The Municipality Of Anand vs State Of Bombay on 21 December, 1961

Equivalent citations: 1962 AIR 988, 1962 SCR SUPL. (2) 355, AIR 1962 SUPREME COURT 988, 1962 44 ITR 565, 1962 2 SCJ 296, 1964 BOM LR 688

Author: A.K. Sarkar

Bench: A.K. Sarkar, Bhuvneshwar P. Sinha, K.C. Das Gupta, N. Rajagopala Ayyangar, J.R. Mudholkar

PETITIONER:
THE MUNICIPALITY OF ANAND

Vs.

RESPONDENT:
STATE OF BOMBAY

DATE OF JUDGMENT:
21/12/1961

BENCH:
SARKAR, A.K.
BENCH:
SARKAR, A.K.
SINHA, BHUVNESHWAR P.(CJ)
GUPTA, K.C. DAS
AYYANGAR, N. RAJAGOPALA
MUDHOLKAR, J.R.

CITATION:
1962 AIR 988 1962 SCR Supl. (2) 355
CITATOR INFO :
R 1990 SC 548 (12)

ACT:
Octroi, Tax-Imposition by Municipality-order by Government prohibiting imposition-Validity of-Bombay District Municipal Act, 1901 (Bom, of 1901), s. 59-Constitution of India, Art. 14.

HEADNOTE:
After following the procedure prescribed by the Bombay District Municipal Act, 1901, and after obtaining the requisite sanction of the Government

the appellant imposed an octroi tax on milk brought within its limits for consumption, use or sale therein. Shortly afterwards the Government passed an
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order directing that the octroi tax shall not be leviable by the appellant. The appellant contented that the Government had no power to control the imposition of the tax once it had been properly imposed.
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Held, that the Government was competent under s. 59 of the Act to pass the order. Section 59 provided that subject to any general or special orders which the State Government may make, a Municipality may "impose" the tax after following the procedure laid down and after obtaining the sanction of the Government. The word "impose" in s. 59 meant the actual levy of the tax after authority to levy it had been acquired by rules duly made and sanctioned and this imposition was subject to the general or special orders of the Government. The general and special orders under s. 59 could not be confined to orders under s. 73 which gave the Government power to suspend the tax in certain cases.

Held, further, that the order of the Government was not discriminatory. Subsequently the Government had prohibited all municipalities from levying octroi tax on milk. For the same reason no question of mala fides could arise.

Per Ayyangar, J.-Imposition of tax was a continuing power deriving vitality from the power of the authority to impose it. The power of the Government to issue special or general order under s. 59 was therefore not exhausted after "imposition" of the tax. There were provisions in ss. 47, 73 and 74 for other contingencies but except for the opening words of s. 59 there was no provision to enable Government to intervene in cases where the continued levy was against public interest. The opening words of s. 59 clothed the Government with power to direct a municipality to desist from imposing a tax.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 211 of 1956.

Appeal from the judgment and order dated July 19, 1955, of the Bombay High Court in Special Civil application No. 976 of 1955.

A. V. Viswanatha Sastri, S. N. Andley, Rameshwar Nath and P. L. Vohra, for the appellant.

M. C. Setalvad, Attorney-General for India, C. K. Daphtary, Solicitor-General of India and B. Sen, for respondent No. 1.

Vithlbhai B. Patel and I. N. Shroff, for respondent No. 2.

1961, December 21. The Judgment of Sinha C. J., Sarkar, Das Gupta and Mudholkar JJ., was delivered by Sarkar J. Ayyangar J., delivered a separate judgment.

SARKAR J.-The appellant is a City Municipality within the meaning of the Bombay District Municipal Act, 1901 and is governed by that Act. It had by a resolution duly passed by it, made a rule under s. 60 of the Act selecting for the purpose of an octroi tax of -/4/- annas per Bengali maund, milk brought within its octroi limits for consumption, use or sale therein. On November 29, 1954, the Government of Bombay had given its sanction to the rule under s. 61 of the Act. The appellant Municipality thereafter published the rule and the sanction as required by s. 62 of the Act and the tax was accordingly imposed with effect from January 1, 1955. On April 4, 1955, the Government of Bombay passed an order directing that the octroi tax shall not be leviable by the appellant Municipality. This order has given rise to the present proceedings.

The appellant Municipality filed a petition in the High Court at Bombay under Art. 226 of the Constitution challenging the validity of the order. This petition was dismissed by the High Court. The appellant Municipality has now come up to this Court in appeal against the decision of the High Court.

The questions that arise in this case will be stated after a few of the sections of the Act have been referred to. Chapter VII of the Act deals with municipal taxation. We shall be concerned principally with ss. 59, 60, 61 and 62 which are all contained in this chapter and deal with imposition of taxes by Municipalities. It will be necessary also to consider s. 46.

Section 46 gives power to a Municipality to make rules for various purposes as specified in the several clauses contained in it. Under cl. (i) of this section a Municipality has power to make rules for the purpose of "prescribing, subject to the provisions of Chapter VII, the taxes to be levied". Section 59 is the section on which the decision of this case will really turn and we, therefore, think it right to set out that portion of it which is relevant for our purpose.

S. 59. (1) Subject to any general or special orders the State Government may make in this behalf, any Municipality-

(a) after observing the preliminary procedure required by section 60 and

(b) with the sanction of the State Government in the case of City Municipalities ..... and subject to such modifications or conditions as under section 61 the State Government..... in according such sanction, deems fit, may impose, for the purposes of this Act, any of the following taxes, that is to say, ...

(iv) an octroi on animals or goods, or both, brought within the octroi limits for consumption, use or sale therein;

Section 60 lays down the procedure to be observed by a Municipality preliminary to imposing a tax. It requires that first a resolution shall be passed at a meeting to the Municipality selecting the tax and making rules for the proposes of cl.

(i) of s. 46 prescribing the tax. Thereafter the resolution has to be published with a notice in a specified form inviting the inhabitants of the Municipal area to submit within a month their objections, if any, to the tax. After the objections have come in, they are to be considered by a committee of the Municipality and unless on the report of the committee the Municipality decides to abandon the tax, it has to submit the objections with its opinion thereon, any modifications it desires to make and the rules prescribing the tax to the State Government. Section 61 provides that on receipt of the rules and the other things mentioned in s. 60 from the Municipality, the Government may refuse to sanction the rules, or return them to the Municipality for further consideration or sanctioned them with or without modifications or subject to conditions prescribed. Section 62 lays down that the rules as sanctioned by the Government shall be published by the Municipality and the tax shall, from the date which shall be specified in the notice publishing the rules, be imposed accordingly. It is not in controversy that in the present case the procedure prescribed in the sections mentioned above had been complied with.

The Government's contention is that the order made by it was competent as it was order which was authorised by s. 59, subject to which only a tax could be imposed by a Municipality. The appellant Municipality does not dispute that it can impose a tax only under s. 59 but it contents that the general or special orders mentioned in the section subject to which it has the power to impose tax, are orders which were in existence before the rule prescribing the tax was framed and once a rule has been framed by it and the Government has accorded its sanction to that rule, the Government has no power to control the imposition of tax under it by any order made under s. 59. The question so raised is one of the construction of s. 59. But for such construction we have to refer also to the other sections earlier mentioned.

In our opinion, the Government's contention is well founded. The Municipality's power to tax arises only under s. 59. Under that section, it has been given the power of impose a tax after following the procedure prescribed but subject always to the general or special orders of the Government. The appellant Municipality can succeed in this appeal only if the word "impose" in s. 59 means the acquisition of the power to tax by following the procedure laid down in ss. 60 to 62. Its appeal must otherwise fail. It seems to us that the word "impose" in s. 59 has not the meaning for which the appellant Municipality contends.

It would have been noticed that under s. 59 a Municipality may impose a tax only after it has framed a rule under s. 60 prescribing the tax to be levied and the Government has given its sanction to that rule under s. 61. It is this imposition which is made by s. 59 "subject to any general or special orders which the State Government may make in this behalf". Therefore, it is the imposition after the making of the rule authorising the tax, that is subject to the Government's orders and not the making of the rule itself which authorises the tax itself. It is plain from s. 59 that the control over a Municipality's power to tax imposed by the requirement of the Government's sanction of the rule prescribing the tax in contained in s. 61, is not the same thing as the control contemplated by the general or special orders mentioned in s. 59, for both are mentioned in s. 59. If it were not so, it would have been unnecessary to provide for the general or special orders controlling the imposition of the tax in s. 59. This is the first reason why we think that the appellant Municipality's contention is untenable.

The imposition contemplated by s. 59 is clearly not the passing of the resolutions under s. 60 selecting the tax and making the rule prescribing the tax to be levied in terms of s. 46(i), for s. 59(1)(a) expressly makes the imposition something happening after s. 60 has been complied with. This seems to us to be another reason for not accepting the appellant Municipality's contention.

The third reason is to be found in s. 62. As we have earlier stated, it provides that the tax shall be imposed from the date mentioned in the notice publishing the sanctioned rule. The choice of this date lies with the Municipality and not with the Government. The power to levy the tax is acquired by a Municipality when the rule prescribing the tax made by it is sanctioned by the Government. The Municipality at its own choice thereafter fixes a date from which it will collect the tax. Therefore, the word "impose" in s. 62 does not refer to the acquisition of power to levy a tax by making the rule but to the actual levy of the tax under the power so acquired. It is of some significance to note that in s. 46(i) the words used are "make……rules…. prescribing…..the taxes to be levied". What we wish to point out is that in connection with the making of the rules the Act uses the word "levied" in s. 46 (i) and in connection with an actual impost, and word "imposed" in s. 62. We, therefore, think that it would be legitimate to construe the word "impose" in s. 59 in the sense in which it has clearly been used in a connected provision, that is, s. 62. Hence, in our view, "impose" in s. 59 means the actual levy of the tax after authority to levy it has been acquired by rules duly made and sanctioned, and it is such imposition that is made subject to the general or special orders of the Government. Therefore, the Government can at any time by any such order prohibit the imposition of the tax.

Mr. Sastri for the appellant said that the general or special orders in s. 59 refer to orders that can be made under s. 73, but the present order had admittedly not been made under that section. Section 73 does not empower an order prohibiting the imposition of a tax altogether as the order in the present case does. It only gives power to suspend the levy of the tax authorised till the objections to the tax which the Government required to be removed, had been removed. Because s. 73 gives a power to suspend the tax, it is, in our opinion, no argument that the general or special orders in s. 59 must be understood as confined to such orders. Section 73 cannot help in interpreting the words "general or special orders" in s. 59.

A third objection to the validity of the order was that it was discriminatory. It was said that no other Municipality had been prohibited from collecting a similar tax which it had power under its rules to collect. Apart from the very interesting question raised by the learned Attorney General that the Municipality being a local authority, was a state, and was not therefore entitled to the benefit of Art. 14, as to which we think it unnecessary to express any opinion we are on the facts satisfied that there is no discrimination. The Government has now, it is not disputed, prohibited all Municipalities from levying any octroi tax on milk. Furthermore, it has not been shown to us that all Municipalities stand on the same footing with regard to milk.

The last objection was that the order had been mala fide made. This grievance is completely without foundation. The Government had earlier requested the appellant Municipality to drop the tax on the ground, among others, that milk was really being purchased for the Government and that the Government was not liable to be taxed by a Municipality. It may be that this ground was not justified on the facts, but as to this we do not come to any finding. It is clear to us that even if this stand taken by the Government was not tenable, that is no reason for thinking that the order was made mala fide. It was said that the Government had made this order to benefit respondent No. 2, a co-operative union, dealing in milk. This is a bare allegation and is not supported by facts. In any event, since similar orders have now been made in respect of all Municipalities within the State, no question of mala fide can possibly arise.

We think that the challenge to the order dated April 4, 1955 is without any foundation. In our view, the order was perfectly legitimate and must be upheld.

We accordingly dismiss the appeal with costs. AYYANGAR J.-I have had the advantage of perusing the judgment just delivered and I agree with order passed.

The relevant facts and the statutory provisions which bear on the points arising in the appeal have all been set out by Sarkar J. and do not require to be repeated.

There is no dispute that the levy of the duty by the municipality as and from January 1, 1955 was lawful because the requirements of ss. 59-62 were satisfied when the levy was made. No general or special order of the State Government stood in the way of the municipality making the particular levy and the sanction of the State Government under s. 59 (1) (b) had been accorded to it, and the relevant rules had conformed to the procedural and other requirements of these sections. The power of the municipality in the matter of the levy of the tax is, however, not absolute but it made subject, apart from other provisions to which I shall advert, to such general and special orders as the State Government might pass by virtue of the opening words of s. 59 of the Act.

The argument strenuously pressed by Mr. Visvanatha Sastri was this: The Government had no doubt, a power to prescribe and control by general or special orders the right of a municipality to impose a tax. These general or special orders would again, no doubt, be subject to modification from time to time to suit the changing needs of particular areas, or of particular interests which would be affected by the tax-levy, but the exercise of the power of modification or this power too prescribe conditions and restrictions is exhausted when a municipality does, by conforming to the orders then

in force, impose a levy which has come into force under s. 62.

I am unable to agree with this construction of the opening words of s. 59 (1). On its language there is nothing to warrant the doctrine that it gets exhausted by reason of a municipality imposing a tax in conformity with an order as it stood at a particular date. The limitation suggested must therefore, be deduced as a necessary implication either from the fasciculus of sections ending with s. 62 leading to the imposition of a levy, or from other provisions of the Act.

The other provision of the Act to which learned Counsel referred was s. 73 which reads:

> "If it shall at any time appear to the Provincial Government, on complaint made or otherwise, that any tax, leviable by a Municipality, is unfair in its incidence, or that the levy thereof, or of any part thereof, is obnoxious to the interest of the general public, it may require the said Municipality, within such period as it shall fix in this behalf, to take measures for removing any objection which appears to it to exist to the said tax, and if, within the period so fixed, such requirement shall not be carried into effect to the satisfaction of the Provincial Government, it may, by notification in the official Gazette, suspend the levy of such tax, or of such part thereof, until such time as the objection there to shall be removed. The Provincial Government may at any time, by a like notification, rescind any such suspension."

It is obvious that this section is of limited operation and confined to the subject it actually deals with. It posts the continued exaction of the impost, but points to the removal of anomalies and hardships in the details of the levy or of its administration. The existence of this provision would manifestly not suffice to negative the right of the Government to forbid the continued imposition of the tax altogether-such as has been done in the present case. Section 73 cannot therefore be construed as negativing by implication the right claimed by the state Government under s. 59, for it refers to and comprehends a totally different subject-matter.

Coming now to the construction of ss. 59-62 as themselves supporting theory of the exhaustion of the power, the submission was this. "The general or special orders" could only restrict the power of a municipality "to impose a tax". On the scheme of provisions contained in ss. 59-62 a tax was "imposed" only once, though when imposed and in operation the levy and collection of such a tax might be periodic and throughout the life of the imposition. Hence there was no scope for the exercise of the State Government to make "any special order" in relation to a tax after it has once been "imposed" because the power to prescribe conditions or restrictions by general or special order is with reference to the "imposition" of the tax. I feel unable to accept this construction. The whole foundation of the argument is based on a denial of the premise that a power to impose tax is a continuing power. In my judgment the "imposition" of a tax is a continuing power in the sense that so long as it is in force, it points to the existence of and derives vitality from the power of the authority to impose it. When the municipality levies the tax in the sense of quantifying it with reference to an ascertained person and thereby creating a statutory debt payable by the tax payer, it is in reality exercising the power to "impose" the tax, for it is the continued existence of the imposition that furnishes the legal basis for the levy when made. When the power to impose is

withdrawn the imposition falls to the ground. That is the ratio of saving provisions which enable taxes to be levied and collected not withstanding the deprivation of the right to impose taxes for the future. In this view it is clear that there is no exhaustion of the State power under the opening words of s. 59 (1).

In arriving at this construction I have also taken into consideration the scheme of the Act and the wide powers conferred on the State Government in the matter of control and supervision over the municipalities powers designed to ensure, that, subject of course to express statutory provision, municipal administration is coordinated to secure the vital interest of the general public.

In this connection reference may be made to s. 74 of the Act which reads:

> "Whenever it appears to the Provincial Government that the balance of the municipal fund of any Municipality is insufficient for meeting the expenditure incurred under section 175 or for the performance of any duties in respect of which they shall have been declared under section 178 to have committed default, the Provincial Government may be notification require the Municipality to impose within the Municipal district, any such tax specified in the notification as may be imposed under section 59 if no such tax is at the time imposed therein, or to enhance any existing tax in such manner or to such extent as the Provincial Government considers fit, and the Municipality shall forthwith proceed to impose or enhance in accordance with the requisition such tax under the provisions of this Chapter as if a resolution of the Municipality had been passed for the purpose under section 60:
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> Provided that:
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> (a) the Provincial Government shall take into consideration any objection which the Municipality or any inhabitant of the Municipal district may make against the imposition or enhancement of such tax,
>
> (b) it shall not be lawful for the Municipality to abandon or modify or to abolish such tax when imposed, and
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> (c) the Provision Government may at any time cancel or modify any requisition made by it under this section, and the levy of tax or the enhancement, except as to arrears theretofore accrued due. shall thereupon cease or be modified accordingly."

Government are thus empowered both to direct the municipality to impose tax when Government consider the same necessary in the interest of municipal finance and administration as also to direct the municipality to desist from continuing the imposition when the necessity ceases. In cases where a tax is imposed by the municipality by virtue of the provisions in ss. 59-62, the municipality itself could revoke the tax if the rules so provide, for s. 47 of the Act enacts:

> (1) Subject to the requirements of clause (a) of the proviso to section 46 every Municipality may, except as otherwise provided in clause (b) of the proviso to section 74, at any time for any sufficient reason, suspend, reduce or abolish any existing tax by suspending, altering or rescinding any rule describing such tax under the provisions of clause (1) and of the first clause of the proviso to section 46. (2) The provisions of Chapter VII relating to the imposition of taxes shall, so far as may be, apply to the suspension, reduction or abolition of any tax and to the suspension, alteration or rescission of any rule prescribing a tax."

But for the opening words of s. 59(1) there is no specific provision in the Act to enable Government to intervene in cases where the continued levy of a tax is contrary to public interest. I do not consider that any such gap was intended and in my judgement the opening words in s. 59(1) are both apt and sufficient to clothe Government with power to direct by 'special order' a municipality to desist from 'imposing' a tax when satisfied that public interest so requires.

The points raised regarding discrimination and mala fides are without substance and for the reasons stated by Sarkar J. I would reject them.

The appeal therefore fails and has to be dismissed with costs. The Writ Petition which raises the same points as the appeal will also stand dismissed but without any order as to costs.

Appeal dismissed.