
(1919) 11 BOM CK 0020
In the Bombay High Court
Case No : Second Appeal No. 527 of 1917

The Ahmedabad Municipality

APPELLANT

Vs

The Gujarat Ginning and Manufacturing Co. Ltd.

RESPONDENT

Date of Decision : 26-11-1919

Acts Referred:

Bombay District Municipal Act, 1901 — Section 59(b)(vi)

Citation : (1920) 22 BOMLR 747 : 57 Ind. Cas. 433

Hon'ble Judges : Norman Macleod, J;Heaton, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Norman Macleod, Kt., C.J.—The plaintiff-company, which carries on business in Ahmedabad, sued to recover from the Committee of Management appointed by Government for the Ahmedabad Municipality Rs. 4, 709-9-0, which was the amount that they had paid to the defendants as a special sanitary cess directed to be paid by the defendants, which it was alleged the defendants had no right whatever to levy. The facts for the purpose of the case are as follows. The Municipality have provided a main sewer along the road on which the plaintiffs' premises abut. The plaintiffs have on their premises private latrines for their operatives, and previous to the period in question in this suit, they cleansed those latrines by manual labour. Then it appeared to them that it would be more convenient if they connected their latrines with the municipal sewer, and they were allowed to do so. The plaintiffs were thereafter called upon to pay a special sanitary cess which the defendants claimed to be entitled to levy u/s 59(b) (vi) of the Bombay District Municipalities Act. That entitles the Municipality to levy "a special sanitary cess upon private latrines, premises or compounds cleansed by municipal agency, after notice given as hereinafter required." Then there is a proviso (b) "no special sanitary cess shall be leviable in respect of any private latrines, premises or compounds unless and until the Municipality have (i) made provision for the cleansing thereof by manual labour, or for conducting or

receiving the sewage thereof into municipal sewers, and (ii) issued either severally to the persons to be charged, or generally to the inhabitants of the district or part of the district to be charged with such cess, one month's notice of the intention of the Municipality to perform such cleansing and to levy such cess."

2. Apparently no objection was taken at the time to the levying of the special sanitary cess. The trial Court held that the plaintiff company were not legally liable for the tax, for they had at their own expense connected their flushing privies with the Municipal main drainage gutter, while the Municipality did not by manual labour remove the night soil from the plaintiffs' privies, nor had it made arrangements for receiving and conducting the sewage into the municipal sewers. The learned Judge, therefore, allowed the plaintiffs' claim on the ground apparently that if the Municipality did not make the connection between the main sewer and the private latrines, they could not charge the special sanitary cess.

3. In First Appeal the same view was taken by the District Judge. He said "the grounds on which a special sanitary cess can be levied are stated in Section 59 and the ground there given is not the use of the Municipal sewer or in sharing in the benefits of the sewage farm or pumping system, but the making provision by the Municipality for conducting or receiving the sewage into Municipal sewers. What then entitles the Municipality to demand a special sanitary cess is not the construction of sewers in the neighbourhood of the premises, nor the permission to the property owner to discharge his sewage into the Municipal sewers, but the construction of a branch system of drainage of some sort so that the conducting or receiving of the private drainage may be effected at the cost of the Municipality. I imagine that a very little work would have been sufficient." So that the learned District Judge's view was this. There is a main sewer. It is not sufficient if the Municipality provide the sewer. They must incur some of the expenses and do some of the work-necessary for connecting the latrines to the sewer. If they pay for a very little, a foot or two of pipe-line, so as to connect the plaintiffs' latrines with the main sewer, that would be sufficient in his opinion to entitle the Municipality to levy the cess. But as the whole of the expenses of connection were made by the plaintiffs he dismissed the appeal.

4. In Second Appeal the real point at issue was taken, namely, that one must look first to (6) (vi) of Section 59 in order to determine when the Municipality can in the first instance levy the special sanitary cess. It was argued that (b) (vi) shows that it cannot be levied upon private latrines or premises or compounds unless they are cleansed by municipal agency; and then even if they are cleansed by municipal agency, still the cess cannot be levied unless the Municipality has made provision for the cleansing of private latrines or premises by manual labour, or for conducting or receiving the sewage thereof into the municipal sewers. It was further argued that the plaintiffs' latrines are not cleansed by municipal agency, that the Municipal water laid on to the latrines is paid for by the plaintiffs, and , that therefore, it is the plaintiffs who cleanse the latrines and not the Municipality. Therefore there is no necessity to look to the

proviso as the conditions which bring the proviso into operation do not exist. I see that my brother Shah, before whom this Second Appeal was originally argued with ray brother Heaton, said at p. 2 of the printed book; "Assuming the facts alleged by the plaintiff in the argument before us in his favour, on reading Clause (vi) and the proviso (b) (i) of Section 59 it is clear that where the Municipality make provision for the cleansing of latrines by manual labour, or for conducting or receiving the sewage thereof into their sewers where the drainage system is in operation the latrines are cleansed by municipal agency within the meaning of Clause (vi). The fact that the owner of the latrines has to make some arrangements to pass on the sewage from the latrines into the connecting sewers and then into the municipal sewers makes no difference." Bat the case was remanded for the trial of an issue whether, apart from supplying sewers as part of the drainage system, and apart from maintaining that system as a means of "cleansing the private latrines, the Municipality in fact j had made any provision for conducting or receiving the sewage of the plaintiffs" latrines into the municipal sewers during the years in question. That issue is found by the District Judge in" the negative. The learned District Judge has found that none of the work of the connection between the sewer and the plaintiffs" latrines was done by the Municipality, not even the branch connection, which is sometimes constructed by the Municipality. When that is done the owner has to pay a tax of 8 annas a year. In the remand judgment Mr. Justice Shah says: "At this stage I do not desire to express any opinion on the question whether by providing a general system of drainage and by putting up Municipal sewers near the premises of the plaintiff the Municipality can be said to have made provision for receiving the sewage of the latrines into the Municipal sewers. That is a question, which must be considered, if necessary, after the finding on the question of fact is received/"

5. It seems to me that although the owner of private premises with private latrines may pay the whole of the expense of the connection between his premises and the manhole, still it can be said that the Municipality have made provision for the receiving ot sewage from his private latrines by having laid down the sewer, with the manholes at intervals, with which connections are made with private premises. It seems to me that the making of the connection consisting of a1 few feet of pipe-line from the manhole to the limit of the owner"s premises is a very minor matter, and if the Municipality provide the sewer and the manhole, then they have done what is required of them by the proviso (b) (i). It follows then that they are entitled to charge a special sanitary cess, provided it can be said that these private latrines on the plaintiffs" premises are cleansed by municipal agency. If the sew. r was not in position, as it is, then the private latrines could not be cleansed except by manual labour. It is true that by another tax the plaintiff pays for the municipal water which carries the sewage along the connecting pipe down to the sewer, but it cannot be said that these private latrines are cleansed;" not-by municipal agency, but by the agency of the owner. I think it was clearly the intention of the Act that if the

Municipality provide a sewer for receiving the sewage, and the owner of private latrines connects them with the sewer and then the Municipality provides the water, although it may be at an additional cost to the owner, , for carrying the sewage from the latrines to the sewer, the latrines are being cleansed by municipal agency, and the Municipality are entitled to levy a special sanitary cess. In my opinion, therefore, these appeals should be allowed and the plaintiffs' suits dismissed with costs throughout. The cross-objections are disallowed with costs.

Heaton, J.

6. I need not restate the facts and arguments which appear fully in the judgments of this Court in the case which was remanded, and in the judgment of my Lord the Chief Justice which has just been delivered. When the Bench first heard the case, and I was a member of that Bench, we found that we could not arrive at any satisfactory decision because the facts were far too vague. The facts have now been made definite. The question is whether the plaintiff is or is not liable for a special sanitary cess. His liability depends upon the fulfilment of two conditions. First of all the private latrines must be cleansed by municipal agency. Taking the facts which are either admitted, "or stated in the remand judgment of the District Judge, I hold that these latrines are cleansed by municipal agency. They are cleansed by the combined operation of the municipal water system and the municipal drainage system. That is what actually happens in practice. They are flushed with water which comes from the municipal system, and that water carries away what is required to be carried away through the drainage pipes into the main sewer. The municipal water system is organised and maintained by municipal agency. The general drainage system is organised and maintained by municipal agency also, and, therefore, I think that it can with certainty be said that, as things now stand, these latrines are cleansed by municipal agency and not by private agency.

7. The second condition is that the Municipality shall have made provision for conducting or for receiving the sewage into the municipal sewers from the private latrines. They certainly have not made provision for conducting the sewage. The whole" of that has been done by the private owners, the plaintiffs. But I hold that the Municipality have made provision for receiving the sewage. They have done it in this way. They have first of all provided a general sewage system. That of course is essential. Without that there can be no provision for receiving the sewage. But it does not follow that because there is a general system, that therefore, there is provision for receiving the sewage from any particular private premises. What has happened appears on the facts as stated by the District Judge. You cannot receive the sewage at every point into the main sewer. You have to make special provision for receiving it at the point at which you wish to receive it, and that is done in Ahmedabad by providing a manhole and the necessary facilities for connecting the subsidiary pipes with the main sewer. The manhole has been provided in such a way that the plaintiffs were able

to connect the subsidiary sewer or drain, which they had made, directly with the main sewer. Seeing that the Municipality not only provided the general system including the main sewer, but also the manhole and the facilities which made it possible for the plaintiffs to connect up his subsidiary system with the main system, I think that they had made provision for receiving the sewage. I therefore agree that the appeal should be allowed and that the claim should be dismissed with costs throughout.