# Municipal Board, Hapur vs Raghuvendra Kripal And Others on 23 September, 1965

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## Author: M. Hidayatullah

## Bench: M. Hidayatullah, P.B. Gajendragadkar, K.N. Wanchoo, J.C. Shah, S.M. Sikri

PETITIONER:
MUNICIPAL BOARD, HAPUR

Vs.

RESPONDENT:
RAGHUVENDRA KRIPAL AND OTHERS

DATE OF JUDGMENT:
23/09/1965

BENCH:
HIDAYATULLAH, M.
BENCH:
HIDAYATULLAH, M.
GAJENDRAGADKAR, P.B. (CJ)
WANCHOO, K.N.
SHAH, J.C.
SIKRI, S.M.

CITATION:
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RF 1970 SC 58 (5)
RF 1973 SC1374 (9)
RF 1974 SC1660 (33)
R 1975 SC1007 (13)
R 1975 SC1069 (25,26)
RF 1977 SC1055 (5)
RF 1990 SC 322 (5)
RF 1990 SC 548 (13)

ACT:
U.P. Municipalities Act (2 of 1916), ss. 131 to 135-Sections 131 to 134 whether mandatory-Section 135(3) whether ultra

vires-Whether suffers from excessive delegation or discrimination-Whether bad as conferring judicial functions on State Government.

HEADNOTE:

The appellant Board passed a special resolution on September 28, 1956, imposing water-tax in Hapur and a notification by the Uttar Pradesh Government was published in the Uttar Pradesh Gazette under s. 135(2) of the U.P. Municipalities Act (2 of 1916) notifying the resolution. Fifteen house-owners of Hapur who received notices from the appellant Board for the payment of the tax petitioned to the High Court under Art. 226 ,of the Constitution and asked for a writ or order preventing- the appellant Board from realising the tax. The main objections were (a) that the resolution of the appellant Board framing the proposal was not published in a local paper of Hapur published in Hindi and (b) that the rules framed for the imposition of the tax did not accompany the resolution which was affixed on the notice board at the office of the appellant Board in purported compliance with the requirements for publication. The imposition was also challenged on the ground that Arts. 14 and 19 of the Constitution were violated. A single judge of the High Court held that the tax was illegal inasmuch as the mandatory requirements of the Municipalities Act were not complied with by the appellant Board while imposing the tax and that s. 135(3) of the Act (which cures all defects in the imposition of the tax by making the notification of Government conclusive evidence of the legality of the imposition) was ultra vires Art. 14 of the Constitution because it created a bar against proof and left no remedy to the tax payers thereby making a discrimination between them and other litigants. He further held that the sub-section by making Government the sole judge of compliance with the Act conferred judicial power on Government contrary to the intendment of the Constitution. The appellant Board appealed under the Letters Patent. The Divisional Bench upheld the order of the single judge. The case was however certified as fit for appeal under Art. 133 and the Board appealed to this Court.

The contentions raised in appeal were: (i) s.135(3) shuts out all ,enquiry into the procedure by which a tax had been imposed and therefore suffered from excessive delegation of legislative function. (ii) The tax had not been validly imposed a there had been non-observance of mandatory provisions; (iii) s. 135(3) was discriminatory; and (iv) the sub-section was also bad because it conferred judicial functions on the State Government.

HELD : Per Gajendragadkar, C.J., Hidayatullah, Shah and Sikri. JJ.-(i) The rule of conclusive evidence in s.135(3) does not shut out all enquiry by courts. There are certain

matters which cannot be established by a notification under s.135(3). For example no notification can issue unless there is a special resolution under s. 134. The special resolu-
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tion is a sine qua non for the notification. Again the notification cannot authorise the imposition of a tax not included in s. 128 of the Municipalities Act. Neither the Municipal Board nor the State Government can exercise such power. What the section does is to put beyond question the procedure by which the tax is imposed, that is to say the various steps taken to impose it. A tax not authorised, can never be within the protection afforded to the procedure for imposing taxes. Such a tax may be challenged, not with reference to the manner of imposition but as an illegal impost. [958 A-D]

(ii) There can be no doubt that some of the provisions of ss. 131 to 134 of the Act are mandatory. But all of them are not of the same character. In the present case, as in Raza Buland Sugar Co. Ltd. and in Berar Swadeshi Vanaspati, the provisions not observed were of a directory character and therefore the imposition had the protection of S. 135(3). [958 H]

Raza Buland Sugar Co. Ltd. v. Municipal Board, Rampur. [1965] 1 S.C.R. 970 and Berar Swadeshi Vanaspati v. Municipal Committe, Committee Sheogaon & Anr. [1962] 1 S.C.R. 596, relied on.

(iii) Mandatory provisions must be fully complied with, and directory provisions should be substantially complied with. In either case the agency for seeing to this compliance is the State Government. It is hardly to be expected that the State Government would not do its duty or that it would allow breaches of the provisions to go unrectified.

In cases of minor departure from the letter of the law especially in matters not fundamental, it is for the Government to see whether there has been substantial or reasonable compliance. Once Government condones the departure, the decision of the Government is rightly made final by making the notification conclusive evidence of the compliance with the requirements of the Act. [959 H-960 D]

(iv) The power to tax belongs to the State Legislature but is exercised by the local authority under the control of the State Government. It is impossible for the State Legislature to impose taxes in local areas because local conditions and needs must very. The power must be delegated. The taxes however are predetermined and a procedure for consulting the wishes of the people is devised. But the matter is not left entirely in the hands of the Municipal Boards. As the State Legislature cannot supervise the due observance of its laws by the municipal Boards power is given to the State Government to check their actions. The proceedings for the imposition of the tax must come to a conclusion at some stage after which it can be

said that the tax has been imposed. That stage is reached, not when the special resolution of the Municipal Board is passed but when the notification by Government is issued. After the notification all enquiry must cease. This is not a case of excessive delegation unless one starts with the notion that the State Government may collude with the Municipal Board to disregard deliberately the provisions for The imposition of the tax. There is no warrant for such a supposition. The provision making the notification conclusive evidence of the proper imposition of the tax is conceived in the best interest of compliance of the provisions by the Board and not to facilitate their breach. [960 F-961 E]

Excessive delegation is most often found when the legislature does not perform all the essential legislative functions and leaves them to some other agency. The Legislature here performs all essential functions in the imposition of the tax. The selection of the tax for imposition in a municipal area is by the legislative will expressed in s. 128. Neither the Municipal Board, nor the Government can go outside the list of taxes therein included. The procedure for the imposition of the tax is also, laid down

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by the Legislature for the Municipal Board to follow and the State Government is there to ensure due observance of that procedure. in view of all this there was no excessive delegation or conferral or legislative functions on the appellant Board or the State Government. [961 F-962 C]

(v) There are numerous statutes including the Evidence Act, in which a fact is taken to be conclusively proved from the existence of some other fact. The law is full of fictions and irrebuttable presumptions which also involve proof of facts. The tax payers in the Municipality are allowed to object to the proposal for the tax and the rules and to, have their objections considered. They cannot be allowed to keep on agitating. Section 135(3) which only concludes objections against the procedure followed in the imposition of the tax cannot be said to be discriminatory and -violative of Art. 14. [962 D-H]

(vi) The objection that the impugned sub-section involves the exercise of judicial functions not open to the legislature is wholly erroneous. The subsection only shuts out further enquiry and makes the notification final. [962 H]

Per Wanchoo, J. (dissenting) (i) Section 135(3) bars enquiry by courts into all procedural provisions relating to imposition of taxes and therefore it bars enquiry into any matter covered by s. 131 to S. 135(1) of the Act. It cannot be read down as barring enquiry only into some procedural provisions i.e. from s. 131 to s. 133 and not into the other procedural provisions i.e. s. 134 and s. 135(1). [968 D]

Section 135(3) is not a rule of evidence; it is a

substantive provision which lays down in effect that once a notification under s. 135(2) is issued it will be conclusively presumed that the tax is in accordance with all the procedural provisions with respect to the imposition thereof. [969 E]

Ishar Ahmad Khan v. Union of India, [1962] Supp. 3 S.C.R. 235, referred to.

The effect of s. 135(3) is that the procedural provisions are given the go by in the matter of imposition of tax and as soon as a notification under s. 135(2) is shown to the court, the court is helpless, in the matter even though none of the provisions of s. 131 to s. 135(1) may have been complied with. [969 H]

(ii) In the field of local taxation relating to municipal boards and district boards and similar other bodies there are reasons for delegating :fixation of rate to such bodies subject to proper safeguards. This is exactly what has been done under the Act subject to the safeguards contained in ss. 131 to s. 135(1). If those safeguards are followed the delegation would be proper delegation and could not be challenged as ultra vires on the ground of excessive delegation. But if the legislature after laying down with great care safeguards as to the imposition of tax including its rate makes a blanket provision like s. 135(3), which at one stroke does away with all those safeguards-and this is what s. 135(3) has done in the present case-the position that results is that there is delegation of even the essential function of fixing the rate to the subordinate authority without any safeguard. Such a delegation would be excessive delegation and would be ultra vires. [972 D-F]

(iii) Section 135(3)inasmuch as it makes the delegation contained in ss. 128 to 135(2) excessive must be severed from the rest of the sections which are otherwise a proper delegation of legislative authority and should be struck down on the ground of excessive delegation. [973 B]

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JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 583 of 1962.

Appeal by special leave from the judgment and order, dated November 23, 1959, of the Allahabad High Court in Special Appeal No. 524 of 1958.

S. V. Gupte, Solicitor-General, Guru Dayal Srivastava and T. Satyanarayana, for the, appellant.

B. R. L. Iyengar and A. G. Ratnaparkhi, for respondents. Nos. 1, 2, 4, 8 & 12 to 14.

C. B. Agarwal and O. P. Rana, for Intervener No. 1. A. V. Rangam, for Intervener No. 2.

G. C. Kasliwal, Advocate-General, for the State of Rajasthan and R. N. Sachthey, for Intervener No. 3.

I. N. Shroff, for Intervener No. 4.

The Judgment of GAJENDRAGADKAR, C.J., HIDAYATULLAH, SHAH AND SIKRI, JJ was delivered by HIDAYATULLAH, J. WANCHOO, J.delivered a dissenting Opinion.

Hidayatullah J. The Municipal Board, Hapur (shortly the appellant Board) passed a Special Resolution (No. 296) on September 28, 1956 imposing water tax in Hapur from April 1, 1957 and a notification by the Government of Uttar Pradesh was. Published in the Uttar Pradesh Gazette under s. 135(2) of the U. P. Municipalities Act (Act 2 of 1916) dated December 11, 1956 notifying the resolution. Fifteen house owners of Hapur who received notices from the appellant Board for the payment of the tax assessed in respect of their houses, petitioned to the High Court at Allahabad under Art. 226 of the Constitution and asked for a writ or order preventing the appellant Board from realising the tax. Their contention was that the tax was illegal as it was imposed in contravention of the provisions of the Munici- palities Act. The main grounds of objection were (a) that the, resolution of the appellant Board framing the proposal was not published in a local paper of Hapur printed in Hindi, and (b) that the rules framed for the imposition of the tax did not accompany the resolution which was affixed on the notice board at the office of the appellant Board in purported compliance with the requirements for publication. The imposition was also challenged on the ground that Arts. 14 and 19 of the Constitution were violated-

The petition was heard by Mr. Justice James who decided all the points against the appellant Board. He held that the tax was illegal inasmuch as the mandatory requirements of the Municipalities Act were not complied with by the appellant Board while imposing the tax, and that s. 135(3) of the Act (which cures all defects in the imposition of tax by making the notification of Government conclusive evidence of the legality of the imposition) was ultra vires Art. 14 of the Constitution because it created a bar against proof and left no remedy to the tax payers thereby making a discrimination between them and other litigants. He further held that the sub-section, by making Government the sole judge of compliance with the Act conferred judicial power on Government contrary to the intendment of the Constitution. The appellant Board was accordingly ordered not to collect the tax from the petitioners. The appellant Board appealed under the Letters Patent. The Divisional Bench hearing the special appeal agreed with Mr. Justice James. The present appeal has been filed by special leave of this Court. Since it will be necessary to 'consider whether the appellant Board complied with the requirements of the Municipalities Act or not and, if not, to what extent, it is necessary to analyse the provisions in the Municipalities Act for the imposition of a tax and then to follow that up with a nar- ration of the steps taken by the appellant Board. Section 128 of the Municipalities Act confers on the Munici- palities in Uttar Pradesh the power to levy taxes and enumerates the kinds of taxes. One such tax mentioned in cl. (x) of sub-S. (1) of the section reads : "a water tax on the annual value of the building or land or both". This was the tax which the Municipality had attempted to impose in Hapur. There can be no question that the appellant Board had the competence to impose this tax and so the first question is whether it went about the business in the wrong way and, if it did, what is the effect. Section 129 specifies certain restrictions

on the imposition of water tax. We need not refer to them because no objection was raised that the restrictions there prescribed had not been observed. Sections 131 to 135 lay down the procedure for the imposition of the tax. Section 131 provides that when a Board desires to impose a tax it shall, by special resolution, frame a proposal specifying the tax, the person or class of persons to be made liable and the description of the property or other taxable things or circumstances in respect of which they are to be made liable, the amount or rate leviable from such person or class of persons and any other matter which the State Government may require by rules to be specified. The same section requires the Board to prepare a draft of the rules which it desires the State Government to make and the Board is required to publish the proposal, the draft rules so framed, and a notice in the prescribed form, in the manner laid down by s.

94. That section says that every resolution passed by a Board at a meeting, shall, as soon thereafter as may be, be published in a local paper published in Hindi and where there is no such local paper, in such manner as the State Government may, by general or special order, direct. After the notice etc. are published, s. 132 enables any inhabitant of the Municipality to, submit to the Board an objection in writing to all or any of the proposals framed by it and the Board is required to consider the objection so submitted and to pass order thereon by special resolution. If the Board decides to modify its proposals or any of them it must publish the modified proposals and (if necessary) the revised draft rules with a fresh notice, for objections. Any new objection so received has to be dealt with in the same way. After the Board has finally settled the proposals, it has to submit the proposals, the objections (if any) and the orders made in connection therewith, to the prescribed authority. The prescribed authority under s. 2(17) (ii) means an officer or a body corporate appointed by the State Government in this behalf by notification in the official Gazette, and, if no such officer or body corporate is appointed, the Commissioner. It may be stated that the proposal we are considering was accepted by the Commissioner. Then follows s. 133 and it gives power to the State Government or the prescribed authority to reject, sanction or modify any proposal. When the proposals are sought to be modified they have to be referred back to the Board for further consideration. When the proposals are sanctioned by the State Government or the prescribed authority s. 134 of the Act requires that the State Government, after taking into consideration the draft rules submitted by the Board, shall proceed to make such rules, under its powers under s. 296 of the Act, in respect of the tax, as the Government may consider necessary. After the rules have been made, the order of sanction and a copy of the rules are sent to the Board and thereupon the Board by special resolution directs the imposition of the tax with effect from a date which it specifies in the resolution. This is stated in s. 135 which may be reproduced here fully "135. Imposition of tax,-

> (1) A copy of the resolution passed under Section 134 shall be submitted to the State Government, if the tax has been sanctioned by the State Government, and to the Prescribed Authority, in any other case.
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> (2) Upon receipt of the copy of the resolution the State Government, or Prescribed Authority, as the case may be, shall notify in the official Gazette, the imposition of the tax from the appointed date, and the imposi-

tion of a tax shall in all cases be subject to the condition that it has been so notified.

(3) A notification of the imposition of a tax under sub-section (2) shall be conclusive proof that the tax has been imposed in accordance with the provisions of this Act." The appellant Board passed a special resolution in terms of s. 131 (1) of the Act. The publication of the resolution was made by affixing a copy of the resolution on the notice board as provided by a notification dated July 5, 1916 and by beat of drum in the town of Hapur. The resolution was, however, not published in a local paper published in Hindi as required by S. 94(3) of the Act. It is admitted that two Hindi weeklies entitled "Janmat" and "Bharatvarsh" and one Hindi daily entitled "Vyapar" were published at that time at Hapur. The appellant Board did not publish the notice etc. in these journals because, in its opinion, none of these papers was a suitable local paper having wide circulation in the town at the time. Notification of the 5th July, 1916 provides that, where, in a Municilpality, there is no local paper, a copy of every resolution passed by a Board at a meeting shall, within ten days from the date of the meeting, be pasted up and for thirty days be kept pasted up on a notice board to be exhibited for public information at the building in which the meetings of the Board are ordinarily held.

Two objections against the tax found favour with the High Court. The first objection arose from the non-observance of s. 94(3) which, as already noticed, requires that the publication of the proposal etc. should be in a local newspaper published in Hindi. The High Court held that there was no need to take recourse to the notification of the 5th of July 1916, because the first part of S. 94(3) could be complied with. The next objection against the tax was that even if the special Resolution under s. 131 was properly published, the rules which ought to accompany the Resolution were not exhibited. The appellant Board claimed that the court was precluded from making an enquiry by reason of s. 135(3) which made the notification conclusive evidence that the tax was imposed in accordance with the provisions of the Municipalities Act. The respondents met this by challenging the legality of the sub-section. They pleaded that it was discriminatory inasmuch as it did not allow one set of litigants to prove their allegations as against the general body of litigants and further that there was a conferral of judicial functions on the legislature which was contrary to the separation of powers under the Constitution. The High Court accepted these contentions also.

There can be no doubt that the language of s. 135(3) is as wide as it is peremptory. Read literally it can lead to the conclusion that even an illegal tax cannot be questioned. Prima facie, it appears that even if a Municipal Board goes outside the categories of taxes mentioned in s. 128 and if the Government is persuaded to notify the imposition, all will be well. 'This cannot be the intent and hence not the meaning. We must, therefore, see if the words are susceptible of another construction obvitating such a patently absurd result.

There is at the very start the fundamental fact that the power to tax in a State can only be exercised by the State Legislature, the extent of the power being fixed by the Constitution. The taxes which the State Legislatures are allowed to raise are enumerated in the Seventh Schedule to the Constitution. The State Legislature can impose all these taxes itself but it is usual to authorise the levy of some of them by local authorities for their own purpose. Taxes so raised by it local authority are not imposed by it as a legislature but as a delegate of the legislature. What is done is binding by the authority of the legislature and the tax is valid only if it is one of the, taxes the delegate can raise and the delegate

imposes it in accordance with the conditions laid down by the legislature. It is thus that we find an elaborate procedure prescribed by all the Municipal Acts. In the U.P. Municipalities Act also, as we have seen, a Board must first pass a special Resolution framing a proposal and the draft rules, invite objections, consider them, and then get them approved by Government. After this approval there must be a final special resolution imposing the tax from a particular date and the Government then notifies the imposition of the tax. It is the duty of Government to see that the various steps laid down for the imposition of the tax are followed. Before it notifies the resolution Government satisfies itself about the requirements. The notification is made conclusive proof that the tax is imposed in accordance with the provi-

sions of the Act. The question arises : Is this rule of conclusive evidence such as to shut out all enquiry by courts ? We have no hesitation in answering the question in the negative. There are certain matters which, of course, cannot be established conclusively by a notification under s. 135(3). For example, no notification can issue unless there is a special resolution. The special resolution is the sine qua non for the notification. 'The State Government cannot impose, a tax all by itself by notifying the imposition of the tax, without a resolution by the Board. Again, the notification cannot authorise the imposition of a tax not included in s. 128 of the Municipalities Act. Neither a Municipal Board nor a State Government can exercise such a power. A tax can only be said to be imposed in accordance with the provisions of the Municipalities Act, if it is contemplated by the Act. There is a difference between the tax and the imposition of the tax. The former is the levy itself and the latter the method by which the levy is imposed and collected. What the sub-section does is Lo put beyond question the procedure by which the tax is imposed, that is to say, the various steps taken to impose it. A tax not authorised can never be within the protection afforded to the procedure for imposing taxes. Such a tax may be challenged, not with reference to the manner of the imposition but as an illegal impost. It would thus appear that it the very start the selection of the tax must be with reference to the delegated powers. The Municipal Board of the State Government cannot select a tax which the legislature has not mentioned in s. 128 of the Municipalities Act. As the State Government cannot itself impose the tax it must have before it, the special resolution of the Board before notifying the imposition. Between the special resolution selecting a tax for imposition and the special resolution imposing it sundry procedure is gone through and section 135(3) say-, that the notification by Government is conclusive proof that the pro- cedure was correctly followed.

It is argued that ss. 131 to 134 use mandatory language and it is the.intention of the Legislature to secure obedience to its wishes and therefore it is for the courts to say whether those provisions were followed by the Municipal Board and the State Government. There can be no doubt that some of the provisions are mandatory. But all provisions are not of the same character. In Raza Bunland Sugar Co. Ltd. v. The Municipal Board, Rampur(1) ss. 131 to 134 were considered in the light of the tests (1) [1965] 1. S. C. R. 970.

usually applied to determine whether a provision of law is mandatory directory. It was there pointed out that all the sections in, spite of the language used in them were not mandatory. The majority opinion considered that the first part of s. 131(3) requiring publication of proposals was mandatory and thesecond part which required that publication should be in the manner required by s. 94(3) was only directory. In one of the minority opinions no such distinction was made but s. 94(3) was

held to be directory. In the other minority opinion distinction was made between provisions for the protection of tax payers which were stated to be mandatory and provisions for promoting despatch, publicity and efficiency were stated to be directory requiring substantial but not literal compliance. In that case the notice imposing water tax in Rampur was published in Hindi but in a news-paper published in Urdu. The majority treating the latter part of s. 131 (3) as directory held that there was Substantial compliance. The minority treating s. 131(3) to be mandatory upheld the tax treating s. 94(3) as directory. One of the minority views relied upon s. 135(3) as shutting out enquiry. In Berar Swadeshi Vanaspati v. Municipal Committee Sheogaon & Anr.(1) the Municipality passed a resolution tinder s. 67(1) of the C. P. & Berar Municipalities Act, 1922. Sub- sections (1) to (7) incorporated provisions similar to ss. 131-135 of the U. P. Municipalities Act. An attempt to question the tax on the ground that the procedure prescribed by s. 67 was not followed was repelled. It was observed:

> "This notification therefore 'clearly is one which directs imposition of octroi and falls within sub- s. (7) of s. 67 and having been notified in the Gazette it is conclusive evidence of the tax having been imposed in accordance with the provisions of the Act and it can not be challenged on the ground that all the necessary steps had not been taken."

The defect in the imposition of the tax here being of the same character as in the two cases of this Court above cited, the imposition would have the protection of s. 135(3) and the tax must be deemed to be imposed according to the procedure laid down in the Act.

As observed already, some of the provisions controlling the imposition of a tax must be fully complied with because they are vital and therefore mandatory, and the others may be complied (1) [1962] 1 S.C.R. 596.

with substantially but not literally, because, they are directory. In either case the agency for seeing to this compliance is the State Government. It is hardly to be expected that the State Government would not do its duty or that it would allow breaches of the provision to go unrectified. One, can hardly imagine that ,an omission to comply with the fundamental provisions would ever be condoned. The law reports show that even before the ,addition of the provision making the notification conclusive ,evidence of the proper imposition of the tax complaints brought before the courts concerned provisions dealing with publicity or requiring ministerial fulfillment. Even in the two earlier cases 'which reached this Court and also the present case, the complaint is of a breach of one of the provisions which can only be regarded as directory. In cases of minor departures from the letter of the law especially in matters not fundamental, it is for the Govern- ment to see whether there has been substantial or reasonable compliance. Once Government condones the departure, the decision of Government is rightly made final by making the notification conclusive evidence of the compliance with the requirements of the Act. It is not necessary to investigate whether a complete lack ,of observance of the provisions would 'be afforded the same protection. It is most unlikely that this would ever happen and before we pronounce our opinion we should like to see such a -case.

It was, however, contended that there has been excessive ,delegation, inasmuch as the State Government has been given the power to condone breaches of the Act and thus to set at naught the Act itself. This is not a right reading of the relevant 'provisions. We have already pointed out that the power to tax is conferred on the State Legislature but is exercised by the local authority under the control of the State Government. The taxes with which we are concerned are local taxes for local needs and for which local inquiries have to be made. They are rightly left to the representatives of the local population which would bear the tax. Such taxes must vary from town to town, from one Board to -another, and from one commodity to another. It is impossible for the Legislature to pass statutes for the imposition of such taxes in local areas. The power must be delegated. Regard being had to the democratic set-up of the municipalities which need the proceeds of the taxes for their own administration, it is proper to leave to these municipalities the power to impose and collect these taxes. The taxes are, however, predetermined and a procedure for consulting the wishes of the people is devised. But the matter is not left entirely in the hands of the Municipal Boards. As the State Legislature cannot supervise the due observance of its laws by the Municipal Boards, power is given to the State Government to check their actions. The imposition of the tax is left to the Municipal Boards but the duty to see that the provisions for publicity, and obtaining the views of the persons to be taxed are fully complied with, is laid upon the State Government. The proceedings for the imposition of the tax, however, must come to a conclusion at some stage after which it can be said that the tax has been imposed. That stage is reached, not when the special resolution of the Municipal Board is passed, but when the notification by Government is issued. Now it is impossible to leave the matter open so that complaints about the imposition of the tax or the breach of this rule or that may continue to be raised. The door to objections must at some stage be shut and the Legislature considers that, if the State Government approves of the special resolution, all enquiry must cease. This is not a case of -excessive delegation unless one starts with the notion that the State Government may collude with the Municipal Board to disregard deliberately the provisions for the imposition of the tax. There is no warrant for such a supposition. The provision making the notification conclusive evidence of the proper imposition of tax is conceived in the best interest of compliance of the provi- sions by the Boards and not to facilitate their breach. It cannot. therefore, be said that there is excessive delegation.

The matter may be looked at from another point of view- Excessive delegation is most often found when the Legislature does not perform all the essential legislative functions and leaves them to some other agency. The Legislature here performs all essential functions in the imposition of the tax. The selection of tax for imposition in a Municipal area is by the legislative will expressed in s. 128. Neither the Municipal Board, nor the Government can go outside the List of taxes therein included. The procedure for the imposition of the tax is also laid down by the Legislature for the Municipal Board to follow and the State Government is there to ensure due observance of that procedure. We have already shown above that it would be impossible for the Legislature to legislate for the numerous Municipal Boards and local authoriteis with a view to raising taxes for them. The provisions, such. as they are, are the best means of achieving consultation of the local population and close scrutiny of the actions of their representatiaves in imposing the tax. The notification which issues is given finality by the voice of the Legislature. It would, there CI/65- 18 fore, appear that in the selection of the ox and its imposition the Legislature plays a decisive part and also lays down the method by which the tax is to be imposed. The Legislature does not make local enquiries, hear

objections and decide them-functions which are most inappropriate for the Legislature to perform. This task is delegated to the appellant Board which is the representative body of the local population on whom the tax is levied. In other words, all the essential functions of Legislation are performed by the State Legislature and only the minor functions necessary for the imposition of the tax and the enquiries which must be made to ascertain local opinion are left to the Municipal Boards. An additional check is available as Government can veto the actions of a Board if it does not carry out the mandate of the Legislature. In our judgment, there was no excessive delegation or a conferral of Legislative functions on the appellant Board or the State Government. It remains to consider two other arguments in the case. The first is the question of discrimination which is said to arise from the proviso which makes the notification conclusive in respect of the procedure by which the tax is imposed. There are numerous statutes, including the Evidence Act, in which a fact is taken to be conclusively proved from the existence of some, other fact. The law is full of fictions and irrebuttable presumptions which also involve proof of facts. It has never been suggested before that when the Legislature says that enquiry into the truth or otherwise of a fact shall stop at a given stage and the fact taken to be conclusively proved, a question of discrimination arises. The tax payers in the Municipality are allowed under the Municipalities Act to object to the proposal for the tax and the rules and to have their objections considered. They cannot, of course, be allowed to keep on agitating and a stage must come when it may be said that the provisions of the Act have been duly observed. That stage is reached after Government has scrutinized the proposal. the rules, the objections and the orders and has approved of the proposal, a special resolution is passed by the Municipal Board and a notification is issued. It cannot be said that sub-s. (3) of s, 135 which leads to the conclusion that the imposition of the tax is according to the Municipalities Act is discriminatory because it only concludes objections against the procedure followed in the imposition of the tax.

The next objection that the impugned sub-section involves the exercise of judicial functions not open to the Legislature, is wholly erroneous. The sub-section only shuts out further enquiry and makes the notification final. There is no exercise of a judicial function. In our country there is no rigid separation of powers and the legislature often frames a rule such as is incorporated in the third sub-section of s. 135. The Evidence Act is full of such Provisions. In the United States of America where the separation of powers is extremely rigid in some of the constitutions of the States it may be open to objection that the Legislature in shutting out enquiry into the truth of a fact encroaches upon the judicial power of the State. Such disability has never been found to exist in our country although legislation of this type is only too frequent The objection is, therefore without substance.

In the result we are "of opinion that the judgment of the High Court under appeal must be set aside. We accordingly set it aside and order the dismissal of the petition under Art,- 226 and 227 of the Constitution from which the present appeal has arisen. In the circumstances of the case there shall be no order as to costs.

Wanchoo J. I regret I am unable to agree.

This appeal by special leave from the judgment of the Allahabad High Court raises the question of vires of s. 135(3) of the U.P. Municipalities Act, No. 2 of 1916, (hereinafter referred to as the Act). the facts in the case are not in dispute and may be briefly stated. The appellant, namely, the Municipal

Board Hapur, decided to impose water tax from April 1, 1957. In consequence, steps were taken under ss. 131 to 135 of the Act to effectuate that purpose. However, proposals and draft rules were never published as required by s. 131(3) of the Act. All that was done was that a notice in the form set forth in Sch. III was pasted on the notice-board and there was some beat of drum with respect to the notice. Even so, the draft rules were not appended to the notice which was put up on the notice-board and in effect there was more or less no compliance with the provisions relating to ;the publication of proposals and draft rules. Eventually a notification was issued under s. 135(2) of the Act by the relevant authority about the imposition of the tax from April 1, 1957. Thereafter collection of tax began. The respondents who are residents of Hapur received notices for payment of tax. Thereupon they filed a writ petition in the High Court, and their main grievance was that the provisions of s. 131 relating to publication of proposals and draft rules were not complied with and thus they were de. proved of an opportunity to file objections as provided under s. 132 of the Act. They contended that the publication as pro-

vided in s. 131 of the Act was mandatory and as a mandatory provision of the Act was not complied with, the imposition of the tax was invalid.

The petition was heard by a learned Single Judge who found, as already indicated that the provisions of s. 131(3) relating to publication had not been complied with, consequently, the residents of Hapur had no opportunity of making objections to the proposals and draft rules. Reliance however was placed on behalf of the appellant on s. 135(3) of the Act, which is in these terms :-

> "A notification of the imposition of a tax under subsection (2) shall be conclusive proof that the tax has been imposed in accordance with the provisions of this Act."

In reply to this, the respondents contended that s. 135(3) was ultra vires, and this contention was accepted by the learned Single Judge. He therefore allowed the petition and directed the appellant not to collect water tax from the respondents until such time as the tax was imposed in strict compliance with the provisions of the Act.

Then there was an appeal by the appellant to a Division Bench. There also reliance was placed on s. 135(3) of the Act. 'Me Division Bench upheld the order of the learned Single Judge, though its approach to s. 135(3) was different. It held that s. 135(3) was not a provision for validating anything done without complying with the provisions of the Act and it could not protect the invalidity of a tax if it was invalid on account of its being imposed without following the legal procedure. Then there was an application by the appellant for a certificate to appeal to this Court, which was refused by the High Court. The appellant thereupon got special leave and that is how the matter has come up before this Court. The main contention on behalf of the appellant before this court is that s. 135(3) which lays down that the notification under s. 135(2) would be conclusive proof that the tax had been imposed in accordance with the provisions of the Act bars any enquiry into the various procedural steps taken for the imposition of the tax, and the court where such a question is raised must hold that the tax has been imposed in accordance with the provisions of the Act. Once the court comes to that conclusion it would mean that it must assume that the necessary procedural

steps for imposing tax had all been properly complied with and therefore there could not be any invalidity of the tax on the ground that all steps necessary for the valid imposition of the tax had not been taken. It is further submitted that s. 135(3) bars enquiry as to the procedural steps necessary for imposing the tax which are contained in ss. 131 to 133 of the Act, and it is urged that what a court can enquire is whether the special resolution as required by s. 134 has been passed by the municipality or not.

On the other hand, learned counsel for the respondents con- tends that if s. 135(3) is to be given the meaning for which the appellant contends it will be ultra vires because then there will be an abdication of its essential legislative functions by the legislatures with respect to imposition of tax and therefore s. 135(3) would be bad on the ground of excessive delegation. It is further urged on behalf of the respondents that s. 135(3) read literally not only bars enquiry into procedural steps necessary for the imposition of the tax, which, according to learned counsel, are contained in ss. 131 to 135(1) but also bar-, enquiry as to whether the tax is in accordance with ss. 128 to 130, which are substantive provisions with respect to taxes which can be imposed by municipal boards. Learned counsel for the respondents thus urges that s. 135(3) would give blanket power for the imposition of any tax whether it is contained in s. 128 or not and would also permit violating the restrictions contained in ss. 129 and 130; and if that be so, it would be a case of complete abdication of its essential functions by the legislature with respect to imposition of tax and a gross case of excessive delegation. The question that falls for consideration therefore is about the scope of s. 135(3) and whether on a true interpretation of that provision it can be said to amount to a case of excessive delegation and therefore liable to be struck down on that count.

Before I come to s. 135(3) I may indicate the scheme of municipal taxation contained in ss. 128 to 135 of the Act. Section 128 mentions the taxes which a board may impose sub- ject to any general rules or special orders of the State Government in this behalf. Section 129 lays down certain restrictions on the imposition of water-tax and s. 130 lays down certain restrictions on the imposition of certain other taxes. Section 130-A specifies the powers of the State Government to require a board to impose taxes. Then comes section 131 to 135 which are obviously procedural provisions with respect to imposition of any tax mentioned in s. 128. That these are procedural provisions is clear from s. 136 of the Act which lays down that the procedure for abolishing a tax or for altering a tax in respect of certain matters shall, so far as may be, be the procedure prescribed by ss. 131 to 135 for the imposition of a tax. The essentials of the procedure contained in ss. 131 to 135 may be briefly summarised thus. When a board desires to impose a tax it has to pass a special resolution framing proposals specifying the tax, the persons or class of persons on whom the tax will be imposed, the amount or rate leviable and any other matter referred to in s. 153 which the State Government requires by rules to be specified. The board has also to prepare a draft of the rules which it desires the State Government to make in that behalf. After the proposals and draft rules have been prepared the board is required to publish them along, with a notice in the form set forth in Sch. III: (see s. 1 3 1). On the publication of the notice along with the proposals and draft rules any inhabitant of the municipality has the right to submit objections in writing and the board has to take such objections into consideration and pass orders thereon by special resolution. If the board decides to modify its proposals, it shall publish the modified proposals and (if necessary) revised draft rules in the same manner as the original proposals and draft rules were published. If any

objections are received to the modified proposals they are again dealt with by the board which has to pass orders thereon by special resolution. When the board has finally settled its Proposals, it has to submit them, along with the objections (if any) to the proper authority, S. (132). The proper authority may either refuse to sanction the proposals or return them to the board for further consideration or sanction them without modifications or with such modification not involving, an increase of the amount to be imposed, as it deems fit; (section 133). When the proposals have been sanctioned by the proper authority, the State Government after taking into consideration the draft rules submitted by the board has to make such rules in respect of the tax as for the time being it considers necessary. When the rule.-, have been made, the order of sanction and a copy of the rules has to be sent to the board and thereupon the board has by special resolution to direct the imposition of the tax with effect from a date to be specified in the resolution : (s. 134). Thereafter a copy of the resolution passed under s. 134 is submitted to the proper authority. Upon receipt of the copy of the resolution the proper authority has to notify in the official gazette the imposition of the tax from the appointed day and the imposition of a tax shall in all cases be subject to the condition that it has been so notified.

It will be seen from the above procedural provisions that the legislature has taken great care to see that the tax is impose, after the inhabitants of a municipality have had a chance to make representations in that behalf and after the tax has been approved at all stages including the disposal of objections by means of special resolutions, which require a special quorum for the meeting in which they are passed. Further the legislature has taken care to provide that the disposal of objections by a board even by special resolution is not sufficient and it has required that the objections shall be sent to the proper authority, presumably for its consideration before it sanctions the tax. These provisions to my mind indicate the safeguards the legislature intended in a case of this kind where the legislature itself has not indicated the rate of tax but has merely indicated the heads of taxation and the fixation of rate of tax and all incidental matters have been delegated to the board subject to the supervision of the State Government. It is after all this elaborate procedure has been gone through that a tax can be validly imposed by the delegate, namely the board. This brings us to s. 135(3) which has already been set out. The first question that arises is the interpretation of this provision. As I have already indicated two different submissions have been made in this connection on behalf of the parties. The appellant submits that this section only bars enquiry by the court into the procedural provisions contained in s. 131 to s. 133. On the other hand, the respondents contend that this provision bars enquiry into all matters contained in s. 128 to s. 135(1). If the words of this provision were to be literally interpreted they lay down that the notification under s. 135(3) shall be conclusive proof that the tax has been imposed in accordance with the provisions of the Act. 'Me last words are very wide and it is contended on behalf of the respondents that they would include all the provisions of the Act and once a notification is issued under s. 135(2) the court is barred from inquiring whether the tax is against any of the provisions of the Act. I feel however that even though the words may be capable of such a wide interpretation, as is being, put upon them on behalf of the respondents. it would not be right to read them as if they provide that a notification under s. 135(2) bars enquiry even into the question whether the tax is one which could be imposed by the board at all under s. 128. It would to my mind be proper to read the section in a restricted sense and to hold that when it speaks of tax being imposed "in accordance with the provisions of this Act" it refers only to 'the procedural provisions relating to the imposition of tax by the board. The

legislature by these Words could not have intended that the board could impose any tax which was even not within the legislative competence of the State legislature and enquiry into that aspect would also be barred. Therefore I must reject the extreme argument on behalf of the respondents that these words mean that the court is barred from enquiring even whether the tax imposed is such as can be properly imposed by a board under S. 128 of the Act. I must read down these words only to mean that they bar an enquiry as to compliance with the procedural provisions of the Act with respect to the imposition of a tax.

This brings me to the next question namely whether the bar created by this provision is only with respect to s. 131 to s. 133 as urged on behalf of the appellant or goes further. I have already indicated that the procedural provisions for the imposition of a tax by the board are contained in ss. 131 to 135(1). It is after these procedural provisions are compeed with that a notification under S. 135(2) is issued. I can understand s. 135(3) being restricted in its application to procedural provisions only with respect to the imposition of a tax; but I cannot understand how that provision can be read down further so that it bars enquiry only into some procedural provisions i.e. from s. 131 to s. 133, and not into the other procedural provisions i.e. S. 134 and s. 135(1). I can see no way of reading s. 135(3) in the manner suggested on behalf of the appellant. 1st therefore hold that S. 135(3) bars enquiry by courts into all procedural provisions relating to imposition of taxes and therefore it bars enquiry into any matter covered by S. 131 to s. 135(1) of the Act.

This brings me to another question namely, what is the nature of the provision contained in s. 135(3) of the Act. Is it merely a rule of evidence as urged on behalf of the appellant or is it more than that and is a substantive provision in itself ? This Court had occasion to consider the question whether a rule of irrebuttable presumption was a rule of evidence or a substantive provision in Ishar Ahmad Khan v. Union of India(1) and observed that "the proper approach to adopt would be to consider whether fact A from the proof of which a presumption is required to be drawn about the existence of fact B is inherently relevant in the matter of proving fact B and has inherently any probative or persuasive value in that behalf or not. If fact A is inherently relevant in proving the existence of fact B and to any rational (1) [1962] Supp. 3 S.C.R. 235.

mind it would bear a probative or persuasive value in the matter of proving the existence of fact B, then a rule prescribing either a rebuttable presumption or an irrebuttable presumption in that behalf would be a rule of evidence. On the other hand, if fact A is inherently not relevant in proving the existence of fact B or has no probative value in that behalf and yet a rule -is made prescribing for a rebuttable or an irrebuttable presumption in that connection, that rule would be a rule of substantive law and not a rule of evidence." It is on this principle that I must consider whether s. 135(3) is merely a rule of evidence or a substantive provision. To my mind it cannot be said from the mere fact that a notification has been published under s. 135(2) that that fact is inherently relevant in showing that all the procedural provisions have been complied with; nor can it be said that that fact has inherent probative or persuasive value. There is in my opinion no inherent connection between the publication of a notification under s. 135(2) and the compliance with all the procedural provisions (namely, s. 131 to s. 135(1) ) of the Act. It will all depend on whether the proper authority has been vigilant or not in seeing that all the provisions contained from s. 131 to s. 135(1) have been complied with. I would therefore hold that s. 135(3) is not a rule of evidence; it is a substantive

provision which lays down in effect that once a notification under 135(2) is issued it will be conclusively presumed that the tax is in accordance with all the procedural provisions with respect to the imposition thereof In other words, the effect of the subs- tantive provision contained in s. 135(3) really comes to this. namely, that all the provisions from s. 1 3 1 to s. 1 3 5 (1 ) are wiped out and the notification issued under s. 135(2) becomes the sole basis of the imposition of tax. It has been said that there is no reason to suppose that the proper authority will not see that the provisions of s. 131 to s. 135(1) are complied with and that there is no reason to presume that the provision of s. 135(3) will be abused. So far as the first aspect is concerned it is obvious in this very case that the proper authority has not seen that the provisions of s. 131 to s. 133 have been complied with. As to the second I do not say that the proper authority will abuse the provisions of s. 135(3); but that does not in my opinion make any difference to the devastating effect of that provision on compliance with the procedural provisions contained in s. 131 to s.-135(1) of the Act in the matter of imposition of tax. The effect of s. 135(3) which in my opinion is a substantive provision is that the procedural provisions are given a complete go-by in the matter of imposition of tax and as soon as a notifi-

cation under S. 135(2) is shown to the court, the court is helpless in the matter, even though none of the provisions of S. 131 to S. 135(1) may have been complied with. This in my opinion is the effect of S. 135 (3), as it stands and there is no question of presuming that the proper authority would abuse that provision. Irrespective of the abuse or otherwise of that provision., the effect thereof in my opinion is to wipe out all the procedural safeguards provided in s. 131 to S. 135(1) of the Act relating to imposition of tax and to make the tax a completely valid imposition so long as there is a notification under S. 135(2).

On this interpretation of S. 135(3) a serious question arises whether it is a provision which can be said to be intravires. As I have already indicated, this is a case of delegation of power to impose tax in so far as its rate and incidence is concerned. Generally speaking, I am of opinion that it is the duty of a legislature when imposing a tax to specify the rate at which the tax is imposed, for the rate of tax, again speaking generally, is one of the essentials of the taxing power given to the legislature. But I cannot fail to recognise that there may be situations where the legislature may delegate to a subordinate authority the power to fix the rate under proper safeguards. It is not necessary to specify all the situations where this can be done. But there can be no doubt that in the matter of local taxation like taxation by municipal boards, district boards and bodies of that character there is pre-eminently a case for delegating the fixation of the rate of tax to the local body, be it a municipal board or a district board or some other board of that kind. The reason for this is that problems of different municipalities or districts may be different and one municipality may require one kind of tax at a particular rate at a particular time while another municipality may need another kind of tax at another rate at some other time. Therefore, the legislature can in the case of taxation by local bodies delegate even the authority to fix the rate to the local body provided it has taken care to specify the safeguards in the form of procedural provisions or such other forms as it considers necessary in the matter of fixing the rate. So far as I know practically all Municipal Acts provide safeguards of the nature contained in ss. 131 to 135(1) of the Act or some other provisions which are equally effective in the matter of controlling the fixation of rate of tax by a delegate of the legislature. In such a case where delegation of fixing the rate has been made by the legislature to a subordinate body with proper safeguards, it can-' not be said that the legislature has abdicated its essential

functions in the matter of taxing legislation by delegating the rate of taxation to be determined under proper safeguards by the delegate. Nor can such delegation be struck down as a case of excessive delegation which means that the legislature has abdicated its essential legislative functions in the matter of the legislation concerned. But there is ample authority for the view that where the legislature has abdicated its essential legislative functions and has made a delegation which may be called excessive such excessive delegation may be struck down. I may in this. connection refer to two decisions of this Court, namely, In re The Delhi Laws Act, 1912(1) and Rajnarain Singh v. The Chairman, Patna Administration Committee(2). It has been held in these cases that an essential legislative function cannot be delegated' by the legislature. Exactly what constitutes essential function cannot be enunciated in general terms. But the essential legislative function consists in the determination of the legislative policy and its formulation as a binding rule of conduct. It cannot be said that an unlimited right of delegation is inherent in the legislative power itself. This is not warranted by the provisions of the Constitution and the legitimacy of delegation depends entirely upon its being used as an ancillary measure which the legislature considers to be necessary for the purpose of exercising its legislative powers effectively and completely. The legislature must retain in its own hands the essential legislative functions which consist in declaring the legislative policy and laying down the standard which is to be enacted into a rule of law and what can be delegated is the task of subordinate legislation which by its very nature is ancillary to the statute which delegates the power to make it. Provided the legislative policy is enunciated with sufficient clearness or a standard is laid down, the courts should not interfere with the discretion that undoubtedly rests with the legislature itself in determining the extent of delegation necessary in a particular case.

In these two cases the question arose whether certain laws could be applied to certain areas with such modification as the executive authority deemed fit to make. It was held that where three executive authority was permitted, at its discretion, to apply without modification (save incidental change,-, such as name and place), the whole of any law already in existence in any part of India, that would be good. Further the executive authority could even be authorised to select future laws in a similar way and to apply them to certain areas. But where the authorisation was to repeal laws already in force in the area and either substitute other laws with or without modification, this was held (1) [1951] S.C.R. 747.

(2) [1955] 1 S.C.R. 290.

to be excessive delegation and ultra vires. Further where the modification in a law to be applied did not affect any essential change in the law and alter its policy it could be modified to that extent and applied by the executive authority under delegated authority. But where a modification affects a radical change in the policy of the law to be applied such an authority could not be delegated and would be ultra vires.

it is on the basis of these principles that I have to see whether s. 135(3) can be upheld. There is no doubt that the legislature delegated its power of imposing taxes, including the power to fix the rate, to the municipal board by s. 128 with respect to taxes specified therein. I have already said that generally speaking the fixation of rate of tax is one of the essential legislative functions but there may be situations where it may not be considered to be an essential legislative function and may be

delegated by the legislature to subordinate authorities with proper safeguards. I have also said that in the field of local taxation relating to municipal boards and district boards and similar other bodies there are reasons for delegating fixation of the rate to such bodies subject to proper safeguards. This is exactly what has been done under the Act subject to the safeguards contained in ss. 131 to 135(1). if those safeguards are followed, the delegation in my opinion would be a proper delegation and could not be challenged as ultra vires on the ground of excessive delegation. But if the legislature after laying down with great care safeguards as to the imposition of tax including its rate maker, a blanket provision like S. 135 (3), which at one stroke does away with all those safeguards-and this is what in my opinion S. 135(3) has done in the present case-the position that results after such provision is that there is delegation of even the essential function of fixing the rate to the subordinate authority with out any safeguard. Such a delegation would in my opinion be excessive delegation and would be ultra vires.

The question then is whether in the present case I should save the delegation contained in s. 128 read with the safeguards provided in s. 131 to S. 135(1) for the imposition of various taxes mentioned therein or uphold s. 135(3) which in one sweep does away with all the safeguards. In my opinion s. 135(3) is severable and the legislature would have provided for various safeguards contained in s. 131 to s. 135(1) when it delegated the power to impose a tax including the fixation of rate to municipal boards. It would therefore in my opinion be right to hold that sections 128 to 135(2) indicate proper delegation of the authority of the legislature to impose taxes specified in s. 128 and that it is sub-s. (3) of s. 135 which should be struck down because it is the only provision which makes the delegation excessive. I would therefore hold that s. 135(3) inasmuch as it makes the delegation contained in ss. 128 to 135(2) excessive must be severed from the rest of the sections which are otherwise a proper exercise of delegation of legislative authority and should be struck down on the ground of excessive delegation.

I would therefore dismiss the appeal with costs and uphold the order of the High Court holding that the tax imposed by the appellant had not been validly imposed, though on a different ground.

ORDER BY COURT In accordance with the opinion of the majority the appeal is allowed. No order as to costs.