
(1979) 10 OHC CK 0010

In the Orissa High Court

Case No : Original Jurisdiction Case No. 1112 of 1979

Haji Allauddin Khan

APPELLANT

Vs

Notified Area Council

RESPONDENT

Date of Decision : 09-10-1979

Acts Referred:

Orissa Municipal Act, 1950 — Section 13, 131(1)

Citation : (1979) 48 CLT 589

Hon'ble Judges : R.N. Misra, J;N.K. Das, J

Bench : Division Bench

Advocate : R.C. Patnaik, for the Appellant; Prasanta Mohanty, for the Respondent

Final Decision : Allowed

Judgement

R.N. Misra, J.—Petitioner is a businessman operating within the Jurisdiction of the Notified Area Council of Bhadrak. A Council levies octroi in terms of Section 13(i) (kk) of the Orissa Municipal Act of 1950 (hereinafter referred to as the "Act"). The relevant proviso to the said Sub-section requires that the imposition of octroi shall be made with the sanction of the State Government. In 1973 under Annexure-A, the State Government has sanctioned the rates of octroi with reference to different articles and in August, 1974, in terms of Annexure-I, the rates were modified. There is no dispute before us that the Government notification of 6th August, 1974 (Annexure-I) has not been further modified. Petitioner carries on business in Potato and onion. Under item 72 of Annexure-I, the sanctioned rate is 10 paise per quintal or Rs. 10/- per truck load. This obviously is the maximum within which the rate of octroi has to be confined. Under Annexure-2 dated 24-5-1979, the Council decided to enhance the rate to 50 paise per quintal or Rs. 50/- per truck load and started levying octroi at the said rate. Petitioner challenges the enhancement contending that it is an act without jurisdiction and is contrary to the proviso to Section 131(1)(kk) of the Act.

2. In the return made to the Court to the rule nisi, reliance has been placed on a Government letter in Annexure-C dated 6-5-1978. Therein it has been stated:

I am directed to invite a reference to your letter No. 1508 dt. 25-4-1978 on the above mentioned subject and to say that sanction of Govt. has been sought for on commodities like free sale sugar, sugar candy etc. at a revised rate of 1% although the existing sanctioned rate of Govt. is 1%. Similarly the rates of octroi on articles per truck, jeep etc., have been sanctioned by Govt. at a rate of 1% but revised rate proposed at a lesser percentage i.e. 1% Seeking further sanction of Govt. appears to e unnecessary....

The instruction contained in the letter as far as it goes is not challengeable. Thus letter, however, did not indicate that the Council was free to enhance the rate beyond what had been fixed under Annexure-I. Misguided by the instruction contained in the letter, the Council passed the resolution under Annexure-2 dated 24-5-1979. The resolution of the Council is without jurisdiction and is clearly contrary to law and has, therefore, to be quashed.

3. We accordingly allow the writ application and quash the impugned resolution. The excess collection above what has been approved by Annexure-1 be refunded within one month from the date of service of the writ. There would be no order for costs.

N.K. Das, J.

4. I agree.