

Municipal Council, Raichur

Vs

Amar Chand Prasanna Etc.

Civil Appeals Nos. 2382 - 2384 of 1966

(J. C. Shah, S. M. Sikri JJ)

01.08.1967

JUDGMENT

SHAH, J. -

On May 3, 1966 the Municipality of Raichur imposed octroi duty on goods specified in Sch. II to the Mysore Municipalities Act 22 of 1964, entering the municipal limits for consumption, use or sale. The respondents who are traders in cloth at Raichur moved the High Court of Mysore by petitions under Art. 226 of the Constitution challenging the levy and collection of octroi duty on goods described in Sch. II of the Act in pursuance of the notification dated May 3, 1966. The High Court of Mysore held that the tax was properly imposed, but in their view collection of the tax was not authorised by law. The High Court accordingly issued a writ of mandamus restraining the Municipal Council, Raichur from recovering the octroi duty levied in pursuance of the notification dated May 3, 1966. The Municipal Council, Raichur, has appealed to this Court against the orders passed by the High Court.

The relevant provisions of the Mysore Municipalities Act 22 of 1964 and the Bye-Laws may be summarised. By s. 94 the Municipal Council is authorised, subject to the general or special orders of the Government, and after observing the preliminary procedure prescribed by s. 95, to levy, among other taxes, octroi on goods specified in Sch. II entering the municipal limits for consumption, use or sale therein. By sub-s. (3) of s. 94 it is provided that the taxes specified in sub-s. (1) shall be assessed, levied and collected in accordance with the provisions of the Act and the rules made by the Government under s. 323. Section 95 prescribes the procedure preliminary to imposition of tax. A municipal council has by resolution passed at a general meeting to select for the purpose one or more of the taxes specified in s. 94 and in such resolution to specify the classes of persons or of property or of both which the municipal council proposes to make liable and to prescribe exemptions which it proposes to make, the amount or rate at which the municipal council proposes to assess any such class, and in the case of octroi, the octroi stations. The resolution must be published in the official Gazette and in such other manner as may be prescribed. Any inhabitant of the municipality may within one month from the publication of the notice submit his objection to the imposition of the tax or to the amount or rate proposed, or to the classes of persons or property to be made liable, or to any exemptions proposed. The municipal council must take into consideration the objections and submit on the Government of the State such objections with its opinion thereon and any modifications proposed in accordance therewith together with a copy of the notice. A resolution sanctioned by the Government together with a notice reciting the sanction and the date and number thereof may then be published by the municipal council in the official Gazette, and the tax as prescribed by the resolution shall be imposed accordingly. Sub-section (2) of s. 97 provides :

"The publication of a notice under this section shall be conclusive evidence that the tax has been imposed in accordance with the provisions of this Act and the rules made thereunder".

Section 123 provides that every municipal council when submitting for sanction a proposal for the imposition of octroi, shall submit therewith for sanction bye-laws for the purposes of cl. (m) of sub-s. (1) of s. 324 or adopt model bye-laws made for the said purposes. Section 124 deals with "non-liability for octroi and refund of octroi on goods in transit". Section 125 invests the municipal council with power to exempt articles liable to octroi duty, and s. 126 relates to the presentation of bills for octroi and prescribes penalties for evasion of payment of octroi. Section 127 prescribes the penalty for selling articles liable to octroi without a licence, or for being in possession of any such article on which octroi has not been paid. Section 323 authorises the Government to make rules for carrying out all or any of the purposes of the Act and to prescribe forms for any proceeding for which it considers that a form shall be prescribed. Exercising the authority conferred by s. 323 the Government of Mysore published on September 2, 1965, the Mysore Municipalities Taxation Rules, 1965. Rules 25 to 32 deal with the collection of octroi. Rule 25 deals with the mode of collection; r. 26 with payment of octroi; r. 27 with assessment and collection of octroi at octroi station; and r. 28 with the procedure in case where octroi is leviable ad valorem. Rule 31 requires the municipal council to maintain a list of traders and public bodies allowed to have an account current, and r. 32 requires a trader of public body allowed to have an account current to present a declaration in Form VII. Section 324 authorises the municipal council to make, alter or rescind bye-laws, subject to the provisions of the Act and the rules made thereunder. Clause (m) provides, insofar as it is material :

"Providing for the exhibition of tables of octroi, requiring a licence to be obtained for the sale of an article liable to octroi and prescribing the conditions on or subject to which such licence may be granted, refused, suspended or withdrawn, regulating, subject to any general or special orders which the Government may make in this behalf, the system under which refunds are to be made on account thereof when the goods on which the octroi has been paid, or article manufactured wholly or in part from such goods, are again exported and the custody or storage of goods declared not to be intended for use or consumption or for sale within the municipality;

Section 325(2) provides that a municipal council may by resolution adopt in respect of any matter the model bye-laws made by the Government under sub-s. (1) of s. 325 in respect of matters specified in s. 324. Sub-section (3) of s. 325 provides :

"If a municipal council proposes to adopt the model bye-laws in respect of any matter subject to any modifications, the procedure specified in sub-sections (4), (5) and (6) of section 324 shall be followed as if the modifications were bye-laws proposed to be made by the municipal council. The modifications as approved by the Government shall be published in the prescribed manner and the model bye-laws shall subject to such modifications come into force from such date as may be specified by the municipal council and where no date is specified on the date of such publication".

Sub-sections (4) & (5) of s. 324 set out the procedure to be followed by the municipal council in the making and publication of bye-laws. Sub-section (6) authorises the local Government while approving the bye-laws to make any changes therein which appear to it to be necessary.

In the present case the Municipal Council adopted the model bye-laws framed by the Government.

It appears, however, that the table of rates in model bye-law 16 relating to the levy of storage fee and charges on goods placed in the bonded warehouses was left blank. The municipal council has however by resolution prescribed a table or rates of storage fee and charges in respect of different classes of articles stored in the bonded warehouses.

The respondents challenge in this Court the validity of the imposition of octroi duty on two grounds : (i) that there was no valid resolution by the Municipal Council under s. 94 of the Act selecting the octroi duty for imposition; and (ii) that the model bye-laws having been altered by adding a tariff of storage fee in the bonded warehouses without following the procedure prescribed under s. 324(4) & (5), the model bye-laws could not be deemed to have been validly adopted by the Municipal Council. They also submit that the Municipal Council has no authority to collect octroi duty, and support the judgment of the High Court, on that question.

Before considering the arguments advanced at the Bar, the steps taken by the Municipal Council for imposing the tax and for adoption of the model bye-laws may be briefly set out. On June 11, 1965 the Standing Committee of the Raichur Municipal Council resolved to levy octroi duty according to Sch. II under s. 94 of the Mysore Municipalities Act, 1964, at the maximum rates at the octroi barriers specified therein. It was recited in the resolution that confirmation of the general body be obtained. By resolution dated June 28, 1965 the general body resolved unanimously to confirm the recommendations of the Standing Committee dated June 11, 1965. On October 27, 1965 the notification under s. 95 of the Act by the Municipality inviting objections to the proposals to impose octroi tax was published. No objections were received from any resident of the Municipality against the proposal to levy octroi. On February 26, 1966 there was a special general body meeting of the Municipal Council and it was resolved to levy octroi with effect from April 1, 1966. The resolution was in the following terms :

"After due decision and consideration it was unanimously resolved to levy the octroi duty on all the goods imported within municipal limits of Raichur under the Schedule II of Mysore Municipalities Act, 1964, from the first day of April 1966. Further the Committee resolved that the Hyderabad District Municipalities Octroi Rules, 1959, will continue till the new Octroi Rules and Bye-laws are finalised under Mysore Municipalities Act, 1964."

But this resolution was amended on March 25, 1966, and second paragraph was substituted by the following paragraph :-

"Further the Committed resolved that the appended Bye-laws framed by the Municipality in the light of Octroi Model Bye-laws 1965 published by the Government in the Mysore Gazette dated 11th November, 1965, have been fully approved."

Approval to the modification in the second paragraph was obtained by circulation to the members and not in an open general meeting. On March 31, 1966 the minutes of the meeting dated February 26, 1966, and the adoption of the resolution modifying the second paragraph by circulation on March 25, 1966, were read, heard and confirmed unanimously. The storage fee under bye-law 16 of the model bye-laws was also adopted. On April 16, 1966 sanction of the Government under s. 96 of the Act of the levy of octroi and the adoption of model bye-laws was given, and on May 3, 1966, the notification under s. 97 of the Act imposing octroi duty under Sch. II to the Act and adopting the bye-laws was published. Thereafter on various dates in the months of July and August, 1966, the

writ petitions out of which these appeals arise were filed.

There is no substance in the contention that the municipal council had not passed a resolution selecting the octroi tax for imposition. As stated earlier, on June 11, 1965 the standing Committee of the Municipal Council had "resolved to impose octroi duty" under Sch. II to the Act. But the resolution also stated that confirmation of the general body meeting should be obtained. The Municipal Council at its meeting dated June 28, 1965 treated the resolution of the Standing Committee as a recommendation and confirmed the recommendation. The resolution dated June 28, 1965 was passed by the general body and thereby the Municipal Council adopted the recommendation of the Standing Committee, and resolved to select levy of octroi duty at the maximum rates at the octroi barriers specified therein.

It is true that the resolution modifying the original resolution dated February 26, 1966 was passed by circulation on March 25, 1966. But in view of the terms of s. 80(5) the validity of the resolution was not liable to be questioned on the ground of irregularity which manifestly did not affect the merit of the case. It may be recalled that on March 31, 1966 the "circulation dated 25-3-66 were read, heard and confirmed unanimously."

The plea that a resolution passed by the Municipal Council cannot, under the Act, be modified or cancelled within three months is without force. Section 57 of the Act provides that no resolution of a municipal council shall be modified or cancelled within three months after the passing thereof except by a resolution passed in the manner prescribed in that behalf. There are no materials on the record to prove that the requirements of s. 57 were not complied with, and s. 97(2) prohibits any enquiry into the regularity of the procedure for imposition of the tax after a notice under s. 97(1) is published. This Court in *Municipal Board, Hapur v. Raghuvendra Kripal & Ors.* in dealing with a similar provision in s. 135 of the U.P. Municipalities Act 2 of 1916, held that s. 135(3) shuts out enquiry into the procedure by which a tax had been imposed. Hidayatullah, J., speaking for the majority observed (p. 958) :

"There is a difference between the tax and the imposition of the tax. The former is the levy itself and the latter the method by which the levy is imposed and collected. What the sub-section does is to put beyond question the procedure by which the tax is imposed, that is to say, the various steps taken to impose it."

Section 97(2) makes the publication of the notice under s. 97(1) conclusive evidence that the tax has been imposed in accordance with the provisions of the Act and the rules made thereunder. The expression "imposed in accordance with the provisions of this Act", in our judgment, means "imposed in accordance with the procedure provided under the Act". All enquiry into the regularity of the procedure followed by the Municipal Council prior to the publication of the notice is excluded by s. 97(2). This is not a case in which the Municipal Council had not selected a tax for imposition by a resolution : nor is it a case in which the Municipal council was seeking to levy tax not authorised by law.

A Municipal Council when submitting for sanction a proposal for the imposition of octroi has to submit under s. 123 with the proposal for imposition of octroi, also bye-laws for the purposes of cl. (m) of sub-s. (1) of s. 324, or to adopt model bye-laws made for the aid purposes. It is to be noticed that under s. 94(3) of the Act the tax has to be assessed, levied and collected in accordance with the provisions of the Act and the rules made by the Government under, s. 323. Bye-laws contemplated to be made under s. 324(1)(m) and required to be adopted from the model bye-laws or specially

framed and submitted under s. 123 deal with matters of details, such as the exhibition of tables of octroi; requiring a licence to be obtained for the sale of any article liable to octroi and prescribing the conditions on or subject to which such licence may be granted, refused, suspended or withdrawn; regulating the system under which the refunds are to be made when the goods on which the octroi has been paid are again exported; for the custody or storage of goods declared not to be intended for use or consumption or for sale within the municipality; prescribing a period of limitation after which no claim for refund of octroi shall be entertained; and prescribing the minimum amount for which any claim for refund may be made. If bye-laws in respect of these matters specified in cl. (m) of s. 324(1) are made and submitted for sanction or model bye-laws framed by the Government for those purposes are adopted, the requirements of s. 123(1) will be satisfied, and if the State Government sanctions the resolution of the Municipal Council imposing octroi duty under s. 97(1) and the notice is duly published, octroi duty may be collected by the Municipal Council. Defect in the bye-laws will not affect the authority of the Municipal Council to collect the tax, for the authority arises under s. 94(3) from the Act and the rules.

The municipal Council of Raichur adopted the model bye-laws made by the Government. None of the bye-laws "for the purposes" of cl. (m) of s. 324 in the model bye-laws was defective or incomplete. The model bye-laws undoubtedly did not prescribe the storage fee, and the resolution of the Municipal Council levying storage fee at the rates set out in the bye-laws and submitted to the Government was not made in conformity with the terms of s. 324(4) & (5).

The High Court held that the bye-laws adopted by the Municipal Council were invalid because (1) the resolution dated February 26, 1966 could not have been modified by circulation; and (2) that it was not shown that the Municipal Council had complied with the requirements of s. 57 when modifying the resolution dated February 26, 1966; and (3) that the State Government had not fixed the time prescribed by bye-laws Nos. 23(e), 27, 28 and 32, and since no decision was taken on those bye-laws by the Municipal Council, the enforcement of the octroi levy was "rendered difficult".

It is clear that under s. 325(3) modifications to the model bye-laws alone require compliance with sub-ss. (4) & (5) of s. 324. It may be assumed that fixing a tariff for storage fee under bye-laws 16 which is not prescribed under the model bye-laws amounts to modification of the bye-laws, but even on that assumption only bye-laws 16 may be deemed to be invalid, and the power to collect the storage fee may not be lawfully exercised by the Municipal Council : that does not affect the validity of the other bye-laws. If without a particular bye-laws, the scheme of the rest of the bye-laws may be unworkable, it may follow by necessary implication that the other bye-laws have also become ineffective. But that cannot be said of the defect in adopting the table of fees for the purpose of bye-laws 16. The Municipal Council may not be entitled to levy any charge for storage under bye-law 16, but that is the only effect of non-compliance with the terms of sub-ss. (4) and (5) of s. 324. The other bye-laws remain valid and operative, for they are plainly severable.

Bye-laws 23(e) of the model bye-laws provides that no refunds shall be allowed in respect of goods which are transported outside the municipal limits within one month of their being brought into the municipal limits, but regarding which the intimation has not been given to the Municipal Commissioner or Chief Officer within such time as may be fixed by the Municipal Council. Bye-law 27 provides that the application for refund with the goods to which it relates shall be presented at the Octroi Station through which it is transported outside the municipal limits within such interval from the hour of examination as the municipal council may determine. Similarly bye-law 28 provides that the Octroi Official-in-Charge of the Octroi Station shall satisfy himself that the goods produced for transport outside the municipal limits as covered by the refund application correspond

with the entries in the refund application form and that they are presented within the time fixed by the Municipal Council under Bye-law 27. In our Judgment, the time contemplated to be fixed for the purposes of bye-laws 23(e), 27 & 28 need not be fixed by the bye-laws. If time is fixed by resolution of the Municipal Council even after the bye-laws are sanctioned, there would be no defect in the bye-laws.

Bye-laws 32 provides that no person shall sell articles mentioned therein without obtaining a licence granted in that behalf. The model bye-law is silent as to the articles which may not be sold without obtaining a licence. Bye-laws 33 to 36 depend for their operations upon the list of articles being effectively incorporated in bye-laws 32. Failure to incorporate the list of articles would result in the Municipal Council being unable to enforce compliance with the requirements of taking out a licence. But we are unable to hold that because of the failure to fix the time under bye-laws 23(e), 27, 28, or for failure to incorporate the list of articles in bye-laws 32, the rest of the bye-laws became ineffective. We are of the view that even without these bye-laws and bye-laws 16, octroi duty may be levied by the Municipal Council. In our view, the High Court was in error in holding that the model bye-laws which were adopted by the Municipal Council were unenforceable.

The appeals must therefore be allowed and the petitions filed by the respondents dismissed with cost in this Court. One hearing fee. The order passed by the High Court regarding the costs is maintained.

Appeals allowed.

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