

PRIVY COUNCIL

(Firm) Radha Kishan Jaikishan

Vs.

Municipal Committee, Khandwa

P.C.A.Nos.3 and 4 of 1931

(Lords Thankerton, Alness and Sir Lancelot Sanderson JJ.)

18.12.1933

JUDGMENT

LORD THANKERTON J.

1. The appellants in these consolidated appeals are the plaintiffs in two suits in January 1924, and August 1925, respectively, in which they challenge the validity of a tax imposed on the trade of ginning and pressing cotton by means of a steam or mechanical process by the respondent, the Municipal Committee of Khandwa, in November 1922. In the first suit the appellants seek an injunction to restrain the respondent from recovering from them the amount of the tax assessed upon the appellants for the year 1922-1923. In the second suit the appellants seek repayment of the amount of the tax paid by them in respect of the year 1923-1924. These consolidated appeals are from one judgment and two decrees of the Court of the Judicial Commissioner, Central Provinces, dated 20th November 1928. The decree in the first suit confirmed in second appeal a decree of the District Judge of Nimar, dated 15th July 1924, which had confirmed a decree of the Subordinate Judge of Khandwa, dated 11th April 1924, dismissing the suit. In the second suit the Court of the Judicial Commissioner reversed a decree of the Additional District Judge of Khandwa, dated 6th February 1926, directing the Municipal Committee of Khandwa to refund to each of the present appellants the amount of the tax paid by them.

2. At the material time the respondent derived its power to impose taxation from the Central Provinces Municipal Act (Act 16 of 1903). That Act was repealed by the Central Provinces Municipalities Act (Act 2 of 1922 C. P.), which came into force on 1st July 1923, and to which it will be necessary to refer later in relation to a contention by the respondent.

3. The following are the material sections of the Act of 1903 :

"35. Subject to any general rules or special orders which the Governor-General in Council may make in this behalf, a committee may, for the purposes of this Act, impose, with the sanction hereinafter specified in each case and in the manner required by Section 39, any of the following taxes, namely :

(a) with the previous sanction of the Local Government

(iii) a tax on any person exercising any profession or art, or carrying on any trade or calling, within the limits of the municipality."

"39 -(1) A committee may resolve at a special meeting to propose the imposition of any tax for the purposes of this Act.

(2) Where a resolution has been passed under sub Section 1, the committee shall publish, in the prescribed manner, a notice defining the class of persons or description of property proposed to be taxed, the amount or rate of the tax to be imposed, and the system of assessment to be adopted,

(3) Any inhabitant of the municipality objecting to the proposed tax-may, within one month from the publication of the notice, submit his objection in writing to the committee, and the committee shall, at a special meeting, take his objection into consideration.

(4) Where no objection is submitted as aforesaid, or where the objections so submitted, having been considered by the committee, are deemed insufficient, the committee may forward its proposals to the Local Government with the objections (if any) so submitted.

(5) The Local Government may, on receiving the proposals of the committee, sanction the same, or refuse to sanction them, or sanction them subject to such modifications as it may think fit, or return them to the committee for further consideration.

(8) Where any proposals for taxation have been sanctioned under Sub-Section 5 or Sub-Section 6 by the Local Government... the Local Government may, by notification in the local official Gazette, direct the imposition of the tax as sanctioned from such date as may be specified in the notification, and thereupon the tax shall come into effect as from the date so specified."

4. At a special meeting held on 16th July 1922, the respondent committee, acting on a suggestion received from the Local Government, resolved to propose the imposition of a tax on the trade of ginning and pressing cotton by means of steam or mechanical process. This resolution was in intended compliance with Sub-Section 1, Section 39. On or about 20th July 1922, notices of the proposed resolution, requiring objections to

be submitted within one month, were placed on the notice board at the Town Hall, and were proclaimed locally by beat of drum. Later on similar notices were inserted in two issues of the Central Provinces Gazette, dated 23rd and 30th September 1922. These notices were issued in view of Sub-Section 2, Section 39. The terms of the resolution and the contents of the notices will be referred to later. On 3rd August, 1922 a number of factory owners, including most of the appellants, submitted objections, requesting the cancellation of the proposed tax. At a special meeting held on 23rd October 1922, the committee considered the objections and rejected them, and resolved to submit their proposals to the Local Government for its sanction. They were so submitted by letter from the Secretary of the committee on 28th October, 1922. These steps were taken under sub-Ss. 3 and 4, Section 39. On 25th November, 1922, the Local Government published in the Central Provinces Gazette a notification sanctioning the imposition of the tax with effect from the date of the notification. By a subsequent notification dated 3rd January, 1923, and published in the Central Provinces Gazette of 6th January 1923, the tax was declared to be payable on the 1st August of each year. These notifications were issued under Sub-Section 8, Section 39.

5. Thereafter the committee proceeded with the assessment and levying of the tax for the year 1922-1923, and early in July 1923, individual notices for payment of the amount of tax assessed on them were sent to the appellants, who declined to pay the amounts so levied, and on 2nd January 1924, filed the first suit, seeking an injunction against recovery of the tax from them. On 26th November 1924, the appellants had notices served on them in respect of the amounts of tax assessed on them respectively in respect of the year 1923-1924. Payment was again demanded from them on 9th January 1925. In February 1925, the said amounts of tax were recovered from the appellants by the committee, and on 3rd August 1925, the appellants filed the second suit, seeking to have these sums refunded to them. In these suits the appellants challenged the validity of the proceedings of the committee on a number of grounds, but only two grounds have been maintained before this Board, namely, (1) that the special meeting of 16th July 1922, was not a valid meeting of the committee, in respect that Major Tarr, one of the members of the committee, did not receive notice of the meeting, and (2) that the resolution passed at the said special meeting did not comply with the provisions of Section 39(1) of the Act of 1903, in respect that it did not fix the amount or rate of the proposed tax, and that either of these defects in the proceedings of the committee rendered the whole proceedings relating to the imposition of the tax ultra vires of the committee and invalid. The respondent, on the other hand, maintained that the Court was precluded from entertaining either of the

appellants' contentions, in view of the provisions of Section 67(8) of the Act of 1922, which rendered the notification by the Local Government of the imposition of the tax conclusive evidence that the tax had been imposed in accordance with the statutory provisions. It will be convenient to consider this contention first. The notification on which the respondent relies was dated 25th November 1922, and was issued by the Local Government under Section 39(8) of the Act of 1903. The Act of 1922, in accordance with notification by the Local Government under section 1, came into force on 1st July 1923. section 2 and Section 67(8) of the Act, so far as material, provide as follows :

" 2.-(1) The Central Provinces Municipal Act, 1903, and the Central Provinces Municipal (Amendment) Act, 1918, are hereby repealed. (2) But all municipalities constituted, committees established, limits defined, appointments, rules, orders and bye-laws made, notifications and notices issued, taxes imposed or assessed,.... under the said Acts or any enactment thereby repealed, shall, so far as may be, be deemed to have been respectively constituted, established, defined, made, issued, imposed or assessed,.... under this Act."

" 67.-(8.) A notification of the imposition of a tax under this section shall be conclusive evidence that the tax has been imposed in accordance with the provisions of this Act."

6. Section 67, in its sub-Ss. 1 to 7, substantially re-enacts Section 39 of the Act of 1903. The respondent maintains that, by virtue of Section 2(2), the Local Government notification of 25th November 1922, under the Act of 1903 is to be deemed to have been issued under the Act of 1922, and is therefore subject to the provisions of Section 67(8) of the latter Act. But their Lordships are unable to place upon Section 2(2) of the Act of 1922, a construction which would involve the validation of proceedings which purported to be under the Act of 1903, but which, ex hypothesis of the present argument, were invalid and without the powers of the Act of 1903. Such invalid proceedings are not proceedings under the Act of 1903, and the notification in question is not a notification issued under the Act of 1903. The terms of Section 2(2) of 1922 are amply satisfied by limiting them to their obvious intendment, namely, to fill the gap made by the repeal of Acts of 1903 and 1918 operated by Sub-Section 1. Further, the ordinary cannon of construction of a taxing Act favours the more limited construction. Their Lordships are therefore unable to accept the respondent's contention. Their Lordships accordingly turn to the two challenges made by the appellants to the validity of the Committee's proceedings on 16th July 1922. It is well

established that any such attack on the proceedings of a statutory body, such as the Committee; must be clearly defined and clearly proved. First, as regards the alleged absence of notice of the meeting to Major Tarr, the general rule as to notice of meetings was stated by Lord Campbell as follows :

" The election being by a definite body on a day of which, till summons, the electors had no notice, they were all entitled to be specially summoned and, if there was any omission to summon any of them, unless they all happened to be present, or unless those not summoned were beyond summoning distance-as, for instance, abroad-there could not be a good electoral assembly ; and even a unanimous election by those who did attend would be void : *Smyth v. Darley* (1849) 2 HL 789., at p. 803."

7. It is usual to find this general rule modified in particular cases as, for instance, by authorising as sufficient notice the posting of a written notice to the usual address of the member. In the present case the bye-laws of the Committee provide as follows:

" Notices of every meeting, with a list of the business to be transacted thereat, shall be sent by the Secretary to every member of the Committee. Not less than three days' notice shall ordinarily be given of meetings held under Rules 1 and 2, and not less than 24 hours' notice of special meetings other than those referred to in Rule."

8. The special meeting of 16th July 1922, was of the class that required not less than 24 hours' notice. This ground of challenge was not specifically pleaded by the appellants in either case, as it should have been. In neither case did either of the parties adduce oral evidence before the trial Court; they were content to take the cases on the documents produced. When the cases came before the Court of the Judicial Commissioner, the Court made an order giving the parties, or such of them as might desire to avail themselves or itself of it, the chance to examine Major Tarr as a witness in the case, and he was so examined as a witness for the Committee. In these circumstances it will be sufficient to refer to the subsequent judgment of the Court of the Judicial Commissioner. The notice of the meeting on 16th July 1922, was issued in the Hindi language and also in English for the English knowing members. It is with the latter that the question arises. The notices were not sent out by separate copies to each member, but a copy in each language was sent round with a peon, and the usual practice was for the members who have seen the notice to write their name or initials opposite their name in the list which was appended to the notice. In the notice in question there appears only a line in blue pencil opposite the name of Major Tarr. In

his evidence Major Tarr-by then Lieutenant-Colonel Tarr-stated :

" I do not remember this notice. My usual habit was to initial the notice. I do not remember to have put the line on the notice; I may have,"

and, in cross-examination ;

" My usual initials are W.T. That is my invariable practice. I never signed by putting a line, so far as I remember. I should like to consider it a discourtesy to send the notice away with such a line. Nobody was authorised by me to sign for me or to make a tick-mark for me. I do not remember anything at all about the meeting referred to in the notice."

9. In agreement with the Court of the Judicial Commissioner, their Lordships do not regard this evidence as sufficient to discharge the burden of clear proof which lies upon the appellants in this matter, and this challenge to the proceedings of the Committee fails. Their Lordships accordingly find it unnecessary to consider the meaning of the somewhat ambiguous word "send" which is used in the bye-law; it might well be made more clear. Their Lordships desire to add that, while the attendance of the member, who has not been duly notified, at the meeting would obviate any objection to the want of notice, they are of opinion that, in the case of a statutory meeting which is to affect the rights of third parties, such as taxpayers, the failure to summon duly all the persons entitled to take part in the meeting is not a defect which can be waived by the individual member concerned. The resolution of the Committee at the special meeting of 16th July 1922, out of which arises the second challenge of the appellants, is engrossed in the Committee's proceeding book, and is recorded as follows:

" (3) Read Secretariat letter No.731-343 VIII, dated 30th March 1922, on the subject of imposing a tax on the trade of ginning and pressing cotton by means of steam or mechanical process.

10. Read also the draft bye-laws prepared by the President, together with his note recommending to adopt them for imposing this tax in this municipality with a view to increase the Committee's income. -

The bye-laws adopted by Murtizapur and other municipalities in Berar, where this tax has already been imposed, were also read.

Resolved that the proposed bye-laws drafted by the President be passed and that they be published locally as well as in two successive issues of the Central Provinces Gazette for inviting objections or suggestions in respect of them within one month from the date of their publication.

Note.-Seth Kamaruddin proposed that this tax be imposed on the trade of pressing cotton only and not on ginning. This proposal was however dropped, as it was not seconded by any member."

11. This slovenly record is open to the comment that, but for the note at the end, it might be doubtful if the question of the imposition of the tax was considered and resolved on by this meeting. The notice convening the meeting had stated the business as

" consideration of the bye-laws regarding the imposition of a tax on the trade of ginning and pressing cotton."

12. But the criticism of more immediate importance is that the record contains no reference to the amount or rate of the tax to be imposed, and it is clear, in their Lordships' opinion, that, in view of sub-Ss. 1 and 2 of Section 39 of the Act of 1903, it is essential that the resolution contemplated by sub-S.1 should settle the amount or rate of the proposed tax. If, however the "proposed bye-laws drafted by the President" can be identified, it should then be possible to ascertain definitely whether the approval of the amount or rate of the proposed tax was involved in the resolution. But it is here that difficulty and confusion arises; there is no documentary evidence which enables one to identify the "bye-laws" referred to in the resolution, and as already stated, the parties adduced no oral evidence at the trial. The following facts are ascertainable from the documentary evidence : -On 8th May 1922, the Secretary of the Committee submitted to the President the circular letter from the Local Government, recommending the imposition of such a tax, along with two copies of the Central Provinces Gazette containing the rules adopted by the Murtizapur Municipality for the assessment and collection of such a tax. On 9th May 1922, the President stated that the proposals were agreeable to him and instructed the Secretary to prepare a draft of the rules to be framed by their Municipality under Section 35(a) (iii), Municipal Act. On 14th July 1922, the President instructed the Secretary to convene a special meeting to be held on 16th July for, inter alia,

"(ii) Consideration of the bye-laws regarding the imposition of a tax on the trade of ginning and pressing cotton";

the notices convening the meeting, which have been already referred to, were issued on the following day. The only document bearing a date prior to the meeting which might possibly be described as bye-laws is in Ex. D-1 in the second suit. It is dated 15th July 1922, is headed "Notice," and includes a part headed "Rules," which clearly states the rate of the proposed taxation. The word

"bye-law" does not occur therein. But among the documents of a date subsequent to the meeting are found two separate documents which appear to have been in existence at the time of the placing of the notice at the Town Hall and the proclamation by beat of drum in the last week of July 1922. The first of these documents begins as follows :

"NOTICE

Is hereby given that the Municipal Committee of Khandwa in the Nimar District propose to make the following bye-laws under section 105, Sub-Section (1), Clause (a), and section 105, Sub-Section (2), Central Provinces Municipal Act, 16 of 1903, for the assessment and collection of the tax on ginning and pressing of cotton within the limits of Khandwa Municipality.

The proposed bye-laws will be taken into consideration on the expiry of one month from the date of the first publication of this notice and any objections or suggestions in respect thereof must be forwarded to the Secretary to the Committee before the expiry of the said period : "

The rest of the document consists of the "Bye-laws," none of which state the amount or rate of the proposed tax. The other document is as follows :

"NOTICE

Is hereby given that the Municipal Committee of Khandwa in the Nimar District propose to impose under section 35, Clause (a), sub-Clause (iii), Central Provinces Municipal Act, 1903, a tax on the ginning and pressing of cotton within the limits of Khandwa Municipality, and under section 39, Sub-Section (2), of the said Act to make the following rules for the assessment of the said tax,

The proposed taxation and the rules will be taken into consideration on the expiry of one month from the date of the first publication of this notice, and any objections or suggestions in respect thereof must be forwarded to the Secretary to the Committee before the said period.

RULES

1. Every person carrying on the trade of ginning cotton or pressing the same into bales by means of steam or mechanical process within the limits of Khandwa Municipality shall pay a tax at the following rates ;

Rs. a. p.

(1) For each bondri of three maunds ginned..... 0 1 6

(2) For each bale of 4½ maunds pressed..... 0 2 3

13. The tax shall be payable in one instalment on 1st August each year."

14. It appears that, in the notices published in the Central Provinces Gazette on 23rd and 30th September 1922, these two documents were amalgamated under the heading of "Rules," the dubious reference to Section 105 of the Act was omitted, and the term "bye-law" also disappeared. In this state of the evidence their Lordships are unable to find any sufficient evidence that the document containing "Rules," which did state the rate of the proposed tax, was before the meeting of 16th July 1922, and was included in the "bye-laws drafted by the President" referred to in the resolution, especially having regard to the fact that there was a contemporaneous document which did contain "bye-laws," but which did not state the amount or rate of the tax. In their Lordships' opinion, the original burden of proof on the appellants was shifted when the Committee produced their written record of the resolution of 16th July 1922, and took their stand on it. But their Lordships were reluctant to come to any conclusion which would involve the voidance of taxation which has been in operation for so many years, without first ensuring that all the available evidence had been placed before the Court. The public interest is concerned in this matter.

15. Their Lordships therefore expressed their willingness to give the respondent Committee, under conditions to be considered at a later stage, the opportunity, if it so desired, of adducing evidence to identify the "bye-laws drafted by the President" referred to in the resolution of 16th July 1922, and to show whether the document dated 15th July 1922, contained in Ex. D-1 in the second suit, or any similar document, which stated the amount or rate of the proposed tax was included in the term "bye-laws drafted by the President." Counsel for the respondent has informed their Lordships of the respondent's desire to avail itself of the opportunity offered, and their Lordships will accordingly humbly advise His Majesty that the cases ought to be remitted to the Court of the Judicial Commissioner, Central Provinces, in order that the respondent may be given the opportunity of adducing evidence as above stated with an opportunity to the Appellants to adduce evidence in answer thereto, if they so desire. The further hearing of the appeals will be adjourned until the evidence adduced upon the question remitted has been received from the Court of the Judicial Commissioner and the costs will likewise be reserved. '

Case remitted.