

(1980) 11 RAJ CK 0003

In the Rajasthan High Court

Case No : Civil Writ Petition No. 718 of 1979

Pyarelal Baluram Agarwal, Stone Quarry Owners

APPELLANT

Vs

The Administrator Municipal Board and Another

RESPONDENT

Date of Decision : 13-11-1980

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1980) WLN 556

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

Bench : Single Bench

Final Decision : Allowed

Judgement

M.C. Jain, J.—This is a writ petition under Article 226 of the Constitution of India presented by Pyarelal Baluram Agarwal against the non-petitioners with the allegations that the petitioner has stone quarry from the Mining Department situated outside the limits of Municipal Board, Abu Road (hereinafter referred to "as the Board"), According to the petitioner the Board started charging certain type at tax or levy known as supervision charges over the material exported by the petitioner to the other parts of the country beyond the limits of the Board and similarly supervision charges are collected over the raw material, which the petitioner brings from other parts of the country to the petitioner's stone quarry. The petitioner averred that the National highway and the State highway pass through the limits of the Board through which material belonging to the petitioner is exported and imported and at the transit point the supervision charges are collected by the Board. The petitioner challenged the levy on the ground that no such tax or charges can be realised from the petitioner under Sections 104 and 105 of the Rajasthan Municipalities Act, 1959 (hereinafter referred to "as the Act") and that no resolution for collecting the supervision charges is passed by the Board and no notification has been issued to that effect. It was prayed by the petitioner that the non-petitioners may be restrained from realising Supervision charges from the petitioner on the material exported or

imported by him from his quarry or brought to the quarry, and, any notification or resolution authorising the Board to collect supervision charges, may be quashed and declared ultra vires. The petitioner also prayed for refund of the supervision charges collected by the Board within three years.

2. The non-petitioners No. 1 and 3 have not submitted any reply to the writ petition. However, they have banked upon the reply submitted to the stay application. It was stated in the reply to the stay application that the Board charges octroi tax on the import of goods in the Municipal area for use, sale and consumption therein u/s 104 of the Act read along with Rajasthan Municipalities (Octroi) Rules, 1962 (hereinafter referred to as "the Rules"). It was further stated that in case of goods, which are imported within the Municipal limits not for use, consumption or sale therein, but for the purpose of export, the in charge of the octroi outpost is required to act under rule 11 of the Rules. He shall draw in triplicate a transit pass in Form No, 5, after receiving by way of deposit such amount as may be equivalent to the amount of octroi payable thereon. The second copy of the transit pass shall be given to the person bringing the goods. The goods have to be transported outside the Municipal limits within the time specified in the transit pass and the transit pass issued, shall be delivered back to the octroi outpost of exit and the incharge of the octroi outpost after satisfying himself that the goods being exported are those covered by the transit pass, shall pay to the person delivering the transit pass, the amount of octroi deposited, and, obtain a receipt from him for the amount so paid. It was further stated that this procedure has been devised so that octroi tax may not be evaded and no octroi tax may be charged from persons who really export goods. It was further stated that under Sub-rule (1A) of Rule 11 of the Rules an option has been given to the persons bringing the goods for immediate transportation that they may instead of depositing the octroi tax under Sub-rule (1A) of Rule 11, pay fixed charges for exporting the goods outside the Municipal limits, and, on payment of that amount, a receipt is given to the person bringing the goods. An employee of the Board is then sent by the incharge of such outpost to accompany the goods from such import octroi outpost to the export octroi outpost to see that such goods are actually transported out of the Municipal limits. It was stated that this amount has been fixed at Rs. 2.50p. per load truck by the Board and is being charged as service charge, which is actually rendered to the person bringing in the goods, Thus, the amount of Rs. 2.50 p. per load-truck is being charged under Sub-rule (1A) of Rule 11 of the Rules, which have been framed u/s 297 read with Section 104 of the Act. It was also stated that from a perusal of Rule 11(1A), it would be clear that these charges are also not compulsory, but an option has been given to the person bringing in the goods within the Municipal limits of the Board. Reference was also made to a circular of the Local Self Government Department dated April 23, 1963, wherein it has been clarified that the provision of Sub-rule (1A) of Rule 11 of the Rules are very clear. The amount of Rs. 2.50 would be charged from the importer only if he fails to pay the amount equivalent to octroi at the import barrier and not otherwise.

3. I have heard Shri Kashi Nath Joshi, learned Counsel for the petitioner and Shri H.M. Parekh, learned Counsel for the Board.

4. Shri K.N. Joshi, learned Counsel for the petitioner vehemently submitted that the petitioner carries the material in transport trucks using the National Highway and State Highway, which pass through the Municipal limits of Abu Road. The goods are neither unloaded nor re-loaded anywhere within the Municipal limits and the goods pass through and through from outside the Municipal limits without being retained or kept within the Municipal limits and, as such, in view of continued process of transport neither octroi is leviable, nor any charges are leviable on the goods by whatever name they may be called, whether "supervision charges", "service charges" or "escort charges", as contemplated under rule 11(1A) of the Rules. He submitted that the goods are neither "imported", nor "exported", nor brought in" within the Municipal limits. Strong reliance has been placed by Shri Joshi on a decision of the Supreme Court in the *The Town Municipal Council, Kalghatgi Vs. Urmilla Kothari*,

5. Shri Parekh on the other hand, submitted that the charges are being realised by the Board under rule 11(1A). It is optional to the petitioner to make payment of such charges, as if the petitioner does not want to make payment of such charges, he is required to deposit octroi tax at the import outpost and is entitled to get back the octroi tax, so deposited, at the export outpost. Shri Parekh submitted that rule 11(1A) only provides a facility for prompt transit, whereby the petitioner is not required to deposit the octroi tax and to take back the same at the export barrier. The provision being optional and the validity of which has not been challenged, the petitioner is not entitled to any relief in the present writ petition.

6. I have carefully considered the contention of the learned Counsel for the parties. It is true that the validity of rule 11(1) or 11(1 A) of the Rules, has not been challenged in the present writ petition, but it has been contended on behalf of the petitioner that the Rule requires such an interpretation as has been placed on a similar rule by the Supreme Court in the decision cited by Shri Joshi. If the rules 11(1) and 11(1 A) are interpreted in the sense that the goods are neither brought in the Municipal limits nor they are imported into the Municipal limits, or exported outside the Municipal limits, then in that circumstance the goods will not attract levy of octroi tax or levy of any charges for issuance of transport permit. In the *Town Municipal Council's* case (supra) their Lordships had an occasion to consider the levy of supervision fees u/s 124 of the Karnataka Municipalities Act (22 of 1964) and a similar question arose in that case as to whether a person who merely brings the goods within the Municipal limits for immediate exportation, is liable to pay supervision fee. Their Lordships of the Supreme Court in that connection, relying on the earlier Supreme Court decision in *The Central India Spinning and Weaving and Manufacturing Company, Limited, The Empress Mills, Nagpur Vs. The Municipal Committee, Wardha*, observed that the enunciation of law in that case fully covers the case of the Town Municipal

Council, and, stated in para 8 as under:

The opening words of Section 124 of the Act viz. "any article or animal brought into the Municipal limits for the purpose of immediate exportation" on the construction of which the up-shot of the case depends are very important. They imply process of "importing into" and "exporting from" the Municipal limits of goods or animals and are indicative of an element of repose and rest of the goods within the municipal limits. As rightly held by the Division Bench of the High Court, the expressions "brought into" and "immediate exportation" do not comprehend within their sweep the continuous process of transit of goods, by vehicles which merely use the State highways passing through the areas which lie within the Municipal limits. In the instant case, the iron ore is carried in the trucks of the respondent which merely pass through the areas which lie within the Municipal limits and is not unloaded and reloaded at any place within the Municipal area. As such, the important element of repose and rest which the words "brought into the Municipal limits for the purpose of immediate exportation" imply is absent in the instant case.

7. It would appear from the observations that the expression "brought into" and "immediate exportation" do not comprehend within their sweep the continuous process of transit of goods by vehicles which merely use the State highways passing through the areas which lie within the Municipal limits. Their Lordships further observed that,

Bearing in mind the above authoritative enunciation of law, we are of opinion that as the continuity or continuous process of the carriage of iron ore is not in any way in fact broken within the Municipal limits of Kalighatgi, the respondent cannot be said either to bring in or export the iron ore as contemplated by Section 124 of the Act read with Rule 26 of the Rules and as such is not liable to pay the octroi or what is styled as "supervision fee". A contrary interpretation would make rail borne goods passing through the Railway Stations within the limits of the Municipality liable to the imposition of the fee on their arrival at the Railway Station and departure therefrom which could not be the intention of the Legislature.

8. Shri Parekh, learned Counsel for non-petitioners No. 1 and 3, submitted that rule 26 of the Karnataka Municipalities Taxation Rules, 1965, was mandatory, but rule 11(1 A) of the Rules is only optional. So it is the sweet, will of the petitioner to agree to pay the charges contemplated under rule 11(1A). It may be pointed out that rule 26 there provided that in case the person bringing the goods wishes to transport the goods at once beyond the limits of the Municipality he shall do so only after obtaining a transport permit, on payment of necessary fee. On perusal of rule 26, as quoted in the judgment, it would appear that the person, who brings in the goods, is required to make payment for obtaining a transport only if he wishes to transport the goods at once beyond the Municipality limits and it is the validity of this, which was under challenge, and, in that connection it was observed that even when a person wishes to transport the goods at once, no levy

in the nature of supervision fee can be made, because it has been held that when the goods are in continuous process of transit or release, then it cannot be said that the goods are either imported or are brought into the Municipal limits, or are exported outside the Municipal limits. In the present case it is true that it is optional with the petitioner to pay or not to pay the charges contemplated under rule 11(1A), but so far as the Board is concerned, the Board is not empowered to levy any charge if the goods are for immediate transportation. It is a question of fact as to whether the goods are for immediate transportation. But when once it is found or the concerned official at the import barrier is satisfied that the goods are for immediate transportation or the goods are in continuous process of transit, then in view of the above decision of the Supreme Court neither octroi can be levied, nor any other charges can be levied. In the present case I am not concerned with the levy of octroi and rule 11(1) of the Rules has not been made the subject of attack. The writ of petition is simply confined to levy of charges under rule 11(1A) of the Rules. As stated above, such levy is not permissible on the interpretation of the rule even. In the light of the interpretation placed on a similar provision by the Supreme Court in the above decision, it cannot be said that the goods have either been brought into or imported within the Municipal limits and exported outside the Municipal limits. The words used in rule 11 are "goods for immediate transportation" and the Town Municipal Council case (supra), as well, the words used in Section 124 were "any article or animal brought into the Municipal limits for the purpose of immediate exportation", I find similarity in the two expressions and so the interpretation placed by their Lordships of the Supreme Court has an important bearing on the interpretation of rules 11(1) and 11(1A) In my opinion the Supreme Court decision fully applies to the facts of the present case.

9. In view of what I have considered above it is not necessary to examine the validity of the resolution No. 2 passed by the Finance Committee dated 12-4-1963 in pursuance of which the charges of Rs. 2.50/- per truck have been fixed.

10. As regards the relief of refund, it may be stated that this relief cannot be granted to the petitioner in view of the fact that it would be a question of fact as to whether the trucks on which charges have been levied, passed through and through and the journey was not broken. The petitioner may avail such remedy as may be available to him in law for the refund of the charges which have been collected from him.

11. In the light of the foregoing discussion, the petition deserves to be allowed in this manner that the petitioner is not liable to pay any charges, either in the name of supervision charges or service charges or escort charges, as contemplated in rule 11(1) of the Rules, on the goods, which are in continuous process of transit, using the National highway or State highway, passing through the Municipal limits of Abu Road.

12. The writ petition is therefore, allowed as above. In the circumstances of the

case, the parties shall bear their own costs of this writ petition.