

(1997) 04 MP CK 0012
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1204 of 1995

Sarjuprasad

APPELLANT

Vs

Municipal Council and Another

RESPONDENT

Date of Decision : 24-04-1997

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Madhya Pradesh Municipalities Act, 1961 — Section 114, 114(1), 114(3), 115, 127

Citation : (1997) 2 JLJ 235

Hon'ble Judges : N.K. Jain, J

Bench : Single Bench

Advocate : S.S. Samvatsar, for the Appellant; Nimgaonkar, for the Respondent

Judgement

N.K. Jain, J.—This is a petition under Article 226/227 of the Constitution of India, seeking quashment of the resolution (Annx. P3) dated 2.8.95 imposing terminal tax on country liquor u/s 127 of the Municipalities Act.

2. The Petitioner is a liquor contractor and carries on business of sale of country liquor in Badnawar, Distt. Dhar. He is required to send liquor from Badnawar to various parts of the tehsil. Respondent No. 1 the Municipal Council, Badnawar in exercise of its powers u/s 127 and 129 of the M.P. Municipalities Act, 1961 (for short, "the Act") passed a resolution dated 4.7.95 (Annx. R-1) imposing terminal tax on various goods including country liquor exported from within the municipal limits of Badnawar. By a subsequent resolution dated 2.8.95 (Annx. R-2) the former resolution was made effective from 5.8.95. Under the resolution (Annx. R-1) the terminal tax on liquor was levied @ Rs. 2.00 per litre. Respondent No. 2 the Government of Madhya Pradesh in exercise of their powers u/s 129(1) of the Act issued a notification (Annx. P4) dated 15.11.95 specifying upper ceiling limits for imposition of terminal tax on various goods by the Municipalities throughout the State of Madhya Pradesh. The limit prescribed for all types of liquor was 1.00 per cent ad-valorem. Consequent to this direction of the State Government the Respondent No. 1 municipality by its resolution dated 5.2.96 (Annx. R-4)

amended its earlier resolution (Annx. P-3) so as to bring in conformity with the government order.

3. The Petitioner has impugned the resolution (Annx. P-3) as contrary to the express and mandatory provision of Sub-section (1) of Section 129 for two reason: one, that the resolution was not passed at the time of adoption of budget estimates for the next financial year, and; two, that the State Government had not then prescribed any limitations and conditions for levy of the tax as envisaged under Sub-section (1).

4. The Respondent No. 1 has filed return in oppugnation and it is contended that the proviso to Section 129 authorises the municipal council to impose a tax even during a financial year before or after adoption of the annual budget. Similarly, the imposition of limitations and conditions by the State Government, it is further contended, is not a condition precedent to exercise powers of imposition of tax by the municipality Under Sections 127 and 129 of the Act.

5. I have heard Shri S.S. Samvatsar, learned Counsel for the Petitioner and Shri Nimgaonkar, learned Counsel for Respondent No. 1.

6. In order to appreciate rival contentions, it would be proper here to read Section 129 which is as follows:

129. Imposition of taxes and fees:

(1) That Council may, by a resolution, at the time of final adoption of the budget estimates for the next financial year, subject to the provisions of this Act and subject to such limitations and conditions, as may be prescribed by the State Government in this behalf:

(a) impose any of the taxes or fees specified in this Act; or

(b) increase the rates of taxes or fees already imposed.

(2) The resolution as referred to in Sub-section (1) shall contain:

(a) in case of imposition of any tax or fee, the provisions under which such tax or fee is being imposed, class of persons or description of property to be taxed, the amount or rate of tax or fee being imposed, system of assessment and collection to be adopted and the date from which imposition of such tax or fee shall take effect;

(b) in case of increase of rate of any tax or fee, the prevailing rate of such tax or fee, the proposed increased rate of such tax or fee and the date from which increase of rate of such tax or fee shall take effect.

(3) The resolution, as passed, shall be conclusive evidence of the imposition of a new tax or fee, or increase of rate of any tax or fee, as the case may be:

Provided that if the council decides to have supplementary taxation during the financial year, it may do so from such date as the council may resolve, subject to

the provisions of this Act and subject to such limitations and conditions, as may be prescribed by the State Government in this behalf.

(4) Nothing contained in this section shall apply to tax mentioned in Clause (i) of Sub-section (1) of Section 127 which shall be charged and levied in accordance with Section 127-A.

7. A plain reading of the proviso to Section 129 makes it absolutely clear that power to levy tax can be exercised any time during a financial year. This proviso though occurring after Sub-section (3) is not restricted to Sub-section (3) but it controls the entire Section 129 and particularly the Sub-section (1) and confers powers on the municipal council for supplementary taxation before or after adoption of annual budget.

8. As regards laying down of limitations and conditions as envisaged u/s 129(1), the point projected stands resolved by a Supreme Court decision in the case of City of Nagpur Corporation Vs. M/s. Khemchand Khushaldas and Sons and others, , the Apex Court while dealing with a similar provision in the City of Nagpur Corporation Act, 1948 held:

The imposition of ceiling on rates of taxes u/s 114(3) by the State is not a condition precedent to the exercise of powers of imposition of taxes by the Corporation u/s 114(1) (e) read with Section 115. The imposition of maximum rates of tax by the State Government u/s 114(3) is an enabling provision and it is not a condition precedent to the exercise of taxing power by the Corporation u/s 114(1) read with Section 115. Both these powers and functions are independent of each other and operate in their own fields subject to the rider that if the State Government chooses to impose maximum amounts of rates of any tax imposed by Corporation, in exercise of State's powers u/s 114(3), that ceiling would get engrafted on the rates of tax as imposed by the Corporation u/s 114 read with Section 115 of the Act. but so long as that ceiling is not imposed by the State Government the rates of taxes imposed by the Corporation would operate unrestricted and uninhibited by any such ceiling. It is difficult to read the provisions of Section 114 (3) as mandatory requiring the State Government to necessarily regulate imposition, assessment and collection of all the taxes imposable by the Corporation u/s 114(1). The several clauses in Sub-section (3) must be read distinctively and the powers which are given to the State Government under Sub-section (3) must be read as independent powers for making rules with regard to the assessment and collection of the taxes. A power to make rules prescribing maximum rates of taxes could be independently exercised by the State Government but there is nothing in the section which would make it obligatory for it to first specify the maximum amounts of rates of tax before it exercise its another independent power of making rules for imposition of a tax u/s 115 read with Section 114 thereof.

9. In the instant case also the expression "subject to such limitations and conditions as may be prescribed by the State Government" occurring in Section

129(1), has to be read disjunctively from rest of the provision and the powers given to the municipal council to levy tax and powers given to the State to specify limits for such taxation have to be read as independent of each other. It is not obligatory for the State Government to specify any such limitations for exercise of powers of taxation by a municipal council nor the municipal council is required to wait for Government's directions in this behalf for exercising its own powers to levy tax. Of course once any such limitations or conditions are specified by the State Government, the municipal council is bound to adhere to those limitations or conditions and the ceiling if any prescribed would get engrafted on the rates of tax imposed by the council under the provision of Section 129(1).

10. It will be thus seen that the resolution (Annx.-P3) does not suffer with any legal defect or statutory sanction. However, as already pointed out, the State Government by its order dated 15.12.95 (Annx. P4) has specified upper ceiling for levy of terminal tax on various goods. The Respondent No. 1 municipal council has also in turn by its resolution dated 5.2.96 (Annx. R/4) has accordingly amended rates of taxation to bring them in conformity with the Government order. There is, however, time gap of 52 days from 15.12.95 to 4.2.96 during which tax has been realised by the Respondent No. 1 in excess of the rates prescribed by the State Government. To this extent the action of Respondent No. 1 is certainly violative of Section 129(1) of the Act. The Respondent No. 1 council is, therefore, bound to refund the excess tax recovered by it to the Petitioner.

11. In the result the petition succeeds in part only to the extent as aforesaid. The Respondent No. 1 is directed to refund to the Petitioner the amount of terminal tax realised by it from the Petitioner during the period from 15.12.95 to 4.2.96 and which is in excess of the upper ceiling prescribed by the State Government under order dated 15.12.95 (Annx. P4). There shall be, however, no order as to costs.