

The Nagar Panchayat, Una

Vs

The Una Taluka Sahakari Kharid Vechan Sangh Ltd.

Civil Appeal No. 1059(N) of 1970

(J. C. Shah, A. N. Grover JJ)

17.09.1970

JUDGMENT

GROVER, J. -

1. This appeal by certificate arises out of a writ petition filed by the respondent which is a society registered under the Bombay Co-operative Societies Act, 1925, challenging the collection of octroi by the appellant which is the Una Nagar Panchayat.
2. The appellant is a local body constituted under the Gujarat Panchayat Act, 1961, hereinafter called the "Act" which came into force with effect from April 1, 1963. Prior to its enactment the Bombay Municipal Act, 1901, as applied to Saurashtra, was in force in that region of the present State of Gujarat. Under its provisions Una Municipality was constituted. It was collecting octroi on commodities which were imported into the municipal limits of Una under the Saurashtra Terminal Tax and Octroi Ordinance, 1949. Under Section 3 of that Ordinance the Government could impose the tax mentioned thereunder in the cities and towns specified or included later in Schedule I. One of these taxes was a terminal tax on goods imported into or exported from the terminal tax limits. Octroi as defined by Section 2(2) included a terminal tax. Section 4 gave the power to the Government to make rules by notification for the purpose of carrying out the purposes of the Ordinance. Rules were framed under Section 4 in the Gujarati language. It was provided therein that the collection of octroi and terminal tax would be done through the Sudhrai of the area entered in the Schedule to the Ordinance. It is apparent that under the Ordinance it was the State Government which imposed the octroi or the terminal tax in the cities and towns specified in the Schedule and the Sudhrai was only an agency for collection thereof.
3. By a notification, dated December 12, 1949, issued under the Ordinance the Government of the erstwhile State of Saurashtra included the town of Una in the Schedule to the Ordinance. Thus octroi and terminal tax became leviable in that town on certain commodities imported there. Section 9 of the Ordinance must also be noticed. According to it the Government was to maintain a separate fund in respect of all monies received by it on account of any of the taxes specified in Section 3 for every city or town or local area specified in Schedule I and such fund after deducting therefrom the expenditure incurred in connection with the levy and collection of such tax was to be applied for the benefit of the inhabitants of the city or town or local area for which it was maintained. The purpose of levying the octroi duty or terminal tax under the Ordinance clearly was to add to the revenue of the local body for the benefit of the people residing within the jurisdiction of that particular local body.
4. So long as Una Municipality remained a municipality as constituted under the Act of 1901, there

was no difficulty in the matter of collection of the octroi. After the Act came into force the Nagar Panchayat replaced the Municipality in Una. It continued to collect the octroi till 1967, when the respondent, for the first time, raised an objection that it was not entitled to do so. As the Nagar Panchayat persisted in making the collection a petition under Article 226 of the Constitution was filed in the Gujarat High Court. It has been held by the High Court that since in the Rules promulgated under the Ordinance in Gujarati the collecting agency has been described as Sudhrai which means a municipality, the Nagar Panchayat was not competent to collect the octroi under the Ordinance as it did not fall within the meaning or definition of the term "municipality".

5. In our judgment the High Court was in error in coming to the conclusion that the Nagar Panchayat was not entitled to carry on the work of collection of octroi under the Ordinance even though the Ordinance which imposed liability to pay remained in force. Under Section 307 of the Act where any local area was declared to be a Gram or Nagar under Section 9 and if that area was co-extensive with the limits of a municipal district or municipal borough the municipality functioning in such local area was to cease to exist and in its place an Interim Gram Panchayat was to be constituted. According to clause (c) of that section the unexpended balance of the municipal fund and property including arrears of rates, taxes and fees belonging to the municipality and all rights and powers which vested in the municipality were to vest in the interim Gram or Nagar Panchayat fund until a new Panchayat was constituted in accordance with the provisions of Section 308(1). Clause (g) provided that all officers and servants in the employ of the municipality were to become officers and servants of the Interim Panchayat under the Act. Clause (k) was in the following terms :

"Any law (other than the municipal law) or any rule, bye-law, notification or order issued under such law, which was applicable to and in force in the local area immediately before it was declared as a Gram or Nagar under Section 9, shall continue to apply to and to be in force in the local area until it is superseded."

Section 308 dealt with the term of office of an Interim Panchayat and the steps to be taken to hold election for a new Gram or Nagar Panchayat. The appellant in the present case is indisputable the duly constituted Nagar Panchayat.

6. Section 307 of the Act leaves no room for doubt that wherever a Nagar Panchayat was constituted in place of the municipality the municipality disappeared and all its funds including the right to realise taxes, etc., vested in the Nagar Panchayat. In other words it was the Nagar Panchayat which was to function as the local body in the area previously constituted as a municipality. Clause (k) of Section 307 clearly saved all laws or rules which were applicable to the local area which formed a municipality and they were to continue to apply and to remain in force in the area for which the Nagar Panchayat came to be constituted. By no stretch of reasoning could it be said that the Ordinance did not become applicable to the cities and towns specified in Schedule I which came to be constituted as Grams or Nagars under the Act. It is true that no fresh rules were promulgated under the Ordinance adapting the new terminology but even about the word Sudhrai it is a moot point whether it means only a municipality as constituted under the Act of 1901.

7. An argument was raised before the High Court that the Gujarati expression 'Sudhrai' meant any Local Self-Governing authority. The High Court observed that this expression as used in the octroi rules could not have a wider connotation than the expression "municipality" in Section 9 of the Ordinance. When Section 307(k) of the Act saved the operation of all laws and rules, etc., other than the municipal law the intention of the Legislature was precise and definite and it is futile to

suggest that the Ordinance was not covered by this saving clause. The object underlying clause (c) of Section 307 was to vest in the Nagar Panchayat the entire municipal fund including the arrears of taxes and fees as also the powers and rights relating thereto which previously vested in the municipality. The octroi which was being collected under the Ordinance clearly fell within the ambit of clause (c). The power and the right, therefore, had passed to the Nagar Panchayat and it was fully entitled to exercise it. Even if in the rules framed under the Ordinance certain expression created a difficulty that could not defeat the right and the power conferred on the Nagar Panchayat by the Act of realising and collecting the octroi which was being done under the Ordinance as saved by clause (k) of Section 307.

8. If on account of the absence of proper adaptation in the rules made under the Ordinance any difficulty is being experienced in the collection of octroi it is always open to the State Government to make those clarifications and adaptations and indeed it would be expedient and desirable to do so. So long as the new rules are not framed under the Ordinance or adaptations are not made thereunder the Nagar Panchayat can certainly make the collection through the officers who discharge the same duties as were being performed by their counterparts mentioned in the rules. This is what seems to have been done upto 1967 without any objection by any one.

9. In the result the appeal succeeds and it is allowed with the costs in this Court as also in the High Court.

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