**Decision Number:** 10725

**Decision Date:** 2077/04/16 B.S. (31/07/2020 A.D.)

**Final Decision:** Supreme Court of Nepal, Joint Bench

**Pre-Decisions:** Appellate Court, Tulsipur

**Petitioner:** District Development Committee, Dang, et al.

**Respondent:** Dilli Bahadur Dangi (Proprietor, Shubh Sandesh Poultry Farm and Hatchery), et al.

**Key Words:** Taxation, Local Governance, Statutory Interpretation, Jurisdiction, Export Tax, Certiorari, Local Self-Governance Act, 2055 B.S.

**Key Points:**

1. The constitutional principle that no tax shall be levied or collected except in accordance with the law means that citizens bear no tax liability in the absence of clear legal authority.
2. For a tax to be validly collected, it must meet four conditions: (a) a specific law authorizing the tax must exist, (b) the item or service being taxed must be explicitly covered by that law, (c) the procedure for collecting the tax must be defined in the law, and (d) that prescribed procedure must be followed.
3. The principle of "No taxation without representation" and the jurisprudential standard that tax laws should be interpreted in favor of the taxpayer require government bodies to exercise special caution when imposing taxes.
4. Elected representatives and local bodies must conduct a thorough study of the constitution and laws before creating financial liabilities for their constituents.
5. Public authorities must not use their power to gain an unfair advantage, and a fraudulent or abusive interpretation of the law to impose unauthorized taxes is legally unacceptable.

**Facts of the Case**

* The respondents are legally registered poultry farmers operating various farms and hatcheries in the Dang district.
* On 2072/02/26 B.S., the District Development Committee (DDC) of Dang published a tender notice for the fiscal year 2072/073 to award a contract for the collection of various taxes.
* The tender included a new export/exit tax on live chickens, chicks, eggs, and chicken feed produced within and exported from the district.
* The poultry farmers filed a writ petition of Certiorari at the Appellate Court, Tulsipur, challenging the DDC's authority to levy this specific tax.
* On 2072/03/24 B.S., the Appellate Court issued an interim order, temporarily halting the collection of the disputed tax.
* On 2072/07/15 B.S., the Appellate Court issued a final order, quashing the tender notice to the extent that it applied to the taxation of chickens, chicks, eggs, and chicken feed.
* The petitioner, District Development Committee, Dang, appealed the Appellate Court's final decision to the Supreme Court.

**Petitioner’s Arguments (District Development Committee, Dang)**

* The tax rates were determined by the 23rd District Council based on recommendations from the Revenue Advisory Committee and were necessary for local development projects.
* Authority to tax is derived from the Local Self-Governance Act, 2055, and its Rules, 2056.
* The law permits taxing the "feathers" of birds like chickens (Rule 207(gh) and Schedule 23(5)). Therefore, by extension, a tax can be levied on the whole chicken and chick.
* A general provision (Rule 207(ch)) allows for taxing other agricultural and animal products based on the District Council's decision.
* The decision of the Appellate Court to quash the tax is flawed and will negatively impact revenue collection and development activities in the district.

**Respondent’s Arguments (Dilli Bahadur Dangi et al.)**

* Live chickens, chicks, eggs, and chicken feed are not listed as taxable items in the schedules of the Local Self-Governance Act or its Rules.
* The DDC's attempt to justify taxing whole chickens based on a provision for taxing "feathers" is a gross misinterpretation of the law.
* The DDC has no legal jurisdiction or authority to impose this tax, and doing so is an illegal act that harms their legally established businesses and violates their rights.
* The tender notice, to the extent it includes these items, is illegal and should be quashed by an order of Certiorari.

**Legal Issues**

1. Does the Local Self-Governance Act, 2055, and its associated rules grant the District Development Committee the authority to impose an export/exit tax on live chickens, chicks, eggs, and chicken feed?
2. Did the District Development Committee follow the prescribed legal procedure for imposing a new tax on agricultural and animal products?
3. Is the decision of the Appellate Court, Tulsipur, to quash the tender notice legally sound and just?

**Judgment**

* The Supreme Court examined the relevant legal provisions, namely Section 215 of the Local Self-Governance Act, 2055, and Rule 207 and Schedule 23 of the Local Self-Governance Rules, 2056.
* The Court found that the law explicitly lists taxable items. Schedule 23(5) allows for a tax on the *feathers* of birds like chickens and ducks, not the birds themselves. There is no provision in the schedules for taxing live chickens, chicks, eggs, or their feed.
* The Court then analyzed the alternative provision in Rule 207(ch), which allows for taxing other agricultural/animal products not listed in the schedules. However, this provision imposes a strict and mandatory procedure, including consultation with a revenue advisory committee, farmer groups, and civil society, and limits the tax rate to 1% of the market value. The DDC failed to provide any evidence that it had followed this mandatory consultation process.
* The Court heavily criticized the DDC's primary argument, stating that the attempt to justify taxing live chickens because they have feathers is a "deplorable and laughable" (दयनीय र हास्यास्पद विषय हो) argument and constitutes a "fraudulent application of the law" (कानूनको जालसाजपूर्ण प्रयोग).
* The Court held that such a forced and abusive interpretation of the law by a responsible public body is unacceptable.
* Concluding that the DDC acted without legal authority and failed to follow the prescribed procedure, the Court found that the tender notice was illegal to the extent it imposed a tax on the respondents' products.
* Therefore, the final order of the Appellate Court, Tulsipur, which quashed the illegal portion of the tender notice, was found to be consistent with law and justice. The Supreme Court upheld the decision of the Appellate Court and dismissed the D.evelopment Committee's appeal.

**Significance**

* This decision strongly reinforces the constitutional principle that no tax can be levied or collected except in accordance with a clear and specific law.
* It clarifies that local government bodies must strictly adhere to the list of taxable items and mandatory procedures specified in governing acts and regulations. They cannot expand their taxing powers through misinterpretation.
* The judgment sets a precedent against the abusive or fraudulent interpretation of legal provisions by public authorities to justify unauthorized actions, particularly in the realm of taxation.
* It highlights the critical importance of procedural fairness, including mandatory consultations with affected stakeholders, before new financial burdens can be imposed on citizens by local governments.

**Source**

1. Local Self-Governance Act, 2055 B.S. [https://www.lawcommission.gov.np/en/archives/category/local-self-governance-act-2055-1999](https://www.google.com/url?sa=E&q=https%3A%2F%2Fwww.lawcommission.gov.np%2Fen%2Farchives%2Fcategory%2Flocal-self-governance-act-2055-1999)
2. NKP, 2078, District Development Committee, Dang v. Dilli Bahadur Dangi et al. (Decision No. 10725, Decided on 2077/04/16 B.S.); [https://nkp.gov.np/full\_detail/10725](https://www.google.com/url?sa=E&q=https%3A%2F%2Fnkp.gov.np%2Ffull_detail%2F10725)