Bhaskar Textile M[Lls Ltd; vs Jharsuguda Municipality & Other on 11 January, 1984

Equivalent citations: 1984 AIR 583, 1984 SCR (2) 401, AIR 1984 SUPREME COURT 583, (1984) 57 CUT LT 456, 1984 MCC 1 217, 1984 (2) SCC 25, 1984 SCC(TAX) 122, (1984) 73 TAXATION 7, (1984) 1 ORISSA LR 18

Author: R.B. Misra

Bench: R.B. Misra, E.S. Venkataramiah

PETITIONER:
BHASKAR TEXTILE M[LLS LTD;

Vs.

RESPONDENT:
JHARSUGUDA MUNICIPALITY & OTHER

DATE OF JUDGMENT11/01/1984

BENCH:
MISRA, R.B. (J)
BENCH:
MISRA, R.B. (J)
VENKATARAMIAH, E.S. (J)

CITATION:
1984 AIR 583 1984 SCR (2) 401
1984 SCC (2) 25 1984 SCALE (1)72

ACT:
Octroi duty, imposition of-Validity of the imposition of Octroi duty under section 131(1)(kk) of the Orissa Municipal Act, 1950 to a village constituted as a Grama earlier under Section 3 of the Orissa Gram Panchayat Act, 1964 but later included in an area of cl Municipality under Section 4 of the 1950 Act-Constitution of India, 1950, Article 19(1)g.

HEADNOTE:
The appellant Textile Mills is a company duly incorporated under the Indian Companies Act 1956 having its mills located at Village Ektaji under the Jharsuguda police station in district Sambalpur, Orissa. The company mainly carries on spinning of Cotton which in the manufacturing

process is transformed from loose fibres into finished yarn The area under the Ektaji village in which the appellant's factory was located was earlier constituted as a Grama by a declaration made under Section 3 of the Orissa Grama Panchayat Act 1964. On or about March 25, 1970 Jharsuguda Municipality passed a resolution for the inclusion of the Ektaji and other villages within its jurisdiction. After considering the objections and representations against the inclusion of Ektaji village in the Municipal Limit and after following once again the other statutory requirement of further notice etc., the State Government published in the Orissa Gazette dated 12.8.1975 a notification approving the inclusion. Soon thereafter on September 1, 1975 the said Jharsuguda Municipality sent a letter to the appellant directing it to pay octroi duty at the rate of I percent ad valorem on cotton as soon as it entered the Municipal check post for the purpose of its being spun into yarn. The levy of octroi was challenged by filing a petition under Arts. 226 and 227 of the Constitution on various grounds, but the writ Petition was dismissed. Petition seeking permission for issuance of a certificate under Article 133(1) of the Constitution was also dismissed. Hence the appeal after obtaining Special Leave of the Court.

Dismissing the appeal the Court.

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HELD: 1. Considering the case from any aspect the imposition of Octroi duty under section 5 of the Orissa Municipal Act, 1950 does not suffer from any infirmity [413 H]

2. The levy, being neither an unreasonable one nor also excessive, cannot . be challenged on the ground that there is violation of Article 19(1)(e) of the Constitution. [413 a]

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3. It is true that when a duly constituted Grama under sub-section (I) of section 3 of the Grama. Panchayat Act is to go out of existence an order of the Magistrate cancelling the Notification in terms of sub-section (2) of Section 3 of the said Act is a pre-requisite. But in the instant case the Gram Panchayat never challenged the Notification of inclusion of the Village Ektaji in Jharsuguda' Municipality. Rather on the other hand the Gram panchayat was consulted before the impugned notification dated 12th August 1975 was issued. [406 H; 407 A]

4. The proviso to sub-section 1 of Section 4 of the Orissa Municipal. Act, 1950 has no application to the present case and that cannot be taken to be a ground for challenging the Notification for inclusion of Village Ektaji hl the Jharsuguda Municipality. A bare perusal of the proviso clearly indicates that the requirement is that two-thirds of the adult, male population of the town to which it refers should be engaged in non-agricultural pursuits The proviso applies not to all the clauses of sub-section (I) of

section 4 but it. applies only to clause (a) of sub-section (1) of Section 4, because it is clause (a) of section 4 (1) which talks of town. [408 E-F]

5. The contention that the objection raised by the appellant against the inclusion of the village in question into Municipality has not been considered by the State has no force. The objection is required to be made through the Magistrate of the District. Naturally the District Magistrate. while forwarding the objection to the State Government made his comment. The Revenue Divisional officer who intervenes in the channel of communication between the District Magistrate and the State Government had an occasion to process the matter. The State Government while dealing with the matter consulted the Panchayat Raj Department and ultimately notified in terms of the notification dated August 12, 1975. [408H; 409A-B]

6. Section 131(1) of the Municipal Act empower the Municipal Council to impose various kinds of taxes which includes octroi as provided in Clause (kk) with the sanction of the Government since the goods are brought into the municipal limits at least for the purpose of use"-one of the three conditions laid down in clause (kk -the imposition of Octroi is valid.

Burmah Shell Oil Storage & Distribution Co. v. The Belgam Borough Municipality ' [1963] Supp 2 SCR 216 referred to and held inapplicable. [409 D-E]

7:1. There is a statutory presumption under section 392 of the Orissa Municipal Act, 1950 that the publication of the rules or regulations or bye laws in the Gazette shall be evidence that the rule pr regulation or bye law has, been mad as required by the section Therefore the court will assume that the bye law has been made in accordance with law in the absence of anything more from the site of the appellant. 1410 F-G]

7 :2; The argument that even assuming that the bye laws when initially enforced might be presumed to be in accordance with law in the absence of similar steps being taken at the time of extension of bye laws to the newly added area, the bye laws are not enforceable in the new areas is not correct as it has, proceed in utter oblivion of the provisions of section 5 of the Municipal Act. [410H; 411 A]

Vishakhapatanam Municipality v. Kandregula Nukarajau & Ors. [1976] 1 S.C.R. 5.44; Atlas Cycle Industries Ltd. v. State of Haryana and Anr. [1972] 1 S.C.R. 127; Bagalkot City Municipality v Bagalkot Cement [1963] 2 Supp S.C.R. 710; distinguished

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JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 487 of 1977.

Appeal by Special leave from the Judgment and order dated the 5th January, 1977 of the orissa High Court in O.J.C. No. 810 of 1976.

V S Desai, Parveen Kumar and Ashok Mathur for the Appellant.

C.V. Murty, K. PrabhaKar Rao and C.M. Murty for the Respondents.

R.K. Mehta for Respondent No. 3.

B.D. Sharma for Respondent No. 2.

The Judgment of the Court was delivered by MISRA J.: The present appeal by special leave is directed against the judgment of the High Court of Orissa dated 5th January]977 dismissing a petition under 'Arts. 226 and 227 of the Constitution ' for quashing imposition of octroi under s. 131(1)(kk) of the Orissa Municipal Act, 1950 (hereinafter referred to as the 'Act') and for . '. a declaration. that the notifications dated 31st July 1973 and 12th August, 1975 issued by the State Government in exercise of powers . . vested under s.4 of the Act are illegal and unenforceable and for a further declaration that the octroi Bye-laws of the Jharsuguda Municipal Council are also void and inoperative.

Jharsuguda Municipality, respondent No. 1, is a municipality incorporated under the Act. In March 1962 the State Government 'accorded sanction for the imposition of octroi in terms of s.]3][]) of the Act. ' A set of octroi bye-laws were framed by the Municipal Council in terms of s.388 of the Act and the same were also approved by the State Government in exercise of powers under s.390 of the Act on 19th March, 1968. octroi was levied for the first time after 31st March 1962 when the State Government accorded sanction under s.131 (i)(kk) of the Act.

The appellant is a company duly incorporated under the Indian Companies Act, 1956 having its mills located at village Ektali under the Jharsuguda police station in District Sambalpur, Orissa. The said area of the village was included within the Ektali Panchayat. The company mainly carries on spinning of cotton which in the manu- .

facturing' process is transformed from loose fibres into finished yarn.

The area under the Ektali village in which the appellants' factory was located was constituted, along with other villages as a Gram by a declaration made under s.3 of the, Orissa' Grama Panchayat Act, 1964. On or about 25th March, 1970 Jharsuguda Municipality passed a resolution for the inclusion of Ektali and other villages in the Jharsuguda Municipality and thus extending the area of the said Municipality. Against the proposed extension the appellant made a representation to the State Government inter alia on the ground that he said, village Ektali could not under the relevant rules be included in the Municipality under s.4(1)(c) of the Orissa Municipal Act, 1950 in view of the proviso to s.4(1) which contemplates that a declaration shall not be made under this sub-section unless the

State Government are satisfied that two-thirds of the adult male population of the town to which it refers are chiefly employed in pursuits other than agriculture and that such a town contains not less than 10,000 inhabitants and an average number of not less than 1000 inhabitants to a square mile of the area of such a town. The appellant alleged that the male population of the said village Ektali was 2640 as per 1971 census report, out of which only 1586 were chiefly employed in pursuits other than agriculture and thus two- thirds of such male population were not employed in non-agricultural pursuits.

The State Government, however, by a notification dated 31st July 1973 declared their intention under s.4(1)(c) of the Municipal Act, 1950 to include within the Jharsuguda Municipality the local area of a number of villages including the village Ektali. By the said notification published in Orissa Gazette Extraordinary dated 22nd August, 1973 the Government invited objections within six weeks from the date of publication. The appellant did file objection to the said notification. Objection was also filed by Grama Panchayat of Ektali to the effect that the Ektali Grama was duly constituted , by the State Government in Community Development and Panchayat Raj Department in exercise of powers under s.3(1) of the Orissa Grama Panchayat Act and in the absence or any notification under s.3(1) and s.149 of the Grama Panchayat Act, village Ektali still continues to be a Grama.

The objections were examined by the District Magistrate, Sambalpur and the Revenue Division Commissioner Northern Division, . Sambalpur and the same were rejected. On 12th August, 1975, notification under s.4(33(b) declaring the inclusion of the said villagsa including the village Ektali, into Jharsuguda Municipality was issued. Soon thereafter on Ist September, 1975 the said Jharsuguda Municipality sent a letter to the appellant directing it to pay octroi as per provisions of s.5 of the Orissa Municipal Act. The said octroi was payable at the rate of 1 per cent ad valorem on cotton as soon as it entered the municipal check-post for the purpose of its being spun into yarn.

The levy or octroi duty was challenged by filing a petition under Arts. 226 and 227 of the Constitution on various grounds viz.,(a) the inclusion of village Ektali in the area of Jharsuguda Municipality was illegal and ultra vires the provisions of the Orissa Municipal Act, and (b) the levy of octroi duty at the rate of I percent ad valorem was arbitrary, coercive and violative of Art. 301 of the Constitution and, therefore, the appellant prayed for quashing the notifications referred to above.

The writ petition was, however, dismissed by a Division Bench of the Orissa High Court by its order dated 5th January. 1977 The appellant filed an application under Art. 133(1) of the Constitution for the grant of a certificate for leave to appeal to 'this Court, which was dismissed by the High Court by its order dated 19th January, 1977. The appellant has now filed the present appeal after-obtaining special leave from this Court.

The learned counsel for the appellant raised the following contentions: .

1. In the absence of a notification cancelling the declaration constituting Ektali village as part of Grama, it was not legally permissible for the- State Government acting ' under the Orissa Municipal Act 1 950 to include within the area of the municipality the area of the said Grama.

2. The mandatory requirements of proviso to sub-s.(l) of s.4 of the Orissa Municipal Act, 1950 have not beer satisfied.

3. The objection filed by the appellant under sub- s.(2) of s.4 has not been considered by the State Government.

4. (a) The liability to octroi arises when any of the three alternatives mentioned in s.]31(1)(kk) of the Municipal Act is satisfied viz., when the goods are brought within the municipal limits for (i) consumption, (ii) use or (iii) sale.

(b) The tax already imposed within the limits of the Municipality of Jharsuguda could not be automatically made applicable to the extended limits of the municipality without obtaining the sanction of the State Government under s.131(1) (kh) of the Act.

(c) The rate levied is per se unreasonable and arbitrary. We take up these grounds seriatim. Admittedly village Ektali where the factory of the appellant is located was a part of the duly constituted Ektali Grama Panchayat prior to 1973, within the meaning of s.3 of the Orissa Grama Panchayat Act. Sub-section (1) of s.3 authorises the State Government to constitute any village or group of contiguous villages as a Grama by a declaration notified in the Gazette and assign to such Grama a name which shall be of one of the villages comprised within the Grama. Subsection (2) of 5.3 provided that whenever the State Government deems it fit so to do, they may cancel any notification in respect of a Grama under sub- s (1) on may alter the area comprised in a Grama by reducing or adding to the number of villages comprised within such Grama by a declaration 'notified in the Gazette constituting such altered area or areas as a Grama or Gramas, as the case may be.

The precise contention raised on behalf of the appellant is that- there was a declaration by notification for the. constitution of the Grama within the meaning of sub-s.(l), but there has been no notification as required by sub-s,(2) of s.3 for taking village Ektali out of Grama Panchayat and, therefore, village Ektali continues to be a Grama and the inclusion of village Ektali in Jharsuguda Municipality by notifications dated 31st July, 1973 and 12th August, 1975 will have no effect.

This contention has considerable force: When-a duly constituted Grama is to go out of existence an order of the Magistrate cancelling the notification in terms of sub-s.(2) of s.3 of the Grama Panchayat Act is necessary. But there are circumstances which take away the force of the argument. The Grama Panchayat never' challenged the notification of inclusion of the village Ektali in Jhar-

suguda Municipality. From un-controverted averment made in para 6 of the counter-affidavit of the State filed before the High Court it appears that the Grama Panchayat was consulted before the impugned notification. Therefore, we do not feel persuaded to accept the contention at the instance of the appellant. This leads us to the second ground.

In order to. appreciate the second ground it is appropriate at this stage to refer to the provisions of s.1 in so far as it is relevant for the purposes of the case:

"4.(1) The State Government may, by notification declare their intention

(a) to constitute any town, together with, or exclusive of, any railway station, village, land or building in the vicinity of any such town, a municipality under this Act: or

(b) .....

(c) to include within a municipality any local area contiguous to the same and defined in the notification; or

(d) .....

(e) ..... .

(f) .....

(g) .....

(h) .....

Provided that a declaration shall not be made under this sub-section unless the State Government are satisfied that two-thirds of the adult male population of the town to which it refers, are chiefly employed in pursuits other than agricultural, and that such town contains not less than ten thousand inhabitants and an average number of not less than one thousand inhabitants to the square mile of the area of such town, (2) Any inhabitant of the town or local area, or any, rate-payer of the municipality, in respect of, which any . . such notification has been published under sub-section (l) may, if he objects to anything contained in the notification, submit his objection in writing to the State Government. through the Magistrate of the district within six weeks from the date of the publication of the notification and the' State . Government shall take his objections into consideration.

(3) ....."

The emphasis of the appellant is that two-third of the adult male population of the Grama should be chiefly employed in pursuits other than agricultural. The appellant has referred to 1971 census figures. On the basis of these- census figures it is argued that out of the total male population of 2640 of Grama Ektali only 1586 adults were engaged in non-agricultural pursuits hut the requirement of law was that two-third of the male population should have been employed in the non-agricultural pursuits which comes to 1760.

The argument proceeds on the assumption that the proviso to s.4(1) applies. But a bare persual of the proviso clearly indicates that the requirement is that two-thirds of the adult male population of the town to which it refers should be engaged in non-agricultural ' pursuits. The provision, to our mind, applies not to all the classes of sub-s.(l) of s.4 but it applies only to cl.(a) of sub-s.(l) of s.4,

because it is cl.(a) of s.4(1) which talks of town. Therefore, the proviso, in . . Our opinion, has no application to the present case and that cannot be taken to be a ground for challenging the notification for inclusion of village Ektali in the Jharsuguda Municipality. This takes us to the third ground.

The appellant had filed an objection under sub-s.(2) of s.4. The said objection was examined by the District Magistrate, Sambalpur and the Revenue Divisional Commissioner (Northern Division), Sambalpur: They overruled the objection treating it to be of general nature. Thereafter, the Community Development and the Panchati Raj (Grama Panchayat) Department were consulted to agree with this proposal, to which they agreed, and it was thereafter. that the Urban Development Department issued a final notification dated 12th August, 1975 to include the above village into the municipal limits of Jharsuguda Municipality. The contention of the appellant that the objection had not been considered by the State Government cannot be accepted in as much as the objection is required to be made through the Magistrate of the district. Naturally, the District Magistrate while forwarding the objection to the State Government made his comment. The Revenue Divisional Commissioner intervenes in the channel of communication between the District Magistrate and the State Government and he, therefore, had an occasion to. process the matter. The-State Government while dealing with the matter consulted the. Panchayati Raj Department and ultimately notified in terms of notification dated 12th August, 1975. In the circumstances it cannot be accepted that the objection filed by the appellant had not been considered by the State Government.

It was next contended that the liability for octroi arises when ally of the three alternatives mentioned in s.131(1)(kk) of the Municipal Act are satisfied, namely, when the goods are brought within the municipal limits fol

(i) consumption, (ii) use, or (iii) sale. Section 131(1) of the Municipal Act empowers the Municipal Council to impose various kids of taxes within the limits of the Municipality with the sanction of the State Government. One of the taxes contemplated by s.313 (l) is octroi, as provided in cl. (kk). According to the appellant the goods are brought into the municipal area not for the purpose of sale or for consumption but for the purpose of manufacture of yarn. The appellant took support from Burmah Shell Oil Storage & Distribution Co. India Ltd. v. The Belgam Borough Municipality in which this Court had an occasion to consider the word 'Consumption'. This Court took the view that the word 'consumption' in is primary sense means the act of con summing and in ordinary parlance means the use of an article in a way which destroys, wastes or uses up that article, but in some legal contexts, the word 'Consumption has a wider meaning and that it is . not necessary that by the act of consumption the commodity must be ' destroyed or used up. On the strength of this authority it is con tended that the goods were brought into the municipal limits neither . For consumption, nor for sale. Assuming the contention to be correct there is no escape from the conclusion that the goods are brought into the municipal limits at. least for the purpose of use. In this view of the legal position the imposition of octroi by the Municipality cannot be challenged on this ground.

The next ground of attack is based on s.372 of the Orissa Municipal Act. Section 392 pertinently reads: - H "392. The State Government before making any rules under sub-section (2) of section 81 and section 387, and a municipal council, before making any regulation or by-laws under section

388, shall publish, in such manner as the State Government deem sufficient for giving information to persons interested, the proposed rules or regulations or by-laws - together with a notice specifying a date on or after which the same will be taken into consideration; and shall before making such rules or regulations or by-laws, receive and consider any objection or suggestion which may be made - by any person with respect to the same before the date so specified.

Every such rule or regulation or by-law shall be published in the Gazette in English and in Oriya and such publication shall be evidence that the rule or regulation or by-law has been made as required by this section."

It is contended that the mandatory requirements having not been complied with the imposition of octroi is vitiated on this account.

The appellant in para 3 of the Writ petition had alleged that the bye-laws 'were not published in the State Gazette either in Oriya or in English. This allegation has, however, been controverted by the State Government in para]8 of the counter-affidavit. It was specifically averred that the bye-laws were approved and confirmed by the Government in Urban Development Department vide. Order No. 1903/Legis-43-67/UD dated nil published in Orissa Gazette for information of the general public on 23rd May, 1969 at pages 691 to 697. There is a statutory presumption under s.3 of the Act that the publication of the rules or regulations or by-laws in the Gazette shall be evidence that the rule or regulation or bye-law has been made as required by this section. In view of this statutory presumption the Court will assume that the bye-law has been made in accordance with law in the absence of anything more from the side of the appellant.

As a second limb to this argument it was contended by the appellant that even assuming that the bye-laws when initially enforced might be presumed to be in accordance with law, in the absence of similar steps being taken at the time of extension of bye-Jaws to the newly added area, the bye-laws are not enforceable in the new area.

This argument has proceeded in utter oblivion of the provisions of s.5 of the Municipal Act. It reads:

> "5. When any local area is included in a municipality, by a notification under clause (b) or (c) of sub-section (3) of section 4, all the provisions of this Act and of any rules, by-laws, notifications, or orders made thereunder, which immediately before such inclusion were in force throughout such municipality, shall be deemed to apply to such area, unless the State Government, in and by the notification, otherwise direct."

The learned counsel for the appellant, however, has placed strong reliance upon Visakhapatnam Municipality v. Kandrequla Nukaraju & Ors. In that case the question that fell for consideration was whether the property tax which could lawfully be levied under the District Municipalities Act 1929 can be levied after the repeal of that Act, on property situated in the areas included within the municipal limits after the constitution of the municipality. Section 391(1) of the Andhra Pradesh Municipalities Act 1965 expressly repealed the. District Municipalities Act, 1920 from which it must follow that ordinarily no action can be taken under the Act of 1920 after April 1, 1966 when the

repeal became effective on the coming into force of the Act. It was, however, contended in that case that cl. la of Schedule 9 of the Act keeps the repealed enactment alive for tax purposes and, therefore, the municipality had the authority to impose the property tax under the Act of 1920 notwithstanding its repeal by the new Act. This Court, however, took the view that the provisions contained in the Schedule are of a transitional nature. They were intended to apply during the period of transition following upon the repeal of old municipal laws and the introduction of the li new law. The object of clause 12 of Schedule 9 was to authorise the levy of taxes which, on the commencement of the Act, Were levied under the repealed laws. This Court further added that the municipality might have been levying property tax since long on properties situated within its limits, but until April 1, 1966 the villages of Ramakrishnapuram and Sriharipuram were outside those limits. Qua the areas newly included within the municipal limits, the tax was being imposed for the first time and therefore it was incumbent on the municipality to follow the procedure prescribed by the first proviso to section 81(2). Residents and tax payers of those areas never had an opportunity to object to the imposition of the tax and that valuable opportunity cannot be denied to them. It is obligatory upon the municipality not only to invite objections to the proposed tax but also to consider the objections received by it within the specified period.

For the State, however, reliance was placed in that case on s.3(4) of the Act to contend that the inclusion of the two villages within the municipal area attracts of its own force every provision of the Act with effect from the dale on which the final notification is published. by the Government under s.3(3). In support of this contention it cited the decision of this Court in Atlas Cycle Industrial Ltd. v. State of Haryana & Anr. This argument on behalf of the State was, however, repelled and the Court observed :.

> "Far from supporting the argument, we consider that the decision shows how a provision like the one contained in Section 3(4) cannot have the effect contended for by the appellant. In the Atlas Cycle case, section 5(4) of the Punjab Municipality Act, 1911 provided that when any local area was included in the municipality, "this Act and...all . rules, bye-laws, orders, directions and powers made, issued or conferred under this Act and- in force throughout the whole municipality at the time, shall apply to such areas."."

But this Court took the view that since section 5(4) of the Punjab Act did not, significantly, refer to notifications and since section 62(1) of the Punjab Act spoke of "notification" for the imposition of taxes, it was not competent to the municipality to levy and collect octroi from the company on the strength merely of the provision contained in s. 5(4) of the Punjab Act. That case, however, is distinguishable and cannot be of much assistance for solving the problem before us. Section 5 of the orissa Municipal Act makes all the provisions of the Act and of any rules, by-laws, notifications, or orders made thereunder, which immediately before such inclusion were in force throughout such municipality, applicable to such area, unless the State Government, in and by the notification, otherwise direct. . This section, therefore, includes not only the provisions of the Act, rules and bye-laws but also includes notifications. This distinguishes the. . present case from the Visakhapatnam Municipality's case (supra).

For the appellant, next reliance was placed upon Bagalkot City Municipality v. Bagalkot Cement.(1) In that case also at the time of the imposition of the octroi duty the respondent's factory was situated outside the municipal district and was not subject to the octroi duty. Subsequently, the Government extended the municipal district so that the factory came to be included within that district. The appellant in that case contended that upon such extension its octroi limits also stood extended to include the factory and the respondent became liable to pay octroi duty in respect of goods brought into the factory. The majority view was that the expression "municipal district" in the bye-law referred to the municipal district as existing when the bye-law was framed. The context prevented the definition of "municipal . district" in the Act, namely, the municipal district as from time to time existing from being applied under s.20 of the Bombay General Clauses Act to interpret the bye-law The bye-law had been made without being published to the respondent, and if it was so read referring to the municipal district from time to time existing it would be invalid for non-compliance with the provisions of s.48 of the Act. This case again is distinguishable in view of the wording of s.5 of the orissa Municipal Act: .

Lastly it is urged that the octroi duty levied in this case by the Municipality is unreasonable and excessive. The Municipality is required to provide certain amenities not only for the permanent residents within the municipality, but also even for casual visitors who may on occasions enter the limits of the municipality. The entry of large quantities of goods within the municipality almost daily from outside necessarily creates innumerable problems such as provisions of water supply, lighting facilities, facilities for conservancy, sanitation, maintenance of good roads and markets etc. which the Jharsuguda Municipality has done and there is no allegation to the contrary by the appellant. From the material placed before us we are of the view that the levy is not an unreasonable one. It is not also excessive. . The imposition of octroi cannot, therefore, be challenged on the ground that there is violation of Art. 19(1)(g) of the Constitution.

Considering the case from any aspect the imposition of octroi duty, in our opinion, does not suffer from any infirmity.

For the foregoing discussion the appeal cannot succeed. It is accordingly dismissed. In the circumstances of the case, however, we allow the parties to bear their own costs.

S.R. Appeal dismissed.