
(1997) 06 RAJ CK 0004
In the Rajasthan High Court
Case No : C. Revision No. 430 of 1996

Indian Oil Corporation Ltd.

APPELLANT

Vs

Municipal Board and Another

RESPONDENT

Date of Decision : 18-06-1997

Acts Referred:

Citation : (1997) 1 WLN 496

Hon'ble Judges : Shiv Kumar Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Shiv Kumar Sharma, J.—A person who seeks temporary Injunction must satisfy the Court as to the insistence of the following conditions:

First; that there is a serious question to be tried in the suit and that on the facts before the Court there is a probability of his being entitled to the relief asked for by him.

Secondly, that the Court's interference is necessary to protect him from the species of urgency which the Court calls irreparable before his legal right can be established on trial, and

Thirdly, that the comparative mischief on inconvenience which is likely to issue from withholding the injunction will be greater than that which is likely to arise from granting it.

2. The genesis of the controversy in the case on hand, relates to the order dated Feb. 23, 1996 whereby the temporary injunction granted by the trial Court in favour of the plaintiff petitioner was set aside.

3. The background is this. The plaintiff petitioner (for short the company) instituted a civil suit for injunction in the trial court with the averments that the State Government looking to the importance and beneficial purposes for the public of Rajasthan, published a notification on April 21, 1994 exempting the

material required for the project from the levy of octroi at the places which covered the VGPPL Project. Consequently, the authorities or person in charge to recover Octroi, were restrained from charging octroi for the goods required to be brought for VCPPL Project. But in the month of January 1996, the N.P. No. 2 (Prem Singh and Company) on behalf of N.P. No.1 (Municipal Board Chaksu) demanded octroi on the goods which were brought for the VCPPL Project and did not permit the Trucks to cross the octroi barrier. As the non petitioner did not comply with the notification dated April 21, 1994, the company was constrained to file a suit for injunction alongwith an application for temporary injunction to restrain the non-petitioner from charging any octroi on the goods brought for the VCPPL Project in terms of Notification. The learned trial Court vide order dated Jan. 29, 1996 granted temporary injunction restraining the non-petitioner from charging the octroi on the goods brought for the aforesaid Project. The non-petitioners preferred separate appeals against the said order. The learned District Judge allowed the appeals and set aside the order of the trial Court.

4. I have given my anxious consideration to the rival contentions and carefully perused the record. I am of the view that there is a serious question in respect of interpretation of Notification dated April 21, 1994 which is to be tried in the suit, therefore prima facie case exists in favour of the company. But the existence of a prima facie case is not by itself sufficient for grant of a temporary injunction. The company should besides showing existence of prima facie case further satisfy that the Courts interference is necessary before its right can be established on trial by showing that irreparable injury will accrue to it if injunction is not granted. A temporary injunction is not to be granted merely because it would not be causing any loss or injury to the defendant, the material and rather the most material question to be considered is whether the plaintiff would suffer any irreparable injury but for the grant of such injunction. The term irreparable injury does not mean that there must be no physical possibility of repairing the injury but means only that the injury must be a material one i.e. one that can not be adequately compensated for in damages. If monetary payment of octroi is made, it would not cause irreparable loss to the company.

5. I am unable to persuade myself to agree with the contention of the learned Counsel for the company. In my considered view the real intent of the notification dated April 21, 1994 can be appreciated in the main suit.

6. There is no jurisdictional error in the order impugned and if it is allowed to stand it would not occasion failure of justice.

7. In the result the revision fails and is hereby dismissed. The record of the case be sent back forthwith. In the facts and circumstances of the case it is expected from the trial Court to adjudicate upon the civil suit within a period of six months from the date of receipt of this order. The parties are directed to appear before the trial Court on July 8th, 1997. Costs each.