

Gujarat High Court

Songadh Group Gram Panchayat, ... vs Ranianlal Ishverlal Patel on 11 April, 1984

Equivalent citations: AIR 1984 Guj 140

Author: P Poti

Bench: P Poti, G Nanavati, I Bhatt

JUDGMENT P.S. Poti, C.J.

1. Section 178 (1) (ii) of the Gujarat Panchayats Act, 1961, empowers the Gram Panchayat and a Nagar Panchayat, subject to any general or special order (including an order fixing the minimum and maximum rates of a tax or fee) which the State Government, may make in this behalf to levy octroi tax on animals or goods or both brought within the gram or nagar for consumption, use or sale therein. R. 3 of the Gujarat Gram and Nagar Panchayats Taxes and Fees Rules, 1964, deals with "procedure for levying tax and fee" and since the scope of the rule and its application are matters in controversy here, we extract the abovesaid rule:

"3. Procedure for levying tax or fee. Before deciding to levy a tax or fee every panchayat shall observed the following procedure, namely:—

(a) It shall, by resolution passed at its meeting, select a tax or fee which if propose to levy and in such resolution shall specify the rate at which it is to be levied.

(b) For the purpose of inviting objections in that behalf, it shall then notify to the public, by means of a notice affixed at the office of the Panchayat and at the Chavdi or Chord of the gram or nagar or at some conspicuous place in the gram or nagar, the proposal together with that part of these rules which relates to that tax or fee specifying a date not, earlier than one month after the date of such notification on or alter which the panchayat shall take the proposal into consideration. The fact of the notification of such proposal shall, as soon as may be, be announced either by beat of drum in the gram or nagar or by publishing it at some conspicuous places in gram or nagar or in at least one local Gujarati Newspaper circulating in the area of the panchayat.

(c) Any inhabitant of the gram or nagar objecting to the levy of the tax or fee so proposed or desiring to rnaake any suggestion may send his objection in writing to the panchayat on or before the date specified in notice published under clause (b) or orally on the day or days on which the panchayat considers the proposal.

(d) On or after the date fixed under cl, (b), the panchayat shall consider all objections and suggestions received by it under clause (c) and way unless, the proposal is dropped select a tax or a fee and decide the rate at which it is to be levied."

2. The Short question that arises Jot decision in the Second Appeal concerns the application of R. 3 (b) to the ease. The appellants Gram Panchayats resolved to levy octroi duty at a meeting held on 29th March 1967 and in accordance with R. 3 (b) issued a notice to the public. This notfication was on 31-3-1967, followed later by a notification in a local Gujarati newspaper on 9-4-1967. The notification as translated in English, the correctness of which translation is not disputed by both

sides, reads:

"Public Notice No .66-67

All persons of Fort, Songadh, Rani Aamba, Amlipada and Ukai Panchayat villages are here

(Gujarat State, Panchayat and Health Department of Government by its resolution No. GU,

In pursuance to the above permission, above said, Panchayats have jointly decided to levy octroi in their joint meeting held on 29-3-1967 by Resolution No. 3 upon goods imported within above panchayats whosoever have any objections they should submit them to Sarpanch, Fort Sonagadh Gram Panchayat by application within 1 month (30 days) from date of this public notice. Notification publishing the schedule showing rates of octroi levied on goods is published on the Board of the Panchayat. The applications received after the period will not be considered.

(See below) This is Ex. 282 and is the notification as published in a Gujarati newspaper. The (late 31-4-1967 though originally shown, was corrected later by a publication on 17-4-1967, correcting the date to 31-3-1967.

3. The suit out of which the second appeal has arisen was filed by a person who is said to have paid octroi duty levied on him and his prayer was for refund of such duty paid and also for a declaration that such octroi duty was not properly levied. He purported to sue on behalf of himself and others like him who had paid octroi duty, under O. 1, R. 8 of the Civil P. C. The suit was dismissed but this was reversed in appeal, consequent upon which he has been given a decree for recovery of the amount said to have been paid by him. He had, in the plaint, made a general attack to the levy 'of the duty by' notification challenging it on the ground that all the formalities required by law to be observed were not observed. Naturally, this was refuted by a general denial by the defendants-panchayats. But, at the hearing before the appellate Judge, the point specifically taken as to the invalidity was that R. 3 (b) of the Rules was contravened in the case inasmuch as the notification issued under that rule did not specify the date as required by the rule. This contention evidently appealed to the Court below and on that approach, the notification and the consequent levy have been found to be illegal.

4. In this appeal by the panchayats, we are concerned only with the limited question as to whether this approach by the learned judge of the appellate Court was right though learned counsel for the respondent attempted to raise new grounds, some requiring investigation into facts and some on the basis of which he would seek remand. It is not necessary in this second appeal to go into these matters. The question urged before the Court below which found favour with it and consequent upon which the plaintiff succeeded, concerned only the plea that the notification in so far as it failed to specify a date not earlier than one month after such notification on or after which the panchayats shall take objections into consideration, must be found to be bad.

5. We do not think that it is necessary to go into the question whether R. 3 (b) is mandatory or directory only. In fact, the appellants counsel fairly conceded that the rule is mandatory but at the same time, contended that it does not mean that any inconsequential noncompliance would, for that reason, render the procedure adopted illegal.

6. Our attention has been drawn to the decision of this Court in *Municipal Corporation of the City of Rajkot v. Sonik Industries*, (1980) 21 Guj LR 838 (AIR 1981 Guj 1) (FB), rendered after reference was made by a learned single Judge of the Second Appeal to a larger Bench. In that case, the Full Bench considered the provisions of the Bombay Municipal Boroughs Act and particularly the question of publication of levy of tax under S. 75 of that Act. The Court held that the publication of the proposal to levy a particular tax was mandatory, but the manner of publication of such notice was directory and if the mandatory notice as published, on the facts of a particular case, substantially complied with the provisions prescribing the mode of publication, it would be proper publication.

7. We observe that it may not be necessary to go into the question whether R. 3 (b) is mandatory or not for the simple reason that in this case we find that there is no such contravention as would render the levy pursuant to the notification invalid. The Purpose of specifying a date in the notification under R. 3 (b) is to lay down the outside limit within which any person seeking to object to the levy of the tax or fee and desiring to make any suggestion may send his objection in writing to The panchayat on or before the date specified as required by R. 3 (c) of the abovesaid rules. It is also evident from R. 3 (b) that consideration of such objections could be made only on or after that date specified. Evidently, therefore, as seen from the rule, the object of specifying the date is to enable those who seek to object to file objections within that time. It indicates the outside limit within which such objectors could file their objections in writing and it has also marked the time for taking up the matter for consideration. It is not as if on the specified date the objections will be heard. If that had been the case, then, of course, non-specification of a specified date may be of significance, for objectors would be expecting to appear on a particular date for hearing of their objections and non-specification of the date would deprive them of such an opportunity. In fact, a Division Bench of this Court had in the decision in *Special Civil Applications Nos. 221 of 1966* and connected cases assumed that the specified date must be a certain date on the basis that objections and proposals would be considered by the panchayats on that date and it would be open to any inhabitant of the panchayat to remain present and offer his objection or suggestion even orally. The Division Bench proceeded to observe "This is an important provision which gives a right to an inhabitant of the panchayat to submit his point of view and his suggestion or objection in regard to the levy of the tax and such a provision must be held to be of mandatory nature and not of a directory nature as was suggested by Mr. Shastri on behalf of the Panchayat". If the rule as understood by the Division Bench was the one in force, of course, one can appreciate that non-specification of a date would lead to grave consequences. But the rule, on the face of it, does not oblige the panchayat to take up the objections on the date specified the late is only one on or after which alone the panchayat could take the objections into consideration, The learned counsel appearing for the respondent fairly conceded that the purport of the rule is that only, and not that the matter should be taken up on the very specified date.

8. In this view, we see no justification for the approach by the Division Bench that the significance of the specified date is that objectors should be heard on the specified date. If the specification is not necessarily to be with reference to any particular date but may be of such a nature as would enable those interested to know within what time they should file the objections and after what date such objections should be considered, any specification that would meet such requirement, should be taken to be in accordance with R. 3 (b) of the said Rules. When the notification in this case mentions that objections had to be filed within one month from the date of publication of notice, it evidently points to the time within which objections are to be received. In fact, it is specifically mentioned in the notification that the objections received after the period will not be considered. Therefore, there has been compliance with the rule.

9. Assuming for the sake of argument that there is some significance in mentioning a specific date, it can very well be that such specification is made with reference to a date which would be the expiry of a specified period of time. The specification of the date need not be with reference to a particular date as noticed in the calendar but could be understood with reference to a date which would be the last day of a specified period. In other words, when persons are told that they should file objections within 30 days of a specified date, it is as good as specifying that their objections should be filed within a Particular specified date. The approach, therefore, made by the learned Appellate Judge in this matter is erroneous. Since the levy has been struck down on this approach, the judgment calls for reversal.

10. We are not going into the propriety of the notification on any other approach. We are mentioning this because we need not be taken to have approved the notification as valid in other respects. What is not pleaded and urged need not be considered by a Court and that is the reason why we are not going into it. Though an attempt was made by the counsel for the respondent to argue that the Period specified, viz. within one month (30 days) would not be in accordance with the relevant rule, this plea was not one raised before the court below and not even raised in the pleadings. This is of significance because, had it been raised, perhaps, the defendants might have attempted to answer it particularly when, on the facts of the case, we find that the plaintiff did file his objections within the notification and his objections considered and dealt with.

11. In this view, we allow the second appeal, reverse the judgment and decree of the appellate Court and dismiss suit. Both parties will bear costs throughout.

12. Appeal allowed.