

(1982) 03 OHC CK 0015

In the Orissa High Court

Case No : Second Appeal No. 317 of 1977

Municipal Council, Jeypore Municipality

APPELLANT

Vs

Ghansyam Das Tirth Das

RESPONDENT

Date of Decision : 16-03-1982

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Orissa Municipal Act, 1950 — Section 377(2)

Citation : AIR 1982 Ori 216 : (1982) 53 CLT 454

Hon'ble Judges : R.C. Patnaik, J

Bench : Single Bench

Advocate : S.C. Mohapatra and M.R. Mohanty, for the Appellant; Y.S.N. Murty, for the Respondent

Final Decision : Dismissed

Judgement

R.C. Patnaik, J.—The courts below having granted concurrently a decree for Ks. 868.94, the Municipal Council, Jeypore Municipality, the defendant, has filed this second appeal.

2. The plaintiff carrying on business under the name and style of "Ghansyam Das Tirthadas" filed a suit for recovery of Ks. 4,496.48 from the Municipality by way of refund of octroi paid. The plaintiff urged that he was the sole distributor in the district of Koraput for batteries, torch lights, bulbs etc. manufactured by the Union Carbide India Ltd. under the trade name of "Eveready". Goods were consigned to Jeypore and distribution to various parts of the district used to be made as per demand. Goods intended for sale, use and consumption are chargeable with octroi. Such goods which were later on re-exported by way of distribution to various parts of the district of Koraput outside Jeypore were not liable to octroi and octroi which was collected in respect of such goods by the Municipality at the time of entry into the limits of the Municipality was available to be refunded upon re-export. The plaintiff alleged that in 1974, the Executive Officer refused to refund the amount claimed in suit though in the past such

refund had been allowed. This controversy gave rise to the suit,

3. The stand of the Municipality was that it was not liable to refund the amount as the destination of the goods was Jeypore, that is within the limits of defendant-Municipality. A further stand was taken that the suit was not maintainable having regard to the provisions of the Act and the Bye-laws.

4. The courts below have granted the decree for Rs. 868.94 holding the rest to have been barred.

5. At the time of hearing of the appeal, the quantum was not disputed. The only question raised by the defendant-appellant was that the suit seeking refund was not maintainable, in view of Section 377 of the Orissa Municipal Act and the provisions contained in the Bye-laws framed by the Municipality called "Jeypore Municipal Council Octroi. Bye-laws, 1974."

6. Section 377 (2) of the Orissa Municipal Act reads as follows :--

"(2) No suit shall be brought in any Court to recover any sum of money collected under the authority of this Act or to recover damages on account of any assessment or collection of motley made under the said authority :--

Provided that the provisions of this Act have been in substance and effect complied with."

The relevant provisions of the Bye-laws are :--

"22, In case goods are brought within limits and part of the same is taken outside the Municipality, the owner of such goods shall pay the entire octroi on goods actually brought and if within the period of 15 days any portion of the goods brought in is taken out, a refund will be allowed to that extent on claim."

"23 (1) Any person claiming any refund of octroi paid in respect of articles or goods brought by him may apply in Form "E" to the Executive Officer within 15 days of payment of octroi. The Municipal Council shall where it is liable to refund the octroi paid, make the refund within 15 days from the date of such a claim, failing which interest at the rate of 6% shall be payable."

The provisions contained in the aforesaid Bye-laws are clear that when goods brought within the limits of the Municipality are re-exported within 15 days, an application for refund can be made to the Executive Officer. There is no provision in the Bye-laws providing adjudication of controversy arising when a claim is made by the party and refutation is made by the Municipality, nor is there any provision for appeal from the decision of the Executive Officer of the Municipal Council. Learned counsel for the appellant Municipality, therefore, stands on Section 377 (2) which has been extracted above. The said provision, ousts the jurisdiction of the civil court in regard to suits for recovery of any sum collected on account of any assessment Or collection made under the authority of the Act. The proviso adds that such assessment or collection must have been made by complying with the provisions of the Act in substance and effect.

7. The courts below have found that goods worth Rs. 868.94 were re-exported within 15 days and the plaintiff was entitled to refund as per the provisions contained in Bye-laws 22 and 23. In my opinion, S; 377 (2) has no application to the facts of the present case. The Supreme Court in the case of Hiralal Thakorlal Dalal Vs. Broach Municipality and Others, followed its earlier decision in *Burmah Shell Oil Storage and Distributing Co. India Ltd. Vs. The Belgaum Borough Municipality*, and held that a party was not liable to octroi in respect of goods which it brought into the local area and which were re-exported

8. Regarding the jurisdiction of the civil court, the parties referred to A good many decisions and I only refer to a few of them. Hidayatullah, C. J. formulated seven propositions in *Dhulabhai and Others Vs. The State of Madhya Pradesh and Another*, :

"1. Where the statute gives a finality to the orders of the special tribunals the civil courts" jurisdiction must be held to be excluded if there is adequate remedy to do what the civil court would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure,

2. Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court. Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intentment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

3. Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.

4. When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open, A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

5. Where the particular Act contains no machinery for refund of "tax collected in excess of constitutional limits or illegally collected, a suit lies.

6. Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an Express prohibition in the

particular Act. In either case, the scheme of the particular Act must be examined because it is a relevant Enquiry.

7. An exclusion of jurisdiction of the Civil Court is not readily to be inferred unless the conditions above set down apply."

9. On the finding that the party was not liable to pay octroi when the goods which were re-exported, retention of the money by the Municipality amounts to collection in excess of constitutional limits or an illegal collection, the foundation justifying collection having been knocked off. The Act, the rules or the Bye-laws provide no machinery for adjudication of the claim for refund. So, the case comes within the fifth proposition formulated in *Dhulabhai and Others Vs. The State of Madhya Pradesh and Another*, No special machinery for enquiring into an adjudicating upon a claim or challenge having been provided, the jurisdiction of civil court is not ousted. In this connection reference may be made to *Hiralal Thakorlal Dalal Vs. Broach Municipality and Others*, .

10. Mr. Mohapatra for the Municipality referred to *Bata Shoe Co. Ltd. Vs. City of Jabalpur Corporation*, , In that case, the Act and the rules contained provisions enabling the aggrieved party effectively to challenge an illegal assessment or levy. It was held that Section 84 (3) of the C. P. & Berar Municipalities Act excluded the ordinary remedy by way of a suit.

In *Munshi Ram and Others Vs. Municipal Committee, Chheharta*, , Section 84 provided the remedy by way of an appeal to a party aggrieved by an assessment or levy. In that context it was held that the remedy must be sought in the specified forum, in the specified way and all other forums and modes were excluded.

11. There being no provision for adjudication or remedy by way of an appeal, the rule laid down in those cases has no application. The "bar ceases to apply once the foundation is knocked off and collection ceases to be one under the" authority of the Act.

12. The courts below have rightly held that the suit was maintainable. I find no merit in the second appeal which is accordingly dismissed. No costs.