Raza Buland Sugar Co. Ltd vs Municlpal Board, Rampur on 30 October, 1964

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Bench: K.N. Wanchoo, P.B. Gajendragadkar, M. Hidayatullah, Raghubar Dayal, J.R. Mudholkar

PETITIONER:
RAZA BULAND SUGAR CO. LTD.

Vs.

RESPONDENT:
MUNICLPAL BOARD, RAMPUR

DATE OF JUDGMENT:
30/10/1964

BENCH:
WANCHOO, K.N.
BENCH:
WANCHOO, K.N.
GAJENDRAGADKAR, P.B. (CJ)
HIDAYATULLAH, M.
DAYAL, RAGHUBAR
MUDHOLKAR, J.R.

CITATION:
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RF	1966 SC 693	(10)
R	1968 SC 90	(6)
D	1968 SC 98	(11)
R	1969 SC 244	(14)
RF	1970 SC 58	(5)
R	1973 SC1041	(13)
RF	1974 SC1185	(13)
D	1976 SC 714	(30,40,68)
R	1977 SC 536	(17)
RF	1977 SC1055	(5)
E	1978 SC 306	(14,15)
RF	1983 SC 558	(20,22)
F	1989 SC1160	(27)

ACT:
U.P. Municipalities Act, 1916, ss. 131(3), 94(3) and 135(3)-Municipal Water Tax-Procedure for levy-Provisions in relevant State for publication of tax proposals whether directory for mandatory-Effect of publication of notification imposing tax in Government Gazette.

HEADNOTE:
The appellant company challenged the imposition of water-tax by the Rampur Municipal Board in a petition under Art. 226 of the Constitution of India on the ground that the tax had not been imposed according to law inasmuch as the proposals and draft rules had been published by the Board in an Urdu paper whereas according to the mandatory provisions of s. 131(3) read with s. 93(3) of the U.P. Municipalities Act, 1916, they should have been published,in a Hindi paper. The High Court dismissed the petition but granted a certificate under Art. 133(1)(c).
The questions for consideration were whether the whole of s. 131(3) was mandatory, or the part of it requiring publication in the manner laid down in s. 94(3) i.e., in a Hindi newspaper was merely directory; and whether the publication in the Government Gazette of the notification imposing the tax was not conclusive proof, as provided in s. 135(3), of the prescribed procedure having been observed.
HELD: (Per GAJENDRAGADKAR" C. J., WANcHoo and RAGHUBAR DAYAL JJ.)-(i) Section 131(3) can be divided into two parts-the first one providing that the proposal and draft rules for a tax intended to be imposed should be published for the objections of the public, if any, and the second laying down that the publication must be in the manner laid down in s. 94(3). Considering the object of the provisions for publication-namely to enable the public to place its viewpoint before the Board-it Is necessary to hold that the first part of the section is mandatory, for to hold otherwise would be to render the whole procedure prescribed for the imposition of taxes nugatory. The second part of the section is, however, merely directory. What it substantially requires is that the publication should be in Hindi in a local paper, and if that is done that would be compliance with s. 94(3). In the instant case publication was made in Hindi in a local paper which on the evidence seems to have good circulation in Rampur. There is no regularly published local Hindi newspaper. There was, in the circumstances, substantial compliance with the provisions of s. 94(3) in this case. [977 E-F; 978 D-F; 980 C; 981 A-B]
(ii) Section 135(3) provides that a notification of the imposition of tax in the Government Gazette was conclusive proof that the tax had been imposed in accordance with the provisions of the Act. Whether such a notification will

save a tax which has been imposed without at all complying with one of the mandatory provisions of the relevant law was a question that did not directly arise in the case. In the instant case there had been compliance with the mandatory part of s. 131(3) and substantial compliance with the second part. Therefore a. 135(3) applied to the case
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and the objection that the tax was not validly imposed could not succeed. [983 B-D; 983 D-E].
K. Kamaraja Nadar v. Kunju Thevar, [1959] S.C.R. 583, relied on.
State of U.P. v. Manbodhan Lai Srivastva, [1958] S.C.R. 533 and
Berar Swadeshi Vanaspati v. Municipal Committee, Shegaon, [1962] 1 S.C.R. 596, distinguished.
Montreal Street Railway Company v. Normandin, (1917) L.R., A.C. 170, Azimulla v. Suraj Kumar Singh, A.I.R. (1957) All. 307 and Municipal Board, Hapur v. Raghuvendra Kripal, 1960 A.L.I. 185, referred to.
Per HIDAYATULLAH J.-A Municipal Committee enjoys powers of taxation not as a legislature but as a delegate of the legislature. Taxes levied by it are in effect levied by the Government. What the Municipality does in exercise of the delegated power can be effective only if the conditions laid down with the grant of the power are complied with and the Government- finally approves the tax. Once the Government after giving its approval has notified its imposition in the Government Gazette the tax is deemed to be conclusively imposed in accordance with the procedure laid down. [985 H to 986 D]
Some conditions which are laid down are for the protection of taxpayers and some others are for ministerial operations. The first kind are fundamental and cannot be overlooked. Conditions which promote dispatch or provide for ministerial operation are directory and substantial compliance is sufficient. [986 G]
The direction to publish the notice in a paper published in Hindi regarded as sufficient compliance in the case. [987 C-D]
The Berar Swadeshi Vanaspati v. Municipal Committee, Shegaon, [1962] 1 S.C.R. 596, relied on.
Per MUDHOLKAR J.-Where a verb used in a provision governs two different matters it cannot be given one meaning insofar as it relates to one matter and another meaning insofar as it relates to another matter.[988 F]
Since s. 94(3) is clearly directory it is immaterial to consider whether s. 131(3) is directory or mandatory or to read it as partly one and partly the other and depart from the normal rule of construction which discountenances reading a word in a provision in two different senses. [988 G-H]
The essential requirement of s. 94(3) is publication in a local newspaper. Where the requirement is satisfied, the

omission to obtain a direction from the State Government permitting publication in a newspaper other then one in Hindi language is not of much consequence. Upon this view the question whether s. 131(3) is mandatory or whether s. 135(3) has become void by reason of Art. 13(1) of the Constitution or whether it ran cure a defect resulting from non-compliance with a mandatory provision does not at all arise for consideration. [989 B-C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 23 of 1964. Appeal from the judgment and decree dated May 12, 1961 of the Allahabad High Court in Civil Misc. Writ No. 3588 of 1958.

M. C. Setalvad, K. C. Jain and B. P. Maheshwari, for the appellant.

S. N. Andley, Rameshwar Nath and P. L. Vohra, for the res- pondent.

The Judgment of P. B. GAJENDRAGADKAR, C.J., K. N.WANCHOO and RAGHUBAR DAYAL JJ., was delivered by WANCHOO J. M. HIDAYATULLAH and J. R. MUDHOLKAR JJ. delivered separate Opinions.

Wanchoo J. This is an appeal on a certificate granted by the Allahabad High Court. The appellant is a public limited company and owns two sugar factories situate in the city of Rampur. The factories comprise a number of buildings including some for residential purposes also. The Municipal Board of Rampur (hereinafter referred to as the respondent) decided to impose water tax in Rampur as provided under S. 128(1) (x) of the U.P. Municipalities Act, No. 11 of 1916 (hereinafter referred to as the Act). The procedure for the imposition of tax by the Municipal Board under the Act is provided in ss. 131 to 135 of the Act Section 131 provides that when a Board desires to impose a tax, it shall by special resolution frame proposals specifying the tax, the persons or class of persons to be made liable, and the des- cription of property or other taxable thing or circumstance in respect of which they are to be made liable, the amount or rate leviable from each such person or class of persons, and any other matter required by the Rules framed by the State Government. The Board has also to prepare a draft of the rules which it desires the State Government to make in respect of the tax, namely, for assessment, collection, exemption and other matters relating to tax, [s. 131(2)]. Section 131(3) which is important for our purposes reads thus :

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

Section 132 provides for procedure subsequent to framing proposals and permits any inhabitant of the municipality within a fortnight from the publication of the notice, to submit to the Board an objection in writing to all or any of the proposals. The Board has to take these, proposals into

consideration and pass orders thereon by special resolution and if it thinks necessary it can modify the proposals. if the proposals and the rules (if any) are modified, the modified proposals and rules are again published. It is open to any inhabitant of the municipality again to object to the modified proposals, and if any such objection is made, it is dealt with in the same manner as objections to the original proposals. When the proposals have been finally settled, the Board has to submit them along with the objections to the prescribed authority or the State Government, as the case may be, under s. 133 of the Act. The prescribed authority or the State Government has the power thereunder to sanction the proposals or to return them to the Board for further consideration or sanction them without modification or with such modification not involving an increase of the amount to be imposed as it deems fit. Section 134 provides that when the proposals have been sanctioned, the State Government has to take into consideration the draft rules submitted by the Board and make such rules under s. 296 of the Act as it thinks fit. When the rules have been made the order of sanction and a copy of the rules has to be sent to the Board, which thereupon by special resolution has to direct the imposition of the tax with effect from the date to be specified in the resolution. Section 135 then provides that a copy of the above resolution has to be submitted to the State Government or the prescribed authority, as the case may be. Upon receipt of such copy, the, State Government or the prescribed authority, as the case may be, has to notify in the official gazette the imposition of the tax from the appointed day and the imposition of the tax is in all cases subject to the condition that it has been so notified under s. 135 (2). Then comes s. 135 (3), which reads as follows "A notification of the imposition of a tax under subsection (2) shall be conclusive proof that the tax has been imposed in accordance with the provisions of this Act."

Section 94 (3) which provides for the manner of publication reads thus :-

> "Every resolution passed by a Board at a meeting shall, as soon thereafter as may be, be published in a local paper published in Hindi and where there is no such local paper, in such manner as the State Government may, by general or special order, direct."

According to the respondent, it followed the procedure pro- vided under the Act for the imposition of the tax and after following the procedure the tax came to be imposed from April 1, 1957 at the rate of 10 per centum of the annual value of lands and buildings. After the tax was thus imposed, the respondent sent notices of demand to the appellant requiring it to pay water tax for the years 1957-58 and 1958-59. This was done on October 7, 1958. It may be added that under s. 129 of the Act there are certain restrictions subject to which water tax can be imposed and one of the restrictions is that the tax shall not be imposed, where the unit of assessment is a plot of land or a building, on any such plot or building of which no part is within a radius to be fixed by rule in this behalf for each municipality from the nearest standing or other waterwork whereat water is made available to the public by the Board. In the present case this limit has been fixed by the rules at 600 feet.

The appellant objected to the payment of water tax demanded from it, and one of its objections was that it was exempt under S. 129 (a), as there was no standpipe or other waterwork whereat water was made available to the public by the respondent within 600 feet of the buildings of the factory, the Central Office or the Govan Colony, except that some buildings outside the main Raza Sugar

Factory were within 600 feet.

The respondent however rejected the objections, and threatened to recover the amount by coercive process. The appellant then filed a writ petition before the High Court in December 1958 and a large number of grounds were taken in the writ petition in support of its case that it was not liable to pay water tax, including certain constitutional objections to the vires of the Act itself. The appellant failed in the High Court on all points and 'has come up in appeal before us on a certificate granted by the High Court. In the present appeal however only two points have been urged before us on behalf of the appellant. We are therefore not ;concerned with the other points raised in the High Court and shall confine ourselves to the two points urged before us, namely-

> (1) There was no publication as provided by s. 131(3) read with s. 94(3) of the Act, and as the provision of s. 131(3) is mandatory and was not complied with, all subsequent action taken for the imposition of the tax was bad for non-

compliance with a mandatory provision and therefore the tax itself was not levied according to law and could not be realised; and (2) the tax could not be levied on most of the premises belonging to the appellant as there was no standpipe or other waterwork whereat water was made available to the public by the respondent within 600 feet of all of the buildings of the appellant.

We shall first consider the ground as to publication and three questions fall to be decided in that behalf : (first), is publication as provided in s. 131 (3) mandatory or directory, for it is contended on behalf of the respondent that publication under s. 131(3) is merely directory; (secondly), was the publication in this case strictly in accordance with the manner provided in s. 94(3); and (thirdly), if the publication was not strictly in accordance with the manner provided in s. 94(3), is the defect curable under s. 135(3)?

The question whether a particular provision of a statute which on the face of it appears mandatory, inasmuch as it uses the word "shall"as in the present case-is merely directory cannot be resolved by laying down any general rule and depends upon the facts of each case and for that purpose the object of the statute in making the provision is the determining factor. The purpose for which the provision has been made and its nature, the intention of the legislature in making the provision, the serious general inconvenience or injustice to persons resulting from whether the; provision is read one way or the other, the relation of the particular provision to other provisions dealing with the same subject and other considerations which may arise on the facts of a particular case including the language of the provision, have all to be taken into account in arriving at the conclusion whether a particular provision is mandatory or directory.

The respondent strongly relies on the State of U.P. v. Man- bodhan Lal Srivastava(1), where Art. 320(3) (c) of the Constitution was held to be directory and not mandatory, and contends that the principle of that case applies with full force to the facts of the present case. If is therefore necessary to consider that case before we consider the facts of the present case in the light of the circumstances to which we have referred above and which are helpful in determining whether a particular provision is mandatory or directory. Article 320(3) (c) provides for consultation with the Public

Service Commission on all disciplinary matters affecting a person serving under the Government of India or the Government of a State in a civil capacity, and the language of the Article is mandatory in form, as it provides that the Public Service Commission shall be consulted. This Court relied on the following observations of the Judicial Committee of the Privy Council in Montreal Street Railway Company v. Normandin(2) in that connection:-

(1) [1958] S.C.R. 533.

(2) [1917] L.R. A.C. 170.

> "The question whether provisions in a statute are directory or imperative has very frequently arisen in this country, but it has been said that no general rule can be laid down, and that in every case the object of the statute must be looked at.... When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience, or injustice to persons who have no control over those entrusted with the duty, and at the same time would not promote the main object of the Legislature, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable, not affecting the validity of the acts done."

That was a case where the jury., lists had not been revised as required by law. Following the principle laid down in that case, this Court held that Art. 320(3) (c) itself contemplates three grounds: (i) that the proviso to Art. 320 itself contemplates that regulations may be made specifying matters in which either generally, or in any particular class of cases or in particular circumstances it shall not be necessary for a Public Service Commission to be consulted; (ii) that the advice of the Public Service Commission was not binding on the Government, and in the ab- sence of such binding character it was difficult to see how non-compliance with the provisions of Art. 320(3) (c) could have the effect of nullifying the final order passed by the Government; and (iii) that Art. 311 was not in any way controlled by Art. 320 and there was no provision in the Constitution expressly or otherwise providing that the result of non-compliance with Art. 320(3) (c) would be to invalidate the proceedings ending with the final order of the Government. It was also pointed out in that case that an examination of the terms of Art. 320 showed that the word "shall" appeared in almost every paragraph and every clause or sub-clause of that Article. If it were held that the provisions of Art. 320 (3) (c) were mandatory in terms, the other clauses or sub-clauses of that Article would have to be equally held to 'be mandatory. If they were so held, any appointments made to the public services without observing strictly the terms of these sub-clauses in cl. (3) of Art. 320 would adversely affect the person so appointed to a public service, without any fault on 'his part and without his having any say in the matter, and this 'could not have been intended by the makers of the Constitution. 'Thus this Court approximated Art. 320(3) (c) to a statutory provision like the one which came up for consideration in Montreal Street Railway Company's case(1) and held that if the Article were construed as mandatory, it would cause serious general inconvenience, and injustice to persons who had no control over those entrusted with the duty. That decision was clearly based on the special facts in that case dealing with appointments and dismissals of public servants and the duty of the Government to consult the, Public Service Commission in that behalf and cannot and should not be

extended to cases based on a different set of facts. As the Judicial Committee itself pointed out the question whether provisions in a statute are directory or mandatory cannot be decided by laying down a general rule and in every case the object of the statute must be looked at. That case therefore in the circumstances is of little assistance to the respondent, except insofar as it lays down the principle that no general rule can be laid down for determining the question whether a provision in a statute is directory or mandatory, and that every case will have to be judged on the basis of the object of the statute concerned. This brings us to the examination of the facts and circums- tances of the present statute in the light of what we have said above as to the criteria for determining whether a provision in a statute is mandatory or directory. The provision with which we are concerned, namely, S. 131(3), can be divided into two parts. The first part lays down that the Board shall publish proposals and draft rules along with a notice inviting objections to the proposals or the draft rules so published within a fortnight from, the publication of the notice (see Sch. III). The second part provides for the manner of publication and that manner is according to s' 94(3). We shall first deal with what we have called the first part of S. 131(3). This provision deals with taxation. The object of providing for publication of proposals and draft rules is to invite objections from the inhabitants of the municipality, who have to pay the tax. The purpose of such publication obviously is to further the democratic process and to provide a reasonable opportunity of being heard to those who are likely to be affected by the tax before imposing it on them. It is true that finally it is the Board itself which settles the proposals with respect to taxation and submits them to Government or the prescribed authority, as the case may be,, for approval. Even so we have no doubt that the object behind this publication is to find out the reaction of tax payers generally to the taxation (1) [1917] L.R. A.C. 170.

proposals, and it may very well be in a particular case that the Board may drop the proposals altogether and may not proceed further with them, if the reaction of the tax-payers in general is of disapprobation. Further the purpose served by the publication of the proposals being to invite objections, in particular from the tax-payers, to the tax proposed to be levied on them, the legislature in its wisdom thought that compliance with this part of s. 131(3) would essentially carry out that purpose. In the circumstances if we are to hold that this part of s. 131(3) was merely directory, the whole purpose of the very elaborate procedure provided in ss. 131 to 135 for the imposition of tax would become meaningless, for the main basis of that procedure is the consideration of objections of tax-payers on the proposals of the Board. If such publication is merely directory, the Board can proceed to levy the tax without complying with them and that would make the entire elaborate procedure provided in the Act before a tax is imposed nugatory. We are therefore of opinion that this part of s. 131(3) is mandatory and it is necessary to comply with it strictly before any tax can be imposed. We shall consider the interpretation of s. 135(3) later, but we have no doubt that in the present case, in spite of s. 135(3), the legislature intended that there must be publication as provided in what we have called the first part of s. 131(3). We therefore hold that this part of S. 131(3) is mandatory considering its language, the purpose for which it has been enacted, the setting in which it appears and the intention of the legislature which obviously is that no tax should be imposed without hearing tax-payers. Lastly we see no serious general inconvenience or injustice to anyone if this part of the provision is held to be mandatory; on the other hand it will be unjust to tax-payers if this part of the provision is held to be directory, inasmuch as the disregard of it would deprive them of the opportunity to make objections to the

proposals, and the draft rules. We therefore hold that this part of s. 131(3) is mandatory.

Turning now to the second part, which provides for the manner of publication, that manner is provided in S. 94(3) already set out above. It seems to us that when the legislature provided for the manner of publication it did not intend that manner should be mandatory. So long as publication is made in substantial compliance with the manner provided in s. 94(3), that would serve the purpose of the mandatory part of the section which provides for Publication. It would therefore, not be improper to hold that the manner of publication provided in s. 94(3) is directory and so long as there is substantial compliance with that the purpose of the mandatory part of s. 131(3) would be served. In this connection we may refer to K. Kamaraja Nadar v. Kunju Thevar(1). In that case, a question arose whether s. 117 of the Representation of the People Act (No. 43 of 1951) was mandatory or directory. That section required that a petitioner filing an election petition had to enclose with the petition a Government Treasury receipt showing that a deposit of one thousand rupees had been made by him either in a Government Treasury or in the Reserve Bank of India in favour of the Secretary to the Election Commission as security for the costs of the petition. This Court analysed this provision and observed that it consisted of three parts : namely, (i) the Government Treasury receipt must show that such deposit had been actually made in a Government Treasury or in the Reserve Bank of India; (ii) it must also show that it had been made in favour of the Secretary to the Election Commission; and (iii) it must further show that it had been made as security for the costs of the petition. The question then arose whether the words 'in favour of the Secretary to the Election Commission" were mandatory in character so that if the deposit had not been made in favour of the Secretary to the Election Commission as therein specified the deposit even though made in a Government Treasury or in the Reserve Bank of India and as security for the costs of the petition would be invalid and of no avail. This Court held that these words in s. 1 17 were directory and not mandatory in their character, and that the essence of the provision contained in s. 117 was that the Petitioner should furnish security for the costs of the petition and should enclose along with the petition a Government Treasury receipt showing that a deposit of one thousand rupees had been made by him either in a Government Treasury or in the Reserve Bank of India to be at the disposal of the Election Commission to be utilised by it in the manner authorised by law and was under its control and payable on a proper application being made in that behalf to the Election Com- mission or to any person duly authorised by it to receive the same, be he the Secretary to the Election Commission or any ,one else. If this essential requirement was complied with, no literal compliance was at all necessary with the words "in favour of the Secretary to the Election Commission" appearing in that section. Though, therefore, the making of the deposit and the presentation of the receipt thereof along with the petition was (1) [1959] S.C.R. 583.

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held to be mandatory, this Court hold that the form in which

-the deposit should be made was only directory. The principle of that case in our opinion applies to the manner of publication provided in S. 94(3) in the present case. As we have said already the essence of s. 131(3) is that there should be publication of the proposals and draft rules so that the tax-payers have an opportunity of objecting to them and that is provided in what we have called the

first part of s. 131,(3); that is mandatory. But the manner of publication provided by s. 94(3) which we have called the second part of s. 131(3), appears to be directory and so long as it is substantially complied with that would be enough for the purpose of providing the tax-payers a reasonable opportunity of making their objections. We are therefore of opinion that the manner of publication provided in s. 131(3) is directory.

Let us see what s. 94(3) requires and what has been done in this case. That section requires the publication to be made in a local paper and that local paper must be one published in Hindi. It further provides that where there is no such local paper, the publication may be made in such manner as the State Government may by general or special order direct. In the present case, the publication has been made in a local paper, but that local paper is not published in Hindi; it is published in Urdu, though the actual publication of the resolution in the present case was in Hindi. The contention on behalf of appellant is that this is no compliance with s. 94(3). It appears that there is a local paper published in Hindi also in Rampur, but the evidence is that it is published very irregularly. It is urged that if there was no local paper published regularly in Hindi in Rampur, then the direction of the State Government should have been sought for the manner of publication. It may be accepted that there has not been strict compliance with the provisions of S. 94(3) inasmuch as the publication has not been made in a local paper published in Hindi. We must however point out that if s. 94(3) is interpreted literally, all that it requires is that the publication must be in a local paper and that local paper must be published in Hindi, though the actual publication of the resolution may not be in Hindi. That does not seem to us to be the real meaning of s. 94(3) and what it substantially requires is that the publication should be in Hindi in a local paper, and if that is done that would be compliance with s. 94(3). Now what has happened in this case is that the publication has been made in a local paper which on the evidence seems to have good circulation in Rampur and the actual resolution has been published in Hindi, though the paper itself is published in Urdu. It seems to us therefore that there is substantial compliance with the provisions of s. 94(3) in this case, even though there is a technical defect inasmuch as the local paper in which the publication has been made is published in Urdu and not in Hindi. But what has happened in this case is in our opinion substantial compliance with s. 94(3) and as we have held that provision to be directory it must be held that s. 131(3) has been complied with. This brings us to the third point, namely, the effect and interpretation of s. 135(3) which we have already set out. That sub-section provides that a notification made under s. 135(2) shall be conclusive proof that the tax has been imposed in accordance with the provisions of the Act. It has been urged on behalf of the respondent that the publication has been made as required by s. 135(2) in the official gazette and therefore is conclusive proof that the tax had been imposed in accordance with the provisions of the Act, i.e., all the provisions of the Act had been complied with. It is urged that once a notification has been made as required by s. 135(2), s. 135(3) raises an irrebuttable presumption that all the provisions of the Act have been complied. with and therefore it was not open to,the appellant to raise the question of non-compliance with the provisions of s. 131(3) read with s. 94(3) at all in the present case. Reliance in this connection has been placed on the Berar Swadeshi Vanaspati v. Municipal Committee, Shegaon(1). In that case s. 67(8) of the C.P. & Berar Municipalities Act, 1922 came up for consideration. That section was in terms similar to the terms of s. 135(3). This Court held in that case that as the provision of s. 67(7) which correspond to s. 135(2) here, had been complied with, that was conclusive evidence of the tax having been imposed in accordance with the provisions of

that Act, and it could not be challenged on the ground that all the necessary steps had not been taken. Now what happened in that case was that the necessary publication was made as required by law and objections were invited to the proposed tax. Only one objection was filed in that case and that objection was considered by the Board and rejected. The other procedural provisions were complied with and tax was imposed and a final notification made (1) [1962] 1 S.C.R. 596.

under S. 67 (7) of that Act. Imposition of the tax was challenged on the ground that the Board did not take into consideration the objections filed. The evidence in that case was that the Board had taken into consideration the objections filed and had rejected them on grounds which the appellant (in that case) thought were not proper. It was in those circumstances that this Court held that sub-s. (8) of s. 67 was conclusive.

The present case is in our opinion similar to that case. Here also the publication was made, as- we have already pointed out in compliance with what we have called the first part of s. 131(3). Further the manner of publication was in substantial compliance with s. 94(3). Therefore, as there was substantial compliance with the provisions of s. 94(3), s. 135(3) would in our opinion come to the help of the respondent and it must be held that all necessary steps had been taken.

It is however contended on behalf of the respondent that s. 135(3) goes further and means that where it applies, the tax must be held to be imposed in accordance with the provisions of the Act, even though none of the procedural provisions may have been complied with at all. It is enough to say that the question in this form does not arise before us directly for we have held that there was publication in compliance with s. 131(3) though the manner was not strictly, in accordance with s. 94(3). We do not think it necessary in the present case to decide what would happen if there was no compliance at all with the various procedural provisions including s. 131(3) by a Board before imposing a tax and the evidence consisted only of a notification under S. 135(2). It has been held by the Allahabad High Court in a number of cases that if there is no compliance with the procedural provisions in s. 131 to s. 134, the mere notification under s. 135(2) would not be sufficient to impose a tax and S. 135(3) would not save such tax: (see Azimulla v. Suraj Kumar Singh(1) and Municipal Board, Hapur v. Raghuvendra Kripal(2). These are cases in which certain procedural provisions were not complied with at all and the High Court held that S. 135(3) would not save the tax in such cases. We do not think it necessary to express any opinion on this question for it does 'not arise in the present case. We may however point out that the decision in the Berar Swadeshi Vanaspathi's case(1) is not a case where there was no compliance whatsoever with procedural provisions all that had happened in that case was that the objections had (1) A.I.R. (1957) All. 307. (3) [1962] 1 S.C.R. 596. (2) 1960 A.L.J. 185.

been taken into consideration by the Board though they were rejected for reasons which were considered by the appellant in that case to be not sufficient. In that case therefore there was compliance with the provisions of the Act and all that we need say is that case is no authority for the proposition that even if there is no compliance whatsoever with a mandatory provision of a statute relating to procedure for the imposition of a tax, a provision like s. 135(3) of the Act or S. 67(8) of' the C.P. & Berar Municipal Act would necessarily save such imposition. If s. 135(3) means that where there is substantial compliance with the provisions of the Act that would be conclusive proof

that they have been complied with there can be no valid objection to such a provision. But if the section is interpreted to mean, as is urged for the respondent, that even if there is no compliance whatever with any mandatory provision relating to imposition of tax and the only thing proved is that a notification under s. 135(2) has been made, the tax would still be good, the question may arise whether s. 135(3) itself is a valid provision. For present purposes however it is unnecessary to decide that question. In the present case the mandatory part of s. 131(3) has been complied with and its directory part has been substantially complied with and so s. 135(3) will apply and the objection that the tax is not validly imposed must fail.

This brings us to the second point raised before us. So far as that is concerned, it is enough to say that it is mainly a question of fact whether the buildings or any of them belonging to the appellant are within 600 feet of the standpipe. The restriction imposed in cl. (a) of s. 129 is that water-tax can be levied on a building where any part of it is within a radius fixed by rules which in the present case is 600 feet from the nearest standpipe or water-work whereat water is made available by the Board to the public. What is contended on behalf of the appellant is that these words mean that there should be standpipe or water-work from which water is made available to the public by the respondent and that it is not enough if underground pipes carrying water are passing within 600 feet. It seems to us that this contention of the appellant is correct. The restriction in s. 129(a) is that no water-tax can be levied on a building which is more than a certain distance fixed by the rules from a standpipe or other water-work from which water is made available to the public. The restriction that water should be made available to the public within the specified distance does not mean that if pipes carrying water pass underground that would be enough. What is required is that water should be made available to the public from the nearest standpipe or other water-work and that requires that there must be something above the ground from which the public can draw water. But even so, the question is one of fact and the High Court has pointed out that there was dispute on this question of fact and there was no sufficient material before it to enable it to come to a definite finding whether all the buildings of the appellant were beyond the radius of 600 feet from the nearest standpipe. In this state of the evidence the question must be left open and the appellant can pursue such remedies as he may be advised to take. The appeal therefore fails and is hereby dismissed with Hidayatullah J. I agree that this appeal should be dismissed but would like to say a few words about the failure to publish the notice in strict compliance with the provisions of s. 94(3) of the U.P. Municipalities Act. The procedure for the imposition of a tax by the Municipality has been analysed by my learned brother Wanchoo very succinctly. I agree generally with all he has said but as I view the matter differently on the construction of ss. 131 (3), 94(3) and 135(3) of the Act, I shall briefly give the reasons for my decision on that part of the case.

The general scheme of taxation in the Act is this: After the Municipal Committee or Board decides to impose a tax it is required to frame proposals by a special resolution [s. 131(1)] and to frame rules which it desires the State Government to make relative to the assessment, collection etc., of the tax [s. 131(2)]. Section 131(3) then provides:

> "The Board shall, thereupon, publish in the manner prescribed in section 94 the proposal framed under subsection (1) and the draft rules framed under subsection (2) along with a notice in the form setforth in Schedule III."

This enables any inhabitant affected by the proposal to object. The Municipal Committee or the Board then considers the objections and passes orders on the objections but if it modifies the proposals or the rules it publishes them a second time and the whole procedure has to be gone through again. When there is no modification or the proposals or rules are finally settled, the original proposals and rules, if any, have to be forwarded to Government. Government may accept the proposals and the rules or may send them back for further consideration. The proposals and the rules when finally sanctioned by Government are returned to the Municipality which imposes the tax with effect from a specified date by passing a fresh resolution. This does not impose the tax proprio vigore. The resolution has to be submitted to Government and when it is notified in the official Gazette, the tax is imposed from the appointed date. Section 153 (3) then provides "A notification of the imposition of a tax under subsection (2) shall be conclusive proof that the tax has been imposed in accordance with the provisions of the Act."

The tax here was imposed by Rampur Municipality and the notices were published in an Urdu newspaper called "Aghaz" though the notices were in Hindi. Section 94(3) of the U.l. Act provides:

> "Every resolution passed by a Board at a meeting shall, as soon thereafter as may be published in a. local paper published in Hindi and where there is no such local paper in such manner as the State Government may, by general or special order, direct."

There was in Rampur another newspaper which was published in Hindi but its circulation was admittedly very poor. The newspaper selected for publication, though in Urdu, was widely read, and the notice itself was in Hindi. Thus there was a local paper with a wide circulation and there was a notice in Hindi. The only breach was that the paper was not 'published in Hindi'. There was, clearly no literal compliance with s. 94(3). Two questions, therefore, arise :

> (a) Is section 94(3) mandatory ? and
>
> (b) If section 94(3) is not strictly complied with whether section 135(3) makes the notification conclusive against the defect ?

In my judgment the answers to these questions depend upon the nature of the functions of a Municipal Committee and its powers of imposing a tax.

A Municipal Committee enjoys powers of taxation not as a legislature but as a delegate of the legislature. Taxes levied by it are in effect levied by Government. They are allowed to be imposed and retained by the Municipality to perform its functions and to pay for its expenses. The whole procedure is shortened in this way, otherwise Government would be required to levy taxes and to give the proceeds to the Municipality. However, the final word lies with Government and the legislature makes this the vital condition in the imposition of the tax. What the Municipality does in consequence of the power so conferred, it can only effectively do if the conditions laid down with the grant of power are followed and Government finally approves of the tax. the manner of its imposition and manner of its collection. Once Government has approved of the Resolution and published it in the Gazette the tax is deemed to be conclusively imposed in accordance with the

procedure laid down. The legislation on the subject is then complete and the tax derives its legislative validity from the legislature's will.

Now ss. 131-135 lay down the procedure. All the conditions apparently seem equally obligatory because every condition is couched in mandatory language. The crux of the problem before us is whether all the conditions are to be treated as mandatory or all of them as directory or some of them as of one kind and some of the other kind ? What is the test to apply and if a distinction is to be made, on what principle? In my opinion, the way to look at the matter is this. A tax to be valid must be imposed in accordance with the Municipalities Act. The Act lays down conditions some of which are devised for the protection of the taxpayers and some others for ministerial operations connected with the method or system of imposing the tax or for promoting dispatch, efficiency and publicity etc. All conditions of the first kind must, of course, be regarded as mandatory, because they lie at the very root of the exercise of the power. Thus preparation of assessment rolls, hearing of objection, framing of assessment rules are all mandatory. Similarly, conditions involving the passing of resolutions by the necessary majority at special meetings after proper notice to members are fundamental and cannot be overlooked. If a defect of a fundamental kind occurs it would (in the absence of curative provision) remain even if Government gave its sanction See Scadding v. Lorant(1) (affirming Sub- Nom) (2) and Joshi Kalidas v. Dakor Town Municipality(3). Conditions which promote despatch or provide for ministerial operations are usually directory and although compliance with them is also necessary it is sufficient if the compliance is substantial.

It may be accepted that a provision for a notice to the tax- payers informing them about the proposal to impose a Particular tax and the rules made for the imposition, is fundamental. Such (1) 3 H.L.C. 418-10 E.R. H.L. 164.

(2) 13 Q.B. 706.

(3) I.L.R. 7 Bom. 399.

a provision, if ignored, would frustrate the very policy of the law that there should be no tax without an opportunity to object, and to ignore it would ordinarily be fatal. Similarly the direction at. The notice should be published in a local newspaper is also an integral part of the Scheme. The same purpose cannot be achieved by proclaiming by beat of drum or distributing hand-bills or publishing a notice in a newspaper not circulating locally. There is no option there because if the notice cannot be-published in a local newspaper the section goes on to provide for alternative modes of publication to be determined by Government. The sub-section, however, goes further and says that the newspaper must be one that is published in Hindi. I would be disposed to consider this further direction as not fundamental. If a newspaper is selected which is very widely read in the locality but is not in Hindi and the notice is published in Hindi, I imagine the intention of the law is better promoted than if another newspaper published in Hindi with next to no circulation is selected. There is no doubt a departure from the letter of the law but the departure promotes the very object and purpose of it. I would regard such a provision as directory. It is a provision for the guidance of the Municipality and not something which can be said to be essential to the validity of the imposition.

It seems to me that it is not necessary at all to go into the niceties of the distinction between mandatory and directory provisions in general or in relation to the provisions of the U.P. Municipalities Act in particular. The legislature has itself furnished the solution by enacting s. 135(3) which indicates the consequences of an omission. It lays down emphatically a rule of evidence which precludes courts from making inquiries into the minutiae of the procedure with a view to declaring the imposition invalid. The legislature is quite content to enact that Government should review the proposals, the rules and the procedure before accepting the resolution imposing the tax and that after this is done and a notification issues all questions about the procedural part of the imposition must cease. The legislative will takes over from that stage and the tax is imposed as validly as if the legislature itself imposed it. Whether one reads s. 135(3) as enacting an absolute rule of evidence (and I am in favour of reading it as such-See: The Berar Swadeshi Vanaspati v. Municipal Committee, Shegaon) (1) or as merely related to venial defects, errors or omissions, it is plain that it must at least protect the imposition of water-tax in Rampur against a flaw in procedure of the (1) [1962] 1 S.C.R. 596.

kind we are dealing with or it would serve no purpose at all. This provision, therefore, 'serves to cure the breach of the direction which was intended to serve merely as a guide to the municipalities, and it precludes courts from inquiring into such a breach. That was a matter for Government to take into consideration before according its approval and Government must be deemed to have approved this other mode of publication which, it is clear enough it could have permitted to be followed in the first instance under the latter part of s. 94(3) itself.

Subject to these reasons for holding the tax to be valid I agree that the appeal be dismissed with costs. Mudholkar J. I agree that the appeal be dismissed but on the point of law urged before us I would like to state my reasons separately.

I find it difficult to construe sub-s. (3) of s.131 as partly directory and partly mandatory; that is to say, that the requirement of publication is mandatory but the requirement of the manner of publication is not mandatory but only directory. To construe the section that way would be giving two different meanings to the verb "shall" occurring in the provision which governs both publication as well as the manner of publication. "Shall" can, according to the authorities, no doubt be construed literally and, therefore, as being mandatory or, liberally and thus being only directory depending upon the object of the provision in which it occurs, the connected provisions and other similar matters. But it seems to me on principle that when a verb used in a provision governs two different matters it cannot be given one meaning in so far as it relates to one matter and another meaning insofar as it relates to another matter. The provisions of s. 94(3) are clearly directory inasmuch as a deviation from the mode of publication prescribed therein

--that is publication in a local newspaper in the Hindi language is contemplated by it. The requirement of s. 131(3) is publication in the manner provided for in S. 94- which is actually provided in sub-s. (3) of S. 94. Since the latter provision is directory it is immaterial to consider whether S. 131(3) is directory or mandatory or to read it as partly one and partly the other and depart from the normal rule of construction which discountenances read- ing a word in a provision in two different senses. While a mandatory provision must be strictly complied with, substantial

compliance is sufficient with respect to a directory provision. There has been substantial compliance with the provisions of s. 94(3) since the proposals were in fact published in the Hindi language in a local newspaper. The only departure from the letter of the law was not obtaining the permission of the State Government for publishing the proposals in an Urdu newspaper. In my view the essential requirement of s. 94(3) is publication in a local newspaper. Where this requirement is satisfied, the omission to obtain a direction from the State Government permitting publication in a newspaper other than one in the Hindi language is not of much consequence.

Upon this view the question whether s. 131(3) is mandatory or whether s. 135(3) has become void by reason of Art. 13(1) of the Constitution or whether it can cure a defect resulting from non-compliance with a mandatory provision do not at all arise for consideration.

Appeal dismissed..