

(1955) 11 AHC CK 0012
In the Allahabad High Court
Case No : Special Appeal No. 20 of 1935

Sri Kedar Nath and Sri Khadim Husain	APPELLANT
Vs	
The Municipal Board	RESPONDENT

Date of Decision : 24-11-1955

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1956) 26 AWR 141

Hon'ble Judges : Mootham, C.J;Agarwala, J

Bench : Division Bench

Advocate : S.C. Khare, for the Appellant; Maharaj Bahadur Lal and Bajrang Bahadur Lal, for the Respondent

Final Decision : Allowed

Judgement

Mootham, C.J.—This is an appeal from an order of a learned single Judge dated the 7th January, 1955, dismissing a petition under Article 226 of the Constitution.

2. The Appellants are inhabitants of the Municipality of Gorakhpur. The Gorakhpur Municipal Board was superseded some years ago and an Administrator was appointed by the Provincial Government to manage the affairs of the Board. A house tax was imposed by the Administrator with effect from the 1st October, 1950, and the Appellants challenge the validity of that tax. They contend that the first intimation they had that the tax had in fact been imposed was the receipt of a demand early in 1953 for the payment of tax for the preceding two and a half years, and they filed the petition out of which this appeal arises on the 24th April, 1953. The petition was dismissed on the ground that there had been a substantial compliance with the provisions of the United Provinces Municipalities Act, 1916, regulating the procedure to be followed when a tax was imposed.

3. This procedure is laid down in Sections 131 to 135 of the Act. It is a somewhat complicated procedure and it seems desirable to restate the salient features. It

must first however be stated that it is common ground in the present case that at all, material times Gorakhpur was not a "city" within the meaning of the Municipalities Act, that the "prescribed authority" was the Commissioner, and that the State Government had delegated to the Commissioner its powers u/s 296 to make rules uunder Clauses (a), (b) and (c) of Section 153.

4. Sections 131 to 135 require that

(a) the Board must first by a special resolution frame proposals specifying the nature of the tax, the persons to be made liable and such other particulars as are mentioned in Sub-section (1) of Section 131.

(b) The Board must also prepare a draft of the rules which it desires the State Government to make with regard to the assessment and collection of the tax and other matters referred to in Section 153 [Section 131(2)].

(c) The Board must then publish the proposals which it has framed, and the draft rules which it desires the State Government to make, in the form prescribed in Schedule III to the Act. The object of publication is to afford the inhabitants of the Municipality an opportunity of objecting to the proposals and the draft rules, and notice has to be published in the manner laid down in Section 94 [Section 131(3)].

(d) The Board has then to take into consideration any objections which are submitted, and if it modifies its proposals it must republish them and, if necessary, revise draft rules, and again invite objection"s. When the proposals are finally settled the Board must submit then together with the objections, if any, to the Commissioner (Section 132).

(e) The Commissioner may then either refuse to sanction the proposals or saction them with or without modification provided there is no increase in the amount of tax to be imposed [Section 133(1)].

(f) After the proposals have been sanctioned it becomes the duty of the State Government to take into consideration the draft rules framed by the Board, and to make, u/s 296 of the Act, such rules in respect of the tax as it considers necessary [Section 134(1)].

(g) When the State Government has made the necessary rules, the order of the Commissioner sanctioning the proposals, and a copy of the rules, must be sent to the Board and the latter shall then by a special resolution direct the imposition of the tax from a date to be specified in the resolution [Section 134(2)].

(h) A copy of the last mentioned resolution has then to be forwarded to the Commissioner who is required to notify in the official Gazette the imposition of the tax from the appointed date. Such notification is an essential condition to the imposition of the tax and it is also conclusive proof that the tax has been imposed in accordance with the provisions of the Act (Section 135).

5. These in outline are the steps which the Act requires to be taken, but it has

also to be observed that the provision in Section 134(1) requiring the State Government to proceed u/s 296 to make such rules in respect of the tax as it considers necessary brings into play the provisions of Section 300 of the Act. Sub-section (1) of that section provides that the power of the State Government to make rules is subject to the condition of the rules being made after previous publication and of their not taking effect until they have been published in the official Gazette. The expression "previous publication" means publication in the manner laid down in Section 23 of the United Provinces General Clauses Act, 1904. It follows therefore that there not only has to be a publication by the Board of the draft rules prepared by it u/s 133(3), but there must also be a publication by the State Government (a) of the draft rules made by it and inviting objections (this is the "previous publication"), and (b) of the rules as finally approved by it.

6. In a case such as the present where the Municipal Board has been superseded by an Administrator, the provisions of Sections 131 to 135 will continue to prescribe the procedure which must be followed when a tax is proposed to be imposed with this modification, that the place of a special resolution of the Board is taken by an order of the Administrator.

7. The Appellants contend, first, that there was no publication of the proposals and the rules as required by Section 131(3) and that they therefore had no opportunity to object; secondly, that no rules were even made by the State Government as required by Section 134(1), and thirdly that the Commissioner had never notified the imposition of the tax as required by Section 135(2).

8. It is somewhat difficult to ascertain what was the procedure actually followed in the case before us as the affidavit filed on behalf of the Administrator is a very unsatisfactory document. An affidavit is not a pleading and should state relevant facts and nothing else. A statement in the affidavit that "Paras 4 and 5 are wrong and are not admitted" is of little use to the Court which desires to know, if the facts stated by the Petitioner are wrong, what are the true facts. This Court has also on numerous occasions drawn attention to the well established rule, stated explicitly in Rule 1(2) of Ch. XXII of the Rules of Court, that in writ petitions, as indeed in all proceedings other than interlocutory proceedings, the contents of an affidavit must be restricted to a statement of facts which are within the deponent's own knowledge.

9. Now it is common ground that a notice in Hindi purporting to be under Sections 153, 140(1)(d) and 151(2) of the Municipalities Act was published by the Administrator in the Aaj newspaper dated the 11th April, 1950, and that a similar notice in English purporting to be u/s 300 of the Act was published by the Commissioner in the official Gazette on the 5th August, 1950; and that there was no other publication.

10. In each case the notice purports to be of rules for the assessment and collection of house tax, and (in the English version) it is headed "Rules". A

number of rules are set out and then comes a paragraph headed "Penalty". Finally there is a paragraph containing particulars of the proposed tax. There is no separate heading to this paragraph in the first (Hindi) notice, but in the second (English) notice it is entitled "Description of tax".

11. Learned Counsel for the Respondents contends that the first publication was a sufficient compliance with the provisions of Section 131(3) and the second with the provisions of Sections 134(1) and 135(2). I am unable to accept this submission. In the first place the first publication does not purport to be u/s 131(3). It is true that what appear to be the proposals for the imposition of the tax are included at the end of the notice, but there is nothing at the commencement of the notice to suggest that it deals with anything but rules for the assessment and collection of tax, and this impression is in my opinion confirmed by the reference to three sections which deal respectively with rules as to collection and assessment, the definition of annual value, and remission of tax by reason of non-occupation. There is further the absence of the requisite notice in the form prescribed in Schedule III. The use of that form is clearly intended to ensure that the inhabitants of the Municipality may have notice of the proposal to impose a tax, and an opportunity of objecting to the proposed tax or to the draft rules copies of which are required to be appended to the notice in that order.

12. In the circumstances I find it impossible to hold that the notice published on the 11th April, 1950, was such a notice as is required by Section 131(3), and it is therefore unnecessary to determine whether publication of that notice in the Aaj--a newspaper not published in Gorakhpur was a sufficient compliance with the provisions of the Sub-section.

13. Upon this view of the matter it would be unnecessary to consider any further point were it not for the argument of learned Counsel that u/s 135(3) the second notice published on the 5th August, 1950, was conclusive proof that tax had been imposed in accordance with the provisions of the Act. As I have already pointed out Section 134(1), read with Sections 296 and 300, imposes on the State Government the duty (which in this case has been delegated to the Commissioner) of making rules after previous publication, and it is only when that has been done and the other steps have been taken for which provision is made in Sections 134(2) and 135(1) that the Commissioner can notify in the Gazette the imposition of the tax from the appointed date.

14. Now it is not suggested that there has been any publication or previous publication of the rules which have to be made u/s 134 read with Section 300 unless it is by means of the Notification of the 5th August, 1950, and I entertain no doubt that that Notification was published, as it says it was, in purported compliance with the provisions of Section 300. In my opinion it was not, and was not intended to be, a Notification u/s 135(2).

15. In my judgment therefore there has been, with all due deference to the learned single judge who thought otherwise, a substantial failure on the part of

the Administrator to comply with the provisions of the Act with regard to the imposition of this tax. It has been suggested that the first Appellant was aware in October, 1951 that a tax had been imposed and that there was undue delay on his part in presenting the Petition. The facts with regard to this matter are somewhat obscure, but it is I think unnecessary to consider them further as no such allegation is made in respect of the second Appellant.

16. For the reasons I have stated I would allow this appeal with costs in both courts. The costs in this Court I would assess at Rs. 200/-.

Agarwala, J.

17. I agree.