

(1961) 11 GUJ CK 0004
In the Gujarat High Court

The Nadiad Borough Municipality

APPELLANT

Vs

Parikh Jitendra Kanaiyalal

RESPONDENT

Date of Decision : 15-11-1961

Acts Referred:

Bombay Municipal Boroughs Act, 1925 — Section 205, 206A, 73(1)(x)

Citation : (1962) 3 GLR 464

Hon'ble Judges : K.T. Desai, C.J;R.B. Mehta, J

Bench : Division Bench

Judgement

K.T. Desai, C.J.—This Second Appeal has been referred by Mr. Justice Bhagwati for decision by a Division Bench of this Court having

regard to the importance of some of the points involved in this appeal. The few facts necessary for the purpose of determining the points raised in

this appeal are as under:

2. The Nadiad Borough Municipality is the appellant in this appeal. On 5 May 1952 the municipality passed a resolution for levying Rs. 6/per

annum per tenement as general water rate from those who were not paying the special water rate. On 15th May 1952 notices were issued by the

municipality inviting objections to such levy. On 23rd July 1952 a resolution was passed by the municipality confirming the earlier resolution of 5th

May 1952. It was also resolved to obtain the requisite sanction of the Government to such levy. On 26th February 1953 the Government granted

its sanction to the levy of this rate upto 31st March 1954. On 27 February 1953 the municipality passed a resolution bringing these rates into force

from 10th April 1953. Within the limits of this municipality there were houses bearing Section Nos. 3396 to 3523 standing in the name of

Manordas Harakhchand Sheth. The joint Hindu family of which the respondent is the Karta was the owner of these houses. The municipality on 12

October 1953 served the respondent with a bill claiming a sum of Rs. 588/from the respondent as being the amount of general water-rate payable

by the respondent in connection with the aforesaid tenements. There being some mistake in calculation an amended bill was prepared and served

on the respondent in the month of December 1953 claiming a sum of Rs. 750 On 18th November 1953 the respondent served a notice upon the

municipality contending that the aforesaid levy was illegal and ultra vires the powers of the municipality The aforesaid notice was given having

regard to the provisions contained in Section 206A of the Bombay Municipal Boroughs Act 1925 This notice was addressed to the Nadiad

Borough Municipality and was sent by registered post to the proper address of the municipality and was delivered at the office of the municipality.

On 15th January 1954 the respondent instituted a suit being Regular Civil Suit No. 17 of 1954 in the Court of the Joint Civil Judge Junior Division

at Nadiad for a declaration that the resolution passed by the municipality dated 5th May 1959 was ultra vires the powers of the municipality and

that the procedure prescribed under the relevant section of the Municipal Boroughs Act had not been complied with before the aforesaid general

water rate was levied and for an injunction restraining the municipality from recovering the sum of Rs. 588/from the respondent. The learned judge

who heard the matter held that the aforesaid levy was ultra vires the powers and authority of the municipality and was illegal and void. He further

held that the respondent was not bound to pay the said sum of Rs. 588/or Rs. 780/and restrained the municipality from recovering the same. The

municipality thereupon preferred an appeal from the aforesaid decision in the Court of the District Judge of Kaira. The learned Extra Assistant

Judge of Kaira who heard the appeal held that the municipality had no power or authority to impose such a rate and that its action in doing so was

ultra vires illegal and without authority. The municipality being aggrieved by the aforesaid decision has preferred this second appeal.

3. It was strenuously urged by Mr. Patel the learned Advocate for the municipality flat the notice that had been served on the municipality on 18

November 1953 prior to the institution of the suit was not a legal notice in due compliance with the provisions of Section 206A of the aforesaid

Act. That section runs as under:

(1) No suit shall lie against a municipality or against any officer or servant of a municipality in respect of any act done in pursuance or execution or

intended execution of this Act or in respect of any alleged neglect or default in the execution of this Act

XX XX XX XX

(b) until the expiration of one month after notice in writing has been in the case of a municipality delivered or left at the municipal office x x x x x

and all such notices shall slate with reasonable particularity the cause of action and the name and place of abode of the intending plaintiff and of his

advocate pleader or agent if any for the purpose of the suit.

4. It was urged that the notice was bad inasmuch as the notice was addressed to The Nadiad Borough Municipality. It was argued that the notice

should have been addressed to the Nadiad Borough Municipality through its Chief Officer and as it was not addressed to the municipality through

its Chief Officer the notice was bad. Strong reliance was placed upon the provisions contained in Section 8 of the Act in this connection. That

section provides as under:

In every municipal borough there shall be a municipality and every such municipality shall be a body corporate. By the name of the... Borough

Municipality and shall have perpetual succession and a common seal and may sue and be sued in its corporate name through its Chief Officer.

5. It was urged that the notice should be addressed to the municipality in the same manner in which the municipality is required to be sued under

the provisions of Section 8. A reference was made to Section 30(2) of the Act where it has been laid down that the executive power for the

purpose of carrying out the provisions of the Act vests in the Chief Officer appointed u/s 33 subject as therein provided. It was urged that before a

suit is instituted against a municipality it is a requisite that the notice required to be given under the provisions of Section 206A should be brought to

the notice of the Chief Officer in whom the executive power for the purpose of carrying out the provisions of the Act vests and that if such a notice

was only addressed to the Borough Municipality and not to the Borough Municipality through its Chief Officer the notice may not reach the proper

quarters. The provisions contained in Section 206A are provisions which have to

be strictly complied with They provide a measure of safety and give time and opportunity to the municipality if it so desires to rectify the act neglect or default complained of. That section merely provides that such a notice should be delivered or left at the municipal office in case a suit is intended to be instituted against the municipality There is no provision contained in the Bombay Municipal Boroughs Act 1925 or in any other enactment prescribing the manner in which a municipality has to be addressed for the purpose of giving any notice to the municipality. Under the provisions contained in Section 8 of the Act every municipality of a municipal borough has been made a body corporate by the name of the particular Borough Municipality Being a body corporate a notice required to be addressed to the body corporate would be sufficiently addressed if it is addressed to that body corporate. It is not necessary for the purpose of the validity of such a notice that it should be addressed to a municipality by its corporate name through its Chief Officer. The requirement of Section 8 in connection with the institution of a suit against the municipality cannot be extended to the giving of a notice to the municipality.

6. Reference was made by the learned Advocate for the appellant to a decision reported in ILR (1951) Bombay 302 K.M.D. Thackersey & Co.

and Ors. v. The Poona City Municipality. In that case a notice under the provisions of Section 205 of the Bombay Municipal Boroughs Act 1925

as it then stood had been addressed to the octroi superintendent of the Poona City Municipality. That section then ran as under:

No person shall commence any suit against any municipality...for anything done or purported to have been done in pursuance of this Act without

giving to such municipality...two months previous notice in writing of the intended suit and of the cause thereof.

It was held in that case that the notice could not be regarded as a valid notice to the municipality. In the course of his judgment Mr. Justice

Rajadhyaksha in that case observes that as suits were filed against the municipality the notice u/s 206 of the Act ought to have been given to the

municipality. He has further observed as follows:

Under Sub-section (2) of Section 30 of the Act the executive power vests in the Chief Officer. It would therefore follow that the notice of a suit

must be given to the Chief Officer of ,v a municipality.

7. It was sufficient for the purpose of that case to lay down that a notice given to an octroi superintendent is not a notice given to the municipality.

Section 206A(b) now lays down in express terms that in the case of a municipality the notice must be delivered or left at the municipal office. It is

not necessary that the same should be delivered to the Chief Officer of the Municipality. A notice given to a municipality which is a corporation by

its corporate name cannot be treated as not given to the municipality merely because it is not given to the chief of officer of the municipality. A

notice addressed to the municipality itself and delivered or left at the municipal office as required by Section 206 A(b) cannot be considered to be

a bad notice.

8. Our attention was also called to a decision reported in 2 G.L.R. 325 in the case of Desai Kantilal Maganlal v. Nadiad Borough Municipality a

Nadiad. In that case it was held that a notice addressed to the municipality through its president and delivered to the president through a clerk of

the municipality was not a valid notice u/s 206 A of the Act. That was a case decided by a single judge of this Court. Mr. Justice Shelat in that

case has observed at page 327 as follows:

But as I have already said u/s 8 of the Act a municipality can sue or be sued only through its Chief Officer in whom under Sub-Section 2 of

Section 30 the executive power of the municipality vests. Therefore in its executive function the municipality acts in its day-to-day administration

through the Chief Officer. Since the Municipality can be sued through its Chief Officer only it would seem that all processes as also a notice

required to be served u/s 206A have to be served upon the municipality through its Chief Officer.

9. In view of the express provisions contained in Section 206A(b) about the notice to the municipality being delivered or left at the municipal office

it is difficult to accept the view that a notice would have to be served upon the municipality through its Chief Officer. In our view if the notice is duly

addressed to the municipality and is delivered or left at the municipal office there would be due compliance with the provisions of Section 206A.

10. Our attention was also drawn to a decision reported in Nathubhai Dhulaji and Others Vs. The Municipal Corporation, Bombay and Others, in

the case of Nathubhai Dhulaji a firm and Ors. v. The Municipal Corporation

Bomhus and Ors. That was a case under the provisions of the Bombay Municipal Corporator Act 1888 In that case a notice required to be given u/s 527 of that Act was addressed to the Municipal Commissioner. It was there held that the Municipal Commissioner was not a body corporate and that it was not sufficient compliance with Section 527 to give notice to the Municipal Commissioner. We may point out that the Bombay Municipal Corporation Act 1888 does not require that the Corporation shall be sued through any of its officer or officers. Section 5 of that Act lays down that the Corporation shall by the name of the Municipal Corporation of Greater Bombay be a body corporate...and by such name may sue and be sued.

11. In our view the notice in the present case has been duly addressed to the Nadiad Borough Municipality in its corporate name and has been duly delivered at the municipal office and the provisions of Section 206A have been duly complied with. The objections of the municipality to the validity of the notice therefore must fail.

12. Mr. M.I. Patel the learned Advocate for the municipality indicated to us that he wished to contend that the suit as instituted against the municipality was not a proper suit inasmuch as the municipality was described in the title of the suit as Nadiad Borough Municipality and not as Nadiad Borough Municipality through its Chief Officer. This point was not taken in the Court of first instance or before the District Court in appeal.

This point has not even been set out in the memo of appeal. We have not permitted the appellant Nadiad Borough Municipality to take such a point at this stage. If this point had been taken at an earlier stage the defect could have been easily rectified by an amendment.

13. The next point that has been urged before us is that the rule in question levying Rs. 6/as general water rate has been framed by the municipality within the ambit of the powers conferred upon the municipality u/s 58(j) and the provisions contained in Section 73(1)(x) of the Bombay Municipal Boroughs Act 1925 and that the same is not ultra Mires the municipality. Section 58(j) provides as follows:

A municipality shall make rules not inconsistent with this Act and may from time to time alter or rescind them

X X X

(J) prescribing the taxes to be levied in the municipal borough for municipal purposes the circumstances in which exemption will be allowed and the mode in which such taxes charges payments fees or rates shall be levied or recovered or be payable....

Section 73 (1)(x) provides as follows:

Subject to any general or special orders which the State Government may make in this behalf and to the provisions of sections 75 and 76 a

municipality may impose for the purposes of this Act any of the following taxes namely:

X X X

(x) a general water-rate or a special water-rate or both for water supplied by the municipality which may be imposed in the form of a rate assessed

on buildings and lands or in any other form including that of charges for such supply fixed in such mode or modes as shall be best adapted to the

varying circumstances of any class of cases or of any individual case;

The rule framed by the municipality in the present case runs as under:

Rs. 6/shall be levied per annum per tenement as general water rate from owner or tenant who do not pay special water rate.

Special water rate has been provided for by rule 16 of the rules framed by the municipality. Rule 16 runs as follows:

The special water rate shall be leviable in addition to the general water rate on all buildings and lands which are either actually connected or

technically deemed to be connected with the municipal water pipes stand-posts or reservoir.

14. Under the provisions of the rule in question the general water rate is liable to be recovered from the owner or the tenant of a tenement who

does not pay special water rate i. e. owner or the tenant of a tenement which is neither actually connected nor technically deemed to be connected

with the municipal water pipes stand-posts or reservoir.

15. It was urged by the learned Advocate for the municipality that the rate prescribed by the rule in question is a general water rate in respect of

water supplied by the municipality within the municipal limits that it is imposed in the form of a rate assessed on tenements or in any other form

within the meaning of Section 73(1)(x) and that it is a rate which clearly falls within the ambit of the words used in Section 73(1)(x). The learned

Extra Assistant Judge in holding that the aforesaid rule framed by the municipality was ultra vires the powers of the municipality conferred under the Act has placed strong reliance upon a decision of the Bombay High Court reported in XLIV Bom. L.R. 280 in the case of Motiram Keshavdas v.

Ahmedabad Municipal Borough. The same case is also reported in AIR 1942 Bom 177. In that case rule 344 which was framed by the

Ahmedabad Municipal Borough and which was challenged was in terms following: when water supplied without meter is used in any trade except those mentioned in rule 340 or in manufacture lump charges may at the discretion of

the Standing Committee be levied instead of the special water rate provided that

(a) In the case of the trade of dyeing in indigo kundas carried on by manual labour the charge shall be Re. 1 per kunda every year.

(b) In the case of dairies sugar and molasses refineries confectionaries factories of aerated water foundaries paper factories and any of the trades

mentioned in Clauses (a) to (o) of Sub-section (1) of Section 186 of the Act such lump charges shall not be less than the rates prescribed in rule

340 for hotels vishis etc.

(c) In other cases the lump charges shall not be less than the special water rate leviable on the building according to its use for trade purposes; and

(d) Such lump charges shall be levied in addition to the special water rate chargeable as a residential building if the Census number in which the

trade or manufacture mentioned in Clauses (a)(b) and (c) above is carried out is also used for residential purposes.

16. In that case the Court had to deal with a lump charge leviable in connection with trades. In dealing with the matter Chief Justice Beaumont at

page 284 observes as follows:

Now both the lower courts have held that the lump sum charged under Rule 344 does not fall u/s 91 because it is not a charge levied on quantity

ascertained by measurement nor is it the subject-matter of agreement. But they hold that it falls within the wide words in Section 73(x) in any other

form their view being that this is a charge levied in a form other than those specified in the Sub-section. But with all respect to the learned Judges

they have overlooked the fact that Section 73(x) deals only with a general water-rate or a special water-rate Those rates may be imposed in the

form of rates assessed on buildings and lands or in an other form including that

of charges for supply of water But what is imposed must be a rate and not an arbitrary lump sum. What precise charges were contemplated by the last words of Section 73(x) I am not sure nor do I propose to lay down a definition of a rate; but in my opinion it is clear that a lump sum imposed arbitrarily by the Standing Committee on certain trades and not on the district generally and not depending on the value of the property assessed is not a rate.

17. In that case the learned Judge has refrained from laying down a definition of the term rate. He took the view that the lump sum levied on certain trades by Rule 344 could not be regarded as a rate. What we have to consider in the present case is whether what is provided for is or is not a

rate. Basing his argument upon the aforesaid decision it is strongly urged by Mr. Amin the learned Advocate for the respondent that wherever a

lump sum is charged it could never be a rate. We do not think that such is the ratio of the aforesaid judgment. Chief Justice Beaumont in that very

case after referring to an unreported decision of Mr. Justice Rangnekar in the case of *Amritlal Maganlal v. Municipality of Ahmedabad* in Civil

Revision Application No. 264 of 1934 given on 1 March 1935 where it was held that a lump sum could be charged under the last part of Section

73(x) has observed that the same could not be done unless the lump sum charged was a rate. That decision is no authority for the proposition that

whenever a lump sum is charged it could not constitute a rate.

In Whartons Law Lexicon 14 Edition at page 839 it is stated as follows:

Rate. A contribution levied by some public body for a public purpose as a poor rate a highway rate a sewers rate upon as a general rule the

occupiers of property within a parish or other area.

There is no reason why such a contribution should not be at a flat rate assessed on the basis of every tenement.

In Strouds Judicial Dictionary Third Edition Vol. 3 at page 2444 it is stated in connection with rate as follows:

Rate; Rates. (1) Apart from any special definition a rate is an impost usually for current and recurrent expenditure spread over a district; and is

distinct from amount payable for work done upon or in respect of particular premises.

18. If rate is an impost for current and recurrent expenditure spread over a

district there is no reason why such impost should not be assessed at a fixed rate on the basis of the number of tenements owned or tenanted by a person. In the present case it is not disputed that the municipality has a water-reservoir that it purifies the water and makes the same available within the municipal limits. It seeks to recover Rs. 6/per annum per tenement from those persons who do not pay special water-rate. We do not see why what they seek to recover cannot be termed as a rate within the meaning of the expression rate as used in Section 73 (1)(x). In Iyers Law Lexicon a rate is referred to as generally an impost usually for current or recurrent expenditure spread over a district or other local area and rates have been referred to as assessment levied by local authorities for local purposes. In our view what is sought to be levied is a general water-rate as the very language of the rule indicates. We do not wish to convey that the language used in the rule is conclusive of the matter. We have to see whether the word rate used in the rule is used in the same sense in which the same word has been used in Section 73 (1)(x). We do not see any difference in the meaning of the said word as used in the rule framed by the municipality and in the said word as used by the legislature in sec 73(1)(x). What is levied is a water-rate for water supplied by the municipality. The words for water supplied by the municipality do not merely refer to cases where water is actually supplied in a particular tenement but also cover cases where water is in general supplied by the municipality. It is not disputed in the present case that water is being supplied by the municipality. The water rate which is leviable by the municipality under the provisions of Section 73(1)(x) is one which may be imposed in the form of a rate assessed on buildings and lands or in any other form. So far as the rule in question is concerned it is imposed in the form of a rate assessed per tenement. A tenement is included in the term buildings used in Section 73(1)(x). In our view the rule framed by the municipality is intra vires the powers of The Nadiad Borough Municipality.

19. The learned Advocate for the appellant very fairly drew our attention to a decision of the Supreme Court reported in 2 G.L.R. 16 in the case of The Lokmanya Mills Barsi Ltd. v. The Barsi Borough Municipality. In that case the Supreme Court had to consider the validity of Rule 2(c) framed by the Municipality of Barsi purporting to do so under the provisions of

Section 58(j) of the Bombay Municipal Boroughs Act 1925 That
rule provided as under:

As regards Mills factories and buildings relating thereto the annual letting value shall be fixed at Rs. 40/per 100 square feet or part thereof for every floor ground-floor or cellar and the tax shall be assessed on the said annual letting value at the ordinary rate.

20. By this rule the municipality sought to fix a fictitious or artificial annual letting lvalue for the purpose of levying house-tax. In the course of his

Judgment Mr. Justice Shah observes as follows:

By Section 78. Sub-section (1) Clause (d) and Explanation to Section 75 the rate to be levied on lands and buildings may be assessed on the

valuation of the lands and buildings based on capital or the annual letting value, x x x x but the rate in respect of buildings failing within rule 2C was

assessed on a valuation computed on the floor area of the structures and not on the capital value nor on the annual rent for which the buildings may

reasonably be expected to let. This was clearly not a tax based on the annual letting value, for Annual letting value postulates rent which a

hypothetical tenant may reasonably be expected to pay for the building if let. A rate may be levied under the Act on valuation made on capital or

on the annual letting value. If the rate is to be levied on the basis of capital value the building to be taxed must be valued according to some

recognised method of valuation: if the rate is to be levied on the basis of the annual letting value the building must be valued at the annual rental

which a hypothetical tenant may pay in respect of the building. The Municipality ignored both the methods of valuation and adopted a method not

sanctioned by the Act.

It was accordingly held that the rule framed by the municipality was illegal and ultra vires. In that case what the Court had to consider was a rate on

buildings or lands having regard to the provisions contained in Section 78 and the provisions contained in Section 75. By Section 75 (a)(iii) the

municipality is required to specify in this rule-in the case of a rate on buildings or lands or both the basis for each class of the valuation on which

such rate is to be imposed.

21. The municipality is not empowered to provide a fictitious basis for such valuation. That decision is an authority in respect of taxes falling within

the provisions of Section 73(1)(i) i.e. a rate on buildings or lands or both situate within the Municipal Borough. It is no authority for a tax falling

within section 73(1)(x) which relates to a general water-rate or a special water-rate or both for water supplied by the municipality. Merely because

it is stated that the rate may be imposed in the form of a rate assessed on buildings and lands it cannot be construed as a rate on buildings or lands

within the meaning of Section 73 (1)(i). In our view that decision does not deal with the question which has arisen before us.

22. In the result we hold that the rule is intra vires the powers of the municipality and the appeal before us must succeed. We set aside the decision

of the Extra Assistant Judge and dismiss the plaintiffs suit. As regards costs we set aside the order for costs passed by the Extra Assistant Judge.

The respondent will pay to the appellant the cost of the appeal. There will be no order as regards costs in the Court of first instance and in the

District Court.