Shri Mulchand Odhavji vs Rajkot Borough Municipality on 28 October, 1969

Equivalent citations: AIR 1970 SUPREME COURT 685

Bench: J.C. Shah, J.M. Shelat, C.A. Vaidyialingam, K.S. Hegde, A.N. Ray

CASE NO.:
Appeal (civil) 542 of 1966

PETITIONER:
Shri Mulchand Odhavji

RESPONDENT:
Rajkot Borough Municipality

DATE OF JUDGMENT: 28/10/1969

BENCH:
J.C. SHAH & J.M. SHELAT & C.A. VAIDYIALINGAM & K.S. HEGDE & A.N. RAY

JUDGMENT:

JUDGMENT 1970 AIR (SC) 685 = 1970 (3) SCC 884 The Judgment was delivered by : SHELAT SHELAT, J. : - In 1948, several States of the then known Kathiawar entered into a Covenant and formed thereunder the United States of Saurashtra later called the State of Saurashtra. Article 9 (3) of the Covenant empowered the Rajpramukh to promulgate ordinances for the peace and good government of the State and provided that, when so promulgated, they would have the force of law as Acts passed by the legislature of the State. Pursuant to the said power, the Rajpramukh promulgated Ordinance 40 of 1949 adopting and applying the Bombay Municipal Boroughs Act, XVIII of 1925 to the State of Saurashtra. The Rajpramukh thereafter promulgated the Saurashtra Terminal Tax and Octroi Ordinance 47 of 1949, which was brought into force with effect from August 31, 1949. The object of the Ordinance was to enable the State Government to levy and collect octroi duty in the towns and cities of the State and to pass on the duty so collected by it to those cities and towns until municipalities therein were constituted under the Act and those municipalities made by laws and rules enabling them to levy and collect octroi and other usual municipal taxes. To that end, Section of the Ordinance empowered the Government to impose octroi duty in towns and cities specified in Schedule I thereof, which Schedule included the town to Rajkot. Section 4 authorised the Government to make rules for the imposition and collection of octroi duty. In exercise of the said power, the State Government made rules for the Rajkot Borough Municipality by a notification dated December 5, 1949. These rules were brought into force with effect from December 1950. Under these rules, the respondent- Municipality collected octroi duty until August 1, 1953 when it framed its own rules and bye-laws in exercise of the power so to do under the Act. On the respondent-Municipality bringing those rules and bye-laws into operation, the Government issued a notification dated September 10, 1956 deleting the name of the respondent-Municipality

from Sch. I to the said Ordinance No. 47 of 1949. The result contemplated by the said notification was that on and from August 1, 1953 it would be the rules and bye-laws framed by the respondent-Municipality, and not the State rules, which would be applicable in relation to octroi duty and other taxes leviable by the respondent-Municipality.

2. The appellant-firm was at the material time carrying on business as dealers in grains and was for that business importing from time to time grains and other commodities with the limits of the respondent- Municipality. The appellant-firm was served with two bills dated February 10, 1959 for octroi duty payable by it for the period from February 17, 1954 to March 28, 1954 and from April 5, 1954 to November 10, 1954, and also a demand notice therefor dated March 9, 1959.

3. The appellant-firm thereupon filed a suit, being Suit No. 186 of 1959, challenging the validity of the rules and bye laws made by the respondent- Municipality on the ground of non-compliance of the procedure laid down in the Act for making such rules and bye-laws and following upon that challenge disputed the legality of the said bills and the demand notice. In the alternative, the appellant-firm contended that the Municipality had maintained under Section 99 of the Act a current account in its name in respect of octroi duty payable by it, but as that account had not been settled within a month as required by that section, the respondent- Municipality had no. power to issue the said bills, and the demand notice or to recover the amounts thereunder by distress warrant permissible under Chapter VIII of the Act. The appellant-firm prayed for a declaration of the illegality of the said rules and bye-laws, the said bills and the said demand notice, and for an injunction against the respondent-Municipality restraining it from recovering octroi duty under the said bills. It also pleaded that as the name of the respondent-Municipality had been deleted by the said notification from Sch. I to Ordinance No. 47 of 1949 as from the date when Municipal rules and bye-laws were brought into force, i.e., from August 1, 1953, the rules made by the Government under the said Ordinance no. longer applied, and therefore, the respondent-Municipality, could not impose and collect octroi duty under those rules also. According to the appellant-firm, the result was that octroi duty was not recoverable from it either under the Government rules or the Municipal rules, the former because they were no. longer applicable in relation to the respondent-Municipality, and the latter because they were illegal.

4. The Trial Court found that the said bye-laws and rules of the respondents-Municipality were not made in compliance with Section 61 (1) and Sections 75 and 77 of the Act and were, therefore, illegal, and consequently, the said bills and the demand notice were illegal and the respondent-Municipality could not recover the said duty on the force of the said rules and bye-laws. It accordingly granted the declaration and injunction as prayed. Nonetheless, it made it clear that the notification dated September 10, 1956, deleting the name of the respondent-Municipality from Sch. I to Ordinance 47 of 1949 was conditional in the sense that the Government rules would cease to apply only from the date from which the Municipality's bye-laws and rules would come into force and that since the said rules and bye-laws were illegal and void they could not be said to have been put into force. Therefore, the Government rules under which the respondent-Municipality could levy and collect octroi duty were still in force and if the Municipality so chose, it could impose and collect octroi duty under the rules made by the Government. The Trial Court further held that respondent-Municipality had maintained an account under the power conferred on it by Section 99. That account could not

be settled by reason of the failure of the appellant-firm to give the necessary particulars, and the respondent-Municipality, therefore, would not be debarred from recovering the octroi duty by resorting to Sections 104 and 105 of the Act if the said bills and the said demand notice had been legal.

5. Both parties, being dissatisfied with the judgment and decree of the Trial Court, filed appeals in the District Court. The District Court upheld the conclusions of the Trial Court, except that it held that the bye-laws passed by the respondent-Municipality were not invalid. The appellant-firm thereupon filed a second appeal in the High Court. A single Judge of the High Court summarily dismissed the appeal and refused to grant leave for a Letters Patent appeal and a certificate to file an appeal in this Court. The appellant-firm, however, obtained special leave from this Court and filed the present appeal.

6. The respondent-Municipality not having filed any appeal against the judgment and decree passed by the District Court, its finding as regards the inavilidity of the said rules became final. The present appeal, therefore, has to be decided on that footing.

7. Counsel for the appellant-firm submitted that the Trial Court, as also the District Court, were in error in holding that the respondent- Municipality could levy and recover octroi duty from the appellant-firm under the said rules made by the Government. The contention was that the Municipal rules in this behalf having been held to be illegal and the said notification having deleted the name of the respondent-Municipality from Sch., I to Ordinance 47 of 1949, there were no. rules under which the octroi duty could be levied and recovered. The Government rules, which were withdrawn by and under the said notification, could not be revived and no. octroi could be levied or recovered thereunder as they were withdrawn with effect from August 1, 1953 when the Municipal rules, now declared illegal, were brought into force.

8. This submission, in our view, suffers from a basic error. As already stated, Ordinance 47 of 1949 was promulgated to meet the transitional situation when municipalities in the towns and cities of Saurashtra were yet to be constituted. As it was known that considerable time would be required to hold elections and constitute the municipalities and those municipalities, after they were constituted, would also require time to frame rules and bye-laws to enable them to impose and levy octroi duty and other taxes permissible to them under the Act in accordance with the procedure laid down therein, the State Government took the power to frame rules for that purpose under Ordinance 47 of 1949 and impose and collect octroi duty through the municipalities which in the meantime would be set up. The rules framed by the Government were thus put in the field until the time when the municipalities could frame rules of their own and levy and collect the octroi duty. When the Government found that the respondent- Municipality had made its own rules and bye-laws and brought them into force, it issued the said notification withdrawing the name of the respondent-Municipality from Sch. I to Ordinance 47 of 1949 as the Government rules made thereunder and the municipal rules framed under the Act could not both operate together. While issuing the said notification, the intention obviously was that once the municipal rules came into operation the Government rules, in so far as they pertained to the respondent Municipality, would cease to operate. The Government rules, however, were to cease to operate as the notification

provided "from the date the said Municipality put into force their independent by- laws."

It is clear beyond doubt that the Government rules would cease to apply from the time the respondent-Municipality brought into force its own bye- laws and rules under which it could validly impose, levy and recover the octroi duty. The said notification did not intend any hiatus when neither the Government rules nor the municipal rules would be in the field. Therefore, it is clear that if the bye-laws made by the respondent- Municipality could not be legally in force for some reason or the other, for instance, for not having been validly made, the Government rules would continue to operate as it cannot be said that the Municipality had "put into force their independent bye-laws." The Trial Court, as also the District Court, were, therefore, perfectly right in holding that the respondent-Municipality could levy and collect octroi duty from the appellant-firm under the Government rules. There was no. question of the Government rules being revived, as in the absence of valid rules of the respondent-Municipality they continued to operate. The submission of counsel in this behalf, therefore, cannot be sustained.

9. The next submission made by counsel has even less merit than the first one. Under Section 99 of the Act, a municipality, for the convenience of persons and firms and other bodies carrying on business, has been authorised to maintain a current account of octroi duty payable by them instead of recovering it at the time they bring in the leviable goods within the municipal limits. The section provides that such accounts, when maintained, should be settled at intervals not exceeding one month and the balance due on such settlement should be recovered. The power to maintain such accounts is discretionary and would be used only for the convenience of merchants and other bodies carrying on business. Obviously the Municipality is not bound to maintain such accounts. Section 99 further provides that if such an account is maintained, the person, in whose name it is maintained, must give such information and details as are necessary to enable the Municipality to maintain and to settle it at the interval stated therein. This cannot be done if the person whose account is maintained fails to furnish the necessary details. The section also provides that the amount due at the foot of such account shall be recoverable under and in accordance with the provisions of Chapter VIII, i.e., inter alia under Sections 104 and 105, by presentation of a bill and a demand notice and, in case of default, by distress warrant.

10. The argument, was that the respondent-Municipality, failed to settle the account maintained by it under this section within the time prescribed by Section 99, and that therefore, it became disentitled to have recourse to the provisions of Chapter VIII of the Act. We are unable to appreciate this submission. The obligation under Section 99 to settle the account is dependent on the merchant furnishing the necessary particulars of the goods brought into the municipal limits. If such particulars are not furnished, the municipality obviously cannot settle the account at all, much less at the interval contemplated by the section. The merchant in such a case cannot validly make a grievance that as his account is not settled, Chapter VIII should not or cannot be applied to him. The evidence was that the appellant-firm failed to supply the details, and consequently, the respondent-Municipality could not settle his account and had to prepare the bills and serve the demand notice in respect of the duty due by the appellant-firm without settling the said account. If the appellant-firm had any dispute about the amount claimed by the Municipality as due, it had a clear remedy by way of an appeal under Section 110 and ventilate therein its grievance. That remedy

was not resorted to. In these circumstances, the appellant-firm could not legitimately object to steps for recovery taken against it by the respondent-Municipality under Chapter VIII of the Act.

11. Both the submissions made on behalf of the appellant-firm thus fail and the appeal is dismissed with costs.