

(1986) 09 AHC CK 0009

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 454, 472, 534, 565 and 3432 of 1982

Shiva Ram Singh and Sons

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 19-09-1986

Acts Referred:

Constitution of India, 1950 — Article 265
Uttar Pradesh Municipalities Act, 1916 — Section 5, 5(3), 5(4)
Uttar Pradesh Nagar Mahapalika Act, 1959 — Section 1(3), 172, 172(1), 172(2), 199

Citation : (1987) 1 AWC 182

Hon'ble Judges : N.D. Ojha, Acting C.J.; R.K. Gulati, J

Bench : Division Bench

Advocate : K.L. Grover, for the Appellant; S.S. Bhatnagar, A.K. Sharma and S.C., for the Respondent

Final Decision : Allowed

Judgement

N.D. Ojha, A.C.J.

1. In these five writ petitions an identical question of law is involved and consequently they are being decided by a common order.

2. The Petitioners in writ petition Nos. 454 of 1982, 472 of 1982, 534 of 1982 and 565 of 1982 have been carrying on business and their godowns or factories were situate beyond the limits of the Municipal Board, Meerut and consequents in respect of the goods which were brought to their godowns or factories from outside, they were not liable to pay any octroi duty to the municipal board. It appears that in place of a Municipal Board a Nagar Mahapalika was sought to be created in Meerut and in that connection a notification dated 16th November, 1981, was issued by the State Government u/s 3(1) of the U.P. Nagar Mahapalika Adhiniyam, 1959 (hereinafter referred to as the Adhiniyam). By this notification the areas mentioned therein were constituted to be a city. The area so

mentioned also included the places where the Petitioners were having their godowns or factories and which before the issue of the said notification were outside the limits of the Meerut municipality. Subsequently another notification dated 11th June, 1982, was issued creating a Nagar Mahapalika in respect of the area which had been constituted as a city by the notification dated 16th November, 1981.

3. The places where the Petitioners had their godowns or factories having been included within the limits of the Nagar Mahapalika, Meerut, in the manner stated above the Petitioners were required to pay octroi duty in respect of the goods which were brought to the aforesaid places. The case of the Petitioners is that they raised objection to this demand of octroi by the Nagar Mahapalika on the ground that the relevant requirements under the Adhiniyam for imposition of octroi which was a tax not having been complied with in respect of the area where the godowns or factories of the Petitioners were situate and where no octroi was earlier payable, it was not open to the Nagar Mahapalika to levy or realise octroi from the Petitioners. The case of the Petitioners further is that the authorities of the Nagar Mahapalika did not pay any heed to the objection raised by them and they insisted on realisation of octroiduty as a result of which these writ petitions had to be filed with the prayer that a writ in the nature of mandamus may be issued directing the Respondents not to charge any octroi duty from the Petitioners on the goods imported and. brought by them to their godowns or factories.

4. Petitioner No. 1 of writ petition No. 342 of 1982 is a registered partnership firm dealing in the business of transport of goods by motor trucks and Petitioner No. 2 is its manager. According to the Petitioners, for the purpose of facilitating the transport of small parcels the Petitioner No. 1 has its booking offices at various towns in India and had also transit godowns at various places for transshipment of items meant for particular routes. The Petitioners have a godown for the purpose of transit which was established outside the limits of the Agra Nagar Mahapalika with the result that no octroi duty was payable by the Petitioners in respect of the goods brought by them to the said godown. The State of Uttar Pradesh in exercise of its powers u/s 3 of the Adhiniyam altered the limits of the Nagar Mahapalika Agra by a notification dated July 8, 1982, where under even the area where the Petitioners had their godown was included within the limits of the city. Having extended the limits of the Nagar Mahapalika in the aforesaid manner the authorities of the Nagar Mahapalika required the Petitioners to pay octroi duty on the goods brought by them to their godown. The Petitioners of this writ petition also assert that they raised objection but no heed was paid by the authorities of the Nagar Mahapalika and since they were insistent upon realising octroi from the Petitioners they had no alternative but to institute a writ petition in this Court.

5. The common question which has been raised in these writ petitions is that since the areas where the godowns or the factories of the Petitioners are situate

were prior to the issue of the aforesaid notification outside the limits of the Municipal Board, Meerut, in the case of the first four writ petitions and outside the limits of the Nagar Mahapalika Agra, in the case of the last writ petition no octroi could be realised from the Petitioners unless the relevant requirements for imposition of octroi, which was a tax, as contained in the Adhiniyam were complied with. Emphasis has been placed by the Petitioners on the circumstance that at the time when the areas where they were having their godowns or factories were included within the limits of the Nagar Mahapalika no octroi had been imposed or was payable so that it was not a case of saving or continuing an existing tax but was a case of imposition of a tax for the first time in respect of those areas. An additional plea raised in regard to the first four writ petitions concerning the Nagar Mahapalika, Meerut, was that apart from the fact that the relevant requirements for imposition of tax contained in various provisions of the Act were not complied with, even the octroi limits had not been fixed which was a condition precedent for assessment and collection of octroi as contemplated by Section 219(a) of the Adhiniyam which provides that the assessment, collection or composition of tax and in respect; of octroi or toll, the determination of octroi or toll limits shall be regulated and governed by rules except in so far as provision therefore is made by the Adhiniyam, During the pendency of these writ petitions, however the State Government framed the Meerut Nagar Mahapalika Octroi Limit Rules, 1983, which were published in the U.P. Gazette (Extraordinary) dated 20th December, 1983. The {notification is dated 19th December, 1983, and has been issued in exercise of the powers under Sections 219(a), 227(2)(a) and 540(1) of the Adhiniyam. In this connection it has been brought to our notice by counsel for the Petitioners in writ petition Nos. 454 of 1982 and 472 of 1982 that the Petitioners of these writ petitions have prior to the issue of the notification dated 19th December, 1983, already left the places of their business and consequently this notification has no material bearing on these two writ petitions. The effect of the issue of the notification dated 19th December, 1983, will have, therefore, to be considered only in regard to the plea of octroi limits not being fixed as raised in writ petition Nos. 534 of 1982 and 565 of 1982 only.

6. We have heard counsel for the parties at some length and are of opinion that in view of the decision of a Division Bench of this Court in *Camphor and Allied Products Ltd. v. State* 1983 ALJ 589 the submission made by counsel for the Petitioners has substance. The facts in a nutshell of the case of *Camphor & Allied Products Ltd.* (supra) were that Municipal Board, Bareilly, had enforced within its limits octroi duty imposed by it in accordance with the provisions of the U.P. Municipalities Act, 1916. No such duty was, however, in force within the limits of certain local areas and the Petitioners of the various writ petitions which were decided by the common order aforesaid had their factories within the limits of one or the other of the said local areas. A notification dated 13th November, 1981, u/s 3 of the Act was issued and after the declaration of the areas mentioned in the said notification as a city which was to be called the Nagar

Mahapalika for the city of Bareilly on account of Section 4 of the Adhiniyam the Petitioners were asked to pay octroi duty on the goods brought by them to their factories. The case of the Petitioners was that they could not be asked to pay octroi duty inasmuch as there was no imposition of octroi duty in accordance with the provisions of the Adhiniyam in respect of the areas where their factories are situate. According to them they could not be required to pay octroi on account of the mere inclusion of those areas within the city of Bareilly. For the Respondents including Nagar Mahapalika, Bareilly, it was urged in that case that it was implicit in Section 3 of the Adhiniyam that whenever limits of a city were altered by including therein some local areas the taxes imposed earlier to such extension in the municipal limits which had been extended shall be effective in the newly added local areas as well. Besides Section 575(a) of the Act properly construed clearly suggested that the tax already imposed to a municipality could extend to the newly added local areas where no similar tax was pre-existing. The plea raised by the Petitioners was accepted and the one raised by the Respondents was repelled. It was held:

What then is ultimate result of this discussion? It clearly, is that unless there is imposition of octroi afresh in the areas in which the factories of the Petitioner are situate, in accordance with the provisions of the Adhiniyam they shall not be liable to its payment upon the goods brought by them within the erstwhile limits of those areas. That is the inevitable result of the statutory provisions as they stand today. And, in the view that we have taken, the Respondents cannot require the Petitioners to pay octroi duty on the goods brought by them to their factories by the mere reason of the inclusion of the local area of the erstwhile Town Area Committee, Clutterbuckganj, Notified Area Committee, Izzatnagar and Gram Sabha of revenue village Parsa Khera of district Bareilly, in the area constituted to be "City of Bareilly." In arriving at this conclusion it was pointed out that in the U.P. Municipalities Act there was a specific provision contained in Section 5 dealing with the effect of inclusion of an area in the municipality and that no similar, provision was incorporated in the Adhiniyam. We are in respectful agreement with the view taken in that case. Section 5 of the U.P. Municipalities Act on which reliance was placed by the Petitioners of that case reads as follows:

Section 5 Effect of including area in Municipality-

When by reason of a notification u/s 3 any local area is included in a Municipality such area shall thereby become subject to all notifications, rules, regulations, bye-laws, orders, directions issued or made under this or any other enactment and in force throughout the Municipality at the time immediately preceding the inclusion of the area.

Whereas Section 577(a) of the Adhiniyam on which reliance was placed by the Respondents in that case and has been placed by the Respondents in the instant cases also reads as follows:

"Section 577. Continuation of appointments, taxes, budget estimate,

assessments etc.

Save as expressly provided by the provisions of this Chapter or by a notification issued u/s 579-

(a) Any appointment, delegation, notification, notice, tax, order, direction, scheme, licence, permission, registration, rule, bye-law, regulation form made, issued imposed or granted under the U.P. Municipalities Act, 1916, or the Cawnpore Urban Area Development Act, 1945 or the U.P. Town Improvement Act 1919 or any other law in force in any local area constituted to be a City immediately before the appointed day shall, in so far as is not inconsistent with the provisions of this Act, continue in force until it is superseded by any appointment, delegation, notification, notice, tax, order, direction, scheme, licence, permission, registration, rule, bye law, or form made, issued, imposed, or granted under this Act or any other law as aforesaid, as the case may be.

... .

A bare reading of Section 5 of the U.P. Municipalities Act makes it clear that all notifications, rules, regulations, bye-laws, orders, directions issued or made under the U.P. Municipalities Act or any other enactment and in force throughout the municipalities at the time immediately preceding the inclusion of an area in a municipality by a notification u/s 3 become applicable to such included area. The result of the enabling provision contained in Section 5 of the U.P. Municipalities Act was that even if in the area included a particular tax was not payable but it was payable in the municipality it shall become payable in the included area also merely by virtue of the issue of the notification extending the area of the municipality so as to include the area concerned within its limits. The same result, however, does not follow u/s 577(a) of the Adhiniyam. It only saves the tax which was already in force in any local area constituted to be a city immediately before the appointed day. In other words if a particular tax was in force in any local area constituted to be a city immediately before the appointed day, it shall in so far as it is not inconsistent with the provisions of the Adhiniyam continue in force until it was superseded under the Adhiniyam. There is no provision like Section 5 of the U.P. Municipalities Act in Section 577(a) of the Adhiniyam which may have the effect of making in force a tax in an area where no such tax was in force merely because the said area has been included within a Nagar Mahapalika as a result of the limits of the Nagar Mahapalika being extended. As a necessary corollary the only method by which octroi could be realised from the Petitioners was to comply with the requirements of the Adhiniyam in the matter of imposition of octroi as a tax in respect of the area where the godowns or the factories of the Petitioners were situated. Even the notification dated 19th December, 1983, fixing the octroi limit will not be sufficient to do away with the requirements contained in the various provisions of the Act for imposition of tax. A reference at this place may be made to the relevant provisions of the Adhiniyam. Section 172 of the Adhiniyam deals with the taxes to be imposed under the Adhiniyam. Sub-section (1) of Section 172

refers to such taxes which the Mahapalika is under an obligation to impose. Sub-section (2) on the other hand refers to taxes which the Mahapalika may impose. In other words Section 172(1) refers to mandatory taxes whereas Sub-section (2) to optional taxes. Octroi comes within Clause (b) of Sub-section (2) of Section 172. Sections 199 to 203 deal with the procedure of imposition of taxes. These sections lay down the various requirements which are necessary to be followed before a tax specified in Sub-section (2) of Section 172 of the Adhiniyam can be validly imposed. Article 265 of the Constitution provides that no tax shall be levied or collected except by authority of law. It is settled law that no tax can be collected unless it has been levied in accordance with law. In *Assistant Collector of Central Excise, Calcutta Division Vs. National Tobacco Co. of India Ltd.*, while dealing with the word "levy" it was held that the term "levy" was wider in its import than the word "assessment". It may include both "imposition" of a tax as well as assessment. The term "imposition" is generally used for the levy of a tax or duty by legislative provisions indicating the subject matter of the tax and the rates at which it has to be taxed. The term "assessment", on the other hand, is generally used in this country for the actual procedure adopted in fixing the liability to pay a tax on account of particular goods or property or whatever may be the object of the tax in a particular case and determining its amount. Article 265 of the Constitution makes a distinction between levy and collection. In the instant writ petitions it is not the case of the Respondents that the provisions contained in Sections 199 to 203 dealing with imposition of tax have been followed with regard to imposition of octroi in the areas where the godowns or the factories of the Petitioners were situate and where prior to their being included in the limits of the Nagar Mahapalika there was no octroi in force. It is apparent, therefore, that octroi has not validly been imposed in the said areas.

7. *The Atlas Cycle Industries Ltd. Vs. State of Haryana and Another*, was a case dealing with the Punjab Municipal Act, 1911. Sub-section (4) of Section 5 of the said Act contained a provision to the following effect:

When any local area has been included in a municipality under subsection (3) of this section of this Act, and, except as the State Government may otherwise by a notification direct all rules, bye-laws, orders, directions and powers made, or conferred under this Act and in force throughout the whole municipality at the time, shall apply to such area.

A question arose as to whether a notification in regard to imposition of octroi shall stand extended automatically to a local area which was subsequently included within the municipal limits. It was held that since Sub-section (4) of Section 5 referred only to "rules, bye-laws, orders, directions and powers" and not to a notification, the notification of imposition of tax could not be automatically extended to the area so included. The decision of the High Court to the contrary was reversed. The same provision came up for consideration in *Hindustan Gum and Chemicals Ltd. Vs. State of Haryana and Others*, . By that

time the word "notification" had also been inserted in Section 5(4) of the Punjab Municipal Act by an amendment and validation Act and in view of the said insertion of the word "notification" it was held that the decision in the case of Atlas Cycles Ltd. (supra) was no longer good law. Reliance on this case of M/s. Hindustan Gum & Chemicals Ltd. (supra) has been placed by counsel for the Respondents in support of his submission that as a result of the inclusion of the areas where the godowns or the factories of the Petitioners were situate within the limits of the concerned Mahapalika Octroi became payable by the Petitioners. In our opinion the said decision is clearly distinguishable. Subsection (4) of Section 5 of the Punjab Municipal Act as it stands after its amendment is in pari-materia with Section 5 of the U.P. Municipalities Act. As already seen above no such corresponding provision is to be found in the Adhiniyam.

8. Reliance was also placed by counsel for the Respondents on Bhaskar Textile Mills Ltd. Vs. Jharsuguda Municipality and Others, . In that case while dealing with the Orissa Municipal Act, 1950, it was held that bye-laws framed under the Act were enforceable in the area newly added in the limits of the Municipality. That case is again distinguishable. In this case also reliance was placed on Section 5 of the Orissa Municipal Act, which reads as follows:

When any local area is included in a municipality by a notification under Clause (b) or (c) of Sub-section (3) of Section 4, all the provisions of this Act and of any rules, bye-laws, notifications, or orders made thereunder, which immediately before such inclusion were in force throughout such municipality shall be deemed to apply to such area, unless the State Government, in and by the notification, otherwise direct.

9. Section 5 of the Orissa Municipal Act is again in parimateria with Section 5 of the U.P. Municipalities Act and as seen above there is no such corresponding provision in the Adhiniyam. Indeed the observations made in paragraph 22 of the report by the Supreme Court in this case with reference to its earlier decision in Bagalkot City Municipality Vs. Bagalkot Cement Co., which was relied on by this Court in the case of Camphor and Allied Products Ltd. (Supra) support the view taken by this Court in the said case of M/s. Camphor and Allied Products Ltd.

10. Counsel for the Respondents then relied on the decision of the Supreme Court in Tulsipur Sugar Co. Ltd. Vs. The Notified Area Committee, Tulsipur, . So far as this case is concerned suffice it to say as is apparent from paragraph 20 of the report that in that case there was no dispute that the procedure prescribed for the imposition of the octroi was followed. What was, however, argued was that since the relevant notification dated December 15, 1959, did not contain the second schedule specifying the octroi limits the defect was not curable in the circumstances of the case and the subsequent notification issued on April 14, 1960 could not cure the said defect. This argument was repelled. It was held on a construction of the relevant notifications that since the intention of the authority imposing octroi in the town area of Tulsipur was made explicit in the opening part of the notification dated December 15, 1959, the omission to set

out the boundaries of Tulsipur Town in that notification could not make the levy of octroi ineffective as there can be no room for any doubt about the local area within whose limits the said impost would be effective. The omission to incorporate the second schedule in the notification dated 15th December, 1959, was only an inconsequential mistake which was rectified by the subsequent notification dated April 14, 1960.

11. It was then urged by the counsel for the Respondents with regard to the first four writ petitions that as a result of the notification dated 16th November, 1981, issued u/s 3(1) of the Adhiniyam the area stated therein stood included within the limits of the municipality and as such by virtue of Section 5 of the U.P. Municipalities Act the octroi which was leviable in the municipality became leviable even in that area where the godowns and factories of the Petitioners are situate even though no octroi was payable in respect of that area prior to the issue of the said notification dated 16th November, 1981. We find it difficult to agree with this submission either. What has been urged by counsel for the Respondents may had substance if the notification dated 16th November, 1981, was issued not u/s 3(1) of the Adhiniyam but u/s 3(1)(d) of the U.P. Municipalities Act. Not only that the notification dated 16th November, 1981, was specifically issued u/s 3(1) of the Adhiniyam it could even otherwise by no stretch of imagination be construed to be a notification u/s 3(1)(d) of the U.P. Municipalities Act. This notification was issued declaring the area mentioned therein to be a city for purposes of creation of a Nagar Mahapalika, Section 3(1) (a) of the U.P. Municipalities Act on the other hand contemplates declaration of a local area to be a municipality and Section 3(1)(d) contemplates inclusion or exclusion of any area in or from any municipality. Looking at it from any angle it is, therefore, not possible to treat the notification dated 16th November, 1981, to be one u/s 3(1)(d) of the U.P. Municipalities Act. The consequences of Section 5 of the U.P. Municipalities Act could follow only if some area had been included in the municipality by a notification issued u/s 3(1)(d) of the U.P. Municipalities Act. Those consequences cannot obviously follow as a result of the issue of the notification dated 16th November, 1981 u/s 3(1) of the Adhiniyam. Such notification is as is apparent from the heading of Section 3 issued to declare local area to be cities "for purposes of the Act" namely the U.P. Nagar Mahapalika Adhiniyam and not for purposes of the U.P. Municipalities Act. Section 3(1) under which the notification dated 16th November, 1981 was issued falls under Chapter I of the Adhiniyam. Sub-section (3) of Section 1 of the Adhiniyam provides that Chapter I of the Adhiniyam shall come into operation at once and the remaining provisions thereof shall in relation to a city come into operation from such date as the State Government may by notification in the official gazette appoint in that behalf and different dates may be appointed for different provisions. As such, on the date when the notification dated 16th November, 1981 was issued the provisions of the Adhiniyam contained in Chapters other than Chapter 1 did not come into operation. In case the State Government had subsequently decided not to create a Nagar Mahapalika and had not notified the appointed

date as contemplated by Sub-section (3) of Section 1 of the Adhiniyam the notification dated 16th November, 1981, would have for all intents and purposes become redundant.

12. In the result all these writ petitions succeed and are allowed. The Nagar Mahapalika, Meerut, in case of the Petitioners in writ petitions Nos. 454 of 1982, 472 of 1982, 534 of 1982 and 565 of 1982, and the Nagar Mahapalika, Agra, in case of the Petitioners of writ petition No. 342 of 1982, are restrained from realising octroi from the Petitioners in respect of the goods brought by them to their respective godowns or factories situate in the areas specified in the body of this judgment. In the circumstances of the case, however, there shall be no order as to costs.