Tharoo Mal

Vs

Puran Chand Pandey and Others

Civil Appeal No. 1201 of 1977

(CJI M. H. Beg, P. N. Bhagwati JJ)

29.11.1977

JUDGMENT

BEG, C.J. -

The appellant before us by grant of special leave under Article 136 of the Constitution is a partner in a firm carrying on the business of running a cinema house called" Jai Talkies" in the town of Pilibhit in Utter Pradesh. The Municipal Board of Pilibhit passed a resolution on April 1, 1971, imposing a theatre tax of Rs. 25 per show under Section 125(1) (iii-a) read with Sections 296 and 299 of the Municipalities Act (hereinafter referred to as the Act). The resolution was duly published in a Hindi newspaper on May 16, 1972, as required by Section 94(3) read with Section 131(1)(a) of the Act. The preliminary proposals for imposition of a tax were framed under Section 131 of the Act which reads as follows :

> 131. Framing of preliminary proposals. - (1) Where a board desires to impose a tax, it shall, by special resolution, frame proposals specifying -
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> (a) the tax, being one of the taxes described in sub-section (1) of Section 128, which it desires to impose;
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> (b) the persons or class of persons to be made liable, and the description of property or other taxable thing or circumstances in respect of which they are to be made liable, except where and in so far as any such class or description is already sufficiently defined under clause (a) or by this Act;
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> (c) the amount or rate leviable from each such person or class of persons;
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> (d) any other matter referred to in Section 153, which the State Government requires by rule to be specified.
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> (2) The board shall also prepare a draft of the rules which it desires the State Government to make in respect of the matters, referred to in Section 153.
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> (3) The board shall, thereupon publish in the manner prescribed in Section 94 the proposals framed under sub-section (1) and the draft rules framed under sub-section (2) along with a notice in the form set forth in Schedule III.

2. Section 132 of the Act then lays down :

> 132. Procedure subsequent to framing proposals. - (1) Any inhabitant of the municipality may, within a fortnight from the publication of the said notice, submit to the board on objection in writing to all or any of the proposals framed under the preceding section, and the board shall take any objection so submitted into consideration and pass orders thereon by special resolution.
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> (2) If the board decides to modify its proposals or any of them, it shall publish modified proposals and (if necessary) revised draft rules along with a notice indicating that the proposals and rules (if any) are in modification of proposals and rules previously published for objection :
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> Provided that no such publication shall be necessary where the modification is confined to reduction in the amount or rate of the tax originally proposed.
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> (3) Any objections which may be received to the modified proposals shall be dealt with in the manner prescribed in sub-section (1).
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> (4) When the board has finally settled its proposals, it shall submit them along with the objection (if any) made in connection therewith to the prescribed authority.

3. It is evident from Section 132(1) of the Act that the time given to the residents within the municipal limits to file their objections is a fortnight from the publication of the resolution, as required by Section 94(1) of the Act. Apparently, a fortnight is considered a reasonable time so that objections may be submitted for consideration to the Municipal Board. As we pointed out by one of us (Beg, C.J.) in Niranjan Lal Bhargava v. State of U.P. (1969 ALJ 295), with regard to almost identically framed provisions of Sections 199 to 203 of the U.P. Nagar Mahapalika Adhiniyam, 1959, the procedure for the imposition of the tax is legislative and not quasi-judicial. Hence, there seems to us nothing to prevent the Municipal Board from considering any objections which may have been filed even after a fortnight, a period which may, at the most, be construed the persons deemed to be notified could not reasonably complain of want of opportunity to object. The right to object, however, seems to be given at the stage of proposals of the tax only as a concession to requirements of fairness even though the procedure is legislative and not quasi-judicial.

4. There seems to us to be a distinction between the period given for filing objections of the kind with which we are concerned here and the period of limitation prescribed for proceedings before a Court or a quasi-judicial authority, which, on the expiry of the period, confers some rights upon parties not proceeded against so that the expiry of the prescribed time bars claims against them. The procedure being legislative here, the objector could not complain that he did not have an opportunity to object if he did not file his objections within a fortnight. This is all that Sections 131 and 132 seem to do so far as the rights of the objectors are concerned. They do not seem to us to invalidate his objections although he may lose his right to object. There is nothing here like Section 28 of the Limitation Act operating to extinguish any legal rights.

5. In the case before us, the appellant did not put forward any objections to the proposals. The proposals were submitted to the Prescribed Authority, the Commissioner of Rohilkhand Division, under Section 132(4) of the Act. It appears that the Commissioner of Rohilkhand Division returned the proposals for reconsideration on the ground that the proposed rate of the theatre tax appeared to be too high. On August 28, 1972, the Municipal Board reduced the rate to Rs. 15 per show but did not publish its resolution reducing the rate.

6. The reduced rate of theatre tax was not published as the provision Section 132(2), added by the U.P. Act 27 of 1964, dispenses with the need to publish the reduced rate of tax. Nevertheless, it still gives persons who object, if any do so at all, the right to have the objection dealt with in the manner prescribed in Section 132(1). The only manner in which they can be "dealt with" under Section 132(1) is that these objections have to be considered by the Board before passing its resolution. If, however, the objections are received when the Board has, after waiting for a fortnight, duly passed a final special resolution, these objections can certainly not be considered by the Board as they were not before it to be considered at all when it passed its resolution. If the proposals, as initially framed, had been accepted by the Prescribed Authority no further opportunity for objecting before the resolution imposing the tax could have arisen.

7. The petitioner and some other owners of cinema houses woke up rather late. On September 16, 1972, they sent in their objections to the imposition of any such tax. By that time, the Board has also reconsidered its initial resolution, as a result of such advice as was given by the Prescribed Authority to the Board, and reduced the theatre tax to Rs. 15 per show. Again, the objections could not have been considered even if they were to be deemed to be objections to the reduced rate of Rs. 15 per show because they were not there at all for consideration before the Board when it passed its special resolution reducing the rate on August 28, 1972. No doubt, its modified proposal of Rs. 15 per show was not published. But, this was not done because the Board, quite rightly, considered itself protected by the clear provisions of the proviso to Section 132(2) of the Act.

8. On September 18, 1972, although the revised proposal to tax cinema shows at the rate of Rs. 15 per show was sent by the Municipal Board to the prescribed Authority, yet, it did not forward the objections of the petitioner of the Prescribed Authority. Perhaps it did not forward these objections because they could not be taken into account by the Board itself either before of at all time of framing the modified proposal of Rs. 15 per show as they were not there at all. The prescribed Authority sanctioned the modified proposal on October 31, 1972, without taking into account the objections of the appellant as they were not before it. But, the draft rules were published on November 18, 1972, and objections invited to them within 30 days. Objections to the draft rules were filed on December 15, 1972, and the rules were sanctioned under Section 134 of the Act after considering these objections. The tax was imposed with effect from April 16, 1973, after a gazette notification on April 14, 1973.

9. It is difficult to understand why, when the appellant applied for copies of the Municipal Board resolution, the copies were refused. A delegation of the cinema owners went to the Commissioner on May 3, 1973, and was told that the Commissioner had not received any of the objections from the Municipal Board before sanctioning the modified tax. Apparently, the Municipal Board took the view that they were irrelevant when it did not consider them. It however, seems to have overlooked the fact that the Prescribed Authority may have taken a different view.

10. On the facts stated above, Mr. Y. S. Chitale, appearing for the appellant, has advanced two ingenious arguments : firstly, he contends that the objections, being there before the revised proposal was sent to the Prescribed Authority on September 18, 1972, ought to have been forwarded to the Prescribed Authority for consideration because they had to be "dealt with " in the manner prescribed in Section 132(1); and, secondly, that, in any case, when the proposal was sent, the Board was bound to forward to the Prescribed Authority any objections it had in its possession and could not withhold them. It was urged that this part of the duty was certainly not carried out by the Board.

11. As regards the first contention, we find it difficult to permit the appellant to advance it here for

the first time. It is not found in his writ petition. It was not advanced in that form before the High Court. It is not even found in the special leave petition in this particular form. However, even if we were to allow this question to be argued, we find that the objections filed by the petitioner on September 19, 1972, we really objections to the original proposal and not to the modified proposal at all. Section 132(3) gives a right only to actual objectors to the modified proposals to have their objections dealt with under Section 132(1) of the Act. This necessarily means that the objections should be at least before the Board when it passes the resolution on modified proposals. After all, all that Section 132(1) indicates about the manner in which the objections are to be dealt with is that they should be considered before the passing of the special resolution. Now, if the objections are not there at all when the initial special resolution is passed or even when the modified proposals were passed, it is impossible for the Board to deal with them in the manner prescribed by Section 132(1) of the Act. Since the duty to send objections could arise only subsequent to the procedure prescribed by Section 132(1) of the Act the contention that the objections should have been sent to the Prescribed Authority to be considered because of any mandatory duty resulting from the provisions of Section 132(1) and (3) of the Act must fail. It may be mentioned that we are not concerned here with the validity of any of the provisions the ground of their reasonableness or otherwise. No such question has been argued before us. We have, therefore, to proceed on the assumption that the provisions of the Act were valid.

12. So far as Section 132(4) is concerned, it may be possible so interpret the provisions as to confine objections to be sent to the Prescribed Authority to only those which the Board took into consideration. Nevertheless, when we examine the wide language in which Section 132(4) is couched conferring a right to object, without any restriction, we find it difficult to exclude the right of the petitioner to have his objections sent to the Prescribed Authority. Apparently, Section 132(4) covers may objections whatsoever, whether made within a fortnight or beyond a fortnight, provided they are sent in before the matter is submitted to the Prescribed Authority. Indeed, we find no statutory bar against the prescribed Authority itself considering the objections which may be filed before it if the interests of justice so require. But, the question which arises before us is whether the non-observance by the Board of a duty to send the appellant's objections to the Prescribed Authority, assuming it is there, would invalidate the imposition of the modified tax. This, we think, would depend upon whether we interpret provisions of Section 132(4) as mandatory or as directory so far as submission of objections, not submitted within sufficient time so as to be considered by the Board, are concerned.

13. As we have already observed, no provision of the Act has been challenged. Section 135(3) of the Act reads as follows :

> 135. Imposition of tax - (1) . . . . .
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> (2) . . . . . .
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> (3) 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 the Act.

14. It is true that, if there is such a gross breach of the rules that the proposal sanctioned could not be deemed to the "imposition of a tax" at all, Section 135(3) may not bar the consideration of such a basic infirmity in the proceedings which make them no proceedings at all in the eyes of the law. This is the most that can be said on the strength of Raza Buland Sugar Co. Ltd. v. Municipal Board, Rampur ((1965) 1 SCR 970 : AIR 1965 SC 895) which is strongly relied upon by Mr. Chitale.

15. Mr. Yogeshwar Prasad, appearing on behalf of the Municipal Board, however, pointed out that the Buland Sugar case was decided before the proviso to Section 132(2) was added in 1964. It does appear to us that the effect of the proviso is that, by dispensing with even the publication of the modified proposals, no such right of the appellant is violated as could be considered a condition precedent to the validity of the proceedings. Nevertheless, if the petitioner could have made out a case of such injustice due to some irregularity that we should deem the imposition of the tax to be vitiated by the non-consideration of a vital matter, we could have taken the view that Section 135(3) will not bar consideration of a vital infirmity, inasmuch patent injustice has resulted from it, in the imposition of a tax. If it could be argued that there is no imposition of the tax at all as contemplated by law, Section 135(3) may not have cured the irregularity. But, no such infirmity has been pointed out to us. The result is that, whatever irregularity there may be in not forwarding the objections of the appellant to the Prescribed Authority, as the Board should have done under Section 132(4) of the Act, the irregularity seems to be cured by an application of the provisions of Section 135(3) of the Act as the Government had notified the imposition of the tax.

16. It may perhaps also be pointed out that, if the incidence of a tax is unfair, a representation can be made to the Government under Section 137 of the Act even after the imposition. Therefore, if there is any gross injustice, which the petitioner has not been able to make out before us, he can still approach the Government for relief in case he can make out a case for relief under Section 137 of the Act.

17. For the reasons given above, we uphold the judgment of the Allahabad High Court and dismiss the appeal. However, in the circumstances of the case, the parties will bear their own costs.

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