# Ahmedabad Manufacturing & Calico ... vs State Of Gujarat & Ors on 10 April, 1967

## Equivalent citations: 1967 AIR 1916, 1967 SCR (3) 595, AIR 1967 SUPREME COURT 1916

## Author: K. Subba Rao

## Bench: K. Subba Rao, M. Hidayatullah, R.S. Bachawat, J.M. Shelat, C.A. Vaidyialingam

PETITIONER:
AHMEDABAD MANUFACTURING & CALICO PRINTING CO., LTD.,

Vs.

RESPONDENT:
STATE OF GUJARAT & ORS.

DATE OF JUDGMENT:
10/04/1967

BENCH:
RAO, K. SUBBA (CJ)
BENCH:
RAO, K. SUBBA (CJ)
HIDAYATULLAH, M.
BACHAWAT, R.S.
SHELAT, J.M.
VAIDYIALINGAM, C.A.

CITATION:
1967 AIR 1916 1967 SCR (3) 595

ACT:
Constitution of India, 1950, Art. 14, and Gujarat Education Cess Act, 1962-City of Ahmedabad divisible into three zones-Different method of levying cess in each zone-Whether results in discrimination.
Gujarat Education Cess Act, 1962, s. 12-Levy based on assessment book prepared by municipality under Bombay Provincial Corporation Act, 1949 as applied to city of Ahmedabad-Said assessment book, levying property tax at flat rate on basis of floor area, declared invalid by Supreme Court-Section 12 of Cess Act whether survives- Cess Act whether invalid for lack of opportunity to raise objections etc.

HEADNOTE:
The petitioners had their textile mills in the City of Ahamdabad, The properties in Ahmedabad were in three zones. In the inner zone were situated properties which did not bear land revenue on account of the exemption given in s. 123 of the Bombay Land Revenue Code. In the middle zone were situated lands which though originally agricultural lands had been diverted to non-agricultural use. In the outer zone were lands which were purely agricultural. Under the Gujarat Education Cess Act, 1962 the Cess was of three separate kinds; (a) a surcharge on land revenue assessed an purely agricultural lands, (b) a surcharge on non-agricultural assessment in respect of lands used for non-agricultural purposes, and (c) a tax on lands and buildings which did not bear land revenue. As a result the Cess Act operated differently in the three zones. The properties of the petitioners were in the middle zone of Ahmedabad. In their writ petitions under Art. 32 of the Constitution they contended that by reason of their situation the Cess Act operated unequally against them because while the owners of property in the other two zones bore either a surcharge on the land revenue or a tax on the annual letting value, they bad to pay both the surcharge as well as the tax. Thus a violation of Art. 14 was alleged. It was also contended that the preparation of the assessment book on the basis of a flat rate on the floor area of a property having been struck down by his court in an earlier case (New Manek Chowk Spinning & Weaving Co. Ltd., etc. v. Municipal Corporation of the City of Ahmedabad & Ors., [1967] 2 S.C.R. 679 the tax under s. 12 of the Cess Act was no longer leviable, and that s. 12 being no longer operative. the Cess Act must fall as a whole. no validity of the Act was also attacked on the ground that it did not provide for objections being considered.
HELD : (i) If as a result of the decision of this Court the assessment book needed revision or the Principles on which valuation must be based had to be laid down afresh by the Legislature, the provisions of s. 12 of the Cess Act did not fail automatically. They would fasten on the new valuation when made. This cannot affect the validity of the section in the meantime. The section remains on the statute book to be worked into such assessment book as hereafter emerged. The argument fiat s. 12 had failed must therefore be rejected. [599 F-G]
(ii) A double imposition on the middle zone was not by itself offensive of Art. 14 of the Constitution unless it could be shown that the double tax in one zone as compared with the single tax in the other zones fell more heavily than the single tax. According to the earlier decision of this Court a new assessment book would be prepared. Ever if, in the middle zone, the surcharge and tax both had to be

paid, that rates might be so adjusted that the cess fell equitably on all landholder regard being had to the advantage; derived from the cess and the advantages derived from the situation of the lands. [601 D-F]

(iii)The procedure for the levy of the cess cannot be said to offend natural justice in not providing opportunity for putting forward objections etc. The cess is nothing more than an addition to other taxes which allow the raising of objections and provide for appeals. There is no need for further scrutiny, objection or appeal. Nor is the Cess Act bad because it is not self-contained in the matter of assessment, this being the usual method by which cesses are levied. [601 H]

JUDGMENT:

ORIGINAL JURISDICTION : Writ Petitions Nos. 12 and 17 to 21 of 1967, and 239, 240, 244 and 246 to 249 of 1966. Petitions under Art. 32 of the Constitution of India for the enforcement of fundamental rights.

G. S. Pathak, M. S. Desai, K. M. Desai and Ravinder Narain for the petitioner (in W.P. No. 12 of 1967).

Ravinder Narain, M. S. Desai and K. M. Desai, for the peti- tioners (in W.Ps. Nos. 17-21 of 1967, 239, 240, 244 and 246 249 of 1966).

N. S. Bindra, R. N. Sachthey and R. H. Dhebar, for respon- dent No. 1 (in all the petitions).

M. N. Shroff and I. N. Shroff, for respondents Nos. 2 and 3 (in all the petitions.) The Judgment of the Court was delivered by Hidayatullah, J. These are twelve Writ Petitions by diverse textile mills and other factories of Ahmedabad challenging the imposition of the Education Cess pursuant to the Gujarat Education Cess Act, 1962. As the contents of all petitions are the same, it will be sufficient if we refer to the petition filed by the Ahmedabad Manufacturing & Calico Printing Co. Ltd. (Writ Petition No. 12 of 1967). Before we do so, we shall state the scheme of the Cess Act relevant to the present purpose.

On October 9, 1962, the Gujarat Education Cess Act, 1962 became law. It is an Act to provide for the creation of a fund to promote education in the State of Gujarat. The Act applies to the City of Ahmedabad as constituted under the Bombay Provincial Municipal Corporations Act, 1949. Under the Cess Act education cess is levied on lands and buildings which have the meanings given to them under the relevant Local Authority Law here the Corporation Act. "Land", however, includes things attached to earth or permanently fastened to anything attached to the earth. Education cess is collected either as a surcharge on lands assessed to land revenue or a tax on lands and buildings in urban areas and the charging section reads :

"s. 3 : For the purpose of providing for the cost of promoting education in the State of Gujarat, there shall be levied and collected in accordance with the provisions of this Act an education cess which shall consist of.....

(a) a surcharge on all lands except lands which are included within a village site and not assessed to land revenue;

(b) a tax on lands and buildings in urban areas.

"Village Site" means the site of a village, town or city determined under s. 126 of the relevant Code which in this case is the Bombay Land Revenue Code, 1879 and "urban area"

means an area which is for the time being included in the limits of a city, municipal borough, etc. The mode of calculation of the surcharge and of the tax and of their collection are contained in Chapters III,' and IV. Chapter III deals with surcharge on land and is divided into two parts A and B. Part A deals with surcharge on agricultural lands and part B deals with surcharge on lands used for non- agricultural purposes. Chapter IV deals with tax on lands and buildings. For the purposes of the present writ petitions, we shall have occasion to refer to s. 5 from Part A and s. 7 from part B of Ch. III and s. 12 from Ch. IV. Under s. 5, a surcharge is levied at the rate of 20 paise on every rupee of every sum assessed as land revenue on all lands (except lands included within a village. site and not assessed to land revenue) which are assessed or held for the purpose of agriculture and not used for any purpose unconnected with agriculture. In simple language, it means the surcharge is 20% of the amount of land revenue assessed on land not within a village site, not assessed to land revenue, and not used for any purpose unconnected with agriculture. Under s. 7 the surcharge is additional to non- agricultural assessment of agricultural lands used for non- agricultural purposes. The surcharge here ranges from 121% to 75% of the non-agricultural assessment depending on the kind of non-agricultural use of the land. Under s. 12, a tax on lands and buildings situated in urban area is levied at varying rates depending on the use to which the lands and buildings are put. In every case, the tax is a percentage of the annual letting value which means the ratable value or annual letting value or gross annual letting value of lands and buildings determined in accordance with the relevant local authority law which as stated earlier is the Corporation Act. The rate applicable to lands and buildings used for purposes of trade, commerce, industry, profession or business is 3% of the annual letting value. It has now been raised to 4.5% from October 1, 1965.

Annual letting value for the purpose of S. 12 is determined upon and pursuant to the preparation of an assessment book relating to the property section under the Corporation Act. According to the assessment book, the annual letting value for the purpose of levying property tax on textile mills, factories, buildings of universities, etc., is made on the basis of a flat rate of a monthly rental of Rs. 6-10as. for the processing portion and Rs. 5-4as. for the non-processing portion, per 100 sq. foot of the floor area of such property situated in the urban area. Education cess is calculated on the basis of the annual letting value determined in the assessment book by applying the percentage. The details of the working of the system are fully described by our brother Mitter, in his judgment in Writ Petitions Nos. 133, 156-157, 159-171, 178 206-209, 210 and 234 of 1966 decided on Feb- ruary

21, 1967, where these mills and factories have successfully challenged the assessment book. By the decision of this Court, the floor area method of determining the annual letting value of textile factories in Ahmedabad has been held to be bad, because the contractor's basis which is usually applied in such calculations was not applied and the system actually adopted was likely to lead to discrimination. The inclusion of plant and machinery has also been held to be illegal as the power of the State Legislature to tax lands and buildings does not include a power to tax plant and machinery and the powers of the Corporation are co-terminus with those of the State Legislature by reason of s. 127(4) of the Corporation Act. It will be noticed that education cess is of three separate kinds. It is (a) a surcharge on land revenue assessed on purely agricultural lands, or (b) a surcharge on non-agricultural assessment in respect of lands used for non- agricultural purposes or (e) a tax on lands and buildings which do not bear land revenue, The properties in Ahmedabad are in three zones which may be described as demarcated by three concentric circles. In the inner zone are situated properties which do not bear land revenue and no surcharge is therefore payable in respect of lands and buildings. Properties in this zone were exempted from the payment of land revenue under S. 128 of the Bombay Land Revenue Code in Ahmedabad in common with other towns and cities in which there had been formerly a city survey. In the middle zone are situated lands which though originally agricultural lands have been diverted to non-agricultural use and the lands and buildings therefore bear both municipal tax and non-agricultural assess-

ment. In the outer zone are lands which are purely agricultural and they bear land revenue but no other charge. The textile mills of the petitioners are situated in the middle zone within the municipal limits of Ahmedabad and the main complaint in these cases is that by reason of their situation, these mills have to pay both the surcharge as well as the tax whereas the owners of property in the other two zones bear either a surcharge on the land revenue or a tax on the annual letting value. It is also contended that the preparation of the assessment book having been struck down by this Court in the case cited earlier by us, the tax under s. 12 is no longer leviable and s. 12 having become inoperative, the Cess Act must fall as a whole. The Cess Act does not provide for the procedure to arrive at the valuation of urban properties. It takes the valuation from the assessment book. There is, therefore, no doubt that the annual letting value or ratable value is not presently available since the decision of this Court has struck down the assessment book itself. This is conceded on behalf of the State of Gujarat. Similarly the decision of this Court that there is no power to include the value of plant and machinery in the ratable value is binding for purposes of the Cess Act. The question is, does this make s. 12 -to fail also? In our judgment it does not. Section 12 lays down that the tax on lands and buildings situated in urban areas shall be collected at the rate of 3% of the annual letting value (now 4.5%) where a building or land is used for the purpose of trade, commerce, industry, profession or business. This rate is applicable to the annual letting value as determined under the Bombay Provincial Municipal Corporations Act. If as a result of the decision of this Court the assessment book needs revision or the principles on which valuation must be based have to be laid down afresh by the Legislature, the provisions of on the new valuation when made. This cannot affect the validity of the section in the meantime. The section remains on the statute book to be worked into such assessment book as may hereafter emerge. The argument that s. 12 has failed must be rejected.

The second argument that there is discrimination between properties in the middle zone and the inner zone may now be considered. Chapter X of the Bombay Land Revenue Code deals with lands

within the sites of villages, towns and cities. Under s. 126, the limits of sites of villages, towns and cities are fixed. Under s. 127, the Bombay Rent-free Estates Act, 1852, the Bombay Exemptions from Land Revenue (No. 1) Act, 1863 and the Bombay Exemption from Land-revenue (No. 2) Act, 1863 have been made applicable to all lands, within the limits of the site of any town or city, in which an inquiry into titles has been made under the provisions of Bombay Act IV of 1868 (now repeated), which had been ordinarily used for agricultural purposes only, but not to other lands. Section 128 of the Code then provides :

> " s. 128 : The existing exemption from payment of land revenue of lands other than lands which have hitherto been ordinarily used for purposes of agriculture only, situate within the sites of towns and cities in which an inquiry into titles has been made under the provisions of Bombay Act IV of 1868 shall be continued.....
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> First-if such lands are situated in any town or city where there has been in former years a survey which the State Government reorganise for the purpose of this section, and are shown in the maps or other records of such survey as being held wholly or partially exempt from the payment of land revenue;

The exemption granted by s. 128 saves lands in the inner zone from the application of land revenue and the middle zone bears the non-agricultural assessment since it does not fall within this exemption. It is subjected to non- agricultural assessment by reason of the non-agricultural use to which it is put. The outer zone being outside the limits of village sites, town or city and composed of pure agricultural land is subject to land revenue only. The three zones are the result of the operation of different laws in rural and urban areas. Lands subjected to city survey and assessed to property-tax are saved from the imposition of land revenue to which all lands are normally subject. This exemption is a hundred years old and is based on the fact that land in the heart of the city ceases to be agricultural. Similarly lands in the outer circle are free from municipal assessment because they. are outside municipal limits and do not benefit from the municipal services. They are subject to land revenue only. The middle zone comes into being be-cause the owners and holders of agricultural lands are not content to hold land for agriculture but divert it to other uses. In course of time the limits of the municipality have to be revised and these lands are taken within the municipality which means that they begin to share in the municipal services. They are, therefore, assessed to municipal taxes as a return for the services rendered.

Now a cess is really a tax and it is generally imposed for providing money for some stated administrative purpose. It is usually collected as an addition to an existing tax. And so it is here. It is made as an addition to the tax already levied on lands and buildings. Since lands and buildings bear different kinds of taxes in the different zones, an attempt has been made to adjust the rates for the different zones presumably to make, the levy, equitable, regard being had to the situation and advantages to be derived from the expenditure on education. No objection has been made in the case that the tax levied in any zone is not commensurate with the

advantages which are likely to accrue or that the burden has been made unduly high in any particular zone. The only objections raised are three. The first and second are (a) that flat rate is applied in calculating the annual letting value and (b) that plant and machinery are included in lands and buildings. This has been corrected by the decision of our brother Mitter. The third is that the middle zone bears both the surcharge and the tax. A double imposition by itself is not offensive to Art. 14 of the Constitution unless it can be shown that the double tax in one zone as compared with the single tax in the other zones falls more heavily than the single tax. This is not attempted to be established except on the ground of flat rate above mentioned. Since that has been struck down already and will presumably be replaced by some more accurate and equitable valuation, we do not see any reason to interfere. The decision of our brother Mitter will lead to a readjustment of the assessment book and then only the ground that the rate of cess in the middle zone exceeds the rate in the other two zones can be considered. As at present situated it is sufficient to say that there is no discrimination because the method of calculation of cess in the three zones is different. Even if, in the middle zone, the Surcharge and tax have to be paid, the rates, for aught we know, may be so adjusted that the cess falls equitably on all landholders regard being had to the advantages derived from the cess and the advantages derived from the situation of the lands.

Finally there is the argument that the Cess Act, in not pro- viding its own procedure of assessment and in not giving the tax-payers an opportunity for putting forward their objections by way of representation, appeal or otherwise, before the tax is finally fixed, offends the principles of natural justice. This argument is not correct. The cess is nothing more than an addition to existing taxes. As it is a percentage of another tax, the determination of the cess is not by an independent assessment. It is an arithmetical calculation based on the result of assessment under other Act or Acts. Those Acts allow the raising of objections and provide for appeals. It is only the result of assessment after scrutiny, objection and appeals which forms the basis for the application of a percentage. There is no need for further scrutiny, objection or appeals. Nor is the Cess Act bad because it is not self-contained in the matter of assessment. In all cases of imposition of cesses for special administrative purposes (such as health cess, road cess, education cess, etc.) this method is followed. Being an addition to another tax this is the only method possible. The legislation on the subject of the imposition, levy and collection of a cess is made complete by incorporation of and reference to another piece of legislation. This practice is neither ineffective nor unconstitutional and cannot be said to be bad. In the result we decline to issue a writ in these petitions. They will be dismissed but the costs will be borne as incurred.

G.C. Petitions dismissed.