

(1980) 10 AHC CK 0012
In the Allahabad High Court
Case No : Second Appeal No. 1405 of 1968

Raghubir Singh and Others

APPELLANT

Vs

Town Area Committee and Others

RESPONDENT

Date of Decision : 25-10-1980

Acts Referred:

Uttar Pradesh Town Area Circumstances and Properties Tax (Assessment and Collection) Rules — Rule 10, 10(2), 5, 7, 8
Uttar Pradesh Town Areas Act, 1914 — Section 14, 15, 15A, 15B, 15B(3)

Citation : (1980) AWC 673

Hon'ble Judges : Satish Chandra, C.J;A.N. Verma, J

Bench : Division Bench

Advocate : N.C. Rajvanshi, for the Appellant; N.K. Saxena, for the Respondent

Final Decision : Dismissed

Judgement

A.N. Verma, J.—This second appeal comes before us upon a reference made by a learned Single Judge in consequence of a divergence of opinion between two learned Judges of this Court on the construction of Rules 7 of the U.P. Town Area Circumstances and Properties Tax (Assessment and Collection) Rules. Manchanda, J. in the case of Central Distillery and Chemical Works Ltd. v. Town Area Committee Ranker Khere C.M. Writ No. 3160 of 1962 decided on 8-1-1963, held this Rule to be mandatory in its operation, while Oak, J. as he then was in Kanchedi Lal v. Town Area Committee Mahreni 1962 AWR 898 held the above Rule to be merely directory. We have, therefore, to decide whether the aforesaid Rule is mandatory or merely directory in the sense that the breach thereof does not result in the complete nullification of the assessment.

2. Before we deal with the legal issues, we may briefly set out the relevant facts.

3. The various Appellants are residents within the local limits of the Town Area Committee of Kanker Khera in the district of Meerut. The Plaintiff-Appellants instituted a suit challenging the validity of the imposition and assessment of an impost called the Circumstances and Property Tax sought to be levied upon the

Plaintiff by the Respondent Town Area Committee in respect of assessment years 1960-61 to 1963-64. The imposition of the aforesaid tax was challenged on the ground that no resolution framing proposal for the imposition of the tax as required by Section 15-A of the U.P. Town Areas Act, 1914 (hereinafter referred to as the Act) was passed by the Respondent Town Area Committee, nor were the said proposal notified in accordance with Section 15-B(3) of the aforesaid Act. The validity of the assessment of the aforesaid tax was on the other hand challenged on the ground that the list of persons liable to be assessed to the aforesaid tax was not completed on or before January 20 under Rule 7(a) of the aforesaid Rules.

4. The Respondent Town Area Committee contested the suit on the assertion that the tax had been both lawfully imposed and assessed strictly in accordance with the provisions of the U.P. Town Areas Act as well as the Rules framed thereunder for the assessment and collection of the tax. Various other pleas were raised in defence which it is not necessary to elaborate here.

5. The trial court decreed the suit holding that the tax had neither been validly imposed, nor assessed.

6. Aggrieved by the decision of the trial court, the Respondent Town Area Committee appealed. The appellate court disagreed with the trial court and held that on the facts established on the record, the impugned tax had been proved to have been both validly imposed and assessed. In regard to the effect of the Town Area Committee not having completed the assessment list under Rule 7(a) before the date specified thereunder, the appellate Court preferred to follow the decision of Oak, J. in the aforesaid case and held that the fact that the assessment list could not be completed before 20th January of the relevant year did not affect the validity of the assessment. The appellate court consequently allowed the appeal and dismissed the suit. Hence this second appeal by the Plaintiff.

7. Though before the learned Single Judge, the learned Counsel for the Plaintiff seems to have attacked only the validity of the assessment of the impugned tax, before us an attempt was made to question the legality of the imposition too of the tax.

8. Having heard the learned Counsel for the Appellants (the Respondent Town Area Committee was not represented despite due service of notice of the second appeal), we are clearly of the view that the provision in Rule 7(a) laying down that the assessment list shall be completed on or before January 20, is directory in its effect. We do not approve of the view of Manchanda, J. in the case of Central Distillery & Chemical Works Ltd. (supra), that the Rule is mandatory in its operation and that its breach would result in the invalidation of the assessment. We think that Oak, J. correctly construed the effect and scope of Rule 7(a).

9. We may now proceed to give our reasons for holding that the Rule in question is directory and not mandatory. Before, however, we do so, we may state what in

our view seems to be the consensus of the judicial precedents as well as the opinion expressed by the leading authorities on the interpretation of statutes on the perennial controversy as to when may a statutory provision be regarded as merely directory, and when mandatory.

10. It seems to have been emphasised from the earliest times that there can be no rule of universal application in this behalf. It has been observed time and again that it is not possible to formulate any universal rule for deciding this controversy.

11. In *Liverpool Brough Bank v. Turner* (1980) 30 LJ Ch 379, Lord Campell observed thus:

No universal rule can be laid down as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of Courts of Justice to try to get at the real intention of the Legislature by carefully attending to the whole scope of the statute to be construed.

Where a statute requires that a thing shall be done in the prescribed manner or form but does not set out the consequences of non-compliance, the question whether the provision was mandatory or directory was to be adjudged in the light of the intention of the legislature as disclosed by the object, purpose and scope of the statute. If the statute is mandatory, the thing done not in the manner or form prescribed can have no effect or validity, if it is directory, penalty may be incurred for non-compliance, but the act or thing done is regarded as good.

Maxwell on the Interpretation of Statutes, 10th Edition Page 376 says;

It has been said that no rule can be laid down for determining whether the command is to be considered as a mere direction or instruction involving no invalidating consequence in its disregard, or as imperative, with an implied nullification for disobedience, beyond the fundamental one that it depends on the scope and object of the enactment. It may perhaps be found generally correct to say that nullification is the natural and usual consequence of disobedience, but the question is in the main governed by consideration of convenience and justice, and when that result would involve general inconvenience or injustice to innocent persons, or advantage of the enactment, such an intention is not to be attributed to the legislature. The sole scope and purpose of the statute under consideration must be regarded.

Craies on Statute Law, 5th Edition, at page 242 states:

No universal rule can be laid down as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of Courts of Justice to try to get at the real intention of the Legislature by carefully attending to the whole scope of the statute to be construed.

Crawford on the Construction of Statutes says much the same thing at page 516.

12. The Supreme Court of India has also been stressing time and again, that the question whether a statute is mandatory or directory, is not capable of generalization and that in each case, the court should try and get at the real intention of the Legislature by analysing the entire provisions of the enactment and the scheme underlying it. Their Lordships of the Supreme Court have referred to the opinions quoted above with approval.--See Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others, ; The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya, . The trend of the later pronouncement of the Supreme Court is the same.

13. These being the rules of interpretation, we proceed to examine what could be the real object or purpose behind Rule 7(a) insofar as setting a time limit for completion of the assessment list is concerned. The first thing which needs to be noticed in this regard is that the Act itself does not set any time limit. Section 17 of the Act provides for the publication of the assessment list. It reads:

Publication of Assessment List;--The committee shall cause a copy of every assessment list prepared or revised u/s 15 and confirmed by the Prescribed Authority, or if none is appointed, the District Magistrate to be pasted at a conspicuous place within Town Area and shall cause a register of assessment to be maintained at such place and in such manner as the District Magistrate may prescribe.

14. The date (20th January) was fixed only under the rules framed for the purpose of the assessment and collection of the Circumstances and Property Tax. These rules were framed under the rule making power of the aforesaid Act by the Governor of Uttar Pradesh through Notification No. 682-T/IX-79-T-50 which was published in the Gazette dated 20th July 1950. It is pertinent to mention that prior to the amendment of the aforesaid Act by means of U.P. Act No. XXIII of 1950, by which Clause (f) was added to Section 14 of the aforesaid Act authorising imposition and assessment of Circumstances and Property Tax on the inhabitants of the Town Areas according to their circumstances and property, the Town Areas Committees had no power to levy the said tax.

15. After the Circumstances and Property Tax has been duly imposed in accordance with the provisions of Sections 15, 15-A and 15-B of the Act, the Committee established for the Town Area concerned is enjoined to prepare a list of persons liable to be assessed to the aforesaid tax and the said list is required to be published by pasting at a conspicuous place within the Town Area (see Sec 17 of the Act).

16. The first notification laying down the manner and mode of assessment was issued by the Governor of Uttar Pradesh under Notification No. 682-T-IX-79-T-50 which was published in the Gazette of 20th July 1950. Rule 7(a) of the aforesaid Rules reads thus:

7(a). On or before December 15 each year, the Committee shall prepare or cause to be prepared a list of all persons within the Town Area who are liable to pay the tax. The Committee shall then consider separately the circumstances and the property of every person entered in the list and of any other person not entered therein, who appears to be liable to pay the tax and shall determine the amount of the tax to which each such person shall be assessed separately for his circumstances and his property. The name of every person assessed and the amount of tax to which he is assessed shall be entered in the assessment list which shall be in the form attached to these rules shall be completed on or before January 20.

(b) Notwithstanding anything in part (a) of this Rule, the committee shall, during the two years following that in which an assessment has been made in accordance with Rule 7(a), prepare the assessment list in the following manner;

It shall examine the assessment list of the preceding year and shall consider the circumstances and the property of every person entered in the list and of any other person not entered therein, who appears to be liable to pay the tax. It shall determine the amount of the Tax to which each person shall be assessed in the current year and shall make such corrections and additions to the list as may be necessary or on or before January 20.

17. As mentioned above, in order to get at the real intention of the rule making body in framing Rule 7(a), it will be necessary to examine the entire scheme of assessment. Under Rule 5, circumstances and property of an assessee pertaining to the year ending on 31st day of December previous to the date of the assessment is to be taken as the basis of assessment.

18. Under Rule 7(a), the Committee is enjoined to prepare a list of persons within the Town Area who are liable to pay the aforesaid tax. The Committee is then required to consider separately the circumstances and property tax of every person residing within the local limits of the Town Area, and then to determine the amounts of the tax to which each such person may be liable separately to pay those circumstances and property tax. Thereafter, the name of every person assessed and the amount of tax to which he is assessed is required to be entered in the assessment list which has to be completed under Rule 7(a) on or before January 20.

19. Thereafter, Rule 8 provides that the Committee shall give public notice of the place where the assessment list prepared and completed under Rule 7(a) may be inspected. After this, the committee is required under Rule 9 to fix a date not earlier than a month thereafter to consider the objections to assessment. Under Rule 9(3), it is provided that the Committee shall dispose of the objections after allowing the objectors an opportunity of being heard.

20. Then comes finally Rule 10, which provides that after the list has been so finalised in accordance with the preceding rules, the same shall be submitted to the Prescribed Authority for confirmation. After the Prescribed Authority has

confirmed the list, it is provided under Rule 10(2) that the same shall be deposited in the office of the Town Area Committee which shall, thereupon, be declared by public notice to be open for inspection.

21. From a schematic analysis of the aforesaid provisions, it seems to us that the only purpose of setting a time limit under Rule 7(a) is to ensure that these various steps and processes listed above between the completion of the list under Rule 7(a) and its deposit under Rule 10(2) in the office of the Town Area Committee are completed well in time to facilitate smooth and timely recovery of the taxes. The idea seems to be that the collection of the tax is not stalled on account of administrative delays. There does not appear to be any other purpose of setting a time limit under Rule 7(a). What is significant is that there are no provisions either in the Act or in the Rules thereunder providing for any consequences which might flow from the failure of the committee to complete the list on or before 20th January. It seems to us that Rule 7(a) imposes a public duty on the Committee established in the Town Area, without having any direct relation to or impact on private rights and obligations. The assesseees are not in the slightest degree prejudiced by the delay in the completion of the list. There is no likelihood of any general inconvenience or injustice being caused to the assesseees individually or the public at large generally. Neither the considerations of convenience nor of justice are likely to suffer by the mere delay in the completion of the list within the prescribed time.

22. The above being the object and purpose behind Rule 7(a) we are clearly of the view that the provision setting a time limit for the completion of the assessment list is directory in its scope and effect, and that its breach cannot result in the invalidation of the assessment, that is, the provision in question is directory and not mandatory. From the scheme of things as reflected by the enactment and the rules framed thereunder, a literal adherence to the rule in question does not seem to have been intended.

23. Manchanda, J. held the aforesaid rule to be mandatory, mainly because of Rule 10 of the aforesaid rule, which reads thus:

19. The dates mentioned in these Rules shall not apply in respect of assessment and collection of the tax relating to the financial year 1950-51 for which the dates applicable shall be those as may be fixed by the District Magistrate.

The learned Judge was of the opinion that the fact that an express exception had to be made in respect of the financial year 1950-51 and the District Magistrate was given the power to fix the date for the completion of the assessment list for that year clearly demonstrated that Rule 7(a) was intended to be mandatory in its operation.

24. We do not agree. The purpose of Rule 19 is obvious. Under the rules, the power to prepare the assessment list and to complete it by 20th of January was conferred upon the committee established for that purpose. These rules as mentioned above, themselves came into existence with the publication of the

aforesaid Notification in the Gazette on 20th July, 1950. The rules in question themselves having been introduced during the assessment year 1950-51, it could not have been possible for the Committee to complete the work relating to the assessment and collection of the tax for that year on or before the dates specified in the rules. It was, therefore, purely for reasons of practicability that it became necessary to empower the District Magistrates to fix dates for the assessment and collection of the Tax in respect of the first assessment year after the introduction of the rules. From the mere fact, therefore, that in respect of the first year following the introduction of the rules, the District Magistrate was empowered to fix the dates for the assessment and collection of the tax, is not to our mind, any or sufficient reason to think that the provision is mandatory in its effect.

25. We are therefore, of the view that the case of Central Distillery & Chemical Works Ltd.--Writ No. 3160 of 1962 (decided on 8-1-1963) was not correctly decided. We approve of the view taken by Oak, J. in the case of Kanchedi Lal v. Town Area Committee Mahroni 1962 AWR 898.

26. Before we pass on to the second point urged in the second appeal, we may notice a decision cited by the learned Counsel for the Appellant on the question whether the impugned rules are directory or mandatory. Learned Counsel relied on a Full Bench decision of this Court in the case of Hindu National School Management Trust Society v. Deputy Director of Education 1980 AWC 407. The Full Bench while considering the validity and effect of Regulations framed under the U.P. Intermediate Education Act observed that in order to judge the nature and scope of a particular statute arid to determine whether it is mandatory or directory, the purpose for which the provision has been made and its nature and the intention of the legislature in making that provision must be examined. This decision is in consonance, with the premise upon which we have proceeded. It fully supports the "approach we have adopted.

27. We turn now to the second argument. It was urged that the imposition of the tax was invalid for non-compliance which the provisions of Section 15-B(3) of the aforesaid Act. The only ground upon which learned Counsel for the Petitioner submitted that Section 15-B(3) was contravened, was that Defendant Town Area Committee had failed to establish that the resolution passed by it directing the imposition, had been notified in the Gazette.

28. We find no substance in this argument either. The argument proceeds upon a wrong premise. Neither the Act, nor the Rules require the publication of the notification contemplated u/s 15-B(3) of the aforesaid Act in the Gazette. Section 15-B(3) reads thus:

(3) After the rules have been framed by the State Government, a copy thereof shall be forwarded to the Prescribed Authority or if none is appointed to the District Magistrate and then the Committee shall as soon as may be, by a resolution direct the imposition of the tax with effect from a date to be specified

and forward a copy of the resolution to the Prescribed Authority or if none is appointed to the District Magistrate, who shall notify in the manner prescribed.

29. The State Government issued a notification No. 682-T/IX-79-50 dated July 20, 1950 prescribing the mode of publication. It provides that the resolution imposing the tax may be notified, (a) by affixing copies thereof at the office of the Committee and such other conspicuous places as the Committee may by resolution decide; and (b) in a local newspaper (if any).

30. It is, therefore, clear that the mode of notification contemplated u/s 15-B(3) is by affixing copies of the resolution of the Town Area directing the imposition of the tax at the office of the Town Area Committee and at such other conspicuous places as the Committee might decide. There was hence no question of the Town Area Committee having failed to produce the Gazette.

31. We agree with the learned District Judge that in view of the presumption attaching to regularity of official acts, a presumption did legitimately arise to the effect that the resolution of the Town Area Committee directing the imposition of the Tax must have been duly notified by the Prescribed Authority u/s 15-B(3). The lower appellate Court has observed thus:

So far as the publication of the proposal of imposition of tax is concerned, the manner of publication prescribed is only by putting up the resolution on the notice board and there is no evidence on record to suggest that the proposal for imposition of the tax was not put up on the notice board of the Town Area Committee.

The finding of the lower appellate Court, therefore, that the Plaintiffs had failed to discharge the burden which lay upon them of establishing that the tax had not been legally imposed appears to be correct, and is not vitiated by any error of law.

32. Learned Counsel for the Appellant placed reliance on a decision of this Court in the case of *Makhan Lal v. State of U.P.* 1971 AWR 703, in support of his contention that in the absence of proof of publication of the notification by the Prescribed Authority u/s 15-B(3), the imposition of the tax must be held to be invalid. This decision does not help the Appellant and is clearly distinguishable. All that it lays down is that Section 15-B(3) is mandatory, and that if the resolution directing imposition of tax is not notified u/s 15-B(3) of the aforesaid Act, it cannot be lawfully levied. There can be no dispute about this proposition. In that case, it has been found as a fact that the resolution had not been notified. In the present case, however, the lower appellate court has found that the resolution directing the imposition of the tax must on the facts of the present case have been fully notified u/s 15-B(3). We, however, do not agree that the mode of notification contemplated u/s 15-B(3) is by publication in the Gazette. We have found no rule or provision in the Act, which may show that the notification must be by publication in the Gazette. On the contrary, we have pointed out above, the rule which requires publication by affixation.

33. We, therefore, hold that the impugned tax was both lawfully imposed and assessed and the lower appellate Court has rightly dismissed the Plaintiff-Appellant's suit.

34. In the result, the appeal fails and is dismissed. There will be no order as to costs.