

Municipal Corporation, Jabalpur and Another

Vs

Shri Soorji Bhanji Keniya

Civil Appeal No. 1506 of 1971

(A. N. Ray, D. G. Palekar, M. H. Beg JJ)

13.10.1972

JUDGMENT

PALEKAR, J. -

1. This is an appeal by certificate from an order of the Madhya Pradesh High Court issuing a mandamus against the Municipal Corporation, Jabalpur, ordering the Corporation to forebear from recovering octroi tax on certain goods at a rate exceeding two annas per maund, which was the maximum limit fixed by the State Government.

2. Under the Central Provinces and Berar Municipalities Act, 1922, which applied to Municipalities including that of Jabalpur, the Provincial Government, purporting to act under Section 66(2) of the Act, fixed by notification No. 2093-714-VIII, dated September 5, 1923 the maximum ad valorem rates for the imposition of octroi by the Municipalities. The Municipal Committee, Jabalpur acting under Section 66(1) of the Act imposed from May 14, 1943, subject to the maximum already prescribed, octroi on metal and metal goods at the rate of Rs. 2/5/6 per cent. ad valorem. Item No. 70 was as follows :

"Metal and metal goods (excluding pure gold and silver) watches, clocks, motor, motor cycle, tricycles, perambulators and machines and machinery and their spare parts, tools of all kinds, parts of all kinds, printing press and machines - at the rate of Rs. 2/5/6 per cent. ad valorem."

3. Respondent Soorji Bhanji Keniya was a local trader and he used to import within the octroi limits of Jabalpur, hardware goods, machinery and machine parts which admittedly fell within the above item and he was liable to pay ad valorem duty as prescribed above.

4. Later in 1950 by notification under Section 66(2) of the Act No. 1584-1661-M-XIII, dated April 29, 1950, the State Government made the following rule :

"Octroi tax shall not be imposed on any article specified in column (2) of the table below in excess of the rates specified in the corresponding entry in column (3) thereof :

#	TABLE-----	Sl. No.	Name of Articles
Rate-----		1 2 3-----	
	X X X X 9	Mild steel and wrought iron	Rs. -/2/- per maund." and their manufactures-----##

5. The above rule came into force from June 5, 1950 and it was the claim of the respondent that ad valorem tax fixed in 1943 could no longer continue in force and the only rate at which his goods would be liable to the octroi tax was the rate not exceeding two annas per maund.
6. In the meantime the City of Jubbulpore Corporation Act, 1948 was passed and was brought into force on June 1, 1950. By reason of Section 2 of the Act, the Municipality of Jubbulpore was withdrawn from the operation of the Central Provinces and Berar Act, 1922 but by virtue of Section 3(2) the notifications, taxes etc., which were in force under the Central Provinces and Berar Act, 1922, continued to be in force as if they were enacted under the appropriate provisions of the new Act viz., the City of Jubbulpore Corporation Act, 1948. The provision for levying octroi was under Section 120(1)(e); and sub-section (3) of that section empowered the Provincial Government to regulate the imposition, assessment and collection of taxes and specify maximum amounts of rates for any tax.
7. By Government notification No. 3821/179/M-XIII, dated July 12, 1954, the State Government, purporting to act under Section 120(3) of the City of Jubbulpore Corporation Act, 1948, made some amendments in the notification, dated April 29, 1950 referred to above. For the entry "mild steel and wrought iron and their manufactures", the following was substituted : "steel and iron and mild steel section including plates, bars and other iron manufactures". One more item was added "12. Spares and components parts of machinery - two annas per maund".
8. The respondent's claim was that the goods which he imported fell within the two items referred to above and were liable to pay octroi not exceeding the rate of two annas per maund.
9. The Madhya Bharat Municipal Corporation Act, 1956, was first enforced only in the cities of Indore and Gwalior on October 30, 1956. But by an amendment which came into force on May 20, 1961, the Act came to be known as the Madhya Pradesh Municipal Corporation Act, 1956, and was applied to the city of Jubbulpore. The City of Jubbulpore Corporation Act, 1948, ceased to operate. But by Section 3(2) of the new Act notifications issued and taxes imposed under the old law continued to be in force as if they had been issued or imposed under the new Act. Section 132(1)(e) provided for the imposition of octroi and sub-section (6) of that section authorised the State Government to prescribe by notification in the Gazette, such maximum and minimum limits with respect to the amount or to the rate or both as may be specified in such notification within which the Corporation may impose taxes mentioned in sub-sections (1) and (2) of Section 132.
10. In 1964 the respondent and many other Hardware merchants in Jubbulpore objected to the Corporation levying octroi at the ad valorem rate of Rs. 2/5/6 per cent. as imposed on May 14, 1943. They charged the Corporation with disregard of the notifications issued by the State Government, dated April 29, 1950 and July 12, 1954, referred to above which clearly prescribed that the octroi on the goods imported by the respondent within the municipal limits was not leviable at a rate in excess of two annas per maund. That contention has been upheld by the High Court.
11. The respondent had filed the petition in the High Court in 1965, but the same was disposed of in 1971. The reason appears to be that appeals had been filed to the Commissioner and, later, to the Administrator of the Corporation against the excess levy and though the High Court gave time for the disposal of the appeals, they were not disposed of, and ultimately the High Court had to hear the petition and dispose it of in March, 1971.
12. We find no substance in this appeal. It is not disputed that the goods imported within the octroi

limits by the respondent fall within the following description "(a) steel iron and mild steel section including plates, bars, G.I. and black sheets and other iron and steel manufacturers and (b) spares and component parts of machinery".

13. Both these items are liable to pay octroi not in excess of two annas per maund by reason of Government Notification No. 3821/179/M-XIII, dated July 12, 1954. That notification was issued by the State Government under Section 120(3) of the City Jubbulpore Corporation Act, 1948. The sub-section provided that the State Government may, by rules made under the Act, regulate the imposition, assessment and collection of taxes under Section 120 and specify maximum amounts of rates for any tax and for preventing evasion of assessment and payment of taxes. The notification specified the maximum amount of rate for octroi in respect of specified goods. Therefore, any imposition of the tax by the Municipality under Section 120(1) which exceeded the limits prescribed by the notification would be obviously bad. The Corporation had not imposed directly any tax under Section 120(1) of the Act, but had purported to impose the tax as authorised by the rules made by the Municipality under the Central Provinces and Berar Act, 1922, on May 14, 1943. Those rules, it was contended, prescribed the ad valorem rate of Rs. 2/5/6 per cent. on such goods, and continued to remain in force by virtue of Section 3(2) of the City of Jubbulpore Corporation Act, 1948. That is undoubtedly true. The taxes imposed by the Municipality under Section 66(1) of the Central Provinces and Berar Municipality Act, 1922, would continue to be in force as if they were imposed under the new Act under Section 120(1). But even as the taxes would continue to be in force under Section 120(1), the notification issued by the State Government on April 29, 1950, under sub-section (2) of Section 66 of the Central Provinces and Berar Municipality Act, 1922, would continue to be in force under sub-section (3) of Section 120 of the City of Jubbulpore Corporation Act, 1948, read with Section 3(2) of that Act. That notification had clearly prescribed the maximum octroi for these goods as annas two per maund. Hence side by side we had two orders with regard to the imposition and levy of octroi on these goods. One was the imposition made by the Municipality under Section 120(1) of the City of Jubbulpore Corporation Act which prescribed an ad valorem rate and, the other was the notification issued by the State Government prescribing the maximum rate for octroi which could be imposed. In the case of conflict between the two it is obvious that the maximum prescribed by the State Government would hold the field. The notification issued by the State Government either under Section 66(2) of the Central Provinces and Berar Municipality Act, 1922 or under Section 120(3) of the City of Jubbulpore Corporation Act, 1948 or under Section 132(6) of the Madhya Pradesh Municipal Corporation Act, 1956 after its application to Jubbulpore in 1961 would be binding upon the Municipal Corporation and any tax imposed by it exceeding that limit would be invalid.

14. That position was not seriously contested before us. Mr. Mukherjee, on behalf of the appellant-corporation, however, attempted to contend that these two notifications of the State Government, dated April 29, 1950, and July 12, 1954, were ultra vires of the powers of the State Government. It is rather difficult to understand this contention. The Corporation was the respondent in the High Court and it does not appear that at any time it had sought to challenge these notifications issued by the State Government. The point was not argued before the High Court and it is difficult to see how in the absence of the State Government as a party to the proceeding such a contention could at all be taken. We did not, therefore, permit Mr. Mukherjee to argue that the above notifications were ultra vires of the powers of the State Government.

15. It was then contended by Mr. Mukherjee that the form in which the mandamus has been issued would require him to charge octroi at the rate of two annas per maund for all time. He submitted that when the Writ Petition was pending in the High Court the State Government had issued a

notification, dated September 27, 1968, whereby it had fixed the octroi rate of Rs. 2.35 P. per cent. ad valorem on similar goods and therefore, at least from that date the two annas per maund rule must be deemed to have been abrogated. We are of concerned with that contention now. It does not appear from the judgment that the attention of the High Court was invited to any such notification issued by the State Government. The Writ Petition had been filed in 1965 and the complaint was that octroi was being imposed upon goods at a rate in excess of the maximum prescribed by the State Government at that time. The High Court was concerned with that limited question and not with the question whether at some future date it was not open to the State Government to fix another rate as the maximum. We are also not concerned with the same. If, after 1965, octroi was levied at a higher rate, merchants would be liable to pay octroi at that rate, provided, always, the levy was legal and valid. But so far as the petition itself was concerned the complaint made by the respondent in the High Court was well-founded viz. that octroi was being charged at a rate in excess of the maximum permitted by the State Government. On that finding the mandamus was rightly issued.

16. The appeal is dismissed with costs.

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