
(1983) 08 GUJ CK 0018
In the Gujarat High Court

Jagmohandas Parshottamdas Shah and Others APPELLANT
Vs
Nadiad Nagar Palika and Another RESPONDENT

Date of Decision : 04-08-1983

Acts Referred:

Gujarat Municipalities Act, 1963 — Section 101, 101, 102

Citation : (1984) 1 GLR 210

Hon'ble Judges : P.D. Desai, Acting C.J.;G.T. Nanavati, J

Bench : Division Bench

Judgement

P.D. Desai, Acting C.J.

1. The petitioners challenge herein the levy of octroi at enhanced rates by the respondent-Municipality under the impugned resolutions on diverse grounds.

2. The respondent-Municipality passed a resolution on March 31 1979 u/s 101 of the Gujarat Municipalities Act, 1963 (hereinafter referred to as "the Act") declaring its intention to revise the rates of octroi duty in respect of items therein mentioned. Objections were duly invited and the petitioners or some of them filed the objections On April 30, 1979, the General Board of the respondent-Municipality appointed a Committee consisting of eight members to make recommendations after consideration of these objections. The Committee heard the objectors and made a report to the General Board incorporating its recommendations on September 23, 1981. On October 24, 1981 the General Board of the respondent-Municipality passed a resolution fixing the rates of octroi after taking into consideration the recommendations of the Committee. On November 24, 1981 the Government sanctioned the levy u/s 102. By a resolution passed by the General Board of the respondent-Municipality on November 30, 1981, the revised rates of octroi were brought into force on and with effect from January 1, 1982.

3. At the hearing of the petition, the levy was challenged on the following three grounds:

(1) The Committee appointed by the General Board of the respondent-Municipality to consider and make recommendations on the objections became functus officio upon the expiry of the period of one year from the date of its appointment, that is to say, on April 29, 1980 and, therefore, the General Board's resolution imposing the levy, which was based upon the recommendations of the said Committee, was ultra vires.

(2) It was not competent to the respondent-Municipality to levy octroi at enhanced rates inasmuch as the revenue which was expected to be raised thereby was far in excess of its needs.

(3) Clauses (b) and (c) of Bye-law 7 of the By-laws relating to refund are ultra vires inasmuch as they bar refund under the contingencies or circumstances therein mentioned and, in that manner, facilitate levy of octroi on the entry of goods into the limits of the respondent-Municipality even though they are not meant for consumption, use or sale therein. We shall briefly deal seriatim with these grounds of attack on the impugned levy.

Re. Ground No. 1:

4. Chapter IV of the Act, which is entitled "Conduct of Business", contains a group of sections dealing with the conduct of business of a Municipality. In the said Chapter, under sub-heading (2) entitled "Committees", are grouped Section 53 to 63. Section 53 deals with the Executive Committee. Section 54 deals with the Pilgrim Committee and Section 55 deals with other committees. Sub-section (1) of Section 55 provides that notwithstanding anything contained in Sub-section (2) of Section 53, other committees consisting of such number of councillors as the Municipality may decide, may be appointed to exercise the powers and perform the duties of the Municipality in respect of any purpose not being, where a Pilgrim Committee is appointed, powers or duties referred to in Section 54. The Executive Committee is prohibited under the said sub-section from exercising any powers or performing any duties which such committee has been appointed to exercise or perform. Sub-section (2) "Capital Gains" was put forward on behalf of the assessee. The Income Tax Officer, by his assessment order dated March 16, 1976, accepted the claim and completed the assessment on the footing that the net result of the computation under the head "Capital Gains" was a loss in the sum of Rs. 40,040/-.

5. It appears that meanwhile, for the purpose of making assessment under the Wealth-tax Act, 1957, the Wealth-tax Officer had referred the question of valuation of the property in question to the Valuation Officer u/s 16A of the said Act. The Valuation Officer issued a notice dated August 25, 1976 to the petitioner as the legal representative of B.T. Kharawala to show cause why the value of the property as on November 2, 1967 (valuation date for the assessment year 1968-69) should not be taken to be Rs. 5,08,000/- in place and stead of Rs. 1,21,000/- as per the report of the Approved Valuer submitted to the Wealth-tax Officer in the course of the proceedings for assessment to wealth-tax for the

assessment year 1968-69. The petitioner, in the course of his reply dated September 6, 1976, set out his objections to the proposed valuation. The Valuation Officer, however, estimated the fair market value of the said property at Rs. 4,49,000/- as on November 2, 1967 in the course of his report dated October 6, 1976. The valuation was arrived at on the basis of the land and building method as against the rental yield method on the basis of which the valuation was earlier determined by the Approved Valuer. Be it stated at this stage that the proceedings for assessment to wealth-tax for the assessment years is material and it reads as under:

The members of such committees shall be elected by the municipality in accordance with the rules framed under Clause (a) of Section 271 and such members shall hold office for a period of one year.

underlining supplied

Section 56 refers to what are called "Consultative Committees" in the marginal note. The said section reads as under:

A municipality may from time to time appoint such other committees consisting of such councillors as it thinks fit, and may refer to such committees for enquiry and report or for opinion such special subjects relating to the purposes of this Act as the municipality shall think fit, and may at any time discontinue or alter the constitution of any such committee. The municipality may direct that the report of any such committee shall be made to the executive committee, or to a committee appointed u/s 56 instead of to the municipality.

Section 101 prescribes the procedure preliminary to the imposition of tax by a municipality. Clause (c) of the said section reads as under:

(c) Any inhabitant of the municipal borough objecting to the imposition of the said tax or to the amount or rate proposed or to the classes of persons or property to be made liable thereto or to any exemptions proposed may, within one month from the publication of the said notice, send his objection in writing to the municipality; the municipality shall take all such objections into consideration, or shall authorise a committee to consider the same and report thereon; and unless it decides to abandon the proposed tax, shall submit such objections with opinion thereon and any modifications, proposed in accordance therewith, together with the notice and rules aforesaid to the State Government.

underlining supplied

6. The submission which was forcefully urged on behalf of the petitioners was that the Committee which was appointed under the General Board's resolution of the respondent-Municipality passed on April 30, 1979 to consider the objections and to make recommendations thereon ceased to hold office on April 29, 1980 by virtue of the provisions contained in Sub-section (2) of Section 55 and that, therefore, the recommendations made by such Committee which was functus officio could not have been validly taken into consideration by the General Board

while imposing the octroi duty. The submission, in our opinion, is misconceived. The Committee, in the instant case, was appointed u/s 101(c) and not under Sub-section (1) of Section 55. To a Committee specially constituted u/s 101(c) the provisions of Sub-section (2) of Section 55 would not be applicable. Section 55 is a general provision relating to appointment of committees other than those referred to in the preceding sections, that is to say, Section 53 & 54. Section 101(c) is a special provision which authorises the appointment of a Committee to consider the objections raised against the proposed levy of tax and to report thereon. The maxims *Generalia specialibus non derogant* and *Generalibus specialia derogant* will be attracted in regard to the constitution of such a committee. Since a special provision is made in regard to the appointment of a committee to consider the objections and report thereon in Section 101(c), such committee is not governed by the general provision with regard to the appointment of a committee u/s 55. Be it noted in this connection that Sub-section (2) of Section 55, in terms, refers to "such committees" and "such members" and, therefore, the bar against holding of office for a period of more than one year is attracted only when a committee is appointed under Sub-section (1) of Section 55 and not otherwise. Be it noted in this connection that Section 55 refers to the appointment of "Consultative Committees". The said sub-section does not provide for the tenure of one year, so far as the members appointed on such committees are concerned.

7. For the foregoing reasons, the first submission made on behalf of the petitioners deserves to be rejected.

Re. Ground No. 2:

8. In order to appreciate the submission made under this head, reference may be made at the outset to Sections 75 & 76 which find place under sub-heading (8) entitled "Municipal accounts" in Chapter-IV which is the same Chapter in which Section 55 finds place. Section 75 provides that every Municipality shall keep accounts of the receipts and expenditure in accordance with the Municipal Account Code subject to such modifications as the State Government may in each case direct. Section 76, which is material and upon which considerable reliance was placed, reads as under:

76. (1) A municipality shall have prepared and laid before it, at its periodical general meetings, complete accounts of the receipts and expenditure of the municipality since the 1st day of April last preceding, and at a general meeting which shall be held on such day between the 10th January and the 15th of March as may be fixed in this behalf by the rules of the municipality, a complete account of the actual and expected receipts and expenditure for the financial year, ending on the 31st March next following, together with a budget estimate of the income and expenditure of the municipality for the financial year to commence on the 1st April next following.

(2) The municipality shall thereupon decide upon the appropriation and the ways

and means contained in the budget of the year to commence on the 1st April next following. The budget so sanctioned may be varied or altered from time to time, as circumstances may render desirable, at a special general meeting called for the purpose:

Provided that the executive committee or any other committee appointed under the Act may, within the budget so sanctioned, sanction re-appropriations not exceeding Rs. 5000/- from one sub-head to another or from one minor head to another minor head under the same major head and controlled by the same committee. A statement of such re-appropriations shall be submitted to the municipality at every quarterly general meeting.

(3) Save as provided in Sub-section (2), no sum shall be expended by or on behalf of, the municipality unless such sum is included in the budget estimate which has been sanctioned and in force at the time of incurring the expenditure.

(4) The municipality shall at the general meeting in April or after audit of the past year's accounts, if such audit has not before that general meeting taken place, pass the accounts of the past year.

9. The submission under this head was formulated as follows. The entire power of imposition of taxes conferred on the respondent-Municipality is to be exercised for raising revenue, contemplated under a sanctioned budget or its variation or alteration at a special general meeting called for the purpose. The budget estimated for the financial year commencing on and with effect from 1-4-1981 as reflected in Annexure-I to the petition showed that the respondent Municipality's total income and expenditure and octroi income and expenditure were more or less balanced and that there was no significant surplus or deficit. Those budget estimates were based on the operative rates of octroi duty and not on the enhanced rates which are impugned herein. No subsequent variation or alteration from the sanctioned budget estimates was made in the course of the Financial Year. There was, therefore, no need to augment the octroi income of the Municipality by enhancing the rates during the said Financial Year. Since no special general meeting was called and there was no revision or alteration in the budget estimates, the enhancement of the rates of octroi duty was in fact ultra vires. Reliance was placed in support of this submission on the decision of the Supreme Court in *Corporation of Calcutta and Another Vs. Liberty Cinema*, and *Municipal Corporation of Delhi Vs. Birla Cotton, Spinning and Weaving Mills, Delhi and Another*, .

10. Now, it has been held in *Liberty Cinema's* case that the fixation of the rates of taxes is not of the essence of legislative power of taxation and that it may be legitimately left by a statute to a nonlegislative authority. No doubt, when the power to fix rates of taxes is left to another body, the legislature must provide guidance for such fixation. For a statutory provision for raising revenue for the purposes of the delegates, the needs of the taxing body for carrying out its functions under the statute for which alone the taxing power was conferred on it,

may afford sufficient guidance to make the power to fix the rate of tax valid. The local authority, subject to certain controls is an autonomous body. It has to perform various statutory functions. It is often given power to decide when and in what manner the functions are to be performed. For all this it needs money and its needs will vary from time to time with the prevailing exigencies. Its power to collect tax, however, is necessarily limited by the expenses required to discharge those functions. It has, therefore, where rates have not been specified in the statute, to fix such rates as may be necessary to meet its needs. That would be sufficient guidance to make the exercise of its power to fix the rates valid. In the case of a self-governing body with taxing powers, a large amount of flexibility in the guidance to be provided for the exercise of that power must exist. In the case of a big municipality, its needs would depend on various and changing circumstances. There may be epidemics, influx of refugees, labour strikes, new amenities to be provided for, such as hospitals, schools and various other things may be mentioned, which make it necessary for a colossal municipal body to have a large amount of flexibility in its taxing powers.

11. In Delhi Municipality's case it was observed that in the field of taxation, the guidance to be provided to the delegate may take the form of proving maximum rates of tax upto which a local body may be given the discretion to make its choice, or it may take the form of providing for consultation with the people of the local area and then fixing also rates after such consultation. It may also take the form of subjecting the rate to be fixed by the local body to the approval of Government which acts as a watch dog on the actions of the local body in this matter on behalf of the legislature. There may be other ways in which guidance may be provided. But the purpose of guidance, whatsoever may be the manner thereof, is to see that the local body fixes a reasonable rate of taxation for the local area concerned. So long as the legislature has made provision to achieve that reasonable rates of taxation are fixed by local bodies, whatever may be the method employed for this purpose provided it is effective, it may be said that there is guidance for the purpose of fixation of rates of taxation.

12. On the ratio of these decisions, it is clear that the law delegating the power of taxation to a local authority must provide the guidance for the exercise of powers on the aforesaid lines and that, if such guidance is found in the statute, the law would be valid. Besides, the actual exercise of power of taxation by the delegated authority must also conform to the need of the rate of tax being reasonable. Reasonableness will, of course, vary from case to case and no rigid formula can be laid down to test the reasonableness. Several factors will enter into consideration and flexibility will necessarily be given to the local authority in the matter of fixation of rates of tax. Till and so long as the rates are fixed in conformity with its requirement of raising revenue in order to discharge the statutory functions, the levy could not be said to be unreasonable. The requirement, in its own rum, would depend upon various and changing circumstances.

13. In the instant case, the petitioners have annexed at Annexure an extract of the budget estimates of the respondent-Municipality for the financial year 1981-82. In the said estimates, on the basis of the extent rates of tax etc., the estimated income was shown at Rs. 2,13,19,800/- and the estimated expenditure was shown as Rs. 2,31,79,710/-. The statement at Annexure-I also gives figures of actual income and expenditure incurred by the respondent-Municipality in the first six months of the financial year 1981-82. The actual income was Rs. 1,13,33,374/-, whereas the actual expenditure was of Rs. 1,13,00,978/ for the said period. The submission was that the figures of actual income and expenditure for the first half of the year do not show any deficit. Even the figures of estimated income and expenditure for the whole of the Financial Year do not disclose large deficit. For that reason presumably no additional taxes or increase in rates of taxes was proposed in the budget. Besides, in the course of the Financial Year, no variation or alteration was made in the budget estimates which would authorise additional revenue being raised to discharge the statutory or discretionary functions, if any, for which no provision or inadequate provision was made. Under the circumstances, the rate of octroi could not have been increased so as to be operative during the last three months of the Financial Year in question and since a large amount of money was likely to be raised by the increased rates of octroi duty, the taxing power was exercised without power, authority and jurisdiction.

14. Para 12 of the affidavit-in-reply filed on behalf of the respondent Municipality is material in this connection. The said paragraph deals with the financial position of the Municipality in the preceding Financial Year (1980-81). It is pointed out in the said paragraph that against the regular income of Rs. 99,37,848/-, the respondent-Municipality had spent a sum of Rs. 1,41,46,350/- in the said Financial Year. The deficit was met by obtaining bank loan of Rs. 3,17,600/-, Government loan of Rs. 1,50,000/- and loan from L.I.C. in the sum of Rs. 6,00,000/- It has been further pointed out in the said paragraph that there were several functions obligatory in nature which were required to be taken on hand immediately, such as water supply, sewage scheme, etc. The implementation of those schemes was likely to increase the expenditure required to be incurred by the respondent-Municipality. It has been further pointed out that the roads within the Municipal limits were also required to be repaired or converted into pakka Roads and that for want of funds, that project could not be taken up on hand. The preparation of the budget estimates would ordinarily depend upon the availability of the resources and the income of the Municipality and since the respondent-Municipality did not have sufficient funds, all the estimated expenses for such schemes could not be incorporated in the budget estimates. In the course of the said paragraph, it has also been pointed out that the income from octroi realized by the respondent-Municipality was far less than that realized by the other Municipalities in the State.

15. We do not find any force in the submission made under this head. Be it realized that the emphasis on the budget estimates of Financial Year 1981-82 is

somewhat misconceived. The budget estimates for Financial Year 1981-82 had to be formulated before March 15, 1981. According to the petitioners themselves, those estimates were sanctioned between March 10 and 15, 1981 by the General Board of the respondent-Municipality. The proposal to enhance the rates of octroi duty under the impugned levy was then at a merely formulative stage. The Committee which was appointed to consider the objections had not yet submitted its report by that time. It could not have been contemplated or predicated at the stage when the budget estimates were prepared whether the report would favour the enhanced rate and, if so, whether the General Board would act on the same and whether the Government would sanction the proposal. Under those circumstances, the budget estimates were prepared on the basis of the prevalent rates of tax and it is difficult to appreciate how those estimates could have made provision for increased expenditure to be incurred out of the enhanced revenue, if any, during the last three months of the Financial Year. It is significant, however, that even those estimates disclosed a deficit of Rs. 18 lacs approximately which was required to be met. Besides, it is not essential that the additional revenue must be spent within the last three months only. The excess amount or revenue, if any, can be carried forward to the next financial year and utilized for discharging statutory and discretionary functions by making suitable provision. It is not the case that any expenditure was actually incurred in the instant case, which was not authorised out of the collections yielded by the enhanced levy. The power to tax is dealt with by Chapter VIII and it makes detailed provisions for the imposition of taxes. The exercise of power under the said Chapter is not subject to the provisions of Sections 75 and 76 occurring in Chapter IV. In other words, it is not as if no new tax can be levied or rates of an existing tax cannot be enhanced unless the budget estimates are first varied or altered. It is also not the requirement of law in order to make a levy reasonable that there must be a connection from day to day or month to month between the collection of revenue and its expenditure for the discharge of statutory and discretionary functions by a local authority. These matters have to be judged from a broad point of view and on the basis of long term needs of the local authority. In order to strike down a tax as unreasonable and, therefore, ultra vires, one has to look at the matter from a wider perspective. A narrow and pedantic view cannot justify the striking down of a tax as unreasonable and excessive and, therefore, ultra vires. As has been held in the decisions in *Liberty Cinema's case* and *Delhi Municipality's case*, in the case of big municipalities, their needs would depend upon various and changing circumstances which make it necessary to have a large amount of flexibility in its taxing powers. The respondent-Municipality is not too small a Municipality. The population of the Municipal Borough of Nadiad at the relevant time was 1,42,481. Having regard to all these circumstances, in our opinion, the challenge to the impugned levy on the ground that it is ultra vires is wholly devoid of merit and deserves to be rejected.

Re. Ground No. 3:

16. By-law 7 upon which reliance has been placed in support of this submission lays down the circumstances under which refund of octroi duty is not admissible. Two of the clauses of this by-law which have been invoked in aid of the challenges make a claim for refund of octroi inadmissible when : (1) the amount of refund due is less than Rs. 3/- and (2) when the goods imported within the municipal limits are not exported within a period of six months. The submission was that the provision making a claim for refund of a sum less than Rs. 3/- as inadmissible amounted to collection of duty of octroi on goods on which octroi could not have been legitimately levied and that, therefore, it amounted to illegal exaction of monies under the guise of a validly levied tax. So far as non-admissibility of claim of refund in case of goods not exported within six months is concerned, the submission was that it amounted to illegal levy of tax in the guise of octroi inasmuch as octroi was thereby sought to be levied on goods which were not imported within the municipal limits for use, consumption or sale.

17. So far as the challenge to that part of the By-law which makes inadmissible the claim for refund of a sum of less than Rs. 3/- collected by way of octroi is concerned, the learned Counsel for the Municipality stated to the Court that he was authorised to state on behalf of the respondent-Municipality that the said portion of the By-law would not be enforced and that no claim for refund of any amount by way of octroi duty shall be rejected merely on the ground that it is in respect of a sum less than Rs. 3/- In view of this express declaration made on behalf of the respondent-Municipality, the challenge to that part of Bylaw 7 is rendered academic. The Court is, therefore, not called upon to examine the said challenge.

18. So far as the other challenge with regard to non-admissibility of claim for refund in cases where the goods are not exported out of municipal limits within a period of six months is concerned, the other parts of By-law 7 are material and it is necessary to advert to those other parts. In the latter part of the By-law it has been in substance. enacted that notwithstanding the non-admissibility of the claim on the ground aforesaid, if the Octroi Committee is satisfied in a given case, upon evidence being led before it, that the goods imported within the octroi limits were not consumed or sold before their export, refund of duty collected on the exported goods would be admissible even after the expiry of the specified time-limit. Besides, there is a Note appended to the By-law which creates a rule of evidence. The Note provides that until the contrary is established, the goods imported within the octroi limits will be presumed to have been imported therein for the purposes of consumption, use or sale if such goods are not exported within a period of six months. On a combined reading of these latter portions of Bylaw 7, it is apparent that the relevant clause of the By-law cannot be assailed as authorising illegal levy of octroi and, therefore, ultra vires. The power to hold the claim non-admissible is exercisable on account of the rule of evidence enacted in the Note. The presumption is not irrebuttable but is rebuttable. Besides, there is a general power conferred on the Octroi Committee to grant refund in such cases if it is established, on evidence, that the goods were not

consumed or sold within the octroi limits, even though they were not exported within a period of six months after their import. Having regard to these provisions, the By-law cannot be held to be ultra vires, unreasonable or arbitrary.

19. For these reasons, even the third challenge must be held to be devoid of merits. For the foregoing reasons, in our opinion, there is no merit in the Writ Petition and it deserves to be summarily rejected. The Writ Petition is summarily rejected.

20. At this stage, an oral request was made on behalf of the petitioners to continue the ad-interim relief granted at the stage of issue of notice on this petition on December 29, 1981. The request was made on the ground that the petitioners were desirous of prosecuting further remedy in accordance with law. We are not inclined to continue the ad-interim relief in toto. However, it appears to us that in the interest of justice, only the first part of the ad-interim relief may be allowed to continue to operate for a period of two months from today. Accordingly, it is directed that for a period of two months from today, the respondent -Municipality will continue to maintain a separate account as regards the monies collected by way of difference in duty at the old rate and the enhanced rates.