**(1960) 03 MP CK 0020**

**In the Madhya Pradesh High Court**

**Case No :** L.P.A. No. 31 of 1958

Ramchand Sugadas APPELLANT

Vs

State RESPONDENT

**Date of Decision :** 24-03-1960

**Acts Referred:**
Central Provinces and Berar Municipalities Act, 1922 — Section 67, 67(3), 67(5)

**Citation :** (1961) JLJ 1083

**Hon'ble Judges :** P.V. Dixit, C.J;K.L. Pandey, J

**Bench :** Division Bench

**Advocate :** B.R. Mandlekar, for the Appellant; H.L. Khaskalam, Addl. Govt. Advocate for State, for the Respondent

**Final Decision :** Dismissed

## Judgement

P.V. Dixit, C.J.—This is an appeal under clause 10 of the Letters Patent from a decision of Shrivastava J dismissing an application under Article 226 of the Constitution of India filed by the appellant challenging the validity of the imposition of octroi tax by the Municipal Committee, Waraseoni.

2. The material section of the Central Provinces and Berar Municipalities Act, 1922, under which the Committee imposed the impugned octroi duty is Section 67 which is as follows:-

67. (1) A Committee may, at a special meeting, pass a resolution to propose the imposition of any tax u/s 66.

(2) When such a resolution has been passed, the Committee shall publish in accordance with rules made under this Act, a notice defining the class of persons or description of property proposed to be taxed, the amount or rate of the tax to be imposed and the system of assessment to be adopted.

(3) Any inhabitant of the municipality objecting to the proposed tax may, within thirty days from the publication of the notice, submit his objection in writing to

 

the Committee.

(4) The Committee shall take the proposals and all objection received thereto consideration at a special meeting, and may modify the proposal so as not to affect their substance, and may then forward them to the. Provincial Government along with all objections received its decisions thereon and its reasons therefore. If the Committee decides to modify the proposals so as to affect, their substance it shall publish them again in the manner prescribed in sub-section (2).

(5) The Provincial Government, on receiving such proposals, may sanction or refuse to sanction the same, or sanction them subject to such modifications as it may think fit, or return them to the Committee for further consideration.

(6) No modification affecting the substance shall be made under sub-section (5), unless and until the modification has been accepted by the Committee at a special meeting.........

At a special meeting the municipal committee resolved to propose the imposition of octroi duty. The resolution was published as required by sub-section (2) of section 67. The objections to the proposed tax were taken into consideration by the committee as prescribed by sub-section (4) and the proposals were forwarded to the Government who, however, returned the proposals to the committee for further consideration. On reconsideration, the committee saw no reason to modify their proposals. They were reiterated by the committee and sent up again to the Government for acceptance. Ultimately the Government sanctioned the imposition of the tax.

3. The appellant challenged the imposition of the octroi tax on the ground that when the proposals were returned by the Government to the committee for further consideration under sub section (5) and the committee resolved to adhere to the proposals made by them, they should have been published as provided by sub-section (2) and then submitted to the Government in accordance with subsection (3) and (4); and that as this was not done the imposition of the tax was invalid. The learned Single Judge found himself unable to accept this contention.

4. The argument that Shri Mandlekar, learned counsel for the appellant, presented before us was that on the proposals being returned to the committee for further consideration by the Government under sub-section (1) they became relegated to the stage contemplated by sub-section (1) and that, therefore, all the formalities prescribed in sub-sections (2), (3) and (4) had to be carried out again before they could be re-submitted to the Government for sanction. We are unable to accede to this contention. Section 67 itself nowhere provides that when a proposal is returned by the Government to the committee for further consideration, the whole procedure laid down in sub-sections (2), (3) and (4) shall be followed again before submitting it to the Government. An examination of S. 67 shows that or cethe committee resolves to propose the imposition of a tax, publishes the resolution, and submits it for acceptance to the Government

 

after considering the objections to the proposed tax, republication of the resolution again in the manner prescribed in sub-section (2) is not necessary even if the Government returns it to the committee for further consideration and the committee reiterates the resolution. When a resolution is returned to the committee for further consideration under sub-section (5), it is relegated to the stage of sub-section (4) and not of sub-section (1). This is obvious from the fact that "further consideration" contemplated by sub-section (5) is not of the question whether the committee should or not resolve to propose the imposition of any tax, but it is of the resolution as already passed, in the light of the suggestions made by the Government and further consideration of the objections already received to the proposal under sub-section (3). Now sub-section (4) clearly shows that at this stage republication of the resolution in the manner prescribed in sub-section (2) is necessary only if the committee decides to modify the proposals so as to affect their substance. If, therefore, the commitee does not make any such modification and decides to resubmit the proposals to the Government for acceptance substantially in the same form as before, publication of the resolution again is wholly unnecessary. The reiteration of a resolution by the committee after it has been remitted to it for further consideration by the Government not being the initial passing of the resolution to propose the imposition of any tax within the meaning of sub-section (1), there can be no question of publication of the resolution under sub-section (2) and of the inhabitants being given a further opportunity to lodge their objections to the tax.

5. In our view, the learned Single Judge was right in holding that it was not necessary to republish the proposals and that the tax was validly imposed. The result is that this appeal is dismissed with costs. Counsel''s fee''s fixed at Rs. 50/-. The outstanding amount of security after deduction of costs shall be refuned to the appellant.

 