



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 513 of 2020

With

R/SPECIAL CIVIL APPLICATION NO. 2741 of 2020

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE J.B.PARDIWALA

Sd/-

and

HONOURABLE MR. JUSTICE BHARGAV D. KARIA

Sd/-

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

NATHALAL MAGANLAL CHAUHAN

Versus

STATE OF GUJARAT

Appearance:

MR CHETAN K PANDYA for the Petitioner(s) No. 1

MR KAMAL B.TRIVEDI, ADVOCATE GENERAL with MR VINAY VISHEN

AND MR CHINTAN DAVE, AGP for the Respondent(s) No. 1,2,3,4

CORAM: HONOURABLE MR.JUSTICE J.B.PARDIWALA

and

HONOURABLE MR. JUSTICE BHARGAV D. KARIA

Date : 04/02/2020

COMMON ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE J.B.PARDIWALA)



1. RULE returnable forthwith. Mr.Vinay Vishen and Mr.Chintan Dave, the learned AGP waive service of notice of rule for and on behalf of the State respondents.

2. Since the issues raised in both the writ-applications are the same, those were heard analogously and are being disposed of by this common judgment and order.

3. For the sake of convenience, the Special Civil Application No.513 of 2020 is treated as the lead matter. By this writ-application under Article 226 of the Constitution of India, the writ-applicant has prayed for the following reliefs :

“(a) To issue a writ of mandamus and/or any other writ, order or direction, directing to quash and set aside the Notification No.EST/1/Jurisdiction/B.2168 dated 05.07.2017 issued by the Commissioner of State Tax, Gujarat State at Annexure-A to the petition.

“(b) Pending admission, final hearing and disposal of this petition, to stay implementation and operation of the Notification No.EST/1/Jurisdiction/B.2168 dated 05.07.2017 issued by the Commissioner of State Tax, Gujarat State at Annexure-A to the petition.

“(c) Pending admission, final hearing and disposal of this petition to release the petitioner's son Paresh Nathalal Chauhan as he has been arrested under the authorization issued by Additional Commissioner of State Tax exercising



powers under Section 69 of the Gujarat Goods and Services Tax Act, 2017 relying on the Notification dated 05.07.2017 at Annexure-A to this petition.

(d) Pass such other and further orders as the Hon'ble Court deems just and expedient.

(e) To provide for the cost of this petition to the petitioner.”

4. The facts giving rise to the present writ-application may be summarised as under :

5. It is the case of the writ-applicant that his son, namely Paresh Nathalal Chauhan, is a proprietor of a proprietary concern running in the name of Lancer Enterprise. The proprietary firm is situated at Vrundavan Estate, Ramol, Ahmedabad.

6. According to the writ-applicant, his son had rented the factory premises including the machines of the proprietary concern to one Mr.Nipun Patel for the purpose of manufacturing miscellaneous articles of plastics on job work basis. Few officers from the office of the Commissioner of State Tax visited the residential premises of the writ-applicant on 11th October 2019 and inquired about the whereabouts of his son. It is alleged that the officers harassed the family by their presence in the flat for almost a period of one week. In view of the aforesaid, a Special Civil Application No.18463 of 2019 came to be filed in this High Court with the following prayers :



“(A) To issue a writ of mandamus and/or writ of prohibition and/or any other appropriate writ, order or direction, directing the respondents not to take any actions against the petitioner being proprietor of the Lancer Enterprise exercising powers under Section 69 read with Section 132 without following due process of law of assessment and adjudication of alleged evasion of GST as contemplated under Section 61, Section 73 or under Section 74 of the Central Goods and Services Tax Act, 2017 and Gujarat Goods and Services Tax Act, 2017 i.e. before following provisions of Chapter XII of Central Goods and Services Tax Act, 2017 and Gujarat Goods and Services Tax Act, 2017 and Chapter VIII of Central Goods and Services Tax Rules, 2017 and Gujarat Goods and Services Tax Rules, 2017 in connection with investigation initiated by the State Tax, Unit-22, Ahmedabad i.e. by the respondents.

(B) To issue a writ of mandamus and/or writ of prohibition and/or any other appropriate writ, order or direction, directing to quash and set-aside an order dated 23.06.2017 bearing No.GSL/S.5(1)/B.1 passed by the Commissioner of State Tax, Gujarat in exercise of powers under sub-section (1) of Section 5 read with clause (91) of Section 2 of the GGST and the rules framed thereunder assigning functions to the proper officers to be performed by the higher officer under GGST at Annexure-A.

(C) Pending admission, final hearing and disposal of this petition, to restrain the respondents from exercising powers under Section 69 read with Section 132 of CGST or GGST



without following due process of law of assessment and adjudication of alleged evasion of GST as contemplated under Section 61, Section 73 or under Section 74 of the Central Goods and Services Tax Act, 2017 and Gujarat Goods and Services Tax Act, 2017 i.e. before following provisions of Chapter XII of Central Goods and Services Tax Act, 2017 and Gujarat Goods and Services Tax Act, 2017 ^{Assessment} and Chapter VIII of Central Goods and Services Tax Rules, 2017 and Gujarat Goods and Services Tax Rules, 2017 ^{Returns} in connection with investigation initiated by the State Tax, Unit-22, Ahmedabad on such terms and conditions which may be deemed fit and proper to this Hon'ble Court and in the interest of the petitioner.

(D) Pending admission, final hearing and disposal of this petition, to direct the respondents to **release the petitioner's family members from house arrest** and/or to remove the officials of the respondents from the petitioner's residential premises being Flat No.104, Aryavrat Heights, Prernatirth Derasar Road, Satellite, Ahmedabad.

(E) To pass any other and further orders in the interest of the petitioner and in the interest of justice on such terms and conditions as may be deemed fit and proper to this Hon'ble Court.

(F) To provide for the costs of this petition.”

7. In the aforesaid writ-application, a Coordinate Bench of this Court passed the following order, dated 25th October 2019 :



“1. Mr. Chetan Pandya, learned advocate for the petitioner has tendered an affidavit of Nathalal Maganlal Chauhan, the father of the petitioner. The same is taken on record.

2. The learned Assistant Government Pleader has submitted a confidential report of the proceedings carried out by the respondents at the premises of the petitioner pursuant to the authorisation issued in favour of the second respondent under sub-section (2) of section 67 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “the CGST Act”).

3. This court has perused the report in its entirety. A perusal of the report reveals that the concerned officers authorised to carry out the search at the residential premises of the petitioner had stayed there from 11.10.2019 to 18.10.2019. A perusal of the record of the proceedings of the case reveals that on 11.10.2019 at 2:15, it has been recorded that after searching of the rooms in the premises, the records of the accounts were brought to the main room and gathered there which included the bank passbooks of the family members as well as cheque books and that verification thereof is continuing. The proceedings thereafter do not reveal any further search carried out at the premises but reveal that the officers had stayed at the premises and had examined the phone calls that were received by the family members and had recorded their phone calls. They had also recorded statements of the family members of the



petitioner on 11.10.2019. The record further reveals that the officers who had arrived on the previous day as well as the panchas were relieved by new set of officers and panchas and this cycle continued till 18.10.2019. It appears that thereafter they have been questioning the family members of the petitioner on a day to day basis till 18.10.2019.

4. Section 67 of the CGST Act, reads thus:-

“67. Power of Inspection, search and seizure.

(1) Where the proper officer, not below the rank of Joint Commissioner, has reasons to believe that-

(a) a taxable person has suppressed any transaction relating to supply of goods or services or both or the stock of goods in hand, or has claimed input tax credit in excess of his entitlement under this Act or has indulged in contravention of any of the provisions of this Act or the rules made thereunder to evade tax under this Act; or

(b) any person engaged in the business of transporting goods or an owner or operator of a warehouse or a godown or any other place is keeping goods which have escaped payment of tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable under this Act, he may authorise in writing any other officer of central tax to inspect



any places of business of the taxable person or the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown or any other place.

(2) Where the proper officer, not below the rank of Joint Commissioner, either pursuant to an inspection carried out under sub-section (1) or otherwise, has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place, he may authorise in writing any other officer of central tax to search and seize or may himself search and seize such goods, documents or books or things:

Provided that where it is not practicable to seize any such goods, the proper officer, or any officer authorised by him, may serve on the owner or the custodian of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer:

Provided further that the documents or books or things so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceedings under this Act.

(3) The documents, books or things referred to in sub-section (2) or any other documents, books or things



produced by a taxable person or any other person, which have not been relied upon for the issue of notice under this Act or the rules made thereunder, shall be returned to such person within a period not exceeding thirty days of the issue of the said notice.

(4) The officer authorised under sub-section (2) shall have the power to seal or break open the door of any premises or to break open any almirah, electronic devices, box, receptacle in which any goods, accounts, registers or documents of the person are suspected to be concealed, where access to such premises, almirah, electronic devices, box or receptacle is denied.

(5) The person from whose custody any documents are seized under sub-section (2) shall be entitled to make copies thereof or take extracts therefrom in the presence of an authorised officer at such place and time as such officer may indicate in this behalf except where making such copies or taking such extracts may, in the opinion of the proper officer, prejudicially affect the investigation.

(6) The goods so seized under sub-section (2) shall be released, on a provisional basis, upon execution of a bond and furnishing of a security, in such manner and of such quantum, respectively, as may be prescribed or on payment of applicable tax, interest and penalty payable, as the case may be.



(7) Where any goods are seized under sub-section (2) and no notice in respect thereof is given within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:

Provided that the period of six months may, on sufficient cause being shown, be extended by the proper officer for a further period not exceeding six months.

(8) The Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (2), be disposed of by the proper officer in such manner as may be prescribed.

(9) Where any goods, being goods specified under sub-section (8), have been seized by a proper officer, or any officer authorised by him under sub-section (2), he shall prepare an inventory of such goods in such manner as may be prescribed.

(10) The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure, shall, so far as may be, apply to search and seizure under this section



subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word “Magistrate”, wherever it occurs, the word “Commissioner” were substituted.

(11) Where the proper officer has reasons to believe that any person has evaded or is attempting to evade the payment of any tax, he may, for reasons to be recorded in writing, seize the accounts, registers or documents of such person produced before him and shall grant a receipt for the same, and shall retain the same for so long as may be necessary in connection with any proceedings under this Act or the rules made thereunder for prosecution.

(12) The Commissioner or an officer authorised by him may cause purchase of any goods or services or both by any person authorised by him from the business premises of any taxable person, to check the issue of tax invoices or bills of supply by such taxable person, and on return of goods so purchased by such officer, such taxable person or any person in charge of the business premises shall refund the amount so paid towards the goods after cancelling any tax invoice or bill of supply issued earlier. ”

5. Thus, **sub-section (2) of section 67** of the CGST Act empowers the authorised officer to **search and seize goods, documents or books or things**. Sub-section (4) of section 67 empowers the officer authorised under sub-section (2) to



seal or break open door of any premises or to break open any almirah, electronic devices, box, receptacle in which any goods, accounts, registers or documents of the person are suspected to be concealed, where access to such premises, almirah, electronic devices, box or receptacle is denied. Thus, the officers concerned were authorised to seize such books, goods, documents, or things which were found at the premises. Sub-section (2) of section 67 does not empower the officer concerned to record statements of family members through force or coercion or to record their conversations in their mobile phones. In exercise of powers under sub-section (2) of section 67 of the CGST Act, it is not permissible for the authorised officer to use coercive measures against family members to find out the whereabouts of the taxable person. It is shocking to see that in a premises where there are three ladies, namely, the petitioner's mother, wife and young daughter, male officers together with a CRPF Officer have stayed throughout day and night despite the fact that the goods, articles and things were already seized on 11.10.2019. The entire exercise carried out by the concerned officers from 12.10.2019 to 18.10.2019 was totally without any authority of law and in flagrant disregard of the provisions of the Act and the rules and in total abuse of the powers vested in them under the Act. The manner in which the officers have conducted themselves by overreaching the process of law and acting beyond the powers vested in them under sub-section (2) of section 67 of the CGST Act needs to be deprecated in the strictest terms. Therefore, a proper inquiry needs to be made in respect of the action of the respondent officers of staying



day and night at the premises of the petitioner without any authority of law.

6. *In the aforesaid premises, the first respondent Commissioner of State Tax, Ahmedabad shall carry out a proper inquiry in the matter and submit a report before this court on or before 13th November, 2019.*

7. *Stand over to 13th November, 2019.*

8. *Registry to forthwith forward a copy of this order to the Commissioner of State Tax as well as Chief Secretary of the State to look into the matter and do the needful to ensure that such incidents are not repeated. ”*

8. Ultimately, on 30th December 2019, the son of the writ-applicant came to be arrested by the respondent no.4 in exercise of power under Section 69 of the Central Goods and Services Tax Act, 2017 (for short, 'the Act 2017'). The arrest was on the reasonable belief that the son of the writ-applicant has committed offence under Section 132 of the Act 2017.

9. The son of the writ-applicant came to be produced before the Chief Metropolitan Magistrate at Ahmedabad who, in turn, remanded the son of the writ-applicant to the judicial custody.

10. The writ-applicant being the father, whose son has been arrested by the respondent no.4, is here before this Court questioning the legality and validity of the Notification No.EST/1/Jurisdiction/B.2168 dated 5th July 2017, by which



the Commissioner of State Tax has delegated all his powers to the Special Commissioner of State Tax and the Additional Commissioners of State Tax.

SUBMISSIONS ON BEHALF OF THE WRIT-APPLICANT :

11. The principal argument of Mr.Chetan Pandya, the learned counsel appearing for the writ-applicant, is that the Commissioner of State Tax could not have delegated all his powers under the Act 2017 in favour of the Special Commissioner of State Tax and the Additional Commissioners of State Tax by virtue of the power conferred under sub-section (3) of Section 5 of the Act 2017. Mr.Pandya would submit that the plain language of Section 69 of the Act would indicate that the reasonable belief should be of the Commissioner and not of the delegated authority. The argument is that the Parliament has chosen and thought fit to repose confidence in the Commissioner and that is the reason why in Section 69 the phrase 'Commissioner has reasons to believe' has been stated.

12. Mr.Pandya would submit that the words 'reason to believe' contemplates an objective determination based on intelligent care and deliberation as distinguished from a purely subjective consideration. If such is the mandate of the Legislature, then such a power can never be delegated. Mr.Pandya would submit that the impugned Notification is contrary to the mandate of Section 6 of the Gujarat Goods and Services Tax Act, 2017. According to Mr.Pandya, while passing an order under Section 69 of the GGST Act, 2017, a simultaneous order under the CGST Act, 2017 shall also have to be passed. Under the CGST Act,



2017, the Commissioner or the Additional Director General of Central Tax would exercise the power under Section 69 of the Act, 2017. The Additional Commissioner of State Tax is subordinate in rank compared to the Commissioner of Central Tax. He pointed out that for the GGST Act, 2017, it is the Additional Commissioner of State Tax who would be exercising the power under Section 69 of the Act on the strength of the impugned Notification whereas, under the CGST Act, 2017, it is the Commissioner or the Additional Director General who would be exercising the powers.

13. Mr.Pandya, the learned counsel would vehemently submit that assuming for the moment that the Commissioner of Tax has been empowered by the statute to delegate his powers, the statute at the same time has also deemed it fit to say in so many words in Section 69 of the Act that the reasonable belief should be that of the Commissioner. The contention raised is on the footing that wherever power is to be exercised based on the reasonable belief of the authority, then such a power cannot be delegated though the statute empowers the authority to do so. In other words, Mr.Pandya drew a distinction between a particular power to be exercised and power to be exercised based on the reasonable belief of the authority.

14. Mr.Pandya further pointed out that the impugned Notification is in direct conflict with the Circular : 49 dated (Flyer No.) dated 1st January 2018 issued by the department. Mr.Pandya, in support of his submissions, has placed reliance on the following case-law :



- (1) Valerius Industries v. Union of India (Special Civil Application No.13132 of 2019, decided on 28th August 2019)
- (2) Deep Suresh Gadhecha v. State of Gujarat and others (Special Civil Application No.10436 of 2019, decided on 16th December 2019)

15. In such circumstances referred to above, Mr.Pandya prays that there being merit in his writ-application, the same be allowed and the impugned Notification be quashed.

16. On the other hand, this writ-application has been vehemently opposed by Mr.Kamal B.Trivedi, the learned Advocate General, appearing for the State respondents. Mr.Trivedi would submit that the challenge to the legality and validity of the impugned Notification is without any basis and devoid of any merit. Mr.Trivedi would submit that Section 5(3) of the GST Act, 2017, confers specific power upon the Commissioner to delegate his powers to any other officer who is subordinate to him. According to Mr.Trivedi, there is no challenge to the constitutional validity of Section 5(3) of the Act, 2017. **Once the source of power is traced, then it is open for the Commissioner to delegate his powers to any other officer.**

17. Mr.Trivedi would submit that there are similar provisions under the Customs Act, 1962, the Central Excise Act, 1944, and the Income Tax Act as amended by the Finance (No.2) Act, 2019, as well. Mr.Trivedi would submit that if the Legislature in its wisdom thought fit to confer power upon a particular authority, then ordinarily it is that authority itself who has to exercise such



power. In other words, it is essential that the delegated power should be exercised by the authority upon whom it is conferred and by no one else. However, according to Mr.Trivedi, in the present administrative setup, such principle cannot be carried to an extreme. According to Mr.Trivedi, there is only one Commissioner of State Tax and it is virtually impossible for one person to singlehandedly discharge all the duties and functions under the Act.

18. Mr.Trivedi further pointed out that prosecution has also been instituted against the son of the writ-applicant for the offence punishable under Section 174 of the Indian Penal Code read with Section 70(1) of the GGST Act, 2017, and the CGST Act, 2017. The Criminal Case No.104117 of 2019 is pending as on date in the court of the Additional Chief Metropolitan Magistrate, Ahmedabad.

19. Mr.Trivedi further seeks to rely on the following averments made in the affidavit-in-reply filed on behalf of the respondents :

“In this regard, before adverting to the contents of the fact / claim ^{पुरचार} averments as canvassed by the Petitioner before this Hon'ble Court, the Respondent authorities ^{solicit} crave leave of this Hon'ble Court to submit on the history attached to the son of the present Petitioner. The son of the present Petitioner is involved in a multi-crore scam wherein on the premise of billing transactions, the son of the present Petitioner has operated numbers of fake entities and illegally claimed huge input tax credit running in crores of rupees and also illegally transferred Input Tax Credit to various entities, through

IPC 174
Offence: Not obeying a legal order to attend at a certain place in person or by agent, or departing therefrom without authority.



such fake entities. In this regard, a complaint came to be registered under Section 174 of the Indian Penal Code for non-compliance of summons, with the Additional Chief Metropolitan Magistrate, Ahmedabad being Criminal Case No.104117 of 2019 by the respondent authorities. In this regard, the competent Court was pleased to issue a bailable warrant upon the son of the present Petitioner and accordingly, the son of the present Petitioner reported before the competent Court on 30.12.2019. Thereafter, the son of the present Petitioner came to be arrested by the respondent authorities.

6. Thereafter, the present Petitioner preferred the present writ petition before this Hon'ble Court on the ground that the son of the present Petitioner could not be arrested as the authorization was issued by the Additional Commissioner of State Tax in exercise of powers as conferred under Section 69 of the GGST Act. According to the Petitioner, the said powers are required to be exercised only by the Commissioner. In this regard, the attention of this Hon'ble Court is drawn to the provisions as contained in sub-section 3 of section 5 of the GGST Act, that categorically empowers the Commissioner to delegate his powers to the Subordinate officers with conditions and limitations as deemed fit in the facts of the present case, the Commissioner has delegated the powers to the Special Commissioner and Additional Commissioner under the overall supervision of the Commissioner himself. If the provisions of sub-section 3 of section 5 of the GGST Act are perused, it is clear that the Commissioner is duly empowered to delegate any of the



powers that are available with the Commissioner under the GGST Act. *If the legislature wanted to prescribe that only some of the powers of the Commissioner can be delegated, then the legislature in its wisdom, would have inserted a proviso or explanation restricting the Commissioner from delegation of certain powers.* However, as the legislature has not kept any restrictions in so far as delegation of powers is concerned, the argument as canvassed by the Petitioner that the said delegation is ipso facto illegal is without any basis and contrary to the intention of the GGST Act.

7. It is further submitted before this Hon'ble Court that the notification under challenge is dated 05.07.2017. The GGST Act was enacted on 01.07.2017. The concerned Commissioner of State Tax at relevant point of time was also part of the various committees viz. law committee, fitment committee, etc. at New Delhi, and therefore, was required to travel frequently. Moreover, as the Government of India had come out with an entirely new tax regime, the Commissioner was also called upon by various institutions and chambers for explaining the modalities and complexities attached with the new tax regime. Therefore, for effective and appropriate administration of the new tax regime, at relevant point of time i.e. on 05.07.2017, the concerned Commissioner in its wisdom decided to delegate powers to senior officers of the cadre so that the administration is not disturbed. Moreover, the Commissioner of State Tax is the Head of the entire department is required to look after the administration of the entire department. Therefore, considering the administrative



flexibilities and practical difficulty, the notification under challenge was published by the then Commissioner of State Tax.

8. *It is respectfully submitted that it could have never been the intention of the legislature/object of the Act not to empower the Commissioner to delegate his powers, inasmuch as, in absence thereof, the same would lead to a situation, where irrespective of the circumstances prevailing, it would only the Commissioner to do all the acts contemplated under the Act. In this regard, it is submitted that as far as the GGST Act is concerned, there is only one post of Chief Commissioner for the entire State of Gujarat. Thus, it is virtually impossible for one person to do all the acts contemplated under the Act by a single person. Thus, with a view to safeguard the revenue, as well as, to take quick action and without taking any time for undertaking procedural approvals, the legislature has consciously empowered the Commissioner to delegate his powers to any other subordinate to him, which will allow the department to take quick necessary actions, depending upon the prevailing circumstances.*

9. *It is further submitted in the State of Gujarat, there is only one position of Special Commissioner for the entire State, which is generally held by an officer from Indian Administrative Service (IAS) cadre or Indian Revenue Service (IRS) cadre. Moreover, the position of Additional Commissioner is held by a person from Gujarat Administrative Service (GAS). Hence, the powers as available with the Commissioner under the GGST Act, are*



delegated to officers from senior cadre and they are obligated to carry out the functions as provided under the GGST Act. It is further submitted before this Hon'ble Court that as provided under 69 of the GGST Act, the Additional Commissioner had a reason to believe for exercising the powers as conferred under section 69 of the GGST Act as the son of the Petitioner was admittedly involved in the offences as committed under section 132 of the GGST Act. Therefore, the requirement of reason to believe has been fulfilled before exercising the powers of arrest as conferred under section 69 of the GGST Act.

10. It is further submitted before this Hon'ble Court that even during the earlier tax regime, as per section 45 of the Gujarat Value Added Tax Act, 2003 the Commissioner was empowered to initiate the proceedings of attachment of bank account of the dealer in order to protect the interest of Government revenue. The said powers were delegated by the Commissioner under section 16 of the Gujarat Value Added Tax Act, 2003.

11. In addition to the above, even under other similar direct/indirect tax legislations referred hereunder, it is permissible to the concerned Commissioner to delegate its powers, including the powers relating to search, detention and seizure to any other officer subordinate to him. This position has been in vogue right from the inception of the said legislations and that, therefore, similar delegation under the provisions of GGST Act by the Commissioner in favour of his subordinate, in relatively at a lower rank,



would not become bad in law, merely because what is been delegated is likely to entail drastic consequences:

- (a) Section 152 of the Customs Act;
- (b) Section 37A of the Excise Act;
- (c) Other State GST Acts.

12. Now, as far as the contention of the Petitioner with regard to the arrest memorandum dated 31.12.2019 not having Document Identification Number is concerned, it is submitted that the said contention is also not tenable under law, inasmuch as, till date, the State of Gujarat has not issued any notification under the GGST Act making it mandatory for generation and quoting of Document Identification Number on any of its document. In absence of such notification, the arrest memorandum issued under the GGST Act, without having Document Identification Number, could not be said to be invalid or in contravention to any of the notifications issued under the GGST Act.”

20. Mr.Trivedi, in support of his aforesaid submissions, has placed reliance on the following decisions :

- (1) Sidhartha Sarawgi v. Board of Trustees for the Port of Kolkata and others, reported in (2014)16 SCC 248;
- (2) State of Bihar and others v. Anil Kumar and others, reported in (2017)14 SCC 304;
- (3) Sahni Silk Mills (P) Ltd. and another v. Employees' State Insurance Corporation, reported in (1994)5



SCC 346.

ANALYSIS :

21. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is, whether the impugned Notification is liable to be quashed and set-aside.

22. Before advertng to the rival submissions canvassed on either side, we must look into few relevant provisions of the law.

23. Section 2(24) of the GGST Act, 2017, defines the term 'Commissioner'. It reads thus :

“(24) “Commissioner” means the Commissioner of State tax appointed under section 3 and includes the Chief Commissioner or Principal Commissioner of State tax appointed under section 3.”

24. Section 3 is with regard to the officers under the GGST Act, 2017. Section 3 reads thus :

*“3. Officers under this Act.-
The Government shall, by notification, appoint the following classes of officers for the purposes of this Act, namely: —*

- (a) Chief Commissioner/Principal Commissioner/Commissioner of State tax,*
- (b) Special Commissioner of State tax,*
- (c) Additional Commissioners of State tax,*



- (d) *Joint Commissioners of State tax,*
- (e) *Deputy Commissioners of State tax,*
- (f) *Assistant Commissioners of State tax, and*
- (g) *any other class of officers as it may deem fit:*

Provided that, the officers appointed under the Gujarat Value Added Tax Act, 2003 (Guj.1 of 2005) shall be deemed to be the officers appointed under the provisions of this Act.”

25. Section 5 of the Act, 2017, is with regard to the officers. Section 5 reads thus :

“5. Powers of Officers.

(1) Subject to such conditions and limitations as the Commissioner may impose, an officer of State tax may exercise the powers and discharge the duties conferred or imposed on him under this Act and discharge the duties conferred or imposed on him under this Act.

(2) An officer of State tax may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of State tax who is subordinate to him.

(3) The Commissioner may, subject to such conditions and limitations as may be specified in this behalf by him, delegate his powers to any other officer who is subordinate to him.

(4) Notwithstanding anything contained in this section, an Appellate Authority shall not exercise the powers and



discharge the duties conferred or imposed on any other officer of State tax.”

26. Section 69 is with regard to the power to arrest. Section 69 reads thus :

“69. Power to arrest.

(1) Where the Commissioner has reasons to believe that a person has committed any offence specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) of section 132 which is punishable under clause (i) or (ii) of sub-section (1), or sub-section (2) of the said section, he may, by order, authorise any officer of State tax to arrest such person.

(2) Where a person is arrested under sub-section (1) for an offence specified under sub-section (5) of section 132, the officer authorised to arrest the person shall inform such person of the grounds of arrest and produce him before a Magistrate within twenty four hours.

(3) Subject to the provisions of the Code of Criminal Procedure, 1973 (2 of 1974),--

(a) where a person is arrested under sub-section (1) for any offence specified under sub-section (4) of section 132, he shall be admitted to bail or in default of bail, forwarded to the custody of the Magistrate;

(b) in the case of a non-cognizable and bailable offence, the



Deputy Commissioner or the Assistant Commissioner shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer-in-charge of a police station. ”

27. Section 167 is with regard to the delegation of powers. It reads thus :

“167. Delegation of powers.

The Commissioner may, by notification, direct that subject to such conditions, if any, as may be specified in the notification, any power exercisable by any authority or officer under this Act may be exercisable also by another authority or officer as may be specified in such notification. ”

28. We may also look into the Circular : 49 (Flyer No.) dated 1st January 2018. The Circular reads thus :

“Circular: 49 (Flyer No.) dated 01-Jan-2018

Inspection, Search, Seizure and Arrest

C.B.E. & C. Flyer No.49, dated 1-1-2018

In any tax administration the provisions for Inspection, Search, Seizure and Arrest are provided to protect the interest of genuine taxpayers (as the Tax evaders, by evading the tax, get an unfair advantage over the genuine taxpayers) and as a deterrent for tax evasion. These provisions are also required to safeguard Government's



legitimate dues. Thus, these provisions acts as a deterrent and by checking evasion provide a level playing field to genuine taxpayers.

2. It may be mentioned that the options of Inspection, Search, Seizure and Arrest are exercised, only in exceptional circumstances and as a last resort, to protect the Government Revenue. Therefore, to ensure that these provisions are used properly, effectively and the rights of taxpayers are also protected, it is stipulated that Inspection, Search or Seizure can only be carried out when an officer, of the rank of Joint Commissioner or above, has reason to believe the existence of such exceptional circumstances. In such cases, the Joint Commissioner may authorise, in writing, any other officer to cause inspection, search and seizure.

However, in case of arrests the same can be carried out only where the person is accused of offences specified for this purpose and the tax amount involved is more than specified limit. Further, the arrests under GST Act can be made only under authorisation from the Commissioner.

3. The circumstances which may warrant exercise of these options are as follows :

(i) Inspection

'Inspection' is a softer provision than search which enables officers to access any place of business or of a person



engaged in transporting goods or who is an owner or an operator of a warehouse or godown. As discussed above the inspection can be carried out by an officer of CGST/SGST only upon a written authorization given by an officer of the rank of Joint Commissioner or above a Joint Commissioner or an officer higher in rank can give such authorization only if he has reasons to believe that the person concerned has done one of the following actions :

(a) Suppression of any transaction relating to supply of goods or services or stock in hand;

(b) Claimed excess input tax credit;

(c) Contravention of any provisions of the Act or the Rules to evade tax;

(d) Transporting or keeping goods which escaped payment of tax or manipulating accounts or stocks which may cause evasion of tax;

Inspection can also be done of the conveyance carrying a consignment of value exceeding specified limit. The person in charge of the conveyance has to produce documents/devices for verification and allow inspection. Inspection during transit can be done even without authorisation of Joint Commissioner.

(ii) Inspection in movement



(a) Any consignment, value of which is exceeding Rs.50,000/-, may be stopped at any place for verification of the documents/devices prescribed for movement of such consignments.

(b) If on verification of the consignment, during transit, it is found that the goods were removed without prescribed document or the same are being supplied in contravention of any provisions of the Act, then the same can be detained or seized and may be subjected to penalties as prescribed.

(c) To ensure transparency and minimise hardships to the trade the law provides that if during verification, in transit, a consignment is held up beyond 30 minutes the transporter can feed details on the portal. This will ensure accountability and transparency for all such verifications. Moreover, for verification during movement of consignment will also be done through Digital Interface and therefore the physical intervention will be minimum and as has already been mentioned that in case of a delay beyond 30 minutes the transporter can feed the details on the portal.

(iii) Search & Seizure

The provisions of search and seizure also provides enough safeguards and the GST Law stipulates that search of any place of business etc. can be carried out only under



authorisation from an officer of the rank of Joint Commissioner and if he has a reason to believe that the person concerned has done at least one of the following :-

(a) Goods liable to confiscation or any documents/books/record/things, which may be useful for or relevant to any proceedings, are secreted in any place then all such places can be searched;

(b) All such goods/documents/books/record/things may be seized, however, if it is not practicable to seize any such goods then the same may be detained. The person from whom these are seized shall be entitled to take copies/extracts of seized records;

(c) The seized documents/books/things shall be retained only till the time the same are required for examination/enquiry/proceedings and if these are not relied on for the case then the same shall be returned within 30 days from the issuance of show cause notice;

(d) The seized goods shall be provisionally released on execution of bond and furnishing a security or on payment of applicable tax, interest and penalty;

Recovery of tax

(e) In case of seizure of goods, a notice has to be issued within six months, if no notice is issued within a period of six months then all such goods shall be



returned. However, this period of six months can be extended by Commissioner for another six months on sufficient cause;

(f) An inventory of the seized goods/documents/ records is required to be made by the officer and the person, from whom the same are seized, shall be given a copy of the same.

(g) To ensure that the provisions for search and seizure are implemented in a proper and transparent manner, the Act stipulates that the searches and seizures shall be carried out in accordance with the provisions of Criminal Procedure Code, 1973. It ensures that any search or seizure should be made in the presence of two or more independent witnesses, a record of entire proceedings is made and forwarded to the Commissioner forthwith.

(iv) Arrests

In the administration of taxation the provisions for arrests are created to tackle the situations created by some unscrupulous tax evaders. To some these may appear very harsh but these are necessary for efficient tax administration and also act as a deterrent and instill a sense of discipline. The provisions for arrests under GST Law have sufficient inbuilt safeguards to ensure that these are used only under authorisation from the Commissioner. Besides this, the GST Law also stipulates that arrests can



be made only in those cases where the person is involved in offences specified for the purposes of arrest and the tax amount involved in such offence is more than the specified limit. The salient points at these provisions are :-

(a) Provisions for arrests are used in exceptional circumstance and only with prior authorisation from the Commissioner.

(b) The law lays down a stringent criteria and procedure to be followed for arresting a person. A person can be arrested only if the criteria stipulated under the law for this purpose is satisfied i.e. if he has committed specified offences (not any offence) and the tax amount is exceeding rupees 200 lakhs. However, the monetary limit shall not be applicable if the offences are committed again even after being convicted earlier i.e. repeat offender of the specified offence can be arrested irrespective of the tax amount involved in the case.

(c) Further, even though a person can be arrested for specified offences involving tax amount exceeding Rs.200 lakhs, however, where the tax involved is less than Rs.500 lakhs, the offences are classified as non-cognizable and bailable and all such arrested persons shall be released on Bail by Deputy/Assistant Commissioner. But in case of arrests for specified offences where the tax amount involved is more than Rs.500 lakhs, the offence is classified as cognizable



and non-bailable and in such cases the bail can be considered by a Magistrate only.”

29. We shall now look into the impugned Notification. The impugned Notification reads thus :

“NOTIFICATION
Commissioner of State Tax
Gujarat State, Ahmedabad
Dated the 5th July 2017

No. EST/1/Jurisdiction/B.2168

In exercise of the power conferred under sub-section (3) of section 5 of the Gujarat goods and Services Tax Act, 2017 (Guj.25 of 2017), the Commissioner of State Tax hereby delegates all the functions under the said Act to the Special Commissioner of State Tax and the Additional Commissioners of State Tax for carrying out the purposes of the said Act.

The said functions delegated as above shall be under the overall supervision of the Commissioner.”

30. The delegation is the act of making or commissioning a delegate. It generally means parting of powers by the person who grants the delegation and conferring of an authority to do things which otherwise that person would have to do himself. Delegation is defined in the Black’s Law Dictionary as “the act of entrusting another with the authority by empowering another to act as an agent or representative”. In P.Ramanatha Aiyar’s, The Law Lexicon, “delegation is the act of making or commissioning a delegate. Delegation generally means parting of



powers by the person who grants the delegation, but it also means conferring of an authority to do things which otherwise that person would have to do himself". Justice Mathew in *Gwalior Rayon Silk Manufacturing (Wvg.) Co. Ltd. v. The Assistant Commissioner of Sales Tax and Others* [1974 (4) SCC 98], has succinctly discussed the concept of delegation. Paragraph 37 reads as follows:

"37. ... Delegation is not the complete handing over or transference of a power from one person or body of persons to another. Delegation may be defined as the entrusting, by a person or body of persons, of the exercise of a power residing in that person or body of persons, to another person or body of persons, with complete power of revocation or amendment remaining in the grantor or delegator. It is important to grasp the implications of this, for, much confusion of thought has unfortunately resulted from assuming that delegation involves or may involve, the complete abdication or abrogation of a power. This is precluded by the definition. Delegation often involves the granting of discretionary authority to another, but such authority is purely derivative. The ultimate power always remains in the delegator and is never renounced."

31. As a general rule, whatever a person has the power to do himself, he may do by means of an agent. This broad rule is limited by the operation of the principle that a delegated authority cannot be re-delegated, *delegatus non-potest delegare*. The naming of a delegate to do an act involving a discretion indicates that the delegate was selected because of his peculiar



skill and the confidence reposed in him and there is a presumption that he is required to do the act himself and cannot re-delegate his authority. As a general rule, "if the statute directs that certain acts shall be done in a specified manner or by certain persons, their performance in any other manner than that specified or by any other person than one of those named is impliedly prohibited. Normally, a discretion entrusted by the Parliament to an administrative organ must be exercised by that organ itself. At the same time, it is settled position of law that the maxim "*delegatus non potest delegare*" must not be pushed too far. The maxim does not embody a rule of law. It indicates a rule of construction of a statute or other instrument conferring an authority. Prima facie, a discretion conferred by a statute on any authority is intended to be exercised by that authority and by no other. However, the intention may be negated by any contrary indications in the language, scope or object of the statute. The construction that would best achieve the purpose and object of the statute should be adopted.

32. The Supreme Court, in the case of Sahni Silk Mills (P) Ltd. and another v. Employees' State Insurance Corporation, reported in (1994)5 SCC 346, considered the question, whether the power under Section 85B of the Employees' State Insurance Act, 1948, could have been exercised by the Regional Directors of the Corporation. The argument before the Supreme Court was that the power could have been exercised either by the Corporation or by the Director General of the said Corporation. The Supreme Court noticed that the power of the Corporation to recover the damages under Section 85B had not been questioned. The



controversy was, whether such power could have been delegated under Section 94A to the Regional Directors. The Supreme Court, while dismissing the SLPs, observed as under :

“5. The Courts are normally rigorous in requiring the power to be exercised by the persons or the bodies authorised by the statutes. It is essential that the delegated power should be exercised by the authority upon whom it is conferred and by no one else. At the same time, in the present administrative set up extreme judicial aversion to delegation cannot be carried on an extreme. A public authority is at liberty to employ agents to exercise its powers. That is why in many statutes, delegation is authorised either expressly or impliedly. Due to the enormous rise in the nature of the activities to be handled by statutory authorities, the maxim delegat us non potest delegare is not being applied specially when there is question of exercise of administrative discretionary power.

6. By now it is almost settled that the legislature can permit any statutory authority to delegate its power to any other authority, of course, after the policy has been indicated in the statute itself within the framework of which such delegatee is to exercise the power. The real problem or the controversy arises when there is a sub-delegation. It is said that when Parliament has specifically appointed authority to discharge a function, it cannot be readily presumed that it had intended that its delegate should be free to empower another person or body to act in its place. In Barium Chemicals Ltd. v. Company Law Board, AIR 1967 SC 295 :



(1966) Supp SCR 311 this Court said in respect of sub-delegation (at p. 306 of AIR):

“Bearing in mind that the maxim delegatus non potest delegare sets out what is merely a rule of construction, sub-delegation can be sustained if permitted by express provision or by necessary implication.”

7. Again in *Mangulal Chunilal v. Manilal Maganlal*, AIR 1968 SC 822 (1968) 2 SCR 401 while considering the scope of S.481(1)(a) of the Bombay Provincial Municipal Corporation Act (59 of 1949) this Court said that Commissioner of the Ahmedabad Municipal Corporation had delegated his power and function under the aforesaid section to a Municipal Officer to launch proceedings against a person charged with offences under the Act or the Rules and that officer to whom such functions were delegated could not further delegate the same to another.

8. In *Halsbury's Laws of England*, 4th Edition, Volume I in respect of sub-delegation of powers it has been said :

“In accordance with the maxim delegatus non potest delegare , a statutory power must be exercised only by the body or officer in whom it has been confided, (H. Lavender and Sons Ltd. v. Minister of Housing and Local Government, 1970 (3) All ER 871) unless sub-delegation of the power is authorised by express words or necessary implication (Customs and Excise Commrs. v. Cure and Deeley Ltd., 1962 (1) QB 340 K, 1961 (3) All ER 641 and Mungoni v. A. S. G. of



Northern Rhodesia, 1960(1) All ER 446 PC etc.). There is a strong presumption against construing a grant of legislative, judicial, or disciplinary power as impliedly authorising sub-delegation; and the same may be said of any power to the exercise of which the designated body should address its own mind. Allam and Co. v. Europa Poster Services Ltd., 1968 (1) All ER 826.....”

9. *In the case of Harishankar Bagla v. State of Madhya Pradesh, AIR 1954 SC 465 at 468, while examining the scope of S.4 of the Essential Supplies (Temporary Powers) Act, 1946 it was said :*

“S.4 of the Act was attacked on the ground that it empowers the Central Government to delegate its own power to make orders under S.3 to any officer or authority subordinate to it or the Provincial Government or to any officer or authority subordinate to the Provincial Government as specified in the direction given by the Central Government. In other words, the delegate has been authorised to further delegate its power in respect of the exercise of the powers of S.3. Mr. Umrigar contended that it was for the legislature itself to specify the particular authorities or officers who could exercise power under S.3 and it was not open to the legislature to empower the Central Government to say what officer or authority could exercise the power.

Reference in this connection was made to two



decisions of the Supreme Court of the United States of America - 'Panama Refining Co. v. Ryan,' (1934) 293 US 388 (F) and 'Schechter v. United States,' (1934) 295 US 495 (G). In both these cases it was held that so long as the policy is laid down and a standard established by a statute, no unconstitutional delegation of legislative power is involved in leaving to selected instrumentalities the making of subordinate rules within prescribed limits and the determination of facts to which the policy as declared by the Legislature is to apply. These decisions in our judgment do not help the contention of Mr. Umrigar as we think that S.4 enumerates the classes of persons to whom the power could be delegated or sub-delegated by the Central Government and it is not correct to say 'that the instrumentalities have not been selected by the Legislature itself.'

In the aforesaid case, the sub-delegation was upheld because S.4 itself enumerated the classes of persons to whom the power could be delegated or sub-delegated by the Central Government.

10. So far as the present S.94A is concerned, it says that the Corporation subject to any regulation made by the Corporation in that behalf, may direct that particular or any of the powers and functions which may be exercised or performed by the Corporation may, in relation to such matters and subject to such conditions, if any, as may be specified 'be also exercisable by any officer or authority



subordinate to the Corporation.' S.94A does not specifically provide that any officer or authority subordinate to the Corporation to whom the power has been delegated by the Corporation may in his turn authorise any other officer to exercise or perform that power or function. But by the resolution dated 28-2-1976 the Corporation has not only delegated its power under S.85B(i) of the Act to the Director General, but has also empowered the Director General to authorise any other officer to exercise the said power. Unless it is held that S.94A of the Act enables the Corporation to delegate any of its powers and functions to any officer or authority subordinate to the Corporation, and he in his turn can sub-delegate the exercise of the said power to any other officer, the last part of the resolution dated 28-2-1976 cannot be held to be within the framework of S.94A. According to us, the Parliament while introducing S.94A in the Act, only conceived direct delegation by the Corporation to different officers or authorities, subordinate to the Corporation, and there is no scope for such delegate to sub-delegate that power, by authorising any other officer to exercise or perform the power so delegated."

33. In *State of Bihar and others v. Anil Kumar and others*, reported in (2017)14 SCC 304, the question that fell for the consideration of the Supreme Court was with regard to the validity of the investigative process under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The Central Government has framed rules, namely, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995, in exercise of its powers under Section



23. Rule 7 of the Rules mandates that the offence under the Act shall be investigated by a police officer not below the rank of the Deputy Superintendent of Police. The controversy arose because of a notification issued by the State of Bihar. The notification was issued by the State Government in exercise of its power vested under Section 9 of the SC/ST Act. The notification issued by the State of Bihar virtually diluted, or rather, did away with Rule 7 of the SC/ST Rules (framed by the Central Government), which required all the investigations in matters arising under the Act to be carried by an officer not below the rank of the Deputy Superintendent of Police. The notification issued by the State of Bihar allowed the investigative process under the SC/ST Act to be carried by the officers three rank below the rank of the Deputy Superintendent of Police. The Supreme Court considered the pivotal issue, whether the notification issued by the State of Bihar in exercise of the powers vested in the State Government under Section 9 of the SC/ST Act could be considered to have been exercised in breach of or in excess of the powers delegated to the State Government.

34. In the aforesaid context, the Supreme Court observed as under :

“15. The next issue that arises for consideration is, whether the notification issued by the State of Bihar dated 03.06.2002, in exercise of the power vested in the State Government, under Section 9 of the ‘SCST Act’, can be considered to have been exercised in breach of, or in excess of the power delegated to the State Government. It was the contention of the learned counsel for the appellant – accused, that Section 9 contemplates the possibility of



extending the powers of arrest, investigation and prosecution (– of persons, alleged to have violated the provisions of the 'SCST Act'), in addition to those already provided for under the Code of Criminal Procedure. Furthermore, as such, it was submitted, that it was not open to the State Government, in exercise of powers vested with it (under Section 9 of the 'SCST Act'), to vest such powers of arrest, investigation and prosecution, with police officer(s) below the rank of the police officer postulated and provided for under the 'SCST Rules'. It was submitted, that under Rule 7 of the above rules, the powers of arrest, investigation and prosecution are mandated to be exercised by a police officer, not below the rank of Deputy Superintendent of Police. It was therefore submitted, that extension of the investigating power, to a police officer/official below the expressly postulated rank, was not permissible.

16. In order to support his above assertion, learned counsel for the appellant – accused, also drew our attention to sub-section (2), of Section 9, of the 'SCST Act', and on the basis thereof contended, that from a plain and simple interpretation of the language adopted by the legislature, in sub-section (2) of Section 9, it would emerge, that the additional conferment of authority (with reference to arrest, investigation and prosecution), could only be extended to an officer, other than a police officer.

16. In order to appreciate the contention of learned counsel for the appellant – accused, it is imperative for us to keep in mind the scheme, which was provided for by the



legislature, in dealing with offences under the 'SCST Act'. In our considered view, at the time of introduction and commencement of the provisions of the 'SCST Act', Section 9 of the 'SCST Act' extended the power of arrest, investigation and prosecution, to all officers as would be entitled to carry out the aforesaid responsibilities, under the Code of Criminal Procedure. And as such, it needs to be appreciated, that when the provisions of the 'SCST Act', came to be worked out, at the outset, police personnel only, including those holding the rank(s) of Inspector, Sub-Inspector and Assistant Sub-Inspector, exercised the above powers. All these police personnel, were authorised by Section 9 of the 'SCST Act', to be a part of the investigative process. In addition, under Section 9 aforementioned, a State Government was authorized, to delegate the power of investigation (in addition to, the power of arrest, and of prosecution), in respect of offences under the 'SCST Act', “.....to any officer of the State Government” , as the State Government may consider “necessary”, “...for the prevention of and for coping with any offence.....” under the `SCST Act'. The power vested with the State Government, under Section 9 of the 'SCST Act', was therefore clearly expansive, obviously intended to and was enlarge the zone of arrest, investigation and prosecution, to officers/officials in addition to those authorised to do so under the Code of Criminal Procedure. The power conferred on a State Government under Section 9(1)(b), allowed the State Government to confer the power “.....on any officer of the State Government” The power of delegation was not limited to police personnel only, but extended to any officer of the



State Government, who may or may not belong to the Police Department. It is therefore not possible for us to accept the contention advanced by the learned counsel for the appellant-accused, founded on sub-section (2) of Section 9 of the 'SCST Act'.

17. *It is also necessary to take note of the legislative intent expressed in Section 9, in that, it extended to the State Government the above discretionary authority. The State Government was afforded the discretion to vest with "... any officer of the State Government ..." the power of arrest, investigation and prosecution, by augmenting the zone provided for through a non obstante clause. Obviously therefore, the right to delegate such powers of arrest, investigation and prosecution, vested with the State Government, was irrespective of the provisions of the Code of Criminal Procedure. Not only that, the above power could be exercised, irrespective of the provisions of the parent 'SCST Act' itself. It is therefore apparent, that Section 9, was aimed at, and provided for, an effective mechanism for arrest, investigation and prosecution, in addition to the provisions in place. In case the State Government found the same as necessary and expedient, for an effective implementation of the provisions of the 'SCST Act', it had the right and the responsibility, to vest the power of arrest, investigation and prosecution, in additional personnel. Stated differently, in case the State Government was satisfied, that the officers vested with such powers, in consonance with the provisions of the 'SCST Act', were insufficient to carry out the purposes of the 'SCST Act', the*



State Government could extend the power, to those not so expressly provided for. Accordingly, in case of inadequacy, to deal with the provisions of the 'SCST Act', the State Government was at liberty to further delegate the power of arrest, investigation and prosecution, to "... any officer of the State Government ...", for the fulfillment of the purposes of the 'SCST Act'.

21. Having concluded as above, we are satisfied to uphold, not only Rule 7 of the 'SCST Rules', but also the notification dated 03.06.2002, issued by the State Government, in exercise of the power vested in it under Section 9(1)(b) of the 'SCST Act'. Accordingly, we find no merit in the challenge raised on behalf of the appellant-accused, to the notification dated 03.06.2002. ”

35. In *Sidhartha Sarawgi (supra)*, the question before the Supreme Court was, whether there is any exception to the principle that the 'delegate has no power to delegate', and whether there is any distinction between the delegation of legislative and non-legislative powers. In this regard, the Supreme Court observed as under :

“4. There is a subtle distinction between delegation of legislative powers and delegation of non-legislative/administrative powers. As far as delegation of power to legislate is concerned, the law is well-settled: the said power cannot be sub-delegated. The Legislature cannot delegate essential legislative functions which consist in the determination or choosing of the legislative policy and



formally enacting that policy into a binding rule of conduct. Subordinate legislation which is generally in the realm of Rules and Regulations dealing with the procedure on implementation of plenary legislation is generally a task entrusted to a specified authority. Since the Legislature need not spend its time for working out the details on implementation of the law, it has thought it fit to entrust the said task to an agency. That agency cannot entrust such task to its subordinates; it would be a breach of the confidence reposed on the delegate.

5. *Regarding delegation of non-legislative/administrative powers on a person or a body to do certain things, whether the delegate himself is to perform such functions or whether after taking decision as per the terms of the delegation, the said agency can authorize the implementation of the same on somebody else, is the question to be considered. Once the power is conferred, after exercising the said power, how to implement the decision taken in the process, is a matter of procedure. The Legislature may, after laying down the legislative policy, confer discretion on an administrative agency as to the execution of the policy and leave it to the agency to work out the details within the framework of that policy. So long as the essential functions of decision making is performed by the delegate, the burden of performing the ancillary and clerical task need not be shouldered by the primary delegate. It is not necessary that the primary delegate himself should perform the ministerial acts as well. In furtherance of the implementation of the decision already taken by the primary delegate as per the delegation,*



ministerial or clerical tasks may be performed by authorized officers. The complexity of modern day administration and the expansion of functions of the State to the economic and social spheres have made it necessary that the Legislature gives wide powers to various authorities when the situation requires it. Today's governmental functions are a lot more complex and the need for delegation of powers has become more compelling. It cannot be expected that the head of the administrative body performs each and every task himself.

6. *The issue was considered by this Court in Jamal Uddin Ahmad v. Abu Saleh Najmuddin and another⁴the context of the procedure for filing of the election petitions under Section 81 of the Representation of Peoples Act, 1951. It was held that the ministerial or administrative functions of the authority on whom the powers are conferred by the statute can be exercised by the authorized officers. It was held that:*

*“13. The functions discharged by a High Court can be divided broadly into judicial and administrative functions. **The judicial functions are to be discharged essentially by the Judges as per the Rules of the Court and cannot be delegated.** However, administrative functions need not necessarily be discharged by the Judges by themselves, whether individually or collectively or in a group of two or more, and may be delegated or entrusted by authorization to subordinates unless there be some rule of law restraining such delegation or authorisation. Every*



High Court consists of some administrative and ministerial staff which is as much a part of the High Court as an institution and is meant to be entrusted with the responsibility of discharging administrative and ministerial functions. There can be "delegation" as also there can be "authorization" in favour of the Registry and the officials therein by empowering or entrusting them with authority or by permitting a few things to be done by them for and on behalf of the Court so as to aid the Judges in discharge of their judicial functioning. Authorization may take the form of formal conferral or sanction or may be by way of approval or countenance. Such delegation or authorization is not a matter of mere convenience but a necessity at times. The Judges are already overburdened with the task of performing judicial functions and the constraints on their time and energy are so demanding that it is in public interest to allow them to devote time and energy as much as possible in discharging their judicial functions, relieving them of the need for diverting their limited resources of time and energy to such administrative or ministerial functions, which, on any principle of propriety, logic, or necessity are not required necessarily to be performed by the Judges. Receiving a cause or a document and making it presentable to a Judge for the purpose of hearing or trial and many a functions post decision, which functions are administrative and ministerial in nature, can be and are generally entrusted or made over to be discharged by the staff of the High Court,



often by making a provision in the Rules or under the orders of the Chief Justice or by issuing practice directions, and at times, in the absence of rules, by sheer practice. The practice gathers the strength of law and the older the practice the greater is the strength.....”

7. *Practical necessities or exigencies of administration require that the decision making authority who has been conferred with statutory power, be able to delegate tasks when the situation so requires. Thus, the maxim delegatus non potest delegare, gives way in the performance of administrative or ministerial tasks by subordinate authorities in furtherance of the exercise of the delegated power by an authority.*

8. *It would also be useful in this context to refer to the decision of this Court in Barium Chemicals Limited and another v. The Company Law Board and another⁵ wherein it is held at paragraph 36 as follows:*

“.....the maxim delegatus non potest delegare must not be pushed too far. The maxim does not embody a rule of law. It indicates a rule of construction of a statute or other instrument conferring an authority. Prima facie, a discretion conferred by a statute on any authority is intended to be exercised by that authority and by no other. But the intention may be negated by any contrary indications in the language, scope or object of the statute. The construction that would best achieve



the purpose and object of the statute should be adopted.”

9. *The Constitution confers power and imposes duty on the Legislature to make laws and the said functions cannot be delegated by the Legislature to the executive. The Legislature is constitutionally required to keep in its own hands the essential legislative functions which consist of the determination of legislative policy and its formulation as a binding rule of conduct. After the performance of the essential legislative function by the Legislature and laying the guiding policy, the Legislature may delegate to the executive or administrative authority , any ancillary or subordinate powers that are necessary for giving effect to the policy and purposes of the enactment. In construing the scope and extent of delegated power, the difference between the essential and non-essential functions of the delegate should also be borne in mind. While there cannot be sub-delegation of any essential functions, in order to achieve the intended object of the delegation, the non-essential functions can be sub-delegated to be performed under the authority and supervision of the delegate.*

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10. *Sometimes, in the plenary legislation itself, the law makers may provide for such sub-delegation. That is what we see under Sections 21 and 34 of the Major Port Trusts Act, 1963, which we shall be discussing in more detail at a later part of this judgment.*

11. *Having analysed the legal position as above, we shall*



now deal with the factual position in these cases. The challenge is on the judgment dated 28.01.2013 of the Division Bench of the Calcutta High Court. The issue pertains to the determination of leases granted by the Kolkata Port Trust to the petitioners. In the case of Universal Autocrafts Private Limited, they were granted lease of a plot of land for 30 years, on 19.8.1990. The lease deed was executed by the Land Manager of the Kolkata Port Trust. On 5.2.2008, a letter was issued to the said petitioner to demolish an alleged unauthorized construction and eject the sub-tenants from the premises. The petitioner submitted its reply on 2.5.2008. Not satisfied with the reply, on 30.01.2009, a notice terminating the lease was issued. The ejectment notice was signed by the Land Manager. The main contention is that the ejectment notice issued by the Land Manager is illegal and without jurisdiction as he is not competent to issue such ejectment notices. In the case of Siddhartha Sarawgi, the leases were terminated during the subsistence of the renewed period of 30 years, on the ground of sub-letting without consent of the Kolkata Port Trust. In his case also, the ejectment notices were issued by the Land Manager and, hence, it is contended that there can be no eviction on the basis of ejectment notice issued by a person who is not competent to do so, the same being without jurisdiction. The said ejectment notices were challenged by both the petitioners before the Calcutta High Court. In the case of Universal Autocrafts Private Limited, the learned single Judge of Calcutta High Court allowed the writ petition holding that the Land Manager was not competent to issue the ejectment notice. In the writ petition



filed by Sidhartha Sarawgi, the learned single Judge of the Calcutta High Court found a conflict between two earlier decisions and referred the matter to a Division Bench. The Division Bench vide common judgment dated 28.01.2003 held in favour of the Kolkata Port Trust in the case of both the petitioners, which is challenged in these Special Leave Petitions.

12. The Major Port Trusts Act, 1963 Ss. 21, 34 (hereinafter referred to as, 'the Act') is an Act intended "to make provision for the constitution of port authorities for certain major ports in India and to vest the administration, control and management of such ports in such authorities and for matters connected therewith". Section 3 of the Act provides for the constitution of a Board of Trustees (hereinafter referred to as 'the Board'). Section 5 provides that:

“5. Board to be body corporate.-Every Board constituted under this Act shall be a body corporate having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold or dispose of property and may by the name by which it is constituted, sue or be sued.”

13. Section 21 of the Act provides for delegation of powers of the Board with the approval of the Central Government on the Chairman and specification of exercise of such powers conferred on the Chairman by the Deputy Chairman or any other officer of the Board. The provision reads as follows:



“21. Delegation of powers.- A Board may, with the approval of the Central Government, specify-

(a) the powers and duties conferred or imposed upon the Board by or under this Act, which may also be exercised or performed by the Chairman; and

(b) the powers and duties conferred or imposed on the Chairman by or under this Act, which may also be exercised or performed by the Deputy Chairman or any officer of the Board and the conditions and restrictions, if any, subject to which such powers and duties may be exercised and performed:

Provided that any powers and duties conferred or imposed upon the Deputy Chairman or any officer of the Board under clause (b) shall be exercised and performed by him subject to the supervision and control of the Chairman.”

14. Section 34 of the Act provides for the mode of executing contracts on behalf of Board. It is provided therein that every contract is to be made by the Chairman or any other officer of the Board not below the rank of the Head of a Department as authorized by the Chairman, on behalf of the Board. The provision reads as follows:

“34. Mode of executing contracts on behalf of Board.-

(1) Every contract shall, on behalf of a Board, be made by the Chairman or by any such officer of the Board



not below the rank of the Head of a Department as the Chairman may, by general or special order, authorise in this behalf and shall be sealed with the common seal of the Board:

Provided that no contract whereof the value or amount exceeds such value or amount as the Central Government may from time to time fix in this behalf shall be made unless it has been previously approved by the Board:

Provided further that no contract for the acquisition or sale of immovable property or for the lease of any such property for a term exceeding thirty years, and no other contract whereof the value or amount exceeds such value or amount as the Central Government may from time to time fix in this behalf, shall be made unless it has been previously approved by the Central Government.

(2) Subject to the provisions of sub-section (1), the form and manner in which any contract shall be made under this Act shall be such as may be prescribed by regulations made in this behalf.

(3) No contract which is not made in accordance with the provisions of this Act and the regulations made thereunder shall be binding on the Board.”

15. *In exercise of the power under Section 21 on delegation of powers, the Board of the Kolkata Port Trust*



passed Resolution No. 82 dated 26.05.1988 delegating the power to terminate any lease on the Chairman. The Chairman was also authorized by the said Resolution to issue ejectment notices. The text of the Resolution reads as follows:

“.. Resolution No. 82-Resolved to sanction the proposal for delegation of powers to the Chairman by invocation of section 21(a) of the Major Port Trust Act, 1963, the power to terminate leases sanctioned by the Trustees and to authorizing him to issue ejectment notices, subject to the sanction of the Government.”

16. *It is the contention of the petitioners that the power to terminate the lease having been specifically conferred on the Chairman, the steps now taken by the Land Manager by issuing the impugned notices for eviction, are clearly without jurisdiction and, hence, illegal and inoperative. On behalf of the Board of Kolkata Port Trust, it is contended that the decision to terminate the lease has actually been taken by the Chairman and the issuance of notice of termination in furtherance of the decision taken by the Chairman alone, has been delegated to the Land Manager. Our attention is also invited to Office Order No. 6480/3/0 dated 22.01.1990, which reads as under:-*

**“CALCUTTA PORT TRUST
No. 6480/3/0 22-1-1990
OFFICE ORDER**

Henceforth ejectment (sic) notices in respect of leases



determined with my approval may be signed by any one of the under-noted officers:

Calcutta

(1) Deputy Chairman (Calcutta)

(2) Land Manager

Haldia

(1) Deputy Chairman (Haldia)

(2) General Manager (Mas)

(3) Manager (I&CF)”

17. *The power that is delegated to the Chairman as per Resolution No. 82 is the power to terminate a lease. The decision to terminate has been taken by the Chairman only and there is no dispute in that regard. In implementation of the decision thus taken by the Chairman to terminate the leases, the Chairman has authorized the Land Manager to issue the ejection notices. The issuance of such notices is a mere ministerial act for the implementation of a decision already taken by the Chairman as delegated by the Board. The Chairman having duly authorized the Land Manager in that regard, it cannot be said that the ejection notice issued by the Land Manager is without jurisdiction. It is not a case of sub-delegation. It is merely a ministerial exercise of issuance of a notice in implementation of the decision, as per the specific authorization in that regard.”*

36. The reliance placed by the learned counsel on the decision of this Court in the case of Deep Suresh Gadhecha (supra) is



thoroughly misconceived. We take notice of the fact that the judgment rendered by the Coordinate Bench in Deep Suresh Gadhecha (supra) was in a habeas corpus petition. This decision in our opinion is in no manner helpful to the writ-applicant in the present case.

37. In *Bombay Municipal Corporation v. Dhondu Narayan Chowdhary*, reported in AIR 1965 SC 1486, the Supreme Court considered the question, whether the delegation by the Commissioner, Municipal Corporation, of his functions under Sections 105-B to 105-E of the Bombay Municipal Corporation Act, 1888, to certain officers of the Corporation, was valid and proper. The Supreme Court took into notice Section 68 of the Act, 1888, and held as under :

“2. The Bombay Municipal Corporation Act is an Act of 1888 and it has been amended frequently. Section 68 is one of the original sections and it provides as follows:

“68. Municipal officers may be empowered to exercise certain of the powers, etc, of the Commissioner.

(1) Any of the powers, duties or functions conferred or imposed upon or vested in the Commissioner by any of the sections, sub-sections or clauses mentioned in sub-section (2) may be exercised, performed or discharged, under the Commissioner's control and subject to his revision and to such conditions and limitations if any, as he shall think fit to prescribe, by any municipal officer whom the Commissioner generally or specially either by name or by virtue of



office, empowers in writing in this behalf; and in each of the said sections, sub-sections and clauses the word "Commissioner" shall, to the extent to which any municipal officer is so empowered, be deemed to include such officer.

(2) The sections, sub-sections and clause of this Act referred to in sub-section (1) are the following namely:-

*“ * * * * ”*

Section 105B.

Section 105C

Section 105D

Section 105E

** * * * ”*

A reference to Ss.105B, 105C, 105D and 105E was inserted by the Maharashtra Act XIV of 1961. These sections are in Chapter 6A which was also newly added by the same Act. It is not necessary to refer to these sections, except a portion from S.105B which brings into prominence the action taken by the Corporation against the respondents:

“105B Power to evict person from corporation premises. (1) Where the Commissioner is satisfied-

(a) that the person authorised to occupy any corporation premises has, whether before or after the commencement of the Bombay Municipal Corporation (Amendment) Act, 1960,-



(i) * * * *

(ii) *sub-let, contrary to the terms or conditions of his occupation, the whole or any part of such premises; or.....”*

....the Commissioner may notwithstanding anything contained in any law for the time being in force, by notice..... order that that person as well as any other person who may be in occupation of the whole or any part of the premises. shall vacate them within one month of the date of the service of the notice.”

It will be noticed that S.68 was originally intended to cover very different matters because Chapter 6A could not have been in contemplation. When Chapter 6A was added and a reference to Ss.105B to 105E was included in S.68, the wording of that section became applicable to the power exercisable under Ss.105B to 105E even though that wording taken literally, is somewhat inapt to cover delegation of judicial power.

3. No question has been raised that any of the amendments is ultra vires so the words of S.68 must be reasonably construed. It goes without saying that judicial power cannot ordinarily be delegated unless the law expressly or by clear implication permits it. In the present case the amendment of S.68 by inclusion of delegation of the functions of the Commissioner under Ss.105B to 105E does indicate the intention that the judicial or quasi-judicial powers contained



in Chapter VIA were expressly intended to be delegated. To the delegation as such there can be no objection. What is objected to is the provision, both in the section as well as in the order of delegation, that the exercise of the function is to be under "the Commissioner's control" and "subject to his revision." These words are really appropriate to a delegation of administrative functions where the control may be deeper than in judicial matters. In respect of judicial or quasi-judicial functions these words cannot of course bear the meaning which they bear in the delegation of administrative functions. When the Commissioner stated that his functions were delegated subject to his control and revision it did not mean that he reserved to himself the right to intervene to impose his own decision upon his delegate. What those words meant was that the Commissioner could control the exercise administratively as to the kinds of cases in which the delegate could take action or the period or time during which the power might be exercised and so on and so forth. In other words, the administrative side of the delegate's duties was to be the subject of control and revision but not the essential power to decide whether to take action or not in a particular case. This is also the intention of S.68 as interpreted in the context of the several delegated powers. This is apparent from the fact that the order of the delegate amounts to an order by the Commissioner and is appealable as such. If it were not so the appeal to the Bombay City Civil Court would be incompetent and the order could not be assailed. The order of the delegate was the order of the Commissioner and the control envisaged both in S.68 and the order of delegation



was not control over the decision as such but over the administrative aspects of cases and their disposal. No allegation has been made that the Commissioner intervened in the decision of the case or improperly influenced it. In these circumstances, the order impugned in the appeal cannot be sustained.”

38. We may quote few extracts from Beatson, Matthews and Elliott's Administrative Law :

“...Some legislation expressly permits discretionary powers to be delegated (see, eg. Local Government Act, 1972, ss.101-102). However, the general policy that discretionary power should be exercised by its statutory holder means that such provisions tend to be narrowly construed. For instance, in General Medical Council v. UK Dental Board (1936) Ch 41, although the Dentists Act, 1921, permitted the GMC to delegate functions to an executive committee, the court held that this power of delegation did not extend to disciplinary functions. This reflects the fact (also illustrated by the following case) that the courts' willingness to find statutory permission for delegation and the importance of the function in question appear to be inversely related....”

“...Under the provisions of the scheme, so far from the board being in the position of an employer, the board are put in a judicial position between the men and the employers; they are to receive reports from the employers and investigate them; they have to inquire whether the man has been guilty of misconduct, such as failing to comply with a lawful order, or failing to comply with the provisions of the scheme; and if



they find against him they can suspend him without pay, or can even dismiss him summarily....”

“....In the first place, the decision-maker designated in the legislation is likely to have been chosen because of its institutional ability to take decisions in the area in question due to the expertise of its personnel, its integration into a wider decision-making structure, or its ability to gain access to relevant information and expert advice. Moreover, the designated agency is most likely to be an accountable decision-maker: it may well be subject to a regime of political accountability and, in any event, its role in making decisions in the relevant area will be transparent, its specification in the legislation making it readily identifiable as the responsible agency....”

39. We are of the view that the challenge to the legality and validity of the impugned notification should fail.

40. As pointed out by the Supreme Court in the case of Sahni Silk Mills (supra), the courts should normally be rigorous while requiring the power to be exercised by the persons or the bodies authorized by the statutes. As noted above, it is essential that the delegated power should be exercised by the authority upon whom it is conferred and by no one else. At the same time, in the present administrative setup, the extreme judicial aversion to delegation should not be carried to an extreme. There is only one Commissioner of State Tax in the State of Gujarat, and having regard to the enormous functions and duties to be discharged under the new tax regime, he has been empowered to delegate



his powers to the Special Commissioner of State Tax and the Additional Commissioners of State Tax.

41. We take notice of the fact that the delegation has been authorized expressly under Section 5(3) of the Act. We would have definitely interfered if the Special Commissioner or the Additional Commissioners would have further delegated the power to officers subordinate to them. Such is not the case over here.

42. In the impugned notification it has been stated that the functions delegated shall be under the overall supervision of the Commissioner. When the Commissioner stated that his functions were delegated subject to his overall supervision, it did not mean or should not be construed as if he reserved to himself the right to intervene to impose his own decision upon his delegate. The words in the last part of the impugned notification would mean that the Commissioner could control the exercise administratively as to the kinds of cases in which the delegate could take action. In other words, the administrative side of the delegate's duties were to be the subject of control and revision but not the essential power to decide, whether to take action or not in a particular case. Once the powers are delegated for the purpose of Section 69 of the Act, the subjective satisfaction, or rather, the reasonable belief should be that of the delegated authority.

43. Mr.Pandya invited our attention to a decision of this Court in the case of Valerius Industries (supra), more particularly, the



observations made by this Court in para-35. We quote para-35 as under :

“In the case on hand, Section 83 makes it abundantly clear that it is the Commissioner's opinion which is relevant. The Legislature has thought fit to confer this power upon the Commissioner. Whether such power conferred upon the Commissioner by the legislature could have been delegated to the three subordinate officers referred to above by virtue of the order dated 15th January 2018 passed in exercise of power under sub-section (3) of Section 5 read with clause 19 of Section 2 of the Act and the rules framed thereunder. In our opinion, the answer has to be in the negative. Although there is no specific challenge to the order dated 15th January 2015 passed by the Commissioner of State Tax delegating his power under Section 83 to the subordinate officers, yet, we are of the view that by virtue of such order, such impugned order of provisional attachment cannot be defended.”

44. In Valerius Industries (supra), this Court was dealing with a matter in which the subject matter of challenge was an order of provisional attachment under Section 83 of the Act. For the purpose of Section 83 of the Act, the Legislature thought fit to confer the power upon the Commissioner. However, in this regard also, the Commissioner has issued a notification dated 15th January 2018 delegating his power to three subordinate officers. While considering the challenge, this Court observed in para-35 as quoted above.



45. We are of the view that the observations made by this Court in the above referred para-35 could be termed as *per incurium* as such observations run contrary to the Supreme Court decisions referred to above in this judgment.

46. It is an accepted principle of administrative law that the repository of power must exercise that power personally. However, there are **two exceptions** to this principle :

1. Legislation provides for the power to delegate or authorise :

An express power to delegate, usually in legislation, allows the person who has the legislative authority to delegate that authority to others. The individual/s or position/s having the delegation can exercise the authority in their own right. An example of an express power to delegate can be seen in section 5(3) of the Act, 2017.

2. Implied power to authorise :

An implied power to authorise, arises where even though there may or may not be an express power to delegate in legislation, there can be an implied power for an official to exercise the power on the person's behalf – it is often termed the **'alter ego' principle**, the **'Carltona principle'** or an implied power to delegate. This principle arose from the decision *Carltona Limited v Commissioner of Works [1943] 2 ALL ER 560*.



47. The principle is: devolving power is permitted in the cases where the nature, scope, and purpose of the power in legislation means that it is unlikely that the Parliament intended that the power is to be exercised personally, and the only practical way the power can be exercised is by the officers who are responsible to the person (who has the power by legislation).

48. This is also known as the principle of agency – where the agent is acting in the principal's name.

49. Whether a person other than that named in the empowering statute is allowed to act will depend upon the statute which lays down the provision for delegation. The nature of the subject matter, the degree of control retained by the person delegating, and the type of person or body to whom the power is delegated will be taken into account while delegating powers.

50. We have to our advantage a Full Bench decision of the Allahabad High Court on the subject. We are referring to a decision in the case of Democratic Bar Association, Allahabad v. High Court of Judicature at Allahabad, reported in AIR 2000 (All) 300. The following questions fell for the consideration of the Full Bench.

“1. Whether the High Court can delegate its statutory function under Sec. 16(2) of the Act, to designate an advocate as senior advocate in favour of a committee consisting of Hon'ble Judges of the Court?”



2. *Whether Rule 3(B) of the Rules, or in the form it stands in the Rules, is in contravention of the provisions contained in Sec. 16(2) of the Act and is ultra vires ?*

3. *Whether the High Court has authority to frame the Rules known as 'Designation of Senior Advocate Rules, 1999'; under Sec. 34(1) of the Act or under any other provision of the Act or the Constitution, for the purposes of evolving the procedure to be allowed for designation of an Advocate as Senior Advocate.*

4. *Whether the procedure evolved under the impugned Rules excludes the advocates, practising in the district courts, or in the tribunals, from consideration to be designated as senior advocates.*

5. *To what relief, if any, in the facts and circumstances of the case petitioners are entitled in the present writ petition?"*

51. The answer given by the Full Bench to the first question referred to above is relevant for our purpose. In para-30, the court observed as under :

“From perusal for Sec. 16(2) of the Act it is clear that High Court has to form an opinion about the ability, standing at the Bar or special knowledge or experience in law of an advocate and when he is found deserving, he is designated as senior advocate. Process of forming opinion by Hon'ble Judges of this Court is a continuous process based on the



observation of the performance of the advocate in arguing cases before the Judge concerned. Such kind of opinion cannot be formed except by long and sustained observation for years. Opinion forming process is thus, objective, However, it is expressed in subjective manner by designating an advocate as senior advocate or by refusing to confer this distinction. The expression is subjective as Hon'ble Judges are not required to assign any reasons for such refusal. Opinion forming is objective as the concerned advocate appears, argues his cases and his performance regarding ability, standing at the Bar and his knowledge and experience of law is judged frequently by Hon'ble Judges. It cannot be disputed that function is necessarily administrative but it is statutory in nature. Whether such kind of statutory function, though administrative in nature, can be delegated. There is no doubt about the legal position that when any function is assigned to the High Court, the High Court means, Hon'ble the Chief Justice and all his companion Judges. Normally administrative functions and powers can be delegated in favour of co-ordinate authority or to a subordinate authority. However, when administrative function is statutory in nature and the function or the power is assigned under the statute it should be performed or exercised by that authority unless the power to delegate such function or exercise of power is specifically provided or may be inferred by necessary implication from the provisions contained in the statute. Learned counsel for the respondents could not lay his hand on any provision contained in the Act on the basis of which it may be said that High Court has been conferred specific power to



delegate this statutory function contemplated under Section 16(2) of the Act.”

(Emphasis supplied)

52. Thus, the dictum as laid in the aforesaid Full Bench decision of the Allahabad High Court is that, normally the administrative functions and powers can be delegated in favour of a coordinate authority or to a subordinate authority. When administrative function is statutory in nature and the function or the power is assigned under the statute, it should be performed or exercised by that authority unless the power to delegate such function or exercise of power is specifically provided or may be inferred by necessary implication from the provisions contained in the statute.

53. In the case on hand, Section 5(3) of the Act specifically confers power upon the Commissioner to delegate his functions.

54. We also have to our benefit, a Division Bench decision of the Madhya Pradesh High Court in the case of Raghunath v. Indore Municipal Corporation, Indore, reported in AIR 1987 (MP) 181. In the said case before the Madhya Pradesh High Court, the petitioner, being dissatisfied with the valuation of the property made for the purpose of property tax, filed his objections under Section 147 of the Madhya Pradesh Municipal Corporation Act, 1956. Those objections were heard and rejected by the Assessment Officer of the respondent Corporation in pursuance of the powers conferred upon him by the Commissioner of the Corporation. The petitioner argued before the High Court that the respondent no.2, i.e. the Commissioner of the Corporation,



had no power to delegate the powers conferred upon him by Section 148 of the Act to any other officer of the Corporation, and consequently, the orders passed by the Assessment Officer overruling the objections submitted by the petitioner could be termed as without jurisdiction or null and void. On the other hand, on behalf of the Corporation, it was contended that the Commissioner is empowered under the provisions of Section 69(4) of the Act, 1956, to delegate any of the powers, duties or functions conferred upon him by the Act to any officer of the Municipal Corporation and that in pursuance of that power the Commissioner had delegated the power conferred upon him by Section 148 of the Act. It was argued on behalf of the Corporation that the orders passed by the Assessment Officer overruling the objections of the petitioner cannot be held to be without jurisdiction or null and void.

55. The following questions fell for the consideration of the Division Bench of the Madhya Pradesh High Court :

“Whether the power to determine objections to valuation made under the Act, conferred by Section 148 of the Act, could be delegated by the Commissioner to any officer of the Corporation under the provisions of Section 69(4) of the Act.”

56. The court proceeded to observe as under :

“5. To appreciate the contentions advanced by the learned counsel for the parties, it is necessary to refer to the relevant provision of the Act. Sub-Sec. (ii) of S.5 of the Act defines the expression 'Commissioner' as follows:



“Commissioner’ means the Municipal Commissioner for the city appointed under S.54 and includes an acting Commissioner appointed under Sub-Sec. (2) of S.57 and any Municipal Officer empowered under this Act to exercise, perform or discharge any of the powers, duties or functions of the Commissioner to the extent to which such officer is so empowered.”

Section 69(4) of the Act empowering the Commissioner to delegate his functions to any officer of the Corporation, reads as follows :

“Municipal Officers may be empowered to exercise the powers of Commissioner. (4) Any of the powers, duties or functions conferred or imposed upon or vested in the Commissioner by this Act may be exercised, performed or discharged under the Commissioner's control, and subject to his superintendence and to such conditions and limitations, if any, as he may think fit to prescribe, by any Municipal Officer, whom the Commissioner may generally or specially empower in writing in this behalf.”

Now, power to determine objections to valuation is conferred on the Commissioner by S.148 of the Act. That this power, under S.148 of the Act to decide objections is a quasi-judicial power" was not disputed before us on behalf of the respondents. The contention urged on behalf of the petitioners was that the Commissioner had no power to delegate the quasi-judicial power conferred upon him by S.148 of the Act.



6. As held by the Supreme Court in *Bombay Municipal Corpn. v. Dhondu Narayan Chowdhary*, AIR 1965 SC 1486, it is well settled that judicial power cannot ordinarily be delegated unless the law expressly or by clear implication, permits it. S.69(4) of the Act, in our opinion, is a provision, which expressly permits the Commissioner to delegate any power conferred upon him by the Act. In absence of the provisions of S.69(4) of the Act, the Commissioner could not have delegated the quasi-judicial powers conferred upon him by the Act.

7. It is, however, urged on behalf of the petitioner that S.69(4) of the Act refers only to the administrative powers under the Act and not to any other power under the Act. There is no warrant for construing the provisions of S.69(4) of the Act in such a way as to confine it to delegation of administrative powers only. S.69(4) of the Act enables delegation of all powers conferred upon the Commissioner by the Act, irrespective of the nature of the power. When an officer of the Corporation decides the objections under S.148 of the Act, in pursuance of the powers conferred upon by the Commissioner, the order passed by that officer is tantamount to an order passed by the Commissioner by virtue of S.5(11) of the Act and is appealable to the District Court under S.149 of the Act. While conferring power on the Commissioner to delegate his functions under the Act, the legislature has not chosen to limit that power to administrative functions only. S.69(4) of the Act expressly confers upon the Commissioner the power to delegate any



power conferred upon him by the Act, to any Municipal Officer. That the control and superintendence envisaged in S.69(4) of the Act cannot bear the meaning, which they in delegation of administrative functions, is clear from the decision of the Supreme Court in AIR 1965 SC 1486 (supra). In that case, while construing a similar provision in the Bombay Municipal Corporation Act, the Supreme Court observed as follows :-

“What is objected to is the provisions both in the Section as well as in the order of delegation that 'Commissioner's control' and 'subject to his revision'. These words are really appropriate to delegation of administrative functions where the control may be deeper than in judicial matters, in respect of judicial or quasi judicial functions, these words cannot, of course, bear the meaning, which they in the delegation of administrative functions. When the Commissioner stated that his functions were delegated subject to his control and revision, it did not mean that he reserved to himself the right to intervene to impose his own decision upon his delegate. What those words meant was that the Commissioner could control the exercise administratively as to the kinds of cases, in which the delegate could take action or the period or time, during which the power might be exercised and so on and so forth. In other words, the administrative side of the delegate's duties was to be the subject of control and revision but not the essential power to decide whether to take action or not in a particular case. This is also



the intention of S.68 as interpreted in the context of the several delegated powers. This is apparent from the fact that the order of the delegate amounts to an order by the Commissioner and is appealable as such.”

In view of the aforesaid decision of the Supreme Court, it cannot be held that the fact that the power delegated under S.69(4) of the Act by the Commissioner is to be exercised subject to the control and superintendence of the Commissioner, rules out delegation of quasi-judicial power conferred upon the Commissioner by S.148 of the Act. Such a construction would also not be reasonable because the legislature has chosen to confer power upon the Commissioner by S.69(4) of the Act, to delegate any of his functions under the Act, without any reservation, presumably because, in a city, where a Corporation is established, the Commissioner cannot possibly exercise each and every power conferred upon him by the Act. Under the circumstances, it cannot be held that the objections to the valuation preferred by the petitioners have been decided by a person, who had no jurisdiction to decide those objections.”

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57. Thus, the dictum as laid in the aforesaid decision is that, be it quasi-judicial or administrative power, the same can be delegated provided the law expressly or by clear implication permits it to be delegated. The Bench took the view that having regard to Section 69(4) of the Act referred to above, the Commissioner has been empowered to delegate any of his powers. The Bench also clarified that in the absence of the



provisions of Section 69(4) of the Act, the Commissioner could not have delegated the quasi-judicial powers conferred upon him by the Act.

58. One important observation made by the Division Bench of the Madhya Pradesh High Court is, “where a Corporation is established the Commissioner cannot possibly exercise each and every power conferred upon him by the Act”. In such circumstances, the statute has permitted the Commissioner to delegate his powers to any of his subordinate authority.

59. The last contention of Mr.Pandya is that although the Commissioner of Tax has been empowered by the statute to delegate his powers, yet, at the same time, Section 69 of the Act mandates that the reasonable belief should be that of the Commissioner. The argument proceeds on the footing that whenever a power is to be exercised based on the reasonable belief of the authority upon whom such power has been conferred, the same cannot be delegated though the statute empowers the statutory authority to do so. In short, Mr.Pandya is trying to draw a distinction between a particular power to be exercised and power to be exercised based on the reasonable belief of the authority. In our opinion, it does not make any difference. The very same reasonable belief will be that of the authority upon whom the power is delegated. The power under Section 69 of the Act can be exercised by the authority upon whom the power is delegated provided the delegatee has reasons to believe that the assessee has committed offence under Section 132 of the Act. Therefore, the condition precedent, i.e. 'reasonable belief', for the purpose of exercise of power under Section 69 of the Act remains the same.



60. In the result, these writ-applications fail and are hereby rejected. Rule stands discharged.

(J. B. PARDIWALA, J.)

(BHARGAV D. KARIA, J.)

/MOINUDDIN

