BOMBAY HIGH COURT

Kalu Karim

Vs

City Municipality of Branch

(Amberson Marten, Kt. C.J. Baker, J.)

27.01.1927

JUDGMENT

Amberson Marten, C.J.

1. The short question before us is the right of the defendant Municipality to levy a terminal tax on fruits brought into their area. The plaintiffs contend that the necessary requirements of the Bombay District Municipal Act 1901 have not been complied with, and that therefore the levying of this tax is ultra vires. The trial Judge decided in their favour, and granted a declaration and an injunction accordingly. On appeal the lower appellate Court reversed that decision and dismissed the suit.

2. Before us issues 1, 2 and 3 in lower appellate Court are not contested. That is to say, the Municipality no longer contends that the suit is barred by limitation, or that no proper notice was given prior to the suit. On the other hand, the appellants do not contend that fruits are vegetables within the meaning of the Terminal Tax Rules.

3. We are, therefore, left with the bare point of law raised by issue 4 as to whether the requirements of the Act were complied with before this tax on fruits was imposed. The question turns on item 20 to the new Schedule E, for which the Municipality asked in March 1923 for Government sanction under the Act. That item relates to "miscellaneous articles" except those exempted under Rule 3 of the Rules and By-Laws of the Municipality. By the Government Resolution of April 18, 1923, Schedule E was in effect approved, subject to the deletion of item No. 20 from the Schedule. That resulted in "fruits" being deleted from the proposed taxation. The Municipality on May 28, recorded this Government Resolution, and resolved that the payment of the new tax in question be enforced from July 1, 1923, after due notice. Accordingly on May 29, 1923, a public notice, Exhibit 35, was published in accordance with Section 62 of the Act that the tax would be received as from July 1, 1923, and setting out the items in question omitting item No. 20. Under Section 612 of the Act a month's notice had to be given, and that is no doubt one reason why July 1 was chosen, Section 62 also enacts that the tax as from the specified date is to

be imposed and the proceeds applied by the Municipality.

4. The contention of the appellants is that then and there the procedure contemplated by the Act was completed, and that the new tax which then came into operation was Schedule E omitting this item 20. It is pointed out that under Section 61 the Governor-in-Council had at least four alternative courses to take, viz., (1) either to refuse to sanction the rules. That was not done. Or (2) to return them to the Municipality for further consideration. That was not done. Or (3) to sanction them without modification. That was not done. Or else (4) to sanction them with a modification. That No. 4 was the course actually taken, and that that course was completed by publishing the rules, under Section 62, and that then the matter ended; and any further tax would be a new tax and require fresh notice.

5. On behalf, however, of the Municipality it is said that because the Municipality at ones endeavoured to get Government to sanction item No. 20, notwithstanding the Government Resolution to the contrary of April 18, 1923, and eventually obtained that sanction by a further Government Resolution of July 3, 1923 (Exhibit 39), that that did not amount to the imposition of a new tax, and that it was only in continuance of the original application which had never been finally disposed of. With all respect to the learned District Judge, that argument seems to me unsound. The answer to it is given, I think, by the learned trial Judge where he says:-In this particular case the matter was resubmitted to Government immediately. But what is to be done in a case where the Municipality takes no action, say, for two or three years after the refusal of sanction to a portion of the rules, and where the Municipality resubmits them to Government for sanction after such a long period. In this latter case the levy must be treated as a new impost. Consequently no distinction can be made between one case and another simply on account of the lapse of intervening time.

6. It seems to me then that a question of principle is involved here. To start with, no subject can be taxed except in pursuance of statutory power to that effect. The statute in question is quite clear under Section 59, that it is only after observing the preliminary procedure required by Section 60 and with the sanction of the Governor-in-Council that taxes may be imposed. Admittedly, here fruits had never before been taxed. Admittedly, they were not taxed by the Schedule E which Government sanctioned on April 18, 1923. They are claimed to be taxed under the subsequent Resolution of July 3. But the preliminary procedure required by Section 60 was not observed prior to the latter Resolution, for no fresh notices were issued to the public. This seems to me a point of substance, for if once there is a formal Government Resolution declining in effect, to tax a particular article and if subsequently that Resolution of Government is to be challenged or altered then surely the parties affected, namely, in the present case the fruit merchants, should have an opportunity of making their representations to Government on the point.

7. Accordingly, I do not regard this as being merely a technical point. And even technical points often guard the observance of an important principle. Thus in London Association for Protection of *Trade v. Greenlands, Limited*[1] in dealing with technicalities arising from points of practice, Lord Parker says at p. 38:-In some cases no doubt a waiver of technical points may be conducive to substantial justice being done between the parties. In others, again, it may be dangerous if only because the dividing line between technicality and substance is not always clearly defined. A rule of practice, however technical it may appear, is almost always based on legal principle, and its neglect may easily lead to a disregard of the principle involved.

8. What we are concerned with here are express statutory provisions which must be observed before the subject can be taxed. As regards the contention of the respondent that really this was not a new tax, but was a mere addition to the existing list of taxes, that to my mind is the same thing put into different language. For what is an addition to an existing list of taxes, but a new tax ?

9. In my judgment, therefore, the contention of the fruit merchants here is correct, viz., that the tax on fruits has been illegally levied. Under those circumstances, I would allow the appeal, set aside the decree of the lower appellate Court, and restore the judgment of the learned Joint Subordinate Judge with costs throughout.

Baker, J.

10. I concur with my Lord the Chief Justice. The point in issue is comparatively a small one. The necessary formalities under Section 60 of the Bombay District Municipal Act III of 1901 were observed, and the sanction of Government was obtained to the imposition of terminal tax on the articles mentioned in Schedule E, with the exception of item 20, which refers to miscellaneous articles, and which admittedly includes fruits, which is the subject of the present appeal. The Municipality then published a notice that a tax would be levied on these articles on July 1, 1923. This is Exhibit 35 at page 11 of the typed paper book, and is the notice required by Section 62 of the Act. This amounts to a notice to the inhabitants of Broach that the terminal tax will be levied on the articles mentioned in the Schedule attached to the notice, and fruit is not amongst these articles. The Municipality, however, were dissatisfied with the order of Government disallowing the item No. 20, and they moved Government through the Commissioner and the Collector to accord their sanction to the addition of item No. 20 to the list of articles liable to the terminal tax. This was done without observing the formalities required by Section 60 of the Act, and without giving any notice to objectors, or affording them any opportunity of raising any objections to the proposed addition, This suggestion of the Municipality was approved by Government, and item No. 20 consisting of miscellaneous articles, including fruits, was added to the list, I have no doubt that this amounts to the imposition of a new tax, and therefore for this addition made the

procedure provided by Chapter VII of the Bombay District Municipal Act should have been followed. This was not done, and I am therefore of opinion that the Municipality had no right to levy a new tax without complying with the formalities which are laid down by the Act.

11. I am, therefore, of opinion that the judgment of the first Court should be restored, and the appeal allowed with costs.

Cases Referred.

1[1916] 2 A.C. 15