

Municipal Board, Sitapur

Vs

Prayag Narain Saigal and Firm Moosaram Bhagwan Das

Civil Appeal Nos. 847-848 of 1966

(S.M. Sikri, R.S. Bachawat, K.S. Hegde JJ)

16.01.1969

JUDGMENT

BACHAWAT, J. -

1. These appeals are directed against orders of the Allahabad High Court (Lucknow Bench), quashing the imposition of a water rate imposed by the Municipal Board, Sitapur. Section 126(1)(x) of the U.P. Municipalities Act, 1916 (U.P. Act No. 2 of 1916), empowers the Board to impose a water tax on the annual value of buildings or lands or of both. Sections 131 to 135 lay down the procedure for imposing the tax. The High Court held that the levy was invalid as the Board did not comply with this procedure.
2. A Municipal Board desiring to impose the tax is required by Section 131, sub-section (1) to pass a special resolution framing the preliminary proposal for the tax. The Municipal Board, Sitapur, passed a special resolution on January 24, 1956, framing the proposal for the levy of water tax at the rate of 12% per annum on the annual value of buildings and lands and exempting buildings and lands whose annual value was Rs. 24 or below.
3. Section 131, sub-section (2) requires the Board to prepare a draft of the rules in respect of the proposed tax. The Board duly prepared the necessary draft rules. Section 131, sub-section (3) requires the Board to publish in the manner prescribed in Section 94 the proposal and the draft rules along with a notice in the form set forth in Schedule III. The draft rules along with the notice was published in the Rashtra Sandesh, a local paper published in Hindi. The proposal was not separately published. But the proposal was to be found in the draft rules published in the local paper. Objections against the proposal were filed by the inhabitants of the municipality. The Board duly considered the objections and passed orders thereon under Section 132, sub-section (1). After considering the objections and the recommendations of the prescribed authority under Section 133, sub-section (1), the Board decided to modify the original proposal by reducing the tax to 10% on the annual value and by exempting all lands and buildings whose annual value was Rs. 36 or below. Section 132, sub-section (2), requires the Board to publish the modified proposal along with a notice indicating that it is in modification of the original proposal, and Section 132, sub-section (3), provides that the objections to the modified proposal shall be dealt with in the manner prescribed by sub-section (1). The modified proposal was not published as required by Section 132, sub-section (2). The prescribed authority acting under Section 132, sub-section (2), duly sanctioned the final proposal and made the necessary rules in respect of the tax. It may be noted that the Commissioner, Lucknow Division, was the prescribed authority. On receipt of the order of sanction and the copy of the rules, the Board acting under Section 134, sub-section (2), passed a special resolution on April 23, 1957, directing the imposition of the tax with effect from October 1, 1957. This special

resolution was not published in the manner prescribed by Section 94. On receipt of the special resolution the prescribed authority, acting under Section 135, sub-section (2), notified in the Official Gazette, dated August 3, 1957, the imposition of the tax from the appointed date. Section 135, sub-section (3), provides that "a notification of the imposition of a tax under sub-section (2), shall be conclusive proof that the tax has been imposed in accordance with the provisions of this Act".

4. The respondents raised three objections against the validity of the imposition of the water tax : (1) omission to publish the preliminary proposal separately in the manner prescribed by Section 131, sub-section (3), read with Section 94; (2) non-publication of the modified proposal in accordance with Section 132, sub-section (2); and (3) non-publication of the special resolution directing the imposition of the tax in accordance with Section 94. The procedure laid down by the Act was not strictly complied with before imposing the tax. But all the procedural defects in the imposition of the tax are cured by Section 135, sub-section (3), where, as in this case, the Municipal Board has the power to levy the tax and has passed the special resolution necessary for the imposition of the tax and the defects are not of a fundamental character. The procedural defects cannot be regarded as fundamental or as invalidating the imposition, if no substantial prejudice is caused thereby to the inhabitants of the municipality. The issue of the notification under Section 135, sub-section (2), is conclusive proof that all necessary steps for the imposition of the tax have been taken in accordance with the provisions of the Act.

5. In *Municipal Board v. Raghuvendra*, ((1956) 1 SCR 950) the Court held that the defect of non-publication of the special resolution proposing the tax in a local Hindi paper and omission to publish the draft rules as required by Section 131, sub-section (3), read with Section 94, sub-section (3), was cured by Section 135, sub-section (3), and that the publication of the special resolution by affixing a copy of it on the notice board and by beat of drum was sufficient. In *Buland Sugar v. Municipal Board*, ((1965) 1 SCR 970) the Court held that the publication of the proposals and the draft rules in Hindi in a local Urdu paper was sufficient compliance with Section 131, sub-section (3). In *Berar Swadeshi Vanaspathi v. Municipal Committee, Sheogaon*, ((1962) 1 SCR 596) the Court held that in view of the similar provisions of Section 67, sub-section (7) of the C.P. and Berar Municipal Act, 1922, the validity of imposition of the octroi tax could not be challenged on the ground that the objections were not considered on the merits.

6. As to the first objection we find that there was substantial compliance with Section 131, sub-section (3). The draft rules were published in the *Rashtra Sandesh*. They incorporated the preliminary proposal and mentioned the special resolution, dated January 24, 1956, by which the proposal was framed. There was thus sufficient publication of the proposal. The proposal was not separately published in the prescribed form, but the omission to do so was a mere irregularity. The inhabitants of the municipality had due notice of the proposal. The object of the publication under Section 131, sub-section (3), is to inform the inhabitants of the proposal so that they can file their objections to it. That object was fully achieved by the publication in the *Rashtra Sandesh*.

7. As to the second objection, we find that the original proposal was to levy water tax at the rate of 12% per annum on the annual value. The inhabitants had full opportunity to raise objections to the rate of the tax and to submit whether the rate should be 12% or 10% or less. After considering their objections, the Board proposed to levy the tax at the reduced rate of 10% per annum on the annual value. No prejudice was caused by not inviting fresh objections to the modified proposal of levying the tax at the reduced rate. It is interesting to notice that the U.P. Municipalities (Amendment) Act, 1964 (U.P. Act No. XXVII of 1964), inserted in Section 132, sub-section (2), the following proviso : "Provided that no such publication shall be necessary where the modification is confined to

reduction in the amount of rate of the tax originally proposed". This proviso was not in force on January 24, 1956. But it does indicate that it is unnecessary to publish a modified proposal reducing the rate of tax originally proposed. The original proposal exempted all buildings and lands whose annual value was Rs. 24 or below. The modified proposal raised the exemption limit and provided that all buildings and lands whose annual value was Rs. 36 or below would be exempted. The inhabitants of the municipality had full opportunity to raise objections as to the exemption limit as originally proposed and to submit whether buildings and lands of the value of Rs. 24 or Rs. 36 or more should be exempted. No prejudice was caused by not inviting fresh objections to the modified proposal raising the exemption limit. The inhabitants submitted all objections which they could possibly raise both with regard to the rate of tax and the exemption limit. In our opinion, the non-publication of the modified proposal was a mere irregularity, and the defect was cured by Section 135, sub-section (3).

8. As to the third objection it is to be observed that Section 134, sub-section (2), does not provide for the publication of the special resolution passed under it. Assuming that this special resolution had to be published under the general provisions of Section 94, we think that the non-publication was a mere irregularity. The inhabitants had no right to file any objections against the special resolution. They had clear notice of the imposition of the tax from the notification published in the Official Gazette on August 3, 1957. The defect of the non-publication of the special resolution in the manner prescribed by Section 94 was cured by Section 135, sub-section (3). The High Court was in error in quashing the imposition of the water tax.

9. In the result, the appeals are allowed with costs in this Court and in the High Court, the order of the High Court is set aside and the writ petitions are dismissed. There will be one hearing fee.

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