by not less than. half the total number of councillors. Under s. 95, the Commissioner is required annually to lay before the Standing Committee estimates of income and expenditure, and under s. 96. the Standing Com- mittee has to prepare budget estimate 'A' "having regard to all the requirements of this Act." The budget estimate then has to be laid before and passed by the Corporation. Similar provisions are made in ss. 97 and 98 for budget estimate 'B' prepared by the Transport Manager. It is after all this has been, done that the Corporation under s. 99 determines, on or before the 20th of February of each year, the rates at which property taxes under s. 127(1), but sub ject to the limitations and conditions laid down in Ch. XI, are to be levied for the next ensuing official year, Under s. 100, the Corporation, either sends back the budget esti- mates 'A or 'B' for further consideration, or adopts them with such alterations as it deems expedient. The conditions and limitations subject to which the Corporation can fix, under s. 99, the rates at which the property taxes are to be levied are those provided in s. 127(3) and (4), i.e., they can be assessed and levied in accordance with the provisions of the Act and the rules. These provisions clearly show that the ultimate control, both for raising the taxes and incurring expenditure, lies with the councillors chosen by and responsible to the people.

As aforesaid, the assessment and levy of the property taxes have to be in conformity with the Act and the rules. These rules contain inter alia Taxation Rules, which are part of the Act. Sec. 454, no doubt, empowers the Corporation to amend, alter and add to these rules, but such power is made under s. 455 subject to the sanction of the State Government. Under s. 4 56, the State Government can at any time require the Corporation to make rules under s. 454 in respect of any purpose of matter specified in s. 457, which includes-item "(7) Municipal Taxes.-(a) The assess- 95 2 ment and recovery of municipal taxes". Thus, although the Ac does not prescribe the maximum rate at which the property taxe can be raised, the ultimate control for raising them is with the councillors responsible to the people. It is difficult, therefore, to sustain the plea that the power to levy the property tax is so un bridled as to make it possible for the corporation to levy it in arbitrary manner or extent.

In all statutes dealing with local administration municipa I authorities have inevitably to be delegated the power of taxation,. Such power is a necessary adjunct to a system of local self-govemment. Whether such delegation is excessive and amounts to abdication of an essential legislative function has to be considered from the scheme, the objects, and the provisions of the statute in question. In The Western India Theatres Ltd. v. Municipal Corporation of the City of Poona(1) this Court spelt out the policy in the expression "for the purposes of this Act", an expression also used in S. 127. In Pandit Banarsi Das Bhanot v. Madhya Pradesh(2), delegation of power to the executive to determine the details relating to the working of taxation laws, such as the selection of persons on whom the tax is to be levied the rates at which it is to be

charged in respect of different classes of goods and the like, was held not to be unconstitutional on the principle that so long as the legislature retains or has the power of withdrawing or altering the power to tax delegated to a subordinate authority such delegation would be held neither an abdication nor excessive. In Liberty Cinema case (3) the majority view was that the power to fix the rate of a tax was not of the essence of the legislative power and that such a power could be delegated even to a non-legislative body. But the decision laid down that when such a power is delegated, the legislature must provide guidance for such fixation. The majority held that where rates have not been specified in the statute, the power to fix the rates as might be necessary to meet the needs of the delegate itself affords guidance. The minority view differed from the majority view, in that, according to it, the power to fix the rate of tax was an essential legislative function. But, even according to that view, such a power can be delegated provided the delegate is afforded guidance by the legislative laying down the policy and principles in the Act, It, however, disagreed with the majority view that the raising of tax 'co-extensive with the needs of the delegate in implementing the purposes of the Act can afford such guidance.

The Liberty Cinema case(3) came for consideration in Devi Das v. Punjab (4) where Subba Rao, C.J., speaking for the Court, said :

(1)[1959] Sup, 2 S.C.R.71. (2) [1959] S.C.R.427. (3) [1965]2 S.C.R. 477.

(4 [1967] 3 S.C.R. 557.

"If this decision [Liberty Cinema case(1) is an authority for the position that the Legislature can delegate its power to a statutory authority to levy taxes and fix rates in regard thereto, it is equally an authority for the position that the said statute to be valid must give a guidance to the said authority for fixing the said rates. . . "

Though he did not agree as a general principle that guidance can always be spelt out from the limitation to fix the rate by the extent of needs of and the expenses required by the delegate to discharge its statutory functions, the Court did not disapprove Liberty Cinema case(1) but confined the principle laid down there to the provisions of the Calcutta Municipal Act in which the majority had found the requisite guidelines. No such guidance was available in the Sales Tax statute before the Bench deciding Devi Das's case(2). The position which emerged from the decisions so far, therefore, was that the power to fix rates can be delegated if the statute doing so contains a policy or principles furnishing gunance to the delegate in exercising such power. In the Municipal Corporation of Delhi v. Birla MilIS(3), the question as to the limits of delegation of taxing power once more arose. The Delhi Municipal Corporation Act, 1957, like the present Act, entrusted to the Delhi Corporation two kinds of functions, compulsory and optional. In relation to the former, the Act specified the maximum rate of tax the Corporation could raise, but not so in the case of tax relating to or for implementing the optional functions. The controversy was whether the Act contained provisions furnishing guidance to the Corporation in the exercise of the power to tax.

After an analysis of the provisions of the Act, Wanchoo, C.J., pointed out the following factors which furnished' sufficient guidance preventing the delegation becoming invalid :

> (1) that the delegation was to an elected body responsible to the people, including those who pay taxes and to whom the councillors have every four years to turn to for being elected;
>
> (2) that the limits of taxation were to be found in the. purposes of the Act for the implementation of which alone taxes could be raised and though this factor was not conclusive, it was nonetheless relevant and must be taken into account with other relevant factors;
>
> (3) that the impugned s. 1 150 itself contained a provision which required that the maximum rate fixed by the. Corporation should have the approval of the Government;
>
> (1) [196512 S.C.R. 477, (2) [1967] 3 S.C.R. 577.
>
> (3) 1968(3) S.C.R.251.
>
> (4) that the Act contained provisions which required adoption of budget estimates by the Corporation annually; and (5) that there was a check by the courts of law where the poower of taxation-is used unreasonably or in non compliance or breach of the provisions and objects of the Act.

Referring to Devi Das case(1), he pointed out that (1) that did not disapprove Liberty Cinema case (2) was concerned case with a sales tax statute and not with a statute dealing with bodies with limited purposes, such as local self governing bodies. At page 268 of the reports he observed.:

> "There is in our opinion a clear distinction between delegation of fixing the rate of tax like sales tax to the State Government and delegation of fixing rates of certain taxes for purposes of local taxation. The needs of ,the State are unlimited. The result of making delegation of a tax like sales tax to the, State Government means a power to fix the tax without any limit even if the needs and purposes of the State are to be taken into account."

Thus, the majority view in this decision, which is binding on us, shows that the mere fact that an Act delegating taxing power refrains from providing a maximum rate does not by itself render the delegation invalid.

From the provisions of the present Act, cited earlier, it will be seen that though factor (3) of the factors relied on by Wanchoo, C.J., is absent in s. 127, the rest are present. It is impossible to say that when a provision requiring sanction of the Government to the maximum rate fixed by the Corporation is absent, the rest of the factors which exist in the Act loose their efficacy and cease to

be guidelines. Furthermore, if the Corporation were to misuse the flexibility of the power given to it in fixing the rates, the State legislature can at any moment withdraw that flexibility by fixing the maximum Emit up to which the Corporation can tax. Indeed, the State Legislature has now done so by S. 4 of Gujarat Act, 8 of 1968. In view of the decisions cited above it is not possible for us to agree with counsel's contention that the Act confers on the Corporation such arbitrary and uncontrolled power as to ren- der such conferment an excessive delegation. That brings us to the contention regarding the validity of the assessment-book maintained by the Commissioner for the assessment year in question.

(1) [1967] 3 S.C.R. 577.

(2) [1965] 2 S.C.R. 477.

Rules 9 to 21 of the Taxation Rules are headed "Assessment- Book". A comparison of these rules with ss. 156 to 168 of the Bombay Municipal Corporation Act, 1888 at once shows that they are, with the exception of r. 10, taken almost verbatim from those sections. Rule 9 requires the Commissioner to keep a book to be called the "Assessment- Book" in which the following matters have to be entered, viz.,

(a) a list of buildings and lands,

(b) the rateable value of each of them,

(c) the names of persons primarily liable for the payment of the property taxes, if any, leviable on each such building or land,

(d) the reasons for non-liability, if any of them is not liable to be assessed to the general tax, and

(e) "when the rates of the property-taxes to be levid for the year have been duly fixed by the Corporation and the period fixed by public notice, as hereinafter provided, or the receipt of complaints against the amount of rateable value entered in any portion of the assessment-book has expired, and in the case of any such entry which is complained against, when such complaint has been disposed, of in' accordance with the provisions hereinafter contained, the amount at which each building or land entered in such portion of the assessrnent-book is assessed to each of the property taxes, if any, liable thereon."

The rule contain other clauses, but we are not at present concerned with them.

Rule 10(1) provides that the assessment-book may, if the Commissioner thinks fit, be made in separate books called "ward assessment-books", one for each of the wards into which the city is for the time being divided for purposes of the elections. Cl. (2) of the rule says that the ward assessment-books and the respective parts, if any, shall collectively constitute the assessment-,book. Rule 10 differs from s. 157 of the Bombay Municipal Corporation Act, in that, whereas it gives an option to the Commissioner either to maintain one assessment-book. for the entire city or separate

ward assessment-books, s. 157 gives no such option and provides only for ward assessment-books which collectively constitute, as in r. 10(2), "the assessment- book". The Legislature, thus, deliberately made a departure from s. 157 by leaving it to the discretion of the Commissioner either to maintain one book or several books wardwise. Such a departure was presumably made because the Act was to apply not to one city only, as did the 'Bombay Act of 1888, but to an unknown number of cities where municipal corporation might in future be set up, each having different conditions from the, other and not being certain whether one assessment-book or separate ward assessment books would be suitable for each of them.

Rules 11 and 12 deal with treatment of properties let to two or m ore persons in separate occupancies and the procedure where the name of the person primarily liable for property taxes cannot be ascertained. Rule 12, it Will be noticed, mentions only the assessment-book and not ward-assessment- books. Rule 13 provides that when entries required by cls.

(a), (b), (c) and (d) of rule 9 have been completed "in any ward assessment-book-, the. Commissioner shall give public notice thereof and of the place where the ward assessment- book, or a copy of it, may be inspected." Rule 14 provides for inspection and taking extracts by an owner or occupier of premises-entered' in "the assessment-book" from any portion of "tie said book" which relates to the said pre- mises. Rule 15 requires the Commissioner "at the time and in the manner prescribed in r. 13" to give notice of a day not being less than 15 days from the publication of such notice, on or before which complaints against the amount of any rateable value entered "in the ward assessment-book"

> will be received in his office. Cl. ,(2) of that rule requires the Commissioner to give a special written notice to the owner or occupier of premises which have for the first time been entered "in the assessment-book' as liable to property taxes or in which the rateable value of any premises has been increased. Rule 16 provides for the manner of filing complaints referred to in r. 1 5 against the rateable value "entered in the assessment-book", and r. 17 provides that complaints received under r. 16 shall be registered in a book kept for that purpose as also for notice to each complainant of the, time and place when and whereat his complaint would be investigated. , Rule 18 provides for the hearing of the complaint if and cl. (3) thereof lays down that when a complaint is disposed of, its result shall be noted in the said book of complaints and the necessary amendment shall be made in accordance with such result "in the assessment-book".

Rule 19, which has been the subject matter of controversy both in the High Court and before us, provides that when "all such complaints, if any, have been disposed of and the entries required by cl. (e) of r. 9 have been completed in the ward assessment-book, the said book shall be authenticated by the Commissioner, who shall certify, under his signature, that except in the cases, if any, in which amendments have been made as shown therein, no valid objection has been made to the rateable values entered in the said book". Cl. (2) provides that "the said ward assessment-book sub-

95 7 ject to such alterations as may thereafter be made therein under the provisions of r. 20 shall be accepted as conclusive evidence of the amount of each property-tax leviable on each building and land in the ward in the official year to which the book-relates." Rule 20 empowers the Commissioner to amend the assessment-book even after it has been authenticated in certain cases and subject to the conditions set out therein. Lastly , r. 21 provides that it is not necessary to prepare a new assessment-book every official year and permits the Commissioner to adopt the entries in the last preceding year's book as the entries for each new year. This, he can do, for. four successive years. From the scheme of rules 9 to 21, it is clear that the Commissioner first enters in the assessment book prescribed by r. 9 the particulars set out in cls. (a) to (d) of at rule. Having done this, he proceeds to enter in the assessment-book the amount at which each building or land is assessed. He can do this under cl. (e) naturally after (i) the rates of property taxes are fixed by the Corporation,

(ii) the period fixed by public notice under r. 13 and for the receipt of complaints under 15 against rateable values entered under cl. (b) has expired, and (iii) after such complaints, if any, have been disposed of. On a plain meaning of the language in r. 10 the Commissioner has the option to maintain either one assessment-book or ward assessment-books separately for each ward. But even if he were to do so, such ward assessment-books would collectively constitute "the assessment-book". As earlier stated, giving of such an option under r. 10 was a clear departure by the Legislature from s. 157 of the Bombay Act, 1888. Since these rules have been taken almost verbatim from that Act, the departure has to be regarded as deliberate. and for the reason that the Legislature could not foresee at the time of enacting the Act as to the cities in which municipal corporations would be set up and the conditions prevailing at such time in those cities. The difficulty, however, arises because rr. 13, 15 and 19, which provide for a notice for inspection, for filing complaints against rateable Values entered under el. (b) of r. 9 and for authentication and certification, use the expression "ward assessment book". It is from this fact that the contention was raised that, though r. IO is couched in permissive language, it must be construed as mandatory requiring the Commissioner to maintain ward assessment- books. Therefore, the Commissioner having maintained only one assessment-book for the whole city, it is not a valid book on the basis of which the levy of the property tax can be sustained. The argument was that the right of inspection, the right of taking extracts, the right to file complaints and the duty to give public. notice under rr. 13 and 15 and a special notice under cl. (2) of r. 15, as also the duty to authenticate and certify under r. 1 9, are all matters vital to both the rate payers, as also. the Corporation, and that it was in respect of these vital matters that rr. 13, 15 and 19 speak of ward assessment-books. Therefore, if the Legislature, which framed these rules, had contemplated one assessment-book instead of separate assessment-books for each of the wards, the language of these rules would not have been what it is. The Language of these rules, therefore, show that r. 10 must be construed to mean that the Commissioner has to maintain ward assessment-books and it is when such books are maintained that the Corporation can validly levy the tax on the basis of such books.

Confronted with this difficulty, the High Court construed the rules to mean that r. 10 was discretionary and not mandatory but that rr. 13, 15 and 19 apply only when ward assessment-books are kept, and that when they are read together, they show that the scheme was that where ward assessment-books are prepared the Legislature intended to invest each of such books with a finality and did not intend that the question as to rateable value or the amount of tax should remain

hanging fire until all the ward assessment- books were prepared. As regards r. 19, the High Court held that "if a single assessment-book is prepared, then the amount of tax entered in the assessment-book will not be conclusive evidence".

Such a conclusion means that r. 19, as also rr. 13 and 15 would apply only to ward assessment-books, and therefore, there would be no authentication and certification where one assessment book is kept and entries in such a single assessment-book would not be conclusive evidence as regards the quantum of tax entred in it under cl. (e) of r. 9. But once it is held that r. IO is discretionary and the Commissioner can maintain one assessment-book or several ward assessment-books, as the High Court has done, it is hardly possible that the legislature which gave such an option could have intended that r. 19 should apply only to ward assessment-books and not where one assessment-book is kept and deprive the Corporation of the benefit of entries in it being treated as conclusive evidence., It is true that a genuine difficulty arises in construing these rules as a result of the use of the expression "ward assessment-book" in rr. 13, 15 and 19, and the use of the expression "a ssessment-book in the rest of the rules. At the same time acceptance of the appellant's contention or the in terpretation by the High Court would create difficulties. The contention that r. 10 should be construed as mandatory ignores (1) the permissive language of the rule, and 9 59 (2)the deliberate departure made by the Legislature from s. 157 of the Bombay Corporation Act. If it intended that assessmentbooks for each ward should be kept, there was no necessity for it to depart from the language of s. 157 of that Act. The fact that it made such a departure is a sure indication that it did not. Unless compelled by the context and the content of the other rules, there would be no justification not to give to r. 10 the plain meaning of its language, particularly in view of the fact that the Act is intended to apply not to one but to an indefinite number of cities, each differing in conditions from the other, a factor which, as aforesaid, led the Legislature to make a departure from the said s. 157.

But a far more serious difficulty would arise if the conclusion reached by the High Court were to be accepted. If r. 19 were to be interpreted as applying to ward assetsment books, and not where one assessment-book is kept, rr. 13 and 15 must also on the same reasoning be construed in the same way. The Legislature could not have intended that the entry under cl. (e) of r. 9, as regards the quantum of property tax leviable on each building and land, would become conclusive evidence only where ward assessmentbooks are kept and not where one assessment-book is kept. Cl. (e) of r. 9 requires the Commissioner to enter in the assessment-book the amount at which each building is assessed to each of the property taxes. The object of authenOcation under r. 19 is to make such entry conclusive evidence of the amount being leviable on each such building and land for the particular official year. It is the amount of tax entered under cl. (e) of r. 9 to which is given the attribute of conclusive evidence, so that the Corporation can thenceforth proceed to issue bills for those amounts and serve demand notices. The rate payers cannot object to such bills and notices on the ground that the amounts therein set out are not correct by reason of some error or such similar reason. Rule 19 confers conclusiveness only to that extent and not to the rateable value or the tax fixed or charged, as both are subject to an appeal under s.406. Rule 19, therefore, was intended to enable the Corporation to proceed to make demands so soon as entries are made as provided by cl. (e) of r. 9 and the Commission has given thereafter his authentication that there exists no valid objection to the rateable value entered under the said cl. (e) . Since the object of r. 19 is to make the

entry as to the amount of tax conclusive evidence so as to enable the Commissioner to issue the bills, the Legislature could not have intended to apply the rule only when ward assessment- books are kept and not when one assessmentbook is maintained especially when in r. 10 it has deliberately given discretion to the Commissioner to maintain either one assessment-book or several ward assessment-books. We are in agreement with the High Court that the liability to pay the tax arises under r. 30 and r. 9(e) and is not dependent on 17-LI10OSupCI/71 9 60 authentication, which, as aforesaid, is intended for a limited purpose. But that does not mean that the provision as to authentication applies only when ward assessment books are kept, or that r. 19 does not apply where one assessment- book is prepared. If r. 19 were to be so construed, rr. 13 and 15 also would have on the same reasoning to be likewise construed. That would mean that the notice to enable the rate pay to take inspection under r. 13 and the notice under r. 15 fixing the date on or before which complaints against rateable value can be made, would have to be given only where ward assessment-books are kept and not where one assessment-book is kept. It goes without saying that the right to inspect provided under r. 13 and the right to file a complaint under r. 15 are vital matters. That being so, it is hardly conceivable that the Legislature intended these rules to apply only where the Commissioner keeps ward assessment-books.

Since, for the reasons given earlier, r. 10 has to be construed as permissive and not mandatory, and the construction adopted by the High Court in regard to rr. 1 3, 15 and 19 is bound to create anomalies pointed out above, the conclusion we must reach is that it was through inadvertence that the old language used in ss. 157 to 168 of the Bombay Corporation Act was allowed to be retained without carrying out the change of language necessitated as a result of r. 10 giving discretion to the Commissioner either to maintain one book or several books wardwise. The result, therefore, is that the assessment-book in question must be held to be valid and no objection as to the validity of the bills and demand notices can be raised on the ground that only one assessment-book and not wardwise books are kept. The appellant, thus, does not succeed on either of the two contentions raised on his behalf. The appeal fails 'and is dismissed with costs.

G.C. Appeal dismissed.