
(1975) 04 RAJ CK 0015
In the Rajasthan High Court
Case No : Civil Writ Petition No. 90 of 1975

Municipal Board	Vs	APPELLANT
The State of Rajasthan and Others		RESPONDENT

Date of Decision : 21-04-1975

Acts Referred:

Constitution of India, 1950 — Article 226, 326, 370
General Clauses Act, 1897 — Section 21
Industrial Disputes Act, 1947 — Section 10
Representation of the People Act, 1951 — Section 30

Citation : (1975) RLW 238 : (1975) 8 WLN 184

Hon'ble Judges : C.M. Lodha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

C.M. Lodha, J.—This is a petition under Article 226 of the Constitution of India by the Municipal Board, Sheoganj through its Chairman against the State of Rajasthan praying that the Rajasthan Government's Local S(sic) Department Notification dated February 22, 1975 (A copy of which has been placed on the record and marked Exhibit - 19 at page 60 of the Paper Book) be quashed and the respondents be restrained from interfering with the right of the Municipal Board to levy octroi duty in accordance with the Rajasthan Government a Notification dated April 5, 1973 published in Rajasthan Gazette dated May 31, 1973 (A copy of which has been annexed to the writ application and marked Exhibit 1 at page 17 of the Paper Book).

2. The short question which arises for decision is whether the State Government after having directed the Municipal Board, Sheoganj (hereinafter referred to as the Board) by notification in the Official Gazette to levy octroi, can rescind that notification and thereby deprive the Municipal Board of the right to levy the tax. The question arises in this way. In exercise of its powers u/s 104 of the Rajasthan Municipalities Act (No. 38), 1969 (which will hereinafter be referred to as "the Act"), the Government of Rajasthan issued a Notification dated April 5,

1973 published in Rajasthan Gazette dated May 31, 1973, whereby it directed the Board, to levy octroi on goods and animals brought within its limits for consumption, use or sale at the rates mentioned therein on the entry of seven days from the publication of the Notification in the Gazette. The Board, however, made a representation (Exhibit-A at page 77 of the Piper Book) to the State of Rajasthan that it would not be feasible to levy octroi and, therefore, the Board may be permuted not to levy it. A few months later, the Cloth Merchants Association of Sheoganj also made a representation to the Chief Minister, Rajasthan for not levying the octroi and the Government of Rajasthan sent the following telegram (Ex. 2 at page 23 of the paper book) to the Administrator, Municipal Board I "STOP FORTHWITH REALISATION OCTROI TILL FURTHER ORDERS LETTER FOLLOWS." The Govt. also forwarded a copy of the representation of the Cloth Merchants Association to the Administrator, Municipal Board, vide its later dated January 25, 1974 Exhibit-15 at page 46 of the Paper Book and asked the Administrator to send factual report of the case for perusal of the Chief Minister. The Administrator, by his letter dated January 28, 1974 (Exhibit 6 at page 27 of the Paper Book) intimated to the Government that while all the arrangements for collection of the tax had been completed, the telegram (Exhibit 2) was received. He further stated that the Board was passing through a financial crisis and its finances could not be put in order without realising the tax. He, therefore, sought the permission of the Government to realise the tax. The Administrator again by his letter dated February 1, 1974 (Exhibit-7) wrote to the Government that the finances of the Municipal Board were so bad that it found be difficult even to pay the salary of the staff and arrange for road lights. While emphasizing the fact that levy of octroi was absolutely necessary he tried to impress upon the Government that the representation by the Cloth Merchants Association of Sheoganj for not living the tax was not at all justified and was motivated by purely selfish considerations. The matter was pursued by the Administration or from time to time by his letters dated March 16, 1974, April 19, 1974, June 4, 1974 and August 13, 1974 marked Exhibits 8, 9, 10 and 11 respectively. Elections to the Board took place sometime in September, 1974. The Chairman of the elected Board by his letter dated October 21, 1974 (Exhibit 12) also requested the Government to withdraw the telegram (Exhibit-2) and permit the Board to commence recovery of the tax. Thereafter, he sent a reminder on November 7, 1974 (Exhibit 13). The Board in its meeting held on November 5, 1974 also passed a Resolution (Exhibit 14) that the Government should be pressed to withdraw the telegram (Exhibit-2) stopping the levy as the financial condition of the Board constantly deteriorating. Thereupon the Government by its letter dated November 22, 1974 (Exhibit-3) withdrew its telegram dated January 15, 1974 (Exhibit 2) and thereby gave a green signal to the Board to recover the tax. A general notice was issued by the Board dated December 2, 1974 (Exhibit-4) whereby it was notified to the people residing within the limits of the Municipal Board that the octroi may be paid on goods and animals brought within the limits of the Municipality. The Board's case is that it started realising octroi. However, again by a letter dated January 6, 1975 (Exhibit 5), the Government

asked the Board that the letter dated November 22, 1974 (Ex. 3) whereby the Stay telegram (Exhibit-2) was withdrawn) be kept in abeyance, meaning thereby that the telegram stopping recovery of the tax be still deemed to be in force. It was on the receipt of the letter Ex. 5) that the Board filed the present writ petition in this Court on January 16, 1975 and inter alia, prayed that the telegraphic stay order dated January 15, 1974 (Ex. 2) or the letter dated January 6, 1975 (Ex. 5) reviving the telegraphic stay order may be quashed.

3. The State did not file any reply inspite of taking several adjournments. However, Mr. Hastimal, Advocate, made an application on February 10, 1975 on behalf of certain merchants and traders of the city of Sheoganj that since they were vitally interested in the result of the writ petition, they may be ordered to be impleaded as respondents to the writ petition. Meanwhile, as already stated above, the Government issued Notification dated February 22, 1975 (Ex. 15) whereby the earlier notification dated April 5, 1973 (Ex. 1) was rescinded with effect from the date of its publication in the official gazette. Consequently, the petitioner prayed for amending the writ petition so as to include a prayer for quashing the notification (Ex. 19) also and the petitioner was allowed to do so by order dated February 25, 1975. By the same order, the application dated February 19, 1975 filed by Mr. Hastimal, Advocate was also allowed to this extent that his clients may be heard as interveners and they may also file reply to the writ petition.

4. The contention of the petitioner is that the telegram (Ex. 2) stopping recovery of the tax as well as the notification (Ex. 19) are ultra vires, illegal and void and should be struck down. On the other hand, Mr. Hastimal, learned Counsel for the intervenors has urged that the Government was competent to rescind the earlier notification imposing the levy by virtue of the general powers provided in Section 21 of the General Clauses Act (which will-hereinafter be referred to as the GC Act). He has also raised four preliminary objections viz. : (1) That the petitioner is guilty of supervision of material facts and, therefore, is not entitled to invoke the extraordinary jurisdiction of this Court. That the petitioner cannot claim any right to levy the tax and, therefore, it has no locus standi to maintain the writ petition. (3) That the petition suffers from the defect of non-joinder of necessary parties and (4) That the petition involves disputed questions of fact, which cannot be properly decided in writ jurisdiction. He has also urged that the petitioner is, by its act and conduct and acquiescence, estopped from asking the reliefs contained in the writ petition.

5. First, I propose to dispose of the preliminary objections. The argument regarding suppression of material facts pertains to the omission on the part of the petitioner to make mention of the Resolution of the Municipal Board dated July 19, 1973 (Exhibit-A). It is stated that it was on the basis of the afore said Resolution by the Municipal Board that the State Govt. had stopped the levy by the telegram (Ex. 2) and therefore, it was the bounden duty of the petitioner to have made mention of the aforesaid Resolution in his writ petition. It is argued

that there has been a deliberate concealment of material facts and, there fore, this Court should decline to consider the merits of this case and reject the application. The petitioner's reply is that it was not necessary to refer to the Board's Resolution (Ex. A), in as much as the telegram (Ex. 2) stopping the levy was sent by the Government on the representation made by the Cloth Merchants Association of Sheoganj.

6. After having carefully examined the facts of the case, I have come to the conclusion that the petitioner cannot be held to be guilty of a deliberate concealment of material facts and in the circumstances of the case it would not be proper to reject the application on this ground. It may be noticed that the decision of the case centres round the validity of the notification dated February 22, 1975 (Ex. 19) whereby the Government rescinded the earlier notification by which octroi was imposed. This notification was issued during the pendency of this writ petition and from the side of the opposite party reliance has been placed mainly on notification to negate the right of the petitioner to realise octroi. I am also of opinion that the petitioner might have bonafide believed that mention of the Resolution of the Board (Ex. A) was not necessary, in as much as it appears that no action was taken by the Government on the Resolution (Ex. A) for a considerable time and it was only after the Cloth Merchants Association has submitted its representation dated January 14, 1974 for not levying the tax that the telegram (Ex. 2) was immediately despatched by the Government. Reliance is being placed by the learned Counsel for the petitioner in support of this position on letter (Ex. 15) dated January 25, 1974 addressed by the Deputy Director of Local Bodies, Rajasthan to the Administrator, Municipal Board, Sheoganj whereby a copy of the representation dated January 14, 1971 by the Cloth Merchants Association addressed to the Chief Minister was forwarded to the Administrator, who was directed to submit a factual report of the case immediately for perusal of the Chief Minister. It may be observed, here, that on January 10, 1974 the Establishment Officer of the Municipal Board had made a report to the Administrator that all arrangements had been made for realisation of octroi. In these circumstances it cannot be said that the telegram (Ex. 2) was issued on the Resolution by the Municipal Board (Ex. A). At any rate, this telegram was withdrawn by the Government by its letter Ex. 3 on the representations made by the Administrator from time to time and also on account of the pressing demand by the Board vide its Resolution (Ex. 14). The Municipal Board actually started realising octroi, as is evident from the general notice (Ex. 4) dated December 2, 1974, and the endorsement made on Exhibit 5, yet the Govt. by its letter dated January 6, 1975 (Ex. 5) revived the stay order communicated by the telegram (Ex. 2) and it is, in fact, this letter Exhibit-5 which originally led to the fixation of the writ petition. The petitioner's contention was that without following the proper procedure prescribed by law, the Government had no jurisdiction to stop levy in the manner it did. I am, therefore, of opinion that the petitioner is not guilty of concealment or suppression of material facts. Learned Counsel for both the parties have cited a number of

authorities on the question of suppression of material facts by a petitioner invoking the extraordinary jurisdiction of this Court But I do not consider it necessary to refer to those authorities, at in my opinion, it depends upon the facts and circumstances of each case whether the petitioner is guilty of deliberate suppression or concealment of material facts so as to forfeit his right to get the case considered on merits and no hard and fast rule can be laid down in such matters. Of course, it is a well established principle of law that a person invoking extra ordinary jurisdiction under Article 226 of the Constitution of India must come with clean hands and if he practises deceit on the Court by misrepresentation or suppression of merits But, as I have stated above, no such circumstances exist in the present case so as to throw out the petition on this ground.

7. Another preliminary objection regarding non joinder of necessary parties has also no substance. The petitioner has challenged the impugned order and notification by the Government and the Government and their officers concerned have been impleaded as respondents in the case The persons who may be liable to pay octroi may not be impleaded as parties to the writ petition merely on the ground that they would be the persons affected. That is an undefined body of persons. Moreover, 25 merchants residing in the town of Sheoganj have been allowed to oppose the writ petition as interveners. They have also been allowed to file reply to the writ petition, Learned Counsel has referred to *Mongibai Hariram Vs. State of Maharashtra and Another*, This ruling, in my opinion, is completely distinguishable on facts and has no application to the facts and circumstances of the present case. I, therefore, over-rule this objection also.

8. The other two preliminary objections that the petitioner has to legal right to maintain this petition and there are disputed questions of facts which cannot be decided by a writ petition, also deserve to be overruled. In this correction, it may be pointed out that, as would be clear from what follows, there are no such disputed questions of fact in the case which cannot be decided in writ jurisdiction. The case has, in fact, been mainly argued on the legal position as to the power of the Government to rescind a notification issued by it u/s 104 of the Act.

9. The objection as to the petitioner's right to maintain the writ petition is also based on a slender ground. The Board has been constituted under the Act. It is a corporate body with perpetual succession and a common seal. The Act lays down the duties, obligatory as well as discretionary, of a Municipal Board. The duties cannot be discharged and the discretionary functions cannot be performed unless the Municipality has power to collect money way of taxes. The Act provides a machinery for imposing and collecting the same. The Board, thus function under statute and its powers, duties and liabilities are regulated by the Act. It is a juristic person and can sue and be sued in its name. As observed by their Lordships of the Supreme Court in *Municipal Corporation of Delhi Vs. Birla Cotton, Spinning and Weaving Mills, Delhi and Another*, local bodies are

democratic institutions managed by the representatives of the people. They function for public purposes and take away a part of the Government affairs in local areas. As they are intended to carry on local Self Government, the power of taxation is a necessary adjunct to their other powers, though they function under the supervision of the Government. I am therefore, not prepared to accept the contention raised by Mr. Hastimal that the Board is merely an agent of the Government and it has no say in the imposition of the tax. Mr. Hastimal placed strong reliance on State of Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and Others, and invited my attention to the following observations therein:

In the contest in which the word "levy" has been used in Section 104, it does not mean "impose" as imposition of a tax under this section is made by a notification of the State Government and when the Board is directed to levy, its function is to perform the duty of collection. It is in this sense that the word "levy" has been used in Section 104.... u/s 103 it is clear that the word "levy" has been used as distinct from "impose" as in this section both these words have been used.

10. In my view, the observations extracted above cannot support Mr. Hastimal's contention that the Municipal Board has no legal and enforceable right to realise the levy imposed by the Government by a notification issued u/s 104 and the Board functions only as an agent of the Government to that the Government can withdraw the imposition of the tax at any time at its sweet will and the Municipal Board can have no say in the matter. As already observed above, the Board functions under the Act and its powers, duties and liabilities are regulated by it and once the authority is conferred upon it to collect the tax u/s 104, it shall be exercised by it as a matter of right, unless that authority is withdrawn in accordance with the provisions of the statute under which it functions. The question which properly falls for consideration is whether the authority and power conferred upon the Board to realise octroi has been withdrawn in accordance with law. That is the question which I shall presently decide on merits. But I am unable to accede to Mr. Hastimal's contention that the Board has no enforceable right to maintain this portion under Article 326 of the Constitution of India.

11. This brings me to the merits of the case. The main point for consideration is whether the Government's notification dated February 22, 1975 (Ex. 19) rescinding the earlier notification dated April 5, 1973 (Ex. 1) is valid. The contention of the learned Counsel for the petitioner is that once the tax has been imposed u/s 104 the Government has no jurisdiction to rescind it or withdraw it except in accordance with the provisions of the act itself. But the notification imposing the tax cannot be rescinded in exercise of the powers u/s 23 of the Rajasthan General Clauses Act which is equivalent to Section 21 of the G.C. Act. Whereas the case of the opposite party is that the Government can always cancel the notification by virtue of its power u/s 23 of the Rajasthan General Clauses Act.

12. Section 23 of the Rajasthan General Clauses Act, 1955 provides that:

23. Power to make or issue to include power to add to amend, vary or rescind orders, etc. Where, by any Rajasthan Law, to power to make or issue orders, rules regulations, schemes, forms, bye-laws or notifications is conferred, then that power includes a power exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary, or rescind any orders, rules, regulations, schemes, laws or notifications so made or issued.

13. The scope of Section 21 of the G.C. Act has been aptly summed up by the Supreme Court in *The State of Bihar Vs. D.N. Ganguly and Others*, in the following passage:

It is well settled that this section (Section 21 of the G.C. Act) embodies a rule of construction and the question whether or not it applies to the provisions of a particular statute would depend on the subject matter, context and the effect, of the relevant provisions of the said statute. In other words, it would be necessary to examine carefully the scheme of the Act, its object and all its relevant and material provisions before deciding whether by the application of rule of construction enunciated by Section 21, the appellant's contention is justified that the power to cancel the reference made u/s 10(1) (of the Industrial Disputes Act, 1947) can be said to vest in the appropriate Government by necessary implication. If we come to the conclusion that the context and effect of the relevant provisions is repugnant to the application of the said rule of construction, the appellant would not be entitled to invoke the assistance of the said section.

It would, therefore, be necessary to examine carefully the scheme of the Act, its object and all its relevant and material provisions before deciding whether the Government can cancel the notification issued u/s 104 of the Act with the aid of Section 21 of the G.C. Act.

14. Before going to other provisions of the Act, it would be proper to examine the relevant provisions in the Act regarding "octroi". Section 104 which deals with the levy in question, reads as under:

104 Obligatory taxes Every Board shall levy at such rate and from such date as the State Government may no each case direct by notification in the official Gazette and in such manner as is laid down in this Act and as may be provided in the rules made by the State Government in this behalf, the following:

- (1) a tax on the annual letting value of buildings or leads or both situated within the Municipality;
- (2) an octroi on goods and animals brought within the limits of the Municipality for consumption, use or sale therein; and
- (3) a tax on professions and vocations, provided that-
 - (a) the tax under Clause (1) shall not be levied
 - (i) on Kham houses, or

(ii) on buildings or lands or both, of which annual lasting value is less than one hundred and eighty rupees.

(b) the tax under Clause (2) shall not be on a motor vehicle as defined in the Motor Vehicles Act, 1939 (Central Act IV of 1939) or any other mechanically propelled vehicle, and

(c) the tax under Clause (3) shall not be levied on artisans:

Provided further that, upon a representation made to it by and at the request of a Board, the State Government, if it is satisfied that circumstances exist which sufficiently provide the justification for the Board not to levy or to stop the levy of, any of the taxes mentioned in this section may, by special order published in the official Gazette, along with the reasons for making such order, permit the board not to levy, or to stop the levy of any such tax.

15. Attention at this stage may also be invited to Section 107 which provides for exemption from taxation. It reads as under:

107. Exemption from taxation (1) None of the taxes specified in Sections 104, 105 and 106 shall be leviable by a board in respect of any property belonging to or vested in it.

(2) xxx xxx xxx

(3) xxx xxx xxx

(4) xxx xxx xxx

(5) The State Government may, if in its opinion reasonable grounds exist for so doing, grant and define, by notification in the official Gazette, such exemptions in exceptional cases from payment of a tax leviable u/s 104 or imposed u/s 105 or u/s 106 as it may consider necessary.

16. At this stage, I may point out that Section 105 provides for other taxes that may be imposed by a Board, subject to any general or special order of the State Government in this behalf.

17. Reference may also be made to Section 113 by which power is conferred on the Government to suspend or prohibit or remedy tax, It reads as under:

113. Power of Government to suspend or prohibit or remedy tax - If it shall at any time appear to the State Government on complaint made or otherwise that any tax, levied by a board u/s 105, is unfair in its incidence or that the levy thereof or of any part thereof is contrary or obnoxious to the interest of the general public, the State Government may require the said board within such period as it shall fix in this behalf to take measures for removing any defect or objection which appears to it to exist in the said tax or in the method of assessing or collecting the same, and if, within the period so fixed, such requirement is not carried into effect to the satisfaction of the State Government it may, by notification in the official Gazette, suspend the levy of the tax or of any part

thereof, until such time as the defect or objection is removed or may abolish or reduce such tax.

18. A careful study of the aforesaid sections would lead to the conclusion that the Act does not expressly confer any power on the Government to rescind or withdraw a tax imposed by it u/s 104 by notification in the official Gazette. An octroi on goods and animals is a tax mentioned u/s 104. Section 113 makes reference to a tax levied by a Board u/s 105 and has, therefore, no application to octroi which is not a tax u/s 105. It would be further clear from a reading of Section 104 that after the Government has imposed octroi by issuing a notification in the official Gazette directing a Board to levy it at such rate and from such date as it may specify, it can permit the Board not to levy or to stop the levy of the tax by special order published in the official Gazette along with the reasons for making such order, upon a representation made to it, by and at the request of the Board, if it is satisfied that circumstances exist which sufficiently provide the justification for the Board not to levy or to stop the levy of the tax. Thus under the proviso to Section 104 the levy can be stopped only after the fulfilment of the conditions mentioned in the proviso. It is obvious that the impugned notification has not been issued under this proviso. The State Government has also power to grant exemptions in exceptional cases from payment of octroi u/s 107(5). It is thus clear that the Act does not expressly confer any power on the Government to cancel or rescind a notification for imposition of octroi issued u/s 104 of the Act.

19. It is conceded by Mr. Hastimal also that there is no express provision in the Act, where by the Government has been empowered to cancel or rescind a notification issued by it u/s 104 of the Act. However, he argues that the power to cancel or rescind such a notification must be held to be implied by virtue of Section 21 of the G.C. Act and in support of his argument he relies on *State of Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and Others*, *Sampat Prakash Vs. The State of Jammu and Kashmir and Another*, *Mohd. Yunus Saleem Vs. Shiv Kumar Shastri and Others*, and *Ranchhod Zina Vs. Patankar and Another*.

20. In the *State of Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and Others*, while dealing with the provisions of the Land Acquisition Act, 1894, it was observed by Wanchoo J., as he then was, (on behalf of himself and Mudholkar J) that Section 48(1) of the Act confers a special power on Government for withdrawal from acquisition without canceling the notification under Sections 4 and 16, provided it has not taken possession of land covered by the notification u/s 6. It was held that Section 48 refers to the stage after the Collector has been asked to take order for acquisition u/s 7 and has issued notice u/s 9(1), and that it does not refer to the stage prior to the issue of the declaration u/s 6. The argument that Section 48(1) is the only method in which the Government can withdraw from the acquisition was repelled on the ground that Government can always cancel the notification under Sections 4 and 6 by

virtue of its powers u/s 21 of the G.C. Act and this power can be exercised before the Government directs the Collector to take action under Sections 7, It was further held that the notification u/s 6 can be cancelled at any time by the Government u/s 21 of the G.C. Act. From the discussion contained in para 19 of the judgment, it is clear that after examining the relevant provisions of the Land Acquisition Act, his Lordship found that the power to cancel the notification by virtue of Section 21 of the G.C. Act can be exercised only before the Government directs the Collector to take action u/s 7. In this regard, I wish to invite reference to a later Supreme Court case on the same point which makes the position further clear. In *Lt. Governor of Himachal Pradesh and Another Vs. Avinash Sharma*, it was held that after possession has been taken pursuant to a notification u/s 17(1), the land is vested in the Government and the notification cannot be cancelled u/s 21 of the G.C. Act, nor can the notification be withdrawn in exercise of powers u/s 48 of the Land Acquisition Act, the reason being; that, with possession of the land taken u/s 17(1) the land vests in the Government and there is no provision by which the land statutorily vested in the Government can revert to the original owner by mere cancellation of the notification. The principle deducible from these cases is that once the property is statutorily vested in a party, it cannot be diverted by cancellation of the notification. Moreover, Section 48(1) of the Land Acquisition Act was construed as special provision for those cases where proceedings for acquisition had gone beyond the stage of the issue of notice u/s 9(1).

21. In *Sampat Prakash Vs. The State of Jammu and Kashmir and Another*, it was held that the G.C. Act shall, subject to any adaptations and modifications that may be made therein under Article 370, apply for the interpretation of the Constitution of India as it applies for the interpretation of an Act of the Legislature of the dominion of India. In my opinion, this case has no relevance to the point at issue.

22. In *Mohd. Yunus Saleem Vs. Shiv Kumar Shastri and Others*, it was held that once the power is exercised by the Election Commission u/s 30 of the Representation of the People Act, 1951 and the notification is issued appointing the various dates mentioned therein for taking poll and for the purposes specified, the power to amend the same, which will include alteration of the dates of poll, can be exercised u/s 21 of the G.C. Act. This case, in my opinion, is also not helpful in deciding the point at issue.

23. In *Ranchhod Zina Vs. Patankar and Another*, it was held that u/s 10 of the Bombay Village Panchayats Act read with Section 21 of the Bombay General Clauses Act, the power of the Collector to issue an order constituting wards and allocating reserved seats, includes the power to rescind the order and thereafter to issue a fresh order constituting the wards and allocating the reserved seats. This power is not limited as to be exercised only once. The decision of the case turned upon a correct interpretation of Section 10 of the Bombay Village Panchayats Act (No. 3 of 1959) read with Section 21 of the Bombay General

Clauses Act.

24. In my opinion, none of the cases relied upon by the learned Counsel for the interveners helps the opposite party. It is to be remembered that Section 21 of the G.C. Act, as observed by their Lordships of the Supreme Court, embodies a rule of construction and that rule must have reference to the context and subject matter of the particular statute to which it is being applied. It would, therefore, be proper to examine the provisions of the Act.

25. It is clear that the Municipal Board is a creature of the statute and it functions under a statute. Its powers, duties and liabilities are also regulated by a statute. Chapter V of the Act deals with Municipal Property and Fund. Section 92 in this Chapter provides that every Board may acquire property, both moveable and immovable, whether within or without the limits of the Municipality. Section 93 deals with Municipal Fund and provides that all moneys received by or on behalf of the Board by virtue of this or any other Act, all taxes and other imposts, fees, and penalties paid to or levied by it under this Act, all proceeds of land or other property sold by the Board and all rents accruing from its land or property, as also all interests, profits and other moneys accruing by gifts or transfer from the State Government or private individuals or otherwise shall constitute the Municipal fund, and shall be held and dealt with in a manner similar to the property mentioned in the last preceding section. Section 94 of the Act speaks of how Municipal Fund and property held by or vested in the Board under the Act shall be applied. Section 95 provides for custody and investment of Municipal Fund. Chapter VI prescribes primary and secondary functions of Boards. It deals with the duties of the Board including special duties and secondary powers of expenditure of the Board. Then comes Chapter VII which deals with imposition of taxes.

26. It is, thus, clear that the policy of the Act is to assign a part of the Governmental activity to the representatives of the people constituting the Board. The taxes collected by the Board constitute its fund which vests in the Board and is to be applied for the purposes specified in Chapter VI dealing with the duties of the Board and powers of expenditure by it. Consequently, once octroi is imposed and the same is realised by the Board, it becomes vested in the Board and the Board cannot be divested of the same. Hence, once a notification is issued by the Government imposing octroi, the Board has no option to refuse to levy the same, nay, it is bound to recover the same and it cannot refuse to levy, nor can it stop to law, unless it is permitted to do so by the Government under the proviso to Section 104 of the Act. This shows that after the issue of notification by the Government to levy octroi, it is the Board which is seized of the matter and except by virtue of the power prescribed under the proviso to Section 10 and Sub-section (5) of Section 107, the Government has no jurisdiction to interfere with the realisation of the tax. The Government has, undoubtedly, the initiative in the matter and it is only where a notification u/s 104 is issued that the Board can levy octroi. But the scheme and the relevant

provisions, prima facie, seem to be inconsistent with any power in the Government to rescind the notification issued u/s 104. Reentrance in the connection may be made in particular to proviso to Section 104 and Sub-section (5) of Section 107, as also other provisions of the Act, which I have referred to above. It is difficult to appreciate that it would be open to the Government to pass one order at one stage prohibiting the levy after the issue of the notification and a contradictory order at another state to continue the levy and so forth and so on. Such a power, would enable the State Government to circumvent the specific provision contained in proviso to Section 104 and Sub-section (5) of Section 107 by relying upon a general power of rescission u/s 21 of the G.C. Act. In my opinion, once the Government has issued notification u/s 104, it is under obligation not to interfere with the right of the Board to realise the tax subject to the conditions contained in the Act itself. On general principles also, it seems rather difficult to accept the argument of Mr. Hastimal that it depends upon the sweet will of the Government to allow the Board to levy the tax when it likes and to withdraw that power any moment the Government wishes to do so.

27. By the impugned notification the Government has rescinded the earlier notification with effect from the date of its publication in the official Gazette, That clearly means that in the eye of law the notification authorising the Man. Board to levy octroi will be deemed to have never come into existence. Black's Law Dictionary (at page 1471) defines the word "rescind" as meaning to abrogate, annul, avoid or cancel a contract particularly by nullifying a contract by the act of a party, to declare a contract void in its inception and to put an end to it as though it never were, not merely to terminate it and release party from other obligation to each other, but to abrogate it from the beginning and restore the parties to relative positions which they would have occupied had no contract ever been made. The power to rescind as provided in Section 21 of the G.C. Act, when exercised, would thus mean abrogating the things rescinded from the beginning and restoring the status quo, that is to say, the position which prevailed before passing of the order of rescission. Now the consequences of the impugned order of rescission would be that the taxes realised after the issue of the notification would be invalid and the Board would be liable to refund the same subject to law limitation etc. Let us imagine of case where the tax may have been realised by a Municipality for a number of years and one fine morning the Government may scrap the notification u/s 104 retrospectively with the result that all the tax which the Board may have realised may become invalid and the Board may be liable to refund the same. This would mean that the Board would be divested of the amount recovered by it as tax which had lawfully vested in it and all the provisions which the Board may have made in the discharge of its duties and all the projects which it may have undertaken would be left in the lurch and the Board may be faced with insurmountable financial problem. This could never have been the intention behind the Act. The situation that would be created by holding that the Government has power to rescind the notification issued u/s 104 by the aid of Section 21 of the G.C. Act would be thus entirely contrary and

repugnant to the scheme of the Act In my view, it was never intended that the rule of construe ion in Section 21 of the G.C. Act should be applicable in such circumstances.

28. Learned Counsel for the petitioner relied upon Kamla Prasad Khetan Vs. The Union of India (UOI), V. Ramachandra Reddy and Another Vs. State of Andhra Pradesh and Others, Kanta Devi and Another Vs. State of Rajasthan and Others, The State Vs. B.L. Ohri and Others, , Gopal Jairam v. State of Madhya Pradesh AIR 1951 Nag. 181, Strawboard Manufacturing Co. Ltd. Vs. Gutta Mill Workers" Union, , Deviprasad Khandelwal and Sons Vs. Union of India, , Harendra Nath Bose and Ors. v. Judge, 2nd Industrial Tribunal and Ors. AIR 1958 Cal. Nag. 181 and Jagatjit Cotton Textile Mills Ltd., Phagware Vs. Industrial Tribunal, Patiala and Others, But I do not consider it necessary to enter into a discussion of these authorities as in my view, it has to be decided with reference to the object and the relevant and material provisions of a particular statute whether the power of rescission contained in Section 21 of the G.C. Act can be exercised by the Government. In the; present case I have come to the conclusion that to concede such a power to the Government u/s 21 of the G.C. Act would be inconsistent and repugnant to the scheme and the relevant provisions of the Act. In the view of the matter, the impugned notification (Ex. 19) is void and it liable to by struck out.

29. It remains to deal with one more argument of the learned Counsel for the interveners viz. that the petitioner is estopped by his act, conduct and acquiescence from reading octroi In this connection it has been urged that it was on representation by the Municipal Board. Sheoganj that the State Government had suspended the realisation of octroi by telegram dated January 15, 1974 (Ex. 2) and the petitioner is therefore, by its conduct estopped from challenging the order of the State Government dated January 15, 1974. Reliance has been placed on Maharashtra State Road Transport Corporation Vs. Balwant Regular Motor Service, Amravati and Others, . The Upper Doab Sugar Mills Ltd. v. The State of U.P. Ors. A.I.R 1957 All. 43. Jaipur Udyog Ltd. v. Union of India an Anr. AIR 1957 All. 43 , Vuppala China Sambamurthy and Others Vs. The Addl. Income Tax Officer, Visakhapatnam, and S.V.K.M. Ratnasamy Nadar and Brothers Vs. K. Subbuswami Iyer and Another, .

30. I do not wish to repeat here the history of the case as narrated in the earlier part of my judgment. It is true that the Board had passed a Resolution in its meeting held on July 19, 1973 (Ex. A) that octroi may not be imposed No action was, however, taken on this representation as envisaged by proviso to Section 104 of the Act. It was open to the Government to examine the grounds contained in the representation and if it was satisfied that circumstances exist which sufficiently provide the justification fir the Board not to low or to stop the levy of octroi, it may have by special order published in the official Gazette along with the reasons for making such order, permitted the Board not to levy or to stood the levy of octroi But the Government did not follow this procedure at all

and on the representation by the Cloth Merchant Association, it issued the impugned telegram (Ex. 2) dated January 15, 1974 to stop realisation of octroi ill further orders. However, the Administrator of the Board went on pressing the Government to withdraw the telegram and allow the Board to levy the tax and soon after the elected Board came into existence in September, 1974. The new Board a so passed a resolution for levying the tax on which the Government withdrew the telegram and the Bad actually started recovery of the tax as would be clear from the notice (Ex. 4) and the endorsement contained in Exhibit 5 dated 9/1/75. In these circumstances, it cannot be said that the petitioner is estopped by its conduct from challenging the validity of the impugned order Moreover, in the facts and circumstances of he case, the principle of estoppel cannot be pressed into ser vice against the Board.

31. Thus the telegram (Ex. 2) was also in violation of the provisions of Section 104 and the act of the Government in issuing the letter Exhibit 5 by which the telegram (Ex. 2) was revived was also illegal and void.

32. The result of the foregoing discussion is that I allow this writ application and quash the impugned notification dated February 22, 1975 (Ex. 19, as well as the telegram dated January 15, 1974 (Ex. 2) and the Govern aunt's letter dated January 6, 1975 (Ex. 5) and hereby res rain the Government and its officers concerned from interfering with the Board's light to levy "octroi" in accordance with law and in pursuance of the notification dated April 5, 1973 (Ex. 1). There will be no order as to costs.