

M/S. Jindal (India) Pvt. Ltd.

Vs

Rachhpal Singh and Another

Civil Appeal No. 1071(N) of 1970 etc.

(Syed M. Fazal Ali, P. S. Kailasam JJ)

16.04.1980

JUDGMENT

FAZAL ALI, J. –

1. This appeal by certificate is directed against the Judgment of Punjab and Haryana High Court dated October 24, 1969 in a writ petition filed before it in which the validity of Section 71(1) of the Punjab Municipal Act was challenged. The High Court after considering the contentions advanced before it found that Section 71(1) of the Act was constitutionally valid but at the instance of the respondent who is merely a taxpayer held that the order passed by the government in this case granting exemption to the appellant was arbitrary and therefore an illegal exercise of discretion under Section 71(1) of the Act.

2. In the first place we fail to understand how the High Court could go into the question of the validity of the order at the instance of a person who has absolutely no locus standi to ask the court to strike down the order. Moreover the reasons given by the High Court for striking down the order are based purely on speculation and do not appeal to us. The High Court does not seem to have taken notice of the very weighty considerations which weighed with government in passing the order impugned. A counter-affidavit filed by the State details the reasons for which exemption from octroi duty was given to the appellant. At page 33 of the Paper Book, the counter-affidavit of the government runs thus :

There is no abuse of power by government while granting exemption to respondent 2 under Section 71(1) of the Punjab Municipal Act, 1911. Although the State Government had earlier withdrawn the exemption given to the firm (respondent 2) yet on reconsideration it was considered necessary to extend the facilities previously given to the said firm on their representation on the following grounds : "There are 3-4 more manufactures of similar items in the country on a much larger scale such as M/s. Indian Tube Co., (1953) Ltd., M/s. Kalinga Tube Co. Ltd. which are of all-India repute who apart from enjoying a number of other facilities are exempt from payment of municipal octroi. It is difficult for us to compete with them without this concession.

3. It would appear from the averment made above that the government acted in public interest in granting exemption to the appellant with a view to boosting up and giving fillip to the industry of the appellant which was the only industry in the district of Hissar in Haryana producing tubes. The appellant had represented to the government that in view of the fact that other manufacturers of similar items had obtained the facility of exemption from octroi duty, it was not understandable why

the appellant was denied this facility. It was also represented to the government that it would be difficult for the appellant to compete with other manufacturers unless some concessions were granted to the appellant. It was also not disputed that other manufacturers of similar articles namely; Indian Tube Company and the Kalinga Tube Company who are well-reputed firms were also enjoying similar facilities of exemption from payment of municipal octroi. In these circumstances in exempting the appellant from octroi duty, the government exercised a sound discretion and it cannot be said that the government passed the order of exemption on extraneous grounds. In these circumstances we are unable to uphold the order of the High Court so far as it quashed the impugned order exempting the appellant from payment of the octroi duty. We might mention here that even the municipality who may have been aggrieved because its income was reduced by virtue of exemption had not opposed the exemption before the High Court and prayed to be added as a party for the first time in this Court which we have disallowed.

4. In these circumstances, we allow the appeal, set aside the order of the High Court quashing the order of the government dated September 7, 1968 granting the exemption of octroi duty, which is hereby restored. There would be no order as to costs.

5. The bank guarantee furnished by the appellant will now stand discharged.

6. Civil Miscellaneous Petition 3988 of 1971 is dismissed.

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