(1957) 12 AP CK 0012

In the Andhra Pradesh High Court

Case No : Writ Pern. No: 306 of 1957

The Vijayawada Rate-payers Association, Bezwada and another — APPELLANT

Vs

The State of Andhra Pradesh and others — RESPONDENT

Date of Decision : 24-12-1957

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : AIR 1958 AP 311

Hon'ble Judges : K. Subba Rao, C.J;Srinivasachari, J

Bench : Division Bench

Advocate : G. Venkatarama Sastry, for the Appellant; M. Seshaphalapathi), for the Respondent

Judgement

K. Subba Rao, C.J.—This is a petition under Art. 226 of the Constitution of India filed by the Vijayawada Rate Payers'' Association, Vijayawada, represented by its Secretary and another for the issue of a Writ of Mandamus against the respondents directing them not to give effect to the general revision of assessments effected in or about March 1957 in the Vijayawada Municipality.

2. The facts are simple and may be briefly stated. The assessment books of the Municipality are revised by the executive authority once in every five years. The executive authority may amend the books at any time between one general revision and another by inserting therein or removing therefrom any property or by altering the valuation of any property or the amount or tax. The executive authority of the municipality is the Commissioner.

The State Government added 8-A. to the schedule of the District Municipalities Act (hereinafter referred to as the Act) by order dated 22-3-1956 whereunder Valuation Officers shall be appointed by the State Government in the case of any of the Municipalities notified by. it. In pursuance of this rule, the State Government appointed Valuation Officers to the Vijayawada Municipality and respondents 3 and 4 are the persons who are now occupying that position. In or about March 1957, the previous Valuation Officers made a general revision of the assessments in the Vijayawada Municipality. They issued public notices under R. 9 inviting revision petitions within a period of thirty days from 12-3-1957. They also issued individual notices to the various rate-payers. The petitioners allege that the revision of assessments made by the Valuation Officers in or about March 1957 was illegal on various grounds. They have filed the writ petition in this Court for the aforesaid reliefs.

3. Various objections are raised to the validity of the revision of assessments made by the Valuation Officers and we shall proceed to consider them seriatim.

4. The first objection raised is that the State Government has no power to amend Schedule IV of Act 5 of 1920 by adding to or inserting a rule in that schedule and that it could be done only by suitably amending the Act by the Legislature. The Government of Andhra, by their Order dated 20-3-1956, inserted R. 8-A after R. 8 in Schedule IV of the Act.

That rule enabled the Government to appoint Valuation Officers to exercise the powers, discharge the duties and perform the functions of the executive authority in so far as they related to the revision of the assessment books under R. 8, in the case of Municipalities notified by the State Government. The contention is that, by reason of S. 124 of the Act, the rules and tables embodied in Schedule IV shall be read as part of Chapter VI and, therefore the argument proceeds that, as the rules of Schedule IV are part of the Act, they can be amended only in the manner the Act can be amended i.e., by the Legislature. But, there is an obvious fallacy in this argument. Section 305 of the Act enables the State Government to make rules altering, adding to or cancelling any of the following schedules to the Act viz., schedules II, III, IV, V and VI. Under this section, the rules in Schedule IV can certainly be altered, added to or cancelled by the State Government and, if so altered, the altered rules of the schedule shall be read, by reason of S. 124 of the Act, as part of Chapter VI. But it is said that Section 305 authorises the Government only to alter, add to or cancel the whole schedule and not to add additional rules to the same. We cannot appreciate this argument, for inserting R. 8-A in the rules of Schedule IV is certainly making a rule adding to Schedule IV. There is, therefore, no force in the first contention.

5. The next argument is that the State Government could have added the rule to the schedule under S. 303 (1) or (2) (k) of the Act and that, as the said rule was made without previous publication, it was invalid. The Government Pleader counters this argument by stating that the rule was not made in exercise of the power conferred on the Government under S. 303 of the Act but conferred on in under S. 305 of the Act and, therefore, pre publication was not a condition precedent for exercising the power. The material provisions in so far as they are relevant to the. question raised, are as follows :

Section 303 (1) The State Government may make rules to carry out all or any of the purposes of this Act not inconsistent therewith.

(2) In particular and without prejudice t(sic) the generality of the foregoing power they may make rules (k) as to the mode in which the officers (sic) the State Government shall advise and assi(sic) Municipal Councils in carrying out the purpose of this Act Section 304 :

The power to make rules under S. 303 subject to the following conditions:

(a) a draft of the rules shall be published in the official gazette;

(b) such draft shall not be further proceeded with until six weeks after such publication or until such later date as the State Government may appoint;

(c) All rules made under S. 303 shall (sic) published in the official gazette and upon such publication shall have effect as if enacted in this Act Section 305 : The State Government may make rules altering, adding to or cancelling and of the following schedules of this Act, namely Schedules II, III, IV, V and VI.

Section 305-A : A draft of the rules p(sic)posed to be made under sub-s. (2) of S. 77 or under sub-s. (1) of S. 305 shall be la(sic) before each of the Houses of the State Legislature and the rules shall not be made un(sic) both Houses approve the draft either without modification or addition or with modification or additions to which both the Houses agri but upon such approval being given the rule may be made in the form in which they has been approved and such rules on being so ma(sic) shall be notified in the Official Gazette a shall thereafter be of full force and effect.

6. Section 303 authorises the Government to make rules to carry out all or any of the p(sic) poses of the Act not inconsistent therewith a in particular, rules with reference to the matter mentioned in that section, whereas S. 305 ables the Government to make rules to al(sic) add to or cancel any of the schedules including Schedule IV. The exercise of the po(sic) under S. 303 is made subject to the condition laid down in S.304. The exercise of the under S. 305 is subject to the procedure (sic) scribed under S. 305-A. While in the case the power under S. 303 the rules are sub to the condition of pre-publication in the m(sic)ner prescribed by section 304, in the cast power under S. 305 the rules made will h(sic). to be approved by both the Houses of the S(sic) Legislature and published thereafter. The e(sic)cise of the power under both the section controlled by different procedures. When (sic)e confers general power on the Government make rules and the other confers a special (sic)ver in respect of a particular subject-matter, is man f(sic)est that on the principle of GENE(sic)LIBUS SPECIALIA DEROGANT (special (sic)gs derogate from general) a rule made in (sic)pect of a particular matter can be made only exercise of the special power conferred on Government. Indeed, the Government pur(sic)ed to make Rule 8-A only in exercise or the (sic)ers conferred upon it under S. 305. It is suggested that the procedure prescribed (sic)er S. 305-A was not followed in making rule.

7. It is then said that Rule 8-A, should (sic)e been made under S. 82 (3) of the

Act, (sic) with S. 303 and, therefore, Rule 8-A should (sic) been made in compliance with the pro(sic)ns of section 304 of the Act, Section 82(3) (sic)e Act reads:

The State Government shall have power (sic)ake rules regarding the manner in which, person or persons by whom and the inter(sic)at which, the value of the land, the pre(sic)cost of erecting the building and the (sic)nt to be deducted for depreciation, shall estimated or revised, in any case or class of (sic) to which Cl. (a) the proviso to sub-s. (2) (sic)es, and they may, by such rules, restrict or (sic)fy the application of the provisions con(sic)d in Schedule IV to such case or class of(sic).

(sic)se (a) of the proviso to sub-s. (2) reads : "Provided that (a)in the case of (i) any Government or railway building or (ii) any building of a class not ordinarily (sic)e gross annual rent of which cannot, in the (sic)n of the executive authority, be estimated annual value of the premises shall be deem(sic) be six per cent, of the total of the esti(sic)d value of the land and the estimated pre(sic)cost of erecting the building after deduct(sic) or depreciation a reasonable amount which in no case be less than ten per centum of cost.

(sic) rule-making power under sub-s. (3) of is only confined to the two categories of (sic)ngs mentioned in the proviso to sub-s. (2) 82. Rule 8-A is not confined to the cate(sic) mentioned in the proviso but to all pro(sic)s in municipalities notified under that rule, not necessary to express our view on the on whether the power conferred on the Government to make rules under S. 82 (3)(sic)hors the power of the Government to make under S. 303 of the Act, or, is controlled (sic)e limitations laid down on the power by (sic) for the Government did not exercise the (sic)d power conferred on it under sub-s. (3) (sic)mended the schedule in exercise of the conferred on it under S. 305. We, tuere(sic) hold that R. 8-A was validly made.

8. It is then said that public notice under Schedule TV was not issued by the exe- (sic) authority but only by the valuation offi(sic)nd, therefore, the notice was invalid. It (sic) that, under R. 9, the executive authority shall give public notice stating that the revision petitions will be considered if they reach the municipal office within a period of sixty days from the date of such notice in the case of the Government a railway administration or a company and thirty days in other cases. Admittedly, in the present case, the said notice was issued by the Valuation Officer. But R. 8-A says that the Valuation Officers shall exercise the powers, discharge the duties and perform the functions of the executive authority under these rules in so far as they relate to the revision of assessment. As the issue of public notices relates to the revision of assessment under the rules, the Valuation Officer, who is empowered to discharge the duties and perform the functions of the executive authority under the rules which certainly takes in B. 9, can discharge the duty of the executive authority to issue public notices There are no merits in this contention.

9. Nor can we accept the contention of the learned Counsel that individual notices were not given in strict compliance with the provisions of the. Act on the ground that they did not give the specific reasons peculiar to each assessee or on the ground that the notices contained the facsimile signature of the Valuation Officer and not his signature. A specimen of the notice reads thus:

Take notice that in virtue of the power vested in the Valuation Officer under R. 8 of Schedule IV to the Madras District Municipalities Act, 1920, the assessment in respect of your property survey No. 15, situated in......street in this Municipality has until further notice been fixed at increased for reasons specified to the amount shown below with effect from the half year commencing 1st April, 1957. In case you are dissatisfied with the assessment now fixed, you can present a revision petition, to the Valuation Officer within thirty days from the date of service of this notice. If no complaint against or objection to the assessment is presented within the above-mentioned periods of thirty days, the assessment will be final.

Annual value.

Amount of tax

Existing assessment, if any. Rs. 10-0-0.

Rs. 0-11-3

Increased tax : Rs. 20-0-0 Reasons for the increase if any :

Rs. 1-7-6

Since the previous tax levied Is insufficient. Sd/......... Valuation Officer.

10. It is not disputed that, except in regard to the value and the amount of tax, all the notices issued were in the same form. The said notice was given in the prescribed form. It gave all the particulars of assessment required by the owner of a building, namely, the description of the property, the period for which the assessment was made, the annual rental value of the property and the amount of tax; imposed. It also gave the reasons though m general terms, for increasing the amount or tax. The purpose of the notice was to inform the party concerned as to his liability so that he might, have an opportunity to get it revised.: We cannot say that the notice was not in compliance with the provisions of R. 9 of Schedule IV.

11. We do not also find any substance in the contention that the notice did not contain the signature of the Officer but only his facsimile. We are also not satisfied that the use of the facsimile signature indicates in the present case that the Valuation Officer did not exercise his mind but only followed a mechanical process with a predetermined mind. From the notice it appears that the previous assessments were low in respect of all the houses and, therefore, the grounds for enhancement were common in respect of all the houses. The Valuation Officers presumably scrutinised the previous assessment of all the houses and enhanced

the tax and the particulars thereof were mentioned in the notice. As the reasons for the enhancement were the same for all the properties, the mere use of the facsimile signature does not indicate that the Valuation Officers did not exercise their mind. Except a general argument, no particular circumstances have been brought to our notice indicating that any of the assessees have been prejudiced by the use of the facsimile signature. We reject this contention.

12. It is then said that the Valuation Officers, being persons responsible for the revision, cannot be Judges of their own cause and seek to dispose of the revision petitions themselves and that such procedure is opposed to all principles of natural justice. In the counter-affidavit filed by the State, it is stated that the Valuation Officers, who issued the notices are no longer functioning in the Vijayawada Municipality and that there are executive instructions given by the Government to the effect that the revision petitions shall be disposed of by a set of Valuation Officers different from those who actually conducted the revision of the assessment. In view of the aforesaid circumstances, the doctrine sought to be invoked, namely, that a man cannot be a Judge in his own cause has no application to the present case. That apart, the argument discloses a misconception in regard to the duties or the functions of Valuation Officers and the nature of the revision of tax conducted by them. The executive authority or the Valuation Officer, who replaced him in the case of noticed municipalities, revises the assessment once in five years. The revision could be Made after the necessary enquiry and relevant entries will be made in the account books. After the revision of the tax has been made, public and individual notices will be issued and also where there is an enhancement, special notice will be served on the owner or occupier of the property concerned stating that the revision petitions would be considered if they reach the municipal office within a prescribed time. After hearing the revisions, the executive authority or the Valuation Officer as the case may be disposes of the revisions, and communicates the order made to the concerned parties. Appeals lie against those orders to the Municipality. Though the word ''revision'' is used in connection with the objections raised by the concerned owners or occupiers the word should not be confused with revisional jurisdiction exercised by Courts some superior authorities under particular A When a revision of assessment is made by Valuation Officer, he does it on his own intimation and enquiry Behind the back of owner or occupier of a house. The notice iss(sic) by him is more analogous to a notice cal(sic) upon the owner or occupier to show cause the assessment made should not be confirm. If an objection is filed, the Valuation Officer hears the objections and, if he is satisfied, r(sic)fies the assessment made by him prior to notice. The objection filed by the assesse not, therefore, in the nature of an appeal or (sic)sion from an order of a subordinate trib(sic) to a higher tribunal. It is really in the na(sic) of giving an opportunity to the party be finalising the assessment. In this view, no (sic)ciple of natural justice is violated. We, therefore, reject this contention.

13. Finally, it is contended that R. 8 inconsistent with the provisions of the Act therefore, is ultra vires. This argument is sub-orated by stating that, under the

Act, three officers were charged with carrying the provisions of the Act and that the Government cannot make a rule adding another (sic)cer or officers for carrying out the provision of the Act. To appreciate this argument, of the relevant provisions of the Act will to be considered. Under S. 6, the Mun(sic) Authorities charged with carrying out the visions of the Act are (a) a council Chairman and (c) an executive authority, Section 3 (8-C)defines "executive authority mean, in the case of municipalities including Schedule IX or notified under sub-s. (sic) S. 12-C, the Commissioner, or, if there Commissioner in charge, the Chairman, executive authority is appointed by the eminent under S. 12-C and is liable to (sic) moved by the Government. Section 13-(sic). fines the functions of the executive aut(sic). The Act defines the powers, duties and (sic)tions of the Executive Authority. See Sections 16, 19, 22, 33 (2) and 64. Section 18 enables the executive authority to delegation of his functions to any officer or servant council or to any servant of the Government and the exercise or discharge of any fu(sic) so delegated shall be subject to such (sic)tions, limitations and conditions as may b(sic) down by the Commissioner and shall a subject to his control and revision. Section provides for the consent of the Municipal (sic)cil to the proposals in regard to fixing o(sic)ing the number, designations and grades (sic)cers made at the instance of the Commissioner Sub-section (3) of S. 70 enables the Government to fix or alter the number, desigr(sic) grades, salaries, fees or allowances payable the officers and servants of any M(sic) Council or any class of such officers a(sic)vants. So too, S. 71 enables the Mun(sic) to sanction the appointment of a Secretory any municipality, which is neither inch Schedule IX nor notified under sub-s. S. 12-C. Section 72enables the Mun(sic) appoint a Health Officer, Engineer, Electrical Engineer or Assistant Electrical Engineer, section 78 prescribes for the mode of appoint officers other than those mentioned in 12-C and 72. Section 75 confers a power the executive authority to punish municipal (sic)cers or servants. Section 76-A enables the Government to appoint a health officer, engineer, or electrical engineer in the case of a (sic)icipality or class of municipalities. Section enables the Government to place any officer of the State Government at the disposal of Council to be employed by it for the pur(sic)e of the Act.

14. From the aforesaid provisions, it is (sic)r that the administration of the Municipal Council is vested in the executive authority sub-(sic) to certain powers conferred on the Municipal Council and the officers appointed in the Municipality are made subordinate to him. (sic)a officers appointed by the Government are (sic)er his supervision and control. The scheme he Act, therefore, is that there should be (sic)e municipal authorities and all the other (sic)ers appointed by the Government, the Municipality or the Committee of the Municipality would be under the control of the Commissioner. It is, therefore, contended that the cerement has no power to make a rule providing for the appointment of another autho(sic) to replace the executive authority com(sic)ly or to some extent and that the rule auiho(sic)g the appointment of Valuation Officers an independent status only directly responsible to the Government but not under the (sic)ol of

the Commissioner and entrusting (sic) with powers of assessment of property tax (sic)spect of specified municipalities and to that it replacing the Commissioner is invalid. argument has considerable force. But, (sic)r view, it ignores the effect of S. 124 of Act. Under S. 124, the rules and tables (sic)died in Schedule IV shall be read as part (sic)hapter VI. If so, it follows that the rules (sic)ly made under the Act must be deemed part of Chapter VI. Section 305 confers (sic)r on the Government to amend the rules (sic)hedule IV with the approval of the two (sic)es and the rules so amended should be as part of Chapter VI. If they are so read, Act itself should be deemed to have con(sic) power upon the Government to appoint (sic)tion Officers to perform the functions (sic)ted to them under the rules. Suppose Chapter VI there is a section authorise Government to appoint a Valuation Officer (sic) respect of specified municipalities to (sic)rge particular functions independently of Commissioner, it cannot be suggested that Appointment of such an officer to a parti(sic) municipality is ultra vires of the powers Government. If so, as we have held that (sic)les of Schedule IV have been validly (sic)led by the Government and they must be (sic)d to be part of the provisions of Chapter (sic)e same result should flow, namely, that Government has power to appoint a Valuation Officer to discharge specified functions it making him subordinate to the executive authority or other authorities mentioned in S. 6 (1) of the Act. In this view, it must be held that the appointment by the Government of. Valuation Officers to the Vijayawada Municipality for the purpose of revising property tax assessment was valid.

15. In the result, the application fails and is dismissed with costs. Advocate''s fee Rs. 100/-.

