

PETITIONER:
PRAKASH ROADLINES (PVT.) LTD.

Vs.

RESPONDENT:
UNION OF INDIA & ANOTHER

DATE OF JUDGMENT 01/08/1989

BENCH:
OZA, G.L. (J)
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OZA, G.L. (J)
SAIKIA, K.N. (J)

CITATION:
1989 AIR 1962 1989 SCR (3) 650
1989 SCC (4) 15 JT 1989 (3) 269
1989 SCALE (2) 153

ACT:

Delhi Municipal Corporation Act, 1957: Sections 59, 463, 464 and 491--Whether penalty could be imposed without conviction by Court--Delegation of powers to taxing authorities to impose penalty--Whether valid.

HEADNOTE:

The appellant, a transporter, brought some goods to Delhi without paying terminal tax. Under Section 464 of the Delhi Municipal Corporation Act, 1957, a penalty of ten times the amount of terminal tax was demanded from the appellant. The demand was challenged before the High Court by way of a Writ Petition. The High Court considered the question as to whether the penalty imposed under section 464 of the Act could be imposed by the taxing authority without a prosecution having been filed before a competent magistrate, and answered it in the affirmative. This appeal by special leave is against the High Court's judgment.

On behalf of the appellant, it was contended that Section 464 of the Act gives a wide discretion to impose penalty upto ten times of the tax payable and as such is a judicial function which cannot be left to the executive authority and hence the authority who imposed the penalty was not competent to do so.

The respondents contended that Section 464 does not pertain to any offence and penalty levied under this section is not punishment; that section 463 provides for punishment after conviction and so, for imposition of penalty under Section 464, the prosecution of the appellant before a competent magistrate is not at all necessary. It was also contended that Section 59 confers very wide powers on the Commissioner and he is also authorised to delegate the functions, and under such delegated authority the penalty has been imposed under Section 464.

Dismissing the appeal,

HELD: 1. Penalty under Section 464 of the Delhi Municipal Corporation Act, 1957 could be imposed without a conviction by a

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criminal court. The different phraseology used in sections 463 and 464 clearly go to show that where the ingredients of

Section 463 are not in doubt it is open to the corporation authorities to launch a prosecution against the person who introduces the goods without payment of terminal tax and in this event the person, on conviction only, can be punished and the punishment is also imprisonment, but the highest limit of fine is limited to Rs.1,000 whereas under Section 464 neither there is any reference to a conviction nor any reference to the Court of a Magistrate and the only penalty provided is monetary which may extend to ten times. It is therefore clear that Section 463 refers to a criminal offence if committed, could only be tried by a competent criminal court and on conviction alone the punishment could be imposed but Section 464 is in the nature of a revenue provision where non-payment of tax could be remedied by imposition of penalty and the limit of penalty has been prescribed at ten times of the tax which is payable. In view of different language used in the two sections and also the language used in the marginal note it is clear that the two cannot be said to be same or similar. [657E, F; 655B-E]

2. It is no doubt true that as regards the offences, a specific provision has been made in Section 469 for appointment of a Municipal Magistrate but in respect of penalties there is no specific provision authorising any officer or authority to exercise jurisdiction under the section where for evasion of tax, penalty could be levied, like Section 464, but it could not be doubted that Section 59 gives a very wide power to the Municipal Commissioner either to exercise these powers himself or to delegate. It is not in dispute that in exercise of powers under Section 59 the Municipal Commissioner had the authority, and exercising the powers under Section 491 of the Act, by notification dated September 17, 1973 he delegated the functions under Section 464 to the taxing authorities. Hence the taxing authorities were competent under the scheme of this Act to impose the penalty to the tune of ten times of the tax which is payable. [655G-H; 656A, B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1800(N) of 1974

From the Judgment and Order dated 2.11.73 of the Delhi High Court in C.W. No. 906 of 1973.

S.N. Mehta for the Appellant.

G. Ramaswamy, Additional Solicitor General, G. Venkatesh Rao and A.V. Rangam for the Respondents.

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The Judgment of the Court was delivered by

OZA, J. This is an appeal on leave under Article 136 of the Constitution. The appellant is a transporter and it is alleged that he brought goods into the limits of Delhi and were seized within the Union Territory as it was alleged that they were brought in without the payment of terminal tax. A penalty of ten times of the amount of the terminal tax was also demanded from the appellant and he was informed that if the terminal tax alongwith the penalty is not paid within four days the goods will be sold at his risk. By a writ petition the appellant challenged this demand before the High Court of Delhi and by the impugned judgment the Delhi High Court dismissed the writ petition and hence the present appeal.

The High Court has considered the law of the Delhi Municipal Corporation Act, 1957 (hereinafter referred to as the 'Act') coupled with the provisions contained in the

imposition of terminal tax and also examined the legislative competence of the Parliament to enact the law and ultimately came to the conclusion that the law was applicable in the territory. There was also some controversy raised before the High Court in respect of the facts as to whether the cylinders on which the duty was demanded were empty or were full and as to whether the appellant stopped its vehicle at the post and was allowed to go and later on he was stopped by the Squad or he got into the territory without payment of tax and was therefore caught but all these controversial questions of facts the High Court refused to consider as the appellant had an opportunity to pursue the remedy under the law where these facts could be investigated and therefore as that was not done and it was a writ petition filed before the High Court, the High Court rightly did not go into the disputed questions of facts. The only question which was canvassed before the High Court and was considered is the question as to whether this penalty imposed under Section 464 of the Act could be imposed by the taxing authority without a prosecution having been filed before a competent magistrate and the High Court in its judgment dismissed the petition upholding the contention of the Delhi Municipal Corporation and the learned counsel appearing for the appellant also canvassed that question alone as it was the question on which High Court held against the appellant.

It was contended by learned counsel for the appellant that Sections 463 and 464 both fall in the Chapter "Offences and Penalties". By referring to the language of Section 464, he contended that in the body of this Section language indicate that what is levied against the appellant is described as "fine". He also referred to Sections 469 and 470 and contended that according to the scheme of this Chapter, the

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punishment provided in Section 463 and the penalty (or fine) provided in Section 464 could only be imposed by a Magistrate after a proper trial. He also contended that the learned Judges of the High Court placing reliance on Section 59 and the notification delegating the functions by the Commissioner to the terminal tax authority came to the conclusion that under Section 464 it is the tax authority who has the jurisdiction to impose the penalty but according to the learned counsel the residuary powers of the Commissioners under Section 59 are only administrative powers and according to him the High Court was not right in placing reliance on that

The main emphasis by the learned counsel was that imposition of penalty as provided in Section 464 where a wide discretion is given to impose penalty upto ten times of the tax payable itself indicates that the functions of the authority who is expected to exercise the jurisdiction under Section 464 is in the nature of judicial function and therefore it could not have been left to the executive authority of the Commissioner or a delegate to whom the powers may have been delegated. According to the learned counsel the penalty was not imposed by the competent authority. Learned counsel for the respondent on the other hand contended that the language used at the heading of the Chapter which starts with Section 461 itself indicates that this Chapter deals with two types of matters (i) where offences are alleged to have been committed and (ii) where only penalties could be imposed and the scheme of this Chapter indicates that wherever the offences are alleged to have been committed it has been provided that they will be tried by a competent magistrate and the punishment could only be inflicted by the

competent magistrate on conviction of the person for the offences alleged against him. Whereas wherever penalties are provided it has been provided that where the facts attract the relevant provisions pertaining to penalty the tax plus penalty could be imposed and these penalty provisions neither talk of any offence nor talk of conviction before a competent court of a Magistrate. It was contended that on the basis of this distinction, if the two sections 463 and 464 which are relevant are examined it is clear that Section 464 do not pertain to any offence and therefore the penalty thus imposed under this Section is not a punishment which could only be inflicted under Section 463 after conviction and therefore for imposition of penalty under Section 464 the prosecution of the appellant before a competent magistrate is not at all necessary. Learned counsel also contended that even reading the provisions of Section 470 or 469 do not indicate contrary.

As regards the authority of the tax authority to impose this penalty, learned counsel referred to the notifications which have been relied on by the High Court and contended that Section 59 confers very wide powers on the Commissioner of Municipal Corporation and he is also authorised to delegate the functions and in accordance with the provisions of law by a notification the functions have been delegated. The Commissioner had the authority as regards the authority of the tax authority to impose this penalty under Section 464 and it is in this delegated authority that the terminal tax authority has imposed this penalty against the appellant as has been held by this Court.

The only question which arises in this appeal is as to whether penalty as provided in Section 464 of the Act could be imposed by the terminal tax authority or it could not be imposed unless the appellant is convicted and found guilty by a competent Magistrate as is contemplated in Section 463 of the Act. Section 463 reads:

463: Punishment for offences relating to terminal tax.
"Whoever brings within the Union Territory of Delhi any goods liable to terminal tax without the payment of such tax shall, on conviction, be punishable with imprisonment for a term which may extend to six months or with the fine which may extend to one thousand rupees or with both, and the court trying an offence under this section may, on such conviction, also confiscate the goods in respect of which the offence has been committed."

Sec. 464 reads:

Penalty for evasion of terminal tax:
"Where any goods imported into Delhi are liable to the payment of terminal tax, any person, with the intention of evading payment of the tax introduces or attempts to introduce or causes or abets introduction of any such goods within the Union Territory of Delhi, upon which payment of terminal tax due on such introduction, has neither been made nor tendered, shall be punishable with fine which may extend to ten times the amount of such terminal tax."

It is significant that in Sections 463 and 464 the language used is that "a

person who brings the goods into the Union Territory of

Delhi liable to terminal tax without the payment of tax shall on conviction be punishable." Whereas in Section 464 the Section talks of bringing the goods into the Union Territory on which terminal tax is due and is not tendered or paid a fine which may extend to ten times the amount of terminal tax could be levied.

This different phraseology used in the two Sections clearly go to show that where the ingredients of Section 463 are not in doubt it is open to the corporation authorities to launch a prosecution against the person who introduces the goods without payment of terminal tax and in this event the person on conviction only can be punished but the punishment is also imprisonment but the highest limit of fine is limited to Rs. 1,000 whereas under Section 464 neither there is any reference to a conviction nor any reference to the Court of a Magistrate and the only penalty provided is monetary which may extend to ten times. It is therefore clear that Section 463 refers to a criminal offence if committed, could only be tried by a competent criminal court and on conviction alone the punishment could be imposed but Section 464 is in the nature of a revenue provision where non-payment of tax could be remedied by imposition of penalty and the limit of penalty has been prescribed at ten times of the tax which is payable. In view of different language used in the two sections and also the language used in the marginal note it is clear that the two can not be said to be same or similar.

Even the heading of the Chapter talks of "Offences and Penalties". It therefore clearly appears that this chapter deals with two categories of matters; (i) 'offences' and the other 'penalties' and the scheme of this Chapter indicates that so far as offences are concerned they could only be tried by a competent criminal court and punishment could only be awarded after conviction whereas so far as penalties are concerned they could be imposed by the taxing authority itself. Even the language of Sections 470 or 469 does not help the appellant in any manner.

It is no doubt true that as regards the offences, a specific provision has been made in Section 469 for appointment of a Municipal Magistrate but in respect of penalties there is no specific provision authorising any officer or authority to exercise jurisdiction under the Section where for evasion of tax, penalty could be levied, like Section 464 but it could not be doubted that Section 59 gives a very wide power to the Municipal Commissioner either to exercise these powers himself

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or to delegate. It is not in dispute that in exercise of power under Section 59 the Municipal Commissioner had the authority and exercising the powers under Section 491 of the Act by notification dated September 17, 1973 he delegated the functions under Section 464 to the taxing authorities and it is the conclusion that the taxing authorities were competent under the scheme of this Act to impose the penalty to the tune of ten times of the tax which is payable.

Section 59 of the Act reads:

59: Functions of

the Commissioner;

"Save as otherwise provided in this Act, the entire executive power for the purpose of carrying out the provisions of this Act other than those pertaining to the Delhi Electric Supply Undertaking and of any other Act for the time being in force which confers, any power or imposes any duty on the Corporation,

shall vest in the Commissioner who shall also

(a) exercise all the powers and perform all the duties specifically conferred or imposed upon him by this Act or by any other law for the time being in force;

(b) prescribe the duties of, and exercise supervision and control over the acts and proceedings of, all municipal officers and other municipal employees other than the Municipal Secretary and the Municipal Chief Auditor and the municipal officers and other municipal employees immediately subordinate to them and subject to any regulation that may be made in this behalf, dispose of all questions relating to the service of the said officers and other employees their pay, privileges, allowances and other conditions of service;

(c) on the occurrence or threatened occurrence of any sudden accident or any unforeseen event or natural calamity involving or likely to involve extensive damage to any property of the Corporation, or danger to human life, take such immediate action as he considers necessary and make a report forthwith to the Standing Committee and the Corporation of the action he has taken and the reasons for the same as also of the amount of cost, if any, incurred or

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likely to be incurred in consequence of such action, which is not covered by a budget grant;

(d) exercise the powers and perform the duties conferred or imposed by or under this Act upon the General Manager (Electricity) in this absence or on failure by him to exercise or perform the same."

This Section clearly shows that the Municipal Commissioner had wide powers and he could therefore exercise powers to impose the penalty as contemplated under Section 464. Section 491 of the Act reads:

491: Power to delegate functions of Commissioner:

"The Commissioner may by order direct that any power conferred or any duty imposed on him by or under this Act shall, in such circumstances and under such conditions, if any, as may be specified in the order, be exercised and performed also by any municipal officer or other municipal employee specified in the order."

This Section authorises the Commissioner to delegate the authority vested in him and it is in exercise of these powers that in fact he had delegated the authority to the tax officer to exercise powers under Section 464.

Under these circumstances therefore the contention advanced by the learned counsel for the appellant that the penalty under Section 464 could not be imposed without a conviction by a criminal court is not sustainable in law. We therefore see no reason to entertain this appeal. It is therefore dismissed. In the circumstances of the case parties are directed to bear their own costs.

G.N.
missed.

Appeal dis-

JUDIS