
(1971) 07 MP CK 0004
In the Madhya Pradesh High Court
Case No : M.P. No. 431 of 1970

Jagatram Daswani and others

APPELLANT

Vs

State of Madhya Pradesh and another

RESPONDENT

Date of Decision : 19-07-1971

Acts Referred:

Constitution of India, 1950 — Article 226, 277

Citation : (1971) J LJ 845 : (1971) MPLJ 911

Hon'ble Judges : Bishambhar Dayal, C.J.; S.P. Bahrgava, J

Bench : Division Bench

Advocate : Y.S. Dharmadhikari and A.H. Saifi, for the Appellant; J.P. Bajpai, D.A.G. and M. Adhikari, for the Respondent

Final Decision : Dismissed

Judgement

Bishambhar Dayal, C.J.

This is a petition under Article 226 of the Constitution by a number of merchants doing business within the limits of Municipal Council, Murwara (Katni), challenging the validity of imposition of octroi duty on certain articles by that municipality. Many questions have been raised and we will deal with those questions giving the relevant facts in respect thereof separately.

Murwara municipality was first established under the C. P. and Berar Municipalities Act (hereinafter referred to as the old Act), and the last elections to that municipality took place in 1958. With effect from 1st February 1962 the M. P. Municipalities Act came into force (hereinafter referred to as the new Act). Section 2 (2) of the new Act continued all the municipalities which had been constituted and elected under the old Act. Fresh elections were held under the new Act in 1964, but they were set aside by the High Court and the body elected under the old Act continued to hold office. In view of the fact that in a large number of towns old bodies elected long back were holding office, the State Government issued an ordinance whereby a new Section 36-A was added to the

M. P. Municipalities Act. The effect of adding this section was, and there is no dispute about it, that the municipal council which was then in power stood dissolved. The relevant part of this section is as follows:

....then such deemed council shall on the date of commencement of the said Ordinance stand dissolved and the provision of Section 328 shall apply in respect thereof.

By this addition of Section 36-A two effects were created-(1) that the Municipal Council, Murwara stood dissolved; and (2) that Section 328 of the M. P. Municipalities Act became applicable to this municipal Council. This section 328 gives power to the State Government either (1) to dissolve a council; or (2) to suspend a council; or (3) to supersede a council for a period. By Sub-section (6) of this section, in all these cases, the State Government has been given the power to appoint an administrator. Therefore, the effect of the ordinance adding Section 36-A to the new Act and thereby applying Section 328 of that Act to this council was that this council stood dissolved and the powers given to the State Government u/s 328 became applicable to this council. Clause (b) of the said Sub-section (6) authorises the State Government as follows:

all powers and duties of the council under this Act may, until the council is reconstituted, be exercised and performed by such person or a committee of persons as the State Government may appoint in that behalf;

After the aforesaid effects had taken place and an administrator had been appointed by the State Government for this municipal council this ordinance inserting Section 36-A to the Act was repealed and Section 36 also was deleted

On this part of the case the contention of learned Counsel for the Petitioners is that after the deletion of Section 36-A the power of the State Government to appoint an administrator came to an end; the old council revived; and, in any case, the State Government could not appoint an administrator after the date of deletion of Section 36-A. We are unable to accept this contention of the learned Counsel. Section 10 (b) of the M. P. General Clauses Act provides as follows:

Where any Madhya Pradesh Act repeals any enactment, then, unless a different intention appears, the repeal shall not-

(a) xxx xxx xxx xxx

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder;

This would indicate that the previous operation of Section 36-A, inasmuch as it dissolved the existing council and vested in the Government the power of appointing an administrator, could not disappear after the repeal. Once the power to appoint an administrator had been vested in the Government it could not automatically be taken away and, consequently, the State Government had the power to appoint an administrator one after the other so long as the

Government found it necessary. This contention of the learned Counsel was aimed at invalidating the proposals to impose the octroi duty which were made by the second administrator who was appointed after the first administrator had been transferred and it is the second administrator who sent the proposals dated 12th October 1968 to the State Government which were published in the M. P. Gazette on 13th June 1969 and which proposals are the basis of the present imposition. We therefore come to the conclusion that the second administrator was properly appointed and had the jurisdiction to do all the acts of the council including the making of proposals for imposition of a tax.

With regard to these proposals another contention of the learned Counsel was that under the M. P. Municipalities Act there is a procedure laid down for imposition of a tax. By Section 127 of the Act authority is given to the municipal council to impose any tax. By Section 129(1) the council has to pass a resolution to propose the imposition of a tax. The contention of the learned Counsel is that the council having been dissolved there could be no resolution by such a council. We do not see any force in this contention. When u/s 328 an administrator has all the powers of a council, he can himself, without there being a meeting of the council, do the same thing for proposing the imposition of a tax as the council could do. Notice of such proposal has to be published u/s 129(2), which was done as mentioned above. Objections were received from the residents of the municipal area as provided by Section 129(3). Thus, the procedure was properly followed, although it was not so done by a council of elected members but by an administrator.

In this connection the learned Counsel further contended that the municipal council itself acts as a delegate from the legislative body and the Procedure prescribed by the Municipalities Act is the only safeguard against the municipal council exercising the powers arbitrarily. Where a municipal council does not exist and a single person has to exercise the powers, that safeguard disappears and any exercise of delegated power must be deemed illegal. We do not see any force in this contention because in this particular case a mere proposal was made by the administrator. The objections filed by the public were later considered by an elected body and the tax was ultimately imposed by a resolution of the elected body. Moreover, this municipality was highly indebted to the State Government. u/s 162 of the Act the State Government has the power to require a council to impose a particular tax and the Government had in fact threatened to exercise this power if the council did not proceed with the imposition of this octroi duty. This imposition was therefore not merely a freak of the mind of the administrator but in the circumstances of this council the tax had to be imposed and the State Government was in full concurrence with this imposition. Even the proposals were submitted by the administrator to the State Government and had been approved by it. We therefore do not agree that the proposals made by the administrator were wholly non est and consequently the imposition is vitiated.

The next set of facts which are relevant in this connection are these. On 31st July

1969, fresh elections having been held, a new elected body came into office. On 13th September 1969 the proposal for imposing the octroi duty and the objections of the members of the public to such imposition were considered by this council and it came to the conclusion that octroi need not be imposed as it was opposed by a large number of citizens. Later on, at the request of the President of the council this resolution was reconsidered by the council by its resolution dated 3rd March 1970 and the proposals to impose octroi duty were referred to a sub-committee which was to hear all objections and make recommendations. On 24th July 1970 this sub-committee altered the schedule originally proposed in respect of 66 items by deleting octroi duty on some and reducing it on others. This revised proposal was accepted by the council by its resolution dated 28th July 1970. This meeting was held in camera as on a previous occasion the public had made it impossible to carry on the work of the council's meeting. At this camera meeting it was resolved to impose octroi duty as proposed by the sub-committee and all the objections were rejected. It may be stated here in passing that the objections that had been filed did not relate to any particular item or a particular rate on any item but the objections were to the imposition of the octroi duty itself. The rates of octroi duty finally approved by the council and the rules and bye-laws relating thereto were published in the official Gazette on 22nd August 1970.

The contention of the learned Counsel in this connection is that the council having once resolved on 13th September 1969 that octroi duty should not be imposed could not, later on, revise that resolution and re-impose octroi duty. We find no such restriction on the powers of the council. It can always reconsider its resolutions.

The other objection of the learned Counsel was that this meeting was held in camera and consequently it was an invalid meeting. This contention has no force. u/s 60 of the Act public is normally to be admitted to the meetings of the council "provided that the council may temporarily exclude the public from a meeting as often as it may deem necessary when in the opinion of a majority of the councillors present at such meeting, expressed by such resolution, in view of the special nature of the business then being dealt with or about to be dealt with, such exclusion is advisable". At that very meeting the council by a majority resolved that in view of the opposition to the imposition of octroi duty by some members of the public who made it impossible to proceed with the work in the last meeting, it was advisable to conduct this work in camera. This action of the council was fully within jurisdiction and it cannot vitiate the resolution passed at such meeting. It may also be noted that u/s 129(8) of the Act when a tax has been imposed and such imposition has been published in the Gazette, as was done in this case, such publication shall be conclusive evidence that the tax has been imposed in accordance with the provisions of the Act. Consequently, even if some defect be found in the procedure prescribed for imposition of a tax it will stand condoned by this section.

Another question raised by the learned Counsel was that in this municipality a terminal tax was in force and his contention is that octroi duty could not be imposed along with the terminal tax and abolition of the terminal tax by the notification by which octroi duty was imposed was invalid. Thus, it is contended that the terminal tax not having been validly abolished the imposition of octroi duty was itself invalid. For the proposition that the terminal tax could not co-exist with octroi duty, the learned Counsel relies on Section 127(1) (xvi) of the Act. There is no dispute on this point. The contention for the Respondents, however, is that the terminal tax was duly abolished from the date where the octroi duty was imposed.

The contention of learned Counsel for the Petitioners was that the terminal tax could not be abolished as was done in this case. His first contention in this connection was that the terminal tax is a tax which is covered Schedule VII, List I, Item 89, of the Constitution. He contended that it was only the Central Government which could impose or abolish the terminal tax. His next contention was that under Article 277 of the Constitution authority was given to the State Government to decide whether to continue or to abolish the terminal tax in the State and therefore the power to continue or to abolish the terminal tax was vested by the Constitution only in the State Government and the municipal council had no power to abolish the same, His contention was also that u/s 130 of the Act the procedure for abolishing any tax is that the council should at a special meeting pass a resolution proposing the abolition and that proposal should be accepted by the Government and after the Government's acceptance the council should again pass resolution abolishing the tax and only thereafter the tax can be abolished. We are unable to agree with any of these contentions. Article 277 of the Constitution is merely an enabling article. Normally on the enforcement of the Constitution all taxes which have come in the Union List ought to have been abolished automatically, if imposed by a State Legislature or its nominee. But this Article authorised the State or the local body to continue realization of such taxes so that the economic structure of the local body which was realizing the tax might not be affected. It created no bar to any council at any time to abolish a tax which it was realizing before.

By Section 130 the State Legislature has delegated the power to abolish taxes imposed by municipal councils. This power was exercisable in respect of terminal tax also as u/s 2(2)(i) of the Act this tax was deemed to have been imposed under this Act. Under Sub-section (1) of section 130 a general power is given to the council to abolish taxes which are already in force, but the Sub-section does not provide any method by which this abolition is to be enforced. There is a proviso to this Sub-section which reads as follows:

Provided further that in the case of any municipality the abolition of any tax.....shall be subject to the previous sanction of the State Government and shall take effect from such date as the State Government may, by notification, specify." This proviso indicates that abolition of a tax will not be effective until

the State Government first sanctions such abolition and then publishes in the Gazette a date from which it will be deemed abolished.

Sub-section (2) of Section 130 is as follows:

A council may, at a special meeting, pass a resolution to propose the abolition of any tax already imposed, or a variation in the amount or rate thereof.

This Sub-section merely requires a council to pass a resolution proposing the abolition of taxes. Such a proposal had in this case been made by the administrator when he sent his proposals for imposition of octroi duty. It was therefore not necessary for the council thereafter to make a fresh proposal. There is no other provision in this section to indicate that after the State Government had sanctioned the abolition it should again pass a resolution actually abolishing the tax. On a reading of Section 130 of the Act we therefore find that the procedure prescribed for abolition of a tax is that the council will make a proposal to the State Government to abolish a tax, and if the State Government gives its sanction it will fix a date from which the tax is to be abolished and will publish that date in the official Gazette. Under Sub-section (5) of Section 130 the publication of such notice shall be conclusive proof of the fact of such abolition. Thus, there is no force in the contentions of the Petitioners' learned Counsel that the terminal tax not having been abolished properly the imposition of octroi was invalid.

The result therefore is that there is no force in this petition and it is dismissed with costs. Counsel's fee Rs. 100, if certified. After payment of Respondent's costs from the amount of security, balance, if any, be refunded to the Petitioners. The stay order is discharged.