Supreme Court of India
Bangalore Woollen, Cotton And ... vs Corporation Of The City Of ... on 5 April, 1961
Equivalent citations: 1962 AIR 562, 1961 SCR Supl. (3) 707
Author: K L.
Bench: Das, S.K., Kapur, J.L., Hidayatullah, M., Shah, J.C., Aiyyar, T.L. Venkatarama

PETITIONER:
BANGALORE WOOLLEN, COTTON AND SILK MILLS CO. LTD.,

Vs.

RESPONDENT:
CORPORATION OF THE CITY OF BANGALORE, BY ITS COMMISSIONER,

DATE OF JUDGMENT:
05/04/1961

BENCH:
KAPUR, J.L.
BENCH:
KAPUR, J.L.
AIYYAR, T.L. VENKATARAMA
DAS, S.K.
HIDAYATULLAH, M.
SHAH, J.C.

CITATION:
1962 AIR 562 1961 SCR Supl. (3) 707
CITATOR INFO :
D 1966 SC1686 (9)
RF 1981 SC 991 (10)
RF 1987 SC1059 (18)

ACT:
Municipality--Octroi--Constitutionality of--Final resolution for levying not published in Official Gazette--Defect, if can be validated--City of Bangalore Municipal Corporation Act, 1949 (69 of 1949), ss. 38(1)(b), 98, 103, Sch. III, Part V, Classes I to VIII--Constitution of India, Arts. 276, 301--Government of India Act, 1935 (26 Geo. V, Ch. 2), s. 142--A.

HEADNOTE:
The appellants in the two appeals and petitioners under Art. 32 of the Constitution challenged the constitutionality of the imposition of octroi duty on cotton and wool on the grounds that (1) the failure to notify the final resolution of the imposition of the tax in the Government Gazette as required by s. 98(2) of the City of Bangalore Municipal Corporation Act was fata I to the tax, and that (2) the

imposition of the tax offended Art. 276 or 301 of the Constitution.
Held, that the impugned octroi duty did not contravene the provisions of Arts. 276 and 301 of the Constitution.
Hamdard Dawakhana (Wakf) v. The Union of India [1960] 2 S.C.R. 671, held inapplicable.
Atiabari Tea Co. Ltd. v. The State of Assam [1961] 1 S.C.R. 809, referred to.
section 38(1)(b) of the Act validated any defect or irregularity in proceedings taken under the Act which did not affect the merits of the case. The failure to publish the final resolution did not affect the merits of the imposition of the tax and was therefore not fatal to it.
The mere fact that S. 38(1)(b) occurred in a chapter dealing with Municipal Authorities or the other parts of the Section dealt with another subject was no reason for confining its operation to those subjects only.
Harla v. State of Rajasthan [1952] S.C.R. 110 and State of Kerala v. P. J. Joseph A.I.R. 1958 S.C. 296, referred to.
The contention that the impugned tax contravened the provisions of Art. 276 of the Constitution was not sustainable. Entry 52 in List II of the Constitution and entry 49 in the Government of India Act, 1935, which relate to taxes on entry of goods into a local area are not affected by Art. 272 of the Constitution and
708
s. 142-A of the Government of India Act, which are similar to each other and relate only to a distinct head of taxation i.e., taxes on professions, trades and callings etc.
The Municipality of Chopda v. Motilal Manekchand I.L.R. [1958] Bom, 483, Gajadhar Hiralal Ginning and Pressing Factory v. The Municipal Committee, Washim I.L.R. [1958] Bom. 628 and Secretary, Municipal Committee, Karanja v. The New East India Press Co. Ltd., Bombay A.I.R. 1949 Nag. 215, distinguished.
Classes I to VII in Schedule III of Part V make certain specified articles taxable and Class VIII makes " other articles which are not specified" taxable if approved by the Corporation The combined effect of ss. 97 and 130 and Part V of Schedule III including Class VIII is that the words used are of very general nature and would have the same effect as if all articles were intended to be and were included.
Anwarkhan Mahboob Co. v. The State of Bombay [1961] 1 S.C.R. 709, followed.

JUDGMENT:

CIVIL APPELLATE JURISDICTION :Civil Appeals Nos. 448 and 449 of 1957 with Writ Petitions Nos. 97 and 107 of 1961.

Appeals from the judgment and order dated September 27, 1956, of the Mysore High Court in Writ Petitions Nos. 44 and 45 of 1955.

M. C. Setalvad, Attorney-General for India,' N. C. Chatterjee, D. N. Mukherjee and B. N. Ghose, for the appellant in C. A. No. 448/57 and Petitioner in Writ Petition No. 97/1961.

M. C. Setalvad, Attorney-General for India, V. L. Narasimhamoorty, S. N. Andley, J. B. Dadachanji, Rameshwar Nath and P. L. Vohra, for appellant in C. A. No. 449157 and Petitioners in W. P. No. 107 of 1961.

A. V. Viswanatha Sastri and K. R. Choudhri, for respondents in C. As. Nos. 448 and 449 of 57 and W. Pa. Nos. 97 and 107/1961.

1961. April 5. The Judgment of the Court was delivered by KAPUR., J.-A Divisional Bench of this, Court made a reference* under the proviso to Cl. (3) of Art. 145 on the. following two points:-

(1) Whether the imposition in the present caw offends Art. 276 or 301 of the Constitution ?

*See p. 698 ante.

(2) Whether the failure to notify the final resolution of the imposition of the tax in the Government, Gazette is fatal to the tax ?

The facts of the case are set out in the order of the Divisional Bench and it is unnecessary to restate them. The appellants in the two appeals and in the two petitions under Art. 32 are challenging the constitutionality of the octroi duty on cotton and wool imposed by the respondent Corporation within its octroi limits. The procedure for levying municipal taxes and the power of control of Government in regard to those taxes is laid down in s. 98 of the City of Bangalore Municipal Corporation Act (Act 69 of 1949) hereinafter termed the Act. The procedure is that a resolution intending to impose a tax has to be passed by the Corporation and that resolution is required to be published in the Official Gazette and in the local newspapers. The rate payers can then submit objections and after considering such objections received during the specified time the Corporation may by resolution determine to levy the tax or duty. When such a resolution has been passed the Commissioner is required to publish forthwith a notification in the Official Gazette and in the newspapers as set out in sub-s. (1) of s. 98 of the Act. This notification is to specify the date from which, the rate at which and the period of levy, if any, for which such tax is levied. As has been stated in the order of the Divisional Bench all other requirements of s. 98 were complied with except that the notification in the Government Gazette as required by sub-s. (2) was not published. This, it was submitted, was a defect which was fatal to the legality of the imposition of the tax. To support this submission reliance was placed on two judgments of this Court in Harla v. State of Rajasthan (1) and State of Kerala v. P. J. Joseph (2). In the former case the-Jaipur Opium Act was enacted by a resolution of the Council of Ministers appointed by the then Crown Representative but this law was neither promulgated nor published in the Gazette nor made known to the public. The mere passing of the resolution by the (1) [1052] S.C.R. 110, (2) A.I.R. 1958 S.C. 296, Council of Ministers without

publication was held not to be sufficient to make the law operative. At p. 114, it was observed that reasonable publication of some sort was necessary and that natural justice required that before a law could operate it had to be promulgated or published and it must be broadcast in some recognizable way. Similarly in the latter case there was no publication in the Gazette of the Order of the Government made in the exercise of the power conferred by an Act nor was there any communication of the order to the person affected thereby and it was held that not having been published in the Gazette it was not valid and could not have the force of law. But the respondent relied upon s. 38(1)(b) of the Act which cures defects or irregularities not affecting the merits of the case. That section provides:-

S. 38(1). " No act done, or proceeding taken under this Act shall be questioned merely on the ground-

(a).....

(b) of any defect or irregularity in such act or proceeding, not affecting the merits of the case. " Thus under that provision any defect or irregularity not affecting the merits of the case saves any act done or proceeding taken under the Act on the ground of such irregularity or defect. The appellants contended that the section has no application to defects in regard to procedure under s. 98 of the Act for the imposition of taxes because s. 38 read as a whole refers to a different situation and that there was internal evidence in the section itself to show that it has no relevance to the objection taken by the appellants. The section, it was argued, is in Chapter 11 dealing with Municipal Authorities and this particular provision is in that Part of the Chapter which deals with provisions common to the Corporation and its Standing Committees and the marginal note shows that the object of enacting it was the validation of proceedings of the Corporation and its Standing Committees and that the whole section should be read in that context. So read, it was submitted, the section must be taken to be.,% saving provision for the validity of proceedings of the Municipal Authorities which was clear from cl. (a) of sub-s. (1) which deals with defects on the B ground of vacancy or defect in the constitution of the Corporation or of any Standing Committee and subs. (2) of that section also has reference to the meetings of the Corporation and therefore, it was contended, I the defect or irregularity mentioned in cl. (b) of sub,section (1) in any act done or proceeding taken also must have reference to that kind of defect which is referred to in other parts of the section. It was further submitted that the words " not affecting the merits of the case " showed that the reference was not to any defect in regard to the procedure for imposition of taxes but defects etc. which might arise in the proceedings of the Corporation and which have reference to a defect in the constitution of the Corporation or its Standing Committees. Reference was also made to the marginal note in the section.

It is unnecessary in this case to discuss the relevance of marginal notes in the construction of s. 38(1)(b) because in our opinion the language is unambiguous and clear and it validates any defect in any act done or proceedings taken under the Act and makes it immune from being questioned on the ground of any defect or irregularity in such act or proceedings not affecting the merits of the case and merely because it is in a chapter dealing with Municipal Authorities or other parts of the section dealing with another subject is no reason for confining its operation to the defects con. tended for by

the appellants. The resolution was published in newspapers and was also communicated to those affected by it and thus it was well known. The failure to publish it in the Government Gazette did not affect the merits of its imposition. The answer to question No. 2 referred therefore is that the mere failure to notify the final resolution of the imposition of the tax in the Government Gazette is not fatal to the legality of the imposition.

The other question referred is whether the imposition offends Art. 276 or 301 of the Constitution, Article 276 as far as it is relevant for the purposes of this case provides:-

> Art. 276(1) " Notwithstanding anything in article 246, no law of the Legislature of a State relating to taxes for the benefit of the State or of a municipality, district, board, local board or other local authority therein in respect of professions, trades, callings or employments shall be invalid on the ground that it relates to a tax on income. (2) The total amount payable in respect of any one person to the State or to any one municipality, district board, local board or other local authority in the State by way of taxes on professions, trades, callings and employment shall not exceed two hundred and fifty rupees per annum."

It was contended that the imposition of the impugned tax contravenes the provision of Art. 276(2) as it is of a sum more than Rs. 250 and is therefore unconstitutional. This contention is not well founded. There 'was a similar provision in the Government of India Act, 1935, i.e., s. 142-A but there the amount mentioned in sub-s. (2) was Rs. 50 per annum and this limitation was placed as from after the 31st day of March, 1939. A reference to the legislative lists will show that neither the Article 276 nor s. 142-A of the Government of India Act, 1935, has any reference to the tax now impugned. In the Devolution Rules under the Government of India Act, 1915, taxes which could be levied for the purpose of local bodies were the following:-

> " Item No. 7. An octroi.
>
> Item No. 8. A terminal tax on goods imported into or exported from, a local area save where such tax is first imposed in a local area in which an octroi was not levied on or before the 6th July 1917.
>
> Item No. 9. A tax on trades, professions and callings. "
>
> In the Government of India Act, 1935, the relevant entries in the Legislative List--List II-were 46 and 49 which were as follows:
>
> 46. " Taxes on professions, trades, callings and employments, subject, however, 'to the provisions of section one hundred and forty-two A of this Act."
>
> 49. " Cesses on entry of goods into a local area' for consumption, use or sale therein. " Terminal tax was taken to List I, i.e., Central List and is now entry 89 in the Union List (List I). Corresponding entries to 46 and 49 of the Government of India Act,

1935, in the Constitution in. List II are 52 and 60 which are as follows :-

52. "Taxes on the entry of goods into a local area for consumption, use or sale therein. "

60. " Taxes on professions, trades, callings and employments. "

The history of these taxes therefore shows that in the Devolution Rules under the Government of India Act, 1915, octroi, terminal tax and taxes on professions and callings were three distinct heads of taxation. Similarly in the Government of India Act, 1935, and in the Constitution the two entries are separate. Therefore when s. 142-A was added in the Government of India Act, 1935, its operation was limited to entry 46 of List II and had no reference to entry 49 which deals with cesses on entry of goods. The position under the Constitution is exactly the same and therefore neither s. 142-A of the Government of India Act, 1935 nor Art. 276 has any effect on entry 49 in the Government of India Act, 1935 or entry 52 in the constitution. The learned Attorney-General in support of his argument that the impugned tax is a tax on trade, relied upon three judgments: The Municipality of Chopda v. Motilal Manekchand (1) ; Gajadhar Hiralal Ginning & Pressing Factory v. The Municipal Committee, Washim (2); and Secretary, Municipal Committee, Karanja v. The New East India Press Co. Ltd., Bombay (3). None of these cases has any applicability to the tax now impugned because the facts were different and the imposition was of a different character. The attack on the constitutionality of the impugned tax on the ground of contravention of Art. 276 is therefore not sustainable and must be rejected.

(1) I.L.R. [1958] Bom. 483.

(2) I.L.R. [1958] Bom. 625.

(3) A.I.R. 1949 Nag. 215.

The second ground of assault on the constitutionality of the tax imposed is based on contravention of 'Art. 301 which provides:-

Art. 301. " Subject to the other provisions of this Part, trade, commerce and intercourse throughout the territory of India shall be free."

It was contended that the tax imposed directly affected the movement of goods and therefore violates Art. 301 which guarantees the freedom of trade throughout the territory of India. In Atiabari Tea Co. Ltd. v. State of Assam (1), Gajendragadkar, J., giving the opinion of the majority said :-

> "that the content of freedom provided for by Art. 301 was larger than the freedom contemplated by s. 297 of the Constitution Act of 1935, and whatever else it may or may not include, it certainly includes movement of trade which is of the very essence of all trade and is its integral part. If the transport or the movement of goods is taxed solely on the basis that the goods are thus carried or transported that, in our opinion,

> directly affects the freedom of trade as contemplated by Art. 301. If the movement, transport or the carrying of goods is allowed to be impeded, obstructed or hampered by taxation without satisfying the requirements of Part XIII the freedom of trade on which so much emphasis is laid by Art. 301 would turn to be illusory."

According to Shah, J., the content is wider. At page 241 the learned Chief Justice gave it a more restricted meaning. Relying on these observations it was contended that the tax which is affected by Art. 301 is one which is directly on movement of trade, i.e., from one point to another. As against this reliance was placed by the respondent on Art. 305 which at the relevant time was as follows:-

> Art. 305. " Nothing in articles 301 and 303 shall affect the provisions of any existing law except in so far as the President may by order otherwise direct;..."

According to this article the provisions of Art. 301 do not affect the provisions of any existing law except in so far as the President may otherwise direct and there (1) [1961] x S.C.R. 809.

is no such direction by the President. " Existing law has been defined in Art. 366, clause (10), to mean:

> " existing law' means any law, Ordinance, order, bye-law, rule or regulation passed or made before the commencement of this Constitution by any Legislature, authority or person having power to make such a law, Ordinance, order, bye-law, rule or regulation ; "

and by Art. 372 all laws in force in the territory of India immediately before the commencement of the Constitution shall continue to be in force until altered or repealed or amended by a competent legislature. It was these provisions which were relied upon as an answer to the question of the applicability of Art. 301. But the learned Attorney-General argued that the action taken by the Municipal Corporation was after the coming into force of the Constitution, being a levy imposed as from January, 1955, that the imposition of the tax was subordinate legislation which could not be saved under Art. 305 and that the tax could only be imposed by resorting to the provisions of Art. 304(b) which provides:

> Art. 304. " Notwithstanding anything in article 301 or article 303, the Legislature of a State may by law-
>
> (a).....
>
> (b) impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest:
>
> Provided that no Bill or amendment for the purposes of clause (b) shall be introduced or moved in the Legislature of a State without the previous sanction of the President."

The argument therefore was this that the Act being an " existing law " might be saved under Art. 305 but that would operate on and save the taxes on articles specified in Schedule III of Part V, item 18, i.e., octroi on animals and goods set out in Classes I to VII of that Part but would not save the octroi on other articles under Class VIII imposed after the Constitution because that would be an addition of a bye-law, rule or order and would not fall within the term " existing law ". The impugned tax was levied under class VIII set out in part V which is as follows :-

Octori Maximum rate Class VIII-Other articles which are not specified above and which may be approved by the Corporation by an Rs. 2-0-0 percent. order in this behalf..... ad valorem. Octroi is to be levied by referenceto s. 130 of the Act which provides:-

S. 130. " If the corporation by a resolution deter. mines that an octroi should be levied on animals or goods brought within the octroi limits of the city, such octroi shall be levied on such articles or goods specified in Part V of Schedule III at such rates not exceeding those laid down in the said Part in such manner as may be determined by the corporation."

Therefore under this section if the Corporation resolved to levy octroi on animals or goods brought within the octroi limits of the city then this octroi was to be levied at rates not exceeding those laid down in that section. This, it was submitted, was subordinate legislation and therefore was not saved by Article 305 because" existing law" as defined means any law, ordinance, order, by-law, rule or regulation passed before the Constitution and as the impugned tax was a new regulation passed after the Constitution it was not saved by Art. 305. In support of this reliance was placed on the observations of this Court in Hamdard Dawakhana (Wakf) v. The Union of India(1); but as was observed by the Divisional Bench that case does not apply to the facts of the present case.

For the respondent it was argued that (1) goods and animals were specified in the Act and therefore there was no making or passing of new regulations and (2) it is not a case of delegated legislation but is a case of conditional legislation. It was firstly submitted that there is sufficient specification in the Act itself of the articles on which the octroi duty could be levied. Section 97 of the Act gives the power to levy octroi duty on animals or goods without any exception which are brought within the octroi limits. Sections 98 (1) [1960] 2 S.C.R. 671.

and 130 lay down the procedure for the levying of taxes and impose a limitation on the extent of the tax to be levied and Classes I to VII make certain articles taxable and Class VIII makes other articles and goods taxable if they are approved by the Corporation. This approach to the subject has the support of a decision of this Court in Anwarkhan Mahboob Co. v. The State of Bombay (1), where the facts were that the assessee was subjected to a purchase tax under s. 14(6) of the Bombay Sales Tax Act, 1953 (Act III of 1953) The contention of the assessee was that the goods had not been specified in the Sales Tax Act. In that Act in the schedule were mentioned the goods the sale or purchase of which was subject to tax and the last entry was of " all goods other than those specified from time to time in Schedule A (and section 7A) and in the preceding entries." The question for decision was whether that entry amounted to specification of goods for the purposes of Sales Tax and it was held that it was. This case was sought to be distinguished on the ground that the words there were " all goods other than..... and those words would comprise every article which was not specifically

mentioned in the Schedule. We are unable to accept this distinction because even though the words used in the present statute are different the combined effect of ss. 97 and 130 and Part V of Schedule III including Class VIII which have been set out above is that the words are of 'very general nature and would have the same effect as if all articles were intended to be and were included. In view of this it is unnecessary to discuss the second contention.

Therefore the answer to the first question referred is that the impugned octroi duty does not contravene the provisions of Arts. 276 and 301. In view of our decision on the two questions referred these appeals fail and are dismissed with costs. One hearing fee.

Consequently Writ Petition Nos. 97 and 107 are dismissed. There will be no order as to costs in those petitions. (1) [1961] 1 S.C.R. 709.

Appeals dismissed.

Petitions dismissed,