

Privy Council Appeals Nos. 3 and 4 of 1931

The firm of Radha Kishan Jaikishan and others - - *Appellants*

v.

The Municipal Committee, Khandwa - - - *Respondents*

The firm of Radha Kishan Jaikishan and others - - *Appellants*

v.

The Municipal Committee, Khandwa - - - *Respondents*

Consolidated Appeals

FROM

THE COURT OF THE JUDICIAL COMMISSIONER OF THE
CENTRAL PROVINCES

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 2ND MARCH, 1937.

Present at the Hearing :

LORD THANKERTON.

SIR SHADI LAL.

SIR GEORGE RANKIN.

[*Delivered by* LORD THANKERTON.]

The further enquiry, for which these appeals were remanded to the Court of the Judicial Commissioner, Central Provinces, by the Order in Council dated the 21st December, 1933, was taken in the Court of the Additional District Judge, Khandwa, and has been transmitted to this Board by the Court of the Judicial Commissioner.

The situation was made clear in the judgment of this Board dated the 18th December, 1933, to which reference may be made. The only issue remaining to be determined may be restated.

Section 39 of the Central Provinces Municipal Act, 1903, so far as material, provides as follows:—

“ 39.—(1) A committee may resolve at a special meeting to propose the imposition of any tax for the purposes of this Act.

“ (2) Where a resolution has been passed under sub-section 1, the committee shall publish, in the prescribed manner, a notice defining the class of persons or description of property proposed to be taxed, the amount or rate of the tax to be imposed, and the system of assessment to be adopted.”

The respondents claimed that a resolution was duly passed at a special meeting of the Municipal Committee held on the 16th July, 1922, which satisfied the requirements of sub-

section 1 of section 39. The resolution was recorded in the Committee's proceeding book as follows:—

“(3) Read Secretariat letter No. 731-343-VIII, dated the 30th March, 1922, on the subject of imposing a tax on the trade of ginning and pressing cotton by means of steam or mechanical process.

“Read also the draft bye-laws prepared by the President, together with his note recommending to adopt them for imposing this tax in this municipality with a view to increase the committee's income.

“The bye-laws adopted by Murtizapur and other municipalities in Berar, where this tax has already been imposed, were also read.

“Resolved that the proposed bye-laws drafted by the President be passed and that they be published locally as well as in two successive issues of the Central Provinces Gazette for inviting objections or suggestions in respect of them within one month from the date of their publication.

“*Note.*—Seth Kamaruddin proposed that this tax be imposed on the trade of pressing cotton only and not on ginning. This proposal was, however, dropped, as it was not seconded by any member.”

Commenting on this document, their Lordships observed:—

“This slovenly record is open to the comment that, but for the note at the end, it might be doubtful if the question of the imposition of the tax was considered and resolved on by this meeting. The notice convening the meeting had stated the business as ‘Consideration of the bye-laws regarding the imposition of a tax on the trade of ginning and pressing cotton’.

“But the criticism of more immediate importance is that the record contains no reference to the amount of the tax to be imposed, and it is clear, in their Lordships' opinion, that, in view of sub-sections 1 and 2 of section 39 of the Act of 1903, it is essential that the resolution contemplated by sub-section 1 should settle the amount or rate of the tax. If, however, the ‘proposed bye-laws drafted by the President’ can be identified, it should then be possible to ascertain definitely whether the amount or rate of the proposed tax was involved in the resolution. But it is here that difficulty and confusion arises; there is no documentary evidence which enables one to identify the ‘bye-laws’ referred to in the resolution, and, as already stated, the parties adduced no oral evidence at the trial.”

It was in these circumstances that their Lordships gave the respondent the opportunity of adducing evidence to identify the “bye-laws drafted by the President” referred to in the resolution of the 16th July, 1922, the appellants being entitled to adduce evidence in reply thereto.

The amount or rate of the tax proposed to be imposed, of which notice was published as provided by sub-section 2 of section 39, was as follows:—

	Rs.	a.	p.
“(1) For each bondri of three maunds ginned	0	1	6
“(2) For each bale of 4½ maunds, pressed ...	0	2	3

It is for the respondent Committee to prove clearly that this amount or rate of tax was consciously resolved upon at the special meeting of the 16th July, 1922. In the opinion of their Lordships they have failed to do so.

Evidence for the respondent Committee was given by three members of the Committee at that time, the President, the Vice-President and a member of the Committee and also by the head clerk in the Municipal Office at that time. The appellants' two witnesses were members of the Committee who were present at the meeting of the 16th July, 1922, but their recollection is not very clear, and their Lordships will deal with the matter on the evidence for the respondent Committee.

The respondents' case is that "the draft bye-laws prepared by the President" are that portion of exhibit D1 in the second suit, which is printed on pages 66, 67 and the top of page 68 of the record in that suit, and which was fully quoted in the judgment of their Lordships. Their Lordships accept that the same document forms part of exhibit D1 in the first suit, but, as printed on pages 68 and 69 of the record in that suit, the date "15th July, 1922" and the signature of Mr. K. R. Harne have not been reproduced. This document is referred to by the witnesses as pages 9 and 10 of exhibit D1 which, as printed, includes the amount or rate of the proposed tax as subsequently published and quoted above. But it is clear from the evidence of the head clerk that there are a large number of corrections on this document, one of them being dated as late as the 17th August, 1922, and the evidence of the President shows that there were changes in the rates proposed.

The President's evidence as to the preparation of the draft bye-laws may be shortly stated, but it may be first observed that the nomenclature of "bye-laws" and "rules" appears to have been applied indiscriminately, and their Lordships are willing to take it that the "draft bye-laws" referred to in the resolution included the part of the document which is headed "Rules."

On receipt of the letter from the Local Self-Government Department dated the 30th March, 1922, suggesting the tax here in question, the President instructed the secretary, K. R. Harne, to prepare a draft of the rules to be framed under section 35 of the Act. The secretary put up a draft of the proposed rules on the 21st May, 1922. On this draft the President made some alterations, and, as so revised, it forms exhibit D.16. The amount or rate of the proposed tax, as shown in it, is:—

"(1) For each bondri of three maunds ginned, 1 anna.

(2) For each bale of $4\frac{1}{2}$ maunds pressed, Re.0-1-6."

On the margin there is a note with a circle round it, initialled by Mr. Harne and dated the 10th June, "This should be one pie per maund as per President's note, dated 26th May, 1922." On this last date the President asked Mr. Harne to get certain information as to weights from the ginning and pressing factories, and expressed the view that the taxation should be started with one pie per maund of cotton pressed and ginned, and asked Mr. Harne to make the necessary changes in the draft. After some correspondence

with other Municipal Committees, in which information was asked for as to the local weight of the maund and other matters, the President addressed a memorandum (exhibit D.26) to the secretary on the 15th July, 1922, the material part of which is as follows:—

“ I have made certain amendments in the draft of the bye-laws prepared by you (*vide* flag A). Please get a duplicate typed copy ready of the draft before this evening.

“ My reasons for these changes are obvious. The local maund is equal to 40 seers while that of the Berar towns equal to 14 seers. The boja of Berar is called a bondri at Khandwa. The rate of the tax in the municipalities of Yeotmal, Akot, Karanja, Mulkapur, Shegaon and Khamgaon is one pie for every 35 pounds ginned and one pie for every $39\frac{1}{5}$ pounds pressed while the tax proposed to be levied in our municipality is one pie for every 20 pounds of cotton ginned and pressed within our municipality. This change is advisable in view of the fact that the tax in the aforesaid municipalities was imposed in the year 1912 and the interim has seen economic changes of importance to justify the proposed increase.”

The secretary's memorandum in reply, of the same date (exhibit D.25) states:—

“ I beg to put up herewith a duplicate typed copy of the amended draft rules as ordered. . . . The rates proposed by you do not require any change, I think.”

It is important to notice that the rates appearing in exhibit D.16, as revised by the President in May, and quoted above, correspond to a rate of one pie for every 20 pounds of cotton ginned and pressed. One anna for three maunds, the maund consisting of 80 pounds, equals 12 pies for 240 pounds, and, similarly, $4\frac{1}{2}$ maunds at one anna and six pies equals 360 pounds at 18 pies. On the other hand, sheet 10 of exhibit D.1 shows a 50 per cent. increase on these rates, and there is no evidence to show when or by whom this increase was made, and it was for the respondent Committee to prove that the rates, as so increased, were before the meeting on the 16th July, 1922. In view of the slovenly way in which the records have been kept, there can be no presumption in favour of the Committee.

The President states that sheets 9 and 10 of exhibit D.1 were placed before the meeting, and he says: “ The amendments referred to in exhibit D.26 are those to be found in sheet No. 10 of exhibit D.1. The alterations bear my initials. They relate to figures giving rates.” These amendments, it will be noticed, do not include the 50 per cent. increase. The President further states that all the papers prior to his endorsement of D.25, including exhibit D.26, were before the meeting, and he adds, “ I have not dated the correction in sheet No. 10 of D.1, but the date of this correction is to be deduced from the first paragraph of exhibit D.26. The reasons for the change in rates in sheet No. 10 of exhibit D.1 are given in second paragraph of exhibit D.26.” He also states that exhibit D.26 is presumably the note of recommendation referred to by the secretary in the resolution of 16th July, 1922. All this evidence, as it stands, is *prima facie* inconsistent with the increase of 50 per cent. having

been before the meeting, and, as already stated, no explanation is given as to the origin of this increase. This increase does appear in exhibit D.28, which, along with D.27, is a fair copy of the bye-laws made for purposes of publication, but the head clerk, who prepared them, states that he did so in obedience to the order of the secretary dated the 16th July, 1922, received by him on the 17th July in the morning. He adds, "But the said documents bear my initials dated 15th July, 1922. I mean to say that the said documents were ready with my initials and were put up before the secretary after 17th July, 1922." This somewhat ambiguous statement is not pursued further, and, as it stands, is without value.

Their Lordships' conclusion, accordingly, is that the respondent Committee have failed to prove that the amount or rate of tax here in question was resolved upon by the special meeting of the 16th July, 1922, and that the tax has not been validly imposed.

Their Lordships will therefore humbly advise His Majesty that the appeals should be allowed, that in appeal No. 3 of 1931 the decree of the Court of the Judicial Commissioner dated the 20th November, 1928, and the decrees of the lower Courts should be set aside, and that the appellants should be granted an injunction as craved, and that in appeal No. 4 of 1931 the decree of the Court of the Judicial Commissioner dated the 20th November, 1928, should be set aside, and the decree of the Additional District Judge, Khandwa, dated the 6th February, 1928, should be restored. The appellants will have the costs of these appeals, and in appeal No. 3 their costs in the Courts below and in appeal No. 4 their costs in the Court of the Judicial Commissioner.

In the Privy Council

THE FIRM OF RADHA KISHAN
JAIKISHAN AND OTHERS

2.

THE MUNICIPAL COMMITTEE,
KHANDWA

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THE MUNICIPAL COMMITTEE,
KHANDWA

DELIVERED BY LORD THANKERTON

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