Zila Parishad Moradabad vs Nundan Sugar Mills, Amroha on 18 July, 1967

Equivalent citations: 1968 AIR 98, 1968 SCR (1) 1, AIR 1968 SUPREME COURT 98

Author: S.M. Sikri

Bench: S.M. Sikri, J.C. Shah, V. Ramaswami

PETITIONER:
ZILA PARISHAD MORADABAD

Vs.

RESPONDENT:
NUNDAN SUGAR MILLS, AMROHA

DATE OF JUDGMENT:
18/07/1967

BENCH:
SIKRI, S.M.
BENCH:
SIKRI, S.M.
SHAH, J.C.
RAMASWAMI, V.

CITATION:
1968 AIR 98 1968 SCR (1) 1

ACT:
U.P. District Boards Act (X of 1928)-ss. 115-118, 119-120-District Board enhancing maximum limit of circumstances and property tax by resolution-State Government notifying amendment of rules to incorporate new limits--Whether tax can be imposed without further resolution under s. 119 and notification under s. 120.

HEADNOTE:
In July 1925 it was notified under s. 120(2) of the U. P. District Boards Act, 1922 that the District Board of Moradabad in exercise of powers conferred by s. 108(2) of the Act had imposed a tax with effect from September-1, 1925, on the residents of the District according to their circumstances and property at the rate of 4 pice per rupee

on the total taxable income subject to a maximum of Rs. 200. In May 1927 the District Board passed a resolution increasing the maximum from Rs. 200 to Rs. 500 and thereafter the State Government issued a notification in January 1928, amending the rules for the assessment-and collection of tax so as to increase the maximum to Rs. 500. In August 1931, the Board passed another resolution in-creasing the maximum further to Rs. 2,000 and the State Government issued a notification in March 1932 further amending the rules so as to incorporate the new maximum. No further action was taken by the District Board to enforce these amendments of the rules.

Upon a writ filed by the respondents under Act, 226 of the Constitution, the High Court directed the District Board, Moradabad, not to levy upon the respondent a tax in excess of Rs. 200 per year on the ground that no special resolution of the Board had been passed nor a notification issued by the State under ss. 119 and 120 respectively of the Act imposing the tax with revised maximum limits.

In appeal to the Supreme Court it was contended on behalf of the appellant that when the procedure laid down in ss. 1.15 to 118 had been followed whereby the amendments had been approved by resolutions and notified, it was not necessary that there should be a further resolution and notification under s. 119 and s. 120 respectively.

Held: The tax with the revised maximum limits introduced in 1928 and 1932 could not be imposed without a resolution under s. 119 and a notification under s. 120. [5B]

The object of ss. 119 and 120 is to fix the date from which the tax can be imposed. If no date is fixed, no tax can be imposed. Once the Board passes a special resolution under, s. 119, it has to go to the Government under s. 120, and then the Government notifies the imposition of tax from the appointed date.. It is then that the notification becomes conclusive Proof of the fact that the tax has been imposed in accordance with the provisions of this Act Sub-clause (3) of s. 120 clearly proceeds on the basis that the imposition of tax takes place on a notification issued under s. 120 and not on the issue of a notification under s. 118. [4G-5A]

Raza Buland Sugar Co. Ltd. v. Municipal Board, Rampur, [1965] 1 S.C.R. 970; referred to.

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JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 596 of 1966. Appeal by special leave from the judgment and order dated January 27, 1964 of the Allahabad High Court in Special Appeal No. 270 of 1958.

S. T. Desai and C. P. Lal, for the appellant. C. B. Agarwala and J. P. Agarwal, for the respondent. The Judgment of the Court was delivered by Sikri, J.--This appeal by special leave is directed against the judgment of the High Court of Allahabad accepting a petition under Art. 226 of the Constitution and directing the District Board, Moradabad, not to levy upon M/s Nundan Sugar Mills,, Amroha, respondent before us, circumstances and property tax for any one year exceeding the sum of Rs.

200. The High Court held that no special resolution of the Board had been passed, nor had a notification been made imposing the tax, under S. 119 and s. 120, respectively, of the United Provinces District Boards Act, 1922 (U. P. Act of 1922)-hereinafter referred to as the Act. The relevant facts out of which this appeal arises are these On July 28, 1925, it was notified under sub-s. (2) of s. 120 of the Act that the District Board of Moradabad, in exercise of the powers conferred by s. 108, sub-s. (2), of the Act has imposed the following tax, with effect from September 1, 1925:

> "A tax on. all persons ordinarily residing or carrying on business in the rural area of the Moradabad District according to their circumstances and property, at the rate of four pies per rupee on the total taxable income; provided that the total amount of tax imposed on any person shall not exceed Rs.
>
> 200. Provided also that no income once assessed shall be reassessed".

On May 28, 1927, the District Board took action upon a memo- randum prepared by the Chairman of the District Board. The memorandum of the Chairman pointed out:

> "..... the maximum amount of tax recoverable from an assessee should be raised from Rs. 200/- to Rs. 500/- P.A. Hence proposal (c) framed under section 115 sanctioned by G. 0. No dated 28-7-25 so be modified as to read as under:
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> "That there shall be a rate of tax 4 pies in the rupee... provided that the total amount of tax imposed on any person shall not exceed Rs.
>
> The resolution of the Board was in these terms:
>
> "The bye-laws be modified accordingly after necessary publication and sanction. The assessing officer to assess them at 2 pies (sic) in anticipation of final sanction".

On January 11, 1928, the Government of United Provinces issued a, notification amending the rules for the assessment and collection of a tax on circumstances and property in the rural areas of the Moradabad District. The following rule 16 was added:

> "16. The total amount of tax imposed on any person shall not in any year exceed the sum of Rs. 5001-."

On August 31, 1931, the Board passed another resolution approving the following memorandum:

> "..... The words and figures 'Rs. 500' be substituted by 'Rs. 2,000' in rule 16 of the rules for the assessment and collection of a tax on circumstances and property in the rural area of the Moradabad district published with Government Notification No.....dated 11-1- 1928".

The exact terms of the resolution were:

> "Resolved unanimously that thememo. be approved and necessary action be taken on it.If publication is required, it be done and Government be moved to accord sanction for the same".

On March 18, 1932, the Government of United Provinces issued a notification amending rule 16. The amendment it was in the following terms:

> "In Rule 16 published with notification No. 33/IX185(14-24) dated January 19, 1928 'Rs. 2,000' shall be substituted for 'Rs. 500".

It appears that no further action was taken by the District Board to enforce this amendment in rule 16 or the amendment dated January 11, 1928. Further action is contemplated by ss. 119 and 120, read with s. 12 1, of the Act. These sections may be reproduced in full.

> " 119. Resolution of board directing imposition of tax--
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> Upon receipt of the copy of the rules sent under the preceding section, the board shall by special resolution direct the imposition of the tax with effect from a date (to be specified in the resolution) not less than six weeks from the date of such resolution".

> " 120. Imposition of tax-(1) A copy of the resolution passed by the board under Section 119 shall be submitted to the State Government. (2) Upon receipt of the copy of the resolution the State Government shall notify in the official Gazette the imposition of the tax from the appointed date, and the imposition of a tax shall in all cases be sub- ject to the condition that it has been so notified. (3) A notification of the imposition of a tax Linder sub-section (2) shall be conclusive proof that the tax has been imposed in accordance with the provisions of this Act".

> "121. Procedure for altering taxes-The procedure for abolishing or suspending a tax, or for altering a tax in respect of the matters specified in clauses (b) and (c) of sub-section (1) of Section 115 shall, so far as may be, be the procedure prescribed by Sections 115 to 120 for the imposition of a tax".

Clauses (b) and (c) of sub-section (1) of s. 115, referred to in s. 121, read:

> "(b) the persons or class of persons to be made liable and the description of the property or other taxable thing or circumstances in respect of which they are to be

made liable, except where and in so far as any such class ,or description is already sufficiently defined under clause

(a) or by this Act-,

(c) the amount or rate leviable from each such person or class of persons;"

It is common ground that the procedure laid down in ss. II 5 to 118 has been followed by the Board. The only dispute between the parties is whether it is necessary that a resolution should be passed under s. 119 and a notification issued under s. 120 before effect can be given to a notification made under s. 118 altering the rules. In other words, was it necessary to pass a resolution under s. 119 after the issue of the notification dated March 18, 1932, or the notification dated January 11, 1928, referred to above? Both the learned Single Judge, and the Division Bench who heard the appeal from the learned Single Judge, have come to the conclusion that without a resolution under s. 119 and a notification under s. 120, no tax can be levied in pursuance of the notification dated March 18, 1932, or notification dated January 11, 1928.

It may be mentioned that the High Court directed the District Board not to-levy upon the petitioner circumstances and property tax for any year exceeding the sum of Rs. 200/-. There is no dispute that the Board could levy upon the petitioner tax up to the sum of Rs. 200/-. The learned counsel for the appellant contends that if the procedure laid down in ss. 115 to 118 has been followed, it is not necessary that there should be a resolution under s. 119 and a notification under s. 120. He says that rules can be made under s. 172, read with s. 1.76, of the Act, and once rules are made there is nothing more to be done. But there is one fallacy underlying the argument of the learned counsel, and that is that it misses the object of ss. 119 and 120 which is to fix the date from which the tax can be imposed. If no date is fixed, no tax can be imposed. Once the Board passes a special resolution under s. 119, it has to go to the Government under s. 120, and then the Government notifies the imposition of tax from the appointed date. It is then that the notification becomes conclusive proof of the fact that the tax has been imposed in accordance with the provisions of this Act. Sub-clause (3) of S. 120 clearly proceeds on the basis that the imposition of tax takes place on a notification issued under s. 120 and not on the issue of a notification under S. 118.

The learned counsel invited our attention to Raza Buland Sugar Co. Ltd. v. Municipal Board, Rampur(1) but we are unable to see how that case assists him. No question of ss. 119 and 120 being directory arises in this case because, in our view, without a resolution under s. 119 and a notification under s. 120, no tax can be imposed. The learned counsel also urges that:-

(a) no writ petition is maintainable challenging a preConstitution matter, and

(b) the respondent not having appealed under S. 128 of the Act, the petition was not maintainable.

In our view, there is no merit in these contentions. The respondent is being charged tax now. He is entitled not to be taxed except under the authority of law, vide Art. 265 of the Constitution. There is

no question of challenging any pre-Constitution matter. The respondent is challenging a post-Constitution action on the ground that there is no authority of law for the action.

Regarding the second point, the High Court held that an appeal to the District Magistrate under s. 128 was not likely to be of much assistance to the petitioner and rejected the contention. It is well-settled that a, provision like s. 128 does not oust the jurisdiction of the High Court to entertain a petition under Art. 226 and it is for the High Court to exercise its discretion whether to entertain the petition or not. The learned counsel has not pointed out anything to us to show that the discretion has not been properly exercised.

In the result the appeal fails and is dismissed with costs. R.K.P.S. Appeal dismissed (1) [1905] 1 S.C.R. 970,