

Daman Municipal Council and another, etc.

Vs

Paramount Traders and others

Civil Appeals Nos. 1232 and 1233 of 1977

(K. N. Singh, Kuldip Singh JJ)

4.10.1991

JUDGMENT

1. These appeals are directed against the judgment and order of the Judicial Commissioner, Goa, dated February 10, 1975 quashing the levy of octroi on entry of liquor within the municipal limits of Daman.
2. The respondents are carrying on business, inter alia as importers and sellers of liquor. They filed writ petitions under Article 226 of the Constitution of India before the Judicial Commissioner challenging the validity of octroi imposed by the Municipal Council. The Judicial Commissioner allowed the writ petitions on the ground that the Daman Municipal Council had no authority to levy octroi under the Portuguese Law called the Reforma Administrative Ultramarina (hereinafter referred to as the 'RAU) which was applicable at the relevant time. It was further held that the notification levying octroi issued by the Chief Secretary, Government of Goa, Daman and Diu was without authority of law as it was not approved by the Governor.
3. After hearing learned counsel for the parties, we are of the view that the learned Judicial Commissioner fell into error in quashing the levy of octroi imposed by the appellant-Municipal Council.
4. The Daman Municipal Council was conscious of the fact that under the RAU, it had no authority on its own to levy the octroi and as such it passed a resolution dated November 12, 1964 seeking approval of the Governor to impose octroi on entry of liquor within the limits of Daman Municipal Council. The Governor granted the said approval and authorised the Municipal Council to collect the octroi on the goods at the rates mentioned in Columns I and II of the Notification dated June 24, 1965, published in the Official Gazette on July 1, 1965. The Judicial Commissioner fell into error in quashing the levy of octroi on the ground that the Municipal Council did not have the jurisdiction to impose the octroi under the RAU. The Judicial Commissioner was oblivious of the fact that it was the Governor who had authorised the imposition of octroi and the Municipal Council only executed the mandate of the Governor.
5. The Judicial Commissioner recorded findings that the Notification dated June 24, 1965 as published in the Gazette on July 1, 1965, had not been issued by the Governor instead the same had been issued by the Chief Secretary who had no authority in law to do so. On the material on record, the finding of the Judicial Commissioner is incorrect. Ulhas Datta Kamat had filed an affidavit on behalf of the Municipal Council before the Judicial Commissioner wherein it had specifically been stated that the Lt. Governor had approved the proposal of the Municipal Council to impose octroi and the Notification dated June 24, 1965 expressly mentioned that the Lt. Governor had granted

approval. Once the Notification was published indicating that the Lt. Governor had granted approval for the levy of octroi, the presumption was that the octroi had been levied in accordance with law, however, this presumption was rebuttable. The respondents failed to place any material before the Court to rebut the presumption. On the other hand, as is stated earlier, there is ample evidence on record showing that the Lt. Governor had approved the imposition of octroi.

6. Subsequently, by a resolution dated March 10, 1966, the Municipal Council changed the rate of octroi and submitted the proposal to the Lt. Governor for approval which was accorded on May 7, 1966 and a Notification in that respect was issued on May 16, 1966. There is no counter to these assertions and even before us these facts have not been disputed. It is thus difficult to uphold the finding recorded by the Judicial Commissioner that the levy of octroi was not approved by the Governor.

7. For the reasons stated above, we allow the appeals, set aside the order of the Judicial Commissioner and dismiss the respondents' writ petitions with no order as to costs.

C. A. Nos. 10240/83, 10241/83, 10242/83, 10243/83, 10247/83, 10255, 10256, 10257, 10258, 10259, 10260/83 & 10270/83, 10244/ 83, 10248-10250/ 83, C. A. 10251/ 83; C. A. Nos. 10252-54/83.

8. The levy of octroi by the Municipal Council, Daman, was quashed by the Judicial Commissioner by his judgment dated July 31, 1979. Thereafter, the respondents filed suits for the recovery of octroi collected from them which had been declared illegal by the Judicial Commissioner. The suits were decreed. The Bombay High Court upheld the decrees by a common judgment dated February 8, 1983. These appeals have been preferred by the Municipal Council, Daman, against the common judgment of the High Court. The respondents' suits have been decreed in view of the judgment of the Judicial Commissioner dated February 10, 1975, declaring the imposition of octroi illegal. We have already set aside the judgment of the Judicial Commissioner in C. A. Nos. 1232/33/77 and the validity of the imposition of octroi by the Municipal Council, Daman, stands upheld.

9. In this view, the respondents' suit for refund of octroi duty collected by the appellant-Municipal Council must fail. We accordingly allow the appeals, set aside the judgment and decree of the courts and dismiss the respondents' suits with no order as to costs.

Appeals allowed.

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