

Corporation of The City of Bangalore

Vs

Kesoram Industries and Cotton Mills Ltd. Dunlop India Ltd. and Others

Civil Appeal Nos. 1216(N) of 1975 with 509-641(N) of 1977

(G. L. Oza, Smt. M. S. Fathima Beevi JJ)

08.12.1989

JUDGMENT

FATHIMA BEEVI, J. –

1. These connected appeals by special leave arise from the common judgment of the High Court of Karnataka. The writ petitions filed by the respondents against the appellant, the Corporation of the City of Bangalore were allowed and the resolution dated the December 30, 1974 passed by the Corporation levying octroi on certain additional items under Section 98 of the City of Bangalore Corporation Act, 1949 (shortly stated as 'the Act') was declared as invalid.

2. Section 98 of the Act requires the Corporation before passing any resolution imposing a tax or duty for the first time to publish a notice in the official gazette and in the local newspapers of its intention and inviting objections. The Corporation may, after considering the objections, if any, received within the period specified determine by resolution to levy the tax or duty.

3. On the recommendation of the Standing Committee to levy octroi on certain new items of goods the appellant published a notice as contemplated under Section 98(1) of the Act inviting objections from the public and the said notice was published in the gazette dated September 17, 1974. Several objections were received in pursuance of the said notification. The subject was included in the supplementary agenda at the meeting held on December 30, 1974. It was taken up as item 146 and the resolution was passed unanimously. The Commissioner thereafter issued a notification.

4. The respondents challenged the validity of the resolution on the ground inter alia that there had not been consideration of the objections before passing the resolution and, therefore, the mandatory provision under Section 98(1) was violated. The High Court in allowing the writ petitions has taken the view that what is contemplated under the statute is a real consideration of the objections and not a mere pretence and since the time was too short there was no opportunity for such consideration and on account of non-consideration of the objections to the proposed levy the condition precedent for the passing of the resolution was not satisfied and therefore, the resolution is invalid.

5. The learned counsel for the appellant submitted that the objections had been placed on the table after the Commissioner had prepared a note of the several objections analysing the nature of the objection, setting out the legal conditions regarding the levy and containing the answers to the objection, distributed cyclostyled copies of the note before the meeting, and the subject was taken up and passed unanimously. The text of the resolution it is submitted indicated that there was proper application of mind by the council. Relying on the decision of this Court in *Municipal Board, Hapur v. Raghuvendra Kripal* ((1966) 1 SCR 950 : AIR 1966 SC 693) the learned counsel maintained that

the High Court should not have ventured into the question of the manner in which consideration was given to the item in the agenda and the presumption that the statutory authority has followed the prescribed procedure should prevail. It was also pointed out that the Mayor of the Corporation and one of the councillors have filed affidavits affirming that the objections along with the note were placed on the table and the objections were taken note of before reaching the decision. The respondents' learned counsel submitted that consideration of the objections is a condition precedent for imposition of the levy and the High Court having been satisfied of the non-compliance with this mandatory requirement, has rightly invalidated the tax.

6. The admitted facts are that the resolution had been passed on December 30, 1974 after placing the objections on the table and, distributing notes of the Commissioner, analysing the objections and containing answers to the same. The subject was in the urgent agenda and the record of proceedings revealed that the resolution had been passed unanimously.

7. Taxation in order to be valid must not only be authorised by a statute, but also be levied or collected in strict conformity with the statute which authorises it. Where a condition precedent is laid down for statutory power being exercised it must be fulfilled before a subordinate authority can exercise delegated power. When the statute requires that delegated power may be exercised on fulfilment of certain conditions precedent, the court would presume the regularity of the order including the fulfilment of the condition precedent. It is for the party who challenged the legality to show that the condition precedent was not in fact complied with by the authority.

8. The Municipal Administration is coordinated (sic constituted) to secure the vital interest of the general public. It is the function of the representative body to ascertain the local opinion and decide thereon before imposition of the tax. It has, therefore, to be assumed that local representatives who had taken note of the objections received in pursuance of the notice published have consciously reached the decision. Once it is clear that there had been consideration of the objection, it is not for the court to examine the manner in which the legislative will had been indicated. We shall only refer to the recent decision of this Court in *Sundarjas Kanyalal Bhatija v. Collector, Thane, Maharashtra* ((1989) 3 SCC 396) : (SCC p. 409, para 27)

"It must be noted that the functions of the government in establishing a Corporation under the Act is neither executive nor administrative. Counsel for the appellants was right in his submission that it is legislative process indeed. No judicial duty is laid on the government in discharge of the statutory duties. The only question to be examined is whether the statutory provisions have been complied with. If they are complied with, then, the court could say no more. In the present case the government did publish the proposal by a draft notification and also considered the representations received. It was only thereafter, a decision was taken to exclude Ulhasnagar for the time being. That decision became final when it was notified under Section 3(2). The court cannot sit in judgment over such decision. It cannot lay down norms for the exercise of that power. It cannot substitute even 'its juster will for theirs'."

9. The court has no jurisdiction to examine the validity of the reasons that goes into the decision or the motive that induced the delegated authority to exercise its powers. No judicial duty is laid on the authority in discharge of the statutory obligations and, therefore, the only question to be examined is whether the statutory provisions have been complied with.

10. In *Swadeshi Cotton Mills Co. Limited v. State of U. P.* ((1962) 1 SCR 422 : AIR 1961 SC 1381 : (1961) 2 LLJ 419) this Court held that : (SCR headnote)

"Where a condition precedent has to be satisfied before a subordinate authority can pass an order, (executive or in the nature of subordinate legislation), it is not necessary that the satisfaction of the condition should be recited in the order itself, unless the statute requires it. But it is desirable that it should be so mentioned for then the presumption that the condition was satisfied would immediately arise and the burden would be on persons challenging the order to show that the recital is not correct. Even when the recital is not made in the order, it will not become void ab initio and only a further burden is cast on the authority passing the order to satisfy the court by other means, e.g. by filing an affidavit, that the condition precedent was satisfied."

11. In *Gopal Narain v. State of Uttar Pradesh* (AIR 1964 SC 370 : (1964) 4 SCR 869) this Court held that : (AIR headnote)

"There is a presumption, when a statutory authority makes an order for imposition of tax, that it has followed the prescribed procedure. The said presumption is not in any way weakened by the long acquiescence in the imposition by the residents of the locality. Nonetheless no tax shall be levied or collected except in accordance with law. If it is not imposed in accordance with law, it would infringe the fundamental right guaranteed under Article 19(1)(f) of the Constitution. While the long period of time that lapses between the imposition of the tax and the attack on it may permit raising of certain presumptions where the evidence is lost by efflux of time, it cannot exonerate the statutory authority if it imposes a tax in derogation of the statutory provisions."

12. The High Court was not justified in assuming from the time factor alone that there could not have been a consideration of the objections. It is not the function of the court to probe into the details of the discussions and the deliberations before legislative will is seen expressed by passing the resolution. The connotation of the word 'consideration' occurring in sub-section (1) of Section 98 comprehends 'taking note of' or 'paying heed to' depending upon the nature of the subject. It may be open to the councillors to express their views even within the limited time available. No standard can be prescribed in such matters. When it is shown that the council had the opportunity to consider the objections received, it has to be deemed, that they had taken note of the same before reaching a decision.

13. We are, therefore, of the view that the High Court has committed an error in assuming on account of the shortage of time alone that there had been non-compliance with the requirements under the statute. We set aside the judgment of the High Court and allow the appeals. In the circumstances of the case we make no order as to costs.

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