

BOMBAY HIGH COURT

Motiram Keshavdas

Vs

Ahmedabad Municipal Borough

(John Beaumont, Kt., C.J. Sen, J.)

07.10.1941

JUDGMENT

John Beaumont, C.J.

1. This is an appeal from a decision of the Extra Assistant Judge at Ahmedabad, and it raises a question as to the validity of Rule 344 of the Ahmedabad Municipal Rules, which deals with charges for the supply of water in certain cases.
2. Under the Bombay Municipal Boroughs Act of 1925, Section 58(j), the Municipality has power to make rules not inconsistent with the Act prescribing the taxes to be levied in the Municipal Borough. Section 73 empowers the Municipality to impose for the purposes of the Act the taxes therein mentioned, including, in Sub-clause (x), a general water-rate or a special water-rate or both for water supplied by the Municipality, which may be imposed in the form of a rate assessed on buildings and lands or in any other form, including that of charges for such supply, fixed in such mode or modes as shall be best adapted to the varying circumstances of any class of cases or of any individual case. That clause deals, as will be seen, only with the imposition of a general or special water-rate. Then Section 91 empowers the Municipality instead of imposing a water-rate, to fix, at rates not exceeding such as shall be specified in the rules in force under Section 58, charges for such supply according to the quantity used, as ascertained by measurement, or to arrange with any person to supply water on terms agreed.
3. Under the rules it is provided in Rule 320 that water-rates may be charged consisting of a general water-rate, a special water-rate and charges. Rule 322 deals with the general water-rate and imposes that rate on the classes of premises specified, which include, generally speaking, all buildings, charged on the net annual letting value after deducting ten per cent. ; and Rule 335 deals with a special water-rate which is leviable, in addition to the general water-rate, on all buildings and lands which are either actually connected or technically deemed to be connected with the municipal water pipes, stand-post or reservoir. Rule 337 specifies the rate at which the

special water-rate is to be charged, that rate depending on the annual letting value of the premises. Then under Rule 344, which is the rule! impeached in this case, it is provided that when water supplied without meter is used in any trade except those mentioned in Rule 340 or in manufacture, lump charges may at the discretion of the Standing Committee be levied instead of the special water-rate. Then there are certain provisoes, the first two of which deal with particular types of trade, and the third of which provides that in other cases the lump charges shall not be less than the special water-rate leviable on the building according to its use for trade purposes. That, I think, must mean less than the special water rate which would have been levied if this charge had not been imposed, because the charge is levied instead of the special water-rate. But it will be noticed that although there is a limit on the minimum to be charged there is no limit on the maximum, and the Municipality under that rule appears to be able to charge a lump sum on premises in respect of water supplied in trade or manufacture of such amount as the Standing Committee may think fit. An arbitrary power of that nature would require very plain words to justify the Court in upholding its legality.

4. Now, both the lower Courts have held that the lump sum charged under Rule 344 does not fall under Section 91, because it is not a charge levied on quantity ascertained by measurement, nor is it the subject-matter of agreement. But they hold that it falls within the wide words in Section 73(x), "in any other form", their view being that this is a charge levied in a form other than those specified in the sub-section. But, with all respect to the learned Judges, they have overlooked the fact that Section 73(x) deals only with a general water-rate or a special water-rate. Those rates may be imposed in the form of rates assessed on buildings and lands or in any other form, including, that of charges for supply of water. But what is imposed must be a rate, and not an arbitrary lump sum. What precise charges were contemplated by the last words of Section 73(x), I am not sure, nor do I propose to lay down a definition of a "rate"; but, in my opinion, it is clear that a lump sum, imposed arbitrarily by the Standing Committee on certain trades, and not on the district generally, and not depending on the value of the property assessed, is not a rate. Therefore, the charge sought to be authorized by Rule 344 does not come within Section 73 (x), nor, clearly, does it come within Section 91, and, in my opinion, unless it comes within one or the other of those sections, it cannot be justified.

5. Mr. Dhruva has referred us to *Amritfal Magmlal v. Municipality of Ahmedabad*¹ which came before Mr. Justice Rangnekar, and no doubt in that case the learned Judge did hold that Rule 344 was valid. I do not know what the case was with which he had to deal, but he held that a lump sum could be charged under the last part of Section 73 (x). As I have already said, in my opinion, that cannot be done unless the lump sum charged is a rate. and in this case it is not a rate.

6. I think, therefore, that we must hold that Rule 344 is ultra vires and grant the first injunction

which the plaintiff asks for, namely, to restrain the defendant Municipality from recovering taxes under bills Nos. 382 to 384,. dated March 30, 1936.

7. The Municipality must pay the costs throughout.