

ALLAHABAD HIGH COURT

Raza Buland Sugar Co. Ltd.

Vs.

Municipal Board

Civil Misc. Writ No. 3588 of 1958

(V.G. Oak and Kailash Prasad, JJ.)

12.05.1961

JUDGMENT

Kailash Prasad, J.

1. The Municipal Board of Rampur decided to impose water tax on the annual value of lands and buildings within the limit of the municipality as provided in Section 128(1)(x) of the U.P. Municipalities Act (hereinafter referred to as the Act). After framing necessary proposals and rules, a notification dated 23rd March, 1957 was issued imposing water tax from 1st April, 1957. The tax was fixed at the rate of 10 per cent of the annual value of the lands and buildings. The petitioner, Raza Buland Sugar Company limited, received notices from the Municipal Board (hereinafter referred to as the Board) for payment of Rs. 37,789-92 np. as water tax assessed in respect of lands and buildings of the petitioner for the years 1957-58 and 1958-59.
2. The petitioner has come to this Court under Article 226 of the Constitution praying for the issue of a writ or order in the nature of certiorari quashing the notices of demand and a writ in the nature of mandamus directing the Board not to recover from the petitioner any water tax on the basis of those notices of demand on the ground that the tax is illegal and the Board had no jurisdiction to impose it.
3. The petitioner's attack on the validity of the water tax in question is principally three-pronged. The first contention of the petitioner is that it was beyond the competence of the Board to levy this tax. Another contention is that by exempting the main residential palace of His Highness the Nawab of Rampur from water tax, the Board has discriminated against the petitioner. The imposition of the tax is, therefore, hit by the provisions of Article 14 of the Constitution. The third contention of the petitioner is that publication of the proposal and the rules regarding the imposition of the tax was not made in accordance with the provisions of the Act and thus the petitioner was deprived of the opportunity of raising objections either to the proposal for

imposition of tax or to the draft rules framed by the Board.

4. In addition to these main contentions the petitioner has also attacked the imposition of the water tax on two subsidiary grounds. One of them is that the alleged water tax is not a tax and in effect amounts to fee for the supply of water. The petitioner's buildings have their own separate adequate arrangement for the supply of water from the tube-wells constructed by the petitioner at great expense and the petitioner's factory does not need water from the Water Works of the Board. The other ground is that the Board has by rules fixed a limit of 600ft. for purposes of charging water tax under Section 129(a). The main buildings of the Raza Buland Sugar Company Limited are outside the radius of 600ft. from a standpipe where water is made available to the public, and as such the petitioner is not liable to pay water tax.

5. 'Tax' means burden of charge imposed by the legislative power of a State on person or property to raise money for public purposes. The expression 'fee' connotes recompense for services rendered. There is an element of quid pro quo in the case of fee. It is not so in the case of a tax. The learned counsel for the petitioner pointed out that clause (b) of Section 129 provides that water tax is to be imposed solely with the object of defraying the expenses connected with construction, maintenance, extension or improvement of municipal water works and that all moneys derived there from shall be expended on the aforesaid object. He argued that the fact that the money raised from water tax is to be spent only on the supply of water, introduces an element of quid pro quo. The argument does not appear to be tenable. Section 129(B) mentions the object of the tax. As the maintenance of regular supply of water and extending the supplies is one of the most beneficial public purposes, the section lays down that the money realized from this impost is to be spent on the construction, maintenance and extension of water works so that the purpose may not suffer on account of paucity of funds. In *(Morris) Leventhal v. David Jones Ltd¹*, their Lordships of the Judicial Committee held that there was no authority for the proposition that revenue raised by statutory imposts for specific purposes is not taxation.

6. The restriction on spending the money raised as water tax for other purposes does not alter the character of this levy into that of a fee. A person living within the municipal limits but not owning any building or land therein may consume the water supplied by the Board, but is not liable to pay the tax and a person owning land and building within the municipality may not use any municipal water and yet he has, according to the rules framed for the imposition of water tax, to pay the tax if his buildings are within a radius of 600ft. from a stand-pipe. He has to pay the tax though he does not utilize the services of the municipal water-works. The element of quid, pro quo is thus absent from this levy. We are, therefore, of the view that water tax is a tax.

7. Section 129(a) of the Act lays down that water tax shall not be imposed on any land and building of which no part is within a radius to be fixed by rule in this behalf for each municipality, from the nearest stand-pipe or other water work whereat water is made available to public by the Board. Under Rule 8 of the Rules framed in connection with water tax in Rampur

municipality, the radius governing the imposition of tax has been fixed to be 600ft. In para 17 of the affidavit filed by the petitioner it is mentioned that there is no stand-pipe or other water-work whereat water is made available to the public by the board within 600ft. from the building of Buland Sugar Factory, the Central Offices of the Raza Buland Sugar Co. Ltd. or the

¹ AIR 1930 PC 129

Govan Colony. Only a few of the buildings outside the main Raza Sagar Factory buildings are within 600ft. of the water works. These allegations are categorically denied by the opposite party in Para. 14 of the counter affidavit. It is stated therein that all the buildings mentioned in paragraph 17 of the petitioner's affidavit are within 600ft. of the stand-pipe and the water works of the Municipal Board. Thus there is a dispute between the parties about this fact and the material on record before us is not sufficient to enable us to give a definite finding that all the buildings of the Sugar Factory are beyond a radius of 600ft. from the stand-pipe. In para 16 of the petition there is mention that a few of the buildings outside the main Raza Sugar Factory building are within 600 ft. of the water works. Section 129 (a) exempts from water tax only such buildings of which no part is within a radius fixed by rule in this behalf. The few buildings referred to in Para. 16 of the petition, as being within 600 ft. of the water works, appears to form part of the buildings of the Raza Sugar Factory. The argument that there can be no liability on the petitioner for payment of water tax on the ground of the petitioner's buildings being outside the radius of 600ft. from stand pipe or other water works, cannot, therefore, be available to the petitioner.

8. We have now to consider the contention if the imposition of the tax was beyond the competence of the board. Section 128 of the Act provides that subject to any general rules or special orders of the State Government in this behalf, a Board may impose in the whole or any part of a municipality the taxes enumerated in the section. Water tax on the annual value of buildings or lands or of both is mentioned in clause (x) of the section. This means that the State Government has delegated by means of legislation a power to impose water tax on a municipality. In List II of the Seventh Schedule to the Constitution there is an enumeration of the matters in respect of which the Legislature of any State has exclusive powers to make the laws. In List III of that Schedule those matters are enumerated with respect to which both the Parliament and the Legislature of a State have concurrent powers to make the laws. Water tax is not mentioned either in List II or List III. The learned counsel for the petitioner, therefore, argued that it was beyond the legislative competence of the State Government to provide for the imposition of water tax.

9. Entry No.49 in List II is 'Taxes on lands and buildings'. The contention of the opposite party is that the water tax imposed by the Municipal Board of Rampur is really a tax on lands and buildings and the State Government has power to make laws in respect thereof.

10. It is obvious that the subject-matter of water tax is not water. Though it is called water tax, it is not levied on its production. As explained by their Lordships of the Judicial Committee in

*Governor-General in Council v. Province of Madras*², it is not the name of the tax but its real nature, its 'pith and substance' as it has sometimes been said, which must determine into what category it falls.

11. Clause (x) of Section 128(1) of the Act makes it clear that a water tax is imposed on buildings or lands or both. It is true that the sub-clause reads as follows:

'a water tax on the annual value of buildings or lands or of both'.

¹ AIR 1945 PC 98

Section 3 of the U.P. Large Land Holdings Tax Act, 1957 provides that there shall be charged, levied and paid, for each agricultural year on the annual value of each land holding, a tax, hereinafter called the Holdings Tax at the rate specified in the Schedule. That section 2 was considered in the Full Bench decision of this Court in *'The Oudh Sugar Mills Ltd. Hargaoon v. State of U.P.*², and it was observed that the expression 'on the annual value' of each land holding only means 'on the basis of the annual value of each land holding'. It was also held in that case that the tax was really a tax on holding and the annual value was only a measure or the yard-stick.

12. The fact that water tax under the Municipalities Act is in reality a tax on land and buildings finds further support from the provisions of clause (a) of Section 129 of the Act. It provides that the tax shall not be imposed on land exclusively used for agricultural purposes or, where the unit of assessment is a plot of land or a building of which no part is within a radius to be fixed by rule from the nearest stand-pipe or other water-work. If the water tax were not at all on the land or building, it was unnecessary to provide for the exemption of agricultural land from the tax.

13. What is, land tax was explained by the Privy Council in (Morris) Leventhal AIR 1930 PC 129 (supra). Their Lordships observed that; a yearly impost laid upon real property by parliamentary enactment for the provision of public revenue appears to be within the description of land tax. It was further held that the Bridge Tax being a tax on land directly imposed by the Legislature is a land tax. In the present case water tax is a tax which is directly imposed on buildings and lands and is therefore covered by Entry 49 of List II of the Seventh Schedule of the Constitution.

14. It was further argued, in this connection, by the learned counsel for the petitioner that clause (i) of sub-section (1) of Section 128 of the Act provides for a tax on buildings and lands and if water tax were also a tax on buildings and lands it was pointless to provide for duplication of the tax. There is authority for the proposition that the same property cannot be subjected to more than one tax if the objects of the taxes imposed on the property are different. As the specific object of the water tax is to raise revenue for meeting expenses connected with maintenance and improvement of water works, it was put down in Section 128 in a different category from the tax provided for in clause (i) of sub-section (1) of Section 128. Sometimes a name is given to a tax

with reference to the subject on which the incidence of the tax falls and sometimes with reference to the object with which the tax is levied. In pith and substance a water-tax imposed under clause (x) of sub-section (1) of Section 128 is a tax on lands and buildings.

15. Another contention of the petitioner is that the water-tax imposed by the Rampur Municipal Board is violative of Article 14 of the Constitution inasmuch as in exempting the main palace of His Highness the Nawab of Rampur, the Board has discriminated against the other citizens including the petitioner and has imposed extra burden on the petitioner.

16. While Article 14 forbids class legislation it does not forbid reasonable classification. A Legislature for the purpose of dealing with the complex problems

²1959 All LJ 754: AIR 1960 All 136

that arise out of an indefinite variety of human relations, cannot but proceed upon some sort of selection or classification of persons upon whom legislation is to operate. The consequence of such legislation would undoubtedly be to differentiate the persons belonging to that class from others but that by itself will not make the legislation obnoxious to the equality protection clause. The test of permissible classification is that classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and that differentia must have a rational relation to the object sought to be achieved by the statute in question. A law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself. It is a matter of recent history and, therefore, of common knowledge that the Nawab of Rampur was one of the ruling princes with absolute sovereign powers in his own principality known as the Rampur State. In the interest of national integration he, like other members of the princely order, surrendered his sovereign rights. As explained by the Supreme Court in 'In re Kerala Education Bill, 1957' AIR 1958 Supreme Court 956 the court can, in order to sustain the presumption of constitutionality, take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation. The circumstance that the Nawab of Rampur willingly gave up his sovereign rights in the wider interest of the nation coupled with the fact that no water from the municipal water works is used in his residential palace and he has his own supply of water from his own plants and machinery, provides a reasonable basis for treating His Highness as a class by himself and exempting him from water tax.

17. When the Nawab of Rampur surrendered his sovereign rights and allowed his principality to be merged in the State of Uttar Pradesh, an agreement was executed between His Highness and the Governor-General of India dated May 15 1949 which is commonly known as the Merger Agreement. Article 2 of the agreement provides that the Nawab shall continue to enjoy the same personal rights, privileges, amenities, dignities and titles which he would have enjoyed had this agreement not been made. It was further stated in the counter-affidavit filed on behalf of the

Municipal Board that Para: 7 of the Merger Agreement ran to the following effect:- "In the event of house tax being levied in Rampur, the ruler's main residential palace will be exempted from such taxation." It was argued on behalf of the Board that water tax being similar in nature to house tax, exemption from water tax will be covered by paragraph 7 of the Merger Agreement.

18. We were referred to White Paper on Indian States, 1950 which contained a copy of the Merger Agreement entered into between the Nawab of Rampur and the Government of India. We did not find the above mentioned Para. 7 in the Merger Agreement as published in the White Paper. It appears that the stipulation contained in the alleged paragraph 7 did not form part of the original agreement. Annexure 'M' to the counter affidavit, which is a letter from the Deputy Secretary to Government, U.P. Local Self Government Department addressed to the District Magistrate of Rampur, however, shows that in the background of Article 2 of the Merger Agreement, reproduced above, a clarification was made in the collateral correspondence that passed between the Nawab and the Government that in the event of house tax being levied in Rampur, the ruler of Rampur shall be exempted from such taxation. It appears that when the Board proposed to impose water tax in Rampur, it sought directions from the State Government with regard to the imposition of the tax on the residential palace of His Highness and the State Government, taking into consideration the Merger Agreement, and its clarification made in the collateral correspondence and finding that the water tax was in nature analogous to house tax, directed that the residential palace of His Highness was to be exempted from the payment of water tax, even if the palace fell within the prescribed radius from the mains of the water works. Under Section 129 of the Act it is obligatory on the Board to follow the directions of the State Government in that behalf. The Board was, therefore, justified in framing rules for the imposition of water tax in accordance with those directions. The State Government has not been made a party in the present proceedings. In the absence of State Government it seems unfair to us to strike down as discriminating the directions issued by it.

19. Another contention of the petitioner is that imposition of water tax is invalid on account of the fact that the special resolution and proposals for imposition of water tax and the draft rules were not published in accordance with the provisions of the Act.

20. Section 131 (3) of the Act requires the special resolution of proposals for imposition of tax and the draft rules to be published in the manner prescribed under Section 94. Under Section 94(3) of the Act such resolution and the rules connected therewith are required to be published in a local paper published in Hindi. A notice of proposals of the imposition of water tax in Rampur and the draft rules framed under sub-section (2) of Section 131 of the Act were published in 'Aghaz' dated 15-8-1956. The aforesaid notice and the draft rules were printed in the paper in Devanagari script. The contention of the petitioner is that Aghaz is a Urdu local paper and the publication of the notice and the draft rules in it did not fulfil the requirement of the provisions of sub-section (3) of Section 94 of the Act, particularly when a Hindi paper 'Pradeep' is published locally in Rampur. The opposite party in para 3 of the counter-affidavit asserts that 'Aghaz' is a

paper which is published in Hindustani or Hindi, though the script employed by it is Persian.

21. Article 343 of the Constitution provides that the official language of the Union shall be Hindi in Devanagari script. In the Eighth Schedule 14 languages are enumerated as the languages of the country. In that schedule Hindi and Urdu are mentioned as separate languages. This will show that language and script are different things. Language means, vocabulary and script implies the manner of writing. It is true that a particular language is associated with a particular kind of character in which it is written, but the difference between language and script is substantial. It is possible to write English words in Devanagari or Persian script and similarly Hindi or Urdu can be written in Roman character. As no copy of the 'Aghaz' has been filed before us by any party, we are not in a position to determine for ourselves if the vocabulary used by the paper is of Urdu or Hindi language. In view of the categorical assertions made by the opposite party in the counter-affidavit it is difficult for us to hold that 'Aghaz' is not published in Hindi language but we can say only this that the script employed by the paper is Persian which is associated with Urdu language.

22. It was urged on behalf of the petitioner that in Rampur there is a local paper known as Pradeep which uses Hindi vocabulary and employs Devanagari script and so it cannot be doubted that Pradeep is published in Hindi. When such a paper was available for the publication of the resolution of proposals for the imposition of the water-tax and the rules framed in connection therewith, the Board was not justified in getting the proposals and the rules published in Aghaz about which it could be reasonably doubted if it is published in Hindi. The contention of the opposite party, however, is that Pradeep is not regularly published. It comes out periodically in the form of a small pamphlet and has a very limited circulation and is not popular among the citizens of Rampur. It is further asserted in the counter affidavit that the petitioner company gets its own advertisements published in Aghaz. In view of those assertions the complaint of the petitioner that on account of the publication of the proposals and the rules for the imposition of water tax in the Aghaz he could not know about them and was denied an opportunity of filing objections thereto, does not seem justified. These proposals and the rules were printed in Aghaz in Devanagari character, As the petitioner sends its advertisements in Aghaz, it can be safely inferred that Aghaz is read by the officers of the petitioner company and its employees. As the proposals and the rules for imposition of water tax were printed in Devanagari character, there is every reason to suppose that the officers and the employees of the petitioner company must have read them. If on account of the fact that 'Aghaz' employs Persian script it becomes doubtful that the publication of the paper is in Hindi in its strict sense, the printing of the proposals and the rules for the imposition of water tax in that paper in Devanagari script amounted, in our opinion, to a substantial compliance with the requirements of sub-section (3) of Section 94 of the Act.

23. In support of the contention that non-compliance with the procedure prescribed Under the Act for publication of the resolution containing proposals for the imposition of a tax, invalidates the tax, reliance was placed on behalf of the petitioner on *Azimulla v. Suraj Kumar Singh*³,

*Raghavendra Kripal v. Municipal Board, Hapur*⁴, and *Om Prakash Sharma v. State of Uttar Pradesh*⁵, In the cases of Azimulla, AIR 1957 Allahabad 307 and Raghavendra Kripal, AIR 1959 Allahabad 192, the special resolutions proposing the imposition of the tax were not published in any local newspaper despite the fact that such newspapers were available for publication. Those cases, therefore, differ from the instant case inasmuch as in those cases no publication of the resolution was made at all. The case of Om Prakash Sharma, 1959 Ail LJ 501 simply lays down that Section 130-A of the Act empowers the State Government to fill up the gap created by the failure of the Board to carry out its directions by passing an order which will be treated in law as a resolution validly passed by the Board. Such an order cannot of itself have the effect of imposing a tax on the inhabitants of the Municipality but may be treated as equivalent to a resolution passed by the Board. But it does not preclude the necessity of following all the other subsequent steps nor does it empower the State Government to short circuit the procedure laid down in the Act.

³ AIR 1957 All 307 ⁵1959 All LJ 501

⁴ AIR 1959 All 192

24. The provisions of sub-section (3) of Section 94 being mandatory, the publication of a resolution in a local paper is indeed necessary. The question whether a resolution was published in accordance with those provisions is a question of fact in each case. In the present case it is admitted that the resolution was published in the Aghaz which is a local paper. There is controversy between the parties whether Aghaz is published in Urdu or in Hindi. This controversy has been referred to above, and on the material before us it cannot be said that Aghaz does not use the vocabulary of Hindi language, and is, therefore, not published in Hindi. It is true that the script used by the paper is Persian but the language employed by it can be Hindi. The resolution in question was printed to that newspaper in Devanagari character. Thus the requirements of Section 94(3) of the Act were substantially complied with and the imposition of water tax pursuant to that resolution cannot be regarded illegal.

25. The petition is, therefore, dismissed with costs.
Petition dismissed.