

(1979) 07 GUJ CK 0017
In the Gujarat High Court

Bhavnagar Municipality

APPELLANT

Vs

Tirathdas Rupchand and Others

RESPONDENT

Date of Decision : 30-07-1979

Acts Referred:

Gujarat Municipalities Act, 1963 — Section 102 , 103, 103

Citation : (1980) 21 GLR 815

Hon'ble Judges : S.H. Sheth, J;G.T. Nanavati, J

Bench : Division Bench

Judgement

S.H. Sheth, J.—The respondents are dealers in bidis and have been carrying on their business within the municipal area of Bhavnagar. They have been importing bidis from outside into the Bhavnagar Municipal area. Since 1968, the municipality has been charging octroi duty on deshi bidis imported into the municipal area. Formerly the rate of levy was 60 paise per 20 Kgs.

2. On May 25,1970 the municipality proposed by a resolution to alter the quantum of levy and tentatively decided that the duty should be imposed at the rate of 30 paise per 1000 bidis. Objections from the members of the public were invited to this proposal.

3. After considering the objections received from the members of the public, the municipality passed on November 6, 1970 a resolution levying octroi duty at the rate of 30 paise per 1000 bidis. Thereafter that resolution was sent to the Government of Gujarat for its sanction. On October 17, 1972 the Government accorded sanction to it. On October 27, 1972 the Chief Officer of the municipality published notice intimating to the members of the public that the Government had accorded its sanction to the resolution and that the new rate of levy would come into force from December 5, 1972.

4. The respondents challenged in the writ petition the validity of this new levy on several grounds. The learned single Judge turned down all the contentions raised by the petitioner except one. He upheld the contention raised by the petitioner

that the Chief Officer of the municipality could not have fixed the date of coming into force of the new levy. He, therefore, allowed the petition and struck down that notice. It is that order which is challenged by the municipality in this appeal.

5. Section 103 of the Gujarat Municipalities Act, 1963, inter alia, provides that the rules sanctioned u/s 102 with the modifications, if any, subject to which the sanction is given shall be published by the municipality in the municipal borough and that the tax as prescribed by the rules so published shall, from a date which shall be specified in such notice and which shall not be less than one month from the date of publication of such notice, be imposed accordingly. Sec. 103 makes it very clear that it is the municipality which decides to publish rules sanctioned by the Government and fixes the date which is not earlier than one month from the date of publication of the notice.

6. Mr. Ravani, who appears on behalf of the municipality, has argued that the fixation of date of coming into force of the rules sanctioned by the Government and the publication of notice in that behalf is a purely ministerial act which the Chief Officer of the Municipality, in exercise of powers conferred upon him by Section 44 of the said Act, can perform. He has also invited our attention to Section 99 and Section 101 of the Act and tried to argue that wherever the Legislature wanted the municipality to pass a resolution, it has said so. Stretching this argument further he has submitted that since sec, 103 does not provide for passing the resolution by the Municipality, the Chief Officer can discharge the function u/s 103. He has also invited our attention to two resolutions of the municipality, one dated May 2, 1970 and another dated May 26, 1970 which, inter alia, state that all the procedure in the matter of levying the new imposition shall be followed according to law. In our opinion, publication of a notice stating that the Government has accorded sanction to the resolution passed by the municipality is indeed a ministerial act which the Chief Officer of the municipality can perform but, the fixation of the date on which the new levy shall come into force is not a ministerial act. The municipality itself has got to fix the date on which the new impost shall come into force. The expression "shall not be less than one month" is an elastic expression which gives discretion to the municipality to fix such date for new imposition to come into force subject to the condition that it shall not be earlier than one month from the date of the publication of the notice.

7. Our attention has been invited by Mr. Ravani to the decision of this Court in *Palitana Nagarpalika v. Arisa Bhuwan Jain Dharamshala* 20 G.L.R. 24. In that case the learned single Judge was concerned with interpreting Section 103 of the Gujarat Municipalities Act, 1963 with which we are concerned in this case. Mr. Ravani has relied upon a few observations made by the learned single Judge in paragraph 15 of the report. The first observation made by the learned single Judge is as under:

Even if they are to be brought into force, they come into force from the date of publication of notice of those rules. It is, therefore, evident that no date is

required to be mentioned as the date on which the rules will come into force....

The second observation made by the learned single Judge is as under:

...The only conceivable idea behind telling the people that the rules will come into force from a particular date would be the intention to tell them that the taxes will be imposed under the rules from those respective dates....

In so far as the learned single Judge, with great respect to him, has observed that no date is required to be mentioned as the date on which the rules will come into force, we are unable to agree with him. The date on which the rules will come into force is required to be specified u/s 103 because Section 103 uses the expression "which shall not be less than one month from the date of publication of such notice" and it does not say "which shall be exactly one month after the date of publication of such notice." It is, therefore, wrong to say that the Legislature has left to the municipality no discretion to fix the date on which the rules shall come into force subject indeed to the condition that it shall not be earlier than one month from the date of the publication of the notice. It is erroneous firstly to say that no date on which the rules shall come into force is required to be fixed and secondly that the rules come into force from the date of publication of the notice. On the language which has been used in Section 103, we are unable to hold that exactly one month after the notice is published, the rules come into force automatically without any further act on the part of the municipality. If the Legislature had stated that the rules shall come into force immediately on the expiry of one month after the publication of the notice, then all that would be required to be done would be a ministerial act of publishing the notice falling within the executive power of the Chief Officer of the municipality. That is, however, not the situation when we look at the discretionary language which has been used by the Legislature in Section 103 of the Act.

8. It is not necessary to make any detailed reference to the decision of the High Court of Bombay in *Emperor Vs. Shirinbai Sorabji Nagpurwala*, . It was a case u/s 48 of the Bombay District Municipal Act. The view which we have taken upon the interpretation of Section 103 of the Gujarat Municipalities Act, 1963 renders it unnecessary for us to make any detailed reference to the aforesaid judgment of the Bombay High Court.

9. Mr. Ravani has tried to produce a subsequent resolution passed by the Bhavnagar Municipality on August 8, 1977 approving with retrospective effect the notice issued by the Chief Officer of the Municipality on October 27, 1972. The resolution which Mr. Ravani is seeking to produce is a piece of additional evidence which we cannot take on record in this appeal firstly because the respondents do not have an opportunity to reply and secondly as because if a subsequent event makes difference in the result of the petition the municipality should withdraw the appeal and apply to the learned single Judge for review of his order. It may be stated that to-day it was in the course of his arguments at the Bar that Mr. Ravani tried to produce this resolution in this appeal.

In the result we agree with the learned single Judge and find no infirmity in his impugned order. The appeal, therefore, fails and is dismissed with costs.