

(1987) 07 MP CK 0028

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 2902 of 1984

Monji Kalyanji and Others

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 13-07-1987

Acts Referred:

Constitution of India, 1950 — Article 14
Madhya Pradesh Municipalities Act, 1961 — Section 127(1), 127(7)

Citation : AIR 1988 MP 220 : (1989) ILR (MP) 133 : (1987) 32 MPLJ 643 :
(1987) MPLJ 643

Hon'ble Judges : N.D. Ojha, C.J.;C.P. Sen, J

Bench : Division Bench

Advocate : N.C. Jain, for the Appellant; M.V. Tamaskar, General, for the Respondent

Final Decision : Dismissed

Judgement

N.D. Ojha, C.J.

The petitioners are doing business of grain and of manufacturing Dal at Vidisha. By this writ petition they have challenged the imposition of terminal tax by the Municipal Committee, Vidisha. A copy of the relevant notification where by this tax has been levied and which has been published in Part 2 of the Madhya Pradesh Rajpatra dt. 10th Aug. 1984 has been attached as Annexure B to the writ petition. It indicates that tax on export of various kinds of food-grains and oil-seeds from within the limits of Municipal Committee, Vidisha, has been levied at rates mentioned in the said notification. The said tax has been levied u/s 127(1)(xvi) of the M. P. Municipalities Act, 1961 (hereinafter referred to as the Act) which contemplates a terminal tax on goods or animals imported into or exported from the limits of the municipality.

It has been urged by learned counsel for the petitioners that Clause (xvi) of Sub-section (1) of Section 127 of the Act was ultra vires inasmuch as it was not covered by any entry either in List II or in List III of the Seventh Schedule to the

Constitution. According to counsel for the petitioners, terminal tax could be levied only by Act of Parliament in view of Entries 89 and 97 of List I of the Seventh Schedule to the Constitution. Entry 89 refers to terminal taxes on goods or passengers, carried by Railway, sea or air, taxes on railway fares and freights; whereas Entry 97 is the residuary entry. For the respondents on the other hand, it was urged by the learned Advocate General that the impugned terminal tax was covered by Entry 56 of List II which refers to taxes on goods and passengers carried by road or on inland waterways.

In our opinion, the impugned tax cannot fall under Entry 89 of List I inasmuch as the said entry contemplates only such goods or passengers which are carried by railway, sea or air. It does not contemplate any terminal tax on goods or passengers carried by road or on inland waterways. The petitioners do not assert to export their goods by railway, sea or air. The impugned tax is clearly covered by Entry 56 of List II. This being so, the residuary Entry 97 of List I will not be attracted. It is true that in Entry 89 of List I the nature of tax has been referred to as terminal tax whereas Entry 56 of List II refers to "taxes". This, in our opinion, is of not much significance inasmuch as the term "taxes" is apparently wider than terminal tax: The term "taxes" used in Entry 56 would obviously include terminal tax if the goods or passengers are carried by road or on inland waterways. Clause (xvi) of Sub-section (1) of Section 127 of the Act uses the words "imported into or exported from the limits of the Municipality". The impugned tax as seen above is on export of goods outside the municipal limits Vidisha. In *The Central India Spinning and Weaving and Manufacturing Company, Limited, The Empress Mills, Nagpur Vs. The Municipal Committee, Wardha*, it was held in para. 24 of the Report that the word "export" has reference to taking out of goods which had become part and parcel of the mass of the property of the local area and will not apply to goods in transit i. e. brought into the area for the purpose of being transported but of it. In para. 32 of the report on the other hand, it was pointed out that terminal tax on goods imported or exported is similar in its incidence and is payable on goods on their journey ending within the municipal limits or commencing therefrom and not where the goods were merely in transit through the municipal limits and had their terminus elsewhere. In this case as also in three subsequent decisions, namely *Bangalore Woollen, Cotton and Silk Mills Co. Ltd., Bangalore Vs. Corporation of the City of Bangalore*, by its Commissioner, Bangalore City, *Burmah Shell Oil Storage and Distributing Co. India Ltd. Vs. The Belgaum Borough Municipality*, and *Man Mohan Tuli Vs. Municipal Corporation of Delhi and Others*, the Supreme Court has traced the legislative history of terminal tax and has also pointed out the distinction between "octroi" and "terminal tax". In *Man Mohan Tuli's* case (*supra*) it was further held that the power to subject the goods either to octroi or to terminal tax squarely falls within Entries 52 and 56 of List II of the Seventh Schedule to the Constitution. In view of these decisions it is apparent that Clause (xvi) of Sub-section (1) of Section 127 of the Act in so far as it empowers a municipal council to impose terminal tax both on import and on export is covered by Entry

56 of List II of the Seventh Schedule to the Constitution. In view of these decisions it is apparent that Clause (xvi) of Sub-section (1) of Section 127 of the Act insofar as it empowers a municipal council to impose terminal tax both on import and on export is covered by Entry 56 of List II of the Seventh Schedule to the Constitution and the submission to the contrary made by learned counsel for the petitioners cannot be accepted.

Reliance was placed by learned counsel for the petitioners on *Bhikamchand v. Municipal Committee, Chhota Chhindwara* 1961 MPLJ 937, where it was held that a municipal committee cannot claim the power to impose a terminal tax on goods exported from and imported in municipal limits by rail on which no such tax was being levied immediately before the commencement of the Constitution or the power to vary the rate of tax. Apparently this case is clearly distinguishable inasmuch as it dealt with imposition of terminal tax on goods exported from and imported in municipal limits by rail and not by road. Such a tax would obviously be covered by Entry 89 of List I and not by Entry 56 of List II of the Seventh Schedule to the Constitution. Learned counsel for the petitioners also placed reliance on a decision of the Rajasthan High Court in *Arjunsingh Vs. Teekchand and Others*, . This decision too, in our opinion, is not applicable to the facts of the instant case. That was a case where a notification dt. 24th July, 1933 was issued giving sanction of His Highness's Government to impose export tax on articles mentioned in that notification when exported by railway. This tax was continuing till the Rajasthan Town Municipalities Act came into force in 1951. u/s 2(b) of the Act, all taxes imposed were, so far as may be, deemed to have been imposed under the Act. On its basis it was urged that the export tax imposed by the notification of the 29th July 1933 must be deemed to be a tax imposed under the Act and as such it would be saved under Article 277 of the Constitution even if no new tax of this nature can be imposed after coming into force of the Constitution. This argument was repelled on the ground that the Constitution had come into force before the Rajasthan Town Municipalities Act was passed and after the coming into force of the Constitution, the Legislature of Rajasthan could not impose a tax which was not covered by Lists II and III of the Constitution. Apparently in view of Entry 89 of List I of the Seventh Schedule to the Constitution, tax on articles exported by railway could be levied only by an Act of Parliament and not by the State Legislature. In the instant case, the impugned tax does not relate to goods that were being exported by railway, sea or air and as such it could be imposed u/s 127(1)(xvi) of the Act and the subject matter of the said section is covered by Entry 56 of List II of the Seventh schedule to the Constitution.

It was then urged by learned counsel for the petitioners that the impugned tax was in violation of Articles 301 and 304(b) of the Constitution inasmuch as it amounted to an unreasonable restriction on inter-State trade. According to him, it was not only not in public interest but was penal and discriminatory. Suffice it to say so far as this submission is concerned that there is no specific statement in the writ petition that the petitioners export goods outside the State of Madhya

Pradesh. In para 13 of the writ petition it has been stated that the food grains and oil-seeds are brought within the municipal limits by the traders of the cultivators for sale and if enough market is not found, they are sent to other places to fetch a fair price. In the absence of any specific assertion in this behalf what transpires from para. 13 of the writ petition is that the words "other places" used therein refer to nearby places within the State of Madhya Pradesh. In para. 16 of the return it has been stated on behalf of the respondents that it is denied that the terminal tax hampers any business of the Vidisha traders or disturbs the free trade and commerce or inter-State trade. In the absence of any specific averment that the petitioners carry on interstate trade and are thereby affected by the impugned terminal tax, the question whether the said tax in any way infringes Article 301 of the Constitution is only academic in the instant case and does not consequently deserve to be dealt with in any detail. The question as to whether the impugned terminal tax places reasonable restriction and is in public interest as contemplated by Clause (b) of Article 304 of the Constitution for the same reason need not be gone into in the instant case. Reliance was placed by learned counsel for the petitioners on certain decisions about imposition of tax with reference to Articles 301 and 304(b) of the Constitution but since the petitioners have not made any specific assertion that they are carrying out inter-State trade, we do not find it necessary to deal with those decisions also.

In connection with his submission that the imposition of the impugned tax was discriminatory, it was urged by learned counsel for the petitioners that other municipal councils within the State of Madhya Pradesh had not levied such a tax and consequently the levy by the Vidisha Municipal Council was discriminatory. Suffice it to say so far as this submission is concerned that firstly on the material placed before us it is not possible for us to come to a definite conclusion that no other municipal council whatsoever within the State of Madhya Pradesh has imposed such a terminal tax. Secondly, we are of opinion that the principle laid down by the Supreme Court in *Vrajlal Manilal and Co. and Another Vs. State of M.P. and Another*, would be applicable. In para. 12 of the report, while dealing with the power of the Parliament on the one hand and of the State Legislature on the other with reference to Lists I and II of the Seventh Schedule to the Constitution, it was pointed out that keeping in mind purpose with which various entries were included in either List I or List II, it was clear that the State Laws must necessarily differ in various respects from the provisions of similar laws of other States. It was further pointed out that consideration of matters which are relevant for imposition of a tax by the States must, from the nature of things, differ from State to State and consequently merely because the provisions of State laws differ from the provisions of the other State laws on the same subject do not make such provisions discriminatory. As pointed out above, we are of opinion that this principle would apply to imposition of tax by one municipal council vis-a-vis other municipal councils within the same State because the considerations for imposition of terminal tax may differ from municipal council to municipal council.

Lastly it was urged by learned counsel for the petitioners that the procedure u/s 129 of the Act for imposition of a tax such as the impugned terminal tax, was not followed and consequently the said imposition is vitiated in law. In this connection it was pointed out that Sub-section (2) of Section 129 contemplated that when a resolution containing proposal to impose a tax has been passed, the council shall publish a notice in the prescribed form and manner along with the resolution. Rule 2 framed in this behalf prescribes the manner of publication and it contemplated that the notice and resolution passed by the council proposing the imposition of any tax shall be forwarded to the State Government through the Deputy Director of Local Bodies for publication in the Gazette. It was urged that the notice and the resolution were not published in the Gazette and were published only in a newspaper as indicated by Annexure R-I to the return. We find no substance in this submission inasmuch as, as pointed out by the learned Advocate General the said notice and resolution were published in Part 3 of the Madhya Pradesh Rajpatra dt 14th Oct., 1983. The next infirmity pointed out by learned counsel for the petitioners in this behalf was that Sub-section (7) of Section 129 of the Act contemplated that if any proposal for taxation has been sanctioned under Sub-section (5), the State Government may, by notification, direct the imposition of the tax as sanctioned from such date which shall not be earlier than thirty days from the date of publication of such notification as may be specified therein, and thereupon the tax shall come into effect as from the date so specified. According to the learned counsel for the petitioners, since the relevant notification issued under the said sub-section did not specify the date contemplated by the said sub-section and the relevant place in this behalf had been left blank, the said notification could not be treated to be valid in law. In this connection, reliance has been placed by learned counsel for the petitioners on a Division Bench decision of this Court in Jagtram Daswani v. State of M.P. 1971 MPLJ 911 : (1972 Tax LR 1699). In that case, while interpreting Section 130 of the Act, it was held :

"On a reading of Section 130 of the Act, we therefore find that the procedure prescribed for abolition of a tax is that the council will make a proposal to the State Government to abolish a tax, and if the State Government gives its sanction it will fix a date from which the tax is to be abolished and will publish that date in the official Gazette."

On its basis it was urged that in the notification issued u/s 129(7) of the Act, the State Government should have fixed a date and since no date was fixed and the relevant place for mentioning the date was left blank, the notification was ineffective. In reply, the learned Advocate General has placed reliance on a letter dt 11th Sept. 1984 from the Under Secretary "to the Government of Madhya Pradesh to the Mukhya Nagar Palika Adhikari, Nagarpalika, Vidisha, a copy whereof has been annexed as R-II to the return stating that the notification issued by the State Government in regard to the export tax shall be effective on the expiry of thirty days from the date of the publication of the said notification in the Madhya Pradesh Rajpatra. According to the learned Advocate General, the

said notification, which was published in the Madhya Pradesh Rajpatra dt. 10th Aug. 1984, became effective on the expiry of thirty days from that date. It was also urged by him that the mere fact that no date had been mentioned in the said notification would not invalidate the same inasmuch as thirty days after the date on which the notification was published in the Rajpatra would be deemed to be the relevant date. In our opinion, there is substance in the submission made by the learned Advocate General A similar question came up for consideration before a Full Bench of this Court in Ramjilal and Others Vs. Municipal Committee, . In that case, the relevant provision which came up for consideration was Section 61(1) of the C. P. and Berar Municipalities Act which read as hereunder :

"If any proposals for taxation have been sanctioned under Sub-section (5), the Provincial Government may, by notification, direct the imposition of the tax as sanctioned from such date as may be specified in such notification, and thereupon the tax shall come into effect as from the date so specified."

The question which came up for consideration was about the effect of no date being specified in the notification. It was held :

"As we read Section 67(7) of the Act, we are of the opinion that it only gives discretion to the Provincial Government after the proposal for taxation has been sanctioned by it under Sub-section (5), to decide whether or not to direct its imposition. If it decides that it should be imposed, it is required to issue a notification directing the imposition of the tax. The Provincial Government may also decide, while sanctioning the proposal of taxation, that the imposition of the tax shall not be forthwith. In that case, it would be required to determine the date from which it shall come into effect. The latter part of Section 67(7) contemplates this contingency and provides that where such a date is specified in the notification, the tax shall be effective only from that date. No obligation, however, can attach to the Provincial Government to postpone the imposition of tax. Accordingly, no such limitation can, in the absence of any express provision to that effect, be read in Section 67(7). Therefore, where no date is specified, it shall be presumed that the imposition of the tax has not been postponed. As a consequence the tax shall take effect from the date on which the notification directing its imposition has been published. It has to be remembered in this connection that in the case of a machinery section in a taxing statute, such as Section 67(7) of the Act, that construction should be preferred which makes the machinery workable."

In view of this Full Bench decision and the requirement of Section 129(7) of the Act, the impugned notification came into force on the expiry of thirty days from the date on which the said notification was published in the Madhya Pradesh Rajpatra and it is really this legal position which was clarified by the letter of the Under Secretary, dt. 11th Sept., 1984 (Annexure R-II) referred to above. Consequently, we are not inclined to agree with the submission made by learned counsel for the petitioners that the impugned notification was bad for non-

compliance of the requisite provisions of Section 129 of the Act.

In the result, we find no merit in this writ petition. It is accordingly dismissed but there shall be no order as to costs. Security amount, if any, be refunded to the petitioners.