

Ramesh Dipraj Kumar Mootoo - - - - - *Appellant*

v.

The Attorney General of Trinidad and Tobago - - *Respondent*

FROM

THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 9TH APRIL 1979

Present at the Hearing :

LORD WILBERFORCE
LORD SALMON
LORD FRASER OF TULLYBELTON
LORD RUSSELL OF KILLOWEN
SIR WILLIAM DOUGLAS

[*Delivered by* SIR WILLIAM DOUGLAS]

In late May and early June, 1970, a Bill was passed in both Houses of Parliament in Trinidad and Tobago to provide for the imposition of an unemployment levy upon the chargeable income or profits of persons. On assent by the Governor-General on the 4th of June, 1970, the Unemployment Levy Act, 1970, (hereinafter referred to as "the Act") came into force.

The background against which the Act was passed was that there was massive unemployment in Trinidad and Tobago at the time, and there was social unrest of such gravity that a State of Emergency was declared on the 20th of April, 1970, and the State of Emergency continued for six months thereafter.

Section 5 of the Act provides—

"Subject to this Act for the financial year 1970 and for each subsequent financial year there shall be charged, levied and collected on the profits or gains of a person an unemployment levy at the rate or rates hereinafter specified".

Under section 2, "unemployment levy" or "levy" is defined as—

"the levy imposed by this Act as from time to time amended, for the purpose of the relief of unemployment and the training of unemployed persons".

The rates are set out in section 7—in the case of a company, 5% on the full amount of chargeable profits and in the case of an individual, 5% on chargeable income over and above \$10,000. Responsibility for

the due administration of the Act and for the computation, collection and recovery of the levy is placed, in accordance with section 3, on the Board of Inland Revenue.

The Unemployment Fund is established by section 14 of the Act in these terms:

- “(1) In this section “Minister” means the member of the Cabinet to whom responsibility for Finance is assigned.
- (2) There is hereby established for the purposes of this Act an unemployment fund which shall be administered by the Minister.
- (3) Subject to this Act and to any regulations made thereunder the Minister is authorised to make advances from the fund for any of the purposes thereby provided”.

Regulation-making powers are conferred in section 19 which provides—

“The Governor-General may make regulations generally for giving effect to this Act, and in particular—

- (a) for the management and control of the fund;
- (b) for prescribing the accounts, books and forms to be used;
- (c) as to the projects and other matters concerning which advances from the fund may be made;
- (d) for prescribing anything by this Act required to be prescribed.”

On the 22nd of October, 1974, the appellant instituted proceedings under section 6 of the Constitution of Trinidad and Tobago contained in the Second Schedule to the Trinidad and Tobago (Constitution) Order in Council 1962, alleging that certain provisions of the Constitution of Trinidad and Tobago (hereafter referred to as “the Constitution”) had been or were likely to be contravened in relation to him by the enactment of the Act. The appellant claimed that the Act infringed section 1 of the Constitution which declares—

“It is hereby recognised and declared that in Trinidad and Tobago there have existed and shall continue to exist without discrimination by reason of race, origin, colour, religion or sex, the following human rights and fundamental freedoms, namely—

- (a) the right of the individual to life, liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law; . . .”

The learned Judge at first instance held that the Act was a nullity in that it sought to abrogate, infringe or abridge the appellant’s rights guaranteed by section 1(a) of the Constitution, in particular the enjoyment of that part of his property “which has survived the inroads of normally accepted taxation by way of income tax”, without meeting the requirements of section 5 of the Constitution in respect of statutes at variance with the Chapter of that Constitution recognising and protecting human rights and fundamental freedoms.

Section 5 reads—

- “(1) An Act of Parliament to which this section applies may expressly declare that it shall have effect notwithstanding sections 1 and 2 of this Constitution and, if any such Act does so declare, it shall have effect accordingly except insofar as its provisions may be shown not to be reasonably justifiable in a society that has a proper respect for the rights and freedoms of the individual.
- (2) An Act of Parliament to which this section applies is one the Bill for which has been passed by both Houses of Parliament and at the final vote thereon in each House has been supported by the votes of not less than three-fifths of all the members of that House . . .

.”

Their Lordships are not asked to consider the soundness of this conclusion reached by the Judge in the High Court because Dr. Ramsahoye for the appellant now concedes that the Legislature of Trinidad and Tobago can by a simple majority pass a statute imposing a tax. He now seeks the restoration of the declarations and Orders of the learned Judge which were set aside by the Court of Appeal, on the basis of other conclusions reached on the application in the High Court.

These other conclusions are as follows:—

- (i) The levy imposed by the Act offends the concept of due process of law;
- (ii) "Relief of unemployment" is a public purpose provided "the nature and quality of the relief is such that benefits are paid directly to ascertained unemployed individuals";
- (iii) The mere use of the terms "the relief of unemployment and the training of unemployed persons" in section 2 of the Act is not enough to connote a public purpose: the nature and quality of the relief must be spelt out to ensure that the public alone will benefit from the levy imposed;
- (iv) By section 19(c) of the Act, Parliament delegated its authority to the Governor-General, contrary to section 85(3) of the Constitution, to direct the issue of money from the Unemployment Fund;
- (v) However liberally the Act is construed, it fails to show that "its purport and intent is to benefit the public weal" since the purposes of the levy "are neither defined nor . . . definable".

Counsel submits firstly, that the Act cannot be said to provide for an impost for public purposes in such a way as to make it a tax, secondly, that sections 14 to 19 of the Act provide for an unconstitutional scheme of expenditure and thirdly, that the Act infringes section 1(a) of the Constitution which guarantees protection against the taking or deprivation of property without due process of law.

In respect of the first of these submissions, it is contended that Parliament should say what the tax is for, and should set out, with reasonable clarity, some scheme whereby the amounts levied would be expended.

Mr. Hosein's answer to this argument is that the Act contains all the elements of a taxing statute. It has a charging section, it provides for the assessment of liability to tax and for the collection of amounts found to be due and owing. It incorporates in section 13 certain provisions of the Ordinance relating to income tax, and it provides for the making of regulations for giving effect to the Act. Counsel also referred to the control and management of the public finances of Trinidad and Tobago under the provisions, which include provisions for the audit of public accounts, of the Exchequer and Audit Ordinance, 1959, of Trinidad and Tobago.

It is not in dispute between the parties that in a case involving an Act of Parliament the presumption of constitutionality applies and that the burden cast on the appellant to prove invalidity is a heavy one.

At page 1026 of the second volume of *Cooley on Constitutional Limitations*, 8th edition, it is said:

"In the first place, taxation having for its only legitimate object the raising of money for public purposes and the proper needs of government, the exaction of moneys from the citizens for other purposes is not a proper exercise of this power, and must therefore be unauthorized. In this place, however, we do not use the word

public in any narrow and restricted sense, nor do we mean to be understood that whenever the legislature shall overstep the legitimate bounds of their authority, the case will be such that the courts can interfere to arrest their action. There are many cases of unconstitutional action by the representatives of the people which can be reached only through the ballot-box; and there are other cases when the line of distinction between that which is allowable and that which is not so faint and shadowy that the decision of the legislature must be accepted as final, even though the judicial opinion might be different. But there are still other cases when it is entirely possible for the legislature so clearly to exceed the bounds of due authority that we cannot doubt the right of the courts to interfere . . .”

And at page 1032 the author states—

“And the Supreme Court of Wisconsin has said: ‘To justify the court in arresting the proceedings and declaring the tax void, the absence of all possible public interest in the purposes for which the funds are raised must be clear and palpable; so clear and palpable as to be perceptible by every mind at the first blush’”.

In regard to the scope and nature of public purposes, Counsel referred to *Green et al. v. Frazier et al.* (1920) 253 U.S. 233 where the following passage appears at page 240 in the judgment of that court—

“What is a public purpose has given rise to no little judicial consideration. Courts, as a rule, have attempted no judicial definition of a ‘public’ as distinguished from a ‘private’ purpose, but have left each case to be determined by its own peculiar circumstances. *Gray, Limitations of Taxing Power*, § 176, ‘Necessity alone is not the test by which the limits of State authority in this direction are to be defined, but a wise statesmanship must look beyond the expenditures which are absolutely needful to the continued existence of organized government, and embrace others which may tend to make that government subserve the general well-being of society, and advance the present and prospective happiness and prosperity of the people.’ Cooley J. in *People v. Salem*, 20 Michigan, 452”.

As to the presumption of constitutionality, their Lordships are content to apply the test laid down by this Board in *Attorney-General and another v. Antigua Times Ltd.* [1976] A.C. 16 at page 32 in these terms:

“Their Lordships think that the proper approach to the question is to presume, until the contrary appears or is shown, that all Acts passed by the Parliament of Antigua were reasonably required. This presumption will be rebutted if the statutory provisions in question are, to use the words of Louisy J.: ‘so arbitrary as to compel the conclusion that it does not involve an exertion of the taxing power but constitutes in substance and effect, the direct execution of a different and forbidden power’”.

It is clear to their Lordships that by any test, the words “for the purpose of the relief of unemployment and the training of unemployed persons”, though appearing in a definition section (2(1)) of the Act, define the purposes for which the levy is to be raised, as later referred to in section 14(3). These purposes are equally clearly public purposes. As the learned Chief Justice pointed out in the Court of Appeal—

“In the context in which the expression [relief of unemployment] is used, it clearly means the relief of the unemployment situation in the country, and would plainly embrace the provision of work and wages to the unemployed . . . and generally all measures directed to the reduction and, if possible, the elimination of unemployment.”

As to the training of unemployed persons, Phillips J.A. in his judgment noted, clearly with approval, that Counsel for the present appellant conceded that the training of unemployed persons was capable of being considered to be a public purpose.

Dr. Ramsahoye's second submission is that the scheme of expenditure contemplated by the Act is in conflict with section 85(3) of the Constitution. Their Lordships do not accept that this ground is open to the appellant in an application under section 6 of the Constitution which alleges a deprivation of property resulting from the fact that the provisions of section 1 of the Constitution have been contravened in relation to him. But as Counsel's contention is that Parliament illegally delegated to the Governor-General the legislative function vested in it, some further examination of section 85 of the Constitution and section 19 of the Act seems appropriate. Section 85(3) reads:

"No moneys shall be withdrawn from any public fund other than the Consolidated Fund unless the issue of those moneys has been authorised by an Act of Parliament".

Counsel submits that this subsection requires a separate Act of Parliament of the nature of an Appropriation Act which would ensure parliamentary control. He cites *Auckland Harbour Board v. The King* [1924] A.C. 318. In that case the Minister of Railways was authorised by an Act of 1912 to pay to the appellants out of the Public Works Fund such sum as might be payable to the appellants by the Crown in accordance with an agreement which was arrived at subsequent to the enactment of the Act of 1912 whereby the Minister would pay the appellants £7,500 when the appellants granted a lease to B. & Co. In delivering the advice of the Board, Viscount Haldane stated at page 326—

"Sect. 7 of the Act of 1912 provides that the sum which was agreed on at £7,500 was to be payable to the appellants only on a condition—namely, on the granting of the lease, which was to be the consideration. The provision which Parliament thus made was to be in itself a sufficient appropriation, but only operative if the condition was actually satisfied. Their Lordships have not been referred to any appropriation or other Act which altered these terms. If, as must therefore be taken to be the case, it remained operative, the authority given by Parliament is merely the conditional appropriation provided in s.7, for a condition which was not fulfilled. The payment was accordingly an illegal one . . ."

In their Lordships' view, the *Auckland Harbour Board* case does not support Counsel's proposition that there must be a separate Act of Parliament authorising expenditure from a public fund established for a specific purpose. Here the Act itself at section 14(3) authorises the Minister to make advances from the Fund for any of the purposes provided for in the Act, and no further enactment is required as suggested by Counsel.

With respect to the question of delegation to the Governor-General, section 63(1) of the Constitution provides—

"The Governor-General shall, in the exercise of his functions, act in accordance with the advice of the Cabinet or a Minister acting under the general authority of the Cabinet, except in cases where by this Constitution or any other law he is required to act in accordance with the advice of any person or authority other than the Cabinet . . ."

Under section 19 of the Act, the Governor-General is empowered to make regulations for giving effect to the Act, and in particular for prescribing anything by the Act required to be prescribed, including the amending of the rates of levy fixed in section 7. Such a delegation is not

inconsistent with the underlying structure of the Constitution, although such a delegation would offend against American Constitutional principles as Dixon J. pointed out in *Victorian Stevedoring and General Contracting Co. Pty. Ltd. v. Dignan* (1931) 46 C.L.R. 73. (See also *Cobb & Co. Ltd. v. Kropp* [1967] A.C. 141.)

The third submission put forward on behalf of the appellant is that the Act infringed section 1(a) of the Constitution which guarantees protection against the taking or deprivation of property without due process. It is urged that due process does not refer simply to procedure but extends to the substance of the statute, regulation or other law, giving that term the wide interpretation accorded to it by section 105 of the Constitution. In support of this proposition *Smyth v. Ames* (1898) 169 U.S. 466 is cited. In that case the Supreme Court of the United States of America held—

“ A state enactment, or regulation made under the authority of a state enactment, establishing rates for the transportation of persons or property by railroad that will not admit of the carrier earning such compensation as under all the circumstances is just to it and to the public, would deprive such carrier of its property without due process of law and deny to it the equal protection of the laws, and would therefore be repugnant to the Fourteenth Amendment to the Constitution of the United States ”.

It is also contended that due process of law requires that a statute should be reasonably certain and should be predictable in its application. Reference is made to *Lassalle v. The Attorney-General* (1971) 18 W.I.R. 379 which dealt with due process of law in relation to a criminal matter. Counsel's submission is that certainty and predictability must extend to the provisions of a taxing statute.

Their Lordships entertain not the slightest doubt in respect of the scope of the principle of due process of law. It embraces both procedural law and substantive law, and this is so without any necessity for recourse to the extended meaning of the term “ law ” provided at section 105 of the Constitution. In their Lordships' view, the absence of any regulations made under the Act detracts nothing from its provisions and as to the complaint that section 14(3) is so general as to make the Act uncertain in operation, there is no justification for holding that the authorisation conferred on the Minister to make advances from the fund for any of “ the purposes thereby provided ” means anything other than the purposes provided by the Act, because any regulations to be *intra vires* must be limited to those purposes. Applying the widest possible interpretation to the due process rule, their Lordships see nothing in the Act upon which it can operate.

In the result, for the reasons set out above, their Lordships consider that the attack on the validity of the Act fails.

Learned Counsel for the respondent submits in the alternative that if the Act was invalid, it was validated by the provisions of section 18 of the Constitution of the Republic of Trinidad and Tobago Act, 1976. Having regard to the conclusions which they have reached, their Lordships consider it unnecessary to express any opinion as to the effect of section 18 of the Constitution of the Republic of Trinidad and Tobago Act, 1976.

Their Lordships will dismiss the appeal with costs.

In the Privy Council

RAMESH DIPRAJ KUMAR MOOTOO

v.

**THE ATTORNEY GENERAL OF
TRINIDAD AND TOBAGO**

DELIVERED BY
SIR WILLIAM DOUGLAS