City of Nagpur Corporation

Vs

Khemchand Khushaldas & Sons and Others

Civil Appeal No. 3463 of 1990

(S. P. Bharucha, S. B. Majmudar JJ)

12.08.1996

JUDGMENT

S.B. MAJMUDAR, J. –

1. City of Nagpur Corporation has brought in challenge the order passed by the High Court of Bombay, Nagpur Bench in Writ Petition No. 1224 of 1980 by obtaining special leave to appeal against the said judgment. The respondents herein had moved the said writ petition challenging the impugned notification dated 10-12-1979 issued by the State of Maharashtra sanctioning the octroi rates proposed by the appellant-Corporation under Section 115 read with Section 114(1)(e) of the City of Nagpur Corporation Act, 1948 (hereinafter referred to as 'the said Act') on the ground that as the State of Maharashtra had not framed any rules fixing the maximum rates of octroi tax under Section 114 sub-section (3) of the said Act, the impugned notification was of no legal effect. The aforesaid challenge to the impugned notification was upheld by the High Court and that is how the appellant-Corporation is in appeal before us.

Background facts

2. A few relevant background facts leading to these proceedings deserve to be noted at the outset. The respondents, original writ petitioners before the High Court, are manufacturers of incense sticks (agarbattis). They carry on their manufacturing activities within the limits of the appellant-Municipal Corporation. Through a notification dated 10-12-1979 issued by the State of Maharashtra the appellant-Corporation sought to revise the rates of octroi duties on various items including aromatic chemicals, perfumery and natural oils in which the respondents were dealing and which were raw materials for the purpose of their business of manufacturing incense sticks. They had to import within the octroi limits the said raw materials from outside. According to the respondents the impugned notification sought to revise upwards the rates of octroi duty on these articles which went beyond the maximum rates of octroi fixed by the State of Madhya Pradesh under the C.P. and Berar Municipalities Act, 1922 (2 of 1922) (hereinafter referred to as 'the 1922 Act') and was, therefore, ultra vires and illegal. This contention of the respondents was accepted by the High Court. We may now have a look at the relevant events preceding the issuance of the impugned notification.

3. The C.P. and Berar Municipalities Act came into force in 1922. On 5-9-1923 a notification was issued by the then local Government under Section 66 sub-section (2) of the 1922 Act regulating the imposition of octroi and also imposing maximum amounts of rates for the said tax. The said notification applied to the local area which now is comprised in the appellant-Corporation. On 3-2-1926 a further notification was issued framing Imposition Rules for Terminal Tax under Section 66(1)(o) of the 1922 Act. The said terminal tax was impossible on the goods imported within the

limits of the local municipality which was the predecessor of the appellant-Corporation. One further notification under Section 66(2)(e) of the 1922 Act was issued by the then local Government on 29-4-1950 laying down the maximum rates of octroi tax. On 21-2-1951 rules were promulgated under Section 66(1)(c) of the 1922 Act for levy of octroi as per Section 66(1)(e) of the 1922 Act. These octroi rules came into force from 1-3-1951 in the local area then comprising the Nagpur city. On 2-3-1951 the City of Nagpur Corporation Act, 1948 came into force. It is not in dispute between the parties that the said Act governs the controversy raised in this litigation. In suppression of the octroi rules framed on 21-2-1951 a fresh notification was issued by the appellant-Corporation framing Octroi Imposition Rules under Section 114(1)(e) of the said Act and the said rules having obtained the requisite sanction from the State of Maharashtra came into force from 1-6-1966. Octroi duty was thereafter being levied by the appellant-Corporation as per the rates imposed on the notified goods covered by the said rules of 1-6-1966. These rules were further amended by notification dated 20-4-1974. These amended rules came into force from 15-5-1974. Up to that stage the respondents-writ petitioners had no grievance. However the said rules came to be further amended by notification dated 10-12-1979 by which the original octroi rules framed under Section 114(1)(e) in the year 1966 came to be further amended. These amended rules came into force from 1-1-1980. The respondents-writ petitioners felt aggrieved by this latter amendment to the octroi rules brought in force pursuant to the said notification dated 10-12-1979.

4. The High Court took the view that the impugned notification of 10-12-1979 issued under Section 114(1)(e) read with Section 115 of the said Act was inoperative as it sought to impose octroi on the raw material imported by the respondents at rates which went beyond the ceiling imposed on these rates by the then local Government under the 1922 Act and which ceiling had remained operative even after the repeal of the 1922 Act.

Rival contentions

5. Mr Mohta, the learned Senior Counsel appearing for the appellant, submitted that the High Court had erred in holding that the imposition of maximum rates of octroi by the then local Government being the Madhya Pradesh Government under Section 66(2) of the 1922 Act enured beyond its repeal by virtue of Section 3 sub-section (2) of the said Act at least from 1966 when the appellant-Corporation in exercise of its statutory powers had imposed new rates of octroi as per Section 114(1)(e) read with Section 115 of the Act after getting them sanctioned by the State Government. That as the said imposition was under the said Act unless any ceiling was imposed qua such imposition by the State in exercise of its powers under Section 114 sub-section (3), the rates as imposed by the appellant-Corporation from time to time from 1966 onwards held the field without being subjected to any ceiling. That the High Court had wrongly assumed that imposition of ceiling of such rates by the State Government under Section 114 sub-section (3) was a condition precedent to the exercise of statutory powers of the Corporation and the State Government under Section 114(1)(e) read with Section 115. It was also contended that the Division Bench of the High Court in "Parekh Bros." v. Corpn. of the City of Nagpur [1975 Mah LJ 86] had taken the view which supported the appellant's contention and the said decision was wrongly not followed by the High Court on the supposition that it no longer remained good law in view of the decision of this Court in Municipal Corpn. v. Soorji Bhanji Keniya [(1973) 3 SCC 519 : 1973 SCC (Tax) 277]. Mr Mohta submitted that in the case before this Court the imposition of octroi tax rates was under the 1922 Act and, therefore, the ceiling imposed under Section 66(2) of the 1922 Act remained inoperative qua those rates. That such a situation did not obtain in the present case as the Corporation did exercise its statutory powers under the said Act by getting issued the notification of 1966 which later got amended in 1974 and then in 1979. Mr Mohta, therefore, submitted that the decision of this Court in

Municipal Corpn. [(1973) 3 SCC 519 : 1973 SCC (Tax) 277] did not in any way adversely affect the ratio of the decision of the Division Bench of the High Court in "Parekh Bros." [1975 Mah LJ 86] Even otherwise the latter decision laid down correct law and ought to have been followed by the High Court in the present case.

6. Mr Agarwala, the learned counsel appearing for the respondents-writ petitioners, on the other hand submitted that this Court in the decision in Municipal Corpn. [(1973) 3 SCC 519 : 1973 SCC (Tax) 277] had clearly ruled that the ceiling imposed on the octroi rates by the then local Government being the Madhya Pradesh Government under Section 66 sub-section (2) of the 1922 Act remained operative by virtue of Section 3 sub-section (2) of the City of Jabalpur Corporation Act which was in para materia with Section 3 sub-section (2) of the said Act and consequently the High Court was justified in following the ratio of the said decision and that the decision of the Division Bench of the High Court in "Parekh Bros." which took a contrary view was rightly not followed by the High Court.

7. Having given our anxious consideration to these rival contentions we find that the High Court with respect was not justified in taking the view that the impugned notification in any way conflicted with the maximum octroi rates as prescribed by the rules promulgated by the then local Government being the Madhya Pradesh Government or that the said maximum rates still held the field after the advent of the said Act and the exercise of the statutory powers by the Corporation and the State Government under the said Act.

8. In order to appreciate the correct contours of the controversy raised for our decision, it will be necessary to have a look at the statutory background governing the said controversy.

Statutory background

9. The precursor of the City of Nagpur Corporation Act, 1948 which governs the rights and obligations of the parties in the present case was the C.P. and Berar Municipalities Act, 1922. The local area within the jurisdiction of the appellant-Corporation was then governed by the said Act. Chapter IX of the 1922 Act dealt with "Imposition, Assessment and Collection of Taxes". Section 66(1) of the 1922 Act, amongst others, authorised and empowered the Municipal Committee from time to time and subject to the provisions of the said Chapter to impose in the whole or in any part of the municipality, amongst others, the tax of octroi on animals or goods brought within the limits of the municipality for sale, consumption or use as laid down by Section 66(1)(e) of the said 1922 Act. The said section also provided in sub-section (2) that the local Government may by rules made under this Act, regulate the imposition of taxes under this section, and impose maximum amounts or rates for any tax. It is not in dispute between the parties that the then local Government being the Madhya Pradesh Government in exercise of its statutory powers under Section 66(2) of the 1922 Act had imposed such maximum rates of octroi duty which could be levied by the Municipal Committee which was then running the municipal administration in the area which is now within the jurisdiction of the appellant-Corporation. These maximum rates as imposed by the then local Government being the Madhya Pradesh Government under Section 66(2) of the 1922 Act did hold the field till the advent of the present City of Nagpur Corporation Act, 1948, that is, the said Act. As noted earlier the said Act came into force on 2-3-1951. By that time the notification issued under Section 66(2) dated 29-4-1950 by the then local Government was holding the field. After the coming into force of the said Act, the aforesaid notification imposing maximum rates of octroi leviable on various goods brought within the local limits of the appellant-Corporation continued to operate by virtue of Section 3 sub-section (2) of the said Act which reads as under :

#"3. (1) * * *##

(2) Every appointment, rule, bye-law, form, notification, notice, tax, scheme, order, licence or permission made, issued, imposed, sanctioned or given under the Central Provinces and Berar Municipalities Act, 1922, shall, so far as it relates to the Municipality of Nagpur and so far as it is in force at the commencement of, and is not inconsistent with, this Act, be deemed to have been made, issued, imposed, sanctioned or given under the provisions of this Act, and shall unless previously altered, modified, cancelled, suspended, surrendered or withdrawn, as the case may be, under this Act remain in force for the period, if any, for which it was so made, issued, imposed, sanctioned or given."

Statutory power to impose octroi tax is conferred on the appellant-Corporation by Section 114 of the said Act. That section is found in Part IV Chapter XI dealing with 'Taxation'. Section 114(1)(e) of the said Act reads as under :

"114. (1) For the purposes of this Act, the Corporation shall impose -

#(a)-(d) * * *##

(e) a cess on animals or goods brought within the city for sale, consumption or use therein."

This imposition is compulsory imposition by the Corporation. Sub-section (3) of Section 114 is also relevant. It reads as under:

#"114. (1)-(2) * * *##

(3) The State Government may, by rules made under this Act, regulate the imposition, assessment and collection of taxes under this section and specify maximum amounts of rates for any tax and for preventing evasion of assessment and payment of taxes."

The procedure for imposing the taxes as envisaged by Section 114 is laid down by Section 115 which with its sub-sections reads as under:

"115. (1) The Corporation may, at a special meeting, bring forward a resolution to propose the imposition of any tax under Section 114.

(2) When such a resolution has been passed the Corporation shall publish in accordance with the rules made under this Act, a notice, defining the class of persons or description of property proposed to be taxed, the amount or rate of the tax to be imposed, and the system of assessment to be adopted.

(3) Any person resident within the city and objecting to the proposed tax may, within thirty days from the publication of the said notice, submit his objection in writing to the Corporation and the Corporation shall at a special meeting take his objection into consideration.

(4) If the Corporation decides, to amend its proposals or any of them, it shall publish

amended proposals, along with a notice indicating that they are in modification of those previously published for objection.

(5) Any objections which may be received to the amended proposals within thirty days shall be dealt with in the manner prescribed in sub-section (3).

(6) The Corporation shall forward its final proposals to the State Government, which shall either refuse to sanction them or return them for further consideration, or sanction them without modification or with such modification not involving an increase of the rate to be proposed as it thinks fit.

(7) Such sanction, if any, shall be published in the Gazette and the tax shall then come into force on such date as may be specified in that notification.

(8) A notification of the imposition of a tax under this section shall be conclusive evidence that the tax has been imposed in accordance with the provisions of this Act."

In the background of the aforesaid relevant statutory provisions we may now proceed to consider the question posed for our decision.

Consideration of the question

10. A mere look at the provision of Section 3(2) of the said Act shows that so long as the appellant-Corporation in exercise of its independent statutory powers under Section 114(1)(e) of the said Act had not imposed fresh rates of octroi duty on various articles brought within its municipal limits for consumption, sale or use, the maximum rates as imposed under Section 66(2) of the 1922 Act could continue to operate. But once the field was occupied by the appellant-Corporation's exercise of statutory powers under Section 114(1)(e) read with Section 115 of the said Act and their sanction by the State Government, the earlier maximum rates fixed by the then local Government being Madhya Pradesh Government under Section 66(2) of the 1922 Act would obviously become inconsistent with the rates that would be fixed by the Corporation under the said Act in exercise of its independent powers under Section 114(1)(e) and also by the rates as amended from time to time by the appellant-Corporation in exercise of the very same power. Hence the old maximum rates would go out of the protective coverage of Section 3(2) of the said Act. That actually happened in 1966 when for the first time the appellant-Corporation imposed new octroi rates on various articles under Section 114(1)(e) of the said Act. A conjoint reading of Section 114(1)(e) and Section 115 with its sub-sections leaves no room for doubt that the appellant-Corporation had full statutory authority empowering it to impose octroi duty at appropriate rates after following the procedure laid down by Section 115 and that could be done after considering the objections to be invited against the proposed imposition of rates of octroi. It is not in dispute that the said procedure was followed by the appellant-Corporation before the 1966 notification imposing new octroi rates was issued and which rates were later amended in the years 1974 and 1979. In this connection it is profitable to have a look at the notification issued by the State of Maharashtra in exercise of its powers conferred by sub-section (6) of Section 115 of the said Act sanctioning the proposal framed by the appellant-Corporation as detailed in the notification for imposition of a cess on animals or goods brought within the city of Nagpur for sale, consumption or use therein, under clause (e) of sub-section (1) of Section 114 read with Section 115 of the City of Nagpur Corporation Act and in supersession of those sanctioned under the Madhya Pradesh Government Notification No. 886-871-MXIII, dated

21-2-1951. The said notification recites that in exercise of the powers conferred by sub-section (7) of Section 115 of the City of Nagpur Corporation Act, 1948, the Government also directs that the said tax shall come into force with effect from 1st day of June, 1966. Clause (2) of the said notification lays down that a cess thereinafter called as "octroi duty" shall be levied on animals and goods, specified in the Schedule thereto annexed, brought within the octroi limits of the city of Nagpur for sale, consumption or use at the rates mentioned against each in the Schedule annexed subject to conditions specified thereinafter. Clause (5) thereof lays down that when an article is mentioned in the Schedule specifically and is also included in a general category, the duty shall be levied at the rate mentioned for the specific item. When any article is not specifically mentioned and may come under two or more headings in the Schedule, the duty shall be levied at the highest rate fixed for such heading.

11. In view of the aforesaid octroi rules sanctioned by the State of Maharashtra under Section 115 of the said Act it becomes obvious that all earlier rules regarding octroi as sanctioned by the erstwhile State of Madhya Pradesh along with the ceiling as imposed by the said State under Section 66(2) of the 1922 Act got eclipsed and ceased to operate as they obviously became inconsistent with the new octroi rules framed by the appellant-Corporation and sanctioned by the State of Maharashtra under the said Act. In other words the field of octroi imposition got completely occupied by the statutory exercise availed of under the new Act by the appellant-Corporation as well as the State of Maharashtra. So far as this aspect is concerned there is not much controversy between the parties. However it is vehemently contended by the learned counsel for the respondents that under sub-section (3) of Section 114 of the said Act the State is enjoined to impose maximum rates of tax which could be levied by the Corporation and as that has not been done by the State, the earlier imposition of maximum amounts for rates of tax as done by the then local Government being the Madhya Pradesh Government under the corresponding provisions of Section 66(2) of the predecessor Act of 1922 continued to operate. It is not possible to agree. A mere glance at Section 114(3) shows that imposition of maximum rates of tax by the State Government is an enabling provision and it is not a condition precedent to the exercise of taxing power by the Corporation under Section 114(1) read with Section 115. Both these powers and functions are independent of each other and operate in their own fields subject to the rider that if the State Government chooses to impose maximum amounts of rates of any tax imposed by the Corporation, in exercise of the State's powers under Section 114(3), that ceiling would get engrafted on the rates of tax as imposed by the Corporation under Section 114 read with Section 115 of the Act. But so long as that ceiling is not imposed by the State Government the rates of taxes imposed by the Corporation would operate unrestricted and uninhibited by any such ceiling. The High Court with respect was in error when it took the view that imposition of such ceiling of rates of taxes under Section 114(3) by the State was a condition precedent to the exercise of powers of imposition of taxes by the Corporation under Section 114(1)(e) read with Section 115. For coming to the said conclusion the High Court had equally erred in reading too much in the judgment of this Court in Municipal Corpn. [(1973) 3 SCC 519 : 1973 SCC (Tax) 277] as we will presently point out. It is difficult for us to read the provisions of Section 114(3) as mandatory requiring the State Government to necessarily regulate imposition, assessment and collection of all the taxes impossible by the Corporation under Section 114(1) of the said Act. The several clauses in sub-section (3) must be read distinctively and the powers which are given to the State Government under sub-section (3) must be read as independent powers for making rules with regard to the assessment and collection of the taxes. A power to make rules prescribing maximum rates of taxes could be independently exercised by the State Government but there is nothing in the section which would make it obligatory for it to first specify the maximum amounts of rates of taxes before exercises its another independent power of making rules for

imposition of a tax under Section 115 of the said Act read with Section 114 thereof. We cannot agree with the contention of the learned counsel for the respondents that the power to make rules for imposition of tax conferred on the Corporation and the State Government under Section 114(1) and Section 115 must be read as being subject to the imposition of maximum rates of any tax under Section 114(3) or that the two powers are interlinked, intertwined or interdependent. If Mr Agarwal's contention was right Section 114(1) would have been made expressly subject to Section 114 sub-section (3). But the legislature in its wisdom has not done so. If the contention of Mr Agarwal, the learned counsel for the respondents is accepted it would amount to rewriting Section 114(1) and Section 115 and making them subject to sub-section (3) of Section 114. Such an exercise is clearly contra-indicated by the aforesaid statutory settings and is impermissible. We may in this connection mention that a Division Bench of the Bombay High Court in the case of "Parekh Brothers" [1975 Mah LJ 86] had taken the same view which we are inclined to take on the construction of the aforesaid relevant provisions of the said Act. We wholly concur with the said view.

12. Now remains the question whether this Court in Municipal Corpn. [(1973) 3 SCC 519 : 1973 SCC (Tax) 277] had taken any contrary view on this aspect. In the case of Municipal Corpn. [(1973) 3 SCC 519 : 1973 SCC (Tax) 277] this Court was concerned with the question whether the rates of octroi as fixed by the Municipality under the Central Provinces and Berar Municipalities Act, 1922 could go beyond the maximum rates as prescribed under the very same Act by the State under Section 66(2). The answer of the High Court in that case was that the ceiling of maximum rates as prescribed by the State under the very same Act would govern the rates of octroi fixed by the Municipal Corporation under the same Act. The said decision of the High Court was confirmed by this Court. It is obvious that if the Municipal Corporation functioning under that Act imposed rates of octroi which went beyond the prescribed maximum rates imposed by the State under the very same Act, the ceiling of maximum rates as fixed by the State had to operate and would restrict within that limit the rates of octroi fixed by the Corporation. If in the present case the State of Maharashtra had fixed maximum rates of octroi under Section 114(3) then obviously the rates of octroi as fixed by the Corporation under Section 114(1)(e) read with Section 115 had to be restricted to the said maximum ceiling but in the present case admittedly no such ceiling was imposed by the State of Maharashtra prescribing maximum octroi rates for the appellant-Corporation in exercise of the State's powers under Section 114(3). We fail to appreciate how the aforesaid decision of this Court in Municipal Corpn. [(1973) 3 SCC 519 : 1973 SCC (Tax) 277] can be of any assistance to the respondents in the present case. In this connection it is pertinent to note that this Court had noted that in the case before it the Corporation had not imposed directly any tax under Section 120(1) of the 1948 Act, but had purported to impose the tax as authorised by the rules made by the Municipality on 14-5-1943, under the 1922 Act. These rules prescribed the ad valorem rate of Rs 2/5/6 per cent and continued to remain in force by virtue of Section 3(2) of the 1948 Act. But even as the taxes imposed under the 1922 Act would continue to be in force, the notification issued by the State Government under Section 66(2) of the 1922 Act would also continue to be in force under Section 3(2), read with Section 120(3) of the 1948 Act. It was also noted that the said notification had clearly prescribed the maximum octroi for these goods at two annas per maund. Hence side by side there were two orders with regard to the imposition and levy of octroi on the same goods. In the case of conflict between the two, it is obvious that the maximum rates prescribed by the State Government would hold the field. As noted earlier on the facts of the present case there are no two orders simultaneously operating in the same field in connection with levy of octroi. The notification of 1966 under Section 115 read with Section 114(1)(e) as amended from time to time has operated on its own without being in any way cut across or superimposed by any maximum rates of octroi as

fixed by the State of Maharashtra in exercise of its statutory powers under Section 114(3). Consequently in the absence of such a statutory ceiling operating in the field, the rates as fixed by the Corporation and as sanctioned by the State under Section 115 remained fully operative without having any ceiling overhead. Such was not the case in Municipal Corpn. [(1973) 3 SCC 519 : 1973 SCC (Tax) 277] as noted earlier. In fact in the very same judgment in para 15 of the Report it has been clarified by this Court that if after 1965 octroi was levied at a higher rate, merchants would be liable to pay octroi at that rate, meaning thereby if after coming into operation of the Madhya Pradesh Municipal Corporation Act, 1956 the City of Jabalpur Corporation had exercised its powers of levy of octroi under the said latter Act of 1956 that would have operated on its own subject to imposition of any ceiling of maximum rate if at all fixed by the State under the 1956 Act. Consequently it must be held that the ration of this Court's decision in the case of Municipal Corpn. [(1973) 3 SCC 519 : 1973 SCC (Tax) 277] is not at all attracted on the facts of the present case. On the other hand the decision of the Division Bench of the Bombay High Court in the case of "Parekh Bros. [1975 Mah LJ 86]" which meets our approval squarely got attracted for resolving the controversy in the present case. The High Court was, therefore, with respect wrong when it took the view that the aforesaid decision of the Division Bench in "Parekh Bros." [1975 Mah LJ 86] was no longer good law in view of this Court's decision in the case of Municipal Corpn. [(1973) 3 SCC 519 : 1973 SCC (Tax) 277] In view of the aforesaid discussion the conclusion is inevitable that the appellant-Corporation was fully justified in imposing octroi on articles at the rates specified in the notification of 1966 as subsequently amended in 1974 and 1979 and the impugned notification of 10-12-1979 issued by the State of Maharashtra under Section 115 of the said Act operated on its own without having any ceiling imposed about the maximum rates under Section 114(3). The said provision about the imposition of maximum rates by the State being directory in nature and not mandatory or compulsory for the State, so long as the State did not choose to exercise its powers under Section 114(3), there was no whittling down or cutting across of the rates of octroi as imposed by the very same State by the impugned notification of 1979 and the rates of octroi as mentioned therein could be legally and validly enforced by the appellant-Corporation.

13. In the result this appeal is allowed. The impugned judgment of the Division Bench of the High Court is set aside and the writ petition filed by the respondents is dismissed. In the facts and circumstances of the case, however, there will be no order as to costs all throughout.