may be that the appellant may in some future proceeding adduce evidence to establish that there are other cinema houses similarly situate and that the imposition of a higher tax on the appellant is discriminatory as to which we say nothing; but all we need say is that in this suit the appellant has not discharged the onus that was on him and, on the material on record, it is impossible for us to hold in this case that there has been any discrimination in fact.

For reasons stated abve this appeal must be dismissed with costs.

*Appeal dismissed*

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## THE WESTERN INDIA THEATRES LTD.

*v.*

## MUNICIPAL CORPORATION OF THE CITY OF POONA

1959

*January 16.*

(S. R. DAS, C. J., S. K. DAS, P. B. GAJENDRAGADKAR. K. N. WANCHOO and M. HIDAYATULLAH, JJ.)

*Municipality, Power of—Imposition of tax on cinema show—Constitutional validity of enactment—Enhancement of such tax—Validity—Bombay District Municipal Act, 1901 (Bom. III of 1901), s. 59(1) (XI)—Bombay Municipal Boroughs Act, 1925 (Bom. XVIII of 1925), s. 60.*

The appellant, a public limited company, was a lessee of four cinema houses situated within the municipal limits of Poona City where it used to exhibit cinematograph films. The respondent, the Municipal Corporation of Poona, in exercise of its power under s. 59(1) (XI) of the Bombay District Municipal Act, 1901, levied with effect from October 1, 1920, a tax of Rs. 2 per day as license fee on the owners and lessees of cinema houses. That Act governed the Municipality till 1926 and thereafter it was governed by the Bombay Municipal Boroughs Act, 1925. The tax was enhanced to Re. 1 per show on June 3, 1941, and to Rs. 5 per show on June 9, 1948. By the suit, out of which the present appeal arose, the appellant sought for a declaration that the levy of the said tax, the rules framed in connection therewith and the enhancement of the tax as aforesaid were illegal and *ultra vires*. The trial court decreed the suit in part but the High Court in appeal reversed the decision of the trial court

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and dismissed the suit. It was contended on behalf of the appellant that (1) the tax was not one covered by Entry 50 in List II of Seventh Schedule to the Government of India Act, 1935, but was one on trade or calling covered by Entry 46 thereof, and, was as such governed by s. 142A of the said Act and that (2) s. 59(1)(XI) of the Bombay District Municipal Act, 1901, was unconstitutional in that the legislature had thereby delegated essential legislative power to the Municipality to determine the nature of the tax to be imposed on the rate-payers and completely abdicated its function, leaving such power wholly unguided.

*Held*, that both the contentions must fail.

The first point was covered by the decision given in the appellant's other appeal, Civil Appeal No. 145 of 1955, which must also govern this case.

It was not correct to contend that the power delegated to the Municipality under s. 59(1)(XI) of the Bombay District Municipal Act, 1901, was unguided. That section authorised the imposition of such taxes alone as were necessary for the purposes of the Act. The obligations and functions cast upon the Municipalities by ch. VII of the Act showed that taxes could be levied only for implementing those purposes and none others.

Nor could it be said that the provincial Legislature had abdicated its function in favour of the Municipality. The taxing power of the Municipality was made subject to the approval of the Governor-in-Council by the section itself.

The marginal note to a section could not affect the construction of the section if its language was otherwise clear and unambiguous and the word 'modify' connoted not merely reduction but also other kinds of alteration including enlargement. The substitution of the word 'reduce' by the word 'modify' in the body of s. 60 of the Bombay Municipal Boroughs Act, 1925, notwithstanding the omission to do so in the marginal note, therefore, clearly indicated the intention of the Legislature to widen the scope of that section and, consequently, it could not be said that the enhancement of the tax was not sustainable thereunder.

*Commissioner of Income Tax, Bombay* v. *Ahmedbhai Umarbhai & Co., Bombay*, [1950] S.C.R. 335 and *Stevens* v. *The General Steam Navigation Company, Ltd.*, L.R. (1903) 1 K.B. 890, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 146 of 1955.

Appeal from the judgment and decree dated February 10, 1953, of the Bombay High Court in Appeal No. 953 of 1951, arising out of the judgment and decree dated November 30, 1951, of the Court of

Joint Civil Judge, Senior Division, Poona, in Special Suit No. 76 of 1950.

*H. D. Banaji, R. A. Gagrat* and *G. Gopalakrishnan*, for the appellant.

*M. C. Setalvad, Attorney-General for India, S. N. Andley* and *J. B. Dadachanji*, for the respondent.

1959. January 16. The Judgment of the Court was delivered by

DAS, C. J.—The appellant is a public limited company registered under the Indian Companies Act, 1913. It is a lessee of four cinema houses situate within the municipal limits of Poona City known respectively as "Minerva", "The Globe", "Sri Krishna" and "The Nishat". It exhibits cinematograph films, both foreign and Indian, in the said four houses. The respondent, a body corporate, was governed by the Bombay District Municipal Act, 1901 (Bom. III of 1901) up to June 8, 1926, and from then by the Bombay Municipal Boroughs Act, 1925 (Bom. XVIII of 1925) up to December 29, 1949, and, thereafter, by the Bombay Provincial Municipal Corporation Act, 1949 (Bom. LIX of 1949). With effect from October 1, 1920, the respondent, with the sanction of the Government of Bombay levied on the owners and lessees of cinema houses within the limits of the erstwhile province of Bombay a tax of Rs. 2 per day as license fee. Rules for the levy and collection of the said tax were framed by the respondent. Those rules were amended on or about June 3, 1941, enhancing the tax from Rs. 2 per day to Re. 1 per show. The rules were again revised on or about June 9, 1948, under which the tax was enhanced from Re. 1 per show to Rs. 5 per show. At all material times the tax was being collected at the last mentioned rate.

Section 59 of the Bombay District Municipal Act 1901 provided that subject to any general or special orders which the State Government might make in that behalf any municipality (a) after observing the preliminary procedure required by s. 60, and (b) with the sanction of the authority therein mentioned, might

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impose for the purposes of that Act any of the taxes mentioned in that section. After enumerating ten specific heads of taxes, which a municipality could levy, a residuary category was set forth in cl. (xi) in the words following:—

"Any other tax to the nature and object of which the approval of the Governor in Council shall have been obtained prior to the selection contemplated in sub-clause (i) of clause (a) of section 60".

Ever since the appellant became a lessee of the said cinema houses, the appellant has been making payments of the said tax under protest.

After giving the necessary statutory notice to the respondent, the appellant, on or about March 31, 1950, filed a suit in the Court of the Civil Judge, Senior Division, Poona, being Suit No. 76 of 1950, against the respondent for a declaration that the levy and imposition of the said tax with effect from October 1, 1920, were invalid and illegal; that the enhancement in the rates of the tax with effect first from June 3, 1941, and then June 9, 1948, was invalid and illegal and that the resolutions passed and rules framed in connection with the levy, imposition, enhancement and collection of the said impugned tax were invalid, illegal and *ultra vires*, for a permanent injunction restraining the defendants from levying or recovering and or increasing and enhancing the said tax and for refund to the appellant of the amounts of the tax collected from it and for costs of the suit and interest. By its judgment dated November 30, 1951, the trial court held that the said tax was validly levied and imposed, but that the increase and enhancement thereof in 1941 and 1948 were illegal and *ultra vires* and that the suit was not barred under the Acts governing the respondent. The trial court decreed the suit in part by issuing an injunction restraining the respondent from levying, recovering or collecting the tax at the enhanced rate and passing a decree against the respondent for refund of a sum of Rs. 27,072 with interest and costs. The respondent preferred an appeal and the appellant filed cross objections. But the HighCourt by its judgment and decree dated February 10, 1953,

reversed the judgment of the trial court and dismissed the suit of the appellant with costs throughout. The appellant's cross objections were also dismissed. On December 10, 1953, the High Court granted leave to the appellant to appeal to this Court from the said judgment. Hence this final appeal questioning the validity of the impugned tax.

The first point urged in this appeal is that the law imposing this tax is not covered by entry 50 in List II of the Seventh Schedule to the Government of India Act, 1935, but is really a tax on the appellant's trade or calling referred to in entry 46 and that, therefore, the amount of tax cannot under s. 142-A of the Government of India Act, 1935 exceed Rs. 100 per annum. This point need not detain us long, for it is covered by us in the appellant's other appeal No. 145 of 1955.

The second point urged before us in support of this appeal is that s. 59(1)(xi) is unconstitutional in that the legislature had completely abdicated its functions and had delegated essential legislative power to the Municipality to determine the nature of the tax to be imposed on the rate payers. Learned counsel for the appellant urges that the power thus delegated to the municipality is unguided, uncanalised and vagrant, for there is nothing in the Act to prevent the municipality from imposing any tax it likes, even, say, income tax. Such omnibus delegation, he contends, cannot on the authorities be supported as constitutional. We find ourselves in agreement with the High Court in rejecting this contention.

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. In the next place, s. 59 authorises the municipality to impose the taxes therein mentioned "for the purposes of this Act". The obligations and functions cast upon the municipalities are set forth in ch. VII of the Act. Taxes, therefore, can be levied by the municipality only for implementing those purposes and for no other purpose. In other words it will be open to the municipality to levy a tax for giving any of the amenities therein mentioned.

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The matter may be illustrated by reference to s. 54 which enumerates the duties of municipalities. The first duty mentioned in that section is that the Municipality should make provision for lighting public streets and nobody can object if it imposes a lighting tax, which, indeed, is item (ix) in s. 59(1). Take another example: It is the duty of the Municipality to arrange for supply of drinking water and it may legitimately charge a water rate which, again, is item (viii) in s. 59(1). We do not for a moment suggest that the municipalities may only impose a tax directly in connection with the heads of duties cast upon it. What we say is that the tax to be imposed must have some reasonable relation to the duties cast on it by the Act. In the third place, although the rule of construction based on the principle of *ejusdem generis* cannot be invoked in this case, for items (i) to (x) do not, strictly speaking, belong to the same genus, but they do indicate, to our mind the kind and nature of tax which the municipalities are authorised to impose. Finally, the provincial legislature had certainly not abdicated in favour of the municipality, for the taxing power of the municipality was quite definitely made subject to the approval of the Governor-in-Council. Under the Indian Council Act, 1861 (24 & 25 Vic. c. 67) the Governor-in-Council might mean the Governor in Executive Council or the Governor in Legislative Council. If the reference in s. 59(1)(xi) is to the Governor's Legislative Council, then there was no improper delegation at all, for it was subject to the legislative control of the Governor in Legislative Council. The Governor's Legislative Council was composed of all the members of the Governor's Executive Council besides a few other persons. Therefore if the reference was to the Governor in his Executive Council even then, from a practical point of view, the ultimate control was left with the Governor's Legislative Council. We need not labour this point any further, for on the first three grounds the delegation of legislative authority, if any, is not excessive so as to make the exercise of it unconstitutional. In our opinion the impugned section did lay down a principle and fix a standard

which the municipalities had to follow in imposing a tax and the legislature cannot, in the circumstances, be said to have had abdicated itself and, therefore, the delegation of power to impose any other tax cannot be struck down as being in excess of the permissible limits of delegation of legislative functions.

The last point urged by learned counsel for the appellant is that, under cl. (xi) of s. 59(1), the enhancements of the rates of the tax in 1941 and again in 1948 were illegal in that the municipality had no power to do so under the Bombay Municipal Boroughs Act, 1925. According to learned counsel for the appellant the judgment under appeal upholding the validity of such enhancements cannot be supported under s. 60 of that Act. That section runs as follows :—

| | |
|---|---|
| "Power to suspend, reduce or abolish any existing tax | 60(1) Subject to the requirements of clause (a) of the proviso to section 58 a municipality may, except as otherwise provided in clause (b) of the proviso to section 103 at any time for any sufficient reason, suspend, modify or abolish any existing tax by suspending, altering or rescinding any rule prescribing such tax. |

(2) The provisions of Chapter VII relating to the imposition of taxes shall apply so far as may be to the suspension, modification or abolition of any tax and to the suspension, alteration or rescission of any rule prescribing a tax."

Reference is made to the marginal note where the words used are " power to suspend, reduce or abolish any existing tax ". It is suggested that the word " modify " in the body of the section in between the words " suspend " and " abolish " should be construed in the sense of reduction. The marginal note, according to him, shows that the several words were used in the section to indicate a progressive diminution in the quantum of tax until it was completely gone. Reference is made to the root meaning of the word " modify " which is to reduce or make less but does not cover the idea of enhancement. In the first place, the marginal note cannot affect the construction of the language used in the body of the section if it is otherwise clear and unambiguous (see *Commissioner of*

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*Income Tax, Bombay* v. *Ahmedbhai Umarbhai & Co., Bombay*) (1). In the next place, it should be borne in mind that s. 67 of the Bombay District Municipal Act (Bom. III of 1901) which was formerly applicable to municipalities used the word "reduce" in between the words "suspend" and "abolish" and that that section had been reproduced is s. 60 of the Bombay Municipal Boroughs Act, 1925, but that in the process of such reproduction the word "reduce" was dropped and the word "modify" was introduced. In the marginal note, however, the word "reduce" was not substituted by the word "modify", apparently through inadvertence. If the word "modify" is to be read as "reduce", then there could be no point in the provincial legislature substituting the word "reduce" by the word "modify". This change must have been made with some purpose and the purpose could only have been to use an expression of wider connotation so as to include not only reduction but also other kinds of alteration. Section 76 of this very Act also refers to "modification not involving an increase in the amount to be imposed" which makes the sense in which the word "modify" has been used in this Act perfectly clear, namely, that there may be a modification involving an increase. Reference may also be made to the decision of the Court of Appeal in England in the case of *Stevens* v. *The General Steam Navigation Company, Ltd.* (2). "Modification", according to Collins M. R. in his judgment at p. 893, implied an alteration and the word was equally applicable whether the effect of the alteration was to narrow or to enlarge the provisions. In our opinion the dropping of the word "reduce" and the introduction of the word "modify" in the body of s. 60 of the Act under consideration clearly indicate an intention on the part of legislature to widen the scope of this section and the High Court was right in so construing the same.

No other point was urged in this appeal and for reasons stated above this appeal must be dismissed with costs.

*Appeal dismissed.*

(1) [1950] S.C.R. 335 at p. 353. (2) L.R. (1903) 1 K.B. 890.