(2002) 04 BOM CK 0048

In the Bombay High Court

Case No : Writ Petition No. 3534 of 2000

Chandrabhan Bhajandas Katariya — APPELLANT

Vs

Ahmednagar Municipal Council, Ahmednagar, (Notice to be served on its Chief Officer) — RESPONDENT

Date of Decision : 03-04-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Maharashtra Municipalities (Octroi) Rules, 1968 — Rule 11, 12, 13, 14, 15
Maharashtra Municipalities Act, 1965 — Section 105(1), 136, 137, 138, 139

Citation : (2002) 04 BOM CK 0048

Hon'ble Judges : Marlapalle, J

Bench : Single Bench

Advocate : R.R. Mantri, for the Appellant; S.B. Deshmukh, for the Respondent

Final Decision : Dismissed

Judgement

Marlapalle, J.—In this petition, filed under Article 226 of the Constitution, the Petitioner has challenged the authority of the Municipal Council to issue the notice dated 26th November, 1998 and the bill of demand under Outward No. 489 dated 14th March, 2000 and prayed for directions to refund an amount of Rs.28,097/- with interest and exemplary costs, as well as to give open delivery of the goods detained by the Municipal Council on 2nd June, 1998. In addition, writ of mandamus has been sought against the Municipal Council to pay an amount of Rs. 63,845/- with interest and exemplary costs.

2. The Petitioner claims to be the proprietor of M/s Saraswati Supari Stores at Shrirampur in Ahmednagar district and he deals in Pan Masala, Jarda, Bidi and Cigarettes. The stores is registered under the provisions of the Bombay Shops and Establishments Act, 1948. On or about 23rd May, 1998 he had purchased 13 packets of Pan Parag and Jarda etc. from M/s Mulchand of Delhi and the goods were transported through M/s Maharashtra Freight Carrier for onward delivery to Ahmednagar as the said transporter had no office at Shrirampur. On 2nd June,

1998 the said goods were being transported to Shrirampur and the officers of the Ahmednagar Municipal Council, without any authority of law and illegally detained the goods on the assumption that there was evasion of octroi. The prescribed procedure u/s 139 and 145 (1) of the Maharashtra Municipalities Act was not followed. No Bill of Demand was served on the Petitioner and, therefore, he made a representation on 9th June, 1998 requesting to release the goods. There was no response and, therefore, he filed Regular Civil Suit No. 265 of 1998 in the Court of Civil Judge, Junior Division at Ahmednagar. The said suit was dismissed on 31st August, 1998 as the Civil Court has no jurisdiction to entertain the same in view of the provision of an appeal under the Municipalities Act. He issued legal notice through an Advocate on 23rd September, 1998 and in response to the same the Municipal Council issued notice dated 26th November, 1998 calling upon the Petitioner to remit an amount of Rs. 28,092/- towards octroi payment. Petitioner came in Civil Revision Application No. 1025 of 1998 before this Court challenging the order passed in Regular Civil Suit No. 265 of 1998. The said Civil Revision Application was rejected by this Court on 16th June, 1999. Therefore, the Petitioner addressed letters dated 6th July, 1999, 20th August, 1999 and 4th September, 1999 to the Municipal Council requesting to accept the principal amount of octroi without imposing penalty and release the goods. He filed Civil Application No. 5128 of 1999 in Civil Revision Application No. 265 of 1998 praying for directions to issue the Bill of Demand and the impugned Bill of Demand dated 29th of March, 2000 was issued by the Municipal Council. The Petitioner received this Bill of Demand on 3rd May, 2000 and the said amount was paid by cheque dated 3rd May, 2000 and requested to deliver the goods to his agent viz. Bhalerao Transport, Ahmednagar so that the goods could be forwarded to the Petitioner at Shrirampur. The goods were not released even though the cheque was encashed and repeated pleas of the Petitioner went on deaf ears of the Municipal Council. As a last alternative, the Petitioner approached this Court by filing the instant Petition on 7th of August, 2000. The subject goods are still lying in the godown of the Municipal Council and they have perished as a result of which the Petitioner is entitled to recover damages from the Municipal Council along with the open delivery of the goods, contends the Petitioner.

3. The Municipal Council has filed reply and has opposed the Petition. At the first instance, it is stated that the subject goods were not in possession of the Petitioner when they were confiscated and when the three wheeler goods carrier bearing No.MH-16-B-1778 carrying 10 boxes of Pan Parag Masala,Jarda was intercepted on 2nd June, 1998 by the Municipal authorities the driver of the said vehicle viz. Aklesh Kaptansing Rajput, resident of Ahmednagar, made a statement in writing to the effect that the subject goods were being transported at the instance of the owner of M/s Radhaswami Stores at Shimpi Galli AT Ahmednagar town and they were to be delivered to the said stores. Notice u/s 141 (1) of the Municipalities Act was issued against the said M/s Radhaswami Stores on 27th October, 1998 calling upon him to pay an amount of Rs. 28,092/

plus the godown rent amount. Around the same time the Municipal Council received a legal notice on behalf of the Petitioner and, therefore, it issued notice dated 26th November, 1998 against the Petitioner for the first time. Thereafter, several notices were issued to the Petitioner but he did not come and receive the delivery of the confiscated goods. These notices were served on M/s Radhaswami Stores and were returned unserved. The Petitioner filed Civil Application No. 5128 of 1999 in Civil Revision Application No. 265 of 1998 and the Municipal Council filed a reply thereto showing its willingness to issue a Bill of Demand as the Petitioner had prayed for the same relief and accordingly on the basis of the legal opinion received by the Municipal Council the Bill of Demand dated 14th March, 2000 came to be issued by the Municipal Council. The Council is not at fault and the impugned notice as well as Bill of Demand was issued by is only at the instance of the Petitioner and not by the Council on its own. The Council has not acted in violation of the provisions of the Municipalities Act or the Octroi Rules and, therefore, the Municipal Council is not liable to pay damages with interest on account of the goods having been perished or become useless. It was for the Petitioner to approach the Municipal Council by establishing his title over the subject goods and to take the delivery after the Municipal Council had received the payment in May/ June, 2000. The Petitioner failed to do so and, therefore, it does not lie in his mouth to find fault with the Municipal Council. On all these grounds the Petition has been opposed by the Municipal Council.

4. The Petitioner has referred to the Bill of Demand dated 14th March, 2000 and submitted that the Municipal Council had no authority to demand exgratia amount equivalent to ten times the amount of octroi payable. He has referred to the provisions of section 139 of the Municipalities Act and submitted that fine cannot be imposed by the Municipal Council on account of nonpayment of octroi unless the importer of such goods has been convicted by a competent Court. Reliance, in this regard, has been placed on our decision in the case of "M/s Dhoot Agencies Pvt. Ltd. V/s Aurangabad Municipal Corporation and others" [AIR 2000 Bom. 246].

5. The Government of Maharashtra amended the Municipalities Act and the provisions of sections 136 to 143A and 145 have been deleted (Maharashtra Act No.XXXI of 1999). However, at the relevant time when the goods were intercepted and confiscated in June, 1998 the said provisions, regarding payment of octroi, were in force and hence the subject matter of this petition is covered under the Municipalities Act. Section 136 defines the "Municipal Limit/ Area" whereas section 137 empowers the officers of the Municipal Council to examine the articles liable to octroi payment. Section 138, 139 and 141 of the Municipalities Act, read as under:

"138. An officer demanding octroi by the authority of the Council shall tender to every person introducing or receiving anything on which the tax is claimed, a bill specifying the animal or goods taxable, the amount claimed, and the rate at which the tax is calculated.

139. Where any animal or goods passing into a municipal area are liable to the payment of octroi, any person who, with the intention of defrauding the Council, causes or abets the introduction of or himself introduces or attempts to introduce within the octroi limits of the Council any such animal or goods upon which payment of the octroi due on such introduction has neither been made nor tendered, shall, on conviction, be punished with fine which shall not be less than five times the amount of Octroi evaded but which may extend to ten times the amount of such octroi ... ...

141. (1) In the case of non-payment on demand of any octroi or toll may seize any animal or goods on which octroi is chargeable, or any vehicle or animal on which the toll is chargeable, or any part of the burden of such vehicle or animal which is of sufficient value to satisfy the demand, and may detain the same. He shall thereupon give the person in possession of the vehicle, animal or thing seized, a list of the property together with a written notice in the form of Schedule VI.

(2) When any property seized is subject to speedy decay, or when the expense of keeping it together with the amount of the octroi or toll chargeable is likely to exceed its value, the person seizing such property may inform the person in whose possession it was that it will be sold at once; and shall sell it or cause it to be sold accordingly unless the amount of octroi or toll demanded be forthwith paid.

(3) If at any time before a sale has begun, the person from whose possession the property has been seized, tenders at the municipal office the amount of all expenses incurred and of the octroi or toll payable, the Chief Officer shall forthwith deliver to him the property seized.

(4) If no such tender is made, the property seized may be sold, and the proceeds of such sale shall be applied in payment of such octroi, or toll, and the expenses incidental to the seizure, detention and sale.

(5) The surplus, if any, of the sale-proceeds shall be credited to the municipal fund, and may, on application made to the Chief Officer in writing within three years next after the sale, be paid to the person in whose possession the property was when seized, and if no such application is made, shall be the property of the Council."

6. The Government of Maharashtra has, in exercise of powers conferred by subsection (2) of of section 321 read with the proviso to subsection (1) of section 105 of the Maharashtra Municipalities Act, framed Maharashtra Municipalities (Octroi) Rules, 1968. Rules 11 to 15 are relevant for our consideration. Subrule (1) of Rule 11 provides that as soon as any dutiable goods are brought within the Octroi limits the importer or person in charge of such goods shall take them to the nearest Entrance Naka to be dealt with in accordance with the said rules. Sub-rule (2) of Rule 11 empowers an Octroi Officer to check any goods at any place within the octroi limits so as to ascertain whether they have been brought

from outside the octroi limits and if so whether octroi has been duly paid and the Octroi Officer may require the said importer or person in-charge of the goods to pay on the spot the amount of octroi payable in respect of such goods. On refusal to make payment on the spot, the officer may require the importer to take the goods to the nearest Octroi Naka or the Central Octroi office at his own expenses for recovery of octroi in accordance with the rules. Rule 12 states that every driver of vehicle or conveyance of any nature whatsoever and every person in-charge of any pack-animal shall stop his vehicle or conveyance or animal at the Octroi Naka to enable the octroi staff to ascertain whether the conveyance contains or the animal carries any goods liable to octroi. Rule 13 states that every importer, driver or other person shall not leave the Octroi Naka until inspection of the goods and of the relevant documents is made by the octroi staff and octroi on any of the goods, if leviable, is paid. Rule 14 pertains to the declaration to be made by the importer of such goods. Rule 15 deals with the procedure for assessment and recovery of octroi. Sub-rule (3) of Rule 15 states that if a person importing the goods is not satisfied as to the correctness of description, number, quantity, weight, measure or value of the goods and the amount of octroi thereon as determined by the Octroi Officer an amount equal to the Octroi determined by the Octroi Officer shall be paid as deposit. The scheme of the Octroi Rules, as framed by the State Government, therefore, recognises the importer or person in-charge of the goods on which octroi is leviable.

7. Section 169 of the Municipalities Act provides for an appeal and the Bill of Demand issued u/s 138 or notice issued u/s 141 of the said Act can be challenged by filing such an appeal. The Petitioner has not invoked such a remedy and he has directly approached us. The learned counsel for the Petitioner has relied upon a decision of the Supreme Court in the case of Himmatlal Harilal Mehta Vs. The State of Madhya Pradesh and Others, and submitted that the availability of alternative remedy under the scheme of the Municipalities Act does not disentitle the Petitioner from invoking the powers of this Court under Article 226 of the Constitution when he is approaching us with an allegation that his fundamental right has been infringed and the Municipal Council cannot impose penalty unless the Petitioner was convicted by a competent Court. The learned counsel has also relied upon the decisions of the Apex Court in the case of Shiv Shankar Dal Mills and Others Vs. State of Haryana and Others, and in the case of "Salonah Tea Company Ltd. etc. V/s The Superintendent of Taxes, Now going and others, etc."

: 1988(33)ELT249(SC) .

8. The main question we are required to consider in this petition is, whether the Petitioner has established before us his status of an importer or a person in-charge of the goods confiscated by the Municipal Council. Such a question goes to the root of the claims made by the Petitioner before us and if our findings on this issue are against the Petitioner nothing further survives in this petition for our considerations. Unless his title as an importer or person incharge of the

confiscated goods is established, it is not safe for us to adjudicate on his claims.

9. In para 2 of the Petition memo the Petitioner has stated that on or about 23rd May, 1998 he had purchased 13 boxes of Pan Parag Jarda etc. from M/s Mulchand of Delhi for his Shrirampur shop and the goods were transported through M/s Maharashtra Freight Carriers and these goods were not imported for use, sale or consumption etc. within the municipal limits of Ahmednagar. In para 3 of the Petition memo he has stated, thus:

"3.The Petitioner says and submits that on 2.6.1998 while the goods were in transit, the officers of the respondent, without any authority of law, illegally detained the goods on an assumption that there was evasion of octroi in respect of the said goods. The procedure prescribed for detention of the goods, as required u/s 136 onwards of the above mentioned Act and more particularly section 145 (1) of the said Act were not at all followed. The Petitioner points out that the respondent and its officers had absolutely no authority of law to detain the goods. No bill of demand was served on the Petitioner. The Petitioner points out that on 9.6.1998 by his letter of representation, the petitioner requested the respondent to release the goods pointing out the illegality committed by it. However, no response was given to the same on behalf of the respondent. The copy of the letter dated 9.6.1998 is being annexed herewith and marked as Exhibit "B"."

10. In his legal notice dated 23rd September, 1998 he had taken a plea that the goods transported through Maharashtra Freight Carrier Private Limited were unloaded at its godown in the MIDC area near Ahmednagar and, therefore, no octroi was paid as the said godown was outside the Municipal Council limits. On 2nd June, 1998 the subject goods were being transported to the office of Bhalerao Transport Company located in Ahmednagar town and from there, they were to be despatched to Shrirampur, to the Petitioner.

11. We have gone through the record, as submitted by the Municipal Council and we briefly refer to certain documents on which the Petitioner relies upon to establish his status qua the subject goods. A copy of Goods Receipt No. 12708 dated 23rd May, 1998 issued by Maharashtra Freight Carriers (P) Ltd., Delhi shows that the consignors name is Vinod and Brothers and it does not mention the name of the consignee. Number of packages shown are 13 and that too of Bidi and destination of the consignment is shown as Ahmednagar. A copy of the Cash Memo issued by Vinod and Brothers, Delhi (Dealers in Bidi, Cigarette, Tobacco, etc.) dated 23rd May, 1998 shows 20 packs valued at Rs.28,245/- and it is addressed to Saraswati Supari Stores, Shrirampur. There is also a copy of Bill No. 436 issued by Mool Chand Hakumat Rai, Delhi dated 23rd May, 1998 issued to M/s Saraswati Supari Stores, Shrirampur in respect of 13 packs and the value of the goods is shown to be Rs.63,835/-. Maharashtra Freight Carriers (P) Ltd., Shivajinagar, Pune issued goods despatch receipt dated 2/6/(year not mentioned) in favour of Saraswati Supari Stores, Shrirampur in respect of 13 packs which were received by it on 2/6/(year not mentioned). On the reverse of

the said document it is stated that out of 13 packs only 10 were received and the delivery of the remaining 3 would be effected later. This endorsement is dated 2nd June, 1998. This Goods Receipt does not show the destination as Ahmednagar and the destination shown is that of Shrirampur. The Petitioner claims that he approached the Municipal Council on 9th June, 1998 and claimed his title on the subject goods confiscated by the Municipal Council on 2nd June, 1998. However, this letter has not been signed by the Petitioner and it has been signed by one Suresh Katariya. The identity of this signatory has not been disclosed in the Petition.

12. Regular Civil Suit No. 265 of 1998 came to be filed before the 2nd Joint Civil Judge, Junior Division at Ahmednagar through the petitioners power of attorney Shri Bhajandas Daulatram Katariya, Aged: 70 years, Occupation: Business. This Bhajandas Katariya is the father of Chandrabhan Katariya, the present Petitioner and from the record we have seen that under the signature of Shri Chandrabhan Bhajandas Katariya no representation has been submitted to the Municipal Council claiming the status of importer or person in-charge of the subject goods, though the legal notice dated 23rd September, 1993 is claimed to have been issued under his instructions, by an Advocate.

13. The three wheeler goods carrier bearing No.MH-16-B-1778 was at the relevant time being driven by Shri Aklesh Kaptansing Rajput who was the owner-driver and admittedly when it was intercepted by the officers of the Municipal Council he was entering into the municipal limits and he was travelling from the North-Western side to the South. If the subject goods were to be transported to Shrirampur this course of journey was not required as the godown of M/s Maharashtra Freight Carrier was located in the M.I.D.C. area which is between the Ahmednagar town and towards Shrirampur side. The following sketch will indicate the location:

The said driver in his statement recorded on 2nd June, 1998 stated:

"The proprietor of Radhaswami Stores has called me at Maharashtra Freight Carriers and goods were loaded in my vehicle and told me to deliver the same at the shop without stopping at the Naka and evade octroi. With request I give this in writing that when I was transporting 10 containers of Pan Masala from Maharashtra Freight Carriers (MIDC) and plying with high speed on the Bolegaon Road without stopping at the Check-post (Naka) the President and Vice President have halted my vehicle. I was not having any document about payment of octroi. The said vehicle was taken to the Central Godown for further action. I was halted when I was transporting the goods by evading octroi by avoiding the check-post. The above facts are true. The concerned goods belongs to Radhaswami Stores."

There is yet another statement made by the said driver to the Chief Officer, Ahmednagar Municipal Council, Ahmednagar and it reads, thus:

"I Aklesh Kaptansing Rajput, R/o Bhavaninagar, Near Videocon Company, Ahmednagar, have been transporting 10 boxes of Pan Parag Masala Jarda through 3 wheeler No.MH-16-B-1778 on 2.6.1998 from Nagapur, MIDC to Radhaswami Stores, Telikhunt, Ahmednagar and the transportation charges was settled at Rs.200/- and accordingly the owner himself accompanying me. He told me to take the rickshaw from Bolegaon road. When I asked him about Octroi he told me "what you have to do with Octroi, I will take care of it". When I am going from Savedi road, as per his instructions, near the temple at Savedi I was halted with my vehicle by the President of Ahmednagar Municipal Council and Vice President Shri Balasaheb Borale also member Municipal Council Shri Ajay Sawate and Shri Satish Gundecha, Ex-Corporate and the car driver Shri Mushtak Qureshi followed my vehicle and when I reached the godown of Radhaswami Stores at Shimpi Galli, the owner of Radhaswami Stores ran away. Thereafter my vehicle was deposited in the Central Godown as it was containing the goods without payment of Octroi."

14. The Municipal Council had issued notice u/s 141 (1) of the Municipalities Act dated 27th October, 1998 against M/s Radhaswami Stores, Telikhunt, Ahmednagar calling upon it to pay an amount of Rs.28,092/- plus the godown rent in respect of the goods confiscated on 2nd June, 1998. This notice was received by the Proprietor of Radhaswami Stores i.e. Shri Jaipaldas D. Katariya and admittedly the said person is the brother of the present Petitioner. Shri Jaipaldas Katariya, vide his letter dated 28th October, 1998, informed the Chief Officer of the Municipal Council that he received the notice dated 27th October, 1998 and he had nothing to do with the goods confiscated from the three wheeler bearing No.MH-16-B-1778 on 2nd June, 1998 by the officers of the Municipal Council and the notice was issued to him without any basis. He, thus, denied to be an importer or person in-charge of the confiscated goods and washed of his hands.

15. The Petitioners contentions that the subject goods were being transported at his instance and they were entering into the Ahmednagar Municipal limits, in the reverse directions, for being transported to Shrirampur through Bhalerao Transport Company, cannot be relied upon and it is certainly a disputed question of fact which cannot be gone into in a writ petition. The statement of the driver on the other hand is very specific that the subject goods were being transported at the instance of the proprietor of M/s Radhaswami Stores in Ahmednagar town and he further stated that when he went to the said stores with goods followed by the Municipal Council Officers, the owner of the said stores ran away.

16. The Municipal Council issued notice dated 26th November, 1998 against the Petitioner only because a legal notice, on behalf of the Petitioner, dated 23rd September, 1998 came to be issued against it and he claimed to be the importer/ person in-charge of the confiscated goods. If the Petitioner had not issued the said legal notice there was no occasion to the Municipal Council to issue the impugned notice dated 26th November, 1998. When Regular Civil Suit No. 265 of 1998 was dismissed he approached this Court in Civil Revision Application No. 1025 of 1998 and the same was also rejected summarily. He filed Civil

Application No. 5128 of 1999 and prayed for directions to issue a Bill u/s 138 of the Municipalities Act. A copy of the Civil Application was served on the Advocate of the Municipal Council and it was under these circumstances that the Municipal Council had issued the impugned Bill of Demand dated 14th March, 2000. The impugned notice as well as Bill of Demand was issued by the Municipal Council at the instance of the Petitioner himself and they cannot be held to be the documents per-se to accept the petitioner as the importer or the person in-charge of the subject goods. There is no reason why the statements made by the driver and as recorded by the officers of the Municipal Council should be brushed aside by us in a writ petition and the same statements are required to be considered as the prima facie record with the Municipal Council. It would be necessary for the Petitioner to establish his status as the importer or the person in-charge of the subject goods in appropriate proceedings as a condition precedent to claim the possession of the subject goods confiscated by the Municipal Council as well as to ask the Municipal Council for the bill of demand. The impugned notice as well as the bill of demand were not issued by the Municipal Council on its own or by accepting the Petitioners status as importer or person in-charge of the confiscated goods. The payment purportedly made by cheque vide letter dated 3rd May, 2000 appears to have been submitted by Shri S. B. Katariya, as the said letter has been signed so.

17. In the result, we hold that the Petitioner has failed to prove before us that he is the person incharge or importer of the goods confiscated by the Municipal Council on 2nd June, 1998 from the driver-owner of vehicle No.MH-16-B-1778 while allegedly transporting the same for M/s Radhaswami Stores at Ahmednagar, which is owned by the Petitioners brother. This being the finding based on the record submitted before us by both the parties, we cannot entertain the petitioners claim for further adjudication in support of the reliefs prayed for. In the premises, the Petition is dismissed. Rule discharged with no order as to costs.

18. We clarify that this decision will not come in the way of the Petitioner to initiate appropriate proceedings to establish his title as an importer or person incharge of the subject goods.

