
(1962) 04 KAR CK 0005
In the Karnataka High Court
Case No : Writ Petition No. 286 of 1960

M. Thippeswamy Setty

APPELLANT

Vs

The Town Municipal Council

RESPONDENT

Date of Decision : 06-04-1962

Acts Referred:

Mysore Town Municipalities Act, 1951 — Section 2 (b)
Mysore Town Municipalities Regulation, 1933 — Regulation 61, 62

Citation : AIR 1963 Kar 17 : AIR 1962 Kar 17

Hon'ble Judges : N. Sreenivasa Rau, C.J;A. Narayana Pai, J

Bench : Division Bench

Advocate : G. S. Ullal, for the Appellant; V. Krishna Murthy and B.K. Ramachandra Rao, for the Respondent

Judgement

Narayana Pai, J.—The petitioner, who is a dealer in cycles and petromax lights carrying on business at Chitradurga, prays for the issue of a writ of mandamus to the respondent, the Town Municipal Council of Chitradurga, directing the respondent to forbear from levying and collecting octroi on cycles, petromax lights and their spare parts.

2. It is the contention of the petitioner that there is no authority of law on the basis of which the Municipality could levy octroi duty on the said articles.

3. The answer of the Municipality is that octroi on the said articles has been duly and properly imposed and that the Municipality has been collecting the same from 1948. In support of the legality of the imposition, the Municipality states that the said imposition has been, made after following the procedure prescribed therefore by Section 62 of the Mysore Town Municipalities Regulation VIII of 1933 and that the Municipality has secured the sanction or approval of the Government for it as required by Section 61 of the same Regulation. Although the Regulation of 1933 has since been repealed by the Mysore Town Municipalities Act XXII of 1951, it is contended, the said action taken by the Municipality continues in force by virtue of Section 2 (b) of the 1951 Act.

4. The relevant order of the Government is numbered L. 15324-5/ML. 59-47-37 dated 31-3-1948 which reads as follows :

"Under Section 61 of the Mysore Town Municipalities Act 1933, Government are pleased to sanction the resolution of the Chitradurga Town Municipal Council, for the levy of Octroi on the several articles at the rates noted against each as detailed in the accompanying statement".

5. Conceding all these contentions raised by the Municipality to be correct, the argument on behalf of the petitioner is that cycles, petromax lights and their spare parts do not fall within the description or any one of the 21 articles set out in the statement annexed to the said Government Order.

6. The learned counsel on behalf of the Municipality concedes that the said argument on behalf of the petitioner would be correct if it is to be understood as suggesting that cycles, petromax and their spare parts are not found specifically mentioned in any one of the 21 articles of the said statement. Both according to the affidavit produced on behalf of the Municipality as well as the arguments addressed to us by its learned counsel, the only case of the Municipality is that cycles, petromax lights and their spare parts could be brought within the description of articles as set out in entry No. 8 or entry No. 9 contained in the said statement. The said description contained in those entries reads as follows :

"8. Iron, steel and their products. 9. Brass, copper, aluminium and other metals including alloys and their products".

7. The only point for consideration therefore is whether cycles, petromax lights and their spare parts can be said to fall within the description contained in entries Nos. 8 and 9 mentioned above.

8. It is difficult to see how either a cycle or a petromax light can be brought under either of these entries.

9. The articles that expressly come within the eighth entry are iron, steel and their products. It certainly cannot be stated that either a cycle or a petromax I light can be brought under either iron or steel. The argument is that it can well be called a product of iron or steel or of both. It is, however, clear that a cycle or a petromax light is not an article made exclusively of iron or steel or of both. Several other metals or substances like chromium, rubber, leather, etc., go into the manufacture of a cycle. Likewise, in the manufacture of petromax lights other metals or things like tin, glass, etc., are used. As we read the entry, the products referred to: therein could only be products wholly of iron or wholly of steel or partly of iron and partly of steel, but cannot be articles produced from other metals or substances, whether or not iron, steel or both are used along with the rest. We do not think therefore that cycles or petromax lights can be brought within entry No. 8 without doing violence to the language employed therein or departing from the ordinary meaning of the words used therein.

10. The position in regard to entry No. 9 is the same. Neither a cycle nor a

petromax light can possibly be brought under this entry.

11. So far as spare parts are concerned, there is not sufficient material placed before us to enable us to express a clear opinion whether they could come under either of these entries. In the light of what is stated above, all that we could say is that a given spare part could be brought under entry No. 8 if it is a product exclusively of iron or exclusively of steel or partly of iron and partly of steel, and not otherwise. It could be brought under entry No. 9 if it is exclusively a product of brass or of copper or of aluminium or of other metal or alloy, or in the production of which two or more such metals or alloys (other than iron and steel) are used.

12. The learned counsel on behalf of the Municipality has brought to our notice a decision of a single judge of the Lahore High Court reported in *Hira Chand v. Emperor* AIR 1931 Lah 572. In that case, it was held that a motor-car was liable to levy of octroi by the Municipality of Dera Ghazi Khan on the ground that it could be brought within the term "carriage" or the expression "an article made wholly or partially of metal" occurring in the relevant notification imposing octroi. The decision turned entirely upon an interpretation of the terms of the relevant notification. The principle underlying that decision is not different from the one, on the basis of which we have expressed our opinion on the controversy before us in this case.

13. We therefore issue a writ of mandamus to the respondent-Municipality directing it to forbear from levying or collecting octroi duty in respect of cycles and petromax lights with a further direction that it should forbear from levying or collecting octroi in respect of spare parts of either cycles or petromax lights unless they could be brought within either entry No. 8 or entry No. 9 of the statement annexed to the Order of the Government bearing No. L. 15324-5/ML. 59-47-37 dated 31-3-1948 interpreted in the manner pointed out by us above.

14. The parties will bear their own costs in this Writ Petition.

15. Before closing, we should make mention of one matter which came to our notice in the course of the arguments. Though it ultimately became unnecessary for us to examine the same for deciding this case, it is of sufficient public importance to call for attention by the Legislature. The Second Schedule to the Mysore Town Municipalities Regulation of 1933 prescribing the maximum rates for octroi divided animals and goods specifically into seven classes and added an eighth class to consist of all other articles not specified in the first seven classes. But the second Schedule of the Mysore Town Municipalities Act of 1951, while giving a list of 65 articles with appropriate maximum rates of octroi stated against each of them, contains no residuary class nor makes mention of any articles other than the specified 65 ones. It is therefore possible to take the view that octroi in respect of any article not coming within the description contained in any one of the 65 entries of the schedule may be levied with out any limit whatever as to rate. Such a result is so obviously opposed to the general scheme

of the statute in regard to levy of octroi, that it does not appear to have been contemplated by the Legislature. It is, however, for the Legislature itself to examine the position and take appropriate steps.