

(1958) 03 AHC CK 0026
In the Allahabad High Court
Case No : Sp. A. No. 444 of 1956

The Dist. Board Allahabad and another	APPELLANT
Vs	
Messrs. Barnett and Company, Allahabad	RESPONDENT

Date of Decision : 03-03-1958

Acts Referred:

Uttar Pradesh District Boards Act, 1922 — Section 136

Citation : (1958) 28 AWR 494

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

Bench : Division Bench

Advocate : Sri Krishna Shanker, for the Appellant; Sri S.N. Kacker, for the Respondent

Final Decision : Allowed

Judgement

Mootham, C.J.—This is an appeal from an order of a learned Judge dated 27-9-1955. The Appellants are the District Board of Allahabad and the Board's Assessing Officer; the Respondent is a catering firm in Allahabad. The Respondent firm holds a contract from the Director General, Civil Aviation, to run a restaurant at the Bamrauli Airport which is within the limits of the Appellant Board. In respect of the year 1950-51 the Board assessed the Respondent firm in the sum of Rs. 100 as circumstances and property tax, and that amount was paid. Payment of a similar amount was demanded by the Board in each of the three succeeding years. These amounts were not paid and on 16-12-1954, the Board sent a notice to the Respondent from calling upon it to pay the sum of Rs. 400 as circumstances and property tax in respect of the year 1951-52, 1952-53, 1953 54 and 1954-55. The firm then objected to the payment of this amount on the ground that the Bamrauli air port had ceased to be used as a landing ground by the various air services from 14-7-1951, and that from that time onwards the receipts from the firm's restaurant had been negligible. The firm's objection was however disregarded by the Board which threatened coercive measures if the tax demanded was not paid by 25-3-1955. The firm thereupon filed a petition u/Art.

226 of the Constitution challenging the validity of the notice served upon it on the ground that it had not had an opportunity of showing cause against payment of the amount sought to be recovered. That contention found favour with the learned Judge who directed the issue of a writ in the nature of Mandamus requiring the Board not to issue any warrant of attachment of the firm's properties until it had considered the objections sent to it by the Respondent firm.

2. In this Court it is contended on behalf of the Appellants that the Respondent firm had had an earlier opportunity of objecting to the assessment, and that not having taken advantage of that opportunity it was not entitled to raise an objection to the amount of the tax at the time when the latter was sought to be recovered.

3. Now the provision with regard to taxation by a District Board are to be found in Chapters VI and VII of the UP District Boards Act, 1922. S. 108 provides that the Board may continue a tax already imposed on persons assessed to their circumstances and property subject to the conditions prescribed in S. 114. S. 123 then provides that various matters including the assessment and collection of taxes shall be governed by rules.

4. Under the rules made by the Appellant Board an assessment committee is required each year to prepare an assessment list. When the list is ready the committee must give public notice of the place where the list or a copy thereof may be inspected, and it must also give notice of the date, not less than one month thereafter, when it will proceed to consider objections to the assessment. In addition to the public notice the rules require that in all cases in which any person is for the first time assessed, or the amount of his assessment is increased, that notice must be served upon him personally. If an objection is made it shall be heard by the assessment committee which, after affording the objector an opportunity of being heard will decide the objection and make such amendment as is necessary in the assessment list.

5. S. 128 of the Act makes provision for an appeal against an assessment, or any alteration of an assessment, under the circumstances and property tax to the District Magistrate or to such other officer as may be empowered by the State Government in that behalf. S. 133 requires the Board to present a bill to every person liable for the payment of the tax and u/s 134 every such bill must specify (a) the period for which, and the property, occupation, circumstances or thing in respect of which, the sum is claimed, (b) the liability or penalty enforceable in default of payment, and (c) the time within which an appeal may be preferred. S. 135 then enacts that if the sum of which an appeal has been presented is not paid within fifteen days a notice of demand shall issue. Then comes S. 136 which reads thus:

136. (1) If the person liable for the payment of the said sum does not, within 30 days from the service of such notice of demand, either-

(a) pay the sum demanded in the notice, or

(b) show cause to the satisfaction of the board, or of such officer as the board by regulation may appoint in this behalf, why he should not pay the same.

6. Such sum with all costs of the recovery may be recovered, under a warrant caused to be issued by the board in such form as the board may, by regulation, prescribe, by distress and sale of the movable property of the defaulter.

(2) Every warrant issued under this section shall be signed by the president of the board, or by an officer to whom the board has delegated its power by regulation.

7. The question raised in this appeal is whether upon the Assessee showing cause the Board can u/s modify or cancel the assessment. Upon a consideration of the provisions of the Act we are of opinion that the Board does not possess such power. S. 131 (1) of the Act provides that

No objection shall be taken to a valuation or assessment, nor shall the liability of a person to be assessed or taxed be questioned in any other manner than is provided in this Act or in the United Provinces Local Rates Act, 1914.

8. S. 128, as we have pointed out, makes provision for an appeal from an assessment or any alteration thereof to the authority mentioned in the section, and S. 131 (2) enacts that the order of the appellate authority shall be final. We think it to be clear therefore that the Board has no power u/s 136 to vary an assessment which has been confirmed or modified by the appellate authority; nor can we think it to have been the intention of the legislature that on cause being shown by an Assessee who has not appealed against his assessment the Board should u/s 136 exercise the powers of an appellate authority. The opening words of that section assume the liability of the Assessee for payment of the sum demanded, and it is to be observed not only that such power as is conferred by that section can be exercised by any officer of the Board whom the latter may by regulation appoint but the section does not empower the Board to revise the assessment list or to remit any part of the tax for which a demand has been made.

9. A consideration of the relevant provisions of the Act leads us therefore to the opinion, with all respect to the learned Judge, that the matters which can be raised before the Board under that section are only such matters as relate to the recovery from the Assessee of the tax for which he has been assessed. It will, for example be open to the Assessee to show that he should not pay the sum demanded on the ground that it had already been paid, or that the bill for which provision is made in S. 134 omitted to specify the time within which appeal could be preferred against the assessment.

10. For these reasons we are of opinion that this appeal must be allowed. We accordingly set aside the order of the learned Judge and dismiss the petition. The Appellants are entitled to their costs in both Courts.