

(1984) 04 CAL CK 0024
In the Calcutta High Court
Case No : C.O. No. No. 7289 (W) of 1983

Satyanarayan Saha and Others APPELLANT
Vs
State of West Bengal and Others RESPONDENT

Date of Decision : 26-04-1984

Acts Referred:

Bengal Municipal Act, 1932 — Section 138(1)(CC)

Citation : 89 CWN 1101

Hon'ble Judges : Suhas Chandra Sen, J

Bench : Single Bench

Advocate : Nirendra Krishna Mitra and Dilip Kumar Sett, for the Appellant; Tapendra Kr. Basu for Municipality Respondent No. 4, N.N. Gooptu, Govt. Pleader and Tapas Roy for State, for the Respondent

Judgement

Suhas Chandra Sen, J.—This is a writ petition made by 22 persons claiming to be President, Vice-President, Office Bearers and members of the Krishnanagore Municipality Kate Prayers Association. Some of the petitioners are rate payers; some are not. The petitioner No. 1, Satyanarayan Saha, has died and it has been contended on behalf of the Respondents that so far as the petitioner No. 1 is concerned, this writ petition has abated. Although there is a prayer for an order in terms of Order 1 Rule 8, no such order was made and the petition cannot be taken to be a representative action on behalf of the rate payers of the Krishnanagore Municipality.

2. It has been stated in the petition that the last valuation and assessment of the holdings of the Krishnanagore Municipality (hereinafter described as the Municipality) was made in the year 1972-73. That assessment was challenged by 41 rate payers of the Krishnanagore Municipality by a writ petition in this Court. By a judgment and order dated March 3, 1978 Anil Kumar Sen and B.C. Chakraborty JJ. quashed the entire assessment as bad in law. No attempt was made by the municipality to revalue or reassess the valuation or the assessment which had been set aside by this Court. It has been stated by the Advocate,

appearing on behalf of the municipality, that the present assessment is for the year 1981-82 and there is no question of any retrospective effect being given to the assessment. There is also no question of any reassessment or revaluation being done u/s 138(1) (CC) of the Bengal Municipal Act (hereinafter described as the said Act). A number of grounds have been taken in the petition on the assumption that this was really a reassessment u/s 138(1) (CC) and the order of assessment was being given retrospective affect. In view of the statement made by the Advocate, appearing on behalf of the Municipality those questions have become irrelevant.

3. A question has, however, been raised that the assessment has not been made by an Assessor of the Municipality not by any person having prescribed qualifications appointed by the Municipality at a salary. It has been contended that only an employee of the Municipality has been empowered to determine the annual value of ail holdings within the Municipality in the manner provided in the Act. Section 76 of the Act has empowered the State Government to make rules prescribing the qualifications of candidates for employment by the Commissioner as, inter alia, Assessors of the Municipality. Section 145 lays down that the State Government was prepared a list of persons qualified to be appointed as Municipal Assessors. It has been laid down in section 145(2):

When a new valuation" list is to be prepared for any municipality the Commissioners at a meeting shall appoint from the list referred to in sub-section (1) a person ***** as an assessor for the purposes of this chapter, on such salary and with such establishment as may be fixed by them with the approval of the State Government.

In this case it has been noted in paragraph 9 of the affidavit-in-opposition filed on behalf of the Municipality "that, however, the assessment made in the year 1980 was made by one Sri A.K. Dutta, Chartered Accountant, as assessor who was entrusted with doing the said work of assessment for the year 1981-82 at a consolidated remuneration of Rs. 750/- for the entire job which was also duly approved by the Government of West Bengal vide Memo No. 4983 dated 29th July, 1980." It has been asserted in that affidavit that Sri A.K. Dutta had all the qualifications laid down in Rule No. 1 (b) framed by the Government of West Bengal under the Act.

4. The case of the petitioners is that a person, who is an employee of the Municipality, can only be entrusted with the job of preparation of the valuation list. It has been emphasized that a person will be appointed u/s 145(2) "on such salary and with such establishment as may be fixed by them". The meaning of the word "Salary" has been given in the Websters "New International Dictionary, Second Edition, as" the recompense or consideration paid, or stipulated to be paid to a person at regular intervals for service, esp. to holders of official, executive or clerical positions; fixed compensation regularly, paid as by the year, quarter, month or weeks stipend now after distinguished from wages. "The duty of the Commissioners to appoint.... a per son as an assessor.... on such salary

and with such establishment" indicates that a person has to be appointed as an assessor by the Municipality on a regular basis. The job of the assessor cannot be given by a contract to a person at a free for that purpose. The section clearly envisages that the assessor for doing the job of valuing a very large number of municipal holdings will need an establishment. Therefore, it was provided in the Act not only for appointment of an assessor but also for setting up of an establishment for the purpose of valuation. It has been contended on behalf of the Municipality that by virtue of an amendment effected by West Bengal Act XXIV of 1983, the Municipality has been empowered to appoint an agent who need not be a salaried employee to do the job of an assessor. The word "salary" has been deleted and instead the word "remuneration" has been introduced to get over this difficulty.

5. The West Bengal Act XXIV of 1983, however, came into force with effect from 1st October, 1982. In this case, it appears from the affidavit-in-opposition that the approval to that appointment of Sri. A.K. Dutta was given by the West Bengal Government on 29th July, 1980. It has been stated in paragraph 11 of the affidavit-in-opposition that Sri A.K. Dutta made due enquiries and also made his report on 31.12.1980 for the year 1980-81.

6. In that view of the matter, the amendment will not come to the aid of the Respondents. The only question is whether the Municipality was empowered to get the assessment done by an agent under the provisions of the Act before its amendment. In view of the clear wording of section 146, in my opinion, the valuation could only be done by a salaried employee of the Municipality and not by an agent.

7. The actual order issued by the Government appointing Sri A.K. Dutta was handed up in which it has been stated that he was being appointed at a certain remuneration. Nothing has been mentioned, about the establishment that may be needed for the purpose of making a new valuation list. This is a point of some importance. Sri A.K. Dutta is a qualified valuer and his name appears in the list of persons prepared for appointment as valuer; but nothing has been mentioned about the persons who are to assist him. The valuer has to take assistance. In fact, he has to rely heavily on the work done by other persons who collect the data for him. The qualifications of those other persons have not been laid down. What has really happened is that the Municipality has appointed an agent who appointed other agents and servants in his turn to get the work done. In my opinion, this is not what is envisaged by section 145(2) of the West Bengal Municipal Act.

8. The assessor is not an employee of the Municipality. The nature and type of the establishment maintained by him is not known to anybody. There is no accountability for the work done by these persons to anybody. The assessor was paid a fee or a remuneration of Rs. 7500/- for the job to be done and he made a report accordingly. The method and manner of doing the job or the quality of the personal who did the basic job are entirely unknown. In fact, it is not possible for

anybody with any personal knowledge to defend the valuation done by the valuer. The plea was taken on behalf of the Respondents that the assessor has not been made a party. This was countered by the petitioner by stating that the assessor was an independent agent. The Municipality has been made a party and the Municipality is not in a position to defend the assessment which is based on the valuation list.

9. It has also been argued on behalf of the Respondents that the court should take a broad view of the matter. The word "salary" should not be strictly construed and regard must be had to section 92 under which no act done or proceeding taken under the Act can be questioned on the ground merely of any defect or irregularity not affecting the merits of the case.

10. I am unable to uphold this contention for several reasons. Without going into the scope of section 92, it can be said that this is not a case of mere defect or irregularity not affecting the merits of the case. The allegation is in the first place that the valuation has been made by a person without any jurisdiction. The allegation is that an agent or an unauthorised establishment cannot be empowered to do the valuation u/s 146.

11. The scheme of the Act, as it stood at the relevant time, tends to suggest that the assessor must be a salaried employee of the Municipality and the appointment of an assessor must be on at least a semi-permanent basis. u/s 145(1) the State Government has to prepare a list of persons qualified to be appointed as Municipal Assessors. u/s 145(1) the Commissioners have been empowered to appoint a person from the list prepared by the Government as an assessor "on such salary and with such establishment" as may be fixed by the Commissioners with the approval of the State Government. Therefore, the appointment has to be not only of the assessor but also of the establishment that has to be set up by the assessor for doing the valuation. Moreover, u/s 146, in case of failure of the Commissioners to appoint an assessor, the State Government may appoint "for such period as may be necessary a suitable person to prepare the valuation list. u/s 146(3) an assessor appointed by the State Government shall be paid monthly out of the Municipal funds such salary and cost of establishment as may be fixed by the State Government. This is a very clear indication that the assessor and the establishment must be appointed at a salary and also for a fixed period. Having regard to the scheme of the Act, it is not possible to hold that whereas the appointment by the State Government u/s 146 must be of an assessor at a monthly salary, but u/s 145 the Municipality is free to appoint any independent agent at a free to prepare the valuation list.

12. Section 146(2) is also important in this connection. It provides that where no person is available for appointment as an assessor from the approved list of the Government. The Commissioners may appoint any person approved by the Government "on such salary, for such period and with such establishment as the Commissioners with the approval of the State Government.... May determine". Therefore, the appointment of the assessor and his establishment must be for a

period of time. In other words, the Act does not envisage awarding of a job contract to a person at a free.

13. There is also another aspect of the matter. If an agent is appointed at a free, the mode and manner of his doing the job cannot be controlled by the Municipality. The agent will be free to choose his establishment. That, in effect, will mean persons who are unknown and unauthorised by the Municipality can be vested with the statutory rights of collecting materials and making the valuation. Such persons will not be accountable either to the Municipality or to the rate-payers or to the State Government for their activities. u/s 135 the assessor or any person authorized by him in writing "may enter, inspect and measure any such holding at any time between sun rise and sun set". The Court should not readily accede to an interpretation which will enable persons unknown and unauthorised by the Municipality or the Government to freely enter into private houses at any time of the day even when such persons will not be accountable either to the Municipality or to the Government for their activities. In my opinion, there is a good reason for the statutory safeguard of obtaining approval for the appointment of not only the assessor but also of his establishment.

14. Lastly, it should be noted that apart from its dictionary meaning, the word "Salary" has been interpreted by the Supreme Court in the case of *Mohmedalli and Others Vs. Union of India (UOI)* and *Another*, to mean payment to an employee whose period of engagement is more or less permanent. In that case, the Supreme Court observed at page 985 of the report:

Both "salary" and "wages" are emoluments paid to an employee of whom salary is remuneration paid to an employee whose period of engagement is more or less permanent in character, for other than manual or relatively unskilled labour....The Act itself has not made any distinction between "wages" and "salary". Both may be paid weekly, fortnightly or monthly, though remuneration for the day's work is not ordinarily termed "salary".

Latham C.J. in a Australian case explained the meaning of "Salary" in the following words:

Where the engagement is for a period, is permanent or substantially permanent in character and is for other than manual or relatively unskilled labour, the remuneration is generally called a salary". (*Federal Commissioner in Taxation Vs. Thompson (J. Walter) (Ans) Pty. Ltd.* 69 C.L.R. 227)

In my opinion, having regard to the meaning of the word "salary" and also bearing in mind the scheme of the Act, the contention of the writ petitioner that an independent agent cannot be given the job of preparing the valuation list in the manner that it has been done in this case must be upheld. Since this is a question of jurisdiction, there cannot be any question of waiver or estoppel in this case. This is not a case of mere irregularity. Therefore, the entire valuation also of his establishment.

15. The mode and the manner in which the valuation list has been prepared also does not appear to be in conformity with the requirement of the Act. The appointment of the assessor in this case was approved by the State Government as dated on the 29th July, 1980. It is not clear when the job of preparation of the valuation list was actually taken up by the assessor. But it appears that the valuation list was prepared by the assessor by 21st December, 1980 as will appear from the report of the assessor, a copy of which was handed up in Court and is kept as part of the record of this proceeding. It also appears that both the valuation list and the assessment list were submitted to the Municipality by 31st December, 1980 which was the last date for this purpose. In the short span of less than five months the assessor completed the valuation of 14,358 holdings. It has been stated in course of the hearing that there was no filed record and the earlier valuation list which was prepared illegally and which was quashed by the judgment and order dated March 3, 1978 passed by Anil Kumar Sen and B.C. Chakraborty JJ. has been treated as filed book. Notices in Form A were issued to all the owners of the holdings for submitting particulars in B Form prescribed under the Act. Returns in B Forms were submitted. It has been stated in the report of the assessor that returns were verified and Column No. 16 was filled up and valuation was entered in the valuation list.

16. A specimen copy of Form B was handed up in Court. This is numbered 258 and was in respect of 12, M.M. Ghosh Street and the notice in Form A had been addressed to Salil Bchari Mondal and others. Column No. 16 of the Form B in which the Assessor is required to give "Assessor's remarks showing the annual value determined and the basis of determination thereof together with brief reasons why the assessment differs if it does from the assessment of similar property in the same area, street, or part of street" has been filled up by affixing a rubber stamp to the following effect:

Assessed u/s. 28(1) of the B.M. Act, 1932 for A. V. as per valuation list taking into consideration the nature of the building and importance and other facilities of the locality.

* As per valuation List cum field book.

Instead of signature, a rubber stamp has been affixed bearing a facsimile of the signature of the Assessor. In my opinion, there is sufficient internal evidence which has been brought on record to show that not only the assessments were done post-haste but were also done in a very improper manner. Instead of "showing the annual value determined", the Assessor has merely mentioned the section and valuation list. The basis of determination of the annual value of one holding may differ from another holding. The statutory duty of filling up Column 16 cannot be distinguished by putting mechanically a rubber stamp on each and every return that has been submitted and the duty of affixing the signature cannot also be discharged by merely putting a rubber stamp. In this connection, it may be noted that in the rules prescribing the procedure to be followed by the Assessor, it has been laid down specifically in Rule 5 that notice, in Form A that

has to be given under Rule 3" shall be signed by or shall bear a facsimile of the signature of the Assessor". But the determination of annual value made by the Assessor in Column No. 16, of Form B must be authenticated by the signature of the Assessor and the return from clearly requires the signature of the Assessor. In this connection the prescribed Form B should be compared with the prescribed Form A. In the prescribed Form A at the bottom it is printed "Assessor" in the prescribed Form B, what is required in "Signature of the Assessor".

17. In my opinion, these are not merely technical difficulties of this case. These details go to show that the assessment has not been done by proper application of mind. It is not clear who put the rubber stamp in Column No. 16. There is no indication that the Assessor has anything to do with the filing up of Column No. 16 of the Form B.

18. It was argued on behalf of the writ petitioners that it was not humanly possible to issue notices to nearly 14,000 people and to examine in detail each and every return and complete the assessments within the short span of less than five months. It has to be borne in mind in this case that the Assessor was not empowered to set up an establishment of his own for doing this job. In my opinion, the assessments have not been made properly at all. I have not been told the manner and mode of doing the valuation. The details were not furnished in Court. The earlier valuation list which was quashed by this Court has been used as the basis of the present valuation in spite of its defects.

19. In my opinion, the valuation list must be quashed.

20. Before I part with this case, I must note one point that cropped up in course of the arguments. Some of the writ petitioners has applied for review of the valuation list and review was done granting some relief to the writ petitioners. The question was raised that the review orders have not been challenged. It was also argued that having taken recourse to the statutory remedy, the ratepayers could not come by way of a writ petition to this Court. Reliance was also placed on section 92 of the Act for the proposition that a valuation list should not be upset because of some minor irregularities. The question in this case is, however, one of jurisdiction. If the contentions of the writ petitioners are correct, then the preparation of the entire valuation list is without jurisdiction and all the assessments have to be quashed on that ground. In this case, two conflicting principles are involved. The Court will not readily upset valuation list prepared after many years on the basis of some minor irregularities. But, on the other hand, the individual interest of the rate-payers must be protected and should not be discarded altogether in the interest of collection of higher revenue. It must appear to the Court that a duly authorised person with duly authorised establishment has prepared a valuation list after proper enquiries and after taking into consideration all the necessary statutory requirements. Merely recording in each and every case that the valuation was done after taking, into consideration the nature of the building and importance of the area and other facilities of the locality with the aid of a rubber stamp will not be enough. It must

appear to the Court that proper enquiry was made as to the age of the building, the area, rent available in the area availability, of water supply and electricity, whether the property is a tenanted property or not and similar other factors which can never be exhaustively enumerated. In the facts of this case, it is very difficult to accept that the valuation was done properly. In column No. 16 of form B not only the valuation order but also the signature was rubber stamped. The amount of valuation was not even mentioned. It is not known who affixed the rubber stamp. The Assessor did not initial the rubber stamp that was put to indicate that it was done either by him or under his authority. In my opinion, the statutory duty of making a valuation has been done in a most perfunctory manner. The statutory duty has not been discharged properly at all. I am quite aware of the need of the Municipality to raise larger funds. I am conscious of the fact that for a large number of years the quinquennial valuation has not been done. But for the reasons stated hereinabove, I must hold that the valuation in this case was done improperly.

21. This writ petition must succeed and there will be orders in terms of prayers (a) and (c). I make it clear that this order will not prevent the Respondents from making a proper valuation in accordance with law.

In the facts and circumstances of this case, there will be no order as to costs.