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Court : Supreme Court of India

Decided On : Jan-31-1957

Reported in : AIR1957SC414; [1957]1SCR295

Judge : S.R. Das, C.J.,; B.P. Sinha,; Bhagwati,; S.K. Das and; Venkatarama Ayyar, JJ.

Acts : Assam Revenue Tribunal (Transfer of Powers) Act, 1948 - Sections 3(3); Government of India Act, 1935 - Sections 296 and 296(1); Eastern Bengal and Assam Excise Act, 1910 - Sections 9(2); Code of Criminal Procedure (CrPC) , 1898

Appellant : The State of Assam

Respondent : A.N. Kidwai, Commissioner of Hills Division and Appeals, Shillong

Judgement :

Das, C.J.

1. This judgment will dispose of the above noted 18 several Civil Appeals filed in this Court on certificate of fitness granted by the High Court of Assam under Art. 132 of the Constitution of India. The appeals Nos. 346, 347, 348, 349 and 359 are directed against the judgment of the said High Court passed on May 23, 1956, in Civil Rules Nos. 26, 31, 32 and 33 of 1956 issued by the said High Court on

several petitions filed under Art. 226 of the Constitution. The rest of the appeals arise out of nine other Civil Rules issued in nine other similar writ applications, which were disposed of by the judgment pronounced by the said High Court on June 12, 1956, which simply followed its previous judgment dated May 23, 1956. Each of these appeals raises the question of the vires of s. 3(3) of the Assam Revenue Tribunal (Transfer of Powers) Act, 1948 (Assam Act No. 4 of 1948) which is hereinafter referred to as 'the 1948 Act' and of the validity of the notification No. Rex. 184/52/39 issued by the Governor of Assam on July 5, 1955, in exercise of powers conferred on him by sub-s. (3) of s. 3 of the said Act appointing the Commissioner of Hills Division and Appeals as the appellate authority under the 1948 Act. All the appeals were accordingly heard together.

2. In order to correctly appreciate the question raised before us it is necessary at this stage to refer to certain relevant statutory provisions and rules. In 1910 was passed the Eastern Bengal and Assam Excise Act 1910 (E.B. and Assam Act 1 of 1910) which is hereinafter called 'the 1910 Act.' It is an Act to consolidate and amend the law in force in Eastern Bengal and Assam relating to the import, export, transport, manufacture, sale and possession of intoxicant liquor and intoxicant drugs. Sub-section (2) of s. 3 as amended and adapted, defines 'Board' as meaning the Provincial Government of Assam. Chapter II of the Act deals with establishments and control. Section 8 makes provision for the appointment of officers and the conferment, withdrawal and delegation of powers on them. Section 9 of the Act, which is of importance, was as follows :

9(1) In all proceedings under this Act, the Excise Commissioner and the Commissioner of the Division shall be subject to the control of the Board, and the Collector shall be subject to the control of the Excise Commissioner and the Board, and shall also, in such cases and such matters as the Provincial Government may specify, be subject to the control of the Commissioner of the Division.

(2) Orders passed under this Act or under any rule made hereunder shall be appealable as follows in manner prescribed by such rules as the Provincial Government may make in this behalf -

(a) to the District Collector, any order passed by a Collector other than the District Collector;

(b) to the Excise Commissioner or, in such cases and such matters as the Provincial Government may specify, to the Commissioner of the Divisions, any order passed by the District Collector; and

(c) to the Board, any order passed by the Excise Commissioner or by the Commissioner of a Division.

(3) In cases not provided for by clauses (a), (b) and (c) of sub-section (2), orders passed under this Act or under rules made hereunder shall be appealable in such cases and to such authorities as the Provincial Government may declare by rules made in this behalf.

(4) The Board, the Excise Commissioner, the Commissioner of the Division (in such cases and such matters as the Provincial Government may specify), or the District Collector may call for the proceedings held by any officer or person subordinate to it or him or subject to its or his control and pass such orders thereon as it or he may think fit.

3. Chapter III deals with import, export and transport of intoxicants. Manufacture, possession and sale of intoxicants are dealt with in Chapter IV. Section 18 prohibits the sale of intoxicants except under the authority and in accordance with the terms and conditions of a licence granted by the Collector or the Excise Commissioner in that behalf and makes certain provisions by way of exception to such prohibition. Chapter V provides for the imposition of duties and fees, either generally or for any specified local area, on any excisable article imported, exported, transported or manufactured under any licence granted under s. 15 or s. 16 of the Act the method of levy of such duty. Chapter VI makes provision for the form and the conditions of grant of licences, permits and passes. Section 28 of this chapter makes it obligatory on the Collector to take such measures as may best enable him to ascertain local public opinion in regard to the licensing and location of shops. Section 29 makes provision for the cancellation or suspension of licences, permits or passes. Under s. 32 no person to whom a licence has been

granted shall have any claim to the renewal of such licence or any claim to compensation on the determination thereof. Chapter VII lays down general provisions. Included in that chapter is s. 36, which confers power on the Provincial Government to make rules for the purpose of carrying out the provisions of the Act or any other law for the time being in force relating to the Excise Revenue. Under sub-s. (2) cls. (g), (h) and (i) of this section specific power is given to the Provincial Government to make rules regulating the periods for which and the persons to whom licences for the sale of any intoxicant may be granted, prescribing the procedure to be followed and the matters to be ascertained before any licence for such sale is granted and laying down, in the case of any intoxicant, the manner in which the duty on such article shall be levied. Prevention, detection and investigation of offences are dealt with in chapter VIII. Chapter IX provides for penalties and procedure.

4. In exercise of the powers conferred on it by s. 36 the Provincial Government of Assam have made elaborate rules. Part IV of the rules deals with licences, settlements and fees, duration and number of licences, location of shops, ascertainment of local public opinion, the procedure for settlement, prohibition on grant of retail licence to certain persons, grant of licence and so on and so forth. A perusal of the Act and rules will make it clear that no person has any absolute right to sell liquor and that the purpose of the Act and the rules is to control and restrict the consumption of intoxicating liquors, such control and restriction being obviously necessary for the preservation of public health and morals, and to raise revenue.

5. Then came the Government of India Act, 1935. It was brought into operation on April 1, 1937. Section 296 of the Act, on which the main controversy in these appeals turns, before its adaptation ran as follows :-

296(1) No member of the Federal or a Provincial Legislature shall be a member of any tribunal in British India having jurisdiction to entertain appeals or revise decisions in revenue cases.

(2) If in any Province any such jurisdiction as aforesaid was, immediately before the commencement of Part III of this Act, vested in the Local Government, the

Governor shall constitute a tribunal, consisting of such person or persons as he, exercising his individual judgment, may think fit to exercise the same jurisdiction until other provision in that behalf is made by Act of the Provincial Legislature.

(3) There shall be paid to the members of any tribunal constituted under the last preceding sub-section, such salaries and allowances as the Governor exercising his individual judgment may determine, and those salaries and allowances shall be charged on the revenues of the Province.

6. It will be recalled that under s. 9 of the 1910 Act the Board, which by s. 3(2) thereof meant the Provincial Government, was the final appellate authority. The Provincial Government was composed of ministers who were necessarily members of the Legislature. In fact, in Assam the ministers used to function as the Board and exercise the final appellate authority under s. 9 of the 1910 Act. The policy of Parliament was that such practice must be discontinued and hence it introduced a prohibition against it by sub-s. (1) of s. 296 quoted above. The intention of Parliament was not, however, to do away withthe right of final appeal but to preserve it. The ban imposed by sub-s. (1) prevented the Board, meaning the Provincial Government, from functioning as the final appellate authority under the 1910 Act. Therefore, some provision had to be made to set up some other body to exercise that appellate power. Accordingly Parliament, by sub-s. (2) of s. 296, empowered the Governor of those provinces where the appellate authority was, prior to the commencement of that Act, vested in the Provincial Government, to constitute a tribunal to exercise the same jurisdiction. The tribunal so constituted by the Governor was to exercise jurisdiction until other provision in that behalf was made by the Legislature. In exercise of powers conferred on him by sub-s. (2) of that section the Governor of Assam constituted a single member Tribunal called at first the Board and later as the Assam Revenue Tribunal. From time to time the personnel of this tribunal was changed by notifications issued in that behalf. The Assam Revenue Tribunal so constituted by the Governor functioned until 1946, when the Assam Revenue Tribunal Act, 1946 (Assam Act II of 1946) hereinafter referred to as 'the 1946 Act' was passed.

7. Sub-section (1) of s. 3 of the 1946 Act provided that the Provincial Government should constitute a tribunal to be called the Assam Revenue Tribunal consisting of a President and two members. Sub-section (2) fixed their period of service as five years. The qualifications of the President and the members were prescribed by sub-s. (3) and provision was made by sub-s. (4) for filling up of vacancies. Sub-section (5) provided that the President and the non-official members should be paid such salary as might be prescribed, i.e., prescribed by rules made under the Act. Powers and functions of the tribunal were defined by Sections 5 and 6 of the Act. Sub-section (2) of s. 5 conferred on the tribunal jurisdiction to entertain appeals and revise the decisions in all revenue cases arising under the provisions of the enactments specified in the schedule in which such jurisdiction was vested in the Provincial Government immediately before the Act. The schedule set out nine enactments. Section 7 prohibited any further appeal or revision against any order passed by the tribunal. Section 8, however, conferred on the tribunal power to review its own orders. Section 9 abolished the Assam Revenue Tribunal constituted by the Governor and provided that all appeals and applications for revision pending before the said tribunal should be deemed to have been instituted before the tribunal constituted under this Act and directed the same to be decided by this tribunal as if they were instituted before it. In exercise of powers so conferred on it the Provincial Government constituted a three member tribunal to exercise the final appellate authority.

8. Thus, broadly speaking, under the 1910 Act up to March 31, 1937, appeals lay under s. 9 from the Deputy Commissioner to the Excise Commissioner and from the latter to the Board, that is to say, the Provincial Government. On and from April 1, 1937, when the Government of India Act, 1935 came into force up to June 1946 when the 1946 Act was passed appeals lay from the Deputy Commissioner to the Excise Commissioner and from the latter to the one member tribunal constituted by the Governor of Assam and after the enactment of the 1946 Act, which abolished the Governor's tribunal, appeals lay from the Deputy Commissioner to the Excise Commissioner and from the latter to the three member tribunal constituted under the 1946 Act.

9. On April 5, 1948, a High Court was established for the province of Assam. On April 6, 1948, the Assam Revenue Tribunal (Transfer of Powers) Act, 1948 (Assam IV of 1948), received the assent of the Governor of Assam. It was published in the official gazette on April 8, 1948, and was brought into force on the same day by a notification issued by the Provincial Government under s. 1(3). Section 3 of this 1948 Act runs as follows :

3 (1) Subject to the provisions of sub-section (3) of this section the Assam High Court shall exercise such jurisdiction to entertain appeals and revise decisions in revenue cases as was vested in the Provincial Government immediately before the first day of April, 1937 under any law for the time being in force.

(2) In particular and without prejudice to the generality of the foregoing provision the Assam High Court shall have jurisdiction to entertain appeals and revise decisions in all revenue cases arising under the provisions of the enactments specified in Schedule A in which such jurisdiction was vested in the Provincial Government immediately before the first day of April 1937, and

(3) Without prejudice to the foregoing provisions the authority appointed by general or special order of the Provincial Government shall exercise such jurisdiction to entertain appeals and revise decisions in matters arising under the provisions of the enactments specified in Schedule B as is exercised now by the Revenue Tribunal and was vested in the Provincial Government before the first day of April 1937, and

(4) The Assam High Court and the authority appointed by Provincial Government shall have jurisdiction to entertain appeals and revise decisions within the field of jurisdiction respectively transferred by this Act to the Assam High Court and the authority appointed by the Provincial Government in cases specified in section 7(2).

10. The drafting of this section is indeed curious, for while sub-s. (1) starts with the words of reservation namely 'subject to the provisions of sub-s. (3) of this section' and sub-s. (2) is without prejudice to the generality of sub-s. (1), sub-s. (3) is expressed to be 'without prejudice to the foregoing provisions', that is to say the

provisions of sub-ss. (1) and (2). Section 5 prohibits any appeal or revision against any orders passed by the Assam High Court or the 'authority referred to in s. 3(3) 'in exercise of its powers of appeal or revision under the Act. Section 6 confers power on the Assam High Court or the 'authority referred to in s. 3(3)' to review its own decision or order under certain conditions. Section 7 provides for the abolition of the Assam Revenue Tribunal and the disposal of pending cases before the same. It runs as follows :-

'7(1) From the date on which this Act comes into force -

The Assam Revenue Tribunal shall be deemed to have been abolished; and the President and members thereof shall be deemed to have relinquished their posts as President and members of the Tribunal. (2) The appeals and applications for revision pending before the said Tribunal on the date on which this Act comes into force shall be deemed to have been instituted before the Assam High Court or the authority referred to in s. 3(3) according to the field of jurisdiction transferred by this Act to the High Court and the aforesaid authority respectively and shall be decided as if they were instituted before the Assam High Court or the authority as the case may be.'

11. It is difficult to appreciate the propriety of the use of the word 'deemed' in sub-s. (1) of s. 7 and this vagueness has given rise to some argument before us which will be dealt with later on. Section 8 confers power on the Assam High Court to make rules by notification in the official gazette consistent with the provisions of this Act for carrying out the purpose of this Act and like power is conferred on the Provincial Government to make rules for the guidance of the authority appointed by it 'as contemplated by s. 3(3)'. The Act contains two schedules. Schedule A contains five enactments, namely, the first four and the ninth enactment referred to in the schedule of the 1946 Act, and sch. B contains the remaining four enactments of the schedule to the 1946 Act. Under s. 3 the appeals and revisions arising out of the enactments specified in sch. A are to be dealt with by the High Court and those arising out of the enactments specified in sch. B are to be dealt with by the authority appointed by general or special order of the Provincial Government.

12. In exercise of powers conferred on it by s. 3(3) of the 1948 Act the Provincial Government from time to time issued notifications appointing persons to exercise the power of the appellate authority. When the Act came into force on April 8, 1948, the Revenue Secretary was appointed the appellate authority. Curiously enough, however, on June 15, 1948, the Minister of Excise to the Government of Assam was appointed as the appellate authority. This was promptly challenged as a flagrant violation of the provisions of s. 296(1) of the Government of India Act, 1935, and was ultimately declared to be invalid by the Assam High Court. Thereafter fresh notifications were issued on September 15, 1952, and May 11, 1955, each superseding the immediately previous notification. On June 2, 1955, a new post called the Commissioner of Hills Divisions and Appeals was created and Notification No. Rex. 184/52/39 was issued on July 5, 1955, whereby the Commissioner of Hills Divisions and Appeals was appointed as the appellate authority after cancellation of the preceding notification dated the May 11, 1955.

13. In 1955 arose the question of granting licence and settlements of country spirit shops in different areas for the year 1956-57. Rival claimants submitted their respective applications. The Deputy Commissioner on the advice of the Advisory Committee made orders for settlements in favour of certain persons. Appeals were promptly preferred by the disappointed claimants to the Excise Commissioner. The Excise Commissioner in some cases upheld the orders of the Deputy Commissioner and in some cases reversed his orders and directed licence to issue to some other claimants. The party dissatisfied with the order of the Excise Commissioner went up on further appeal to the appellate authority constituted by the last mentioned Notification of the Provincial Government. In some cases the appellate authority upheld the orders of the Excise Commissioner, in some cases it reversed the same and restored the orders of the Deputy Commissioner and in some cases it reversed the orders of the Excise commissioner and did not restore the orders of the Deputy Commissioner but made orders for the grant of licences to third parties who were also claimants for such licences. Parties dissatisfied with the order made by the appellate authority filed petitions under Art. 226 of the Constitution of India for appropriate writs quashing the orders of the Appellate Authority and the several Civil Rules hereinbefore referred to were issued to the respondents to show cause why the writs prayed for should not be issued. Civil

Rules Nos. 26, 31, 32 and 33, all of 1956, were taken up for hearing together by the High Court.

14. At the hearing before the High Court three points were raised on behalf of the petitioners, namely :

(1) That s. 3(3) of the 1948 Act was bad, because (a) it was repugnant to s. 296(2) and (b) it conferred essential legislative power on the Provincial Government and amounted to excessive delegation of legislative power;

(2) that Notification No. Rex. 184/52/39 issued on July 5, 1955, was repugnant to the whole scheme and policy of s. 9 of the 1910 Act; and

(3) that assuming that s. 3(3) of the 1948 Act was valid the power of the Provincial Government to appoint an appellate authority came to an end once the authority had been appointed.

15. On the first point the High Court took the view that s. 296(2) placed an obligation on the Provincial Legislature to constitute a tribunal but the Provincial Legislature failed to carry to this positive mandate and left the constitution of the appellate authority to the Provincial Government in violation of the obligation enjoined upon it by s. 296(2). This reading of s. 296(2) later on was further emphasized and appears to have been the central theme running throughout the judgment of the High Court. The High Court also took the view that, apart from s. 296(2), s. 3(3) of the 1948 Act constituted an excessive delegation of legislative power conferred on the Provincial Legislature by Sections 99 and 100 of the Government of India Act, 1935, read with entries 2, 31 and 40 of list II of the Seventh schedule thereto. The High Court also upheld the petitioner's contention that the Notification dated July 5, 1955, was repugnant to s. 9 of the 1910 Act. In the view the High Court took on the first two points it did not express any opinion on the third point. In the result the High Court held that s. 3(3) of the 1948 Act and the said Notification were void and that the appellate authority which heard the revenue appeals had not been validly or lawfully constituted and that, therefore, its decisions were nullities. The High Court accordingly issued appropriate writs quashing the said orders. The other Civil Rules came up for hearing later on and

were disposed of by another judgment of the High Court pronounced on June 12, 1956, which simply followed its earlier decision and accordingly the High Court issued similar writs quashing the said orders. The State of Assam as well as some of the parties have come up on appeal with the requisite certificate from the High Court as hereinbefore mentioned.

16. The main attack on the part of the State of Assam was directed against the High Court's view that s. 3(3) of the 1948 Act was void on the two grounds referred to in the judgment. As already indicated the principal theme running throughout that judgment was that s. 296(2) of the Government of India Act, 1935 had placed an obligation on the Provincial Legislature to constitute a tribunal. We are unable to accept this reading of that section. The purpose of s. 296 was to deal with courts of appeal in revenue cases. By sub-s. (1) it imposed a ban on the members of the Federal or Provincial Legislature and prohibited them from becoming members of any tribunal in British India having jurisdiction to entertain appeals or revise decisions in revenue cases. It appears that in some of the provinces such jurisdiction was, immediately before the commencement of Part III of the Government of India Act, vested in the local government, which in effect meant ministers, who of necessity had to be members of the Legislature. Having imposed the ban and at the same time intending that the right of final appeal should be maintained, Parliament had to make provision for preserving this right of final appeal in those provinces in which such jurisdiction was, immediately before the commencement of Part III of the Act, vested in the local Government. Accordingly Parliament authorised the Governor to constitute a tribunal consisting of such person or persons as he, exercising his individual judgment, might think fit, to exercise the same jurisdiction. In Sections 99 and 100 read with the several entries in List II Parliament had already authorised the Provincial Legislatures to make laws with respect to the jurisdiction and powers of all courts except the Federal Court (entry 2), Intoxicating and Narcotic Drugs (entry 31) and Duties of Excise (Entry 40). Evidently Parliament did not intend that the power to constitute a tribunal so conferred on Provincial Legislatures of those provinces in which appellate jurisdiction was, at the date of that Act, vested in the local government should be affected or whittled down by the constitution of a tribunal by the Governor under sub-s. (2) and accordingly it provided that the tribunal constituted

by the Governor to exercise the appellate jurisdiction should continue 'until other provision in that behalf' was made by the Act of the Provincial Legislature. The concluding clause in the section clearly indicated the point of time up to which the Governor's tribunal was to function. The purpose of the section was clearly not to impose any restriction on the legislative power conferred on the Provincial Legislatures by Sections 99 and 100 read with the aforesaid entries in list II of the Seventh schedule. Sub-section (2) of s. 296 imposed no compulsion whatever on the Provincial Legislature to make.'other provision in that behalf'. Indeed no provision in that behalf was made by the Assam Legislature until it enacted the 1946 Act. We are unable, with great respect, to read into s. 296(2) any mandate requiring the Provincial Legislature to make any provision. On the contrary it was left entirely to the Provincial Legislature in the provinces referred to therein to make or not to make any law under the entries referred to above and the only effective provision of that sub-section was to authorise the Governor to constitute a tribunal and to fix a terminus as quo up to which the Governor's tribunal could continue to function.

17. Learned counsel appearing for the respondents have not sought to support the extreme construction put upon s. 296(2) by the High Court. They have, however, pointed out that the Governor's tribunal was to continue until other provision 'in that behalf' was made by the Provincial Legislature and contended that some meaning must be given to the words 'in that behalf'. They argued that those words related back and referred to the constitution of the tribunal by the Governor, that so read the meaning of the sub-section plainly was that the Governor's tribunal was to continue to function until the Provincial Legislature made other provision for the constitution of a tribunal of its own. They conceded that the power of the Provincial Legislature to constitute a tribunal was not derived from s. 296(2) but was conferred on it by Sections 99 and 100 read with the relevant entries in List II of the Seventh schedule, but they contended that the provision that until in exercise of those powers the Provincial Legislature constituted a tribunal the Governor's tribunal would continue clearly indicated that the Governor's tribunal was to be a temporary body and this circumstance impliedly imposed on the Provincial Legislature an obligation requiring it to exercise its power only for constituting a tribunal. We are unable to accept this contention. The Governor was

empowered to constitute a tribunal to exercise the same jurisdiction as was, immediately before the commencement of Part III of the Government of India Act, 1935, vested in the Provincial Government. The tribunal so constituted by the Governor was to function until other provision was made 'in that behalf'. The words 'in that behalf' need not necessarily relate back to the constitution of a tribunal. Learned counsel for the appellants suggest that the words 'other provision in that behalf' may grammatically refer to what preceded immediately, namely, to the exercise of the same jurisdiction. In other words they contend that the sub-section means that the Governor's tribunal would continue to exercise the jurisdiction until other provision in that behalf, that is to say, other provision for or with respect to the exercise of the same jurisdiction was made by Act of the Provincial Legislature. It is pointed out that the construction suggested by learned counsel for the respondents would lead us to the conclusion that the intendment of the concluding part of the sub-section was to impose a fetter on the legislative powers of the Provincial Legislatures of those provinces referred to in the sub-section so that they could constitute a tribunal if they ever wanted to exercise their legislative powers under the entries mentioned above but could make no other provision with respect to the exercise of such jurisdiction as was being exercised by the Provincial Government at the commencement of the Government of India Act, 1935. On this construction the Legislatures of those provinces only would be prevented from abolishing the right of final appeal, while other provinces in which the appellate jurisdiction was not, at the date of the commencement of Part III of the Government of India Act, 1935, being exercised by the local government would be free to abolish the right of final appeal. A construction which leads to such a result should, they contend, be avoided, if possible. The criticisms advanced against the construction put upon s. 296(2) by the High Court which has been pressed upon us in a slightly modified form as hereinbefore mentioned do not appear to us to be wholly untenable or devoid of substance. We need not, however, base our decision on those considerations, for on a plain reading of s. 296(2) its purpose clearly was to authorise the Governors of certain provinces to constitute a tribunal and to prescribe a time limit up to which the tribunal so constituted by him was to exercise the appellate jurisdiction. Beyond this the sub-section was not intended to go. It was not concerned with the legislative powers of

the Provincial Legislatures which had already been prescribed by Sections 99 and 100 read with List II of the Seventh schedule. It imposed no compulsion on the Provincial Legislatures to make any law or to impose any restriction whatever on the legislative powers of the Provincial Legislatures. The critical concluding clause in sub-s. (2) only fixed a terminus a quo and did nothing further. Even assuming that the construction suggested by learned counsel for the respondents were to be accepted, namely, that s. 296(2) imposed an obligation on the Provincial Legislature to constitute a tribunal, we take the view, for reasons to be presently stated, that that obligation has in substance been fully discharged by s. 3(3) of the 1948 Act and this leads us to a consideration of the second point founded on the doctrine of delegation of power.

18. It was said that apart from the questions whether s. 296(2) contained a mandate and whether the Provincial Legislature had obeyed the same, s. 3(3) of the 1948 Act must be struck down on the ground that the Provincial Legislature had not exercised its essential legislative functions, under Sections 99 and 100 read with the aforesaid entries but had delegated it to the Provincial Government without laying down any policy or principle to guide the latter in exercising the same. Reference was made to the 1946 Act and it was urged that that Act prima facie carried out the obligations placed upon the legislature by s. 296(2) and that apart from that question that Act laid down by the policy and principle, namely, the number of members of the tribunal, their qualifications, functions, and term of their office and remuneration and that the only authority which the legislature by that Act delegated to the Provincial Government was to select the personnel of the tribunal. In comparison it was pointed out that the 1984 Act did not lay down any legislative policy or principle by which the Provincial Government was to be guided in the exercise of the delegated power. By doing so the Provincial Legislature had in effect abdicated its function and made the Provincial Government a parallel legislative authority to constitute a tribunal. In short, as stated by the High Court, the legislature told the Provincial Government 'you appoint the tribunal as and when you like instead of my doing so.' The legislature, it was contended, could not in this way part with its essential legislative functions. Elaborate arguments were advanced before us as to the permissible limit of delegation of legislative power and reference was made to numerous authorities English, American and Indian,

ranging from Burah's case [[1878] L.R. 5 I.A. 178.] to In re, Delhi Laws Act, 1912 [[1951] S.C.R. 747.] and finally to Raj Narain Singh v. The Chairman, Patna Administration Committee : [1955]1SCR290 . In the view we have taken of the true meaning and effect of the 1948 Act it is, however, not necessary for us to embark upon a discussion on the baffling subject of delegation of legislative powers and the permissible limits thereof as to which there is considerable scope for divergence of opinion.

19. In order to correctly interpret the 1948 Act one has to have a clear conception of the circumstances in which and the purpose for which that statute came to be enacted. It will be recalled that there was the 1910 Act dealing with the excise law in force in Eastern Bengal and Assam. That Act set out a hierarchy of appellate authority as will appear from s. 9(2) of that Act hereinbefore quoted. Then came the Government of India Act, 1935, s. 296(2) of which authorised the Governor to constitute a tribunal to exercise the appellate jurisdiction that was, immediately before the commencement of that Act, being exercised by the Provincial Government. The Governor's tribunal was to exercise such jurisdiction until the Provincial Legislature made other provision with respect thereto. By the 1946 Act the Assam Legislature made other provision for the exercise of the final appellate powers by the tribunal constituted by the Provincial Government in exercise of the powers conferred on it by s. 3 of that Act. Jurisdiction was conferred on the Tribunal to entertain appeals and revise decisions in all revenue cases arising under the provisions of the nine enactments specified in the schedule thereto, and in all cases which stood transferred to the Tribunal from the Assam Revenue Tribunal constituted by the Governor as specified in s. 9 The High Court of Assam had just been established on April 5, 1948. The purpose of the 1948 Act, as recited in its preamble, was to transfer the powers and jurisdiction exercised by the revenue tribunal to the Assam High Court and to an authority appointed by general or special order of the Provincial Government. Section 3, which has been quoted above, constituted the Assam High Court as the appellate authority for exercising such jurisdiction to entertain appeals and revise decisions in revenue cases as was vested in the Provincial Government immediately before April 1, 1937, and in particular in all revenue cases arising under the provisions of the enactments specified in sch. A to the Act. By sub-s. (3) of s. 3 power was conferred on the

Authority appointed by general or special order of the Provincial Government to exercise such jurisdiction to entertain appeals and revise decisions in matters arising under the provisions of the enactments specified in sch. B to the Act as was then exercised by the revenue tribunal and was vested in the Provincial Government before April 1, 1937. Turning to the schedules to the Act it will be noticed that the first four and the ninth item of the schedule to the 1946 Act have been set out in sch. A to the 1948 Act and items 5 to 8 of the schedule to the 1946 Act have been assigned to sch. B to the 1948 Act. By s. 7 of the 1948 Act the Assam Revenue Tribunal is to be deemed to have been abolished and the President and the members thereof are to be deemed to have relinquished their posts as President and members of the tribunal. Sub-section (2) of that section transfers the appeals and applications for revision pending before the Assam Revenue Tribunal to the Assam High Court or the authority referred to in s. 3(3) according to the field of jurisdiction transferred by the 1948 Act to the High Court and the aforesaid authority respectively and directs that the High Court and the aforesaid authority should decide such appeals and applications for revision as if they were instituted before the Assam High Court or the authority as the case may be. Section 8 confers rule making power on, amongst others, the Provincial Government for the guidance of the Authority appointed by it as contemplated by s. 3(3). Reading the relevant provisions of the Act it is quite clear that the Assam Legislature had applied its mind and determined that the Assam Revenue Tribunal constituted under the 1946 Act should be abolished; that the Legislature applied its mind and further determined that the jurisdiction and powers of the Assam Revenue Tribunal should be distributed between two bodies, namely, those specified in schedule A should go to the High Court and those specified in schedule B to the Authority referred to in s. 3(3). At one stage of the arguments an endeavour was made to find out a rational basis of the distribution of the appellate powers between the two bodies. It was stated that the appeals or revisions in which Government was interested were sent to the High Court. A reference to the enactments in the schedules does not bear out this basis of distribution, for the Government may quite clearly be interested in appeals and revisions arising under the Assam Forest Regulation, which is assigned to schedule B as item (iii) thereof. It was also said that the appeals and revisions with respect to revenue matters

have been assigned to the High Court. But some of the enactments specified in sch. B relate to revenue. It is, therefore, futile to try and ascertain a logical basis for the distribution of the appellate authority between the two bodies. Nor do we think that it is necessary at all to divine any rational basis for such distribution. It is enough to say that the legislature in its wisdom and in the interest of smooth administration has thought fit to assign some of the appellate and revisional powers exercised by the Assam Revenue Tribunal to the High Court and the rest to the Authority referred to in s. 3(3).

20. Two alternative arguments have been advanced before us on the assumption that the Assam Legislature was labouring under some mistake or misapprehension. In the first place is was urged that the legislature was under the mistaken belief that the tribunal set up under the 1946 Act though abolished for the purpose of the Act remained nevertheless as an existing tribunal for the purpose of the 1948 Act. This argument is founded on the inartistic use of the word 'deemed' in s. 7(1) of the 1948 Act. But this argument cannot hold good for a moment in view of sub-s. (2) of that section, whereby the appeals and applications for revision pending before the Assam Revenue Tribunal on and from the date of the 1948 Act were to be deemed to have been instituted before the Assam High Court or the Authority referred to in s. 3(3) and the Assam High Court or the said Authority was directed to decide such appeals and applications as if they were instituted before the Assam High Court or the Authority as the case might be. This shows that the Assam High Court and the Authority are, therefore, bodies quite different from the old Assam Revenue Tribunal. Therefore, it cannot possibly be argued that the old 1946 Act tribunal, notwithstanding its abolition, continued to exist for the purpose of the 1948 Act, for sub-s. (2) of s. 7 quite clearly authorised the High Court and the Authority referred to in s. 3(3) but not the 1946 Act Tribunal to decide the appeals and applications for revision, which were pending before the old Assam Revenue Tribunal.

21. The alternative argument was that the legislature in enacting the 1948 Act proceeded on the basis that the power to set up a tribunal resided in the Provincial Government and not in the legislature and that, therefore, the 1948 Act did not purport to be an Act for constituting an appellate tribunal but that the purpose of

the Act was only to distribute the appellate powers as recited in its preamble. It was argued that by this Act the legislature did not itself constitute a tribunal nor authorise the Provincial Government to set up a tribunal. It was further contended that assuming that the legislature had authorised the Provincial Government to set up a tribunal then there had been an excess of delegation of legislative power. We are unable to accept the correctness of this alternative argument. There is no particular form of expression that is necessary for constituting a tribunal. The Assam High Court was undoubtedly an existing tribunal, but apart from s. 3(1) and (2) that High Court was not an appellate authority having jurisdiction to entertain appeals and revise decisions in all revenue cases arising under the provisions of the enactments specified in schedule A to the Act. It is the 1948 Act which, by sub-ss. (1) and (2) of s. 3, constitutes the Assam High Court as the appellate authority for exercising such jurisdiction and this it has done by simply saying that the Assam High Court shall exercise such jurisdiction or the Assam High Court shall have jurisdiction to entertain appeals and to revise decisions. If the language of sub-ss. (1) and (2) of s. 3 is sufficient to constitute the Assam High Court as an appellate authority why does not the language of sub-s. (3) of the same section amount to the constitution of the Authority referred to therein as the appellate authority to exercise such jurisdiction to entertain appeals and revise decisions in matters arising under the provisions of the enactments specified in schedule B thereto The sub-section has undoubtedly been very inartistically and inaptly drafted. The intention of the framers of the sub-section, however, appears to be quite clear that the legislature itself applied its mind and constituted an appellate authority. If that were not so then after the abolition of the Assam Revenue Tribunal, which took effect on the date of the Act, there would result a vacuum as regards the exercise of jurisdiction to entertain appeals and revisions under the provisions of the enactments specified in schedule B and there would be no authority to deal with the pending appeals and revisions or future appeals and revisions arising under those several enactments. It is further to be noticed that the sub-section uses the word 'appointed' and not 'constituted'. The word 'appointed' is inappropriate to signify the constitution of any authority but is quite proper to signify the selection of the personnel of the already constituted authority to exercise the appellate powers of that authority. In order to give a rational meaning

to the whole Act one is driven to the conclusion that by sub-s. (3) the legislature itself constituted the authority and only left it to the Provincial Government to appoint persons to man that authority and to perform the duties of that authority. It appears to be the usual practice of Indian legislatures to constitute authorities in this manner. In support of such legislative practice reference may be made to the following enactments :

1. The Central Board of Revenue Act, 1924 (Act No. IV of 1924), Section 2.

2. The Indian Boilers Act, 1923 (Act V of 1923), Section 20.

3. Bengal Board of Revenue Act, 1913, Sections 3 and 4.

4. The Motor Vehicles Act, 1939 (Act IV of 1939), Section 64.

5. The Factories Act, 1948 (Act LXIII of 1948), Section 107.

6. Schedule Districts Act (XIV of 1874), Section 6.

7. Essential Supplies (Temporary Powers) Act, 1946, Section 4.

8. Assam Act XVII of 1947 (Sales Tax Act), Section 30.

9. Bombay Act V of 1946 (Sales Tax Act), Section 21.

10. Bengal Raw Jute Taxation Act (XI of 1941), Section 21.

11. Extra Provincial Jurisdiction Act, 1947 (Central Act XLVII of 1947), Sections 3 and 4.

12. Garo Hills Regulation 1 of 1882, Section 6.

13. Assam Requisition and Control of Vehicles Act (Act XXXII of 1950), section 9.

14. Assam Adhiars Protection and Regulation Act, 1948 (Act XII of 1948), Section 9.

15. Assam Forest Product Acquisition Act (XXXI of 1950), Section 7.

22. 'Appointed' does not necessarily mean already appointed. It may also mean 'to be appointed' at any future time. When a person is appointed by the Provincial Government after the date of the Act, he may immediately thereafter be well described as a person appointed by the Provincial Government.

23. It is next suggested that even if the legislature itself constituted the authority it, nevertheless, delegated essential legislative functions with respect to the appointment of members, for the legislature had not laid down any policy or principle as to the number, qualification, remuneration or period of service of persons to be appointed to perform the duties of the tribunal. We do not think that there is any force in this contention. Section 296(2) of the Government of India Act, 1935, itself, which authorised the Governor to constitute a tribunal did not indicate any qualification for the eligibility of the persons to be appointed as members of the tribunal. It is clear that the tribunal was to sit in appeal over the decision of the Excise Commissioner and that by itself gives some indication that the person or persons to be appointed to the tribunal should have the requisite capacity and competency to deal with appeals from such high officials. We do not consider that there has been an excessive delegation of legislative power.

24. It was finally urged that the intention of the legislature in enacting the impugned Act was to give effect, inter alia, to the provisions of the Excise Act and that there was nothing in any portion of the impugned Act to indicate that the intention of the legislature was to effect the repeal of the provisions of s. 9 of the 1910 Act. There was no question, it was said, of any implied repeal of any portion of s. 9. This argument overlooks the fact that in Assam the 'Board' meant of the Provincial Government. Section 296(1) debarred the members of the legislature, which included the ministers, from exercising any appellate authority and s. 296(2) authorised the Governor to constitute a tribunal to exercise the appellate jurisdiction which was being exercised by the Provincial Government immediately before the commencement of the Government of India Act, 1935. Therefore, the jurisdiction of the Board meaning the Provincial Government under s. 9 of the 1910 Act was taken away and vested first in the Governor's tribunal and thereafter in the Assam Revenue Tribunal constituted under the 1946 Act, and this appellate jurisdiction was by the 1948 Act distributed between the Assam High Court and

the authority referred to in s. 3(3) of the last mentioned Act. There is, in the circumstances, nothing in the impugned Act which is repugnant to s. 9(2) as modified by s. 296 of the Government of India Act, 1935. It was next pointed out that the Excise Commissioner and the Commissioner of a Division had almost co-ordinate powers under the scheme of s. 9, that the powers of the Commissioner of a Division were more restricted as they related only to matters specified by the Provincial Government and that there was no provision in s. 9 for any appeal to the Commissioner of a Division against the orders of the Excise Commissioner. This is true enough, but the 'Board' meaning the Provincial Government had been superseded by s. 296(2) of the Government of India Act, 1935, whereby the Assam Revenue Tribunal was constituted by the Governor as the authority to entertain appeals and revisions from the Excise Commissioner. The Governor's tribunal was replaced by the Assam Revenue Tribunal constituted under the 1946 Act, which in its turn was replaced by two authorities, namely, the Assam High Court and the Authorities referred to in s. 3(3) of the 1948 Act. We see no impropriety in the Commissioner of Hills Division and Appeals, assuming that he is the same as the Commissioner of a Division, being appointed as the authority to entertain appeals from the Excise Commissioner. It s true that appeal from the decision of the Commissioner of a Division in matters specified by the Provincial Government lay initially to the Board and thereafter to the Governor's tribunal and then to the Assam Revenue Tribunal and finally to the tribunal referred to in s. 3(3) of the 1948 Act. The possibility of an appeal from the decision of the Commissioner of a Division coming up before the authority referred to in s. 3(3) cannot in our opinion affect the validity of the Notification whereby the Commissioner of Hills Division and Appeals was appointed as the authority contemplated by s. 3(3). At the highest it may be that the Commissioner of Hills Division and Appeals exercising the powers of the authority referred to under s. 3(3) may be disqualified from entertaining the appeals from his own order, but that does no affect his power to entertain appeals from the Excise Commissioner. Even that situation will not arise, for under r. 341 of the Excise Rules appeals arising out of cases decided in the excluded areas by the Commissioner of Hills Division and Appeals would go to the Governor. In any event there does not appear to the any repugnancy between the Notification and the so called principle or policy of s. 9 of

the 1910 Act as regards the hearing of appeals from the decisions of the Excise Commissioner. In our opinion there is no substance in this point.

25. No other point of law or fact has been urged before us. In our opinion for reasons stated above the judgments of the High Court appealed from should be set aside and those of the appellate authority should be restored. All the appeals are accordingly allowed. The controversy, it seems to us, arose by reason of the inartistic drafting of the relevant enactment and in the premises, although the State of Assam has succeeded in the appeals filed by it, we make no order as the costs in its favour in any of the appeals filed by it. The successful appellants in the other appeals will get the costs of their respective appeals from the respondents in those appeals including the State of Assam.

26. Appeals allowed.

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