

(1998) 10 SC CK 0051
In the Supreme Court Of India
Case No : Civil Appeal No. 567 of 1980

State of Orissa

APPELLANT

Vs

Sarat Kumar Sahoo (Dead) and Others

RESPONDENT

Date of Decision : 14-10-1998

Acts Referred:

ORISSA MUNICIPAL ACT, 1950 — Section 131, 388

Citation : (2000) 10 SCC 571

Hon'ble Judges : Sujata V. Manohar, J; G. B. Pattanaik, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Under its resolution dated 16-9-1964, Respondent 2--Notified Area Municipal Council at Talcher imposed octroi @ 1% on foreign liquor. The imposition of octroi at 1% on foreign liquor was duly approved by the State Government. The second respondent by a notification dated 11-6-1965 framed regulations for the time and mode of collecting octroi u/s 388(3) of the Orissa Municipal Act of 1950. In these regulations, octroi @ 1% on foreign liquor is mentioned in the Schedule to the said regulations.

2. By a resolution dated 17-2-1968, the second respondent increased the rate of octroi on foreign liquor from 1% to 10%. Sanction of the State Government was obtained for this increase in February 1969. Accordingly, Respondent 2--Council demanded from the original first respondent, octroi @ 10% w.e.f. 10-11-1969. This demand is the subject-matter of challenge in the present proceedings. It is not in dispute that from January 1972, under a notification issued u/s 131-A of the Orissa Municipal Act, the State Government has revised the rate of octroi and has fixed a uniform rate of octroi at 5% on foreign liquor. Therefore, no claim is being made in the present proceedings for any period after January 1972.

3. The High Court has held that since the original rate of octroi was mentioned in the Schedule to the regulation framed u/s 388(3), any change in the rate of

octroi should have been done by amending the said regulation. Since this was not done, the increase in the rate of octroi by a resolution of the 2nd respondent is not valid.

4. The power to levy octroi is conferred u/s 131 of the Orissa Municipal Act, 1950. The material part of Section 131 is as follows:

"131. Power to impose taxes.--(1) The municipal council may, from time to time, at a meeting convened expressly for the purpose of which due notice shall have been given subject to the provisions of this Act impose within the limits of the municipality the following taxes and fees or any of them:

(a)-(k) * * *

(kk) an octroi on goods brought within the limits of a municipality for consumption, use or sale therein;

(l) * * *

Provided that no such imposition as is referred to in Clauses (kk) and (l) shall be made without the sanction of the State Government.

(2) * * *"

5. Section 131, therefore, expressly provides the manner of imposing various taxes and fees including octroi. It requires a resolution to be passed at a meeting of the municipality expressly convened for that purpose of which due notice shall have been given. Therefore u/s 131, the second respondent is entitled to levy octroi or to change the rate of octroi by a resolution passed at a meeting expressly convened for that purpose of which due notice shall have been given.

6. Section 388, on the other hand, deals with the powers of a municipality to make bye-laws and regulations. Under Sub-section (3) of Section 388, such regulations may provide "for the regulation of the time and mode of collecting the taxes under this Act". Regulations framed u/s 388, therefore, are required only to prescribe the time and mode of collection of taxes. Regulations are not required for the purpose of imposing a tax or fixing the rate of tax. Imposition of tax is governed by Section 131 and not by any regulations framed u/s 388. The second respondent Council is, therefore, entitled to change the rate of octroi by a resolution passed u/s 131.

7. The High Court, however, has held that since the original rate was imposed by a regulation, any change in the rate could only be made by amending that regulation. This view proceeds on a misinterpretation of the notification of 7-1-1966 promulgating the regulations for the time and mode of collection of octroi. Notification of 7-1-1966 is, in terms, a notification in exercise of the power conferred by Section 388 of the Orissa Municipal Act, 1950. The recital states,

"the Talcher Notified Area Council hereby makes the octroi regulations for the

regulation of time and mode of collecting the octroi tax levied by the Talcher Notified Area Council on articles and goods specified in Schedule A brought within the limits of Talcher Notified Area for consumption, use or sale therein at the rates specified in the said Schedule u/s 131(1)(kk) of the aforesaid Act".

The notification deals in detail with the time and mode of collecting octroi tax. The rate which is mentioned in the Schedule to the regulation is the rate which was fixed by a resolution passed u/s 131(1)(kk) by the second respondent Council at its meeting of 16-9-1964. Therefore, the rate mentioned in the Schedule is the rate fixed by the resolution of the second respondent. The regulation of 7-1-1966, therefore, does not, for the first time, fix a rate of octroi by that regulation. The appellant has submitted that as octroi was being levied for the first time it was thought convenient to incorporate the rate of octroi in the newly-framed octroi regulations. The actual rate, however, was fixed under a resolution of the second respondent. The rate was also sanctioned by the State. The High Court, therefore, was not right in coming to the conclusion that the second respondent could not exercise its power u/s 131(1)(kk) in order to alter the rate of octroi.

8. The appeal is, therefore, allowed. The impugned judgment and order of the High Court is set aside.