
(2002) 03 MP CK 0043

In the Madhya Pradesh High Court

Case No : Letters Patent Appeal No. 275/96 with L.P.A. No's. 244 and 274 of 1996

Municipal Corporation, Gwalior

APPELLANT

Vs

M.E.S. Builders' Association and Another

RESPONDENT

Date of Decision : 18-03-2002

Acts Referred:

Constitution of India, 1950 — Article 286
Madhya Pradesh Municipal Corporation Act, 1956 — Section 133(2A)

Citation : (2002) 2 MPHT 508 : (2002) 2 MPLJ 524

Hon'ble Judges : S.S. Jha, J; R.B. Dixit, J

Bench : Division Bench

Advocate : Jitendra Maheshwari, for the Appellant; K.B. Chaturvedi, Government Advocate and K.N. Gupta, for the Respondent

Final Decision : Allowed

Judgement

This order shall also govern the disposal of Letters Patent Appeal No. 244/96 (Hemant Kumar Gupta and another v. Municipal Corporation, Gwalior and another) and Letters Patent Appeal No. 274/96 (Gwalior Local Transport Union and another v. State of Madhya Pradesh and others).

These appeals are filed against the order passed by the learned Single Judge in Writ Petition No. 1252/1994, decided on 27-3-1996.

Respondent No. 1 has filed a writ petition before Single Bench of this Court challenging the enhancement of levy of tax on entry of materials known as building materials. It was decided that every truck and tractor entering into the limits of Municipal Corporation, Gwalior was required to pay tax of Rs. 20/-; Rs. 4/- was to be paid by tempo, bullock-cart and tonga, and Rs. 3/- were payable by hand-cart entering into the limits of Municipal Corporation, Gwalior. Later entry fee was fixed at Rs. 50A for truck bringing building materials, trolley attached with the tractor fee was fixed at Rs. 251-and for bullock-cart Rs. 10/- were payable as fee. Enhancement of fee was issued by notification Annexure

P-3 annexed with the writ petition. Respondent-Association has challenged the recovery before the Writ Court. Single Bench found that the power to enhance the fee is not vested with the Municipal Corporation and allowed the petition and quashed the enhanced recovery. It was further observed that whatever amount is recovered by the Municipal Corporation shall not be refunded, since such refund would amount to unjust enrichment.

Letters Patent Appeal No. 275/96 has been filed challenging the entire judgment, whereas other two connected appeals have been filed challenging the order refusing to refund the excess fee recovered by the Municipal Corporation.

Counsel for the appellant submitted that the power to impose tax vests with the Municipal Corporation. Entry Fee of Rs. 50/- per truck load entering within the limits of Municipal Corporation, Gwalior is proper and according to law. It is further contended that the petitioner before the Writ Court M.E.S. Builders' Association has no locus to challenge the notification. M.E.S. Builders' Association is not a person and has no right to challenge the notification. It is further contended that the Municipal Corporation has full right to impose levy of tax on the sale of building materials in the market and the tax has rightly been imposed as per the provisions of Madhya Pradesh Municipal Corporation Act, 1956 (hereinafter, referred to as the "Act").

Counsel for appellant submitted that vide resolution No. 508 dated 3-6-1994 Municipal Corporation, Gwalior has revised the notification and enhanced the entry tax. Notice was published in daily newspaper and after the said publication, entry tax on building materials at the rate of Rs. 50/- per truck is being realised. Counsel for appellant submitted that under Sub-section (2) of Section 132 of the Act as it stood in the year 1994, tax has been imposed. Tax was imposed in the year 1995, and the said imposition was not challenged by anyone. Counsel for appellant further submitted that the provisions of Section 162 of the Act are not applicable in the instant case. Sub-section (2) of Section 162 relates to abolition, suspension or reduction or increase in the rate of any tax or exemption from the payment of any such tax in whole or in part any person or any class of persons or any property or class of property. Counsel for the appellant submitted that the tax can be enhanced, but only in the case of reduction, previous sanction of the State Government subject to the provisions of Section 135 of the Act will be necessary. He further submitted that the view taken by the learned Single Judge that even enhancement of tax shall be governed by Section 133 of the Act is not correct. Counsel for the appellant submitted that u/s 132 (2) (c) of the Act, Corporation is empowered to recover a toll on vehicles and animals entering the city but not liable to taxation under Clause (b) of Section 132 (2) of the Act. He submitted that the local bodies enjoy the powers of taxation not as legislators but as a delegate of the legislature. Taxes are allowed to be imposed and retained by the local bodies for due performance of their functions and for meeting their expenses.

Counsel for appellant then submitted that the provisions of Section 133 of the

Act will not be applicable as Section 133 relates to procedure for imposing tax, wherein it is provided that the Corporation may at a special meeting bring forward a resolution to propose the imposition of any tax u/s 132 defining the class of persons or description of property proposed to be taxed, the amount of rate of tax to be imposed and the system of assessment to be adopted. It is further provided that such resolution shall be published in the Gazette and in such other manner as may be prescribed by bye-laws. Any person residing within the city and objecting to the proposed tax may, within thirty days from the publication of the resolution of the Gazette, submit his objection in writing to the Corporation and the Corporation shall at a special meeting take the objection into consideration. Section 133 (2-A) provides that if the Corporation decides to amend its proposals or any of them it shall publish amended proposals, alongwith a notice indicating that they are in modification of those previously published for objection. Any objection received to the amended proposal within thirty days shall be dealt with in the manner prescribed in Sub-section (2-A), and after considering the objections, Corporation shall publish final proposal in the Gazette and the tax shall come into force as may be specified in the notification.

Counsel for appellant has placed reliance on the decision in the case of City of Nagpur Corporation v. Khemchand Khushaldas & Sons (AIR 19% SC 2604), and submitted that the power of Corporation to levy octroi is not dependent on fixation by the State Government of maximum rates of tax leviable by Corporation. This judgment relates to City of Nagpur Corporation Act, 1948.

In the case of Indore Municipal Corporation Vs. Gujarat Co-operative Housing Society Ltd. and another,) question arose regarding recovery of drainage tax and lighting rate which was introduced in the year 1971 by the bye-laws fixing annual letting value determined under the Act as basis for assessment published in 1976 and 1974 respectively and resolution was passed before bye-laws enabling the Corporation to use annual letting value fixed under 1964 Adhiniyam for assessment. Therefore, assessment of drainage tax and lighting rate for the period before bye-laws, made on the basis of annual letting value fixed under 1964 Adhiniyam was held to be valid.

Counsel for appellant then invited attention to Section 421 of the Act. This section relates to power of Government to suspend any resolution or order. Counsel for appellant then submitted that if any party have any grievance, it should have approached the State Government for exercising powers u/s 421 of the Act.

On bare reading of Section 133 (2-A) of the Act, it is necessary that as and when tax is to be enhanced, objections must be invited and after deciding the objections, final notification is required to be published. Considering the facts of the case and the intention of Section 133 (2-A) of the Act, increase in fee by the Municipal Corporation is bad in law. Unless proper procedure is followed as prescribed in Section 133 of the Act, and notification is passed after considering the objections, no tax can be enhanced. Learned Single Judge has not committed

any error in quashing the enhancement of levy of toll on the trucks carrying building materials and entering within the limits of Municipal Corporation. Since such imposition of tax is contrary to law, as such, tax cannot be recovered under the provisions of Article 286 of the Constitution. Therefore, recovery of the said tax has rightly been held to be bad in law and rightly been quashed.

Since the Corporation has no right to recover the said tax, therefore, it owes the duty to refund the tax recovered in contravention of provisions of law. Such recovery is contrary to the provisions of Article 286 of the Constitution of India. In the said facts of the case, it is held that any amount of tax recovered under the resolution is liable to be refunded, if claimants submit their claim alongwith receipt and other documents within one month from the date of this order.

In the result, Letters Patent Appeal No. 275/96 fails and is dismissed. Consequently, Letters Patent Appeal No. 244/96 and Letters Patent Appeal No. 274/96 succeed and are allowed. There shall be no order as to costs.