

(1969) 01 GUJ CK 0006

In the Gujarat High Court

Case No : Special Civil Application No's. 943, 946 and 979 of 1968

Saurashtra Iron Foundry and Steel Works Private Ltd. and
Others

APPELLANT

Vs

Bhavnagar Nagarpalika and Another

RESPONDENT

Date of Decision : 16-01-1969

Acts Referred:

General Clauses Act, 1897 — Section 21

Gujarat Municipalities Act, 1963 — Section 101, 102, 103, 275, 99

Citation : AIR 1970 Guj 53 : (1970) 11 GLR 351

Hon'ble Judges : D.A. Desai, J;A.R. Bakshi, J

Bench : Division Bench

Advocate : I.M. Nanavati, B.K. Mehta and D.U. Shah, in Spl. Civil appln. No. 943 of 1968, B.K. Mehta and D.U. Shah, in Spl. Civil appln. No. 946/68, H.M. Mehta and M.R. Barot, in Spl. Civil appln. No. 979/68, for the Appellant; H.M. Mehta, M.E. Barot, G.N. Desai, Govt. Pleader and R.M. Gandhi, Addl. Govt. Pleader in Spl. Civil Appln. No. 943 of 1968, H.M. Mehta, M.R. Barot, G.N. Desai, Govt. Pleader and R.M. Gandhi, Addl. Govt. Pleader in Spl. Civil Appln. No. 946/68, G.N. Deasi, Govt. Pleader and R.M. Gandhi, Addl. Govt. Pleader in Spl. Civil Appln. No. 979/68, for the Respondent

Judgement

1. These are three petition which arise on account of the imposition of octroi tax by the Bhavnagar Municipality. Since there are certain common facts and questions that would require to be considered in these three petitions, it would be convenient to dispose them of by one judgment, though each petition will be dealt with separately.

2. There are certain facts which are undisputed and common to all the three petitions and, therefore, may be stated at the outset. The Bhavnagar Municipality was constituted under the Bhavnagar Municipality Act as it was in force in the erstwhile State of Bhavnagar and was deemed to have been constituted thereafter under the Bombay Municipality Boroughs Act, 1925 as applied to the State of Saurashtra in 1949, and under the Gujarat Municipalities Act, 1963,

when it was enacted and applied to the State of Gujarat, Formerly, the Bhavnagar Municipality (hereinafter called "the Municipality") levied and collected terminal tax on the goods imported within the municipal limits of Bhavnagar and there were the Bhavnagar Municipal Terminal Tax Rules, which continued to be in force during the period when the Bombay Municipal Boroughs Act was applicable and also thereafter by virtue of Clause (vi) of sub-section (2) of Section 279 of the Gujarat Municipalities Act, 1963, (hereinafter referred to as "the Act"). The Municipality was thus collecting terminal tax under the Bhavnagar Municipality Terminal Tax Rules after 1st July 1949 under the Bombay Municipal Boroughs Act, 1925, and after 1st January 1965 under the Gujarat Municipalities Act, 1963. It may be mentioned that the Municipality had, by passing a resolution on 5th April 1956 decided to impose and levy octroi duty on sugar of any kind and its products and had made Rules and bye-laws for the purpose of levying and collecting that tax and the Municipality had commenced collecting the octroi duty on sugar and its products from October 1956. There was an area known as Dock Estate Area which was not included within municipal limits and was consequently not liable to levy of either octroi or terminal tax. It may also be mentioned that the Municipality had made attempts to get the Dock Estate Area included within municipal limits. Such an attempt was made in 1964 when the Municipality issued a proclamation inviting objection to the proposal to include the area of Dock Estate within the municipal limits and the Government of Gujarat declared that the Dock Estate area be included within the municipal limits with effect from 8th March, 1965. The Municipality had also thought of converting the terminal tax into octroi and with that end in view, passed a resolution in its Ordinary General Meeting held on 15th December 1965 resolving to make necessary amendments and changes in the Rules and the Bye-laws in force for levy and collection of octroi duty on sugar of any kind and its products so as to include other goods and articles in the Schedule to the said Rules. The Municipality published in the local newspapers of Bhavnagar under Sections 101 and 275 of Gujarat Municipalities Act for the information of the persons likely to be affected thereby, a draft of the proposed Rules and Bye-laws with a public notice inviting objections to be filed within one month from the date of the said notice. Objections were filed against the proposed draft of the Bye-laws and Rules by some trade associations, industrial and commercial establishments and by some individual citizens. The Municipality had appointed a Sub-Committee to consider the objections filed before it but before the said Committee could complete its work, the Municipality was superseded in June 1967 and the State of Gujarat appointed an Administrator for the administration of the Municipality. The Administrator of the Municipality then forwarded the Rules and Bye-laws to the State Government with the objections received and the Government of Gujarat by a Resolution dated 18th June 1968 accorded sanction with modifications to the Octroi Rules and Bye-laws framed by the Municipality which, on receipt of the sanction, published a notice specifying 1st August 1968 as the date from which the octroi duty was to be imposed within the municipal limits. The State of Gujarat issued a corrigendum dated 8th July 1968

making certain additions and modifications in Rules and Bye-laws. The Rules and Bye-laws and the corrigendum referred to above are the subject matter of these petitions.

3. The petitioners in Special Civil Application No. 943 of 1968 have urged that the Government Resolution dated 18th June 1968 and the notice of the Municipality dated 29th June 1968 publishing the sanction specifying 1st August 1968 as the date from which octroi duty would be imposed and the Government corrigendum dated 8th July 1968 are ultra vires the powers of the State Government and the Municipality and are in excess of jurisdiction and are against the mandatory provisions of the Gujarat Municipalities Act. In the petition it has also been stated that these Notifications are discriminatory, arbitrary and unjust and prayer is made for quashing the same and for a writ prohibiting the Municipality for levying and collecting the octroi duty.

4. The first contention of Mr. Nanavati was that on the corrigendum being issued on 8th July 1968 it got engrafted in the octroi rules and bye-laws as sanctioned by the Government by its Resolution dated 18th June 1968 and the Municipality could enforce the rules and bye-laws and levy octroi only by and after incorporating the corrigendum in the originally sanctioned rules and bye-laws. It was contended that the corrigendum Appendix "F" being issued by the State Government, the same had the legal effect of being a part and parcel of the earlier sanction given by the State Government at Exhibit "D" and the corrigendum was an integral and inseparable part of the original sanction. The Municipality had not notified u/s 103 its intention to levy octroi according to rules and bye-laws as finally sanctioned by the corrigendum and consequently, it was contended, the collection of octroi was illegal and unauthorized and it was not, therefore, open to the Municipality to levy and collect octroi according to the earlier sanction Appendix "D" discarding the corrigendum Appendix "F". It was pointed out that the Municipality had decided to enforce octroi rules disregarding the corrigendum regarding the refund of deposit in respect of goods in transit and, therefore, also the levy of octroi by the Municipality would be illegal and unauthorized. On the other hand it was urged on behalf of the Municipality by Mr. H. M. Mehta, that the Government having once given its sanction on 18th June 1968, had no power to issue the corrigendum which consequently was of no effect and that, therefore, its non-publication u/s 103 was of no consequence.

5. [Their Lordships after quoting certain sections from the Gujarat Municipalities Act, observed:-]

If we examine the Scheme of the relevant provisions relating to the imposition of a tax, it appears that Section 99 is the source of power vested in the Municipality of imposing the taxes mentioned therein and Sections 101, 102 and 103 provide for the machinery for imposing a tax. If we summarize the steps that are required to be taken for bringing the tax into existence and to make it effective, these steps as could be gathered from the provisions of Sections 101, 102 and 103 are :-

- (1) Passing a resolution by the Municipality for selecting a tax specified in Section 99;
- (2) preparation and approval of rules;
- (3) publication of the rules;
- (4) receipt by the Municipality of objections in writing from the inhabitants of the municipal borough;
- (5) consideration of the objections by the Municipality;
- (6) submission of the objections with its opinion and any proposed modifications by the Municipality to the State Government;
- (7) sanction of the rules with or without modifications by the State Government; and
- (8) publication of the sanctioned rules together with a notice reciting the sanction, the date and serial number thereof and also specifying the date from which the tax shall be imposed.

These steps constitute a compact machinery which enables a municipality to put into force its right of imposing a tax given to it by Section 99 of the Act. The source of the power to impose tax is in the municipality and it is the municipality which is levying the tax, the function of the State Government being to accord sanction with or without modifications within the limits of Section 102 of the Act. Section 99 of course does empower the Government to pass general or special orders subject to which a Municipality may impose a tax. But that is altogether a different and a separate power vested in the Government which on its own can make the imposition of a tax by the Municipality subject to its general or special orders. This power which is vested in the Government is apart from the machinery provided by Sections 101, 102 and 103 which provide for the obligatory steps which have to be taken from the beginning, that is, from the selection of the tax which is to be imposed to the publication of the date from which the tax could effectively be levied.

6-7. [Narrating the steps taken by the Municipality and quoting the corrigendum in Para 6, their Lordships observed;]

On a perusal of the corrigendum it would be seen that the corrigendum is divided into two parts. By the first part the rules are affected and by the second part the bye-laws are modified. It would, therefore, require to be seen whether the sanction that has once been given by the Government can subsequently be amended, modified or varied by the Government. There are three aspects from which this question can be approached. Firstly, when once the sanction is given by Government, the power to grant sanction is exhausted once for all and the Government cannot by any subsequent action amend or modify the sanction or the rules. The second aspect would be that the Government can modify the sanction and the rules before the publication of the sanction and the rules by the

Municipality and the third view that can be canvassed is that the sanction and the rules could be modified till the levy of octroi becomes effective, that is to say, till the expiry of the date notified by the Municipality on which the octroi would come into force as duly imposed. The first question is whether there is anything in Sections 101, 102 and 103 of the Act which gives an indication that the sanction when once it is signed by Government becomes conclusive and final so that it can never be withdrawn or modified by Government even before the octroi becomes effective and leviable. There is no such express prohibition in either of the sanctions nor such a prohibition can be read from the words and the phraseology of the sections. As the sections indicate, the sanction of the Government does not appear to be merely a form of acquiescence by Government of the rules and the tax imposed by the Municipality. But the Government has to exercise its mind on the question whether the tax and the rules are proposed should be confirmed and sanctioned or should be sanctioned with modification. The Government is required to consider the objections preferred by the citizens and the opinion of the Municipality on such objections and after taking into consideration these matters, the Government has further to consider whether it would refuse to sanction the rules or whether it would give its sanction with or without modifications or whether it would return the rules to the Municipality for further consideration. It has further to be seen that although the original source of the power to tax is in the Municipality, the sanction to the rules whereby tax is proposed to be imposed is an essential part of the machinery as is the resolution of the Municipality selecting a tax from imposition. All these facts including the fact that the Government is given the power even to refuse to sanction the rules or to sanction the rules with modifications would suggest that the Government is given a power to sanction and while using that power it has to consider the several circumstances mentioned above. As already stated, there is no prohibition to the use of the power till the rules become effective and there is no specific prohibition against modification of the sanction by Government until of course the rules have become effective on the date of enforcement as notified by the Municipality as provided in Section 103 of the Act. Once the rules have become effective and once the tax has become leviable, the power to sanction must be deemed to have been fully utilised and, therefore, exhausted and if after the rules have become effective, the government feels that conditions should be imposed to the levy of octroi, then possibly it may have recourse to Section 99 of the Act by passing a general or a special order. The imposition and the levy of the tax, therefore, it appears, has been made subject to the octroi of the Government in two ways; one of the ways being to pass general or special orders to which the levy would be subject and the other mode of control being by the reservation of the power in the Government to refuse to sanction or sanction with modification the rules by which tax is proposed to be imposed. Of course the latter machinery for control, namely, the power to sanction is given to the Government while the proceedings by the Municipality for the imposition of the tax are in progress and it would, therefore, be reasonable to take the view that the power vested in Government u/s 102 of the

Act would continue to vest in it during the period in which the proceedings for the imposition of the tax are in progress and till those proceedings have culminated in an enforceable and effective levy of tax. We do not think, therefore, that the corrigendum is ultra vires the powers of Government because the power of Government was exhausted once the sanction was issued on 18th June 1968. The sanction is an effective part of the machinery to make the rules and the imposition of tax effective and it cannot be said that the Government had lost seisin over the rules merely because it had put its signature on the sanction or merely because the office of the Government had not the physical possession of the rules which might have been sent to the municipality with the sanction. The real question is whether there is anything to suggest in the sections that the power of Government to sanction gets exhausted completely when once the act of sanction has been performed by the Government. If that would be so, the result would be that the Government would be unable to effect further modification if it is discovered by the Government that there was some lacuna in the rules which must be rectified before the rules were put into force. When such a power in the Government seems to exist by virtue of Section 99, there is no reason why during the course of the proceedings for the imposition of tax Government could not have the power to rectify any lacuna which appears to it to have crept in the rules. The sanction, as stated above, is a substantial and necessary ingredient for the imposition of the tax and it cannot be said that the sanction of Government is merely a condition of the exercise of power by the Municipality, such that it can never be modified once it has been signed by the Government. This conclusion to which we have arrived flows from the provisions of the Act itself and, therefore, it would not be necessary to derive additional support from the provisions of Section 21 of the General Clauses Act, although it is possible to argue, as was urged on behalf of the petitioner, that the action taken by the Government in sanctioning the rules was in the nature of an order and, therefore, subject to the provisions of Section 21 of the General Clauses Act and that it would for that reason be open to Government to modify its sanction before the rules became final and effective. Mr. Mehta's contention was that Section 21 of the General Clauses Act would be inapplicable inasmuch as the sanction to be given by Government could not be said to be an order within the meaning of Section 21 of the General Clauses Act.

8. The learned Government Pleader appearing on behalf of the State had tried to support the corrigendum should be considered as an order u/s 99 as a special order of Government. Looking to the nature of the modification made by the corrigendum it cannot be said that it is an order u/s 99. What the corrigendum does is to make or add a rule or a bye-law and by its very nature it suggests to correct or amend rules and bye-laws which are placed in the machinery for the purpose of imposing a tax under Sections 101, 102 and 103 of the Act. Substantially it is the function of the municipality to make bye-laws and rules and the essential condition of making of rules and bye-laws is in inviting public objections. We are, therefore, not inclined to accept the argument of the learned

Government Pleader that the corrigendum should be construed as an order u/s 99 of the Act. The aforesaid discussion leads us to the conclusion that the modification of the rules made by Government by the corrigendum dated 8th July 1968 cannot be held to be outside the powers of the Government. But that would not be the position as regards that part of the corrigendum which modifies the bye-laws because there is no provision for modification in Section 275 of the Act. Sub-section (4) of Section 275 provides that no bye-law, or alteration or rescission of a bye-law made under sub-section (1) shall have effect unless and until it has been sanctioned by the State Government and it will be seen that the phraseology employed in this sub-section is entirely different from the one which is employed in Section 102 of the Act. The corrigendum, therefore, in so far as it relates to the bye-laws would be ineffective. In this view of the matter it would be unnecessary to consider whether the corrigendum modifying the bye-laws would be discriminatory and be hit by Article 14 of the Constitution. Again this point was not pressed by Mr. Nanavati appearing on behalf of the petitioner.

9. The next question for consideration would be as to what would be the effect of the corrigendum relating to the rules when the same has not been published by the Municipality. Section 103 of the Act clearly provides for the publication of the sanction along with the rules. The corrigendum must, therefore, be published by the Municipality to be made effective and so long as the same has not been published, it cannot be said to have been incorporated in the rules. If that is so, it would have to be considered whether the non-publication of the corrigendum relating to rules and its consequential ineffectiveness would render the whole sanction and the rules ineffective and invalid. It was urged by Mr. Nanavati that on the corrigendum being issued, it must be taken as having been engrafted in the octroi rules as sanctioned by the Government on 18th June 1968 and the Municipality could enforce the rules and bye-laws and levy octroi only by incorporating the corrigendum in the originally sanctioned rules and bye-laws and levy octroi only by incorporating the corrigendum in the originally sanctioned rules and bye-laws and that since the Municipality had not notified u/s 103 its intention to levy octroi according to rules and bye-laws as finally sanctioned by the corrigendum, the collection and levy of octroi would be illegal and unauthorised. According to Mr. Nanavati the Municipality cannot disregard the corrigendum relating to the refund of deposit relating to goods in transit and the levy of octroi without these rules contained in the corrigendum would be unworkable and also illegal and unauthorised as the same formed an integral part of the rules as sanctioned by Government. In order to decide this question it would be necessary to see whether the rules contained in the corrigendum are such that without them the levy of octroi becomes unworkable and illegal. The rules contained in the corrigendum relate to the refund of deposit relating to goods in transit and it was urged that if these rules were not in force, octroi would be levied on all types of goods irrespective of the fact whether they were introduced in the city for the purpose of consumption, use or sale. It is true that in the absence of such rules the Municipality might find it difficult to decide at the

octroi post as to what goods were being introduced for consumption, use or sale. The definition of "octroi" clearly indicates that it is a tax on the entry of goods into the limits of a municipal borough for consumption, use or sale therein, and the imposition of tax by virtue of Section 99 is permissible as an octroi on animals or goods or both brought within the octroi limits for consumption, use or sale therein. The Municipality, therefore, would not be able to recover and collect octroi on such goods which do not fall within the above definition and, therefore, the argument that in absence of the rules as provided in the corrigendum it would enable the Municipality to recover the octroi tax even on goods which are not introduced within the borough for consumption, use or sale therein does not appear to be well founded. No doubt it would be in the interest of the municipality to have such a rule which seems to have been left out and it would be for the municipality to publish the rule so as to make it effective with a view to facilitate the working of collection of octroi. But for that reason it cannot be said that the first sanction which was given by the Government was invalidated and that the rules as they were sanctioned on 18th June 1968 could not be enforced although they were properly published by the municipality as provided by Section 103 of the Act. We are, therefore, not inclined to accept the argument of Mr. Nanavati that the octroi rules cannot be said to have come into force although they have been published by the municipality because the corrigendum was not published by the municipality after the rules were modified by Government by the corrigendum. The rules and bye-laws contained in the corrigendum are not such and so inextricably connected with the rules and bye-laws originally sanctioned that it would be impossible even to enforce the original rules and bye-laws which were duly published by the municipality along with the sanction received by it from the Government.

10. The next point that requires to be considered is whether the Government while granting the first sanction had added an increased burden in the octroi rates on certain items and had added new items for imposition of octroi as was urged by Mr. Nanavati. It was urged that the Government while granting the sanction had changed the basis from ad valorem calculation as proposed by the municipality to the basis of weight and that because of all this, not only the levy on those items would be bad but the entire set of octroi rules would become unenforceable as the same were indivisible. Because certain items which are the subject matter of the sanction carry additional burden of octroi by virtue of the sanction, it could not be said that the sanction would be bad as a whole and also in respect of items in respect of which no additional burden is imposed. Section 102 of the Act gives power to the Government to sanction, modify or impose conditions not involving an increase in the amount of octroi to be imposed and it cannot be said that if the sanction improves upon the rate of octroi on a particular item by imposing a burden as regard that item, the sanction as a whole would be invalid. Each item would stand by itself and the sanction would be valid in respect of those items which would fall within the purview of Section 103 of the Act provided no additional burden is imposed while giving the

sanction. We have, therefore, to see on which of the items it has positively been shown that an additional burden has been imposed.

11. [Enumerating such items and referring to details of individual application in portion of Para 10 and in Paras 11 to 15, their Lordships continued;]

The aforesaid discussion leads us to the following conclusions:-

(1) The corrigendum dated 8th July 1968 which modifies the sanction dated 18th June 1968 is not outside the powers of the Government in so far as it related to rules:

(2) The said corrigendum is invalid in so far as it relates to bye-laws;

(3) The corrigendum modifying the sanction relating to Rules dated 18th June would require to be published by the Municipality to be made effective and so long as the same has not been published, it cannot be said to have been incorporated in the rules;

(4) The corrigendum cannot be construed as an order u/s 99;

(5) The non- publication of the modified sanction contained in the corrigendum would not render the whole sanction and the rules and bye-laws ineffective and invalid;

(6) By the sanction dated 18th June, 1968, the additional burden imposed would be in respect of items as shown in the Schedules "A" and "B" appended and the sanction in respect of those items only would be invalid and not in respect of others;

(7) The corrigendum was not issued by the Government mala fide.

* * *

12. Petitions partly allowed.