
(1957) 12 AP CK 0014

In the Andhra Pradesh High Court

Case No : Tax Revision Case No. 36 of 1956

Batchu Sreeramulu Chetty

APPELLANT

Vs

State of Andhra (now Andhra Pradesh)

RESPONDENT

Date of Decision : 10-12-1957

Acts Referred:

Citation : AIR 1958 AP 354

Hon'ble Judges : K. Subba Rao, C.J.; Satyanarayana Raju, J.; Jaganmohan Reddy, J

Bench : Full Bench

Advocate : T. Ananta Babu, for the Appellant; Govt. Pleader, for the Respondent

Judgement

Jaganmohan Reddy, J.—The question that has been referred to the Pull Bench is:

Whether Rule 13 of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, is invalid by reason of the non-compliance of the condition laid down in sub-section (4) of Section 19 of the Act?

The assessee is a dealer the groceries and pulses etc. at Nellore. Having elected to be assessed for the year 1952-53 under rule 13 of the Turnover and Assessment Rules, he submitted the return of his turnover in form A-3 for each month of the year of assessment. The Deputy Commercial Officer after visiting the assessee's place of business held that the returns submitted by him were incorrect and incomplete.

Accordingly he finalised the assessment for the above year under Rule 13 (5) of the Turnover and Assessment Rules by adding a sum of Rs. 75.727/- to the admitted turnover of the assessee. Several legal grounds have been urged in the petition, but the one that has been referred to us is that which relates to Rule 13. I am not here concerned with the application of the provisions of Rule 13, to the facts in the case, but only with its validity.

2. It is admitted by the learned Government Pleader before us and it appears

from the Tribunal's order that the State Representative also, on information, filed a memo that there was no pre publication of the amendment of Rule 13 by the insertion of a new rule for the old one on 22-13-1947. Rule 13 was again amended by G. O. 614/Revenue dated 16th March 51 and the proviso to sub-rule (5) of the said Rule was added by G. O. H83/Revenue dated 24th April, 1953.

The Government Pleader also submits that the 1957 amendments were approved by the Legislature on 14th February, 1957, a fact borne out by the proceedings of the Legislature of that date. But these amendments as well as the other amendments are challenged even in the assumption that they were approved by the Legislature. It is, however, admitted that the Madras General Sales Tax (Turnover and Assessment) Rules as originally made complied with the provisions of sub-section (4) of Section 19 as well as the proviso to sub-section (4) of Section 3. Rule 13 provides for an option to dealer to choose the monthly system or the annual system for assessment and payment of tax. Under the Sales Tax Act, turnover is to be determined and taxes are to be assessed, levied and collected in accordance with the rules which may be prescribed. The relevant provisions relating to the making of these rules are Sections 3 and 19 which are as follows:

3. (1) Levy of Taxes on Sales, of Goods: Subject to the provisions of this Act, -

(a) every dealer shall pay for each year a tax on his total turnover for such year; and

(b) the tax shall be calculated at the rate of three pies for every rupee in such turnover:

XX XXX X X

(2) XX XX XX XX

(3) A dealer whose total turnover in any year is less than ten thousand rupees shall not be liable to pay any tax for that year under sub-section (1) or sub-section (2).

(4) For the purposes of this section and the other provisions of this Act, turnover shall be determined in accordance with such rules as may be prescribed.

Provided that no such rules shall come into force unless they are approved by a resolution of the Legislative Assembly.

(5) The taxes under sub-ss. (1) and (2) shall be assessed, levied and collected in such manner and in such instalments, if any, as may be prescribed:

Provided that:

(i) in respect of the same transaction of sale, the buyer or the seller, but not both, as determined by such rules as may be prescribed shall be taxed;

(ii) where a dealer has been taxed in respect of the purchase of any goods In

accordance with the rules referred to in Cl. (i) of this proviso, he shall not be taxed again in respect of any sale of such goods, effected by him.

(6) Subject to such rules as may be prescribed, the assessing authority may assess a dealer for any year, as if his transactions in such year had been the same as in the previous year.

19. (1) Power to make rules:- The State Government may make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for-

(a) all matters expressly required or allowed by this Act to be prescribed;

(b) to (1) x x x x x x x x

(3) x x x x x x x

(4) The power to make rules conferred by this section shall be subject to the condition of the rules being made after previous publication for a period of not less than four weeks,

(5) All rules made under this section shall be published in the Fort St. George Gazette, and upon such publication shall have effect as if enacted in this Act."

The rules relating to the turnover and assessment under sub-ss. (4) and (5) of S. 3 have to be prescribed which under sub-s. (f) of S. 2 means prescribed by rules made under the Act. The Government have been vested with power of making rules under S. 19 to carry out the purposes of the Act and in particular to provide for the several matters contained in sub-ss. (2) & (3) Cl. (a) of sub-s. (2) of S. 19 authorises the Government to make rules for all matters expressly required or allowed by the Act.

Learned advocate for the petitioner, Sh(sic) Ananta Babu, submits that the Government have made the Madras General Sales Tax (Turnover and Assessment) Rules under S. 19 and consequently the provisions of sub-s. (4) of S. 19 rela(sic)ing to publication must be complied with.

3. Learned Government Pleader conten(sic) that the provisions in sub-ss. (4) and (5) of S(sic) and those contained in S. 19 of the Sales Tax Act authorises the making of two sets of rule one set for the purposes of turnover and assessment and the other for other purposes mentioned in S. 19 which are independent and that wh(sic) rules made under S. 19 are subject to a p(sic) publication under sub-s. (4), the rules made under sub-ss. (4) and (5) of S. 3 are not so subject the only requirement being that they should approved by a resolution of the Legislative Assembly, which has been done in the case of (sic) impugned amendment of R. 13.

In support of this contention he ha refer (sic)MS to the provisions of the District Municipality Act, Indian Lunacy Act and the Madras District Boards Act, and the

Madras District Po(sic) Act. An examination of the relevant provision of the Acts referred TO clearly shows that wh(sic) ever two sets of rules are intended to be m(sic) independently, the authorities empowered to m(sic) them and the manner in which they have to made have been clearly specified.

Under the Madras District Municipal Act, S. 77-A empowers the State Government notification to constitute any class of officers servants of municipal councils into a municipal service for the Presidency of Madras, after the municipal councils constituted under the Act have been consulted and a majority of councils so consulted have passed a resolution supporting the issue of such a notification. section (2) of S. 77-A empowers the State Government upon the issue of a notification under S(sic) (1) to make rules regulating the classification methods of recruitment, conditions of service, and allowances, discipline and conduct of municipal service, subject to the provisions (sic) 305-A which provides for the rules being before both the Houses of the State Legislative and their being approved.

On the other hand S. 303 of the same confers on the State Government a power make rules for the carrying out of the put(sic) of the Act and particularly with respect to (sic)ters specified thereunder. The rules under S(sic) are to be made after previous publication, these provisions it is clear that in so far as relating to the classification of service etc concerned, they are made by the State Government after the approval of the Legislature, the other rules are made after previous, cation and without the necessity of their (sic) to be approved by the Legislature. It is manifest from the above provision the manner in which the two sets of rules to be made is different and distinct. Similar visions in the District Boards Act, XIV o(sic) as those in the District Municipalities A(sic) contained in Ss. 74-A, 201-A, 199 and 200. provisions of Ss. 91 and 92 of the Indian I(sic) Act, IV of 1912, authorise the State Government make rules for the matters specified therein and the rules "o made shall be published in the official gazette and shall thereupon have effect is if enacted In that Act.

Section 99 Is a specific provision empower(sic)ag the State Government to make rules regulating the procedure for the reception and detention in asylums in the State of Madras lunatics whose reception and detention are provided for (sic) S. 98. The authority empowered to make rules (sic)br carrying out the purposes of both Ss. 91 and 9 is the State Government. While the manner a which the rules under S. 91 have to be made by publication in the Gazette, no particular lode of making rules under S. 99 has been prescribed.

The effect of the omission of publication of ay rules made there under does not, however, fall (sic)r determination here. Similarly under S. 9 of the District Police Act, the Inspector-General has been specified as the authority who may sub-(sic)ct to the approval of the State Government) (sic)ame such orders and regulations from time to me as he shall deem expedient relative to the (sic)atters specified therein, while S. 10 authorises (sic)e Inspector-General, Deputy Inspector-General the District Superintendent of Police, subject the provisions of

Art. 311 of the Constitution (sic)nd to such rules as the State Government may (sic)om time to time make, to dismiss, suspend or (sic)duce etc., to a lower post or time scale or to lower stage in time scale, any officer : the Subordinate Police whom they shall (sic)ink remis or negligent in the discharge of his (sic)ty or otherwise unfit for the same.

Under these two sections different authorise have been prescribed for dealing with the matters referred to therein. The analogy of the (sic)lerent provisions of the specific Acts referred by the learned Government Pleader is not of (sic)ach assistance in construing the relevant provisions of the Sales Tax Act relating to the question under reference.

4. Sub-section (4) as well as sub-s. (5) of 3 merely provide for the determination of the turnover and assessment, levy and collection of (sic)es in accordance with such rules as may be (sic)de under the Act. They do not specify the (sic)hority empowered to make rules prescribing (sic) matters referred to therein. All that they is to expressly specify the matters required allowed to be prescribed by the rules.

These provisions are not independent and (sic)-contained. It cannot be said that any rules de under the said provisions by any authority specified therein will have the statutory force (sic)rely on their being approved by a resolution the Legislative Assembly. The authority em(sic)ered to make rules under sub-ss. (4) and (5) S. 3 is the authority referred to in S. 19, name(sic) the State Government.

Sub-section 2 (a) of S. 19 clearly empowers State Government to make rules for all mat(sic) expressly required or allowed by the Act to prescribed, one of such matters being those specified in sub-ss. (4) and (5). In other words, lain reading of the provisions of S. 19 would If show that the rules relating to all matters (sic)ressly required or allowed by the Act to be (sic)icribed by the rules such as those under sub-section (4) and (5) of S. 3 as well as rules authorised to be made under the other provisions of s. (2) of S. 19 or those providing for penalty the breach of rules under sub-s. (3) of s. 19 to be made in conformity with the conditions laid down in sub-s. (4) of S. 19, that is, they can only be made after previous publication for a period not less than four weeks.

The exercise of that power by the Government to make rules is itself subject to the condition that these rules are made only after previous publication and in so far as the rules relating to matters specified in sub-s. (4) of S. 3 are concerned, they must also be approved by a resolution of the Legislative Assembly. It is after complying with these pre requisites that the rules have to be published in the Gazette under sub-section (5) of S. 19 and upon such publication they will have effect as if enacted under that Act.

The provisions of S. 7 of the Madras General Clauses Act, I of 1891, relating to pre-publication are set out in Chapter II, S. 4 whereof makes the provisions of that Chapter applicable to all Madras Acts made after the commencement of that

Act, unless a contrary intention appears to such Acts. S. 7 of Act I Of 1891 reads as under:

7. Where, by an Act to which this Chapter applies, a power to make rules is expressed to be given, subject to the condition of the rules being made after previous publication, the following provisions shall apply, namely:

- (a) the authority having the power to make the rules shall, before making them, publish ft draft of the proposed rules;
- (b) the publication shall be made in such manner as that authority deems to be sufficient, or if the condition with respect to previous publication so requires, in such manner as the Central Government, or, as the case may be, the State Government prescribes;
- (c) there shall be published with the draft a notice specifying a date at or after which the draft will be taken into consideration;
- (d) the authority having power to make the rules, and, where the rules are to be made with the sanction, approval or concurrence of another authority, that authority also, shall consider any objection or suggestion which may be received by the authority having power to make the rules from any person with respect to the draft before the date so specified;
- (e) the publication in the official Gazette of a rule purporting to have been made in exercise of a power to make rules after previous publication, shall be conclusive proof that the rule has been duly made.

The provisions of the above section in relation to the provisions under S. 19 (4) would become applicable to rules made under S. 19 read with sub-ss. (4) and (5) of S. 3 which provisions, it is admitted, have not been complied with in so far as the amendments in 1947, 1951 and 1953 are concerned.

5. It now remains to be considered as to the effect of non-compliance with the requirements of sub-s. (4) of S. 19. Admittedly the Madras General Sales Tax (Turnover and Assessment) Rules made in 1939 were made after pre-publication in accordance with the provisions of S. 19 read with S. 7. The validity of these rules was also challenged in K. G. Rangaswami Chettiar and Co. v. Government of Madras, 1957-8 S.T.C. 222 (Mad) (A), where a Bench of the Madras High Court held that they were not invalid on the ground that there was failure to observe the provisions relating to the promulgation of these rules, in that case the constitutionality of R. 4 (2) of the Turnover and Assessment Rules was Unsuccessfully challenged, but with that we are cot now concerned.

In that case it was noticed that the rules were published on 18-7-1939 for eliciting public opinion. In the notices it was stated that the draft would be proposed for approval at the sitting of the Assembly on 3-8-1939. Rule 2 of the draft rules provided that the Rules are to come into force on 1-10-1939. Accordingly the rules were laid before the Legislature on 3-8-1939, and were

published on 15-9-1939, and as provided in R. 2 thereof they came into force on 1-10-1939 the date when the rest of the Act was brought into operation by the notification under S. 1 (3).

It was argued that there was no notice specifying the date at or after which the draft would be taken into consideration. Under the proviso (3) to S. 2 as it then was and S. 3 (4) as it exists now, the rules having been approved by the Legislative Assembly before becoming effective, the Bench held that there was a literal compliance with the terms of S. 3 (c), the rules having come into operation more than four weeks after the publication.

It was also argued that since the Act came into force on 1st October, the rules were bad because the resolution of the Assembly referred to in the proviso to S.3 (4) was passed at a time when S. 3 (4) had not been brought into force. This objection was held to be without substance, having regard to S. 6 of the Madras General Clauses Act which read as under:

Where, by an Act to which this Chapter applies and which is not to come into force immediately on the passing thereof, a power is conferred on Government or other authority to make rules, or to issue orders with respect to the application of the Act, or with respect to the appointment of any officer there under, such power may be exercised at any time after the passing of the Act, but rules or orders so made or issued shall not take effect till the commencement of the Act.

It is in exercise of the powers conferred under the above section, rules under the Act were prepared and formalities completed for being put into force on the 1st of October. At pages 234-235 Rajagopala Ayyangar J., observed as follows:

... Section 6 refers not merely to the powers conferred on the Government in the matter of making rules but also to other authority. The approval of the Legislature is merely part of the procedure or machinery for the making of the rules and by virtue of S. 6 of the General Clauses Act, it must be taken that that provision also was in operation from the date of the passing of the Act and that power could be exercised at any time after the passing of the Act. though, however the rule so made shall not take effect until the commencement of the Act".

I agree with the views expressed in the above decision relating to the validity of the Turnover and Assessment Rules made under the Sales Tax Act in 1939: consequently R. 13 as it then stood would be valid. But in so far as the subsequent amendments to R. 13 are concerned, there is no doubt that the condition relating to the previous publication not having been complied with, the power conferred on the Government to make or amend the rules cannot be deemed to have been exercised.

6. Where powers are delegated to an authority, that authority is bound by the terms of its delegation and any exercise of the powers in contravention of the condition precedent or the statutory essentials laid down would be invalid and

ultra vires. The exercise of the power is in my view, dependent upon compliance with the conditions laid down by the statute. The condition of pre-publication has been specifically inserted by the Legislature in the public interest particularly in the interest of that section of the public which is called upon to pay the Sale Tax.

It enables such of those who have any objection to send them to the authority empowered to make the rules and that authority is enjoined to consider such objections. In this manner the limit of the delegated power has been strictly defined, and the authority which is empowered to exercise that power must act within that limit. The following passage from Craik on Statute Law at page 273 may usefully be cited

The initial difference between subordinate Legislation (of the kind dealt with in this Character) and statute law lies in the fact that a subordinate law-making body is bound by the term of its delegated or derived authority, and the Court of law, as a general rule, will not give effect to the rules, etc., thus made, unless, satisfied that all the conditions precedent to the validity of the rules have been fulfilled...

The Courts therefore (1) will require due proof that the rules have been made and promulgated in accordance with the statutory authority, unless the Statute directs them to be judicially noticed; (2) in the absence of express statutory provision to the contrary may inquire whether the rule-making power has been exercised in accordance with the provisions of the statute which it is created, either with respect to the procedure adopted, the form or substance of the regulation; or the sanction, if any, attached to the regulation; and it follows that the Court may reject as invalid and ultra vires regulation which fails to comply with the statutory essentials.

In my view, therefore, the amendments to R. of the Madras General Sales Tax (Turnover and Assessment) Rules in 1947, 1951 and 1953 are valid by reason of the non-compliance with conditions laid down in sub-s. (4) of S. 19 of Act. and my answer to the reference is in affirmative.

Satyanarayana Raju, J.

7. I agree

K. Subba Rao, C.J.

8. I have had advantage of perusing the judgment prepared by my learned brother, Jaganmohan Reddy J. I agree with him.

(Final order of the Division Bench consisting of K. Subba Rao C. J. and Srinivasachari was delivered by)

K. Subba Rao, C.J.

9. This revision is posted for final disposal after the Full Bench answered the question referred to it. The Full Bench held that the amendments to R. 13 of the

Madras General Steles (Turnover and Assessment) Rules in 1947. and 1953 are invalid by reason of the non-compliance with the conditions laid down in sub(sic) of S. 19 of the Act.

10. Learned counsel for the petitioner tends that even the Madras General Sales (Turnover and Assessment) Rules of 1939 (sic) also invalid for the reason that the said (sic) were not made after previous publication fo(sic) period of not less than 4 weeks under sub-s. of S. 19 of the Madras General Sales Tax 1939 (hereinafter referred to as the Act). Be test the correctness of this argument on the is of the material rules, the relevant dates may noticed. The draft rules were published on (sic)-1939.

They were laid before the Assembly on 3-8-(sic). The Assembly approved them on 7-8-1939. (sic) approved rules were published on 15-9-1939 they came into force on 1-10-1939. From the (sic)resaid dates, it is seen that four weeks elaps(sic) between the date of the publication of the (sic)t rules and the publication of the approved (sic)s and the date of their coming into force the time between the publication and the lay(sic) of the rules before the Assembly falls short of period. Now, coming to the relevant pro(sic) ins, they are:

Section 19:

(4) The power to make rules conferred by section shall be subject to the condition of rules being made after previous publication for period of not less than four weeks.

(5) All rules made under this section shall published in the Port St. George Gazette and (sic) such publication shall have effect as if enac(sic) in this Act.

Section 3:

(4) For the purposes of this section and the provisions of this Act, turnover shall be (sic)mined in accordance with such rules as may prescribed,

Provided that no such rules shall come into unless they are approved by a resolution of Legislative Assembly.

11. Learned counsel argues that the said provisions are enacted as a salutary check to (sic)nt hasty and improper delegated legislation, that there is an essential distinction between making of the rules and the coming into force (sic)ose rules. According to the learned counsel, following stages are fixed to achieve the (sic):

Draft rules are published giving four weeks to enable persons interested to raise objec(sic) or suggest improvements to them.

After hearing the objections and conslder(sic) the suggestions for improvement, the government make the rules i. e., finalise them.-

The finalised rules are placed before the (sic)ature in a case where the statute requires (sic)proval for its approval.

After they are approved, they are published in the Port St. George Gazette and upon publication they shall have effect as if enacted in the Act.

Learned counsel seeks to derive these stages others from the phraseology of sub-s. 5 of the Act which makes distinction between the making of the rules and the publication of them. We must acknowledge that there is considerable force in the argument that four weeks should be given between the publication of draft rules and the finalisation of them by Government, for the object of publication is to invite objections and suggestions for improvement so that the Government might modify the rules if they accept the suggestions and the object may not effectively be achieved if the interval is only between the publication of the draft rules and their final publication, when they come into operation.

While we appreciate his argument and while it is desirable that sufficient time be given before the rules are finalised by the Government and placed for approval before the Legislature, we cannot say that the words "making of the rules" mean only the finalisation of the draft rules by the Government. Under S. 19 of the Act, the State Government is empowered to make rules to carry out the purposes of the Act. Under S. 19 (4), the power to make the rules is subject to the condition of pre-publication and under sub-s. (5) rules made under this section shall be published in the Port St. George Gazette and upon such publication shall have effect as if enacted in the Act.

The rules are made under the Act only after all the necessary conditions for the making of the rules are complied with. Till they are published, they are not rules made under the Act. Rules made under that section can only mean the rules that are legally effective. Till publication, they have no legal force and, therefore, they are not rules made under the Act. The juxtaposition in sub-s. 5 between the rules made and their publication emphasises the fact that till publication, the rules have no legal force.

12. Nor does the argument that, after approval by the legislature no further modifications can be made, appear to be correct. There is time for the interested parties to give suggestions up to the date of publication. If valuable suggestions, which have escaped the attention of the Government and the Legislature are forthcoming after approval but before publication, nothing in the Act prevents the Government from accepting the said suggestions, incorporating them in the rules and placing them before the legislature for approval and with the approved modifications publishing them in the official gazette.

It may not also be forgotten that all rules do not require the approval of the legislature and, therefore, nothing prevents the Government from modifying the rules in such case in response to public opinion before they are published finally in the Port St. George Gazette. On a reading of the provisions of the Act, we hold that the prescribed period, namely, four weeks, was given after the draft rules were published on 18-7-1939 and before they were published finally on 15-9-1939 when in law effective statutory rules were made under the Act.

13. The history of the making of the rules is found in *Syed Mohammed and Co. v. State of Madras*, 1952-3 STC 367 at p. 383 (Mad) (B). The learned Judges stated thus:

In accordance with this provision the rules were first published on 18-7-1939, for eliciting public opinion. On 3-8-1939, they were laid before the Assembly and the proceedings of the house show that there was considerable debate over the provisions. After they were approved, the Rules were again published on 12-9-1939 and actually came into force on 1-10-1939.

It is seen from the aforesaid observations that the procedure prescribed has been followed and that every opportunity was given for eliciting public opinion and for the Assembly to debate upon.

14. A Division Bench of the Madras High Court in 1957-8 STC 222 (Mad) (A), arrived at the same conclusion which we have come to, though without much discussion. At page 234 the learned Judges observed:

Section 19 (4) prescribed a minimum Interval of four weeks between the previous publication and the rules coming Into operation and it is not contended that that condition was not satisfied, since the rules were published in the Gazette on 18-7-1939 and came into, operation on 1-10-1939.

Learned counsel for the petitioner says that it was not contended before the learned Judges that that condition was not complied with on a misapprehension of the legal position and, therefore, the learned Judges recorded their opinion on an admission. Though there is some force in this suggestion, we think the learned Judges applied their mind and accepted the contention of the State. We agree with the conclusion.

15. Learned Government pleader relies upon S. 7 (e) of the Madras General Clauses Act and contends that, though there was no publication in the manner prescribed by S. 19 (4) of the Act, the rule purporting to have been made in exercise of the power conferred under S. 19 (4) is conclusive proof under S. 7 (e) of the General Clauses Act and, therefore, it is not open to the petitioner to contest its validity. S. 7 (e) of the General Clauses Act reads:

the publication in the Official Gazette of a rule purporting to have been made in exercise of a power to make rules after previous publication, shall be conclusive proof that the rule has been duly made.

Under this sub-section, the publication in the Official Gazette of a rule is conclusive proof that the rule has been duly made. But to have that effect, the said rule should have been made purporting to be in exercise of a power. The word "purporting" doubtless indicates that the rule gets sanctity, though it is not made in actual exercise of the power but under a, bona fide belief that it is made in exercise of that power.

But what is necessary is that the rule should be made under a purported or

actual exercise of power which is defined in the sub-section. The power is defined as one to make rules after publication. The power is a conditional one. Unless that condition namely, pre-publication in the prescribed manner, has been complied with, there cannot be an exercise of that power, whether actual or purported. Till the condition is satisfied,, the" power does not exist and, therefore, a rule cannot be made in exercise of that non-existent power.

To state differently, the power to make rules under S. 19 of the Act can be exercised only after the condition of publication is fulfilled and if a rule is made purporting to be in exercise of that power, it is conclusive under the rule. We, therefore, hold that, as there was no publication in the manner prescribed in S. 19 (4) of the Act, there was no power in the Government to make the rule and, therefore, the validity of a rule made in exercise of that non-existent power could be questioned.

16. The next contention of the learned counsel for the petitioner is that the provisions of S. 7 (c) of the Madras General Clauses Act providing for the publication of the draft notice specifying a date at or after which the draft would be taken into consideration was not complied with. It is true that, in the draft which was published on 18-7-1939, there was no notice specifying the date at or after which the draft would be taken into consideration.

Even if there was any such defect, by reason of S. 7 (e) of the Madras General Clauses Act, the rule having been made in the exercise of power to make rules after previous publication and the publication of the rule in the official gazette being conclusive proof that the rule been duly made, it is not open to the petition to rely upon that defect.

17. Lastly, it is argued that the Assist Commercial Tax Officer was not validly appo(sic)ed under the Act and, therefore he had power to make the assessment This question turns upon the following relevant provisions the notification issued by the Government. Section 2-B:

The State Government may appoint as m(sic) Deputy Commissioners of Commercial Taxes Commercial Tax Officers as they think fit, the purpose of performing the functions respectively conferred on them by or under this Such officers shall perform the said function within such local limits as the State Government or any authority or officer empowered them in this behalf may assign to them.

Section "2 (a-2):

Assessing authority" means any persons authorised by the State Government to make assessment under this Act. Section 19 (1):

The State Government may make rule to out the purposes of this Act:

(2) In particular and without prejudice the generality of the foregoing power, such may provide for

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(j) the duties and powers of officers pointed for the purpose of enforcing the provisions of this Act.

NOTIFICATION UNDER THE MADRAS

GENERAL SALES TAX ACT, 1939:

In exercise of the powers conferred b(sic) (a) of S. 2 and sub-ss. 2 and 3 of S. 14 o(sic) Madras General Sales Tax Act, 1939 (Madras IX of 1939), His Excellency the Governor of Madras is hereby pleased:

(1) to authorise:

(a) Assistant Commercial Tax Officer exercise the powers of an assessing author the case of dealers whose turnover does n(sic)ceed twenty thousand rupees.

18. Learned counsel argues that the Government did not appoint Assistant Commercial Officers but the Deputy Commissioner of commercial Taxes, who has no power to do so S. 2-B, did and, therefore, the assessment by him was invalid. S. 2-B authorises the Government to appoint Deputy Commission Commercial Taxes and Commercial Tax (sic) for the purpose of performing the function respectively conferred on them by or under Act.

Section 2 (b-1) defines "Deputy Commissioner" as a person appointed to be a Commissioner of Commercial Taxes under Under S. 2 (a-3), "Commercial Tax Officer" any person appointed to be a Commercial Officer under S. 2-B. The Act specifies functions to be discharged by Deputy C sioners of Commercial Taxes and Commercial Officers. See Ss. 12 (2), 12 (3) and 12-A

But the Assistant Commercial Tax are authorised by the Government to exer(sic) powers of an assessing authority not in of the power conferred under S.2-B but S. 2 (a-2) of the Act. S. 2 (a-2), the defines assessing authority, by necessary action empowers the State Government authorise any person to make an assessment under the Act. The Government certainly can authorise the Deputy Commissioner to make appointments to man his office and to help him in carrying out the administrative functions entrusted to him.

Section 2 (a-2) does not qualify the word person" as one directly appointed by the Government. It takes in any person authorised by he Government to make an assessment. Therefore the person appointed, by the Deputy Commissioner had been legally authorised by Government by issuing the necessary notification in exercise of the powers conferred upon it under 2 (a-2) to make the assessment We do not see any merits in this contention.

19. In the result, the revision fails and is dismissed. No costs.