

(1975) 10 BOM CK 0015

Bombay High Court

Case No: Special Civil Application No. 2035 of 1975

Ramkumar Ramchandra
Choudhari

APPELLANT

Vs

The Hingoli Municipal Council

RESPONDENT

Date of Decision: Oct. 15, 1975

Acts Referred:

- Constitution of India, 1950 - Article 227

Citation: (1976) 78 BOMLR 243 : (1976) MhLj 137

Hon'ble Judges: Chandurkar, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Chandurkar, J.

The question in this petition under Article 227 of the Constitution of India is whether a person who wants to challenge a demand made by a bill issued u/s 150 of the Maharashtra Municipalities Act, 1965 (hereinafter referred to as the "Municipalities Act") is bound to deposit the amount of taxes which he does not want to dispute in the appeal filed u/s 170 of the Municipalities Act.

2. The question arises thus: On January 6, 1973 a bill was received by the petitioner making a demand for house tax, education cess and Bangla Desh Relief Fund Cess. The house tax demanded was Rs. 1,096.20 consisting of Rs. 529.20 for the year 1971-72 and 1972-73. The education cess demanded for 1962-63 to 1970-71 was Rs. 124.11 and Rs. 94.50 for the years. 1971-72 and 1972-73 each. The Bangla Desh Cess demanded was Rs. 23.63 for 1971-72 and Rs. 47.25 for 1972-73. The demand totalled Rs. 1,480.19, but after making a representation to the Municipal Council, it was reduced to Rs. 1,478.19. The correction was made by the Municipal Council on January 23, 1973 and on February 6, 1973, the petitioner filed an appeal u/s 169 of the Municipalities Act. Section 169 of the Municipalities Act Provides for appeals

against any claim for taxes or other dues included in the bill presented to any person u/s 150 or any other provisions of the Act. The appeal lies to a Judicial Magistrate or Bench of such Magistrates by whom under the direction of the Sessions Judge such class of cases is to be tried. Section 170 of the Act, which deals with the procedure in appeal, reads as follows;

No appeal under the last preceding section shall be entertained unless◆

(a) the appeal is brought within fifteen days next after the presentation of the bill complained of; and

(b) an application in writing stating the grounds on which the claim of the Council is disputed, has been made to the Council in the case of tax on buildings or lands or both within the time fixed in the notice given u/s 119 or 123 of the assessment or alteration thereof, according to which the bill is prepared; and

(c) the amount claimed from the appellant has been deposited by him in the municipal office.

The decision in the appeal can be challenged by a revision application to the Court to which appeal against the decision of the Magistrate ordinarily lies. Now, the memo of appeal of the petitioner shows that his challenge was restricted to the demand in respect of house tax. Admittedly, before the filing of the appeal, the petitioner had deposited Rs. 1,096.20, being the amount of the tax which was the subject-matter of the appeal. The Judicial Magistrate, First Class, Hingoli, however, took the view that Clause (c) of Section 170 did not make any distinction between a disputed and an undisputed claim and the whole amount claimed, whether disputed or undisputed, had to be deposited in the municipal office before the appeal was filed. Admittedly, the petitioner had not deposited the amount due on account of education cess and Bangla Desh Relief Fund Cess. The learned Judicial Magistrate, therefore, rejected the appeal. The appeal was also held barred on the ground of limitation.

3. The petitioner then filed a revision application before the Sessions Judge, Parbhani. The learned Sessions Judge held that the period from January 8, 1973 to March 21, 1973, which was taken by the Municipal Council for the purposes of correction of the bill, had to be excluded. The learned Sessions Judge reversed the finding of the Judicial Magistrate that the appeal was barred by the limitation. However, the learned Sessions Judge confirmed the finding given by the Judicial Magistrate that unless the entire amount of the bill was deposited, the appeal was not tenable. The petitioner has now filed this petition challenging this order of the learned Sessions Judge.

4. Now, it is contended on behalf of the petitioner that there was no prohibition in the Municipalities Act which prevented the petitioner from challenging only a part of the demand made by the bill and, according to the learned Counsel for the

petitioner, if the petitioner did not challenge the demand with regard to education cess and Bangla Desh Relief Fund Cess, then since those demands were not the subject-matter of the appeal, he was not bound to deposit that amount before filing the appeal. It is, however, contended on behalf of the Municipal Council by Mr. Savant that where Clause (c) in Section 170 refers to the amount claimed, those words have reference to the total demand made in the bill of demand.

5. The appeal u/s 169 is provided against "any claim for taxes or other dues included in a bill presented to any person u/s 150 or any other provisions of this Act". Section 150 of the Municipalities Act provides that where any amount becomes due to the Council under this Act or the rules or by-laws made thereunder, the Chief Officer shall with the least practicable delay cause to be presented to the person liable for the payment thereof a bill for the sum claimed as due. Sub-section (2) provides that every such bill shall specify the period for which and the property, occupation or thing in respect of which the sum is claimed and shall also give notice of the liability incurred in default of payment and of the time within which an appeal may be preferred as provided in the Act. Under Sub-section (3) if the payment is made within fifteen days from the presentation of the bill, a person is entitled to a discount at 1 per cent, of the sum claimed. If the amount is not paid within fifteen days or the person concerned does not show cause to the satisfaction of the Chief Officer why he is not liable to pay the same or he does not prefer an appeal in accordance with the provisions of Section 169 against the claim, then a further notice of demand has to be issued. Thus in a case where the demand made by the Municipal Council is not disputed, a person has a longer time available to him for making the necessary payment. Now, a bill u/s 150 may not necessarily refer to only one kind of tax or dues. It may not only refer to different kinds of taxes or dues but it may also refer to demands for different periods. In a given case, the person on whom the bill of demand is served may not dispute a liability in respect of a particular tax or in respect of a particular period and he may be interested in challenging only a particular kind of demand. That he has to do by filing an appeal. Thus where a person wants to challenge a demand only in respect of a claim made on account of a particular tax or dues or for a particular period, then the subject-matter of the appeal will be restricted to such items of demand alone. Merely because the demand which is challenged is made by the same bill of demand which makes a demand in respect of other dues also, the entire amount claimed in the bill cannot be said to be "the amount claimed" within the meaning of Clause (c) of Section 170 of the Municipalities Act. The object of Section 170 is that an appeal by a person, who has been served with a bill of demand, shall not be entertained. ♦ it is important to note that the word used is "entertained" and not "filed" ♦ before he deposits the amount claimed in respect of which he wants to raise a challenge. The words "the amount claimed" in Clause (c) of Section 170 must, therefore, be restricted to the amount claimed which is in dispute and not the amount claimed in total by the bill of demand. The petitioner in the instant case

wanted to restrict his challenge to the house tax demand to the tune of Rs. 1,096.20. Admittedly, he had deposited that money before the filing of the appeal. Both the lower Courts were, therefore, in error in taking the view that unless the petitioner deposited the entire amount due, his appeal should not be entertained. Their orders rejecting the appeal of the petitioner will, therefore, have to be quashed.

6. In the result, the petition is allowed, the orders rejecting the appeal of the petitioner are quashed and the appeal of the petitioner is remitted back to the Judicial Magistrate, Hingoli, for a decision according to law. In the circumstances of the case, there will be no order as to costs.