Atlas Cycle Industries Ltd vs State Of Haryana & Anr on 11 August, 1971

Equivalent citations: 1972 AIR 121, 1972 SCR (1) 127, AIR 1972 SUPREME COURT 121, 1973 TAX. L. R. 394

Author: A.N. Ray

Bench: A.N. Ray, S.M. Sikri, D.G. Palekar

PETITIONER:
ATLAS CYCLE INDUSTRIES LTD.

Vs.

RESPONDENT:
STATE OF HARYANA & ANR.

DATE OF JUDGMENT11/08/1971

BENCH:
RAY, A.N.
BENCH:
RAY, A.N.
SIKRI, S.M. (CJ)
PALEKAR, D.G.

CITATION:
1972 AIR 121 1972 SCR (1) 127
1971 SCC (2) 564
CITATOR INFO :
E 1975 SC2172 (14)
R 1975 SC2193 (11)
R 1984 SC 583 (21)
O 1985 SC1683 (4,7)

ACT:
Punjab Municipality Act, 1911, s. 5(4), 62 (10)-Notification imposing octroi if became automatically applicable to new areas included in Municipality by virtue of s. 5(4)-Notification, bye law difference between.

HEADNOTE:
Section 5 (4) of the Punjab Municipality Act, 1911 enacts: "when any local area has been included in a municipality under sub-section (3) of this section of this Act, and,

except as the State Government may otherwise by notification direct all rules, bye-laws, orders, directions and powers made, or conferred under this Act and in force throughout the whole municipality at the time shall apply to such area."

By a notification the industrial area within which the appellants' factory was situated was included within the municipality of Sonepat. Thereafter, the respondent-municipality purported to impose, levy and collect from the appellant octroi. The appellant filed a writ petition in the High Court for restraining the municipality from levying and collecting the octroi. The municipality relied upon the provisions contained in s. 5 (4) of the Act in support of the contention that the notification dated 3rd November 1942 issued under s. 62 (10) of the Act notifying the imposition of octroi within the octroi limits of the Sonepat municipal limits became applicable to the areas included. The High Court dismissed the petition. It came to the conclusion that by reason of the provisions contained in s. 5 (4) of the Act the taxes would "automatically become leviable" to new areas included in the municipal limits. Allowing the appeals,

HELD: The High Court was wrong in holding that the municipality was competent to levy and collect octroi from the appellants by reason of the provision contained in s. 5 (4) of the Act.

(i) Section 5 (4) of the Act speaks of rules, bye-laws, conducts, directions and powers and does not significantly, mention notification. The Act speaks of notification ceasing to apply to excluded areas, whereas, in the case of inclusion of areas the Act significantly omits any notification being applicable to such areas. The legislative intent is, therefore, unambiguous that notifications would not be applicable to an included area on the strength of s. 5 (4). And s. 62 (10) of the Act speaks of notification for the imposition of taxes and such a notification is the statutory basis of the imposition and levy of tax. [133 H]

(ii) The word 'notification' is not synonymous with rules, bye laws, orders, directions and powers. The power to issue notifications orders, rules or bye-laws refers to different and separate methods of expression of exercise of power under the statute. Bye-laws are entirely

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different from notifications imposing tax and the bye-laws fixing the 'limits and prescribing the routes by Which articles which are subject to octroi may be imported obviously cannot be equated with notification of imposition of octroi. [134 C, G]

Bagalkot City Municipality v. Bagalkot Cement Co., [1963] Supp. I S.C.R. 710, distinguished.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1927 and 2222 of 1970.

Appeals from the judgment and order dated May 18, 1970 of the Punjab and Haryana High Court in Civil Writ Nos. 2014 and 2611 of 1967.

C.K, Daphtar and L N. Shroff, for the appellant (in C. A. No. 1927 of 1970).

I. N. Shroff, for the appellant (in C.A. No. 2222 of 1970). V. C. Mahajan, and R. AT. Sachthey, for the respondent No. 1 (in both the appeals).

M. C.. Setalvad, N. S. Das Bahl, P. C. Bhartari, J. B. Dadachanji and Ravinder Narain, for respondent No. 2 (in C. A. No. 1927 of 1970).

P. C. Bhartari, J. B. Dadachanji and Ravinder Narain, for respondent No. 2 (in C. A. No. 2222 of 1970).

The Judgment of the Court was delivered by Ray, J. These two appeals are by certificate against the common judgment dated 18 May, 1970 of the High Court of Punjab and Haryana dismissing the applications of the appellants for a writ of mandamus restraining the Municipality of Sonepat from levying against and collecting from the appellants any octroi in respect of raw materials, components and parts imported by the appellants into the factory of the appellants situated at Industrial Area, Sonepat.

The factory of each of the appellants was situated at Industrial Area, Sonepat. The appellants carry on business of manufacturing bicycles and bicycle components and parts.

On 30 September, 1966 a notification dated 15, September, 1966 was published in the Punjab Government Gazette to the effect that under section 5(1) of the Punjab Municipal' Act, 1911 (referred to for the sake of brevity as the Act) the President of India was pleased to declare his intention of including within the municipal limits of Sonepat in the Rohtak District, the area specified in the Schedule to the notification. The Schedule included the Industrial area of, Sonepat where the factory of the appellants was situated. Under section 5(2) of the Act the inhabitants of the area who objected to the proposed inclusion of the said area could submit their objection in writing within six weeks- of the date of publication of the notification. The appellants. filed objections in writing.

On 1 November, 1966 after the bifurcation, of Punjab, the State of Haryana came into existence. A notification dated 11 August, 1967 was published in the Haryana. Government Gazette. The Gazette notification was to the effect that the Governor of Haryana, was pleased to,, include within the Municipality of Sonepat in the Rohtak District the areas mentioned in the notification. The industrial area within which the factory of the appellants was, situated was thus included within the local limits of the Municipality of Sonepat.

From 18 August, 1967 the respondent-Municipality, purported to impose, levy and collect from the appellants, octroi in respect of raw materials, components and parts imported by the appellants into their factory for consumption or use in the manufacture of bicycles and bicycle components. The respondent-municipality relied an the provisions. contained in section 5(4) of the Act in support of their contention that imposition of octroi which was in force within the municipality applied to the area included within the limits of the municipality by the notifications, and, therefore, the appellants were liable to payment of octroi. The provisions of section 5(4) of the Act are as follows:-

> "When any local area has been included in a municipality under sub-section (3) of this section of this Act, and, except as the State Government may, otherwise by notification direct all rules, bye-laws, orders, directions and powers made, or conferred under this Act and in force throughout the whole municipality at the time, shall apply to such area."

The respondent-municipality relied on the provisions ,contained in section 5(4) of the Act that all rules, bye- laws, orders, directions and powers made, or conferred under the Act and in force throughout the whole municipality would apply to such an area, and, therefore, the notification No. 3798-C-42/60545 dated 3 November, 1942 issued under ,section 62(10) of the Act notifying the imposition of octroi within the octroi limits of the Sonepat Municipality became applicable to the area included.

The relevant provisions for imposition of tax are to be found in sections 61 and 62 of the Act. Under section 61 of the Act any municipal committee may impose tax of different kinds enumerated there. The three broad heads of taxes under section 61 of the Act are those provided in sections 61(1)(a),61(1)(b)to(f)inclusive and61(2). Tax mentioned in section 61(1)(a) of the Act is on buildings and lands. Tax mentioned in section' 61 (1)(b) to (f) is tax on profession, ,calling, trade and of other forms which are not material for the purpose of the present appeals. Under section 61(2) of the Act the municipality may impose with the previous sanction of the State Government any other tax which the State Legislature has power to impose in the State under the Constitution. The levy of octroi is under section 61(2) ,of the Act. Competency to impose octroi is because of item 52 of the State List which reads "taxes on the entry of goods within the local limits of the area for sale therein." The power to levy octroi is indisputable and was not ,challenged.

The contention on behalf of the appellants Was that the provisions contained in section 62 of the Act should have '- been followed. Section 62 consists of 12 sub-sections. Broadly stated, under section 62 of the Act a Municipal Committee passes a resolution proposing the imposition ,of any tax under section 61. When such a resolution has been passed the committee shall publish 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. Any inhabitant, objecting to the proposed tax may within thirty days from the publication of the notice submit his objection in writing., to the committee. If the committee decides to amend its proposals it shall publish the amended proposal along with, a notice indicating that they are in modification of those previously published for objection. Objections may-within, thirty days be received to the amended proposal and the: committee shall then consider the objections. Counsel on behalf of the appellants contended that

this procedure. for inviting objections should have been followed.

In the case of tax falling under section 6 1 (1)(b) to (f) of the Act the municipal committee after settlement of the proposals shall direct that the tax be imposed and forward,;, a copy of the order through the Deputy Commissioner to,, the State Government. These orders will be attracted by, the provisions of section 5(4) of the Act to the included areas. But orders by themselves are not the authority for imposition of tax.

In the case of tax falling under section 61(1)(b) to, (f) of the Act the State Government one receipt of the order-shall notify under section 62 (10) of the Act the imposition of the tax in accordance with such order and shall in the notification specify a date not less than; one month from the date of the notification, on which the tax-shall come into force. Therefore, in the absence of notification falling within the ambit of section 5 (4), of the- Act the municipality will not be competent to levy or collect tax. In the case of a proposed tax. under section 61 (1) (a) of the Act the municipality has, to submit proposals together with the objection, if any,, made in connection., therewith to the Deputy Commissioner. The Deputy,Commissioner after considering the objections may either.refuse to sanction the proposals or, return them to 1 the municipality for further consideration or sanction them without modification or with such. modification not involving an increase of the amount to be imposed, as he deems. fit and then forward the same to, the State Government. a copy of the proposals and his- order. of, sanction..

In the case of tax falling under section 61 (1) (a) of the Act the State Government on receipt of the order of sanction of the Deputy Commissioner shall notify the imposition of the tax in accordance with such order and in the noti- fication shall specify a date not less than one month from the date of the notification, on which the tax shall come into ,.force.

In the case of tax falling under section 61(2) of the Act the municipality has to submit proposals together with objections to the Deputy Commissioner. The Deputy Commissioner shall submit the proposal and objections with his recommendation to the State Government. The State Government on receiving the proposals for taxation under section 61(2) of the Act may sanction or refuse to sanction the same or return them to the committee for further consideration.

In the case of tax falling under section 61(2) of the Act when the State Government on receipt of the proposal,and objections along with the recommendation of the Deputy Commissioner sanctions the imposition of the tax the State Government under section 62(10) of the Act shall notify the imposition of the tax and shall in the notification specify a date not less than one month from the ,date of the notification, on which the tax shall come into force. Inasmuch as the provisions of section 5(4) of the Act render the order of the relevant authorities sanctioning proposal of municipality for levy of octroi applicable to the included area, there cannot be any question of following the procedure for inviting objections to the proposed tax contemplated in section 62. It may also be stated here that a contention was advanced on behalf of the appellants that the applicability of octroi to the, included area would offend Article 14 of the Constitution by reason ,of denial to the persons within the included area of right to object to the tax. The provisions contained in section 5 of the Act and, in particular, sub-section (2) thereof, confer on inhabitants within the

area proposed to be included the right to object to the alteration proposed and submit objections in writing. The inhabitants. would thereby have the opportunity of objecting not only to the inclusion of the area but also to the incidence of tax as a result of the inclusion.

Section 62 of the Act consists of 12 sub-sections. These sub-sections deal with three matters. The first five sub- sections deal with the procedure for proposals of tax, objections by inhabitants and final consideration of ob- jections by the committee. These sub-sections form part of a stage anterior to sanction by the relevant authorities of proposals for tax.

Sub-section (6) to (9) of section 62 of the Act deal with the order of sanction by the appropriate authorities of the proposals for tax. These orders are not the provisions by which tax is imposed. These orders are sanction for imposition of tax. These orders are attracted by virtue of the provisions contained in section 5(4) of the Act to the included areas. But in the absence of notification by the Government under section 62(10) of the Act there is no imposition of tax.

Section 62 (10) of the Act indicates that there is imposition of tax only when the State Government shall notify the imposition of the tax and shall in the notification specify a date on which the tax shall come into force. In the absence of imposition of tax by a notification under section 62 (10) of the Act the municipality is not competent to impose, levy or collect tax. Section 62(12) of the Act enacts that a notification of the imposition of tax shall be conclusive evidence that the tax has been imposed in accordance with the provisions of the Act. It is the notification under the statute which is conclusive evidence of the imposition of tax. The controversy in the present appeals is solved by finding out as to whether the notification dated 3 November, 1942 imposing octroi within the limits of the Sonepat Municipality became applicable by reason of the provisions contained in section 5(4) of the Act. It is noticeable at the outset that section 5(4) of the Act speaks of rules, bye-laws, orders, directions and powers and does not signi- ficantly mention 'notifications'. It is apposite to consider sections 6,7 and 8 of the Act which deal with the effect of exclusion of local area from the municipality. In the case of exclusion of an area from the Municipality it is provided in section 8(1) (a) of the Act that "This Act and all noti- fications, rules, bye-laws, orders, directions and powers issued, made or conferred under the Act, shall cease to apply thereto". When the Act provided for notifications ceasing to apply in the case of exclusion of local areas, and in the immediately preceding section 5 refrained from using the word 'notifications' becoming applicable in the case of inclusion of areas the legislative intent is unam- biguous and crystal clear that notifications could not become applicable to an included area on the strength of section 5(4) of the Act.

The word 'notification' cannot be said to be synonymous with rules, bye-laws, orders, directions and powers for two reasons. First, the Act in the present case speaks of noti- fications for imposition of tax and uses the word 'notifi- cation' separately from the other words "rules, bye-laws, orders, directions and powers". In the case of exclusions of areas, the Act speaks of notification ceasing to apply to excluded areas whereas in the case of inclusion of areas the Act significantly omits any notification being applicable to such area. Secondly, the General Clauses Act in section 21 speaks of power to issue notifications, orders, rules or bye-laws and it is, therefore, apparent that the power to issue notifications, orders, rules or bye-laws refers to different and separate methods of expression of exercise of power under the statute. Section 62(10) of the Act speaks of notification of the

imposition of tax. Such a notification is the statutory basis of imposition and levy of tax.

Bye-laws are entirely different from notifications imposing tax as will be manifest from section 188 of the Act. Under that section the committee may by bye-laws as mentioned in clause(g) thereof fix limits for the purpose of collecting octroi where collection of octroi has been sanctioned and may prescribe routes by which articles which are subject to octroi may be imported into municipality. Bye-laws fixing the limits and prescribing the routes by which articles which are subject to octroi may be imported obviously cannot be equated with notification of imposition of octroi.

In the present appeals, the High Court came to the conclusion that by reason of the provisions contained in section 5(4) of the Act taxes would 'automatically become' leviable' to new areas added to the municipal limits. The High Court fell into the error of holding that taxes became automatically leviable in new areas. The High Court relied on the decision of this Court in Bagalkot City' Municipality v. Bagalkot Cement Co. to support the conclusion of taxes becoming automatically leviable in extended areas on the ground that by reason of the provisions contained in section 5(4) of the Act the inhabitants of the, included area would 'suffer all the burdens that are inherent in their inclusion within the municipal limits'. This conclusion of the High Court is not supported either by the decision of this Court or by the provisions of the statute. In the first place, a taxing provision always receives a strict interpretation for the obvious reason that there must be clear and express language imposing a tax and the date from which such tax shall come into effect. Notifications, under the Act are the only authority and mandate for imposition and charge of tax. Notifications are not made applicable to included areas under section 5(4) of the Act. There cannot be any taxation by implication. Secondly, in the Bagalkot City Municipality case' there was no provision comparable to section 5(4) of the Act and this Court did not decide that taxes would become automatically leviable. On the contrary, this Court in the Bagalkot City Municipality case' in interpreting the words 'Municipal district' occurring in a bye-law did not extend the meaning of 'municipal district, to include areas which were subsequent to the making of the bye-law added within the limits of the municipal district' The reason given by this Court was that the expression 'municipal district' in the bye-law referred to the 'municipal district' as existing when the bye-law was framed. The words 'municipal district' in the bye-law were not construed to relate to extended areas. In the Bagalkot City Municipality case' section 48 of the Municipal Act provided that a bye-law could be made only with the sanction of the Government. The further provisions (1) [1963] Supp. 1 S.C.R. 710.

10-MI245SupCI/71 of section 48 in the Bagalkot CitY Municipality case' required publication of a proposed bye-law for the information of the persons likely to be affected thereby. The lack of publication of the bye-law to the Bagalkot Cement Company affected by the bye-law was held to be an additional reason for refusing to extend the meaning of the words 'municipal district' to include extended areas. There is no such aspect in the present appeals. The Bagalkot City Municipality case' is, therefore, of no aid in interpreting section 5(4) of the Act in the manner the High Court did. The High Court was wrong in holding that the municipality was competent to levy and collect octroi from the appellants by reason of the provisions contained in section 5(4) of the Act. The judgment of the High Court is set aside. The appeals are allowed. The applications of the appellants are allowed and writs of mandamus will go to the respondent municipality restraining the municipality from levying against and collecting from the appellants any octroi in respect of raw materials,

components and parts imported by the appellants into the factory of the appellants. Each party will pay and bear their own costs. Liberty to mention if the Respondent Municipality will fail to refund the monies within a fortnight.

K.B.N. Appeals allowed.