

(2005) 06 BOM CK 0020

In the Bombay High Court

Case No : Writ Petition No. 3009 of 2005

Hemant Sudhakar Madane and Others

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 26-06-2005

Acts Referred:

Bombay Provincial Municipal Corporations Act, 1949 — Section 127, 127(1), 149, 451, 493

Constitution of India, 1950 — Article 166, 265

General Clauses Act, 1897 — Section 24

Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships (Amendment) Act, 1999 — Section 23(1A), 30(1)

Citation : (2005) 3 ALLMR 841 : (2006) 2 BomCR 307

Hon'ble Judges : Kukday S.P., J;Khandeparkar R.M.S., J

Bench : Division Bench

Advocate : P.M. Shah and S.P. Deshmukh, for the Appellant; U.K. Patil, A.G.P. for respondent Nos. 1 and 2 and S.B. Talekar, for the Respondent

Final Decision : Allowed

Judgement

Khandeparkar R.M.S., J.—Heard.

2. Rule.

3. By consent, Rule is made returnable forthwith.

4. Though the writ petition has been filed seeking various reliefs, the learned Senior Advocate for the petitioners has sought leave to restrict the petition to the relief pertaining to the quashing of levy and collection or octroi by Dhule Municipal Corporation without following the procedure prescribed under the statute, and further has sought leave to withdraw the petition as regards other reliefs with liberty to file fresh petition for those reliefs.

5. Few facts relevant for the decision are that :

The petitioners are businessmen and ordinary residents of District Dhule.

Respondent No. 3 Dhule Municipal Corporation is the Corporation constituted under the Bombay Provincial Municipal Corporations Act, 1949, (hereinafter called "Corporation Act") and came in existence from 30th June, 2003. Prior to the establishment of said Corporation, Dhule Municipal Council constituted under the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (hereinafter called "Municipality Act") was in existence.

6. The Municipality Act was amended by Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships (Amendment) Act, 1999, with effect from 1-5-1999 thereby the provision regarding the powers of Municipality to levy and collect the octroi was abolished from the Municipality Act, Consequently, all the provisions relating to the entitlement and the matters connected therewith were also repealed by the said Amendment Act of 1999. On account of abolition of said powers of the Municipal Council to levy and collect the octroi, the Government had formulated a policy to provide financial assistance for a certain period and consequently, under the Government Resolution dated 10-10-2001 the Municipalities were assured of certain compensation in lieu of octroi duty.

7. After formation of Dhule Municipal Corporation, it appears that a resolution came to be passed by the said Corporation objecting the imposition of levy of octroi. The Commissioner of the Corporation, however, by his letter dated 24-2-2004, opposed the said resolution expressing apprehension of the difficulties which the Corporation would face in raising funds for day to day activities of the Corporation, It appears that the authorities, therefore, in exercise of the powers under the Corporation Act rescinded the said resolution of the Corporation against the levy of octroi.

8. On 31-5-2005, a letter came to be issued by the Deputy Secretary to the Government, Urban Development Department, informing the Corporation that the Government had decided to compensate the Municipal Councils which were not authorised to levy and collect octroi, only for two years and on completion of two ears the Corporation will have to take steps to raise funds by itself by imposing cess for entry. The letter also indicated that in terms of the decision of the cabinet the Corporation should levy octroi from the following year. It also informed the Corporation that since it would take long time to prepare necessary rules and to comply with other required procedure under the statute for the purpose of levy of octroi, it should proceed to levy and collect octroi by following the procedure laid down under the Octroi Rules, 1969, which were framed under the Municipality Act and accordingly shall report to the Government.

9. Subsequent to the letter dated 31-5-2005, it appears that some news items appeared in the local newspapers regarding the intention of the Corporation to levy entry cess and there upon the present petition came to be filed challenging the alleged decision of the Corporation to levy entry cess. Consequent to the reply filed by the Corporation disclosing that it has no intention at the moment to levy entry cess, and what is proposed by the Corporation is to levy octroi and in that regard tender has been ordered to be issued for the purpose of collection of

such duty, amendment to the petition was sought for and the same was allowed. Accordingly, now the challenge in the petition is being restricted to the decision of the Corporation to levy and collect octroi.

10. While challenging the decision of the Corporation to levy and collect octroi, Shri P.M. Shah, the learned Senior Advocate for the petitioners submitted that though the statutory provisions comprised under the Corporation Act duly empower the Corporation to levy and collect octroi, certain mandatory procedure prescribed under the statutory provisions has to be followed before actual levy and collection of octroi. The Corporation has not followed the said procedure and therefore, it cannot, bypassing the said mandatory procedure, proceed to levy and collect octroi. He has further submitted that the letter dated 31-5-2005 on the basis of which the Corporation claims that necessary " sanction was granted by the Government for taking steps to levy and collect octroi under the Corporation Act, has neither been issued by the Competent Authority under the Corporation Act nor it empowers the Corporation to levy and collect octroi duty nor such power can be assumed from the said letter by the Corporation. He has further submitted that prior to the constitution of the Corporation and as long as back in 1999 the powers of Municipal Council, predecessor of the Corporation, to levy and collect octroi was abolished and the provisions of law in relation to such power were repealed by virtue of the Amendment Act of 1999. Being so, according to the learned Senior Advocate, even the provisions for transitory arrangement comprised under Appendix IV of the Corporations Act, by themselves, would not come to the help of the Corporation to adopt the procedure which was prescribed under the Municipality Act for levy and collection of octroi duty. Drawing attention to Clause (5) of Appendix IV of the Corporation Act, he has further submitted that the provision specifically clarifies that only those provisions of law which were in force at the time the Corporation Act was made applicable to the areas comprised under the jurisdiction of the Corporation constituted on 30-6-2003 could be taken resort to and not to any other provisions which has been repealed much prior to that date. He had also submitted that the Cabinet decision dated 10-10-2001 (copy of which is annexed at Exhibit Rule 1 by the respondents alongwith their reply) nowhere grants any sanction in terms of the provisions comprised under the Corporation Act approving any procedure as such to be followed by the Corporation for levy and collection of octroi. The resolution merely relates to the assurance of compensation in lieu of octroi duty for a period of two years and requires the Corporation to levy entry cess. As regards the powers of the Government to issue order for removal of difficulties, attention is drawn to the proviso to Clause (23) of the said Appendix IV which prescribes period of limitation of one year from the appointed date. According to the learned Senior Advocate, since the Corporation came into existence on 30-6-2003 such an order could have been issued on or before 30-6-2004 and not thereafter.

11. Reliance is sought to be placed in the decisions in the cases of (i) Saibhusan Mukherjee v. The Corporation of Calcutta AIR 1949 Cal 20 , (ii) Rayalseema

Constructions Vs. Deputy Commercial Tax Officer, Mannady Division, Madras 1 and Others, , (iii) Harishchandra Vs. State of Madhya Pradesh, , (iv) Municipal Council, Khurai and Another Vs. Kamal Kumar and Another, , (v) The Town Municipal Committee, Amravati Vs. Ramchandra Vasudeo Chimote and Another, , (vi) The Atlas Cycle Industries Ltd. Vs. State of Haryana and Another, , (vii) Air India Vs. Union of India and others, and (viii) Baidyanath Ayurved Bhawan (Pvt) Ltd., Jhansi Vs. The Excise Commissioner, U. P. and Others, .

12. Shri U.K. Patil, learned Assistant Government Pleader for respondent Nos. 1 and 2, at the out-set has sought to raise an issue regarding absence of locus standi to the petitioners to challenge the issue regarding nonpayment of compensation to the Corporation after two years. However, as already stated above, since the petitioners have restricted the challenge to the imposition of octroi the question of dealing with other issues in the petition does not arise. The learned Assistant Government Pleader has further submitted that under the letter dated 3-5-2005 the Corporation was informed about the decision taken by the Government on 10-10-2001 that the Government expected the Corporation to levy entry cess and that the compensation which is to be given in lieu of octroi tax would be given only for two years. On completion of two years, grant of such compensation would be stopped. Considering the said letter, the Corporation is expected to levy entry cess. The resolution which was passed by the Corporation against imposition of octroi has already been rescinded by the Government in exercise of powers u/s 451 of the Corporation Act and there is no challenge to the said decision of the Government, Therefore, the petitioners are not entitled to dispute the powers of the Corporation to impose such tax. As regards Rules pertaining to the procedure for levy and collection of the tax which were framed under the Municipality Act, the learned Assistant Government Pleader has submitted that it is not the policy of the Government to allow old Rules framed under the Municipality Act can be followed nor there is any such clarification given on behalf of the Government to the Corporation either under letter dated 31-5-2005 or otherwise. However, according to the learned Assistant Government Pleader, considering the provisions of Section 493 read with the provisions contained in Appendix IV thereof, the same deal with the transitory provisions, the Corporation's power to imposed octroi tax and to follow the procedure which was followed earlier in that regard, cannot be disputed. As regards the letter dated 31-5-2005, the learned Assistant Government Pleader has submitted that it is merely in the form of an advice to the Corporation and it is not an order of the Government. He has further submitted that it does not disclose any policy decision of the Government.

13. Shri S.B. Talekar, learned Advocate appearing for respondent No. 3, has submitted that the letter dated 31-5-2005 has in fact been in exercise of the powers delegated to the Secretary under the Maharashtra Government Rules of Business and Instructions issued thereunder and particularly Clause 13 thereof. Therefore, the said letter has to be construed as an order of behalf of the Government. During attention to the various provisions comprised in Appendix IV

read with Section 493 of the Corporation Act, the learned Advocate for respondent No. 3 has submitted that the transitory provisions more particularly comprised under Clause (5) of the said Appendix clearly empower the Corporation to follow the procedure which was followed by the Municipal Council for the purpose of levy and collection of octroi and therefore, merely because the Rules which are required to be framed under the Corporation Act have not been framed so far, that will not prohibit the Corporation from levying and collecting octroi tax. He has further submitted that the provisions comprised u/s 493 read with Appendix IV and particularly Clause (5) thereof are essentially to overcome the difficulties which the Corporation may face in the initial days after its formation. Besides, Clause (23) of the said Appendix empowers the Government even to issue orders to remove the difficulties and this being so, nothing prevented the Government from issuing the order dated 31-5-2005 in view of the fact that the compensation which was to be given to the Corporation would not be given to the Corporation from the current financial year. He has further submitted that since the attempt is to raise funds for the Corporation to meet its day to day expenditure including salaries of its employees, the decision of the Corporation to levy and collect octroi cannot be found fault with nor can it be said to be contrary to the provisions of law. He has further submitted that though the Rules which were framed in relation to levy and collection of octroi under the Municipality Act would stand repealed consequent to the repeal of the powers to levy and collect octroi by the Municipal Council, nevertheless the Corporation is not debarred from following the procedure prescribed under those Rules by taking shelter of the provisions comprised under Clause (5) of Appendix IV of the Corporation Act. He has also submitted that the provisions comprised under Appendix IV are not subsidiary or secondary legislation but they form part of the main statute and therefore, the Corporation would be entitled to levy and collect the tax by taking resort to the provisions of Clause (5) of the said Appendix. Reliance is sought to be placed on the decision in the case of (i) Citizens Forum for Scientific Development of Pimpri-Chinchwad Vs. State of Maharashtra and Others, , (ii) Aphali Pharmaceuticals Ltd v. State of Maharashtra and Ors. : 1989(44)ELT613(SC) and (iii) K.S. Paripoornan Vs. State of Kerala and Others, .

14. There is no dispute that considering the provisions comprised in Section 127(l)(a) of the Corporation Act, the Corporation is duly empowered to levy and collect octroi. The grievance relates to non-compliance of the procedure which is required to be followed for levy of such octroi under the Statute and more particularly u/s 149 of the Corporation Act. On the other hand, respondent No. 3 Corporation insists that such powers can be exercised by taking resort to the provisions under Appendix IV of the Corporation Act.

15. Considering the facts of the case, the arguments by the learned Advocates and the relevant provisions of law, the short point which arises for consideration is whether respondent No. 3 Corporation, in order to levy and collect octroi could resort to the provisions of Clause (5) read with Clause (23) of Appendix IV read with Section 493 of the Corporation Act and adopt the procedure prescribed

under Octroi Rules, 1969, which were framed under the Municipality Act and which stood repealed since the year 1999, ignoring the provisions of law comprised u/s 149 of the Corporation Act.

16. Section 493 of the Corporation Act provides that the provisions of Appendix IV shall apply to the Constitution of Corporation and other matters specified therein. Appendix IV relates to the transitory provisions and under Part I thereof, the Clause (5)(a) read thus:

5. Save as expressly provided by the provisions of this Appendix, or by a notification issued under paragraph 22 of order made under paragraph 23 :-

(a) any appointment, notification, notice, tax, order, scheme, licence, permission, rule, bylaw or form made, issued, imposed or granted under the Maharashtra Municipalities Act, 1965 or any other law in force in any local area constituted to be a City immediately before the appointed day shall, in so far as it is not inconsistent with the provisions of this Act, continue in force until it is superseded by any appointment, notification, notice, tax, order, scheme, licence, permission, rule, bye-law, or form made, issued, imposed or granted under this Act or any other law as aforesaid, as the case may be:

Clause 23 of the said Appendix reads thus :

23. If any difficulty arises in giving effect to the provisions of this Act or, by reason of anything contained in this Act, to any other enactment for the time being in force, the State Government may, as occasion requires, by order do anything which appears to it necessary for the purpose of removing the difficulty.

17. It is settled law that the question of interpretation of provisions would arise only when there is some ambiguity in the statutory provisions. Otherwise, it has to be read and understood according to the language employed. When the words used in a statute are precise and unambiguous, they are to be understood in their natural and ordinary sense. Clear and plain words warrant no hypothetical consideration. In *Baidyanath Ayurved Bhawan's case* (supra), the Apex Court had ruled that in a taxing act one has to look at what is clearly said, there is no room for any intendment and there is no equity about a tax. So also there is no presumption as to a tax and nothing is to be read in, nothing is to be implied. The plain reading of Clause (5)(a) of Appendix IV would disclose that any action taken or order passed under any law in force immediately prior to the date of Constitution of the Corporation, in so far as it is not inconsistent with the provisions of the Corporation Act, will continue to remain in force until it is superseded by necessary action or order under the Corporation Act. The expressions in the said clause to the effect "law in force", "immediately before the appointed date" "shall inconsistent with the provisions of this Act" and "continue in force until" clearly disclose that the statutory provision has been made to facilitate day to day affairs of the newly constituted Corporations so that till appropriate decisions are taken under the provisions of the Corporation Act, its administration is not affected in any manner. The expressions "immediately" and "in force" disclose

that the action which is saved must be under the law which was in force on the date immediately prior to the date of formation or constitution of the Corporation. Perhaps, even a gap of one day may make a lot of difference and may not entitle the newly constituted Corporation to claim benefit of the statute which was already repealed prior to such gap of one day. Nevertheless in those cases the Government can come to the help of the Corporation by taking resort to Clause (23) of the said Appendix. In case, the Government decides to take resort to Clause (23) it has necessarily to be done within a period of one year from the date of formation of the Corporation. Proviso to Clause (23) clearly prescribes the period of limitation for exercise of such power by the Government. Once the statute clearly prescribes a limitation period, the authority acting under the statute is not empowered to assume such power after expiry of the period during which it is required to exercise such power. The provisions of law, therefore, abundantly disclose that the transitory provisions which can be resorted to by the Corporation are in relation to the actions taken by the Council under the statute which was in force immediately prior to the formation of the Corporation and not otherwise,

18. In the case in hand, undisputedly the provisions empowering the Municipal Council to levy and collect octroi under the Municipality Act were repealed in 1999. In other words, those provisions were not in force immediately prior to the formation of the newly constituted Corporation. The contention of the learned Advocate for respondent No. 3, however, is that though the provisions empowering the Municipal Council to levy and collect octroi under the Municipality Act were repealed and even if it is assumed that the Rules framed for the purpose of following the procedure for levy and collection of octroi would consequently stand repealed, nevertheless resort to those Rules can be taken by the Corporation in view of the provisions comprised under Clause 5(a) of Appendix IV to the Corporation Act. The law on the point that the machinery provisions in the form of procedure provided under the secondary legislation would automatically get repealed once the charging provisions in relation to imposition of tax are repealed is well-settled. Indeed, even the learned Counsel for respondent No. 3 has no quarrel about the said proposition. However, the exception is sought to be carved out in favour of the Corporation to take resort to such provisions even after they are repealed. The submission is devoid of substance. There is nothing on record to justify such an exception. The statutory provisions applicable to the Corporations are totally contrary to the submission. Absolutely no basis has been disclosed for such exception in favour of the Corporation. 19. The Apex Court in *Harish Chandm's case* (supra), while dealing with the issue relating to the legal effect of the parallel provisions on the same subject and whether the notifications issued by the State Government fixing prices of scrap iron were in force even after applicability of the provisions of Indian Scrap Control Order, 1943, to the State and particularly, after 12th September, 1950, the day on which the said Indian Scrap Control Order was made applicable to the State, and after considering the provisions of Section 24

of the General Clauses Act, quoted the following passage from Craie on Statute Law, 6th edition, page 334 :

If the statute under which bye laws are made is repealed, those by laws are impliedly repealed and cease to have nay validity unless the repealing statute contains some provisions preserving the validity of the by-law notwithstanding the repeal. This follows from the rule .. when an Act of Parliament is repealed it must be considered (except to transactions passed and closed) as if it had never existed.

Further relying upon the decision in *Watson v. Winch* 1916 (17) All.E.R. 972, wherein Lord Reading, C.J., had held that "it would follow that any by-law made under a repealed statute cases to have any validity unless the repealing Act contains some provision preserving the validity of the by-law notwithstanding the repeal" and Sankey, J., had observed that "when a statute is repealed any bye-law made thereunder ceases to be operative unless there is a saving clause in the new statute preserving the old bye law. There appear to be two reasons for this.... Secondly, because the usual practice is to insert in the later statute a section expressly preserving previously made bye-laws if it is intended that they shall remain in force." the Apex Court in *AIR Inida's* case (supra) ruled that:

In our view, if subordinate legislation is to survive the repeal of its parent statute, the repealing statute must say so in so many words and by mentioning the title of the subordinate legislation. We do not think that there is room for implying anything in this behalf.

Similarly, in *Milkfood Ltd. Vs. GMC Ice Cream (P) Ltd.*, , the Apex Court ruled that the transitory provisions is to be interpreted in the light of the circumstances existing on the date of the enforcement of the new Act.

20. Bearing in mind the said law laid down by the Apex Court as well as the Rules of interpretation of statute and considering the facts of the case in hand, it is abundantly clear that the statutory provisions empowering levy and collection of the octroi by Municipality were repealed in 1999. Consequently, the procedural rules in relation to exercise of such powers comprised under subordinate legislation also automatically stood repealed in the year 1999. They ceased to exist thereafter. The transitory provision under Clause 5 of the said Appendix specifically refers to law which was in force immediately prior to the formation of the newly constituted Corporation. Certainly, the rules for exercise of powers to impose octroi under the Municipality Act were not in force immediately prior to the formation of the newly constituted Corporation. The said provision neither provides for nor Amendment Act of 1999 had made any provisions of law for preserving or saving the rules relating to imposition of recovery of octroi under the Municipality Act which were in force prior to 1999. It being so, by no stretch of imaginations it can be assumed that by taking resort to the provisions comprised under Clause (5) of Appendix IV of the Corporation Act, the Corporation would be entitled to follow the procedure for levy and collection of

octroi under the repealed Rules,

21. Apart from what is stated above, the matter relates to the imposition of tax. Article 265 of the Constitution clearly provides that no tax can be either levied or collected except by authority of law, which implies, otherwise than the procedure prescribed under the provisions of law. Once it is clear that the Corporations cannot resort to the provisions comprised under Clause (5) of Appendix IV to impose, levy and collect the octroi duty by following the procedure prescribed under the Rules framed under the Municipality Act, the only provisions which would entitle the Corporation to exercise the powers available u/s 127 would be the provisions comprised u/s 149 of the Corporation Act. Admittedly, the Corporation has not resorted to the procedure prescribed u/s 149 of the Act. In *Commissioner of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala and Others*, it was clearly ruled that it is a normal rule of construction that when a statute vested certain power in an authority to be exercised in a particular manner, then the said authority has to exercise it only in the manner provided in the statute itself. Besides, one should not forget the fundamental principle of law that a natural person has capacity to do everything save and except those forbidden by law. In case of an artificial person created under a statute e.g, a Corporation, the rule is just converse. Whatever is not permitted expressly or by necessary implication by the constituting instrument is prohibited by application of doctrine of ultra vires. We are fortified in this view by the decision of Calcutta High Court in *Saibhusan Mukherjee's case* (supra).

22. In *K.S. Paripoornan's case* (supra), the Apex Court has clearly observed that to ascertain whether the transitional provisions would enable the authority to exercise certain powers or not one has to carefully consider and understand the transitional provisions comprised in the statute under reference. This is apparent from the observations of the Apex Court that "for the purpose of ascertaining whether and, if so, to what extent the provisions of Sub-section (1-A) introduced in Section 23 by the amending Act are applicable to proceedings that were pending on the date of the commencement of the amending Act it is necessary to read Section 23(1-A) along with the transitional provisions contained in Sub-section (1) of Section 30 of the amending Act." The Apex Court was dealing with the provision introduced in the Land Acquisition Act, 1894, by way of amendment in the year 1984.

23. The decision of the Apex Court in *Aphali Pharmaceutical's case* (supra) is on the point of various arrangements of statutory provisions being made while drafting the statute. It lays down that a schedule of a statute would form part of the Act itself.

24. The Division Bench of this Court in *Citizens Forum for Scientific Development of Pimpri Chinchwad's case* (supra) has held that in terms of the procedure prescribed under the law, the Rules were required to be brought in force. Once the sanction had been granted by the State Government, it does not retain any power, authority or jurisdiction to suspend enforcement of the Rules or to grant

any interim order. The Division Bench was dealing with a question as to whether the action taken by the State directing the Corporation not to implement new rules and not to collect octroi on the basis of new Rules was legal and valid. In that connection, the Division Bench was considering the issue as to whether the Government had such powers or not. The decision has no relevancy to the matter in issue.

25. In Municipal Council Khurai's case (supra) the Apex Court had ruled that:

Under Article 265 of the Constitution no tax shall be levied or collected except by authority of law. This clearly implies that the procedure for imposing the liability to pay a tax has to be strictly complied with. Where it is not so complied with the liability to pay the tax cannot be said to be according to law.

26. We are also in respectful agreement with the proposition that the expression "levy of tax" would include both the stages i.e. the levy properly so called and determination of the amount of the tax" as was laid down by the Madras High Court in Rayalseema Construction's case (supra).

27. The contention of respondent No. 3 that the letter dated 31-5-2005 issued by the Deputy Secretary is an order in exercise of the powers delegated to such authority under the Maharashtra Government Rules of Business and Instructions issued therein is totally devoid of substance. Clause (13) thereof, to which attention was drawn, merely deals with the subject of authentication of an instrument or order. It does not deal with the power to take decision by such authority. When the statute specifically provides that the decision is required to be taken by the Government, it obviously means that the decision is of the Governor. Section 149 of the Corporation Act clearly requires decisions to be of the Government. Unless under the Rules of Business framed under Article 166 of the Constitution of India, the power is specifically delegated to such authority, no such authority is empowered to exercise such powers. No such delegation having been disclosed, the question of assuming that the letter dated 31-5-2005 was issued by the competent authority in exercise of powers delegated under the said Rules does not arise. That apart, the authority itself does not claim that it was issued in exercise of the powers under the Corporations Act. The learned Assistant Government Pleader has categorically stated that the letter dated 31-5-2005 is not a decision of the Government but it is merely an advice by one of the officers of the Government to the Corporation. This being so, there is no substance in the contention of respondent No. 3 that the letter dated 31-5-2005 is an order of the Government,

28. It is well settled by number of decisions of the Apex Court that the taxing statute or provision cannot be interpreted on any assumption or presumption. It has to be interpreted in the light of what is clearly expressed. There can be neither any scope to imply something which is not expressed nor any provision can be imported to supply deficiency. Neither there is scope for equity for judiciousness can twist the taxing statutes and provisions. It was clearly ruled by

the Apex Court in *State Bank of Travancore Vs. Commissioner of Income Tax, Kerala*, , the considerations of hardship, injustice or anomalies do not play any useful role in construing taxing statutes, unless there is real ambiguity. This settled law applies to the assesses as well as to the revenue and the same was clarified in *Commissioner of Income Tax, Madhya Pradesh Vs. Hukumchand Mohanlal*, and in *Kapil Mohan Vs. The Commissioner of Income Tax, Delhi*, .

29. Needless to say that the issue in the matter in hand relates to the decision of the Corporation to proceed to levy octroi by taking resort to the provisions of Clause (5) of Appendix IV of the Corporation Act and not by resorting to any other provision incorporated under the Corporation Act or the Rules framed thereunder. That the power to levy and collect octroi by the Corporation otherwise exists is undisputable, But it has to be exercised in accordance with the provisions of law.

30. In the result, leaving open all other issues which were sought to be raised in the petition, the decision of the Corporation to levy and collect octroi merely by resorting to the provisions of Clause (5)(a) read with Clause (23) of Appendix IV read with Section 493 of the Corporation Act cannot be sustained and is liable to be quashed and set aside which were do hereby order. Hence, the petition succeeds on that ground alone and it is hereby allowed. Rule is made absolute in above terms with no order as to costs.