(1965) 10 BOM CK 0015

Bombay High Court

Case No: Special Civil Application No. 355 of 1964

Village Panchayat of Kanhan-Pipri, District Nagpur		APPELLANT
	Vs	
Standing Committee, Zilla Parishad, Nagpur and Others		RESPONDENT

Date of Decision: Oct. 22, 1965

Acts Referred:

- Bombay Village Panchayats Act, 1959 - Section 124, 124(5), 176, 176(1), 176(2)
- Constitution of India, 1950 - Article 226
- Maharashtra Village Panchayats Taxes and Fees Rules, 1960 - Rule 21, 22, 3, 4, 5

Citation: AIR 1967 Bom 283 : (1966) 68 BOMLR 828 : (1967) MhLj 70

Hon'ble Judges: Padhye, J; Abhyankar, J

Bench: Division Bench

Advocate: M.N. Phadhe, S.R. Mangrulkar and M.W. Puranik, S.M. Hajarnavis, Asst. Govt. Pleader, for the Appellant; V.M. Kulkarni, A.S. Bobde and N.A. Palkhiwala, for the Respondent

Judgement

Abhyankar, J.

(1) The petitioner is a Village Panchayat of Kanhan Pipri. It has filed this petition under Article 226 of the Constitution for quashing the resolution passed by respondent no. 1 on 6-4-1964, by which it allowed the appeal filed by respondent no. 2, Respondent no.1 has held that the resolution passed by he petitioner Panchayat levying octroi tax was not validly made, and it has further held that the activities of respondent no. 2. Factory did not attract the liability for payment of octroi tax in respect of tea leaves imported by them for the purpose of lending in that factory.

(2) The petitioner has been constituted as a Village Panchayat u/s 5 read with section 9 of the Bombay Village Panchayats Act 1958. It comprises of an area of more than one Village, which is permissible under that Act. The Panchayat is a body corporate

having perpetuity in succession and is a local authority over the area for which it is constituted. u/s 124 of the Bombay Village Panchayats Act, which shall hereinafter be referred to as the Pachayats Act, the Panchayat is competent to levy all or any of the taxes and fees enumerated in sub-section (1) of section 124, one of the taxes which it can levy under S. 124 (1) (ii) is octroi. ''Octroi'' or ''octroi duty'' is defined by S. 3 (13) of the Panchayats Act as meaning a tax on the entry of goods into a village for consumption, use or sale therein.

(3) The petitioner Panchayat passed a resolution on 14-7-1961, Proposing to impose an octroi tax on import of goods within the octroi limits of Kanhan-Pipri Village Panchayat. The Panchayat passed another resolution on 17-11-1962 on the same subject, but neither of these resolution have been filed by the petitioner with the petition. But it appears that the resolutions were published and objections were received and considered regarding these proposals. In fact, the contesting respondent no. 2 has denied that the resolutions of 14th July 1961 and 17th November 1962 were duly published as required by Maharashtra Village Panchayat Taxes and Fees Rules, 1960.

(4) Respondent no. 2. among others, filed objections to the proposals to levy octroi tax. The petitioner Panchayat considered the objections received and passed a final resolution on 25-2-1963. That resolution is document no. 2 filed with the petition. The substance of the resolution is that the Panchayat resolved that octroi should be levied at minimum rates on all the materials and goods as per Schedule I item (i) coming into the limits of the Gram Panchayat as early as possible for all-round progress of the village. The last part of the resolution is as follows;

"Having considered all these above objections and suggestions and having given a satisfactory explanation for the same, this Committee unanimously resolves that as per the above resolution octroi should be levied on all the goods coming into the limits of the Panchayat, as per schedule I, item 1, and levy the minimum octroi as per the rules in Schedule I item 2. This levy should come into force from 1-4-1963 and its final publication be done on 1-3-1963 as per rules and by public notice and by announcement by beat of drum (through loudspeaker)."

(5) Thereafter the petitioner Panchayat passed resolution no. 3 on 17-3-1963 to the following effect:

"The Committee discussed about the fixing of is octroi limits, the number of Nakas and their places and it has been unanimously resolved that the area of the Gram Panchayat within its jurisdiction will form the boundaries of the Nakas. The total number of Nakas will be 7 and the Nakas will be at the following mentioned places and will be known as under;

Octroi Naka No. 1 "Kamptee Naka"

" " No. 2 "Railway Station Naka"

" " No. 3 "Sihora Naka"

" " No. 4 "Pipri Naka"

" " No. 5 "Tekadi Naka"

" " No. 6 Hiwra Naka", and

" " No. 7 Kandri Naka"

The places of the Nakas will be at the places as shown in the accompanying maps. Thus having decided the limits, number of Nakas and places as above, this Committee requests the Collector, Nagpur, that taking into consideration that octroi levy is to begin as from 1-4-1964, he should be pleased to give his approval (sanction) to the same as early as possible."

(6) On the next day the Panchayat forwarded resolution no. 3 fixing the octroi limits and the octroi Nakas to the Collector, Nagpur, with a covering letter, and asked for his approval of the same.

(7) It appears that the collector forwarded the proposal regarding octroi limits and fixation of the Nakas as per resolution of the petitioner Panchayat, dated 17-3-1963, for disposal to the Tahsildar of Remtek. The Tahsildar, Remtek, passed an order on 14-1-1964. In paragraph 6 of this order, the Tahsildar stated that as regards limits of the Gram Panchayat, it consists of villages Kanhan-Pipri and Sihora and the area of it is the boundary of these villages and these octroi Nakas are within the limits of the Gram Panchayat. It seems the observations of the Tahsildar in paragraph 6 of his order have reference to one to the objections raised before him, namely, that the area of the village Panchayat is not fixed and be fixed. The Tahsildar does not appear to have given any finding regarding this objection. The Tahsildar, however, dealt with objections to he proposed Nakas and gave approval regarding Nakas at the end of the order in the following terms:

"I, therefore, approve the location of these 2 Nakas Nos. 1 and 7 subject to the condition that the lands of Nakas Nos. 1 and 7 are approved by the P. W. D. The location of all other Nakas are approved without any other condition."

To complete the further action regarding this approval it may be mentioned that the petitioner Panchayat seems to have addressed a communication to the Executive Engineer, Nagpur, Division, with regard to location of two of the Nakas proposed and in reply thereto the Executive Engineer, Nagpur Division, intimated to the Sarpanch of the petitioner Panchayat on 25-6-1965 that lease of the land occupied by the Naka in Mile 13 and 3 furlongs, and Naka in Mile 14 and 2 furlongs were being regularised from 1-4-63 upto 31st October 1965.

(8) Respondent no. 2 filed a memorandum of appeal before the Panchayat Samiti on 29th May 1963 against the order levying octroi, passed by the petitioner Panchayat on 1-4-1963. A copy of this memorandum of appeal is Document no. 3 filed with the

petition. The appeal was filed in exercise of the right of respondent no. 2 u/s 124 (5) of the Panchayats Act, after filing the appeal respondent no. 2 had sent a letter by registered post on 17-7-1963, requesting the Panchayat Samiti, Parseoni, to fix a date for hearing, but nothing was heard from the Panchayat Samiti, Parseoni by respondent no. 2. Respondent no. 2 sent another letter to the Panchayat Samiti under registered post on 31-8-1963, requesting that the matter may be expedited i.e., the hearing of the appeal may be expedited. It is the case of respondent no. 2 that the Panchayat Samiti Parseoni, dismissed their appeal by resolution dated 4th September 1963 on the ground that it was not filed within limitation as per provisions of the Bombay Village Panchayats Act, and rule 5 of the Maharashtra Village Panchayats Taxes and Fees Rules, 1960. The petitioner has not filed a copy of this resolution, but this result was communicated to respondent no. 2 by the Chairman of the Panchayat Samiti, Parseoni, by his letter dated 19th September 1963.

(9) Respondent no. 2 thereafter filed a further appeal before respondent no. 1 i.e. the Standing Committee of the Nagpur Zilla Parishad on 22nd October 1963. Document no 5 filed with the petition is the memorandum of this appeal. To this appeal respondent no, 2 had impleaded the petitioner Panchayat as respondent no. 1 and the Panchayat Samiti, Parseoni, as the second respondent. It appears that notice was issued to the respondent of this appeal, namely, the petitioner Panchayat, and the petitioner Panchayat filed a written objection to the further appeal preferred by respondent no. 2 before respondent no 1. One of the objections specifically raised by petitioner Panchayat was that the final publication of the notice relating the taxes to be levied as required by the rules was published by the Panchayat on 1-3-1963 by affixing a copy thereof in its office and it was announced by beat of drum, and that the first appeal filed by respondent no. 2 before the Panchayat Samiti, Parseoni, was filed after 89 days and was thus hopelessly barred by time. The petitioner Panchayat, therefore, urged that the further appeal filed by respondent no. 2 before respondent no. 1 was not tenable as the first appeal filed by respondent no. 2 before the Panchayat Samiti, Parseoni, was itself not tenable, having been filed beyond the period of limitation prescribed by the rules.

(10) Respondent no. 1 Standing Committee of the Zilla Parishad, after hearing both the parties which appeared before it, decided the appeal in favour of respondent no. 2 by its resolution dated 6-4-1964. Document no. 7 filed with the petition is a copy of that resolution. The resolution stated that the appeal was first heard when the say of both the sides was heard on 21-1-1964. Thereafter the Standing Committee inspected the appellant''s factory at kanhan-Pipri on 13-2-1964 available papers were seen and points of arguments urged on behalf of both sides were considered at length on the day the resolution was passed by the Standing Committee. The resolution states that the petitioner Panchayat had demanded and began recovery of octroi from respondent no. 2 from 1-4-1963 and it was against this levy of octroi that respondent no. 2 had under rule 5 read with section 124 (5) of the Panchayats

Act gone up in appeal before the Panchayat Samiti.

Respondent no. 1 has held that the octroi levied by the Panchayat was illegal on two grounds:

(1) It was binding on the Panchayat to follow the procedure of rule 21 because it is absolutely necessary to follow the procedure before the actual levy of the octroi. As long as the octroi limits are not fixed it was not possible to decide which goods arriving in which limits would be liable to pay octroi.

(2) It appears that respondent no. 2 was not importing tea within the limits of the Panchayat for consumption, use and sale. The tea after it came in the area was sent out after repacking outside the Panchayat limits.

The Standing Committee rejected the contention of the Panchayat that on this tea processing or opening was done in the factory. The standing Committee gave a finding that after actual inspection of process it was convinced that the tea brought by the appellant was not imported for consumption, use or sale within the octroi limits of the Panchayat and was not therefore liable to be levied with the octroi . On both these grounds, therefore, the levy was held to be illegal and the appeal was allowed. A copy of the resolution was forwarded to respondent no. 2, the petitioner Panchayat, as well as the Chairman of the Panchayat Samiti, Parseoni on 26th May 1964. The petitioner Panchayat is aggrieved by his decision and hence this petition. The petitioner raised the following points in support of this petition:

(1) That the appeal filed by respondent no. 2, the Brooke Bonds, before Panchayat Samiti, Parseoni, was filed beyond limitation and the Panchayat Samiti was bound to dismiss the appeal as barred by time which it did.

(2) Respondent no. 1 as the further appellate authority u/s 124 (5) of the Panchayats Act had no jurisdiction to entertain he further appeal inasmuch as the first appeal itself was liable to be dismissed on the ground of limitation and was in fact so dismissed.

(3) The only matter which could properly form the subject-matter of consideration o f further appeal before respondent no. 1 was the correctness or otherwise of the dismissal of the first appeal by the Panchayat Samiti and respondent No. 1 has exceeded its jurisdiction in entering the further appeal on merits giving relief to respondent no.2

(4) There was no power either in the Panchayat Samiti as the first appellate authority or in respondent no.1 as the further appellate authority to condone the delay in filing the first appeal by respondent no. 2, and therefore the entertainment of the further appeal and decision on merits by the further appellate authority was in excess of the jurisdiction of respondent no. 1.

(5) Respondent no. 1 was also in error in holding that the activities of respondent no.2, the Brooke Bonds, in importing tea leaves and blending them did not amount to consumption or use of tea within the octroi limits so as not to attract the liability for payment of octroi tax over the tea imported by them

No return has been filed on behalf of respondent no.1, the Standing Committee of the Zilla Parishad, but the Standing Committee was represented before us by duly authorised counsel. Return has been filed on behalf of respondent no. 2. Factory Manager of Brooke Bonds, India, Limited, who had succeeded in their appeal before the Standing Committee. They have supported the validity and correctness of the order passed by respondent no. 1 and in addition have raised some specific contentions. Respondent no.1 has specifically raised the issue about the validity of rule 5 of the rules framed by the State Government, called the Maharashtra Village Panchayat Taxes and Fees Rules 1960. Hereafter the rules will be called Taxes and Fees Rules for the sake of brevity. BY rule 5 a limitation of sixty days is fixed for the appeals provided u/s 124 (5) of the Panchayats Act, and that limitation of sixty days is from the date of publication of the notice under rule 4 of the Rules. As the vires of rule 5 was challenged, notice was issued to the Advocate General of the State and the learned Assistant Government Pleader has appeared in support of the validity of this rule.

(11) We now consider the points raised in controversy between the parties in the order in which they have been stated above.

(12) The first question that arises for consideration is whether the Panchayat Samiti, Paresoni, could dismiss the first appeal filed by respondent no,. 2 because it was barred by limitation, and whether the appeal was barred by limitation. The right of appeal is provided by the Legislature u/s 124 (5) of the Panchayats Act, which is as follows:

"124 (5) Any person aggrieved by the assessment, levy or imposition of any tax or fee may appeal to the Panchayat Samiti. A further appeal against the order of the Panchayat Samiti shall lie to the Standing Committee. whose decision shall be final."

We may mention that the words "Panchayat Samiti" have been substituted for the words "Panchayat Mandal" by Maharashtra Act no. 5 of 1962. Similarly, by the same Act a further appeal was provided to the Standing Committee from the order of the Panchayat Samiti which was not originally provided when the law was passed.

(13) Power has been given to the State Government to make rules for carrying into effect the purpose of this Act by section 176 of the Panchayats Act. Sub-section (1) of S. 176 invests the State Government with a general power to make rules for carrying into effect the purposes of the Act. Under sub-section (2) of section 176 express power is given to make rules on enumerated topics but without prejudice to the generality of the power to make rules for carrying into effect the purposes of the Act, under sub-section (1) of section 176. There is no express power under any of the

clauses of sub-section (2) of section 176 to provide for limitation of filing appeals. It is, however not disputed that even in the absence of an express power the State Government would have a right to provide for limitation of time within which the appeal provided for in section 124 (5) has to be filed. The Legislature having given a right to appeal to a citizen, the rule-making authority is naturally expected to provide limitation of time within which such appeal is to be filed. This would be implicit in the general power to make rules for carrying into effect the purposes of the Act. Under clause (xlvii) of sub-section (2) of section 176 also power is reserved to the State Government to make rules for any other matter for which rules are required to be made under the Act, or generally for carrying out the purposes of the Act. Rule 5, which is made by the State Government in exercise of its power, and which is challenged before us as ultra vires is as follows:

"5. Appeal against levy of any tax or fee.

A person desiring to make an appeal under sub-section (5) of section 124 shall do so within sixty days from the date of publication of the notice under rule.4 ."

(14) As this rule refers to rule 4 as indicating the starting point of limitation it is necessary to examine rule 4 as well. That rule is as follows;

"4. Final publication of rules relating to tax or fee to be levied.- Where a Panchayat finally decides to levy any tax or fee the rules in that part of these rules which relate to such tax or fee, together with a notice stating the tax or fee to be levied and the rate thereof shall be published by the Panchayat by affixing a copy thereof in the office of the Panchayat. It shall announce by beat of drum in the village the fact of such publication.

The tax or fee shall accordingly be levied from the date which shall be specified in the notice and which shall not be earlier than one month after the date of publication of the notice."

(15) The contention of the petitioner is that the notice referred to in rule 4 was published by the petitioner Panchayat on 1-3-1963, and according to that notice the tax was to be levied from 1-4-63. Respondent no. 2 has filed a copy of the said notice dated 1-3-1963 as annexure 1 to their return. It will be useful to reproduce that notice to understand the rival contentions with regard to the rule regarding limitation. That notice is as follows:

"It is hereby notified for the information all the people that in accordance with section 124 (i) and (iii) of Bombay village Panchayats Act, 1958 (Bombay Act. No. III of 1959) and the Maharashtra village Panchayat Taxes and Fees Rules, 1960, and after taking into consideration the objections and protests lodged by the public, the Gram Panchayat has ultimately decided as per resolution NO. 3 dated 25-2-1963, to levy octroi on all the goods mentioned in item (i) of Schedule I, imported into the Gram Panchayat limits for consumption, use or sale.

The rates of octroi, rules and other information could be seen in the Panchayat Office.

This octroi will be levied with effect from 1-4-1963.

Therefore, this is published for he information of all the public."

(16) It is urged on behalf of respondent no. 2 that the citizen has been given a right of appeal by the Legislature u/s 124 (5) of the Panchayats Act against three distinct causes of action and two appeals in each case. Thus, there is right of a first appeal to the Panchayat Samiti and a further appeal to the Standing Committee, given to a person aggrieved by (i) assessment, (ii) levy, and (iii) imposition of any tax or fee. It was accepted by the learned counsel for the petitioner that on a proper construction of sub-section (5) of section 124 of the Panchayats Act, as many as six kinds of appeal were permitted to a person aggrieved u/s 124 (5) of the Panchayats Act. Even prior to the amendment affected by Maharashtra Act No. 5 of 1962, by which a further appeal was provided to the Standing Committee, there were as many as three appeals provided under different contingencies to the Panchayat Mandal. The taxes and Fees Rules were made on or about 25th April 1961 and are called Maharashtra Village Panchayats Taxes and Fees Rules, 1960. Even a bare perusal of rule as it stands even today, shows that a single period of limitation beginning from the date of publication of the notice under rule 4 is provided as the time within which each of the several appeals which the Legislature has allowed u/s 124 (5) is prescribed by rule 5. Such a provision of a single period of limitation for the various kinds of appeals and for first appeal as well as further appeal from an arbitrary date, namely,. the date of publication of the notice under rule 4 is not according to respondent no 2, a valid exercise of power to make rule either u/s 176 (1) or u/s 176 (2) (xlvii) of the Panchayats Act. The grievance of respondent no. 2 is that the rule-making authority is bound to make a rule which will carry into effect the purposes of the Act. It cannot exercise its rule-making power in such a manner which will frustrate the carrying into effect the purposes of the Act and will in effect take away or arbitrarily curtail the rights of appeal given under the Act. According to rule 5, the limitation commences from a date arbitrarily as the date of publication of a notice under R. 4 in respect of all the appeals. It could hardly be disputed but in case a person is aggrieved by assessment or imposition of a tax, his right to appeal will commence only after assessment or imposition is made. The two words ''assessment'' and ''imposition'' in section 124 (5) are used in the sense of quantification of the tax and the collection of the tax respectively. On the other hand, levy of the tax within the meaning of sub-section (5) of section 124 would mean announcement of liability of charge as a result of the action taken by the Panchayat in exercise of its powers u/s 124 (1) of the Panchayats Act. A perusal of sub-section (1) of section 124 shows that the Panchayat is competent to levy all or any of the taxes enumerated and the word ''levy'' used in section 124 (1) must mean the initial determination of liability for payment of tax, or, in other words, the

decision of the Panchayat that a particular kind of tax should be payable by a citizen when the taxing event occurs. Under R. 4 itself a tax or fee can be levied from a date to be specified by the Panchayat in the notice and the tax cannot be said to be levied from any date prior to such a date specified in the notice. Appeal is provided u/s 124 (5) to a person against levy of the tax if he is aggrieved by the levy. It is therefore difficult to see how in providing the starting point of limitation under a rule fixing limitation the rule-making authority could select a point of time at which it could not be reasonably held that tax was levied on that date. The cause of action for filing an appeal against the levy is not the notice provided for in rule 4. but the date from which the levy of the tax is effective, and that date by rule 4 itself is required to be not earlier than one months from the date on which notice under rule 4 was to be issued.

(17) The learned counsel for the petitioner urged that every provision of limitation must have some element of arbitrariness. It is also permissible to fix a period of limitation from a point of time prior to the accrual of the cause of action for an appeal. No considerations of equity have any place in interpreting the provisions regarding limitation because limitation is an act of repose. The very concept of limitation of right postulates that the right must come to an end at some time. If a party does not wake up and avail itself of the right within the prescribed time the harshness involved will not be relevant in determining the vires of the rule. It is further argued that whatever may be said about fixation of the period of limitation for an appeal by a person aggrieved by assessment or imposition with respect to his right, of first appeal or further appeal, so far as the right of first appeal against levy of the tax was concerned, rule 5 ought to be held good though a single period of limitation is fixed without indicating which of the several rights of appeal provided in section 124 (5) are governed by that period. In support of this contention the learned counsel invited our attention to a decision of the Supreme Court in Bootamal Vs. Union of India (UOI), and the observations at page 1718 to the following effect:

"Ordinarily, the words of a statute have to be given their strict grammatical meaning and equitable considerations are out of place, particularly in provisions of law limiting the period of limitation for filing suits or legal proceedings."

(18) Reliance was also placed on a Division Bench decision of the Calcutta High Court in Sarat Kamini Dasi v. Nagendra Nath Pal AIR 1926 Cal. 65 where Mukerji J. observed that the starting point of limitation does not always synchronise with the cause of action; in many cases its does, but in others it dates from some specified events which again is either interior or posterior to the accrual of cause of action. The period prescribed by the Act is more or less arbitrary. and the fixing of the period is founded on considerations of public policy. We do not think that the rule is challengeable on the ground of hardship it involves nor is it so challenged before us. It is true that in fixing up periods of limitation it is difficult to avoid some element of

arbitrariness because the purpose of the rule itself is to limit or restrict the right which is granted as it is to be exercised within the prescribed period. It may also be hat the rule making authority has a discretion to determine the commencement of the period of limitation, but we do not see how in providing for a period limitation for the several appeals granted by the Legislature u/s 124 (5) of the Panchayats Act the rule-making authority could fix a single period of limitation which would negative the right to several appeals if the rule is held to be operative and binding. The rule-making authority has not cared to effect any change in the rule even after a further appeal was provided by the Legislature by amending sub-section (5) of section 124 i.e. further appeal to the Standing committee,. But even while framing the rule originally, the rule-making authority lost sight of the fact that if limitation was to be provided for an appeal, periods of limitation were required to be fixed for three distinct kinds of appeal provided in section 125 (5) to a person aggrieved. It cannot be seriously disputed that occasion to exercise the right of appeal against (i) levy, (ii) assessment and (iii) imposition of a tax would arise to an aggrieved person at three separate and distinct points of time. In other words, the cause of action for each of these kinds of appeals would be distinct and separate. The rule-making authority has fixed only a single period of limitation for all these appeals, and in so fixing that period it has not indicated which of several kinds of appeals are governed by the period of limitation fixed by rule 5. Such an exercise of rule-making power by the rule-making authority, in our opinion, is not warranted either by section 176 (1) or section 176 (2) (xlvii) of the Act. The power to make rules is given so as to advance the purposes of Act and not to fetter or frustrate them. We fail to see how the Legislative grant of different and distinct kinds of appeals to a person aggrieved could be said to carry into effect the purpose of the Act by providing a single period of limitation for filing the several and distinct kinds of appeals u/s 124 (5) of the Panchayats Act.

(19) The learned counsel for the petitioner was driven to say that the rule is good at any rate so far as determination of the period of limitation for the first appeal against levy is concerned and the rule is partially good and it should be held to bind the parties so far as the rights of filing the first appeal against the levy is concerned.

(20) In Support of his contention that rule 5 should be held valid restricting it to a first appeal against levy, the learned counsel called in aid a Division Bench decision of this court reported in State v. Balwant. (1961 Nag L. J. 83) At page 95 the Division Bench had referred to the contention of the Advocate General regarding interpretation of section 129-A of the Bombay Prohibition Act. The contention was that the Legislature must be presumed to have known it own limitations and to have intended to enact only such laws as are within its competence. He called in aid this principle to urge that the words "resistance" appearing in section 129-A of that Act should be restricted to active resistance as distinguished from passive non-co-operation. This contention seems to have been accepted by the Division Bench and it was held that it was possible to interpret that word in a more restricted

sense on the presumption that the Legislature knew its limitations. In our opinion, this rule of construction is of no assistance to the petitioner in upholding the validity of R. 5 prescribing period of limitation for several kinds of distinct appeals which period would be meaningless in respect of at any rate 5 out of the six appeals provided by section 124 (5) of the Panchayats Act. We are also doubtful whether rule 5 can be said properly to lay down limitation in respect of the first appeal against the levy which a person aggrieved by the levy is entitled to file. As we have pointed out, rule 5 lost all its efficacy without amendment as soon as the Legislature provided the further appeal to the Standing Committee by amendment of sub-section (5) of section 124. Even prior to the amendment the rule- making authority failed to see that an appeal was provided distinctly for each cause of action arising against (a) levy (b) assessment (c) imposition to a person aggrieved by levy. assessment or imposition. Section 124 (5) provides an appeal against levy of a tax, and it cannot be said that the tax is levied until the date on which the levy beings has arrived. Under rule 4 the Panchayat is empowered to fix such a date, but the Panchayat is enjoined not to fix the date earlier than one month from the date on which the notice required to be given is posted for publication of the decision which is final under rule 4. So no tax can be said o be levied at a point of time earlier than the date from which the levy begins to operate, and when an appeal is provided against such levy i.e. commencement of liability of a person affected by the tax, we fail to see how the rule-making authority could arbitrarily fix commencement of limitation of an appeal against such a levy at a point of time anterior to the commencement of the levy itself. Such a rule would obviously defeat the purpose for which the rule is made i.e. to carry out the obvious object of the legislation in providing a substantive right of appeal to a person aggrieved even by the levy of the tax. We are using the word ''levy'' as used in section 124 throughout as commencement of liability or in other words as a charging section. Throughout his argument the learned counsel for the petitioner p[referred to use the word ''imposition'' to described the action of the Panchayat determining that the citizen shall be liable for a particular tax. A perusal of section 124 shows that the word ''imposition'' is used not in the sense of a levy but different from the same. This is clear from the use of the word ''levy'' or ''imposition'' in sub-sec (6) of section 124,. In our opinion the word ''imposition'' wherever used in section 124 of other relevant provisions of the Act and the rules, must mean collection of the tax in the context in which the word ''imposition'' is used and not accrual of liability for the tax. In the sense of accrual of liability or the creation of the charge for the tax, the Legislature seems to have used the word ''levy'', which is the first stage and is really a legislative act of the authority entitled to levy a tax. In our opinion, the intention of the Legislature in providing an appeal against levy to a person aggrieved by it, is to make such an appeal available not only to the persons who may be citizens of the village or locality and affected by a particular tax when the procedure for imposition was being followed but to any person who may be aggrieved even at a subsequent date after the levy begins effectively. While the levy is in the process of being

determined, namely,. when the procedure for such a levy is being considered, rules provided for objection by inhabitants under rule 3 (c) of the rules. Thus, so far as the inhabitants are concerned, the scheme of the rules is that they can object to the proposal of the Panchayat to levy a particular tax or its incidence or its burden. Once a tax is lawfully levied by the Panchayat, the stage of raising objections to the proposal is long past. But even thereafter, namely after the legislative act of making persons affected by the tax liable to pay the same, the inhabitants are given an express right by the Legislature u/s 124 (5) of the Act to file an appeal against the levy itself. Such a person may be an inhabitant or may not be an inhabitant. It is quite conceivable that a tax operating within a local area affects not only the inhabitants of that area but others who do business, bring in the goods and are affected by the local legislation. To this class of persons the Legislature has thought fit to give a right of appeal, and the right of appeal is not restricted to inhabitants, or even if the inhabitant is not affected by the proposal of the Panchayat to under consideration, the inhabitant may come in appeal at a future date if he is affected either because he starts business and has to pay octroi tax or because he professes to build and may come within the mischief of building tax, and in that sense, whenever a person is aggrieved by the levy i.e. by the existence of a tax liability, such a person has been given a right wherever the cause of action accrues in his favour. The rule-making authority therefore had to provide a period of limitation commencing when the cause of action could have accrued, and if the rule making authority fixes commencement of the period of limitation for an appeal even before the cause of action has accrued and the limitation exhausts the rights in given cases prior to the accrual of the cause of action, such an exercise of power to make a rule is unwarranted and will be ultra vires of the powers of the rule-making authority to provide a period of limitation for the appeal. The present rule 5 is not free from this vice. As we have pointed out, the rule is meaningless so far as the further appeals are concerned and cannot possibly be said to govern the limitation of further appeals in any case. It is also meaningless and effectively frustrates the right of appeals so far as the appeals against assessment and imposition are concerned even in respect of first appeals. There is no indication in the rule that it is restricted to appeals against levy, and that too in the first appeals. Thus, the rule fixing an arbitrary date for filing an appeal even prior to the commencement of the cause of action and resulting in exhausting the right of appeal even before the cause of action has accrued must be struck down as an invalid exercise of power of making the rule regarding limitation for the appeals. We have no hesitation in holding therefore, that rule 5 is ultra vires of the powers of the rule-making authority because far from carrying into effect the purpose of providing the right of appeal granted by the Legislature it frustrates that right and makes it illusory in the manner in which the rule operates on the right of appeal given to a person aggrieved u/s 124 (5) of the Act. There is no scope for application of the principle of restricted efficiency of the rule by limiting it to the first appeal against the levy only because the rules does not say so, and even in the case of levy the rule is not available to a

person who may become aggrieved after the levy begins to operate.

(21) In view of the conclusion we have reached about rule 5 being ultra vires of the powers of the rule making authority, we do not think it is necessary to pronounce upon other contentions of respondent No. 2 whether the limitation begins to run or whether the limitation would not begin to run from the date of knowledge of the operation of the levy. It is also not necessary to consider the further contention of the petitioner that there was no power in the appellate authority, either the first appellate authority of the further appellate authority, to condone the delay in filing the appeal preferred by respondent No. 2 to the Panchayat Samiti. As there was no effective period of limitation fixed by a valid rule, within which an appeal was required to be filed by respondent No.2 before the Panchayat Samiti Parseoni, we hold that the appeal preferred by respondent No, 2 before the Panchayat Samiti could not have been rejected as time barred.

(22) In his connection the petitioner raised a further contention that respondent No. 2 was not entitled to challenge the vires of rule 5 and ask this Court to hold that the appeal was not time-barred in the absence of the Panchayat Samiti as a party to this petition. In our opinion, the petitioner has taken an untenable position in resisting the plea of respondent No. 2 regarding the vires of rule 5 and effect. Respondent No. 2 preferred an appeal in exercise of their right u/s 124 (5) against the levy before the Panchayat Samiti which was the first appellate authority. That authority dismissed the appeal as time-barred. Respondent No. 2 thereafter preferred a further appeal as provided by the statute before the Standing Committee of the Zilla Parishad, Nagpur, i.e. respondent No. 1. To this appeal respondent No. 2 had impleaded the Panchayat Samiti, Parseoni. That appeal was allowed by the Standing Committee and the effect of allowing that appeal obviously is that the order of the Panchayat Samiti dismissing the appeal was set aside, as also the levy of the octroi tax by the petitioner. Panchayat on merits. Thus, when the petitioner wanted to challenge the order of respondent No. 1, dated 6-4-1964, the position was that not only the resolution of the village Panchayat was quashed, but the appellate order of the Panchayat Samiti has also disappeared, having merged in the appellate order of the Standing Committee, which was an order in favour of respondent No. 2. In these circumstances, in our opinion, if any grievance could be made about the absence of Panchayat Samiti as a party to this petition,. It could legitimately be made by respondent No. 2 and not by the petitioner. The Panchayat Samiti would be a proper party to be impleaded to this petition because when the petition was filed there was no longer in existence the order of the Panchayat Samiti which must be taken to have been effectively set at naught by the final order the Standing Committee which was in favour of respondent No.2. We therefore fail to see how the petitioner Panchayat, having itself failed to implead the Panchayat Samiti which was a proper party to this petition, if no necessary party, could made any grievance about its absence and on that footing resist the claim of respondent No, 2 to show that rule 5 regarding limitation for appeal was ultra vires. We are satisfied that respondent No.

2 was entitled to show that their first appeal could not have been dismissed on the ground of limitation and as we have held that contention to be well founded, it must be held that the order of the Panchayat Samiti dismissing the appeal was clearly without jurisdiction.

(23) There is yet another ground on which respondent No. 2 has claimed that the order of the Panchayat Samiti dismissing the appeal as time-barred is not binding on respondent No. 2 because the Panchayat Samiti did not give any hearing. Respondent No. 2 alleged in their memorandum of appeal before respondent No. 1 that they had sent two written communications to the Panchayat Samiti to hear them in support of their appeal. There is no averment that the Panchayat Samiti at any time heard respondent No,. 2 before their appeal was dismissed by it. even assuming that the Panchayat Samiti was entitled to dismiss the appeal on the ground of limitation, it is elementary that a decision adverse to the appellant (respondent No.2) could not have been given without giving a hearing to them. Under the principle of natural justice hearing ought to have been given to the Brooke Bonds when the legislature has expressly provided a right of appeal against the levy of a tax. On this ground also, therefore, it must be held that the order dismissing the appeal was illegal and could not deprive respondent No. 2 of their right to be heard by the Standing Committee in further appeal.

(24) We may here dispose of another contention raised on behalf of the petitioner, that is, the jurisdiction of the Standing Committee as a further appellate authority to entertain the appeal when the appeal filed by respondent No.2 before the first appellate authority was dismissed as barred by limitation. It is true that the further appellate authority has not recorded any finding about this contention which, it is claimed, was raised by the petitioner Panchayat before the Standing Committee. But the Standing Committee having entered into the merits of the controversy between the parties regarding the validity of the levy of octroi tax and of holding respondent No. 2 as liable for the tax on account of nature of the transactions in respect of the tea business it must be held that the Standing Committee overruled the petitioner''s objections by implication.

(25) In this connection we would like to observe that corporate bodies like Standing Committee of the Zilla Parishad, or other corporate bodies brought into existence by the recent legislation regarding democratic decentralisation of administration, are not expected to conform to the technical rules of procedure expected of Courts with their normal trappings which are presided over by functionaries trained in the theory and techniques of administrative law. Authorities like Standing Committee are primarily deliberative and administrative bodies, and their decisions as appellate or original authorities are arrived at after following their own procedure. Procedure before such bodies is not tramelled by an technical rules, nor are the members composing such bodies expected to be trained in legal formalities. It is not therefore possible to expect in decisions of such bodies elaborate discussion of all the points

raised or discussion of the legal objections that may be raised, and clear judgment on all the points in dispute in the legal language with which one is familiar in a Court of law. Though the bodies exercise quasi-judicial functions in hearing an appeal by their very composition and the limit of experience of its members a substantial compliance with their procedure and a sufficiently clear exposition of the finding is all that can be expected from their decisions. It will be wrong to apply the test of a judicial pronouncement by a Court of law or by a Judge or by a Magistrate to the decisions of such bodies. The fact, therefore, that there is not express finding regarding the tenability of this further appeal to which objection was raised by the petitioner Panchayat before respondent No.1 , cannot in our opinion, vitiate the order of respondent No, 1 the Standing Committee. We agree with the contention of respondent No.2 that the very fact that the Standing Committee proceeded to determine the question on merits implies that in the opinion of the Committee the objection to the tenability was not valid and that it overruled it. Though it may have been desirable for the Standing Committee to deal with the objection and give its finding. its failure to expressly do so does not result in the order being any the less effective if otherwise valid.

(26) As we have held that there was no valid impediment in the way of the appeal filed by respondent No, 2 being considered on merits by the Panchayat Samiti, it must be held that the dismissal of the appeal on the ground of limitation was clearly in excess of its jurisdiction. The Panchayat Samiti, on the view it took that the appeal was barred by limitation, did not discuss the merits of the controversy regarding the validity of the levy or the liability of respondent NO. 2 for the octroi tax. The matter was therefore at large and could certainly be examined by the further appellate authority. We also do not find any limitations placed on the jurisdiction or powers of the Standing Committee as the further appellate authority u/s 124 (5) of the Panchayats Act. There is no reason. therefore, to limit the jurisdiction of the Standing Committee whose decision is made final under the Act, to examine the questions raised before it, whether questions of fact or law as understood in Courts as open to adjudication by the Standing committee. It does not appear that the Legislature has imposed any limitation or restriction on the powers of the Standing Committee as it is a further appellate authority to entertain and adjudge on all questions in controversy between the aggrieved persons and the Panchayat Samiti u/s 124 (5) of the Panchayat Act. We are not prepared to hold, therefore, that the Standing Committee suffered from incompetence in disposing of the further appeal preferred before it by respondent No.2.

(27) We have now to consider whether the decision of the Standing Committee that the initial levy of the octroi tax without fixing octroi limits was a valid exercise of the power of the petitioner in levying the octroi tax, and whether octroi tax has been validly levied by the petitioner Panchayat by the procedure they have followed. The Standing Committee has observed that the petitioner Panchayat levied octroi with effect from 1-4-1963, but I did not get octroi limits and octroi Nakas fixed, nor

obtained sanction of the Collector for the same, and it was necessary for the Panchayat the to follow the procedure under rule 21 because it was absolutely necessary to follow the procedure before actual levy of the octroi. Since the octroi limits were not fixed, it was not possible to decide which goods arriving in which limits would be liable to pay octroi. The sanction of the Collector had not obtained till 14-1-1964 and therefore the Panchayat had not decided for which areas the octroi was levied. On these grounds the Standing Committee held that the octroi levied by the Panchayat was illegal and the Panchayat had no right to levy the same on the appellant''s tea, which was against the rules and the procedure.

(28) According to the petitioner, fixation of octroi limits or Nakas for collection of the octroi tax is not an essential or integral part of a valid levy of an octroi tax. Octroi limits are necessary to be defined and determined only for the purpose of collection of the tax and not for the levy of the tax. If octroi limits are not fixed, the Panchayat may not be able to collect the tax or to assess it, but the fixation of such limit is not necessary according to the petitioner, so far as accrual of the liability for the octroi tax is to be determined by final acceptance of the proposal to levy the octroi tax. It is not the contention of respondent No. 2 that the failure to determine the Nakas is the element invalidating the initial levy of the octroi tax. We do not therefore propose to examine in this petition the effect of failure of Panchayat to determine the octroi Nakas on the validity of the levy tax itself. Though the fixation of octroi Nakas is also required to be done under rule 21 with the approval of the Collector or the officer authorized by the Collector, it is not disputed that fixation of octroi Nakas is one of the steps in determining the machinery and facilitating collection part of the tax.

(29) The procedure for levying a tax or fee of any kind permissible to the Village Panchayat out of the several taxes and fees enumerated in section 124 (1) of the Panchayats Act is prescribed by rules 3 and 4 of the Taxes and Fees Rules 1960 Rules 3 and 4 are as follows:

"3. Procedure for levying tax or fee:-

Every Panchayat before deciding to levy a tax or fee shall observe the following procedure, namely:-

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

(b) The Panchayat shall then notify to the public the proposal together with that part of these rules which relates to that tax or fee by beat of drum in the village and by means of a notice affixed in the office of the Panchayat and at the village Chavdi or Chora, specifying a date, not earlier than one month after the date of such publication, on or after which the Panchayat shall take the proposal in to consideration.

(c) Any inhabitant of the village objecting to the levy of the tax or fee proposed by the Panchayat may send his objection or suggestion in writing on or before the date specified in the notice published under clause (b).

(d) On or after the date fixed under clause (b), the Panchayat shall consider all objections and suggestions made under clause (c) and may finally select a tax or a fee and decide the rate at which it is to be levied.

4. Final publication of rules relating to tax or fee to be levied:- Where a Panchayat finally decided to levy any tax or fee the rules in that part of these rules which relate to such tax or fee, together with a notice stating the tax or fee to be levied and the rate thereof shall be published by the Panchayat by affixing a copy thereof in the office of the Panchayat. It shall also announce by beat of drum in the village the fact of such publication.

The tax or fee shall accordingly be levied from the date which shall be specified in the notice and which shall not be earlier than one month after the date of publication of the notice."

(30) According to rule 3, a Panchayat is required to observe the procedure in clauses (a) to (d) of the rule before deciding to levy a particular tax or fee. The first step in this procedure is to select the tax which the Panchayat proposes to levy in a resolution to be passed for this purpose, and then to specify the rate at which it is to be levied. The next step to be taken by the Panchayat is to notify to the public the proposal to levy a particular tax and the rate for it, together with that part of the rules which relates to the tax or fee. The whole controversy on this subject has centered round the interpretation of these requirements in rule 3 (b). Rules relevant for octroi are to be found in part III of the Rules, and these are rules 21 and 35 inclusive of the Schedules. According to the learned counsel for the petitioner, rule 3 (b) merely requires the Panchayat to notify to the public its proposal to levy a particular tax and also to notify to the public the relevant rules relating to the tax, and by this what is meant to be suggested is that the Panchayat is merely required to put up a notice in its office containing the proposal to levy a particular tax and the relevant rules in respect of the tax proposed which in this case will be rules in part II, rules 21 to 35 inclusive. The object of notifying to the public the proposal together with the rules obviously is to give an opportunity to the inhabitants of the village to object to the levy of the tax as proposed by the Panchayat and to make suggestions in writing before a date specified in the notice. Now, the contention of respondent No. 2 in respect of these requirements is that rules 21 and 22 regarding octroi in part III of the rules enjoin on the Panchayat a duty wherever the proposal is to levy an octroi tax. Rule 21 requires the Panchayat to fix octroi limits and number and locations of octroi Nakas within the limits of its jurisdiction. Unless octroi limits are fixed, the inhabitants of the village cannot possibly know as to when a taxable event could be said to occur so as to attract the octroi tax. It can hardly, be disputed that the liability to pay octroi duty or octroi tax arises only when goods are taken over a

definite boundary for the purpose of consumption, use or sale within the boundary. Thus the taxing event by which the liability for purposes of octroi tax occurs is the taking of the goods over the octroi limits. This position is also not disputed. What the petitioner contends, however, is that this limit in the larger sense is already defined or fixed by the definition of ''octroi'' in section 2 (13) of the Panchayats Act which defined ''octroi'' or ''octroi duty'' to mean a tax on good entered into a village for consumption, use or sale therein. So the limit of the village by which is meant the outer limit of the village is the octroi limit for entry over which into the village the specified goods attract the liability for octroi tax. The petitioner has not cared to place before us the prior resolutions of the Panchayat which it must have passed under rule 3 (a), selecting the octroi tax which it proposed to levy. What is placed before us is the final resolution dated 25-2-1963 which obviously must have been the resolution required to be passed under rule 4 of the rules and not resolutions under rule 3 (a). That resolution dated 25-2-1963 states that the Committee i.e. the Panchayat unanimously resolved that octroi should be levied on all the goods coming within the limits of the Panchayat. What is urged, therefore, is that limits of the Panchayat having been indicated as the octroi limits, there was sufficient compliance with the requirements of rules 3 and 4 of the rules and it was not necessary to fix the octroi limits under rule 21 before the final resolution levying the octroi tax was passed on 25-2-1963.

(31) Now, it is not clear how mere statement in the resolution dated 25-2-1963 that octroi should be levied at minimum rates on all the materials and goods coming into he limits of the Gram Panchayat is tantamount to fixation of octroi limits. If anything, reference to materials "coming into the limits of the Gram Panchayat" only indicates that the goods and materials will be liable to octroi duty if such goods or materials are consumed, used or sold within the limits of the Gram Panchayat. Incidence of an octroi duty postulates two things, (1) bringing the goods over the limits of the octroi or, in other words, their entry into the area, and (2) consumption, use or sale of such goods within he area. Mere entry of the goods will not attract the liability for he tax unless goods are brought in or enter with the object of consumption use or sale within the area of the authority empowered to levy the octroi tax. What the resolution dated 25-2-1963 passed by the Panchayat has done is to determine the area, consumption, use or sale within which will attract the liability for payment of the tax in respect of specified goods. It is not possible to interpret the resolution of 25-2-1963 as determining the limits, entry over which or crossing which makes the goods so liable. When the definition of ''octroi'' or ''octroi duty'' in section 2 (13) of the Panchayats Act speaks of entry of goods into a village, the definition in our opinion, does not indicate the octroi limits as understood in law, but indicates the area within which consumption, use or sale would attract he liability for octroi duty. It has been argued that in this definition there is implicit an outer limit of the village boundary as the octroi limit, entry over which should attract the liability for the octroi tax. We do not think that the definition is capable of this

construction so as to obviate the necessity for the Panchayat to determine the octroi limits before a levy could be validly made.

(32) Usually octroi limits are fixed by a authority a little inside the outer geographical limits of its territorial jurisdiction. This is done advisedly to avoid a defence that the impugned goods had not entered into the octroi limits in marginal cases. Unless, therefore octroi limits are fixed, which rule 21 expressly enjoins a Panchayat to do: it is difficult for a citizen or a person like respondent No. 2 to know entry over which area would attract the liability pay octroi tax. Instances are well known where traders and manufacturers carry on trade activities just beyond the octroi limits fixed by a local authority. Though such trading or commercial activities or manufacture may well be within the territorial jurisdiction of the authority yet they may be beyond the octroi limits. It is the entry over the octroi limits which attracts the liability initially, provided of course the goods are made for consumption, use or sale within the area. In order to determine, therefore, whether the essential element for attracting the liability to pay octroi tax exists, determination of octroi limit is necessary as an integral part of the process of levying the octroi.

(33) Rule 3 (b) speaks of notifying to the public along with the proposal selecting the tax, the relevant part of the rules relating to that tax Again, at the time of final publication of the rules relating to the tax under rule 4, rules in the relevant part which relate to the tax have to be published. If the reference to rules in rule 3 as well as rule 4 only means reproduction of the rules as framed in the relevant part, without indicating the action taken by the Panchayat in obedience to these rules,we fail to se what purpose is served by mechanical reproduction of the rules in the relevant parts as required by either rule 3 or rule 4 of the rules for procedure levying the tax. Rule 3 (b) must therefore be interpreted as requiring the Panchayat to notify to the public not only the proposal about the tax selected by it for levy, but also the rules relating to that tax which must mean the action taken under the Act and the rules. Rule 2 of the octroi rules requires the Panchayat to fix octroi limits. Rule 22 requires the Panchayat to specify the goods in respect of which goods mentioned in Schedule I to part III relating to octroi, and the minimum rate and the maximum rate of such levy are also indicated in the Schedule. It is not disputed, and it is an integral part of the process of levying the octroi tax, that the Panchayat must select the goods for which it proposes the levy of octroi tax. Thus, compliance with rule 22 at any rate must form part of the process of levying the tax even at the initial stage of the proposal under rule 3 (b) of the rules. But it is argued that though compliance with rule 22 may be necessary in following the procedure for levying the octroi tax, compliance with rule 22 so far as fixation of octroi limits etc. is concerned, is not a condition precedent and need not be followed as an integral part of the process for levying the tax. We have not been able to appreciate this distinction. According to the learned counsel for the petitioner, fixation of octroi limits is relevant for the purpose of quantification or assessment of the tax. It is necessary to fix octroi limits to provide the machinery for collection and is not relevant or essential for collection

and is not levy of the tax viz. the proposal to create a tax liability.

(34) In this connectin, the learned counsel invited our attention to provisions made in other laws where other local authorities are empowered to levy an octroi tax. Under the empowered to levy an octroi tax . Under the Bombay District Municipal Act of 901, section 59 in Chapter VII empowers a municipality to levy an octroi tax on animals or goods brought within the octroi limits for consumption, use or sale therein. The preliminary procedure for leaving the tax is indicated n section 60 of the Act. Though the section speaks of levying an octroi tax on animals and goods brought within the octroi limits, the fixation of octroi limits is done under byelaws made by the Municipal committee u/s 48. u/s 48 (1) (j) the municipal committee fixes octroi limits and stations. Obe of the conditions for valid exercise of power for making the laws is that the byelaws had to be published int he prescribed manner for opinion of the persons likely to be affected, the draft of the byelaws together with the notice specifying the date on which it will be taken into consideration has to be published and objections or suggestions in respect of the proposed byelaws are to be considered.

(35) Under the Bombay Municipal Boroughs Act 1952, section 73 (1) (iv) empowers the municipal borough to levy an octroi on animals or goods brought within the octroi limits for consumption, use or sale therein. u/s 61 (1) (n) of the same Act the municipal borough is empowered to make byelaws fixing octroi limits etc. Under S. 61 (2), prior publication of the byelaws inviting objections is also provided.

(36) Similarly, u/s 66 (1) (e) of the C.P. and Berar Municipalities Act, a municipal committee constituted under that Act is empowered to levy an octroi on animals and goods brought within the limits of the municipal committee for consumption, use or sale within those limits. u/s 178 (1) (g) of the same Act where imposition of an octroi tax or terminal tax has been sanctioned, a municipal committee is empowered to make byelaws for fixing the limits for the purposes of such tax. u/s 178 (4) no bye-law takes effect until it has been previously published and confirmed by the Government.

(37) By referring to the schemes of these Acts it is urged on behalf of the petitioner that normally levy of an octroi tax is a legislative act & is not made to depend on fixation of octroi limits which is done by exercise of another legislative power given to these local authorities for making byelaws in respect of octroi limits. It is therefore urged that the requirement of rule 2 enjoining the Panchayat to fix octroi limits with the approval of the Collector is an obligation independent of the power of the Panchayat to levy the octroi tax. Though it may not be possible, the argument proceeds, to collect an octroi tax untill the octroi limits are fixed in exercise of the powers under rule of the rules, the accrual of liability to pay tax would arise as soon as a resolution levying the tax is finally passed under rule 4 of the rules. In other words, what is contended by the petitioner is that the two functions of levying the octroi tax and fixation of octroi limits are unrelated to each other and the efficacy of

the levy is not dependent on fixation of octroi limits.

(38) In our opinion, this construction of the rules and the requirements of the law for the valid levy of an Octroi tax by the Panchayat is not well founded. In this connection reliance was placed by both sides on a decision of the Supreme Court in Bagalkot City Municipality Vs. Bagalkot Cement Co., . Facts out of which the dispute arose in that case, in our opinion . will throw considerable light to understand the principle laid down in that decision by the majority view. Bagalkot City Municipality had levied octroi tax in exercise of its powers u/s 59 of the Bombay District Municipal Act, 1901. Under a bye-law framed by that Committee u/s 48 of the same Act the octroi limits were fixed and the octroi limits were to be the same as the municipal district. When the octroi was imposed and the octroi limits were thus fixed, Bagalkot Cement Company was beyond the territorial limits of the Bagalkot Municipality, and thus outside the municipal district. By a subsequent notification the State Government extended the area of the Municipal district of the Bagalkot Municipal Committee, and as a result of this extension the Bagalkot Cement Company came to be included within the municipal district. and the question that arose for determination was whether with the extension of the municipal district by the Government notification Bagalkot Cement Company was liable to pay octroi tax. The contention of the Municipal Committee was that even though the Bagalkot Cement Company was not within the municipal district when it originally fixed the octroi limits to be the same as the municipal district, and even though there was no amendment ot this bye-law upon extension of the municipal district by the State Government , the Cement Company had become liable to pay the octroi duty. This contention has been repelled by the majority decision of their Lordships of the Supreme Court. The contention was repelled for the reasons stated in paragraph 6 of the judgment at page 773 in which the following observations occur :
"It is, therefore, not open to much doubt that a bye-law made without the previous publication of its draft to the person mentioned would be an invalid bye-law. Now, who are those persons ? They must be ''persons likely to be affected thereby'', that is, by the bye-law, they must be persons whom the byelaw when made is likely to affect by its own terms".

It was held that the expression '' municipal district'' in the bye-law muse be understood as referring the the municipal district as existing decision proceeded on the basis that objections were capable of being made when the Government proposed to extend the limits of the municipal district, and thus the argument based on opportunity to object tot he extension of the municipal limits which necessarily implied the extension of the octroi limits was thus made available to the Cement Company. As such an opportunity was available to the Cement Company, according to the minority decision when the then municipal limits were extended by the State Government, they should have no grievance about their liability for levy of the octroi being validly enforced.

(39) In our opinion, the principle to be deduced from this decision is that it is necessary from this decision is that it is necessary to fix octroi limits when imposing an octroi duty, and these limits are required to be fixed after a legitimate opportunity to have their say when such octroi limits are determined or fixed by the local authority. Emphasis seems to have ben laid in both these decisions on the necessity of an opportunity being given to the persons likely to be affected by the proposed tax and one of the integral part of the proposal to levy an octroi tax is the fixation of the octroi limits. We are unable to interpret this decision of the Supreme Court as indicating that the fixation of octroi limits is not an integral part of the process of levy of the octroi duty initially by the local authority. In paragraph 24 of the minority opinion, to which our attention is drawn, it has been observed that the octroi duty is by nature a duty which is realised on goods entering certain limits over which the municipality charges octroi as control There is no reason why octroi duty which is levied solely for the purpose of raising funds and not for protection of trade in any particular area. is not charged on the same goods entering certain parts of the municipality, that is to say, there is no reason why goods should not pay octroi duty by entering into areas different fromt he limits of the municipal district over which the municipality has control. Thus one of the essential conditions for a valid levy of octroi duty by a local authority would be determination of the limits of the boundary, entry of goods over which for the purpose of consumption, use or sale within the area inside the limits is required to be taxed. We have not been able to appreciate how fixation of the boundary, entry over which makes the goods liable to octroi tax, can await decision at a later date, and yet a valid levy of octroi tax can be said to have been made without fixation of such boundary or limits. To say that entry into the village of certain goods will entail or attract the liability to pay octroi duty is not equal to fixation of octroi limit. It may well be, and it does often happen, the octroi limits are not necessarily conterminous with the outer boundary of the village. By saying that entry into village of certain types of goods will be liable village of certain types of goods will be liable to octroi duty what is determined is the area where consumptuion, use or sale of goods takes place and makes the goods liable for tax. But the taxing authority is required to determine the boundaries around this area so that the entry over these boundaries into the area will complete the process of levy of the tax. Itis not unusual to find for a local authority to leave some of its territorial area as a free zone entry into which does not attract the liability for payment of the tax. In our opinin, therefore, fixation of octroi limits is a necessary sine qua non for a valid levy of the octroi tax in the sense of accrual of liability . in exercise of the powers by a local authority like the Panchayat.

(40) There is another principle also which, in our opinion, leads to the conclusion that the Panchayat ought to have fixed the octroi limits in the process of validly levying the tax, i.e, while complying with rules 3 and 4 of the Taxes and Fees Rules. 1960. It will be seen that the rules in part III, or, for the matter of that, nowhere else except rule 3 (c). mae any provision for an opportunity to be given to the inhabitants

or others likely to be affected by fixation of the octroi limits. If rule 21 were to be construed as an independent provision, inhabitants of the locality who are vitally affected by the fixation of the octroi limits. would have no opportunity to know what were the proposed octroi limits. and to object to the same or suggest alterations of variations in the same. It will be very proper, therefore, to construe rule 3 and rule 4 of the rules of procedure for levying of a tax including an octroi duty to hold that the rules required to be notified to the public include the proposal of the Panchayat fixing the octroi limits. It is only then that the inhabitants may have adequate opportunity to object to the levy of the tax expressly given under rule 3 (c), cannot be abridged or made illusory by restricting it merely to the levy of the particular tax. Proposals of the local authority regarding (1) the rate of the tax, (2) the goods over which octroi may be liable, and (3) the limits or boundaries, entry over which attracts the liability for payment of the octroi duty respecting the specified goods. It is certainly not disputed, and could not have been disputed, that the proposal of the Panchayat for levy of an octroi tax must necessarily include determination by the Panchayat of the kinds and variety of goods out of the Schedule over which octroi duty is proposed to be levied. The determination or selection of goods, over which octroi duty should be levied by the Panchayat, has necessarily to be made by Panchayat at the same time i.e. under rule 3 (a) in exercise of its powers under rule 2. If we do not read such a requirement in rule 3 (b) and if we were to accept the suggestion of the learned counsel for the petitioner that what is required by rule 3 (b) is a mechanical reproduction of the rules in part III in case of the proposal to levy an octroi duty, and a similar mechanical reproduction of the same rules at the time of final publication required under rule 4 . it will attribute a purposeless repetition of the publication of th rules. which we do not feel inclined to do, not is it justified. It is a sound rule of construction not to attribute redundancy or senseless repetition to a subordinate legislative authority, and yet this would precisely be the result if rules 3 (b) and 4 are construed as merely requiring the Panchayat to reproduce printed rules in part III when the proposal is to levy an octroi duty according to the submission of thepetitioner. We must therefore hold that according to the procedure laid down for levy of an octroi tax the Panchayat required to determine and fix octroi limits at the same time when it considers the proposal to levy tax, and after such fixation of octroi limits as well as selection of goods over which octroi is to be paid, and after all the determination of the rat at which the levy should be made, opportunity is to be given to the inhabitants to object to this levy . The Panchayat is bound under law to consider the objections and suggestions which the inhabitants are entitled to make. and then the Panchayat can finally select the tax or fee and the rate.

(41) It was urged that the only duty of the Panchayat under rule 8 (b) is to select the tax and decide the rate and there is no express reference to fixation of octroi limits in rule 3 (b) . In our opinion, such a literal construction of the requirement is not warranted. The very purpose and process by which the octroi duty can be lawfully

levied postulates the three things which we have mentioned above, and without fixation of octroi limits it cannot be said that the levy of octroi duty has been lawfully made. We are using the word "lecy" in this context as the legislative process of determination of the circumstances in which the liability for payment of the octroi duty shall accrue.

(42) The learned counsel for the petitioner called in aid a Division Bench decision of the Nagpur High Court in Chotabhai Jethabal and Co. v. Union of India. AIR 1952 Nag 139. In that case one of the questions raised was whether a tax could be retrospectively levied and collected. The decision of the Court was that there was no constitutional limitation on the retrospective legislations. Therefore, sub-section (2) of section 7 of the Finance Act 0f 1951, under which the Union Government was empowered to collect duties which had not been collected but would have been collected even after the good have been collected and removed from the warehose, was held to be a valid piece of legislation, but it was further held that though the liability for payment of tax in respect of such goods had accrued, absence of machinery for collection of such tax by appropriate rules made the demand invalid. On examination of the rules for collection of the tax, it was held that there was no power or authority to collect the duty in respect of excess goods.which had already been removed from the warehouse. In the absence of such rules it was held that though the law permitted levy of exercise on goods which had left the warehouse, in the absence of rules enabling collection to be made the demand could not be supported. This decision seems to have been cited in aid of the proposition that provision of machinery for collection is apart and not directly concerned with the levy of the tax as such. It is not difficult to agree with this proposition, but we do not think that fixation of octroi limits when it is proposed to levy an octroi duty is a step providing a machinery for its collection. Machinery for collection can be said to be provided in case of a tax like an octroi duty when Nakas are fixed, but so far as fixation of octroi limits are concerned, that is not fixation of machinery for collection but fixation of the boundary, entry over which makes the goods liable for payment of the duty. In other words, the crossing over of the boundary is the taxing event or the charging event for goods to which liability to pay octroi is attracted, of course, if such goods are brought in for purpose of consumption, use or sale, but not otherwise.

(43) There was some discussion a the Bar as to the proper meaning to be given to the word ''levy'' as used in section 124 of the Panchayats Act and the Taxes and Fees Rules 1960. The learned counsel for the petitioner contended that the use of the word ''levy'' has no particular significance because that word is used in different senses in different contexts. As an example our attention was invited to a decision of the Supreme Court in The Town Municipal Committee, Amravati Vs. Ramchandra Vasudeo Chimote and Another, where the language of Article 277 of the Constitution was under consideration. It has been held in this decision that the word ''levy'' in the text of Article 277 does not mean imposition of the tax but collection. In

his decision similar interpretation of the word ''levy'' by the Madhya Bharat High Court has been referred to as reported in Chhuttilal v. Bagmal AIR 1956 M B 177. That interpretation was that there is in the subject of legal taxation a real distinction between the imposition of a tax and the levy o collection thereof. But we do not think that merely because the word ''levy'' has been interpreted to mean collection in the text of Article 277 of the Constitution, it bears that meaning in section 124 of the Panchayats Act. On the contrary, there is enough indication in the context in which the word ''levy'' is used in different sub-section of section 124 of the Panchayats Act, which enables us to hold that the word ''levy'' has been used in the sense of determination of accrual of liability, or in other words, exercise of a legislative power to impose the tax, and not in the sense of collection of the tax. It will be seen that under sub-section (6) of section 124 power is given to the State Government to suspend "the levy or imposition of any tax". When the two word ''levy'' and ''imposition'' are thus used in juxtaposition, it is hardly possible to construe the word ''levy'' as meaning the same as ''imposition'' and that was not so intended either. Imposition therefore must mean under S. 124 (5) of the Act, the process of recovery. The word ''assessmen'' in section 124 (5) should normally mean the quantification or determination of the actual amount of the tax and he word levy ''used in section 124 (1) which speaks of the competence of the Panchayat to levy all or any of the taxes enumerated in that sub-section, must mean the legislative process of determining which of the taxes shall be imposed. Rule 3 itself lays down the procedure for levying the tax, and this procedure is necessarily the initial step taken in the legislative sphere when the Panchayat decides to levy the tax. There is no doubt therefore that the word ''levy'' has been used in section 124 as well as in the rules in the sense of the legislative decision of the Panchayat that liability in respect of specified tax which is selected for levy, should accrue.

(44) Unless octroi limits are fixed as an integral part of the process of levying an octroi duty a citizen has no means of knowing whether or not to bring his goods over a particular boundary into the area for the purposes of consumption, use or sale. Fixation of boundaries is a notice to the citizen that the bringing of the specified goods for the purposes of consumption, use or sale over those boundaries will attract the liability for the tax. On the other hand, if boundaries are known, the citizen may decide whether to bring his goods or not. Fixation of boundaris, therfore, cannot be left to an indefinite or indeterminate period and yet the octroi duty could be said to the lawfully levied. To take an example of this very case, the Panchayat purported to levy the tax with effect form 1-4-1963 and the allegation is that it also started making a demand for the tax from that date in respect of goods entering into the village. The fixation of octroi limits, however, was made by the Panchayat by its resolution dated 17-3-1963 and this proposal was sent to the Collector for approval and sanction as required by rule 21 on the next day For reasons not quite clear from the record the officer authorized by the Collector, namely the Naib Tahsildar, could not make enquiries or pass an order till 14-1-1964,

i.e. nearly 10 months after the Panchayat fixed the octroi limits. The octroi limits could be said to have been validly fixed only on and from 14-1-1964. It is difficult to see how liability to pay octroi tax could at all accrue between 1-4-1963 and 14-1-1964 when the limits themseleves were unknown, not having been fixed according o law. When faced with this contingency, it was urged on behalf of the petitioner that persons bringing goods over the octroi limits would not be liable to pay until the octroi limits were fixed, and if any tax was recovered, it was liable to be refunded. But the question is not whether the tax would be refunded or not, the issue being whether the liability would at all accrue, and in our opinion the liability had not accrued either on 1-4-1963 or at subsequent date because of the failure of the Panchayat to fix the octroi limits in the process of levying the octroi tax itself. The inhabitants were entitled to know what are the octroi limits entry over which would attract the liability and until the octroi limits were fixed no liability could validly accrue. In other words, the levy itself does not begin to function or to be fixed. It must therefore be held that the decision of the Standing Committee that the octroi tax was not validly levied by the petitioner Panchayat as it has failed to fix the octroi limits is correct and must be upheld.

(45) The third question that was urged before us concerns the particular activity of respondent no 2 the Brooke Bonds in respect of the goods brought into the area of the Panchayat and the process to which it was subjected.

(46) According to respondent no. 2, the Brooke Bonds Company, Ltd. what is done is described in the memorandum of appeal filed before the Standing Committee Paragraphs 2, 3, and 4 describe those activites as follows:

"2. Tea of different categories and qualities is received at Kanhan Pipri from several places in India When tea is thus imported at Kanhan from outside, it is not meant for consumption, use or sale within the local area of the respondent Panchayat and as a fact the tea thus received is not consumed, used or sold within the said local area.

3. The tea thus received also does not undergo any processing as such and what is done in the factory at Kanhan is merely blending of several categories and qualities of tea. Such blending is necessary in the order to satisfy the need of the consumers for particular type of tea.

4. Similarly after blending of tea as stated above, it is packed in packets of different sizes. After the packets are prepared they are put in cases of several sizes and those cases containing such packets are despatched to the various depots of the Company all over India for sale to the wholesale dealers. The Appellant does not sell any tea to any dealer or individual within the local area of the respondent Panchayat. Even if any dealer at Kanhan Pipri has to sell tea within the said local area he has to purchase the same from others than the appellant."

Similar averments were made by respondent no. 2 in their first appeal before the Panchayat Samiti in ground no. 3 where they stated that the tea received into the

village does not under go any processing as such and what is done at the factory at Kanhan is merely such blending as is necessary in order to satisfy the needs of consumers for particular type of tea.

(47) On the other hand, the contention of the petitioner is that different leaves and dust are brought within the limits of the petitioner Panchayat for use and consumption therein. The petitioner also alleged that bringing in of the tea through the limits, crushing the same, putting it in the packages of the factory of the respondent no 2 were all done and the tea was imported for sale as a marketable commodity i.e. the tea was the result of highly technical and continuous process done dy respondent no. 2 upon the bulk of tea which was imported.

(48) There is no doubt that the form in which the tea was brought, whether in the form of tea or dust, or both received the process of blending is a question of fact. Whether the tea leaves alone are brought, whether the tea that is brought and that is sent out is identical in form or altogether different in composition is again a question of fact. The first appellate authority did not decide or pay attention to this aspect at all because the Panchayat Samiti dismissed the appeal in limine on the ground of limitation. The Standing Committee as a further appellate authority has not also given any finding as to what activities are carried on in respect of the tea after it is brought in, and whether it is said to be consumed or used within the meaning of he definition of ''octroi duty'' under the Panchayats Act. The only observations to be found in the resolution of the Standing Committee on this aspect of the question are as follows;

"On further consideration it appears that appellant is not importing the Tea within the limits of the Panchayat for consumption, use, or sale. The tea after it comes in this area, is sent back after repacking, outside the Panchayat limits. It is the contention of the Village Panchayat that on this tea processing or opening is done in the factory. But since the imported tea goes out of the Panchayat limits, this argument of the Gram Panchayat is not correct."

The Standing Committee further observed that it is convinced after actual inspection that the tea of the appellant is not imported for any of these purposes i.e. for consumption, use or sale within the Panchayat''s limits.

(49) We are not satisfied that the authority competent to deal with this question of fact has given any finding that the activities carried on by respondent no. 2 Brooke Bonds regarding the process to which the tea or tea leaves are subjected are carried on within the area of the Panchayat. It has been urged on behalf of respondent no. 2 that ther is no case of sale of the tea brought within the limits, and what is brought in are tea leaves though of different qualities and they are mixed so as to form a particular blend to suit the taste of the customers. Tea leaves of two or more qualities are mixed or blended together but only mechanically and it is quite possible by a laborious process to reseparate each of the tea leaves. In other words,

what is suggested is that what comes in are tea leaves of different qualities, and what goes out is a sort of assorted tea like assorted biscuits, assorted chocolates etc., but the quality of each tea leaf maintains its original character at the time of going out of the boundary and that is not altered by any process. What is done ''within the area'' of Kanhan-Pipri is to mix together the tea leaves of different qualities so as to form a single blend of quality of tea to the liking of customers for commercial purposes. This process, according to respondent no. 2, does not involve any consumption or use of tea leaves brought within the Panchayat area because what is brought in is tea and what goes out is also tea. According to respondent no.2, unless the identity of the goods brought within the octroi area is so altered or changed within the area before they are taken out, the goods cannot be said to have been consumed or used. Blending together different varieties of tea leaves is no user of the tea because they are not used up nor are they consumed in he sense in which that word is used in definition. The learned counsel referred to several decisions to illustrate what is meant by use or consumption of an article of goods so as to attract the liability for payment of octroi duty. Reference was made to the following decisions:- (1) Punjab Flour and General Mills Co. Ltd. v Lahore Corporation AIR 1947 FC 14; (2) Kailash Nath and Another Vs. State of U.P. and Others, ; (3) Anwarkhan Mahboob Co. Vs. The State of Bombay (Now Maharashtra) and Others, ; (4) Burmah Shell Oil Storage and Distributing Co. India Ltd. Vs. The Belgaum Borough Municipality, and (5) Nilgiri Ceylon Tea Supplying Co. Vs. The State of Bombay, .

(50) The last case was particularly relied upon because it was a case dealing with a somewhat similar situation but under the Sales Tax Act, Bombay. The facts in that case were that the assessee Company purchased in bulk diverse brands of tea and without the application of mechanical or chemical process mixed up the brands and sold the tea as tea mixture. The mixture was not haphazard but according to a formula evolved by them. The Sales Tax authorities held that the tea had been processed or altered after the purchase within the meaning of proviso to section 8 (a) of the Bombay Sales Tax Act 1953, and therefore the assessee was not entitled to deduct the turnover under that section for the value of the tea purchased. The Division Bench held that there was neither processing nor alteration in any manner of the tea and they were therefore entitled to deduction u/s 8 (a). The principle for which the learned counsel for respondent No. 2 relied upon this case was that there was no alteration of identity nor processing within the meaning of the section concerned merely by blending or mixing tea leaves of different qualities or varieties. If tea leaves of different varieties are mixed together and sold as tea mixture, the product cannot be said to be an article different from its components having undertaken any alteration or processing. In our opinion, this principle would have been of considerable assistance to the respondent, had either of the facts-finding authorities given a finding of their own as to what exactly happens when tea leaves are brought in by respondent No. 2 Company within the octroi limits of the village

and in what form i.e. whether he quality is altered or not when the blended tea goes out of the octroi area.

(51) The learned counsel for the petitioner has made a grievance before us, and in our opinion the grievance is correct, that the Standing Committee has not given any clear finding of its own which it was bound to do before holding that the activities of respondent No.2 do not attract the liability for the purposes of octroi tax in respect of their tea. According to the petitioner, what comes in within the octroi area are different varieties of tea leaves and dust. The petitioner does not admit that there is no crushing or mechanical processing of the different tea leaves and dust, Its contention is that the raw material which is brought in is subjected to mechanical process like crushing etc. and what goes out is an altogether different article though it is called blended tea of a special variety or quality. In other words, the contention of the petitioner is that what is brought in are different varieties of tea, either leaves or dust; and after being subjected to several processes including mechanical processes what goes out is an altogether different article, having undergone complete change in identity and also quality. Which of these rival contentions is correct we are not in a position to decide in the absence of any finding on this question by the authorities which are enjoined to decide the question under the statute.

Both the Panchayat Samiti as well as the Standing Committee as appellate authorities were bound to apply their mind and find out whether the tea brought in and subjected to such processing as may be found on evidence has undergone such a change as to lose its identity and justify a conclusion that the tea leaves or dust or both which are brought in are consumer goods in the process. We cannot in disposing of this petition for the first time address ourselves to determine this question, which is primarily a question of fact, though the inference to be drawn from those facts once found may be a question of law. As those basic questions of fact also have not been determined by the authorities concerned, we do not feel it is proper to make any pronouncement on this question which is raised by the petitioner.

(52) The learned counsel for the petitioner relies on the decision of the Supreme Court in Burmah Shell Oil Storage and Distributing Co. India Ltd. Vs. The Belgaum Borough Municipality, , as to the correct meaning to be given to words ''consumption or use in the definition of "octroi" or "octroi duty" given by the Act. This submission of the learned counsel is correct. The words "consumtion or use" in the definition of "octroi duty" are used in the technical sense. As observed by their Lordships, the word ''consumption in its primary sense means the Act of consumption, and in ordinary parlance, use of an article which destroys or wastes itself. But in some legal context the word "consumption" has a wider meaning. It is not necessary that in the act of consumption the commodity is to be used up altogether.

(53) In view of our finding, however, that the octroi tax has not itself been validly levied by the Panchayat as held by the Standing Committee, it is not necessary for us to remand the matter for decision on the third question that was raised, namely, whether the activity of respondent No. 2 Company can be said to have consumed or used tea leaves or tea dust within the octroi area. If and when such question arises the matter will have to be determined afresh according to the facts and circumstances brought before an appropriate authority. We may only observe that the Standing Committee has not given any clear finding on this question and the question is at large as between the Panchayat and respondent No. 2 the Brooke Bonds.

(54) In view of our finding on the first two points it must be held that the Panchayat has not validly levied the octroi tax and respondent No, 2 was entitled to the declaration given to it by the Standing Committee that the octroi duty has not been validly levied by the petitioner Village Panchayat. In view of our concurrence with that finding, the result is that the petition fails and is dismissed with costs.

(55) Petition dismissed.