

(1958) 02 RAJ CK 0012
In the Rajasthan High Court
Case No : Civil Writ Case No. 135 of 1957

Jethmal and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 04-02-1958

Acts Referred:

Rajasthan Panchayat (Amendment) Act, 1958 — Section 64
Rajasthan Panchayat (General) Rules, 1954 — Rule 24(1), 24(5)
Rajasthan Panchayat Act, 1953 — Section 64

Citation : AIR 1959 Raj 75 : (1958) RLW 448

Hon'ble Judges : K.N. Wanchoo, C.J.; Jagat Narayan, J

Bench : Division Bench

Advocate : Hastimal, for the Appellant; Kansingh, Deputy Government Advocate for Respondents 2 and 3, for the Respondent

Final Decision : Allowed

Judgement

K.N. Wanchoo, C.J.—This is an application under Article 226 of the Constitution by Jethmal and 19 others against the State of Rajasthan, Village Panchayat Chandarun and Kanaram, Sarpanch of the Panchayat challenging the imposition of a tax on wood imposed by the Panchayat with the sanction of the Government,

2. The case of the applicants is that they received a notice from the Panchayat on 2-9-1957 in which they were told that a tax of 3 naye paise per maund had been imposed on all wood imported within the Panchayat Circle with the sanction of the Government. Consequently, they were asked to pay the tax at that rate on all wood in stock with them.

They were also told that they would have to pay the tax on any fresh wood received by them. The present application was made soon after this notice was received by the applicants. Their case is that the tax has not been legally imposed and they are not bound to pay it. They have also said, that in any case it was not open to the Panchayat to tax the stock of wood with them on 2-11-1957.

3. The reasons put forward by the applicants in support of the invalidity of the tax are these;

1. No previous sanction of Government as required by Section 64(1) of the Rajasthan Panchayat Act, (Act No. XXI of 1953) (hereinafter called the Act) was received by the Panchayat before it considered the imposition of the tax.

2. No publication, as required by rule 24 of the Rajasthan Panchayat (General) Rules (hereinafter called the Rules) was made of the tax desired to be imposed and of the tax actually imposed.

3. No date was specified as required by rule 25 for the imposition of the tax.

4. The application has been opposed on behalf of the Panchayat and it has traversed the points on which the applicants claim that the tax is invalid. We shall take these points one by one.

5. The first point refers to the interpretation of the words "previous sanction" appearing in Section 64 of the Act. The relevant portion of Section 64 is in these terms:

"Subject to the prescribed rules and any orders made by the State Government in this behalf, a Panchayat may with the previous sanction of the State Government impose one or more of the following taxes, namely:

.....

(j) any other tax with the previous sanction of the State Government."

6. The facts which have been brought on the record on behalf of the Panchayat show that the Panchayat passed a resolution on the 8th of October 1956 in which they said that they proposed to impose a tax on the import of wood within the Panchayat Circle for sale and that this would be realised from the seller of wood, Thereafter followed publication with which we shall deal later.

Then the Panchayat took up the matter again on the 22nd of November 1956 and, after considering the objections, decided to impose the tax which they had proposed in the meeting of the 8th of October. This proposal was then submitted to Government and was approved by the Government by their order dated the 11th of July 1957 which was eventually communicated to the Panchayat in August 1957.

7. Now the question arises whether in these circumstances, this tax has been imposed with the previous sanction of the Government. There is a well understood distinction in law between cases where a tax is imposed with the "sanction" of Government and cases where the tax has to be imposed with "previous sanction".

Where the imposition of the tax is with the "sanction" of Government, all that is required is that after the necessary procedure has been followed by the body imposing the tax, it sends the final proposal to Government for sanction. Where,

however, "previous sanction" is required for the imposition of a tax, the matter has! to be submitted to Government twice for sanction.

In the first instance, the body, as soon as it wishes to impose a tax which requires "previous sanction", communicates its wishes to Government and must get the sanction of Government to proceed to take steps for the imposition of the tax and follow the procedure provided for such imposition. It is only when this sanction of Government is received that the body imposing the tax is authorised to take steps for publication of the tax intended to be imposed and for inviting objections to the tax.

Thereafter it has to consider the objections and] finally decide whether it would impose the tax and at what rate. When this is decided, the final proposal is again submitted to Government for sanction and on receipt of the second sanction, the tax can be imposed from such date as may be fixed under the law. Our attention in this connection has been drawn to the opening words of Section 64 (1) of the Act, which are these ;

"Subject to the prescribed rules and any orders made by the State Government in this behalf". The argument is that the State Government can prescribe the mode of "previous sanction" which is required for the imposition of the tax by framing rules and that whatever may be the rules framed by the State Government, if compliance is made with the rules framed, that would be sufficient for purposes of showing that there was "previous sanction" of the Government.

We are of opinion that the opening words of Section 64 cannot bear this interpretation. Undoubtedly the State Government may prescribe the pro-dure for obtaining "previous sanction" by framing rules. But by framing these rules, the State Government cannot prescribe a procedure which goes counter to the well accepted interpretation of the words "previous sanction" and thus delete the word "previous" from the section.

Further, in this particular case, the matter is completely beyond controversy because this is a tax which comes under Clause (j) of Section 64 (1) of the Act. That clause itself provides that if a tax is to be imposed under it, the previous sanction of the State Government has to be obtained. In that clause the words are not even subject to the same limitation, which is to be found in the opening portion of Section 64(1).

In this connection, our attention was drawn to a decision of a Bench of this Court in Jeo Raj and Others Vs. State of Rajasthan and Others, . That was a case of a tax on building under Clause (e) of Section 64 (1) and the learned Judges were of the view that the procedure prescribed by Rule 24 was not followed. There are some observations in the case to suggest that the requirements of "previous sanction" would be complied with if the procedure mentioned in rule 24 is followed.

In that case the learned Judges made reference to *Jai Narain v. State of Rajasthan* ILR 1955 Raj 818 where the distinction between what is meant by "sanction" and what is meant by "previous sanction" was brought out with reference to the framing of municipal bye-laws. It seems that that distinction was overlooked in *Jeo Raj and Others Vs. State of Rajasthan and Others*, Whether there was previous sanction or not in *Jai Raj*'s case, the facts of that case showed that there was not even compliance with rule 24.

We may also point out that whatever may be said as to the imposition of tax from Clauses (a) to (i) so far as a tax included in clause (j) is concerned, the procedure we have pointed out above relating to previous sanction is absolutely essential. Under Clause (j), the Panchayat selects a tax which it is not specifically empowered to impose under Clauses (a) to (i).

In such a case, the repetition of the word "previous sanction" of the State Government in that clause makes it clear that before the Panchayat goes forward to notify its intention to impose such a tax on the inhabitants and calls for their objections, it must obtain the sanction of the Government to impose that tax which is not within its specific power to impose. It is only thereafter that it can proceed under rule 24 to notify the tax so proposed to the inhabitants, call for their objections and then finally decide whether to impose it or not. Thereafter the final proposal has to be sent to Government again for sanction.

8. Now this was a tax under Clause (j) and before the Panchayat could consider its imposition, it must have asked for sanction of the Government to go ahead with the consideration of its imposition. It never did so. What it did was to pass a resolution for the imposition of this tax, invite objections, consider the objections and then ask the Government for sanction.

This, in our opinion, is not what the words "previous sanction" appearing in Clause (j) and also in the opening part of Section 64 (1) require. We cannot but draw attention of the Government to the observations made in *Jainarain*'s case ILR (1955) Raj 818 which was with reference to municipalities, These observations acquire even greater force in the case of such small bodies as Panchayats. The observations are these:

"It seems to us that perhaps the machinery provided for carrying out the intention of the Legislature in the levy and collection of taxes has been made needlessly cumbrous and complicated by the necessity of making rules as well as by-laws for the imposition of a tax and providing for a different procedure for the making of the rules and the by-laws."

9. It seems that the implication of the words "previous sanction" is not understood at all, with the result that many a time taxes are imposed without "previous sanction" as explained by us above and become invalid for no other defect. It would be worth considering whether if the word "previous" should not be removed wherever it occurs in a case of sanction by Government of taxes to be imposed by local bodies.

But as the law stands at present, the imposition of this tax by the Panchayat must be struck down on the first ground urged on behalf of the applicants, namely that no "previous sanction" of the State Government was obtained to its imposition.

9a. This, however, is not the only infirmity in this case and we should like to consider the other points raised on behalf of the applicants because even if no previous sanction in the sense explained by us was necessary, the tax would still be invalid. This brings us to the question of publication raised on behalf of the applicants.

Now we find that in their resolution of the 8th of October, 1956, the Panchayat proposed a tax on the import of wood for sale within the Panchayat Circle to be realised from the seller. But when publication was made of the tax intended to be imposed under Rule 24(1), the inhabitants of the Panchayat Circle were told that it was intended to impose a tax on the sale of wood.

Thus the resolution of the Panchayat was for imposing an octroi tax on the import of wood for sale within the Panchayat Circle, while the notice to the public was that there would be a "sales tax" on the sale of wood within the Panchayat Circle. We must say that this was not proper notice as required by Rule 24(1), for the intention of the Panchayat was never communicated to the public. The final resolution of the 22nd of November 1956 again speaks of the imposition of octroi tax on the import of wood in the Panchayat Circle for sale, but the public had never had any idea from the notice published by the Panchayat that it was considering an octroi tax.

Finally when notice was issued to the public as to what tax had been levied, we find quite another story. This notice was issued by the Panchayat on 2-9-57. It mentions "lakdi kar" (wood tax) and says that it would be charged at 3 naye paise per maund. Thus, this notice merely talks of a tax on wood and goes much beyond an octroi tax on the import of wood within the Panchayat Circle. In these circumstances, there was no proper publication as required by rule 24 and, therefore, the tax must be struck down on this ground also.

10. Then we come to the third point, namely whether any date as required by rule 24(5) was fixed for the imposition of this tax. That sub-rule is as follows :

"In the case of every such approval, the Government shall specify the date from which the tax mentioned in the proposal shall come into force."

Thus under this sub-rule, it was the duty of the Government to specify the date from which the tax was to come into force and this date has to be sometime after the date of the Government's approval. The Government's order is dated the 11th of July, 1957. A copy of that order has not been supplied to us. But the copy of that order, as supplied to the Panchayat by the Divisional Panchayat Officer has been placed before us.

Now that copy does not show that the Government fixed any date when it

sanctioned the tax on the 11th of July 1957. This fact is confirmed by the fact that there is another order of the Government dated the 1st/4th November 1957 by which a certain date is purported to be fixed for the imposition of the tax. It is a matter of regret that the order of the Government dated the 11th of July 1957 did not fix the date from which the tax was to come into force, as required by Sub-rule (5).

But though the Government did not fix any date by which the tax would come into force, the Panchayat, immediately it received the order at the end of August, took action by giving notice to dealers in wood and the notice to the applicants was given on the 2nd of September 1957. Later it seems to have been realised that the Government had not fixed any date from which the tax was to be imposed.

Consequently, another letter was issued after this writ application had been filed and the stay order had been passed, purporting to fix the date. A copy of that letter has been filed and is dated 1st/4th November 1957. In this letter it is said that

"in pursuance of rule 24 (5) of the Rajasthan Panchayat (General) Rules, 1954 the State Government does hereby specify that the tax approved by the Government by the aforesaid letter (11th of July 1956} shall and shall always be deemed to have come into force on the date the approval was received by the Panchayat."

Here again, an exact date is not fixed for the realization of this tax. All that is said is that the date shall be the date on which the approval was received by the Panchayat, leaving it to the public to find out as best as they can what that date was. This is not what, in our opinion, is provided under rule 24(5). In any case, Rule 24(5) contemplates a date which shall be in the future. It does not contemplate a date imposing the tax with retrospective effect which seems to be the intention of the order of Government dated 1st/4th November 1957.

We are of opinion that in view of what rule 24(5) says, it was not open to Government by its letter dated 1st/4th November 1957 to fix a date with retrospective effect for the realization of the tax. The date under Rule 24(5) must always be a prospective date i.e., a date in the future. Therefore, the present tax cannot be realised because the Government has not yet fixed by a proper order a date as required by Rule 24(5),

11. Before we leave this case, we may also refer to one more matter brought to our notice during the course of arguments. That refers to the form of the sanction given by the Government for imposition of the tax. Here again, we have to depend upon the copy which was supplied to the Panchayat.

According to that copy, the tax sanctioned is this: "every kind of wood imported into the Panchayat Circle is to be taxed at 3 naye paise per maund". Now this sanction is very different from what the Panchayat desired. The Panchayat

desired sanction for imposition of an octroi tax on wood imported into the Panchayat Circle for sale.

But this sanction has omitted the words "for sale". It is of course open to Government to make any alteration in the proposal under Rule 24(4); but the contention on behalf of the applicants is that the alteration made in this case by the Government turned what was "an octroi tax on import of wood for sale" into a "terminal tax for import of wood in that area".

We do not propose to decide this point because we have come to the conclusion that the tax cannot be imposed for reasons already given. But we cannot refrain from remarking that in a matter of this kind, there should be the utmost care in the form of the sanction given by the Government.

12. Lastly we may refer to the notice of the Panchayat to the applicants on which they have been asked to pay the tax on the wood in stock on 2-9-57. Now an octroi tax can never be levied like this on goods in stock on the day it comes into force. This shows the extreme difficulty of levying octroi tax in a Panchayat Circle.

Such a tax requires octroi posts and all the other paraphernalia which municipalities employ and it is doubtful whether Panchayats can afford it. That seems to be the reason why this Panchayat asked the dealers to pay the tax on the wood in their stock. It would, therefore, be well worth considering whether octroi taxes are at all suitable for such bodies as Panchayats with their slender resources.

13. The questions raised in this case are of great general importance as there are many Panchayats in Rajasthan and, therefore, as requested by the learned Deputy Government Advocate, we order that a copy of this judgment be sent to the Chief Secretary to Government for information.

14. We, therefore, allow the application and direct that the Panchayat will not realise this tax as it is invalid. As the Panchayat seems to be in- experienced body, we pass no order as to costs in this case this time.