

(1985) 03 GUJ CK 0008
In the Gujarat High Court

Associated Cement Co. Ltd.	Vs	APPELLANT
State of Gujarat and Another		RESPONDENT

Date of Decision : 22-03-1985

Acts Referred:

Gujarat Panchayats Act, 1961 — Section 179, 179, 179(1), 179(1), 179(2)

Citation : (1985) 2 GLR 1016

Hon'ble Judges : N.H. Bhatt, J;J.P. Desai, J

Bench : Division Bench

Judgement

N.H. Bhatt, J.—These three petitions between common parties by and large raise common or similar questions of law and facts, and they can be conveniently dealt with together and disposed of by this common judgment, obviously with the concurrence of the learned common counsels appearing; in these matters.

2. In order to understand what the controversies are. some facts are required to be closely noted. The common petitioner is the Associated Cement Companies Limited, having its cement works at various places in India. One of such factories is known as Dwarka Cement Works and it is situated within the limits of the respondent No. 2 Dwarka Nagar Panchayat which is a body corporate constituted under the provisions of the Gujarat Panchayats Act, 1961 (hereinafter referred to as "the Act" for brevity's sake). Under the Act, the Respondent-Panchayat is entitled to levy various taxes by virtue of the power conferred on this Panchayat u/s 178 of the Act. The taxes are house tax, octroi, entertainment tax etc.. The State Government has made Gujarat Gram and Nagar Panchayats Taxes and Fees Rules, 1964, but in order to facilitate the working of recovery of these taxes some other rules are also made and they are styled as Gujarat Panchayats (Payment of Lump-sum Contribution by Factories in lieu of Taxes) Rules, 1964. As the name itself suggests, the provision is made to enable the Panchayats to recovery and the factories to pay a lump-sum in lieu of various taxes. Section 179 of the Act is a substantive provision which deals with this lump-sum contribution. Said Section 179 reads as follows:

179(1). Subject to any rules that may be made under this Act, and regard being had to the fact that a factory itself provides in the factory area all or any of the amenities which such panchayat provides, a gram panchayat or as the case may be, nagar panchayat may arrive at an agreement with any factory with the sanction of the State Government to receive a lump-sum contribution in lieu of all or any of the taxes levied by the panchayat.

(2) Where no such agreement as is referred to in Sub-section (1) can be reached, the matter may be referred to the State Government in the manner prescribed and the State Government may after giving to the panchayat and the factory concerned an opportunity of being heard decide the amount of such contribution. The decision of the State Government shall be binding on the panchayat and the factory concerned.

(3) In the case of any matter referred to the State Government under Sub-section (2) the State Government may subject to such conditions as it may think fit to impose having regard to the circumstances of the case by order in writing direct the panchayat to stay the collection or recovery from the factory of all or any of the taxes until the State Government decides the matter under Sub-section (2).

This means that u/s 179(1) a factory and the gram panchayat are free to arrive at an agreement to pay and receive lump-sum contribution in lieu of all or any of the taxes levied or leviable by the panchayat. This sort of arrangement, ex facie, is to suit the needs and requirements of both the parties to the agreement. The panchayat will be spared of the trouble of making arrangements for collection of various taxes and this would obviously save some expenditure and botheration on that count. Similarly, the factory also will be saved of the day-to-day trouble attendant upon the payment of duties, particularly octroi. So, more often than not, it will be in the interest of both the parties to reach a sort of a settlement or agreement, but the legislature was not oblivious of onetime office bearers of a panchayat or the persons in management of a factory to act to the detriment of the public body, and that is why such an agreement is required to be sanctioned by the State Government in order to be operative. However, at times the factory on the one hand and the panchayat on the other hand have cross-roads. For reasons of its own, may be personal or political, the panchayat may not be willing to have this sort of working arrangement. But the legislature wanted that this unilateral denial of this facility should not be encouraged. Section 179(2), therefore, provides this sort of arrangement to be imposed on an unwilling panchayat. Sub-section (2), therefore, provides that where any such agreement cannot be reached between the factory on the one hand and the panchayat on the other, the matter can be referred to the State Government in the manner prescribed, and the State Government would be competent to give its decision, obviously after hearing both the sides; and Sub-section (2) ends with the provision that the decision of the State Government shall be binding on the panchayat and the factory concerned.

3. The legislature has left the procedural aspect of this substantive provisions to, the rule-making authority, namely, the Government, Rules 3 and 4 of the above named Rules are reproduced hereinbelow:

3. Application by occupier.- (1) Where the occupier of a factory situate within the limits of a gram or nagar desires to arrive at an agreement he shall make an application in writing to the panchayat not later than sixty days from the commencement of the financial year:

Provided that, where the factory is newly established during the financial year, the occupier may make such application, not later than sixty days from the date on which the factory started functioning.

(2) Where any local area in which a factory is situated:

(a) is declared to be a gram or nagar under Sub-section (1) of Section 9 of the Act; or

(b) is included in a grain or nagar under Sub-section (2) of the said Section 9 the occupier may make an application under Sub-rule (1) within sixty days from the dale of such declaration or inclusion and where such declaration or inclusion has been made before the commencement of these rules from the date of such commencement,

(3) An application under Sub-rule (1) shall state:

(a) (i) the amounts paid to the panchayat in respect of each of the taxes levied by the panchayat during the three financial years immediately preceding the financial year or as the case may be during the period of less than three years the factory has been functioning immediately preceding the financial year in which the application is made;

(ii) the amount payable by the occupier to the panchayat in respect of all or any of the taxes levied by the panchayat during the financial year in which the application is made (the amount payable in respect of each tax being indicated separately);

(b) the details of the amenities provided by the occupier in the factory and of those which the panchayat provides within the limits of its jurisdiction;

(c) the expenditure incurred by the factory on each of the amenities provided by it during the period referred to in Sub-clause (i) of Clause (a) upto the date of the application;

(d) whether the occupier desires that the panchayat. shall not recover any tax from him pending decision on the application.

(4) Consideration of the application by panchayat,

(1) On receipt of the application under Rule 3, the panchayat shall stay recovery of its taxes from the occupier, if the occupier has so desired and then consider

the application and subject to the provisions of Rule 8, pass not later than sixty days from the date of receipt thereof, a resolution fixing the lump sum in lieu of all or any of the taxes.

(2) The amount of lump sum contribution may not be disproportionately less than the amount receivable by the panchayat in respect of taxes levied by it at the normal rates during any financial year, after deducting cost of amenities, if any, provided by the occupier.

(3) Where the occupier agreed to accept the lump sum fixed by the panchayat the panchayat shall submit, through the District Development Officer, and the Development Commissioner, to the State Government proposal for sanction. Such proposal shall be accompanied by:

(a) the application made by the occupier under Rule 3;

(b) the resolution passed by the panchayat; and

(c) a draft of the agreement Form "A";

(d) details of amenities:

(i) provided by the panchayat within the limits of its jurisdiction as a whole;

(ii) provided by the panchayat within the limits of the factory; and

(iii) likely to be further provided within the limits of the factory on the agreement being effective indicating the approximate cost thereof in the year immediately preceding the financial year or likely to be involved in the financial year in which the application is made.

The initiative for this agreement or settlement ordinarily also would emanate from a factory, and that is why Rule 3(1) provides that the occupier of a factory situate within the limits of a gram or nagar and desirous of arriving at an agreement has to make an application in writing to the panchayat not later than sixty days from the commencement of the financial year. Rule 3(3) sets out various information to be furnished by the applicant-factory in order to enable the Government either to sanction the agreement, if Section 179(1) applies, or to give its decision if the matter comes to be referred to it u/s 179(2) in the event of there being no agreement. The idea of the rule-making authorities is also to see that such agreements are encouraged, and that is why Rule 4(1) provides that on receipt of the application under Rule 3, the panchayat shall stay recovery of its taxes from the occupier, if the occupier so desires, and then consider the application and pass a resolution not later than sixty days from the date of the receipt of the application fixing the lumpsum contribution in lieu of all or any of the taxes. Rule 4(2) provides that while entering into this agreement the panchayat is not to act arbitrarily to the detriment of the interests of the panchayat which are common interests of all inhabitants of that locality. It is, therefore, reasonably provided that the amount of lump sum contribution, though obviously would not be on par with the expected amount of taxes, cannot

be disproportionately less than the said expected realisation. More often than not, such factories provide amenities to the people in the area of the factory, the amenities being similar to those amenities provided by the panchayat to the remaining area, means, the area other than the area of the factory under the panchayat's final control. Provisions of Section 179 specifically make this amply dear. They say that while fixing the lump sum contribution, regard shall be had to the fact that a factory itself provides in the factory area all or any of the amenities which the panchayat provides in the remainder of the area or to the local area of that panchayat. Obviously, this will be the relevant factor. If the agreement is reached, the matter has to go to the State Government for its sanction, and obviously various factors will be required to be taken into account by the Government, strike a golden balance between two, at times rival interests of the panchayat and the factory. If there is no agreement, there will be recourse to Section 379(2), where also the Government has to decide the amount of contribution obviously on the principles laid down in Section 179(1), namely, the amount to be decided by the Government is not to be disproportionately less than the amount expected to be received by the panchayat in respect of taxes levied by it at the normal rate during any financial year, after making adequate deductions for the costs of amenities provided by the factory in its area, which amenities would be similar to the amenities provided by the panchayat in the remaining area. Obviously Rule 4(2) will govern such a situation, as per Rule 8(4) of these rules, and even in the absence of an agreement between the parties the Government while deciding the amount of lump sum contribution shall see that the amount fixed by it is not disproportionately less than the amount receivable by the Panchayat in respect of taxes levied by it at the normal rate during any financial year and before reaching that amount of lump sum contribution deduction of the cost of amenities, if any, provided by the occupier shall be made.

4. In these three petitions, three different periods had arisen for consideration. The Special Civil Application No. 647 of 1979 deals with the three years' period from the year 1972-73 to 1974-75. Initially the occupier of the factory and the panchayat had agreed at Rs. 95,000/- and the matter had gone to the Government for its sanction. The Government, curiously enough, held that Rs. 1,50,000/- should be the amount of lump sum contribution and not Rs. 95,000/- which was the amount agreed to between the occupier and the panchayat. This decision was taken in the year 1975. So, a writ petition had come to be filed in this High Court registered as the Special Civil Application No. 1624 of 1975. It came to be dealt with by P. D. Desai, J. (as he then was) by his judgment dated 10-9-1976 and he very clearly ruled that the Government had no jurisdiction to arrive at its own amount when there was agreement between the parties. In other words the learned Judge held that the only authority which the Government had u/s 179(1) was either to accord sanction or not to accord sanction, but it had no jurisdiction to arrive at its own assessment of the lump sum contribution. The result was that the petition came to be allowed by the

learned Judge on 10-9-1976 and the proceedings regarding the sanction of the agreement stood remanded to the Government. This time the Government heard the parties. By that time the panchayat also was not willing to stand by the original agreement and tried to give evidence of far more amount expected by way of octroi. The result was that the State Government passed the order annexure 8 dated 15-7-1978 refusing to grant approval. That is why the Company has filed this petition for a writ quashing and setting aside the impugned order of the first respondent and directing it to accord its sanction to the agreement arrived at between the petitioner and the respondent panchayat at Rs. 95,000/- per annum for the triennial period 1972-73 to 1974-75. To us it appears that the Government should have treated the proceedings before it in those circumstances, as the proceedings u/s 179(2) of the Act and should have proceeded to decide the matter and that having been not done, the proceedings are required to be remanded to the Government for dealing with the question of fixation of lump sum contribution u/s 179(2) of the Act. This is the normal and ordinary inference that should be drawn from the insistence of the occupier of the factory that the Government must decide the question of lump sum contribution. It is in this sense that we said that after we remand these proceedings, the Government shall consider the proceedings as the proceedings before it u/s 179(2) and the Government shall, by following the proper procedure, arrive at a figure of lump sum contribution. However, certain grounds given by the Government for not accepting the amount of Rs. 95,000 and for reaching the figures of Rs. 4,79,000/- as, the amount of lump sum contribution (for refusing to sanction the agreement will be required to be examined by us because after the proceedings are remanded the conclusion will be required to be reached on the basis of those various principles. These very questions also arise in the other two petitions, the facts of which we are instantly giving.

5. The Special Civil Application No. 3144 of 1981 deals with the petitioner's application to the respondent-panchayat for arriving at an agreement in respect of lump sum contribution in lieu of taxes and the period sought to be covered is the "period of three years from 1978-79 to 1980-81. The panchayat did not agree to reaching a settlement, and there is no controversy about it. So, the matter had gone to the Government, obviously u/s 179(2) of the Act. The order of the Government dated 27th July, 1981 is to be found at annexure D in that petition and by that the Government fixed the amount of Rs. 5,70,000/- as the amount of lump sum contribution to be paid by the petitioner to the respondent-panchayat. This decision of the Government u/s 179(2) of the Gujarat Panchayats Act is assailed in this petition, and the ground ? are more or less common to the grounds that had weighed with the Government in tentatively reaching decision of Rs. 4,79,000/- in respect of the period from 1972-73 to 1974-75. The Special Civil Application No. 6281 of 1984 arises out of the Government's decision u/s 179(2) of the Act because the Government, after the panchayat did not reach, an agreement with the petitioner occupier of the factory, was required to fix the amount of lump sum contribution in lieu of taxes

and the Government did it at Rs. 4,82,627/-. The period is covering 1981-82 to 1983-84. This petition No. 6281 of 1984 is directed against that decision of the Government.

6. Many of the grounds that we now deal with are common to all the three petitions and is why we have taken up these three matters together. The first contention of Mr. S.I. Nanavati, the Learned Counsel appearing for the petitioner, is that whatever expenses are incurred by the occupier in respect of various amenities which are providable by the panchayat are to be deducted from the expected amount of taxes. This argument proceeds against the very text of Section 179(1) of the Act. It is to be noted with, pertinence that the panchayat is under no obligation to enter into an agreement with the occupier. Section 179(1) of the Act is an enabling provision and if the panchayat for good, bad or no reasons does not agree with the occupier the function of Section 179(1) rests there. But u/s 179(2) the occupier certainly can seek an adjudication at the hands of the State Government. So, Mr. Nanavati was not right in his submission that the occupier has a right to enter into an agreement and the panchayat is under an obligation to enter into an agreement. The very term "agreement" itself militates against this argument. Mr. Nanavati's argument is that whatever duties are imposed on the panchayat in respect of carrying on certain duties qua the local area under the jurisdiction of the panchayat can be attended to by the occupier in respect of the area of the factory and all those deductions must be made from the expected amount of taxes in a financial year. The relevant words of Section 179(1) are "the amenities which such panchayat provides" and the words are not that "the amenities which such panchayat is expected to provide". It is truism to state that various duties are cast on panchayats, but the panchayat is not expected to take all those duties on hand to the fullest extent because, more often than not, there may be financial restraints on the power of the panchayat in that regard. That is why the legislature has made it amply clear that if the factory provides the amenities which are in act provided by the panchayat in the area other than the factory area, regard shall be had to that fact of the provision made by the factory itself in the factory area. In Other words, the regard spoken of in Section 179(1) is confined to those all or any of the amenities which the panchayat actually provides in the non factory area. If Mr. S.I. Nanavati's argument is to be accepted, it "would mean that the text of Section 179(1) is to be written, "as the amenities such panchayat is under an obligation to provide, or is capable of providing". Such a thing cannot have been contemplated by the legislature looking to she comparatively meagre sources at the command of the panchayats.

7. However, it is to be pertinently noted that while sanctioning agreement u/s 179(1) or deciding the question of lump sum contribution, the State Government has to give due regard to the amounts spent by the factory after providing all or any of the amenities which are taken on hand by the panchayat. This alternative argument of Mr. S.I. Nanavati, therefore, deserves to be accepted and the Government and the Panchayat do not seem to have any quarrel over the

principle. The question, however, is how are these expenses to be worked out. The Government in these three decisions in these petitions have taken per capita expenditure. Say, for example, there are five thousand souls in the area other than the factory area and, say, there are three thousand souls in the factory area who are occupying the premises or the place. If the panchayat, say for example, spends Rs. 12.50 per head after electricity, water-supply and sanitary facilities in its area as contradicted with the area within the factory premises, the Government would say, and as a matter of fact has now said, that the expenses made by the panchayat qua those five thousand people are to be examined, then, per head amount is to be worked out and then for the three thousand persons within the factory area that amount alone will be given adjustment from the amount of the expected realisations by way of taxes. The Government seems to be thinking that the judgment of the learned single Judge of this High Court in the case of *Sauarashtra Cement & Chemicals Industries Ltd. v. State of Gujarat and Ors.* 17 G.L.R. 646, supports this arithmetical formula. We have gone through that judgment very carefully. We do not find that any such rigid formula has been laid down by the learned single Judge. We shall quote the words of the learned Judge to clear what we mean to say:

The employees of a factory residing within the territory of a panchayat cannot claim from the panchayat more amenities than the panchayat provides to its other residents in the village. Therefore, while computing the cost of amenities which should be deducted from the amount of taxes payable by a factory to a panchayat it is necessary to find out what amenities a panchayat provides to its other residents in the village and what would be the cost of those amenities if provided by the panchayat to the employees of the factory residing within its limits. Now, if a factory does not provide to its employees within the area of a gram panchayat all or any of the amenities which the panchayat provides to its other residents, the factory is not entitled to any deduction from the amount of taxes payable by it to the panchayat. The next factor which a panchayat or the State Government has to find out is the cost of amenities provided by a panchayat to the employees of the factory within the limits of the village. If a panchayat provides to the employees of a factory all the amenities which it provides to the other residents of its village, then also the factory is not entitled to any deduction on that account from the amount of taxes payable by it to the gram panchayat. If a panchayat does not provide any of the amenities to the employees of a factory within its limits and if the factory at its own cost provides them to its employees, the factory is entitled to deduction of the cost of the amenities provided by it subject to the fact that the amount of such cost would be the amount which the panchayat would have otherwise spent if it had provided the amenities to the employees of the factory within its limits. If the factory provides some of the amenities which a panchayat provides to the other residents of the village, then the factory is entitled to deduction from the amount of lump sum contribution of such amount as it spends on providing some of the amenities. In other words, the scheme of Clause (d) of Sub-rule (4) appears to

be that if a factory provides all amenities to its employees residing within the limits of a panchayat which the panchayat would have otherwise provided, then it would be entitled to the deduction of such cost from the amount of lump sum contribution. If the factory provides not all but some of the amenities to its employees it is entitled to deduction of such amount as it spends on them.

Above quoted words, in our view, do not permit any such per head amount of expenses. We find that it is neither feasible nor advisable to have recourse to such a rigid formula for certain obvious reasons. As for example, the area of the factory may be comparatively larger though the population in that area may be comparatively less. The lighting facilities and the sanitation facilities would be required to be more in the factory area though the population be less. So about making of the roads. Regarding water supply also the same conditions would arise. It is, therefore, inevitable to take all such factors into account cumulatively, and there should be a reasonable prognosis as to what would be the costs required to be incurred by the panchayat to extend those very facilities and amenities to that area in the factory. After having reasonable prognosis in that regard it will be considered that, that is the amount which should be regarded as deducible from the expected earnings by way of imposition of taxes. It is a matter of common knowledge that as occupiers of factories, the occupiers are under some special obligations under the factory laws or labour laws. Whatever is expended by the occupiers to meet those specially provided for obligations can never be expected to be deduced from the expected amount of realisations by way of taxes. Therefore, we hold that only those expenses which the panchayat would have been required to meet, had the panchayat extended those similar facilities in the factory area also, which are to be given adjustment also, and no other.

8. The second and important bone of contention between the parties also centers round the method of working out the probable income under various heads. Here the petitioner has much to say against the method adopted by the Government. The Government can be said to be quasi-judicial authority, while dealing with the question u/s 179(1) or Section 179(2). Even if it be not, having quasi-judicial authority, at least it is cast with administrative authority which has civil repercussions on the rights of the factory owner, and that is why the balance is to be held evenly by the State Government while dealing with situation. In other words, the Government cannot act a protagonist of the panchayat and try to see that the panchayat's coffers are made as rich as possible. It cannot be lost sight of that whatever be the Government's decision u/s 179(2) of the Act, it has got binding effect not only on the panchayat but on the occupier of the factory also, and that is why there are all the greater reasons for the State Government, like a quasi-judicial authority, to act fairly and dispassionately. This is required to be emphasised because we find that the Government's approach in these three cases is not what it should be. We shall illustrate this observation of ours by certain instances, some of which are common to all the three petitions.

9. The first instance is about one item called calcareous shell sand which is imported by the factory for the purposes of its manufacturing activities. Paragraph 13 of the Special Civil Application No. 647 of 1979 deals with the petitioner's stand on this question. This peculiar type of sand, known to the mercantile or business world as calcareous shell sand is exigible to octroi. There is entry 70 in the Octroi Rules which is reproduced below:

Schedule	1	(Rule	24)	-	Rate	of	Octroi
-----							Goods
Rate			of				Tax

Minimum	Maximum	x	x	x	x	x	...
(70) Silica, Quartz, Zircon sand, Felspar, 0.15 per 0.30 per Gypsum, Grog Minerals & Oxides used metric ton metric ton as raw materials. (71) residuary Rs. 2/- or 100% ad valorem							

Below it is mentioned the residuary entry (71). Though entry 70 deals with specified types of materials as exigible to specified rate of octroi and though this calcareous shell sand is not one of those items set out there, the Government unreasonably treated this as falling under that item. The result is that according to the petitioner the octroi of the imported material, namely, calcareous shell sand would be Rs. 1,15,998/- whereas the Government has put it at almost three times that amount. The Government says that from this item itself the panchayat would be able to derive the octroi of Rs. 3,47,723/- by recourse to entry 70. This is obviously erroneous. All that Mr. J.R. Nanavati states is that they will be in a position to show that this being one kind of sand would be covered by entry 70. This is ex facie untenable. Even if it be the residuary type of sand, then also this calcareous shell sand would fall under entry 71, and not 70.

10. Secondly, the question is of furnace oil. The petitioner's say in this regard is to be found in paragraph 14 of the Special Civil Application No. 647 of 1979. According to the petitioner, octroi from that source would be only Rs. 48,455/-, whereas the Government works it out at Rs. 5,21,304/-, about ten times. During the period from 1-4-1969 to 31-12-1969, furnace oil was not liable to octroi under any of the specified entries but was liable under the residuary entry No. 65 (then existing) at the rate of 1% ad valorem. From 1-1-1970 to 14-6-1971 it was liable to octroi under the residuary item: No. 71, i. e. 2% ad valorem, and from 15-6-1971 onwards it was liable to octroi under the specified item 70(A) at 40 paise per metric ton. Still the Government did not respond to the argument of the petitioner company. All that has been stated by the Government as well as the panchayat was denial about the liability of this item to duty under specified item No. 70(A) as 40 paise per metric ton from 15th June, 1971. The reason given is that the said entry 70(A) was introduced by the State Government in its Rules with effect from 15th June, 1971 but the panchayat had adopted the same on and from 1st April, 1975. u/s 178 of the Gujarat Panchayats Act, there cannot be levy of octroi at a rate less than the rate prescribed by the State Government

nor at a rate higher than the one prescribed by the State Government. If the Government amends its schedule of the rules on and from 15th June, 1971, the panchayat has to adopt it from that date and if it does not adopt, it is deemed to have adopted that rate under statutory obligation. This also shows the very unreasonable attitude adopted by the State Government which is expected to know the provisions of law and the Gujarat Gram and Nagar Panchayats Taxes and Fees Rules, 1964 framed by it.

11. The third item of controversy is general stores. There the Government's stand is sustainable for the obvious reason that the occupier did not furnish any break up and, therefore, the Government as a reasonable deciding body applied the correct standard. However, when the matters go back on remand and if the wisdom dawns on this occupier-company and it gives a satisfactory break up, and if the Government is satisfied about it, the Government may revise its decision on this score.

12. The fourth question that crept up in the Special Civil Application No. 3144 of 1981 and 6281 of 1984 pertains to certain materials imported by the contractor for the purposes of this petitioner-Company. Here there is a storm in a tea-cup, as we shall instantly point out. The petitioner had engaged services of contractors who were to supply the petitioner lime stone or some materials to be used as one of the raw materials. The panchayat insisted that these being the materials brought by independent contractors for the purposes of sale to the occupier, i. e., the petitioner-Company who were free to accept or reject them on being offered at the factory premises, were liable to octroi duty. The company on the other hand contended that this octroi amount could not be realised from the contractor who was only an agent of the company and, therefore, this amount of octroi also should be calculated for the purpose of reaching the lump sum contribution. The panchayat cannot have this amount calculated doubly. It cannot recover best of both the worlds. The panchayat cannot have the octroi recovered from the contractor and at the same time have the octroi amount calculated, as the possible income of octroi realisable even on the count of this item from the occupier. Because of this controversy there was a litigation between these parties which was the subject matter of the Special Civil Suit No. 163 of 1978 in the Court of Joint Civil Judge (SD) at Jamnagar. The Company there urged that the contractor was their employee or agent and therefore, the panchayat should not collect octroi from the contractor. And the consequence for the purpose of the Special Civil Application No. 3144 of 1981 would be that in the total figure of expected realisations by way of octroi this amount would not be required to be included. The learned Civil Judge there held that the contractor was importing things on his own and not as the agent or employee of the Company. Against that decision the Company has preferred First Appeal No. 700 of 1980 in this High Court which was pending. With the concurrence of the learned advocates, we directed to hear that First Appeal No. 700 of 1980 along with the Special Civil Application No. 3144 of 1981. We have heard that first appeal also and by a separate judgment we have dismissed that appeal. The net

outcome, therefore, on this score would be that the panchayat will be entitled to recover octroi on this item from the contractor and, consequently, the octroi on this item will not be taken into account while considering the possible income of octroi from the company on this item, for the purpose of ultimate decision regarding lump sum contribution. Mr. J.R. Nanavati, the Learned Counsel for the panchayat, very categorically states that the panchayat did not want this octroi to be taken up in the total calculation of the amount of octroi realisable from the occupier-factory. So, the Government shall have to exclude this item for the purposes of working out the possible octroi and then proceed to give its decision u/s 179(1) of the Act.

13. This brings us to the facts of the Special Civil Application No. 6281 of 1984. The period sought to be covered by this lump sum contribution scheme is the period from 1981-82 to 1983-84. There also the panchayat categorically declined to have any agreement with the petitioner, with the result that the matter was sent to the Government u/s 179(2) of the Act. The Government adopted various untenable stands and more or less similar to those which were adopted while dealing with the similar cases of the earlier periods which are subject matter of the two petitions being the Special Civil Applications No. 647 of 1979 and 3144 of 1981. For the same reasons, the proceedings u/s 179(2) which are at the root of the Special Civil Application No. 6281 of 1984 also shall stand remanded to the Government.

14. One more argument was advanced by Mr. S.I. Nanavati which deserves to be noted for being rejected. The Company imports special kind of paper bags for the purpose of packing their final product, namely, cement. This item is liable to custom duty because they are imported bags made out of imported paper. As these bags again go out of India, the Central Government gives a duty drawback, which in common commercial parlance would come to refund of the custom duty. Seeking analogical assistance, the petitioner-Company urges that when these paper bags go out, the panchayat will be under an obligation to refund the octroi amount and, therefore, while working out the expected amounts of octroi, the octroi paid or payable on these paper bags must be left out. This argument is not acceptable for the simple reason that the bags, once they are imported for the purposes of use in the octroi limits are in fact used, no question of refund arises. What weighs with the Central Government in refunding the custom duty cannot necessarily be a reason for the panchayat which levies octroi on the import of the goods within the octroi limits for the purposes of consumption, use or sale. Once the packets are put to use, namely, for the purpose of storing cement, the purposes of import is served, and subsequent sending of the bags along with the things contained in it cannot give rise to any case for refund of octroi.

15. In this connection it was alternatively urged that once the refund of custom duty is there, there will be corresponding decrease in the price of the bags and, therefore, the price for the purpose of working out the possible octroi also will

stand comparatively reduced. This cannot also be in any way countenanced because the occasion for charging octroi arises on the entry of goods for the purpose of use and if for some other reasons there is refund there cannot be retroactive reduction of price. In this connection it was also urged that these bags should be treated as gunny bags. The word "gunny bag" having common parlance meaning means a bag made out of fibre, namely, (mostly) jute. These paper bags can be, by no stretch of imagination, termed as gunny bags. So, the entry applied to these paper bags is rightly applied by the Government.

16. The result is that all the three petitions, to the aforesaid extent, allowed by setting aside the impugned orders of the Government. The proceedings u/s 179(1) of the Gujarat Panchayats Act stand remanded to the Government for fresh decision u/s 179(2) of the Act in accordance with law. As the matters are sufficiently old, particularly in the two earlier petitions out of these petitions, we direct the Government that the Government shall take up this question at once on hand and dispose them of in accordance with law latest by 30th June, 1985. Rule is accordingly made absolute in each of these petitions with no order as to costs.

17. It is directed that the interim relief granted by this Court during pendency of these petitions shall continue to operate till the expiry of the period of fifteen days after the Government's fresh decision as per our above directions is reached.