

ORISSA HIGH COURT

Orissa Ceramic Industries Ltd

Vs

Executive Officer

O.J.C. No. 134 of 1962

(R.L. Narasimham, C.J. and G.K. Misra, J.)

22.04.1963

JUDGMENT

R.L. Narasimham, C.J.

1. In these 2 applications under Article 226 the constitutional validity of clause (kk) of sub-section (1) of Section 131 of the Orissa Municipal Act, 1950, as amended by the Orissa Municipal (Amendment) Act, 1954, is under challenge. Hence they were both heard together and will be disposed of in one judgment.

2. Sub-section (1) of Section 131 of the Orissa Municipal Act confers power on the Municipalities in Orissa, to levy various kinds of taxes and fees after obtaining the sanction of the State Government. By the amending Act of 1954 a new clause (kk) was inserted in that Section as follows :

"(kk) An octroi on goods brought within the limits of the Municipality for consumption, use or sale therein is maintained by the Municipal Council. (sic.)"

3. Mr. Das for the petitioners urged that the said clause (kk) of sub-section (1) of Section 131 is unconstitutional on the following two grounds :

(i) It amounted to excessive delegation by the Legislature, inasmuch as the maximum or minimum limit to the octroi duty that may be levied was not indicated in the Act and the Municipality was conferred unfettered discretion to levy octroi at any rate that it may consider fit, subject to the sanction of the State Government.

(ii) It imposed an unreasonable restriction on the freedom of trade, commerce and intercourse within the territory in India and as neither the previous assent of the President (before the introduction of the Bill) nor his subsequent assent (after the passing of the Act) was obtained it would not be saved by Article 304 (b) of the Constitution.

4. The power of a Municipality to levy octroi duty on the entry of goods within that Municipality for sale, consumption or use therein is a well recognised statutory power which has been in existence for a long time. In the recent Report of the Taxation Enquiry Commission, 1955-56, Part I of Chapter IV deals with the history of octroi duties, the various objections to the levy of such duties and the final recommendations of the Commission to allow their continuance subject to certain restrictions. But it is unnecessary to discuss this aspect at length because we are concerned only with the constitutional validity of the provision. It is true that neither in impugned sub-section (1) of Section 131 nor in the succeeding sub-section of that Section is there any provision for the guidance of the Municipality while fixing the rate of levy of the octroi duty. The only restriction on the exercise of its power is the requirement about obtaining sanction from Government. But it was urged that compliance with this requirement alone would not suffice. Mr. Das invited our attention to Sections 112, 133, 134 and 135 of the Orissa Municipal Act which impose certain restrictions on the levy of taxes on holdings, lighting and water tax, latrine tax, drainage tax etc. It was urged that in the absence of such restrictions regarding the imposition of octroi duty, clause (kk) must be struck down as unconstitutional as it is primarily the function of the Legislature to fix the rate of levy of tax or duty or at any rate, to fix the maximum and the minimum within which the rate should range or to give guidance to the Municipality in the statute itself for fixing the rate.

5. Though there may be no express provision in Chapter XIII of the Orissa Municipal Act (which deals with municipal taxation) regarding the principles to be followed by the Municipality while fixing the rate of levy of the octroi nevertheless I think the Legislature has, in Sections 114 and 117 of the Act clearly indicated the main principles which should guide the Municipality in levying octroi duty. Section 114 says that all sums received by the Municipality from taxes or fees shall be included in the Municipal funds. Section 117 says that any sum included in the Municipal fund (subject to certain limited exceptions) cannot be used for any other purpose than the purposes of the Municipality, as indicated in the various sub-clauses of sub-section (1) of that Section. Thus the legislature in Section 117 has broadly indicated the purposes for which the Municipality may levy octroi and other taxes and on which they may be expended. The discretion to fix the rate of octroi is thus not absolutely unfettered.

6. In this connection the recent judgment of the Supreme Court reported in *Western India Theatres Ltd. v. Municipal Corporation of the City of Poona*¹, may be taken as sufficient authority in support of this view. In that case the Constitutional validity of clause (xi) of Section 59 of the Bombay District Municipal Act, 1901 (quoted below) was challenged on the ground that it amounted to abdication of its functions by the Legislature.

"Any other tax to the nature and object of which the approval of the Governor in Council shall have been obtained prior to the selection contemplated in sub-clause (i) of clause (a) of Section 60."

This clause is wider than clause (kk) of sub-section (1) of Section 131 of the Orissa Municipal Act. Here even the nature of the tax was not indicated, there was no limit fixed as regards the maxima and minima, and subject only to the approval of the Governor General, the Municipality was given unfettered discretion to levy any other tax at such rate as it may consider fit. While repelling the argument that the conferment of such unfettered discretion amounted to an

abdication of its functions by the Legislature, the learned Chief justice of the Supreme Court observed as follows :

"In the next place Section 59 authorizes the Municipality to impose taxes therein mentioned, for the purpose of the Act. The obligation and functions cast upon Municipalities are set forth in Chapter VII of the Act. Taxes can therefore be levied by the Municipality only for implementing those purposes and for no other purpose. In other words it will be open to the Municipality to levy tax for giving any of the amenities therein mentioned We do not for a moment suggest that the Municipality may only impose a tax directly in connection with heads of duties cast upon it. What we say is that the tax must have a reasonable relation to the duties cast upon it by the Act."

These observations apply with full force here - bearing in mind the provisions of Sections 114 and 117 of the Orissa municipal Act. A tax under Section 131 of the Act can be levied only for the purpose of Municipality and the amount collected therefrom which constitutes the Municipal fund can also be expended only for the limited purposes mentioned in Section 117 (1) of that Act - subject to certain exceptions provided in Section 113 which are not material. Hence the tax that is levied either in the shape of octroi or otherwise by virtue of the power conferred by Section 131 (1) must have some reasonable relation to the duties cast on it by the Act. Hence where general principles for guidance are indicated, in the statute, it cannot be struck down as unconstitutional. The further safe-guard of requiring the sanction of Government would in almost all instances prevent the unreasonable or arbitrary exercise of the taxing power. The first argument of Mr. A. Das must therefore fail.

7. The second argument is now concluded by the recent judgment of the Supreme Court in the Rajasthan case reported in *Automobile Transport (Rajasthan) Ltd. v. State of Rajasthan*², There, after noticing all the previous conflicting decisions on the vexed question as to when a tax levied by a State in exercise of its taxing power conferred by List II of Schedule VII of the Constitution would amount to reasonable restriction for the purpose of Article 304 of the Constitution, the majority of Judges held that taxes which are essentially in the nature of regularity or compensatory taxes cannot be held to impose any unreasonable restrictions on the freedom of trade, commerce and intercourse. Their Lordships have further indicated in the following terms what are 'compensatory taxes' (at the end of paragraph 19 of their judgment) (page 1425) :

"It seems to us that a working test for deciding whether a tax is compensatory or not is to enquire whether the trades people are having the use of certain facilities for the better conduct of their business "and paying not patently, much more than what is required for providing those facilities". It would be impossible to judge the compensatory nature of the tax by imposing test and in the nature of things that cannot be done."

Judged by these principles there can be no doubt that an octroi duty levied by the Municipality is essentially a compensatory tax. The Municipality is required to provide certain amenities not only for the permanent residents within the Municipality but also even for casual visitors who may on occasions enter the limits of the Municipality. The entry of large quantities of goods within the Municipality almost daily from outside necessarily creates innumerable problems such

as provision of water, supply of lighting facilities and facilities for conservancy sanitation etc., maintenance of good roads and markets etc. These are all within the well defined purposes of a Municipality and under Section 117 any tax collected must be only utilized for those purposes. Hence, if, with a view to meet the extra expenditure involved in solving the problems created by the daily influx of people carrying goods within Municipal limits the Municipality imposes an octroi duty with a view to increase its income, it must be held that such an octroi duty is essentially a compensatory tax. As their Lordships pointed out in the aforesaid paragraph of their judgment - it is not necessary, for a tax to be compensatory, to show that the amount collected is actually used in providing facilities. But bearing in mind the fundamental limitation on the power of a Municipality to expend its income for purposes other than making provisions for the convenience of the people residing either temporarily or permanently within Municipal limits such octroi duty must be held to be essentially compensatory in nature. Hence Article 304 does not apply and the impugned provision does not require either the previous sanction or the subsequent assent of the President.

8. The applications are therefore, dismissed. But in the circumstances both parties will bear their own costs.

Misra, J.

9. I agree.

Petitions dismissed.

Cases Referred.

² AIR 1962 SC 1406

¹ AIR 1959 SC 586