

1961

March 28.

THE BERAR SWADESHI VANASPATHI &
OTHERS

v.

THE MUNICIPAL COMMITTEE, SHEGAON &
ANOTHER(S. K. DAS, J. L. KAPUR, M. HIDAYATULLAH,
J. C. SHAH and T. L. VENKATARAMA AYYAR JJ.)

Octroi Tax—Imposition of—Irregularities—Issuance of Government Notification—Effect—C. P. & Berar Municipal Act, 1922 (C. P. & Berar II of 1922), s. 67, sub-ss. (6) and (8).

The respondent Municipality passed a resolution under s. 67(1) of the C.P. & Berar Municipal Act, 1922, for the purpose of levying an octroi duty which was published in the State Gazette along with the rules for assessment. Objections were invited to the said proposed tax, and only one objection was filed within time which was also rejected. The Government gave its sanction to the imposition of the tax and draft Rules by two Notifications.

The appellants filed a petition challenging the legality of the imposition of the tax *inter alia* on the ground that the notifications were *ultra vires*. They contended that all steps necessary for the imposition of tax had not been taken and that objections raised within time by the respondent No. 1 were not considered on their merits and were rejected merely on the ground that there was only one objector; as this was one of the essential steps for the validity of the imposition of tax it could not be said that s. 67 of the Act had been complied with, therefore the imposition was invalid.

Held, that where the Government Notification clearly was one which directed imposition of Octroi Tax it fell within sub-s. (7) of s. 67 of the Act and having been once notified in the Gazette sub-s. (8) of s. 67 of the Act came into operation and the issue of the notification was conclusive evidence of the Tax having been imposed in accordance with the provisions of the Act, and it could not be challenged on the ground that all necessary steps had not been taken.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 234 of 1959.

Appeal from the order dated February 15, 1957 of the Bombay High Court of Judicature at Nagpur in Special Civil Application No. 2-N of 1956.

S. P. Varma, for appellant No. 1.

B. S. Shastri and Ganpat Rai, for respondent No. 1.

B. R. L. Iyengar and T. M. Sen, for respondent No. 2.

1961. March 28. The Judgment of the Court was delivered by

KAPUR, J.—This is an appeal on a certificate by the High Court of Bombay against the judgment and order of that Court passed on a petition under Art. 226 of the Constitution by the present appellants in regard to the legality of the notification levying an octroi duty on certain goods.

The appellants are some of the ratepayers of the Municipal Committee of Shegaon which is respondent No. 1 in this appeal. The other respondent is the State of Bombay. The appellants were carrying on trade and business which involved their bringing goods within the limits of the Municipal Committee. On July 25, 1954, the Municipal Committee passed a resolution for the purpose of levying an octroi duty instead of terminal tax. This resolution was published in the State Gazette on June 29, 1956, along with rules for assessment. On August 4, 1956, objections were invited to the proposed tax. The objections by the first appellant were filed on August 4, 1956, and by some others on August 5 and 6. At a meeting of the Municipal Committee dated August 16, 1956, the objections of the other appellants were rejected as being time barred and those by the first appellant were rejected because it was the only objector whose objections were within time. Some representations were made by the first appellant to the Government and a few days later the other objectors also made similar representations but the Government issued the notification sanctioning the imposition of the tax and the Draft Rules on October 27, 1956, though the Gazette Notifications were published on two separate dates, *i.e.*, October 30 and October 31, 1956. The appellants then filed a petition under Art. 226 in the High Court of Bombay at Nagpur challenging the legality of the imposition of the tax. Two main grounds were urged: (1) that the notification was *ultra*

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vires because s. 67 of the C. P. & Berar Municipalities Act, 1922 (Act II of 1922), hereinafter termed the 'Act', had not been complied with and (2) that the rate of tax in regard to certain articles was unauthorised in that it was more than the maximum which could be levied under the law. The High Court rejected the first ground but accepted the second objection and gave relief accordingly.

Appellants Nos. 2 to 6 have not taken steps for the prosecution of the appeal and the appeal, in so far as it relates to them, is dismissed for non-prosecution.

The appellant No. 1 before us has challenged the *vires* of the imposition on two grounds: (1) that all the steps necessary for the imposition of the octroi duty had not been taken and therefore s. 67 had not been complied with and (2) that as a matter of fact there was no notification imposing an octroi duty. For the purpose of the decision of these objections it is necessary to refer to the scheme of the Act, Chapter IX of which relates to the imposition, assessment and collection of taxes. Section 66 enumerates the taxes which may be imposed and s. 67 prescribes the procedure for imposing taxes. Section 67 reads as under:—

Section 67(1) "A committee may, at a special meeting, pass a resolution to propose the imposition of any tax under section 66.

(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.

(3) Any inhabitant of the municipality objecting to the proposed tax may, within thirty days from the publication of the notice, submit his objection in writing to the committee.

(4) The committee shall take the proposal and all objections received thereto into consideration at a special meeting, and may modify the proposals so as not to affect their substance, and may then forward them to the Provincial Government along with all objections received, its decisions thereon

and its reasons therefor. If the committee decided to modify the proposals so as to affect their substance it shall publish them again in the manner prescribed in sub-section (2).

(5) The Provincial Government, on receiving such proposals may sanction or refuse to sanction the same, or sanction them subject to such modifications as it may think fit, or return them to the committee for further consideration:

(6)

(7) If any proposals for taxation have been sanctioned under sub-section (5) the Provincial Government may, by notification direct the imposition of the tax as sanctioned from such date as may be specified in such notification, and thereupon the tax shall come into effect as from the date so specified.

A notification of the imposition of a tax under this section shall be conclusive evidence that the tax has been imposed in accordance with the provision of this Act."

The objection to the vires of the notification in regard to procedure is that the objections raised by appellant No. 1, though within time, were not considered on their merits and were rejected merely on the ground that there was only one objector and as this was one of the essential steps for the validity of the imposition it could not be said that s. 67 had been complied with; and the imposition was therefore invalid. The High Court rejected this plea because of s. 67(8), although it found that non-consideration of the objections was an error in procedure. The language of sub-s. (8) lends support to this view. It provides that the issuance of the notification imposing a tax shall be conclusive evidence that the tax had been imposed in accordance with the provisions of the Act. But it was argued that as a matter of fact there was no notification imposing the tax and therefore the question of conclusive evidence does not arise. This, in our opinion, is not established.

As stated above, there were two notifications issued

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by the Government both of October 27, 1956. One was published in the Gazette on October 30, 1956, and the other on the following day. The first notification was as follows:—

“No. 4963-5869-M-XIII.—In exercise of the powers conferred by sections 71, 76 and 85 of the Central Provinces and Berar Municipalities Act, 1922 (II of 1922), the State Government are pleased to sanction the following draft rules for assessment, collection and refund of the octroi tax within the limits of the Shegaon Municipality, in the Buldana District.

The rules shall come into force from the date of their publication in the ‘Madhya Pradesh Gazette Extraordinary’ ”.

And the second notification stated:—

“No. 4962-5869-M-XIII.—In exercise of the powers conferred by sub-section (2) of section 67 of the Central Provinces and Berar Municipalities Act, 1922 (II of 1922), the State Government are pleased to confirm the following draft rules for the imposition of the octroi tax within the limits of the SHEGAON MUNICIPAL COMMITTEE, in the Buldana district, under clause (c) of sub-s. (1) of section 66 of the said Act, on animals and goods brought for sale, expenditure or use in supersession of the rules of terminal tax, sanctioned under Notification No. 37-16-B-VIII dated the 15th February, 1921.

The rules shall come into force from the date of their publication in the ‘Madhya Pradesh Gazette Extraordinary’ ”.

The first notification purports to be in exercise of the powers under s. 71 which relates to Rules for assessment and for preventing evasion of assessment of taxes; s. 76 which provides for collection of taxes and s. 85 which relates to refunds. That notification therefore lays down the various rules and other matters necessary for the collection of taxes. The second notification on the face of it is under sub-s. (2) of s. 67. It appears to us that this is a mistake and should have been under sub-s. (7) of s. 67. By this notification the State Government confirmed the draft rules for

the imposition of the octroi duty which in the context must mean imposition of the tax because the very first rule states:—

Rule 1 “Octroi shall ordinarily be levied on commodities included in the following classes and specified in the schedule hereto annexed and at the rates therein entered”.

The various classes of articles and commodities on which octroi was to be levied are then set out and then the exceptions and explanations are given. With these rules are the schedules specifying the goods under each class which are liable to octroi duty and the rate at which the octroi duty was chargeable. This notification therefore clearly is one which directs imposition of octroi and falls within sub-s. (7) of s. 67 and having been notified in the Gazette it is conclusive evidence of the tax having been imposed in accordance with the provisions of the Act and it cannot be challenged on the ground that all the necessary steps had not been taken.

In our opinion this appeal is without force and is therefore dismissed with costs.

Appeal dismissed.

HUKUM SINGH AND OTHERS

v.

THE STATE OF UTTAR PRADESH

(K. SUBBA RAO and RAGHUBAR DAYAL, JJ.)

Criminal Trial—Criminal Trespass—Right of private defence of property—Degree of—Trespasser, if must abide by the directions of the aggrieved party—Common object—Conclusion of—Indian Penal Code (Act 45 of 1860), s. 149.

The appellants one of whom was armed with hatchet and others with lathis, on being prevented by one ‘H’ and his supporters through whose field they were committing criminal trespass with the common object to reach a public passage with two loaded carts, are alleged to have attacked ‘H’ and his supporters, as

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