

**1995 (2) G.L.H. 201  
R. K. ABICHANDANI, J.**

Surat Khedut Samaj & Ors. ...Petitioners  
Versus  
The State of Gujarat & Ors....Respondents

Special Civil Application No. 1437 of 1984\*

D/-24-3-1995

\* Special Civil Application challenging the notification issued by State Government, increasing the rate of cess levied under Section 169(3) of Gujarat Panchayats Act, 1961 [*@page201*]

**(A) Gujarat Panchayats Act, 1961 - S. 169 (1), (3) - Natural Justice - No personal hearing is required to be given to affected parties while levying cess u/S. 169 - On facts lawful purpose for increase in rate of cess found established.**

**(B) Administrative Law - Natural Justice - When excluded.**

The contention that no hearing was given to the affected parties while inviting the increase in the rate of cess under S. 169 (3)(b) of the said Act is misconceived inasmuch as the levy and increase in rate of cess are done by the State Government and not by the District Panchayat. The provision of S. 169 falls in Chapter VIII dealing with taxation and more particularly under Part I entitled "fixation by the State Government". Therefore, the manner of levying cess described in S. 169 is the same so far as may be as per the provisions of law as to the Land Revenue, in view of the provisions of S. 172 of the said Act. There is no contention raised to the effect that there is any violation of the manner of levying cess contemplated by S. 172 of the said Act. There is nothing to show that any hearing was required to be given to the petitioners while levying cess under S. 169 of the said Act. The impugned notification cannot therefore be assailed on the ground that the affected parties were not heard. (Para 9)

**Cases Referred:**

1. Municipal Board, Bareilly v. Bharat Oil Company & Ors. (1990) 1 SCC 311 (Para 10)
2. G. B. Mahajan & Ors. v. Jalgaon Municipal Council & Ors., AIR 1991 SC 1153 (Para 10)

**Appearances:**

Mr. N. Y. Chudgar, Advocate for Mr. K.S. Nanavati, Advocate for the petitioners  
Miss S. K. Mandavia, Additional Government Pleader for the respondent No. 1  
Mr. H. M. Mehta, Senior Counsel for respondent No. 2

**R. K. ABICHANDANI, J.:-**

1. The petitioners seek to challenge the notification dated 30th July 1983, issued by the State Government under Section 169(3) of the Gujarat Panchayat Act, 1961, increasing rate of cess levied under sub-section (1) of Section 169 in relation to the Surat District under the jurisdiction of the Surat District Panchayat to 150 paise from 50 paise on every rupee of land revenue payable for a period of 2 years on and with effect from 1st August 1983. On 26th March 1984, Hon'ble Mr. Justice N. H. Bhatt, while admitting the petition, had granted *ad interim* relief as prayed for by the petitioners as a result of which the increase in the rate under the impugned notification could not be released by the District Panchayat.

2. The petitioners are holding agricultural lands in the District of Surat. By a resolution passed on January 19, 1980, the respondent No. 2-District Panchayat had resolved to recommend levy of cess at the rate of 50 paise on every rupee of every sum payable to the State Government as ordinary land revenue and the State Government had increased the levy to 50 paise for a period of 5 years with effect from 1st August 1980, in relation to the said District Panchayat. The upper limit of rate of cess was raised to 200 paise on every rupee on which such cess was leviable under Section 169 (1) by Gujarat Act II of 1983 amending the proviso to Section 169 [page 202] (3)(a) of the said Act. The said upper limit was raised to 300 paise by Gujarat Act 13 of 1989 which came into force from 31-3-1989. On 14-6-1983, the District Panchayat, Surat passed a resolution being Resolution No. 4(1) under which it resolved to move the State Government to increase the rate of cess to 150 paise with effect from 1-8-1983. The minutes and the resolution are at Annexure "III" collectively to the petition. On 30-7-1983, the Government issued notification in the official gazette increasing the rate of the cess as proposed by the District Panchayat in exercise of its powers under Section 169(2)(b) of the said Act.

3. It was contended on behalf of the petitioners that the impugned notification was issued on the basis of the resolution of the District Panchayat passed on grounds not germane to the purpose of the levy. It was contended that the minutes of the resolution of the district Panchayat indicated that the increase in the rate of cess was intended to meet with the expenses of providing hutments which was not a function enumerated in Schedule III to the Act as contemplated by Section 169(3) of the said Act. It was further contended that the District Panchayat could not have gone beyond the scope of Section 169 (3) which prescribes the norms for the increase of the rate of cess. It was argued that the increase in rate of cess was sought by the District Panchayat not because of its needs but because of the amendment in Section the proviso to 169(3) raising the upper limit prescribed for such cess and that it was based on an extraneous ground of providing hutments to the villages. It was also contended that the impugned notification was issued without proper application of mind, inasmuch as the District Development (*sic.*) had applied for the increase in the cess by its resolution dated 21st July 1983, and in about a week's time the State Government hastily issued the impugned orders on 30th July 1983, from which it should be inferred that the State Government did not apply its mind. It was finally contended that the affected parties were not given any hearing before increasing the rate of cess under Section 169(3)(a) of the said Act.

4. Under Section 169(1), the State Government is empowered to levy cess at the rate of 50 paise on every rupee of every sum payable to the State Government as provided therein. Section 169 (3)(a) enables a District Panchayat to apply to the State Government by a resolution passed at its meeting to increase in relation to its District, the rate of cess levied under sub-section (i) to such extent and for such period as may be specified in the resolution if it appears to the District Panchayat that for the purposes of its function under Schedule III an additional provision of fund is necessary. Such increase in rate of cess is subject to the upper limit which was 200 paise at the relevant time and is now 300 paise as per the proviso to sub-section (3)(a) of Section 169. Under clause (b) of sub-section (1) of Section 169, the State Government, may on receipt of the application, increase the rate of the cess as proposed by the District Panchayat by a notification published in the official gazette and thereupon sub-section (1) of Section 169 shall have effect as if for rate specified therein the rate as so increased has been substituted. It will thus, be seen that it is the State Government that levies the cess, even when the District Panchayat recommends increase in the rate. The cess prescribed in Section 169 is to be levied, so far as may be, in the same manner and under the same provisions of law as the Land Revenue as provided in Section 172 of the said Act. Section 176 provides that the local cess leviable on lands under Section 176 shall be paid by the State Government to the District [page 203] Panchayat within the jurisdiction of which lands are situated after deducting a portion of the cost of collection as may be prescribed by Rules. Thus, the cess levied by the State Government is payable to the District Panchayat which reflects that the amount is to be utilised by District Panchayat for the purposes of its function under Schedule III for which the additional provision of funds was found to be necessary by the District Panchayat, which would be in better position to assess its requirements. The application for increase in the rate of cess levied under Section 169(1) can be made only if it appears to a District Panchayat that additional provision of funds is necessary for the purposes of its functions under Schedule III of the said Act. It therefore follows that the District Panchayat cannot apply for increase in the rate of cess nor can the State Government increase the rate of cess as proposed if the proposed increase is not relatable to the additional provision of funds required for the purposes of the functions of a District Panchayat under Schedule III. Therefore, no increase in the rate of cess can be made on any ground which is extraneous to the functions of a District Panchayat under Schedule III of the said Act.

5. The functions of the District Panchayat under Schedule III are very wide and they include construction and maintenance of roads, co-ordination and integration of developmental scheme, implementing schemes relating to agricultural development, conducting necessary social welfare activities in the District, etc. and therefore are wide enough to embrace a development scheme and social welfare activity like providing hutments to the community.

6. The resolution No. 4 (1) dated 14-6-1983 opens with the word to the effect that if additional funds was required for the purposes of the functions of the District Panchayat an application could be made by a resolution to the State Government for such purpose. It is therefore evident that the District Panchayat was fully aware of the provisions of Section 169 (3)(a) of the said Act and was passing the resolution in context of the said provisions. It was resolved that having regard to the increase in the upper limit of the rate of cess prescribed by the Gujarat Act No. 11 of 1983 amending Section 169 of the said Act and keeping in view the financial requirements of the District Panchayat, it was necessary to increase the rate to 150 paise. There is nothing to show in the body of the said resolution that the increase was sought with a view to meet with expenses for providing hutments to the villages, the increase was sought in context of the function of the District Panchayat as is clear from the opening part of the said resolution. In the minutes showing the discussion on the subject before the resolution was passed, the President and Members have expressed their views only and those views by themselves would not be a resolution of the Panchayat. It will be seen from the minutes that the list of the functions of the District Panchayat was read over at the meeting. This again shows that the District Panchayat was aware at its meeting about the basis on which the increase in rate could be sought under Section 169(3) of the said Act. The financial requirement of the District Panchayat was assessed at Rs. 70 to 90 lacs. Reference to the financial requirement of a District Panchayat was obviously in context of its functions and cannot be said to be an extraneous factor. The President had referred to the huge financial liability of the scheme of providing hutments. He also referred to the increase in prices and the increased needs. One Mohammedbhai Patel, a Member had expressed that the development schemes should be specified [at page 204] and the roads should also be constructed for the agricultural lands. One Bhagwanjibhai had expressed that the amount should be utilised for the agriculturists and Shri Govindbhai M.L.A. had said that this was a matter included in the developmental work. From these views which were expressed at the meeting, it can never be inferred that the District Panchayat had passed the resolution seeking increase in the rate of cess only for the purpose of putting up hutments. The resolution itself clearly refers to the fact that the District Panchayat could move for the increase when it appeared to it that for the purposes of its function, an additional provision of fund was necessary. Therefore, the very basis on which the contention raised on behalf of the petitioners is founded, does not exist. The resolution of the District Panchayat is clearly passed in context of the functions of the District Panchayat for which additional provision of fund was found necessary by the District Panchayat at the said meeting. The contention that the District Panchayat has made a resolution violating the relevant norm to the effect that the increase can be sought only in context of its functions cannot therefore be accepted.

7. The resolution of the District Panchayat shows that its financial needs were taken into account while seeking the increase in the rate of cess and there is no reason to condemn the said resolution merely because it refers to the Amending Act by which the upper rate of cess was increased to 200 paise in the proviso to Section 169 (3) (a) of the said Act. Mere reference to the Amending Act cannot lead to a conclusion that the increase was sought only because of the amendment and without there being any need for the additional funds.

8. The State Government had issued notification expeditiously on 30th July 1983, after the District Panchayat passed the resolution seeking increase on 21st July 1983, because the proposed increase was sought from 1st August 1983. Therefore, if the State Government acted in good time in accepting the proposal of the District Panchayat to make the increase effective from 1st August 1983, it cannot be said that the State Government acted in haste and without proper application of mind as contended on behalf of the petitioner.

9. The contention that no hearing was given to the affected parties, while inviting the increase in the rate of cess under Section 169 (3)(b) of the said Act is misconceived inasmuch as the levy and increase in rate of cess are done by the State Government and not by the District Panchayat. The provision of Section 169 fails in Chapter VIII dealing with taxation and more particularly under Part I entitled "Taxation by the State Government". Therefore, the manner of levying cess described in Section 169 is the same so far as may be as

per the provisions of law as to the Land Revenue, in view of the provisions of Section 172 of the said Act. There is nothing to show that any hearing was required to be given to the petitioners while levying cess under Section 169 of the said Act. The impugned notification cannot therefore be assailed on the ground that the affected parties were not heard.

**10.** In the above view of the matter the decisions of the Supreme Court cited on behalf of the petitioners in the case of Municipal Board, Bareilly v. Bharat Oil Company and Ors. reported in (1990) 1 Supreme Court Cases 311 and in the case of G. B. Mahajan and Ors. v. The Jalgaon Municipal Council and Ors. reported in AIR 1221 S.C. 1153 cannot assist the petitioners. The petition therefore fails and Rules id discharged [ @page205 ] with costs. *Ad interim* relief stands vacated. Since the challenge of the petitioners against the impugned notification has failed and the impugned notification was not acted upon because of the interim relief granted by this Court, it would be open to the District Panchayat to proceed in respect of the relevant period on the footing that the notification increasing the rate of cess was valid and operative.

(VSM) Rule discharged.