(1972) 09 AHC CK 0008

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No''s. 1805 and 4696 of 1970

Bharat Oil Co. and Others — APPELLANT

Vs

State of U.P. and Others — RESPONDENT

Date of Decision : 26-09-1972

Acts Referred:
Uttar Pradesh Municipalities Act, 1916 — Section 136, 296

Citation : (1972) 42 AWR 773

Hon'ble Judges : G.C. Mathur, J

Bench : Single Bench

Advocate : S.K. Tewari, S.N. Misra and Om Prakash Srivastava, for the Appellant; K.C. Agarwala, for the Respondent

Final Decision : Allowed

Judgement

G.C. Mathur, J.—In these two writ petitions some petrol dealers of Bareilly have challenged the imposition of octroi duty by the Municipal Board, Bareilly, on motor spirit, kerosene and diesel oils.

2. The imposition of octroi duty on these articles is challenged on the simple ground that the Municipal Board had no power to impose octroi duty on these articles. Section 128 of the U.P. Municipalities Act, 1916, confers power on Municipal Boards to impose taxes. The relevant part of this section reads thus-

128(1). Subject to any general rules or special orders of the State Government, in this behalf, the taxes which a Board may impose in the whole or any part of the Municipality are....

(viii) an octroi on goods or animals brought within the Municipality for consumption, use or sale therein;

It will be seen that this provision permits a Municipal Board to impose octroi duty. But this power is subject to any general rules or special orders of the State Government. Section 153 provides that the assessment, collection or imposition of taxes and in the case of octroi, or toll, the determination of octroi or toll limits shall be regulated and governed by rules. Section 296 confers powers on the State Government to make rules. By a notification dated October 24, 1925, the Governor in exercise of the powers u/s 296 of the Act made certain rules for the assessment and collection of octroi by all Municipalities. These rules are contained in Ch. X of the Municipal Account Code (Volume II Municipal Manual). Rule 131 of these rules provides that subject to the exceptions contained in the proviso, octroi shall ordinarily be levied on commodities included in that rule. The proviso to this rule states that octroi shall not be levied on certain commodities including mineral oils. By an amendment dated November 2, 1953, the expression "Mineral Oils" was substituted by the expression "Mineral oils classified as motor spirit, kerosene or diesel oils". The proviso to this rule, thus, took away the power of the Municipal Boards to impose octroi duty on these commodities. Rule 131 is apparently relateable to the power conferred on the State Government by the opening words of Section 128. According to the Petitioners, this prohibition against the Municipal Boards levying octroi duty on mineral oils was in force at the time when the Municipal Board, Bareilly, imposed octroi duty on these commodities.

3. By a notification dated May 7, 1963, the U.P. Government published certain rules for the assessment and collection of octroi in the Bareilly Municipality. These rules were made u/s 296 of the Act. They have been filed as Annexure "1-B" to the additional counter-affidavit of Sri Ashraf Ali in writ petition No. 1805 of 1970. By a notification dated July 24, 1963, published in the U.P. Gazette dated August 3, 1963, Under Sections 135(2) and 136 of the Act, the Municipal Board, Bareilly, imposed octroi duty on goods and animals brought within the octroi limits of Bareilly Municipality. This notification was amended from time to time. After the schedule of rates the notification sets out exemptions from octroi duty. Item 29 of the Exemptions relates to "Mineral oils classified as motor spirit, kerosene and diesel oils." At some stage, which does not appear from the records of these two writ petitions, an item No. 11 was introduced in Class III, which provided for imposition of duty on oils excluding motor spirit, petrol, kerosene and diesel oils. Thus, under this notification, as it stood on the date of the impugned notification, Mineral oils classified as motor spirit, kerosene and diesel oils were not subject to octroi duty. The impugned notification (Annexure ''G'' to the writ petition) dated August 27, 1969, was issued u/s 135(2) read with Section 136 of the Act. It purported to amend the octroi schedule published in the notification dated July 24, 1963, as amended from time to time. Amendments were made both in the rate schedule as well in the exemptions contained in the earlier notification. From item II of Glass III words "excluding motor spirit, petrol, kerosene oil and diesel oil" were deleted. From the list of exemptions item No. 29 was deleted. Thus, the impugned notification sought to take away the exemption in favour of Mineral oils and further sought to subject them to octroi duty. It is this notification which is challenged by the Petitioners.

4. As already stated above, the impugned notification is challenged on the

ground that the rules framed by the State Government in 1925 took away the power from all the Municipal Boards to impose octroi duty on Mineral oils. The Respondents accept that the rules of 1925 took away the power from all Municipal Boards to impose octroi duty on Mineral oils; but they contend that the subsequent rules of 1963, which were framed specifically for the Municipal Board, Bareilly, superseded the 1925 Rules and thereby restored the power of the Municipal Board, Bareilly, to impose octroi duty on Mineral oils. It is, further, contended by the Respondents that when the State Government accorded sanction u/s 133 to the proposal of the Municipal Board to impose octroi duty on Mineral oils, it permitted the imposition of octroi duty on Mineral oils and thereby superseded the earlier prohibition in the 1925 Rules. The question whether the 1963 Rules superseded the 1925 Rules, so far as the Municipal Board of Bareilly is concerned, may be examined first. Before the 1963 Rules were finalised, a draft of the Rules was published under a notification dated February 16, 1963. The opening part of this notification was in these words:

The following draft of the rules for the assessment and collection of octroi in the Bareilly Municipality, in supersession 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 Sub-section (i) of Section 300 of the said Act, for the information of all concerned with a view to invite objections and suggestions in respect thereof.

The final Rules were published under a notification dated May 7, 1963. The notification stated:

In continuation of notification No. 89-B/XI-C-129-60, dated February 16, 1963, it is hereby notified that the Governor in exercise of the powers conferred by Section 296 of the U.P. Municipalities Act, 1916 (U.P. Act No. II of 1916) has after previous publication as required by Sub-section (1) of Section 300 of the said Act, made the following rules for the assessment and collection of octroi in the Bareilly Municipality. The contention of the learned Counsel for the Municipal Board and for the State Government is that these two notifications clearly show that the 1925 Rules were superseded by the 1963 Rules. There can be no doubt that to the extent the 1963 Rules cover the same ground as the 1925 Rules, they must supersede the earlier Rules. A perusal of the 1963 Rules clearly shows that these Rules relate only to the assessment and collection of octroi in the Bareilly Municipality. These rules are relateable to power u/s 153 of the Act. In the 1925 Rules, Rules 134 onwards also relate to the assessment and collection of octroi duty. Rules 134 onwards will, therefore, be superseded by the 1963 Rules. Rules 131, 132 and 133 of the 1925 Rules do not relate to assessment and collection of octroi. Rule 131 contains general directions as to what articles may be subjected to the imposition of the octroi duty and what articles may not be so subjected. Rule 132 sets out a list of commodities on which octroi duty would be leviable, but shall be exempt from the payment thereof, Rule 133 lays down that the goods on which and the rates at which, octroi has been imposed by the Board shall be entered in a schedule; and that the Board shall not collect octroi on any goods, or at any rates, not so entered. It appears that these three Rules have been made by the State Government in exercise of the power conferred upon it by the opening words of Section 128(1) of making general rules or special orders regarding the taxes which a Board may impose. These three Rules are not rules u/s 153 for the assessment and collection of octroi. The subject matter of these three Rules is not covered by the 1963 Rules and therefore, the 1963 Rules cannot supersede Rules 131 to 133 of the 1925 Rules. Rule 36 of the 1963 Rules itself provides that matters for which no specific provision has been made in these rules shall, until such provision is made, continue to be governed by the rules made in that behalf and contained in the U.P. Municipal Manual, Volume II (The Municipal Account Code). This leaves no room for doubt that in spite of the 1963 Rules, Rules 131, 132 and 133 of the 1925 Rules survive continue to operate.

5. The second ground on which the Municipal Board and the State Government support the impugned notification is that by the sanction granted by the State Government u/s 133 of the Act, the State Government permitted imposition of octroi duty on mineral oils, thereby removing the earlier prohibition. The procedure for imposing taxes authorised by Section 128 is laid down in Sections 131 to 135. First, u/s 131, a special resolution framing proposal for imposition of a tax is to be passed specifying the persons or class of persons to be made liable and the description of the property or other taxable things and specifying the amount or rate leviable. These proposals have to be published in the prescribed manner and objections have to be invited against them. The objections are filed u/s 132 and after considering the objections, the Board is required to settle the proposals and to submit them for sanction. u/s 133 the State Government or the Prescribed Authority may reject, sanction or modify the proposals. When the proposals have been sanctioned, the State Government or the Prescribed Authority is required by Section 134 to proceed to make rules u/s 296 of the Act in respect of the taxes. After the rules have been made, the Board has to pass a special resolution directing the imposition of the tax with effect from a date to be specified in the resolution. u/s 135(1) a copy of the resolution has to be submitted to the State Government or the Prescribed Authority; and upon receipt thereof the State Government or the Prescribed Authority, as the case may be, has to notify, in the Official Gazette, the imposition of the tax from the appointed date. It is obvious that the procedure prescribed by Sections 131 to 135 can be taken only in respect of a tax which a Board is permitted to impose. When the Municipal Board, Bareilly, framed the preliminary proposals u/s 131 and finally settled the proposals u/s 132, it had, on account of the proviso to Rule 131 of the 1925 Rules, no power to impose octroi duty on Mineral oils. It, therefore, was not authorised to take action u/s 131 or u/s 132 for the purposes of imposing octroi duty on Mineral oils. When proposals are submitted to the State

Government for its sanction, the State Government has to see whether it is proper or desirable to impose the tax; but, if there is no power in the Municipal Board to impose that particular tax in respect of certain persons or goods, then the State Government has no power to sanction such proposals. If the fact that the Municipal Board has no power to impose such a tax comes to the notice of the State Government, it has no option but to reject the proposals. At this stage and in exercising the power u/s 133, the State Government is not empowered to confer a power on the Municipal Board to impose a tax, which it did not till then have. Therefore, the mere fact, that the State Government sanctioned the proposals submitted by the Municipal Board of Bareilly to impose octroi duty on Mineral oils, cannot have the effect of over-riding the prohibition contained in the proviso to Rule 131 of the 1925 Rules. It appears that the sanction was in advertantly given by the State Government. There appears no reason why the ban imposed by the proviso to Rule 131 on all Municipal Boards should be lifted in respect of the Bareilly Municipal Board. It is difficult to accept that when it granted the sanction, the State Government intended to lift the ban so far as the Bareilly Municipal Board was concerned. There is another aspect of the case which may be considered. The 1925 Rules were made in exercise of the power u/s 296 of the Act and therefore, were statutory rules. These statutory rules will continue in force so long as they are not repealed either by a repeal of the rules themselves or by an amendment of the rules or by an amendment of the statute. The operation and force of these statutory rules cannot be affected or taken away by a mere executive order made by the Government. Therefore, the order u/s 133 granting sanction to the proposals of the Municipal Board, Bareilly, could not legally, even if the Government so intended override the proviso to Rule 131 of the 1925 Rules. The impugned order, therefore, cannot be upheld on the ground that the order of sanction, u/s 133 specifically conferred a power on the Municipal Board, Bareilly, to impose octroi duty on Mineral oils.

6. In view of what has been stated above, the prohibition of the proviso to Rule 131 of the 1925 Rules was in forte on the date of the imposition of octroi duty by ''the'' Municipal Board, Bareilly, on Mineral oils. In view of this prohibition, the Municipal Board had no power to impose octroi duty on Mineral oils. That being so, the imposition is illegal and in-effective.

7. The writ petition is, accordingly, allowed and the impugned notification dated August 27, 1969, is quashed. The Municipal Board, Bareilly, is restrained from assessing or collecting octroi duty on Mineral Oils classified as motor spirit, kerosene oil and diesel oil. The Petitioners are entitled to their costs from Respondents Nos. 1, 2 and 3.

8. Under the interim orders passed by this Court the Oil Companies, who supplied these commodities to the Petitioners, were directed to deposit the amount of octroi duty with the Municipal Board. Since the imposition of the octroi duty has been held to be illegal, the Municipal Board must now forthwith refund the amounts deposited by each one of the Oil Companies.

