

(1982) 12 GUJ CK 0011
In the Gujarat High Court

Jayantilal Naranbhai Shah and Others	APPELLANT
Vs	
Dholka Municipality and Others	RESPONDENT

Date of Decision : 06-12-1982

Acts Referred:

Gujarat Municipalities Act, 1963 — Section 101, 101(c), 101(c), 102

Citation : (1983) 1 GLR 597

Hon'ble Judges : A.M. Ahmadi, J

Bench : Single Bench

Judgement

A.M. Ahmadi, J.—The petitioners who are residents of Dholka have filed this petition in their capacity as tax-payers challenging the revised octroi schedule whereunder octroi duty on several items is sought to be substantially increased. The facts leading to this petition, briefly stated, are as under.

2. The respondent-Municipality passed a Resolution No. 285 dated 1st February 1978 for the upward revision of octroi duty as per the revised schedule appended to Annexure "A" to the petition. The proposal was then forwarded to the State Government as required by Section 101 (c) of the Gujarat Municipalities Act, 1963 (hereinafter called "the Act"). Section 99 of the Act empowers the Municipality to impose certain taxes, including octroi. Section 101 requires the Municipality to observe the preliminary procedure of passing a resolution at a general meeting selecting the tax to be imposed and approving the rules prepared as required by Clause (1) of Section 271 of the Act. The resolution should inter alia specify the classes of persons or property or both to be subjected to tax and the amount or rate at which the municipality proposes to assess each such class. After the resolution is passed, it is incumbent upon the municipality to publish the rules so approved with a notice in the prescribed form. Clause (c) thereof, with which we are concerned, provides that any inhabitant of the municipal borough objecting to the imposition of the said tax or to the amount or rate proposed or to the classes of persons or property to be made liable thereto or to any exemptions proposed may, within one month from

the publication of the notice, send his objections in writing to the municipality. After the objections are received the said clause enjoins upon the municipality to take into consideration all such objections or authorize a committee to consider the same and report thereon, and unless it decides to abandon the proposed tax, it must submit such objections with its opinion thereon and any modifications proposed in accordance therewith, to the State Government. Section 102 next provides that the State Government may refuse to sanction the rules submitted u/s 101, or may return them to the municipality for further consideration; or if no objection, or no objection which is in its opinion sufficient, was made to the proposed tax within the period prescribed u/s 101, may sanction the said rules without modification, or subject to such modifications not involving an increase in the amount to be imposed, as it deems fit. Section 103 provides for the publication of the sanctioned rules.

3. The petitioner's case is that after the notice was published as required by Section 101(b) of the Act, objections were received to the proposed hike in the octroi rates and the same were considered by the municipality. However, the municipality over-ruled the said objections. The proposal was then forwarded to the State Government for according sanction. The petitioners contend that the objections taken to the proposed octroi rates "were not submitted by the municipality to the State Government and, therefore, the State Government had no opportunity to consider the objections taken by the petitioners and other citizens". This is the first ground on which the proposed revised schedule of octroi rates is challenged by the petitioners. The second ground is that the proposed octroi rates are sought to be increased mala fide with a view to granting benefit to persons dealing in waste yarn and cotton yarn at the cost of dealers of other items. These are the two contentions on the basis of which the proposed octroi rates have been challenged. As I am of the view that the challenge must succeed on the first count, I do not consider it necessary to examine the second count.

4. As seen from the language of Clause (c) of Section 101 of the Act, after the municipality has passed a resolution for the imposition of one or more of the taxes specified in Section 99 and rules have been framed prescribing the tax selected, a notice in the prescribed form is required to be published whereupon any inhabitant of the municipal borough may object to the imposition of the said tax, or to the amount or rate proposed or to the classes of persons or property to be made liable thereto or to any exemptions proposed thereunder, within a period of one month from the date of publication of the said notice. On receipt of objections from one or more inhabitants of the said municipal borough, the municipality is duty bound to consider those objections. If it decides not to abandon the proposed tax, it must submit the said objections with its opinion thereon to the State Government. It is, therefore, clear from the plain language of Clause (c) of Section 101 of the Act that it is imperative on the municipality to submit the objections received from the inhabitants of the municipal borough together with its opinion thereon to the State Government. That is so because,

independently of the municipality, the State Government is expected to apply its mind to the grounds on which the levy is opposed before according sanction u/s 102 of the Act. Unless the objections as well as the opinion of the municipality are before the State Government, the latter would not be able to appreciate the objections and decide whether or not to accept the same. It is for this reason that Clause (c) of Section 101 requires the municipality to forward the objections along with its opinion to the State Government for its sanction. It is obvious from Section 102 that on receipt of the proposal u/s 101, the State Government may (i) refuse to sanction the rules; or (ii) return the rules to the municipality for further consideration; or (iii) sanction the said rules with or without modification not involving an increase in the tax proposed. Before the State Government gives its sanction it must be satisfied that either there is no objection at all or there is no objection which is in its opinion sufficient for refusing to accord sanction. The question of sufficiency of the objection cannot be decided if the objection are not before the State Government. Therefore, there can be no doubt that the proposal must be accompanied by the objections received by the municipality in order to enable the State Government to apply its mind to the proposed tax. I have, therefore, no hesitation in coming to the conclusion that the requirement of Section 101(c) regarding the submission of the objections along with the opinion of the municipality is mandatory and cannot be bypassed.

5. It was, however, contended on behalf of the municipality as well as the Government that even though at the initial stage the objections were not submitted along with the opinion of the municipality as required by Clause (c) of Section 101 of the Act, there was substantial compliance because the said objections were in fact considered by the Director of Municipalities before according sanction by his order dated 7th October 1981. Now the Chief Officer of the Municipality in his affidavit-in-reply does not categorically state whether or not the objections were submitted along with the opinion to the State Government for its sanction. In paragraph 8 of his affidavit-in-reply he merely states that the municipality had followed the requirements of Sections 99 to 102 of the Act. Again in paragraph 9 of the affidavit-in-reply he makes an equally vague statement that all the necessary records were submitted by the municipality to the State Government. Proceeding further in the same paragraph he states as under:

...I say that it was pointed out to the Government with regard to the objections raised against the said proceedings pursuant to the amendment in octroi rates. In any case, I will produce all the relevant records before this Hon"ble Court for perusal and to satisfy this Court that all the substantial requirements necessary for obtaining the sanction of the Government has been followed by the municipality and even thereafter the respondent No. 2 called upon the municipality to produce all the records with regard to the procedure followed for amendment in octroi rates....

6. The impression that is created on a reading of the affidavit filed by the Chief

Officer of the municipality is that in fact the objections were not submitted to the State Government along with the opinion of the municipality as required by Clause (c) of Section 101 of the Act. If the objections were in fact forwarded, the Chief Officer would have made a clear and unequivocal statement to that effect. In that case there would not have been any need to beat about the bush. Belatedly, in the course of the hearing of this petition, respondent No. 2 filed an affidavit-in-reply, which has been taken on record by consent, wherein he inter alia states as under:

The municipality is required to frame rules and bye-laws under statutory provision of the relevant law which lays down the manner and method in which the rules have to be framed by inviting objections and finalise them after giving full opportunity of representing the matter before municipality. The petitioner has said that the provision of Section 101 of the Act is not followed is not true but in fact the objections were considered by the municipality further and on 23-2-1980 all these papers were submitted to this office. When the respondent No. 2 visited Dholka before giving sanction to these rules had taken opportunity to examine the objections raised by the citizens and after full consideration, the decision in the matter has been taken which is quite in conformity with the provisions of law....

7. From this statement made by respondent No. 2 it was vehemently argued that there was substantial compliance with the requirement of Section 101 (c) of the Act. I am not impressed by this submission. In the first place nowhere in the affidavit filed by the Chief Officer of the municipality has it been said that these objections were submitted on 23rd February 1980 or were examined by respondent No. 2 when he visited Dholka sometime before the sanction was accorded. In fact, there is no mention about the visit of respondent No. 2 to Dholka, much less about his having perused the objections then. It was only as an alternative argument that a submission was made on the basis of the aforequoted statement of respondent No. 2 that there was substantial compliance with the requirement of Section 101(c) of the Act. Now respondent No. 2 does not state on what date he visited Dholka but on further inquiry by the Court, learned Counsel for respondent No. 2 could point out a letter written by the President of the Dholka Municipality dated 23rd February 1980 (Javak No. 1566) which recites about the visit of respondent No. 2 to Dholka on 16th January 1980. That letter merely shows that during his visit certain dealers and office-bearers of powerloom associations had met him and had insisted on sanction being accorded to the new schedule. It nowhere speaks about respondent No. 2 having examined the objections received by the municipality against the proposed impost. On the contrary, this letter shows that those who were in favour of the proposed impost had met him and pressed him for according sanction thereto. What was important was to consider the objections against the proposed impost and no useful purpose could be served by meeting dealers and representatives of associations who were in favour of the impost. Besides, mere perusal of the objections, assuming, they were in fact perused, is not sufficient

to establish compliance with Section 101(c) of the Act. Not only have the objections to be perused but they have to be scrutinised from the point of sufficiency and only thereafter can the concerned officer conclude that they are not sufficient for the purpose of refusing or modifying the proposal. I inquired of Mr. Jadeja if he could point out from the Government file available with him that the objections were examined and scrutinised by respondent No. 2 before he reached the conclusion that they were not sufficient. He was unable to point out anything from the file to that effect. A mere glance through the objections at the time of local visit is not what is contemplated by Sections 101(c) and 102 of the Act. I am, therefore, of the opinion that there is no substantial compliance, assuming substantial compliance is sufficient. The impost, therefore, cannot be upheld.

8. Since the petition can be disposed of on the aforesaid single ground, it is not necessary to consider the submission bearing on the question of mala fides raised by the petitioners in the petition. In the result the petition succeeds. The order dated 7th October 1971, Annexure "A" to the petition, granting sanction u/s 102 of the Act is quashed. The municipality is directed to forward all the objections received by it to the State Government within a period of two weeks from to-day. On receipt of the said objections the State Government will consider them in the light of the requirements of Section 102 of the Act and then take a decision whether or not to accord sanction to the proposal of the municipality. The rule is made absolute accordingly with no order as to costs.