
(1987) 11 MP CK 0001

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 1009 of 1987

Lalji

APPELLANT

Vs

State of Madhya Pradesh and another

RESPONDENT

Date of Decision : 25-11-1987

Acts Referred:

Madhya Pradesh Municipalities Act, 1961 — Section 130, 130(1), 130(2)

Citation : AIR 1988 MP 82 : (1988) 2 RCR(Criminal) 13

Hon'ble Judges : Y.B. Suryavanshi, J;K.N. Shukla, J;Faizanuddin, J

Bench : Full Bench

Advocate : D.D. Bhargava, for the Appellant; Rajendra Tiwari, D.A.G., for the Respondent

Final Decision : Dismissed

Judgement

N.D. Ojha, C.J.—The two petitioners of this writ petition who are residents of Raigarh have filed this writ petition against five respondents, namely, the Municipal Council, Raigarh, the Administrator, Raigarh Municipality, the Chief Municipal Officer, Raigarh, the State of Madhya Pradesh and the Collector, Raigarh, with a prayer that the first three respondents may be restrained from imposing levying and recovering latrine tax and water tax at a rate other than that which was being imposed and levied prior to 1981-82 and that they may also be directed to refund or adjust the tax already paid by the citizens of Raigarh.

2. It is not disputed by the petitioners, as is apparent from paragraph 7 of the writ petition, that both the aforesaid taxes stood levied and were being paid by the residents of Raigarh in 1981-82. The case of the petitioners further is that the amount of both these taxes was determined on the basis of the annual letting value of the property in respect of which these taxes were levied. Their grievance is that the residents of Raigarh were being required to pay higher amount of these taxes for the year 1982-83 on the ground that there had been a revision of the annual letting value. According to them, the enhancement in

these taxes amounted to variation in tax within the meaning of Section 130 of the M.P. Municipalities Act (in short the Act) and since the requirement of subsections (1) and (2) of Section 130 of the Act had not been complied with, the variation in tax was illegal.

3. The writ petition has been contested by respondents 1 to 3 by filing a return and an additional return. Their case in regard to latrine tax is that it was not a case of variation of tax within the meaning of Section 130 of the Act but a case of revision of annual letting value and since there was an upward revision of annual letting value there was a consequential increase in the amount of latrine tax, the same being correlated with the annual letting value. Accordingly to them, since revision in the annual letting value had been made in accordance with law no exception could be taken to the consequential corresponding increase in the amount of latrine tax. In regard to water rate also, the case of respondents 1 to 3 is that no variation in this tax has been made as contemplated by Section 130 of the Act but by following the procedure contemplated by Section 129 of the Act the basis of water rate has been altered. Earlier water rate also was determined on the basis of the annual letting value of the property concerned but now the amount of water rate is to be determined on the basis of the diameter of the service line and number of taps used in the concerned property.

4. Consequent upon the stand taken by respondents 1 to 3 as aforesaid, the petitioners have got the writ petition amended. In regard to latrine tax, their case is that the procedure contemplated by Section 129 of the Act was not followed inasmuch as the objections which were filed u/s 129(3) of the Act to the proposed tax were heard and disposed of not by the Council but by the Finance Committee of the Council and consequently the revision of the annual letting value was illegal in view of the decision of the Supreme Court in *Matiullah Sheikh Vs. The State of West Bengal*, . In regard to water rate, on the other hand, the petitioners assert that since the requirements of Section 129(1) of the Act which were mandatory in nature in view of the decision of the Supreme Court in *Raza Buland Sugar Co. Ltd. Vs. Municipal Board, Rampur*, were not followed the impugned levy of water rate was illegal. In this connection they assert that Section 129(1) of the Act contemplates that the proposal shall define the class of persons or description of property proposed to be taxed, the amount or rate of tax to be imposed and the system of assessment and collection to be adopted, but the draft rules as well as the final rules (Annexures R. 7 and R. 9) which were published in the Gazette did not specify the amount or rate of tax in a case where no meter was installed in the concerned property. Reliance has been placed on R. 9 which says that "the rate as specified in clause (2) of the Schedule shall be payable" and on the circumstance that no Schedule was attached to the rules. They further assert that even though the proposal which was published along with the notice as contemplated by Section 129(2) of the Act as also finally published u/s 129(7) (Annexures R. 8 and R. 9) specified the amount or rate of tax, it was bad as it did not satisfy the other mandatory

requirements of Section 129(1) of the Act referred to above.

5. We shall take up the case of the petitioners in regard to water rate first. Section 131 of the U.P. Municipalities Act which fell for consideration in the case of R. B. Sugar Company (supra) is substantially in pari materia with Section 129 of the Act and as such in view of the principles laid down by the Supreme Court in the aforesaid case, the submission made by Learned Counsel for the petitioners that requirements of Section 129(1) of the Act are mandatory in nature is well founded. In the same case, however, it has also been held that the manner of publication was directory and not mandatory. The question which, therefore, falls for consideration is whether there has been noncompliance with any of the mandatory requirements of Section 129(1) of the Act.

6. It has been urged by Learned Counsel for the petitioners that Section 129(2) of the Act contemplates publication of the notice mentioned therein "in the prescribed form and manner". In this connection, our attention has been invited to R. 1 of the relevant rules which provides that the notice referred to in Section 129(2) of the Act shall be in the form appended to these rules and the form so appended is as hereunder :

FORM OF NOTICE (See Rule 2)

1. Notice is hereby given to the inhabitants of the Municipality of....that the Municipal Council desires to impose the (name of tax)...in the whole of the said Municipality under clause.....of sub-section (1) of Section 127 of the Madhya Pradesh Municipalities Act, 1961. The class of persons or description of properties proposed to be taxed, the amount or rate of the tax to be imposed and system of assessment and collection to be adopted have been defined in the proposals annexed hereto.

2. Any inhabitant of the Municipality objecting to the proposed tax may, within thirty days from the date of publication of this notice in the Gazette, submit his objection in writing to the Council.

Resolution..... Proposals..... Chief Municipal Officer, Municipality.....

7. On its basis it was urged that even though the rules and the proposal (Annexures R. 7, R. 8 and R. 9) if read together fulfil the requirements of Section 129(1) of the Act, since according to the form of notice they have to be simultaneously annexed to the notice and since it was not so done in the instant case, there was non-compliance of sub-sections (1) and (2) of S. 129 of the Act Suffice it to say so far as this submission is concerned that as seen above even in the case of Raza Buland Sugar Co. Ltd. Vs. Municipal Board, Rampur, it has been held that the manner of publication was directory. The purpose of publication of the proposal and draft rules was stated in the aforesaid case as follows :

The purpose of such publication obviously is to further the democratic process and to provide a reasonable opportunity of being heard to those who are likely to be affected by the tax before imposing it on them. It is true that finally it is the

Board itself which settles the proposals with respect to taxation and submits them to Government or the prescribed authority, as the case may be, for approval. Even so we have no doubt that the object behind this publication is to find out the reaction of tax-payers generally to the taxation proposals, and it may very well be in a particular case that the Board may drop the proposals altogether and may not proceed further with them, if the reaction of the taxpayers in general is of disapprobation. Further the purpose served by the publication of the proposals being to invite objections, in particular from the tax-payers, to the tax proposed to be levied on them, the legislature in its wisdom thought that compliance with this part of S. 131(3) would essentially carry out that purpose. In the circumstances if we are to hold that this part of S. 131(3) was merely directory, the whole purpose of the very elaborate procedure provided in Ss. 131 to 135 for the imposition of tax would become meaningless, for the main basis of that procedure is the consideration of objections of tax-payers on the proposals of the Board. If such publication is merely directory, the Board can proceed to levy the tax without complying with them and that would make the entire elaborate procedure provided in the Act before a tax is imposed, nugatory. We are therefore of opinion that this part of S. 131(3) is mandatory and it is necessary to comply with it strictly before any tax can be imposed. We shall consider the interpretation of S. 135(3) later; but we have no doubt that in the present case, in spite of S. 135(3), the legislature intended that there must be publication as provided in what we have called the first part of S. 131(3). We therefore hold that this part of S. 131(3) is mandatory considering its language, the purpose of which it has been enacted, the setting in which it appears and the intention of the legislature which obviously is that no tax should be imposed without hearing tax-payers. Lastly we see no serious general inconvenience or injustice to any one if this part of the provision is held to be mandatory; on the other hand it will be unjust to tax-payers if this part of the provision is held to be directory, inasmuch as the disregard of it would deprive them of the opportunity to make objections to the proposals, and the draft rules. We therefore hold that this part of S. 131(3) is mandatory.

8. The question then to be considered is whether on account of the publication of the proposals and draft rules separately and not simultaneously as required by the form of notice, the purpose of such publication has been frustrated causing prejudice to anyone. For reasons to be recorded shortly, our answer to the aforesaid question on the facts of the instant case is in the negative. Annexure R. 12 is copy of the proceedings of a meeting of the Municipal Council held on 2-6-1979. Resolutions containing decision on proposals 4(a) and 4(b) adopted by the Municipal Council on that day are relevant for the purpose of this case. Proposal No. 4(a) as translated into English was that draft of amended rules had been prepared for acceptance after repealing the rules framed earlier with regard assessment, collection and refund of water rate and they were put up for consideration along with Memo No. 54/6/2/8800 dated 30th October 1978 of Prakaran Sanchalak, Sthaniya Sansthayen, Madhya Pradesh Bhopal. The decision

taken on this proposal was that the draft rules are accepted Proposal No. 4(b), on the other hand, was that the amended draft rules which had been prepared with regard to levy of water rate were put up for consideration and acceptance. To this proposal an amendment was proposed by the Chairman to the effect that meter system may be continued which was adopted by majority. The Council also decided that it adopted the levy of water rate within the entire limits of the municipality as contemplated by Section 127(1)(xiii) of the MP. Municipalities Act, 1961 (No. 37 of 1961). It also adopted the proposed rate of tax. This resolution was also passed by majority. The draft rules thereafter were published in Part II of the M.P. Government Gazette dated 10th April 1981 inviting objections or suggestions within thirty days from the date of publication of the notice in the M.P. Gazette. It was stated that any objection or suggestion which may be received from any person with respect to the said draft within the period specified above will be considered by the State Government. The proposal of the Municipal Council was also published even though separately, vide Annexure R. 8, in Part 3(1) of M.P. Government Gazette dated 11th September 1981. This publication also invited objection to the proposed tax from any inhabitant of the municipality within thirty days from the date of publication of the notice in the Gazette and it was stated that objection received will be considered by the Municipal Council, Raigarh. It has been stated in the additional return that notwithstanding these publications no objections were received. Thereupon the rules and the sanction of the proposal of the Municipal Council for imposition of water rate within the limits of Raigarh Municipality were finally published simultaneously in Part II of the same M.P. Government Gazette dated 6th May 1983 (Annexure R. 9). This publication was made as contemplated by sub-sections (5) and (7) of S. 129 of the Act. Sub-section (8) of Section 129 contemplates that a notification of imposition of tax under this section shall be conclusive evidence that the tax has been imposed in accordance with the provisions of this Act. From the aforesaid narration it is apparent that before the final publication contemplated by sub-ss. (5) and (7) of Section 129 was made, the draft rules and the proposal of the Municipal Council were published even though separately and not simultaneously vide Annexures R. 7 and R. 8, what is however of consequence is that by both these publications objections were invited within thirty days. The two publications read together fulfil the requirements of Section 129(1) of the Act. Consequently, every one who may have been interested in filing an objection as against any of the requirements of Section 129(1) had ample opportunity to file objection which was promised to be considered before taking a final decision in the matter. It was thus a case where even though a procedural irregularity seems to have been committed in not publishing Annexures R. 7 and R. 8 simultaneously but on account of this irregularity neither the purpose of publication of the proposal and draft rules can be said to have been frustrated nor can any one be said to have been aggrieved by this irregularity. Manner of publication being directory and not mandatory as held by the Supreme Court in the case of Raza Buland Sugar Co. Ltd. Vs. Municipal Board, Rampur, , the imposition of water rate does not, therefore, on

the facts of the instant case, deserve to be annulled on account of the aforesaid irregularity.

9. It was then urged that before making changes in water rate on the basis of diameter of service pipe and number of taps by complying with the requirements of Section 129 of the Act afresh the water rate levied earlier on the basis of annual letting value should have been first abolished u/s 130 of the Act. In our opinion there is no substance in this submission as nothing in Section 130 warrants such a submission. In *The Municipal Council, Raigarh Vs. Pahawa Trading Co., Raigarh and Others*, making of changes in the existing rates of octroi by following the procedure as required by the rules for the first imposition was upheld by a Division Bench of this Court.

10. In support of the submission that increase in the latrine tax was illegal inasmuch as the revision of annual letting value itself was illegal, the objections having been heard and decided by the Finance Committee and not by the Council reliance was placed on the following observations in the decision of the Supreme Court in the case of *Municipal Council, Khurai and Another Vs. Kamal Kumar and Another*, .

Moreover, Mr. Setalvad was not able to point out to us any provision of the Act or of the rules, except S. 78, whereunder the council could delegate its function of hearing and deciding objections to a sub-committee. Section 78 reads thus :

Any powers or duties or executive functions which may be exercised or performed by or on behalf of the Council may, in accordance with the rules made under this Act, be delegated by the Council to the President or Vice-President or to the Chairman of the Standing or other Committees, or to one or more stipendiary or honorary officers, but without prejudice to any powers that may have been conferred on the Chief Municipal Officer by or u/s 92.

Even assuming that under this provision the power of the Council of hearing objections could be delegated, the delegation can presumably be only in favour of the persons mentioned in S. 78 quoted above. It cannot be in favour of a Sub-Committee or a Committee. It is true that the Convener of the Sub-Committee appointed by the Council was the Vice-President but the delegation was not to him alone but to the Sub-Committee. The two are not the same thing because while in one case the right to decide an objection would be solely exercisable by the Vice-President in the other it will be exercisable by the Sub-Committee as a whole. If there is unanimity amongst the members of the Sub-Committee no prejudice may be caused. But if the Vice-President is of one opinion and the other two members are of a different opinion the decision of the Sub-Committee cannot be Said to be that of the Vice-President at all. But to the contrary.

From a perusal of the aforesaid case it is apparent that in that case the objections had been heard and decided not by the Finance Committee as in the instant case but by some Sub-Committee and no provision except Section 78 of the Act was pointed out laying down the power of such Sub-Committee and the

procedure for its appointment. Learned Counsel for the respondents 1 to 3 has submitted and in our opinion there is substance in this submission, that the case of Kamal Kumar (supra) is clearly distinguishable inasmuch as in the instant case the objections were heard and decided by the Finance Committee which had statutory sanction to hear and decide the objections in view of Section 71(1)(i) of the Act and R. 10(iii) of the Rules contemplated by Section 71(2) of the Act. Section 71 of the Act reads as hereunder :

71. Appointments of Executive Committees.--

(1) Every Council may elect out of its own body the following Executive Committees, namely :--

- (i) Finance Committee;
- (ii) Public Works Committee;
- (iii) Public Health Committee;
- (iv) Education Committee;
- (v) Such other Committees as it may deem fit;

Provided that the Council may, appoint a single Committee for more than one subject.

(2) The constitution, term of office, duties and procedure of, and powers to be exercised by such Committees shall be such as may be prescribed by rules :

Provided that the term of a Committee shall not exceed two years.

The rules contemplated by Section 71(2) of the Act are called the Madhya Pradesh Municipalities (Executive Committee) Rules, 1963. R. 10(iii) of these rules reads as follows : --

10. Duties and powers. -- In addition to the duties particularly assigned by or under the Act, the various executive committees shall perform the duties prescribed below : --

(a) Finance Committee.

(i)&(ii) * * * * *

(iii) To finalise the assessment list prepared by the Chief Municipal Officer and the objections received in respect of such assessment list. * * * * *

The language of R. 10 (iii) is apparently wide enough to include the power to hear and decide the objections referred to therein.

11. In view of the specific statutory provisions contained in this behalf in Section 71(1)(i) of the Act and R. 10(iii) aforesaid the submission made by Learned Counsel for the petitioners that the revision of annual letting value was illegal inasmuch as the objections were heard and decided not by Council but by its

Finance Committee cannot be accepted.

12. In view of the foregoing discussion, we find no merit in this writ petition. It is accordingly dismissed but there shall be no order as to costs. The amount of security deposit shall be refunded to the petitioners.