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**(1953) 10 OHC CK 0013**  
**In the Orissa High Court**  
**Case No : O.J.C. No. 17 of 1952**

Narashingh Das

APPELLANT

Vs

Municipal Council of Deogarh

RESPONDENT

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**Date of Decision :** 06-10-1953

**Acts Referred:**

Orissa Municipal Act, 1950 — Section 131

**Citation :** AIR 1954 Ori 131 : (1954) 20 CLT 40

**Hon'ble Judges :** Panigrahi, C.J.; Mohapatra, J

**Bench :** Division Bench

**Advocate :** G.K. Misra, for the Appellant; A.G., for the Respondent

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## Judgement

Panigrahi, C.J.—This is an application under Article 226 of the Constitution praying for the issue of a writ of mandamus prohibiting the opposite party, the Municipal Council of Deogarh, which was a part of the former State of Bamra, from collecting a levy known as octroi duty from the petitioner.

2. The case for the petitioner is that the municipality of Deogarh while it formed a part of the State of Bamra used to collect a tax at the rate of three pies per rupee on the purchase price of articles imported into Deogarh town for sale and that this tax was being levied by the Municipality till October 1952. The petitioner objected to the payment of this tax as being opposed to the provisions of the Orissa Municipal Act, 1950, (Act 23 of 1950) which came into force on 16-4-1951 in that area.

3. The opposite party relies on a resolution passed by the now defunct Municipality of Deogarh and contends that the imposition of the said octroi duty was legally levied at the time it was imposed with the sanction of the Ruler of Bamra in 1941, and it continues to be a legal levy even after the coming into force of the Orissa Municipal Act.

4. The State of Bamra was integrated with the Province of Orissa in 1948 and the Bihar and Orissa Municipal Act (Act 7 of 1922) was extended to Bamra by the

Orissa Merged States (Laws) Ordinance (No. 4 of 1949). In spite of the Bihar and Orissa Municipal Act being extended to the State, however, the octroi duty continued to be levied in Deogarh. This is sought to be justified on the ground that Section 391 of the said Act provides for the continuance of the municipalities constituted under the different laws, and of the taxes imposed by such municipalities. Section 391 makes provision for the transitional period and says that the taxes imposed under any of the enactments repealed by Section 2 shall, so far as may be, be deemed to have been respectively imposed under this Act. I have cut out the words which I have not considered necessary for bringing out the point made by the learned Advocate-General appearing for the opposite party. All that this section says is that any tax which had been imposed prior to the introduction of the Bihar and Orissa Municipal Act shall be deemed to have been imposed under that Act, But that would not justify the continuance of such taxes in the future if the Act itself does not warrant the imposition of such taxes.

Our attention was drawn to Section 82(1)(i) of the Act which makes a specific provision for the imposition of a "scheduled tax" with the sanction of the Local Government. The expression "scheduled tax" in the Government of India Act also mentioned an imposition called "octroi duty" under the rules framed under the Government of India Act. Even if the tax imposed by the municipality of Deogarh is justified under the rules framed under the Government of India Act, its continuance as a valid imposition would still require the sanction of the Local Government, as contemplated in Section 82(1)(i). Learned counsel's contention however is that the rules themselves sanction the levy of the octroi duty. But that would be so only till the introduction of the Bihar and Orissa Municipal Act. After the introduction of the Act, however, the sanction of the Local Government, namely, the Provincial Government of Orissa, would be required for the imposition. But whatever be the merits of this contention the decision of the point will depend on the construction of the language employed in the Orissa Municipal Act 1950 (Orissa Act 23 of 1950) which was extended to the area on 16-4-1951.

5. Section 418 of the Orissa Municipal Act also makes provision for the transitional period, and the language employed is identical with that of Section 391 of the Bihar and Orissa Municipal Act. The section says in substance that a tax imposed under a repealed enactment shall,

"so far as may be, be deemed to have been imposed and taken under the "corresponding provision of this Act".

What the section declares is that a tax imposed under a repealed enactment shall be deemed to have been imposed under a corresponding provision of the Act so far as may be. The question therefore is whether there is a "corresponding provision" in Orissa Act, 23 of 1950, relating to an "octroi duty", that is to say, whether there is a provision authorising the imposition of a levy on the entry of articles into the municipality of Deogarh.

The provision relating to taxation is contained in Section 131 which says that the Municipal Council may, with the sanction of the State Government, impose within the limits of the municipality the following taxes. A number of taxes such as holding tax, latrine tax, water tax, etc., are mentioned in the section, under none of which an "octroi duty" such as the one contemplated here, can be brought, it should also be noticed that the levy of a charge on the purchase-price of articles imported into the town is not a tax but is a duty. It is not a tax in the sense that every citizen living within the municipality is liable to pay it. Properly speaking, it is a duty leviable upon a class of persons. Section 131 makes no provision for the imposition of a duty as such. The opposite party however places reliance on clause (k) of the section which says:

"any other tax which the Municipal Council is empowered to impose under any law for the time being in force."

The expression "under any law for the time being in force" cannot certainly refer to any law made by the Ruler of the ex-State of Bamra, unless such a law can be said to be an Act of the State Legislature which is continued in force for the time being. We have not been referred to any such enactment which continues the operation of the municipal laws of Deograh municipal by which were in force before the State was integrated into the Province of Orissa. The only law that the learned Advocate-General could refer to is contained in a number of Resolutions of the Deogarh Municipality passed from time to time, the latest one being a Resolution of November 1952. But that Resolution is clearly not a "law for the time being in force". The authority to impose a tax is vested in the municipality u/s 131 of the Orissa Municipal Act of 1950. It is clear that that section does not authorise the imposition of an octroi duty and there is no other law of the State Legislature continuing the old law relating to the imposition of such an octroi duty. In these circumstances, it must be held that the imposition is not sanctioned by law.

6. We would accordingly hold that the municipality of Deogarh is not entitled to impose any tax levy on the purchase-price of articles imported into the town and that the amount of Rs. 227-6-0 paid by the petitioner as octroi duty has been illegally collected. We accordingly direct the opposite parties to refund the amount to the petitioner. We will not however make any order as to costs as the municipality appears to have, collected the amount under a bona fide belief that it was empowered to do so under the law. It was the duty of the State Government to point out that the levy of an octroi duty by the municipality was not warranted by the provisions of the Orissa Municipal Act of 1950 which is now in force.

Mohapatra, J.

7. I agree.