
(1978) 06 GUJ CK 0006
In the Gujarat High Court

Vasuki Exhibitors

APPELLANT

Vs

Thangadh Gram Panchayat

RESPONDENT

Date of Decision : 16-06-1978

Acts Referred:

Evidence Act, 1872 — Section 114

Gujarat Gram and Nagar Panchayats (Taxes and Fees) Rules, 1964 — Rule 3 , 4

Citation : (1978) 19 GLR 1114

Hon'ble Judges : N.H. Bhatt, J

Bench : Single Bench

Judgement

N.H. Bhatt, J.—This is an appeal by M/s. Vasuki Exhibitors, who were plaintiffs in the Civil Suit No. 66 of 1972 dismissed by the Civil

Judge (J.D.) Chotila. Their appeal, being appeal No. 5 of 1973 also had come to be dismissed by the learned District Judge, Surendranagar.

Hence the present second appeal.

2. The respondent is a Gram Panchayat at village Thangadh in Surendranagar District. Prior to the year 1972, the panchayat was levying the

entertainment tax at the rate of Rs. 1/- per show from cinema theatres. The respondent-panchayat wanted to enhance the tax by Rs. 4/- per show

and so followed a procedure of new imposition of tax. It firstly passed the resolution selecting this new rate of tax, invited objections, considered

them, then passed a resolution dealing with the objections and deciding to levy the new rate of tax with effect from 1-1-72. So the plaintiff-filed the

suit challenging the levy.

3. In the pleadings of the plaintiff, the grounds were vaguely stated as follows:

(1) The defendant-panchayat followed the procedure as if it was levying the

entertainment tax for the first time, though in effect it was only enhancing the tax and should have followed the procedure of Section 189 of the Panchayats Act;

(2) The panchayat did not follow the procedure contained in Section 178 read with Rules 3 and 4 of the Gujarat Gram and Nagar Panchayats

Taxes and Fees Rules.

(3) The defendant-panchayat did not follow the procedure prescribed in Rule 3 of the above Taxes and Fees Rules.

(4) The final publication made on 28-10-71 is also not in accordance with the Rules of Taxes and Fees Rules and hence the levy on cinema show is clearly illegal and invalid.

4. On behalf of the plaintiff, the sole witness had come to be examined and he is Dhirajal, ex. 28. Curiously, I find that nowhere in his deposition he

spoke of the non-compliance with Rule 4 of the Gujarat Gram and Nagar Panchayats Taxes and Fees Rules, 1964. Only thing he complained of in

para 2 of his deposition was that the notices inviting objections were not seen affixed by him on different notice boards. The first witness of the

defendant-panchayat is its Secretary Divyakant ex. 33. To him also, it was not even suggested that there was non-compliance with the

requirements of Rule 4 of the said Rules. It is, therefore, crystal clear that the plaintiff not only did not specify in their plaint as to what Rules and

how were not complied with, but they also did not try to elaborate even at the stage of the actual trial what requirements were not complied with.

The ingenuity of the persons in charge of the litigation came to the forefront only at the stage of arguments, which unfortunately came to be dealt

with by the courts below and Mr. Shah for the appellant tried to derive capital out of those grounds, which should not have been considered by the

learned Judges of the courts below for want of any specific pleadings and for want of any evidence on that score.

5. In this connection Mr. Shah urged very vehemently that what was required to be pleaded in such case was a bald allegation that the requisite

procedure for imposition of taxes was not complied with. His submission therefore, comes to this the moment such an allegation is made, the onus

immediately shifts to the other side to enlist the requirements and lead specific evidence on all those aspects. I am in respectful disagreement with

what has been submitted by Mr. Shah. Whoever wants the judgment from the court, has to lay proper basis in materials on the strength of which

the relief or reliefs is or are claimed. If the plaintiffs wanted that the court should declare the imposition of this tax as invalid, they must specifically

first plead the grounds on which they challenged the imposition of the tax and secondly they should have adduced sufficient evidence to substantiate

those grounds. Neither of the things has been done by the plaintiffs. There is no presumption of law that whatever is required to be done shall be

presumed to have not been done when the plaintiff alleges otherwise. On the contrary, Section 114 of the Indian Evidence Act permits the court to

draw a presumption that official acts are regularly done in the manner laid down by law. In such circumstances, it is absolutely essential and

inevitable for a party seeking the court's assistance to specifically plead the grounds on which the relief in ultimate analysis rests.

6. In the case on hand, it was only at the stage of arguments that it was contended that the subsequent part of Rule 4 of the said Rules was not

complied with. The said Rule 4 reads as follows:

4. Final publication of rules relating to tax or fee to be levied: Where a panchayat so decides to levy any tax or fee, the rules in that part of these

rules which relate to such tax or fee, together with a notice stating the tax or fee to be levied and the rate thereof shall be published by it by affixing

copy thereof in the office of the panchayat. The fact of such publication shall, as soon as may be, be announced either by beat of drum in the gram

or nagar or by affixing it at some conspicuous places in the gram or nagar or by publishing it in at least one local Gujarati newspaper circulating in

the area of the panchayat. The tax or fee shall accordingly be levied from the date which shall be specified in the notice and which shall not be

earlier than one month after the date of publication of the notice.

It was alleged that the Rules about the rate of tax were required to be published by affixing a copy in the office of the gram panchayat. The

evidence bears out that this was in fact done. Ex. 27, which is a notice to which relevant Rules are affixed, clearly shows compliance with this p

Article Subsequent part, however, requires that such a publication is to be announced by any of the modes prescribed in the Rules 4. Mr. Shah

vehemently contended that there was nothing on record to show that such a

publication was announced. In my view, it was not open to the plaintiff to raise this bogey for the first time at the time of arguments. Even if it is open to them to do so, the defendant-panchayat can well place reliance on the presumption permissible u/s 114 of the Indian Evidence Act.

7. The challenge on the ground of Rule 3 has been elaborately dealt with by the learned appellate Judge in paragraph 9 of his judgment. He has

relied upon the evidence of the Peon and also the evidence of the Secretary of the Defendant-panchayat and has concluded as a matter of fact that

the notices were published on 4-9-71 on the Notice Board of the panchayat and at other places. 8. In the above circumstances, I find little merit in

this appeal, which is hereby dismissed with no order as to costs.