The Municipal Corporation For City Of ... vs Bharat Forge Co. Ltd. & Ors on 10 March, 1995

Equivalent citations: 1995 SCC (3) 434, JT 1995 (3) 312, AIR 1996 SUPREME COURT 2856, 1995 (3) SCC 434, 1996 AIR SCW 449, (1995) 2 SCR 716 (SC), 1995 (2) SCR 716, (1995) 3 JT 312 (SC), (1995) 58 ECR 211, (1996) 1 MAHLR 540, (1995) 3 BOM CR 468

Author: B.L Hansaria

Bench: B.L Hansaria, Kuldip Singh, S.B Majmudar

PETITIONER:
THE MUNICIPAL CORPORATION FOR CITY OF PUNE AND ANR.

Vs.

RESPONDENT:
BHARAT FORGE CO. LTD. & ORS.

DATE OF JUDGMENT10/03/1995

BENCH:
HANSARIA B.L. (J)
BENCH:
HANSARIA B.L. (J)
KULDIP SINGH (J)
MAJMUDAR S.B. (J)

CITATION:
1995 SCC (3) 434 JT 1995 (3) 312
1995 SCALE (2)245

ACT:

HEADNOTE:

JUDGMENT:

HANSARIA, J.:

1. The jouney to decide the fate of these appeals has to start from 1881 as it was on

> 12th March of that Notification No. 165 was gazetted starting inter alia that octroi duties in the Cantonment of Poona would be, imposed at the rates "for the time being" leviable and in respect of the several articles "for time being" dutiable in the Municipality of Poona, when such articles would enter in to the cantonment from any place situate without the limits of the said Municipality, The Poona Cantonment Bowl authorised the Municipality to collect the octroi which had become so leviable and thereafter to divide the proceeds as agreed upon. The Municipality of Poona having become a Corporation under the Municipal Corporation 1950, it continued to collect octroi on the strength of the aforesaid Notification and agreement.

The respondents challenged the legality, of the collection of the octroi made as per 1963 Schedule to the Octroi Rules framed by the appellant This was done by approaching the Bombay High Court by filing petitions under Article 226 of the Constitution which have come to be allowed by the impugned judgment. Hence these appeals by the Municipal Corporation for the City of Pune, hereinafter referred as the Municipal Corporation.

2.The challenge to the collection was broadly on two counts:

> (1)The 1881 Notification does not infact permit the collection; and (2)even if factually the Notification were to so permit, the appellant could not have done so in law..

3.The High Court accepted both the contentions, the correctness of which has been assailed in these appeals. Factual matrix

4. Poona Cantonment (the Cantonment) came into existence in 1817. The Bombay Municipal Act, 1872, provided for levy of taxes including octroi. Similar was the provision in Bombay District Municipal Act, 1873. Poona City Municipality started levy and recovery of octroi from 1875-

76. The Cantonments Act, 1880 was enacted on 5th February, 1980. Section 21 of this Act permitted imposition by the Local Government, with the previous sanction of the Governor-General in Council, by notification in the Official Gazette, any tax which could be imposed in a Municipality. Section 22 of this Act permitted the Local Government by notification in Official Gazette to apply and adapt to any cantonment provisions and rules in force under any enactment for assessment and recovery, of any tax in Municipality.

5. The Government of Bombay by its Resolution No. 234 adopted on 26.1.1881 approved the levy of octroi in the Cantonment on the same articles and the same rate as in Poona City; and it approved the proposal to divide the proceeds on some terms, the details of which are not required to be noted. The Government of India conveyed its sanction to the levy of octroi in the Cantonment by its telegram dated 4.3.1881. Thereafter came the aforesaid Notification of 12th March, 1881 and the Municipality started collection of octroi duties for the Cantonment from that year itself.

6. The aforesaid arrangement smoothly continued till 1912 by which year the Cantonment Act of 191 0 had come into force. The Cantonment then wanted a new method of apportionment as it thought

that the existing agreement relating to apportionment was unjust to it, The State Government did not, however, agree and the disagreement was conveyed to the Cantonment. The Municipality proposed to revise its Schedule of Octroi Rules in 1917 by enhancing the same, which was opposed by the Cantonment Committee. On the matter being examined by the Government it approved the revised Octroi Schedule as mentioned in its Order No.6649 dated 25th September, 1918. This Order required the General Officer Commanding of the Cantonment to be informed that the Government saw no reason to modify its earlier decision.

7. In the meantime, the Government had issued four notifications bearing Nos. 4160 to 4163 dated 17th June, 1918 which were gazetted on June 20, 1918. Notification No- 4160 had been issued in exercise of powers conferred by section 15(1) of the Cantonments Act, 1910 and it imposed taxes mentioned in this Notification in the Cantonment of Poona "in supersession of the notifications of the Government noted on the margin and all other notifications on the same subject." Notification No. 4162 had also been issued in exercise of the same power and it dealt inter alia with octroi duties. Notification No. 4163 was, however in exercise of powers conferred by section 15(2) of the aforesaid Act and applied to the Cantonment of Poona in an adapted form the rules of the Poona City Municipality mentioned in Notification relating to assessment collection and recovery of octroi duties.

8. After the aforesaid Notifications had bean issued Cantonment Act. 1924 was enacted. Chapter V of this Act is on the subject of 'Taxation'; and sections 60 to 63 of this Chapter set out the power and procedure of imposition, of any tax in any cantonment. (A part of this Act was repealed in 1927).

9. In 1963 new Octroi Ruts were tamed by the appellant which enhanced the rates of octroi and included new articles in the schedule and it started collecting octroi accordingly from all concerned.

Submissions

10. In the backdrop of aforesaid broad facts, the respondents challenged the collection of octroi by the appellant as per revised Rules of 1963 contending that nei- ther in fact nor in law the appellant had 'authority of law' required by Article 265 of the Constitution to carry on the work of collection of octroi from them as per 1963 schedule which enhanced the rates of octroi and included new articles in the schedule.

11. The factual aspects of the submission were:-

> (1) The 1881 Notification having stated that octroi duties at the rates "for the time being" dutiable, are imposed, the rates which were prevailing on 12th March, 1881 and the articles on which octroi was leviable on that date alone could be collected by the appellant; and not at the rates mentioned in the Schedule of 1963 Octroi Rules, nor on articles added by those Rules.
>
> (2) The 1881 notification in any Case, stood superseded by the fasiculus of Notifications dated June 18, 1918 which had been duly gazetted.

(3)if the, later Notifications did not supersede the 1881 Notification, the same, in any case, impliedly repealed the former.

12. The legal affirmity of the collection was assailed on these counts :-

(1) The appellants not having entered into an agreement with the Cantonment as required by Section 45(1)(b) of the Cantonments Act, 1924, so also by section 32(4) of the Bombay Provincial Municipal Corporations Act, 1949, after new Octroi Rules were framed in 1963, it had no authority to collect octroi on behalf of the Cantonment. (2) If the Notification of 1881 were to be held to permit levy and collection of octroi not only on the rates and articles as prevailing on 12th March, 1881 but on articles other than those and/or at rates higher than those, the notification is unsustainable being a product of impermissible delegation.

(3) The procedure contemplated by section 62 of the Cantonments Act, 1924 having not been followed while enhancing the rates of octroi duties by 1963 Rules, col-

lection of the same at the enhanced rate would be against 'authority of law.'

13. We propose to deal with the submissions seriatim. Reach of the 1881 Notification

14. The basic point which would need our consideration to answer this question is to find out what was meant by the expression "for die time being" used twice in the aforesaid Notification. According to S/Shri Shanti Bhusan and Anil Divan learned Senior Advocates appearing for the respondents, this expression refers to the rates of octroi which were prevailing at the time when the notification was issued; and octroi on the articles or at the rates which became effective after the Notification saw the light of day cannot be imposed or collected with the aid of this no- tification.

15. In support of this submission, reliance has been placed on a judgment of this Court, to which one of us (Kuldip Singh, J.) was it pang, in Jivendra Nath Kaul v. Collector/District Magistrate and another, 1992 (3) SCC 576. In that case, this Court was concerned to find out the purport of this expression used in section 28(1) of the concerned provisions, which dealt with the question as to when a motion of no confidence can be said to be carried out. The section required support of more than half of the total number of members "for the time being." The contention advanced was that as the Zila Parishad was constituted of 62 members, but as 31 valid votes had been cast in favour of the no-confidence motion, which number was not was not more than half of 62, the motion could not be said to have been carried out as required by the statutory provision. This Court stated that die expression "for the time being " meant "at the moment or existing position"; and as at the time no-confidence motion was taken up, the total number of members of the Zila Parishad was 56, it was held that the requirement of law was satisfied.

16. Learned Advocate General of Maharastra appearing for the appellant, however, contends that the aforesaid ex- pression has no fixed connotation and is capable of different interpretation accord-

ing to the context. This is was what been stated at page 257 of Volume 2 of "Words and Phrases" (Second Edition). According to the statement made there, this expression in one context may point to "one single period of time"; and in another context to "succession of periods."

17. That the aforesaid expression means, as is the contention on behalf of the appellant receives support from what was pointed out by a Constitution Bench in the case of Madhav Rao Scindia Bahadur v. Union of India, 1971 (1) SCC

85. In that case, to which our attention has been invited by the learned Advocate General, while dealing with be meaning of the word "Ruler" as defined by Article 366 (22) of the Constitution, which had stated at that time that it included any person "for the time being" recognized by the President as the successor of the Ruler with whom any agreement had been entered into and who had been so recognized by the President it was observed in paragraph 112 that the expression "for the time being" predicates that there shall be a Ruler of Indian State and that if the first recognised Ruler dies, or ceases to be a Ruler, a successor shall be appointed, and that there shall not be more Ruler than one at a given time. This observation indicates that the recognition given by the President is not one time recognition, but the same could be bout time to time.

18. That die intention of the concerned authorities while issuing the Notification at hand was not confined to the rates prevailing or articles subjected to octroi on the date of Notification is apparent, according to the learned Advocate-General, from what has been recorded contempora- neously in the Government file, a zerox copy of relevant nothings of which has been made available to us by him. At page 13 of this collection we find mention of the fact that rates of octroi duties to be imposed and the articles on which octroi is to be imposed in the Cantonment were to be so as enforced in the Municipality "from time to time", There is also enough material on record to show that octroi at rates prevailing subsequent to the date of aforesaid notification had come to be collected by the Municipality on behalf of the Cantonment for a sufficient long period after the issuance of 1881 Notification. Thus, all concerned persons had accepted the aforesaid Notification to mean that the rates (so also the articles) need not be those which prevailed when the Notification was issued.

19. In view of all the above, we hold that the 1881 Notification was meant to impose octroi duties, not only at the rates prevailing when the Notification was issued, nor was confined to the articles on which octroi was lien leviable, but these could be collected at rates higher than those prevailing at the time of issuance of the Notification, or could be levied on articles then not subject to octroi.

Supersession of 1881 Notification

20. The submission relating to supersession is advanced on the strength of what was stated in Notifications Nos. 4160- 4163 dated 17th June, 1918. Shri Divan was very emphatic that if these four notifications are read as a whole, as they are required to be, there would be no manner of doubt that the 1881 Notification relating to octroi stood superseded. This contention is equally emphatically challenged by the learned Advocate General.

21. We have closely perused the aforesaid Notification and we do agree with Shri Divan that they form a complete scheme in themselves relating to tax in the Cantonment of Poona; and what has been stated in these Notifications would prevail insofar as taxes to be imposed in the Cantonment is concerned, in preference of earlier Notifications on the subject. Question, however, is whether I can be said on the language of the 1918 Notifications, that the 1881 Notification relating to octroi stood superseded. 'it deserves mention that Notification No. 4160 alone, of the four Notifications, expressly stated about supersession of the-Notifications mentioned in the margin of this Notification. Shri Divan draws our attention that of the four Notifications mentioned in the margin, one is Government Notification No, 481 dated 18th September, 1891, which had superseded Government Notification No. 574 of 5th December, 1883, which in its turn had superseded Notification No. 165 of 2th March, 1881. Relying on this historical setting, it is urged that Notification No. 4160 must be held to have superseded the Notification of 12th March, 1881 relating to octroi also.

22. The learned Advocate General joins issue and submits that Notification No. 4160 having not dealt with the subject octroi, what can reasonably be said to have been superseded by this Notification qua the Notification of 12th March, 1881 which had dealt not only with the octroi duties but Property Rates also, I that die supersession of which Notification No. 4160 mentioned, is of those taxes which Were the subject of that Notification. It is contended that this Notification stated about suppression of notifications "on the, same subject", which, according to learned Advocate, General, means the subject dealt with by that Notification.

23. We do find sufficient force in this submission and, according to us, it would not be a correct reading of Notification Nos. 4160 to hold that it superseded Noti- fication on 12th March, 1881 in its entirety. In our view, the supersession has to be confined to taxes mentioned in Notification No.4160. Octroi being not one of these taxes, we hold that Notification did not supersede 1881 Notification qua octroi. This conclusion of ours receives support from what has been stated in Notification No.4162 which has specifically dealt with imposition of octroi duties and trade registration fees.

Implied repeal of 1881 Notification relating to octroi

24. The alternative submission of Shri Divan in this context is that, in any case, Notification No. 4162 has to be read to have impliedly repeated 1881 Notification re- lating to octroi duties. We find no difficulty in accepting this submission, because Notification 14a 4162 which is on the subject of imposition of octroi duties has been supplemented by Notification No. 4163 dealing with assessment collection and recovery, of octroi duties. This aspect has been dealt with by section 15(2) of the Cantonments Act, 1910; the imposition being covered by sub- section (1) of this section. As these Notifications were issued with the previous sanction of the Governor-General in Council, we have no hesitation in stating that by issuing Notifications No.4162 and 4163, the issuing authority did impliedly repeal Notification of 1881 dealing with octroi.

25. The learned Advocate General does not really contest the legal position, What, however, has been urged by him that the Notification No. of 1918 dealing with the imposition of octroi and rates

thereof had not been acted upon and a decision had in act been taken to formally cancel these Notifications, which, however, did not actually happen. Despite non-cancellation of these Notifications as required by section 21 of the General Clauses Act, as per which provision any addition, amendment, variation or rescission of any notification has to be "in the like manner" and "subject to the like sanction" as the issuance of notification, the contention is that if we were to bear in mind the practical construction given to these Notifications, it would be apparent that they were not sought to be acted upon. Another related submission is that these Notifications should be deemed to have good effaced because of disuse for almost 50 years by 1963, as permitted by the legal process known as "desuetude"

26. Shri Divan and Shri Shanti Bhushan would not agree with the learned Advocate General, because, according to them a statutory notification could not be set at naught any executive decision, which is the basis of the first submission of the learned Advocate General relatable to practical construction. The learned counsel for respondents submit that the Local Government knew that even an amendment of these Notifications could be made only by publication in official gazette, because of which the little omission which had occurred in the Notification No.4163 had been supplied by a corrigendum published in official gazette, Our attention is invited to what was stated on this subject in Mahender Lal Jaine v. State of Uttar Pradesh, 1963 (Suppl) 1 SCR 912 at page 951. In the written submissions of the respondent-:, filed on 31st January, it has been mentioned, and rightly, that administrative practice (and for that matter, administrative order) cannot supersede or override statutory rule or Notification. Some decisions have also been mentioned in this regard to which we are not adverting, because this legal proposition is well settled.

27. As we are agreeing with the learned counsel for the respondents on the legal aspect we do not propose to burden the judgment with the long factual facts, highlighted by the learned Advocate General by referring to Government Order No. 6649 dated 25th September, 1918 (at pages 472 to 482 of Part-II of the Paper Book) that die Notifications of June 1918 relating to octroi duties were not acted upon. We would not be justified in allowing the Local Government, or even the Governor-in Council, to undo a notification issued with the previous sanction of Governor-General in Council. According to us, the only legal way in which Notifications No.4162 and 4163 could have been reminded was by issuance of another Notification in the like manner and subject to like sanction prevailing as when those were issued. It would also be hazardous to allow an executive authority to obliterate a statutory Notification. We would take this view, more so, being concerned with a subject which fell, not within the domain of the Provincial Government, but the Central Government, as did the subject of cantonment.

28. What has been stated relating to "executive construction" or "practical construction" in Crawford's 'Interpretation of Laws at pages 393 to 401, watch has been relied on by the learned Advocate General, would not persuade us to agree with him in this submission, though it may be permissible to take note of post-enactment history to find out as to how an enactment was understood on the principle of "contemporanea expositio", of which mention have been made at pages 551 et. seq. of Francis Bennions' "Statutory Interpretation" (1984). The learned Advocate General is not relying on the statements made in the aforesaid Government Order for the purpose of interpreting the two Notifications, but for contending that the Notifications had stood effaced

because of what had been stated therein.

29. On the principle of 'contemporanea expositio' also, which is available to find out how a statutory provision has been understood by those whose duty it is to construe, execute and apply, as mentioned at pages 659-60 of Polestar Electronics (P) Ltd. v. Addl. Commissioner, Sales Tax, 1978-1 SCC 636 and at page 383 of Deshbandhu Gupta v. Delhi Stock Exchange, 1979-3 SCR 373 (to which our attention has been invited by the Advocate General through his written Arguments filed on 21 1 A 995), we have two observations to make. First, this principle is not decisive or controlling of the question of construction; it has only persuasive value. If occasion arises, such interpretation may be even disregarded and in a clear case of error court would without hesitation refuse to follow such construction. (See obser- vations of Mukherji J. in Balaeswar v. Bhagirathi, ILR 35 al.701 noted in Deshbandhu's Case). Secondly, as already stated, reliance is being placed on the nothings in the file not to interpret the Notifications in question, but to declare then as dead. This is not permissible. Not only this, Shri Divan has objection to the reliance on the notings made in the file even for the purpose of interpretation of the Notifications, in support of which submission he has referred to what was stated in para 39 of Doypack Construction Pvt. Ltd. v. Union of India, 1988 (2) SCC 299. As to the reliance on the decision in Polestar Electronics' case, it has been mentioned in the written submissions filed on behalf of the respondents that in that case itself it was stated at page 660 that the view of the Department as to the meaning of a statute administered by it is not admissible as an aid to construction because "wrong practice does not make the law." It has been further argued that the present was, in any case, not a case of a statutory provision being interpreted by, the Department, in which case it may be that the interpretation put upon it has some sanction, if there be long acquiescence by the legislature,, as mentioned in Maxwell's Interpretation of the Statutes, noted in the aforesaid decision at page 660. Quasi-repeal of 1918 Notifications due to desuetude.

30. Learned Advocate-General's another submission relating to implied repeal is that the 1918 Notifications having not been acted upon must be taken to have become a dead letter because of its long disuse and the same stood repealed because of the legal process known as desuetude. He draws our attention to what has been stated in this regard in Francis Bennion's 'Statutory Interpretation' where this matter has been dealt at pages 441 and 442 of 1984 Edition. It is stated there that desuetude is a legal process by which, through disobedience and lack of enforcement over a long period, a statute may loose its force with-

out express or implied repeal. This doctrine has not however, been accepted in United Kingdom for the reason that otherwise an inquiry would be needed before the subject could know whether or not an enactment would bind him. Under Scots Law, however, this doctrine has been applied. As to the English Law the further commentary is that though this doctrine has no application, an Act may in practice be 'dead letter', which would be so if the Act falls into disuse or is not applied as intended. In this connection Bacon's dictum: ' .....let penal laws, if they had been sleepers for long be confined in the execution' is quoted. Reference has also been made to what happened to the Limitation Act, 1623, apart from mentioning about the refusal to act according to Sex Disqualification (Removal) Act, 1919, despite which enactment a peeress was denied the right to sit in the House of Lords, Vide Committee of Privileges, Viscountess Rhonddas' Claim, 1922-2 AC 3 39, (HL). The judicial emasculation of the first act had caused Lord Sumner to lament the difficulty of

extracting'...anything that deserves to be called a principle from the decisions of three centuries, which have been directed to what is after all the task of decorously disregarding an Act of Parliament'.

31. In Craies's 'Statute Law' (7th Edition) it has been stated at page 7 that desuetude is a process by which an Act of Parliament may lose its force without express repeal. It does not, however, consist merely of obsolescence or disuse:

> there must also be a contrary practice, which must be of some duration and general application. Lord Mackay's view in Brown v. Magistrate of Edinburgh, 1931 SLT (Scots Law Times Reports) 456 (458) has also been noted, which is as below "I hold it clear in law that desuetude re- quires for its operation a very considerable period, not merely of neglect, but of contrary usage of such a character as practically to infer such completely established habit of de community as to set a counter of law or establish a quasi-repeal"
>
> A perusal of this judgment shows that Lord Mackay ventured to prefer the Scottish system to that of England regarding which Lord Eldon, as a member of House of Lords, had stated thus in Johnstone v. Scott, (1802) 4 Pat 274 at p. 285: -
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> "The English lawyer feels himself much at a loss here; tie cannot conceive at what period of time a statute can be held as commencing to grow in desuetude, no when it can be held to be totally worn out. All he can do is to submit to what great authorities have declared the Law of Scotland to be."

Lord Mackay thereafter enunciated the afore-quoted test of desuetude for it to permit quasi-repeal.

32.It would be useful to note what has been stated in this regard in the chapter headed 'Repeal and Desuetude of Statutes' by Aubrey L. Diamond, printed in Current Legal Problems (1975), Volume 28 pages 107 to 124. Diamond has quoted on this subject what Lord Denning M.R. observed in Buckoke v. Greater London Council, 1971 Ch.655 at page 668, which reads:-

> "It is a fundamental principle of our con- stitution, enshrined in the Bill of Rights, that no one, not even the Crown itself, has 'the power of dispensing with laws or the execution of laws'. But this is sub-
>
> ject to some qualification. When a law has become a dead letters the police need not prosecute, nor need the Magistrate punish. They can give an absolute discharge"

33. Diamond has thereafter referred to the Scottish approach to desuetude at pages 122 and 123 and has noted some decisions wherein an Act of Scottish Parliament was not enforced because of desuetude. It would be of interest to note that when an argument was advanced that the particular Act (which was of 1606) had been left unrepealed by the Statute Law (Repeals) Act, 1906, and must, therefore, be regarded as still in force, the reply given by one of the law Lords was that "it was for the

Court and not for the Statute Law Revision (sic Repeal) Act to determine whether Act of 1606 was or was not in desuetude. "

34. Though in India the doctrine of desuetude does not appear to have been used so far to hold that any statute has stood repealed because of this process, we find no objection in principle to apply this doctrine to our statutes as well. This is for the reason that a citizen should know whether, despite a statute having been in disuse for long duration and instead a contrary practice being in use, he is still required to act as per the 'dead letter'. We would think it would advance the cause of justice to accept the application of doctrine of desuetude in our country also Our soil is ready to accept this principle: indeed, there is need for its implantation, because persons residing in free India, who have assured fundamental rights including what has been stated in Article 21, must be protected from their being, say, prosecuted and punished for violation of a law which has become 'dead letter'. A new path is, therefore, required to be laid and trodden.

35.In written submissions filed on behalf of respondents, it has been stated that the theory, of desuetude can have no application to the facts of the present case, since the challenge by the respondents is to the levy and calculation under the 1963 schedule, and not to the rates enforced since 1918. This submission has been characterised as "most important". As to this -we would observe that if Notification of 1818 were to prevail despite 1918 No- tifications, the fact that some changes were made in the schedule in 1963 has no legal bearing on the question under examination. The theory or desuetude has been pressed into service by the appellant only to take can: of relevant 1918 Notifications. If those Notifications can be said to stand eclipsed, the fact that changes were made in the rates etc. in 1963 cannot stand in the way of application of the theory of desuetude.

36. Coming to 1918 Notifications, we find materials on record to show that it has not been implemented till date; and in fact what has been done was contrary, and that too for long period. So, we hold that Notification Nos. 4162 and 4163 dated 17th June 1918 had stood repealed 'quasily' by the time new Octroi Rules came to be framed in 1963, which were applied to realise octroi from the respondents. The Statement made in the written submissions filed on behalf of the respondents that this cowl had treated Notification No.416O as operative in the case of western India Theatres v. Cantonment Board, Pune, 1959 Suppl. (2) SCR 63, does not affect the view taken by us relating to quasi-repeal of Notification Nos. 4162 and 4163 inas-

much as the field of operation of Notification No.4160 is different from that of later Notifications, as already noted.

Legal objections

37. Being satisfied that 1881 Notifications held the field even by 1963, the legal objections relating to its applications may ,now be dealt with. These objections, as already noted, are (1) lack of agreement as required by law, (2) impermissible delegation; and (3) non-compliance with the procedure mentioned in section 62 of the Cantonments Act, 1924.

38. We shall deal with these objections as well seriatim Lack of agreement as required by law

39. That such sawn agreement is required is not disputed by the learned Advocate General. His stand is that such an agreement had in fact been entered into between the Poona Cantonment Board and Poona City Municipality in 1881 and the same was being renewed from time to time, as would appear from the resolutions of the Cantonment Board, copies of which have been printed in Appeal Paper Book (ii) at pages 245-428. As we have held that the 1881 Notification held the field by 1963, the fact that no agreement was entered into after the Octroi Rules of 1963 were framed by the appellants as had been done between Poona Municipal Corporation and Kirkee Cantonment Board, is not relevant We. therefore, do not find any legal infirmity in enforcement of 1963 Octroi Rules on the ground of lack of agreement with the Poona Cantonment Board after these ruts came into force. Impermissible delegation

40. Shri Shanti Bhushan has taken pains to impress upon us that if we were to read the expression "for the time being,, finding place in 1881 Notification to mean "from time to time", that notification has to be struck down because of the delegation of an essential feature of the statute, which is not permissible in law.

41. On the question of permissible extent of delegation the leading judgment is one rendered by a 7-Judge Bench of this Court in In re Delhi Laws Act, 1951 SCR 747. The ratio of that decision came to be applied to a taxing statute in Rajnarain Singh V. Chairman, of Patna Demonstration Committee, 1955-1 SCR, 290. It was held there by the majority that a delegatee has no power to change a policy of the statute; and imposition of tax without observing the formalities prescribed by the statute was held to be a change in the legislature policy. The statute which had came to be examined in that case had required an opportunity to be given to raise objection; but the notification issued by the delegate which had the effect of levying tax had been done without inviting objection. The same was, therefore struck down as ultra vires.

42. Shri Shanti Bhushan contends that the octroi collected by the appellant being from persons residing in Poona Cantonment, opportunity was required to be given to them to have their say if they have objection to the enhancement of rate of octroi or for imposition of octroi on new articles as the 1963 Rules purported to do. It is urged that because of the special importance of Cantonment the Central Government has been conferred with the power to control these areas; and it is because of this that the Cantonments Act of 1924 required by its section 62 to seek objection before imposing any taxation which had admittedly not been done in the present case; and so, octroi could not have collected by the appellant at least after coming into force of The 1924 Act. (As we would point out later, section 62 has not application to the facts of the present case. The non-inviting of objection has therefore introduced no legal infirmity).

43.In support of his submission, Shri Shanti Bhushan has further referred to Bagalkot State Municipality v. Bagalkot Cement Company, (1963 (Supp.) (1) SCR 710 wherein the stand of the municipality that octroi duty had become automatically realisable from that area which had come to be included within the municipal limits following the enlargement of Be limit, was held to be not sustainable. What had been stated in that case has no application, be- cause here the appellant is not trying to realise octroi from the residents of the Poona Cantonment because of enlargement of the limit of Poona Municipality.

44.Shri Shanti Bhushan than places reliance on B. Sharma Rao v. Union Territory of pondicherry, (1967 (2) SCR 650. There, the particular Act of Pondicherry Legislative Assembly was held to be an abdication or effacement by the law making authority inasmuch as it had by the Act in question allowed the amendments to be made in the parallel Madras statute to prevail in Pondicherry without knowing that those amendments would be. Shri Shanti Bhushan contends that same would be the position here if the 1881 Notification were to permit changes in the rates of octroi, without knowing what the same would be, to prevail in the Cantonment area also.

45.Learned Advocate General has contended that the case of Sharma Rao was distinguished in Gwalior Rayon Silk Mfg. (Wvg.). Company Ltd. v. The Assistant Commissioner of Sales Tax, (1974 (2) SCR 879. In this connection what was stated by Khanna, J. at pages 885-6 and by Mathew J. at pages 908-9 has been brought to our notice. In that case the validity of section 8(2)(b) of the Central Sales Tax, Act, 1956 was assailed on the ground that it suffered from the vice of excessive delegation inasmuch as it stated that the rate of central sales tax in case of goods other than declared goods shall be calculated at the raw of 10%, or at the rate applicable to the sale or purchase of such goods inside the appropriate State,, whichever is higher. The Constitution Bench rejected the contention because of clear legislative policy being discernible in what has been provided in the impugned section. This shows that merely because the matter of rate at which tax is required to be imposed is left to be determined by some authority other than the one which imposesit, the same would not be impermissible in law.

46. Still another decision pressed into service by Shri Shanti Bhushan in this context is that of Atlas Cycle Industries v.State of Haryana, 1971 (2) SCC 564. A perusal of this decision shows dud A too was on a different point. There, the effort of the Municipality of Sonipat to realise octroi on the force of Notification which had been issued earlier was not upheld, because the relevant section did not take care, of Notification, but had mentioned about rules, bye-laws, orders, directions and powers.

47.To buttress his submission, the learned Advocate General brings to our notice the decision in MK Papaiah v. Excise Commissioner, 1975 (1) SCC 492, in which it was held that if the legislature retained its control over its delegate by exercising its power of repeal, the same would meet the objection relating to excessive delegation, for which purpose the test to be applied is not whether the legislature has delegated any matter relating to essraial policy. It is contended what was stated in Papiah's case by a three-Judge Bench through Mathew, J. was accepted, as correct by a Constitution Bench in A.K. Roy v. Union of India, 1982 (1) SCC 27 1.

48. What was held in Brij Sunder Kapoor v. First Addl. District Judge, 1989 (1) SCC 561 is more relevant for our purpose, because in that case a two-Judge Bench of this Court had upheld the delegation as contained in section 3 of Cantonment (Extention of Rent Control Laws) Act, 1957, by which the Central Government by a notification in official gazette could extend to any cantonment any enactment relating to control of rent which was in force in the State in which the cantonment is situated. The Bench distinguished Shama Rao's case and held that the delegation was valid, including that part of it by which amendments in the concerned State legislation were allowed to become effective in the cantonment area as well.

49. What was stated in Brij Sunders'case about the typical situation of cantonment in para 25 is more important for our purpose. The same is as below:-

> "These cantonments were located in the heart of various cites ha the different States and unlike the position that prevailed in early years, had ceased to be a separate and exclusive colony for army personnel. It was, therefore, but natural for Parliament to decide, as a matter of policy, that there should be no difference, in the matter of housing accommodation, between persons residing in cantonment areas of a State and those residing in other parts of the State and it is this policy that was given effect to..... Having decided upon this policy, it was open to Parliament to do one of two things: pass a separate enactment in respect of the cantonment areas in each State or to merely extend the statutes prevalent in other parts of the respective States by a single enactment. The second course was opted upon

50.What was stated relating to cantonments in the aforesaid excerpt qua housing accommodation should apply, according to us, to levy of taxes as well on persons residing in cantonment areas. It can well be said that as a matter of policy there should be no difference in taxing the residents of cantonment areas and those residing in municipal areas, in view of the fact that the former have ceased to be a separate and exclusive colony. for armed personnel, as pointed out in the aforesaid case.

51.This being the legal position, we hold that the 1881 Notification cannot be assailed on the ground of impermissible delegation. -Me second legal infirmity also, as canvassed by the learned counsel for the respondents, therefore, does not exist.

Non-compliance with the procedure mentioned in section 62 of the Cantonments Act, 1924

52.That the procedure contemplated by section 62 has not been followed is not in disputes The stand of the appellant is that procedure was not required to be followed. The respondents have serious objection to this stand of the appellant

53.The objection is founded on the legal proposition that enhancement of rates by the Octroi Rules of 1963 have to be taken as imposition of octroi, which would have required invitation of objections, of which mention has been made in section 62. The question for determination is whether enhancement of rates of octroi can be said to be imposition of octroi, in which case alone section 62 would get attracted, because of what has been stated in sections 60 and 6 1. That this is so is very strenuously contended by Shri Anil Divan by placing reliance on two decisions of this Court, one of which is of Constitution Bench: The Amalgamated Coal Fields Ltd. v. Janapada Sabha Chhindwara 1963 Sup, (1) SCR 172; and another by a two-Judge Bench:in Dhrangadhara Chemicals Works Ltd. v. State of Gujarat, 1973 (2) SCC 345.

54. In Amalgamated Coal Field's case the legality of levy of the tax imposed on coal at 9 pies per ton by the Janapada Sabha of Chhindwara was assailed on the ground that die same was in violation of section 51(2) of the concerned Act (noted at page 191 of the Report) which had laid down that the

'first imposition' of any tax shall be the subject to the previous sanction of the Provincial (Government The tax on coal had not, however, been imposed for the first time on the residents of the Janapada Sabha. What the Janpadha had done was that the tax which was earlier being levied by a Mining Board (whose successor the Sabha was) at the rate of 3 pies per ton had been enhanced to 9 piece.The appellant took a stand that though the Janpadha Sabha had on, enhanced be rate of tax, the same could have been done only with the previous sanction of the Provincial Government, as laid down in section 5 1(2), despite the section having required this for 'first imposition'. The Constitution Bench upheld this contention. Mr. Divan, therefore, contends that enhancement of rate of octroi duties by 1963 Rules could have been done only in accordance with the provisions contained in sections 60 to 63 of the Cantonments Act 1924.

55 Learned Advocate General, however, submits that what was held by the Constitution Bench in the aforesaid case may not be taken to mean that every case of enhancement of rate would be first or fresh imposition of tax. According to the learned counsel, the Constitution Bench had regarded the imposition of the levy at the altered rates as 'first imposition' only in the context (this word has been used at page 193 of the Report) of what had happened; and it is because of this that the altered rates were 'deemed' (page

194) to have been included in the expression 'first imposition'. The context, as per the learned counsel was that the Janpada Sabha had levied the tax for the first time and it is because of this that it was taken to be first imposition qua the Sabha residents. Learned Advocate General submits that if what was held by the. Constitution Bench were to be taken literally, even if the rate of any tax were to be enhanced, say, even by 1% the same would require the procedural aspect relating to imposition of tax to be gone through whole hog, which could not have been the intention of the constitution Bench.

56. We have duly considered the rival submission. Nothing really turns on the rate of change, according to us. It cannot be that if the change be significant (say, 10051) then only the same would be a case of fresh imposition, but if it be insignificant (say, 1% as mentioned by the Advocate General), die same would not be a case of fresh imposition. Even so, what has been contended by the learned Advocate General seems to have force, as in Amalgamated Coal Field's case this Court did deal with a levy which had been imposed for the first time by the Janpada Sabha.

57. Shri Divan urges that what was held by the two-Judge in.Dharangadhra Chemicals' case (supra) would not leave any- thing to doubt that increase in rate of tax has to be taken to be a case of imposition of tax. But in that case also the Municipality's increase of octroi was in first act, because of which what has been urged by the learned Advocate General qua Amalgamated Coal Field's case would apply to this case also.

58.The case of Visakhapatnam Municipality v. Nukaraju, 1976(1) SCR 544, which was cited by shri Shanti Bhusan in some other context, is more relevant in the present context. There, what happened Was that no opportunity to object was given to the persons of the area, which had come to be included in the municipality subsequently, before calling upon the residents to pay tax in question. Though the mu- nicipality in that case lost on some other ground, what had been stated about the

need to call for objections is relevant inasmuch as it was stated that even for imposition of tax at new rate objection is required to be invited. This stand was taken according to us, because the proviso to Section 81(2) of the concerned Act (noted at page 548) had stated that before passing a resolution imposing a tax for the first time or increasing the rate of an existing tax the council shall publish a notice in the prescribed manner declaring the requisite intention. It is because of this requirement that the need for calling objections for increased rate as well was held obligatory.

59. This is not all that we propose to say on this important facet of the appeals. We think that if sections 60 to 63 of the 1924 Act are read closely it would appear that for change in the rate of tax already in operation, objections are not required to be invited. To bring home this, let sections 60 to 63 of the Act, which together form a chain, be noted:-

> "60. General power of taxation-
>
> (1) The Board may, with the previous, sanction of the Central Government, impose in any Cantonment any tax which under any enactment for the time being in force, may be imposed in any municipality in the State wherein such cantonment is situated: (2) Any tax imposed under this section shall take effect from the date of its notification in the official Gazette, or where any later date is specified in this behalf in the notification from such later, date.

61. Framing of preliminary proposals-

When a resolution has been passed by the Board proposing to impose a tax under section 60, the Board shall in the manner prescribed in section 255 publish a notice specifying -

(a) the tax which it is proposed to impose;

(b)the persons or classes of persons to be made liable and the description of the property or other taxable thing or circum-

stance in respect of which they are to be mode liable; and

(c)the rate at which the tax is to be levied.

62. Objections and disposal thereof-

(1) Any inhabitant of the cantonment may, within thirty days from the publication of the notice under section 61, submit to the Board an objection in writing to all or any of the proposals contained therein and the Board shall take such objection into consideration and pass orders thereon by special resolution. (2) Unless the Board decides to abandon its proposals contained in the notice published under section 61, it shall submit to the Central Government through the Officer Commanding in-Chief, the command, all such proposals alongwith the objections, if any, received in connection therewith together with its opinion thereon and any modifications proposed in

accordance with such opinion an d the note published under the said section.

63. Imposition of tax -

(1) The Central Government may authorise the Board to impose the tax either in the original form or, if any objection has been submitted in that form or any such modified form as it thinks fit. "

60. The aforesaid shows that the notice required to be published by Section 61 specifying, inter alia, "the rate at which the tax is to be levied", of which mention has been made in clause (c), refers to the tax to be levied, and not which has already been levied. Clause (a) makes it clear that the publication required by Section 61 is about the tax which is proposed to be imposed. These provisions would show that the objection which is to be solicited, pursuant to the mandate of section 62, has to be regarding the tax proposed to be imposed and the rate at which it is to be levied. The opening sentence of section 61 mentions about the proposal of the Board "to impose a tax" ; and so, the imposition of which section 60 speaks of, is of a tax proposed to be imposed by the Board, and not a tax which had already been imposed by the time the Act came to be enforced.

61. We, therefore, do not find any infirmity in the collection of octroi by the appellant at the enhanced rates, mentioned in the schedule of 1963 Rules, without there having been compliance of what was required by section 62 of the: aforesaid Act.

Conclusion

62. For the reasons aforesaid, we hold that the 1881 Notification did in fact permit the appellant to collect octroi duties at the rates specified in 1963 Octroi Rules framed by the appellant; and there was no obstacle in law in allowing the appellant to do so.

63. The appeals are allowed accordingly by setting aside the impugned judgment, with the result that the writ petitions filed in the High Court by the respondents stand dismissed. On the facts and circumstances of the case, we do not make any order as to costs.