

Supreme Court of India

Municipal Corpn vs Commr. Of Patiala Division on 7 December, 1994

Equivalent citations: 1995 SCC (1) 304, JT 1995 (1) 405

Author: B Jeevan Reddy

Bench: Jeevan Reddy, B.P. (J)

PETITIONER:

MUNICIPAL CORPN.

Vs.

RESPONDENT:

COMMR. OF PATIALA DIVISION

DATE OF JUDGMENT 07/12/1994

BENCH:

JEEVAN REDDY, B.P. (J)

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JEEVAN REDDY, B.P. (J)

MANOHAR SUJATA V. (J)

CITATION:

1995 SCC (1) 304 JT 1995 (1) 405

1994 SCALE (5) 123

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by B.P JEEVAN REDDY, J.- Leave granted.

2. Section 90 of the Punjab Municipal Corporation Act, 1976 empowers the Corporation to levy inter alia octroi. Sections 113 to 116 provide for the levy and collection of octroi. Section 113 says that the octroi shall be levied at the rates specified by the Government. Section 114 obligates every person bringing or receiving within the octroi limits of any city any article on which octroi is payable to allow the same to be inspected, examined and weighed by the officer of the Corporation and to communicate to the officer such information or other documents in his possession as may be called for by him. Section 115 provides that any person refusing to permit the officer to inspect, weigh or otherwise examine the goods being brought in shall be liable to be punished with fine which may extend to Rs 50. Section 116, which is relevant for our purposes, provides that any person bringing the goods or who abets the bringing in of goods into octroi limits without payment of duty shall be punishable with fine. The section reads as follows:

" 116. Penalty for evasion of octroi.- If animals or articles passing the octroi limits of a corporation are liable to the payment of octroi then every person who causes or abets the introduction of,- or himself introduces or attempts to introduce within the said octroi limits any such animals or articles upon which payment of the octroi due on such introduction has neither been made nor tendered, shall be punishable with fine which may extend either to twenty times the value of such octroi or to fifty rupees, whichever may be greater."

3. The Punjab and Haryana High Court has held that the fine contemplated by Section 116 can be imposed only by a criminal court and not by an officer of the Municipal Corporation. The correctness of the said view is questioned. So far as the levy of octroi is concerned, there is no dispute that it can be assessed, collected and recovered by the officers of the Corporation. Indeed it is generally collected at the point of entry itself. The only dispute is with respect to the levy of fine under Section 116, which can extend either to twenty times the value of the octroi evaded or attempted to be evaded or Rs 50, whichever is higher.

4. Sections 113 to 116 occur in Chapter VII dealing with 'Taxes'. Indeed there are other provisions in the Act which provide punishment for certain offences created by the Act. Reference may be made to Section 388 which says that whoever contravenes the provisions specified therein "shall be punishable (i) with fine which may extend to the amount, or with imprisonment for a term which may extend to the period, specified in that behalf.....".

5. Section 394-A says:

"394-A. Prosecutions.- Save as otherwise provided in this Act, no court shall try any offence made punishable by or under this Act or any rule or any bye-law made thereunder, except on the complaint of, or upon information received from the Commissioner, the Executive Officer, the Medical Officer of Health, the Municipal Engineer (Electricity) or any other officer of the Corporation authorised by it in this behalf."

6. It appears that the Punjab and Haryana High Court has consistently taken the view that the imposition of fine under Section 116 (and the corresponding provision in the preceding enactments) can be only by a criminal court vide *Nitco Roadways (P) Ltd. v. Municipal Corpn. of Ludhiana*¹ disposed of on 4-9-1985 and *Gian Chand v. State*². We are of the opinion that the said view is correct in law. The normal rule of legislative drafting is that wherever it says that a particular Act shall be "punishable with fine", it contemplates its imposition by a criminal court only. Be that as it may, both Sections 116 and 388 speak of "punishable with fine". Section 388 provides not only for fine but also for imprisonment. It cannot be suggested that the punishment of imprisonment contemplated by Section 388 can be awarded by the officers of the Corporation. If so, the punishment of fine can also not be imposed by them. The same logic applies to Section 116 as well. We, therefore, agree with the High Court that punishment of fine provided by Section 116 can be imposed only by the criminal court and cannot be imposed by the officers of the Corporation.

7. The appeal accordingly fails and is dismissed. No costs.