(1971) 09 RAJ CK 0011

In the Rajasthan High Court

Case No : Civil Writ petition No. 1005 of 1968

Popular House APPELLANT

Vs

State of Rajasthan and Others RESPONDENT

Date of Decision : 06-09-1971

Acts Referred:
Constitution of India, 1950 — Article 14

Citation : (1972) RLW 144 : (1971) WLN 620

Hon'ble Judges : V.P. Tyagi, J

Bench : Single Bench

Judgement

V.P. Tyagi, J.—These 30 writ petitions were filed by the residents of Gangapur. Udaipur, Ajmer and Beawar towns challenging the validity of the rates of octroi duty on certain commodities being violative of Article 14 of the Constitution as according to them they are highly discriminatory when compared with the rates applicable in other towns of the State.

2. Out of these 39 petitions, 8 petitions relate to the octroi duty on cloth in Gangapur town. 1 to Udaipur town wherein octroi rates on medicine have been challenged, 3 petitions to Ajmer town in relation to octroi duty imposed on cigar, cigarettes and medicines and 27 petitions have been filed by the citizens of Beawar town to challenge the rates of octroi duty on different commodities which shall be dealt with separately when I would consider these petitions.

3. Since common questions of law have been raised, it will be advisable to dispose of these petitions by one judgment.

4. In these petitions the vires of Section 104 of the Rajasthan Town Municipalities Act, 1955 (hereinafter called the Act) was also challenged but at the very outset learned Counsel for all the petitioner Mr. Guman Mai Lodha informed the Court that the view of the decision of the Division Bench of this Court in Mohanlal Daga v. The State of Rajasthan and Ors. 1970 Weekly Law Notes 215. against which the appeal has been taken to the Supreme Court, he would not like to agitate

that question here and, therefore, I would not refer those facts mentioned in the petitions which relate to that question.

5. The only question not left for the determination of the Court is whether the rates of octroi duty on different commodities under challenge are hit by Article 14 of the Constitution as the disparity between these rates and the rates obtainable on these very commodities in the towns of Jodhdur, Jaipur and some other places in Rajasthan is glaring and that it cannot be explained on any rational basis.

6. The grievance of the petitioners in the reality is that the octroi duty falls within the category of obligatory taxes to be imposed in each municipality u/s 104 of the Act by the Government and, therefore, difference in the rates of octroi duty in different towns of the State on the same commodity cannot be outrageously different.

7. u/s 104 of the Act, every Board is under obligation to levy at such late and from such date as the State Government may in 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 taxes, namely-

(1) a tax on the annual letting value of buildings or lands 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.

These taxes have been termed by the legislature as Obligatory Taxes The case of the petitioners is that in the year 1960, the State Government issued a notification whereby a direction was issued to 124 Municipal Boards and Municipal Councils in the State to levy tax on the annual letting value of the buildings and lands excluding agricultural lands at the rate of 5% of the annual letting value thereof with effect from 1st July, 1960. Thus, the State Government brought about a uniform pattern to levy tax on the annual letting value of the buildings and lands within each municipality or municipal council. This notification was, however, amended later on in 1962 whereby the State Government prescribed the following slab system to levy tax on the letting value of the houses and the lands within the municipal limits.

Annual letting value. Rate of tax Above the eexmption limit and upto Rs. 30C/- per annum : 4% Above Rs. 300/- and upto Rs. 600/- 5% Above Rs. 600/- and upto Rs. 1200/- 6 1/2% Above Rs. 1200/- 7 1/2% 8. Thus, according to the petitioner, the Government evolved a formula on a rational basis to impose the so called house tax in Municipal areas. The professional tax has not yet been imposed by the State Government under the provisions of Section 104 of the Act.

9. The grievance of the petitioners is that the State Government, which is the

taxing authority under the provisions of Section 104, has in the matter of octroi duty prescribed totally different rates in each Municipality and the difference in some cases is so outrageous that it adversely affects the trade of that commodity in the town and therefore these outrageously different rates are hit by Article 14 of the Constitution and are liable to be struck down by this Court as they encroach upon the fundamental rights of the traders of these four towns of Beawar, Ajmer, Udaipur and Gangapur.

10. Replies have been filed by the respective Municipal councils and Municipal boards in these petitions. The State Government has also filed replies only in the petitioners coming from Beawar town. The learned Advocate General has also filed a chart showing different rates of octroi duty on these commodities, which have been brought under challenge, applicable in some of the important towns of the State and has given therein the maximum and minimum rates of octroi duty in the State. On the basis of this chare learned Advocate-General has urged that the rates impugned by the citizens of Beawar cannot be said to be exorbitant as they generally fall within the minimum and maximum limits and compare favourably well with the rates available in some of the towns of the State.

11. The Municipal Councils of Ajmer and Beawar have, however urged that these two Councils have taken up different projects under the secondary functions of the Councils as prescribed u/s 101 of the Act and therefore, they require larger funds to discharge their duties and functions and hence their case stands on a different footing from the case of other municipalities who discharge their duties only in respect of primary functions under the Act.

12. According to the State Government, before prescribing the rate of octroi duty in a particular Municipal Council or a Municipal Board the Government has to take into account the policy and the history regarding the imposition of octroi duty in the past and also it has to see the functions that a particular Municipality has actually to discharge under the Act Sine octroi duty forms the backbone of the finances of a local body and in some cases the revenue collected from the octroi goes upto 80% of the total gross revenue of the local body, the State Government has to keep in view various other factors viz. the development of the trade of a particular commodity in a particular town; the capacity of the tax-payer; the changes in the pattern of the trade; the prospects of the probable reduction of revenue in case of decrease or in the increase in the general revenues in the duty is increased. It is also submitted that Rajasthan has 800 miles of International frontier which is also taken into consideration while fixing the schedule of octroi in the towns situate on the border; the Government also keeps an eye on improving and facilitating trade in town lying within the State. It is also averred that where the Government finds that certain towns in neighbouring States are competing in trade in General or in certain times in particular, it takes suitable steps in adjusting" the octroi duties to suit the requirements of that trade in particular towns. For Beawar town particularly, it is submitted by the State Government that before the re-organisation of the State

of Rajasthan in 1956, Beawar was the part of the State of Ajmer and the Municipality was organised under the provisions of the Ajmer-Merwara Municipalities Regulations, 1925. In that State, except Ajmer and Beawar, there was no other town of mentionable size. Municipal services in these two towns were rendered in a much higher degree of efficiency than in any other town of Rajasthan. These two towns had, therefore, their own traditions in respect of the Municipal services maintained under the old Regulations and, therefore, the Government could not ignore the historical background while fixing the schedule of octroi duty.

13. It is also urged by the State Government that the local bodies have been classified in the State under two main heads : (1) Municipal Councils and (2) Municipal Boards. Learned Advocate-General was therefore strongly of opinion that the rates of octroi duty obtainable in Municipal Councils cannot and should not be compared with the rates applicable in the Municipal Boards as the conditions in trade and other matters relating to the local self-Government were different in the towns. The comparisons between the rates of octroi duty in Municipal Council and Municipal Board, according to Mr. Kasliwal cannot provide a basis for throwing a challenge under Article 14 of the Constitution.

14. The arguments advanced by learned Advocate-General have been adopted by other counsel representing the Municipal Board of Gangapur and Municipal Councils of Ajmer, Beawar and Udaipur.

15. These rival contentions give rise to this constitutional question whether third difference in rates of octroi duty in different towns of the State can be made the basis for the challenge of rates of octroi duty on the ground that they are then as being violative of Article 14 of the Constitution.

16. After the Act of 1959 came into force, the Legislature introduced a new policy of taxation in the local bodies of the State. u/s 104 of the Act, three taxes have been mentioned which are brought under the category of Obligatory Taxes and in order to impose these taxes the State legislature empowered the Government to direct by notification in the official Gazette to impose these taxes in such manner as may be laid down in the Act or provided in the rules made thereunder. It is admitted by the parties hit the tax on professions and vocations has not yet been imposed by the Government in any of the Municipal Councils or the Municipal Boards. As regards the house tax, it is alleged that the State Government by issuing a notification in the year 1960 prescribed a uniform rate of tax for 124 Municipal Councils and Municipal Boards in the State, but later on in 1962 it introduced a slab system and a uniform basis was provided to impose tax on the letting value of the building and the lands in the town. Regarding octroi duty, the State Government did not evolve any system which could provide a rational basis for prescribing the rate of octroi duty in different towns. It is contained that at some places the octroi duty is charged on weight basis while in other places it prescribed on ad-valorem basis. These two systems create such difference in the imposition of octroi duty that it not only affects the trade but weighs very heavily

on the consumers on whose pocket the incidence of tax ultimately falls. For instance, the petitioners coming from Beawar have stated that the traders of Beawar have to pay Rs. 6.800/- octroi duty on 1 quintal of saffron whereas resident of Jaipur and Jodhpur, where octroi is charged on weight basis, have to pay only Rs. 2/- on one quintal of saffron. In Bikaner the rate of octroi duty on this commodity is only Re. 1/- per quintal. The disparity in the rates, according to the petitioner, on this commodity obviously attracts the application of Article 14 of the Constitution as no reasonable basis can be given by the State Government for levying such a high duty on this commodity in Beawar. It is also contended by the petitioners that is it only in Beawar Municipal Council that octroi is charged on postal parcel, whereas postal parcels are exempt from octroi duty in all other Municipalities in the State. This discriminatory treatment, according to the petitioners, cannot be explained by the State Government on any rational basis. According to learned Counsel for the petitioners, these are few glaring examples which attract Article 14 of the Constitution to declare the difference in rates of octroi duty on certain commodities in different places of Rajasthan as illegal.

17. Learned Advocate-General when asked to explain such a glaring disparity in the rates prescribing for levying octroi duty in different places of Rajasthan, could not give any satisfactory explanation. He, however, candidly admitted that the Government has not given its thought to nationalise the basis for prescribing different rates of octroi duties in different Municipalities in the State.

18. The history of the imposition of octroi duty reveals that this type of tax was in vogue since the concept of local body came into existence. Even in ancient India the tax in the nature of octroi was levied by the Hindu Rulers under different names though their assessment and collection was made on a different system. Mann has also described such taxes. Magasthenes in his book also refers to octroi tax in some details. The Ain-i-Akbari records that octroi duties were in force during the period of Mughol power and that the duty of collecting such tax was in the hands of the City Kotwal. It was not only in India but on continent also, octroi was a familiar tax since the days of the Roman Empire. In the days of East India Company the evil affects of octroi duties were studied by the Company because it was itself carrying on trade in India. In 1828 Lord William Bentnick employed Sir Charles Trevelyan to make an enquiry into these inland transit duties. His report shows that he was not in favour of imposing such duties. Lord Ellenborough in 1835 commented very severely on the evils of the imposition of octroi duty. But in-spite of this historical background, the system of levying octroi came down to the present generation. The Government of India set up a committee to study the local finance enquiry committee in 1951 and that committee submitted its report and recommended the continuance of the levy of octroi duty, but it recommended that the rates must be prescribed generally on ad-valorem basis. The committee, however, observed that where ad-velorem basis is not suitable, the rates may be adopted on the basis of maundage, that is, on weight basis. One of the members of the Committee, however, observed in

this connection as follows:

In the circumstances, I find it hard to believe that it will at any stage be possible to dispense with octroi and consequently, I am afraid, its levy shall have to be tolerated ad infinitum unless the State Governments make up their minds to share the proceeds of the sales tax with the local bodies on the basis of realisations within those areas....

19. While dealing with the question of prescribing the rates for the levy of octroi duty the committee was generally of opinion that as far as possible uniformity in the rates at different places should be evolved on some rational basis, but Shri Chunilal D. Barfivala, Director of Local Self-Government Institute, Bombay wrote a very strong note of dissent on the question of evolving a model schedule for octroi duty in different places in the State and observed:

The levy of octroi in that State (Punjab State) is both by weight as well as on ad valorem basis. An attempt is being made in that State for the preparation of a model schedule of octroi rates, and my colleagues have probably taken a clue from this move on the part of the Punjab Government and made their suggestion for model schedule. I am afraid that a State wise attempt on these lines is not likely to succeed, & if any such scheme is enforced, numerous exceptions to the rules will have to be provided. These exceptions would actually embrace a far larger range of articles than the general rule itself. This would be the result because the circumstances regarding consumption, use and sale (for which an octroi is levied) vary with each local body and even in the case of neighboring areas. For instance, an article produced or manufactured in one local area may demand the largest demand in a neighboring area and vice versa. Consequently the rates in the two areas cannot be at the same level but must be regulated by the differences in economic factors of demand and supply. It was, therefore, that the U.P. Government Taxation Committee considered ''uniform rates in every Municipality were undesirable.

20. It is true that the conditions in the matter of trade and commerce differ from area to area and from town to town and sometimes conditions in respect of trade in one commodity may be different in the neighboring towns but in order to justify the difference in the rates of octroi duty it must be established that the existing difference in the rates is deeply related with the existing different conditions obtainable in different towns. There must, therefore, be sons national basis while prescribing different rates of octroi in different Municipalities.

21. In Gopal Narain v. State of Uttar Pradesh and Anr. AIR 1964 S.C. 270, while discussing the scope of Sections 128, 131 to 136 of the U.P. Municipalities Act (No. 2 of 1916), their Lordships of the Supreme Court held that different rates of taxes can prevail in different localities. In that case, the rates of tax in cantonment area were different from the rates obtainable in the city area of Bareilly, but to justify those different rates the Supreme Court observed as follows:

It is clear from the affidavit filed on behalf of the Municipal Board and the map annexed there to that the area covered by the Civil Lines has been treated as a separate unit in the matter of development from the year 1970 The Municipal Board acquired the land in that area laid out roads, carved out good sized building plots, and provided special amenities for the residents by way of broad roads, open and bigger plots for construction of houses, parks and gardens, special lighting arrangements, foot-path with cement benches, water booths with watermen for giving water to the public and special sanitary arrangements, whereas the old city area of Bareilly consisted of small plots of land with small houses thereon situated in congested localities with narrow lanes. The Municipal Board imposed house tax in the Civil Lines area from as early as January 31, 1870 and, after the Act came in to force, re-imposed the impugned tax in accordance with the provisions of the Act, In the case of scavenging tax, there appears to be different methods adopted in the two areas. In the Civil Lines area night soil and rubbish are collected by the Municipal Board from each bungalow, while in the City area they are collected from one common place in each ward. The former certainly involves higher expenditure than the latter. It will, therefore, be seen that for about 90 years the Civil Lines area has been treated as a separate geographical unit for the purpose of taxation, having regard to historical reasons and the extra amenities provided for the residents of that locality and the heavy expenditure incurred by the Municipal Board in doing so The difference between the old city and the Civil Lines area are so pronounced in the matter of amenities that there is a reasonable relation between the taxes imposed and the geographical classification made for the purpose of taxation. We, therefore, hold that the notification imposing the said taxes does not infringe Article 14 of the Constitution.

22. This decision of the Supreme Court clarifies the position in law about the different rates of taxes applicable in different Municipalities and according to it the existence of different rates can be justified provided that difference of rates has some relationship with the amenities provided by the Municipalities for the purpose for which the tax is charged. In other words, there must be some justification for charging higher rates for a particular tax and it is only then that such higher rate can escape the application of Article 14 of the Constitution. In that case, before the Supreme Court two taxes, namely, (1) the house tax, and (2) scavenging tax were challenged. The Supreme Court while declaring these taxes valid observed that the Cantonment Municipality was providing better amenities in the fields of sanitary arrangement and providing big residential plots than what the Municipality of Bareilly was doing. In the present writ petition no attempt has been made to show-in what manner the octroi tax is directly related to the amenities provided by the Municipal Council or Municipal Board. Octroi tax is the main source of income for the Municipalities in Rajasthan, but when different rates are prescribed by the State Government under the authority exercised u/s 104 of the Act, it must be justified on some rational basis. Simply because a particular Municipality requires more funds to discharge its primary

and secondary functions, the Government cannot adopt irrational basis for prescribing different rates of octroi duty in different towns. The difference in rates of octroi on the same commodity in different towns must therefore be explained by the State Government on some rational basis.

23. There is yet another view point to examine this question that view point has been considered by this Court in Johari Mal and Others Vs. State of Rajasthan and Another, The rates of octroi duty in the Municipalities of Abu, Barinand Kota on certain commodities were challenged in that case as being violative of Article 14 of the Constitution on the ground that they did not compare favourably well with the rates on the same commodity prescribed in other towns of Rajasthan. The Court, while examining that question, expressed its opinion that uniform schedule of rates is difficult to be prescribed for all Municipalities in the State because allowance shall have to be given for the variations in local conditions and also about the capacity of persons on whom the burden of tax ultimately falls but learned Judge was definitely of the view that the difference cannot be outrageous. Learned Judge in this connection observed:

Even so, the difference between citizens living in one part of the State and those living in another regarding the incidence of tax should not be outrageous.

24. An argument was advanced by the Municipalities that though the State Government prescribes the rate of the octroi duty and the dates for applying those rates in particular Municipalities, yet those taxes are levied for the Municipalities and the advantages of that tax goes to the Municipalities and, therefore, it will not be correct to compare the rate of tax applicable in one Municipality with the rate of tax obtainable in another. While meeting this argument, the learned Judge held that the State Government does not act on behalf of the Municipal Boards when it prescribes the rates of octroi duty tinder Section 104 of the Act for a particular Municipality and he observed:

It is true the tax may benefit only the Municipal boards but it is a far cry to urge that the Government acts on behalf of the Municipal boards. The tax is imposed by the Government in its own right and it is only realised by the Municipal Boards. In enacting Section 104, in my view, was to have a somewhat uniform pattern for the three kinds of taxes included in Section 104 though there may be some difference due to local conditions. However, in my view, where the Government is the source of authority, the difference cannot be allowed to be outrageous.

25. Discussing further, the learned Judge mentioned:

It is true that the citizens are living in different Municipal areas but all the same they are citizens living in one State and the source of authority for imposing the tax is the State Government. It was in the circumstances absolutely necessary for the State Government to offer justification for this impost which it has completely failed to do.

26. It was in this view of the state of law that the learned Judge struck down the rates of octroi duty in respect of gold, textile, cotton, silk etc. for Abu Road Municipality and similar relief was granted to the petitioner of the octroi duty rates proposed on silver and gold in Kota.

27. The source of authority for the imposition of the octroi tax in all the Municipalities is the State Government and it derives powers to do so under the provisions of Section 104 of the Rajasthan Municipalities Act, 1959. Therefore, in these circumstances, if the difference in the rates of octroi duty is exorbitant in different parts of the State, which is not capable of being explained on any rational oasis, then the application of Article 14 of the Constitution cannot altogether be ruled out I agree with the observations of the learned single Judge in Johari Mal and Others Vs. State of Rajasthan and Another, that the State Government must offer some kind of jurisdiction in prescribing different rates in different places so that the difference in rates may not hamper the trade of that place where the octroi duty is enormously high as compared to the duty on the same commodity in other municipalities.

28. This proposition brings me to another important question as to under what circumstances the difference in the rates of octroi duty in different Municipalities on the same commodity can be called outrageous.

29. Specifically this question was put to learned Advocate-General whether he can offer any justification or suggest any reasonable basis for prescribing different rates on the same commodities in different Municipalities which may have adverse effect on the trade in these Municipal limits where octroi duty is exorbitant in comparison with the duty in other towns. Learned Advocate-General could not formulate any basis to justify such glaring difference and frankly admitted that no reasonable basis can be provided to justify this disparity which has been pointed out by the petitioners on certain commodities. It is in the light of this straight-forward reply of learned Advocate General that I shall have to examine the grievance of the petitioners.

30. In order to call the difference in rates of octroi duty as outrageous, the court shall have to take into consideration the comparative hours given of the rates of duty in different towns of the State, its effect on the trade of commodity in a particular Municipal area, and the jurisdiction, if any, on certain rational basis to levy such exorbitantly high rate on a particular commodity in comparison with the rate available in other Municipal towns of the State. It is in this light that I will now discuss the impugned rates on different commodities and shall find out whether the difference in rates when compared with the rates on the same commodity in other Municipal areas can be called outrageous so as to attract Article 14 of the Constitution.

31. In the Municipal Councils of Beawar, Udaipur and Ajmer the octroi duty on the import of medicines is 1% and valorem, whereas the duty on the import of medicines in the towns of Jodhpur and Jaipur is only Re. 1/- per quintal This

difference in the octroi duty, according to Mr. G.M. Lodha, is outrageous because, as his argument goes, the residents of these three towns of Udaipur, Beawar and Ajmer have to pay heavy tax on medicines as compared to the duty paid by the inhabitants of Jedhpur and Jaipur cities. Another argument of Mr. Lodha is that the need of the peoples everywhere is the same for the supply of medicines and the patients of these three towns cannot be differentiated with the patients of Jodhpur and Jaipur cities. The contention of learned Advocate-General, oh the other hand, is that Jodhpur and Jaipur markets are developing as wholesale markets for medicines. From these two markets the entire area around these two big towns are supplied with medicines and, therefore, looking this growth in the trade in medicines the State Government had to take into consideration this important factor while prescribing rates of octroi duty on medicines in Jaipur and Jodhpur, therefore to develop a wholesale market the Government shall have to provide an incentive for larger imports by either abolishing the octroi duty or reducing the rates of octroi duty. I need not go into the details of this explanation advanced by Mr. Kasliwal because it is not the function of this Court to see whether lover rate of octroi duty on medians would help in developing a wholesale market to cater the needs of the surrounding areas. I have simply to examine whether this thinking of the Government provides a rational basis for fixing exorbitantly low rates of octroi for the imports of medicines in Jaipur and Jodhpur as compared to the rates obtainable in Ajmer, Beawar and Udaipur. The argument advanced by Mr. Kasliwal cannot be said to be wholly devoid of force. There is some rationality in this thinking and therefore it can safely be held that this glaring difference in the rates of octroi duty in Jaipur and Jodhpur as compared to the rates in Beawar, Ajmer and Udaipur can be justified on rational basis and hence these rates on medicines in Beawar, Ajmer and Udaipur can not fall within the term "outrageous difference". In this view of the matter, I find it difficult to declare rates of octroi duty on medicines in the aforementioned three town as outrageous. The writ petitions Nos. 354/1970, 1802/1969 and 1803/1969 are therefore dismissed. The writ petitions Nos. 911/ 1969 and 912/1969 so far as they relate to the imposition of tax on medicines are also dismissed.

32. Now, I take up the petitions filed by the citizens of Gangapur town. They are writ petitions Nos. 1073 to 1079 of 1969 and 400 of 1969. By filling these petitions the petit''oners have challenged the imposition of octroi duty at the rate of Order 50 Paisas percent ad valorem on the import of the cloth in the Municipal area of Gangapur. In writ petitions Nos. 912, 913, 1066, 1109, 1418, 1576 and 1016 of 1969 the citizens of Beawar town have also challenged the rates for charging octroi duty on the import of cotton, silk, terylene, woollen and binding clothes in the municipal limits of Beawar and have branded these rates as outrageous in comparison with the rates available in Jodhpur, Jaipur, Ganganagar, Bikaner, Parbatsar, Ajmer, Deeg and Udaipur Municipalities. I, therefore, consider these petitions together.

33. In Beawar and Gangapur octroi duty on the import of cloth is imposed on ad

valarem basis whereas in Jodhpur, Udaipur, Jaipur, Ganganagar, Bikaner, Ajmer, Deeg, it is imposed on weight basis. The rate of Jodhpur is Rs. 2/- per quintal to Rs. 4/- per quintal on different varieties of clothes. At Ajmer the rates of octroi duty on clothes, however, are between Rs. 8/- per quintal to Rs. 25/- per quintal as is evident from the comparative chart submitted by learned Advocate-General showing different rates in different municipalities on the same commodity. This chart also gives maximum and minimum rate of octroi duty on commodities mentioned therein. 1 he rate of octroi duty at Gangapur is 0.50 paisas percent and at Beawar it is 75 paisas percent (ad valorem basis). No reasonable basis for this difference in the rates on the textile products and terylene, wollen and silken clothes has been given by learned Advocate-General, and he frankly admitted that no rational basis could be given in fixing different rates in different towns. The only answer that he gave to the question put by the Court was that these rates were in force even before the Act of 1959 came into force and the Government did not like to deviate in the matter of imposition of octroi from the policy followed by each Municipality in the past. The comparative study of the rates on textiles and other clothes in Beawar and Gangapur with the rates on this commodity in the towns of Jodhpur and Jaipur makes it clear that the difference is exorbitant & the disparity in the rates of Gangapur end Beawar Municipalities when examined in the light of the discussions referred to above, can conveniently be called outrageous. These writ petitions, whereby the rates of octroi duty on cloth in Gangapur and Beawaa are challenged, are, therefore, allowed and the rates prescribed to levy octroi duty on all kinds of textiles including cotton, terylene, silken, woollen and binding clothes and yarn in the aforementioned towns of Gangapur and Beawar are struck down as being violative of Article 14 of the Constitution.

34. Now I take up the case of octroi duty levied on cigarattes and cigars, Bin and tobacco in the Municipalities of Beawar and Ajmer. Writ Petition No. 244 of 1970 relates to the octroi duty charged on cigarettes and cigar in the town of Ajmer. The rate prescribed is Rs. 5/- percent ad valorem. Writ Petitions Nos. 1244, 1246, 1250, 1253 and 1254 of 1969 are from Beawar. The octroi tax on these commodities in the town of Beawar is 3 percent. In Jodhpur and Ganganagar the tax on cigar and cigarettes is charged @ Rs. 4/- quintal, whereas in Jaipur the octroi on cigarettes is Rs. 4/- per quintal and on cigar Rs. 15/- per quintal. On Biri, the tax in Jaipur is charged @ 20/- per quintal. When these rates of taxes are compared with the rates available in the town of Ajmer and Beawar then the disparity becomes quite obvious. The octroi duty on these commodities in Ajmer and Beawar as compared to Jodhpur, Jaipur, Ganganagar, Parbatsar is exorbitant. The basis for levying octroi in these towns is entirely different. No reasonable explanation is given by learned Advocate-General to justify this exorbitant difference in the rates of octroi in Ajmer and Beawar. In these circumstances, the rates on cigarettes, cigar, Biri and tobacco in Beawar Municipality and rates on cigarettes and cigar in Ajmer shall have to be struck down. These writ petitions are, therefore, allowed and the rates prescribed for charging octroi duty on

cigarettes, cigar, Biri and tobacco in Beawar and on cigarettes and cigar in Ajmer are quashed as they are hit by Article 14 of the Constitution.

35. Learned Counsel has challenged the octroi duties levied by the Municipal Council, Beawar on the following commodities by calling it as outrageous:

1. Stationery including papers 3% ad valorem 2. Cosmetic, toilet goods and perfumery 3% " 3. Radio and electric goods 3% " 4. Binoculars, telescopes and optical glass goods 3% " 5. Surgicals goods 2% " 6. Crockery goods 2% " 7. Colours, paints, chemicals etc. 2% " 8. Sanitory goods 2% " 9. Rubber goods (tyres, tubes) 2% " 10. Motor parts accessories 2% "

36. It is alleged mat the octroi duty is charged on these commodities in the Municipalities of Jodhpur, Jaipur, Ganganagar and Bikaner on weight basis, which on comparison with the duty charged on ad valorem basis becomes outrageous. The petitioners have given details about the price of these articles in their petitions and have given a comparative chart to show that the difference in the amount of duty calculated on weight basis and on ad valorem basis is really exorbitant Learned Advocate-General could not explain any reasonable basis for charging octroi on these articles on two different basis. These different rates, according to the petitioner, shall have adverse effect on the growth of the trade in these commodities in the town of Beawar as the duty charged on ad valorem basis is much more than the duty charged on weight basis in the towns of Jodhpur, Jaipur, Bikaner and Ganganagar. The rates of octroi duty on the aforementioned ten commodities are hit by Article 14 of the Constitution and they are therefore quashed.

37. The result is that the writ petitions Nos. 1005, 1106, 912, 913, 911, 1253, 1260, 1246, 1244, 1170, 1254, 1066, 1107, 1114, 1110, 1113, 1417, 1247, 1119 and 1118 of 1969 relating to the above items are allowed so for as the rates of octroi duty on the said articles are concerned. These rates of octroi on the aforementioned articles are therefore quashed.

38. The citizens of Beawar by filing writ petitions Nos. 911, 912, 913, 1112 and 1118 of 1969 have challenged the rates of octroi duty on the following 34 costly items of Kirana. The octroi is charged on these commodities by the Municipal Council of Beawar @ 3% (ad valorem):

1. Saffron Rs. 34000/. per quintal. 2. Menthal Rs. 30000/- " 3. Cloves Rs. 1100/- " 4. Illachi Chhoti Rs. 12000/- " 5. Javitri Rs. 8500/- " 6. Jaifal Rs. 6000/- " 7. Dal Chini Rs. 6500/- " 8. Katha Rs. 2200/- " 9. Kalajeera Rs. 3000/- " 10. Pistha Rs. 4200/- " 11. Supari Rs. 1600/. " 12. Kismiss Rs. 1900/- " 13. Kajoo Rs. 1300/- " 14. Heeng Rs. 7000/- " 15. Tatric Rs. 3000/- " 16. Almonds Rs. 5600/- " 17. Peepar Rs. 3500/- " 18. Camphor Rs. 3600/- " 19. Vanshlochan Rs. 9000/- " 20. Moti Illachi Rs. 1300/- " 21. Jeera Rs. 600/- " 22. Meenji Rs. 1000/- " 23. Khopra Rs. 425/- " 24. Gola Rs. 510/- " 25. Sacreen Rs. 3000/- " 26. Chillies Rs. 500/- " 27. Gugal Rs. 600/- " 28. Sounf Rs. 450/- " 29. Kali Mirchi Rs. 525/- " 30. Suinth Rs. 1600/- " 31. White Musli Rs. 1200/- " 32. Honey Rs. 600/- " 33.

Auskand Rs. 500/- " 34. Akhal Khora Rs. 12000/- "

39. It is said that in Jodhpur and Jaipur the octroi duty is charged on these commodities @ Rs. 3/- per quintal. The contention of the petitioners is that if one quintal of saffron is imported within the Municipal limits of Beawar, the trader of Beawar has to pay Rs. 6,800/- as octroi duty, while on the same quantity of saffron a trader of Jodhpur and Jaipur and other places where the duty is charged on weight basis, shall be required to pay only Rs. 2/-. Such a difference in octroi duty on these costly items of Kirana would undoubtedly be called outrageous, Mr. Guman Mal is correct when he submits that the difference in octroi duty on these commodities. No reasonable basis has been shown by learned Advocate-Generel for imposing such outrageous different rates for charging octroi in different Municipalities of the State. In my opinion, the difference is so glaring that it shall have to be struck down as violative of Article 14 of the Constitution.

40. The result is that the writ petitions Nos. 911, 912, 913, 1112 and 1118 of 1969 so far as they relate to the above mentioned 34 items of Kirana are allowed and the rates of octroi duty on these items are quashed.

41. While enacting the Rajasthan Municipalities Act of 1959 the State Legislature introduced for the first time a new scheme of imposing obligatory taxes in all the Municipalities of Rajasihan and for that purpose Section 104 was enacted. Under the provisions of this section the State Government was empowered to direct by issuing a notification in the official Gazette to levy such tax at such rate and from such date as may be notified. The house tax, octroi duty and tax on professions and vocations are the three obligatory taxes which the State Government can direct to levy under this provision of the law. The State Government has not yet proposed to levy a tax on professions and vocations. Regarding the levy of a tax on the annual letting value of the building or lands or both the State Government have evolved a uniform pattern, but it so appears that the State Government have not given any serious thought to evolve a rational basis for imposing octroi duty in different Municipalities. From the study of the rates prescribed by the Government to levy octroi duty in different Municipalities in the State, it is clear that it simply followed the old system obtainable in each Municipality in this behalf. It is true that it is difficult to evolve a uniform schedule of rates imposing octroi city in all the Municipalities in the State as the rates are bound to differ from town to town as observed by the learned single Judge in Johari Mal and Others Vs. State of Rajasthan and Another, which opinion finds support from the observations of Shri Barfiwala when he says in his dissenting note that a uniform schedule of rates cannot be prescribed for all the Municipalities in the State, but I feel that a uniform pattern for levying octroi duty in the Municipalities of the State, can be devised and the State Government can chalk out a guideline to prescribe the rates in different Municipalities in the State if a serious thought is given to this problem. No doubt, this subject requires a deep study about various aspects of the problem; but Commit of experts if appointed by the State

Government can certainly find Out a solution to give a rational basis to the rates prescribed by the State Government u/s 10 of the Act in different Municipalities.

42. After this judgment, the Chun is likely to be flooded with writ petitions of this nature challenging the Outrageous, differences in rates of octroi duty in different Municipalities therefore this problem requires a prompt action by the State Government. I feel that I must suggest the State Government that may immediately set up a committee of experts to examine this question scientifically and to evolve a formula which may give a basis for prescribing rates for the imposition of octroi duty on certain reasonable and rational basis. I am sure, the experts when they will put their heads together would certainly evolve a uniform pattern, if not the uniform schedule of rates to obviate this outrageous disparity in the rates of octroi duty in different Municipalities.

43. Learned Counsel for the petitioners in the end urged that an interim order was passed by this Court directing the concerned Municipalities to keep a separate account of the octroi duty realised from the petitioners on those commodities for which, rates, have been challenged in this Court; and the tax so realised from the petitioners shall be treated as ''Amanat''. It is also urged that the interim order was passed in order to facilitate the refund of the tax to the petitioners in the event their writ petitions are allowed. The Municipalities concerned shall, in compliance with the order passed by this Court, refund the tax realised from the petitioners in these petitions on the commodities the rates whereof have been quashed by this judgment. The order regarding refund shall apply only to those petitions wherein the interim order had been passed by this Court on the application of the petitioner directing the Municipality concerned to keep the amount of tax as ''Amanat''.

44. All these writ petitions are therefore accordingly disposed of. No order as to costs.

