

(1990) 10 AP CK 0006

In the Andhra Pradesh High Court

Case No : Writ Petition No. 2848 of 1988

D. Narasimha Reddy Hotels (P) Ltd.

APPELLANT

Vs

The Appellate Commissioner, Municipalities and Another

RESPONDENT

Date of Decision : 12-10-1990

Acts Referred:

Andhra Pradesh Municipalities Act, 1965 — Section 130
Andhra Pradesh Municipalities Rules — Rule 22
Assessment of Tax Rules, 1969 — Rule 14(2), 3
Constitution of India, 1950 — Article 22, 226, 227
Taxation and Finance Rules — Rule 23

Citation : (1991) 1 ALT 665

Hon'ble Judges : P. Venkatarama Reddi, J; Jagannadha Rao, J

Bench : Division Bench

Advocate : N. Rama Krishna Reddy, for B. Subhashan Reddy, for the Appellant;
B. Siva Reddy, S.C., for the Respondent

Final Decision : Dismissed

Judgement

P. Venkatarama Reddi, J.—The petitioner is a Company running a hotel in Nizamabad Town. The petitioner commenced doing business from 22-5-1983 onwards. It is said to be a Two-star hotel with three floors and 37 rooms including three staff and office rooms. According to the statement given by the representative of the petitioner before the Commissioner of Municipality on 27-1-1984 there are three air-conditioned double-rooms for which rent of Rs. 80/- is charged, 24 non-Airconditioned double rooms for which Rs. 30/- or Rs. 40/- is charged depending upon the single or double occupancy. He also stated that the petitioner started a Bar and non-vegetarian restaurant in August, 1983. The assessment of property tax on the petitioner-hotel had to be made for the first time for the year commencing from 1-4-1983. A special notice was issued by the Commissioner under Rule 11 of the Taxation and Finance Rules (Schedule II), (hereinafter referred to as "the Rules" of the Andhra Pradesh Municipalities Act on 5-5-1983 fixing the annual rental value at Rs. 2,52,000/- and the tax at Rs.

62,899/-. This was objected to by the petitioner by filing a petition dated 6-6-1983. The petitioner pleaded for assessment of tax by refixing the capital value at Rs. 23.06 lakhs as against the total construction cost of Rs. 42 lakhs. Before disposing of this revision petition (he petitioner was called for personal hearing. Accordingly, as stated above, the petitioner's representative appeared before the Commissioner and gave a statement regarding the details of the rooms and the rents. Apart from the details mentioned, he stated that the occupancy was low in view of its location on the outskirts and in an under-developed area. The Commissioner, by an order dated 29-11-1984 reduced the annual rental value to Rs. 1,96,040/- and accordingly refixed the tax at Rs. 48,926/-for the said year. Against this order, the petitioner filed an appeal to the Appellate Commissioner-the first respondent herein. In the grounds of appeal, the petitioner contended that the Commissioner did not take into account the occupancy rate and that the property tax should not have been levied on the fixtures and amenities. The petitioner had not suggested any particular rental value to be adopted. The Appellate Commissioner inspected the premises and communicated his orders confirming the commissioner's proceedings, on 4-11-1987. The proceedings of the Appellate Commissioner dated 4-11-1987 mentions that the annual rental value has been confirmed at Rs. 2,10,000/- and the tax thereon was fixed at Rs. 55039/-whereas according to the order passed by the Commissioner on the revision petition, the annual rental value was Rs. 1,96,020/- and the tax was specified as Rs. 48,926/-. Aggrieved by these orders the petitioner filed this writ petition.

2. At the time of hearing the petition to vacate stay, we noticed that the Appellate Commissioner in fact passed a reasoned order on 28-10-1987 though the same was not communicated to the petitioner. Accordingly we directed the learned standing counsel for Municipalities to serve a copy of the same to the petitioner's counsel. We also expressed our desire to dispose of the main writ petition itself. Accordingly we adjourned the case and took up the main writ petition itself for hearing subsequently. The petitioner has filed a petition to amend the prayer seeking to challenge the order of the Appellate Commissioner dated 28-10-1987. We have allowed this amendment petition which has not been opposed.

3. Three contentions have been raised before us :-

(1) that the special notice given by the Commissioner on 5-5-1983 does not spell out any reasons nor disclose any basis for the assessment and hence it is opposed to the principles of natural justice as also Rule 3 of the Assessment of Tax Rules 1969 read with Form "C" prescribed thereunder.

(2) The Appellate Commissioner's order is based on presumptions and vitiated by non-consideration of the material grounds, and

(3) The Appellate Commissioner violated Sub-rule (2) of Rule 22 of Taxation and Finance Rules read with Rule 14 (2) of the Assessment of Tax Rules, by reason of

non-consultation with the Chairman of the Municipal Council and hence the order passed in appeal is invalid in law.

4. We do not find merit in any of these contentions. It is no doubt true that the special notice issued by the Commissioner fixing the property tax for the first time on the petitioner's hotel does not disclose any details excepting the annual rental value and the tax. Form "C of the Assessment of Tax Rules relied upon by the petitioner's counsel does not support the contention that the reasons should be given for the fixation of the assessment. The reasons contemplated by Form "C are reasons for increase of tax if any. As there is no increase in the present case, the question of giving reasons as per Form "C" does not arise. No doubt with a view to give reasonable opportunity to the tax payer, it would have been desirable if in the special notice the basis for assessment was indicated atleast briefly. But mere failure in doing so is not sufficient to declare the assessment as illegal especially in the light of the facts of the case. It may be noticed that on the receipt of the special notice the petitioner did not ask for any reasons or the basis for the assessment. On the other hand, he submitted a revision petition to the Commissioner. The Commissioner gave him personal hearing. Before the Commissioner all relevant, details and particulars having bearing on the rental value of the building were furnished by the petitioner. At no stage did he make a complaint that he was handicapped on account of the omission to give details in the special notice. After two stages the petitioner shall not be permitted to turn round and raise an objection with reference to the initial notice issued especially when such objection does not go to the root of the matter. We, therefore, reject the first contention of the petitioner.

5. The second contention too has no merit. The Appellate Authority inspected the premises, approached the issue in a proper perspective, took relevant facts into account and confirmed the monthly rental value of Rs. 17,500/- fixed by the Commissioner. The Appellate Commissioner expressed that the rental value fixed for the premises for this commercial building is quite reasonable and that considerable reduction has already been given by the Commissioner. In the counter-affidavit, it is clarified that the Commissioner reassessed the annual rental value for the building excluding the value of amenities, fixtures and furniture. The Commissioner calculated the tax at the rate of 24% as against the maximum percentage of 33% leviable on non-residential buildings. We find that the monthly rental value was fixed on the basis of 1/4th of the total rent that could be fetched by the building had all the rooms been fully occupied. It is not possible for us to sit in appeal over these orders when the respondents | have Hot committed any error of law nor was there any failure to take relevant circumstances into account.

6. However, we notice that there is one infirmity in the order of the Appellate Commissioner. While the 1st respondent expressed the view that the order of the Commissioner need not be interfered with, the annual rental value and the tax has been specified in the Printed proforma order dated 4-11-1987 at a higher

figure than what it should be. There seems to be an obvious error in this regard. Hence the figure relating to annual rental value and the tax for the year 1983-84 as mentioned in the order passed in the revision should stand. We clarify accordingly.

7. Then remains the last contention. It is an admitted case that the Chairman of the Municipal Council has not been consulted before disposing of the appeal. The learned Standing Counsel for Municipalities states that normally such consultation is being done by the Appellate Authority. But in this case he is not in a position to say at this distance of time as to why the Chairman had not been consulted. This point has been raised by the petitioner for the first time in the affidavit filed in support of the amendment petition. It is stated in the said affidavit that "the Appellate Authority did not consider before passing the impugned order and did not take the endorsement of the Chairman, as required under the Schedule and Rules in this respect.

8. The relevant Rules are Rule 22 of the Rules vide Schedule II of the A.P. Municipalities Act and Rule 14 of the Assessment of Tax Rules, 1969.

9. Rule 22 reads as follows:

"22 (1) An appeal shall lie to an appellate Commissioner, appointed by the Government for the purpose (hereafter in these rules referred to as the appellate commissioner), in respect of the assessments and imposition of the following taxes and no others:

- (a) assessments made by the Revenue Divisional Officer under Rule 3;
- (b) the order of the (Commissioner) or the valuation officer under Rule 14 upon a revision petition;
- (c) Omitted by A.P. Act 22 of 1984;
- (d) the imposition by the (Commissioner) of any tax on any carriage or cart or animal.

(2) The appellate Commissioner shall dispose of the appeals in consultation with the Chairman of the Municipality concerned."

10. It may be noticed that Schedule II is part of the A.P. Municipalities Act itself. Section 130 of the A.P. Municipalities Act occurring in Chapter II relating to Finance and Municipal Fund enjoins that-

"the rules and tables embodied in Schedule II be read as part of this Chapter."

Rule 14 (2) of the Assessment of Tax Rules, 1969 says:

"14. (2) The appellate Commissioner shall obtain the endorsement of the Chairman in token of having consulted him on the appeal before the appeal is disposed off. If for any reasons the Chairman does not so endorse even after such consultation the appellate Commissioner shall record the act and dispose of

the appeal."

11. The question is whether the failure of the appellate authority to consult the Chairman of the Municipal Council has vitiated the appellate order in the instant case?

12. The appellate authority constituted under the Municipalities Act is undoubtedly a quasi-judicial authority. While discharging its functions, the appellate authority is expected to act independently and objectively. Seldom we could find a provision in any enactment that the authority invested with the appellate powers should consult some other body. However, such an extraordinary provision is contained in the A.P. Municipalities Act. It would be relevant to know the purpose and the underlying spirit of this provision. None of the Counsel has placed any material before us which could throw light on the exact purpose of this requirement. We are, therefore, constrained to indulge in certain amount of guess work in the task of ascertaining the purpose and object of this provision. It may be noted that before the enactment of the A.P. Municipalities Act, 1965, the Municipal Council was the appellate authority to hear the appeals against taxation under relevant provisions of the Municipalities Act then in force. This appellate power in respect of property tax matters has been transferred to an appellate commissioner appointed by the Government who is of the rank of Regional Director of Municipal administration. The Council is, however, left with the power to cancel or modify any order passed by the commissioner reducing or remitting a tax either suo motu or otherwise (vide Rule 23 of Taxation and Finance Rules). This power under Rule 23 has been conferred on the Municipal Council for the obvious reason that the Municipal Council has no remedy of appeal against the assessment made by the Commissioner. As far as the appeal filed by the tax-payer is concerned, the Municipal Council through its Chairman is now left with the limited privilege of rendering advice to the appellate authority as and when the latter consults the Chairman. The use of the word "shall" in Rule 22 is no doubt not conclusive on the question whether consultation is mandatory. Whether it casts an imperative duty on the part of the appellate commissioner to consult the Chairman before disposing of the appeal and whether the failure to comply with this requirement results in nullification of the appellate order, has to be judged from the nature and the purpose of the provision coupled with the consequence of non-compliance. We are of the view that consultation, though a part of procedural requirement, cannot for the reasons stated hereinafter, be regarded as an empty formality. At the same time we cannot construe this procedural provision as a condition precedent for the exercise of appellate power. We are also of the view that the failure to comply with Rule 22 need not invariably and necessarily result in making the appellate order null and void. It appears to us that the provision of consultation has a two fold objective—firstly and primarily it is conceived in the interests of municipal revenue and secondly it is also meant to provide some safeguard to the tax-payers in a locality or town against the arbitrary and unrealistic estimates of rental values etc., that may have been adopted by the commissioner as a result

of general revision or otherwise. The Chairman being an elected representative of the public hailing from the particular municipal town, is expected to know the local conditions and he is in a position to offer his views on some of the relevant matters having general bearing on the assessments. Of course, the views of the Chairman of the Municipal Council are not binding on the appellate authority and he need not necessarily follow the advice of the Chairman. The appellate authority should ultimately reach its independent conclusion keeping in view the merits of the case and the representation of the appellant. At the same time the views of the Chairman may some times guide him on proper lines in the disposal of the appeal and the appellate authority may be benefitted by such views. That is the reason why the consultation with the Chairman is provided for while taking away the appellate powers of the Municipal Council in tax matters. In our view, the consultation with the Chairman while disposing of the appeal is not intended to subserve the interests of any individual tax payer in respect of an issue unrelated to the general issue that may be common to a substantial number of taxpayers. In other words, it is not so much in the interests of an individual tax payer that the provision of consultation with the Chairman is designed but it is in the general interests of a substantial number of tax payers in a locality or town.

13. With the above background we have to consider whether the failure of the appellate authority to consult the Chairman vitiates the impugned order. The traditional approach to the problem on hand would have been to consider whether the aforementioned Rules casting a duty on the appellate authority to consult the Chairman shall be treated as mandatory in the light of the well-known tests laid down by the Supreme Court in various cases commencing from *State of U.P. Vs. Manbodhan Lal Srivastava*, and if held to be mandatory to strike down the impugned order for non-compliance with the said Rules. But, we refrain from entering into an investigation of this larger question. We would prefer to adopt the approach whether the failure to comply with this procedural requirement-may be mandatory in its character shall entitle the petitioner to a relief in this writ proceeding. In other words, the question is whether the appellate order should be nullified by this Court at the instance of the petitioner on account of non-compliance with the "mandatory" requirement of consultation?

14. In considering the above question, we have to bear in mind two or three aspects. The relief under Article 226 of the Constitution is discretionary in its nature and it is meant to promote the cause of justice. Merely because there is a breach of legal duty on the part of the State or its instrumentality, it does not necessarily follow that a writ should be issued in order to give effect to the form rather than substance. It should also be kept in mind that the requirement of consultation cannot be said to be a condition precedent for the exercise of appellate power nor is it the foundation of the exercise of appellate jurisdiction. Above all, the object of the provision as discussed above, should be borne in mind.

15. Having regard to these considerations, let us scan the facts of this case. This

is a. case where the property tax is sought to be determined for the first time in respect of the hotel building. There is no general revision of property-tax in the municipal area. The facts having bearing on the fixation of proper assessment are peculiar to the individual building owned by the petitioner. These facts are not much in dispute. The area of the building, the number of rooms used for the hotel business, the rentals charged for the rooms, the age of the building and the fixtures and fittings provided, are all admitted facts. With regard to the cost of construction also, there is no dispute even if it is a relevant factor. The only dispute that has been raised is about the occupancy ratio of the hotel. However, no specific details about the occupancy have been set out by the petitioner before the respondents apart from stating that the occupancy is generally poor and that the A.C. rooms are not occupied throughout the year. Assuming that the actual rent fetched but not notional rent should be the relevant criterion, the petitioner had not thrown any light on this aspect. In the absence of these details the revisional and the appellate authorities did give sufficient margin to this factor and calculated the rent on the basis of 1/4th occupancy on the average. To satisfy himself about the correctness of the assessment fixed by the Commissioner, the Appellate Commissioner even inspected the premises. In the state of these facts, the consultation with the Chairman would have served no useful purpose. As already noticed, the facts peculiar to the individual building are to be taken into account in the instant case for the fixation of the rental value. The general factors which an elected representative of a local body could be presumed to be aware of, do not, enter into the process of assessment here at all. Anything relevant said by the Chairman could not have benefited the petitioner. Under these circumstances, we are firmly of the view that any invalidation of the appellate order on the ground of non-compliance with procedural requirement of consultation would amount to travesty of justice. The interests of justice will not be subserved by performing the ritual of quashing the appellate authority for de novo disposal after consulting the Chairman. Incidentally, to do so would also be against the underlying purpose and object of the Rule discussed above. Thus, we are not inclined to grant any relief to the petitioner in exercise of our jurisdiction under Article 226 of the Constitution.

16. By adopting the above approach, we are not saying anything obnoxious to the principles of interpretation of statutory provisions. In fact, such an approach finds its echo in some of the recent decisions of English Courts and well known treatises on administrative law. The view that has gained currency in England in the recent times is that the fact that certain provisions are mandatory "does not itself cause a failure to comply with them to invalidate the notice". (Vide Roskill, L.J. in *Howard v. Environment Secretary*, (1975) 1 Q.B. 235, in *London & Clydeside Estates Ltd. v. Aberdeen District Council*, (1980) 1 W.L.R. 182 (HL), Lord Hailsham warned against the use of rigid legal classification viz.. mandatory, directory, void, voidable, etc. and stressed the discretion vested in the Court in deciding whether in a particular case, the Court should intervene. The effect of the failure to comply with the "mandatory procedural requirement" has been

succinctly summarised in Garner's Administrative Law, Seventh Edition (1989) at page 166. The learned author observed that ""although all procedural requirements laid down by statute ought, of course, to be complied with, it does not follow that in all cases, failure to follow such requirements to the letter will result in the exercise of power being null and void. Although statutes commonly prescribe procedures, they rarely make express provision as to the consequences of non-compliance. This is left to the Courts, and the courts have adopted a flexible attitude to this matter. "Serious" cases of failure to comply with the obligations will be treated differently from less "serious" departures from prescribed procedure. Moreover, the estimation of "seriousness" will generally depend on assessment of a variety of factors, the chief of which would appear to be-

the extent of the failure to comply (i.e. has there been a complete failure to comply, or simply a failure to comply "to the letter"?)

the nature and purpose of the procedure in the question (i.e. is the procedure to be regarded as an important procedural safeguard for the citizen, or is the procedural requirement more a symptom or bureaucracy?)

the consequence of the procedural failure (i.e. has anyone been prejudicially affected?)

Whether a procedural deficiency is in relation to the mere exercise of a power, or in respect of the performance of a duty owed by the authority in question ? In the former case to hold the act or decision a nullity may simply frustrate the public authority in its purpose; in the latter case it may deprive the public of the benefit of the performance of the public duty.

The courts have used a variety of language to distinguish cases of invalidity from others. Commonly a (sic) is (sic) between mandatory procedural requirements and directory requirement and it is then sometimes said that any breach of the form (sic) requirement will result in invalidity, whereas breach of a directory requirement will no have such effect. The deficiency of this analysis lies in its apparent concentration on only one of the factors listed above-i.e. the nature of the procedural requirement. Whilst the analysis is adequate in some cases in that some requirements are intrinsically of such importance that compliance "to the letter" is required, and others intrinsically much less important so that wholesale failure to comply may be ignored, there exists a large category of requirements in respect of which the matter needs to be considered more broadly. In such cases the courts will look not just at the nature of the requirement, but also at the extent of the breach and at its consequences. Labelling of the obligation as "mandatory" or "directory" will then be a process of ex post facto justification of the decision reached. This process has been apparent for many years."

17. It is appropriate to refer to the forceful and pertinent opinion of Lord Hailsham in London & Clydeside Estates Ltd. case (3 supra) (pages 189-190):

"In this appeal we are in the field of the rapidly developing jurisprudence of administrative law, and we are considering the effect of non-compliance by a statutory authority with the statutory requirements affecting the discharge of one of its functions. In the reported decisions there is much language presupposing the existence of stark categories such as "mandatory" and "directory", "void" and "voidable" a "nullity" and "purely regulatory".

Such language is useful; indeed, in the course of this opinion I have used some of it myself. But I wish to say that I am not at all clear that the language itself may not be misleading in so far as it may be supposed to present a court with the necessity of flitting a particular case into one or other of mutually exclusive and starkly contracted compartments, compartments which in some cases (e.g. "void" and "voidable") are borrowed from the language of contract of status, and are not easily fitted to the requirements of administrative law.

When Parliament lays down a statutory requirement for the exercise of legal authority to be obeyed down to the minutest detail. But what the courts have to decide in a particular case is the legal consequence of non-compliance on the rights of the subject viewed in the light of a concrete state of facts and a continuing chain of events. It may be that what the courts are faced with is not so much a stark choice of alternatives but a spectrum of possibilities in which one compartment or description fades gradually into another. At one end of this spectrum there may be cases in which a fundamental obligation may have been so outrageously and flagrantly ignored or defied that the subject may safely ignore what has been done and treat it as having no legal consequences upon himself. In such a case if the defaulting authority seeks to rely on its action it may be that the subject is entitled to use the defect in procedure simply as a shield or defence without having taken any positive action of his own. At the other end of the spectrum the defect in procedure may be so nugatory or trivial that the authority can safely proceed without remedial action, confident that, if the subject is so misguided as to rely on the fault, courts will decline to listen to this complaint. But in a very great number of cases it may be in a majority of them, it may be necessary for a subject, in order to safeguard himself, to go to the court for declaration of his rights, the grant of which may well be discriminatory, and by the like token it may be wise for an authority (as it certainly would have been here) to do every thing in its power to remedy the fault in its procedure so as not to deprive the subject of his due or themselves of their power to act. In such cases, though language like "mandatory", "directory", "void", "voidable", "nullity" and so forth may be helpful in argument, it may be misleading in effect if relied on to show that the courts, in deciding the consequences of a defect in the exercise of power, are necessarily bound to fit the facts of a particular case and a developing chain of events into rigid legal categories or to stretch or cramp them on a bed of procrustes invented by lawyers for the purposes of convenient exposition."

18. The following observations of the learned Law Lord apply with equal force to

the exercise of writ jurisdiction under Article 226 of the Constitution as well :

"As I have said, the case does not really arise here, since we are in the presence of total non-compliance with a requirement which I have held to be mandatory. Never the less I do not wish to be understood in the field of administrative law and in the domain where the courts apply a supervisory jurisdiction over the acts of subordinate authority purporting to exercise statutory powers, to encourage, the use of rigid legal classifications. The jurisdiction is inherently discretionary and the court is frequently in the presence of differences of degree which merge almost imperceptibly into differences of kind."

19. It is thus clear that the breach of a "mandatory procedural provision" need not necessarily make the impugned order or proceeding a nullity. If it does not become a nullity, it holds good until avoided or invalidated. The party affected cannot unilaterally ignore the same. Where a party seeks to avoid such an act or proceeding, the Court has to consider all the relevant circumstances and weigh the pros and cons and decide whether any relief should be afforded to the party concerned on the ground of disregard of a procedural requirement -which may very well be mandatory. In the instant case, we are not in a position to say that the consultation with the Chairman of the Municipal Council though not an empty formality, is so imperative in nature as to attach the consequence of nullity or voidness to the appellate order. Judged from the point of view of the "legal consequence of non-compliance on the rights of the subject" and the "state of facts" obtaining in the present case, we are not prepared to nullify the appellate order on the ground that the appellate authority omitted to consult the chairman before disposing of the appeal.

20. Thus, viewed from any angle, we are of the view that the impugned order is not vitiated by any jurisdictional or legal error and at any rate the petitioner is not entitled to any relief under Article 226 of the Constitution.

21. The Writ Petition is therefore dismissed subject to the clarification at page 8 supra. The petitioner will pay the costs of the respondents. Advocate's fee is fixed at Rs. 350/-.