

(1979) 06 CAL CK 0008

In the Calcutta High Court

Case No : Appeal from Original Suit No. 102 of 1973

Karnani Properties Ltd.

APPELLANT

Vs

Corporation of Calcutta

RESPONDENT

Date of Decision : 20-06-1979

Acts Referred:

Constitution of India, 1950 — Article 13, 13(2), 14, 16, 226
Evidence Act, 1872 — Section 3, 65, 91
General Clauses Act, 1897 — Section 2, 25
Stamp Act, 1899 — Section 2(12), 2(14)

Citation : 84 CWN 48

Hon'ble Judges : Mitra, C.J.; S.K. Datta, J

Bench : Division Bench

Advocate : R.C. Deb, Bankim Dutt, Prodosh Mallick, Ranjan Deb and Nirmal K. Mitter, for the Appellant; T.K. Basu, Umesh Banerjee and P.K. Ray, for the Respondent

Final Decision : Dismissed

Judgement

Sankar Prasad Mitra, C.J.—This is an appeal from a judgment of Sabyasachi Mukharji, J. delivered on the 30th April, 1973. The Karnani Properties Ltd. (hereinafter called "the appellant") challenged before the learned judge in an application under Article 226 of the Constitution, the rate bills for both owner's and occupier's share of consolidated rates relating to 17 premises under the Calcutta Municipal Act, 1951, being premises Nos. 21, 23 25A 25B 27A 27B 29 31 33 35 37 39 43 45 47 55 and 57 Park Street, Calcutta, for the period starting with the first quarter of 1968-69, to the fourth quarter of 1970-71; three letters dated the 17th March, 1971; and the rate bills dated the 1st January, 1971. On the 1st May, 1952, the Calcutta Municipal Act, 1951, came into force. Prior to June 26, 1954, there was a general valuation of all lands and buildings in the then ward No. 53 in which all the premises of the appellant were situate. The general valuation was made under the provisions of sub-section (2) of section 172 of the Act of 1951.

2. With effect from the second quarter of 1954-55, the Assessor to the Corporation sought to amalgamate 16 of the said premises into three premises and put amalgamated valuations thereon.

3. On the 5th December, 1955, D.N. Sinha, J. on an application under Article 226 quashed the amalgamations and new valuations. The Learned Judge directed the Corporation to proceed according to law.

4. Between March 9, 1957 and March 12, 1957, four notices u/s 175 of the 1951 Act were issued by the Corporation's Commissioner proposing to amalgamate the said 16 premises.

5. Between March 31, 1960 and April 6, 1960, by 16 notices u/s 180 of the 1951 Act in respect of the said premises excepting premises No. 27B, Park Street the Corporation's Assessor informed the appellant that the valuation u/s 172(3) (b) read with section 172(4), as shown in the said notices would remain in force from the second quarter of 1954-55 until further valuation. The earlier valuation, as we have seen, had been cancelled on the ground of irregularity.

6. On April 18, 1960 the Corporation's Assistant Assessor addressed four letters to the appellant, informing that the four notices of proposed amalgamation stood cancelled and separate notices of re-valuation would be issued.

7. On September 12, 1960, seventeen notices u/s 180 of 1951 Act each in respect of one of the 17 premises were issued intimating the petitioner about the increased annual valuation of the said premises with effect from the second quarter of 1960-61.

8. On March 22, 1963, the Corporation's Special Officer passed several orders disposing of the objections which the appellant had filed in respect of two lots of notices u/s 180 of the 1951 Act.

9. On September 20, 1963, the appellant moved an application under Article 226 against the notices issued u/s 180 and the orders passed thereon, all dated the 22nd March, 1963. This Court issued a rule which was numbered as Matter No. 398 of 1963.

10. On March 6, 1964, the Court passed an interim order of injunction in Matter No. 398 of 1963 which was heard on March 11, 1965.

11. Between the 7th January, 1967 and the 7th March, 1967, the appellant received 20 Rate Bills from the third and fourth quarters of 1966-67 in respect of premises Nos. 25A 25B 27A 27B and 47, Park Street by which the Corporation sought to charge the consolidated tax in respect of the said premises at the rate of 30 1/2%. On the 12th April, 1967, the respondent No. 3, namely, the Collector, Corporation of Calcutta, also presented to the appellant certain rate bills being the difference of rate bills for the first and second quarters of 1966-67. The previous rate bills in respect of the said quarters were presented at the rate of 23 1/2% in respect of premises Nos. 25A, 25B, 27A, 27B and 47, Park Street,

Calcutta.

12. On the 29th April, 1967, the appellant wrote to the Corporation contending that the State Government did not give any approval to the increasing of consolidated rates and, as such, the Corporation had no power to realise the difference on the alleged increase of rates of consolidated rates. This point, however, was not pressed before Sabyasachi Mukharji, J.

13. On the 6th May, 1967, the Collector to the Corporation of Calcutta, the respondent No. 3 herein withdrew all the said rate bills presented to the appellant by letters dated January 7, 1967, March 7, 1967 and April 12, 1967.

14. Between June 27, 1967 and August 1, 1967 the Corporation was demanding payment for subsequent periods.

15. On the 1st April, 1968, the bills for the first quarter of 1968-69 were issued. The appellant's contention is that the said bills were unsigned bills and, as such did not create any liability. We shall deal with this contention at the appropriate time.

16. On May 20, 1968, B.N. Banerjee, J. disposed of Matter No. 398 of 1968 and vacated the interim order of injunction. The appellant preferred an appeal against the judgment of B.N. Banerjee, J. being Appeal No. 185 of 1968. The appeal has subsequently been disposed of and B. N. Banerjee, J.'s judgment has been upheld.

17. While the appeal No. 185 of 1968 was pending, the Collector to the Corporation of Calcutta presented certain rate bills relating to 17 premises. These rate bills are also unsigned rate bills.

18. On the 1st December, 1969, seventeen letters were issued, in respect of the 17 premises whereby the respondent No. 3, that is, the Collector, presented a bunch of rate bills all dated the 1st November, 1969 u/s 235 of the 1951 Act relating to both the owner's and occupier's shares. On the said date, namely, the 1st December, 1969, by 14 letters, one each in respect of premises Nos. 21, 23, 25A, 25B, 27A, 27B, 35, 37, 39, 43, 45, 47, 55 and 57, Park Street, the Collector to the Corporation of Calcutta, presented u/s 235 of the 1951 Act supplementary rate bills dated the 1st November 1969. These supplementary rate bills relating to both owners' share and occupiers' share were all signed by the Bailiff of the Corporation.

19. On the 4th February, 1971, by 17 letters, one each in respect of the said 17 premises the Collector forwarded to the appellant several rate bills relating to both the owners' share and occupiers' share in respect of the said premises for the periods 4th quarter, 1966-67 to the 3rd quarter, 1967-68. The Collector also forwarded to the appellant bills in respect of both the shares for two periods viz. the 1st and 2nd quarters of 1966-67.

20. On the 17th March, 1971, by three letters the Collector forwarded to the

appellant three bunches of Notices of demand dated the 3rd March, 1971 under sections 236 and 200 of the Act.

21. On the 1st April, 1971, the appellant demanded justice in writing. On the 12th April, 1971, the appellant moved this Court under Articles 226 and obtained a rule nisi.

22. The first contention of the appellant's counsel is that some of the bills presented to the appellant are signed bills and some of the bills are unsigned bills. The unsigned bills create no liability at all. Learned counsel relies on Section 527" of the 1951 Act which gives powers to the Corporation to make bye-laws. He then takes, us through section 552 which says that every license, written permission, notice, (notice of demand), bill, summons or other documents which is required by this Act or by any Rule or Bye-law made thereunder to bear the signature of the Commissioner or any Municipal Officer, shall be deemed to be properly signed if it bears a facsimile of the signature of the Commissioner or such Municipal Officer, as the case may be, stamped thereupon. These provisions, however, do not apply to a cheque drawn upon the Municipal Fund u/s 118. Learned Counsel admits that there is no bye-law made u/s 552 or Section 527 of the 1951 Act which requires the presentation of signed bills to the rate-payers. But he has placed strong reliance on certain provisions of the "Assessment and Collection Manual of the Corporation of Calcutta published on the 28th September, 1916. There is an introduction to this Manual by Mr. C.F. Payne who was then the Chairman of the Corporation. The introduction is in these terms:

23. The revised Manual is published for information and guidance of the officers of the Corporation, and supersedes from the date of issue all rules and practice in force relative to the subject treated herein.

24. Officers of the Department concerned should pay their best attention to the strict observance of the provisions of this Manual so far as they relate to their respective duties. They will be held responsible for any departure therefrom and for bringing to the notice of the Vice-Chairman through the Assessor, Collector or Solicitor, as the case may be, any practical difficulties which may arise in complying with the rules.

25. Proposal for any change in the Rules should be submitted to the Chairman through the Vice-Chairman. Alterations made from time to time will be forthwith noticed in the Manual against the Rule or form concerned.

26. Counsel for the appellant drew our attention to paragraph 258 of this Manual which says that at the end of each day's work, the clerks from the Collector's department will take bills which have been delivered to them to the Assessor's room and have them stamped with his signature in his presence. They will be responsible for seeing that every bill, which is delivered to them, is stamped with the Assessor's signature. If for any reason this cannot be done the same day, it must be done the first thing in the following morning.

27. Counsel for the appellant also drew our attention to paragraph 357 of this Manual. This paragraph lays down that immediately bailiffs receive any bills they will present them to the parties liable and demand payment. All bills constituting the preliminary demand of the quarter must be presented by the first week of the second month of the quarter at the latest, and all other bills must be presented within five days of their receipt.

28. The appellant's case is that the Corporation is still bound by this Manual and the bill that is presented to the rate-payer must be stamped with the Assessor's signature. Reliance was also placed on section 25 of the General Clauses Act and section 235 of the Calcutta Municipal Act, 1951. It is argued that the principle embodied in section 25 of the General Clauses Act, *inter alia*, is that if a Rule or Bye law was in force before an enactment came into operation, the Rule or Bye-law shall continue to be in force unless there is an express provision to the contrary in the new enactment. From this point of view, according to Counsel for the appellant, paragraphs 258 and 357 of the "Assessment and Collection Manual" are still in force and the obligation of the Corporations employees contained in the said paragraphs have still to be fulfilled.

29. Pratip Kumar Ghose one of the Assessing Inspectors of the Corporation, has filed an affidavit affirmed on the 27th July, 1972. In paragraph (a.I) at page 842 of the paper Book this deponent has, *inter alia*, stated that there exists no Rule or Bye-law with regard to any signature on consolidated rate bill. In paragraph (a.II) of the said affidavit at pages 843 and 844 the deponent has stated, *inter alia*, that the Corporation's present practice in view of the increased number of rate-payers is to present the rate bills under certificate of posting u/s 235 of the 1951 Act. The consolidated Rate Bill is prepared in triplicate. The first part is the "Presentation Copy". The second part is the "Receipted Bill" which the rate-payer receives after making payment of the consolidated rates and taxes which bears the facsimile of the signature of the Assessor and the third part is being kept for office purposes.

30. After inviting our attention to this affidavit of Pratip Kumar Ghose, Learned Counsel has submitted to us that, all the three documents which he has referred to constituted a bill. The "presentation copy" therefore, by itself is not the original bill. And the original bill was never presented to the appellant.

31. Section 235(1) of the 1951 Act before its amendment in 1975 required the presentation of a bill for payment of consolidated rate or any instalment thereof. Sub-section (2) of section 235 required that the bill would specify the period for which, and the premises in respect of which, the rate was charged. In these circumstances, Counsel for the appellant contends that, the document stamped with this assessor's signature a copy whereof has been set out at page 852 of the paper Book, should have been sent to the appellant; but that was never done. What was sent was the so-called "presentation copy" containing no signatures at all.

32. The importance of the signature, says Learned Counsel, would be evident from section 552 of the 1951 Act which has made specific provisions for the making of Rules or Bye-laws, if necessary, for signatures on bills. Paragraph 258 of the "Assessment and Collection Manual" also gives the same indication. The liability for payment of consolidated rates is imposed by section 191. Section 235 before its amendment provided for presentation of the bills with the least practicable delay. Paragraphs 258 and 357 of the "Assessment and Collection Manual" are not inconsistent, Learned Counsel for the appellant has argued, with any of the provisions of the 1951 Act. The bills that are presented therefore, should always be stamped with the assessor's signature. An unsigned bill is no bill at all in the eye of law. The importance of the presentation of a bill was stressed in several judgments of this Court.

33. It is true that in *Mathura Prasad v. The Corporation of Calcutta*, 48 CWN 336, a Division Bench of this Court held that presentation of a bill to the person liable to pay is not a condition precedent to the institution of a suit against him. But that view was not accepted by another Division Bench in *Subimal Ch. Chatterji v. Corporation of Calcutta*, 51 CWN 326. In the latter case it was explicitly held that a defaulter for the purpose of a suit u/s 204 of the Calcutta Municipal Act, 1923 was not merely a person from whom the rate was due but was a person from whom the rate was due and who having been presented with a bill u/s 189 had failed to pay it within seven days.

34. Counsel for the appellant then relied on the judgment of a Learned single Judge of the Allahabad High Court in *Mohd. Tahir Vs. Mst. Sardar Bano and Another*, . In this case the Allahabad High Court was considering the provisions of sections 3, 91 and 65 of the Evidence Act along with section 2(12) of the Stamp Act of 1899. The Allahabad High Court said that one of the essential elements of due execution of a document was that the document should be signed by the party or parties associated with it. It was not possible to imagine that execution of a document might take any other form than that of the executant putting his signature on it.

35. According to Learned Counsel the Corporation's rate bill is an "instrument" within the meaning of section 2(14) of the Stamp Act as it is a document by which a liability is created and its execution requires a signature u/s 2(12) of the said Act.

36. Reliance was also placed on the case of *The Corporation of Calcutta Vs. Moti Chand Chowdhury and Others* in which the Corporation's "Assessment and Collection Manual" came up for consideration. A Division Bench of this Court said that the Rules in this Manual had not the force of law and might be ignored if they were inconsistent with the provisions of the Calcutta Municipal Act, 1923.

37. The sum and substance of the arguments of the appellant's Counsel on this aspect of the case are as follows:

1. Presentation of a bill is a condition precedent to the attachment of liability in

respect of the bill.

2. The Assessment and Collection Manual" requires that bills have to be stamped with the Assessor's signature.

3. There are no provisions in the 1951 Act or under Rules or Bye-laws thereunder which contain provisions contrary to those in paragraphs 258 and 357 of the Manual. In these premises, a bill which is not stamped with the Assessor's signature, even if presented to the rate-prayer, does not make the rate-prayer liable to pay the amount specified in the bill.

38. We have scanned through the relevant provisions of the 1951 Act applicable to the instant appeal. It seems to us that there is no obligation on the part of the Corporation of Calcutta to send the "Presentation copy" of the rate bill to the rate-prayer stamped with the Assessor's signature. Chapter XI in Part IV of the Act deals with "Taxation". Section 165 in this Chapter gives power to the Corporation to impose consolidated rate. Section 191 prescribes, inter alia, that one-half of the consolidated rate shall be payable by the owner of the lands and buildings and the other half by the occupiers thereof. These provisions are independent provisions which foist liabilities on owners and occupiers for payment of consolidated rate. After providing for imposition of consolidated rate in Chapter XI of Part IV, Chapter XVII deals with Recovery of the consolidated rate and other taxes". Section 234 which is the opening section of Chapter XVII is in the following terms:-

The provisions of this Chapter shall be deemed to be in addition to, and not in derogation of any powers conferred by or under other Chapters of this Act for the collection or recovery of the consolidated rate and other taxes.

39. This section is followed by section 235 providing for "presentation of bills". Section 235, therefore, must be read subject to section 191 and section 234. Section 235 has two essential requirements, namely, (1) each bill shall specify the period for which the rate is charged and (2) each bill shall specify the premises in respect of which the rate is charged. There is no requirement to present a bill stamped with the Assessor's signature. Then comes section 245 which is in these terms.

40. After a defaulter has been proceeded against under the foregoing provisions of this Chapter unsuccessfully or with only partial success, the Commissioner may recover from him by certificate under the Bengal Public Demands Recovery Act, 1913, any sum due or the balance of any sum due, as the case may be, together with interests and all costs.

41. Along with section 245 it is necessary to note in this connection the provisions of sub-section (1) of section 251 as it then stood. These provisions were as follows:

Instead of the Commissioner proceeding against a defaulter under the foregoing provisions of this Chapter, or after a defaulter has been so proceeded against

unsuccessfully or with only partial success, it shall be competent for the Corporation to recover from him by suit, in any Court of competent jurisdiction, any sum due, or the balance of any sum due, as the case may be, on account of the consolidated rate, together with all costs.

42. Section 245 and 251, therefore, were the machinery prescribed by Statute for recovery of consolidated rates and taxes either by certificate proceedings or by suit.

43. We next come to section 527 which confers powers on the Corporation to make Bye-laws for carrying out the provisions and intentions of the Art. Section 552 as we have seen, is of great significance so far as this appeal is concerned. The relevant portions of this section are as under:-

Every.....bill.....or other document which is required by this Act or by any rule or bye-law made thereunder to bear the signature of the Commissioner or any Municipal Officer, shall be deemed to be properly signed if it bears a facsimile of the signature of the Commissioner or such Municipal Officer, as the case may be, stamped thereon.

44. Admittedly, there is no requirement of the 1951 Act for any signature or facsimile of signature on the "Presentation Copy" of a bill for consolidated rate. Admittedly also, no rules or bye-laws have been framed under the Act for any such signature or facsimile of signature. It appears from page 855 of the Paper Book that when the Corporation gives receipt for the consolidated rate which the owner or the occupier has paid the receipt contains the signature or facsimile of signature of the Treasurer or Collector to the Corporation. Looking at this copy of the "receipted bill" at page 855 of the Paper Book it seems to us that what is being described as a "Presentation Copy" is a mere intimation to the party that a particular sum has fallen due and it does not obviously require the signature or facsimile of signature of the Corporation's Assessor or Commissioner. Otherwise, it should not have been given that description at all. In fact, it appears from the page 850 of the Paper Book that after the words "PRESENTATION COPY" it is stated within brackets "this should not be accepted as a receipt." The absence of signature or facsimile of signature, on the "Presentation Copy" therefore, cannot be taken advantage of by a rate-payer who is liable to pay consolidated rate imposed on him u/s 191 of the Act.

45. Assuming, however, for the sake of argument that a "Presentation Copy" requires a signature or a facsimile of signature, we cannot overlook the provisions of section 260(1) (b) of the 1951 Act. These provisions are as follows:-

260(1) No assessment and no charge or demand of the consolidated rate or any other tax made under this Act shall be called in question or in any way affected by reason of--

(b) any clerical error, or

(ii) any defect of form not being of a substantial nature:

Provided that the Commissioner may, either of his own motion or on the application of any aggrieved party, correct any mistake or clerical error or defect of form as is referred to in sub-section (1).

46. It does not seem to us that the absence of a signature or facsimile of a signature on the "presentation copy" of a Municipal rate-bill is a defect of a substantial nature. In any event the Commissioner under the proviso to section 260 (1) had the option to correct the defect which in the instant case he did not exercise.

47. That it is not a defect, of a substantial nature is also evident from sub-section (2) of section 260(1). It says:

It shall suffice in the case of any such tax on property or any assessment of value for the purpose of any such tax, if the property taxed or assessed is so described as to be generally known,

and it shall not be necessary to name the owner or occupier thereof.

48. Pratip Kumar Ghose one of the Corporation's Assessing Inspectors in his affidavit affirmed on the 27th July, 1972, has explained the Corporation's procedure in paragraph (a. II) in these terms: "Prior to 1963 the Corporation of Calcutta for the purpose of consolidated rates and taxes used to make out bills in two parts, namely, a bill and its counterfoil which used to be produced and | or presented by the bailiff to the rate-payer personally and as and when the payments were made the said bailiff used to make over the same bill duly receipted. In some cases, however, bills were presented by the bailiff to the rate-prayers who received the bills by signing on a Register maintained by the Corporation of Calcutta. The said bills were duly receipted as and when payments were made. Prior to the coming into force of the Calcutta Municipal Act, 1951, there was no provision in the Calcutta Municipal Acts for payment of interest on rate bill and consequently presentation copies or rate-bills were prepared by the Corporation of Calcutta under the old Calcutta Municipal Acts. But the said practice with the changing structure of the society and because of the increased number of rate-payers, has been given a go-bye and with that perspective the CM. Act, 1951 as amended in 1953 for the first time, enacted presentation of the rate-bill under certificate of posting u/s 235. Since the inclusion of the said provision u/s 235, the practice has always been and still is that the consolidated rate bill is being prepared in triplicate. The 1st part is the ""Presentation copy". The 2nd part is the "receipted bill" which the rate-payers receive after making payment of the consolidated rates and taxes which bears the facsimile of the signature of the Assessor and the 3rd part is being kept for office purpose....

49. The procedure, therefore, that is followed by the Corporation at the present time, is that the "presentation copy" is an intimation to the ratepayer that his rates and taxes have fallen due. It is the "receipted Bill" which is the real document to be preserved by the rate-payer as evidence of the fact that he has cleared off his liabilities to the Corporation. The "receipted Bill" bears the

facsimile of the Assessor's signature.

50. Then again, section 527 of the 1951 Act gives power to the Corporation to make bye-laws. The provisions of this section by implication exculude the application of the Manual of 1916. The Corporation's powers are circumscribed by Statute and the Bye-laws made under the Statute. When the powers are so circumscribed, the courts should not presume inclusion of other items which are not specifically mentioned.

51. In *R. Abdulla Rowker v. S.T.A. Tribunal*, AIR 1939 S.C. 896 the Supreme Court was considering certain directions in a Madras Government Order issued u/s 43A of the Motor Vehicles Act, 1939. The Supreme Court has said that section 43A has been enacted to enable the State Government to issue administrative or executive orders or directions; directions issued u/s 43A are not required to be published and may not even be known to the several persons applying for permit. They have been issued not for the information of the applicants, but for the information and guidance of the authorities; and that it is not surprising because the public-at-large would be entitled to know these directions only if they confer any legal enforceable rights on the applicants for permit. The Supreme Court has said further that as the Government Order contains merely executive or administrative direction, their breach was if patent, would not justify the issue of a writ of certiorari. Though the executive orders properly so-called do not confer any legal enforceable rights on any person and impose no legal obligations on the subordinate authorities for whose guidance they are issued, that is not to say that the directions are not valid and should not be followed by the said authorities; the said authorities are undoubtedly expected to follow the said directions and their breach may expose them to disciplinary or other appropriate action. But if any of the directions contained in the order is found to have been ignored or misapplied, the applicant for a permit cannot claim any relief by way of a writ of certiorari. The direction itself, though valid, and in a sense binding on the subordinate authorities is not a statutory rule and has not the force of law; and so its misconstructions cannot be said to be an error of law.

52. We have cited the above decision of the Supreme Court inasmuch as considerable arguments were advanced before us on paragraphs 258 and 357 of the "Assessment and Collection Manual". In the very introduction to the Manual it is stated that the Manual has been published "for the information and guidance of the officers of the Corporation". It is stated further that the officers of the departments concerned "should pay their best attention to the strict observance of the provisions of this Manual so far as they relate to their respective duties.

53. The provisions of the Manual, therefore, cannot create any legal obligations nor can they confer a corresponding legal right on the rate-payer. At best these provisions can be treated as provisions to guide the Corporation's officers. Moreover, paragraph 357 of the Manual appears to be inconsistent with section 235 of the Act which Pratip Kumar Ghose has referred to in his affidavit-in-opposition. Paragraph 357 requires presentation of the Bill by the bailiff himself

whereas the provisions to which Pratip Kumar Ghose has drawn the Court's attention do not prescribe service by the bailiff.

54. There is one other aspect of the matter which may be noted in this connection. Sub-section (2) of section 2 of the 1951 Act has specifically mentioned which of the acts done or notices issued under the Calcutta Municipal Act, 1899 or under the Calcutta Municipal Act, 1923 shall remain operative in spite of the repeal of the 1923 Act by the 1951 Act. The "Assessment and Collection Manual" has not been mentioned in sub-section (2) of section 2.

55. We intend also to make reference to two other decisions. The "Assessment and Collection Manual" of 1960 directly came under consideration of a Division Bench of this Court in *Union of India v. Corporation of Calcutta*, reported in 59 C.W.N. page 91. The Division Bench was construing section 127 (a) of the 1923 Act. The Division Bench was of the view that the Rules contained in the Assessment and Collection Manual had not the force of law and might be ignored if they were inconsistent with the provisions of the Act. There was no law, according to the Division Bench, which required that a practice, however convenient it might be and however fairly it might have been worked out over a period of years, must be observed.

56. The other case we may refer to in the case of *Dr. Amarjit Singh Ahluwalia Vs. The State of Punjab and Others*, . Here the Supreme Court was considering a Government Memorandum relating to integration of provincial Civil Medical Service and Public Health Service, promotion of Class II Officers to Class I and fixation of inter se seniority. The Supreme Court expressed the view that the Memorandum was in the nature administrative instructions, not having the force of law but the State Government could not at its own sweet will depart from it without rational justification. That would be clearly violative of Articles 14 and 16 of the Constitution.

57. From the principles cited above it is clear that the Corporation's "Assessment and Collection Manual" has no force of law. It need not be followed if its provisions are inconsistent with the Statute. It can also be departed from if there be rational justification for the same. Pratip Kumar Ghose has explained in his affidavit why the previous practice of demanding payment by presentation of bills through bailiffs cannot be followed in view of the ever increasing number of rate-payers and why the presentation copy is sent by post and a receipted Bill given at the time of payment.

58. We are inclined for all the reasons stated in the foregoing paragraphs to accept the explanation of Pratip Kumar Ghose and overrule the contention of the appellant's Counsel that presentation of unsigned bills did not make the appellant liable to pay municipal rates and taxes in view of the provisions of the statute which we have already indicated.

59. The next contention of Learned Counsel for the appellant is that u/s 191 of the 1951 Act, one half of the consolidated rate is payable by the owner and one

half by the occupier in four equal installments. The dates of the installments have also been specified in section 191.

60. Then, section 235(1) prescribes that when the consolidated rate or any instalment thereof is due. the Commissioner shall, with the least practicable delay, cause to be presented to the person liable a bill for the sum due. In the instant case bills have been presented even six or seven years after the due date. By presenting such bills beyond a reasonable time the Corporation cannot compel the appellant to make the payment. Section 235(1) is a mandatory provision and if this mandatory provision is not observed, the ratepayer's liability cannot be enforced. The "Assessment and Collection Manual" also indicates the time within which bills have to be presented.

61. Pratip Kumar Ghose, the Corporation's Assessing Inspector in his affidavit affirmed on the 21st July 1971, in paragraph 14 at page 783 of the paper Book has stated that bills could not be presented to the appellant within the time prescribed because of the Rule which the appellant obtained from this Court and the orders of injunction made in that Rule. Soon after the final disposal of the Rule the bills were duly presented.

62. Section 233(1) requires presentation of the bills "with the least practicable delay". The statement of Pratip Kumar Ghose is sufficient, in our opinion, to repeal the appellant's contention based on late presentation of Bills. Moreover, the liability to pay is u/s 191 of the Act which is in Chapter XI of part IV which deals with "Taxation". The sub-heading is "payment and recovery of the consolidated rate". Section 235 is in Chapter XVII, the sub-heading whereof is "recovery of the consolidated rate and other taxes." Section 235 is preceded by section 234 in the same Chapter.. And section 234 specifically lays down : "The provisions of this Chapter shall be deemed to be in addition, to and not in derogation of any power conferred by or under other Chapters of this Act for the collection or recovery of the consolidated rate and other taxes."

63. Section 191 which imposes the liability to pay consolidated rate leaves no room for any confusion in the minds of owners and occupiers. As it originally stood It imposed one-half of the liability on the owner and one-half of the liability on the occupier. It also stated that the payment had to be made in quarterly installments and the quarters would be taken to commence on the 1st day of April the 1st day of July, the 1st day of October and the 1st day of January. The installments were payable on or before the 15th day of May, the 15th day of August, the 15th day of November and the 15th day of February respectively for such quarters.

64. By the Calcutta Municipal (2nd Amendment) Act, 1975 a substituted section 191 was introduced which made the position clearer still. This substituted section runs thus:

One-half of the consolidated rates shall be payable by the owners of the lands and building and the other half by the occupiers thereof. The payments shall be

made in quarterly installments and the quarters shall be taken to commence on the 1st day of April, the 1st day of July, the 1st day of October and the 1st day of January. The installments in respect of lands and buildings in different wards shall be payable on or before the last day of the month as shown in Schedule VA and if any instalment is paid into the Municipal Office on or before the last day of the month within which such instalment is payable a rebate of three and one eighth per cent of the amount of such installments shall be allowed to the payer.

65. Since section 191 is in Chapter XI and section 235 is in Chapter XVII the presentation of the Bill, so far as imposition of liability is concerned loses much of its significance especially in view of the provisions of section 234. In any event it is clear from the facts which we have already narrated that because of various orders of injunction passed by this Court restraining the Corporation from realising consolidated rates and taxes, the Corporation cannot be blamed, on the facts and in the circumstances of this case for the delay in presentation of bills. This contention of the appellant is, therefore, overruled.

66. The next argument of the appellant was on section 200 in Chapter XI of Part IV of the 1951 Act. Section 200 is in these terms:

If any land or building is ordinarily occupied by more than one person holding in severalty, or is valued at less than five hundred rupees, the Commissioner may, notwithstanding anything contained in section 191, levy the entire consolidated rate from the owner of such land or building.

67. The following contentions have been advanced before us:--

1. Section 200 confers unguided powers on the Commissioner, The contingencies which section "200 contemplate merely lay down the condition under which the Commissioner may levy the entire consolidated rate from the owner but does not provide for any guideline for persons similarly situate within these contingencies.

2. Before presenting the occupiers' share of rate bills to the owner the Commissioner should have given to the owner an opportunity of being heard and thereafter should have passed his order u/s 200 levying the entire consolidated rate from the owner.

3. In the instant case there was only one occupier in respect of premises Nos. 31, 33, 35, 37, 39 and 45, Park Street. All these premises were valued at more than five hundred rupees. Neither the Corporation nor the Commissioner had the power to realise the entire consolidated rate u/s 200 from the appellant but the Corporation was trying to do so

4. Section 200 does not touch section 235, the provisions whereof must be complied with.

68. As regards section 235 we have already expressed our view. So far as section 200 is concerned Pratip Kumar Ghose in paragraph (b) of his affidavit affirmed on the 27th July, 1972, at pages 845 and 846 of the Paper Book has

stated that this section has no application to the instant case. The rate bills had been submitted to the appellant from the very beginning and the appellant never raised any objection thereto. In any event the appellant had enjoyed "the benefits for paying the occupier's share of taxes since the 2nd quarter of 1960-61 as would appear from Annexure "E" to the said affidavit. Pratip Kumar Ghose says further that the appellant accepted such benefits and made payments previously. The appellant, therefore, is estopped from contending otherwise.

69. At page 856 of the Paper Book we find a statement ""showing deduction of occupier's share of tax at the time of annual value by Special Officer I on 22-3-63 which took effect from 2|60-61". It appears that the appellant had enjoyed a deduction of 10% from the annual rent.

70. In view of the state of affairs prevailing since the second, quarter of 1960-61, the contentions in this behalf of the appellant's counsel do not seem to us to be justified, we agree with the learned trial judge that Pratip Kumar Ghose has sufficiently indicated how and in what manner the appellant had liken advantage or paying both the shares. In any event, the appellant did not protest against demands when made. The appellant therefore, cannot be allowed to urge this point in an application under article 226. The appellant cannot invoke, the Court's discretionery power under article 226 on the facts of this case. We may, however make a few observations as to, whether section 200 of the 1951 act is violative of article 14. In section 6(c) of the 1951 Act we find that the Commissioner is one of the Municipal Authorities charged with carrying out the provisions of the Act. The power u/s 200 has been vested in the Commissioner.

71. On this aspect of the matter we may refer to the Supreme Courts decision in Messrs. Pannalal Binraj v. Union of India, AIR 1957 SC 307. In this case the Supreme Court's comments on section 5(7A) of the Indian Income Tax Act, 1922 are worth nothing. Section 5 (7A) was as under:

The Commissioner of Income Tax may transfer any case from one I.T.O. subordinate to him to another and the Central Board of Revenue may transfer any case from any one I.T.O. to another. Such transfer may be made at any stage of the proceedings, and shall not render necessary the reissue of any notice already issued by the I.T.O. from whom the case is transferred.

This sub-section was inserted by section 3 of the Indian Income Tax Amendment Act, 1940. In paragraph 29 at page 408 in Pannalal Binraj's case the Supreme Court observes;

It may also be remembered that this power is vested not in minor officials but in top ranking authorities like the Commissioner of income tax and the Central Board of Revenue who act on the information supplied to them by the Income Tax Officers concerned. This power is discretionery and not necessarily discriminatory. An abuse of power cannot be easily assumed which the discretion is vested in such high officials... There is moreover a presumption that public officials will discharge their duties honestly and in accordance with the rules of

law.....

72. In the instant case the discretion is vested in the Commissioner who is one of the highest authorities under the 1951 Act. The discretion cannot be said to be necessarily discriminatory. Secondly, it is not correct that no guidelines have been indicated in section 200. Commissioner can exercise his discretion u/s 200 only when one of the conditions prescribed by that section has been satisfied. Thirdly, there is always a presumption in favour of constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of constitutional principles : vide *Spences Hotel Private Ltd. & Anr. v. State of West Bengal*, & Anr., 1975 Calcutta High Court Notes 115 at page 124. In our case the appellant has not been able to show any clear transgression of constitutional principles in section 200 of the 1951 Act especially when the discretion has been conferred on the Commissioner himself. The Supreme Court in *State of Madhya Pradesh v. Chhotabhai Jethahkai Patel Co.* reported in (1972) 1 SC cases 209 and in *State of Madhya Pradesh v. Dadabhoy's Colliery Co.* reported in (1972) 1 SC cases 298 have discussed two principles of construction which seem to be relevant in this connection. These two principles are:

1. Where two constructions of a legislative provision are possible one consistent with the constitutionality of the measure impugned and the other offending the same, the Court will lean towards the first if it be compatible with the object and purpose of the impugned Act the mischief which it sought to prevent ascertaining from relevant factors its true scope and meaning.

2. The rule of construction that a Court construing a provision of law must presume that the intention of the authority making it was not to exceed its power and to enact if validly is well settled. Where, therefore, two constructions are possible, the one which sustains its validity must be preferred.

73. So far as section 200 is concerned a construction which sustains its validity is possible as we have already indicated. In these circumstances, we are unable to strike it down on the ground that it is violative of Article 14 of the Constitution.

74. The last contention of the appellant before us is on sections 236, 237 and 251 of the 1951 Act. Let us quote the relevant portions of these sections as they originally stood.

Sec. 236(1). If the amount for which any Bill has been presented u/s 235 is not paid within fifteen days from such presentation, into the Municipal Office or to a Municipal Officer appointed to receive the same, the Commissioner may cause to be served upon the person liable a notice of demand in the form in schedule VIII or in a form to the like effect.

Sec. 237(1). If the person liable for the payment of the consolidated rate does not, within fifteen days from a service of a notice of demand u/s 236, pay the sum due, or show sufficient cause to the satisfaction of the Commissioner for

nonpayment of the same, such sum with interest thereon and all cost of recovery, may be recovered under a warrant in the form in Schedule IX, or in a form to the like effect, to be issued by the Commissioner-

(a) by distress and sale of any moveable property belonging to such person, or

(b) if such person be the occupier of any premises in respect of which the sum is due, by distress and sale of any moveable property found on the said premises:

Provided that, when the premises in respect of which the default is committed are a place of business, and the moveable property distrained under clause (b) is shown to the satisfaction of the Commissioner to have been left there (by some person other than the person referred to in that clause) for repairs or safe custody in the ordinary course of business, it shall be released.

Sec. 251(1). Instead of the Commissioner proceeding against a defaulter under the foregoing provisions of this chapter, or after any defaulter has been so proceeded against unsuccessfully or with only partial success, it shall be competent for the Corporation to recover from him by suit, in any Court of competent jurisdiction, any sum due, or the balance of any sum due, as the case may be, on account of the consolidated rate, together with all costs.

75. All the three sections quoted above were in Chapter XVII of Part IV of the 1951 Act. Section 251 was challenged before a Special Bench of this Court consisting of Das Gupta C.J., Lahiri J. and Bose J. in *Nawab Aritff v. Corporation of Calcutta* reported in 64 CWN at page 1. Dasgupta C.J. and Lahiri J. delivered concurring judgments. Bose, J. delivered a dissenting judgment. Dasgupta C.J. was of the view that the legislators wanted to provide in section 251 that all defaulters might be proceeded against by way of suit, To achieve that result the legislators first thought of defaulters, who were not at all being proceeded against by way of distraint or under certificate procedure whether because of impracticability or any other reason then of defaulters who had already been proceeded against under the Act but without success. As these would leave defaulters who had been proceeded against with partial success out of the reach of the section, the further words were used "or with only partial success". The words which the legislators used gave full effect to this intention of providing that every class of defaulters could be proceeded against by the Corporation by way of suit u/s 251 in addition to the mode already provided for the same purpose, namely, recovery by way of distraint or by certificate procedure.

76. The learned Chief Justice has said that the words "or after a defaulter has been proceeded against unsuccessfully or with partial success" in section 251 do not appear at all superfluous but are necessary and inevitable language the legislature had to use to provide for the defaulters who have been proceeded against under the foregoing provisions in addition to the defaulters who have not been so proceeded against at all.

77. The learned Chief Justice then says that, properly interpreted, the section

provides that every default as may, in addition to being proceeded against by way of distraint or certificate procedure, also be proceeded against by way of suit. As between defaulters who can be proceeded against by way of suit. As between defaulters who can be proceeded against by way of suit and defaulters who can be proceeded against in other modes, the statute has made no classification and it has clearly left it to the discretion of Municipal Authorities whether a particular defaulter would be proceeded against in one way or the other.

78. The learned Chief Justice's view is that there is no scope for reading in section 251 any principle or policy for guidance of the exercise of the discretion by the authorities in the matter of selection or classification in view of the very clear words which the legislature has used in the phrase "instead of the Commissioner proceeding against a defaulter under the foregoing provisions of this Chapter, or after a defaulter has been so proceeded against unsuccessfully or with only partial success.

79. The procedure of distraint, according to the learned Chief Justice, as provided u/s 237 is more onerous and prejudicial to any defaulting rate-payer than the procedure by suit u/s 251.

80. The learned Chief Justice has held that the law as laid down in section 237 is discriminatory and violative of Article 14 of the Constitution and so void under Article 13 of the Constitution.

81. Lahiri, J. expresses the view that the Calcutta Municipal Act of 1951 does not contain any reasonable classification of cases where the procedure by use. of distress warrant is to be followed and cases where the procedure by way of suit is to be applied. Under the Statute as it stands the Commissioner has arbitrary power, unguided and uncontrolled by the Rules, to realise arrears of consolidated rates either u/s 237 by issuing a distress warrant or by instituting a suit u/s 251. In order to fall within the mischief of Article 14 of the Constitution two conditions must be fulfilled:

(a) The Statute must not contain any classification of the persons or things for the purpose of applying its provision and

(b) The Statute must not lay down any principle of policy for the guidance of exercise of discretion by the person entrusted with the duty of administering the Statute.

82. Lahiri, J. has stated that there can be no question that the procedure u/s 237 is of a summary character under which the rate-payer has no right to appeal-against the order of the Commissioner and he is given only 15 days" time within which to pay the amount claimed under the notice of demand or to show sufficient cause to the satisfaction of the Commissioner for nonpayment of the same. If the Commissioner is not satisfied with the cause shown, he is authorised to realise the amount due together with all costs of recovery by

distress and sale of any moveable property belonging to such person or if such person be the occupier of any premises in respect of which the sum is due, by distress and sale of moveable property found in the premises. In the case of a suit u/s 251, however, the rate-payer will have time to file written statement and also more time for discovery and inspection of documents etc. and above all a right of appeal against the decree that may be passed against him. The presence of this alternative form of recovery of arrears of consolidated rates without any indication of any principle to guide the discretion of the Commissioner as to the circumstances under which the two alternative modes are to be applied makes the more onerous procedure void.

83. We have already said that Bose, J. has delivered a dissenting judgment. His Lordship has inter alia, relied on principles laid down by the Supreme Court on which we have also relied in this judgment in upholding section 200 of the 1951 Act. But since this is a dissenting judgment we are not discussing it in details.

84. After section 251 was declared void, its provisions were amended by the Calcutta Municipal (Amendment) Act, 1960. The amended provisions were as under:

251. Pouter to Commissioner to sue for arrears. (1) After a defaulter has been proceeded against under the foregoing provisions of the chapter unsuccessfully or with partial success, it shall be competent for the Corporation to recover from him by suit, in any Court of competent jurisdiction, any sum due, or the balance of any sum due, as the case may be, on account of the consolidated rate, together with all costs.

3. Notwithstanding any decision of any Court to the contrary, any proceeding instituted in accordance with the provisions of sections 236 to 250 and pending on the date of commencement of the Calcutta Municipal (Amendment) Act, 1960, may be continued after such commencement and any such proceeding, or any order made, anything done or any action taken therein, shall not, in any manner, be called in question merely on the ground that the Calcutta Municipal (Amendment) Act, 1960 was not in force when such proceeding was instituted, such order was made, such thing was done or such action was taken.

85. In the Statements of Objects and Reasons of the Calcutta Municipal (Amendment) Act, 1960 it is, inter alia stated: "The procedure of realisation of consolidated rate by distraint as provided in section 237 of the Calcutta Municipal Act, 1961, is essential for the maintenance of the Municipal Administration. This provision has recently been declared ultra vires because of the opening words of section 251 (S.M. Nawab Ariff v. The Corporation of Calcutta 64 C.W.N. page 1). This bill amends section 251 so that section 237 may continue to be valid."

86. In the instant appeal certain notices u/s 236 both with respect to owner's share and occupier's share of consolidated rates have been challenged. Learned Counsel for the appellant has urged that the Notices of Demand u/s 236 threatening the appellant with distraint are without jurisdiction inasmuch as

section 237 was declared ultra vires by a Special Bench of this Court. The attempt that the legislature has made by amending section 251 has not rectified the defect which the Special Bench had pointed out. Section 237 is a post-Constitutional provision. Sub-Article (2) of Article 13 of the Constitution says that the State shall not make any law which takes away or abridges the rights conferred by this part and any law made in contravention of this clause shall, to the extent of the contravention, be void. The Special Bench has completely obliterated section 237 from the Statute by declaring that it is void under Article 13(2). If it is void ab initio it is a still-born baby and by amending section 251, the legislature can not revive section 237. In support of this contention the appellant's Counsel relied on the Supreme Court's judgment in *Deep Chand Vs. The State of Uttar Pradesh and Others*, . In paragraph 19 at page 659 the Supreme Court has said that the doctrine of eclipse has no application to post-Constitution laws infringing the fundamental rights as they would be ab initio void in to or to the extent of their contravention of the fundamental rights.

87. In these circumstances the contention of the appellant's Counsel is that by merely amending section 251, section 237 cannot be reviewed or revalidated. It was necessary to re-enact section 237 after amending section 251 but the legislature has failed to do so.

88. On this point numerous decisions of the Supreme Court some of them difficult to be reconciled were cited before us; but for the purpose of disposing of this appeal, we do not find it necessary to enter into these controversies. In *The State of Mysore and Another Vs. D. Achiah Chetty, etc.*, , it had been laid down that the supremacy of the legislatures in-India within the constitutional limits of their jurisdiction is as complete as that of the British Parliament. If two procedures exist and one is followed and the other discarded, there may in a given case be found discrimination. But the legislature has still the competence to put out of action retrospectively one of the procedures leaving one procedure only available, namely, the one followed and thus to make disappear the discrimination. In this way a validating Act can get over discrimination. Where however, the legislative competence is not available, the discrimination must remain for ever since that discrimination can only be removed by a legislature having power to create a single procedure out of two and not by a legislature which has not that power. The Supreme Court made these observations on certain provisions of the Bangalore Acquisition of lands (validation) Act, 1983.

89. In the instant case there is no question of legislative competence. The State Legislature was fully competent to enact the provisions of the Calcutta Municipal Act. In Section 251 before the amendment two procedures were available for the realisation of consolidated rates. One was the distraint procedure which was a onerous procedure and the other was the procedure by way of suit. The Special Bench took the view that the simultaneous availability of these alternative procedures without any guidelines was creating discrimination and hence section 237/ was void and inoperative. By the amending Act of 1960 it has been provided

that the Corporation has to exhaust the distraint procedure before resorting to the procedure for recovery by suit. By the validating Act, therefore, retrospectively only one procedure has been made available at a time. In this view of the matter it is not open to us to strike down section 237 or a notice u/s 236 on the ground that by the validating Act the defect which the Special Bench had discovered had not been cured.

90. The Special Bench did not say that there was any inherent vice in section 237. This section was declared invalid because of the opening words of section 251 as they then stood. The Special Bench's view was that as there were two alternative procedures in section 251 without any guidelines, section 237 was invalid. In these circumstances, it seems to us that, legislature competent to amend section 251 to remove the defect that the Special Bench had noticed.

91. In *M.P.V. Sundararamier and Co. Vs. The State of Andhra Pradesh and Another*, a few provisions of the Madras General Sales Tax Act (as applied to Andhra), 1938 came up for consideration. At page 489 in paragraph 42 the Supreme Court observes:

Thus, a legislation on a topic not within the competence of the Legislature and a legislation within its competence but Violative of constitutional limitations have both the same reckoning in a Court of law; they are both of them unenforceable. But does it follow from this that both the laws are of the same quality and character, and stand on the same footing for all purposes ? This question has been the subject of consideration in numerous decisions in the American Courts, and the preponderance of authority is in favour of the view that while a law on a matter not within the competence of the legislature is a nullity, a law; on a topic within its competence but repugnant to the constitutional provisions is only unenforceable. This distinction has a material (sic) on the present discussion. If a law is on a field not within the domain of the Legislature, it is absolutely null and void, and a subsequent cession of that field to the legislature will not have the effect of breathing life into what was a still-born piece of legislation and a fresh legislation on the subject would be requisite. But if the law is in respect, of a matter assigned to the legislature but its provisions disregard constitutional prohibitions though the law would be unenforceable by reason of those prohibitions, when once they are removed, the law will become effective without re-enactment.

92. In the case before us "*Local Government, that is to say, the constitutions and powers of Municipal Corporations*" is item No. 5 in List II of the 7th Schedule to the Constitution. The competence of the State Legislature was, therefore, not in dispute. The Special Bench was of opinion that section 251 had been enacted by disregarding constitutional prohibitions and, therefore, section 237 which laid down a more onerous procedure was unenforceable. The constitutional prohibitions were removed by the Amending Act of 1960. Once the constitutional prohibitions were removed section 237 became effective without re-enactment.

93. Our attention was drawn to the Supreme Court's decision in Mahendra Lal Jaini Vs. The State of Uttar Pradesh and Others, . where a distinction had been made between pre-constitution law- and, post-constitution laws. But we find that in this case the Supreme Court's earlier judgement in Sundaramier's case was not cited at all. We also find that in Hari Singh and Others Vs. The Military Estate Officer and Another, , a post-constitutional legislation was sought to be rectified by an amending Act. And the Supreme Court had followed its decision in The State of Mysore and Another Vs. D. Achiah Chetty, etc., which we have already noted. In paragraph 20 at page 2211 the Supreme Court says:

The Mysore case, AIR 1969 477 (supra) is an authority for the proposition that if there is legislative competence the legislature can put out of action retrospectively one of the procedures leaving one procedure only available and thus removing the vice of discrimination. That is exactly what had happened in the 1971 Act in the present appeals. The 1958 Act was challenged on the ground that there were two procedures and the choice of either was left to the unguided discretion of the Estate Officer. The 1971 Act does not leave any such discretion to the Estate Officer. Under the 1971 Act there is only one procedure. The deeming provision contained in section 20 of the 1971 Act validates actions done by virtue of the provisions of the 1971 Act.

94. Recently a Special Bench of this Court in Ananda Kumar Chakraborty and Another Vs. State of West Bengal and Others, has also placed reliance on the Supreme Court's judgment in Sundraramier's case. The judgment was delivered by Sabyasachi Mukherji J. with which my learned brother S.K. Dutt, J. and I had concurred.

95. In our opinion, the Supreme Court's judgments which have taken the view that a constitutional infirmity can be removed by validating Act provided that legislative competence does not stand in the way should be applied to the instant case and we hold that section 237 of the Calcutta Municipal Act, 1951 became effective and enforceable after the amendments to section 251 made by the Calcutta Municipal (Amendment) Act, 1960.

96. For all the reasons aforesaid, this appeal is dismissed; interim orders, if any, are vacated; there will be no order as to costs.

S.K. Patta, J.

I agree.