(1980) 11 AHC CK 0015

In the Allahabad High Court

Case No : Civil Misc. Writ No. 8 of 1978

Prabhn Dayal Kukreja APPELLANT

Vs

Municipal Board Konch and Another RESPONDENT

Date of Decision : 21-11-1980

Acts Referred:
Constitution of India, 1950 — Article 226
Uttar Pradesh Municipalities Act, 1916 — Section 131, 131(2), 132, 133, 134(2)

Citation : (1981) AWC 1

Hon'ble Judges : N.D. Ojha, J;H.N.Seth, J

Bench : Division Bench

Advocate : R.B. Mehrotra, for the Appellant;

Final Decision : Allowed

Judgement

H.N. Seth, J.—Commissioner Jhansi Division, vide notification dated 24th December, 1975 issued u/s 135(2) of the U. U.P. Municipalities Act, notified imposition of theatre tax by the Municipal Board, Konch, at the tate of Rs. 10/- per -show in cinema halls with effect from let (sic)of the Act had also framed rules u/s 296 of the U.P. Municipalities Act in respect of the aforementioned tax. These rules inter alia provided that the owner manager of the cinema hall was to pay the theatre tax before each show in advance (Rule 2) and that in case the same was not paid, penalty at the rate of Rs. 2/- per show per day would continue to be levied till such time as the tax was paia (Rule 3). It was also mentioned at the foot of the rules that the Board had, in exercise of its powers u/s 299(1) of the U.P. Municipalities Act, directed that any person contravening any provision in the Rules would be liable to pay a fine which may extend to Rs. 1000/- and in case of continuing reach to an additional fine at the rate of Rs. 25/-. per day.

2. Petitioner Prabhu Dayal Kukreja claims that there is only one cinema all in the city of Konch known as Mohan Talkies which had been exhibit-g film shows with effect from 24th January, 1977 and that he is one of its (sic) prietors. As one Sri

Hari Krishna, Manager of Kanhaiya Touring Talkies, had d a suit against the Municipal Board, Konch challenging the levy of the theatre and the Municipal Board did not take any step to realise the same, the Petitioner was under the impression that the tax was not being levied and he ordingly did not pay the same. Suddenly, on 30th November, 1977 the (sic) Board published a notice in the newspaper ''Chowdhari Darshan'' that Petitioner was being called upon to pay a sum of Rs. 9,960/- as theatre tax the period 24th January, 1977 to 30th September 1977 together with penalty at rate of Rs. 2/- per show per day amounting to Rs. 2,49,144/- total Rs.-2,59,104/-thin fifteen days. As the Municipal Board was pressing the Petitioner to pay e aforementioned amount which demand according to him was illegal and unauthorised he has, by means of this petition, approached this Court for relief under Article 226 of the Constitution.

3. learned Counsel for the Petitioner invited our attention to the provisions contained in Sections 131 to 135 of the U.P. Municipalities Act which lay down the procedure for imposition of taxes by Municipal Board. The scheme underlying these Sections is that the Municipal Board desiring to impose a tax has to pass a special resolution and frame proposal specifying the nature of tax, persons or class of persons to be made liable, the amount or rate leviable from each person etc. and thereafter to publish the same (Section 131). Persons affected are enabled to file their objections and the Board is then required to, after considering those objections finalise the proposal and to submit the same along with the objections received by it to the Prescribed Authority (Section 132). After the Prescribed Authority sanctions the proposal (Section 133) the matter is referred to the State Government for framing of the Rules in respect of the tax proposed to be imposed (draft rules having already been framed by the Municipal Board u/s 131(2)). After the Municipal Board receives the order sanctioning the imposition of tax and the copy of the Rules framed by the State Government, it passes a special resolution u/s 134(2) of the Act directing imposition of the tax with effect from the date specified therein and the tax stands imposed with effect from that date as soon as the State Government/Prescribed Authority makes the publication in the official gazette as required by Section 135(2) of the Act, notifying the imposition of the tax.

4. The case of the Petitioner, as set out in paragraphs 20 to 28 of the petition, is that to the best of his knowledge the theatre tax levied by the Municipal Board, Konch, is sought to be enforced against him without its having been imposed after strictly complying with the provisions contained in any of the Sections 132 to 135 of the U.P. Municipalties Act. The impost being without authority of law, the Municipal Board is not entitled to press the impugned demand against the Petitioner.

5. Sri Ram Din, Executive Officer of the Board has, in paragraphs 19 to 27 of the counter affidavit, asserted that the impugned theatre tax has been imposed after strictly complying with all the provisions contained in Section to 135 of the U.P.

Municipalities Act. He has also mentioned the full parties of various steps that have been taken with a view to comply with the (sic) contained in the aforementioned Sections of the Act. We have absolutely reason to disbelieve the statement made by Sri Ram Din in his counter-(sic) and to think that there has in this case, been any non-compliance of the (sic) contained in Sections 132 to 135 of the Act. The Petitioner has, in ou opinion, failed to substantiate his case that the impugned theatre tax has been imposed by the Municipal Board without there being compliance of the provisions contained in Sections 132 to 135 of the U.P. Municipalities Act and he is not entitled to object to the demand raised against him on this account.

6. learned Counsel for the Petitioner next contended that Rule 3 of the Rules regarding theatre tax as framed by the State! Government which lays down that the owner/manager of the cinema will, in case he does not pay the theatre tax, be liable to pay a fine at the rate of Rs. 2/- per show per day till such time as he pays up the tax, is ultra vires the Rule making power of the State Government and is, as such, invalid. The demand to the extent of Rs. 2,49,144/- raised by the Municipal Board on this account can, therefore, not be sustained and is liable to be quashed.

7. According to Section 131(1) of the Act where a Board desires to impose (sic) tax, it has to pass a special resolution specifying the matters enumerated therein! Sub-section (2) thereof enjoins upon the Board to, while proposing to impose the tax, prepare draft of the Rules which it desires the State Government to make in respect of the matters referred to in Section 153 of the Act which runs thus:

The following matters shall be regulated and governed by rules ''except in so far as provision therefore is made by this Act, namely :

(a) the assessment, collection or composition of taxes and in the case of octroi or toll, the determination of octroi or toll limits;

(b) the prevention of evasion of taxes;

(c) the system on which refunds shall be allowed and paid;

(d) the fees for notices demanding payments on account of a tax and for the execution of warrants of distress;

(e) -the rates to be charged for maintaining live stock distrained and

(f) any other matter relating to -taxes in respect of which this Act makes no provision or insufficient provision and provision is in the opinion of the State Government, necessary.

The draft rules so framed by the Municipal Board are then forwarded to the State Government which, as laid down in Section 134 of the Act, is required to, after taking into consideration the said draft, proceed forthwith to make, u/s 296, Rules in respect of the tax as for the time being it considers necessary. The scheme underlying these Sections envisages that the rules contemplated by Section 134 are to concern themselves with the matters enumerated in Clauses (a) to (f) of Section 153 and the framing of such rules by the State Government has also to be confined to such matters. However, Section 299(1) of the Act lays down that while making a Rule the State Government may direct that breach of it shall be punishable with fine which may extend to Rs. 1,000/- and when the breach is a continuing breach with a further fine which may extend to Rs. 25/- for every day after the date of the first conviction during which the offender is proved to have persisted in the offence. Sub-section (2) thereof enables a Municipal Board to, with the sanction of the State Government, prescribe a similar penalty for the breach of Rules lawfully made under the United Provinces Municipalities Act, 1873, where such rules still continue to be in force. Accordingly the State Government while framing the rules contemplated by Section 134 of the Act can apart from making provisions with regard to the matters enumerated in Section 153 of the Act also make a provision of the nature contemplated by Section 299(1) of the Act.

8. We now proceed to examine as to whether Rule 3 of the Theatre Rules ed by the State Government which provides that in a case where theatre tax paid the owner/manager will be liable to. pay fine at the rate of Rs. 2/- per day show till he deposits the tax, concerns any of the -matters enumerated in .153 or Section 299 of the U.P. Municipalities Act. In case we come to the (sic)clusion that Rule concerns the matter enumerated in these Sections, it would not e possible to say that the Rule is ultra vires and in case we come to the conclusion that it does not concern the said subject matter, it will have to be struck down as being beyond the Rule making power of the State Government.

9. The impugned Rule clearly does not concern itself with any of the matters enumerated in Clauses (a) and (c) to (f) of Section 153 of the U.P. Municipalities Act. The only question to be considered in this regard is as to whether the framing of the said Rule can be justified under Clause (b) of Section 153 of the Act as a matter concerning prevention of evasion of tax.

10. In our opinion the provision for prevention of evasion of taxes would embrace within its ambit the making of such provisions as are directed towards actually preventing a person from creating situations in which it may not be possible for the authorities to effectively determine and realise the tax from him. A provision for punishing a person for not paying the tax payable by him does not, in our opinion, fall in the category of provisions relating to evasion of tax as contemplated by Clause (b) of Section 153 of the U.P. Municipalities Act. There is, In our opinion, a clear distinction between making of a provision relating to prevention of evasion of tax and that for punishing a person who has avoided payment of tax. A provision for punishing a person who contravenes the provisions of the rules has, in so many words, been made in Section 299 of the U.P. Municipalities Act. Viewed in this light, it is clear that Rule 3 of the impugned Rules does not fall within the four corners of the -rule-making powers of the

State Government as a matter dealing with prevention of evasion of tax contemplated by Clause (b) of Section 153 of the U.P. Municipalities Act.

11. We now proceed to consider whether the framing of the impugned Rule can be justified u/s 299 of the U.P. Municipalities Act. Section 299 of the U.P. Municipalities Act reads thus :

"Infringement of rules and bye-laws (1) In making a Rule the State Government, and in making a bye-law the board with the sanction of the State Government may direct that a breach of it shall be punishable with fine which may extend to (one thousand) rupees, and when the breach is a continuing breach with a further fine which may extend to twenty five rupees for every day after the date of the first conviction during which the offender is proved to have persisted in the offence.

(2) The board may with like sanction prescribe a similar penalty for the breach of a Rule lawfully made under the United Provinces Municipalities Act, 1973 (Act XV of 1973) and still remaining in force.

We, however, find that in the instant case the State Government does not purports to frame the impugned Rule in exercise of its power under this section. In the instant case a direction of the nature contemplated by Section 299(1) has been mentioned at the foot of the rules framed by the State Government (Annexure XIII to the counter-affidavit filed on behalf of the Board) and runs thus:

In exercise of powers conferred by Section 299(1) of the U.P. Municipalities Act, the board directs that any contravention of the aforesaid rules would incur a liability for fine extending upto Rs. 1000/- and in case of continuing breach for a further fine of Rs. 25/- per day till such breach continues.

12. A perusal of Rule 299 (1) shows that it clearly authorises the State Government to make any action, which results in contravention of the rules framed by it, an offence for which a person on conviction can be punished with fine which may extend to Rs. 1000/- and if the contravention happens to be a continuing breach to a further fine which may extend to Rs. 25/- for every day after the date of the first conviction during which the offender is proved to have persisted in the offence. The liability to pay the fine in pursuance of a direction given u/s 299 arises only after a person has been convicted by a Court of law. Rule 3 however, makes a person, who has not deposited the theatre tax as provided in the rules liable to pay the fine at the rate mentioned therein without reference to his being tried or convicted for an offence in any criminal Court. The framing of the impugned rule, therefore, cannot be justified by any thing contained in Section 299(1) of the U.P. Municipalities Act.

13. learned Counsel for the Board then attempted to justify the framing of the Rule u/s 299(2) of the U.P. Municipalities Act. Recourse to this provision, in our opinion, is wholly misconceived. Sub-rule (2) of Section 299 merely enables the

Board to make a provision, like that contained in Sub-section (1), for penalty for breach of rules which may have lawfully been made under the U.P. Municipalities Act, 1973 and which still continues to remain in force. As the concerned rules regarding imposition of theatre tax were not framed under the United Provinces Municipalities Act, 1873 no question of those rules being justified under the provisions of Section 299(2) arises.

14. learned Counsel for the Board could not bring any other provisions of law to our notice under which framing of the rule, like Rule 3 providing for payment of penalty at the rate of Rs. 2/- per show per day by persons who fail to pay the theatre tax could be justified. We are accordingly of opinion that Rule 3 authorising the Municipal Board Konch to demand and realise such penalty is ultra vires the powers of the State Government and the Municipal Board does not possess any authority to recover such penalty from the Petitioner. The demand raised by the Municipal Board in respect of a sum of Rs. 2,49,144/- as penalty for non-payment of theatre tax is, therefore, illegal and is hable to be quashed.

15. In the result the writ petition is allowed in part. While upholding the demand raised by the Municipal Board for payment of theatre tax for the period 24th January, 1977 to 30th September, 1977 amounting to Rs. 9,960/- we quash the demand raised by it for a sum of Rs. 2,49,144/- representing the amount of penalty payable under Rule 3 of the rules framed by the State Government which Rule has been held to be invalid by us. In view of their divided success, the parties are directed to bear their own costs.