1961

January 27.

VALLABHDAS AND OTHERS
v.
MUNICIPAL COMMITTEE, AKOLA.

(J. L. KAPUR, M. HIDAYATULLAH and J. C. SHAH, JJ.)

Octroi Tax—Legality of imposition—"System of Assessment", meaning of—C. P. & Berar Municipal Act, 1922 (C. P. & Berar II of 1922), s. 67(2).

The Municipal Committee, Akola, passed a resolution to impose an octroi tax and forwarded it along with the draft rules of assessment and collection to the State Government. The State Government published a notification in the Gazette which contained the articles to be taxed, the rate or rates at which they were to be taxed and a brief statement of objects and reasons for the imposition of the tax. This was followed by draft rules as to how taxation was to be done. Thereafter the Municipal Committee affixed on its notice board and also published in the local newspapers the said proposed rules but the draft rules in regard to the "system of assessment" were not published along with other particulars. It was alleged by the appellants that the Municipality by not publishing the draft rules of the "system of assessment", failed to comply in full with the mandatory requirements of s. 67(2) of the Act rendering the imposition of tax illegal.

Held, that the words "system of assessment" did not necessarily mean the whole procedure of taxation, i.e. imposition, collection and procedure in regard to collection and refund. The notice and not the draft rules relating to assessment and collection were required under the Rules to be affixed on the notice

board of the Municipality and at other conspicuous places of the town. In the instant case the publication of the Rules relating to the rates at which the tax had been imposed was sufficient compliance with the provisions of Section 67(2) of the C. P. & Berar Municipal Act, 1922, and the rules made thereunder.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 234/60.

Appeal from the judgment and order dated November 18, 1958, of the Bombay High Court at Nagpur in Special Civil Application No. 201 of 1958.

N. C. Chatterjee, M. N. Phadke, S. A. Sonhi and *Ganpat Rai*, for the appellants.

A. V. Viswanatha Sastri, B. R. Mandekar and *A. G. Ratnaparkhi*, for respondent No. 1.

G. C. Mathur and *R. H. Dhebar*, for respondent No. 2.

1961. January 27. The Judgment of the Court was delivered by

Kapur J.

KAPUR, J.—This is an appeal against the jugdment and order of the High Court of Judicature of Bombay at Nagpur dismissing a petition under Arts. 226 & 227 of the Constitution challenging the legality of the imposition of the octroi tax under s. 66(1)(e) of the C. P. & Berar Municipal Act (Act II of 1922) hereinafter termed the Act.

The appellants who were the petitioners in the High Court are some of the rate-payers of the town of Akola in the erstwhile State of Bombay and respondent No. 1 is the Municipal Committee, Akola. On November 11, 1957, respondent No. 1 passed a resolution to impose an octroi tax on animals and goods brought within the limits of the Akola Municipality. This resolution and the draft Rules of Assessment and Collection were later on forwarded by the Akola Municipality to the State Government for publication. A notification dated January 3, 1958, was published in the Bombay Government Gazette on January 16, 1958. This Gazette Notification contained the draft rules, the schedule of goods liable to octroi duty and the rates to be charged. This was in accordance with the requirements of s. 67(2) of the Act. Respondent

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No. 1, the Municipal Committee, affixed on the Notice Board of the Committee and published in the local newspapers the proposed rules for the imposition of the tax, but the objection of the appellants is that they did not publish along with them the draft of the "System of Assessment". It is true that a pamphlet in Marathi language was distributed in the town of Akola and the proposals were also published in the local newspaper Jan-Sewak. Objections to the proposals were filed by some of the rate-payers of the town of Akola and all of them were considered and a resolution was passed by the Municipal Committee on March 3, 1958, and that is the resolution which was challenged in the petition filed in the High Court by a petition dated April 14, 1958, praying for the quashing of the resolution and for the issuing of a prohibitory order against the State Government against sanctioning the proposal sent by the Municipal Committee. On April 18, 1958, a rule was issued by the High Court to the opposite parties calling upon them to show cause why the order as prayed should not be made. This notice was served on the Special Government Pleader on May 9, 1958, and the Special Government Pleader put in his appearance on June 17, 1958. On June 23, 1958, an interim injunction was issued, but previous to that on June 19, 1958, a final notification was issued by the Government approving of the proposal to impose the octroi tax. As a consequence of this the petition was allowed to be amended, but ultimately the High Court dismissed the petition and this appeal has been brought on a certificate of the High Court.

The sole question which has been debated before us is the legality of the imposition. The ground on which the legality is challenged is that there was no full compliance with the mandatory requirements of s. 67(2) of the Act. It is, therefore, necessary to deal with the relevant provisions of the Act. Chapter IX of the Act deals with Imposition, Assessment and Collection of taxes. Section 66 provides for the taxes which can be imposed and s. 67 deals with the mode of the imposition of the tax. By s. 71, the State

Government is empowered to make rules regulating the assessment of taxes and for preventing evasion of assessment. Section 76 empowers the State Government to make rules regulating the collection of taxes and preventing evasion of payment. Section 85 empowers the State Government to make rules regulating the refund of taxes. But it was argued on behalf of the appellants that as the mandatory provisions of s. 67 as to publication of the "System of Assessment" in accordance with the rules was not complied with, the imposition of the tax was illegal. Reliance was placed on certain judgments, but it is not necessary to discuss those cases because in the circumstances of this case they are of little assistance. The respondents, on the other hand, submitted that what was published was all that the section required and that the word assessment there did not mean anything more.

As s. 67(2) has been mainly relied upon, it may be quoted. It provides:—

> "67(2) When such a resolution has been passed, the committee shall publish in accordance with rules made under this Act, a notice defining the class of persons or description of property proposed to be taxed, the amount or rate of the tax to be imposed and the system of assessment to be adopted."

The scheme of s. 67 appears to be this: that when a Municipal Committee wishes to impose a tax it has to pass a resolution at a special meeting and then it has to publish its resolution for imposition of that tax so that the rate-payers may be able to place their objections against the imposition. This publication must appear in the Government Gazette and also locally as required by the rules. The Municipal Committee has then to consider the objections, if any, of the rate-payers and if the Committee does not consider it necessary to alter its original proposals, it has to send its proposals with the objections received and its decision thereon and any modifications of the original proposals to the State Government which, after considering the matter, may sanction them or refuse to sanction or sanction them with modifications.

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The real objection of the appellants was that the system of assessment had not been published as required. The Rule relating to publication under s. 67 is as follows :—

"1. A notice under section 67(2) of the intention of the municipal committee to impose a tax, or under section 68(3) of the proposal of the committee to increase the amount of rate of any tax, shall be forwarded to the State Government through the Deputy Commissioner for publication in the "Madhya Pradesh Gazette." The notice under section 67(2) shall be accompanied by draft rules for the assessment and collection of the tax. After its publication in the Gazette the notice shall be published by affixing copies thereof to a notice board at the municipal office and at conspicuous places in the town, and shall also be published in the local papers, if any. As an alternative to its publication in local papers, the committee may circulate the notice in print in vernacular within the municipal limits. Proclamation shall also be made by beat of drum throughout the municipality notifying the intention of the committee and calling the attention of the inhabitants to the notice in question and to the term of thirty days laid down in the law as that within which objections to the proposed imposition or increase must be submitted to the committee."

According to this rule the notice under s. 67(2) has to be accompanied by draft rules for the assessment and collection of the tax and after its publication in the Gazette the notice has to be published by affixing copies thereof to a notice board at the Municipal Office and at conspicuous places in the town and has to be published in the local papers, if any, or it may circulate the notice in print within the municipal limits. It is admitted that in the Gazette dated January 16, 1958, the draft rules were published which contained the articles to be taxed, the rate or rates at which they were to be taxed and what articles were not to be taxed. It also contained a brief statement of objects and reasons for the imposition of the tax. This was

followed by draft rules as to how taxation was to be done. In short what was published in the Gazette was admitted to conform to all the requirements of s. 67(2). But the contention raised is that in the Jan-Sewak, a local Marathi newspaper, the rules which were published contained the articles to be taxed, the rate or rates at which they were to be taxed, but the draft rules in regard to "System of Assessment" were not published along with it.

The High Court has pointed out that what was done was a sufficient compliance with the provisions of s. 67(2) and that the words "System of Assessment" meant only the stage of the imposition of the tax and not other stages as a whole. Sections 71, 76 and 85, as has been said above, deal with rules for assessment and for preventing evasion of taxes, rules for collection of taxes and rules for refund respectively. Read together these provisions of the Act support the decision of the High Court that the words "System of Assessment" do not necessarily mean the whole procedure of taxation, i.e., imposition, collection and procedure in regard to collection and refunds. The rule also shows that what is to be affixed on the notice board and at conspicuous places of the town is the notice and not the draft rules relating to assessment and collection. In our opinion there has been a compliance with the provision of s. 67(2) and that the publication of the rules relating to the rates at which the tax had been imposed was sufficient to comply with the provisions of the Act and the rules made thereunder. It is unnecessary to deal with the efficacy of sub-ss. (7) and (8) of s. 67.

In our opinion the judgment of the High Court was right and the appeal is therefore dismissed with costs.

Appeal dismissed.