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(1979) 04 RAJ CK 0016

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1713/69

Chuhar Mal Sadhu Mal Commission Agent APPELLANT

Vs

The State of Rajasthan and Another RESPONDENT

Date of Decision : 26-04-1979

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (1979) WLN 207

Hon'ble Judges : S.C. Agrawal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.C. Agrawal, J.—M/s Chuharmal Sadhumal the petitioner in this writ petition filed under Article 226 of the Constitution, carries on business as Commission Agent at Abu Road. The Municipal Board, Abu Road respondent No. 2 in this writ petition, is a Municipality governed by the provisions of the Rajasthan Municipalities Act, 1959 (hereinafter referred to as ''the Act''). Section 104 of the Act provides for imposition of obligatory taxes including octroi on goods and animals brought within the limits of the Municipality for consumption use or sale there in. In exercise of the powers conferred u/s 104 of the Act, the State Government has issued a notification, directing the Municipal Board, Abu Road, to levy an octroi on goods and animals brought within the limits of the Municipal Board, Abu Road for consumption, use or sale therein at the rate specified in the schedule annexed to the said notification. In the said schedule, the following rates of octroi duty have been prescribed in respect of vegetables and fruits:

16 All varieties of vegetables including sugar cane, water Rs. 1.00 percent melons, Kharbhuja and Tarkari 17. Fruites of all varieties Rs. 1.00 percent

In this writ petition, the petitioner has challenged the constitutional validity of Section 104 of the Act as well as the notification aforesaid dated 10th April, 1964 in so far as it relates to the imposition of octroi on vegetables and fruits. But the

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learned Counsel for the petitioner did not make any submission with regard to the validity of Section 104 of the Act at the time of the hearing of the writ petition, presumably in view of the decision of this Court in Johari Mal v. The State of Rajasthan 1969 RLW 367 wherein the challenge to the constitutional validity of Section 104 on the grounds that it violates Article 14 of the Constitution and that it involves excessive delegation of legislative power has been negatived. The submissions of the petitioner are confined to the validity of the notification dated 10th April, 1964 on the ground that it is violative of the provisions of Article 14 of the Constitution. In this regard, the case of the petitioner is that the State Government has arbitrarily discriminated between the citizens residing in Abu Road and citizens residing in other Municipalities, such as, Jodhpur, Sirohi, Kota etc. in as much as under the impugned notification, the citizens residing in Abu Road are required to pay octroi duty at the rate of Re 1% on fruits and vegetables brought into the Municipal limits of the Municipal Board, Abu Road, whereas in the Municipalities of Jodhpur and Sirohi such an octroi duty on fruits and vegetables is not levied at all and in many Municipal Boards within the State of Rajasthan, the rate on which octroi duty is levied on fruits and vegetables is much less than that imposed in relation to the Municipal Board. Abu Road. In support of the aforesaid submission, the petitioner has filed a chart (Ex.1) along with the writ petition, showing the rates at which octroi duty is being charged on vegetables and fruits in various Municipalities in the State of Rajasthan.

2. In the reply which has been filed on behalf of the respondent Municipal Board, it is stated that each Municipal Board is a separate unit and the levy of octroi tax is a local tax according to the needs of the Municipal Board functioning in that locality and that the incidence of octroi duty levied in one Municipal Board cannot be compared with that levied by another Municipal Board. The submission of the respondent Board is further that it is not essential that octroi duty must be levied in all Municipal Boards and at the same rate and the mere fact that some of the Municipal Boards in Rajasthan do not levy any octroi duty on vegetables and fruits will not render the imposition of octroi duty on fruits and vegetables in Abu Road as discriminatory.

3. The Act makes provision for the imposition of taxes which fall in two categories: obligatory taxes and other taxes. As regards obligatory taxes, provision in made in Section 104 of the Act. Sections 105 to 113 provide for imposition and levy of taxes other than obligatory taxes. According to Section 104 tax on the annual letting value of buildings or lands or both situated within the Municipalities, octroi on goods and animals brought within the limits of the Municipality for consumption, use or sale therein and taxes on professions and vocations are three obligatory taxes. A Municipal Board is obliged to levy these taxes at such rate and from such date as the State Government may in each case direct by notification in the official Gazette The proviso to Sub-section (1) of Section 104 enables the State Govt. to permit a Municipal Board not to levy or stop the levy of any such tax, if the State Government is satisfied that

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circumstances exist, which sufficiently provide the justification for a period not to levy or to stop the levy of the tux In Sub-section (2) of Section 101 it is laid down that while giving a direction under Sub-section (1), the State Government may provide for the levy of taxe3 at different rates in different Municipalities having regard to their varying local conditions and needs, and on the same considerations and by a like direction, the State Government may, from time to time:

(i) vary uniformally or differently in relation to different Municipalities, the rates of taxes levied, or''

(ii) withdraw any tax levied by any Municipality.

A perusal of the provisions of Section 104 aforesaid, indicates that the legislature has contemplated that the obligatory taxes which are required to be imposed under the said section need not be uniform for all the Municipalities in the State of Rajasthan and the rates of such taxes may vary in different Municipalities depending upon the local conditions and needs.

4. The question as to whether the imposition of a tax u/s 104 under a notification issued by the State Government is open to challenge on the ground of Article 14 of the Constitution has come up for consideration before three learned Single judges of this Court in Johari Mal and Others Vs. State of Rajasthan and Another, Popular House v. State of Raj 1972 RLW 144 Meghraj Nemichand v. State 1977 RLW 344 . The aforesaid decisions have been considered by a Division Bench of this Court in Municipal Board, Abu Road v. State of Rajasthan and Anr. (D.B. Civil Spl. Appeal No. 39/1978, decided on 20th Dec, 1978) in the Special Appeal filed against the judgment of the learned Single Judge (Kan Singh J.) in Johari Mal and Others Vs. State of Rajasthan and Another, In the aforesaid decision, the Division Bench of this Court has laid down:

The items specified u/s 104 are, more or less, major items which are common in all the Municipalities & it is for that reason that the State Government has retained the power to impose taxes on items including octroi mentioned in Section 104 of the Act. It may be pointed out that octroi duty on goods is one of the items mentioned in Section 104 of the Act and it Is to be imposed by the State Government in all the Municipalities throughout the territories of the State. It is the State Government, therefore, who is empowered to levy impost of octroi on various items including the textiles in the different Municipalities of the State.

After referring to the earlier decisions of this Court, the learned Judges have observed:

From the survey of the above cases, it will be evident that the State has power to select different commodities, persons or Municipalities for the purpose of levying octroi tax. It may also levy different rates of taxes and even adopt different manner as to how the tax is to be charged, provided the action of the State is justifiable on intelligible differentia and is explicable on rational basis.

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There must be proximate relationship between the varying rates and manner of levy of octroi and the amenities provided by the Municipality where such widely varying rates are charged.

At the cost of repetition, we may stress that the State Government, which is really the taxing authority u/s 104 of the Act, has to adopt, more or less uniform pattern in the rates of octroi impost subject, of course, to local and geographical conditions prevailing within the local limits of the particular Municipality. How ever, the difference in rates of impost octroi should not be too wide so as to lead to outrageous disparity in the matter of incidence of octroi tax on the consumers residing within the limits of different Municipalities of the State. The State Government is expected to bear in mind this principle while imposing octroi in various Municipalities of the State. It may be that imposition of octroi is for the purposes of augmenting revenue of the Municipality for running its administration, but that fact equally applies in case of bigger Municipalities also, and in our opinion, mere augmenting of revenue of a Municipality by itself cannot be a ground for imposition of wide''y varying rates of octroi and that too on different basis in various Municipalities of the same State on the same commodity. It cannot be gainsaid the levy of tax that results in outrageous and hostile discrimination between one citizen of the State and the other citizens of the State at the hands of the taxing authority, is subject to attack under Article 14 of the Constitution of India.

It may be that the taxing authority has power to charge different rates of tax and adopt different basis, but that must be such which should not lead to outrageous disparity in the matter of incidence of imposition of octroi on the citizens of the same State residing in different Municipalities.

From the aforesaid decision of the Division Bench of this Court, it is clear that while it is open to the State Government to direct the imposition of octroi duty at different rates and on different basis for the various Municipalities depending upon the local and geographical conditions prevailing within the local limits of the particular Municipality, the State Government must adopt a uniform pattern in the rates of octroi duty and the difference in the rates should not be too wide so as to lead to outrageous disparity in the matters of incidence of octroi tax on the citizens of the same State residing in different Municipalities. In other words, it is possible for the Stale Government to provide for imposition of octroi duty on the same commodity on value basis in respect of one Municipality and weight basis for another, provided ?hat the incidence of the octroi tax on the consumers does not result in outrageous dispartity. Similarly, it is open to the State Government, while prescribing the same basis for imposition of tax to prescribe different rates of tax provided of course the rates are not such as to lead to outrageous disparity in the incidence of tax

5. The learned Counsel for the respondent Municipal Board has sought to challenge the correctness of the aforesaid decision of the Division Bench of this Court and has submitted that in the aforesaid decision, the learned judges have

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not properly appreciated the decision of the Supreme Court in the Municipal Board, Hapur Vs. Raghuvendra Kripal and Others, . I am unable to accept the aforesaid contention urged by the learned Counsel for the respondent Municipal Board.

6. What remains to be considered is whether the imposition of octroi duty on value basis at the rate of 1% on vegetables and fruits which has been imposed in Municipal Board, Abu Road under the notification dated l0th April, 1964 satisfies the aforesaid tests laid-down by this Court. The submission of the learned Counsel for the petitioner is that the imposition of octroi duty at the aforesaid rate results in outrageous disparity in the incidence of octroi tax, where as the submission of the learned Counsel for the respondent Municipal Board is that the rates at which octroi duty has been imposed under the impugned notification on vegetables and fruits does not lead to such an outrageous disparity in the matter of incidence of octroi.

7. Although all the previous decisions of this Court proceeded on the basis that difference in the rates should not be so much as can be called outrageous, the said decisions do not lay down any precise test for determining as to when the difference in rates of imposition of a tax can be said to result in outrageous disparity in the incidence of the tax In Johari Mal and Others Vs. State of Rajasthan and Another, the Court was dealing with a case where in some Municipalities octroi was being levied at the rate of Rs. 25/- per quintal on gold and silver, where as in one Municipal Board, it was being levied at the rate of 1% of the value and it was held that the difference was outrageous for the reason that in one case this duty would be Rs 25/- and in the other it would be Rs. 10,000/-. In the same case it was noticed that in some Municipalities octroi duty on cloth was being levied on Weight basis at rates varying from Rs. 150 to 2/- per quintal, where as in one Municipality it was being levied on value basis at the rate of Rs 1%. It was held that the disparity was outrageous. Similarly, in Popular House v. State of Raj. 1972 RLW 144 the Court has held the disparity in the imposition of octroi tax to be outrageous on the view the difference in the amount of duty calculated on weight basis and on ad valerom basis was really exhorbitant In this context, this Court has pointed out that if one quintal of saffron was imported in Jodhpur and Jaipur, the duty would be Rs 2/-, whereas on the same quantity, the octroi duty would be Rs. 6800/- on the basis of valuation in Beawar. In Municipal Board, Abu Road v. State of Rajasthan (supra) the Division Bench of this Court was concerned with the imposition of octroi duty on textiles, under the impugned notification, the Municipal Board, Abu Road was charging octroi duty on textiles on value basis at the rate of Rs. 1%. The said levy had been struck down by Kan Singh J. on the view that in other Municipalities octroi duty on textiles was bring levied on weight basis at the rates varying from 50 paise to Rs. 2/'' per quintal and that the difference in the rates was outrageous. The learned Judges constituting the Division Bench have upheld the aforesaid decision of the learned single Judge on the view that the incidence of impost of octroi duty on weight basis is very insignificant as compared to

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impost of ad valerom octroi duty at the rate of i% on the cloth. In other words, the learned Judges of the Division Bench of this Court have proceeded on the basis that the difference between the impost must be disproportionately high in order that imposition may be said to lead to outrageous disparity.

8. Applying, the aforesaid test to the facts of the present case, it will have to be seen as to whether the imposition of octroi duty on value basis on fruits and vegetables under the impugned notification can be said to lead to outrageous disparity when compared with octroi duty imposed on the said commodities in other Municipalities.

9. The case of fruits and vegetables cannot be equated with other commodities like bullion, textiles or Kirana or cigarattes in as much as most of fruits and vegetables are generally sold in the range of 50 paise to Rs. 3/- per kg. If octroi duty is levied on the basis of value at the rate of Rs. 1% in one Municipality and on the basis of weight at the rate of Rs 1/- per quintal, the difference in the incidence of the tax. may not be very significant and may only be marginal. From the chart (Ex.1), which has been filed by the petitioner along with the writ petition, I find that the rates at which octroi duty is being levied by various Municipalities varies from 10 paisa per quintal to Rs. 1/- per quintal on vegetables and from 15 paise to Rs. 2 per quintal on fruits. It cannot be said that the incidence of impost of octroi duty on weight on fruits and vegetables would be very insignificant as compared to impost of and valorem octroi duty at the rate of Rs, 1% on fruits and vegetables.

The difference cannot be said to be so disproportionately high as to result in outrageous disparity. I am, therefore, unable to accept the contention urged by the learned Counsel for the petitioner that in imposing octroi duty on the basis of value on fruits and vegetables at the rate of 1%, the State Govt. has violated the provisions of Article 14 of the Constitution.

10. In the result, this writ petition is dismissed but in the circumstances of the case, there will be no order as to costs.

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