

(1954) 07 BOM CK 0015

In the Bombay High Court

Case No : Misc. Petition No. 171 of 1954

Hirabhai Ashabhai Patel

APPELLANT

Vs

The State of Bombay

RESPONDENT

Date of Decision : 28-07-1954

Acts Referred:

Bombay Municipal Corporation Act, 1888 — Section 139, 140, 141, 169, 169(1)
Constitution of India, 1950 — Article 14, 245, 265

Citation : AIR 1955 Bom 185 : (1954) 56 BOMLR 1035

Hon'ble Judges : Chagla, C.J.;Dixit, J

Bench : Division Bench

Advocate : Purshottam Tricumdas, M.M. Gharekhan and G. Munshi, for the Appellant; M.P. Amin, General, C.K. Daphtary, Solicitor General, G.N. Joshi and N.A. Palkhiwala, for the Respondent

Judgement

Chagla, C.J.—The petitioners are the owners of a building situated on the Marine Drive and their main grievance is that the Municipality of Bombay, instead of levying a water-tax upon this building, is charging them for water according to measurement, and their contention is that Section 169, City of Bombay Municipal Act, 1888, which confers that power upon the Commissioner, is invalid.

2. It appears that up to 1952 water-tax was levied upon these premises at a particular rate. On 7-5-1952, a meter was installed by the Municipality, and on 8-7-1952, the Municipality submitted to the petitioners a bill in respect of water consumed in the premises and charging them at a particular rate. After that, various bills were submitted : the petitioners refused to pay these bills and went on paying water-tax.

Ultimately, on 10-4-1954, a notice was served upon the petitioners by the Assessor and Collector of Municipal Taxes, calling upon them to pay the sum due within a certain time and intimating to them that in default of payment a warrant of distress would be issued for the recovery of the amount. On receiving this notice, the petitioners approached this Court and contended by their petition that

the threat held out by the Municipality to issue distress was without Justification in law.

3. Now it is necessary to look at the scheme of the Bombay Municipal Corporation Act in order to understand the contentions of the petitioners and also the grievance set out in their petition. Chapter VIII deals with municipal taxation and Section 139 describes the taxes which can be imposed Under the Act, and property taxes are among the taxes which can be imposed under the Act. Section 140 describes what property taxes are leviable and they are a water-tax, a halalkhor-tax and a general tax. Section 141 deals with the water-tax and water-tax can be levied in respect of premises where there is a private water-supply which is connected with municipal waterworks by means of communication pipes and It also applies to premises where water is available from municipal waterworks and in respect of which the Commissioner has given public notice.

Now, Section 141, which deals With the water- tax ,, is subject to the provisions of Section 169 and that Section gives the discretion to the Commissioner to charge for the water supplied to such premises by measurement at such rate as shall from time to time be prescribed by the Standing Committee in this behalf. But this discretion conferred upon the Commissioner can only be exercised provided that the Standing Committee either generally or specially has directed that, instead of levying the water-tax in respect of any premises, water should be charged for according to measurement. Now It is Section 169 that is challenged by the petitioners, and the challenge, broadly speaking is on three grounds. The first ground is as to the competence of the Legislature to enact this Section; the second ground is that the Section offends against Article 14 of the Constitution; and the third ground is that It constitutes, delegation of legislative function by the Legislature to the Standing Committee or the Commissioner. We have to examine each one of these grounds which have been urged before us by Mr. Purshottam on behalf of the petitioners.

4. Turning to the first ground, the competence of the Legislature must clearly be looked at from the point of view of the Constitution Act in force when the Municipal Act of 1888 was passed. But both Mr. Purshottam and the Solicitor General on behalf of the Municipality have argued the points on the basis that the competence of the Legislature is the same as It is under the present Constitution. Now, turning to our present Constitution, Entry 5 in the state List is to the following effect :

"Local government, that is to say the constitution and powers of municipal corporations, improvement trusts, district boards, mining settle-merit authorities and other local authorities -for the purpose of local self-government or village administration."

The Entry is very wide in Its terms and legislation is permissible to the State Legislature with regard to any subject of local government and It is also permissible to the State Legislature to confer powers upon a local authority

provided the power is for the purpose of local self-government. Now, there can be no doubt that the power of taxation conferred upon the Bombay Municipality is for the purpose of local self-Government. Mr. Purshottam is right when he contends that the State Legislature cannot confer upon a local authority the power to tax, which power it Itself does not possess. Therefore, the power to tax must be found in the list which would make the Legislature Itself competent to impose- the tax. If the Legislature is competent, it can, for the purposes of local self-government, instead of levying the tax Itself, confer that power upon the local authority.

It is again not disputed that the State Legislature is competent to impose the water-tax. But what is argued is that It is not competent to the Legislature to empower the Municipality to levy a tax in respect of which no limit is indicated in the legislation Itself. Now It is difficult to appreciate this argument in the context of competence. If the State Legislature is competent to confer upon the local authority the power to tax, Its competency cannot be affected because the power that has been conferred is an unlimited power. The fact that no limitation has been Imposed may lead to the legislation being challenged on some other ground; but it cannot be challenged on the ground of competence. Indeed, this absence of limitation has been challenged on other grounds and we shall presently consider those arguments.

5. The second ground on which the Section is challenged is that It offends against Article 14 of the Constitution. It is pointed out that u/s 169 It is left to the Standing Committee to determine what are the premises generally which should be charged for the water supplied to them by measurement or to determine any particular specific property which should be charged for water supplied, and It is urged that in permitting the Standing Committee to determine this by a general or special order equality of law is denied to all property-owners in Bombay.

Now, what we have to consider is whether the classification which the Legislature has permitted the Standing Committee to make is a classification which is reasonable and is not arbitrary. In deciding whether certain premises should be charged according to measurement and no water-tax should be levied upon those premises, various factors would have to be borne in mind; and the Legislature had to leave It to the Standing Committee to decide from time to time, whether as a class or as individual cases, which are the premises to which this alternative mode of charging water-tax should be applied. It should be noted that the ultimate power of applying this Section was left to the Commissioner and the real grievance of the petitioners is, not that there is discrimination in the legislation, but that there is discrimination in the exercise of the power by the Commissioner.

What is urged by the petitioners is that the Commissioner has not exercised this power reasonably and fairly, but that in exercising the power he has discriminated between one landlord and another in the city of Bombay and even

one landlord and another in the same locality. Now we must confess that there is considerable paucity of particulars in the various charges and allegations made in the petition. But there is a clear and categorical reply by the Commissioner in his affidavit as to how he came to exercise his power u/s 169 in respect of the premises belonging to the petitioners.

In an elaborate statement, the Commissioner has traced the history of this alternative mode of recovering water-charges and he has pointed out that in 1907 a decision was taken that water-charges should be recovered u/s 169 with respect to certain premises only, and as years went by the class of premises was gradually extended. In April 1950, the suburbs of Bombay were merged into Greater Bombay and it was then discovered that, while in the suburbs the charge for supply of water was always made on measurement, in most parts of Greater Bombay it was done on a flat water-tax, and this itself seemed to indicate that a part of Greater Bombay was differently treated from the other part. A survey was then taken to find out what was the consumption of water in various localities and it was found that the consumption of water was more than the average consumption per capita in certain localities including the Marine Drive, and it was, therefore, decided that, although the ultimate target was that this mode of recovering water-charges should be applied to the whole of Bombay, certain residential localities should be taken in hand first.

The Commissioner also points out that if meters were to be supplied to all the premises and this mode of recovering water-charges was to be put into force, it would involve a capital outlay of Rs. 1,89,00,000. Therefore, in effect and in substance, the affidavit of the Commissioner comes to this, that there is a decision that all property-owners will ultimately have to pay for water supplied to them by measurement, but this is a very big ambitious scheme and that scheme cannot be realised all at once: It can only be realised by stages and the first stage has been taken with certain localities because in those localities it has been found that the consumption of water is more than in other localities.

Now, it is well settled that it is not necessary that a certain provision of law should apply at the same time to all members of a class. If a class is indicated as the object of legislation or the object of social reform, it is open to the legislature or to the authority upon whom the power is conferred to achieve the object or to carry out the social reform in stages or by installments, and the Court will not hold that there is no equality of law because certain members of the class are affected and others are not. If it is reasonably clear that ultimately the whole class will come within the purview of the law, then the mere fact that at a particular point of time only certain members of the class are affected will not make the legislation or the exercise of power bad. That is exactly the position here. If the ultimate objective is to make every landlord or every property-owner in the city of Bombay to pay for water-charges by measurement, then it is not open to the petitioners to complain that to-day they along with a few others are affected by this exercise of power and the others are not affected. The short and

simple answer to the petitioners is that others will also be affected in due course; that they are not being picked out arbitrarily or capriciously, but that they have had the misfortune of being singled out first because the Municipal Commissioner has to start somewhere and in this case he has started with the petitioners for the very good reason that he has started with a locality where the consumption of water is very high.

6. The third ground of challenge is that Section 169 constitutes the delegation of legislative function to the Standing Committee or the Commissioner. It is pointed out that the Legislature has given no indication of Its policy as to the ceiling of the rate which can be charged for the supply of water and that as the Section stands the Standing Committee may charge any rate and It is left entirely to their absolute unfettered discretion. Now, a delegation of certain functions is bad only if it amounts to an abdication by the Legislature. In others words, if the Legislature, instead of legislating Itself, which in Its own function, permits legislation by some other authority, or, again, to put It in different language, if the Legislature, without laying down the policy, permits the carrying out of a particular activity or a particular function by some authority, then It might be said that the Legislature has abdicated Its own functions.

Now it, may be pointed out, as was rightly indicated by the Solicitor General, that even with regard to the levying of a water-tax no limit has been placed by the Legislature. In the case of halalkhor-tax the limit is there : It cannot exceed 5 per cent. of the rateable value. In the case of general tax also there is both a floor and a ceiling: It cannot be less than 8 per cent. or more than 21 per cent. But curiously, with regard to the water-tax the Legislature has not indicated any limit to the tax which the Municipality can levy. Now there is a very good reason why the Legislature did not do so in the case of the water-tax.

To supply water to a city like Bombay, -with its growing needs and its growing population, is a tremendous task, and the Legislature which passed this law in 1888 could not possibly decide what it would cost the Municipality to provide a water supply for Bombay; and therefore, the only indication that the Legislature gave as to the limit of the power of taxation of the Municipality with regard to water-tax was that it shall levy a water-tax of so many per centum of the rateable value as the Corporation shall deem reasonable for providing a water supply for Greater Bombay. Therefore, the Water-tax was to be levied for the specific purpose of providing a water supply for Bombay and it was left to the Corporation to decide what was the reasonable percentage of the rateable value at which the water-tax should be levied. There can be no doubt that the Legislature intended that there should be a relationship between the rate charged and the cost of providing a water supply.

Therefore, it would be true to say that, in one sense, even in the case of a water-tax there is an implied limitation upon the power of the Municipality. When we turn to Section 169, which is an alternative to Section 140 Sub-clause (a), it provides for an alternative method of realising the water-tax; and, in our opinion,

the limitation that is placed upon the levying of the water-tax must also be held to have been placed upon charging for water supplied according to measurement. Therefore, this is not a case where a power was delegated by the Legislature without laying down the policy. The policy is clearly and explicitly laid down in Section 140, Sub-clause (a), with regard to the levying of water-tax, and in Section 169 the Legislature confers upon the Municipality the power of recovering the water-tax by a different mode. But whether the Municipality levies a water-tax as provided by Section 140(a) or whether it charges for water supplied by measurement, the object of both is the same, namely, providing a water supply for Bombay. Therefore, in our opinion, the contention that Section 169 constitutes a delegation of legislative function by the Legislature is untenable.

7. There are various other points urged by Mr. Purshottam with which we must deal, although we have dealt with the challenge to Section 169, broadly as has been urged by Mr. Purshottam.

In the first place, it is pointed out - and with some justification ~ that the result of changing over from the mode of levying a water-tax to charging for water by measurement inflicts a very serious hardship upon the petitioners as landlords.

Now the position briefly is this. u/s 173 a landlord can pass on a water-tax to his tenant. Now, our Court has held in --" Bombay Municipality v. Haji Eisa Haji Oosman", AIR 1936 Bom 48, that a water-charge u/s 169 is not a tax and, therefore, it cannot be a charge on the property u/s 212. Although that Bench was not called upon to consider the question which we are considering, but by parity of reasoning it would follow that if it is not a tax the landlord cannot pass it on to his tenant u/s 173. Therefore, the grievance of the landlord is, as we said, a Justifiable grievance, that whereas he can recover the water-tax from his tenant as soon as the Municipality adopts the alternative mode of recovering water charges he has got to pay the water-charges himself and he cannot recover the water charges from his tenant, although the property may be in the occupation of the tenant, although he may not use the water at all and although all the water supplied may be used by the tenant-Now, a hardship caused by a particular piece of legislation or a hardship caused by the exercise of this statutory power can be no ground for holding either that the legislation is bad or that the exercise of the power is bad. One can sympathise with those who suffer the hardship; one can recommend to Government to remove the hardship. But that is about all. In this case, however, we have been told that Government are intending to pass legislation immediately, by which the landlords would be enabled to recover the water-charges from their tenants. Mr. Purshottam has also drawn our attention to the fact that even under the Rent Act landlords are prevented from recovering, these water-charges from the tenants and even from making a contract when the tenancy is formed that the tenant shall pay these water-charges to the landlord. Perhaps it would have been better, before the Municipality decided upon this new mode of recovering water-charges, that the necessary legislation had been passed enabling the landlords to recover the

water-charges from the tenants. But that is a matter of policy with which we are not concerned. We do hope, however, that the legislation which is on the anvil will not be delayed.

8. It is then rather faintly urged by Mr. Purshottam that if a taxing statute provides two modes of recovering a particular tax, the Court should lean in favour of that tax which is more beneficial to the citizen. Now, that is not the principle of construing a taxing statute, The principle is that in a taxing statute, wherever there is ambiguity of language, the ambiguity must be resolved in favour of the person to be taxed rather than the taxing authority. But when a legislation advisedly confers upon the taxing authority two modes of taxation, and the authority chooses a mode which makes it possible to realise a larger amount, it cannot be urged that the second mode is unlawful because the first mode is more beneficial to the citizen.

The Legislature, in this case, has empowered the Municipality either to levy a water-tax u/s 140(a) or to recover a water-charge u/s 169. It seems obvious that the Municipality will recover a larger amount by resorting to the mode laid down in Section 169 rather than to the mode laid down in Section 140(a). But if the Legislature has in its wisdom permitted the Municipality to tax the rate-payer in one way or the other, the rate-payer cannot make a grievance of the fact that he is being taxed more because the Municipality is exercising its power u/s 169 and not u/s 140(a)

There was a suggestion that the Municipality should not make profit by resorting to its powers u/s 169 when it could more naturally and more justly impose a tax u/s 140(a). It is difficult to understand how the word "profit" is appropriate to a local authority like the Bombay Municipality. As we have already pointed out, the object of levying a water-tax is to provide a water supply for Bombay, and if Bombay has now grown into Greater Bombay, if its population has multiplied, if the Municipality feels that the needs of the citizen should be properly met with regard to the supply of water, and if the water supply to-day would cost hundreds of times more than what it cost in years gone by, and with that object the Municipality wants to obtain a larger revenue by resorting to Section 169 in place of Section 140(a), it is hardly appropriate to suggest that the Municipality is trying to make profits by devious methods and by circumventing the clear provision of levying a water-tax u/s 140(a).

It may also be pointed out that, apart from the limitation implied in Section 140(a) upon the power . of the Municipality of levying a water-tax, there is this further limitation that the Municipal Corporation is an elected body and the Standing Committee which ultimately decides u/s 169 is also a committee of that elected body, and in matters of taxation the only safeguard that a citizen has is that his representatives will exercise the power of taxation with wisdom, with caution, and with sobriety.

9. it is then urged that the Municipality is guilty of double taxation by reason of

the fact that it taxes the petitioners by way of water-tax when he is already taxed by way of halalkhor-tax.

In order to understand this argument, it is necessary to state a few facts. The halalkhor-tax is levied for the collection, removal and disposal by a municipal agency of all excrementitious and polluted matter from privies, urinals and cesspools, and also for maintaining and repairing the municipal drains constructed or used for the reception or conveyance of such matter. Now, the municipal agency for removing excrementitious and polluted matter was in evidence when the flushing system was not Introduced. Now practically over the whole of Bombay there is a flushing system and the flushing system is - certainly in force as far as the petitioners' premises are concerned.

What is argued is this, that a certain quantity of water is used for the purpose of the flushing system and the flushing system is installed in order to remove excrementitious and polluted matter; that is the function of the Municipality and for the services which it renders in removing that it charges the halalkhor-tax; but having charged the halalkhor-tax, it cannot again tax for the same services by levying a water-tax. That, in brief, is the argument with regard to double taxation.

The answer to the argument is that the water-tax that is levied u/s 140(a) or the water charge that is made u/s 169 is for the use of water. Neither Section provides that the tax will be levied or the charge made provided the water is used for any particular purpose. To whatever use the water may be put, as far as Section 169 is concerned the charge is according to measurement. Therefore, the first answer to Mr. Purshottam's contention is that, even though the owner of the premises may use the water for flushing purposes, he having taken the water from the Municipality he has got to pay according to measurement u/s 169.

The other answer is that it is. Impossible for the Court to say what various factors the Corporation or the Standing Committee or the Commissioner has taken into consideration in fixing the water-tax at a certain rate or the water-charge at a certain rate and the halalkhor-tax - at a certain rate. It may well be that in fixing the halalkhor-tax at a particular rate the Municipality might take into consideration the fact that it no longer has to supply sweepers to every house for removal of excrementitious matter and that that purpose is now being served by the flush, The Municipality might also well take into consideration, in fixing the water-tax or the water-charge, that part of the water which the owner of the premises uses is for a purpose which helps the Municipality in carrying out its duties under the Act and in rendering halalkhor services to the owner. But we find it impossible to accept Mr. Purshottam's contention that a separate specific credit must be given by the Municipality when it acts u/s 169 for the quantity of water which is used for flushing and which is not used for domestic purposes by the owner.

10. it is then urged that the exercise of power by the Commissioner u/s 169 is

not lawful because it is not pursuant to a valid resolution passed by the Standing Committee. The resolution of the Standing Committee which is attacked is that of 15-4-1953. In the petition this resolution is not set out, nor is it expressly challenged. But we accept Mr. Purshottam's contention that, inasmuch as the petitioners challenge the authority of the Commissioner to levy this charge and inasmuch as the Commissioner justifies the levy by relying upon his power u/s 169 and also the resolution of the Standing Committee, it is for the Municipality to satisfy us that the power has been properly exercised, and if the power has been exercised pursuant to an invalid resolution it may be that the exercise of the power itself is invalid.

Therefore, it is necessary for us to consider the resolution of the Standing Committee and the arguments advanced against it. Now, this is the resolution of the Standing Committee: "Under Section 169(1) Ca), Bombay Municipal Corporation Act, 1888, the standing Committee hereby direct that, for the following classes of premises, the Commissioner may, from time to time, determine whether the water-tax shall be levied in respect of any particular premises, or whether, instead of levying such tax he will charge for the water supplied to such premises by measurement,"

Then various classes of premises are set out and the rates are mentioned; and we are concerned with that class of premises where the rate is annas 0-14-0 per thousand gallons. Eight classes of premises fall within this category and the fourth category mentioned is "premises used for domestic and residential purposes and those premises where no trade is carried out." Now, the petitioners' premises fall within this class and he is charged at the rate of annas 0-14-0 per thousand gallons.

What is urged is that the Standing Committee, after determining the class of premises to which Section 169 (a) may apply, has conferred upon the Commissioner the power to select any of the premises from this class and to apply the alternative mode of realising the water-charges to the premises so selected by the Commissioner. But that is not all. The Standing Committee has further conferred upon the Commissioner the power to decide from time to time whether any particular premises shall be charged the water-tax or there should be a charge for water supplied according to measurement.

In other words, Mr. Purshottam's contention is that this resolution permits the Commissioner, not merely to select such premises as he thinks proper from the class indicated by the Standing Committee for the application of the alternative mode, but having so selected he can subsequently again decide that, instead of these premises paying the water charges according to measurement, they shall pay a water-tax; and Mr. Purshottam says that such a resolution the Standing Committee cannot pass u/s 169 and the resolution is bad.

He further contends that, if the resolution is bad, the power exercised by the Commissioner pursuant to this resolution is equally invalid. Now, in order to

understand the implications of this resolution, we must once again look at Section 169 and consider what really the effect of the Section is. In the first place Section 169 confers the discretion upon the Commissioner to charge for the water supplied by measurement instead of levying a water-tax.

It is to be noted that this power is conferred upon the Commissioner, not as a delegate, but as an independent authority under the Act. Section 4 sets out the various municipal authorities who are charged with carrying out the provisions of the Act, and among these authorities are the Standing Committee and the Municipal Commissioner. Therefore, the discretion is given to the Commissioner as an independent municipal authority.

But Section 169 lays down a limitation upon the exercise of his discretion and the limitation is that he can only exercise his discretion with regard to charging for water according to measurement with regard only to those premises with regard to which the Standing Committee has passed an order or given a direction. In other words, the Standing Committee must first determine either generally the class of premises or specially the property or properties. It is only when such a determination is arrived at that the Commissioner's discretion -- if one may put it that way -- can attach to those premises. Therefore, it is not open to the Commissioner to exercise his discretion u/s 169 with regard to any premises in the city of Bombay. He can only exercise his discretion with regard to those premises with regard to which the Standing Committee has given a general or special direction.

Now it is clear -- and we do not think Mr. Purshottam seriously disputes that position - that even where a general direction is given by the Standing Committee and a class of premises has been indicated, it would be open to the Commissioner to apply the alternative mode, not all at one time, but by stages. It is open to the Commissioner not to exercise his discretion with regard to a particular class of premises selected by the Standing Committee, because the Commissioner is not bound to carry out the direction of the Standing Committee. As we have already said, he has an independent discretion and he may take the view that notwithstanding the direction of the Standing Committee, water should not be charged according to measurement. But once he exercises his discretion with regard to the class of premises indicated by the Standing Committee, it would not be open to him to say "I will only exercise my discretion with regard to certain premises in that class and not all the premises." He must then apply the alternative mode to the whole class, although in applying the alternative mode he may take his time, he may do it by stages, he may think that financial considerations make it impossible for him to exhaust the whole class at once.

But Mr. Purshottam's grievance is that the resolution of the Standing Committee does not merely permit the Commissioner to select premises from time to time from the class, but it goes further and empowers the Commissioner, not only to select premises from the class for the purpose of applying the alternative mode, but to revert with regard to those premises to the method of levying a water-tax

if in his opinion he thinks that having applied the alternative mode it is more profitable or more desirable to go back to the old "system.

Now, the resolution of the Standing Committee must be read in the light of Section 169. Not only does the resolution set out the Section, but we must assume that the standing Committee knew what its powers were u/s 169, it is also equally clear that we must give to the resolution of the Standing Committee a fair and reasonable meaning. It is equally obvious that we must lean in favour of validating the resolution rather than Invalidating it. Now it is clear that the Standing Committee has indicated the classes of premises and it is left to the Commissioner in his discretion to select either any class out of these classes of premises or select any particular premises from any particular class. In our opinion, the effect and force of the expression "from time to time" is that the Commissioner may not apply the mode of recovering water-charges u/s 169 all at once to a particular class of premises if he selects such a class, but he may do so from time to time which, particular premises in that class should come within the ambit of Section 169. It seems to us that in the light of Section 169 it is rather far-fetched to suggest that the Standing Committee was conferring upon the Commissioner a power which the Section does not confer upon the Commissioner.

We agree with Mr. Purshottam that the language used by the Standing Committee is by no means happy, nor can the language be characterised as artistic. It seems to us difficult to understand why the Standing Committee should have expressly stated in the resolution that the Commissioner may exercise his/ discretion when that discretion is conferred upon the Commissioner independently of the Standing Committee and nothing that the Standing Committee can do can prevent the Commissioner from exercising that discretion. It is pure surplusage on the part of the Standing Committee to set out in its resolution a statutory provision with regard to the Commissioner's discretion. It is not as if the Standing Committee is delegating its discretion to the Commissioner, in which case one can understand the resolution setting out the delegation.

Then again, there is the other difficulty in accepting Mr. Purshottam's view. If the power exercised by the Commissioner was a delegated power, then it would be obviously necessary for us to consider the terms of the delegation embodied in the resolution, because the Commissioner would have no higher authority than what was delegated to him by the Standing Committee. But that is not the case here. The power of the Commissioner, the discretion of the Commissioner, is a statutory power and a statutory discretion. The Commissioner is not functioning as a delegate of the Standing Committee and, therefore, the powers of the Commissioner are to be determined by a construction of Section 169 and not strictly by what the Standing Committee says are his powers. In our opinion, therefore, on a fair and reasonable reading of the resolution of the Standing Committee, the Commissioner has not been given the power suggested by Mr.

Purshottam; and we hold further that, even assuming that the resolution of the Standing Committee is capable of that construction, the power of the Commissioner must be determined by the provisions of Section 169, and we have already pointed out what his power is under that Section. .

11. A grievance is also made of the fact that this rather drastic change in the mode of recovering the water charges was brought about without any notice to the petitioners and without the petitioners being heard and being allowed to show cause. We were rather surprised when it was mentioned that a responsible officer like the Municipal Commissioner should have suddenly decided to install a meter and to charge the petitioners u/s 169 without any intimation whatsoever to them. It is true that the Section does not require the Commissioner to give any notice. But a responsible officer is not merely guided by what he is commanded to do by the statute. He does many things which are not obligatory upon him, but which a sense of fairness and responsibility demands of him; and we were relieved when we were told by Mr. Palkhivala on behalf of the Commissioner that on 29-4-1952, before the meter was installed, intimation "was" given to the petitioners that they would be charged u/s 169 and a water-tax would not be levied upon their property. There is no substance in the contention that the rules of natural justice have been violated by the petitioners not being heard or their not being allowed to show cause. It may seem rather ironical, but it is still true, that there is one matter in which every citizen is vitally affected where he is not allowed to be heard, and that is when the Legislature or any duly constituted authority decides to levy tax upon him. Perhaps it is not ironic because the reason is obvious. Although the citizen is not heard directly in his own defence or is not allowed directly to show cause on questions of taxation, the policy underlying taxation is decided by an authority which represents him and therefore he is heard through that representative authority. If the Legislature taxes, it is his representatives that are taxing him. If the Municipality taxes, again it is his representatives who are taxing him. This may be the philosophic basis of the citizen not being-heard. But as far as the law is concerned, it is clear that this being an executive and administrative order there is no right in the petitioners being heard or being allowed to show cause and no rules of natural justice have been violated.

12. A point has also been taken by Mr. Purshottam that the water-charge u/s 169 not being a tax, the coercive machinery with regard to recovery of tax is not available to the Municipality. The simple answer to that is the provision of Section 169 Sub-clause (3) which in terms provides that a person who is charged for water by measurement or who has compounded for a fixed periodical sum shall not be liable for payment of the water-tax, but any sum payable by him on account of water and not paid when it becomes due shall be recoverable by the Commissioner as if it were an arrear of water-tax. It is because of this provision that a notice has been given by the Municipal Commissioner u/s 202 and he will proceed to levy distress u/s 203 of the Act.

13. The result is, the petition fails and the rule is discharged with costs.

14. Discharged.