

PETITIONER:
SONIK INDUSTRIES, RAJKOT

Vs.

RESPONDENT:
MUNICIPAL CORPORATION OF THE CITY OF RAJKOT

DATE OF JUDGMENT 02/04/1986

BENCH:
PATHAK, R.S.
BENCH:
PATHAK, R.S.
REDDY, O. CHINNAPPA (J)
MISRA, R.B. (J)

CITATION:
1986 AIR 1518 1986 SCR (2) 59
1986 SCC (2) 608 1986 SCALE (1)500

ACT:

Bombay Municipal Boroughs Act, 1925, section 77, scope of - Whether the rules for the levy of a rate on buildings and lands can be said to be published under section 77 of the Act, if the notice published in a newspaper reciting the sanction of the State Government to the rules mentions that the rules themselves are open to inspection in the Municipal office and that copies of the rules can also be purchased there.

HEADNOTE:

The Rajkot municipality framed Draft rules for the levy of rates on buildings and lands in Rajkot. The Draft Rules were published and objections were invited and, thereafter the State Government accorded its sanction to the rules. The issue dated November 28, 1964 of "Jai Hind", a Gujarati newspaper published from Rajkot carried a Notice purporting to be under section 77 of the Bombay Municipal Boroughs Act, 1925 as adopted and applied for the information of persons holding buildings and immovable property within the Municipal limits of Rajkot that the Municipality had resolved to enforce the "Rules to the Rajkot Borough Municipality for the levy of Rate (Tax) on buildings and lands" sanctioned by the State Government of Gujarat, with effect from January 1, 1965. Thereafter an assessment list was prepared and steps were taken to demand the tax. F

The appellants, a registered partnership firm instituted a suit in the Court of the Civil Judge, Senior Division Rajkot for a declaration that the aforesaid Rules were invalid. The Trial Court decreed the suit. An Appeal against the decree of the Trial Court was dismissed by the Extra Assistant Judge, Rajkot. A Second Appeal preferred by the Municipality was referred to a larger Bench of the High Court consisting of learned Judges who held that the conditions of section 77 had been complied with. In accordance with the said opinion, the learned Single Judge allowed the Second Appeal. Hence the appeal by Special Leave.

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Dismissing the appeal, the Court,
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HELD : 1.1 The general principle is that if the mode of publication adopted is sufficient for persons affected by the rules with reasonable diligence to be acquainted with them, publication of the Rules has taken place in contemplation of the law. [65 D-E]

1.2 In the case of Municipal taxation, the conventional procedure enacted in most statutes requires publication of the proposed rules providing for the levy and inviting objections thereto from the inhabitants of the Municipality. Thereafter when the rules are finalised and sanctioned by the State Government, it is mandatory that they be published so that the inhabitants of the Municipality should know how the levy affects them in its final form. The rules, and consequently the levy, take effect only upon publication in accordance with the statute. The object of the requirement is that a person affected by the levy must know precisely the provisions of the levy and its consequences for him. [64 D-F]

1.3 The requirement of section 77 was complied with inasmuch as information was thereby given to all persons holding buildings and immovable property within the Municipal limits of Rajkot that the rules mentioned therein had been sanctioned by the State Government and that the rules could be inspected in the Municipal office. The mandatory requirement of section 77 was that the rules should be published, which requirement the notice satisfies. The mode of publishing the rules is a matter for directory or substantial compliance. It is sufficient if it is reasonably possible for persons affected by the rules to obtain, with fair diligence, knowledge of those rules through the mode specified in the notice. Had the Act itself specified the mode in which the rules were to be published, that mode would have to be adopted for publishing the rules. In the opinion of the Legislature, that would have been the mode through which the inhabitants of the Municipality could best be informed of the rules. [64 H; 65 A-D]

1.4 Section 77 provides the final stage of the procedure enacted in sections 75 to 77 for imposing a levy. The period referred to in section 77, after which alone the tax can be 3 imposed, is intended to enable persons affected by the levy to acquaint themselves with the contents of the rules, and to

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take preparatory measures for compliance with the rules. The period has not been particularly prescribed in order to enable a person to take advantage of the benefit of section 102 before the tax is imposed. [66 B-D]

Chunni Lal v. The Municipal Board, Shri Madhopur, [1956] I.L.R. Rajasthan 568; Gokaldas Amarshi v. Porbandar City Municipality, [1971] 12 G.L.R. 603; Commissioner of Sales-tax, Uttar Pradesh v. The Modi Sugar Mills Ltd., [1961] 2 S.C.R. 189; The Municipal Corporation Bhopal, M.P. v. Misbahul Hasan and Ors., [1972] 1 S.C.C. 696; Govindlal Chhagga Lal Patel v. The Agricultural Produce Market Committee, Godhra and Others, [1976] 1 S.C.R. 451; and Municipal Council, Rajahmundry v. Nidamarti Jaladurga Prasadarayudu and Anr., 1926 A.I.R. Madras 800 referred to.

OBSERVATION

(It would have been more desirable for the Municipality to have published the rules in the Newspaper along with the notice reciting the sanction, though the omission to do so and notifying instead that inspection of the rules was available in the Municipal office still constitute sufficient compliance with the law.)

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1242 of 1980.

From the Judgment and Order dated 2nd May, 1980 of the Gujarat High Court in Second Appeal No. 110 of 1978.

T.U. Mehta, D.H. Kothari, S.K. Dholakia and R.C. Bhatia for the Appellant.

Dr. Y.S. Chitale, Vimal Dave and H. Mehta for the Respondent.

The Judgment of the Court was delivered by

PATHAK, J. This appeal by special leave raises the question whether the rules for the levy of a rate on buildings and lands can be said to be published under s.77 of the Bombay Municipal Boroughs Act, 1925 if the notice published in a

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newspaper reciting the sanction of the State Government to the rules mentions that the rules themselves are open to inspection in the Municipal office and that copies of the rules can also be purchased there.

The Rajkot Borough Municipality framed Draft rules for the levy of rates on buildings and lands in Rajkot. The Draft rules were published and objections were invited, and there after the State Government accorded its sanction to the rules. In the issue dated November 28, 1964 of "Jai Hind", a Gujarati newspaper published from Rajkot, a notice was published purporting to be under s.77 of the Bombay Municipal Boroughs Act, 1925 as adopted and applied to the Saurashtra area of the State Gujarat (hereinafter referred to as "The Act"), for the information of persons holding buildings and immovable property within the Municipal limits of Rajkot that the Municipality had resolved to enforce the "Rules of the Rajkot Borough Municipality for the levy of Rate (Tax) on Buildings and Lands" sanctioned by the State Government of Gujarat with effect from January 1, 1965. Notice recited the date and serial number of the sanction. It also stated :

"These rules can be inspected at the office of the Municipality on all days other than Holidays during office hours; moreover copies of the rules can be purchased at the Municipal Office".

It appears that thereafter an assessment list was prepared and steps were taken to demand the tax.

The appellant, a registered partnership firm, instituted a suit in the Court of the learned Civil Judge, Senior Division, Rajkot, praying for a declaration that the aforesaid rules were invalid, and that the consequent assessment list and the related notices of demand were without authority of law. A permanent injunction was also sought to restrain the Municipality from giving effect to the rules. The trial court decreed the suit and granted the declaration and injunction prayed for. An appeal against the decree of the trial court was dismissed by the learned Extra Assistant Judge, Rajkot. A second appeal was filed by the Municipal Corporation of Rajkot (the Municipal Borough of Rajkot having been so renamed) in the High Court, and at the time of admission a learned Single

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Judge of the High Court formulated three questions of law arising in the appeal. The appeal was referred subsequently to a larger Bench. A Bench of three learned Judges of the High Court took up the case and observed at the outset that the only question which required consideration at that stage

was whether the courts below had erred in striking down the rules on the ground that they had not been published as required by s.77 of the Act. The learned Judges held that the courts below had taken an erroneous view of the statute and that, in their opinion, the conditions of s.77 of the Act had been satisfied in the case. The case was sent back to the learned Single Judge with that opinion for disposal in accordance with law.

Chapter VII of the Act provides for Municipal taxation. While the different taxes which can be levied by a Municipality are enumerated in s.73, sections 75 to 77 detail the procedure to be observed when the Municipality proposes to levy a tax. Before imposing a tax the Municipality is required by s.75 to pass a resolution deciding which one or other of the taxes specified in s.73 would be imposed and to approve rules specifying the classes of persons or property or both which are proposed to be made liable, the amount or rate proposed for assessment, the basis of valuation on which such rate on buildings and lands is to be imposed and other related matters. The rules so approved by the Municipality are required to be published with a notice in a prescribed form. Objections are invited from the inhabitants of the Municipal borough, and the Municipality is required to take the objections into consideration, and if it decides to pursue the levy it submits the objections with its opinion thereon and any modifications proposed by it, together with the notice and rules to the State Government. Section 76 empowers the State Government to sanction the rules with or without modification, or to return them to the Municipality for further consideration. Section 77 provides :

"77. Rules sanctioned under section 76 with the modifications and conditions, if any, subject to which the sanction is given shall be published by the Municipality in the Municipal borough, together with a notice reciting the sanction and the date and serial number thereof; and the tax as prescribed by the rules so published shall, from a

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date which shall be specified in such notice and which shall not be less than one month from the date of publication on such notice, be imposed accordingly,"

It is contended by learned counsel for the appellant that the rules sanctioned by the State Government should have been published along with the notice reciting the sanction in the same newspaper and there was no publication for the purposes of s.77 if the notice merely mentions that the rules can be inspected in the Municipal Office and that copies of the rules can be purchased. Our attention is invited to s.192 which provides for the mode of service of notice under the Act, and it is urged that the publication of the rules in this case is not in conformity with any of the modes prescribed therein. It is contended that the provisions of s.77 call for strict construction inasmuch as the rules are intended to levy a tax on the inhabitants of the Municipality.

In the case of Municipal taxation, the conventional procedure enacted in most statutes requires publication of the proposed rules providing for the levy and inviting objections thereto from the inhabitants of the Municipality. Thereafter when the rules are finalised and sanctioned by the State Government, it is mandatory that they be published so that the inhabitants of the Municipality should know how the levy affects them in its final form. The rules, and

consequently the levy, take effect only upon publication in accordance with the statute. The object of the requirement is that a person affected by the levy must know precisely the provisions of the levy and its consequences for him. Section 77 requires that the sanctioned rules should be published by the Municipality in the Municipal borough together with the notice reciting the sanction. The notice published in the newspaper mentioned that the "Rules of Rajkot Borough Municipality for the levy of Rate (Tax) levied on Buildings and Lands" had been sanctioned by the State Government and the notice recited also the date and serial number of the sanction. It was open to the Municipality to publish the sanctioned rules also in the newspaper, but what it did was to state in the notice that the rules could be inspected in the Municipal office, and also that copies of the rules could be purchased at the Municipal Office. In our opinion, the requirement of s.77 was complied with inasmuch as

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information was thereby given to all persons holding buildings and immovable property within the Municipal limits of Rajkot that the rules mentioned therein had been sanctioned by the State Government and that the rules could be inspected in the Municipal Office. The mandatory requirement of s.77 was that the rules should be published and it seems to us that the notice satisfies that requirement. The mode of publishing the rules is a matter for directory or substantial compliance. It is sufficient if it is reasonably possible for persons affected by the rules to obtain, with fair diligence, knowledge of those rules through the mode specified in the notice. Had the Act itself specified the mode in which the rules were to be published, that mode would have to be adopted for publishing the rules. In the opinion of the Legislature, that was the mode through which the inhabitants of the Municipality could best be informed of the rules. But the Act is silent as to this. Section 102 specifies the modes in which service of a notice contemplated by the Act should be served. There is nothing in the section prescribing the mode for publishing the rules in question here. Nor does s.24 of the Bombay General Clauses Act help us. We must, therefore, fall back upon the general principle that if the mode of publication adopted is sufficient for persons, affected by the rules, with reasonable diligence to be acquainted with them, publication of the rules has taken place in contemplation of law. It is necessary to emphasise that we are dealing with a stage defining the final shape of the rules, after objections to the draft rules have been considered and the State Government has accorded its sanction.

Learned counsel for the appellant and learned counsel for the interveners have referred us to s. 102 of the Act, which empowers the State Government on complaint made or otherwise that any tax leviable by the Municipality is unfair in its incidence, or that the levy thereof, of any part thereof, is obnoxious to the interest of the general public, to require the Municipality to take measures for removing any objection which appears to it to exist to the said tax. If, within the period so fixed, such requirement is not carried into effect to the satisfaction of the State Government, it may, by notification in the Official Gazette, suspend the levy of the tax, or of such part thereof, until such time as the objection thereto is removed. It is urged that the rules published under

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s.77 of the Act are still open to challenge under s.102 of

the Act and it is for that reason that s.77 provides that the notice published thereunder should prescribe a date, not less than one month from the date of such publication, as the date on which the tax as prescribed by the rules shall be imposed. It is said that this period is intended to enable persons affected by the levy to object again under s.102 of the Act, and therefore the rules must be set forth in the newspaper itself. We are unable to agree. To our mind, s.77 provides the final stage of the procedure enacted in sections 75 to 77 for imposing a levy. The period referred to in s.77, after which alone the tax can be imposed, is intended to enable persons affected by the levy to acquaint themselves with the contents of the rules, and to take preparatory measures for compliance with the rules. The period has not been particularly prescribed in order to enable a person to take advantage of the benefit of s.102 before the tax is imposed. We are of opinion that it would have been more desirable for the Municipality to have published the rules in the newspaper along with the notice reciting the sanction, but while saying so we are unable to hold that its omission to do so and notifying instead that inspection of the rules was available in the Municipal Office does not constitute sufficient compliance with law.

Reliance was placed by the appellant on *Chunni Lal v. The Municipal Board, Shri Madhopur*, [1956] I.L.R. Rajasthan 568 before us. In that case, on a difference of opinion between two learned Judges of the Rajasthan High Court, a third learned Judge of the High Court held that the provision for inspection of the rules in the Municipal Office did not constitute publication within the meaning of s.62 of the Rajasthan Town Municipalities Act, 1951. The High Court in that case was influenced by the particular evidentiary material before it, on the basis of which it reached the conclusion that it was not reasonably possible for a member of the public to acquaint himself with the contents of the rules. No such difficulty has been placed before us. Our attention was also invited to *Gokaldas Amarshi v. Porbandar City Municipality*, [1971] 12 G.L.R. 603 but in that case the High Court was concerned with the stage of publication of the draft rules, that is to say the preliminary procedure enacted under the Act before imposing a tax. Learned counsel for the

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appellant has referred to *Commissioner of Sales-tax, Uttar Pradesh v. Modi Sugar Mills Ltd.*, [1961] 2 S.C.R. 189, *The Municipal Corporation Bhopal, M.P. v. Misbahul Hasan and Ors.*, [1972] 1 S.C.C. 696, *Govindlal Chhagga Lal Patel v. The Agricultural Produce Market Committee, Godhra and Ors.*, [1976] 1 S.C.R. 451 and *Municipal Council, Rajahmundry v. Nidamarti Jaladurga Prasadarayudu and Anr.*, [1926] A.I.R. Madras 800, but nothing said therein appears to us to be of any assistance to the appellant in this case.

There is no force in this appeal and it is accordingly dismissed with costs.

S.R.

Appeal dismissed.

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