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THAROO MAL

v.

PURAN CHAND PANDEY & OTHERS

November 29, 1977

[M. H. BEG, C. J. and P. N. BHAGWATI, J.]

B

U.P. Municipalities Act, 1916, *s.* 132(1) vis-a-vis *Limitation Act, s.* 28—*Section* 132(4), *whether confined to objections considered by Municipal Board —Section* 135(3), *scope.*

The Municipal Board of Pilibhit passed a resolution under the Municipalities Act, imposing a theatre tax of Rs. 25/- per show. The resolution was duly published on 16-5-1972 and objections were invited, but since no objections were received within the time prescribed u/s. 132(1) of the Act, preliminary C proposals were framed and submitted to the prescribed authority, the Commissioner of Rohilkhand Division. The proposals were returned to the Board for reconsideration on the ground that the proposed rate of the theatre tax appeared to be too high, and on 28-8-1972 the Board reduced the rate to Rs. 15/- per show, though the publication of the resolution reducing the rates was dispensed with under the proviso to s. 132(2). On 16-9-1972, the petitioner and some other owners of cinema houses, sent their objections to the initial resolution, but as these objections had not been presented for consideration when the two resolutions were passed, the Board refrained from submitting them with the D modified proposals to the prescribed authority u/s. 132(4) of the Act. The modified proposals were sanctioned on 31-10-1972 and were duly converted into rules, published in the Gazette dated 14-4-1973. The appellant moved the High Court; but failed.

Dismissing the appeal the Court,

HELD : (i) There is a distinction between the period given for filing objections u/s. 132(1) of the U.P. Municipalities Act, and the period of limitation E prescribed for proceedings before a court or a quasi-judicial authority, which on the expiry of the period, confers some rights upon parties not proceeded against, so that the expiry of the prescribed time bars claims against them. The procedure under s. 132(1) is legislative and not quasi-judicial and if the objector does not file his objections within a fortnight, he may lose his right to object, but his objections will not be invalidated. It is not like s. 28 of the Limitation Act operating to extinguish any legal right. [256E, G, H, 257A]

Niranjan Lal Bhargava v. *State of U.P.* 1969 A.L.J. 295, referred to.

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(2) Section 132(4) covers any objections whatsoever, whether made within a fortnight or beyond a fortnight, provided they are sent in before the matter is submitted to the prescribed authority. In fact, there is no statutory bar against the prescribed authority itself considering the objections which may be filed before it if the interests of justice so require. [259B-C]

(3) The effect of the proviso to s. 132(2) added in 1964, is that, by dispensing with even the publication of the modified proposals, no such right of the G appellant is violated as could be considered a condition precedent to the validity of the proceedings. Nevertheless, if patent injustice has resulted from an irregularity, in the imposition of a tax, s. 135(3) may not cure the irregularity. [259G-H, 260A]

Buland Sugar v. *Municipal Board* [1965] 1 SCR 970, distinguished.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1201 of 1977.

H

Appeal by Special Leave from the Judgment and Order dated 1-12-76 of the High Court of Allahabad at Allahabad in Civil Misc. Writ No. 3090/93.

Y. S. Chitale and *K. J. John* for the Appellant. A

Yogeshwar Prasad, Rani Arora and *Meera Bali* for the Respondents.

The Judgment of the court was delivered by :

BEG, C. J.—The appellant before us by grant of special leave under Article 136 of the Constitution is a partner in a firm carrying on B the business of running a cinema house called "Jai Talkies" in the town of Pilibhit in Uttar Pradesh. The municipal Board of Pilibhit passed a resolution on 11th of April, 1971, imposing a theatre tax of Rs. 25/- per show under section 128(1)(iii-a) read with sections 296 and 299 of the Municipalities Act (hereinafter referred to as the Act). The resolution was duly published in a Hindi newspaper on 16 May, 1972, as required by section 94(3) read with section C 131(1)(a) of the Act. The preliminary proposals for imposition of a tax were framed under section 131 of the Act which reads as follows :

"131. Framing of preliminary proposals :—

(1) Where a board desires to impose a tax, it shall, by special resolution, frame proposals specifying :— D

(a) the tax, being one of the taxes described in sub-section (1) of section 128, which it desires to impose;

(b) the persons or class of persons to be made liable, and the description of property or other taxable thing or circumstances in respect of which they are E to be made liable, except where and in so far as any such class or description is already sufficiently defined under clause (a) or by this Act;

(c) the amount or rate leviable from each such person or class of persons;

(d) any other matter referred to in section 153, which F the State Government requires by rule to be specified.

(2) The board shall also prepare a draft of the rules which it desires the State Government to make in respect of the matters, referred to in section 153.

(3) The board shall, thereupon publish in the manner G prescribed in section 94 the proposals framed under sub-section (1) and the draft rules framed under sub-section (2) along with a notice in the form set forth in Schedule III."

Section 132 of the Act then lays down :

"132. Procedure subsequent to framing proposals :— H

(1) Any inhabitant of the municipality may, within a fortnight from the publication of the said notice, submit to

A the board an objection in writing to all or any of the proposals framed under the preceding section, and the board shall take any objection so submitted into consideration and pass orders thereon by special resolution.

(2) If the board decides to modify its proposals or any of them, it shall publish modified proposals and (if necessary) revised draft rules along with a notice indicating that the proposals and rules (if any) are in modification of proposals and rules previously published for objection :

Provided that no such publication shall be necessary where the modification is confined to reduction in the amount or rate of the tax originally proposed.

(3) Any objections which may be received to the modified proposals shall be dealt with in the manner prescribed in sub-section (1).

(4) When the board has finally settled its proposals, it shall submit them along with the objection (if any) made in connection therewith to the prescribed authority."

It is evident from section 132(1) of the Act that the time given to the residents within the municipal limits to file their objections is a fortnight from the publication of the resolution, as required by section 94(1) of the Act. Apparently, a fortnight is considered a reasonable time so that objections may be submitted for consideration to the Municipal Board. As was pointed out by one of us (Beg, C.J.) in *Niranjan Lal Bhargava* v. *State of U.P.*,(1) with regard to almost identically framed provisions of sections 199 to 203 of the U.P. Nagar Mahapalika Adhiniyam, 1959, the procedure for the imposition of the tax is legislative and not quasi-judicial. Hence, there seems to us nothing to prevent the Municipal Board from considering any objections which may have been filed even after a fortnight, a period which may, at the most, be construed as a reasonable limit from the publication of the notification after which the persons deemed to be notified could not reasonably complain of want of opportunity to object. The right to object, however, seems to be given at the stage of proposals of the tax only as a concession to requirements of fairness even though the procedure is legislative and not quasi-judicial.

There seems to us to be a distinction between the period given for filing objections of the kind with which we are concerned here and the period of limitation prescribed for proceedings before a Court or a quasi-judicial authority, which, on the expiry of the period, confers some rights upon parties not proceeded against so that the expiry of the prescribed time bars claims against them. The procedure being legislative here, the objector could not complain that he did not have an opportunity to object if he did not file his objections within a fortnight. This is all that sections 131 and 132 seem to do so far as

(1) 1969 A.L.J. 295.

the rights of the objectors are concerned. They do not seem to us to invalidate his objections although he may lose his right to object. There is nothing here like section 28 of the Limitation Act operating to extinguish any legal rights. A

In the case before us, the appellant did not put forward any objections to the proposals. The proposals were submitted to the Prescribed Authority, the Commissioner of Rohilkhand Division, under section 132(4) of the Act. It appears that the Commissioner of Rohilkhand Division returned the proposals for reconsideration on the ground that the proposed rate of the theatre tax appeared to be too high. On the 28th of August, 1972, the Municipal Board reduced the rate to Rs. 15/- per show but did not publish its resolution reducing the rate. B

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The reduced rate of theatre tax was not published as the proviso to section 132(2), added by the U.P. Act No. 27 of 1964, dispenses with the need to publish the reduced rate of tax. Nevertheless, it still gives persons who object, if any do so at all, the right to have the objections dealt with in the manner prescribed in section 132(1). The only manner in which they can be "dealt with" under section 132(1) is that these objections have to be considered by the Board before passing its resolution. If, however, the objections are received when the Board has, after waiting for a fortnight, duly passed a final special resolution, these objections can certainly not be considered by the Board as they were not before it to be considered at all when it passed its resolution. If the proposals, as initially framed, had been accepted by the Prescribed Authority no further opportunity for objecting before the resolution imposing the tax could have arisen. D

E

The petitioner and some other owners of cinema houses woke up rather late. On 16 September, 1972, they sent in their objections to the imposition of such tax. By that time, the Board had also reconsidered its initial resolution, as a result of such advice as was given by the Prescribed Authority to the Board, and reduced the theatre tax to Rs. 15/- per show. Again, the objections could not have been considered even if they were to be deemed to be objections to the reduced rate of Rs. 15/- per show because they were not there at all for consideration before the Board when it passed its special resolution reducing the rate on 28 August, 1972. No doubt, its modified proposal of Rs. 15/- per show was not published. But, this was not done because the Board, quite rightly, considered itself protested by the clear provisions of the proviso to section 132(2) of the Act. F

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On 18 September, 1972, although the revised proposal to tax cinema shows at the rate of Rs. 15/- per show was sent by the Municipal Board to the Prescribed Authority, yet, it did not forward the objections of the petitioner to the Prescribed Authority. Perhaps it did not forward these objections because they could not be taken into account by the Board itself either before or at the time of framing the modified proposal of Rs. 15/- per show as they were not there at all. The Prescribed Authority sanctioned the modified proposal on 31 October, 1972, without taking into account the objections of the appellant as H

A they were not before it. But, the draft rules were published on 18 November, 1972, and objections invited to them within 30 days. Objections to the draft rules were filed on 15 December, 1972, and the rules were sanctioned under section 134 of the Act after considering these objections. The tax was imposed with effect from 16 April, 1973, after a gazette notification on 14 April, 1973.

B It is difficult to understand why, when the appellant applied for copies of the Municipal Board resolution, the copies were refused. A delegation of the cinema owners went to the Commissioner on 3 May, 1973, and was told that the Commissioner had not received any of the objections from the Municipal Board before sanctioning the modified tax. Apparently, the Municipal Board took the view that they were irrelevant when it did not consider them. It, however, C seems to have overlooked the fact that the Prescribed Authority may have taken a different view.

On the facts stated above, Mr. Y. S. Chitale, appearing for the appellant, has advanced two ingenious arguments : firstly, he contends that the objections, being there before the revised proposal was sent to the Prescribed Authority on 18 September, 1972, ought to have D been forwarded to the Prescribed Authority for consideration because they had to be "dealt with" in the manner prescribed in section 132(1); and secondly, that, in any case, when the proposal was sent, the Board was bound to forward to the Prescribed Authority any objections it had in its possession and could not withhold them. It was urged that this part of the duty was certainly not carried out by the E Board.

As regards the first contention, we find it difficult to permit the appellant to advance it here for the first time. It is not found in his writ petition. It was not advanced in that form before the High Court. It is not even found in the special leave petition in this particular form. However, even if we were to allow this question to be F argued, we find that the objections filed by the petitioner on 16 September, 1972, were really objections to the original proposal and not to the modified proposal at all. Section 132(3) gives a right only to actual objectors to the modified proposals to have their objections dealt with under section 132(1) of the Act. This necessarily means that the objections should be at least before the Board when it passes the resolution on modified proposals. After all, all that section 132(1) G indicates about the manner in which the objections are be dealt with is that they should be considered before the passing of the special resolution. Now, if the objections are not there at all when the initial special resolution is passed or even when the modified proposals were passed, it is impossible for the Board to deal with them in the manner prescribed by section 132(1) of the Act. Since the duty to send objections could arise only subsequent to the procedure prescribed by H section 132(1) of the Act the contention that the objections should have been sent to the Prescribed Authority to be considered because of any mandatory duty resulting from the provisions of section 132(1) and (3) of the Act must fail. It may be mentioned that we are not

concerned here with the validity of any of the provisions on the ground of their reasonableness or otherwise. No such question has been argued before us. We have, therefore, to proceed on the assumption that the provisions of the Act are valid. A

So far as section 132(4) is concerned, it may be possible to so interpret the provisions as to confine objections to be sent to the Prescribed Authority to only those which the Board took into consideration. Nevertheless, when we examine the wide language in which section 132(4) is couched conferring a right to object, without any restriction, we find it difficult to exclude the right of the petitioner to have his objections sent to the Prescribed Authority. Apparently, section 132(4) covers any objections whatsoever, whether made within a fortnight or beyond a fortnight, provided they are sent in before the matter is submitted to the Prescribed Authority. Indeed, we find no statutory bar against the Prescribed Authority itself considering the objections which may be filed before it if the interests of justice so require. But, the question which arises before us is whether the non-observance by the Board of a duty to send the appellant's objections to the Prescribed Authority, assuming it is there, would invalidate the imposition of the modified tax. This, we think, would depend upon whether we interpret provisions of section 132(4) as mandatory or as directory so far as submission of objections, not submitted within sufficient time so as to be considered by the Board, are concerned. B C D

As we have already observed, no provision of the Act has been challenged. Section 135(3) of the Act reads as follows : E

> "135. Imposition of tax.—(1) ....
> (2) .....
>
> (3) A notification of the imposition of a tax under sub-section (2) shall be conclusive proof that the tax has been imposed in accordance with the provisions of this Act."

It is true that, if there is such a gross breach of the rules that the proposal sanctioned could not be deemed to be "imposition of a tax" at all, section 135(3) may not bar the consideration of such basic infirmity in the proceedings which make them no proceedings at all in the eyes of the law. This is the most that can be said on the strength of *Buland Sugar* v. *Municipal Board,*(1) which is strongly relied upon by Mr. Chitale. F

Mr. Yogeshwar Prasad, appearing on behalf of the Municipal Board, however, pointed out that the *Buland Sugar* case was decided before the proviso to section 132(2) was added in 1964. It does appear to us that the effect of the proviso is that, by dispensing with even the publication of the modified proposals, no such right of the appellant is violated as could be considered a condition precedent to the validity of the proceedings. Nevertheless, if the petitioner could have made out a case of such injustice due to some irregularity G H

(1) [1965] (1) S.C.R. 979.

A that we should deem the imposition of the tax to be vitiated by the non-consideration of a vital matter, we could have taken the view that section 135(3) will not bar consideration of a vital infirmity, in as much patent injustice has resulted from it, in the imposition of a tax. If it could be argued that there is no imposition of the tax at all as contemplated by law, section 135(3) may not have cured the irregularity. But, no such infirmity has been pointed out to us. The result B is that, whatever irregularity there may be in not forwarding the objections of the appellant to the Prescribed Authority, as the Board should have done under section 132(4) of the Act, the irregularity seems to be cured by an application of the provisions of section 135(3) of the Act as the Government had notified the imposition of the tax.

It may perhaps also be pointed out that, if the incidence of a tax C is unfair, a representation can be made to the Government under section 137 of the Act even after the imposition. Therefore, if there is any gross injustice, which the petitioner has not been able to make out before us he can still approach the Government for relief in case he can make out a case for relief under section 137 of the Act.

For the reasons given above, we uphold the judgment of the Allaha- D bad High Court and dismiss the appeal. However, in the circumstances of the case, the parties will bear their own costs.

M. R. *Appeal dismissed.*