Supreme Court of India
Government Of Andhra Pradesh & Anr vs Hindustan Machine Tools Ltd on 1 May, 1975
Equivalent citations: 1975 AIR 2037, 1975 SCR 394
Author: Y Chandrachud
Bench: Chandrachud, Y.V.

PETITIONER:
GOVERNMENT OF ANDHRA PRADESH & ANR:

Vs.

RESPONDENT:
HINDUSTAN MACHINE TOOLS LTD.

DATE OF JUDGMENT01/05/1975

BENCH:
CHANDRACHUD, Y.V.
BENCH:
CHANDRACHUD, Y.V.
KHANNA, HANS RAJ
BEG, M. HAMEEDULLAH

CITATION:
1975 AIR 2037 1975 SCR 394
1975 SCC (2) 274
CITATOR INFO :
R 1977 SC1686 (6)
RF 1980 SC1008 (21)
R 1987 SC2310 (14)

ACT:
Article 246(3) and, entry 49 in List II of 7th Schedule to Constitution--Nature of fees--Quid pro quo--Legislature amending definition retrospectively whether encroaches upon judicial functions--Andhra Pradesh Gram Panchayat Act, 1964.

HEADNOTE:
The Andhra Pradesh Legislature passed the Andhra Pradesh Gram Panchayat Act, 1964. The Kuthbullapur Gram Panchayat was established under the Act. The respondent constructed a factory and other buildings without the permission of the Gram Panchayat. Later on, the respondent asked for expost-facto permission. The Panchayat agreed to grant the permission on the respondent paying permission fee at 1-1/2 per cent on the capital value of the factory building and at 1 percent on the capital value of other buildings. The Panchayat also called upon the respondents to pay the house tax.
The respondents filed a Writ Petition in the High Court

challenging the levy of house tax and permission fee. The High Court allowed the Writ Petition holding that the buildings constructed by the respondents did not fall within the definition of a house and further ruled that since no services were rendered, the levy of, permission fee was illegal. Section 69 of the Act authorises the Gram Panchayat to levy a house tax.

> The definition of house as it stood when the High Court delivered its judgment was a building or hut fit for human occupation whether as a residence or otherwise, having a separate principal entrance from the common way and included any shop, workshop or warehouse or any building used for garaging or parking of buses or as a bus stand. The High Court held that the buildings other than factory premises were not a house because their separate principal entrance was situated on the road belonging to the respondents.

As regards the factory buildings, the High Court held that the legislature included shops, workshops, and warehouses, but aid not include factory within the definition of the house. The demand of house tax was held to be illegal.

After the judgment of the High Court was delivered, the Legislature amended the definition of the house retrospectively to include the buildings constructed by the respondents.

The appellant contended that the new definition of the house clearly includes the buildings constructed by the respondent and that the Panchayat was entitled to impose house tax on the respondent. Secondly, the Gram Panchayat lays roads, provides for drainage and lights, scrutinises the plans submitted for intended construction, and, therefore, is entitled to charge the permission fee. In the alternative, it was contended that the permission fee though called a fee is really in the nature of a tax on buildings and may be upheld as such.

Respondent contended

1. By redefining the term 'houses with retrospective effect, the Legislature encroached upon a judicial function.
2. Without a proper budget, the Gram Panchayat cannot impose taxes.

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3. There is no provision in the Act empowering the Gram Panchayat to levy permission fees.
4. No services are rendered for which permission fees can be charged.

Partly allowing the appeal,

HELD : The Legislature has power to pass a law prospectively as well as retrospectively. The Legislature can remove the basis of the decision rendered by a court. The Amending Act does not ask the instrumentalities of the State to disobey or disregard the decision given by the High Court, but

merely removes the basis of that decision. Under Article 246(3) read with Entry 49 in List II of the 7th Schedule, the State Legislature has exclusive power to make laws with respect to taxes on lands and buildings. Section 69 of the Act authorises the Gram Panchayats to levy house tax in the' villages under their respective jurisdiction. The house tax was rightly imposed by the Gram Panchayat. [398 B.F., 399 DEF]

HELD FURTHER-The argument about absence of budget was not made in the High Court and as it involves an investigation into facts, this Court cannot go into it for the first time. [400-DE]

HELD FURTHER-There is no provision in the Act empowering the Gram Panchayat to levy fees on the permission to construct a building. In fact, there is no provision in the Act to obtain the permission of the Gram Panchayat for construction of building. Fees are a sort of return or consideration for services rendered which makes it necessary that there should be an element of quid pro quo in the imposition of a fee. There has to be co-relationship between the fee levied by an authority and the services rendered by it to the person who is required to pay the fee. In this case, there is no such co-relationship. Fees cannot be imposed for discharging statutory functions of public authorities. The services have to be rendered individually to the particular person on whom the fee is imposed. The very fact that the permission fee is levied at a certain percentage of the capital value of the buildings shows that the Gram Panchayat itself never intended to correlate the fee with the services rendered or intended to be rendered by it. [400-H, 401-DE, 402 c]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1189 of 1972.

From the Judgment and order dated 6th August, 1971 of the High Court of Andhra Pradesh in W. P. No. 4223 of 1969. P. Ram Reddy and P. P. Rao, for the appellants. B. Sen and Naunit Lal, for the respondent.

K. Srinivasanmurthy, Naunit Lal and Lalita Kohli, for the inter-verners.

The Judgment of the Court was delivered by CHANDRACHUD, J. This is a tax dispute concerning the power of the second appellant, Kuthbullapur Gram Panchayat, to levy house-tax and Permission Fee on the respondent. The Hindustan Machine Tools Ltd., which is a Government of India Undertaking. The first appellant is the Government of Andhra Pradesh.

The Kuthbullapur Gram Panchayat was established in 1959. In 1964 the Andhra Pradesh State Legislature passed the Andhra Pradesh Gram Panchayats Act, 2 of 1964, which with he exception of

Chapter VII of the Act, came into force on January 18,1964.The Act to the Kuthbullapur Gram Panchayat within whose geographical limits the respondent has established a factory for the manufacture of special apparatus machines, presses etc. The construction of the factory began in 1964 and was completed in December 1965. The factory was con- structed without the permission of the Gram Panchayat. Considering the skeleton staff which mans the Panchayat and its skeleton activities, the respondent's plea that it did not obtain the Panchayat's permission bemuse it was not aware of its existence is not implausible. But such awareness has no relevance on the respondent's liability to pay taxes and fees. In any event, on coming to know of the construction of the factory and the other buildings the Panchayat asked the respondent to obtain the requisite permission. The respondent asked for ex-postfacto permission in January, 1967.

In its meeting of May 8, 1967 the Panchayat passed a resolution for collecting Permission Fee from the respondent at 1/2% on the capital value of the factory buildings and at 1% on the capital value of other buildings. By a letter dated August 20, 1968 the Panchayat called upon the respondent to pay house-tax for the years 1966-67, 1967-68 and 1968-69 amounting to Rs. 1,83,750 at the rate of Rs. 61,250 per annum. On March 3, 1969 the Panchayat demanded from the respondent a sum of Rs. 1,65,000 by way of Permission Fee, Rs. 80,000 being for factory buildings and Rs. 85,000 in respect of the, other buildings. On November 25, 1969 the respondent filed a writ petition in the High Court of Andhra Pradesh Challenging the levy of house tax and the Permission Fee. By its judgment dated August 6, 1971 the High Court allowed the writ petition. It held that the buildings constructed by the respondent did not fall within the definition of a 'house' as contained in the Act and therefore no house-tax could be levied on the buildings. Regarding the Permission Fee the High Court re- pelled the appellant's contention that the fee was in the nature of tax and held that since no services were rendered by the Panchayat to the respondent the levy of Permission Fee was illegal. The High Court has granted to the appellants a Certificate of Fitness under Article 133(1) (a) of the Constitution to appeal to this Court. Section 69(1) (a) of the Act provides that a Grain Panchayat shall levy in the village a house-tax. By section 2(15), as it stood when the High Court delivered its judgment, 'house' meant a building or hut fit for human occupation, whether as a residence or otherwise, "having a separate principal entrance from the common way," and included "any shop, workshop or warehouse or any building used for garaging or parking buses or as a bus-stand". The High Court held that buildings other than factory premises were not a 'house' within the meaning of the Act because their separate principal entrances were situated on the roads belonging to the respondent and not on the common way as required by section 2(15). As regards the factory buildings, the High Court held that the Legislature had included shops, 39 7 workshops and warehouses but not factories within the definition of a 'house' and therefore factory buildings were also not a 'house' within the meaning of the Act. The demand. of house-tax was accordingly held illegal. By the Andhra Pradesh Gram Panchayats (Amendment) Act, 16 of 1974, the State Legislature has amended the definition of 'house with retrospective effect so as to eliminate the impediments on which the High Court rested its judgment. If the amendment is lawful and valid, it will be unnecessary to consider whether the High Court was right in reading the way it did the definition of 'house' as contained in the unamended section 2(15).

Section 2 of the Amending Act provides "2. For clause (15) of section 2 of the Andhra Pradesh Gram Pancbayats Act, 1964 (hereinafter referred to as the principal Act), the following clause shall be and

shall be deemed always to have been substituted, namely :- "(15) 'house' means a building or hut fit for human occupation, whether as a residence or otherwise. and includes any shop, factory, workshop or warehouse or any building used for garaging or parking buses or as a bus-stand, cattle shed (other than a cattle shed in an agricultural land), poultry shed or dairy shed" ;

Section 4(a) of the Amending Act provides "4. Notwithstanding anything in any judgment, decree or order of any court or other authority,-

(a)anything done or any action taken, including any tax levied and collected, in the exercise of any power conferred by or under the principal Act shall be deemed, to be and to have always been, done or taken or leived and collected in the exercise of the powers conferred by to under the principal Act as amended by section 2 of this Act , as if the principal Act as amended by this Act were in force on the date on which. such thing was done or action was taken, or tax was levied and collected; and all arrears of tax and other amounts due under the principal Act as amended by this Act at the commencement of this Act, may be recovered as if they had accrued under the principal Act as amended by this Act";

The new definition of 'house' which is to be read retrospectively in to the Act meets effectively both the objections by reason of which the High Court held that the buildings constructed by the respondent were not a 'house'. By the Amendment the old clause "having a separate principal entrance from the common way" is dropped and the definition of 'house' is reframed to include a 'factory'. It is clear and is undisputed that the buildings constructed by the respondent-the colony buildings as well as the factory buildings-answer fully the description of a house and are squarely within the new definition contained in section 2(15).

We see no substance in the respondent's contention that by redefining the term 'house' with retrospective effect and by validating the levies imposed under the unamended Act as if, notwithstanding anything contained in any judgment decree or order of any court, that Act as amended was in force on the date when the tax was levied, the Legislature has encroached upon a judicial, function. The power of the Legislature to pass a law postulates the power to pass it prospectively as well as retrospectively, the one no less than the other. Within the scope of its legislative competence and subject to other constitutional limitations, the power of the Legislature to enact laws is plenary. In United Provinces v. Atiqa Begum (1) Gwyer, C.J. while repelling the argument that Indian Legislatures had no power to alter the existing laws retrospectively, observed that within the limits of their powers the Indian Legislatures were as supreme and sovereign as the British Parliament itself and that those powers were not subject to the "strange and unusual prohibition against retrospective legislation". The power to validate a law, retrospectively is, subject to the limitations aforesaid, an ancillary power to legislate on the particular subject.

The State legislature, it is significant, has not overruled or set aside the judgment of the High Court. It has amended the definition of 'house' by the substitution of a new section 2(15) for the old section and it has provided that the new definition shall have retrospective effect, notwithstanding anything contained in any judgment, decree or order of any court or other authority. In other words, it has removed the basis of the decision rendered by the High Court so that the decision could not have

been given in the altered circumstances. If the old section 2(15) were to define "house' in the manner that the amended section 2(15) does, there is doubt that the decision of the High Court would have been otherwise. In fact, it was not disputed before us that the buildings constructed by the respondent meet fully the requirements of section 2(15) as amended by the Act of 1974.

In Tirath Ram Rajindra Nath v. State of U. P. (2), the Legislature amended the law retrospectively and thereby removed the basis of the decision rendered by the High Court of Allahabad. It was held by this Court that this was within the permissible limits and validation of the old Act by amending it retrospectively did not constitute an encroachment on the functions of the judiciary. The decisions on which the respondent relies are clearly distinguishable. In the Municipal Corporation of the City of Allahabad v. The New Shrock Spg. & Wvg. Co. Ltd. (3) the impugned provision commanded the Corporation to refuse to refund the amount illegally (1) (1940)F.C.R. 110.

(2) A.I.R. 1973 S.C. 405.

(3) A.I.R. 1970 S.C. 1292.

collected by it despite the orders of the Supreme Court and the High Court. As the basis of these decisions remained unchanged even after the amendment, it was held by this Court that the legislature had made a direct inroad into the Judicial powers. In Janpada Sabha Chindwara etc., v. The Central Provinces Syndicate Ltd.,(1) the Madhya Pradesh Legislature passed a Validation Act in order to rectify the defect pointed out by this Court in the imposition of a cess. But the Act did not set out the nature of the amendment nor did it provide that the notifications issued without the sanction of the State Government would be deemed to have been issued validly. It was held by this Court that this was tantamount to saying that the judgment of a court rendered in the exercise of its legitimate jurisdiction was to be deemed to be ineffective. The position in, State of Tamil Nadu v. M. Rayappa Gounder (2) was similar. In that case the reassessment made under an Act which did not provide for reassessments were attempted to be validated without changing the law retrospectively. This was considered to be an encroachments on the judicial functions. 'In the instant case the Amending Act of 1974, cures the old definition contained in section 2(15) of the vice from which it suffered. The amendment has been given retrospective effect and as stated earlier the legislature has the power to make the law passed by it retroactive. As the Amending Act does not ask the instrumentalities' of the State to disobey or disregard the decision given by 'the High Court but removes the basis of its decision, the challenge made by the respondent to the Amending Act must fail. The levy of the, house-tax must therefore be upheld.

Under Article 246(3) read with Entry 49 in List II, Seventh Schedule of the Constitution, the State legislatures have exclusive power to make laws with respect to "Taxes on lands and buildings" Section 69(1)(a) of the Act authorises Gram Panchayats to levy house.-tax in the villages under their respective jurisdiction. The Gram Panchayat of Kuthbullapur has accordingly levied house-tax on the buildings constructed by the respondent including the factory buildings. It needs to be clarified that by Rule 6 of the "Rules relating to levy of House-Tax", machinery and furniture are to be excluded from consideration for the purpose of assessment to house-tax. Thus, the tax is on buildings only and does not transgress the scope of Entry

49. This clarification became necessary in view of the respondent's contention that the State legislature has no power under Entry 49, List II, to levy tax on the lands and buildings owned or occupied by a factory. Entry 36 in List III relates to "Factories" and Entry 47 in that List relates to "Fees in respect of any of the matters in this List, but not including fees taken in any court". It is urged on behalf of the respondent that these specific Entries in regard to the, particular subject matter exhaust the power to impose levies on factories and 'since the power is limited to the imposition of fees on (1) A.I.R. 1971 S.C. 57. A.I.R. 1971 S.C. 231.

factories, the legislature has no competence to impose a tax on the lands or buildings of a factory. It is true that the various Entries in the legislature Lists must receive a broad and liberal construction and Entry 36 in List III may therefore cover every aspect of the subject matter of "Factories". But the State legislature has not authorised the levy of, house-tax on factories in the compendious sense. The new definition of 'house' includes a 'factory' but the house-tax is levied only on the buildings occupied by the factory and not on the machinery and furniture. The State legislature has the legislative competence to do so under Entry 49 in List II.

It was urged by Mr. Naunit Lal on behalf of one of the interveners that 'Factory' is a compendious expression and since a factory consists of the building, the machinery and the furniture, the legislature cannot split up the personality of the factory and tax one part of it only. There is no substance in this contention because the power to tax a building can be exercised without reference to the use to which the building as put and it irrelevant that the building is occupied by a factory which cannot conduct its activities without the machinery and furniture. What falls legitimately within the scope of a legislative Entry can lawfully form the subject matter of legislation. We cannot entertain the respondent's argument that without a proper budget, the Gram Panchayat cannot impose a tax. Such an argument was not made in the High Court and it involves an investigation into the fact whether the Gram Panchayat had or had not prepared a budget. Nor can we entertain the respondents submission that section 4(b) and (c) of the Act of 1974 are invalid. Under clause (b), no suit or other proceeding is maintainable or can be continued in any court or before any authority for the refund, of any tax. Under clause (c), no court shall enforce any decree or order directing the refund of any such tax. No suit has been filed by the respondent for the refund of tax and no decree or order has been passed by any court or any authority for the refund of any tax. This Court does not answer academic questions.

The position in regard to the so called 'Permission Fee' is entirely different. In the first place, the Act of 1964 itself makes a distinction between the power to impose a tax and the power to impose a fee. Section 69(1) and section 69(3)(i), (ii), (iii) empower the Gram Panchayats to levy taxes while section 69(3) (v) and (vi) provide for the levy of fees. Sections 92, 109(2), 111, 121(5), 122 and section 131 of the Act also provide for the imposition of specific fees. There is no provision in the Act empowering the Gram Panchayats to levy fees on the permission to construct a building, which is what the second appellant has purported to do in the instant case.

In fact, there is no provision in tile Act under which it is necessary to obtain the permission of the Gram Panchayat for constructing a building. Section 131(2) of the Act which authorises the levy of fees for every licence or permission is therefore not attracted. Section 125(1) requires that the

permission of the Gram Panchayat must be, obtained for constructing or establishing a factory, workshop or work-place in which it is proposed to employ steam power, water power or other mechanical power or electrical power or in which it is proposed to install any machinery or manufacturing plant driven by steam, water or other power as aforesaid. The provision may possibly support a levy of Permission Fee on the factory buildings, but there is no provision in the Act at all requiring the permission of. the Gram Panchayat for the construction of other buildings. Counsel for the appellants wanted to derive sustenance to the imposition of Permission Fee from the provision contained in section 217(2) (xvi) but that clause only empowers the Government to make rules "as to the regulation or restriction of building and the use of sites for building". In the absence of any provision in the parent Statute requiring the permission of the Gram Panchayat for the construction of non-factory buildings, the rule-making power of the Government cannot be exercised so as to impose. the requirement of a permission in respect of such buildings.

But there is a broader ground on which the levy of Permission Fee must be struck down. Fees are a sort of return or consideration for services rendered which makes it necessary that there should be an element of quid pro quo in the imposition of a fee. There has to be a correlation-ship between the fee levied by an authority Ind the services rendered by it to the person who is required to pay the fee(1). There is, in this case, not a word showing such a correlationship. In the counter-affidavit which the appellants filed in the High Court in reply to the respondent's writ petition, nothing at all was stated as to the expenses incurred or likely to be incurred by the Gram Panchayat in rendering any actual or intended service to the respondent. There may be something in the grievance of the Gram Panchayat that the mighty respondent and others following the respondent's lead have been persistently refusing to pay taxes which has made it impossible for the Gram Panchayat to render any services. But the true legal position as stated by Mukherjea, J. in the Commissioner, Hindu Religious Endowments Madras v. Shri Lakshmindar Thirtha Swamiar of Sri Shiur Mutt(2) is that 'it is absolutely necessary that the levy of fees should on 'the face of the legislative provision, be correlated to the expenses incurred by Government in rendering the services". In the total absence of any data showing such a correlationship, the levy of Permission Fee has to fail. One cannot take into account the sum total of the activities of a public body like a Gram Panchayat to seek justification for the fees imposed by it. The expenses incurred by a Gram Panchayat or a Municipality in discharging its obligatory functions are usually met by the imposition of a variety of taxes. For justifying the imposition of fees the public authority has to show what services are rendered or H intended to be rendered individually to the particular person on whom the fee is imposed. The Gram Panchayat here has not even prepared an estimate of what the intended services would cost it.

(1) [1954] S C.R. 1005: A.I.R. 1957 S.C. 846. (2) [1954] S.C.R. 1005, 1042.

Learned counsel for the appellants contended that the Gram Panchayat lays roads for providing access to new buildings,that it provides for drainage and lights and that it scrutinises the plans submitted for intended constructions and, if necessary, it advises the applicants in order that the proposed construction may conform to the regulations. We are unable to accept that these services are rendered individually to the respondent. The laying of roads and drainage or the supply of street-lights are a statutory function of public authorities and it is difficult to hold, in the absence of

any material, that any of such services as have been mentioned to us have in fact been rendered to the respondent. The very circumstance that the Permission Fee is levied at a certain percentage of the capital value of the buildings shows that the Gram Panchayat itself never intended to correlate the fee with the services rendered or intended to be rendered by it. There is therefore no warrant for the levy of Permission Fee, not even on factory buildings, assuming for the sake of argument that the permission of Gram Panchayat is necessary for the construction of factory buildings.

It was alternatively contended on behalf of the appellants that the Permission Fee though called a fee is really in the nature of a tax on buildings and may be upheld as such. It is impossible to accept this contention. That the Permission Fee is not a tax on buildings is clear from the fact that the fee may be required to be paid even if a building does not eventually come into existence. The scheme under which the Permission Fee is attempted to be levied is that it becomes payable at the time when the permission to construct a building is applied for. The levy does not depend upon whether a building has been in fact constructed with the result that whether a building is constructed or not, the fee has to be paid. In other words, the Permission Fee is in the nature of a levy on a proposed activity and is not a tax on buildings.

Thus, the levy of house-tax is lawful but the levy of Permission Fee has to be struck down as being illegal. Accordingly the appeal is allowed partly but since the success is divided, there will be no order as to costs.

Appeal partly allowed.

P. H. P.