

(1975) 04 MP CK 0009

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 727 of 1973

Laxmidas Patel

APPELLANT

Vs

The Indore Municipal Corporation and Others

RESPONDENT

Date of Decision : 03-04-1975

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)
Madhya Pradesh General Clauses (Amendment) Act, 1958 — Section 25
Madhya Pradesh General Clauses Act, 1957 — Section 25
Madhya Pradesh General Clauses Rules, 1957 — Rule 11
Madhya Pradesh Municipal Corporation Act, 1956 — Section 423, 423(1), 66(1)
Madhya Pradesh Nirashriton Ki Sahayata Adhiniyam, 1970 — Section 7, 7(1), 7(3)
Regulation of Assessment and Collection of Cess Rules, 1971 — Rule 3 , 4, 5, 6

Citation : AIR 1975 MP 223 : (1980) ILR (MP) 206 : (1976) JLJ 534 : (1975) 20 MPLJ 525

Hon'ble Judges : G.P. Singh, J;C.P. Sen, J

Bench : Division Bench

Advocate : S.R. Fadnis and P.V. Pandit, for the Appellant; A.P. Tare, Dy. Govt. Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

Singh, J.

The petitioner by this petition under Articles 226 and 227 of the Constitution challenges the validity of Section 7 of the Madhya Pradesh Nirashriton Ki Sahayata Adhiniyam (Act 12 of 1970), hereinafter referred to as the Act, which authorises a local authority to levy a cess on lands and buildings within its local area. The petitioner also challenges the imposition and assessment of the cess and the bills issued to him for payment of tax on various grounds, An earlier challenge to the Act was negated by this Court in Bhagwandas Gajju Vs. State of Madhya Pradesh and Others, . Grounds of challenge covered by that decision have not been repeated before us.

The petitioner is the owner of house No. 97, situated within the limits of the

Municipal Corporation, Indore. The Indore Corporation was superseded by the State Government on 10th July 1970 and since then the Administrator appointed by the State Government carries on the duties of the Corporation. The Administrator is respondent No. 2 to this petition. The petitioner was served with a bill dated 5th September 1975 for payment of Rs. 48.64 as the cess assessed under the Act for the years 1971-72, 1972-73 and 1973-74.

The object of the Act as disclosed by its long title is "to make provision for assistance to destitutes by making it obligatory on the local authorities to provide relief to them and for matters connected therewith". Section 2 (a) defines "destitute" to mean "(i) old and infirm persons; or (ii) blind, deaf, dumb or otherwise disabled persons, fulfilling such requirements including residence in a local area as may be prescribed". The expression "local authority" is defined by Section 2 (d) to mean "a Municipal Corporation, Municipal Council, Notified Area Committee, Gram Panchayat or Adivasi Panchayat, as the case may be, constituted or deemed to have been constituted under the law relating to local authority concerned". Notwithstanding anything contained in the law relating to a local authority, Section 3 of the Act makes it an "obligatory duty" of a local authority "to make provision for: (a) feeding of destitutes, (b) care of destitutes; and the maintenance and management of service for the objects aforesaid." To enable the local authorities to carry out this obligatory duty, authority has been conferred on them to levy a cess on lands and buildings the entire proceeds of which are required by Section 8 to be expended on the relief of destitutes. Section 7 which authorises the levy of the cess reads as follows:

"7. Power of local authority to impose cess. (1) For the purpose of this Act. the local authority shall, in the manner prescribed, levy a cess on lands and buildings situated within the local area at a rate--

(i) not more than ten per cent of the land revenue payable or rent fixed or assessed on land used for the purpose of agriculture, whether or not such land revenue or rent or any portion thereof has been released, compounded for or redeemed or if the land is held rent free or at a reduced rent or on favourable conditions, of the rent fixed on such land;

(ii) not more than one per cent of the gross annual letting value or annual letting value, as the case may be. of land or building determined in accordance with the law relating to the local authority concerned :

Provided that in respect of buildings situate within the limits of a Gram Panchayat or Adhivasi Panchayat such cess shall be levied at a rate not more than one paisa per hundred rupees of the capital value of buildings determined in accordance with the provisions of the law relating to local authority:

Provided further that no tax shall be levied under the foregoing proviso on buildings of capital value not exceeding one thousand rupees.

(2) The cess levied under Sub-section (1) shall be in addition to taxes imposed

by a local authority under the law relating to local authority concerned and shall be payable by-

(i) by the tenure-holder tenant other than sub-tenant or a Government lessee liable to pay land revenue or rent;

(ii) in case of cess levied under Clause (ii) of Sub-section (1) by the owner of land or building.

(3) The State Government may, by rules made under this Act.-

(a) regulate the assessment and collection of cess;

(b) prevent the evasion of such cess."

The first contention of the learned counsel for the petitioner is that the cess imposed by the Act violates his fundamental right under Article 19(1)(f) of the Constitution. The argument is that the owners of lands and buildings are to receive no benefit from the cess which is levied for the benefit of destitutes and the cess imposes an unreasonable burden on them, for they have also to pay similar taxes to the State and Municipal Corporation under different enactments.

The power of taxation is resorted to by the State for the support of the Government and its activities. Revenue is raised by taxation for public purposes. Imposition of tax for purposes other than public purposes will not be valid. It is, however, not necessary that the person on whom the tax is imposed must derive any direct benefit out of it; *Vivian Joseph Ferreira and Another Vs. The Municipal Corporation of Greater Bombay and Others*, , In the instant case, the Act authorises the imposition of cess to raise funds for rendering assistance to destitutes. It is the duty of the State to make provision for public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want; (Article 41). The State has power to legislate for the relief of the disabled and unemploy-ables; (Entry 9, List II). The cess permitted by the Act is a tax on lands and buildings (Entry 49, List II) which a local authority can impose for raising funds for providing relief to destitutes. The cess is thus imposed for a public purpose. It is true That it imposes a burden on owners of lands and buildings who are to derive no direct benefit from the tax and who may not be responsible for the existence of destitutes. But from this it cannot be held that the cess is an unreasonable res-triction of the property rights of the owners under Article 19(1)(f). After all destitutes cannot be taxed for providing relief to desti-tutes. Persons other than destitutes have to provide revenue to the State or its delegate, the local authority, to meet the great social need of rendering assistance to destitutes. "Tt is a common experience in the field of taxation" said the Supreme Court in *Ferreira's case* (supra) (p. 854), "that the incidence of tax falls upon a class or upon individuals who derive no direct benefit from its expenditure or who are not responsible for the mischief to remedy which the tax is imposed." So the ownen of lands and buildings cannot complain of unreasonable restriction of their property rights. As stated by Prof.

Willis : "Taxation is reasonable when, it is for a public purpose. Nothing else is required to make it reasonable", [Willis, Constitutional Law, p. 802].

The argument that the cess imposes an unreasonable burden because lands and buildings within the limits of a Municipal Corporation are also taxed under other enactments is ;again devoid of any substance. It is true that lands and buildings within a Municipal Corporation are taxed by the Corporation under the Municipal Corporation Act, 1956, and by the State under the Nagariya Sthawar Sampatti Kar Adhiniyam, 1964 (14 of 1964). But from this alone it cannot be inferred that the cumulative burden imposed by all these Acts is extortionate or confiscatory. No data has been produced before us to support the assertion that the burden is unbearable. The maximum rate of cess which can be imposed by a local authority under the Act is one per cent of the annual letting value which in no sense can be called excessive. It is well settled that unless the tax is confiscatory or extortionate, reasonableness of the rate is not open to judicial review; *The Assistant Commissioner of Urban Land Tax and Others Vs. The Buckingham and Carnatic Co. Ltd., etc., and S. Kodar Vs. State of Kerala*, . Further, the Constitution does not provide any guarantee against multiple taxation and, therefore, imposition of the cess cannot be invalid on the ground that lands and buildings are already subject-matters of taxation under other enactments; *Delite Talkies Vs. The City of Jabalpur Corporation*,); *The Assistant Commissioner of Urban Land Tax and Others Vs. The Buckingham and Carnatic Co. Ltd., etc.,* .

The learned counsel for the petitioner then contends that the cess is violative of the petitioner's fundamental right under Article 14 of the Constitution. It is argued that as the Act imposes the cess on owners of lands and buildings and not on owners of other types of properties it creates a classification which has no reasonable nexus with the object to be attained, namely, relief of destitutes. This contention is also without any substance. The cess imposed is a tax on lands and buildings under Entry 49, List II. Under this entry owners of other properties cannot be taxed at all. The Act, therefore, cannot be said to discriminate between owners of lands and buildings and owners of other properties. "A State does not have to tax everything in order to tax something. It is allowed to pick and choose districts, objects, persons, methods and even rates for taxation if it does so reasonably"; Willis, Constitutional Law, p. 587; *Vivian Joseph Ferreira and Another Vs. The Municipal Corporation of Greater Bombay and Others*, . It is for the State "to choose the taxes which it will levy. If it prefers it may choose one tax and not levy any others, or if it prefers it may levy all the different kinds of taxes." [Willis, pp. 596, 597]. If the State has decided to permit imposition of a tax under Entry 49, List II for raising funds to provide relief to destitutes, it cannot be argued that the State should have also legislated for imposition of taxes permitted under other entries for the same purpose. The cess imposed by the Act cannot, therefore, be held to be discriminatory] offending Article 14 of the Constitution. J

It is then contended that the notification imposing the cess was issued after

following the procedure prescribed by the rules framed under an earlier Ordinance which was repealed by the Act and as the rules must be taken to be repealed with the repeal of the Ordinance, it cannot be held that the cess was properly imposed.

To understand the above contention it is necessary to mention a few facts. The Act was preceded by Ordinance No. 17 of 1969 authorising the imposition of the cess in the manner prescribed. Rules were framed under the Ordinance by notification dated 3rd December, 1969. Rule 11 of these rules prescribed the manner of imposition of cess as follows :

(1) The local authority shall by a resolution passed in a meeting specially convened for the purpose levy a cess u/s 7 at such rate as may be specified therein and forward the same to the State Government.

(2) The State Government may sanction the proposed levy of cess with or without modification and shall publish the proposal so sanctioned in the Gazette.

(3) The levy of cess shall come into force with effect from such date as the State Government may specify but such date shall not be earlier than thirty days from the date of publication in the Gazette.

The ordinance was repealed and replaced by the Act from 13th February, 1970. As already seen Section 7 of the Act authorises a local authority to levy the cess in the manner prescribed. Section 9 (2) (c) empowers the State Govt to make rules prescribing the manner in which the cess shall be levied u/s 7. The Administrator by his order dated 26th June, 1971 decided to levy the cess at the rate of 1 per cent. This order was sent for sanction of the State Government. The sanction was accorded by notification dated 2nd February, 1972 published in the Gazette dated 11th February, 1972. The notification reads as follows :

"Notification No. 384-3997-XXVI-71, dated 2nd February, 1972. In exercise of the powers conferred by Sub-rules (2) and (3) of Rule 11 of the Madhya Pradesh Nirashriton Ki Sahayata Rules, 1969, the State Government hereby sanctions the following proposal of the Municipal Corporation, Indore, for levy of cess u/s 7 of the Madhya Pradesh Nirashriton Ki Sahayata Adhiniyam, 1970 (12 of 1970) and specifies the 15th March, 1972 as the date with effect from which the levy of cess shall come into force.

PROPOSAL

A cess be levied on lands and buildings situated within the- area of the Municipal Corporation at the rate of one per cent of the gross annual letting value or annual letting value, as the case may be, of land or buildings determined in accordance with the law relating the Municipal Corporation." The reference to Rule 11 in the notification is to Rule 11 of the rules made under the Ordinance. Corresponding rules under the Act were made by notification dated 9th August 1972. M. P. L. T. 240) . Rule 10 of these rules is identical to Rule 11 under the Ordinance which we have earlier quoted.

It will be seen from the facts stated above that the rules prescribing the manner of levy of the cess under the Act were made in August 1972. The cess was levied in February, 1972 under the Act after following the procedure prescribed by Rule 11 of the rules made under the Ordinance which was repealed by the Act. Now the argument of the learned counsel for the petitioner is that the rules under the Ordinance must be taken to have died along with the Ordinance after its repeal by the Act and, therefore, at the relevant time there were no rules prescribing the manner of levy and recourse to rules under the repealed Ordinance could not be taken for levy of the cess. This argument completely overlooks Section 25 of the Madhya Pradesh General Clauses Act, 1957, which reads :

"25. Continuation of orders, etc., issued under enactments repealed and re-enacted, --Where any enactment is repealed and re-enacted by a Madhya Pradesh Act with or without modification, then, unless it is otherwise expressly provided, any appointment, notification, order, scheme, rule, regulation, form or bye-law made or issued under the repealed enactment shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been made or issued under the provisions so re-enacted, unless and until it is superseded by any appointment, notification, order, scheme, rule, regulation, form or bye-law made or issued under the provisions so re-enacted." TV word "enactment" in this section will include an Ordinance [see Section 2(13) of the General Clauses Act]. By force of Section 25. the rules under the Ordinance continued under the Act as rules deemed to have been made under it until superseded by new rules. The Administrator and the Government were, therefore, right in following the procedure of law under Rule 11 of the rules made under the Ordinance and the levy of the cess cannot be held to be invalid on that ground.

The learned counsel then challenged the authority of the Administrator to levy the cess. The argument is four fold. First, that no Administrator can be appointed when a Corporation is not dissolved but only superseded. Secondly, there can be no Administrator for a period beyond two years. Thirdly, the Administrator can, if at all, exercise the powers of the Corporation under the Municipal Corporation Act, 1956, and not under any other Act. Fourthly, powers of the Corporation which can be exercised by passing a resolution in a meeting specially convened for the purpose cannot be exercised by an Administrator who does not pass resolutions in any meeting.

To appreciate the contention it is necessary to refer to certain provisions of the Corporation Act. The obligatory duties of a Corporation laid down in Section 66 (1) which in so far as relevant for present purposes reads :

"Section 66 (1). The Corporation shall make adequate provision, by any means or measures which it may lawfully use or take for each of the following matters :--

(a) *****

(b) *****

(y) fulfilling any obligation imposed by this Act or any other law for the time being in force."

Provision for supersession of the Corporation is made in Section 422. Sub-section (3) of this section provides that the total period of supersession together with its extension, if any, shall in no case exceed two years. Dissolution of the Corporation is provided for in Section 422-A which was introduced by Act 13 of 1961. Section 423 provides for consequences of supersession or dissolution. The section as substituted by Act 11 of 1966 reads as follows :

"423. (1) When the Corporation is superseded u/s 422 or dissolved u/s 422-A. the following consequences shall ensue, namely :--

(a) all the Councillors of the Corporation shall vacate their office -

(i) in the case of supersession, as from the date appointed under Sub-section (1) of Section 422; and

(ii) in the case of dissolution,--

(a) where the Corporation is dissolved u/s 422-A as from the date of the order of dissolution;

(b) where the Corporation stands dissolved under Sub-section (4) of Section 20, as from the date of dissolution under the said sub-section;

(c) all powers and duties of the Corporation, the Standing Committee and the Appeal Committee under this Act, may, until the Corporation is reconstituted, be exercised and performed by such person or a Committee of persons as the State Government may appoint in that behalf;

(c) all property vested in the Corporation shall, until the Corporation is reconstituted vest in such person or committee in trust for the purposes of this Act.

(2) The person or the committee of persons appointed under Clause (b) of subsection (1) shall be called the Administrator of the City and may sue and be sued in the name of the Administrator of the City."

[As printed in M. P. Gazette dated 16-3-1966]

Section 424 which deals with reconstitution of Corporation in so far as relevant reads : "424. Reconstitution of Corporation.--(1) The Government may, if it thinks fit, at any time, during the period of supersession declare by notification, its intention to constitute a Corporation in place of the Corporation superseded u/s 422 or dissolved u/s 422-A.

(2) The Administrator of the City shall forthwith proceed to prepare a register of electors and to hold an election of Councillors in accordance with the provisions of this Act.

(3) The Councillors so elected and selected shall enter upon office as the Corporation on such day as the Government may appoint in this behalf, and subject to the provisions of this Act, shall continue in office for a period of four years from the date on which they enter upon office."

The argument that no Administrator can be appointed in case of supersession of a Corporation is based on certain mistakes in printing of the new Section 423 of the Corporation Act in the Gazette of 16th March, 1966. We have quoted the section as printed in the Gazette. At the first impression it appears that Sub-section (1) of Section 423 consists of only one Clause (a) which is divided into two Sub-clauses (i) and fii) and Sub-clause (ii) is further sub-divided into four Sub-clauses (a), (b), (c) and (c), and that the appointment of a person by the State Government to act in place of the Corporation, which is covered by Sub-clauses (c) and (c) of Sub-clause (ii) of Clause (a), can only be made in case of dissolution of the Corporation. A careful reading of the section will, however, show that the said Sub-Clauses (c) and (c) are not related to Sub-clause (ii) of Clause (a) but are independent clauses of Sub-section (1) and that they should be read as Clauses fb) and (c) of Sub-section (1). There are various reasons for so reading the section. First, the history of the section will show that the Act as originally enacted in 1956 did not contain any provision for dis-solution and Section 423 (1). which consisted of ihrcc Clauses (a), (b) and (c), then dealt with the consequence of supersession only. Clauses (b) and (c) provided respectively for appointment of an officer called the Administrator to act in place of the superseded Corporation and for vesting of the property of the Corporation in such person. By amending Act 2 of 1965 provision for dissolution was made by inserting Section 422-A and Section 423 was amended to make provision for appointment of Administrator in case also of dissolution. Clauses (b) and fc) of Section 423 (1) as amended by Act 2 of 1965 authorised the appointment of Administrator both in case of supersession and in case of dissolution. The object of redrafting the section by Act 11 of 1966 appears to be of clarifying Clause (a) which deals with the vacation of the office by Councillors in case of supersession and dissolution. Clause (a) is now broken up into two Sub-clauses (i) and (ii) (a and b) the former dealing with supersession and the latter with dissolution. These sub-clauses fix the date from which the Councillors vacate their office. The two subsequent Clauses (c) and (c) correspond to Clauses (b) and fc) of the old section and must be given the same meaning. It does not appear from the manner in which the new section is drafted that the intention was to take away the power of appointment of Adminis trator in case of supersession of the Corporation. Secondly, if Clauses (c) and (c) are read as sub-sub-clauses of Sub-clause (ii) of Clause fa), they will grammatically make no sense. The subject-matter of Clause fa) is to provide for the vacation of office of Councillors and its Sub-clauses (i) and (ii) fix the date of vacation in case of supersession and dissolution respectively. This subject-matter ends with Sub-clause (ii) (a) and (b). The subject of the appointment of an officer to function in place of superseded or dissolved Corporation is outside the subject covered by Clause fa).

This shows that Clauses (c) and fc) are independent of Clause (a). Thirdly, had these clauses been part of Clause (a) (ii), the second Clause fc) would have been numbered as (d). Fourthly, Sub-section (2) refers to Clause (b) of Sub-section (1) and says that the officer or committee appointed under it shall be called the Administrator. This makes it very clear that the first Clause (c) in Sub-section (1) is misprinted and should be read as Clause (b) of Sub-section (1). Fifthly, Sub-sections (1) and (2) of Section 424 show that the Administrator functions also in case of supersession and it is he who takes steps for holding elections after the Government decides to constitute the Corporation. Sixthly, it cannot be readily inferred that the Act would make no provision for carrying out the duties of the Corporation during the period of its supersession as it will create a vacuum and lead to very strange consequences. Lastly, the Hindi version of the Act 11 of 1966 printed at pp. 1198-1200 of the Gazette (16th March, 1966) shows that Sub-section (1) consists of three independent Clauses (Ka), (Kha) and (Ga) corresponding to Clauses (a), (c) and fc) of the English version. The English version is no doubt the authoritative text under Article 348(3) of the Constitution, but, the Hindi version can be referred to as an external aid to construction. For all these reasons, we are of opinion that Clauses fc) and (c) should be read as independent Clauses (b) and (c) of Sub-section (1) and not as part of Clause (a). In other words, Section 423 (1) should be read as follows:

"423. Consequences of supersession or dissolution -- (1) When the Corporation is superseded u/s 422 or dissolved u/s 422-A, the following consequences shall ensue, namely :

(a) all the Councillors of the Corporation shall vacate their office-

(i) in the case of supersession, as from the date appointed under Sub-section (1) of Section 422; and

(ii) in the case of dissolution,--

(a) where the Corporation is dissolved u/s 422-A, as from the date of the order of dissolution;

(b) where the Corporation stands dissolved under Sub-section (4) of Section 20, as from the date of dissolution under the said subsection :

(b) all powers and duties of the Corporation, the Standing Committee and the Appeal Committee under this Act, may, until the Corporation is reconstituted, be exercised and performed by such person or a Committee of persons as the State Government may appoint in that behalf;

"(c) all property vested in the Corporation shall, until the Corporation is reconstituted, vest in such person or committee in trust for the purposes of this Act." Section 423 (1), therefore, on a correct reading authorises the appointment of Administrator not only when a Corporation is dissolved but also when it is superseded and the argument that no Administrator can be appointed in case of supersession is wholly misconceived.

The next argument that the Administrator cannot function beyond a period of more than two years because the total period of supersession cannot exceed two years is also without any substance. The Administrator can continue as provided by Section 423 (1) (b) "until the Corporation is reconstituted." The Corporation admittedly has so far not been reconstituted. If the petitioner feels that the Government must take steps to reconstitute the Corporation as two years have expired from the date of supersession, he may, if he is so advised, take legal steps for enforcing that public duty. That matter, however, cannot be considered in this petition. It is enough for the present controversy to say that Administrator continues in office because the Corporation has not so far been reconstituted.

We now take up the argument that the Administrator cannot exercise the power conferred on the Corporation to levy cess on lands and buildings for relief of destitutes. The argument is that Section 423 (1) (c) of the Corporation Act limits the function of the Administrator to the exercise and performance of all powers and duties of the Corporation "under this Act." i. e. under the Corporation Act and that the Administrator cannot exercise any power conferred on the Corporation by another independent Act. This argument overlooks Section 56 (1) of the Corporation Act. Under this provision it is the duty of the Corporation not only to fulfil any obligation imposed by the Corporation Act but also to fulfil any obligation imposed by "any other law for the time being in force." The Corporation is also authorised under this provision to use any means or measures which it may lawfully use or take for fulfilling its obligations. By virtue of this provision the duty to give relief to destitutes and the power to impose the cess for carrying out this duty, though imposed and conferred on the Corporation by another Act, also became a duty and power imposed and conferred under the Corporation Act. The Administrator, therefore, had authority to levy the cess.

The further argument that the Administrator cannot exercise those powers of the Corporation which are to be exercised by a resolution passed in a meeting convened for the purpose is also of no merit. A Corporation when not superseded or dissolved acts by resolutions passed in meetings. The Administrator when he is an individual cannot hold any meeting or pass resolutions. He will act by passing orders. As he exercises all the powers of the superseded Corporation, he is competent to exercise even those powers which if exercised by the Corporation require that a meeting be specially called for the purpose or that a resolution be passed by a special majority. Indeed, it was so held by the Supreme Court in the State of Haryana Vs. Mohanlal and Others, , where an analogous provision of the Punjab Municipal Act came up for construction. z As a result of the above discussion, our conclusion is that the cess was valid-ly levied by the Administrator, Indore Corporation, with the sanction of the State Government u/s 7 of the Act.

The learned counsel for the petitioner then contended that assessment of the cess is invalid as the rules made in that behalf have not been followed. Section 7 (3) (a) of the Act empowers the State Government to make rules to "regulate

the assessment and collection of cess." The rules in exercise of this power were made by notification dated 15th February 1971 MPLT [22]. The rules are called the Regulation of Assessment and Collection of Cess Rules, 1971. Rules 3 to 6 of these rules contemplate the following steps for assessment of cess: (1) Preparation of assessment list;

(2) Publication of notice inviting objections to the list and making it available for inspection;

(3) Consideration of objections; and

(4) Authentication of assessment list when all objections are disposed of. Rule 8 authorises a local authority to amend the assessment list after notice to persons interested. Rule 9 makes provision for revision of the assessment list every four years. Rule 10 provides for collection of cess by an officer duly authorised in this behalf. A reading of these rules clearly shows that the cess must be assessed by preparing an assessment list and the list must be authenticated after disposing of all objections before the stage of the collection of the cess is reached. The cess cannot be collected without assessment and assessment is complete only after the authentication of the assessment list. The learned Government Advocate conceded before us that the procedure of preparation and authentication of assessment list was not followed before issuing the bill for payment of the cess. It must, therefore, be held that the bill and the demand Contained in it are illegal.

There is yet another valid objection to the bill served on the petitioner. A perusal of the bill shows that the cess has been assessed with reference to the annual letting value determined for collection of property tax under Act No. 14 of 1966 which authorises the State to levy and collect tax on lands and buildings. This annual letting value is not at all relevant for the assessment of cess. According to Section 7 (1) (ii) of the Act the annual letting value with reference to which the cess is levied has to be determined in accordance with the law relating to the local authority concerned which in the instant case will mean the Corporation Act. So the cess is to be assessed with reference to the annual letting value determined in accordance with Section 138 of the Corporation Act. The assessment of the cess with reference to the annual letting value determined in accordance with Act 14 of 1966 was thus clearly illegal.

The petition is partly allowed. Although we hold that the cess is validly imposed, we quash the bill (Annexure A to the petition) on the ground that the procedure for assessment has not been followed and the cess has been assessed on a wrong basis. There shall be no order as to costs of the petition. The security amount shall be refunded to the petitioner.