The Municipal Board, Maunath Bhanjan

Vs

M/S. Swadeshi Cotton Mills Co. Ltd. and Others

Civil Appeal No. 527 of 1976

(V.V. Chandrachud, P.N. Shinghal JJ)

28.01.1977

JUDGMENT

SHINGHAL, J. –

1. This appeal by special leave is directed against the judgment of the Allahabad High Court dated March 26, 1976. It relates to the validity of the imposition of octroi with effect from July 15, 1950, on certain goods brought within the Maunath Bhanjan Municipality, hereinafter referred to as the Board.

2. The challenge to the imposition was made by the Swadeshi Cotton Mills Company Ltd., hereinafter referred to as the Company. The company started constructing a textile factory, a part of which at any rate, fell within the area of the Board. It applied for and obtained exemption from the levy of octroi on its building material on the ground that it was a new concern. It however started bringing more articles within its premises, and the Octroi Superintendent made a demand for the payment of octroi on June 25, 1969. The Company tried to avoid the levy on the basis of the order of exemption, but the Executive Officer of the Board repeated the demand on May 30, 1970, and June 16, 1970. The Board also wrote to the State Government for permission to relies octroi from the Company. The Government gave the permission to realise the tax. The Company thereupon challenged the levy of the octroi in the High Court by a writ petition. The High Court took the view that the initial imposition of the octroi was illegal, allowed the writ petition, and issued a mandamus directing the Board not to realise the tax. The Board feels aggrieved and has come up in appeal to this Court.

3. It appears that the Company took four grounds for challenging the levy of octroi, but the High Court examined only the following ground, as it took, the view that it was enough for the Company's success in the petition, and did not examine the other grounds, -

> that the procedure prescribed for the imposition of taxes by Municipal Boards under Sections 131 to 135 of the U.P. Municipalities Act, 1916, was not followed by the Municipal Board.
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> Counsel for the parties have accordingly confined their arguments to the finding of the High Court in favour of the Company on this ground.

4. As the ground on which the Company has succeeded is quite general and vague, we asked counsel for the parties to refer to the precise plea in that respect, on the writ petition. They could however only invite our attention to ground No. 6 of the writ petition where the Company has

merely stated that the imposition of octroi was void and illegal "because mandatory provisions for imposition of octroi tax as provided in the U. P. Municipalities Act has not been followed". It is therefore obvious, and has not been disputed before us, that the Company took a very vague ground to challenge the validity of the imposition of octroi, and left it to the High Court to embark on a roving and fishing inquiry, on the off chance of finding some violation of the so-called "mandatory provisions for the imposition of octroi". It has not been disputed before us that the High Court undertook such an inquiry and struck down the imposition on the following grounds :

> (1) The draft rules for the levy of the tax were not published, and only the rates of octroi were published, so that there was violation of the provisions of Section 23 of the General Clauses Act and Sections 134(1) and 300 of the Act.
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> (2) The order of the District Magistrate, which was equivalent to the special resolution of the Board under sub-section (2) of Section 134 was invalid as it was passed on June 20, 1950, while the rules were finalised and published on July 15, 1950.
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> (3) There was no "foundation or basis" of the notification under Section 135(2) and no such notification was published.

5. Counsel for the Company however strenuously argued that there was no compliance with the provisions of Sections 131 to 133 also, and made a reference to the decisions in Municipal Board, Hapur v. Raghuvendra Kripal [(1966) 1 SCR 950 : AIR 1966 SC 693] and Raza Buland Sugar Co. Ltd. v. Municipal Board, Rampur [(1965) 1 SCR 970 : AIR 1965 SC 895], for the purpose of showing that parts of Sections 131 to 134 were mandatory, and has to be followed. We find that the High Court has categorically stated that the Company did not assert that sub-sections (2) and (3) of Section 131 had not been complied with, and that there was "no dispute regarding compliance with the provisions of Section 131". The High Court has also stated that the Company "has not asserted that any of the provisions of Section 132 has not been followed". It has further stated that there was "no complaint of non-compliance with the provisions of Section 133 also". There was thus no challenge to the validity of the imposition of octroi on the ground that there was no compliance with the provisions of Sections 131, 132 and 133 and we are not called upon to examine the argument that there was non-compliance with the provisions of those sections. There was also no dispute in the High Court that "the Municipal Board was competent to impose octroi tax." We shall accordingly examine the three grounds, on which the High Court has held the imposition of octroi as invalid, in this background.

6. Ground No. 1. The High Court has held that there was no previous publication of the draft rules for the levy of octroi and that only the rates of octroi were published. So that there was breach of the provisions of Sections 134(1) and 300 of the United Provinces Municipalities Act, 1916, hereinafter referred to as the Act, and Section 23 of the General Clauses Act. It will be recalled that the High Court has found that the Company had not challenged the imposition of octroi on the ground that there was non-compliance with the provisions of Sections 131 to 133. It cannot therefore be disputed that the draft rules were published as required by sub-section (3) of Section 131. Moreover we find from the affidavit which has been filed on behalf of the Board that its Officer Incharge wrote to the Prescribed Authority on January 9, 1950, that the draft rules had been published in the "Sansar" on November 1, 1949, and may be sanctioned. A copy of that letter has been placed on the record. It may also be mentioned that the Officer Incharge wrote to the Commissioner intimating that only two objections had been received, which were for reduction of

the tax, and that after considering them the rate of the tax had been reduced from Rs. 1/8/- to Re. 1/- per maund, and the necessary amendment had been made in the rate chart. An objection was also received from the Shoe Makers' Association, and the Commissioner directed that if the Board wanted to make any modification, it may again publish the modified proposals. This was done on February 14, 1950, but as only the rates had been reduced, and the rules had not been modified, it was not necessary to republish the draft rules. The Prescribed Authority accordingly sanctioned the same on April 1, 1950, under Section 133. The rules were forwarded to the Prescribed Authority on April 26, 1950, and were published in the State Gazette dated July 7, 1950. It was stated in the notification that the rules were published under Section 300 of the Act, which required their previous publication, but there can be no doubt that it was a notification under sub-section (2) of Section 135 as it was issued after receipt of the Board's special resolution in pursuance of the sanction of the Prescribed Authority, and it was directed that the rules shall take effect from July 15, 1950. It is therefore futile to contend that the rules were not made in accordance with the provisions of Sections 134(1) and 300 of the Act and Section 23 of the General Clauses Act which requires certain conditions to be observed in regard to the making of rules after previous publication.

7. Ground No. 2. It is not in dispute that the special resolution for the imposition of the tax was sent by the Officer Incharge of the Municipal Board on June 20, 1950, stating that July 15, 1950, had been fixed for the levy of the tax. It is true that the rules were published under the notification dated July 7, 1950, but that would not necessarily lead to the conclusion that the resolution dated June 20, 1950, was rendered nugatory, or that it was necessary for the Board to pass another resolution. The notification shows that the authority concerned not only published the resolution by its notification dated July 7, 1950, but also stated that they shall take effect from July 15, 1950, which was the date fixed by the resolution dated June 20, 1950, for the imposition of the tax. There was therefore no jurisdiction for taking the view that the resolution dated June 20, 1950 could not authorise the imposition of the tax from July 15, 1950, merely because it was passed before the publication of the rules. At any rate any technical defect in the date of the resolution could not have the effect of making the imposition void in the facts and circumstances of this case.

8. Ground No. 3. As has been shown, the notification dated July 7, 1950, which was published under Section 300 of the Act, was, in fact and substance, issued under the authority of sub-section (2) of Section 135, and it would not matter if it did not make a specific reference to that sub-section and made a reference to Section 300 instead. The High Court therefore erred in thinking that there was no notification under sub-section (2) of Section 135 at all. It is the nature of the notification which is decisive of the section under which it has been issued, and we have no doubt that the impugned notification was really issued under sub-section (2) of Section 135.

9. We have thus no doubt that the notification had really been issued in compliance with the requirement of sub-section (2) of Section 135 of the Act. That would attack the application of sub-section (3) of that section which provides as follows :

> 135(3) A notification of the imposition of a tax under sub-section (2) shall be conclusive proof that the tax has been imposed in accordance with the provisions of this Act.
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> So when a probative effect had been given by law making the notification of the imposition of the tax as "conclusive proof" that the tax had been imposed "in accordance with the provisions of this Act", no evidence could be allowed to combat that fact, and we have no hesitation in holding that the imposition was according to

the law.

10. It is not disputed that Maunath Bhanjan is an industrial town, and its Board was collecting octroi since July 15, 1950. The Company started the construction of its factory in 1968-69, and, as has been stated, it applied for and obtained exemption from the levy of octroi on its building material on the ground that it was a new concern. The Board granted the exemption on July 21, 1967, for a period of 10 years, and that fact was acknowledge in the Company's letter dated August 18, 1967. The Company prayed for the continuance of the exemption even after that time limit. The State Government however granted the exemption for five years. The Company started "importing" certain other articles, and the State Government ultimately gave permission to the Board on April 2, 1973 to realise octroi from the Company with effect from May, 1974. The Company once again applied for further exemption on August 14, 1973, but without success. It is thus clear that, far from having any doubts about the validity of the imposition and levy of octroi, the Company accepted the validity thereof and prayed for exemption. It availed of that exemption, for some years, and applied for its extension until as late as August 14, 1973. It was only when further exemption was refused, that the Company thought of filing the writ petition. As has been shown, the Company did not, even then, venture to point out any reason why the imposition could be said to be invalid, and merely stated that the "procedure" prescribed under Sections 131-135 had not been followed. That was far too vague a plea to justify investigation and interference in the exercise of the extraordinary jurisdiction of the High Court under Article 226 of the Constitution.

11. The appeal is allowed, the impugned judgment of the High Court dated March 26, 1976, is set aside, and the writ petition is dismissed with costs.

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