

SANGAPALA
v.
URBAN COUNCIL, GAMPAHA AND OTHERS

COURT OF APPEAL,
S. N. SILVA J. AND W. N. D. PERERA, J.,
C. A. APPLICATIONS NOS. 1481/81 AND 118/82,
NOVEMBER 21, 1989

Certiorari – Local Government Law – Imposition and levy of taxes on categories of trade in a single business – Sections 165A and 165B of the Urban Councils Ordinance – Total tax leviable – Severability – Applicability of Certiorari upon severing the bad part of the decision from the good.

The Urban Council, Gampaha served notices on the petitioner imposing taxes by resolution for the year 1980 as follows :—

- (1) Notice dated 28.01.1981 for a sum of Rs. 500 in respect of the sale of textiles ;
- (2) Notice dated 03.02.1981 for a sum of Rs. 250 in respect of the sale of ready-made garments ;
- (3) Notice dated 29.01.1981 for a sum of Rs. 500 in respect of the sale of shop goods. (සාපදු බඩු)
- (4) Notice dated 03.02.1981 for a sum of Rs. 200 for the sale of shoes.

All these trades were carried on at No. 11, Main Street, Gampaha and the total of these taxes were Rs. 1,450. For 1981 fresh notices were sent and these notices related also to certain additional types of trade carried on at the same premises and the total was Rs. 1,500. The notices referred to S. 165A of the Urban Council Ordinance as the provision under which the taxes are imposed and levied.

Held :

S. 165A introduced by the amendment of 1979 is a comprehensive provision which not only empowers a council to impose a tax on any trade but also provides for several matters connected with the levy and to recovery of unpaid taxes.

1. Hence there is no basis whatever to construe the provisions of S. 165A by reading in the requirements of S. 162 (1) (c) to obtain Ministerial approval and of S. 165 to enact by-laws prescribing the amount and the conditions of such taxes.

2. A decision to exercise the power vested in the Council under S. 165A(1) to impose and levy a tax on trade has to be taken by the members at any general or special meeting.

3. Sub-section (1) of Section 165A empowers the Council to impose and levy a tax on "any" trade. The use of the word "any" suggests that the legislature did not contemplate a single category of activity coming within the description of the word "trade" but different

types of activities coming within the description of that word. Only such an interpretation would harmonize with the provisions of the Ordinance and result in a reasonable exercise of the power vested in the Council by the section. If a single tax is to be imposed on trade a person carrying on the simple trade of selling tea would be liable to the same tax as a person running a supermarket or even a shop selling a variety of electronic equipment. The legislature intended a Council to classify the different categories of trade carried on within its area and to impose taxes bearing in mind the distinctions between these categories. In terms of Section 165A(1) an Urban Council is empowered to classify the categories of trade carried on within its area for the purpose of imposing and levying the tax contemplated in that section. Such classification should be reasonable and bear rational relationship to the object sought to be achieved by the classification. The classification should be done on the basis that there are certain traders who sell only a specified category of goods. For instance there could be a trader who sells only textiles and another who sells only ready-made garments. In order to encompass both categories of trade, it is necessary to specify the categories separately as has happened in this instance. The result of such categorisation is that a person who sells textiles and ready-made garments may be taxed twice. Any adverse consequence that may flow from this kind of situation is taken care of by the provisions of Sub-section (2).

4. Although an Urban Council is empowered in terms of Section 165A(1) of the Ordinance to classify different types or categories of trade for the purpose of imposing taxes as trade, no such tax or taxes can be levied in respect of trade in any premises in excess of the limits laid down in the proviso to Sub-section (2) of that section. The total amount of the taxes that could be validly levied from the Petitioner cannot exceed Rs. 1,000 for each year.

5. The doctrine of severability applies in situation where a tribunal or authority that is validly exercising its power exceeds in limits of its power or authority only in certain respects. Where the bad part of a decision is severable from the good *Certiorari* may be granted to quash the bad part only.

The taxes in excess of the limit are identifiable and could be severed from the amounts that could validly be levied from the Petitioner

Cases referred to :

- (1) *Jansen v. The Sanitary Inspector, Dehiwela – Mt. Lavinia* U.C 55 NLR 445.
- (2) *Urban Council, Weligama v. Asuraf* 66 NLR 41.

APPLICATION for *Writ of Certiorari* to quash decision to levy certain taxes.

E. R. S. R. Coomaraswamy, P.C. with *M. Abeysekera* and *L. K. M. N Perera* and *E. R. S. R. Coomaraswamy (Junior)* for the Petitioner.

P. A. D. Samarasekera, P.C. with *J. de Almeda Gunaratne* for respondents.

January 15, 1990

S. N. SILVA, J.

The Petitioner, a trader running a shop at premises No.11, Main Street, Gampaha, has filed the above applications for *writs of certiorari* in respect of certain taxes imposed by the 1st Respondent Council. Application No. 1481/81 relates to the taxes for the year 1980 and application No. 118/82 for the year 1981. Both sets of taxes are challenged on the same grounds and it was agreed by Counsel that the applications could be heard and disposed of together.

The 1st Respondent is an Urban Council constituted in terms of the Urban Councils Ordinance (Cap. 577 L.E.C.). The provisions of the Ordinance empower Councils to impose certain rates, taxes and licence duties. They are, rates on immovable property (Section 160) ; taxes and licence duties, in respect of vehicles, animals and licences issued by the Council (Section 162) and duties in respect of licences granted under law by the Council, authorizing the use of any premises for any special purpose (Section 164). In 1979 the Parliament widened the revenue base of Councils by empowering them to impose and levy or to collect certain additional taxes. This was done by enacting Section 15 of Act No. 42 of 1979 which introduced new provisions numbered as Sections 165 A to D. They provide for taxes on, any trade (Section 165 A), on any business (Section 165B), on undeveloped land (Section 165 C) and on certain sales of land (Section 165 D).

The Council by resolution dated 21.12.1979 decided to impose for the year 1980, certain taxes on trade as set out in the schedule to the resolution. This decision (contained in the minutes marked 2R 1) was published in the Gazette of 07.03.1980 marked 'A'. Pursuant to this imposition the Council sought to levy two taxes amounting to Rs. 2,000 from the Petitioner upon notices marked 'B' and 'C' issued in July, 1980. There seems to have been much opposition to the levels of these taxes. The resolution itself was passed upon a division of votes. Later, by resolution dated 03.12.1980, (contained in the minutes marked 2R2) it was decided to amend the existing schedule of taxes. The amended schedule is contained in the Gazette of 26.12.1980, marked 'D'. The types of trade in respect of which taxes were imposed was increased from 37 to 54 and there was an overall reduction in the rates of taxes. It was also decided to impose the same taxes for the year 1981. In

December 1980 the Council sought once again to levy four sets of taxes from the Petitioner totalling Rs. 1,450 by undated notices marked 'E', 'F', 'G' and 'H'. It appears that these notices are legally defective. Thereafter the Council sent four fresh notices to the Petitioner, marked 'I', 'J', 'K' and 'L' seeking to levy the same taxes from the Petitioner. These notices correctly refer to Section 165 A as the provision under which the taxes are imposed and levied. They relate to the following types of trades :-

- (i) Notice dated 28.01.1981 for a sum of Rs. 500 in respect of the sale of textiles, carried on at premises No. 11, Main Street, Gampaha (marked 'I') ;
- (ii) Notice dated 03.02.1981 for a sum of Rs. 250 in respect of the sale of ready-made garments carried on at the same premises (marked 'J') ;
- (iii) Notice dated 29.01.1981 for a sum of Rs. 500 in respect of the sale of shop goods (සාපයු බඩු) carried on at the same premises (marked 'K') ;
- (iv) Notice dated 03.02.1981 for a sum of Rs. 200 for the sale of shoes carried on at the same premises (marked 'L').

The foregoing notices relate to the year 1980. It appears that for the year 1981 fresh notices were sent and they are filed in application No. 118/82 without proper markings. These notices relate to certain additional types of trade carried on at the same premises. They are the sale of clocks and of radios. The total taxes for the year 1981 appear to be slightly higher. i.e. a sum of Rs. 1,500.

Counsel for the Petitioner submitted that the imposition of taxes for the year 1980 and 1981 by the resolutions referred above and levy of such taxes from the Petitioner by the notices that have been produced, are illegal and void. Although Counsel stated several grounds in his written submissions, in the oral submissions made finally on 29.11.1989 he restricted the challenge to three grounds :-

- (i) That the impugned taxes could not be validly imposed by the Council by resolution without there being by-laws dealing with the quantum and conditions of such taxes. That the approval of the Minister was required in terms of Section 162 (2) ;

- (ii) That the activity of the Petitioner liable to taxation is the trade carried on by him in his shop and that it could not be validly split into different types of trade with reference to the different articles sold by him in the shop ;
- (iii) That in terms of the proviso to Section 165 A (2) the maximum that could be imposed as taxes in respect of the trade carried on by the Petitioner in the premises in question is Rs. 1,000. The levies sought to be made from the Petitioner exceed that limit and as such are invalid.

Council based his submissions with regard to the first ground of objection on the difference in wording between Sections 165 A and 165 B. Section 165 B (1) specifically provides that the Council "may by resolution" impose and levy a tax on certain business. The words "may by resolution" are not found in Section 165 A which is silent as to the means by which the Council may impose the tax on trade. Therefore Counsel submitted that the provisions in Section 165 which require that the quantum and the conditions of the tax imposed be prescribed by by-laws, should apply. In this connection Counsel relied upon the decisions of the Supreme Court in the cases of *Jensen v. The Sanitary Inspector, Dehiwala-Mt. Lavinia U.C.*⁽¹⁾ and of *Urban Council Weligama v. Asura*⁽²⁾. On the other hand, Counsel for the Respondents submitted that Section 165 A neither expressly nor by necessary implications require the enactment of by-laws as a condition precedent for the valid imposition and levy of the taxes on trade.

Section 165 of the Ordinance relied upon by Counsel for the Petitioner is applicable to the imposition of taxes in terms of Section 162 (1)(c). The relevant portions of this Section empower the Council to impose and levy any form of tax approved by the Minister subject to such "limitations, qualifications and conditions as may be prescribed by the Council". Section 165 provides that the amount of such taxes and the conditions to which they are subject be prescribed by by-laws. Thus it is seen that Section 162 (1)(c) which empowers a Council generally to impose and levy any form of tax is, conditioned upon ministerial approval being received for such tax and the enactment of by-laws covering the requisite matters referred above. In that respect Section 162 (1)(c) can be appropriately described as a skeletal provision. On the other hand Section 165 A introduced by the amendment of 1979 is a comprehensive provision which not only empowers a Council to

impose a tax on trade but also provides for several matters connected with the levy and to the recovery of the unpaid taxes.

It provides for *inter alia* –

- (i) the period for which the tax may be levied ;
- (ii) the basis on which the tax will be determined and its upper limits ;
- (iii) the manner in which the date of payment will be determined or prescribed.
- (iv) the recovery of the taxes on default through summary proceedings in the Magistrate's Court.

Hence, there is no basis whatever to construe the provisions of Section 165 A by reading in the requirements in Section 162 (1)(c) to obtain ministerial approval and of 165 to enact by-laws prescribing the amount and the conditions of such taxes.

Counsel for the Petitioner relied on the decisions of the Supreme Court in the case of *Janson v. The Sanitary Inspector, Dehiwala-mt. Lavinia Urban Council (Supra)*. In that case the Supreme Court set aside a conviction entered by the Magistrate's Court against a person who was alleged to have violated the provisions of a by-law prohibiting the carrying on of a dangerous or offensive trade without a licence from the Chairman. The by-law itself provides that the Chairman shall issue a licence to all persons complying with conditions that are provided for. With regard to the particular category of trade it was found that the Urban Council had not prescribed the conditions applicable to it. In those circumstances the Supreme Court held that the Appellant could not have been charged or convicted for a contravention of the by-law. It is thus seen that this decision of the Supreme Court has no bearing whatever on the questions at issue in this case. The other decision relied upon by Counsel is that of *The Urban Council of Weligama v. Asuraf (Supra)*. In that case the Urban Council filed an action in the District Court to recover certain sums due from the Defendant who was running a meat stall, on a tender. It was urged by the Defendant that the Urban Council could recover in respect of the meat stall only the fee leviable under the by-laws. The Supreme Court held that as long as the by-laws remain in force no additional fees could be recovered pursuant to a tender in respect of the same meat stall. Here too we find that the decision of the Supreme Court has no bearing on the questions at issue in this case.

The other aspect of this ground of objection is whether the Council could validly impose and levy the impugned taxes upon the resolutions that have been referred to. In this regard, we note that Section 165 A (1) empowers an Urban Council to impose and levy a tax on trade. In the absence of any provision in this section specifying the means by which this power can be exercised, it is necessary to examine the general provisions of the Ordinance with regard to the means by which a matter could be ordinarily decided by an Urban Council. Section 5 (1) of the Ordinance provides that each Council shall consist of the Chairman, Vice-Chairman and such number of other members as the Minister may prescribe by order published in the Gazette. Section 26 (2) provides that all matters or questions authorised by the Ordinance or by any other written law, to be decided by the members of an Urban Council, shall be decided by the majority of members present and voting at any general or special meeting. Therefore, a decision to exercise the power vested in the Council under Section 165 A (1) to impose and levy a tax on trade, has to be taken by the members at any general or special meeting. For the reasons stated above as regards the first ground of objection, we hold that the 1st Respondent Council has validly decided by the resolutions marked 2R1 and 2R2 to impose and levy a tax on trade carried on within its area. We also hold that it was not incumbent on the 1st Respondent Council to obtain the approval of the Minister or to enact by-laws prescribing the conditions subject to which the tax is payable, as a pre requisite for the valid imposition and levy of the tax on trade in terms of Section 165 A.

The second and third grounds of objections could be conveniently dealt with together. Counsel for the Petitioner submitted that the word "trade" appearing in Section 165 A (1) is not defined and that it should be given its ordinary meaning. He relied upon the meaning of this word found in the work on "Words and Phrases" by Burrows – Vol.5 page 203. Here it is stated that the word "trade" means "the buying and selling of goods". Counsel submitted that it would not be open for the 1st Respondent Council to split up "trade" into the selling of different types or categories of goods.

The relevant provisions of Section 165 A are as follows :

" 165A : (1) An Urban Council may impose and levy a tax on any trade carried on within the administrative limits of that Council.

(2) the tax levied under Sub-section (1) shall be an annual tax determined by the Council according to the annual value of the premises on which that trade is carried on :

(3) Provided that where the annual value of such premises falls within the limits of any item in Column I set out below, the tax levied shall not exceed the sum set out in the corresponding entry in Column II—

<i>Column I</i>	<i>Column II</i>
Where the annual value –	Rs.
does not exceed Rs. 750	500
exceeds Rs. 750 but does not exceed Rs. 1,500	750
exceeds Rs. 1,500	1,000

Provided, further, that such tax shall not be leviable or payable in respect of any trade for which a licence is necessary under the provisions of this Ordinance or any by-law, made thereunder."

It is seen that sub-section (1) empowers the Council to impose and levy a tax on "any" trade. The use of the word "any" suggests that the legislature did not contemplate a single category of activity coming within the description of the words "trade" but different types of activities coming within the description of that word. Only such an interpretation would harmonise with the provisions of the Ordinance and result in a reasonable exercise of the power vested in the Council by this section. If a single tax is to be imposed on trade as contended by Counsel for the Petitioner a person carrying on the simple trade of selling tea would be liable to the same tax as a person running a super market or even a shop selling a variety of electronic equipment. It is clear from the provisions that the legislature intended, a Council to classify the different categories of trade carried on within its area and to impose taxes bearing in mind the distinctions between these categories. Therefore we hold that in terms of Section 165 A (1) an Urban Council is empowered to classify the categories of trade carried on within its area for the purpose of imposing and levying the tax contemplated in that section.

Counsel for the Petitioner contended that if an Urban Council has an unlimited power to classify different categories of trade in relation to the types of goods sold by a trader, it would result in absurdity. It was contended that a Council could then classify each item sold in the shop under a different head and impose separate taxes in respect of each

item. This contention ignores the basic requirement in law that any classification should be reasonable and that it should bear a rational relationship to the object sought to be achieved by such classification. We have examined the different categories of trade specified in the resolutions that have been published in the Gazette. We do not find these classifications to be *per se* unreasonable. A classification has to be done on the basis that there are certain traders who sell only a specified category of goods. For instance there could be a trader who sells only textiles and another who sells only ready-made garments. In order to encompass both categories of trade it is necessary to specify the two categories separately, as has happened in this instance. The result of such a categorisation is that, a person who sells textiles and ready-made garments may be taxed twice. Any adverse consequence that may flow from this kind of situation is in our view taken care of by the provisions of Sub-section (2). It is seen that whereas Sub-section (1) empowers a Council to "impose" and "levy" a tax on trade, Sub-section (2) deals with only the "levy" of such tax. The word "impose" is used to empower the Council to place a general charge in respect of the different categories of trade. The word "levy" connotes the next stage of the process of taxation where it is sought to recover from each person the tax to which he is liable, in terms of the general imposition. It is significant that the legislature has placed certain limits in Sub-section (2) subject to which taxes could be levied. Accordingly, taxes cannot be levied in excess of the sums of Rs. 500, 750 and 1,000 respectively depending on the annual value of the premises in which the trade is carried on. Counsel for the Respondents submitted that these limits apply only in relation to each category or type of trade and not to the totality of the taxes, where different categories or type of trade are carried on in the same premises. We are unable to agree with this submission. It is clear from the proviso to Sub-section (2) that the legislature placed a limit on the total amount of tax that could be levied in respect of the trade carried on in any premises. It is for that reason the limit was placed in relation to the annual value of the premises. Therefore, we hold that although an Urban Council is empowered in terms of Section 165 A (1) of the Ordinance to classify different types or categories of trade for the purpose of imposing taxes on trade, no such tax or taxes can be levied in respect of trade in any premises in excess of the limits laid down in the proviso to Sub-section (2) of that Section.

In this case it is common ground that the annual value of the premises in which the Petitioner carries on the different categories of trade is Rs.

1,636. Therefore, we hold that the total amount of taxes that could be validly levied from the Petitioner by the 1st Respondent Council in respect of the trade carried on in those premises, cannot exceed, Rs. 1,000.

According to the notices of levy that have been produced and referred to above, for the year 1980 the 1st Respondent Council has sought to levy from the petitioner taxes amounting to Rs. 1,450. For the year 1981, this has gone up to Rs. 1,500. Thus we find that the 1st Respondent Council has sought to levy taxes in excess of the limit of Rs. 1,000 specified in the proviso to Sub-section (2).

Counsel for the Petitioner submitted that the entire levy is bad since it exceeds the limits referred above. On the other hand, Counsel for the Respondent submitted that the doctrine of severability should apply and that only the amount of taxes in excess of the sum of Rs. 1,000 should be held as being *ultra vires* and void.

The doctrine of severability clearly applies in situations where a tribunal or authority that is validly exercising its power, exceeds the limits of the power or authority only in certain respects. Professor H. W. R. Wade in his work titled "Administrative Law" (4th Edition pg. 302) has stated thus :

"An administrative act may be partially good and partially bad, it often happens that a tribunal or authority makes a proper order but adds some direction or condition which is beyond its powers. If the bad can be cleanly severed from the good, the Court will quash the bad part only and leave the good standing" and

"Where the bad part of a decision is severable from the good, *certiorari* may be granted to quash the bad part only". (page 551).

In the instant case we are of the view that the taxes in excess of the limit are identifiable and could be severed from the amounts that could be validly levied from the Petitioner. We therefore issue a *writs of certiorari* quashing the amounts of the taxes sought to be levied in respect of the years 1980 and 1981 in so far as they exceed the sum of Rs. 1,000 in respect of each year and direct that recovery of the taxes in respect of each year be limited to a sum of Rs. 1,000.

We make no order as to costs.

W. N. D. PERERA, J. – I agree.

Certiorari issued to quash amounts in excess of Rs. 1,000.