Village Panchayat of Kanhan Pipri

Vs

Standing Committee, Zila Parishad, Nagpur, and Ors

Civil Appeal No. 1375 of 1966

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

17.08.1967

JUDGMENT

SIKRI, J. -

This appeal by certificate of fitness granted by the High Court of Judicature at Bombay (Nagpur Bench) is directed against the judgment of that Court dismissing the petition filed under art. 226 of the Constitution by the Village Panchayat of Kanhan Pipri, appellant before us. The appellant had in this petition prayed for the issue of a writ quashing the resolution dated April 6, 1964, passed by the Standing Committee, Zila Parishad, Nagpur, and for a writ of mandamus directing the Standing Committee not to interfere with the right of the appellant to impose and collect the octroi duty pursuant to its resolution dated February 25, 1963.

In order to appreciate the points raised before us it is necessary to give the relevant facts and statutory provisions. The Village Panchayat of Kanhan Pipri, hereinafter referred to as the Panchayat, was originally constituted under the C.P. & Berar Panchayat Act, 1946 (C.P. & Berar Act No. 1 of 1947). On June 1, 1959, the Bombay Village Panchayat Act, 1958 (Bombay Act III of 1959) hereinafter refereed to as the Act came into effect in Vidharba region, and by virtue of this Act the appellant was deemed to be a Panchayat under the Act.

On July 14, 1961, the Panchayat passed resolution No. 2 with a view to levy octroi duty. The resolution, after reciting the need for levying octroi duty and the relevant statutory provisions, conclude :

> ".....it passes the resolution to levy minimum octroi tax on the goods coming within its local limits as per the Schedule No. 1 of the Rules."

On November 17, 1962, resolution No. 5 was passed which reads as follows :

> "5. The meeting considered the question of imposition of octroi duty. It has been unanimously resolved that by virtue of Grampanchayat Resolution No. 2, dated 14-7-61, that octroi duty shall be imposed on the goods coming into its local limits, the committee accepts the same. The matter of levying octroi duty shall be undertaken in accordance with the Panchayat Act and its rules. Therefore matter of Octroi Rules, calling for objections for tax and taking of decisions thereon after the consideration, number of the octroi posts and place etc. should be got decided by the appropriate authority. This matter may be taken into hand very urgently. It is so decided by the majority."

On January 26, 1963, a public notice was issue under r. 3(b) of the Maharashtra Village Panchayats Taxes and Fees Rules, 1960 - hereinafter referred to as the Fees Rules. On February 19, 1963, M/s. Brooke Bond of India (Pr.) Ltd. - hereinafter referred to as the Company - respondent before us, preferred objections against the proposed levy of octroi. On February 25, 1963, resolution No. 3 was passed. After setting out the previous resolutions and the publication of the notice by beat of drum, and the various objections received, it concludes :-

> "Having considered all these above objections and suggestions and having given a satisfactory explanation for the same, this Committee unanimously resolved 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 drums (through loudspeakers.)"

On March 17, 1963, resolution No. 3 was passed fixing octroi limits and number of octroi nakas and their places. On March 18, 1963, the Panchayat wrote to the Collector, Nagpur, seeking his approval to the octroi limits, number of octroi nakas and their places.

It appears that the Panchayat started collecting octroi from April 1, 1963. On May 29, 1963, the Company filed an appeal under s. 124(5) of the Act before the Panchayat Samiti, Parseoni. The Panchayat Samiti, however, rejected the appeal by its resolution dated September 4, 1963. This decision was communicated to the Company by letter dated September 19, 1963, stating that the appeal "has been rejected by the Samiti as per its resolution dated 4th September, 1963 because the same was not filed within limitation as per provisions of Bombay Village Panchayat Act and Rule 5 of Taxes and Fees Rules of 1960."

The Company thereupon filed an appeal before the Standing Committee, Zila Parishad, Nagpur - hereinafter, referred to as the Standing Committee - on October 22. 1963. While the appeal was pending, the Tehsildar Ramtek on January 14, 1964, approved the octroi limits and the number and location of octroi nakas within the limits of the jurisdiction of the Panchayat under r. 21 of the Fees Rules. Only April 6, 1964, the Standing Committee allowed the appeal of the Company on two grounds; first, that it was necessary for the Panchayat to have the octroi limits fixed with the approval of the Collector before levying octroi under r. 21; and secondly, that the Company was not importing tea within the limits of the Panchayat for consumption, use or sale. Thereupon, the Panchayat, as already stated, filed an application under art. 226 of the Constitution before the High Court.

The High Court held that the Panchayat Samiti could not dismiss the appeal of the Company as being barred by limitation because r. 5 of the Fees Rules was ultra vires the powers of the rule-making authority. The High Court further held that the octroi duty was not validly levied by the Panchayat as it had failed to fix the octroi limits in accordance with law. The High Court did not deal with the question whether the company's tea was imported into the limits of the Panchayat for consumption, use or sale because it felt that sufficient facts had not been found by the Standing Committee. The High Court felt that it would not be proper to determine facts for itself.

The learned counsel for the appellant contends before us (1) that r. 5 of the Fees Rules was intra vires; (2) that the Standing Committee had not jurisdiction to decide the appeal on merits as the appeal to the Panchayat Samiti was barred by limitation; (3) that the octroi duty has been levied in

accordance with law; (4) that, at any rate, the levy was good after the octroi limits were fixed on January 14, 1964; (5) that the approval of the octroi limits in January 14, 1964, relates back to April 1, 1963; and (6) that the tea was imported into the Panchayat limits for consumption, use or sale.

Before we deal with these points it is necessary to set out the relevant statutory provisions. Section 3(13) of the Bombay Village Panchayat Act, 1958 (Bombay Act III of 1959) defines "octroi" or "octroi duty" to mean "a tax on the entry of goods into a village for consumption, use or sale therein". Section 124(1) empowers Panchayats to levy all or any of the taxes and fees mentioned therein, and reads as follows :

> "124(1). It shall be competent to a panchayat to levy all or any of the following taxes and fees at such rates as may be decided by it (but subject to the minimum and maximum rates which may be fixed by the State Government) and in such manner and subject to such exemptions as may be prescribed, namely :-
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> (ii) octroi....."

section 124(5) provides for appeals in these terms :

> "Any person aggrieved by the assessment, levy of 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."

Section 176(1) enables the State Government to make rules for carrying into effect the purposes of the Act. Section 176(2)(xxvi) provides :

> "176(2) In particular but without prejudice to the generality of the foregoing provision, the State Government may make rules -
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> #. . . . .##
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> (xxvi) under section 124 laying down the maximum and the minimum rates and the manner in which and the exemption subject to which taxes and fees specified in the section shall be leviable;.....".

In exercise of the powers under s. 176 of the Act, the State Government made the rules called the Maharashtra Village Panchayat Taxes and Fees Rules, 1960. Part I of the Fees Rules is headed "General", and apart from definitions it consists of three rules, which read 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 :-
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> (a) The Panchayat shall, by resolution passed at its meeting, select a tax or fee which it proposes to levy and in such resolution shall specify the rate at which it is to be levied.
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> (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 into 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) One 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 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 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.

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.

The scheme of the Fees rules is first to prescribe general rules and then to deal individually with various taxes. Part II deals with tax on Buildings and Lands; Part III with Octroi Part IV with Pilgrim Tax; Part V with tax on Fairs, festivals and Entertainments; Part VI with taxes on Bicycles and on Vehicles drawn by Animals; and so on. We are concerned with Part III. This Part consists of rules 21 to 35, and two schedules. The important rules are 21, 22 and 23, and may be sent out in full :

"21. Fixing of octroi limits and nakas. - A Panchayat shall, with the approval of the Collector or of any officer authorised by the Collector not below the rank of a Mamlatdar Tehsildar, Naib Tehsildar or Mahalkari, fix octroi limits and the number and location of octroi Nakas within the limits of its jurisdiction.

22. Rate of octroi - Octroi may be levied by a panchayat, after following the procedure prescribed in rules 3 and 4, on all or any of the goods specified in column 1 of Schedule I, annexed, to this Part, which are imported into the octroi limits for consumption, use or sale therein and at such rates as may be decided by it but not below the minimum and not exceeding the maximum rates specified in columns 2 and 3, respectively, of that Schedule.

23. Payment of octroi on introduction of goods, etc. - The octroi shall be paid at the octroi Naka at the time when the articles in respect of which it is leviable are imported into the octroi limits of a panchayat."

Rules 30, 31, 32 and 33 deal with refund of octroi.

We may first deal with the question of the validity of the levy of octroi duty. It seems to us that the octroi duty has been levied in accordance with law. It would be noticed that the rule which authorised the levy is r. 22, but it enjoins that the procedure prescribed in rr. 3 and 4 should be followed before the octroi duty can be levied. When we turn to rr. 3 and 4, it would be noticed that these rules proscribe the procedure for levying tax or fee and are not confined to octroi duty only. Rule 7 which deals with tax on buildings and lands also prescribes that the panchayat shall follow the procedure prescribed in rr. 3 and 4 before levying a tax on buildings and lands. Similarly, r. 37 which deals with tax on pilgrims provides that the procedure prescribed in rr. 3 and 4 should be followed. Again, in r. 53, which deals with tax on vehicles, a reference is made to rr. 3 and 4. Rule 71 which deals with tax on professions also contains a reference to rr. 3 and 4. Rule 84 which deals with fee on markets and weekly bazar has a reference to rr. 3 and 4. Rule 93 which deals with fee on cartstands and tonga-stands makes the procedure in rr. 3 and 4 applicable. The scheme of the Fees Rules accordingly seems to be that the general procedure for levying taxes or fees is laid down and then this procedure is made applicable to the levy of various taxes mentioned in the other parts of the Rules. Viewed in this background, it seems to us that r. 3(b) does not require the Panchayat to fix the octroi limits in the resolution passed under r. 3(a). It only deals with two items; (1) selection of the tax and the rate at which it is to be levied. Rule 3(c) has to be similarly read. The inhabitants of the village would be entitled to object only to these two matters, namely, (1) the tax or fees imposed and the rate at which it is levied. Under r. 3(d) what the panchayat does is to consider objections and suggestions and then finally make the choice as regards two things, i.e. the tax or fee to be imposed and the rate at which it is to be levied.

This interpretation is reinforced by a proper reading of r. 4. Rule 4 requires a notice stating two things; (1) the tax or fee to be levied and (2) the rate. But the learned counsel for the Company, Mr. Ashok Sen, argues that this interpretation is not correct because para 2 of r. 4 says that the tax shall accordingly be levied from the date which shall be specified in the notice, and he says that if the octroi limits had not been approved of by the time the resolution is passed, how could the tax be levied from the date specified in the notice. But r. 4 has to be read alongwith r. 21, and if so read, it would mean that before the octroi duty can start being levied, r. 21 must be complied with. In other words, para 2 of r. 4 must be read to mean that the octroi will be levied from that date provided r. 21 had been complied with.

We are, however, unable to agree with the learned counsel for the appellant that before the octroi limits are approved octroi can be collected. We consider that the fixing of the octroi limits with the approval of the Collector is an essential condition precedent to the levy of octroi duty. The learned counsel for the appellant says that the approval of the Collector on January 14, 1964, relates back and, therefore, the levy of octroi from April 1, 1963, was regularised. We are unable to agree with this submission. Apart from the fact that it may in certain circumstances lead to illegal levies, there is nothing in the language of r. 21 which indicates that the Collector can regularise an imposition made without the authority law. The Collector may in particular cases enlarge the octroi limits or reduce the octroi limits and it would lead to great confusion if either of the things happens after the Panchayat had been collecting octroi duty within the octroi limits submitted by it to collector for approval.

We may here deal with a minor point which was mentioned in the course of arguments. The High Court held that "r. 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." On the language of r. 3(b) we are unable to appreciate how action taken under the Act and the rules is required to be notified to

the public. There is nothing in the language to warrant such a construction.

In conclusion we hold that the octroi duty was validly levied and that it could be imposed and collected with effect from January 14, 1964.

Mr. Sen raised another point not dealt with by the High Court. He urges that there was no proper publication under r. 4. We are unable to allow him to raise this point at this stage. He says that this point was raised before the High Court but it has not been dealt with by it. He points out a passage in the judgment of the High Court but we are unable to agree with him that the High Court has implied that this point was raised before it. He further says that this point was taken in the return filed on behalf on the Company. Para 2 of the return only alleged :

> "This respondent says that at that time no copy of the Rules required to be published by Rule 4 of the Rules was exhibited along with the said Notice. This respondent is not aware and does not admit that the fact of publication of the Notice under Rule 4 was announced by beat of drum in the village."

This allegation is reiterated in para 9 of the return. No such specific point was taken in the grounds of appeal to the Panchayat Samiti. It was broadly stated that the procedure required to be followed for imposing octroi had not been followed in imposing the same. Similarly, in the grounds of appeal to the Standing Committee, vague allegations were made "that the village Panchayat has erred in law in not following the procedure contemplated by law in the matter of imposing the octroi and has acted contrary to the principles of natural justice on an assumption that the formalities contemplated by law were complied with." He relies on the notice which is no the record to show that as a matter of fact the publication was not in accordance with law. In the circumstances noted above we are unable to allow him to raise this point at this stage.

Coming to the question of the vires of r. 5, it seems to us that the High Court has placed a wrong interpretation on r. 5. The High Court has held that as r. 5 applies to all appeals under s. 124(5) of the Panchayat Act, the fixing of the commencement of the period of limitation as the date of publication of the notice under r. 4 for all appeals is arbitrary and destructive of the right of appeal. But this interpretation, with respect is not correct, if r. 5 is real in the setting in which it occurs. Rule 5 follows immediately rr. 3 and 4 and is headed "Appeal against levy of any tax or fee", and the period of sixty days of limitation commences from the date of the publication of the notice under r. 4, i.e. the notice following the decision of a Panchayat to levy and tax or fee. This date shows that r. 5 is dealing only with appeals against levy of any tax and not with the assessment or imposition of a tax or any further appeals to the Panchayat Samiti under s. 124(5). It is true that the opening sentence makes a reference to an appeal under sub-s. (5) of s. 124, and this opening sentence would cover all appeals under sub-s. (5) of s. 124, but in the context and setting, the heading of r. 5 brings out the scope of the rule. Accordingly, the appeal of the Company to the Samiti was wrongly dismissed as time-barred. It follows from this that the Standing Committee was entitled to deal with the appeal on merits.

The only point that remains is whether the Company brought tea into the octroi limits of the Panchayat for consumption, use or sale, therein. As we have pointed out, the High Court felt difficulty in dealing with the question because neither the Panchayat Samiti nor the Standing Committee had found sufficient facts to enable it to deal with the question. Mr. Sen says that he is willing to take the facts as stated at the bar by the learned counsel for the appellant. But we consider that it is an unsatisfactory way of dealing with questions of fact. Before this question can be dealt

with satisfactorily, all the relevant facts must be found by the Standing Committee. It is true that the Standing Committee inspected the premises of the Company but in their order they have given very scanty facts. They do not say whether the tea is crushed, processed or treated chemically to convert it into a marketable commodity. The learned counsel for the Panchayat contends that these things are done and that the resultant product is completely different from the tea imported into octroi limits. It is also not quite clear whether the tea which is imported by the Company is known in trade circles as a different commodity from the tea actually sent out in boxes. In the circumstances we must also decline to deal with this point.

In the result the appeal is allowed, and it is declared that the Panchayat could validly impose octroi duty from January 14, 1964, in accordance with the resolutions dated February 25, 1963, and March 17, 1963. The case is remanded to the High Court to deal with the question whether the Company imported tea for the purpose of consumption, use or sale within the octroi limits of the Panchayat. The High Court may either remand the case to the Panchayat Samiti or deal with it as it may consider best in accordance with law. Under the circumstances there will be no order as to costs in this appeal.

Appeal allowed.

G.C

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