

(2003) 01 BOM CK 0131

In the Bombay High Court

Case No : Public Interest Litigation No. 31 of 2002

Citizens Forum for Scientific Development of Pimpri-
Chinchwad

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 22-01-2003

Acts Referred:

Bombay Provincial Municipal Corporations Act, 1949 — Section 127, 149, 149(3), 457

Citation : (2003) 2 ALLMR 85 : (2003) 3 BomCR 760 : (2003) 2 MhLj 479

Hon'ble Judges : C.K. Thakker, C.J.;D.Y. Chandrachud, J

Bench : Division Bench

Advocate : Abhay S. Oka and Dilip Bodake, for the Appellant; P. Janardhanan, A.A.G. and V.P. Malvankar, Assistant Government Pleader for respondent No. 1, D.R. More, for respondent Nos. 2 and 3, Hitesh Jain, instructed by Udwardia Udeshi and Berjis, for the Respondent

Final Decision : Allowed

Judgement

C.K. Thakker, C.J.—Rule. Mr. P. Janardhanan, Additional Advocate General, appears and waives service of rule on behalf of respondent No. 1. Mr. D. R. More, learned counsel, appears and waives service of rule on behalf of respondent Nos. 2 and 3. Mr. Hitesh Jain, learned counsel, appears and waives service of rule on behalf of respondent No. 4.

2. In the facts and circumstances, matter was taken up for final hearing.

3. This petition is filed by the petitioner as a Public Interest Litigation for an appropriate writ, direction or order to the State of Maharashtra, respondent No. 1, as also respondent No. 3, Pimpri-Chinchwad Municipal Corporation, to implement Pimpri-Chinchwad Municipal Corporation (Octroi) Rules, 2001, with effect from January 6, 2002, i.e. from the date they ought to have been implemented in accordance with law.

4. The petitioner is a trust registered under the Public Trust Act, 1950. It is also

registered under the Societies Registration Act, 1860. The aim and object of the trust is to make awareness of social justice and to solve problems in the society.

5. The case of the petitioner is that there is a Municipal Corporation known as Pimpri-Chinchwad Municipal Corporation, respondent No. 3, constituted and established u/s 5 of the Bombay Provincial Municipal Corporations Act, 1949 (hereinafter referred to as "the Act"). The Commissioner, respondent No. 2, is administrative head of the Corporation appointed by the State of Maharashtra, respondent No. 1, u/s 36 of the Act and is performing his functions, exercising his powers and discharging his duties in accordance with law. According to the petitioner, the Corporation is empowered to impose taxes under the Act. Section 127 of the Act enables the Corporation to impose certain taxes which, inter alia, includes "octroi". Section 149 of the Act lays down procedure to be followed in levying such taxes. Section 457 of the Act allows Corporation to frame Rules. The respondent-Corporation, in pursuance of the above power conferred by the statute, framed Rules known as Pimpri-Chinchwad Corporation (octroi) Rules, 2001 (hereinafter referred to as "the Rules"), in 1995 after following complete procedure. The draft Rules were then sent to the State Government for approval. The State Government in exercise of powers conferred by Sub-section (1) of Section 149 read with Clause (a) of Sub-section (2) of Section 127, Sub-section (2) of Section 455 and Sub-clause (c) of Clause (7) of Section 457 of the Act granted necessary sanction to the Rules. It, however, appears that those Rules were not published in the Government Gazette within the prescribed time limit and hence, they could not be brought into force. The Corporation, therefore, again submitted draft Rules for sanction to the respondent-State on January 29, 2001. The State Government granted necessary sanction/approval on 29th November, 2001. The Rules were published in the Official Gazette on 6th December, 2001, as provided by Section 149 of the Act and they were ordered to be implemented with effect from 6th January, 2002 i.e. after one month of the publication in the Official Gazette.

6. The case of the petitioner before this Court is that though the Rules were framed by the respondent-Corporation in accordance with law and after following the procedure laid down in the Act and the draft Rules were duly sanctioned/ approved by the State Government and a notification was issued in the name of the Governor of Maharashtra and was duly published in the Official Gazette on 6th December, 2001 stating therein that they will be implemented after one month of the publication in the Official Gazette i.e. from 6th January, 2002, the new rules were not implemented and enforced. The petitioner has stated that the State Government had granted stay against implementation of the Rules on the ground that general elections of Municipal Corporation were to be held in February, 2002 and under the code of conduct, new Rules could not be implemented. The petitioner further stated that elections were over in February, 2002, and stay granted by the State Government came to an end on 14th February, 2002. Collection of octroi under the new Rules was enforced from 15th February, 2002. It is, however, asserted by the petitioner that only two days i.e.

15th February and 16th February, 2002, the new Rules were enforced and octroi was collected thereunder. But on 16th February, 2002, again, there was an oral direction/telephonic message to the respondent-Corporation not to collect octroi as per new Rules. The said action was totally illegal, ultra vires and de hors the Act. The petitioner has, therefore, approached this Court. It is stated by the petitioner that non-implementation of new Rules resulted into substantial loss to respondent-Corporation and public exchequer has suffered. Appropriate directions are, therefore, required to be issued to the respondents to collect octroi in accordance with law under the new Rules.

7. An affidavit in reply is filed on behalf of the State. Certain facts are not disputed in the said affidavit. It was admitted that the draft Rules were prepared by the Corporation and were sent for confirmation/approval which was granted by the State. It is also not disputed that such approval was given on 29th November, 2001. It is undisputed that the respondent-Corporation was directed to implement the Rules after a period of one month from the date of its publication in the official gazette.

8. It was then stated that general election to the Pimpri-Chinchwad Municipal Corporation was scheduled to be held on 10th February, 2002. The code of conduct, in view of general election to the Corporation, was in operation from 1st January to 11th February, 2002, and hence new Octroi Rules which were to come into operation from 6th January, 2002 could not be implemented. The Commissioner of respondent-Corporation was, therefore, directed by the State Government on February 13, 2002, to start implementation of new Rules from 15th February, 2002.

9. In paragraph 5 of the counter affidavit, it was stated by the deponent that Maratha Chamber of Commerce, Industries and Agriculture and Chinchwad Station Vyapari Association made representations to the Chief Minister. In the said representations, it was complained that under the new Rules, the rate of octroi was increased from 100 per cent to 500 per cent in the commonly used articles. It was also stated that if the new Rules will be implemented, traders and industries would require to shift their units outside Municipal Corporation limits and the Corporation may lose the "whole income" of the octroi from them which would result in less collection of octroi by the Corporation itself. Considering the points raised in the representations, the Government felt it necessary that the representations needed consideration in the interest of both, viz. traders and industries organisations as also the Municipal Corporation. The deponent then stated;

"Therefore, the Government also felt it necessary to continue with the old Octroi Rules of the Corporation for further some time."

It was stated that on completion of the exercise, the Government was satisfied that the new Octroi Rules were in order and Government had decided to allow the Municipal Corporation to start the implementation of the new Octroi Rules

vide a letter dated 7th May, 2002. Accordingly, new Rules were brought into force and collection was started from 8th May, 2002.

10. An affidavit in rejoinder is filed by the petitioner contending that the action of the respondent-State in not allowing new Rules to be implemented from 6th January, 2002 to 14th February, 2002 and from 17th February, 2002 to 7th May, 2002, was illegal and unlawful. The petitioner has also stated that on a rough estimate, the respondent-Corporation could have approximately recovered an additional amount of Rs. 23,00,000/- (Rupees Twenty three lakhs only) every day, over and above the octroi amount which it had actually received. The octroi could not be collected in view of the action of the respondent-State for 121 days, resulting into loss of Rs. 27,83,00,000/- (Rupees Twenty seven crores eighty three lakhs only). It is, therefore, necessary to issue a direction to the respondents that the respondent-Corporation should take appropriate steps for recovery of octroi in accordance with new Rules from the persons from whom octroi was charged under the old Rules during the aforesaid period.

11. The question for our consideration, therefore, is : Whether the action taken by the respondent-State directing the respondent-Corporation not to implement new Rules and not to collect octroi on the basis of new Rules was legal and valid and if not, what should be the final order to be passed by this Court.

12. As we have already seen, Section 127 of the Act empowers Corporation to impose octroi. The said fact is not disputed by the respondents. Section 149 provides procedure to be followed in levying taxes and it is also not the say of the respondents that the said procedure had not been followed. Draft Rules were prepared and they were sent for approval/sanction/confirmation to the State Government and the State Government duly approved them by granting necessary sanction. Those Rules were then required to be published in a Government Gazette and they were duly published in the gazette on 6th December, 2001. A copy of the notification has been placed on record by the petitioner.

13. In the circumstances, in our opinion. Sub-section (3) of Section 149 of the Act would get attracted. The said Sub-section (3) of Section 149 of the Act reads thus :

"149. Procedure to be followed in levying other taxes.

(1).... ..

(2).... ..

(3) Any sanction given by the State Government under Sub-section (2) shall become operative on such date not earlier than one month from the date of the sanction as the State Government shall specify in the order of sanction, and the Corporation shall be competent to levy the tax covered by the sanction as from the date so specified."

14. In our opinion, once the required procedure has been followed, the Rules were required to be brought into force. Once the sanction had been granted by the State Government, it had no power, authority or jurisdiction to suspend enforcement of the Rules or to grant any interim order. From the facts it is clear that at two stages the State directed the respondent-Corporation not to enforce new Rules and to collect octroi under the new Rules but continued to collect octroi under the old Rules only firstly during 6th January, 2002 to 14th February, 2002 and secondly, from 17th February, 2002 to 7th May, 2002.

15. So far as the first period is concerned, it was stated by the State that there were elections to the Corporations and under the code of conduct the Rules could not be implemented. No provision, however, was brought to our notice by the learned Assistant Government Pleader as to how code of conduct would prevent enforcement of Rules which were framed in accordance with the provisions of the Act. Once the Rules were sanctioned by the State Government, a notification was issued and the time after which they were to come into force was over, in our considered view, the State Government could not prevent or prohibit enforcement of Rules on the ground that election was to take place and under the code of conduct, octroi Rules could not be enforced. Hence, the said action was clearly illegal and outside the purview of the Act. Since it was not within the power of the State Government, octroi ought to have been imposed and collected by the Corporation under the new Rules.

16. Regarding the second stage, no written order at all has been brought on record. The petitioner has stated that there was a telephonic message from the State Government directing the Commissioner of the respondent-Corporation not to collect octroi under the new Rules. The said assertion has not been controverted by the State Government, though an affidavit in reply is filed. On the contrary, in the affidavit in reply, the action is sought to be justified on the ground that some representations were made. In our opinion, however, when the draft rules were approved by the State Government and one month after which they were to bring into force was over, no power had been left with the State and no direction could be issued to the Corporation not to enforce the Rules. It is further stated in the affidavit that after the State Government was satisfied that the Octroi Rules were proper, legal and valid, vide a letter dated 7th May, 2002, the Commissioner of the respondent-Corporation was permitted to collect octroi under the new Rules. The fact, however, remains that from 17th February, 2002 to 7th May, 2002, octroi could not be collected under the new Rules and it was only with effect from 8th May, 2002 that octroi could be recovered under the new Rules. Thus, even for that period, the action on the part of the State Government could not be said to be legal and valid. No provision has been shown to us under which such power was exercised by the State Government.

17. We are, therefore, of the opinion that at both stages, the action of the State Government was neither legal, nor valid nor supported by any provision of law.

18. At this stage, the learned counsel for respondent No. 4, submitted that if this

Court will issue a writ of mandamus directing the respondent-Corporation to implement new Octroi Rules from 6th January, 2002 to 14th February, 2002 and then from 17th February, 2002 to 7th May, 2002, serious prejudice will be caused to the fourth respondent. The counsel submitted that the fourth respondent adopted a proper, permissible and democratic course in such matters i.e. to make a representation to the Chief Minister, the highest authority of the State by putting forward its grievances and objections. The Chief Minister also saw substance in the grievance voiced by respondent No. 4 and accordingly, enforcement was stayed. It is because of the fact that the prayer was granted by the State Government that the fourth respondent did not choose other remedies which were available to it. If this Court orders recovery of octroi under the new Rules now, for that period also, it may cause substantial loss to respondent No. 4 and several others.

19. In our opinion, when there is no provision in the Act to suspend implementation and enforcement of the Octroi Rules and when we are of the view that at both the stages, action of the respondent-State was not legal and valid, appropriate directions will have to be issued to the respondent Corporation to collect octroi from 6th January, 2002 under the new Rules, as per the available record with the Corporation.

20. We may, however, observe that if respondent No. 4 is aggrieved by the new Rules, it is open to it to take appropriate proceedings in accordance with law and orders passed by us in the present petition would not come in its way.

21. For the foregoing reasons, the petition deserves to be allowed and is accordingly allowed by declaring that the action of respondent No. 1 State in directing respondent Nos. 2 and 3, Municipal Corporation and Commissioner, not to collect octroi under the new Rules after the new Rules came into force from January 6, 2002, was illegal, ultra vires and without authority of law. Respondent Nos. 2 and 3, therefore, are directed to collect octroi as per the available record with them from 6th January, 2002 to 14th February, 2002 and from 17th February, 2002 to 7th May, 2002. Rule is made absolute. In the facts and circumstances, however, there shall be no order as to costs. Certified copy expedited.