

(2004) 06 GUJ CK 0036

In the Gujarat High Court

Case No : Special Civil Application No. 13864 of 2003

Somabhai Maganbhai Darji

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 21-06-2004

Acts Referred:

Constitution of India, 1950 — Article 226
Gujarat Education Cess Act, 1962 — Section 12, 15, 15(1)
Gujarat Municipalities Act, 1963 — Section 104, 105, 108(2), 108(3)

Citation : AIR 2004 Guj 356 : (2004) 3 GLR 2287

Hon'ble Judges : M.S. Shah, J;D.A. Mehta, J

Bench : Division Bench

Advocate : A.J. Shastri, for Petitioner No. 1-11, for the Appellant; S.N. Shelat, Advocate General and Zubin F. Bharda, for the Respondent

Judgement

M.S. Shah, J.—What is challenged in this petition under Article 226 of the Constitution is order dated 31/5/2003 passed by the State Government confirming the order dated 17/4/2002 passed by the Collector, Kheda upholding the action of the Municipality in revising the assessment for the purpose of levy and collection of property tax, water tax, drainage tax and education cess on the basis of the resolutions passed by the Administrator of the Dakor Municipal Borough on 30/3/2001 at Annexure "A" (colly.).

2. By resolution No.91 dated 30/3/2001 the Administrator of the Municipal Borough resolved to follow necessary legal procedure for revision of assessment at the interval of four years as per the provisions of Section 105 of the Gujarat Municipalities Act, 1964 (hereinafter referred to as "the Act"). By resolution No.92 the Administrator resolved to collect education cess as stipulated in Section 12 of the Gujarat Education Cess Act, 1962 (hereinafter referred to as the "Cess Act"). By resolution No.97 the Administrator resolved to levy and collect water tax at a rate higher than erstwhile rate. By resolution No.98 the Administrator resolved to levy and collect drainage tax and special drainage tax at a rate higher than erstwhile rates.

There is no dispute about the fact that the State Government u/s 104 of the Act granted sanction for increase in the rates of water tax and drainage tax. There is no increase in the rates of property tax.

Pursuant to the aforesaid resolution No.30/3/2001 the municipal borough undertook the revision of assessment and made upward revision of valuation of several properties. A number of persons lodged objections against such upward revision of assessment of the respective parties. The municipality appointed two officers as Appellate Officers for hearing and deciding such objections as contemplated by the provisions of sub-section (2) & (3) of Section 108 of the Act. The present petitioners are the persons who claim to have lodged objections against upward revision assessment and whose objections have been turned down by the municipality.

3. Mr. A. J. Shastri, learned Counsel for the petitioners has submitted that the State Government has granted approval for increasing rates of water tax and drainage tax but the State Government has not granted any approval for levy of education cess. Hence, the levy of education cess by the respondent municipal borough is without any authority of law. It is further submitted that the respondents have levied education cess without giving any opportunity of hearing to the petitioners and other residents of Dakor. Thirdly, it is contended that retrospective levy and collection of tax before the sanction of the Collector is illegal.

4. So far as the first contention is concerned, the same is thoroughly misconceived because in view of the provisions of the Gujarat Education Cess Act, 1962, tax shall be levied and collected with effect from the 1st day of April, 1970 on lands and buildings situated in an urban area at the rates stipulated in Section 12. Sub-clauses (a) and (b) lay down the formula containing rates of tax depending on the annual letting value of the concerned properties. Rates of education cess as contained in resolution no.92 dated 30/3/2001 are exactly the same as provided in the aforesaid provisions of Section 12 of the Education Cess Act. Since Section 15 of the Cess Act itself requires the local authority to levy and collect the education cess on the properties at the rates stipulated in Section 12 and there is no other provision in the Education Cess Act requiring any approval of the State Government before a municipal borough starts levying and collecting education cess, there is no substance whatsoever in the first contention raised on behalf of the petitioner.

5. Coming to the second contention -

5.1 Similarly there is no provision in the Education Cess Act or in the Gujarat Municipalities Act, 1963 requiring municipal borough to afford any hearing to any resident before levying and collecting education cess. Therefore the contention that the hearing was required to be afforded is also misconceived. As per settled legal position, before exercising any legislative power like imposing any tax, there is no duty cast on any authority to afford hearing to the persons affected or

likely to be affected by such levy of tax.

5.2 However, in this connection, Mr. Shastri has heavily relied on the judgment of a learned Single Judge of this Court in Special Civil Application No.8027 of 2001. In the said judgment the learned Single Judge has placed reliance upon the provisions of Rule 3 of the Gujarat Education Cess Rules, 1962 for the purpose of holding that personal hearing was required to be given before passing of resolution by a municipal borough for levying and collecting the education cess.

5.3 A bare perusal of Rule 3 makes it clear that the same is applicable where a direction is issued under the Proviso to clauses (a) & (b) of Section 15 of the Education Cess Act. The Section provides that the tax u/s 12 of the Act shall be collected in urban areas by the respective local authorities concerned; Proviso to the said clauses reads as under :-

"Provided that where a local authority is not for the time being levying a property tax or where a local authority has made a default in the collection of the tax or payment thereof to the State Government, the State Government may by order direct that the tax shall be collected by the Collector".

Thus, if the local authority commits default in levying and/or collecting the education cess as mandated u/s 12 of the Education Cess Act, the State Government may direct the Collector to collect the education cess and where such a direction is issued for collecting education cess by Collector, then only the provisions of Rule 3 of the Gujarat Education Cess Rules would apply. It appears that provisions of Section 15 of the Education Cess Act were not brought to the notice of the learned Single Judge. May be the Talod municipal borough in that case might have committed default in levying and/or collecting education cess and a direction might have been issued under clause (b) of Section 15(1) of the Education Cess Act. Be that as it may, in our considered view the provisions of Rule 3 do not apply where the municipal borough itself is levying the property tax and, therefore, Section 12 of Education Cess Act would automatically apply.

6. As regards the last contention about retrospective levy and collection of water tax and drainage tax, it is clear that the Administrator had proposed increase in the rates of water tax and drainage tax by resolution dated 30/3/2001 with effect from 1/4/2001. The State Government took some time to consider and decide the municipal borough's proposal for increase in the rate of tax and the State Government ultimately sanctioned increase in the rates of water tax, and drainage tax on 21/1/2002. Since the proposal was already made by the municipal borough on 30/3/2001, the sanction of the State Government would be effective from the date on which the municipal borough had prayed to give effect to increase in rates of taxes. The proposal did not contain any retrospective effect to be given and, therefore, it cannot be said that retrospective effect has been given.

7. In view of the above discussion, there is no substance in any of the contentions with regard to the challenge to the resolutions dated 30/3/2001. The

petition is, therefore, rejected and notice is discharged.

However, if any of the petitioners have any grievance regarding assessment of the annual letting value of their individual properties, it will be open to the petitioners to avail of the remedies in this behalf.