of the word "factory" and that the appellant has been rightly convicted of the offence of working the factory without obtaining a licence. We therefore dismiss the appeal.

Appeal dismissed.

THE PIONEER MOTORS (PRIVATE) LTD.

v.

THE MUNICIPAL COUNCIL, NAGERCOIL.

(and connected appeals)

(J. L. KAPUR, M. HIDAYATULLAH and J. C. SHAH, JJ.)

Profession Tax—Provision for time before levy, if mandatory—Reasonableness—Commissioner's powers, if can carry out executive powers of the Municipality—"Profession", definition of—Travancore District Municipalities Act, 1116 (Act XXIII of the Malayalam year 1116), ss. 16, 78, 91.

The imposition of "profession tax" by the respondent Municipal Council under the Travancore District Municipalities Act (Act XXIII of the Malayalam year 1116) was challenged on the grounds, *inter alia* (1) that the requisite notification was not published by the Municipal Council but by its commissioner, (2) that the period of thirty days which was given for filing objections to the imposition was insufficient in law which required a period of "not less than a month", and (3) that this was a mandatory provision under the proviso to s. 78 of the Act.

Held, that under s. 16 the Commissioner being the executive authority of the Municipal Council was authorised to give effect to the resolutions of the Council and to perform all its executive duties.

The words "not being less than one month" in the proviso to s. 78 implied the necessity for one clear month's notice excluding the first and last day of the month, but the use of the words "reasonable period" before the words "not being less than one month" showed that the time given must be reasonable. In view of the facts of the case the period allowed must be regarded as reasonable and to have complied with the provision which is directory in its later part.

Commissioner of Income-tax v. *Ekbal and Co.* [1945] 13 I.T.R. 154 and *Thompson* v. *Stimpson*, [1960] 3 All E.R. 500, distinguished.

Municipal Council, Cuddapah v. *The Madras and Southern Mahratta Railway Ltd.* (1929) I.L.R. 52 Mad. 779, *The Borough Municipality of Amalner* v. *The Pratap Spinning, Weaving and Manufacturing Co. Ltd., Amalner*, I.L.R. [1952] Bom. 918 and *Kalu Karim* v. *Municipality of Broach* (1927) I.L.R. 51 Bom. 764, referred to.

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The definition of "profession" as given in s. 81 includes business.

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 499 to 502 of 1958.

Appeals from the judgment and decree dated July 13, 1956, of the former Travancore-Cochin High Court in A. S. Nos. 94, 95, 96 and 156 of 1952.

G. S. Pathak and *G. C. Mathur*, for the appellants (in C. As. Nos. 499 to 501 of 58).

P. George and *M. R. Krishna Pillai*, for the appellants (in C. A. No. 502 of 58).

T. N. Subramania Iyer, *R. Ganapathy Iyer* and *G. Gopalakrishnan*, for the respondent.

1961. January 27. The Judgment of the Court was delivered by

Kapur J.

KAPUR, J.—These four appeals are brought against the judgments and decrees of the erstwhile High Court of Travancore-Cochin. The appellants were the plaintiffs in the respective suits out of which these appeals have arisen and the respondent was the defendant in all the suits. As all the suits involve a common question of law, it will be convenient to dispose of them by one judgment.

The facts of the cases are these. On September 9, 1943, the Nagercoil Municipal Council the respondent, passed a resolution under s. 78 of the Travancore District Municipalities Act (Act XXIII of the Malayalam year 1116), hereinafter called the Act. By this resolution, it was resolved to levy a profession tax at the rates specified in the schedule. This was notified in the Government Gazette of September 26, 1943, under the name of the Commissioner of the respondent Council. In this notification, it was stated :—

> "Any inhabitant of the local municipal town objecting to the proposal may submit his objection in writing to this office within 30 days of date of publication of this notification in the Government Gazette."

This notification was also published in a local newspaper called the *Abhimani*. It does not appear, nor is there any assertion or allegation that any

objection was raised to this tax by the appellants or any one else. On January 12, 1944, a resolution under s. 79 of the Act was passed, by which the profession tax became payable from the beginning of the second half of the Malayalam year 1119. A trust, Kottar Chetty Ninar Desikavinayaga Swamy filed a suit on February 10, 1946, challenging the legality of this tax. C.A. 502 of 1958 has arisen out of that suit. Amongst other allegations, which are common to the other suits, which will be mentioned presently, the trust pleaded that it was not carrying on a profession within the meaning of the word used in the Act and that it was only a religious trust and had no profession. That suit was tried by the Munsif and was decreed. An appeal was taken against that decree to the District Judge.

Three private limited companies carrying on business brought three suits challenging the legality of the imposition of the tax out of which the other three appeals, i.e., Civil Appeals Nos. 499 to 501, have arisen. In these suits, it was alleged that the publication of the resolution was not in accordance with the provisions of s. 78 of the Act in so far as (1) it was not published by the respondent Municipal Council, but by the Commissioner; (2) the newspaper in which the advertisement was published was not selected by the Council; (3) time given in the notification was fixed not by the Council, but by the Commissioner; and (4) the period prescribed in the notification, that is, "within 30 days", was not fixed by the Council and was not in accordance with the Act. The respondent Municipal Council denied these allegations and several issues were raised and the suits were decreed. The appeal which had been taken in the suit by the Trust was also decided in favour of that plaintiff. The result was that all the suits and the appeal were decided against the respondent Municipal Council. It took four appeals to the High Court. The decrees were reversed and the suits of the various plaintiffs were dismissed. Against those judgments and decrees, these four appeals have been brought by the plaintiffs, in the various suits, who are now the appellants.

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In Civil Appeals Nos. 499 to 501, Counsel for the appellants has raised two points (1) that the publication was not by the Council and (2) that the time given in the notification, i.e., "within 30 days" was not in accordance with the law and as these were conditions precedent to the legality of the resolution under s. 79 the resolution was ultra vires and therefore the imposition of the tax was illegal. It is, therefore, necessary to examine the various provisions of the Act upon which the whole argument has proceeded.

Chapter VI of the Act deals with Taxation and Finance. In s. 77 are enumerated the various taxes which can be levied by Municipal Councils. Section 78 gives the procedure for the levying of the tax and when quoted it is as follows:—

"S. 78. *Resolution of Council determining to levy tax or tolls.*—Any resolution of a municipal council determining to levy a tax or toll shall specify the rate at which any such tax or toll shall be levied and the date from which it shall be levied:

Provided that before passing a resolution imposing a tax or toll for the first time or increasing the rate of an existing tax or toll, the council shall publish a notice in Our Government Gazette and at least in one Malayalam or Tamil newspaper having circulation in the municipality of its intention, fix a reasonable period *not being less than one month* for submission of objections, and consider the objections, if any, received within the period specified."

(Italics are ours).

After the various steps given in s. 78 have been taken, a Municipal Council has then to adopt the taxes proposed by means of a resolution under s. 79, which provides:—

"S. 79. *Notification of new taxes and tolls.*—When a municipal council shall have determined subject to the provisions of Section 78 to levy any tax or toll for the first time or at a new rate the executive authority shall forthwith publish a notification in Our Government Gazette and by beat of drum specifying the rate at which the date from which,

and the period of levy, if any, for which such tax or toll shall be levied."

The functions of the executive authority, that is, of the Commissioner of the Council are contained in s. 16 of the Act, which is as follows :—

"S. 16. *Functions of the Executive Authority.*—The executive authority of the municipal council shall—

(a) carry into effect the resolutions of the council;

(b) furnish to the council such periodical reports regarding the progress made in carrying out the resolutions of that body in the collection of taxes as the council may direct; and

(c) perform all the duties and exercise all the powers specifically imposed or conferred on the executive authority by this Act, and subject, whenever it is hereinafter expressly so provided, to the sanction of the council, and subject to all other restrictions, limitations and conditions hereinafter imposed, exercise the executive power for the purpose of carrying out the provisions of this Act and be directly responsible for the due fulfilment of the purposes of this Act."

Section 16, which contains the power of the executive authority, does not support the contention of the appellants, because it provides that the executive authority has to give effect to the resolutions of the council and has to perform all duties specifically imposed on the executive authority by the Act and can also exercise executive power for the carrying out of the provisions of the Act and can act without sanction, unless the Act otherwise requires. Therefore, when the Commissioner of the respondent council got published a notification of the resolution under s. 78 of the Act to impose a tax, he was acting within his powers and the fixing of the time in which objection had to be made was provided under the Act and was not exercise of authority by the executive which it did not possess.

The only serious question which arises for decision is whether the period of "within thirty days" given in the notification was compliance with the provisions of the Act or not. If it was not then is the period of

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time mentioned a mandatory requirement, a breach of which makes the tax illegal?

Counsel for the appellants in the first three appeals argued, and that argument was adopted by counsel for the appellant in the fourth appeal, that the words used in the first proviso to s. 78 required that a clear period of one month had to be given for inviting objections and as "within thirty days" was not a clear period of one month, the provisions of the section had not been complied with. In support of his contention that the provision as to time was a mandatory requirement, he particularly stressed three words and phrases used in that proviso: (1) "before passing a resolution"; (2) "shall publish"; and (3) "fix a reasonable period not being less than one month for submission of objections." The argument was that where these words are used, the effect was that the requirements were mandatory and not merely directory. It was submitted that the words "before" and "shall" provided that what was mentioned in the proviso were conditions precedent for giving power to the Municipal Council to pass a resolution under s. 79 and when those two words were read along with "not being less than one month", it was a clear indication of the mandatory nature of the requirements of the section. Quite a number of cases were relied upon by Counsel and besides this it was also emphasised that ss. 78 and 79 concerned taxing matters and as the liability of the tax-payers arises after the tax is legally imposed, strict compliance with the provisions was necessary. It is not necessary to discuss all the cases on which reliance was placed.

The words "not being less than one month" do imply that clear one month's notice was necessary to be given, that is, both the first day and the last day of the month had to be excluded. To put it in the language used by Maxwell on Interpretation of Statutes, 10th Edition, p. 351:—

> "...when..... 'not less than' so many days are to intervene, both the terminal days are excluded from the computation."

That does not seem to have been done in the present case. But in order to decide whether this portion of the proviso is a mandatory provision, it is convenient to see the object for which it has been enacted. Under s. 78, the procedure is laid down for the levying of a new tax, which has to be done by a resolution. But in the proviso, it is stated that before such a resolution can be passed, a notice to that effect has to be published in the official gazette and also in one Malayalam or Tamil newspaper having circulation within the municipality. Then comes the period for inviting objections. The object of notifying in the Gazette and Local Newspaper is both to give notice to the public and particulary to the persons who are likely to be taxed and to invite their objections. For this purpose, the proviso requires a reasonable period of not less than one month to be given. The object of the provision is to give reasonable time and opportunity and it is given as a guidance that reasonable time would be a month. The use of the words "reasonable period" before the words "not being less than one month" is significant. If sufficient time has been given for the invitation of the objections which only just falls short of the period mentioned in the proviso, then it would serve the object of the legislature. The provision in regard to time in the context must be held to be directory and not mandatory.

The cases under the Income-tax Act like the *Commissioner of Income-tax* v. *Ekbal and Co.* (1) where the notice under s. 22(2) of the Income-tax Act (which requires the furnishing of a return within such period not being less than thirty days) of 30 days only was held to be bad, because it was not a notice of thirty clear days, were so decided because that notice is the basis of the jurisdiction to tax and a legal notice is an obligation imposed in order to tax an individual and it is a mandatory provision. Similarly, cases under Rent Act will also not apply. In *Thompson* v. *Stimpson* (2) the law required that not less than four

(1) [1945] 13 I.T.R. 154.

(2) [1960] 3 All E.R. 500.

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weeks' notice shall be given for vacation of premises on a weekly tenancy and only one week's time was given. It was held there that it was a bad notice. It was further held that four weeks' notice was a condition precedent and the words had been used which had been interpreted in the past as providing for four clear weeks and also it was construed as four clear weeks, so that there might be certainty in the matter. In other cases, that were relied upon and which related to taxing statutes, the *Municipal Council, Cuddapah* v. *The Madras and Southern Mahratta Railway Ltd.* (1), *The Borough Municipality of Amalner* v. *The Pratap Spinning, Weaving and Manufacturing Co. Ltd., Amalner* (2) and *Kalu Karim* v. *Municipality of Broach* (3); it was held that taxing statutes have to be strictly construed and requirements which are precedent to the imposition of the tax have to be complied with before tax can be legally imposed. In every case the words have to be construed in the context taking into consideration the language used and the object to be achieved. As we have said above, the use of the words "not being less than one month" implies the giving of a clear month excluding both the first and the last day of the month. There is no dispute as to the meaning of that expression alone which has been so construed and the observations of Lord Parker in *Thompson* v. *Stimpson* (4) will apply. But the question that arises in the present case is: what is the exact significance of these words when used in the context of the other words used in the proviso. The power of the municipality to levy the tax does not depend upon a period prescribed for notice for objections. The power to tax is derived from the Statute; the provisions relating to the length of notice inviting objections and publication are merely procedural. The object of the notification is to inform the future rate payers and to invite objections from them. The proviso itself uses words "reasonable time". Reading "reasonable time" and "not being less than one month" together, it is clear that the

(1) (1929) I.L.R. 52 Mad. 779.
(2) I.L.R. [1952] Bom. 918.
(3) (1927) I.L.R. 51 Bom. 764.
(4) [1960] 3 All E.R. 500.

time given must be reasonable and the legislature has only added a guide so that periods shorter than a month may not be fixed. In the present case the whole of the period except one day has been fixed and in view of the other facts it must be regarded as reasonable and to have complied with the provision which is directory in its later part.

Counsel for the appellants in C. A. 499/501/58 wanted to raise a further objection to the legality of the tax levied and that ground was that the appellants were not carrying on a profession as they were only engaged in motor business and trade. This question was never raised at any previous stage and was not taken in the statement of the appellants' case. Therefore, it cannot be allowed to be raised. Besides it is without any substance in view of the definition of profession as given in s. 91 of the Act, which includes business. In our opinion, the High Court was right in so holding and the three appeals Nos. 499 to 501 of 1958 are dismissed with costs, one hearing fee.

Coming now to Civil Appeal No. 502 of 1958, in the plaint it was alleged that the trust was a religious trust and was following no profession and therefore it did not fall within the definition of the word "profession" as used in s. 91 of the Act. The defendant joined issue and the matter was put in issue in the following form:

> "Is the taxation by defendant of plaintiff illegal and in contravention of the provisions of the District Municipalities Act?"

Although no specific finding was given as regards the operation of s. 91, the suit was decreed and the question whether the trust followed a profession or not seems to have got lost at the subsequent stages of the proceedings, that is, in appeal in the court of the District Judge and in the High Court. It is this point which was urged by counsel for the trust; his plea was that his case was not covered by s. 91, as being a religious trust it had no profession and was carrying on none. That is a matter which, in our opinion, should have been decided, and as neither the District

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Judge nor the High Court has given a finding on that point, it is necessary to remit the case to the High Court with the direction that the appeal be reheard and that particular question be decided on the materials on the record. Nothing that has been said in this judgment must be taken to be an expression of opinion on the merits of this plea taken by the appellant Trust.

Appeal No. 502 of 1958, is therefore, allowed and the case remitted to the High Court for decision. The costs in this Court and in the High Court will abide the decision of the appeal in the High Court.

Appeals nos. 499 to 501 dismissed.
Appeal no. 502 allowed. Case remitted.

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January 27.

VALLABHDAS AND OTHERS
v.
MUNICIPAL COMMITTEE, AKOLA.

(J. L. KAPUR, M. HIDAYATULLAH and J. C. SHAH, JJ.)

Octroi Tax—Legality of imposition—"System of Assessment", meaning of—C. P. & Berar Municipal Act, 1922 (C. P. & Berar II of 1922), s. 67(2).

The Municipal Committee, Akola, passed a resolution to impose an octroi tax and forwarded it along with the draft rules of assessment and collection to the State Government. The State Government published a notification in the Gazette which contained the articles to be taxed, the rate or rates at which they were to be taxed and a brief statement of objects and reasons for the imposition of the tax. This was followed by draft rules as to how taxation was to be done. Thereafter the Municipal Committee affixed on its notice board and also published in the local newspapers the said proposed rules but the draft rules in regard to the "system of assessment" were not published along with other particulars. It was alleged by the appellants that the Municipality by not publishing the draft rules of the "system of assessment", failed to comply in full with the mandatory requirements of s. 67(2) of the Act rendering the imposition of tax illegal.

Held, that the words "system of assessment" did not necessarily mean the whole procedure of taxation, i.e. imposition, collection and procedure in regard to collection and refund. The notice and not the draft rules relating to assessment and collection were required under the Rules to be affixed on the notice