
(1965) 11 MP CK 0022
In the Madhya Pradesh High Court
Case No : M.P. No. 112 of 1965

Madanlal Hiralal and others	Vs	APPELLANT
State of Madhya Pradesh and others		RESPONDENT

Date of Decision : 05-11-1965

Acts Referred:

Madhya Pradesh Municipalities Act, 1961 — Section 323

Citation : (1966) JLJ 65 : (1966) MPLJ 68

Hon'ble Judges : P.V. Dixit, C.J.; R.J. Bhavde, J

Bench : Division Bench

Advocate : A.P. Sen, for the Appellant; S. Awasthy for Respondent No. 3 and A.R. Choubey, for the Respondent

Judgement

P.V. Dixit, C.J.

By this application under Article 226 of the Constitution the Petitioners, who are the ratepayers of the Municipal Council, Rajnandgaon, question the legality of an order passed by the Collector, Durg, on 20th February 1965 u/s 323 of the Madhya Pradesh Municipalities Act, 1961 (hereinafter referred to as the Act) suspending the execution of an order passed by the President, Municipal Council, Rajuandgaon, on 12th January 1965 that with effect from 15th January 1965 refund of octroi duty matters shall be dealt with at the Town Hall upto 5 p. m. daily. They pray for the issue of a writ of certiorari for quashing the said order of the Collector.

The material facts are that under Rule 19 of the Rules framed by the Municipal Council for collection and refund of octroi duty, applications for refund of octroi duty have to be made to the Central Octroi Office of the Municipal Council and they must be accompanied by receipts of payment of octroi duty in respect of the goods desired to be imported or exported. As stated by the petitioners and also by the Collector in the impugned order, the Central Octroi Office is located near the railway station and quite close to the municipal godown. According to the applicants, the location of the Central Octroi Office near the railway station and

at a considerable distance from the main municipal office in the Town Hall was causing considerable inconvenience to the general body of traders and was also resulting in fraudulent refund of octroi duty by the subordinate staff of the Municipal Council; that in order to remove this inconvenience and stop evasion of payment of octroi duty by claims of refund, the President made an order on 12th January 1965 that with effect from 15th January 1965:

(Proceedings for refund of octroi will be held at the Town Hall upto 5 p. m.). This order of the President was ratified by the Council on 19th February 1965.

It appears that after the making of this order by the President, the Respondent No. 4, the President of Kirana Vyapari Sangh, Rajnandgaon, moved the Collector for staying the execution of the order of the President on the ground that the shifting of the place of refund proceeding of octroi duty amounted to a change in Rule 19 referred to above and that the change would also cause considerable inconvenience to the merchants. The Collector after hearing the President of Municipal Council and the Respondent No. 4 formed the opinion that the order passed by the President on 12th January 1965 virtually amended Rule 19 of the Rules framed by the Municipal Council for collection and refund of octroi duty; that the rules had the effect of bye-laws and no change in the bye-laws could be made without the approval of the State Government as laid down by Section 357 of the Act; that the President had no power to make an order which required the approval of the State Government; and that the change made by the President by his order dated 12th January 1965 was likely to cause " injury to the interests of the traders of Rajnandgaon and also to cause annoyance to them in performing their profession of trade. " On this view the Collector made an order u/s 323 suspending the execution of the President's order dated 12th January 1965. He also directed that a copy of his order should be transmitted forthwith to the State Government for confirmation.

The question raised in this petition is whether the Collector had the power u/s 323 of the Act to suspend the execution of the order passed by the President of the Municipal Council on 12th January 1965. Sub-section (1) of Section 323 is as follows:-

323 (1). If, in the opinion of the Divisional Commissioner, the Collector, or any other officer authorised by the State Government in this behalf, the execution of any order or resolution of a Council, or of any of its Committee or any other authority or officer subordinate thereto, or the doing of any act which is about to be done or is being done by or on behalf of the Council, is not in conformity with law or with the rules or bye-laws made there under and is detrimental to the interests of the Council or the public or is causing or is likely to cause injury or annoyance to the public or any class or body of persons or is likely to lead to a breach of the peace, he may, by order in writing under his signature suspend the execution of such resolution or order or prohibit the doing of any such act.

The second Sub-section, *inter alia*, provides that when any order under sub-

section (1) is passed, the authority making the order shall forthwith forward it to the State Government and it shall be in the discretion of the State Government whether to rescind the order or to direct that it shall continue in force with or without modification permanently or for such period as it thinks fit. It will be seen from the first Sub-section that the making of an order thereunder has been made dependent on certain conditions and contingencies. An order under that provision cannot be made by the Collector unless the order or resolution of the Municipal Council or of any of its committees or of any of its subordinate authorities, the execution of which is intended to be stayed, or any act of these bodies which is intended to be prohibited, is not in conformity with law or with the rules or bye-laws made thereunder and unless also the execution of the order or the act would be detrimental to the interests of the Council or the public or is likely to cause injury or annoyance to the public or any class or body of persons or is likely to lead to a breach of the peace. The opinion which the Collector is required to form u/s 323 before making an order under that provision is with regard to the above mentioned matters. It follows, therefore, that if an order, resolution or act of a Council or of any of its Committees or of any authorities or officers subordinate thereto is in accordance with law or with the rules or bye-laws made thereunder and is neither detrimental to the interests of the Council or the public nor causes nor is likely to cause injury or annoyance to the public, then the execution of such resolution, order or act cannot be suspended. The making of an order u/s 323 no doubt depends upon the opinion of the Collector. But there must be material before the Collector to form the opinion that the conditions on the basis of which alone an order u/s 323 can be made to exist. Where the Collector makes an order solely on grounds altogether extraneous to Section 323 (1), the case would be one of want of jurisdiction in the Collector to make the order.

Here, it cannot be said of the order passed by the President on 12th January 1965 that it is contrary to the Act or any law or to the statutory rules or bye-laws. It does not in any way purport to amend or affect Rule 19 of the Rules made by the Municipal Council for the collection and refund of octroi duty. That rule only says that applications for refund shall be made to the Central Octroi Office of the Municipality. It does not fix the location of the Central Octroi Office. Under that rule applications are to be made to the Central Octroi Office and not to any Central Octroi Post. The order of the President is no doubt not very precisely worded. But its effect is to shift the Central Octroi Office from its present location to the Town Hall. Thus, by the President's order only the place of location of the Central Octroi Office has been changed and not the authority or the office where applications for refund should be made. The order of the President has to be read consistent with Rule 19, and, so read, it can only mean that what has been done by the order is to shift the Central Octroi Office from its present place to the Town Hall. The Collector has nowhere found in the impugned order that even after the passing of the order by the President on 12th January 1965 the Central Octroi Office remains where it is but that under that order

another office or authority has been nominated for dealing with refund matters. As we read the Collector's order, we find that according to him the change in the location of the Central Octroi Office from the railway station to the Town Hall amounts to a change in Rule 19. This is not correct. Section 51(1)(b) of the Act gives to the President of the Council supervisory power over the executive administration of the Council. In the exercise of this power, the President has clearly the power to decide which office shall be located where. In making the order dated 12th January 1965 the President thus acted within the limits of his powers and in conformity with the provisions of the Act and Rule 19 of the aforesaid Rules.

If the President's order dated 12th January 1965 cannot be said to be, one "not in conformity with law or with the rules or bye-laws made thereunder" then the Collector had no jurisdiction to stay the execution of that order. It must be noted that for staying u/s 323 the execution of any order, resolution or act, both the conditions, namely, of the order, resolution or act being against law or the rules or bye-laws made thereunder and it being detrimental to the interests of the Council or the public and likely to cause injury or annoyance to the public or any class or body of persons, must be satisfied. If, therefore, one of the conditions does not exist, then the Collector has no jurisdiction to stay the execution of the order, resolution or act. It is, therefore, not necessary to consider whether the change in the location of the Central Octroi Office is likely to cause injury or annoyance to the public or any class or body of persons or is likely to lead to a breach of the peace. But it may be noted that the impugned order of the Collector does not show that the second condition about "injury" also existed. If, in carrying out a statutory duty, the President passes a legal and valid order, then it cannot be said that the order is one causing injury or annoyance to the public or any class or body of persons. As pointed out by this Court in *Municipal Committee Vs. State of M.P. and Others*, while dealing with Section 53 of the Central Provinces and Berar Municipalities Act, 1922, "injury" means unlawful infringement or privation of a right, and "annoyance" in law means much the same thing as nuisance. The Collector's order does not reveal how the change in the location of the Central Octroi office would in any way infringe the rights of the public or of any class or body of persons and how the functioning of the Central Octroi Office in the Town Hall constituted a nuisance. Indeed, it is but right that if the offices of the Municipal Council are located in the Town Hall, the Central Octroi Office should also be there, and there can be no more injury or nuisance in the location of the Central Octroi Office in the Town Hall than there can be in the location of other municipal offices in the Town Hall.

The Collector has no doubt forwarded his order dated 20th February 1963 to the State Government for confirmation as required by Sub-section (2) of Section 323. But, if, as we think, the Collector's order is illegal and invalid, then the submission of that order to the Government for action u/s 323 (2) cannot cure the invalidity in the order. If the Government gives a direction continuing in force the Collector's order dated 20th February 1963 with or without modification,

such a direction would be clearly invalid and of no legal effect whatsoever.

For all these reasons, we are of the opinion that the order dated 20th February 1965 of the Collector is illegal and invalid. It is accordingly quashed by the issue of a writ of certiorari. The Respondents No 3. 1 and 2 are restrained from giving effect to that order. The Petitioners shall have costs of this application from the Respondents No3. 1, 2 and 1. Counsel's fee is fixed at Rs. 150. The outstanding amount of the security deposit shall be refunded to the Petitioners.