

indira Rani Devi Vs. Nagar Palika and ors.

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Court : Allahabad

Decided On : Jan-18-2000

Reported in : AIR2000All346

Judge : M.C. Agarwal and ;S. Rafat Alam, JJ.

Acts : Uttar Pradesh Municipalities Act, 1916 - Sections 135(3), 333 and 333A

Appeal No. : Civ. Misc. Writ Petn. No. 895 of 1981

Appellant : indira Rani Devi

Respondent : Nagar Palika and ors.

Advocate for Def. : K.D. Tripathi, Standing Counsel

Advocate for Pet/Ap. : Ambrish Kumar Sharma and ;V.P. Upadhya, Advs.

Disposition : Petition dismissed

Judgement :

M.C. Agarwal, J.

1. By this petition under Article 226 of the Constitution of India, the petitioner challenges a notification dated 12-4-1980 issued by the Government of U.P. whereby the rules regarding the levy of show tax on cinema houses situate within the territorial limits of Nagar Pallka, Puranpur have been published. A copy of the

notification has been annexed to the writ petition as annexure 4. The petitioner further prays that the Nagar Palika be restrained from realising show tax and octroi duty on the import of films from the petitioner.

2. We have heard Sri V. B. Upadhyaya, learned counsel for the petitioner and Sri K. D. Tripathi, learned counsel for the respondent No. 1 i.e. Nagar Palika, Puranpur. None appeared for the respondent No. 2 i.e. the State of U.P.

3. The petitioner's case is that she owns a cinema house situate at Puranpur which was a town area governed by the provisions of the U.P. Town Areas Act, 1940. On 22-4-1977 the Governor in exercise of powers under Section 36(1) of the said Act superseded the town area committee on grounds of persistent default and abuse of power and appointed the District Magistrate, Pilibhit as Administrator under Section 37 of the Act. Then on the 10th of July, 1978 the State Government in exercise of powers under Section 3(1)(a) of the U.P. Municipalities Act issued a notification declaring the area to be a fourth class municipality w.e.f. 16th of July, 1978. On 10-12-1978 an advertisement was issued in weekly news paper published from Pilibhit by the Officer Incharge. Municipal Board, Puranpur publishing proposal for imposing show tax within the limits of the Municipal Board, Puranpur. Subsequently by notification dated 12th of April, 1980 rules relating to the show tax were published in the official gazette. It is averred that prior to the said notification issued under Section 3(1) of the U.P. Municipalities Act, no show tax was imposed by the Town Area, Puranpur. It is claimed that the effect of the supersession of the Town Area, Puranpur and creation of Municipal Board in place of the Town Area is that the District Magistrate, Pilibhit who is the Administrator is alone competent to act as the Board and the action of the Officer Incharge in imposing the show tax is wholly illegal and not in conformity with the provisions of the U.P. Municipalities Act. It is also claimed that even on the creation of the municipality in place of the town area, the Municipal Board had no power to impose a new tax and the only power available to the new Board under Section 333-A is that it shall continue to impose and realise the taxes already imposed by the Town Area Committee and that no new taxes could be imposed. It is claimed that the impugned tax has been imposed by the Officer Incharge of the Board who is not the Administrator and who has not been appointed as Prescribed Authority

by the State Government and as such the Officer Incharge of the Board cannot be deemed or treated as Board under the provisions of the Act. According to the petitioner there is no resolution of the Board nor any proposal was ever made by the Board for the imposition of show tax and the Board never authorised the Officer Incharge either to impose the tax or to take any steps for imposition of the tax.

4. Regarding the octroi duty in respect of import of films by the cinema houses, it is claimed that through a Government Order dated 19th of September, 1978, the Governor exempted from payment of octroi duty from the cinema houses that, were paying show tax and, despite exemption, the respondent is still realising octroi duty from the petitioner on the import of films. It is on the aforesaid allegations that the petitioner claims the aforesaid reliefs.

5. A counter-affidavit was filed on behalf of the respondent Nagar Palika in which it is claimed that the show tax has been levied in accordance with the provisions of the U.P. Municipalities Act. It is claimed that by virtue of the provisions of Section 333 of the U.P. Municipalities Act read with the proviso to Section 10-AA(C) an Administrator is empowered subject to any general or special order made by the State Government to delegate all or any of his powers to any officer subordinate to him. The State Government is also said to have issued an order empowering the District Magistrate to delegate their powers, functions and duties under the said Act to any Sub-Divisional Magistrate under him. In exercise of those powers, the District Magistrate, Pilibhit delegated his powers, functions and duties to Sri R.C. Sharma, the Sub-Divisional Magistrate, Puranpur who initiated the proposal to levy the show tax and was competent to do so. Regarding octroi, it is claimed that the aforesaid Government Order does not apply to the petitioner because the show tax levied is less than the limit prescribed therein.

6. No rejoinder affidavit was filed.

7. As is evident after the supersession of the Town Area Committee, a municipality was created in its place by an order dated 10th of July. 1978. Sub-section (2) of Section 36 of the Town Areas Act provides the consequences of the supersession of a Committee and amongst them one of the consequences is that all members of

the Committee shall as from the date of the order vacate their offices as such members. The other consequence is that all powers and duties of the Committee may during the period of supersession be exercised and performed by the Prescribed Authority or if none is appointed by the District Magistrate. It was in pursuance of these provisions that the District Magistrate stood substitution in place of the members of the Committee and could function as the Town Area Committee. Then during the period of supersession itself, the area was constituted into a municipality. Section 333 of the U.P. Municipalities Act makes provision for the interregnum between the creation of a municipality and the constitution of a Board by the election of its members. Section 333 reads as under :--

'333. Exercise by District Magistrate of Board's power pending establishment of Board --When a new municipality is created under this Act, the District Magistrate, or other officer, or committee, or authority appointed by him in this behalf, may until a Board is established, exercise the powers and perform the duties and functions of the Board, and, he or it shall, for the purposes, aforesaid, be deemed to be the Board :

Provided always that the District Magistrate or such other officer or committee, or authority shall, as early as possible make preliminary arrangements for the holdings of first elections and generally or expediting the assumption by the Board of its duties when constituted.'

On behalf of the petitioner, reliance was heavily placed on the provisions of Section 333-A which provides for consequences of establishment of a municipality in place of town area or notified area. The said section stands as under :--

'333-A. Consequences of establishment of a municipality in place of town area or notified area -- Where a municipality is created in place of a town area or notified area, the following consequences shall, notwithstanding anything contained in Section 34 of the Town Areas Act, 1914 (U.P. Act 11 of 1914), or Section 339 of this Act, follow as from the date of the creation of the municipality;

(i) all taxes, fees, licences, fines or penalties imposed, prescribed or levied, on the date immediately preceding the said date, by the Town Area Committee or the

Notified Area Committee, as the case may be, be deemed to have been imposed, prescribed or levied by the Board under or in accordance with the provisions of this Act shall, until modified or changed, continue to be so realizable;

(ii) any expenditure, incurred by the Town Area Committee, or the Notified Area Committee, on or before the date immediately preceding the said date from its funds shall continue to be so incurred by the Board as if it was an expenditure authorised by or under the said Act;

(iii) all property including the rights or benefits subsisting under any deed, contract, bond, security or chooses in action vested in the town area or notified area, as the case may be, on the date immediately preceding the said date, shall be transferred to and vested in and ensure for the benefit of the Board;

(iv) all liabilities, whether arising out of contract or otherwise which have accrued against the Town Area Committee or the Notified Area Committee and are outstanding on the date immediately preceding the said date, shall thereafter be the liabilities of the Board;

(v) the fund of the town area or the notified area and all the proceeds of any unexpended taxes, tolls-fees or fines, levied or realised, as the case may be, by Town Area Committee or the Notified Area Committee shall be transferred to and form part of the Municipal fund of the municipality;

(vi) all legal proceedings commenced by or against the Town Area Committee or the Notified Area Committee and pending on the date Immediately preceding the said date, shall be continued by or against the Board;

(vii) any officer or servant, who on the date immediately preceding the said date, was employed by the Town Area Committee or the Notified Area Committee in full time employment shall be transferred to and become an officer or servant of the Board as if he had been appointed by it under the provisions of this Act; and

(viii) anything done or any action taken, including any appointment or delegation made, notification, or direction issued, rule, regulation, form, bye-law or scheme framed permit or licence granted or registration effected under the provisions of

the United Provinces Town Areas Act, 1914 (U.P. Act II of 1914), or the provisions of this Act as applied to the notified areas shall be deemed to have been done or taken under the corresponding provisions of this Act and shall continue in force accordingly unless and until superseded by anything done or any action taken under this Act.'

8. Section 333-A merely provides that the existing rights and liabilities of the Town Area Committee shall continue to be effective and it does not restrict the rights and obligations which arise from the establishment of a municipality. The contention raised on behalf of the petitioner that the newly created municipality had no right to levy show tax because no such tax was levied by the erstwhile Town Area Committee, has no substance.

9. As pointed out above, Section 333 makes provision for the transactional period and appoints the District Magistrate or other officer or committee or authority appointed by him in this behalf to exercise the powers and perform the duties and functions of the Board and he or it shall, for the purpose aforesaid, be deemed to be the Board. Therefore, if the District Magistrate appoints any officer to exercise the powers and perform the duties and functions of the Board, such officer can act as the Board for all purposes of the U.P. Municipalities Act till an elected Board takes over for which Section 333 provides that the District Magistrate shall take steps, as early as possible for holding the election and of expediting the assumption by the Board of its duties when constituted. In the counter affidavit, it has been asserted that the District Magistrate appointed Sri R.C. Sharma to exercise the powers, functions and duties under the U.P. Municipalities Act as the Officer Incharge, Nagar Palika, Puranpur and it was in exercise of those powers that Sri R.C. Sharma made the proposal for levy of show tax which were ultimately approved by the Government by the issue of the impugned notification. The contention that the District Magistrate could not delegate his powers to another officer ignores the specific provisions of Section 333 of the U.P. Municipalities Act which specifically confers powers on the District Magistrate to appoint another officer or committee or authority to exercise powers and perform the duties and functions of the Board.

10. The learned counsel for the petitioner placed reliance on a recent judgment of this Court in *Behram Ji v. State of U.P.*, (1999) 2 UPLBEC 956 : (AIR 1999 All 288) in which a Division Bench of this Court held that the Administrator of a superseded Town Area had no power to impose fresh taxes or revise the existing taxes and that a superseded local body should be restored, as soon as possible. The judgment deals on the general concept of democracy and does not refer to any of the statutory provisions and must, therefore, be restricted in its application to an identical case only. The present case is not an identical case. The reason is that here a new municipality was constituted in July, 1978 and there was no undue delay in initiating the proposals for levy of show tax. The record shows that Sri R.C. Sharma, who was appointed by the District Magistrate to discharge the functions of the Board, initiated the proposals in December 1978, as mentioned in paragraph 5 of the writ petition. No one has ever raised an eyebrow to the initiation of the levy of the tax by the said officer. In our view this being the case of a newly created municipality, that was in need of funds and the proposals having been initiated without undue delay, the aforesaid judgment cannot be applied in aid of the petitioner. Further Section 135(3) of the U.P. Municipalities Act provides that 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. Therefore, any minor lapse in the procedure would stand cured by the issue of the notification. We, therefore, hold that there is no illegality in the imposition of show tax by the Nagar Palika, Puranpur, respondent No. 1.

11. Now we come to the question of the petitioner's claim for exemption from octroi. A copy of the relevant Government Order dated 19th of September, 1978 has been placed as annexure 5 to the writ petition. This order says that in respect of cinema houses of first class i.e. whose annual value is Rs. 10,000/- or more, the show tax should not be less than Rs. 20/- per show and in respect of cinema houses of the second class whose annual value is less than Rupees 10,000/-, the show tax should not be less than 10 rupees per show. The order goes on to state that in respect of cinema houses for which the show tax has been enhanced as above, there shall be an exemption from octroi and advertisement tax. The exemption granted by this order is, thus, not absolute. It is available if in respect of a cinema of first class, the show tax is Rs. 20/- or more per show and in respect of

a cinema of a second class, the show tax is Rs. 10/- or more per show. The petition does not state in which of the two categories the petitioner's cinema house falls and the notification dated 12th of April, 1980 by which the rules have been notified show that the show tax levied is only Rs. 10/- per show. Therefore, if any exemption is available, the petitioner can approach the Municipal Board Puranpur stating the facts of its case and the Municipal Board will decide the matter, according to law. So far as the present petition is concerned, petitioner has failed to make out any case at this stage so as to enable this Court to make an order in her favour particularly when it had been challenging the levy of show tax and no tax had actually been paid because of the interim order dated 22-12-1981 by which the respondent No. 1 was restrained from realising the show tax and the octroi duty.

12. In view of the above discussions, the writ petition is liable to be dismissed. The petitioner has withheld the payment of the taxes for an unduly long time because of the interim order dated 22-12-1981. We, therefore, deem it fit to direct the petitioner to clear the dues within six weeks of this judgment, failing which it shall be liable to pay interest on the arrears of the tax dues due till today @ 18% per annum compounded six monthly.

13. In the result, the writ petition is dismissed with costs to respondent No. 1 that we assess at Rs. 2500/-. We further direct the petitioner to clear the dues in respect of show tax and octroi duty, the payment of which has been withheld by virtue of the interim order dated 22-12-1981 within six weeks from today. In case of default in clearing the dues, the petitioner will be liable to pay interest on the said dues due till today @ 18% per annum. The interest shall be compounded six monthly. The interim order dated 22-12-1981 stands discharged.

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