(2014) 09 BOM CK 0241

In the Bombay High Court

Case No : Writ Petition No. 7053 of 2014

J.K. Enterprises APPELLANT

Vs

State of Maharashtra and Others RESPONDENT

Date of Decision : 10-09-2014

Acts Referred:

Constitution of India, 1950 — Article 226 — Maharashtra Municipalities Act, 1965 - Section 127, 147, 2(31A), 2(42)

Citation : (2015) 3 ABR 610 : (2016) 2 ALLMR 223 : (2015) 6 BomCR 230 : (2015) 2 MhLj 746

Hon'ble Judges : R.M. Borde, J;V.K. Jadhav, J.

Bench : Division Bench

Advocate : R.N. Dhorde, Senior Counsel instructed by V.R. Dhorde, for the Appellant; N.B. Patil, A.G.P., for the Respondent

Final Decision : Dismissed

Judgement

R.M. Borde, J.?Heard. Rule. Rule made returnable forthwith. With the consent of the parties, petition is taken up for final disposal at admission stage.

2. Petitioner is praying for quashment of communication issued by the State of Maharashtra on 14-8-2014 directing the Municipal Corporations to stop collection of Escort Fees and to take steps for removal of infrastructure for facilitating collection of such Escort Fees.

3. Petitioner is a private limited company registered under the Companies Act and is conducting various business activities including collection of tolls and Escort Fees on behalf of local authorities. Ahmednagar Municipal Corporation issued a public notice calling tenders for collection of Escort Fees for about twelve months. The minimum amount prescribed in the tender notice was 24,21,90,000/-. Petitioner-company made an offer for payment of amount of Rs. 26,13,60,000/- which amount is over and above the estimated minimum amount prescribed in the tender notice. Petitioner being the highest bidder his tender was accepted after due approval form the Standing Committee. Petitioner also

furnished bank guarantee for an amount of Rs. 2,61,36,000/- as directed by the Corporation. Respondent No. 3 - Corporation entered into agreement with petitioner for collection of Escort Fees for a period of twelve months from 1-8-2014 to 31-7-2015 or from the date of issuance of work order. The agreement was entered into between the parties on 15-7-2014. It is further contended that since there was strike of transporters objecting collection of Escort Fees, a meeting was convened by the Principal Secretary, Urban Development Department, Mumbai and it was decided not to collect Escort Fees from 15-8-2014. It is recorded in the communication that since the Corporation is not collecting octroi and has taken a decision to collect Local Body tax which is an account based taxation system, it would not be permissible for the Corporation to collect escort fees. The Municipal Commissioner, Municipal Corporation, Ahmednagar, called upon the petitioner to present an undertaking to the effect that he would not challenge the decision, if any, taken by the State Government or the Municipal Corporation prohibiting collection of Escort Fees. Petitioner tendered undertaking to the effect that in the event of rendering decision of cancellation of collection of Escort Fees in future, the petitioner shall not challenge such decision of the Municipal Corporation or the State Government before any forum and such decision shall be final. Petitioner contends that after tendering an undertaking work order came to be issued on 31-7-2014 and petitioner started collecting Escort Fees from the midnight of 31-7-2014. As a result of decision taken by the State Government on 14-8-2014 petitioner is prohibited from collecting Escort Fees. As such, petitioner is constrained to approach this Court seeking quashment of the decision of the State Government as well as seeking direction restraining the Municipal Corporation from prohibiting petitioner from collecting Escort Fees during the period from 1-8-2014 till 31-7-2015.

4. Petitioner contends that the State Government is not empowered to issue direction to the Municipal Corporation prohibiting the Corporation from collecting Escort Fees. It is the contention of petitioner that tender offer submitted by him has been accepted by the Municipal Corporation after approval by the Standing Committee and a resolution in that behalf has been adopted. Unless the State Government takes steps of either revoking or rescinding resolution as provided under section 451 of the Maharashtra Municipal Corporation Act, prohibitory order cannot be issued against the Corporation and the contractor thereby prohibiting collection of Escort Fees.

5. In order to appreciate contentions raised by petitioner, certain provisions of the Maharashtra Municipal Corporation Act need to be considered. Section 2(42) of the Act defines octroi as a cess on the entry of goods into the limits of a city for consumption, use or sale therein : [but does not include a cess as defined in clause 6A or Local Body Tax, as defined in clause (31A)]. Section 2(31A) defines "Local Body Tax" as a tax on the entry of goods into the limits of the City, for consumption, use or sale therein, levied in accordance with the provisions of Chapter XIB, but does not include cess as defined in clause (6A) and octroi as

defined in clause (42). Section 127 of the Act deals with taxes to be imposed under the Act and sub-section (2) thereby prescribes collection of octroi by the Municipal Corporation whereas sub-section 2(aaa) empowers the Municipal Corporation to collect Local Body Tax on entry of goods into the limits of City for consumption, use or sale therein, in lieu of octroi or cess, if so directed by the State Government by Notification in the Official Gazette.

Section 147 of the Act provides for collection of supervision charges or Escort Fees which reads thus:

147. Articles imported for immediate exportation:

Until the contrary is proved, any goods imported into the City shall be presumed to have been imported for the purposes of consumption, use or sale therein unless such goods are conveyed from the place of import to the place of export by such routes, within such time, under such supervision and on payment of such fees thereof as shall be determined by the standing orders."

Section 466(1)(A)(f) provides for making standing order by the Commissioner determining supervision under which, the routes by which and the time within which goods intended for immediate exportation shall be conveyed out of City and the fees payable by persons so conveying the goods.

Section 451 of the Act provides for procedure to be followed by the State Government to suspend or rescind any resolution or order or Corporation or other authority in certain cases.

6. Petitioner contends that the company has been allotted tender work of collection of escort fees after observing due procedure prescribed under the Act. Award of contract to the petitioner has been approved by the Standing Committee of the Municipal Corporation and a resolution has been adopted in that behalf. The Commissioner has also entered into agreement with the petitioner thereby authorising the petitioner to collect escort fees upto 31-7-2015. It is contended that the State Government has no authority to prohibit the Corporation from collecting escort fees. The resolution adopted by the Standing Committee and the decision taken by the Municipal Corporation to authorise petitioner-company to collect octroi fees cannot be suspended by the State Government. If at all, the State Government proposes to rescind the decision, procedure is prescribed under section 451 of the Act which has not been followed by the State Government. It is the contention of petitioner that collection of escort fees cannot be linked with octroi. Octroi is meant as cess on the entry of goods into the limits of the city for consumption, use or sale therein whereas local body tax is a tax on entry of goods into the limits of city for consumption, use or sale therein levied in accordance with the provisions of the Act. So far as escort fees is concerned, it is collected by way of supervision charges so as to facilitate conveyance of goods from the place of import to the place of export by prescribed route under the supervision of collecting authority. When the goods are conveyed through the limits of Municipal Corporation and

those are not meant for the purpose of consumption, use or sale in the limits of the city and are imported for immediate exportation, the escort fees is collected. Another mode which is prescribed under the scheme is that the carrier of goods may have to deposit octroi charges towards deposit at entry points and obtain certificate in that behalf and claim refund at the exit point of the city. In the event the carrier of the goods does not intend to import goods for the purpose of consumption, use or sale within the city limits, he can pay supervision charges and export the goods through the prescribed route out of the city limits. Petitioner contends that merely because collection of octroi is prohibited by the Municipal Corporation, such a decision can have no impact on collection of escort fees. It is the contention of petitioner that the amount collected towards supervision charges or escort fees cannot be equated with octroi or local body tax under the scheme of the Act and as prescribed under section 127 octroi is a tax on entry of goods within the limits of city for consumption, use or sale therein.

7. In order to substantiate contention that levy of escort charges is a fee and not tax, petitioner places reliance on the judgment in the matter of Ravi Rameshkumar Bhatia Vs. Commissioner, Ulhasnagar Municipal Corporation and Others, . In paragraph No. 15 of the judgment referring to decision of the Supreme Court in the matter of Municipal Corporation of the City of Baroda Vs. Babubhai Himatlal, it is observed that supervision charges (which are akin to escort fees) constitute fee and not tax. It is clarified that in order to make it convenient to the transporter not to involve in payment of octroi duty at the entry and after satisfying the authority at the exit end to claim refund of octroi paid, thereby the corporation intended to help the transporters for saving time in payment of the octroi at one end and later on claiming a refund thereon. Escort fees is charged for the service rendered by the Municipal Corporation to benefit the transporter and the fees is charged just to meet the approximate expenses that the Corporation may incur to provide the facility. It is thus contended that since collection of escort charges is fees and such collection is authorised by the Corporation, the State Government had no authority to prohibit the Corporation from collecting escort charges. It is also contended that the standing orders framed by the Commissioner prescribing procedure relating to collection of escort fees has been approved by the State Government. As such, there is no reason for the State Government to issue direction to the corporation to desist from collecting escort fees. Petitioner also places reliance on the judgment in the matter of Citizens Forum for Scientific Development of Pimpri-Chinchwad Vs. State of Maharashtra and Others, . In the reported matter it is ruled that once the State Government granted necessary sanction/approval to Pimpri-Chinchwad Municipal Corporation and published the rules in the Official Gazette and ordered to implement the rules w.e.f. 6th January, 2002, the Government cannot grant stay against implementation of the rules on the ground that the general elections of the Municipal Corporation were to be held in February, 2002. While quashing the action of Government the Division Bench held that once required procedure

has been followed and the rules were required to be brought into force and sanction had been granted by the State Government, it had no power, authority or jurisdiction to suspend enforcement of the rules or to grant any interim order. It is contended by applying the analogy derived in the aforesaid judgment by the Division Bench that once the State Government having approved standing order framed by the Government, it was not permissible to direct not to implement the standing order and desist from collecting escort fees.

8. Affidavit-in-reply has been presented on behalf of the Government controverting the contentions raised by the petitioner. It is contended by respondent-State that octroi is one of the taxes levied and collected by the Municipal Corporation and collection of tax is effected with the previous approval of the State Government. It is contended that octroi is leviable on goods which are imported within the jurisdiction of the Corporation. Rule 17 of the Octroi rules provides for procedure of dutiable goods imported which are intended for immediate export. It is thus contended that Rule 17 is a part of the scheme for collection of octroi and the same is to be considered in the context of the entire scheme. It is thus contended that escort fees is a part and parcel of the entire scheme of levy, imposition, assessment and recovery of octroi. It is the stand of the State Government that recovery of escort fees is inseparable part of the scheme and once an alternate system of collection of tax namely Local Body Tax is adopted there is no scope for collecting escort fees. It is pointed out that normally it is open for the transporter to pay octroi in accordance with the rules and on satisfying at the checkpost authority at the exit point the transporter can claim refund of octroi paid by him. If the transporter does not want to avail this option he is to pay octroi first at the entry point and then claim refund at the exit point. If the transporter expresses his willingness to pay escort fees he is not required to pay octroi at the entry point and claim refund at the exist point. It is thus contended that imposition of escort fees is a service rendered by the Corporation to the transporter who does not intend to pay octroi at the entry point and claim its refund at the exit point. Thus, it is contended that escort fees is connected with octroi and is an inseparable part of the scheme. Rule 17 of the Octroi Rules provide as under:

"(1) Goods imported by rail, sea air or road and intended for immediate export shall be dealt with according to this rule.

(2) The person-in-charge of the dutiable goods imported within the octroi which are intended for immediate export shall on their arrival at the Entrance naka apply to the Octroi Officer for a written permission-cum-transit pass for conveying the goods without escort, via the route from the Entrance naka to the Exist Naka specified under Clause (c) of sub-rule (1) of Rule 5. He shall at the same time pay at the Entrance Naka a deposit, calculated by the Octroi Officer in accordance with the fees, if any, as determined by the Commissioner and approved by Standing Committee for written permission-cum-transit pass and if considered necessary by the Octroi Officer, on presentation of a declaration-cum-

application in Form 2, the Octroi Officer shall issue a written permission-cum-transit pass in Form 7 to the said person and allow that person to proceed with the goods without Escort."

It is the contention of respondent - State that normally octroi is leviable on all goods which are brought within the octroi limits of the municipal corporation for the purpose of consumption, use and sale within the limits which would obviously mean that the goods which are brought in the octroi limits of Corporation not for the purpose of consumption, use or sale and only for the purpose of onward transport outside the octroi limits of the Corporation, the transporter is not liable to pay octroi. Once the State Government takes a policy decision to abolish octroi and cease collection of said tax from the transporter there is no question of collecting escort fees from the transporter carrying goods for onward transport outside the octroi limits of the Corporation. It is further contended that the State Government has taken a decision to substitute octroi by Local Body Tax. The scheme of collection of local body tax is totally different and distinguishable from the scheme of collection of octroi. The procedure for collection of local body tax is account based and there are no jakat nakas required for collection of said tax. It is the stand of the State Government that the trade/business community was facing difficulty in the free movement of goods due to the system of collecting octroi at checkposts. Taking into consideration the grievances raised by the representative body of trading community and transporters it was decided to abolish the system of collecting octroi and replacing the same by local body tax. So far as Municipal Corporation, Ahmednagar is concerned, it has started collecting local body tax in lieu of octroi from 10-9-2013 and in view thereof there arises no question for permitting the Corporation to collect escort fees. It is also contended that petitioner was aware of the decision taken by the Government and the fact that it would not be permissible to collect escort fees after abolition of octroi tax and as such petitioner was instructed to tender an undertaking which the petitioner has already tendered to the corporation agreeing not to challenge the decision of the Government or the Corporation to prohibit collection of escort fees. It is contended that petitioner is estopped from challenging the decision of the State Government as well as the Corporation regarding cancellation of collection of escort fees.

9. It must be noted that octroi tax and local body tax are two different concepts. Octroi as well as local body tax is collected on entry of goods into limits of the city for consumption, use or sale therein however, collection of octroi and local body tax is mutually exclusive. Local body tax is collected in the absence of octroi tax. Provisions relating to local body tax are incorporated in section 152-P to section 152T of the Maharashtra Municipal Corporations Act. There are rules framed by the State Government in exercise of powers conferred under section 152-T(1) of the Act prescribing the procedure for collection of local body tax. Rule 3 provides for limits of turnover for registration. Under the scheme of the rules, Rule 9 mandates that no dealer while being liable for registration under Rule 3 or under Rule 5(7), carry on business as a dealer, unless he possesses a

valid certificate of registration as provided by these rules. There is also mandate under the rules to every dealer to apply for registration and secure registration certificate. Rule 3 provides limits of turnover for registration which in case of a dealer who is an importer and dealing with the goods imported by him during the year is not less than Rs. 1,00,000/-, and in any other case including the case where a dealer has not become liable to pay local body tax under clause (a), and the turnover of all his sales or purchases during such year, is not less than Rs. 5,00,000/-. Thus, the dealer or any other person coming within the category of sub-rule (a) and (b) of Rule 3 are required to possess registration certificate. The dealers are required to maintain register of purchase and receipt of goods on transfer basis in Form D as mandated under Rule 19 of the rules. Rule 27 provides for lumpsum payment of local body tax. Said rule provides for procedure for making self-declaration in respect of turnover of purchase during the year and to pay tax as prescribed under the Rules. The limit of slab and the amount of tax payable by a dealer is also prescribed under the rules. There are certain exemptions granted under Rule 28 of the Rules. Rule 29 provides for submission of return by a registered dealer and, in certain cases, a dealer is required to furnish security as laid down under Rule 30. Rule 31 provides for determination of disputed questions and the Commissioner has been authorised to deal with the issues in dispute. Rule 33 provides for assessment of local body tax whereas Rule 34 provides for its reassessment. Ratification of mistake in assessment has been provided under Rule 35. There is also provision for appeal in the event of occurrence of dispute.

10. On consideration of the scheme of the Act and rules, it is clear that the scheme of collection of local body tax is totally different than collection of octroi tax. Octroi is claimed at the entry point of the city from a transporter whereas for collection of local body tax, a dealer is required to register himself, maintain record in respect of transaction and is also mandated to file returns and deposit tax as provided under the Rules. So far as the scheme of local body tax is concerned, the taxes are not collected at entry point. The scheme also provides for exemption in respect of annual transaction below Rs. 1,00,000/- so far as the dealer is concerned and, in respect of others, the limit prescribed is Rs. 5,00,000/-. So far as import of goods in the city limit which are to be exported outside the city by the person importing such goods otherwise than under a contract of sale or where that person has sold such goods and the sale occasions export of goods outside the city, then 90% of such amount of local body tax so paid is required to be refunded to the person. Thus, Rule 32 of the Rules also provides for refund of local body tax in case of export. On consideration of the scheme of octroi as well as local body tax, it is clear that collection of escort charges or supervision charges are surely linked with collection of octroi at the entry point. In view of abolition of collection of octroi by the Corporation, there is no reason for the Corporation to collect escort fees. The goods brought into the city limits by the transporter which are not meant for the purpose of consumption, use or sale within the city limits and are required to be exported

outside the city limits need not be charged with any tax or fees. Since the system of collection of tax at entry point is abolished and by adoption of system of collection of tax namely local body tax which is account based, the Corporation is not expected to collect escort charges.

11. In this view of the matter, in our view, the State Government was justified in directing the Corporation not to collect escort fees and to dismantle the infrastructure created for collection of charges at the entry point of the city and permit the transporters to move the goods within and outside the city limits without putting any artificial barriers. Petitioner, in the instant case was well aware of these developments and as such had given an undertaking to the Corporation to accept the decision, if any, that was most likely to be taken by the Corporation to abolish escort or supervision charges. Having tendered an undertaking not to challenge such decision if taken in future by the Corporation or the State Government, the petitioner is estopped from claiming entitlement to collect octroi charges. Even otherwise, the contract entered into by petitioner with the Corporation is frustrated on account of the decision of the Corporation not to levy octroi tax. As stated above, collection of escort fees is a part of the scheme of octroi tax and once the Corporation takes a decision not to collect octroi tax at the entry point of the city, there is no reason for the Corporation to collect escort charges. If at all, petitioner is of the opinion that as a result of decision taken by the Corporation or the State Government, the petitioner is put to any financial loss, it would be open for the petitioner to avail of the remedy provided under the law and claim damages. Petitioner has been prohibited from collecting escort fees and, in our opinion, rightly so by the Corporation.

12. For the reasons recorded above, there is no warrant to cause interference in the petition in exercise of extra ordinary jurisdiction under Article 226 of the Constitution of India. Petition is devoid of substance hence stands dismissed. Rule discharged. In the facts and circumstances of the case, there shall be no order as to costs. Pending civil application, if any, does not survive and stands disposed of.