

## **Municipal Board, Bareilly vs Bharat Oil Company And Ors on 4 December, 1989**

**Equivalent citations: 1990 AIR 548, 1989 SCR SUPL. (2) 376, AIR 1990 SUPREME COURT 548, 1990 (1) SCC 311, (1989) 4 JT 453 (SC), 1990 ALL CJ 13, (1990) 1 UPLBEC 209, (1990) 1 SCJ 329, (1990) 16 ALL LR 248, (1990) 1 ALL WC 51**

**Author: M. Fathima Beevi**

**Bench: M. Fathima Beevi, K.N. Saikia**

PETITIONER:  
MUNICIPAL BOARD, BAREILLY

Vs.

RESPONDENT:  
BHARAT OIL COMPANY AND ORS.

DATE OF JUDGMENT 04/12/1989

BENCH:  
FATHIMA BEEVI, M. (J)  
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FATHIMA BEEVI, M. (J)  
SAIKIA, K.N. (J)

CITATION:  
1990 AIR 548                      1989 SCR Supl. (2) 376  
1990 SCC (1) 311                JT 1989 (4) 453  
1989 SCALE (2) 1269

ACT:  
U.P. Municipalities Act 1916/U.P. Municipal Account Code  
1925/U.P. Octroi Rules, 1925: Section 128 Chapter X/Rules  
131-23 I--Octroi--Levy Or'on mineral oil--Permissibility of.

### **HEADNOTE:**

The appellant is a Municipal Board governed by the provisions of the U.P. Municipalities Act, 1916. Section 128 of the Act provides for imposition of taxes by the Board. In exercise of the powers under Sections 131 to 135 and 296 of the Act, the Government of the United Provinces framed octroi rules. The said rules were included in the Municipal Account Code (Chapter X rules 131 to 231). The proviso to

Rule 131 provided that octroi shall not be levied on certain articles which included mineral oil. The rule was amended vide notification dated the 2nd November 1953 and for the words "the mineral oil" in the proviso, the words "mineral oils classified as motor spirit, kerosene or diesel oil" were substituted.

Separate rules for the assessment and collection of octroi in the Bareilly Municipality were framed by the Govt. of U.P. The draft rules were notified vide notification dated the 16th February 1963. Final rules were notified vide notification dated the 7th May 1963 and published in U.P. Gazette dated the 11th May 1963. By a notification dated the 24th July 1963, published in U.P. Gazette dated the 3rd August, 1963, the appellant Board imposed octroi duty on goods and animals brought within the octroi limits of Bareilly Municipality for consumption, use and sale at the rates shown in the Schedule subject to certain exceptions mentioned therein. The said notification came into operation from November 16, 1963 and thereafter the levy of octroi in Bareilly Municipality was governed by 1963 rules. The amendments were made in the octroi schedule both in the rates as well as in the exemption and as a result whereof motor spirit, kerosene and diesel oil were removed from the exemption clause and were subjected to the octroi duty @ 1 paisa per liter vide notification dated August 27, 1969.

The respondents challenged the validity of the notification dated

377

the 27th August 1969 by means of a writ petition before the High Court on the ground that 1925 rules took away the power from all Municipal Boards to impose octroi duty on mineral oils and until such power is restored under a contrary notification issued under section 128 of the Act, the Board did not have any justification to assess or collect octroi duty on mineral oils. The appellant Board contended that Rule 131 was superseded by the 1963 rules which now governed the imposition of octroi by the appellant Board. The single Judge of the High Court who heard the petition came to the conclusion that Rule 131 restricted the power of the Board to impose the octroi and the subject-matter of the rule was not covered by the 1963 rules. The appellant's appeals preferred before the Division Bench were dismissed which took the view that the bar under Rule 131 regarding the imposition of octroi duty on mineral oils continued notwithstanding the 1963 Rules. Hence these appeals by the Municipal Board.

Allowing the appeals, this Court,

HELD: The rule making power under section 296 read with Section 300(2) of the Act enables the State Government to except any one municipality from the operation of the general rule by express provision in that behalf. When the identical authority in exercise of its rule making power duly frames the rules in respect of the same matter expressly

providing that the new rules shall apply to a particular municipality in supersession of the existing rules, it must be deemed that existing rules are repealed to that extent. [384C-D]

The 1963 rules had been framed under Section 296 of the Act in supersession of the existing rules after the publication by the State Government, in the Gazette as provided under Section 300 and therefore rule 131 in the 1925 rules ceased to have any operation in respect of the matters dealt with therein so far as the Bareilly municipality is concerned. [384D]

M/s Central Distillery Chemicals Works Ltd. & Anr. v. State of U.P. & Ors., [1980] All L.J. 62, approved.

Municipality of Anand v. State of Bombay, AIR 1962 SC 988; Municipal Board, Hapur v. Raghuvendra Kripal & Ors., [1966] 1 SCR 950; Mool Chand v. Municipal Board, Banda, AIR 1926 All. 517; Zaverbhai Amaidas v. The State of Bombay, [1955] 1 SCR 799 and The Municipality of Anand v. State of Bombay, [1962] 2 Supp. SCR 366, referred to

#### JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 993 & 994 of 1976.

From the Judgment and Order dated 16.9.1974 of the Allahabad High Court in Spl. Civil Appeal Nos. 622 & 623 of 1972.

R.K. Virmani for the Appellant.

M.V. Goswami and S.S. Khanduja for the Respondents. The Judgment of the Court was delivered by M. FATHIMA BEEVI, J. 1. These two appeals by special leave are filed by the Municipal Board, Bareilly, against the judgment of the Allahabad High Court quashing the Gazette Notification dated August 27, 1969 amending the octroi schedule of the Bareilly Municipality so as to impose octroi on "mineral oil".

2. The respondents Bharat Oil Company and others filed writ petitions under Article 226 of the Constitution of India challenging the notification on the ground inter alia that the appellant, the Municipal Board Bareilly (hereinafter referred to as 'the Board') had no authority to impose octroi on mineral oil in view of the proviso to Rule 131 of the octroi Rules contained in the U.P. Municipal Account Code, 1925. This was countered by the appellant stating that the R. 131 was superseded by the 1963 rules which govern the imposition of octroi by the appellant Board. The Single Judge in allowing the Writ Petitions took the view that R.131 restricted the power of the Board to impose the octroi and the subject-matter of the rule is not covered by the 1963 rules. The appeals preferred were dismissed by the Division Bench of the High Court agreeing that the bar under R. 131 'regarding the imposition of octroi duty on mineral oils continued notwithstanding the 1963 rules.

3. The appellant is a Municipal Board governed by the provisions of the U.P. Municipalities Act, 1916 (hereinafter referred to as 'the Act'). Section 128 of the Act provides for imposition of taxes by a Municipal Board. The relevant part of the said section reads as under:

"128. Taxes which may be imposed (1) Subject to any general rules or special orders or' the State Government in this behalf, the taxes which a board may impose in the whole or any part of a municipality are--

(i) x x  
x

(viii) an octroi On goods or animals

brought without the municipality for consump- tion, use or sale therein."

4. Sections 13 1 to 135 of the Act contain provisions relating to the framing of proposals for the imposition of taxes by the Municipal Board, inviting objections to the said proposal, the approval of the said proposal by the State Government, the framing of rules by the State Govern- ment on the basis of such proposals, under Section 296 of the Act and for the issue of a notification about the impo- sition of tax from the appointed date.

5. Section 153 of the Act provides that assessment and collection of taxes and other matters relating to taxes may be regulated by Rules. Section 296 empowers the State Gov- ernment to make rules in respect of matters described in Section 153.

6. In exercise of the powers under Sections 13 1 to 135 and 296 of the Act, the Government of the United Provinces framed octroi rules which were published vide notification dated the 25th October, 1925. The said rules are included in the Municipal Account Code (Chapter X Rules 13 1 to 23 1) published by the Government of U.P.

7. Rule 13 1 provided that subject to the exceptions contained in the proviso octroi may be ordinarily levied on commodities included in the list set-out in the said rule. The proviso to this rule stated that octroi shall not be levied on certain articles which included mineral oil. Rule 131 was amended vide notification dated the 2nd November, 1953 and for the words "the mineral oil" in the proviso the words "mineral oils classified as motor spirit, kerosene or diesel oil" were substituted.

8. Separate rules for the assessment and collection of octroi in the Bareilly Municipality were framed by the Government of U.P. in exercise of the powers conferred by Section 296 of the Act. The draft rules were notified vide notification dated the 16th February, 1963 and published in the U.P. Gazette dated 23rd February, 1963. The said notifi- cation reads as under:

"No..89-B/XI-C-129-60. The following draft of the rules for the assessment and collection of octroi in the Bareilly Municipality, in super- session of the existing octroi rules contained in the Municipal Account Code in so far as they apply to the said municipality, which the Governor of Uttar Pradesh proposes to make, in exercise of

the powers conferred by Section 296 of the U.P. Municipalities Act, 1916 (U.P. Act No. II of 1916), is published as required by subsection (1) of section 300 of the said Act, for the information of all concerned with a view to invite objections and suggestions in respect thereof".

9. Final Rules were notified vide notification dated the 7th May, 1963 and published by the Government in the U.P. Gazette dated the 11th May, 1963 as required under S. 300 of the Act.

10. By notification dated the 24th July, 1963 published in the U.P. Gazette dated the August 3, 1963 the appellant Board imposed octroi duty on goods and animals brought within the octroi limits of Bareilly Municipality for consumption, use and sale at the rates shown in the schedule to the said notification and subject to the exceptions contained therein. Item 29 of the exceptions contained in the schedule related to "mineral oils" classified as motor spirit, kerosene and diesel oil. The said notification came into operation from November 16, 1963. Thereafter the levy of octroi in the Bareilly Municipality was governed by 1963 rules. The amendments were made in the octroi schedule both in the rates as well as in the exemption and as a result thereof motor spirit, kerosene and diesel oil were removed from the exemption clause and were subjected to the octroi duty @ 1 paisa per litre vide notification dated August 27, 1969.

11. The validity of the notification dated the 27th August, 1969 was challenged before the High Court in the Writ Petitions Nos. 1805 and 4696 of 1970 by respondents on the ground that 1925 rules take away the power from all Municipal Boards to impose octroi duty on mineral oils and until such power is restored under a contrary notification issued under Section 128 of the Act, the Board did not have any justification to assess or collect octroi duty on mineral oils.

12. The impugned judgment proceeded on the basis that Rules 131 to 133 of the 1925 rules have been made by the State Government in exercise of the powers conferred upon it by the opening words of Section 128(1) and they are not rules under section 153 for the assessment and collection of octroi. It was also held that the subject-matter of these rules is not covered by the 1963 rules and, therefore, the 1963 rules cannot supersede R. 131 of the 1925 Rules. A Full Bench of the Allahabad High Court in *M/s Central Distillery Chemicals Works Ltd. & Another v. State of U.P. & Others*, [1980] All L.J. 62 following the decision of this Court in *Municipality of Anand v. State of Bombay*, A.I.R. 1962 SC 988 overruled the impugned decision holding that the special rules which are in relation to a particular tax and a particular Municipal Board will override or supersede the general rules framed by State Government under Section 153 read with Section 296. The appellant's learned counsel relied on the Full Bench decision and maintained that the rules framed by the Board prevail over the rules contained in the Municipal Account Code and the notification is, therefore, valid. In our view the approach made by the Full Bench of the High Court in *M/s Central Distillery Chemicals Works Ltd. v. State of U.P.*, (supra) is correct and has to be approved.

13. As pointed out by this Court in *Municipal Board, Hapur v. Raghuvendra Kripal and Others*, [1966] 1 SCR 950 taxes raised by a local authority are not imposed by it as a legislature but as a delegate of the legislature. The tax is valid one if it is one of the taxes the local authority can raise and the delegate imposes it in accordance with the conditions laid down by the legislature. The taxes

that can be raised in exercise of delegated power are predetermined and procedure is prescribed by the Municipal Act. Thus Section 128 of the U.P. Municipalities Act confers on the municipalities in the State the power to levy taxes enumerated thereunder. The power conferred is not absolute but is subject to any general rules or special orders of the State Government in this behalf. Section 128(1) does not confer any independent rule making power. The general rules referred to in that Section can only be the rules in the matter of such levy specified in Section 153 of the Act and framed in exercise of the power under Section 296 of the Act. The State Government is empowered under Section 296 to make rules consistent with the Act in respect of matters described in Section 153. Rules framed under Section 153 constitute the exclusive machinery for assessment and collection of taxes. The relevant part of Section 153 reads as under:

"153. Rules as to assessment, collection and other matters. The following matters shall be regulated and governed by rules except in so far as provision therefor is made by this Act, namely:

(a) the assessment, collection or composition of taxes, and, in the case of octroi or toll, the determination of octroi or toll limit;

(f) any other matter relating to taxes in respect of which this Act makes no provision or insufficient provision and provision, is, in the opinion of the State Government necessary-

sary."

In prescribing the procedure for the imposition of taxes by the board, Section 131 of the Act requires the board while framing the proposal to prepare a draft of the rules which it desires the State Government to make in respect of the matters referred to in Section 153 and publish the same. When the proposals have been sanctioned the State Government makes the necessary rules in respect of the tax under Section 296. The rules referred to in Section 128(1) are rules thus framed by the State Government under Section 296 in respect of matters referred to in Section 153. Section 300(2) expressly provides that any rule or regulation made by the State Government may be general for all municipalities or may be special for any one municipality as it directs.

14. The Municipal Manual published by the Government contains the general rules made by the Government under the Act and general orders issued in Volume 1. The second volume contains the Municipal Account Code. The General Rules and orders are contained in Chapter I to XII of Part I. The Explanation in Chapter I reads as under:

"The Rules in this Manual, which are printed in pica type, together with their explanations, illustrations and exceptions, have the force of law, having been made by the Government in exercise of the powers conferred by section 296 of the Act, and, except where otherwise stated, are applicable to all municipalities. The notifications in which they were published are referred to on the margins of the pages."

Part II contains the model rules, bye laws and regulations. Section A deals with Rules with reference to Section 153 of the Act thus:

"The following model rules have been framed by the Government for the assessment and collection of taxes other than octroi under section 153 and 296 of the Act.

It is anticipated that they will be found generally applicable to the circumstances of the municipalities of these provinces, and it is desirable that the model forms should be adhered to unless there are special reasons justifying any divergence from them. In forwarding proposals for the imposition of additional taxation, boards are reminded that the necessary rules for the assessment and collection of the taxes to be imposed should be forwarded at the same time as the tax proposals, and it will facilitate the disposal of such cases if any deviations from the model forms printed below are specifically referred to in the proposals submitted. Vol. II contains the Municipal Account Code. Chapter X deals with octroi and provides in R. 13 1 that subject to the exceptions contained in the proviso octroi shall ordinarily be levied on commodities included in the list. In *Mool Chand v. Municipal Board, Banda*, AIR 1926 All 5 17 it was held that the rules contained in the Code have as much force of law as the Act itself. The octroi rules contained in Chapter X of the Municipal Account Code are general rules framed by the State Government in respect of matters referred to in Section 153 in exercise of power under Section 296 and refer to the levy and govern the assessment, collection etc. The rules are general for all municipalities. The 1963 rules are framed for the appellant board expressly superseding the general rules in so far as they apply to the appellant board. By framing the 1963 rules the government evinced the intention to cover the field which was covered by 1925 rules in so far as the Bareilly Municipality was concerned. The subject-matter dealt within 1963 rules is the same as that dealt with in 1925 rules. The intention to supersede the earlier rules is clearly expressed. The rule has the force of law. Rule 13 1 of 1925 rules has no longer any application in the matter of levying octroi by the appellant board. That rule stands repealed in so far as the appellant Board is concerned. The rule cannot, therefore, be read as curtailing the power under Section 128(1)(viii) of the Act to impose octroi. Rules do not enlarge or restrict the authority to impose tax. Authority is conferred by the section. Rules are only regulating the exercise of that power. The imposition of the tax and the regulation of its assessment and collections are totally different matters and they are clearly distinguished. In *Zaverbhai Amaldas v. The State of Bombay*, [1955] 1 SCR 799 this Court reiterated the rule of construction that if a later statute deals with the same subject-matter and varies the procedure the earlier statute is repealed by the later statute. In *The Municipality or Anand v. State of Bombay*, [1962] 2 Supp. SCR 366 construing s. 59 of the Bombay District Municipal Act, 1901 which is in pari materia with s. 128 of the U.P. Municipalities Act, this Court said the word 'impose' in s. 59 meant the actual levy of the tax after authority to levy it had been acquired by rules duly made and sanctioned and this imposition was subject to the general or special orders of the government. The opening words of S. 128 are capable of similar construction and the imposition

has to be understood as the actual levy subject to the general rules and special orders contemplated under the other provisions of the Act.

15. The rule making power under Section 296 read with Section 300(2) of the Act enables the State Government to except any municipality from the operation of the general rule by express provision in that behalf. When the identical authority in exercise of its rule making power duly frames the rules in respect of the same matter expressly providing that the new rules shall apply to a particular municipality in supersession of the existing rules, it must be deemed that existing rules are repealed to that extent. The 1963 rules had been framed under Section 296 of the Act in supersession of the existing rules after publication by the State Government, in the Gazette as provided under Section 300 and therefore Rule 131 in the 1925 rules ceased to have any operation in respect of the matters dealt with therein so far as the Bareilly municipality is concerned.

16. In this view of the matter, we hold that the appellant Board had authority to levy octroi on mineral oils and challenge against the impugned notification is not sustainable. The High Court was clearly in error in quashing the same and restraining the Board from assessing and collecting the tax.

We accordingly allow the appeal and set-aside the judgment of the High Court. In the circumstances of these cases, we, however, make no order as to costs.

Y. Lal