(1978) 07 OHC CK 0007

In the Orissa High Court

Case No : O.J.C. No. 801 of 1977

I.T.C. Limited and Another APPELLANT

Vs

Puri Municipal Council and Others RESPONDENT

Date of Decision : 21-07-1978

Acts Referred:

Constitution of India, 1950 — Article 265, 301, 31(1)
Orissa Municipal Act, 1950 — Section 117(1), 13(1), 131(1), 388(3)

Citation : (1978) 46 CLT 387

Hon'ble Judges : S.K. Ray, C.J;N.K. Das, J

Bench : Division Bench

Final Decision : Allowed

Judgement

N.K. Das, J.—The Municipal Council of Puri imposed octroi tax on marine fish including prawns and also on prawns brought from Chilka side to Puri and fish caught from sea. The case of the Petitioners is that Petitioner No. 1 is a company which carries on the business of exporting prawns to various foreign countries which is one of the items of its business. It procures prawns from the catchers and after processing the same, sends to foreign countries. The procurement of prawns is through its commission agent. This commission agent collects prawns from inside the limits of the Puri Municipality and therefrom carries the same to the processing plant at Gopinathpur which is situated outside the limits of Puri Municipality. The prawns are processed at that place, then refrigerated in vans and are thereafter sent to Calcutta Port by road for export. None of the prawns either procured or carried by the firm and processed at the factory is ever sold, used or consumed or otherwise disposed of either within the limits of the Puri Municipality, or anywhere else in India. The entire quantity is exported outside India. The prawns are caught by fishermen from the sea who bring the same into the municipal limits and they are purchased by the firm inside the municipal limits and when the firm carries the prawns to its processing unit, the municipality is charging octroi tax at the exit point and has been collecting the same. The municipality has also in the meanwhile enhanced the rate of octroi tax.

The Petitioners challenge the imposition of such tax as well as the provisions for imposition of the same on the ground that the provisions of Section 131(1)(kk) of the Orissa Municipal Act are ultra vires the Constitution and as such the bye-laws framed thereunder are illegal. The provisions under the bye-laws are also contrary to law. Even assuming that the provisions of the bye-laws are not contrary to law, the demand and collection of octroi tax of the exit point, as is being done by the municipality, are not envisaged under the bye-laws and are ultra vires the Municipal Act. The scheme of levy of octroi tax envisages that such tax is payable when article arrives at a check post before entering into the limits of the municipality and at that point octroi tax is to be assessed and imposed. The municipality has no authority to demand octroi tax in respect of prawns purchased by the Petitioners at the exit point at Atharnala Check Post. The Municipality has been compelling the Petitioners to pay octroi tax at the exit point. It is contended that Section 13(l)(kk) of the Orissa Municipal Act is ultra vires and suffers from the vice of excessive delegation as it amounts to abdication of essential legislative functions. There is no provision in the Act for authorising the municipality to fix a particular rate of octroi tax and as such the rate that may be fixed by the municipality is without jurisdiction and void. The bye-laws framed by the municipality are not in accordance with the provisions of the Orissa Municipal Act. The provisions of the Act and the bye-laws thereunder do hot authorise the municipality to demand and collect octroi tax on exit of goods outside the limits of the municipality. If the bye-laws are interpreted to authorise the municipality to collect octroi tax at the exit point, then the same ultra vires Entry 52 of List II of the 7th Schedule of the Constitution of India. The bye-laws are unreasonable and imposition of octroi tax is without authority and infringe the provisions of Article 31(1) and Article 265 of the Constitution of India and as such are without jurisdiction, void and unenforceable. The Petitioners pray for a declaration that the Orissa Municipal Act of 1950. as amended thereafter, insofar as it imposes octroi on them and in particular the provisions of Section 13(1)(kk) and the resolutions of the municipality as well as the bye-laws of the municipality are unconstitutional and void. They have further prayed for refund of the octroi taxes already collected from them.

2. Opposite parties 1, 3, 4 and 5 in their return have controverted the assertions of the Petitioners. It is contended by them that fishes and prawns are brought from sea to the municipal area for sale and as such are liable to be taxed since the sale takes place within the municipal limits. The provisions of Section 131(1)(kk) are not ultra vires to Constitution and are in accordance with the relevant entries in the Constitution of India. The bye-laws are also in consonance with the provisions of the Act. The municipality passed resolutions according to the provisions of the Act and the bye-laws. The same have also been approved by Government. Besides Atharnala Check Post, a temporary check post has also been set up at Chakratirtha Road during winter season. These check posts are not exclusively exit posts. Host of the goods enter into the municipal limits through Atharnala Check Post and it cannot be said to be at the exit point only.

The collection made from the Petitioners at the Atharnala Check Post is not illega1. As the prawns procured by the Petitioners are subjected to sale within the municipal limits and octroi tax is not realised in respect of such goods at any earlier point of time, the same can be assessed and tax can be collected at the Atharnala Check Post. According to the bye-laws tiny person found in possession of goods is liable for tax and if tax has not been realised earlier the municipality has authority to collect the same at any point of time. In other words, the goods in question are subjected to tax when found in possession of Petitioner No. 1 or his agents or servants because they had been brought into the municipal limits for the purpose of sale and the Petitioners or their agents purchase the same within the municipal limits. The tax is on goods which enter the municipal limits for the purpose of sale and is not ultra vires. The provisions of the bye-laws are reasonable and sufficient opportunity is provided to the person on whom the tax is levied.

3. The vires of Section 131(1)(kk) of the Orissa Municipal Act are no longer res integra. This question was first raised in The Orissa Ceramic Industries Ltd. and Others Vs. Executive Officer, Jharsuguda Municipality and Others, It was contended therein that the section suffers from excessive delegation as the minimum or maximum limit of tax that may be levied has not been indicated and unfettered discretion has been given to the municipality. The Section was also attacked on the ground that the amount collected as such tax is not expended for the limited purpose as mentioned in Section 117(1) of the Act. The rates to be fixed are absolutely unfettered. All these points have been negatived by this Court. This question was again raised in Sridhar Patnaik and Ors. v. Keohjhar-Garh Municipality and Anr. 1972 (1) C.W.R. 105, and the decision in Jharsuguda Municipality case was upheld. In Bhaskar Textile Mills Ltd. v. Jharsuguda Municipality and Ors. ILR 1977 Cutt 48 Section 131(l)(kk) of the Orissa Municipal Act was challenged on the ground of being violative of Article 301 of the Constitution. This Court has reaffirmed its previous decisions. Also in Sridhar Patnaik easel, referred to above, the points raised by the Petitioners have been answered. In view of the aforesaid consistent decisions of this Court which are binding on us, Mr. Choudhury, the learned Counsel for the Petitioners, has not argued the point of ultra vires of Section 131(l)(kk) of the Orissa Municipal Act, without abandoning the same.

4. The main contention of Mr. Choudhury is that imposition of octroi is the Event of entry info the municipal limits. The Petitioners are purchasers from catchers and the purchase takes place inside the municipal limits. When they go out of the municipal limits at Atharnala Check Post, octroi is demanded from them. Accordingly, his contention is that the provision for such demand in the bye-laws is illegal and void.

5. Entry 52 of List II of the 7th schedule of the Constitution of India relates to "taxes on the entry of goods into a local area for consumption, use or sale therein". On the authority of the said entry, the State Legislature has enacted

Section 131(1)(kk) of the Orissa Municipal Act for collection of octroi. The Puri Municipality has framed bye-laws exercising its powers u/s 131(1)(kk) of the Act which provides as follows:

The Municipal Council may, from time to time, at a meeting convened expressly for the purpose, of which due notice shall have been given subject to the provisions of this act impose within the limits of the municipality the following taxes and fees or any of them- xx xx

In exercise of the powers conferred u/s 131(1)(kk) read with Section 388(3), as described above, the Puri Municipality has framed bye-laws for collection of octroi, which is annexure-B/1 to the writ application. From the notification, it appears that the State Government has approved the bye-laws. This bye-law provides for imposition of octroi at such rates and on such articles and goods brought within the limits of the Puri Municipality for consumption, use or sale. In bye-law 4, it is provided that any number of check posts and branch check posts shall be established at such places or in the immediate vicinity of the limits of the municipality. The relevant provisions in the bye-laws are:

Bye-law 10. "In anticipation of the arrival of articles subject to octroi exceeding Rs. 201- in value, the owner may present the receipt and the invoice of such articles with certified copies thereof to the Superintendent who on being satisfied as to their correctness shall assess the amount...." Bye-law 11.

(l) Every person in charge of goods or articles subject to octroi shall as soon as they are brought within the octroi limits, take them to the nearest octroi check post if required by any octroi official to be dealt with in accordance with these bye-laws.

(2) If any goods or articles are brought within the limits by evading payment of octroi and it is prove to the satisfaction of the Octroi Superintendent that the goods or articles are liable to payment of octroi and have been brought without payment of such octroi the said Superintendent may after giving reasonable opportunity to the owner or person in charge by serving a notice on him make the necessary assessment and on such assessment the owner or person in charge of goods or articles shall pay the octroi.

xx xx

(3) On the arrival of goods or articles subject to octroi at a check post the Octroi official in charge of check post shall call upon the person in charge (1) to declare whether the goods or articles are intended (a) for consumption, use or sale within the limits (b) for immediate transport beyond such limits or (c) for temporary retention within such limits and eventual transport; and (2) To give their weight and description and where octroi is leviable ad valorem the value, every person making a declaration as to the nature, quantity and value of goods liable to octroi brought by him shall be bound to make a true declaration concerning them to the best of the knowledge and belief. Provided that the Octroi

official in charge of the check post shall presume that all the goods or articles that are brought within the limits are for use, consumption or sale until the person in custody of the goods or articles declares to the contrary."

Bye-taw 24 "(a) Goods intended for immediate transport and in transit through the limits shall not be subject to the octroi. On the arrival of such goods at the check post and after the declaration under bye-law 11 has been made, the Octroi Muharrir shall grant a pass free of charge in form ''C'' called the "Transit Pass". The goods will [hen proceed under the escort of a peon to the check post through which they are to go out. xx xx"

Bye-laws 25. "(l)Any person claiming any refund of octroi paid in respect of articles or goods brought by him shall apply in form ''E'' to the Executive Officer with in 15 days of such transportation.

xx xx xx"

6. Mr. Choudhury contends that according to the provisions of the Act and the entry in List II of the 7th Schedule of the Constitution, the taxable event is the entry of the goods. This question came up for consideration of this Court in M/s. Star Tobacco House v. Municipal Council, Cuttack and Ors. 1976 (2) C.W.R. 970 where a Division Bench held:

The critical time for payment of octroi duty is when the articles arrive at a check post before entering into the limits of the Cuttack Municipality. It is at that point of time the assessment of octroi duty is to be made on the value of the articles. Value at the check post would mean the entire cost incurred by the owner up to that point of time. xx

The question of octroi came up for consideration also in Burmah Shell Oil Storage and Distributing Co. India Ltd. Vs. The Belgaum Borough Municipality, . It was observed in this decision by the Supreme Court:

When the Government of India Act, in its Scheduled Tax Rules, mentioned ''octrois'', it intended to give the power to levy taxes in this well-understood sense, namely, on the entry of goods in a local area for consumption, use or sale.

While dealing with the question of consumption, use or sale, the Supreme Court held:

The two expressions use and consumption together therefore, connote the bringing in of goods and animals not with a view to taking them out again. x x

In para 21 of the judgment in that case, the Supreme Court held:

The goods must be regarded as having been brought in for purposes of consumption when a person brings them either for his own use or consumption, or to put them in the way of others in the area, who are to use and consume. In this process the act of sale is merely the means for putting the goods in the way of use of consumption. It is an earlier stage, the ultimate destination of the goods being ''use or consumption''. The earlier stage, namely, the sale by him, does not save the person who brought the goods into the local area from liability to the tax if the goods were brought inside for consumption or use.

The Supreme Court also in Jothi Timber Mart and Others Vs. Corporation of Calicut and Another, , held:

Entry of goods within the local area for consumption, use, or sale therein is made taxable....

7. Section 388(3) of the Act envisages framing of byelaw only in respect of the time and mode of collection. Therefore, the time for collection means the event of point of entry. In this connection, it is contended by the Petitioners that though the expressions "owner", "person in charge" and "person in custody" have been mentioned in the bye-1aws at different places all these expressions mean the owner or his agent. The other provisions of the bye-laws would show that when the price of the goods and above Rs. 20/-, octroi can be paid in advance which is to be adjusted thereafter. On arrival of the goods at the check post, declaration is to be made by the person who has brought in the goods. The check posts are within the municipal limits. At that point, he has to satisfy the municipal officer in charge and assessment is to be done and payments are to be made. If ultimately any amount is to be refunded, then the person who brought in the goods is to claim refund. These provisions would clearly show that the person who brings the goods into the local limits of the municipality has to perform certain duties and has to pay the duty imposed, in other words, has certain liability.

It is contended by Mr. Rath, the learned Counsel for the municipality, that when the goods are brought within the limits of the municipality and the goods are liable for octroi tax and it is found that the same has not been paid, then the person found in charge of the goods is liable to pay the tax. Accordingly, he contends that when the goods reach Atharnala Check Post, assessment can be made and octroi can be collected.

It is not disputed that the sea is on one side of the limits of the Puri Municipality and on the other side is the Atharnala Check Post where the municipality is connected with other parts of Orissa by road. It is also not disputed that prawns are caught by catchers (fishermen) from the sea and those are brought inside the municipal limits and the agents of the Petitioners purchase the same within the municipal limits, but take the prawns outside for processing with a view to exporting the same. The contention of the municipality is that as prawns are sold inside the municipal limits and are liable for octroi duty, the municipality has every right, by virtue of the provisions of the bye-law 11(2), to impose and collect octroi on prawns when they go out of the municipal limits at the Atharnala Check Post. Bye-law 11(2) provides that if any goods or articles are brought within the limits by evading payment of octroi and those are liable to payment of octroi necessary assessment is to be made by the Octroi Superintendent. Mr.

Choudhury contends that the Petitioners never brought in prawns evading payment of octroi duty. The catchers are the persons who bring in fish from the sea for sale within the municipal limits and thus it cannot be said that the Petitioners evaded payment of octroi. In this connection, reliance has been placed on Simms and Ors. v. The Registrar of Probates (1900) A.C. 323. In that case, it has been observed that the word "evade" means to avoid by some direct means, by some device or stratagem, and the word avoid suggests underhand dealing and means nothing more than the intentional avoidance of something disagreeable. In this case also their Lordships have taken into consideration the question, if the motive of escaping the duty can be traced to the disposer, he may be liable to what everybody speaks of as and feels to be a penal tax; and that, with no limit of time, and with no limit of person. It has further been held that where there are two meanings each adequately satisfying the language, and great harshness is produced by one of them, that has legitimate influence in inclining the mind to the other. If the word "evade" be taken to signify some contrivance between donor and donee, that which is pointed out as the greatest harshness of the enactment (their Lordships were considering the case of imposition of duty on transfers by way of gift) would be removed or substantially reduced, seeing that the donee would be a party to the transaction which causes loss to him. Their Lordships also held that the word "evade" when used of actual evasion, and not merely of something which, not being an evasion, was by an artificial mental process to be presumed or deemed an evasion, is to be taken as meaning some kind of underhand contrivance.

Basing on this finding, it is contended that there was no underhand contrivance by the Petitioners to avoid octroi duty which the catchers were liable to pay while bringing the prawns inside the municipal limits. Mr. Rath, the learned Counsel for the municipality, relying on Khyerbari Tea Co. Ltd. and Another Vs. The State of Assam, , contends that the tax on goods carried by road or by in land waterways were also held to be on the producer because ultimately the goods are carried by road or waterways and thus the person who is found in possession of the goods is liable for the octroi duty and where such duty is not paid is also liable to pay octroi duty. In our opinion, the facts and circumstances of Khyerbari Tea Co. Ltd. and Another Vs. The State of Assam, are not applicable to the present case, inasmuch as the provision of octroi on goods is the point of entry, as has been discussed above.

8. Admittedly prawns are brought into the municipal limits of Puri Municipality by the fishermen to sell the same to the Petitioners. The imposition and liability of octroi duty is specifically done at the point when those are brought into the municipal limits. In the bye-laws, the expressions at different places should be read as carrying the same meaning and cannot be given any meaning out of context. It is well settled that in a statute when different expressions are used, the statute is to be considered as a whole and the same meaning is to be given to all the expressions, unless otherwise expressly provided In the statute.

9. In the Interpretation of Statutes by Maxwell (Eleventh Edition) at page 311, it is stated that at all events, it is reasonable to presume that the same meaning is implied by the use of the same expression in every part of an Act. It is not a case here that the same word is used in different sense in the same bye-law. Therefore, as held by Maxwell, it has been justly remarked that when precision is required, no safer rule can be followed than always to call the same thing by the same name. At page 27 of that book, it is stated that it is an elementary rule that construction is to be made of all the parts together, and not of one part only by itself. While discussing about the taxing statute, it has been stated at page 278 that it is well-settled rule of law that all charges upon the subject must be imposed by clear and unambiguous language, because in some degree they operate as penalties and the subject is not to be taxed unless the language of the statute clearly imposes the obligation. In this connection, it has been observed:

In a Taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used. xx xx. In a case of reasonable doubt the construction most beneficial to the subject is to be adopted. Still less is the language of a section to be strained in order to tax a transaction which, had the legislature thought of it, would have been covered by appropriate words.

The expressions "owner" or "person in charge" in the bye-law 11(2) relate to those who are in that position or capacity at the point of time of bringing in and not to any bona fide purchaser who cannot be said to be under any legal obligation to verify whether octroi has been paid or not by the seller. The distinction can also be made on the passing on of the incidence of the octroi as part of value during sate and the transferability of the octroi as a legal/taxation liability in the context of the particular transaction in question. It is not valid to say that Bye-laws 11(2) covers any "owner" or "person in charge" (other than the person bringing in the goods) as Section 388(3) of the Orissa Municipal Act authorises the Municipal Council to make bye-laws for the regulation of the time and mode of collecting taxes under the Act and as the relevant time is entry or being brought into the limits, nothing more can be construed than what the statute authorises. Nothing more is to be presumed. If something more is to be presumed than the clause "when brought within" in Clause 3 of the bye-law, the same expression in the context of the other clauses becomes meaningless. The calculation for value is possible only at the point of entry even if a back calculation is thought of and difficulty may arise as there might have taken place a number of interrelatedly sales and purchases. Transport charges, inter mediary profit will all get into the value (see Star Tobacco case, referred to above). Profits of dealers and unknown dealers cannot be eliminated. Provision for this "bringing in" articles is unworkable and as such stands in an illusory position.

10. Bye-law 11(2) speaks of "evasion" as distinct from non-payment (this may

be, as in this case in the absence of an adequate machinery for collection). Evasion has specific connotation 10 the nature of an intent to evade through some device and contrivance, as discussed above. There is no allegation of any evasion by the Petitioners in this case. Projecting bye-law 11(2) as a machinery of collection (and of prevention of evasion) and thereby as a procedural derivative power covering the Petitioners would not be valid in view of the above findings and as such, Khyerabari case is not applicable to the facts of the present case.

Mr. Rath then contends that as the sea is on one side of the municipal limits of Puri, it is not possible to have check post on sea side which is vast in extent. But hardship is no ground for consideration on this point in face of clear provision of law.

Mr. Rath also relies on Rai Ramkrishna and Others Vs. The State of Bihar, This case relates to taxation on passengers and goods carried by road or inland waterways. It has been held in that case that it would be convenient to provide for the recovery of the tax from owners of the vehicles themselves and thus it is competent to the Legislature to devise a machinery for the recovery of the said tax by requiring the bus operators or bus owners to pay the said tax. This point was also not disputed by the parties of that Case. Therefore, the said case is not of any help.

11. Suppose a person brings ten quintals of fish into the municipal limits and sells the same to ten different persons, namely, one quintal to everyone. It is not the bounden duty of the purchaser to inquire whether octroi tax has been paid and these persons cannot be liable to pay octroi duty when they go out of the local limits. Supposing also, there are five different consecutive sales inside the local limits of the municipality by the aforesaid ten persons to hundred other persons those hundred persons cannot be held liable to pay octroi tax at the exit check post. It is not expected that the aforesaid hundred persons will inquire about payment of octroi duty and would be liable to pay octroi duty at the exit point. Mr. Rath also contends that the check post at Atharnala is also an entry to the municipal area. Undoubtedly that is the entry point from road side and at the same time it is also the exit point from inside the municipal limits

The municipality derives its powers from the State Legislature and the power of the State Legislature cannot go beyond Entry 52 of List II of the 7th schedule of the Constitution of India. When the Constitution provides levy of tax on goods on entry into a local area, the State Legislature has power only to that extent and the municipality having framed its bye-laws in pursuance of Section 388(3) of the Act which definitely relates to time and mode of -collection, the power of the municipality in framing its bye-laws is limited to that extent. In Jothi Timber Mart case2it has been observed that when the power of the Legislature with limited authority is exercised in respect of a subject matter but words of wide and general import are used, it may reasonably be presumed that the Legislature was using the words in regard to that activity in respect of which it is competent to legislate and to no other; and that the Legislature did not intend to transgress the limits imposed by the Constitution. On the aforesaid analogy, the bye-laws of the municipality are to be limited only to the power of the Municipal Act [Section 131(1)(kk)] which has been enacted under the power conferred by the relevant entry of the Constitution.

12. On the aforesaid analysis, we hold that imposition of octroi on Petitioners at the Atharnala Check Post is not valid and authorised and the provision of bye-law 11(2), as discussed above, will be limited to the persons and to the point of entry, as we have already held.

13. Mr. Choudhury has also raised certain other contentions relating to the nature and character of octroi tax, but as we have held that imposition of octroi duty on the Petitioners in respect of prawns purchased by them inside the municipality is not leviable at the Atharnala Check Post, we think it would be unnecessary to discuss those technical points and the same would be purely academic.

14. In the result the writ application is allowed in part. Imposition and collection of octroi tax from the Petitioners at Atharnala Check Post by opposite party No. 1 and its officers are quashed and they are directed to refund to the Petitioners the octroi tax already collected from them. In the circumstances of the case, we direct each party to bear its own costs.

S.K. Ray, C.J.

I agree.

16. Appeal partly allowed.

