(1976) 08 AHC CK 0002

In the Allahabad High Court

Case No : Special Appeal No. 414 of 1975

POORAN SINGH AND OTHERS — APPELLANT

Vs

THE TOWN AREA COMMITTEE AND ANOTHER. — RESPONDENT

Date of Decision : 25-08-1976

Acts Referred:
Town Area Act, 1914 — Section 15B(3)

Citation : (1976) 5 CTR 300

Hon'ble Judges : G. C. Mathur, J

Bench : Division Bench

Judgement

G. C. Mathur, J. - This is an appeal against the Judgment of a learned Single Judge dismissing the writ petition filed by the appellants challenging the imposition of toll tax in the Town Area of Babugarh, District Meerut. The imposition was challenged only on one ground, namely, that the notification under sub-sec. (3) of sec. 15-B of the Town Area Act, 1914, was not published by the Commissioner, who was the Prescribed Authority, but by the District Magistrate. The learned Single Judge held that the Commissioner was not the Prescribed Authority and, therefore, the District Magistrate was empowered to publish the notification. He further held that the defect, if any, was inconsequential and did not call for striking down of the imposition.

2. Admittedly, all the essential steps for the imposition of toll tax had been taken in the present case by appropriate authorities. This means that the proposals were duly framed by the Town Area Committee, that they were sanctioned by the appropriate authority, that the sanctioned proposals were submitted to the State Government along with draft rules, that the rules were duly framed by the State Government, that they were forwarded to the Committee by the State Government, and that the Committee duty passed a resolution directing that the imposition of tax shall take effect from a specified date. The procedure that remained to be followed was that the committee was required to forward a copy of the resolution directing the imposition of the tax with effect from a specified

date to the prescribed Authority or, if non was appointed, to the District Magistrate, and Prescribed Authority or the District Magistrate as the case may be, had to notify the same in the manner prescribed. It is not disputed that Town Area Committee forwarded a copy of the resolution to the District Magistrate who got this resolution published in the prescribed manner. The entire argument of the appellants is that the Commissioner was the Prescribed Authority and, therefore, the resolution of the Committee should have been forwarded to the Commissioner and the Commissioner should have published the same. Even if we assume that the appellants are right in asserting that the Commissioner was the Prescribed Authority, in our opinion, the defect was an inconsequential irregularity which did not affect the imposition of the toll tax. It is to be noticed that after the resolution in forwarded either to the Prescribed Authority or to the District Magistrate, the Prescribed Authority or the District Magistrate is required mechanically to publish the same. The Prescribed Authority or the District Magistrate has no discretion in the matter and is obliged to publish the resolution as received. The Prescribed Authority or the District Magistrate cannot, in any way, alter the resolution or change the date fixed by the Committee. The action of publication is automatic and mechanical requiring no application of the mind. The provision regarding publication is certainly mandatory, but the further provision that it shall be done by the Prescribed Authority, if appointed, and by the District Magistrate, if no Prescribed Authority is appointed, is merely directory. Since the publication has been made in the manner prescribed, the mandatory provisions have been fully complied with and it can certainly be said that the directory provisions have also been substantially complied with. In any case, the non-compliance with the directory provisions does not affect the validity of the imposition. Therefore, in our opinion, on account of defect relied upon by the appellants, the imposition of the toll cannot be struck down.

3. The appeal is without merits and is hereby dismissed with costs.

