PETITIONER:
INCOME-TAX OFFICER, ALLEPPEY

Vs.

RESPONDENT:
M.C. PONNOOSE & ORS.

DATE OF JUDGMENT:
28/07/1969

BENCH:
GROVER, A.N.
BENCH:
GROVER, A.N.
SHAH, J.C. (CJ)
RAMASWAMI, V.

CITATION:
1970 AIR 385 1970 SCR (1) 678
1969 SCC (2) 351
CITATOR INFO :
R 1972 SC2427 (9)
RF 1980 SC2181 (104)
C 1984 SC 87 (21)
R 1987 SC1399 (18)
R 1987 SC2239 (8)
R 1988 SC1263 (10)

ACT:
Income-tax Act, 1961, s. 2(44)---Definition of Tax Recovery Officer in section amended by s. 1 of Finance Act 1963--Notification under section extending definition--Certain revenue officials including Taluka Tehsildar brought within definition--Such Notification being executive act cannot be given retrospective effect---Subordinate legislation cannot ordinarily be retrospective.

HEADNOTE:
By a notification dated August 14, 1963, issued by the State of Kerala the Taluka Tehsildar was authorised to exercise the powers of a Tax Recovery Officer under the Income-tax Act, 1961. The notification was made effective from April 1962. The shares of the assessee, who was in arrears of his income-tax, were. attached by the Taluka Tehsildar after April 1, 1962 but prior to August 14, 1963. A petition under Art. 226 of the Constitution was filed challenging the, action of the Tehsildar. The High Court held that the notification empowering the Tehsildar to exercise the powers of a Tax Recovery Officer with retrospective effect was invalid and consequently quashed the attachments. This view was affirmed by the Division Bench in appeal. Dismissing the appeal by the Revenue, this Court,
HELD: The courts will not ascribe retrospectivity to new laws affecting rights unless by express words or necessary implication it appears that such was the intention of the legislature. The Parliament can delegate its legislative power within the recognised limits. Where any rule or regulation is made by any person or authority to whom such powers have been delegated by the legislature it may or may

not be possible to make the same so as to give retrospective operation. It will depend on the language employed in the statutory provision which may in express terms or by necessary implication empower the authority concerned to make a rule or regulation with retrospective effect. But where no such language is to be found it has been held by the courts that the person or authority exercising subordinate legislative functions rule, regulation or bye-law . which can operate with retrospective effect. [681 F--H]

It can hardly be said that the impugned notification promulgates any rule, regulation or bye-law 'all of which have a definite signification. The exercise of the power under sub-cl. (ii) of cl. (44) of s. 2 of the Income-tax Act, 1961 is more of an executive than a legislative act. [682 B]

Dr. Indramani Pyarelal Gupta v.W.R. Nathu & Ors. [1963] 1 S.C.R. 721, Strawboard Manufacturing Co. Ltd. v. Gutta Mill Workers [1953] S.C.R. 439, followed.

Phillips v. Eyre, 40 Law L Rep. (N.S.) Q.B. 28 at p. 37, referred to.

Modi Food Products Ltd. v. Commissioner of Sales-tax U.P.A.I.R. [1956] All. 35, India Refineries Ltd. v. State of Mysore, A.I.R. 1960 Mys. 326 and General 8. Shivdev Singh & Anr. v, The State of Punjab & Ors. [1959] P.L.R. 514, approved.

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By saying that new definition of "Tax Recovery Officer" substituted by s. 1 of the Finance Act, 1963, "shall be and shall be deemed always to have been substituted" was to make the new definition a part of the income Tax Act from the date it was enacted. The legal fiction could not be extended beyond its legiitimate field and the aforesaid words occurring in s.4 of the Finance Act, 1963 could not be construed to embody conferment of 'a power for retrospective authorisation by the State re.the absence of any express provision in s. 2(44) of the Income-Tax Act itself. [682 G]

B.S. Vadera etc. v. Union of India & Ors. [1968] 3 S.C.R. 575, distinguished.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 942 and 943 of 1966.

Appeals by special leave from the judgment and order dated june 18, 1965 of the Kerala High Court in Writ Appeals Nos. 139 and 140 of 1964.

Jagdish Swarup, Solicitor-General, T.A. Ramachandran and D. Sharma, for the appellant (in both the appeals).

S.T. Desai, M.C. Chacko, A.K. Verma, J.B. Dadachanji, and O.C. Mathur, for respondent No. 1 (in C.A. No. 942 of 1966).

A.G. Pudissery, for respondents Nos. 2 and 3 (in C.A. No. 942 of 1966).

J.B. Dadachanji, for respondents Nos. 1 and 2 (in C.A. NO. 943 of 1966).

A.G. Pudissery, for respondents Nos. 7 and 8 (in C.A. No. 943 of 1966).

The Judgment of the Court was delivered by

Grover, J. These two appeals by special leave involve a common question relating to the validity of a notification issued by the Government of Kerala in August 1963 empowering certain revenue officials including the Taluka Tahsildar to

exercise the powers of a Tax Recovery Officer under the Income Tax Act 1961, hereinafter called the Act. The notification was expressly stated to be effective from 1st April 1962--a date prior to the date of the notification.

The facts in one of the appeals (C.A. 942/66) may be stated: One Kunchacko of Alleppey allowed the income tax dues from him to fall into arrears. The Income Tax Officer took steps to recover the arrears through the Tahsildar. Certain shares standing in the name of the assessee were attached by the Tahsildar. The first respondent Ponnoose claimed to have obtained a decree for a certain sum against the assessee. He also got the shares

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standing in the name of the assessee attached in execution proceedings, Ponnoose filed a petition under Art. 226 of the Constitution in the High Court of Kerala in which he challenged the action taken by the revenue officials including the Tahsildar for getting the shares, which had been attached, sold for satisfaction of the income tax dues of the assessee.

The learned Single Judge held that the notification empowering the Tahsildar to exercise the powers of a Tax Recovery Officer under the Act with retrospective effect was invalid. Consequently' the attachments made by the Tahsildar were quashed. This view was affirmed by a division bench in appeal.

The Act came into force on first April 1962. Section 2(44) defined the expression "Tax Recovery Officer" in the following. terms:--

> "Tax Recovery Officer' means--
> (i) a Collector;
> (ii) an additional Collector or any other officer authorised to exercise the powers of a Collector under any law relating to Land revenue for the time being in force in a State; or
> (iii) any gazetted officer of the Central or a State Government who may be authorised by the Central Government by notification in the Official Gazette, to exercise the powers of a Tax Recovery Officer".

Section 4 of the Finance Act, 1963 substituted a new definition for the original definition of Tax Recovery Officer. It was provided that the new definition "shall be and shall be deemed always to have been substituted". The new definition was as follows:

> "Tax Recovery Officer" means--
> (i) a Collector or an additional Collector;
> (ii) any such officer empowered to. effect recovery of arrears of land revenue or other public demand under any law relating to land revenue or other public demand for the time being in force in the State as may be authorised by the State Government, by general or special notification in the Official Gazette, to exercise the powers of a Tax Recovery Officer;
> (iii) any Gazetted Officer of the Central or a State Government who may be authorised by the Central Government, by general or special noti-

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> fication in the Official Gazette, to exercise the powers of a Tax Recovery Officer."

The impugned notification dated August 14, 1963 which was

published in the Kerala Gazette dated August 20, 1963 referred to the powers conferred by sub-clause (ii) of clause (44) of s. 2 of the Act read with sub-rule (2) of rule 7 of the Income tax (Certificate Proceedings) Rules, 1962 and authorised the various revenue officials mentioned therein including the Taluk Tahsildar to exercise the powers of a Tax Recovery Officer under the Act in respect of the arrears etc. The concluding portion was, "This notification shall be deemed to have come into force on the first day of April 1962". The Tahsildar had effected attachment of the shares subsequent to first April 1962 but prior to August 14, 1963. In other words on the date on which he had effected attachment he was not a Tax Recovery Officer but he got the powers of a Tax Recovery Officer by virtue of the notification dated August 14, 1963. The short question for determination, therefore, was and is whether the State Government could invest the Tahsildar with the powers of a Tax Recovery Officer under the aforesaid provisions of the Act with effect from a date prior to the date of the notification, i.e., retroactively or retrospectively.

Now it is open to a sovereign legislature to enact laws which have retrospective operation. Even when the Parliament enacts retrospective laws such laws are-in the words of Willes J. in Phillips v. Eyre(1) --"no doubt prima facie of questionable policy and contrary to the general principle that legislation by which the conduct of mankind is to be regulated ought, when introduced for the first time, to deal with future acts, and ought not to change the character of past transactions carried on upon the faith of the then existing law." The courts will not, therefore, ascribe retrospectivity to new laws affecting rights unless by express words or necessary implication it appears that such was the intention of the legislature. The Parliament can delegate its legislative power within the recognised limits. Where any rule or regulation is made by any person or authority to whom such powers have been delegated by the legislature it may or may not be possible to make the same so as to give retrospective operation. It will depend on the language employed in the statutory provision which may in express terms or by necessary implication empower the authority concerned to make a rule or regulation with retrospective effect. But where no such language is to be found it has been held by the courts that the person or authority exercising subordinate legislative functions cannot make a rule, regulation or bye-law which can operate with retrospective effect; (see Subba Rao J. in Dr. lndramani Pyarelal Gupta v. W. R. Nathu &

(1) 40 Law J.Rep.(N.S.) Q.B. 28 at p. 37.

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Others(1)--the majority not having expressed any different opinion on the point; Modi Food Products Ltd. v. Commissioner of Sales Tax U.P.(2); India Sugar Refineries Ltd. v. State of Mysore(3) and General S. Shivdev Singh & Another v. The State of Punjab & Others(4).

it can hardly be said that the impugned notification promulgates any rule, regulation or bye-law all of which have a definite signification. The exercise of the power under sub-clause (ii) of cl. (44) of s. 2 of the Act is more of an executive than a legislative act. It becomes, therefore, all the more necessary to consider how such an act which has retrospective operation can be valid in the absence of any power conferred by the aforesaid provision to so perform it as to give it retrospective operation. In Strawboard Manufacturing Co., Ltd. v. Gutta Mill Workers' Union(5) an industrial dispute had been referred by the

Governor to the Labour Commissioner or a person nominated by him with the direction that the award should be submitted not later than April 5, 1950. The award, however, was made on April 13, 1950. On April 26, 1950 the Governor issued a notification extending the time up to April 30. It was held that in the absence of a provision authorising the State Government to extend from time to time the period within which the Tribunal or the adjudicator could pronounce the decision the State Government had no authority to extend the time and the award was, therefore, one made without jurisdiction and a nullity. This decision is quite apposite and it is difficult to hold in the present case that the Taluka Tehsildar could be authorised by the impugned notification to exercise powers of a Tax Recovery Officer with effect from a date prior to the date of the notification.

It may next be considered whether by saying that the new definition. of "Tax Recovery Officer" substituted by s. 4 of the Finance Act, 1963 "shall be and shall be deemed always to have been substituted" it could be said that by necessary implication or intendment the State Government had been authorised to invest the officers mentioned in the notification with the powers of a Tax Recovery Officer with retrospective effect. The only effect of the substitution made by the Finance Act was to make the new definition a part of the Act from the date it was enacted. The legal fiction could not be extended beyond its legitimate field and the aforesaid words occurring in s. 4 of the Finance Act 1963 could not be construed to embody conferment of a power for a retrospective authorisation by the State in the absence of any express

(1) [1963] S.C.R. 721. (2) A.I.R. 1956 All. 35.
(2) A.I.R. 1960 Mys, 326 (4) [1959] P.L.R. 514.
(5) [1953] S.C.R. 439.

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provision in s. 2(44) of the Act itself. It may be noticed that in a recent decision of the Constitution Bench of this Court in B. 8. vadera etc., v. Union of India & Others(1) it has been observed with reference to rules framed under the proviso to Art. 309 of the Constitution that these rules can be made with retrospective operation. This view was, however, expressed owing to the language employed in the proviso to Art. 309 that ’’any rules so made shall have effect subject to the provisions of any such Act". As has been pointed out the clear and unambiguous expressions used in the Constitution, must be given their full and unrestricted meaning unless hedged in by any limitations. Moreover when the language employed in the main part of Art. 309 is compared with that of the proviso it becomes clear that the power given to the legislature for laying down the conditions is identical with the power given to the President or the Governor, as the case may be, in the matter of regulating the recruitment of Government servants and their conditions of service. The legislature, however, can regulate the recruitment and conditions of service for all times whereas the President and the Governor can do so only. till a provision in that behalf is made by or under an Act of the appropriate legislature. As the legislature can legislate prospectively as well as retrospectively there can be hardly any .justification for saying that the President or the Governor should not be able to make rules in the same manner so as to give them prospective as welt as retrospective operation. For these reasons the ambit and content of the rule making power under Art. 309 can furnish no analogy or. parallel to the present case. The High Court

was consequently fight in coming to the conclusion that the action taken by the Tahsildar in attaching the shares was unsustainable.

The appeals therefore fail and are dismissed with costs. One hearing fee.

Y.P. Appeals dismissed.

(1) [1968] 3 S.C.R. 575.

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