

Befodre D. S. Tewatia and S. S. Sodhi JJ.

KISHAN CHAND AND OTHERS,—*Petitioners.*

versus

MUNICIPAL COMMITTEE SANGAT AND ANOTHER,—*Respondents.*

Civil Writ Petition No. 893 of 1977.

March 21, 1984.

Punjab Municipal Act (III of 1911)—Sections 37 and 62(10) and (12)—House tax imposed by a notification under section 62—Such tax enforced with effect from a date less than one month from the imposition—Date—Whether could be said to be validly fixed—Enquiry into the regularity of procedure before the issue of the notification—Whether barred by section 62(12).

Held, that where in the imposition of house tax the only infraction, if any, was that the notification specified a date less than one month from the date of imposition, such a defect would not invalidate the imposition of tax in view of the provisions of sub-section (12) of section 62 of the Punjab Municipal Act, 1911. Section 62(12) of the Act prohibits any enquiry into the regularity of the procedure followed for the imposition of tax.

(Paras 7, 8 and 10).

Case referred by a learned Single Judge Hon'ble Mr. Justice D. S. Tewatia to the Larger Bench on 18th August, 1983 for decision of an important question of law involved in this case. The Larger Bench consisting of Hon'ble Mr. Justice D. S. Tewatia and Hon'ble Mr. Justice S. S. Sodhi finally decided the case on 21st March, 1984.

Petition under Articles 226/227 of the Constitution of India praying that the Hon'ble Court may be pleased to :—

- (a) *Issue a writ in the nature of certiorari or any other writ, order or direction for quashing the impugned notifications (P-3 and P-4) and impugned resolutions (P-1 and P-2).*
- (b) *issue any other writ, order or direction to which the petitioners are held entitled.*
- (c) *exempt the filing of the originals or certified copies of the Annexures.*

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- (d) *Dispense with the supplying of the copies of the writ petition and Annexures to the Respondents before the filing of this writ petition.*
- (e) *Stay assessment and recovery of tax in pursuance of the impugned resolutions and notifications till the disposal of this writ-petition.*
- (f) *Costs of this writ petition be awarded to the petitioners.*

J. R. Mittal and Pawan Bansal Advocates, for the Petitioner.

H. S. Bedi, D.A.G., (Punjab), for Respondent No. 2.

K. S. Kanwar, Advocate, for Respondent No. 1.

JUDGMENT

S. S. Sodhi, J.

(1) The matter here relates to the imposition of House Tax by the Municipal Committee, Sangat.

(2) On December 30, 1975, the Municipal Committee passed a resolution that House Tax be imposed with effect from April 1, 1976. A copy of this resolution was sent to the State Government for publication in the Government gazette. A notification under Section 62(10) of the Punjab Municipal Act, 1911 (hereinafter referred to as 'the Act') was issued on April 9, 1976 (Annexure P/3), but no date of enforcement of the House Tax was mentioned therein. This omission was later rectified by a corrigendum issued on October 20, 1976 (Annexure P/4) whereby it was provided that the House Tax shall come into effect from July 1, 1976. The requirement in this behalf under Section 62(10) of the Act is that the State Government "shall in the notification specify a date, not less than one month from the date of notification on which the Tax shall come into force."

(3) The contention of Mr. J. R. Mittal, counsel for the petitioners was two-fold—one that the notification regarding the imposition of the tax was required to notify not only the imposition of such tax

case (supra) needed reconsideration. As is plain, the necessity of it was spelled out in the referring order.

(14) In *Gobind Ram's case* (supra), B. R. Tuli, J., had taken the view that the rule was not consistent with the power vested in the State Government under section 85 of the Punjab Co-operative Societies Act, 1961 (hereinafter referred to as the Act) whereunder power to frame Rules had been conferred on the State Government. It seems that the provisions of sub-section (3) of section 85 of the Act were not read before the Hon'ble Judge in the right perspective. These may well be reproduced here:—

“Every rule made under this section shall be laid as soon as may be after it is made before the State Legislature while it is in session for a total period of ten days which may be comprised in one session or in two successive sessions, and if before the expiry of the session in which it is laid or the session immediately following the Legislature agrees in making any modification in the rule or the Legislature agrees that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.”

Undeniably; the rule in question was placed before the State Legislature. Rather, no data has been placed on the record to show that it was not so placed. It has thus to be assumed that it was so placed.

(15) Mr. Khoji, learned counsel for the petitioners, on the strength of parliamentary practice, maintained that such rules are seldom placed before the Legislature and, possibly in the observance of that practice, the rule perhaps was not placed. On the anvil of *Megha Singh and Co., and others v. The State of Punjab and others*. (6), it was suggested that in any case “non-laying of the rule before the Legislature” would not have invalidated such legislation. That apart, the concluding portion of sub-section (3) of section 85 of the Act makes the intendment of the Legislature clear that the rule becomes effective on its promulgation, and for

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provisions of this Act", in our judgment, means "imposed in accordance with the procedure provided under the Act". All enquiry into the regularity of the procedure followed by the Municipal Council prior to the publication of the notice is excluded by S. 97(2).———".

(9) Provisions similar to Section 62(12) of the Act, were also contained in Section 78(8) of the C.P. and Berar Municipalities Act, 1922. These came up for consideration by the Supreme Court in *Berar Swadeshi Vanaspati & Ors. v. Municipal Committee Shegaon & anr.* (5). Where the plea raised in challenge to the imposition of octroi duty was that objections to the proposed tax had not been considered on merits and therefore, the procedure, as prescribed by section 67 relating to the imposition of tax had not been complied with. Here again, it was held that the imposition of the Octroi having been notified under sub-section (7) of Section 67, it was conclusive evidence of the tax having been imposed in accordance with the provisions of the Act and it could not, therefore, be challenged on the ground that all necessary steps had not been taken.

(10) Seen from another angle too, the same result follows. In *M/s Jagir Singh-Mohinder Singh and Ors. v. State of Punjab and others* (6), the validity of the notification relating to the enhancement of licence fee was questioned on the ground that it violated the provisions of clause (b) of sub-section (10) of Section 62 of the Act, in that, it required that the notification shall specify a date, not less than one month from the date of the notification on which the tax shall come into force. The impugned notification, which had been published on April 4, 1980, however, provided that the tax would be enforced with effect from April 1, 1980. Relying upon the provisions of Section 37 of the Act, D. S. Tewatia, J. held, "the only infraction, if any, was that the date of enforcement of the taxation proposal should have been separated by a month from the date of the notification. Such a defect, in my view, would not invalidate the enhanced licence fee in view of the provisions of S. 37 of the Act."

(11) The issue raised thus stands concluded by the consistent view expressed by the Supreme Court which indeed constitutes a

(5) A.I.R. 1962 S.C. 420.

(6) A.I.R. 1983 Pb. & Hry. 315.

Anglo-French Drug Co., (Eastern) Ltd., Bombay v. M/s. Belco
Pharma (G. C. Mital, J.)

binding precedent here. The infirmities in the procedure for the imposition of the House Tax in this case thus stand cured by the provisions of Section 62(12) as also Section 37 of the Act and the tax imposed consequently warrants no interference in writ proceedings.

(12) This writ petition is accordingly hereby dismissed. There will, however, be no order as to costs.

D. S. Tewatia, J.--I agree.

N.K.S.