Dhrangadhra Chemical Works Ltd. vs State Of Gujarat And Ors. on 20 September, 1972

Equivalent citations: AIR1973SC1041, (1973)2SCC345, AIR 1973 SUPREME COURT 1041, 1973 2 SCC 345, 1973 TAX. L. R. 1750, 1973 SCC (TAX) 536, 1972 2 SCWR 812

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Bench: A.N. Ray, I.D.Dua, K.K. Mathew

JUDGMENT

K.K. Mathew, J.

1. The appellant filed a writ petition before the High Court of Gujarat at Ahmedahad, praying for issue of a writ or order quashing a notice dated September 15, 1962, issued by the second respondent, the Dhrangadhra Municipality demanding octroi to the tune of Rs. 58,000/-and for restraining the respondent from recovering the amount from the appellant in pursuance of the notice. The High Court dismissed the petition and this appeal, by certificate, is from that order.

2. The appellant is a Company registered under the Companies Act and carries on business of manufacturing soda ash at its factory at Dhrangadhra. The Bombay District Municipalities Act, 1901 hereinafter called the 'Act' was extended to the merged territories of Saurashtra including the area of Dhrangadhra Municipality from July 1, 1949, by an Ordinance of the Saurashtra State. Thereafter, the Governor of Saurashtra issued Ordinance No. 47, dated August 27, 1949, called the Saurashtra Terminal Tax and Octroi Ordinance, 1949, hereinafter called the 'Ordinance. Under Clause 4 of the Ordinance, the State Government framed Octroi Rules in 1949, hereinafter called the 'Rules'. By the inclusion of Dhrangadhra town in the schedule, octroi was being levied by the Government under the aforesaid Rules within the Municipality. On November 29, 1952, the petitioner filed a writ petition in the Saurashtra High Court claiming total exemption from payment of octroi on the basis of an agreement between the appellant and the erstwhile ruler of Dhrangadhra State. That writ petition was dismissed by the High Court on September 20, 1951, and the appellant filed an appeal to this Court on the basis of a certificate granted by the High Court. During the pendency of the appeal before this Court, the Municipality had further increased the octroi by 50 per cent with effect from July 1, 1953. The appeal pending before the Supreme Court was withdrawn in pursuance of an agreement between the appellant and the Municipality on September 26, 1960. The appellant paid octroi as per the revised rates till July 11, 1962. The appellant thereafter gave notice on September 8, 1962, asking the Municipality not to recover octroi at the said rate. On September 15, 1962, the Municipality served a demand notice on the appellant directing the appellant to pay the balance of

octroi amounting to Rs. 58,000/-. On September 26, 1962, the appellant filed the present writ petition.

3. The appellant had raised three contentions before the High Court, namely, that the Rules conferred power only on the Government to levy and collect octroi and the Municipality had no power by means of rules made under Clause 4 of the Ordinance to impose it; that the enhancement of octroi by 50 per cent from July 1, 1953 was illegal as the Rules have not been revised by the Government and, if the levy is considered as one imposed under the provisions of the Act, the procedure prescribed by the Act for levy of octroi had not been followed by the Municipality; and that the threat to issue distress warrants in the demand notice for recovery of octroi was illegal as there was no provision in the Rules for recovery of octroi by issue of distress warrant

4. The High Court considered these contentions and also the preliminary question raised by the respondents, namely, that since the appellant had suppressed material facts in the writ petition, the petition ought to be dismissed for that reason alone and it came to the conclusion that there was no merit in the writ petition and dismissed it In this Court, two broad contentions were raised on behalf of the appellant: (1) that the Rules did not authorise the municipality to impose octroi as the Rules only conferred that power upon the Government and (2) even if the municipality purported to act under the provisions of the Act as applied to Saurashtra, the procedure foe levy of octroi had not been followed.

5, To decide the first question, it is necessary to have an idea of the relevant provisions of the Ordinance. Clause 3 of the Ordinance provides that notwithstanding any thing contained in any law, enactment on rules made thereunder in force in any of the covenanting States, Talukas or Estates, as respects matters dealt with in the Ordinance, on the date of coming into force of the Ordinance, the Government may impose any of the following taxes at such rates as may be prescribed in the cities and towns specified in Schedule I by a notification issued in that behalf from time to time by the Government:

> (a) an octroi on animals or goods, on both, brought within the octroi limits, for consumption, 01? use, or sale therein.

Clause 4(1) states that the Government may, by notification in the official gazette, make, or may from time to time, alter 07 rescind rules for carrying out the provisions of the Ordinance. Sub-clause (2) of Clause 4 pro vides that without prejudice to the generality of the foregoing provisions, such rules may provide (i) for fixing and alteration of the octroi limit of stations, (a) for the exhibition of tables of octroi, (v) for refund of octroi, (vii) for the time at which and the mode in which such tax may be levied or recovered or shall fee payable. Sub-clause (ix) provides:

> (ix) designate the persons authorised to deceive payments of any sums so leviable.

By Clause 9 the Government is directed to maintain a separate fund in respect of monies received by it on account of any of the taxes specified in Clause 3 for every city or town or local area specified in the schedule.

6. There is no dispute that Dhrangadhra town was included in Schedule I by a notification dated December 12, 1949, with effect from December 26, 1949. Therefore, it is clear that the Government could impose octroi at such rates as may be prescribed within the municipality of Dhrangadhra. So far as the imposition of octroi under the Ordinance is concerned, the Government alone has the power to impose it or prescribe its rate. The Municipality has no power under the Rules to alter the Rules imposing the levy so as to enhance it. The High Court was also of the view that the municipality had no power to impose or enhance the rate of octroi under the Rules.

7. The resolution of the Municipality enhancing the octroi runs:

> The matter of budget was considered and that the expenditure figures and the income figures were presented. Further the amount payable by the Municipality was also considered. It was resolved that due to expenses the present rate of octroi be increased by 50%.
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> This would seem to indicate that the Municipality purported to enhance the octroi under the Rules as octroi had already been levied raider the Rules.

8. The appellant contends that even If it be assumed that the levy of 150 per cent of octroi was under the provisions of the Act, the procedure prescribed for imposing octroi had not been followed and, there fore, the levy was bad. The respondent Municipality, on the other hand, submitted that the procedure prescribed by the Act for imposing octroi had been followed and, there fore, the levy was valid under the Act

9. Section 60 of the Act provides for the procedure to be followed for imposing a tax. Section 60(a)(i) states that every municipality, before imposing a tax shall select for the purpose one or other of the taxes specified in Section 59 and that section states that, subject to any special or general orders which the State Government may make in this behalf, any Municipality, after observing the preliminary procedure required by Section 60 and with the sanction of the appropriate authority may impose, for the purpose of the Act, .any of the taxes, namely:

> 59(1)(iv): an octroi on animals 09 goods, or both, brought within the octroi limits for consumption, use or sale therein." Section 60(a)(ii) provides that every municipality, before imposing a tax shall, by resolution passed at a general meeting, prepare rules for the purposes of Clause (i) of Section 46 prescribing the tax selected and shall by such resolution and in such rules specify.
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> (iii) the class or classes of persons or of property or of both which the Municipality desire to make liable, and any exemptions which they desire to make;
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> (v) the amount for which, or the rate at which it is desired to make such clauses liable, etc., etc. Section 46 (i) states:

> 46. Every Municipality shall, as soon as conveniently may be after the Constitution thereof and subject to the provisions of Chapter XIIIA, make and may from time to time alter or rescind rules, but not so as to render them inconsistent with this Act, XX XX XX XX XX XX
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> (i) prescribing, subject to the provisions of Chapter VII, the taxes to be levied in the municipal district for municipal purposes, the grounds on which exemptions are to be recognized, the conditions on which and the extent to which remissions may be granted, and the system on which refunds are to be allowed and paid, in respect of such taxes, and the limits of the charges or payments to be fixed in lieu of any tax under Section 71, and the times at which and the mode in which the same shall be levied or recovered or shall be payable, and prescribing the fees for notices demanding payments due on account of any tax, and for the issue and execution of warrants of distress, and the rates to be charged for maintaining any livestock destrained, and designating the persons authorized to receive payment of any sums so leviable;

10. The resolution passed by the Municipality would indicate that no rules as contemplated by Section 60(a)(ii) were passed by the municipality. Nor is there anything to show that the municipality adopted the Rules as the rules under Section 60(a)(ii). It was argued on behalf of the respondent that there was incorporation of the Rules by reference in the resolution and so, the Rules passed under the Ordinance became the rules passed by the Municipality. We do not find our way to accept this contention. There is absolutely no reference in the resolution to any rules having been passed, nor is there any reference in it to the Rules so that it might be said that the Rules were adopted as the rules to be passed by the Municipality. Framing of rules is a mandatory requirement enjoined by Section 60(a)(ii).

11. After the resolution is passed and the rules framed, Section 60(b) enjoins that the form of rules prepared with a notice in the form of Schedule A prefixed thereto shall be published. The form in Schedule A requires that objections to the rules should be invited. The publication in this case stated that Saurashtra municipal octroi rates and rules are shown at the municipal office and the octroi office. No objection was invited to the rules as required. Thereafter the proposal to impose octroi at the enhanced rate was finalized. According to Section 60(c) the rules have to be sent for the sanction of the Collector. Under Section 61, the Collector may, either sanction or refuse to sanction the rules, or sanction the same with or without modification. The order of sanction by the Collector set out below says that by laws have been sanctioned:

> RESOLUTION The following bye-laws of the Dhrangadhra Municipality are hereby sanctioned as per Sections 48-i and 61 of the Bombay District Municipality Act, 1901 which Act has been adopted by the Government of Saurashtra.
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> Bye-laws made by Dhrangadhra Municipality for octroi.

> The Dhrangadhra Chemical Works has taken objection against the rates shown in the aforesaid bye-laws by the Municipality and the Municipality has filed a suit to recover the octroi from them. Till the disposal of the said question through the said High Court or by any other means it appears proper to continue with the Chemical works the present dealings relating to the octroi. Therefore, the Dhrangadhra Municipality is directed to continue the present position with the Chemical Works.
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> These bye-laws will be deemed to have come into force from 1-7-1953.
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> The order of the Collector does not say that any rules have been sanctioned.

12. That no rules have been framed under the Act is clear from the fact that the Municipality has not been able to produce them when the appellant asked for a copy of the same. The Municipality had then stated that "although no rules have been framed, the rules framed by the Government appear to have been adopted," Section 62 of the Act provides that rules sanctioned under Section 61 shall be published by the Municipality in the district for which they are prescribed together with notice reciting the sanction and the date and the serial number thereof, and the tax as prescribed by the rules so published shall, from a date which shall be specified in such notice and which shall not be less than one month from the publication of such notice, be imposed accordingly. In this case, the publication was as follows:

> Shri Samaharna Sahib of Jhalawad District by his letter of Surendranagar dated 27-1-1954 bearing No. L-SG 9-4 (1966) has sanctioned that the bye-law regarding increase in octroi rate at the amended rate will come into force from 1st July, 1953.
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> Then the publication went on to recite the resolution passed by the Municipality on March 30, 1953. The publication was made on March 1, 1954, and the tax was levied with effect from July 1, 1953. This was clearly illegal as under Section 62, a date shall have to be specified which shall not be less than one month from the date of the publication. Section 75 provides that every municipality, when submitting for sanction a proposal for the imposition of octroi, shall submit therewith for sanction a draft of by-laws for the purpose of Clause (j) of Section 48(1) after observing the requirements of Sub-sections (2) and (3) of that section. No by-laws have been framed by the municipality as visualised by Section 48 (1)(j). It would appear from the order of sanction by the Collector that by-laws have been submitted to him. It is said by the respondent-municipality that though no bye-laws have been framed by it, ft had adopted the by-laws framed by the Government under Clause 4 of the Ordinance, namely, the "Adesha Patrika". If the municipality adopted "Adesha Patrika" as its by-law under Section 48(1)(j), that should have been published in accordance with Section 48(2). It does not appear that the "Adesha Patrika" was published in accordance with that Sub-section. Sub-section (2) of Section 48 provides:

> 48 (2) Every Municipality shall, before making any by-law under this section, publish in such manner as shall in their opinion be sufficient for the information of the persons likely to be affected thereby, a draft of the proposed by-law, together with a notice specifying a date on or after which the draft will be taken into consideration and shall, before making the by-law receive and consider any objection or suggestion with respect to the draft which may be made in writing by any person before the date so specified.

13 This Court has held in Municipal Council, Khurai v. Kamal Kumar that failure to comply with any mandatory provision prescribing the procedure for imposing a tax would vitiate the tax. A minor or trivial deviation from the procedure to be complied with might not be considered as fatal (see Raza Buland Sugar Co. Ltd. v. Municipal Board, Rampur

14. We do not think that the mandatory provisions of Sections 60 to 62 for imposing a tax have been complied with in this case. Therefore, we hold that the imposition of the tax was illegal.

15. On behalf of the respondent It was submitted that the appellant was estopped from questioning the validity of the tax as it obtained benefit under the agreement dated September 26, 1960, and, therefore, the discretion of the High Court was rightly exercised by dismissing the petition. The respondent further submitted that the appellant was aware of the illegality of the levy in 1953 and that with open eyes it entered into the agreement with the municipality, under taking to pay tax at the rate in vogue on July 1, 1953, and, in consideration thereof, the municipality agreed not to enhance the tax for a period of one year; and so, the appellant cannot be allowed to challenge the legality of the tax. We do not think that there is any substance in these contentions. There was no agreement to pay the tax waiving the illegality attaching to it. There is also nothing to show that the appellant was aware of the illegality in the imposition of the tax and that it waived the illegality with full knowledge of it. Part of the consideration for the agreement by the appellant to pay the tax at the rate in vogue in 1953 was that the municipality will not increase the tax from a period of one year as far as the appellant was concerned. There could be no valid agreement by a municipality, which is a political sub-division of the State that it will not collect a tax from a particular person which It is authorized by the statute to collect from all (see Mathra Parshad & Sons v. State of Punjab . If the agreement is treated as a representation by the appellant that it will pay the tax at the rate in vogue in 1953, the municipality did not suffer) any detriment by acting on the faith of it. The appellant did not also derive any benefit under the agreement as the municipality never increased the rate of tax with respect to any class of persons in the municipality.

16. It was argued on behalf of the municipality that Section 167 of the Act has fixed a period of six months for a suit against the municipality and as the appellant bad not come within that period before the High Court, the High Court was justified in refusing to issue the writ. It was further submitted that even in the matter of enforcement of a fundamental right, acquiescence or delay would be a bar and, therefore, the Writ petition of the appellant challenging the validity of the tax on the ground that it violated its fundamental right was rightly dismissed by the High Court. The decisions in Nainsukh Das v. The State of Uttar Pradesh , The Moon Mills v. Industrial Court, Bombay AIR 1967 SC 1450 at p. 1454; Tilokchand Motichand v. H. B. Munshi and State of Assam v.

Amalgamated Tea Estates Company Ltd. were referred to in this connection. All these rulings are of no assistance to the respondent for the simple reason that the appellant was challenging the demand notice dated September 15, 1962, by its writ petition filed on September 26, 1962. Merely because the municipality has passed the resolution in 1953 for imposing the tax and the appellant was paying the tax for some time would not preclude the appellant from challenging the validity of the tax when the demand notice was issued. As we said, there are no circumstances in this case to show that the appellant waived the illegality attaching to the imposition of the tax.

17. The High Court discussed in detail the preliminary objection raised by the respondent that the writ petition should be summarily dismissed on the ground that the appellant has omitted to refer in the writ petition to the agreement dated September 26, 1960, and thus suppressed a material fact from the Court. The High Court, after having found that the petition was liable to be dismissed on the ground that the appellant has suppressed a material fact, nevertheless, chose to pass upon the contentions of the appellant on merits instead of disposing of the petition on its finding on the preliminary objection. The High Court, having entered into the merits of the case and disposed it of on that basis, we do not think it necessary to consider at length the merit of the preliminary objection. Suffice it to say that it does not appear to us that omission to refer to the agreement dated September 26, 1960, can be characterized as suppression of a material fact in view of the nature of the relief claimed in the writ petition.

18. The appellant can take just exception only to the extent of one-third of. The amount shown in the demand notice as that alone represents the 50 per cent increase. In the result, we quash the demand notice to the extent of the 50 per cent increase.

19. ' The question whether the rest of the tax can be realised under the provisions of the Rules by issue of distress warrant does not arise for consideration in this proceeding. The appellant will be free to question the legality of any distress warrant if and when it is issued. The appeal is allowed to the extent indicated above and it is dismissed in other respects. In the circumstances we make no order as to costs.