

(1994) 01 RAJ CK 0021

In the Rajasthan High Court

Case No : DB Civil Writ Petition No. 3019 of 1990

Arvind Textiles

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 24-01-1994

Acts Referred:

Constitution of India, 1950 — Article 265
Rajasthan Municipalities Act, 1959 — Section 104(2)

Citation : AIR 1994 Raj 195 : (1994) 1 WLN 66

Hon'ble Judges : K.C. Agrawal, C.J;A.K. Mathur, J

Bench : Division Bench

Advocate : Sangeet Lodha, for the Appellant; J.M. Bhandari, L.S. Udawat, A.A.G., for the Respondent

Final Decision : Dismissed

Judgement

K.C. Agrawal, C.J.—This writ petition under Article 226 of the Constitution seeks, (a) for setting aside the notification dated 27-12-1989 (Annex. 4); and (b) for directing the respondents not to levy any water pollution prevention fee on the petitioner on the grey cloth brought by it within the limits of respondent Municipal Board.

2. The petitioner is engaged in the business of cloth. It purchases, inter alia, grey cloth from various markets situated in different parts of the country and brings them within the Municipal limits of the Municipal Board, Balotara (for short, "the Board") for the purposes of business in which it is engaged.

3. Vide impugned Notification dated 27-12-1989 (Annex. 4), the Rajasthan Municipalities Act, 1959 (for short, "the Act"), was amended by the State Government and Rs. 15/- per bale as water pollution prevention fee has also been imposed in addition to octroi duty @ 0.50%. The notification dated 27-12-1989 reads as under:-

^^th- ,l- vkj- 84 uxjikfydk ckysrjk dh orZeku Lohd`fr paqxhdj vuqlwph esa

vkaf"kd la"kks/ku djrs gq, vkSj jktLFkku uxjikydk vf/kfu;e 1959 ?vf/kfu;e la[;k 38 lu 1959?dh /kkjk 104 ds [k.M ?2? }kjk iznRr "kfDr;ksa dk iz;ksx djrs gq, jkT; ljdkj ,rn }kjk funsZ"k nsrh gS fd uxjikydk ckysrjk dh lhekUrxZr ^^xzs diM+k** miHkksx] iz;ksx vFkok fo?;kFkZ yk, tkus ij bl vf/klqpk ds jktLFkku jkti= esa izdkf"kr gksus ds i"pkr ls uxjikydk ckysrjk }kjk 1@&izfr"kr paqxh dj ds vfrfjDr :i;s 15@&izfr xksB? vkSj vf/kd jde lh- bZ- ih- Vh- dks pykus o foLrkj fd;s tkus ds mi;ksx esa yk, tkus ds fy; olwy dh tkus dh jktdh; Lohd`fr iznku dh tkrh gS A ty iznq"k.k fuokj.k gsrw xzs diM+s ij tks vfrfjDr dj yxk;k x;k gS mlls izkIr jkf"kd fdlh Hkh cSad esa vyx ls [kkrrk [kqyokus dh jktdh; Lohd`fr bl "krZ ds lkFk iznku dh tkrh gS fd [kkrrk ftyk dysDVj ckM+esj o vf/k"kkllh vf/kdkjh uxjikydk ckysrjk ds la;qDr gLrk{kjksa dk jgsxk A ftyk dysDVj ckMesaj dh v?;{krk esa izLrkfor lfevr dk xBu fd;k tkosxk A**

4. u/s 104(1)(2) of the Act, the State Government is empowered to impose octroi duty on goods and animals brought within the Municipal limits, for consumption use or sale therein. u/s 104(2) of the Act, State Government is further empowered to vary the rate of octroi duty. The aforesaid notification is purported to have been issued u/s 104(2) of the Act, which was substituted vide Section 4 of the Act 13 of 1990, published in Rajasthan Gazette dated 28-7-1990.

5. It may be mentioned that due to the dyeing and bleaching of cloths in industries situated at Balotara, the inhabitants of Balotara had been suffering of bad health and unhygienic conditions which has resulted in prevailing of various diseases in Balotara city and as such, to avoid this, Rs. 15/- per bale has been imposed to operate Common Effluent Treatment Plant (for short, "C.E.T.P."). The amount so recovered has been kept in a separate account, which is being controlled by the committee constituted for the purpose of C.E.T.P.

6. Counsel for the petitioner contended that u/s 104(1)(2) of the Act, the State Government is empowered to impose octroi duty on the goods and animals brought within the Municipal limits for consumption, use or sale therein and u/s 104(2) of the Act it can revise the rate of octroi duty, but no other charges like water pollution prevention fee can be levied u/s 104 of the Act. According to him there is a distinction in tax and fee and in fee there is an element of "Quid Pro Quo" and as the C.E.T.P. is not in existence in the Municipal area, there could be no question of operating and extending the same. Counsel also contended that responsibility of installing, operating and maintaining the C.E.T.P. is of RIICO and as such the Board cannot be made an instrumentality for collecting the amount for a work which is not entrusted to it. He also contended that installation of such a plant is a mandatory duty of the Municipal Board and it could not throw the burden of cost and running expenses on traders.

7. The writ petition was contested by the respondents and the allegations levelled in the petition were denied. The respondents stated that the notification (Annex. 4) was valid and justified and it was denied that the rate was exorbitant or that it was a fee levied by the State Government. The amount so recovered, had to be utilised for prevention of water pollution.

8. We have heard learned counsel for the parties and have perused the record.

9. A recent survey reveals that "every day millions of gallons of the trade wastes and effluents are discharged into the rivers, streams, lake and sea etc." indiscriminate water pollution is a problem all over the world but is now acute in densely populated industrial cities, India is not exception to this. The pollution of air, water and soil, and consequently the contamination of food with chemicals in the economically advanced countries has led scientists to believe that the bacteriological era has come to an end and the new, chemical era has set it. That is why environmental hygiene is a very urgent problem. Its solution would save nature, while failure could mean the destruction of the natural environment. Measures to protect the environment have assumed particularly massive dimensions during the past decades, which can be explained by the growing rate of nature consumption due to the rapid progress of technology.

10. As stated" above, the State Government issued the Notification (Annex. 4) in due consideration of the industrial atmosphere and conditions of the Balotara City and the recovery of Rs. 15/- is an additional octroi duty and not a fee. It has been asserted in the reply to the writ petition, and in our opinion rightly, that the purpose of levying this additional octroi is for a particular purpose and this amount would be used for the prevention of water pollution and this recovery of additional amount cannot be termed as fee.

11. From the affidavits filed by the parties, it is established that there were about 200 factories engaged in the process of bleaching and colouring which required for making proper arrangements for its flow. In case C.E.T.P. was not installed and proper arrangements were not made, there would be a great hardship to the factory owners as well as to the employees and labourers working in it. In that view of the matter the decision of installing C.E.T.P. had been made.

12. The Water (Prevention and Control of Pollution) Act, 1974 was passed in order to provide legal deterrent against the spread of pollution. The Act applied to many States and the Union Territories. This Act provides for the constitution of Central or State Boards for the States and the Union Territories. The function of the Central Board is generally to promote cleanliness of streams and wells in different areas of the State in order to control water pollution. The State Boards will perform all these functions at the State level and also will assist the Central Board whenever necessary. Standards have been prescribed by these boards for the control of pollution. Whoever makes the breach of these standards, commits an offence under this Act. The Act provides punishments which include both imprisonment and fine. Different standards are needed for different types of industries regarding different streams at different places. Under the provisions, the industries cannot discharge effluents in excess of the standard prescribed. Keeping the standard, in mind, the Municipal Board and the committee thought about the installation of C.E.T.P.

13. Counsel for the petitioner urged that the expenses to be incurred in

installation and running of C.E.T.P. be borne exclusively by the State Government and that the Board had no power to impose any tax for this purpose.

14. The legal provisions are inadequate to control the enormous problems of environmental pollution of various types. The Indian judiciary in recent years, has demonstrated a progressive attitude in matters of environmental protection. The Supreme Court had emphatically stressed the statutory obligation of the local bodies towards the environmental protection. *Municipal Council, Ratlam Vs. Vardichan and Others*,

15. In the *Rural Litigation and Entitlement Kendra, Dehradun and Others Vs. State of U.P. and Others*, the Supreme Court came close to the ratio that the right to environmental protection can be considered as a part and parcel of "right to live" under Article 21 of the Constitution. The Andhra Pradesh High Court has expressly laid down that "protection of the environment is not only the duty of the citizen but also the obligation of the State and all the state organs including the courts". The Court has also further observed in the same case that "the environmental law has succeeded in unshackling man's right to life and personal liberty from the clutches of the common law theory of individual ownership". In *M.C. Mehta Vs. Union of India (UOI) and Others*, the Supreme Court of India, on a petition under Article 32 of the Constitution, ordered closure of 29 tanneries and issued directions to other tanneries to instal primary effluent treatment plant within a stipulated period. In *Pollution Control Board v. Modi Distillery* AIR 1987 SC 227 the Supreme Court openly condemned the big business houses for flouting pollution control laws and for making a mockery of justice. In *T. Damodar Rao v. S. O. Municipal Corporation, Hyderabad* AIR 1987 SC 171 (sic), the Supreme Court held that "causing ecological disturbance and slow poisoning through environmental pollution should also be regarded as amounting to violation of Article 21 of the Constitution.

16. Paras Diwan in his book "Environment Administration law and Judicial Attitude" has noted down the urgency of providing environment protection in these words:--

"Environment protection is the concern of everyone. The assessment of ecological changes and of the beneficial use of our land, water and air resources requires collective wisdom. The rapid increase in the world's population and the accelerating rate of use of all natural resources are making the consequences of misuse more drastic, more widespread and more readily evident to large number of people. Means and methods of environmental pollution are many and varied. Apart from the well known pollution of environment like water, air and land, there are several other sources, methods and subject matters of pollution like land erosion, food pollution arising out of the use of drugs, hormones and pesticides, occupational hazards due to the use of certain materials in the buildings, problems of preserving forests, wild life and fish, problems of hazardous and solid waste and the problem of acid rains. Protection of environment raises difficult and complex issues.

The fundamental question before the world today is whether we can allow the destruction of the environment leading to the destruction of all life on the earth. In India the problem is not yet beyond our control. Despite brutal exploitation of our forests, indiscriminate (contd. on col. 2) quarrying, pollution of our waters and air, it is still possible despite our limited resources, to arrest the damage and repair it and to make preventive measures. The preventive costs in terms of ultimate benefit may not be much."

17. Section 104(2) of the Rajasthan Municipalities Act, 1959 serves the purpose to a very great extent. Under this provision octroi can be levied. This is what it has been needed in this case. We are of the view that it is a tax and as such there is no requirement of quid pro qua. The Municipal Board was requested by a joint representation to levy the octroi so that the need of the people to save themselves from the pollution be fulfilled. The Act confers powers on the Municipal Board which the State itself possess. Therefore, the octroi imposed by the Rajasthan Municipalities Act is within the legislative power.

18. We do not find any substance in the submission of the petitioner that the levy was beyond the legislative competence.

19. For what we have said above, we find that the interest of the petitioner also lies in the control of air and water pollution and what is intended by the Municipal Board and the State is to serve the public on this count.

20. Consequently this writ petition and all the writ petitions mentioned in the annexed Schedule are dismissed for the reasons mentioned above.

SCHEDULE.

S. No. D. B. Writ Title of the case. Ptition 1. 4900/91 Umed Cotton Mills v. State and others 2. 5055/91 Grasim Mills v. State and others 3. 5058/91 Mahavir Mukesh Fabrics v. State and others 4. 5059/91 Hundia Enterprises v. State and others. 5. 5060/91 Naresh Mahendra Textiles v. State and others. 6. 5122/91 Manjushree Mills v. State and others. 7. 5133/91 Hundia Syntex v. State and others. 8. 5134/91 Narendra Cotton Mills v. State and others. 9. 5135/91 P. D. Shah & Co. v. State and others. 10. 5136/91 S. K. Salecha v. State and others. 11. 5251/91 Majestic India v. State and others. 12. 5253/91 M. Parakh industries v. State and others. 13. 5288/91 Bharat Dying Mills v. State and others. 14. 5289/91 M. P. Madani v. State and others. 15. 5290/91 Prakash Fabrics v. State and others. 16. 5291/91 Arvind Dying & Printing Mill v. State and others. 17. 5292/91 Bharat Vijay Fabrics v. State and others 18. 5293/91 Mahavir Handloom Factory v. State and others. 19. 5294/91 Balotra Textiles v. State and others.