
(2001) 02 RAJ CK 0124
In the Rajasthan High Court
Case No : Civil Writ Petition No. 868 of 1990

J.K. Synthetics Ltd. and another	Vs	APPELLANT
State of Rajasthan and another		RESPONDENT

Date of Decision : 22-02-2001

Acts Referred:

Rajasthan Municipalities (Amendment) Act, 1989 — Section 3, 6(2), 8(4)
Rajasthan Municipalities Act, 1959 — Section 149, 4, 4(1), 4(7)

Citation : (2001) 3 RLW 1353 : (2001) 4 WLC 187 : (2001) 3 WLN 295

Hon'ble Judges : Sunil Kumar Garg, J;Rajesh Balia, J

Bench : Division Bench

Advocate : L.R. Mehta, R.L. Jangid, A.A.G, for the Appellant; M. Mridul, for the Respondent

Final Decision : Dismissed

Judgement

Balia, J.

(1). Heard learned counsel for the parties.

(2). By this writ petition, the petitioner-J.K. Synthetics Limited, a Company registered under the Companies Act and engaged in the activities of manufacturing cement at Nimbahera, challenges letters of demand dated 30th October, 1989 (Annex. 5), 6th November, 1989 (Annex. 7), dated 29th November 1989 (Annex. 9), dated 16th December, 1989 (Annex. 3), dated 29th December, 1989 (Annex. 12) and dated 12th January, 1990 (Annex. 14), by the Municipal Board, Nimbahera Respondent No.2, in respect of demands raised regarding octroi on goods brought by the Company within the Municipal limits between 20th July, 1989 to 18th October, 1989. The other reliefs claimed in the writ petition relating to declaration of the order of this Court passed in Special Appeal No. 84/87 on 13.9.89 in an appeal preferred by the present petitioner on earlier occasion to be still effective and operative in respect thereof notwithstanding promulgation of the Rajasthan Municipalities (Amendment) Ordinance, 1989, later on incorporated into the enactment and claim to refund of

octroi duty levied and paid during the pendency of the earlier litigation, have not been pressed by the learned counsel. So also challenge the constitutional validity of provisions of the Ordinance has not been pressed.

(3). The facts, necessary for the present controversy, may be noticed at the outset. Until, before the issuance of Notification dated 13.2.84, extending the limits of Nimbahera Municipality, the factory premises of the petitioner-Company were situated outside the Nimbahera Municipality and it was not subjected to octroi in respect of goods which were brought to the factory area through the Municipal Limits of Nimbahera for use and consumption in the factory, By Notification dated 13.2.84, the Municipal limit of Nimbahera Municipality was extended to limits which include the factory premises of the petitioner-Company within the municipal limits of Nimbahera. This Notification was challenged by way of Writ Petition No. 946/84, inter alia, on the ground that the Notification (Annex. 4), for including the additional area in the Municipality vide the impugned Notification to be declared invalid for non-compliance of the provisions of Section 6(2) of the Rajasthan Municipalities Act (hereinafter referred to as "the Act"). Other consequential relief that since the Notification, extending the limits of the Municipality was invalid, no octroi was leviable in respect of goods brought within the factory for use and consumption therein was also raised. The said writ petition was dismissed by a learned Single Judge of this Court on 9.1.87, against which D.B. Civil Special Appeal No. 84/87 was preferred by the petitioner-company.

(4). The Division Bench, concurred with the learned Single Judge and held that the Notification, extending the limits of the Municipality, was valid and suffers from no irregularity. However, it agreed with the submission, made on behalf of the petitioner-company that in the absence of word "Notification" in sub-section (7) of Section 4 of the Act, the Municipal Board had no authority to levy octroi in respect of the goods brought within the extended area of Municipality, unless further notification levying octroi on goods brought within the extended area for use and consumption therein was issued. The Court held that so far as the inclusion of any Panehayat circle in any existing municipality is concerned, that could be made as per sub-section (4) of Section 8 and old Notification would apply to the newly included area of panchayat circle. In view thereof, the levy of octroi w.e.f 13.2.84 in respect of the goods brought for use and consumption within the Factory area, therefore, was held to be unsustainable notwithstanding it becoming a part of the Municipal Board, Nimbahera, for want of new Notification, extending levy of octroi duty to that area also and the Court further ordered refund of the octroi collected during the pendency of the writ petition w.e.f. the date of Notification dated 13.2.84. The Division Bench decided the appeal of the petitioner on 13.9.89.

(5). After the aforesaid judgment, the Rajasthan Municipalities (Amendment) Ordinance, 1989, published in the Rajasthan Gazette dated 12th October, 1989, was promulgated by the Governor of the State of Rajasthan. By Section 3 of the

said Ordinance, amendment was made in Section 4 of the Rajasthan Act No. 38 of 1959, by, inserting the word "Notification" between the words "directions" and "notices" in sub-section (7) of Section 4 of the Act. In view thereof, existing provisions for imposing octroi duty were extended retrospectively to the extended area of the Municipality, consequential provisions for validating levy and collection of lax since 13.2.84 until promulgation of Ordinance were also made by enacting Section 4 of the Ordinance, which reads as under-

"4. Validation. -(1) Notwithstanding any judgment, decree or order of any court or other authority to the contrary any octroi levied, charged or collected or purporting to have been levied, charged or collected before the commencement of this Ordinance and any action taken or things done before such commencement in relation to such assessment re-assessment, levy or collection under the provisions of the Principal Act and the rules made there under shall be deemed to be as valid and effect as if such assessment, re-assessment, levy or collection or action or things had been made, taken or done under the principal Act as amended by this Ordinance and the rules and bye-laws made there under and accordingly-

(a) all acts, proceedings of things done or taken by any municipality or by the officers of such municipality or by any other authority in connection with the assessment, re-assessment, levy or collection of such tax or octroi shall, for all purposes, be deemed to be and to have always been done or taken in accordance with law;

(b) no suit or other proceedings shall be maintained or continued in any court or before any authority for the refund of any such lax or octroi; and

(c) no court shall enforce any decree or order directing the refund of any such lax or octroi.

(2) For the removal of doubts, it is hereby declared that nothing in sub-section (1) shall be construed as preventing any person-

(a) from questioning in accordance with the provisions of the Principal Act, as amended by this Ordinance, any assessment, re- assessment, levy or collection of tax or octroi referred to in sub-section (1); or

(b) from claiming refund of any tax or octroi paid by him in excess of the amount due from him by way of lax or octroi under the principal Act, as amended by this Ordinance."

(6), After the issuance of this Ordinance, which later on became an Act on enactment of the Rajasthan Municipalities [Amendment) Act, 1989 vide Notification dated 18th January, 1990 coming-into force w.e.f. the date of Ordinance i.e., 12th October, 1989. After the commencement of the Ordinance, a demand was realised for a sum of Rs. 3,85,148.74 in relations to octroi payable between 20th July, 1989 to. 18th October, 1989 vide Notification (Annex. 5) dated 30.10.89 which, inter alia, was founded on the basis of the transit passed

issued during this period to the Company for carrying the goods through Municipal Limits of Nimbahera to the factory, Ex. 5 reads as under:-

(7). This was issued in response to the letter dated 17.9.89 issued by the company. The letter dated 17.9.89 has not been produced. However, letter dated 20th September, 1989 is on record as Annex. 1 which appears to be sequel to letter dated 16.9.89 for raising a demand of refund of octroi duty paid for the period from 13.2.84 to 13.9.89, during the pendency of the writ petition. This Annex. 5 is the first letter of demand in the chronological events of the letters which are subject matter of challenge. In response to Annex. 5, the petitioner protested vide letter dated 2.11.89 (Annex. 6) and requested to withdraw the demand of Rs. 3,85,148.74. In response to Annex. 6 dated 2.11.89, the petitioner was informed by letter dated 6.11.89 (Annex. 7) that demand has been created in pursuance of Amending Ordinance dated 12th October, 1989. This was replied to by the petitioner on 8th November, 1989 vide Annex. 8, demanding reference to specific provision of the Rajasthan Municipalities (Amendment) Ordinance, 1989, under which the proposed action for demand of recovery of octroi has been taken. This was replied to vide Annex. 9 dated 29.11.89, making it out to the petitioner that in sub-section (7) of Section 4, the word "Notification" has been inserted with retrospective effect and the octroi duty is now payable for the entire period, there being no difficulty in the levy and reiterated the demand. In response thereto, the petitioner paid Rs. 2,00,000/- under protest vide Annex. 10 letter accompanied with receipt Annex. 11 dated 13.12.89. After the deposit of Rs. 2,00,000/- on 13.12.89, the petitioner again issued a demand for refund of the amount paid, during the pendency of the writ petition, since the issuance of Notification dated 13.2.84 which became due as per the judgment of this Court dated 13.9.89 and also alleged that Section 4 of the Rajasthan Municipalities (Amendment) Ordinance has become ultra vires and nonest and threatened with litigation to follow, in case the refund is not made. This demand was replied to vide Annex. 3 dated 16.12.89 pointing out that Rs. 2,00,000/- have been deposited against the demand of octroi that became due between 13th July, 1989 to 18th October, 1989 and the remaining balance of Rs. 1,85,148.74 remains outstanding, which may be deposited by 25th December, 1989. About the demand made by the petitioner, it was informed that the same stands cancelled as a result of Amending Ordinance. Annex. 3 followed with further demand for remaining amount due for the aforesaid period vide letter dated 29.12.89 (Annex. 12) and letter dated 12.1.90 (Annex. 14). In between, the petitioner vide his letter dated 8th January, 1990 (Annex. 13) raised another objection by inviting attention to Section 149 of the Rajasthan Municipalities Act, 1959, mentioning requirement of demand of notice in a prescribed form.

(8). From the aforesaid narration of facts, it is apparent that all impugned letters Annexes. 5, 7, 9, 3, 12 and 14 in the order of chronology, are for challenging the demand raised vide Annex. 5 dated 30th October, 1989 for a sum of Rs. 3,85,148.74 for the period 20th July, 1989 to 18th October, 1989, out of which Rs. 2,00,000/- have been deposited by the petitioner and for the remaining

amount, repealed demands have been made by the respondent No.2, Municipal Board.

(9). The only contention raised by Mr. L.R. Mehta, learned counsel for the petitioners, in this case, is that though by Amending Ordinance, later enacted into an Act, the foundation of inadequacy or deficiency in levy of octroi on the extended area of the Municipal Board, Nimbahera, has been removed and the levy and collection of the octroi for the period until the date of the judgment of this Court dated 13th September, 1989, has been validated and no legitimate claim can be made by the petitioner to that amount for refund. But no levy could have been made for the period between the date of judgment and the commencement of Ordinance with reference to the provisions of the Amending Act as there is no validation of levy for that period.

(10). Having carefully considered the contention raised before us in support of the aforesaid relief, we find ourselves in disagreement with it.

(11). Once it is accepted premise that the law has been validly amended by removing the deficiency viz. the absence of reference to notification in Section 4 (7) which was pointed by the Court in its judgment dated 13.9.89, and which has resulted in invalidating the levy of octroi on the basis of existing notification operating levy of octroi in areas included in Municipal limits prior to 12.2.84 and the amendment in law was made inserting word "notification" in Section 4(7) with retrospective effect from the date of commencement of the Act, the logical consequence of such retrospective amendment is that the law as amended existed throughout the operation of the Act. Notifications issued under the Act from time to time thus stood extended in their operation to entire Municipal limits as delimited from time to time. Therefore, authority of law for imposing and collecting octroi in respect of goods brought within the municipal area under notification, even if issued prior to 13.2.84 became operative in respect of goods brought for consumption or to be used otherwise within the extended Municipal limits w.e.f. the date of notification extending Municipal limits. This also carried with it authority to levy and collect octroi on such goods during the entire period since 13.2.84.

(12). That has the effect of extending the operation of notification as existed from time to time effective even in respect of extended limits of existing limits of given municipality. As a result, the goods brought within the factory premises of the petitioner which fell in the extended area of the municipal limits of Nimbahera, became valid subject of levy and collection of octroi. Such levy and collection whether during the pendency of the litigation, or period after litigation was concluded, continued to be governed by the same provisions of law and subject to the same conditions. There is no hit us merely because of the validating provision on the extended authority of law for imposition and collection of such tax between the date of demand and the promulgation of Amending Ordinance. Mere validation of levy and collection made during the period of pendency of litigation after amendment of judgment would not have been

countenanced inasmuch as nullifying the effect of judgment without removing the foundation on which the judgment is based, is not within the province of the authority of Legislation. But, once the foundation on which the levy has been held to be invalid is removed retrospectively, thereafter, levy for such period is made not because of the validating Act, but because of the due existence of the valid provisions of law imposing tax at all relevant times and if that is the purpose of retrospective operation of law, there is no question of remaining any hit us between the operative period of validating effect of the amending law. The validating provisions, after removing the foundation of the judgment. are mere clarificatory in nature of the effect of the amendment made retrospectively and to give a quietus to any contention that may be raised on the premise of matters having received finality because of judicial or quasi judicial decisions.

(13). However, where no period is covered by any order or judgment, the authority to levy and collect taxes flow from the provisions of law itself and does not need any validating provision.

(14). From the narration of facts, it is further apparent that the octroi duty has been levied not merely for the period subsequent to the pronouncement of judgment, but covers partly the period prior to the date of judgment. The judgment has been pronounced only on 13th September, 1989, whereas the demand has been created for the period between 20th July, 1989 to 18th October, 1989 and the basis for computation of octroi has been stated in Annex. 5 to be the transit passes issued during that period to the petitioner for carrying the goods through municipal limits to the factory. In fact, no contention so as to the correctness of the amount of demand raised on that basis, has even been raised before us.

(15). In that view of the matter, we find no invalidity in the demand raised through various demand letters under challenge, namely Annex. 5, 7, 9, 3, 12 and 14.

(16). Accordingly, the writ petition fails and is hereby dismissed with costs.

(17). The interim order dated 26.9.94 stands vacated. It may be pointed out that in the interim order dated 26.9.94, a condition was imposed that, in case the writ petition fails, the respondent would be entitled to the interest at the rate of 12% per annum. In view of this, the petitioners shall be liable to make the payment to the respondents of the amount due along with 12% interest with effect from the date it became due.