Supreme Court of India
Corporation Of Calcutta And ... vs Liberty Cinema on 14 December, 1964
Equivalent citations: 1965 AIR 1107, 1965 SCR (2) 477
Author: A Sarkar
Bench: Sarkar, A.K., Subbarao, K., Dayal, Raghubar, Ayyangar, N. Rajagopala, Mudholkar, J.R.

PETITIONER:
CORPORATION OF CALCUTTA AND ANOTHER

Vs.

RESPONDENT:
LIBERTY CINEMA

DATE OF JUDGMENT:
14/12/1964

BENCH:
SARKAR, A.K.
BENCH:
SARKAR, A.K.
SUBBARAO, K.
DAYAL, RAGHUBAR
AYYANGAR, N. RAJAGOPALA
MUDHOLKAR, J.R.

CITATION:
1965 AIR 1107 1965 SCR (2) 477
CITATOR INFO :

R	1967 SC1040	(8)
RF	1967 SC1895	(10,11,12)
RF	1968 SC1232	(25,27,53,86,95,96)
RF	1971 SC 344	(5,6)
R	1971 SC1182	(9)
RF	1971 SC2100	(8,18,19,21)
RF	1973 SC1374	(6)
R	1974 SC1660	(9,21,32)
RF	1975 SC 846	(19)
R	1975 SC1007	(12)
D	1975 SC2193	(3,6,8,10)
E	1979 SC 321	(13,15,18,26,40)
RF	1979 SC1475	(20,22)
E	1980 SC1008	(15)
RF	1985 SC 218	(7)
R	1990 SC 560	(13)

ACT:
Calcutta Municipal Act (33 of 1951), ss. 413 and 548--License fee on cinema houses-whether tax or fee for rendering service--Validity of levy and s. 548.

HEADNOTE:

Under a. 413 of the Calcutta Municipal Act, 1951, no person shall without a licence granted by the Corporation of Calcutta, keep open any cinema house for public amusement in Calcutta. Under s. 548(2), for every licence under the Act, a fee may be charged at such rate as may from time to time be fixed by the Corporation. In 1948, the appellant (Corporation) fixed fees on the basis of annual valuation of the cinema house. The respondent, who was the owner and licensee of a cinema theatre, had been paying a licence fee of Rs. 400 per year on that basis. In 1958, the appellant, by a Resolution, changed the basis of assessment of the fee. Under the new method the fee was to be assessed at rates prescribed per show according to the sanctioned seating capacity of the cinema house; and the respondent had to pay a fee of Rs. 6,000 per year. The respondent, therefore moved the High Court for the issue of a writ quashing the resolution and the application was allowed.

In the appeal to the Supreme Court the appellant contended that (i) the levy was a tax and not a fee in return for services and (ii) s. 548(2) does not suffer from the vice of excessive delegation; while the respondent contended that (i) the levy was a fee in return for services to be rendered and not a tax, and as it was not commensurate with the costs incurred by the Corporation in providing the services, the levy was invalid; (ii) if s. 548 authorised the levy of a tax, as distinct from a fee in return for service rendered, it was invalid, as it amounted to an illegal delegation of legislative functions to the appellant to fix the amount of a tax without any guidance for the purpose and (iii) the levy was invalid as violating Art. 19(1) (f) and (g) of the Constitute.

HELD (per Sarkar, Raghubar Dayal and Mudholkar JJ) : (i) The was not a fee but a tax. [490 F]

The Act does not intend to use the word "fee" as referring only to a levy in return for services, for, the levies authorised by some other sections of the Act are really "taxes", though called "fees". Besides, the words used are "fee for the licence" and these words do not necessarily mean a "fee in return for services" as is apparent from Arts. 110(2) and 199(2) of the Constitution, where both expressions are used indicating that they are not the same. [483 G-H]

The word "fee" in s. 548 must be read as referring to a tax as any other reading would make the section invalid, and in interpreting a statute, it ought to be made valid if possible. [484 B-C]

The decisions of this Court establish that in order to make a levy a fee for services rendered, the levy must confer special benefit on the persons on whom it is imposed. The levy under s. 548 (2) is not a "fee in return for services"

as the Act does not provide for any services of a special kind being rendered, resulting in benefits to the person on 478
whom it is imposed. S. 527(43) permits by laws to be framed for regulating the inspection, supervision and control, among others, of cinema houses; but it is not obligatory to make such by laws and therefore, there may be no services to render. Even the by law made provides only for inspection, and the work of inspection done by the appellant was only to see that the terms of the licence were observed by the licensee. It was not a service to him, and so, no question arises of correlating the amount of levy to the costs of any service. The levy therefore is not a fee and must be tax. [485 B-C, F; 488 E; 490 E-F]

The Commissioner, Hindu Religious Endowments, Madras v. Shri Lakshmindra Thirtha Swamiar of Sirur Mutt, [1954] S.C.R. 1005, H. H. Sudhindra Thirtha Swamiar v. Commissioner for Hindu Religious and Charitable Endowments, [1963] Supp. 2 S.C.R. 302 and The Hingir Rampur Coal Co. Ltd. v. The State of Orissa and Ors. [1961] 2 S.C.R. 537, referred to.

Whether a particular levy is a fee or a tax has to be decided only by reference to the terms of the section. Its position in the Act cannot determine its nature ; an imposition which is by its terms a tax and not a fee, cannot become a fee by reason of its having been placed in a certain part of the Statute. [489 B]

It is not right to say that s. 443 does not impose any duty on the appellant and that therefore, the licence fee leviable under s. 548, should be fixed only with reference to rendering of services. The Corporation has been set up only to perform municipal duties and its powers are for enabling it to perform those duties. But, since there is no provision for service being rendered, the levy cannot be a fee and would indisputably be a tax. [490 B, C, D]

(ii) The fixing of the rate of a tax is not of the essence of legislative power and the fixing of rates may be left to a non legislative body. When it is so left to another body the legislature must provide guidance for such fixation. Since there is sufficient guidance in the Act as to how the rate of the levy under s. 548 is to be fixed, the section is valid. [492 D, F; 493 G-H; 497 B]

The appellant is an autonomous body. It has to perform various statutory functions. It is given power to decide when and in what manner the functions are to be performed. For all this it needs money and its needs will vary from time to time with the prevailing exigencies. Its power to collect tax is necessarily limited by the expenses required to discharge the functions. it has, therefore, where rates have not been specified in the statute, to fix such rates as may be necessary to meet its needs, and that would be sufficient guidance to make the exercise of its power to fix the rate, valid. [496 D-F]

Case law reviewed.

(iii) The challenge to the levy on the ground that it amounts to expropriation is wholly unfounded.

No doubt the increase in the rate of fee was large but considering the available seating capacity of the respondent, it cannot be said to be unreasonably high. [482 E-F]

The contention of the appellant that even if no guidance for taxation has been prescribed the section would still be valid, because, the Act may be said to have been passed under Entry 5 of List II of the Seventh Schedule to the Constitution and that Entry authorises the passing of a law concerning the powers of a municipal corporation and that such powers must necessarily include the power to levy a tax, was left open. [497 D-E, H]

479

per Subba Rao and Ayyangar, JJ (dissenting) (i) If on a proper construction of the Act one reached the conclusion that Part IV of the Act was not exhaustive of the range of levies permitted by the Act, and the fees permitted to be levied by s. 548(2) were also taxes, there would be nothing in s. 127(3) or (4) to militate against that construction. But, an examination of the provisions of the Act makes three matters abundantly clear; (a) that the Act draws a sharp and clear distinction between taxes properly so called and fees; (b) that the division into Parts and Chapters is logical and clear cut and no matter which properly falls under a subject set out under a Part or Chanter heading, is dealt with in any other; and (c) that taxes, by whatever designation they might be called, are all comprehended and dealt with by Part IV and by Part IV alone, and that what is permitted to be imposed by s. 548(2) is only a fee as distinguished from a tax. As admittedly there is no correlation between the fee charged and the service rendered, the impugned levy was not authorised and the High Court was right in granting relief to the respondent. [525 B-C; 526 D-G]

To say that to enable a fee strictly so called to be levied, an immediate advantage measurable in terms of money should be conferred on the payer is to take too narrow a view of the concept of a fee. The word "services" in the context has to be understood in a wide sense, as including supervision and control over the activities for the excess of which the fee is charged. The judgements of this Court in the Shirur Mutt case, [1954] S.C.R. 1005, and the cases following it, do not lay down that where an activity is regulated by licenses, the imposition of charges for the inspection, supervision and control of the activity to ensure compliance with the regulation is not a benefit conferred on the licensee, so as to render the amount charged for such a licence not a fee in the real sense, but a tax, whose constitutional validity could be sustained by reference to the taxation entries in Lists I and II. [508 A; 515 F-G; 517 H; 518 A]

Case law considered.

Also, Art. 110(2) of the Constitution far from supporting the appellant's contention, negatives it. If pure taxation measures, employing the machinery of licences and fees, would be money-bills, then the fees for licences which are outside the definition, would be those fees which are imposed to meet the cost of regulation and supervision of an activity which is controlled by the requirements of a licence and compliance with its terms. Besides, if the levy of such licence fees on various activities which form the subject of legislative control or regulation under the various non-taxation entries in the Lists were treated as tax, Entries 96 and 66 in the respective Lists would have to be read as taxation entries, because, such a levy is permitted only by those entries. This however would be contrary to the entire scheme on which the several entries in the Lists are made, namely, setting out the exclusive general legislative powers the enumeration of taxes which could be imposed and finally the power to, impose fees in respect of any of the matters in the List. [502 C; 519 B-C, E, G]

(ii) Viewed as a tax the delegation in s. 548(2) is unconstitutional, as essential legislative functions are parted with to the municipality, a subordinate law making body, and therefore the provision is unconstitutional. [546 B]

Essential legislative functions cannot be delegated but where the law lays down the principles and affords guidance to the subordinate lawmaking authority details may be left for being filled up by the executive or by other authorities vested with quasi-legislative power. The power

480

to fix a rate of tax is an essential legislative function and therefore, unless the subordinate law-making authority is afforded guidance by the policies being formulated, principles enunciated and standards laid down, the legislation will suffer from the vice of excessive delegation and would be void as arbitrary and unconstitutional. The _Provisions of the Act do not afford any guidance to the Municipal Corporation to fix the rate of levy. No doubt, the municipal government of Calcutta was vested in the Corporation under s. 24 of the Act, but the expression "government" does not gather within its fold all powers necessary for administration nor does it create an independent sovereign body entitled to legislate in any manner it likes for the purpose of carrying on civic government. The Corporation is still a subordinate body which is the creation of the legislature and can only function within the framework of the powers conferred upon it by the Act. No assistance is derived in this regard from the powers of supervision which the State Government has over the municipal affairs under a. 42 and 47. If no standards have been laid down by the Act for the Corporation to afford it a guidance for the fixation of a rate, the fact

that supervisory power is conferred upon the executive would not obviate that objection, for the Government itself would have no guidance from the legislature as to the policy to be adopted in exercising the supervision. [541 E--G; 542 C-G; 545 A]

It cannot be said that as a result of as. 115, 117 and 126 no taxes could be raised except such as were needed for the expenditure for which provision had been made in the budget and the rate of tax was, therefore, determined by the needs of the Corporation. If the amount of money which a municipality needs for discharging its functions, affords any guidance, then the need of a State or the Union ought to afford sufficient guidance to sustain the validity of any skeleton legislation. [545 A-C]

The Orissa Ceramic Industries Ltd. v. Executive Officer, Jharsuguda Municipality A.l.R, 1963 Orissa 171 disapproved.

The quantum of power which a law could bestow upon an institution or body of its creation is determined, first, by the view of the legislature to what are necessary for achieving the purposes for which the institution or body is created and, secondly, by the overall limitations imposed by the Constitution by the distribution of legislative power. Nothing therefore turns on the use of the word "powers" in Entry 5 of the List 11 which deals with the Constitution and powers of municipal corporations for the purpose of local self-government. The State Legislature cannot, therefore, authorise a municipal body which it creates, even though, it be for the purpose of local self-Govemment, to exercise a power higher than what it itself possesses. Any legislative practice prevailing before 1st April, 1937 when India was under a unitary form of government or prevailing before the Constitution, does not serve as a guide for interpreting the Legislative entries in the Constitution and any such legislative practise cannot prevail over the limitations imposed by the distribution of Legislative power in respect of post-Constitution legislation. [527 F-G;530 D, G; 532 F-G ; 533 E-F; 534 C]

The analogy of American decisions also cannot afford any guidance for the application of a different rule as to what constitutes excessive delegation in the case of legislation creating municipal bodies. The rule to limits of delegation by the legislatures constituted in India, by the Consti-tution, has been the subject of elaborate consideration by this Court and the decisions have not laid down that a different rule applies when the delegation of legislative power is in favour of a municipal corporation. [535 C-D, E]

Case law considered.

481

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 26 of 1961. Appeal from the judgment and order dated July 26, 1961 of the Calcutta High Court in Appeal from original Order No. 67 of 1959.

G. S. Pathak, A. N. Sinha and P. K. Mukherjee for the appellants.

Niren De, Additional Solicitor-general N.C chatterjee S.Ghosh, J. B. Dadachanji and O. C. Mathur for the respondent.

D. N. Mukherjee, for the intervener No. 1. Naunit Lal, for the intervener No. 2.

The Judgment of SARKAR, RAGHUBAR DAYAL and MUDHOLKAR JJ. was delivered by SARKAR J. The dessenting Opinion of SUBBA RAO and AYYANGAR JJ. was delivered by AYYANGAR J. Sarkar J. The appellant Corporation was constituted by the Calcutta Municipal Act, 1951, an Act passed by the Legislature of the State of West Bengal. The Act was intended to consolidate and amend the law relating to the Municipal affairs of Calcutta and it defined the duties, powers and functions of the Corporation in whose charge those affairs were placed. The respondent is a firm owning a cinema house. and carrying on business of public cinema shows.

Section 443 of the Act provides that no person shall without a licence granted by the Corporation keep open any cinemahouse for public amusement. It, however, does not say that any fee is to be paid for the licence. But sub-s. (2) of S. 548 says that for every licence under the Act, a fee may, unless otherwise provided, be charged at such rate as may from time to time be provided. In 1948 the Corporation had fixed the scale of fees on the basis of the annual valuation of the cinema-houses made by a method which does not appear on the record. The respondent had under these sections obtained a licence for its cinema house and had been paying a licence fee calculated on the aforesaid basis. The fee as calculated was Rs. 400 per year.

By a resolution passed on March 14, 1958 the Corporation changed the basis of assessment of the licence fee with effect from April 1, 1958. Under the new method the fee was to be assessed at rates prescribed per show according to the sanctioned seating capacity of the cinema houses. The respondent's cinema house,had 551 seats and under the changed method it became liable to a fee of Rs. 5 per show. In the result it became liable to pay a fee of Rs. 6,000 per year.

The respondent then moved the High Court at Calcutta under Art. 226 of the Constitution for a writ quashing the resolution. The application was first heard by Sinha J. who allowed it. This order was confirmed by an appellate Bench of the same Court consisting of Bose C. J. and C. K. Mitter J. on appeal by the Corporation. Hence the present appeal. In this Court the levy was challenged on three grounds the first of which may be disposed of at once. That ground was that the levy amounted to expropriation and was, therefore, invalid as violating cls. (f) and (g) of sub-Art. (1) of Art. 19. Sinha J. rejected this contention as on the materials on the record it could not be said that the new rate was so high as to make it impossible for the respondent to carry on its business. The learned Judges of the appellate Bench do not appear to have taken a different view of the matter. It seems to us that a fee at the rate of Rs. 5 per show in a house with a seating capacity of 551 cannot in any sense be said to be unreasonably high. With that seating capacity the respondent would at a reasonable

estimate be collecting about Rs. 1,000 per show and paying the sum of Rs. 5 per show. No doubt the increase in the rate of fee from Rs. 400 to Rs. 6,000 per year was large. But at the same time the circumstances obtaining in our country had undergone an immense change between 1948 when the fee was earlier fixed and 1958. The challenge to the levy on the ground that it amounted to expropriation is wholly unfounded and was rightly rejected in the High Court. Substantially the same argument was advanced from a different point of view. It was said that Art. 19(1), (f) and (g) were violated in any case as S. 548 gave an arbitrary power of taxation. This contention found favour with the learned Judges of the High Court but, with respect to them, we are unable to agree. In our view, for reasons to be later stated, no arbitrary power of taxation was conferred by s. 548.

The second challenge to the levy was put in this way. The levy authorised by ss. 443 and 548 was a fee in return for services to be rendered and not a tax and it had therefore to be commensurate with the costs incurred by the Corporation in providing those services. The present levy of Rs. 6,000 per year was far in excess of those costs and was for that reason invalid. The Corporation's answer to this contention is that the levy was a tax and not a fee taken in return for services and no question of its being proportionate to any costs for services arose. The Corporation does not dispute that if the levy was a fee in the sense mentioned, it would be invalid. The only question on this part of the case, therefore, is, was the levy a fee in return for services? Another subsidiary question is, what is the nature of the services which makes a levy in respect of them, a fee ? It is not disputed that a levy made in return for services rendered would be a fee. It is, therefore, unnecessary to consider what a fee is or the tests by which it is to be determined. Nor is it necessary to discuss whether in order that a levy may be a fee the statute imposing it must intend primarily to confer the benefits of the services on those who pay it and benefits received from those services by the public at large, if any, must be secondary. A discussion of these aspects of fees, will be unprofitable and will only cloud the point really in issue.

Now, on the first question, that is, whether the levy is in return for services, it is said that it is so because s. 548 uses the word "fee". But, surely, nothing turns on words used. The word "fee" cannot be said to have acquired a rigid technical meaning in the English language indicating only a levy in return for services. No authority for such a meaning of the word was cited. However that may be, it is conceded by the respondent that the Act uses the word "fee" indiscriminately. It is admitted that some of the levies authorised are taxes though called fees. Thus, for example, as Mitter J. pointed out, the levies authorised by ss. 218, 222 and 229 are really taxes though called fees, for no services are required to be rendered in respect of them. The Act, therefore, did not intend to use the word fee as referring only to a levy in return for services. This contention is not really open to the respondent for s. 548 does not use the word "fee"; it uses the words "licence fee" and those words do not necessarily mean a fee in return for services. In fact in our Constitution fee for licence and fee for services rendered are contemplated as different kinds of levy. The former is not intended to be a fee for services rendered. This is apparent from a consideration of Art. 110(2) and Art. 199(2) where both the expressions are used indicating thereby that they are not the same. In Shannon v. Lower Mainland Dairy Products Board(1) it was observed at pp. 721-722, "if licences are granted, it appears to be no objection that fees should be charged in order either to defray the costs of administering the local regulation or to increase (1) [1938] A. C. 708 the general funds of the Province or for both purposes It cannot, as their Lordships think, be an objection to a licence plus a fee that it is directed

both to the regulation of trade and to the provision of revenue." It would, therefore, appear that a provision for the imposition of a licence fee does not necessarily lead to the conclusion that the fee must be only for services rendered. It may also be stated that a statute has to be read so as to make it valid and, if possible, an interpretation leading to a contrary position should be avoided; it has to be construed ut res magis valeat quam pareat : see Broom's Legal Maxims (10 ed.) p. 361, Craies on Statutes (6th ed.) p. 95 and Maxwell on Statutes (11th ed.) p. 221. Therefore again, the word "fee" in s. 548 should be read as meaning a tax, for as we shall show later, it made no provision for services to be rendered; any other reading would make the section invalid. A construction producing that result has to be avoided. We do not also think that by reading the word as referring to a tax we would be doing any violence to the language used.

If the word "fee" is not conclusive of the question that it must be in return for services, as we think it is not, then the question whether the fee contemplated in s. 548 is a fee in return for services, can only be decided by reference to the terms of the section and for this purpose we have to consider that section along with s. 443. We have earlier summarised the sections but now propose to set them out so far as material :

> S. 443. No person shall, without or otherwise than in conformity with the terms of a licence granted....
>
> S. 548. (1) Every licence granted under this Act shall specify, ... (1) the tax or fee, if any, paid for the licence (2) Except when it isotherwise expressly provided, for every such licencea fee may be charged at such rate as may from time to time be fixed by the Corporation.....

The sections do not refer to the rendering of any service by the Corporation. Looking at them we do not find anything to lead to the conclusion that they make it incumbent on the Corporation to render any service in return for the fee imposed. Stopping here, therefore, there is no reason for saying that the levy is a fee in return for services.

But it was said that the services to be provided for the levy of the fee are set out in the by-laws made under s. 527, item 43. Item 43 permits by-laws to be framed regulating the inspection, supervision and control, among others, of cinema houses. It does not however make it obligatory on the Corporation to make any by-law. If the by-laws are not made, there would, ex hypothesis be no services to render. No doubt s. 443 contemplates that the cinema shows shall be conducted in conformity with the terms of the licence but it again seems to us that it is optional for the Corporation to impose terms; it is not bound to do so. In any case, those terms need not be for rendering of services by the Corporation. They may, for example, provide that the shows will not be continued after a certain hour in the evening.

In fact, however, certain by-Laws, called Theatre By-laws, were framed by the Corporation. Those by-laws were not produced before us excepting one which states, "The Chairman may cause all such premises to be inspected at least twice yearly and if as the result of such inspection any defect or disorder be noticed in such premises in connection with and relating to any of the matters or things

referred to in these by-laws, the Chairman may by written notice require the owner or lessee of such premises to make good such defects." It is quite clear that the words "the matters or things referred to in these by-laws" occurring in the by-law quoted, contemplate things to be done by the licensee and not by the Corporation. Those matters or things cannot be services which the Corporation is required to render. It would, therefore, appear that even the by-laws the terms of which might have been incorporated in the licence do not contemplate the rendering of any service by the Corporation to the licensee. It may be stated that the licence granted to the respondent does not appear in the records of this case.

It is however said that the by-law earlier quoted requires inspection of the cinema houses by the Corporation and that was the service that the Corporation had to render in return for the licence fee. We are unable to accept this contention. The inspection was not certainly a service to the licensee; it was necessary only to make sure that he carried out the conditions on which the licence had been granted to him. It was something to be done to control the licensee's activities and to make him observe the conditions of the licence on pain of cancellation of the licence. This is clear from sub-s. (3) of S. 548 which states that "any licence granted under this Act may at any time be suspended or revoked if any of its restrictions or conditions is infringed or evaded by the grantee." This non-observance of the conditions of the licence would expose the licensee to penalty under S. 537 of the Act. The inspection was therefore necessary also for enforcing the conditions of the licence by penalising a breach of them by the licensee. We cannot imagine that an inspection by the Corporation for such purposes can at all be said to be rendering of service to the licensee. The nature of services to be rendered in return for a levy so as to make it a fee has been considered by this Court in several cases and in all of them it has been said that the services must confer some benefit on the person paying the fee. The earliest case on the subject appears to be The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt(1), where it was said at p. 1042, 'a fee is a payment for a special benefit or privilege.... Public interest seems to be at the basis of all impositions, but in a fee it is some special benefit which the individual receives". It was again said at p. 1043, that in the case of fees for services "the Government does some positive work for the benefit of persons and the money is taken as the return for the work done or services rendered." This case was concerned with a statute which imposed a levy on religious institutions expressly said to be in return for services. The services mentioned in the statute consisted among others in the Government supervising the management of the institutions, auditing their accounts and seeing that their income was duly appropriated to the purposes for which they were founded. Though it did not expressly say so. this Court was presumably of the view that these were services to the institutions making the levy a fee, for it declared the levy invalid on the ground that it was not correlated to the costs of those services and therefore was a tax which was beyond the competence of the Madras Legislature which had enacted the statute. It would appear that the services here considered were not for controlling the institutions but for doing work which secured to them their funds and the proper application of them. The statute might have involved a check on the conduct of the (1) [1954] S.C.R. 1005.

Mathadipatis who managed the institutions but that control also was for the benefit of the institutions. It has to be remembered as was said in another case to which we shall presently refer, that the Mathadipatis were in the position of trustees of the institutions. It would follow that control

of their wrongful activities must result in special benefits to the institutions for their funds would not then be frittered away.

After this judgment, the section imposing the levy was amended but the amended section was also challenged on similar grounds. The matter again came up to this Court in the case of H. H. Sudhundra Thirtha Swamiar v. Commissioner for Hindu Religious & Charitable Endowments, Mysore("). This time the validity of the section was upheld. The reasons for this decision are not relevant to the present discussion. As to the nature of services however, this Court reiterated the view stated in the earlier case. It said at p. 323, "If with a view to provide a specific service, levy is imposed by law and expenses for maintaining the service are met out of the amounts collected there being a reasonable relation between the levy and the expenses incurred for rendering the service, the levy would be in the nature of a fee and not in the nature of a tax." It was further said, "A fee being a levy in consideration of rendering service of a particular type, correlation between the expenditure by the Government and the levy must undoubtedly exist." The act was the same as the earlier one in regard to the services to be rendered by the Government and the view expressed in the earlier judgment as to the nature of the services required by the statute to be performed was endorsed in this judgment. It was said at p. 312, that the Mathadipati "is by virtue of his office under an obligation to discharge the duties as a trustee and is answerable as such". It would follow that a service resulting in the control of the Mathadipati would confer special benefit on the institution which alone paid the levy.

Both these cases discussed other tests besides the require- ment of the rendering of services for determining whether a levy is a fee, but with these we are not concerned in the present case. These cases also discussed the correlation of the costs of the services to the levy but with that also we are not concerned as it is not sought to uphold the present levy on the ground of such correlation. We have referred to these cases only for showing that to make a levy a fee the services rendered in respect of it (1) [1965] Supp. 2 S. C. R. 302 Supp./65-15 must benefit, or confer advantage on, the person who pays the levy.

The other case to which we wish to refer in this connection is The Hingir-Rampur Coal Co. Ltd. v. The State of Orissa and ors.(1). There the imposition by a certain statute of a levy on lessees of coal mines in a certain area and the creation of a fund with it, was called in question. It was held that the levy was a foe in return for services and was valid. It was there said at p. 549, "If the special service rendered is distinctly and primarily meant for the benefit of a specified class or area, the fact that in benefitting the specified class or area the State as a whole may ultimately and indirectly be benefitted would not detract from the character of the levy as a fee." It may be mentioned that the levy there went to meet expenditure necessary or expedient for providing amenities like communication, water supply and electricity for the better development of the mining area and to meet the welfare of the labour employed and other persons residing or working in the area of the mines. Here again there is no element ,of control but the services resulted in real benefit specially accruing to the persons on whom the levy was imposed. These decisions of this Court clearly establish that in order to make a levy a fee for services rendered the levy must confer special benefit on the persons on whom it is imposed. No case has been brought to our notice in which it has been held that a mere control exercised on the activities of the persons on whom the levy is imposed so as

to make these activities more onerous, is ,service rendered to them making the levy a fee.

It was also contended that the levy under S. 548 must be a tee and not a tax, for all provisions as, to taxation are contained in Part IV of the Act, while this section occurred in Chapter XXXVI headed "Procedure" in Part VIII which was without a heading. It was pointed out that Part V dealt with "Public Health, Safety and Convenience" and s. 443 which was included in Chapter XXVI contained in this Part was headed "Inspection and Regulation of Premises, and of Factories, Trades and Places of Public Resort". A cinema house, it is not disputed, is included in the words "Places of public resort". It was, therefore, contended that a levy outside Part IV could not be a tax and hence must be a fee for services. This contention was sought to be supported by the argument that s. 443 occurred in a Part concerning public health, safety and convenience and therefore the (1) [1961] 2 S. C. R. 537 intention was that the levy authorised by the section would be in return for work done for securing public health, safety and convenience and was hence a fee. We are wholly unable to accept this contention. Whether a particular levy is a fee or tax has to be decided only by reference to the terms of the section as we have earlier stated. Its position in the Act cannot determint; its nature; an imposition which is by its terms a tax and not a fee, which in our opinion the present imposition is, cannot become a fee by reason of its having been placed in a certain part of the statute. The reference to the heading of Part V can at most indicate that the provisions in it were for conferring benefit on the public at large. The cinema house owners paying the levy would not as such owners be getting that benefit. We are not concerned with the benefit, if any, received by them as members of the public for that is not special benefit meant for them. We are clear in our mind that if looking at the terms of the provision authorising the levy, it appears that it is not for special services rendered to the person on whom the levy is imposed. it cannot be a fee wherever it may be placed in the statute. A consideration of where ss. 443 and 548 are placed in the Act is irrelevant for determining whether the levy imposed by them is a fee or a tax.

The last argument in this connection which we have to notice was based on ss. 126 and 127 of the Act. Section 126 deals with the preparation by the Chief Executive Officer of the Corporation called Commissioner, of the annual budget. The budget has to include an estimate of receipts from all sources. These receipts would obviously include taxes, fees, licence fees and rents. Under s. 127(3) the Corporation has to pass this budget and to determine, subject to Part IV of the Act, the levy of consolidated rates and taxes at such rates as are necessary to provide for the purposes mentioned in sub-s. (4). Sub-section (4) requires the Corporation to make adequate and suitable provision for such services as may be required for the fulfilment of the several duties imposed by the Act and for certain other things to which it is not necessary to refer. The first point made was that these sections showed that the Act made a distinction between fees and taxes. It does not seem to us that anything turns on this as the only question now is whether the levy under s. 548 is a fee. The other point was that cls. (3) and (4) of s. 127 showed that the Corporation could fix the consolidated rates and taxes and that the determination of rates for these had to be in accordance with the needs for carrying out the Corporation's duties under the Act.

It was said that as the licence fee leviable under S. 548 did not relate to any duty of the Corporation under the Act, it being optional for the Corporation to impose terms for grant of licences for cinema houses, the rate for that fee was not to be fixed in reference to anything except rendering of services.

We are unable to accept this argument and it is enough to say in regard to it that it is not right that s. 443 does not impose a duty on the Corporation. We think it does so, though in what manner and when it will be exercised it is for the Corporation to decide. It is impossible to call it a power, as the respondent wants to do, for it is not given to the Corporation for its own benefit. The Corporation has been set up only to perform municipal duties and its powers are for enabling it to perform those duties. Furthermore there is no doubt that an estimate of the licence fee has to be included in the budget and therefore the word "tax" in S. 127(3) must be deemed to include the levy under s. 548. The words " subject to the provisions of Part IV" in S. 127(3)must be read with the addition of the words "where applicable".If that levy cannot be a fee because there is no provision forservice being rendered in respect of it, it would indisputably be a tax. As such again, its rate can be determined under s. 127(3) to provide for the discharge of at least the other undisputed duties of the Corporation. We would, therefore, reject this last argument also. The conclusion to which we then arrive is that the levy under S. 548 is not a fee as the Act does not provide for any services of special kind being rendered resulting in benefits to the person on whom it is imposed. The work of inspection done by the Corporation which is only to see that the terms of the licence are observed by the licensee is not a service to him. No question here arises of correlating the amount of the levy to the costs of any service. The levy is a tax. It is not disputed, it may be stated, that if the levy is not a fee, it must be a tax.

It was then said that if S. 548 authorised the levy of a tax as distinct from a fee in return for services rendered, it was invalid as it amounted to an illegal delegation of legislative functions to the Corporation because it left it entirely to the latter to fix the amount of the tax and provided no guidance for that purpose. We wish to point out here that the contention now is that the section is invalid while the contention that we have just dealt with proceeded on the basis that the section was valid as it provided for the levy of a fee in return for services and as this necessarily implied a limit of the levy, namely, that it had to be commensurate to the amount of the costs of the services, no guidance for fixing the amount of the fee to be levied was required to be provided. That argument only challenged the resolution on the ground that it fixed the amount of the fee at a figure much in excess of the costs for the services rendered. Here again there is no dispute that a delegation of essential legislative power would be bad. It was so held by this Court first in In re The Delhi Laws Act.(1) The principle there laid down has been summarised by Bose J. in Rajnarain Singh v. The Chairman, Patna Administration Committee, Patna(2), in these terms: "In our opinion, the majority view was that an executive authority can be authorised to modify either existing or future laws but not in any essential feature. Exactly what constitutes an essential feature cannot be enunciated in general terms, and there was some divergence of view about this in the former case, but this much is clear from the opinions set out above: it cannot include a change of policy." On the basis that s. 548 is a piece of delegated legislation, it has been contended on behalf of the Corporation that the rate of a tax is not an essential feature of legislation and the power to fix it was properly delegated to the Corporation as sufficient guidance for that purpose was given in the Act. It is not in controversy, and this indeed has been held by this Court, that if that is so, the section would be unexceptionable. The question first is whether the power to fix the rate of a tax can be delegated by the legislature to another authority; whether it is of the essence of taxing legislation. The contention of the Corporation that fixation of rates is not an essential part of legislation would seem to be supported by several judgments of this Court to some of which we now proceed to refer.

First, there is Pandit Benarsi Das Bhanot v. The State of Madhya Pradesh (3) . That case was concerned with a Sales Tax Act which by s. 6(1) provided that no tax would be payable on any sale of goods specified in a schedule to it. Item 33 of that Schedule read, "goods sold to or by the State Government". Section 6(2) of the Act authorised the State Government to amend the schedule by a notification. In exercise of this power the Government duly substituted by a notification for item 33 the following: "Goods sold by the State Government". The amendment of the schedule by the notification was challenged on the round that s. 6(2) was invalid as it was a delegation of the (1) [1951] S. C. R. 747 (2) [1955] 1 S. C. R. 290,301.

(3) [1959] S. C. R. 427.

essential power of legislation to the State Government. Venkatarama Aiyar J. delivering the judgment of the majority of the Court sitting in a Constitution Bench, rejected this contention and after having read what we have earlier set out from the judgment of Bose J. in Rajnarain Singh's case(1), observed at p. 435: "On these observations, the point for determination is whether the impugned notification relates to what may be said to be an essential feature of the law, and whether it involves any change of policy. Now, the authorities are clear that it is not unconstitutional for the legislature to leave it to the executive to determine details relating to the working of taxation laws, such as the selection of persons on whom the tax is to be laid, the rates at which it is to be charged in respect of different classes of goods, and the like." The Act was a statute imposing taxes for revenue purposes. This case would appear to be express authority for the proposition that fixation of rates of taxes may be legitimately left by a statute to a non-legislative authority, for we see no distinction in principle between delegation of power to fix rates simpliciter; if power to fix rates in some cases can be delegated then equally the power to fix rates generally can be delegated. No doubt Pandit Banarsi Das's case(1) was not concerned with fixation of rates of taxes; it was a case where the question was on what subject mater, and therefore on what persons, the tax could be imposed. Between the two we are unable to distinguish in principle, as to which is of the essence of legislation; if the power to decide who is to pay the tax is not an essential part of legislation, neither would the power to decide the rate of tax be so. Therefore we think that apart from the express observation made, this case on principle supports the contention that fixing of the rate of a tax is not of the essence of legislative power. In regard to the observations in Pandit Benarsi Das's case(1) earlier quoted, it has been said that the authorities on which they appear to have been based do not support it. It has been contended that as the observations do not form part of the actual decision in the case, they need not be given that weight which they would otherwise have been entitled to. In the High Court this contention appears to have been accepted. The acceptance of the contention would result in by-passing a judgment of this Court and that is something which cannot in any case be sup- ported. We are furthermore of opinion that the authorities to (1) [1955] 1 S. C. R. 290.

(2) [1959] S. C. R. 427, which Venkatarama Aiyar J. referred fully support his observations. The first case relied upon by him was Powell v. Appollo CandleCo. Ltd.(1). That case upheld the validity of a statute passedby the legislature of New South Wales which conferred power on the Governor of that Province to impose duty on certain articles in the circumstances prescribed. The Governor under this power imposed the tax and this was challenged. The Judicial Committee rejected the contention that the tax had not been, imposed by the Legislature which alone could do it in the view that "the

duties levied under the Order in Council are really levied by the authority of the Act" see p. 291. Here, therefore, a power conferred on the Governor by the Legislature to levy a tax was upheld. It would follow that a power conferred to fix rates of taxes has equally to be upheld. The next case was Syed Mohamed v. State of Madras(2). There a power to an authority to determine who shall pay the tax was upheld. On the same principle a power to determine at what rate he will have to pay the tax has to be upheld. The last case was Hampton Jr. & Co. v. United States(3), in which the power conferred by a statute on the President to make an increase or decrease in the rate of customs duty was upheld. There it was said at p. 630, "It is conceded by counsel that Congress may use executive officers in the application and enforcement of a policy declared in law by Congress and authorise such officers in the application of the Congressional declaration to enforce it by regulation equivalent to law. But it is said that this never has been permitted to be done where Congress has exercised the power to levy taxes and fix customs duties. The authorities make no such distinction. The same principle that permits Congress to exercise its rate making power in inter state commerce by declaring the rule which shall prevail in the legislative fixing of rates, and enables it to remit to a rate making body created in accordance with its provisions the fixing of such rates, justifies a similar provision for the fixing of customs duties on imported merchandise." This therefore is clear authority that the fixing of rates may be left to a non- legislative body.

No doubt when the power to fix rates of taxes is left to another body, the legislature must provide guidance for such fixation. The question then is, was such guidance provided in the Act ? We first wish to observe that the validity of the guidance

1) 1 O. A. C. 282 (2) [1952] 3 S. T. C 367 (3) [1927] 72 L. ed. 624.

cannot be tested by a rigid uniform rule; that must depend on the object of the Act giving power to fix the 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.

It seems to us that there are various decisions of this Court which support the proposition that for a statutory provision for raising revenue for the purposes of the delegate, as the section now under consideration is, the needs of the taxing body for carrying out its functions under the statute for which alone the taxing power was conferred on it, may afford sufficient guidance to make the power to fix the rate of tax valid. We proceed now to refer to these cases.

The Western India Theatres Ltd. v. Municipal Corporation of the City of Poona(1) was concerned with a statute under which the respondent Corporation had been set up and which gave that Corporation power to levy "any other tax". It was contended that such a power amounted to abdication of legislative function as there was no guidance provided. This contention was rejected. One of the grounds for this view was that the statute authorised the municipality to impose , taxes therein mentioned for the purposes of the Act and that this furnished sufficient guidance for the

imposition of the tax. Again, no doubt, this was not a case dealing with rates of taxes, but if a power on the Corporation to impose any tax it liked subject to the guidance mentioned was valid, that would include in it the power to fix the rates of the tax, subject of course to the same guidance. Such a power has to be held to be good. It is true, as was pointed out by learned advocate for the respondent, that other ,,rounds were mentioned in support of the view taken in the Western India Theatres case(1) but that surely is irrelevant, for it cannot make the ground of the decision there which we have earlier set out devoid of all force.

Then there is Vasantlal Manganbhai Sanjanwala v. The State of Bombay (2) . The provision of the statute there attacked (1) [1959] Supp. 2 S. C. R. 71.

(2) [1961] 1 S. C. R. 341.

49 5 gave the Government power to fix a lower rate of maximum rent payable by the tenants. The validity of this provision was upheld on the ground that the material provisions of the Act including its preamble were intended to give relief to tenants by fixing the maximum rent payable by them. It was in the light of this policy of the Act that the validity of the impugned provision was really upheld. The last case which we wish to notice in this connection is the Union of India v. Bhana Mal Gulzari Mal(1). Section 3 of the Essential Supplies (Temporary Powers) Act, 1946 came up for consideration there. That section gave power to the Government to make necessary orders for maintaining or increasing supplies of any essential commodities or for securing their equitable distribution and availability at fair prices. In Harishankar Bagla v. The State of Madhya Pradesh(1) the validity of the delegation of power contained in that section had been upheld as it laid down the policy as to how that power was to be exercised by the delegates, that is, the Government. In Bhana Mal Gulzari Mal's case(3) the validity of an order made under s. 3 reducing the price at which steel could be sold was challenged. This challenge was rejected on the ground that the order fixing the price carried out the legislative objective prescribed in s. 3. It was observed at p. 638, "It is not difficult to appreciate how and why the Legislature must have thought that it would be inexpedient either to define or describe in detail all the relevant factors which have to be considered in fixing the fair price of an essential commodity from time to time. In prescribing a schedule of maximum prices the Controller has to take into account the position in respect of production of the commodities in question, the demand for the said commodities, the availability of the said commodities from foreign sources and the anticipated increase or decrease in the said supply or demand. Foreign prices for the said commodities may also be not irrelevant. Having regard to the fact that the decision about the maximum prices in respect of iron and steel would depend on a rational evaluation from time to time of all these varied factors the Legislature may well have thought that this problem should be left to be tackled by the delegate with enough freedom, the policy of the Legislature having been clearly indicated by s. 3 in that behalf." Again it was said at P. 640, "In deciding the nature and extent of the guidance which should be given to the delegate Legislature must inevitably (1) [1960] 2 S. C. R. 627.

(2) [1955] 1 S C. R. 380.

take into account the special features of the object which it intends to achieve by a particular statute..... Having regard to the nature of the problem which the Legislature wanted to attack it may have come to the conclusion that it would be inexpedient to limit the discretion of the delegate in fixing the maximum prices by reference to any basic price."

The portions in the judgment in Bhana Mal Gulzari Mal's case(1) quoted in the preceding paragraph will show that the validity of the guidance required to make delegation of power good cannot be judged by a stereotyped rule. With respect, we entirely be held to be agree with this view. The guidance furnished must good if it leads to the achievement of the object of the statute which delegated the power. The validity of the power to fix rates of taxes delegated to the Corporation by s. 548 of the Act must be judged by the same standard. Now there is no dispute that all taxes, including the one under this section, can be collected and used by the Corporation only for discharging its functions under the Act. The Corporation, subject to certain controls with which we are not concerned, is an autonomous body. It has to perform various statutory functions. It is often given power to decide when and in what manner the functions are to be performed. For all this it needs money and its needs will vary from time to time with the prevailing exigencies. Its power to collect tax, however, is necessarily limited by the expenses required to discharge those functions. It has, therefore, where rates have not been specified in the statute, to fix such rates as may be necessary to meet its needs. That, we think, would be sufficient guidance to make the exercise of its power to fix the rates valid. The case is as if the statute had required the Corporation to perform duties A, B & C and given power to levy taxes to meet the costs to be incurred for the discharge of these duties and then said that, "provided, however, that the rates of the taxes shall be such is would bring into the Corporation's hands the amount necessary to defray the costs of discharging the duties." We should suppose, this would have been a valid guidance. We think the Act in the present case impliedly provides the same guidance see s. 127 (3) & (4). It would be impracticable to insist on a more rigid guidance. In the case of a self-governing body with taxing powers, a large amount of flexibility in the guidance to be provided for the exercise of that power must exist. It is hardly necessary to point out that, as in the cases under Essential Supplies (Temporary Powers) Act, 1946, so in the case of a big (1)[1960] 2 S. C. R. 627.

municipality like that of Calcutta, its needs would depend on various and changing circumstances. There are epidemics, influx of refugees, labour strikes, new amenities to be provided, for such as hospitals, schools and various other such things may be mentioned which make it necessary for a colossal Municipal Corporation like that of Calcutta to have a large amount of flexibility in its taxing powers. These considerations lead us to the view that s. 548 is valid legislation. There is sufficient guidance in the Act as to how the rate of the levy is to be fixed.

We may point out at the end that entry 62 in List II of the Seventh Schedule to the Constitution gives power to the State Legislatures to impose taxes on entertainment and amusement and therefore on cinema shows. It was hence not said if the question was relevant that the State Legislature delegated a power to the Corporation which it itself did not possess.

It remains now to notice an argument advanced by Mr. Pathak on behalf of the Corporation. It is that even if it be assumed that no guidance for the taxation has been prescribed, the provision for

taxation in the Act would be valid. He said that the Act may be said to have been passed under entry 5 of List 11 in the Seventh Schedule to our Constitution. That entry authorises the passing of a law concerning the constitution and powers of a municipal corporation. Mr. Pathak contended that the powers of a corporation contemplated in this entry must necessarily in- clude power to levy tax, for no municipal corporation could work without its own funds. He pointed out that this has been the case with the municipal corporations created before and after the Constitution. He, therefore, said that the present was not a case of delegation of taxing power which might be bad if no guidance to the exercise of that power had been furnished by the Act; it is a case where under the Constitution independent power to tax had been conferred on the Corporation. The conferment of such power did not require any guidance for its exercise to make it valid. He pointed out that delegation of power necessarily meant delegation of the power of the delegator. On such delegation the delegated power could only be exercised by the delegates for the use of the delegator. That was not the case of power conferred tinder entry 5. In such a case the power of taxation conferred was for the purpose of the corporation itself. The amount collected by taxation belonged to the corporation. This is what had happened here. As at present advised, we think that this contention of Mr. Pathak deserves consideration. It is unnecessary,, however, for us to pronounce finally on it, for in either view the taxing power challenged must be held to be good. In the result we would allow the appeal with costs through- out.

Ayyangar, J. Section 443 of the Calcutta Municipal Act, 1951 (West Bengal Act XXXIII of 1951) which will hereafter be referred to as the Act enacts :

> "No person shall, without or otherwise than in conformity with the terms of a licence granted by the Commissioner in this behalf, keep open any theatre, circus, cinema house, dancing hall or other similar place of public resort, recreation or amusement :
>
> Provided that this section shall not apply to private performances in any such place."
> and s. 548 (2) :
>
> "Except when it is in this Act or in any rule or byelaw made thereunder otherwise expressly provided, for every such licence or written permission a fee may be charged at such rate as may from time to time be fixed by the Corporation and such fee shall be payable by the person to whom the licence or written permission is granted.

The respondent before us is the owner and licensee of a cinema theatre known as the Liberty Cinema situated in Calcutta within the Municipal limits of the city. Under the provisions of the Calcutta Municipal Act 1923 which had been repealed and reenacted with modifications by the Act of 1951, the respondent was paying for his theatre Rs. 800 per annum as licence fee under provisions corresponding to ss. 443 and 548 (2) of the Act. While so, by a resolution of the Municipal Council dated March 14, 1958, the licence fee payable by theatres under s. 443 was raised with the result that instead of Rs. 800 which the respondent was paying previously he was required to pay a sum of Rs. 6,000 per year. As the Corporation insisted upon the amount being paid and threatened to cancel the licence and take appro- priate penal action in the event of the demand not being met, the respondent filed a petition before the High Court under Art. 226 of the Constitution

praying for appropriate writs of certiorai, mandamus etc. to quash the said resolution and to prevent the Corporation from enforcing the said demand. It was stated in the petition that the respondent had been paying besides the consoli-

dated rate for the property, a fee of Rs. 250 as profession tax for carrying on the trade or calling of cinema exhibitor as well as other taxes and fees. He characterised the licence fee which was. demanded from him as not in reality a fee which alone the Municipal Corporation was entitled to charge. Stating that it was out of all proportion to the service rendered or the costs involved in ensuring the observance of the conditions of the licence, he contended that the fee demanded from him was really a tax which the Corporation was not entitled to levy under the provisions quoted and therefore sought the relief which he prayed for in the petition.

The learned Single Judge who heard the petition in the first instance held on an analysis of the provisions of the Calcutta Municipal Act that what the Municipality was entitled to levy under s. 548 (2) read with s. 443 was really "a licence fee" and not a tax and that viewed as a licence fee it did not pass the test of legality on account of there being no correlation between the amount charged on the theatre owners and the services rendered to them or the expenses incurred by the Municipality in regard to the issue of licences. Dealing with the alternative contention urged before him by the Corporation that s. 548 (2) of the Act authodsed' the Corporation to levy a tax, the learned Judge held that the section would be unconstitutional as suffering from the vice of excessive delegation in that it laid down no principle, indicated no policy and afforded no guidance for determining the basis or the rate on which the tax was to be levied and was therefore void. In consequence he allowed the petition saving however the right of the Corporation to recover the fee at the rate in force prior to March 14, 1958 on the ground that the levy at this rate was saved by Art. 277 of the Constitution. The Corporation preferred an appeal to a Division Bench and the learned Judges on practically the same line of reasoning as the learned Single Judge dismissed the appeal. Their conclusions were as follows : The imposition permitted to be made by s. 548 (2) read with s. 443 of the Act is charged was only a fee as distinguished from a tax. Regarded as a fee the levy was invalid as there was no quid pro quo. If, however, it be held that the provisions quoted authorised the levy of a tax, the provisions were unconstitutional because they involved an improper delegation of legislative power. They also held that the levy was not to any extent saved by Art. 277 of the Constitution. The Corporation desiring to prefer an appeal sought a certificate of fitness from the learned Judges and the same having been granted, the appeal is now before us.

As one of the questions involved in the appeal related to the ,constitutional validity of the provisions of a State enactment, notice of this appeal was served on the State. Mr. Pathak learned Counsel for the appellant Corporation did not contest the finding and decision of both the learned Single Judge as well as the learned Judges in appeal, that if what s. 548 (2) of the Act authorised was only a fee in the technical sense, viz., a payment for service rendered as distinguished from a tax, the impugned levy was invalid in as much as there was admittedly no correlation between the amount of the levy and the cost of the service, if any rendered to the fee-payer. His submissions in support of the validity of the impugned levy were : (1) An analysis of the several provisions of the Act showed that the Act employed the word "fee" and particularly in the context of a fee for licences granted for carrying on an activity, in the sense of a tax., (2) the fee permitted to be charged for licences by s.

548 (2) of the Act was not a fee but a tax as it was not a quid pro quo for services which the Corporation was required by or under the Act to render or did render to the licensee., (3) A fee charged for a licence other than a fee for services rendered is in reality a tax and no quid pro quo is necessary to sustain its validity beyond the grant of the licence and a permission to carry on the activity which the licence authorises., (4) If what was permitted to be charged by S. 548 (2) were a tax, the provision is not unconstitutional for the reason that the rate of the fee was not specified in the Act. The non- specification in the Act of the rate of the licence fee to be charged is not open to the objection of excessive delegation of legislative power for two reasons : (1) For considering whether there has been an excessive delegation, regard must be had not merely to the section conferring the power but to the other provisions of the Act as well which might throw light upon the topic and from which sufficient enunciation of principle or guidance could be gathered. In the present case there was sufficient guidance available and proper standards laid down in the other provisions of the Act as to uphold the validity of the delegation., (2) When a delegation of legislative power including legislative power to impose a tax is conferred upon a Municipal Corporation, no question of excessive delegation arises as the Constitution itself permits and authorizes such devolution ,of legislative power.

In view of these submissions it is necessary to consider and ascertain principally 4 matters : (1) the precise nature of a fee, as distinguished from a tax., (2) Whether on an examination of the several provisions of the Act the charge authorised to be levied by s. 548 (2) read with s. 443 of the Act, is a fee in that or is it a tax., (3) If what is permitted to be levied by s. 548(2) is not a fee out a tax whether the various provisions of the Act read independently or together enunciate the principles, prescribe the standards, and affords sufficient guidance to the Municipality to fix the rate so as to render the conferment of the power free the from the vice of excessive delegation; and (4) lastly, whether the rule as to excessive delegation of legislative power is inapplicable in those cases where the devolution or conferment of power is on a municipal corporation, or, in any event, whether the rule as to excessive delegation needs substantial modification before the same is applied to a case where the donee of the power is a municipal corporation entrusted with local self government.

Weshall take up these questions in that order.

1.The Nature of a Fee as distinguished from a tax. Mr. Pathakdid not dispute that the Constitution had drawn a distinction between "fees" and "taxes", and that while "fees" could be charged as incidental to the exercise of legislative power on topics set up in the several entries in the three legislative lists in Schedule VII, the power taxation by the Union or by the State was confined to particular species or types of taxes distinctively specified as such in lists I or II respectively. In the context of such a distinction the question necessarily arose as to what were the ingredients or characteristics of a "fee" as distinguished from a "tax". Mr. Pathak submitted that "fees" as envisaged by the Constitution was the exaction of compensation permitted by a statute to be imposed for a special service rendered to the payer. In other words, unless by or under an enactment it was obligatory on an authority, be it a municipal authority or any other to render some special service to the payer of the fee as distinguished from the benefit conferred on every member of the general public by the performance of statutory duties, and the levy is permitted to be made for meeting the cost of such service, the charge imposed would not be a "fee". In all other cases, where

no special service is directed to be or is rendered to a particular individual out of the ordinary, the fee imposed for the licence or permission granted for the carrying on of any activity is really in the nature of a tax in regard to which no question of quid pro quo arises.

It is common ground that the Constitution recognises a clear distinction between a tax and a fee. The several entries in the Lists in the Seventh Schedule which enumerate the legislative powers and distribute them between Parliament and the State Legislatures point to this distinction. The scheme underlying the Lists may shortly be summarised thus. Each of the Union and the State Lists which are Lists I and II start by enumerating first the Entries conferring general legislative powers as distinct from taxation powers. In other words, the taxation entries, that is entries conferring taxing power, are separately enumerated after entries conferring general legislative power. Thus items 1 to 81 of List I deal with the exclusive general legislative powers of Parliament while 82 to 92 enumerate the taxes which Parliament may impose. Item 96 empowers Parliament to legislate in respect of "fees in respect of any of the matters in this List, but not including fees taken in any Court." This would clearly demonstrate that while "fees" may be levied in respect of or as incidental to legislation on the topics set out in the other entries in the list, the power to levy a tax is not to be taken as conferred by entries conferring general legislative power. Thus though a fee may be levied as incidental to legislation be it general as in respect of entries 1 to 81 or the entries conferring taxing powers entries 82 to 92, or in respect of the miscellaneous matters enumerated by such an entry like 94, no taxes may be imposed by virtue of the general legislative power under entries 1 to 81. This matter has been the subject of consideration by this Court though from a slightly different angle in M.P.V. Sundararamier & Co. v. The State of Andhra Pradesh.(1) Venkatarama Aiyar, J.speaking for the Court said :-

> "In List 1, Entries 1 to 81 mention the several matters over which Parliament has authority to legislate. Entries 82 to 92 enumerate the taxes which could be imposed by a law of Parliament. An examination of these two groups of Entries shows that while the main subject of legislation figures in the first group, a tax in relation thereto is separately mentioned in the second. Thus, Entry 22 in List I is "Railways", and Entry 89 is "Terminal taxes on goods or passengers, carried by railway, sea or air; taxes on railway fares and freights". If Entry 22 is to be construed as involving taxes to be imposed, then Entry 89 would be superfluous. Entry 41 mentions "Trade and commerce with foreign coun-
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> (1) [1958] S.C.R. 1422,1479-80.
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> tries; import and export across customs frontiers". If these expressions are to be interpreted as including duties to be levied in respect of that trade and commerce, then Entry 83 which is "Duties of customs including export duties" would be wholly redundant. Entries 43 and 44 relate to incorporation, regulation and winding up of corporations. Entry 85 provides separately for Corporation tax. Turning to List II, Entries 1 to 44 form one group mentioning the subjects on which the States could legislate. Entries 45 to 63 in that List form another group, and they deal with taxes. Entry 18, for example, is "Land" and Entry 45 is "Land revenue". Entry 23 is

> "Regulation of mines" and Entry 50 is "Taxes of mineral rights". The above analysis and it is not exhaustive of the Entries in the Lists leads to the inference that taxation is not intended to be comprised in the main subject in which it might on an extended construction be regarded as included, but is treated as a distinct matter for purposes of legislative competence. And this distinction is also manifest in the language of Art. 248, Cls. (1) and (2), and of Entry 97 in List I of the Constitution."

The same pattern of classification and conferment of general legislative as distinguished from taxing power is adopted in the State List, List II. Entries 1 to 44 of this List deal with general legislative power while items 45 to 63 deal with specific taxes which might be imposed exclusively by the State Legislatures. The last entry in this List is in the same terms as Entry 96 of List 1 and reads "fees taken in respect of any of the matters in this List but not including fees taken in any Court". So far as the Con- current List is concerned, it contains no entry conferring the taxation power but by its last entry, Entry 47, it enables the Legislatures to impose "fees in respect of any of the matters in that List but not including fees taken in any Court" and this is in terms identical with Entries 96 of List 1 and 66 of List 11. It is, therefore, quite obvious that the Constitution proceeds on a basis of clear line of demarcation between the power to tax and the power to levy a fee.

Before proceeding further, one other matter arising out of this scheme might also be noticed. When entries 96 of List 1 or 66 of List 11 speak of "any of the matters in this List" they necessarily include also the entries relating to taxation. In other words, a fee may be levied even under an enactment relating to the imposi-

3Sup./65-16 tion of a tax. Merely by way of illustration of this type of fee we might refer to fees which are charged for licences which are required to be taken by dealers under the Sales Tax Act in the various States. The exact amount of the licence fees to be charged is most often left to the executive determination, the maximum being sometimes prescribed by the relevant sales tax enactment and sometimes even this maximum is not prescribed. These licences are issued in order to ensure the orderly administration of tax legislation and the proper collection of the tax imposed thereby. The distinction between the tax imposed under Entry 54 of List 11 "taxes on the sale or purchase of goods" and +the fees charged for the licences issued to dealers as a condition of their being permitted to carry on business of buying and selling goods is too obvious to need explanation. The significance of illustration of this kind and its impact upon the submissions of Mr. Pathak as regards the nature of a fee under the Constitution we shall reserve for consideration later.

Recognising this well marked distinction which the Constitution makes as between a fee and a tax, the submission of Mr. Pathak was that "fees" in entry 66 of List II were fees for services specially rendered to the payer, and for this construction he relied on two separate lines of reasoning (1) that this had been the sense in which this Court had understood the content of the word "fee"; that this construction was required or reinforced by Art. 110 (2) [and the corresponding Article 199 (2)].

We shall first consider the decisions of this Court, which it is stated have thus interpreted the term "fee" as used in the Constitution. The first case referred to in this connection was The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirth Swamiar of Sri

Shirur Mutt(1) where this Court had to consider the constitutional validity of certain provisions of the Madras Hindu Religious and Charitable Endowments Act, 1951 in its application to Mutts. Among the provisions considered in that context was a. 76 of that enactment, which directed every religious institution to "pay to the Government annually" such contribution not exceeding 5% of its income as might be prescribed. The validity of this provision was challenged on the ground that what was authorised to be levied was not a fee but a tax, and that as a tax it could not be brought within any of the particular taxes enumerated in List 11 which the State Legislature was empowered to impose. This Court agreed with this contention. and based its conclusion on the following circums-

(1) [1954] S.C.R. 1005.

tances. It recognised that a clear distinction existed between taxes and fees under the Constitution. As to what was meant by a tax, Mukherjea, J., who delivered the judgment of the Court adopted the definition of the term by Latham, C.J., in Mathews v. Chicory Marketing Board(1) : "a tax is a compulsory exaction of money by a public authority for public purposes enforceable by law and is not payment for services rendered". The learned Judge enumerated the characteristic of a tax from other forms of compulsory payments, and these were summarised thus :- (1) that taxes were imposed by a statutory power without the tax-payer's consent the payment being enforced by law, (2) that a tax is an imposition made for public purpose without reference to any special benefit to be conferred on the payer of the tax (3) that a tax was levied for the purposes of general revenue which when collected formed part of the public revenues of the State. "As the object of a tax is not to confer any special benefit upon any particular individual there is no element of quid' pro quo between the tax-payer and the public authority". On the other hand, a fee was generally stated to be defined to be a charge for special service rendered to individuals by some governmental agency. "The amount of fee levied is supposed to be based on the expenses incurred by the Government in rendering the service though in many cases the costs are arbitrarily assessed". The learned Judge then went on to observe "the distinction between a tax and a fee lies primarily in the fact that a tax is levied as a part of a common burden while a fee is a payment for a special benefit or privilege. Fee confers a special capacity although the special advantage as for example in the case of registration fees for documents or marriage licences is secondary to the primary motive of regulation in the public interest. Public interest seems to be the basis of all impositions, but in a fee it is some special benefit which the individual receives". In holding that the contribution imposed by s. 76(1) was really a tax and not a fee regard was also had to some other factors, viz., (1) the percentage of contribution leviable was graded according to the income derived by the institution, and(2)the entire collections went into the Consolidated Fund of the State and the expenses for the upkeep of the Board which was a statutory corporation created for the administration of religious endowments in the State was also directed to be met out of the monies in the Consolidated Fund. Reliance was also placed on similar observations of this Court, in other cases of (1)61) C.L.R. 263.

fees charged on religious endowments under other enactments which were heard along with the Shirur Mutt case,(1) already referred to, though in them the validity of the levy was upheld. The validity of a contribution levied under the Orissa Hindu Religious Endowments Act was considered by this Court in Mahant Sri Jagannath Ramanuj Das and Anr. v. The State of Orissa and Anr.(1) and

of a similar levy under the Bombay Public Trust Act (Ratial Panchand Gandhi v. The State of Bombay and Ors.(2)). In these two cases, the validity of the contribution levied under their respective charging provisions was, as stated already, upheld. The ground on which s. 76(1)of the Madras Act which was struck down in the Shirur Mutt case was distinguished was, that under the other two enactments, a special fund was created to which the collections were to be credited and that the expenses of the administration of the Act were directed to be met out of this fund. Though the concept of a fee as a quid pro quo for particular services rendered to the fee payer as explained in the Shirur Mutt case are also repeated in these two decisions, it is worth noticing that the service to be rendered to the Religious Endowment or public trust by the Orissa and the Bombay Acts were exactly similar to the service which was by way of supervision, regulation and control over the way in which the management by the trustees was conducted under the Madras Act. This consideration is highlighted when one examines the decision of this Court in the Udipi Mutt case H. H. Sudhundra, Thirtha Swamiar v. Commissioner for Hindu Religious and Charitable Endowments, Mysore(1)which was a sequel to the Shirur Mutt case,(1). After s. 76(1) was struck down by this Court in the Shirur Mutt case(2) the Madras Legislature by Act 27 of 1954 effected certain amendments to that section with a view to rendering it constitutional. Section 76 had been held to be ultra vires of the legisture on the ground that what it imposed was not a fee which was the only thing permitted by Entry 66 but in reality of tax. This decision was based upon several grounds of which the principal were : (1) that no special service had been rendered to the Mutts and other religious institutions so as to justify its being a fee for services rendered,, (2) that it was graded according to the capacity of the payer based upon the annual income derived by the institution which rendered it somewhat like an income tax, and (3) that it was paid to the Government and became part of the Consolidated Fund of the State, the expenses incurred in administering the Act being paid (1) [1954] S.C.R. 1005.

(2) [1954] S.C.R. 1046.

(3)[1963] 2 Supp. S.C.R. 302.

out of the General Revenues. Section 76 as amended by Act 27 of 1954 was held to be intra vires and sustained as a fee. The changes that were effected by the Madras Legislature were : (1) the graded system was abolished and the maximum percentage of the contribution being fixed by the statute, (2) the contributions payable were collected by the Commissioner and not by the State, (3) that a separate Fund was created into which these collections were credited and moneys for meeting the expenditure for the administration of the Act were drawn from this Fund. One other point to be mentioned is that the services rendered to the institution, as set out in s. 76 and the other relevant provisions of the Act remained exactly the same. This Court held the contribution to be a fee principally for the reason that the moneys that were being paid into a separate Fund were collected not by the Government and were being paid to a different Fund. If one proceeded on the footing that unless the service rendered was a specific service in the sense of a benefit conferred specially upon the payer, the charge levied would be a tax, the contribution levied under s. 76 even after the amendment would have been held to be a tax. No doubt, the fact that a separate Fund is segregated from the Consolidated fund of the State and the moneys are received not by the Government as such but by a public authority might show that it is not a tax, still these are not decisive, for as was held

by the Privy Council in Attorney-General for British Columbia v. E. & N. Railway Co.(1) which has been approved by this Court in The Hingir Rampur Coal Co. Ltd. and Ors. v. The State of Orissa and ors. (2) to which we shall refer later the payments were credited to a Fund known as the Authorised Protection Fund to which advances were made from Consolidated revenues. Lord Greene after saying that the levy had the characteristics of taxation, observed :

> "It is suggested, however, that there are two circumstances which are sufficient to turn the levy into what is called a 'service charge'. They are, first, that the levy is on a defined class of interested individuals and, secondly, that the fund raised does not fall into the general mass of the proceeds of taxation but is applicable for a special and limited purpose. Neither of these considerations appears to their Lordships to have the weight which it is desired to attach to them."

The segregation of the Fund, therefore, could not have been a decisive factor for determining the nature of the levy. This (1) [1950] A.C. 87.

(2) [1961] 2 S.C.R. 537.

decision as well as the Orissa and the Bombay cases already cited are, therefore, authority for the position that the word 'services' in this context may have to be understood in a wide sense as including supervision and control over the activity for the exercise of which the fee is charged. As contrasted with these three cases, Mr. Pathak submitted that when fees were levied for licences they were taxes. In support he referred to Cooverjee B. Bharucha v. The Excise Commissioner & the Commissioner, Ajmer and others.(1) Under the legislation before the Court viz. The Excise Regulation Act 1950 licences were granted to regulate the trade in liquor. The fee to be charged for the grant of the licence was not prescribed by the Act or the rules but the licence was sold in public auction, the highest bidder being granted the licence the amount of the licence fee thus being the amount of the highest bid. This Court held that the fee collected from the highest bidders to whom the licences were granted was really in the nature of a tax though described as a licence fee. It was held that the legislative power for enacting this legislation was to be traced to the Entries in the Seventh Schedule, List 11, of the Government of India Act, 1935, "for making laws regarding intoxicating liquors, i.e. the production, manufacture, possession, transport, purchase and sale of intoxicating liquors, and under the powers conferred for raising duties of excise on alcoholic liquors for human consumption; and the pith and substance of the regulation was that it raised excise revenue by imposing duties on liquors". Dealing with the contention that as it was described in the Excise Act as a licence fee the same was invalid as excessive was repelled in these terms : "The next contention that the charge of fee by public auction is excessive and is not in the nature of a fee but a tax ignores the fact that the licence fee described as a licence fee is more in the nature of a tax than a licence fee. One of the purpose of the Regulation is to raise revenue .... The grantee is given a licence on payment of the auction price. The Regulation specifically authorizes this". We do not see how this decision helps the appellant. The description of the levy as a fee does not of course determine whether it is a fee or a tax. That taxes may be imposed for effectuating other purposes than raising revenue for protecting some activity which is not subject to tax or to inhibit one which is so subject or to regulate some activity cannot also be disputed. That fees for licences may be by way of taxes

does not, however, mean that every fee for a licence is or must be a tax.

(1) [1954] S.C.R. 873.

Reference was next made to The Hingir-Rampur Coal Co. Ltd. and others v. The State of Orissa and ors.(1) which consi- dered the validity of a cess imposed on owners, among others, of coal-mines by the Orissa Mining Areas Development Fund Act, 1952. The amount of cess was to be determined by the Government but it was not to exceed 5% of the value of the minerals extracted at the pits-mouth which was to be paid into a fund out of which was to be derived the monies for providing the amenities to the mining areas. It was contended for the petitioner coal company who moved this Court under Art. 32 of the Constitution that this cess was really a duty of excise on coal within Entry 84 of List I of the Seventh Schedule. On the other hand, it was contended by the State who opposed the petition that the cess was a fee and not a duty of excise. This Court upheld the validity of the cess on the ground that it was really a fee, and in so holding observed "it is true that between a tax and a fee there is no generic difference. Both are compulsory exactions of money by public authorities; but whereas a tax is imposed for public purposes and is not, and need not, be supported by any consideration of service rendered in return, a fee is levied essentially for services rendered and as such there is an element of quid pro quo between the person who pays the fee and the public authority which imposes it. If specific services are rendered to a specific area or to specific class of persons or trade or persons in any local area and as a condition precedent for such service cess is levied against the said area or the said class of persons or trade or business the cess is distinguishable from a tax and is described as a fee. Tax recovered by public authority invariably goes into the consolidated fund which ultimately is utilised for all public purposes,whereas cess levied by way of fees is not intended to be, and doesnot become, a part of the consolidated fund. It is earmarked andset apart for the purpose of services for which it is lvied.....In regard to fees there is, and must always be, co-ordinaton between the fee collected and the service intended to be rendered..... The distinction between a tax and a fee is, however, important and it is recognised by the Constitution. Several Entries in the Three Lists empower the appropriate Legislatures to levy taxes, but apart from the power to levy taxes thus conferred each List specifically refers to the power to levy "fees in respect of any of the matters covered in the said List excluding of course fees taken in any Court". Reference was then (1)[1961] 2 S.C.R. 537.

made to the decisions in the Shirur Mutt case(1) the Orissa(1) and the Bombay(2) cases to which we have already adverted. Mr. Pathak placed considerable reliance on the reference in the Hingir-Rampur Coal Co.(4) to the decision of the Privy Council in Attorney-General for British Columbia v. Esquimalt and Nanaimo Railway Co.(3) and to the explanation of the rationale of those decisions of this Court :- "It would thus appear that this decision proceeded on the basis that what was claimed to be a special service to the lands in question was in reality an item in public service itself and so the element of quid pro quo was absent. It is true that when the Legislature levies a fee for rendering specific services to a specified area or to a specified class of persons or trade or business, in the last analysis such services may indirectly form part of services to the public in general. If the special service rendered is distinctly and primarily meant for the benefit of a specific class or area the fact that in benefiting the specified class or area the State as a whole may ultimately and indirectly be benefited would not detract from the character of the levy as a fee. Where,

however, the specific service is indistinguishable from public service and in essence is directly a part of it different considerations may arise".

These decisions according to the learned counsel established (1) that a fee for a licence was prima facie a tax and was a mode of raising revenue, (2) the fact that under the licence the trade, business or other activity of the licensee is controlled and regulated where such control and regulation is imposed in the interest of the general public is not sufficient to negative the licence fee being a tax; (3) it was only in those cases where an impost was made either as an ad hoc cess or a fee for the grant of a licence as a charge for services rendered to the fee-payer that the impost could be characterised technically as a fee which for being valid would have to stand the test of correlation with the costs entailed on the public body for rendering the service. Besides the requirement as to special service to the payer being required, the argument continued that on the authorities cited any fee would be tax if there was no segregation of its proceeds for the general revenues and a requirement of the law that the collections should be used only for the purpose of rendering the service. This last requirement, however, the learned counsel did not press seriously, seeing that even charges for services rendered, for instance, charges for (1) [1954] S.C.R. 1005.

(2) [1954] S.C.R. 10.

(3) [1954] S.C.R. 1055.

(4) [1961] 2 S.C.R. 537.

(5) [1950] A.C. 87.

extra water supply also went into the general municipal fund and figured in the consolidated annual budget prepared for the Corporation.

Learned counsel is no doubt right in the submission that the impost described as a "fee" does not decisively determine that it is not a tax. He is also right in urging that the, fact that the fee is imposed for the grant of a licence, is equally not determinative of its true nature. It is common knowledge that in the United Kingdom duties of excise are often collected as licence fees and an illustration of a similar practice in India is seen in the Ajmere Excise Licence case.(1) As observed by Gwyer, C.J., in Re : Central Provinces and Berar Act 14 of 1938 (2) "The licence fees payable by persons who produced or sold excisable articles also became known (in U.K.) as duties of excise". In the context of the problem before us, however, the question is whether in order to constitute a fee in the strict sense it is not sufficient that it is imposed in order to raise funds for ensuring due compliance with the activity which it is the object of the licence, to place under supervision, inspection and control. In this connection reference may be made to paragraph 7 of the affidavit by the Corporation in answer to the Writ Petition filed by the respondent. There the appellant Corporation stated "the new scale of fees as fixed by the Corporation is reasonable for effective inspection, supervision and control of cinema houses in Calcutta at present numbering 75 in accordance with the provisions in the relative bye-law framed under the Calcutta Municipal Act having regard to the public health, safety and convenience..... I say that in order to effectively

discharge the statutory duties imposed on the Corporation in regard to the inspection, regulation. supervision and control of cinema houses in Calcutta it is necessary to pro- vide for a more suitable machinery and establishment involving employment of a much larger staff and consequently very large additional expenses in order to exercise a better, fuller and more effective control and supervision of the cinema houses, having regard to the additional burden imposed by the cinema business at present times and the ever growing needs of precautions regarding the health, safety and convenience of the public the new scale of fees is reasonable to cover necessary expenses involved in the said control and supervision of the cinema houses as hereinbefore stated". Mr. Pathak urged that the point that be was raising was one of law and therefore the appellant was not confined to sup-

(1) [1954] S.C.R. 873.

(2) [1939] F.C.R. 18.

porting the levy as a fee in the strict sense. He is right there, but we are drawing attention to this defence only for the reason that this plea was taken because of the accepted position as to the concept of a fee on the authorities to which we shall refer presently and the elements of "service" needed the rendering of which would constitute a quid pro quo for the fee imposed. These authorities have taken the view that where a licence is granted, the fee to be charged for such a licence might bear a reasonable relation to the cost of providing the inspection, supervision and control imposed on the licensee both in his own interest as well as in the interest of the general public. In other words a fee in the strict sense-as distinguished from a tax could be charged, for the cost involved in (a) the machinery employed for granting the licence, (b) the supervision, regulation and control to which the licensee renders himself liable under the licence, and subject to which he is granted the licence. Thus in The Municipal Corporation of Rangoon v. The Cooratee Bara Bazar Co. Ltd.(1) the validity of a licence fee imposed for keeping a private market was questioned by a suit filed on the original side of the High Court. Section 178(3) of the City of the Rangoon Municipal Act ran : "For every such licence or permission a fee may be charged at such rate as shall from time to time be fixed by the Corporation". Under this provision fees amounting to substantial sums were charged for licences granted for these private markets. This fee was challenged as unreasonable and ultra vires. Cunliffe, J. who tried the suit observed at pp. 219 and 220 :-

> "A licence is merely a permission granted to a particular person to do a particular thing at a. fixed place during a determinate period. The fee attached to such a permit is a specific sum of money to be collected from the licensee for the purpose of covering the expenses of the licence, its registration, inspection and supervision. Fees levied on licenses of premises ought not to be greater than a sum to cover the costs of the regulation."

> A Similar view was taken by the Division Bench on appeal. They said at p. 228 :-

> "Was it the intention to give the Corporation power to impose on the owners of private markets a charge for a licence which might extend to any amount for which

(1) [1927] I.L.R. 5 Rangoon 212.

> the sanction of the Local Government could be obtained? Or was the intention merely to give power to charge a fee which would save the Corporation from being out of pocket by reason of the duties and liabilities imposed on it by the Act of the supervision and regulation of private markets ?

As the amount charged bore no relationship to the expenses involved in the inspection, supervision and control which the Corporation might exercise over the licensed premises, the fee was held to be ultra vires. This decision was followed in Corporation of Madras v. Spencer & Co. (1). The licence fee for storing spirits levied under the Madras City Municipal Act was raised from Rs. 25 to 200 by a resolution of the Corporation after observing the necessary formalities. This was challenged as excessive because of want of correlation between the cost of inspection, supervision and control of holders of the licence and the total amount recovered as fees. The pattern of the Madras City Municipal Act was the same as the Act before us. The contention,urged before the Court was the same as that now urged viz. that what was permitted to be levied by s. 365(2) of the Madras Act [corresponding to our s. 548(2)] was a tax particularly seeing that what was being regulated and controlled was a noxious or dangerous trade or activity. The Court repelled it by pointing out that taxes were dealt with in Part 3 while the power to levy fees for licences was conferred by a section occurring in a part headed Miscellaneous and Procedure. Phillips J. observed at p. 57 :

> "Beasley, I., has held that the fees are leviable as compensation to the corporation for the expenses incurred in the issue of licenses and the general regulation of the trades and other occupations which are licenced and there must be some relation between these expenses and the amount of fees leviable. This was the view which was adopted by the Rangoon High Court in Municipal Corporation Rangoon v. Cooratee Barn Bazar Co. Ltd. (A.I.R. 1927 Rangoon 183-5 Rangoon 212). With all respect, I think this is a very reasonable view to take and, although possibly the above is not the sole consideration which may be taken into account in fixing the amount of fee, it is the main (1) A.I.R. 1939 Mad. 55.
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> consideration. The license fees are in respect of what are called dangerous and offensive trades, that is to say, it is necessary in the interests of the city that the corporation shall know where such trades are being carried on and shall be in a position to see that they are carried on in a proper manner without causing unnecessary nuisance to other people or danger to the public generally."
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> Reilly, J., the other learned Judge, added at p. 59 "It is suggested that the fixing of fees for those licenses may be used by the council as method of taxation. Surely, if that was intended, that power would have been provided for in the part of the Act which deals with taxation. What could be the reason for bringing it in as a' mere matter of procedure at the end of the Act ? .... If we accept the proposition that the power of charging license fees cannot be used for taxation, then we must say that as a whole the fees charged by the corporation must not be very much in excess of what the duties cast upon them and their staff in connexion with the licenses cost them. There is the cost of issuing the licenses; there is the cost of inspecting the premises to

> see whether they are suitable for the purpose proposed; and there is the subsequent cost of inspecting the premises to see that they are being used properly and that the conditions and restrictions imposed by the Commissioner are observed."

These decisions were followed in Municipal Council of Kumba- konam v. Ralli Bros.(1) where a fee for a Municipal licence granted for storing groundnut was increased and its validity was questioned. Section 321 (2) of the Madras District Municipalities Act was in terms identical with s. 548(2) of the Act. Dealing with the nature of the fee permitted to be charged under that provision Curgenvan, J. said :-

> "The wording undoubtedly suggested that the fee should be commensurate with the extra cost entailed by granting the licence and exercising such supervision as is necessary to see that its terms are complied with. It may be that in order to promote the health, etc., of the public, with which this part of the act specially (1) A.I.R. 1931 Mad. 497.
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> deals, higher fees should be chargeable in the case of dangerous or offensive occupations."

The High Court of Orissa(1) followed these decisions and adopted the same construction of the fee permitted to be levied by s. 321 of the Madras District Municipalities Act, whose provisions were also applicable to parts of the State of Orissa, besides decisions on the same lines by the High Court of Allahabad in Lala Rai Kishore v. District Board of Saharanpur(2).

We have, therefore, to consider whether there is anything in the decisions of this Court referred to earlier and relied on by the learned counsel which militates against holding that the cost involved in the inspection, supervision and control of an industry, trade or activity is not a quid pro quo to the payer so as to constitute a fee levied for that purpose as always a tax. Reference may here be made to the terms of s. 431 of the Act with which Chapter XXVI, in which s. 443 occus, opens.

> " inspection and Regulation of Premises.
>
> 431. Subject to the provisions of this Act, land and buildings shall respectively be inspected, cleansed, secured, repaired, drained or otherwise regulated in accordance with the rules contained in Schedule XVII."

It is, therefore, not as if powers or duties are not cast on the Corporation to be discharged for which the fee to be charged under s. 548 (2) would be a quid pro quo. The placing of an activity, industrial or commercial, under regulation and control is no doubt done in furtherance of public interest, but so are most of the activities of public bodies. Nevertheless the supervision, inspection and regulation is from a long term point of view considered to be and is in the interest of the industry or the activity itself. To say that to enable a fee strictly so called to be levied, an immediate advantage measurable in terms of money should be conferred on the payer, is to take too narrow a view of the concept of a fee. We do not consider that the decisions of this Court in the Endowment cases lay down such a

proposition or compel us to adopt this construction. On the other hand the Orissa Endowments Act and the Bombay Public Trusts Act cases, as also the Orissa Mining Area Development Fund case support a broader view of what constitutes service to the fee-payer. (1) Sivaparvatamma v. Executive Officer, A.I.R. 1957 Orissa, 285.

(2) A.I.R. 1954 All. 675.

We are also satisfied that the narrow construction suggested would not accord with the scheme of the entries in the lists in Schedule VII to the Constitution. To illustrate the point, we would refer to a legislation like the Industries Development and Regulation Act, 1951 (Central Act 65 of 1951). It is an Act to provide for the Development and Regulation of certain industries. Under the provisions of s. 11 of that enactment no new industrial undertaking could be established by any person or authority other than the Central Government after the commencement of the Act "except under and in accordance with the licence issued in that behalf by the Central Government". The inspection, supervision and control to be exercised over the licenses is provided for in detail by various sections of the enactment. Under s. 30 (2) (j) the Central Government is empowered under the rules made under the Act to determine the fees to be levied in respect of licences and permissions issued under the Act. Now, let us see the constitutional power to empower the fee to be charged. Entry 52 of List I reads "industries, the control of which by the Union is declared by law to be expedient in the public interest", and s. 2 of the enactment contains this declaration. Coming now to the entries relating to taxation it will be found that none of these entries, 82 to 92, would cover the fees charged for licences issued under the enactment. It is obvious. therefore, that the legislative power for charging fees is to be derived from Entry 96 of List 1, "fees in respect of any of the matters in this List". If the learned counsels submission that the expression quid pro quo should be read in the sense of a special and particular benefit conferred upon particular licensees (benefit again in the sense suggested) is correct ,he licence fees levied under the rules made under s. 30 (2) (j) read with s. II would be invalid as a fee and it could not be sustained as a tax either, for the tax there levied could not be brought within the rubric of any of the Entries, 82 to 92. It, therefore, appears to us that the word quid pro quo should be read not in the narrow and restricted sense submitted by the learned counsel for the appellant but in a somewhat wider sense as including cases where the function of the licence is to impose control upon an activity the cost incurred for effectuating that control, and this on the basis that the industry or activity is placed under regulation and control not merely in public interest but in the interest and for the benefit of the licensees as a whole as well. Coming nearer to the present case we might take another instance. Take the case of a licensing of factories and trades which are the other matters dealt with in the fasciculus of sections of the Act in which s. 443 is to be found. Section 436 runs, to quote the material words "no person shall, without the previous written permission of the Commissioner establish in any premises or materially alter, enlarge or extend any factory, workshop or workplace in which it is intended to employ some electricity, water or other mechanical power [436(1)] and s. 437(1) reads : "No person shall use or Permit or suffer to be used any premises for any of the following purposes without or otherwise or in conformity with the term, of the licence granted by the Commissioner in this behalf, viz. (a) any of the purposes specified in Schedule 18,(b) any purpose which is in the opinion of the Corporation danger(us to health or property or..... Schedule 18 contains a list of the purposes for which premises may not be used without a licence and contains a long list of goods or articles which could not be packed, stored etc.

in such premises. Under s. 548(2) a fee might be charged both for a written permission as well is for the grant of a licence. It must be assumed that if the learned counsel is right in his submission as to what constitutes a fee, the fee charged for a written permission under s. 436 and for licence under s. 437 which we have extracted above would in reality be taxes though called fees. Now, lot us see whether there is any taxation entry in List 11 which could support the validity of the impost. The only Entry under which it could possibly be brought in if it all would be Entry 60, "taxes on professions, callings and employments". It is hardly possible lo sustain this interpretation because there is also Ch. 13 of Part IV headed "taxes on professions, trades, callings and the exact figure of the taxes which. might be imposed are laid down in Schedule 4. It cannot of course be said to be a tax on land buildings because it is not on the 'land or building that the tax is levied but on the activity Pursued therein, and besides "taxes on lands and buildings" are specially dealt with under Ch. 11 of Part IV where the permissible "consolidated rates" are laid down. The licence fee for the written permission and licence fee under ss. 436-37 can only be supported as referable to legislation under Entries 5-- constitution and powers of the municipal corporations" and 6public health and sanitation" and 24-"industries" read with Entry 66 of the State List. We have taken these two illustrative cases at random but an examination of the entire body of statute law in India would bear this out. We are not, therefore, disposed' to read the judgments of this Court in the Shirur Mutt case(1) and the cases following as laying down that where an activity is regulated by licences the imposition of charges for the inspection, (1) [1954] S.C.R. 1005.

supervision and control of the activity to ensure compliance with the regulation is not a benefit conferred on the licensee so as to render the amount charged for such a licence not a fee in the real sense but a tax, whose constitutional validity could be sustained only by reference to the taxation entries in Lists I and II. Mr. Pathak submitted that so far as the fee charged with reference to entertainments in theaters under s. 443 of the Act might be sustained with reference to Entry 62 of List 11, but that would hardly be an answer, because we are examining the entirety of the group of cases to which s. 548(2) of the Act would apply.

It will now be convenient to consider the argument of learned Counsel based on Art. 110(2) as supporting the narrow construction of the word "fee" as used in the entries in the legislative lists. Article 110(2) deals with the definition, of Money Bills for the purposes of that Chapter. Clause (1) defines in positive terms what shall be deemed to be a money bill and cl. (2) negatively defines what shall not be deemed to be a money bill. That provision reads "110. (2) A Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission,, alteration or regulation of any tax by any local authority or body for local purposes." Learned Counsel pointed out that here a distinction was drawn between a payment of fees for licences and fees for services rendered, and so a payment for fees for licences was treated differently from fees for services rendered. The argument based upon it was that Entry 66 of List 11 and the similar Entries in Lists I & III were confined to fees for services rendered and that "a payment of fees for licences" were really not fees within those Entries. Re- ferring to the present case he urged that as no special services for the benefit of the theatre owners had either been required to be rendered by the Act or the bye-laws made thereunder or had actually been rendered, it could not fall under the category of "fees for services rendered".

The Constitution, therefore, it was urged contemplated imposts by way of fees for licences which were not for services rendered and it was this category of impost that was per- mitted to be charged by s. 548(2) of the Act. We ire unable to agree in this construction of Art. 1 10(2). In the first place, all municipal taxation is outside the definition of a money bill, so that in regard to municipalities and the imposts made for purposes of local administration, no distinction is drawn between taxes and fees. The "fees" therefore which are specifically excluded from the definition are fees imposed by the State Government or its administrative agencies other than by instruments of Local Self-Government. The exclusion from the definition is as regards two categories : (1) fees for licences, and (2) fees for services rendered. It is obvious that a tax which is collected as a licence fee such as in the Ajmere Excise case considered earlier, would not fall outside this definition of a money bill merely because the tax was imposed and collected as a licence fee. If therefore pure taxation measures would be money bills then, it is obvious that the fees for licences which are outside the definition would be those fees which are imposed to meet the cost of regulation and supervision of an activity which is controlled by the requirement of a licence and compliance with its terms. Thus a contribution under s. 76(1) of the Madras Religious Endowments Act as amended in 1954, would be a fee for services rendered because there is no question of licences being taken out in these cases and fees for regulating an activity such as the fees payable for licences under the Regulation of Industries Act, 1951 or for licences for trading in essential commodities under the Essential Commodities Act, 1955 would on the other hand fall tinder the bead "payment of fees for licences". Thus we consider that Art. 110(2) far from supporting Mr. Pathak, negatives the construction for which he contends.

Any other construction of Art. 110(2) would hardly fit in with the scheme of the Article itself or even with the lists in Sch. VII. Thus if every fee for a licence were outside the definition of a money bill, legislation for the levy of excise duties which are very often collected by adopting the machinery of licences and fees therefor, would not be money bills, and seeing that "excise duties" are a taxation entry in Lists I & II such a position cannot be reconciled. Besides, as already pointed out, Entry 66 itself would have to be read as a taxation entry in order to sustain the levy of licence fees on various activities which might form the subject of legislative control or regulation under the various non-taxation entries in the lists. Such a construction would be contrary to the entire scheme on which the several entries in the lists are arranged and differentiated. As additional illustrations of the anomaly that would result if Mr. Pathak's construction of entry 66 of List 11 were accepted we would refer to other sections of the Act which enable the issue of licences and the charging of fees therefor. We have already referred to s. 436 and s. 437 of the Act. Under Section 449 the Commissioner is empowered to license vendors in Sup./65 17 municipal markets, under S. 451 he has power to license private markets, slaughter houses and stock-yards, and under s. 460-to license butchers and those who sell meat. We are not making an exhaustive list but are merely pointing out that in order to sustain these levies as fees, because they do not fall under any of the heads of taxation permitted to the State, the word 'fee' has to be read as including fees charged for supervision, control and regulation of an activity which the legislature desires to control. On this part of the case we are clearly of the opinion that the legislative power as regards "fees" under Entry 66 as well as the corresponding entries in the other Lists is really in the nature of an incidental power to effectuate the main head of legislation empowered to be enacted by the other entries in the List. Item 66 is not an entry in relation to taxes which, on the scheme of the Constitution as we have

analysed earlier, are grouped together serially in Lists I & II. This construction is confirmed by the fact that in the Concurrent List which contains only entries in relation to legislative power as distinguished from entries conferring taxing power, the last entry enables fees to be levied as ancillary to the legislative power conferred by the other entries in that list.

Even assuming that learned Counsel is right in his submission regarding the manner in which the decisions of this Court in the Religious Endowment group of cases have to be understood, the appellant would be in no better position; in fact, its position would be worse, for if a fee within Entry 66 is confined to payments for particular and specific services rendered to the fee payer, the constitutional validity of s. 548(2) of the Act would be open to challenge on the ground that it authorises the Municipal Corporation to impose taxes which are not within the State's power to impose for its own purposes. This would be an additional reason for reading the word "fee" in Entry 66 in the sense which we have indicated earlier and which is in consonance with the uniform course of decisions already referred to rendered on the meaning of that word.

(2)Is the fee permitted to be charged by s. 548 (2) a fee or a tax ?

This brings us to a consideration of the provisions of the Act for the purpose of determining whether the impost permitted to be charged by S. 548(2) of the Act is a fee understood in the sense in which we have explained earlier as used in Entry 66 of List 11 or is it a tax. For this purpose it is necessary to examine the scheme of the Act. The Act contains 615 sections and these are divided into 3 8 chapters each with a heading indicating the subject dealt with in it. These several chapters are themselves grouped under 8 Parts. Part 1 in which Ch. 1 alone occurs is preliminary and does not require mention. Part 11 which comprises Chapters 11 to VI deal with the constitution and government of the Municipal Corporation. The several chapters of this Part enumerate and specify the powers and functions of the several municipal authorities and the manner in which the business of the Corporation has to be transacted. This Part also is not relevant to the matter on hand and may be passed over. Part III deals with Finance and is made up of Chapters VII, VIII, IX and X. It is sufficient to refer to the headings of the several chapters which are Ch. VII. The Municipal Fund, Ch. VIII- Budget Estimates, Ch. IX Loans and Ch. X Accounts. We shall have to refer to some of the provisions of these chapters in dealing with certain arguments of Mr. Pathak relying on them for the purpose of showing that the legislature had laid down the principles and afforded sufficient guidance for determining the rate at which a fee should be levied, on the basis that such a fee was a tax. To these, however, we shall revert later.

Part IV is headed 'Taxation' and Chapters XI to XVII are in this Part and each of these chapters deal with separate heads of taxes which the Corporation is authorised to levy and collect.

Section 165 of the Act with which Ch. XI opens empowers the Corporation to impose "a consolidated rate" on lands and buildings situated within the municipal area. The section prescribes the maximum percentages of the annual value at which the tax may be levied and grades them into several categories dependent on the total annual valuation. Section 166 prescribes the manner in which the particular percentage to be charged is to be determined by the Corporation. The percentages, subject to the maxima laid down in s. 165, have to be fixed annually having regard to

the requirements of the Corporation with reference to the obligations imposed upon it by the Act. Elaborate procedure is laid down by the other sections of this Chapter ending with s. 207 for the manner in which the annual value of lands and buildings on which the specified percentages may be levied may be determined, with appeals provided to Civil Courts for the aggrieved tax-payer in the event of the annual value as determined by the Corporation being disputed. The next Chapter-Ch. XII comprising ss. 208 to 217 is headed 'Taxes on Carriages and Animals'. When the tax leviable under this chapter whose rate is prescribed by the Sch. VI of the Act, is paid, a licence is issued to the owner of the Carriage or Animal. Next, we get to Ch. XIII headed "Tax on professions, trades and callings" and comprises ss. 218 to

221. Section 218 directs that "every person who exercises or carries on in Calcutta any profession, trade or calling indicated in Sch. IV shall annually take out a licence before the 1 st July each year..... and pay for the same such fee as is mentioned in that behalf in the said Schedule. Schedule IV, it might be mentioned, contains the rules as to the quantum of the profession etc. tax to be charged by the ,Corporation. The persons to be taxed under this head are divided into 10 classes depending upon the amount of business carried on and in the case of companies, their paid-up capital and in the case of individuals, of their annual income and in respect of each class the fee to be levied is specified. Chapter XIV headed "Scavenging Tax" comprises ss. 222 and 223. This tax is to be levied on per- sons who exercise a calling. specified in Part 1 of Sch. VII and is dependent on either the average number of animals kept by the persons for the exercise of such calling, or in the case of the owner or occupier of a market, the average quantity of offensive matter and rubbish removed daily. A licence is to be taken by the person liable to pay the tax and the rates to be charged are to be those specified in Part 11 of Sch. VII. Next, we have a tax on carts under Ch. XV. The tax is to be imposed for the registration and the numbering of carts and by charging of a fee for such registration. Section 225 prescribes the fee that might be charged for the several varieties of vehicles which are classified under that section. Section 229 which is the first section in Ch. XVI provides for the imposition of a licence fee for advertisements. It is the only provision for taxation as regards which a rate is not specified or the maxima laid down by the Act. Chapter XVII which is the last chapter in this Part is concerned with making provision for the recovery of the consolidated rate and the other taxes and for certain supplementary provisions in relation to taxes permitted to be levied under this Part. The next Part-Part V is headed the Public Health, Safety and Convenience and Chapters XVIII to XXXI are included in this Part. Chapter XVIII relates to water supply, XIX to drains, privies and other receptacles for filth, Chapter XX to licensed plumbers, XXI to Streets and Public places, XXII to buildings, XXIII to Bustees, XXIV to demolition, alteration and stopping of unlawful work, XXV to lighting and scavenging, and regulation of public bathing and washing, XXVI to inspection and regulation of premises, and of factories, trades and places of public resort and this is the chapter in which s. 443 finds a place. Chapter XXVII deals with markets and slaughter places, Ch. XXVIII with Food and Drugs, Ch. XXIX with milk-supply, Ch. XXX with restraint of infection and Ch. XXXI with registration of births and deaths and disposal of the dead. The next chapter in this Part deals with acquisition, disposal and general improvement of land and buildings and the last oneCh. XXXIII with the special powers of the Corporation. The next part-Part VII contains provisions for enabling the Municipal Corporation to make bye-laws and rules. Part VIII which is the last Part has four chapters-Ch. XXXV deals with penalties to be imposed for ensuring compliance with the provisions of the Act and the bye-laws made by the Corporation, Ch. XXXVI is

headed 'Procedure', and s. 548 is the first section in this Chapter, and the other sections deal with the incidental powers of the Corporation and with procedure. The next two chapters are headed "Supplemental provisions & Transitory provisions".

Mr. De for the respondent urged that the scheme of the Muni- cipal Act proceeded on a clear demarcation between taxes and fees, and that all the taxes which the Corporation was empowered to impose were grouped together under various heads in Part IV of the Act headed "Taxation". Section 443 occurs in the Chapter relating to the inspection of places of entertainment and public resort and s. 548(2) in one headed "Procedure" and that the framers of the Act, therefore, could not, by these provisions, intend that the fee to be levied would be a tax. In other words, the argument was that all taxing power and the heads of taxation were to be exclusively found in Part IV of the Act. This argument deserves serious consideration, but before we proceed to do so, we might notice and dispose of an additional submission which was made to reinforce this argument based on the terms of s. 127(3) read with s. 127(4) of the Act. Section 127 occurs in Ch. VIII dealing with Budget estimates. Section 126 requires the Commissioner to prepare and submit to the Standing Finance Committee on or before December 15 each year, "the annual estimates of expenditure, receipts and balances and the statements of proposed taxes". Section 127 is concerned with requiring the Corporation to frame budget estimates of the year. Sub- s. (3) on which he relied reads "(3). The Budget Estimates prepared by the Standing Finance Committee shall be laid before the Corporation on the 15th February or as soon as possible thereafter and the Corporation shall consider the same. It may refer the estimates back to the Standing Finance Committee for further consideration and resubmission within a specified time and shall-

(a) .....

(b)determine, subject to the provisions of Part IV the levy of the consolidated rate and taxes for the said year at such rates as are necessary to provide for the purposes mentioned in sub-section (4) .....

and sub-s. (4) reads :

"(4). In the Budget Estimates the Corporation shall among other things

(a)make adequate and suitable provisions for such services as may be required for the fulfilment of the several duties imposed by this Act, (aa) make adequate provisions for depreciation of machinery belonging to the Corporation, as far as may be possible,

(b)provide for the payment as they fall due of all instalments of the principal and interest for which the Corporation may be liable in respect of loans contracted by it,

(c)allow for a cash balance at the end of the year of not less than twelve lakhs of rupees, and

(d)allot sums of money to each Borough Committee to enable it to exercise and discharge its powers, duties and functions." The argument was that in the budget estimates in s. 127(3) what is to be

considered is the levy of the consolidated rate and the taxes and these are subject to the provisions of Part IV and the obligatory expenditure imposed by sub-s. (4) is to be met out of the consolidated rates and taxes which are to be determined subject to the provisions of Part IV. It was, therefore, submitted that the rates and taxes had to be determined subject to the provisions of Part IV and as the expenditure under sub-s. (4) was to be correlated to the receipt from the rates and taxes it was an indication that all rates & taxes were only under Part IV. We consider that this argument proceeds upon a misconstruction of these provisions. Sub-s. (4) of s. 127, of course, deals with obligatory expenditure but from this it does not follow that expenditure which the Corporation could lawfully incur for the optional amenities which it could provide for the citizens would not find a place in the budget. Sub-s. (4), it would be seen, opens with the words "shall among other things, make Under s. 126 the budget will cover all the expenditure which it is proposed to incur-both that which is obligatory upon the Corporation under s. 127(4) and those which it could lawfully incur. On the receipt side would be included also fees and all receipts from every other source. No doubt, s. 127(3) would appear to suggest that so far as consolidated rates and taxes are concerned, it would be subject to the provisions of Part IV but that by its very nature can only apply to the rates and taxes listed in Part IV. If on a proper construc- tion of the Act one reached the conclusion that Part IV was not exhaustive of the range of levies permitted by the Act and that the fees permitted to be levied by s. 548(2) were also taxes, there would be nothing in s. 127(3), either by itself or read with s. 127(4), to militate against that construction. We do not, therefore, consider that these provisions advance the case of the respondent if on a construction of the Act one reached a different conclusion. We are thus left with the assistance afforded to us by the scheme underlying the provisions of the Act for determining whether the levy permitted by s. 548(2) is of the nature of a tax. The submission of Mr. Pathak was that Part IV, no doubt, dealt with rates and taxes but merely on that account one cannot draw the conclusion that taxes are not dealt with or permitted to be imposed by other provisions of the Act. No doubt, if a power to make a levy occurred in a part outside Part IV and it clearly and unequivocally pointed to the imposition being a tax its effectiveness could not be denied merely because the provision did not appear in Part IV. But on the scheme of the Act we have at least to start with a presumption that Part IV is exhaustive of the taxes which are permitted to be levied by the Corporation. In this connection Mr. Pathak laid some stress on the fact that the nomenclature employed to designate taxes in Part IV was not uniform and that a tax was sometimes called a consolidated rate (vide s. 165) and, though called a tax in the case of taxes on carriages and animals under ss. 208 and 216, a licence was granted on the payment of a tax, it was called a fee under s. 218 in the case of tax on professions, trades and callings, and, similarly, in the case of scavenging tax under s. 222, was designated as a fee and a licence fee on advertisements by s. 229. In the face of this difference in the terminology employed learned Counsel stressed that the framers of the Act did not proceed on the differentiation that every fee permitted to be imposed for the grant of a licence was always not a tax. Learned Counsel is, no doubt, right in the submission that Part IV headed 'Taxes' uses the expression "fee" to designate taxes to be imposed upon particular articles or activities but the provisions of the Act and the way the relevant sections are framed make it clear that what is permitted to be charged by these provisions in Part IV is really in the nature of a tax. Besides, in the case of all these imposts, whether called a tax or a fee, except in the case of a fee on advertisements under s. 229 either the amount of the tax was prescribed or criteria laid down on the basis of which the rate of the levy was to be determined. In some cases, as the case of profession tax, tax on carts etc., the tax to be imposed is determined by the Act itself. In the case of others like the

Consolidated rate the maximum percentages are fixed and what is left to be determined by the Municipal authorities are the fixation of the percentages within the maxima prescribed and the determination of the annual value of the premises for fixing which elaborate procedure is laid down which includes appeals to Courts where persons are aggrieved by action of the municipal authorities. One exception to this method of prescribing the tax or its permitted limits is, as already pointed out, s. 229. It is called a licence fee on advertisements but, in the context, gives no room for controversy as to whether it is a tax or a fee. We are satisfied that an examination of the provisions to which we have referred makes three matters abundantly clear : (1) that it draws a sharp and clear distinction between taxes properly so called and fees, (2) the division into Parts and chapters is logical and clear cut and no matter which properly falls under a subject set out under a Part or chapter heading is dealt with in any other. Mr. Pathak was not able to point to any instance in which a subject which fell under one Part or even chapter was included in and dealt with in another, and (3) that taxes, by whatever designation they might be called, are all comprehended and dealt with by Part IV and by Part IV alone and that what is permitted to be imposed by S. 548(2) is only a fee as distinguished from a tax. If one has reference to the entries in the legislative list in Sch. VII, what is permitted to be imposed under s. 548 (2) is a fee "in respect of the matters in the list" viz., Entry 5, Entry 6-Public Health and Sanitation, 16-Prevention of cattle trespass, 24-Industries, 28-Markets and Fairs, 33Sports, entertainments and amusements. In this view as admittedly there is no correlation between the fee charged and the service rendered in the sense discussed earlier, we must hold that the impugned levy was not authorised and that the learned Judges of the High Court were right in granting relief to the respondent.

(3)Assuming s. 548 permits the levy of a far, is the provision Constitutional ?

In this view no other question would arise. In view, however, of the elaborate arguments addressed to us by Mr. Pathak on the other parts of the case and particularly since the learned Judges of the High Court have devoted considerable parts of their judgment to dealing with them we propose to examine the submissions of learned Counsel under that head also. On the footing that what was permitted to be levied by s. 548(2) was a tax the submission of learned Counsel was, as already stated, two-fold : (1) that in the case of devolution of legislative or quasi legislative power to a Municipal Corporation a different criteria for determining excessive delegation has to be adopted and that having regard to the terms of Entry 5 of List II no conferment of a power in favour of a municipality which is germane to municipal administration or local self government can be held to be beyond the legislative power of the State., and (2) *,bat even if the above were not accepted, the Act itself laid down in sufficiently definite terms the prin- ciples upon which the rate of fee was to be determined and afforded' sufficient guidance for its determination, that the provision did not suffer from the vice of excessive delegation.

We shall deal with them in that order. For the submission, under the first head, Mr. Pathak relied on two lines of reasoning, based respectively on the terms of Entry 5 of List 11 of Sch. VII and on certain American decisions which he said supported such a view.

Entry 5 reads
"Local government, that is to say, the constitution and powers of municipal

corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration".

On the terms of this entry emphasis was laid on the words "powers of municipal corporations" and "for the purpose of local self-government" for which the municipal corporations and other bodies specified were to be constituted. Relying on the words underlined he urged: (1) that the Constitution empowered the devolution on municipal corporations of all powers which were needed for the purpose of local self- government. If, therefore, a power of taxation was conferred upon a municipal corporation, that devolution of power was sanctioned by the Constitution and so was outside the rule against excessive delegation of Legislative power. The argument was even pitched higher and it was said that the expression "powers" occurring in the entry enabled the State Legislature to confer upon municipal corporations not merely all the powers which the State Legislature itself could exercise under the several legislative entries in Lists II and 111, but even powers outside those Lists provided they were necessary for the purposes of local self-government. It was suggested that having regard to the great object of decentralisation of power which was achieved by setting up institutions for the purpose of local self-government the Constitution had vested in the State Legislatures complete and plenary powers necessary for effectuating the setting up of such bodies and endowing them with the capacity to achieve their object. If entry 5 was construed in this manner the conferment of power to tax by s. 548 (2) of the Act could not be challenged as unconstitutional. To examine this argument closely it would be convenient to split it up into two parts : (1) whether by reason of a provision for legislation as regards the "power" of municipal corporation,$ the rule as to unconstitutionality arising from excessive delegation of legislative power becomes inapplicable, and (2) whether the powers which were permitted to be conferred on municipal corporations extend beyond those open to the State Legislatures themselves to exercise under the relevant entries in the Seventh Schedule. We shall take up the second question first. Learned Counsel was driven to put forward an argument in this form that powers to be conferred upon municipal corporations need not necessarily be confined to the legislative powers of the State Legislatures under other entries, because of the difficulty he experienced in sustaining the plea that every fee for a written permission or for licence permitted by s. 548 (2) of the Act could be related to particular entries as to taxation which alone are permitted to the States by the distribution of legislative power under the Seventh Schedule. For instance, it was pointed out during the course of the argument that the purposes for which a written permission was necessary and a licence was required to be taken embraced a wide variety of subjects and if s. 548 (2) were held to authorise the levy of a tax in respect of each of those activities for which a permission was needed or a licence was required to be taken, it would not be possible to relate such a tax to any of the taxation entries in List 11, that is, entries 45 to 63. Thus S. 297 of the Act provides that without the written permission of the Commissioner no private streets shall be constructed and under s. 548 (2) a fee may be charged for the granting of the written permission. It is not possible to relate the fee to be charged for this permission under any of the heads of taxation in List 11. Of course, if it were a fee under entry 66, it would fall under that entry read with entry 5, entry 6-public health and sanitation-as well as entry 13- Communications, that is to say, roads, bridges etc. Very many more illustrations of this sort to some of which we have adverted earlier, were pointed out during the course of the argument and learned Counsel suggested that some of them might fall under the head of "lands and buildings". But the regulation of an activity for carrying on a business in certain premises and which are dealt with in Chapter XXVI of

the Act--"Inspection and Regulation of Premises, and of Factories" cannot be equated with the subject-matter of a tax on land and buildings which are specifically dealt with by s. 165 which reads :

> "A graduated consolidated rate on the annual valuation determined under this Chapter may be imposed by the Corporation upon all lands and buildings in Calcutta for the purpose of this Act.....

Similarly, restrictions are imposed in the interest of public health and sanitation on the carrying on of certain trades which are specified in Schedule XVIII. The licence fee levied to secure permission to carry on such an activity could not, on the scheme of the Act, be called a tax on professions, trades, callings and employments referred to in entry 60 of List 11. It was by reason of these difficulties that learned Counsel was forced to make this submission relying on the words "powers" and "for the purpose of self- government" in entry 5. We consider that this submission is entirely without force. In the first place, it could not be disputed, though learned counsel did so somewhat hesitantly at one stage, that the legislature cannot confer larger powers upon a body which it creates than what it itself possesses. We should have considered that this was too elementary for any elaborate exposition but for submission of counsel in this case. The position is really incontrovertible. In the Western India Theatres Ltd. v. Municipal Corporationof the City of Poona(1) the learned Chief Justice speaking for the court said :

> "In the first place, the power of the municipality cannot exceed the power of the provincial legislature itself and the municipality cannot impose any tax, e.g. income tax which the provincial legislature could not itself impose."

If the State Legislature cannot confer a power upon the State Government it is not easy to see how it could confer a wider power, (1) [1959] Supp. 2 S.C.R. 71, 75.

which it could not otherwise exercise, upon a municipality. Besides, it was not suggested that without a power being conferred by the legislature in the Municipal Act, by the mere constitution of a Municipality, the latter can lay claim to any inherent power either of local self-government or as incidental thereto of a power to levy taxes and fees. If the powers of a municipality are derived from legislation and if the legislature has not, under Art. 246 of the Constitution read with the entries in the Legislative List which are relevant, the authority to confer such a power it appears to us to be self-evident that the State Legislature can confer no higher powers on the municipality than it has itself. If Mr. Pathak is right it would mean that though a State cannot levy income tax or impose customs duties on imports and exports for the purpose of augmenting State Revenues, it can however confer power to levy these taxes on a municipality for the "purpose of local self government". The proposition has only to be stated to be rejected. Nothing, therefore, in our opinion depends upon the use of the " powers" in entry 5, as that expression can refer only to (a) such powers as are actually conferred by the enactment in question and (b) powers which the Legislature can by law confer on the executive Government of the State or on any other instrumentality of its creation. The answer on behalf of the respondent to this submission was based upon two grounds: (1) That s. 548(2) is really an exercise of legislative power under entry 66 of List 11 and that under the power so conferred what the Corporation has a right to impose is not to impose a tax but to

charge a fee correlated to the expenses involved in the administration of that law; (2) What the legislature can confer by a provision of the type found in S. 548 (2) is merely a power to levy a fee and not a tax as otherwise, the tax itself which is permitted to be levied would be beyond the competence of the State Legislature. We consider this submission well- founded. A stream can rise no higher than its source, and this is so self-evident as not to need elaboration, it would follow that the State legislature cannot authorise a muni- cipal body which it creates even though it be for the purpose of local self-government a power higher than what it itself possesses. In this connection one cannot forget that the government of the entire territory forming the State is vested in the State and what the legislature cannot do for the purpose of the government of that area cannot obviously be done by conferring powers upon a municipal authority, whose jurisdiction extends to defined limits in that territory.

It was next urged that the terms of entry 5 were sufficient to the State Legislature with authority to endow municipal corporations at least with such powers as they possessed on the late the Constitution came into force. We do not see any legal basis for this argument. It would be noticed that entry 5 in List 11 reproduces in terms entry 13 of List 11 of the Provincial legislative List in Schedule VII to the Government of India Act, 1935. If the argument had any validity it would follow that one should go back not merely to the state of circumstances and the law as to distribution of legislative power which prevailed under the Government of India Act but to a period anterior thereto, namely before the 1st of April, 1937 when the Government of India Act, 1935 itself came into force. At that time there was no distribution of legislative power in the sense in which we have under the Government of India Act and the Constitution. India was then under a unitary form of Government;) the legislatures were not confined to enumerated powers and the distribution of legislative power between the provinces and the centre was determined with a view to administrative convenience and not on foot of an allocation of areas of exclusive legislative competence. No legislation of a State Government which trenched on a central subject was unconstitutional (See proviso to s. 80A(3) introduced by the Government of India Act, 1919). No assistance therefore can be derived by reference to the powers exercised by local authorities and municipal corporations at a time when there was no distribution of legislative powers leading to unconstitutionality.

It is precisely because the Government of India Act made a change in this respect that a provision was inserted in s. 143(2) of that Act by which taxes, duties, cesses or fees which immediately before the commencement of the Government of India Act, 1935 were being lawfully levied by any Provincial Government, municipality or other local authority or body for the purposes of the province, municipality, district or other local area etc. may notwithstanding that those taxes, duties, cesses or fees mentioned in Federal Legislative List continue to be levied and to be applied to the same purposes until provision is made to the contrary by the Federal Legislature". In other words, the framers of the Government of India Act proceeded on the basis that the powers of the Provincial Legislatures as regards taxation were not the same and that it was, therefore, necessary for making a provision for continued realisation of those taxes subject to any central law on the topic and we have a provision exactly on the same lines with practically the same phraseology in Art. 277 of the Consti-

tution. If the submission of the learned Counsel for the appellant is right, there would have been no need in Art. 277, for a reference to taxation by Municipal and other local bodies because or, the argument the State Legislature could validly confer upon a municipal corporation all powers which it had enjoyed before, including the power to impose taxes, nothwithstanding that power is not in the State Legislative List.

As "Power" could be conferred on a Municipal Corporation only by law, we consider that the nature or quantum of power that could be vested by a law of the State Legislature, cannot transcend the limitations prescribed by the Constitution on the State legislature. In the context therefore of the law being one in relation to municipal corporations, the State legislature can confer on the corporation created only those powers which are within its legislative power and relevant to the topic. Pausing here, it would be convenient to refer to the submis- sion of Mr. Naunit Lal appearing for the Intervenor who addressed us in further support of the appellant's case. His argument was that entry 5 was to be understood in the light of the legislative practice which prevailed prior to the Constitution and he placed before us the report of the Local Finance Enquiry Committee published in 1951 in which the history of taxation powers exercised by municipal and other authorities from early times has been traced. He also referred us to the provisions in several pre and post-Constitution enactments in which provision had been made enabling the municipal or other local authorities to levy and collect taxes some of which, he stated, did not fall within the State List or even within any of the three Lists. It is not necessary to examine the details of the instances referred to by learned Counsel. But assuming learned Counsel is right in the illustration it would not help him in the least. In the first place, so far as legislative practice is concerned, it cannot prevail over the limitations imposed by the distribution of legislative power in respect of post-Constitution legislation such as the Act before us. What the legislature cannot do directly by legislating and conferring power upon the State Government or the instruments which it creates, it cannot obviously confer upon a municipal corporation merely because it has authority to confer power upon a municipality in express terms. The power to impose taxes which it cannot impose for the augmentation of the revenues of the State it cannot manifestly confer upon a municipality or other organ of a local self-government. Besides, as pointed out by Lord Tomlin in dealing with a contention as to the meaning of 53.3 the word "fisheries" in "Sea coast and inland fisheries" in s. 91 of the British North America Act, 1867 in Attorney General for Canada v. Attorney General for British Columbia and ors(1):

"He (the appellant) supports his contention by referring to fishery legislation prior to 1867 affecting territories now part of the Dominion, pointing out that in this legislation there are to be found numerous provisions relating to the curing and marketing of fish, and he urges that the British North America Act, 1867, must be construed in the light of the earlier legislation, and that the word 'fisheries' must be given such a meaning as is wide enough to include at any rate the operations affected by the impugned sections. Their Lordships are of opinion that the appellant's contention in this respect is not well-founded. The fact that in earlier fishery legislation raising no question of legislative competence matters are dealt with not strictly within any ordinary definition of "fishery" affords no ground for putting an unnatural construction upon the words "Sea coast and inland fisheries".

Lastly, it may be pointed out that the territory of India now embraces what were formerly the territory of ruling princes in which there were no limitations on the powers which might be vested in Municipal bodies. It is not, therefore, possible to refer to an uniform legislative practice prevailing before the Constitution to serve as a guide for interpreting the legislative entries in the Constitution. That is so far as reliance was placed on legislative practice.

We do not, therefore, consider that anything material turns on the use of the word "powers" in entry 5. Authority to confer power on institutions or bodies created by legislation, to enable them to fulfill their purposes and achieve their objects is implicit in every entry conferring legislative power. Thus, for instance under entry 47 of List I reading "Insurance" Parliament has created the Life Insurance Corporation under the Life Insurance Corporation Act and has clothed it with sufficient powers to enable it to function and carry out the purposes for which it was created. Similarly, by legislation under the head 'Banking' the Reserve Bank Act has been enacted and the Reserve, Bank created with sufficient powers conferred upon it necessary to regulate (1)[1930] A.C. 111, 121.

the functioning of the Banking system in the country. By legislation under the entry "Future markets" (entry 48 List

1) the Forward Markets Commission has been created and powers and ,duties vested in it. From these examples it would be clear that the authority to confer power upon the bodies created by legislation is inherent in the power to legislate on the topic. The express mention of an authority to confer power on Municipal Corporations, therefore, introduces no novel principle or rule of construction as regards the conferment of powers. The quantum of the power which a law could bestow upon an institution or body of its creation is determined, firstly, by the view of the legislature as to what are necessary for achieving the purposes for which the institution or body is created and, secondly, by the over-all limitations imposed by the Constitution by the distribution of legislative power. Nothing, therefore, turns on whether the authority to confer "power" is express or is a necessary incident of legislative power. If the very nature of a legislative power is such that the legislature cannot delegate essential legislative functions the fact that the authority to confer power is express & not implicit makes no difference to the application of the principle. In either event, as the law conferring power even when expressly authorised is a law, the rule against excessive delegation, applies to it as much to cases where the authority to confer power is implicit. The next head of argument on this point was based on invoking the principles stated to have been laid down by certain American decisions to which we were referred. The principal authority on which reliance was placed was the formulation of the law by Fuller C.J. in Soutenburgh v. Hennick(1) Speaking for the majority of the Court he said:- "It is a cardinal principle of our system of government, that local affairs shall be managed by local authorities, and general affairs by the central authority; and hence while the rule is also fundamental that the power to make laws cannot be delegated, the creation of municipalities exercising local self government has never been held to trench upon that rule. Such legislation is not regarded as a transfer of general legislative power, but rather as the grant of the authority to prescribe local regulations, according to immemorial practice, subject of course to the interposition of the superior in cases of necessity". (1) 129 U.S. 142=32 L.Ed. 637.

there are similar passages in judgments in other cases to which also our attention was drawn. But we do not, however, see the appositeness of the American rule to the interpretation of the Indian Constitution, particularly in the context of the criteria there indicated. Besides the rule as to limits of delegation by the legislatures constituted in India by the Constitution has been the subject of elaborate consideration by this Court in the Delhi Laws Act cam,(1) and in the later decisions in Yasantlal Maganbhai Sanjanwala v. The State of Bombay and others (2); Jyoti Pershad v. The Administrator For the Union Territory of Delhi($) to mention a few and these decisions bind this Court. These decisions have not laid down that a different rule applies where the delegation of legislative power is in favour of municipal corporation. We, therefore, consider that the analogy of the American decisions affords no guidance for the application of a different rule as to what constitutes excessive delegation in the case of legislation creating municipal bodies.

If then the same tests have to be applied to determine the limits of permissible delegation of quasi legislative power whether the same be in favour of Municipal bodies or in favour of other administrative agencies, the question next to be considered is whether the Act affords sufficient guidance to the municipal authority for the levying of the rate. The subject of the limits of the delegation of legislative power has been the subject of consideration in several decisions of this Court including the Delhi Laws Case(1) mentioned above. It is, however, sufficient to refer to a few of them. As regards the principle itself we do not understand that there is any controversy. In Vasant Lal Maganbhai Sanjanwala v. The State of Bombay and Ors.(2) Subba Rao. J. though he dissented from the judgment of the majority of the Court on the facts, summarised the decisions of this Court on this topic, which Mr. Pathak did not dispute correctly states the law. He said at pp. 356-357 of the report :-

"The law on the subject may be briefly stated thus: The Constitution confers a power and imposes a duty on the legislature to make laws. The essential legislative function is the determination of the legislative policy and its formulation as a rule of conduct. Obviously it cannot abdicate its functions in favour of another. But in view of the multifarious activities of a welfare State, it cannot presumably work out all the (1) [1951] S.C.R. 747.

(2) [1961] 1 S.C.R. 341.

(3) [1962] 2 S.C.R. 125.

sup 65 - 18 details to suit the varying aspects of a complex situation. It must necessarily delegate the working out of details to the executive or any other agency. But there is a danger inherent in such a process of delegation. An overburdened legislature or one controlled by a powerful executive may unduly overstep the limits of delegation. It may not lay down any policy at all; it may declare its policy in vague and general terms; it may not set down any standard for the guidance of the executive; it may confer an arbitrary power on the executive to change or modify the policy laid down by it without reserving for itself any control over subordinate legislation. This self effacement of legislative power in favour of another agency either in whole or in part is beyond the permissible limits of delegation. It is for a court to hold on a fair, generous and liberal construction of an impugned statute whether the legislature exceeded such limits. But the said liberal construction

should not be carried by the courts to the extent of always trying to discover a dormant or latent legislative policy to sustain an arbitrary power conferred on executive authorities. It is the duty of this Court to strike down without any hesitation any arbitrary power conferred on the executive by the legislature".

The same principle was expressed in slightly different language in jyoti Pershad v. The Administrator for the Union Territory of Delhi(',) at p. 145 :-

"In the context of modern conditions and the variety and complexity of the situations which present themselves for solutions, it is not possible for the Legislature to envisage in detail every possibility and make provision for them. The Legislature therefore is forced to leave the authorities created by it an ample discretion limited, however, by the guidance afforded by the Act. This is the ratio of delegated legislation, and is a process which has come to stay, and which one may be permitted to observe is not without its advantages. So long therefore as the Legislature indicates, in the operative provisions of the statute with certainty, the policy and purpose of the enactment, the mere fact (1) [1962] 2 S.C.R. 125.

that the legislation is skeletal, or the fact that a dis- cretion is left to those entrusted with administering the law, affords no basis either for the contention that there has been an excessive delegation of legislative power as to amount to an abdication of its functions or that the discretion vested is uncanalised and unguided as to amount to a carte blanche to discriminates The matter may possibly be stated more simply by adopting the language of Bose, J. in Rajnarain Singh v. The Chairman, Patna Administration Committee, Patna and another(1) 'is it the delegation of essential legislative power", or unessential details the principle being that if the legislature lays down a policy, prescribes the standards and affords sufficient guidance to the rule making or subordinate legislative authority it is a proper delegation, but not if the legislature confers on the subordinate law making authority powers to determine its own policy without any guidance in that regard. In the one case it would be a canalised power and in the other uncanalised and would amount, in effect, to transferring its basic power to another body.

If the validity of s. 548(2) of the Act be judged by this test the questions that arise are : (1) Whether the power to determine the rate of a tax is an essential legislative, function or is it merely a minor and incidental matter, (2). Assuming it is an essential legislative function, whether the Act has indicated with reasonable certainty the principles upon which that power has to be exercised or laid down the standards for the fixation of the rate. Now, on the first point as to whether it is an essential legislative function or not, the submission of Mr. Pathak was that it was not, and for this purpose he relied principally on three decisions of this Court.The first one Banarsi Das v. The State of Madhya Pradesh(1) was concerned with the constitutional validity of a provision in the C.P. & Berar Sales Tax Act, 1947 which conferred upon Government power to withdraw certain exemptions from the tax as levied by the Act. It was urged before the Court that the conferment of this power to withdraw the exemption on the Executive was unconstitutional as suffering from the vice of excessive delegation. This argument was repelled by this Court for more than one reason. The passage relied on in this connection is at p. 435 :-

"The point for determination is whether the impugned notification relates to what may be said to be
(1) [1955] 1 S.C.R. 290.

(2) [1959] S.C.R. 427.

an essential feature of the law, and whether it involves any change of policy. The authorities are clear that it is not unconstitutional for the legislature to leave it to the executive to determine details relating to the working of taxation laws, such as the selection of persons on whom the tax is to be laid, the rates at which it is to be charged in respect of different classes of goods, and the like". As to the meaning of the words "such as .... the rates at which it is to be charged in respect of different classes of goods" there was controversy before us. Mr. Pathak submitted that this was an explicit decision holding that the determination of a rate at which a tax might be levied was not an essential legislative function. On the other hand, Mr. De urged that the emphasis in the passage was really on "different classes of goods" -and not on the determination of a rate simpliciter and in support pointed out that the three decisions from which the principle underlying the passage quoted above was extracted did not support such a wide proposition. The three decisions relied on for the proposition were one of the Privy Council, one of this Court and one of the United States Supreme Court. In all those cases the amount of the rate had been prescribed by the legislature and the delegation to the external authority the Government or the President in the United Sates, was merely the determination of certain external facts for rendering the tax applicable to the commodity. Thus in Powell v. Apollo Candle Company, Limited(1) the rate of the custom duty was laid down by an enactment of the New South Wales Legislature. Section 133 of the Customs Act enacted:

"Whenever any article possesses, in the opinion of the collector, properties in the whole or in part which can be used for a similar purpose as a dutiable article, the Governor is authorised to levy a duty upon such article at a rate to be fixed in proportion to the degree in which such unknown article approximates in its qualities or uses to such dutiable article".

Candles were expressly named in the Act as subject to the rate of duty specified and on the application of the Collector the Governor, by an order in Council notified "stearine" as liable to a similar duty. It is in that context that the Privy Council stated in a passage which is extracted in the judgment of this Court (1) 10 A.C. 282, "But the duties levied under the Order in Council are really levied by the authority of the Act under which the order is issued".

The two other decisions do not lay down a wider principle. For this reason Mr. De submitted that the judgment of this Court should be understood in the context in which it occurs and with reference to the authorities cited in support and if so read the rates referred to are in relation to those "to be charged in respect of different classes of goods", as in Powell's case. We see considerable force in this argument and as we shall show by a reference to later decisions of this Court, this passage has not been understood in the sense in which Mr. Pathak desires us to understand viz., that a legislation which leaves the rate of taxation entirely to the executive does not suffer from the vice of excessive delegation. If Mr. Pathak is right, in order to impose an income tax, it would be sufficient for the legislature to pass a single section empowering the executive to levy the tax at such rates as they might consider appropriate on the different classes of persons whom they consider proper and

with reference to such income as they might choose to tax. This illustration of what his argument would lead to was put to Mr. Pathak but his only answer was that was not the case before us.

The second case that Mr. Pathak referred to was the Western India Theatres Ltd. v. Municipal Corporation of the City of Poona.(1) Section 59 of the Bombay District Municipalities Act 1901 empowered municipalities to impose for the purpose of the Act certain taxes. By the first ten entries in sub- s. (1) particular taxes were specified and this was followed by a general head reading "any other tax". The second sub- section of s. 59 read :

"Nothing in this section shall authorise the imposition of any tax which the State Legislature has no power to impose in the State under the Constitution."

The Municipal Corporation of Poona imposed a tax, after following the procedure prescribed by the Municipal Act on theatres within the city, of Rs. 2 per day as a licence fee. This tax was imposed from October 1, 1920 and there was enhancement of this tax in 1941 and 1948. It was the constitutional validity of this levy which came from pre- Constitution times that was challenged by a civil suit filed in the Bombay High Court by the appellant company. Several points were urged in support of this conten- (1) [1959] 2 Supp. S.C.R. 71.

supp/65-19 tion. The first was that the Provincial Legislature under the Government of India Act, 1935 did not itself have the power to levy the said tax; (2) that the residuary category set forth in cl. 1 1 "any other tax" was unconstitutional, the point urged being that thereby "the legislature had completely abdicated its function and delegated essential legislative power to the municipality to determine the nature of the taxes to be imposed on the rate payers. Such omnibus delegation could not, on the authorities, be supported as constitutional". The grounds upon which this second argument was rejected was the main point on which Mr. Pathak relied in support of this case. These were: (1) that the taxes authorised to be imposed were taxes "for the purposes of the Act" i.e., taxes could be raised only for implementing the purposes for which the municipality was constituted and for no other purpose, (2) though strictly speaking the rule as to ejusdem generis could not be invoked, the kind and the nature of the tax which the municipality was authorised to impose were indicated by the specified items 1 to 10, (3) the taxing power of the municipality was made subject to the approval of the Governor-in-Council which, at the date when the Act was passed, viz. 1901, meant the Governor-inlegislative Council, and (4) finally it was observed the impugned section did lay down a principle and fix a standard which the municipalities had to follow in imposing the tax and, in the circumstances, the legislature was held not to have abdicated its powers. No doubt, this decision does support learned counsel to some extent but a question in the form in which it arises now was not before the Court. The only point was whether there was sufficient formulation of policy for determining the nature of the tax which a municipality might impose. The answer was in the affirmative, based principally on two grounds: (1) that by sub-s. (2) of s. 59 as well on general principles of law the power of the municipality to levy taxes was confined to those on which Provincial Legislature could legislate. In fact, from the arguments as reported it would appear that one of the points urged by learned counsel for the appellant was that under head II of s. 5 9 (1) municipality might levy an income tax. It was this extreme contention that was answered and rejected by the learned Judges. This was, in a sense, negative as it merely prevented the municipality

from levying particular kinds of taxes. Coming to the positive aspect, the learned Judges held that the other specified items of taxes coupled with the purposes for which tax was to be levied, indicated the nature of the tax that was to be levied. We are unable to agree that this case decides that the fixation of a rate of tax is not an essential legislative function but a mere matter of detail which could be delegated to a subordinate law making body.

The last of the decisions relied on in this connection was in Vasantlal v. The State of Bombay(1). It was not a case regarding the determination of a rate at which tax could be levied out of the rent which a tenant might be required to pay under the Bombay Tenancy and Agricultural Land Act, 1948. Section 6(2) of that Act enacted :

"The Provincial Legislature may, by notification in the official Gazette, fix a lower rate of maximum rent payable by the tenants of lands situate in any particular area or may fix such rate on any other suitable basis as it thinks fit."

By a notification issued under that section the Government of Bombay prescribed the rate of rent and this was much lower than the one previously fixed. By petitions under Art. 226 filed in the High Court of Bombay the appellants who were landholders challenged the constitutionality of this fixation on the ground that the legislature had delegated its essential legislative function without laying down policy or principles affording guidance to the delegates for implementing the legislation. This Court, by a majority, answered this question in the negative. The decision proceeded on the basis that the fixation of rent was an essential legislative function. It was, however, held that the legislature had enunciated the principles subject to which the delegates could exercise its subsidiary powers. Gajendragadkar J. as he then was, observed : "The extent to which delegation is permissible is also now well settled. The legislature cannot delegate its essential legislative function in any case. It must lay down the legislative policy and principle and must afford guidance for carrying out the legislative policy laid down before it delegates its subsidiary power in that behalf." The enunciation of the principle in this manner does not help Mr. Pathak. His contention, however, was that in s. 6(2) extracted earlier, no policy had been laid down but that this Court had upheld the constitutional validity of that delegation. A close I examination of the decision, however, does not support this submission. The basic reasoning on which that decision rests is that (1)[1961] 1 S.C.R. 341.

for the fixation of a reasonable rent under s. 12 by the Mamlatdar the necessary factors had all been specified and on a construction of the Act the learned Judges of the majority reached a conclusion that the exercise of powers under s. 6(2) had to be effected on the same basis and with reference to the same factors which were specified in s. 12(3) of the Act. It is precisely on this question of the construction of the Act and the correlation between the power to fix the rent conferred upon the State Government by s. 6(2) and the power of fixation of fair rent, conferred on the Mamlatdar by s. 12 that there was the difference of opinion between the learned Judges. It would, therefore, be seen that far from Vasantlal's case being an authority for the position that the fixation of a rate of rent is not an essential legislative function but a mere matter of detail which could be left wholly to the executive or subordinate law making authority the decision clearly lays down that it is an essential legislative function and it could. not be delegated without sufficient guidance.

There were a few other decisions which were referred to by the learned counsel on the question of excessive delegation but the principles laid down there are general ones and related to the particular point about the fixation of rates. We do not, therefore, consider it necessary to refer to or to deal with them. The final result of this analysis of the decisions as laying down the law so far as the Constitution is concerned, may be thus summarised : (1) Essential legislative functions cannot be delegated but where the law lays down the principles and affords guidance to the sub- ordinate law making authority details may be left for being filled up by the executive or by other authorities vested with quasi legislative power, (2) The power to fix a rate of tax is an essential legislative function and therefore unless the subordinate lawmaking authority is afforded guidance by the policies being formulated, principles enunciated and standards laid down the legislation will suffer from the vice of excessive delegation and would be void as arbitrary or unconstitutional.

This leads us to the last of the points urged by Mr. Pathak that the Act itself affords sufficient guidance and fixes standards by which it could determine the rate at which a tax could be levied. It is not, and cannot be disputed that the guidance could be afforded not merely by the provision enabling the tax to be levied but by other provisions of the Act including the preamble. But the question is whether there are any such provisions in the Act which could serve to determine the standard upon which the rate of tax to be levied is to be determined. Mr. Pathak first referred us to the preamble where it is recited that the Act enacted was one relating to the municipal affairs of Calcutta. We are unable to see how this affords any assistance in this regard. He next referred us to s. 24 reading, to quote the material words "Subject to the provisions of this Act and the rules, bye-laws and regulations made thereunder the municipal government of Calcutta shall vest in the Corporation." and to ss. 42 to 47 which deal with the supervision of the State Government over the affairs and activities of the Corporation. As regards s. 24, we are unable to see how this helps learned counsel in the present argument. No doubt, the municipal government of Calcutta is vested in the Corporation but the question is what powers are vested in that government. If by describing the powers of administration of the city of Calcutta vested in the Corporation, as "a government" every power necessary to effectuate governmental functions was involved there would have been no necessity at all for the other provisions of the Act. It is not, therefore, as if the expression 'government' gathers within its fold all powers necessary for administration or creates an independent sovereign body entitled to legislate in any manner it likes provided the same is necessary for the purpose of carrying on civic government. It is obvious that is not the sense in which the word 'government' is employed in s. 24. The Corporation is still a subordinate body which is the creature of the legislature and can only function within the framework of the powers conferred upon it by the Municipal Act. Nor are we able to appreciate bow any assistance is derived in this regard from the powers of supervision which the State Government has over municipal affairs under ss. 42 to 47. The supervision is only by the Executive Government and the question relating to the vice of excessive delegation is as much applicable to powers exercisable by the Executive Government as to the Corporation. If no standards have been laid down by the Act for the Corporation to afford it a guidance for the fixation of a rate the fact that supervisory power is conferred upon the executive would not obviate that objection for the Government itself would have no guidance from the legislature as to the policy to be adopted in exercising the supervision. As was pointed out by this Court in Jyoti Pershad v. The Administrator for the Union Territory of Delhi(1) though in a slightly different context speaking of an appeal Provided against orders of an authority

where it was complained that an arbitrary power had been vested in the original authority : (1) [1962] 2 S.C.R. 125.

5 4 4 "If learned counsel is right in his submission that the power of the 'competent authority' is unguided and that he had an unfettered and arbitrary authority to exercise his discretion 'at his sweet will and pleasure' the existence of a provision for appeals might not impart validity to such legislation. The reason for this is that the appellate power would be subject to the same vice as the power of the original authority and the imposition of one's I sweet will and pleasure' over another of a lower authority, would not prevent discrimination or render the restriction reasonable".

Principal reliance, however, was placed by learned counsel on ss. 115 and 117 of the Act as affording the requisite guidance. These read :-

Section 115 : "There shall be one Municipal Fund held by the Corporation in trust for the purposes of this Act to which all moneys realised or realisable under this Act (other than fine levied by Magistrates) and all moneys otherwise received by the Corporation shall be credited". Section 117 : "(1) The moneys from time to time credited to the Municipal Fund shall be applied in payment of all sums, charges and cost necessary for carrying out the purposes of this Act, or of which the payment is duly directed or sanctioned by or under any of the provisions of this Act. (2)Such moneys shall likewise be applied in payment of all sums payable out of the Municipal Fund under any other enactment for the time being in force."

Reference was also made in this connection to s. 126 under which annual budget estimates have to be prepared for the Corporation in which a statement of the proposals as to taxation which would be necessary or expedient to impose in the said year and the expenditure to be incurred would all have to be set out. It was, therefore, submitted : (1) that there was a municipal fund into which all collections were deposited, & (2) the amount of the collection was determined by the expenditure which it was either obligatory or permissive for the Corporation to incur. Thus no taxes could be raised except such as were needed for the expendi- ture for which provision had been made in the budget and the rate of tax was, therefore, determined by the needs of the Corporation. In support of the submission that this was sufficient guidance learned Counsel referred us to the decision of the High Court of Orissa in The Orissa Ceramic Industries Ltd. v. Executive Officer, Jharsuguda Municipality(1) where reference is made to these very provisions as affording sufficient guidance to enable a power to fix the rate being delegated to a municipal authority. We do not consider that ss. 115 and 117 afford any guidance for the fixation of a rate. If the amount of money which a municipality needs for discharging its functions, affords any guidance it would appear to follow that the needs of a State for the expendi- ture which it has to incur for its manifold activities and again of the Union for the activities which it might undertake ought to afford sufficient guidance to sustain the validity of a skeleton legislation of the type we have indicated earlier. Thus, if learned Counsel is right in his submission as regards ss. 115 and 117 read with s. 126 as affording sufficient guidance a legislation by a State Legislature or Parliament enacting that the State Government might raise such taxes as it considers necessary and at such rates as it might consider proper for meeting the expenditure of Government could be constitutional and there would be no need for a parliamentary scrutiny and legislation as regards the rates of the several taxes to be levied within the State or the

Union, as the case may be. As Mr. Pathak himself realised, this would be plainly unsupportable. If this were so, merely because the area of Government was restricted to a municipality we do not consider how these provisions afford guidance to the subordinate law making authority viz., the Municipal Corporation to fix the rate of the levy. Pausing here, learned Counsel said that even if a maxima were prescribed still it left an amount of discretion to the Municipal Corporation or the Executive, as the case may be, and that even such a "guided" power could be attacked as ultra vires. This, however, do Is not follow. The unconstitutionality arises out of the discretion being %,holly uncanalised and unguided. The argument on the other side is not that no discretion could be left to the legislature to determine within permissible limits the precise rate that would secure the purposes which it seeks to achieve but rather that no guidance is at all afforded and a blank cheque given to the subordinate authority. Where a maxima is fixed and the limit of discretion is thus controlled the legislature has exercised its legislative power on that topic viz., the particular tax. In the other case, where it merely authorises the subordinate law making authority to levy the tax without indicating the essential legislative features of such a tax it is not really legislation on the taxation (1) A.I.R. 1963 Orissa 171.

entry but is merely authorising the subordinate legislature to enact a law on that topic. If these provisions, referred to earlier, do not afford any guidance to the Municipal Corporation to fix the rate of the levy it was not suggested that there were any others in the Act which performed that function. Sections 443 and 548(2), it is admitted, do not afford any help for this purpose. It has, therefore, to be held that viewed as a tax, the delegation is unconstitu- tional as the essential legislative functions are parted with to the subordinate law making body and the provision is, therefore, unconstitutional.

The result is, the appeal fails and is dismissed with costs.

ORDER In accordance with the majority judgment, the appeal is allowed with costs throughout.

L3Sup/65-2,500-13-12-65-GIPF.