

Allahabad High Court

Bisauli Vyapar Mandal And Ors. vs State Of U.P. And Ors. on 7 October, 2004

Equivalent citations: (2005) 1 UPLBEC 56

Author: M Katju

Bench: M Katju, S Ambwani, K Ojha

JUDGMENT M. Katju, A.C.J.

1. Heard Sri S.K. Verma, learned Senior Counsel and Sri Siddhartha Verma, learned Counsel for the petitioner, Sri S.M.A. Kazmi, learned Chief Standing Counsel for the State and Sri U.S. Mishra, learned Counsel for the Municipal Board, Bisauli.

2. This Full Bench has been constituted by order of Hon'ble the Acting Chief Justice on a reference made by a Division Bench dated 16.8.2000 as the Division Bench doubted the correctness of the view of another Division Bench in Madan Lal Gupta and others, Civil Misc. Writ Petition No. 226 (Tax) of 1983, decided on 20.5.1998.

3. The short question in this case is whether an Administrator of a Municipal Board can impose a Municipal Tax as envisaged by Chapter V of the U.P. Municipalities Act, 1916 (hereinafter referred to as the Act) when the Municipal Board has been dissolved or superseded under Section 30 of the Act.

4. The Division Bench, which made the reference order dated 16.8.2000 (presided over by one of us M. Katju, J.), was of the view that an Administrator, who was appointed after dissolution or supersession of the Municipal Board can impose a municipal tax as he steps into the shoes of the Municipal Board and he can do all acts which a Municipal Board does, although he is not an elected authority. In this connection reference was made to Section 31(b) of the U.P. Municipalities Act which prior to its deletion by U.P. Act No. 12 of 1994 read as follows :

"Such person or persons as the State Government may appoint in that behalf shall, so long as the supersession of the Board lasts, exercise and perform, so far as may be, the powers and duties of the Board and shall be deemed to be the Board for all purposes and the person so appointed, shall be called the Administrator, and accordingly, the provisions of Section 10-A shall mutatis mutandis apply."

5. The Division Bench was of the view that since Section 31(b) of the Act states that after supersession of the Municipal Board, the Administrator shall be the Board for all purposes, hence he can also impose a municipal tax.

6. Sri S.K. Verma, learned Senior Counsel for the petitioner submitted that we cannot ignore the words "so far as may be" in Section 31(b) of the Act. He submitted that it is a well settled principle of interpretation that no part of a statute can be treated as redundant. Consequently he submitted that the Administrator cannot be treated as a Municipal Board for all purposes, otherwise the words "so far as may be" would become redundant.

7. We accept this submission of Sri Verma. In *Aswini Kumar Ghose v. Arbinda Base*, AIR 1952 SC 369 (per Patanjali Sastri J.) the Supreme Court observed:

"It is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute."

8. In *Ghanshyamdas v. Regl. Asstt. Commr.*, AIR 1964 SC 766, the Supreme Court observed :

"A construction which would attribute redundancy to a legislature shall not be accepted except for compelling reasons."

9. In *Krishnayya v. Seshachalam*, AIR 1965 SC 939, the Supreme Court observed :

"It is commonplace that every provision of a statute has to be given full effect and whenever possible the Court should not place that construction upon a provision which would tend to make it redundant....."

10. In *Ballabhdas v. State of Orissa*, (1976) 2 SCC 44, the Supreme Court observed :

"It is equally well settled that the legislature does not waste words or introduce useless or redundant provisions."

11. In *Indian Chamber of Commerce v. CIT*, (1976) 1 SCC 324, the Supreme Court observed :

"Section 2(xv) must be interpreted in such a manner that every word is given a meaning and not to treat any expression as redundant."

12. In *Dinesh Chandra Sangma v. State of Assam*, (1977) 4 SCC 441, the Supreme Court observed :

"It is a cardinal rule of construction that no words should be considered redundant or surplus in interpreting the provisions of a statute."

13. In view of the settled principle of interpretation as stated above no part of Section 31 (b) should be treated as redundant. Hence the words 'so far as may be' cannot be ignored.

14. In *Pratap Singh v. Director of Enforcement*, AIR 1985 SC 989, (vide para 12) the Supreme Court observed :

"The expression 'so far as may be' has always been construed to mean that those provisions may be generally followed to the extent possible. The submission that Section 165(1) has been incorporated by pen and ink in Section 37(2) has to be negated in view of the positive language employed in the section that the provisions relating to searches shall so far as may be apply to searches under Section 37(1). If Section 165(1) was to be incorporated by pen and ink as sub-section (2) of Section 37, the

legislative draftsmanship will leave no room for doubt by providing that the provisions of the Code of Criminal Procedure relating to searches shall apply to the searches directed or ordered under Section 37(1) except that the power will be exercised by the Director of Enforcement or other officer exercising his power and he will be substituted in place of the Magistrate. The provisions of sub-section (2) of Section 37 has not been cast in any such language."

15. The Supreme Court (in the same paragraph) went on to say :

"In order to give full meaning to the expression 'so far as may be', sub- section (2) of Section 37 should be interpreted to mean that broadly the procedure relating to search as enacted in Section 165 shall be followed. But if a deviation becomes necessary to carry out the purposes of the Act in which Section 37(1) is incorporated, it would be permissible except that when challenged before a Court of Law, justification will have to be offered for the deviation. This view will give full play to the expression 'so far as may be'."

16. Sri Verma submitted that under Section 134(2) of the Act a Municipal tax can be imposed only by a special resolution of the Board. Section 134(2) reads as follows:

"When the rules have been made, the order of sanction and a copy of the rules shall be sent to the Board, and thereupon the Board shall by special resolution direct the imposition of the tax with effect from a date to be specified in the resolution.¹"

17. The difference between "special resolution" and "ordinary resolution" can be gathered from Section 88 of the U.P. Municipalities Act, which reads as follows :

"88. Quorum.-(1) It shall be necessary for the transaction of any business other than business which is required to be transacted by a special resolution that not less than one third of the total number of the members of the Board for the time being shall be present.

(2) It shall be necessary for the transaction of business which is required to be transacted by special resolution that not less than one half of such members shall be present."

18. A perusal of Section 88 of the Act shows that the difference between a special resolution and an ordinary resolution is that while passing an ordinary resolution only one-third of the total members of the Board are required to be present, for passing a special resolution not less than one half of such members should be present. Hence Sri Verma submitted that an Administrator cannot be treated as a Municipal Board for imposing a Municipal tax, because in his case there is no difference between a special resolution and an ordinary resolution.

19. We agree with this submission of Sri Verma. If it is held that an Administrator can impose a Municipal tax then for him there would be no difference between a special resolution and an ordinary resolution because an Administrator is a single individual and hence there is no question of any quorum. The fact that the quorum required for a special resolution is different from the quorum required for an ordinary resolution, and the fact that a municipal tax can only be imposed by a

special resolution, indicates that an Administrator cannot impose a Municipal tax, In our opinion an Administrator cannot be deemed to be the Municipal Board for all purposes, as is evident from the use of the words 'so far as may be' in Section 31(b). Hence it is only when an elected Municipal Board is in existence that a Municipal tax can be imposed. Admittedly at the time the impugned tax was imposed Municipal Board, Bisauli was without elected representatives as it was superseded.

20. For the reasons given above, the writ petition is allowed and the respondents will not demand or recover House Tax or other Municipal taxes from the petitioners as imposed by the Administrator. Petition allowed.