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MUNICIPAL BOARD, SITAPUR

v.

PRAYAG NARAIN SAIGAL & FIRM MOOSARAM BHAGWANDAS

January 16, 1969

B

[S. M. SIKRI, R. S. BACHAWAT AND K. S. HEGDE, JJ.]

U.P. Municipalities Act, 1916 (U.P. Act 2 of 1916)—Levy of water tax—Non-compliance with provisions of ss. 131(3), 132(2) and 94—Whether makes levy invalid—Effect of s. 135(3).

C

The Municipal Board Sitapur took various steps to levy water tax as authorised by s. 126(1)(x) of the U.P. Municipalities Act, 1916, and the special resolution imposing the tax with effect from October 1, 1957 was passed on April 23, 1957. The High Court held the levy to be invalid. In appeal filed by the Municipal Board this Court had to consider the effect of (i) the omission to publish the preliminary proposal separately in the manner prescribed by s. 131(3) read with s. 94, (ii) the non-publication of the modified proposal in accordance with s. 132(2) and (iii) the non-publication of the special resolution directing the imposition of the tax in accordance with s. 94.

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HELD : The High Court was in error in quashing the imposition of the water-tax.

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(i) Procedural defects in the imposition of the tax are cured by s. 135(3). Such defects cannot be regarded as fundamental or as invalidating the imposition, if no substantial prejudice is caused thereby to the inhabitants of the municipality. The issue of the notification under s. 135(2) is conclusive proof that all necessary steps for the imposition of the tax have been taken in accordance with the provisions of the Act. [389E-F]

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Municipal Board v. Raghuvendra, [1966] 1 S.C.R. 950. *Buland Sugar v. Municipal Board*, [1965] 1 S.C.R. 970 and *Berar Swadeshi Vanaspathi v. Municipal Committee, Shegaon*, [1962] 1 S.C.R. 596, applied.

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(ii) In the present case there was substantial compliance with s. 131(3). The proposal was not separately published in the prescribed form but the omission to do so was a mere irregularity. The object of the publication under s. 131(3) is to inform the inhabitants of the proposal so that they can file their objections to it. That object was fully achieved by the publication in the local newspaper. [390 B—D]

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(iii) The inhabitants submitted all objections which they could possibly raise both with regard to the rate of tax and the exemption limit. No prejudice was caused by not inviting fresh objections to reduction of the rate of tax or the exemption limit. The non-publication of the modified proposal was a mere irregularity and the defect was cured by s. 135(3). [390 E]

(iv) Section 134(2) does not provide for the publication of the special resolution passed under it. Assuming that it had to be published under the general provisions of s. 94, the non-publication was a mere irregularity cured by s. 135(3). [391 C]

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 847 and 848 of 1966.

Appeals by special leave from the judgment and order dated January 20, 1965 of the Allahabad High Court, Lucknow Bench in Writ Petitions Nos. 108 and 109 of 1962. A

S. C. Manchanda and *S. S. Shukla*, for the appellant (in both the appeals).

C. B. Agarwala and *K. P. Gupta*, for the respondents (in both the appeals). B

The Judgment of the Court was delivered by

Bachawat, J. These appeals are directed against orders of the Allahabad High Court (Lucknow Bench), quashing the imposition of a water rate imposed by the Municipal Board, Sitapur. Section 126(1)(x) of the U.P. Municipalities Act, 1916 (U.P. Act No. 2 of 1916) empowers the Board to impose a water tax on the annual value of buildings or lands or of both. Sections 131 to 135 lay down the procedure for imposing the tax. The High Court held that the levy was invalid as the Board did not comply with this procedure. C

A municipal board desiring to impose the tax is required by s. 131 sub-s. (1) to pass a special resolution framing the preliminary proposal for the tax. The Municipal Board, Sitapur, passed a special resolution on January 24, 1956 framing the proposal for the levy of water tax at the rate of 12% per annum on the annual value of buildings and lands and exempting buildings and lands whose annual value was Rs. 24 or below. D

Section 131 sub-s. (2) requires the Board to prepare a draft of the rules in respect of the proposed tax. The Board duly prepared the necessary draft rules. Section 131 sub-s. (3) requires the Board to publish in the manner prescribed in s. 94 the proposal and the draft rules along with a notice in the form set forth in Schedule III. The draft rules along with the notice was published in the *Rashtra Sandesh*, a local paper published in Hindi. The proposal was not separately published. But the proposal was to be found in the draft rules published in the local paper. Objections against the proposal were filed by the inhabitants of the municipality. The Board duly considered the objections and passed orders thereon under s. 132 sub-s. (1). After considering the objections and the recommendations of the prescribed authority under s. 133 sub-s. (1) the Board decided to modify the original proposal by reducing the tax to 10% on the annual value and by exempting all lands and buildings whose annual value was Rs. 36 or below. Section 132 sub-s. (2) requires the Board to publish the modified proposal along with a notice indicating that it is in modification of the original proposal. and s. 132 sub-s. (3) provides that the objec- E

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A tions to the modified proposal shall be dealt with in the manner prescribed by sub-s. (1). The modified proposal was not published as required by s. 132 sub-s. (2). The prescribed authority acting under s. 132 sub-s. (2) duly sanctioned the final proposal and made the necessary rules in respect of the tax. It may be noted that the Commissioner, Lucknow Division, was the prescribed authority. On receipt of the order of sanction and the copy of the rules, the Board acting under s. 134 sub-s. (2) passed a special resolution on April 23, 1957 directing the imposition of the tax with effect from October 1, 1957. This special resolution was not published in the manner prescribed by s. 94. On receipt of the special resolution the prescribed authority acting under s. 135 sub-s. (2) notified in the official gazette dated August 3, 1957 the imposition of the tax from the appointed date. Section 135 sub-s. (3) provides that "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."

D The respondents raised three objections against the validity of the imposition of the water tax : (1) omission to publish the preliminary proposal separately in the manner prescribed by s. 131 sub-s. (3) read with s. 94; (2) non-publication of the modified proposal in accordance with s. 132 sub-s. (2); and (3) non-publication of the special resolution directing the imposition of the tax in accordance with s. 94. The procedure laid down by the Act was not strictly complied with before imposing the tax. But all the procedural defects in the imposition of the tax are cured by s. 135 sub-s. (3), where, as in this case, the Municipal Board has the power to levy the tax and has passed the special resolution necessary for the imposition of the tax and the defects are not of a fundamental character. The procedural defects cannot be regarded as fundamental or as invalidating the imposition, if no substantial prejudice is caused thereby to the inhabitants of the municipality. The issue of the notification under s. 135 sub-s. (2) is conclusive proof that all necessary steps for the imposition of the tax have been taken in accordance with the provisions of the Act.

G In *Municipal Board v. Raghuvendra*⁽¹⁾ the Court held that the defect of non-publication of the special resolution proposing the tax in a local Hindi paper and omission to publish the draft rules as required by s. 131 sub-s. (3) read with s. 94 sub-s. (3) was cured by s. 135 sub-s. (3) and that the publication of the special resolution by affixing a copy of it on the notice board and by beat of drum was sufficient. In *Bland Sugar v. Municipal Board*⁽²⁾ the Court held that the publication of the pro-

(1) [1966] 1 S.C.R. 950.

(2) [1935] 1 S.C.R. 970.

posals and the draft rules in Hindi in a local Urdu paper was sufficient compliance with s. 131 sub-s. (3). In *Berar Swadeshi Vanaspathi v. Municipal Committee, Shegaon*,⁽¹⁾ the Court held that in view of the similar provisions of s. 67 sub-s. (7) of the C.P. and Berar Municipal Act, 1922, the validity of imposition of the octroi tax could not be challenged on the ground that the objections were not considered on the merits.

As to the first objection we find that there was substantial compliance with s. 131 sub-s. (3). The draft rules were published in the *Rashtra Sandesh*. They incorporated the preliminary proposal and mentioned the special resolution dated January 24, 1956 by which the proposal was framed. There was thus sufficient publication of the proposal. The proposal was not separately published in the prescribed form, but the omission to do so was a mere irregularity. The inhabitants of the municipality had due notice of the proposal. The object of the publication under s. 131 sub-s. (3) is to inform the inhabitants of the proposal so that they can file their objections to it. That object was fully achieved by the publication in the *Rashtra Sandesh*.

As to the second objection, we find that the original proposal was to levy water tax at the rate of 12% per annum on the annual value. The inhabitants had full opportunity to raise objections to the rate of the tax and to submit whether the rate should be 12% or 10% or less. After considering their objections, the Board proposed to levy the tax at the reduced rate of 10% per annum on the annual value. No prejudice was caused by not inviting fresh objections to the modified proposal of levying the tax at the reduced rate. It is interesting to notice that the U.P. Municipalities (Amendment) Act, 1964 (U.P. Act No. XXVII of 1964) inserted in s. 132 sub-s. (2) the following proviso: "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." This proviso was not in force on January 24, 1956. But it does indicate that it is unnecessary to publish a modified proposal reducing the rate of tax originally proposed. The original proposal exempted all buildings and lands whose annual value was Rs. 24 or below. The modified proposal raised the exemption limit and provided that all buildings and lands whose annual value was Rs. 36 or below would be exempted. The inhabitants of the municipality had full opportunity to raise objections as to the exemption limits as originally proposed and to submit whether buildings and lands of the value of Rs. 24 or Rs. 36 or more should be exempted. No prejudice was caused by not inviting fresh objections to the

(1) [1962] 1 S.C.R. 596.

- A** modified proposal raising the exemption limit. The inhabitants submitted all objections which they could possibly raise both with regard to the rate of tax and the exemption limit. In our opinion, the non-publication of the modified proposal was a mere irregularity, and the defect was cured by s. 135 sub-s. (3).
- B** As to the third objection it is to be observed that s. 134 sub. s. (2) does not provide for the publication of the special resolution passed under it. Assuming that this special resolution had to be published under the general provisions of s. 94, we think that the non-publication was a mere irregularity. The inhabitants had no right to file any objections
- C** against the special resolution. They had clear notice of the imposition of the tax from the notification published in the official gazette on August 3, 1957. The defect of the non-publication of the special resolution in the manner prescribed by s. 94 was cured by s. 135 sub-s. (3). The High Court was in error in quashing the imposition of the water tax.
- D** In the result, the appeals are allowed with costs in this Court and in the High Court, the order of the High Court is set aside and the writ petitions are dismissed. There will be one hearing fee.

G.C.

Appeals allowed.