

(1974) 02 MP CK 0006
In the Madhya Pradesh High Court
Case No : M.P. No. 564 of 1973

Sunderlal and others

APPELLANT

Vs

State of Madhya Pradesh and another

RESPONDENT

Date of Decision : 25-02-1974

Acts Referred:

Madhya Pradesh Land Revenue Code, 1959 — Section 244

Citation : (1977) ILR (MP) 537 : (1974) MPLJ 788

Hon'ble Judges : Suraj Bhan Grover, J; Raj Krishna Tankha, J

Bench : Division Bench

Advocate : R.S. Dabir, N.C. Jain and V.K. Mehta, for the Appellant; M.V. Tamaskar, Govt. Advocate for Respondent No. 1 and P.C. Pathak, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Tankha, J.

The petitioners, by this writ petition under Articles 226 and 227 of the Constitution, are praying for issue of a writ of certiorari for purposes of quashing the Notification dated 10-11-1972 (Annexure A) published in the M.P. Rajpatra dated 29-6 1973 and in consequence restraining the Municipal Council, Tikamgarh (respondent No. 2) from enforcing the octroi duty.

Brief facts leading to the present petition are that the Municipal Council, Tikamgarh (respondent No. 2) desired to replace the existing terminal tax by octroi duty. After having followed the procedure as laid down u/s 129 (1) to (4) of the M.P. Municipalities Act, 1961 (hereinafter referred to as "the Act") and the rules framed thereunder in imposing taxes on various items as per schedule, the respondent No. 2 forwarded the proposal together with all objections to the State Government through the Collector Tikamgarh. The State Government in exercise of the powers conferred by subsections (5) and (7) of section 129 of the Act sanctioned the proposal vide notification dated 10-11-72 for imposition of octroi

on certain animals or goods brought within the limits of Tikamgarh Municipal Council for sale, consumption or use within its limits under clause (v) of sub-section (1) of section 127 of the said Act. It was further directed that the imposition of the said tax shall come into force after thirty days from the date of publication of the said notification in the Madhya Pradesh Gazette. The publication was made in the M.P. Rajpatra dated 29-6-1973. The petitioners who are from a cross-section of dealers and traders in the town of Tikamgarh, have come up challenging the imposition of the octroi duty by the aforesaid notification.

The contention of the learned counsel for the petitioners has been that section 127 (2) (c) of the Act requires the State Government to make rules, and thereby prescribe the maximum and minimum limits as to the amount of rate of any tax. Unless such limits are first prescribed, there is no check or guidance for the Municipal Council in initiating the proposal for imposition of octroi duty. Since no rules have been framed in that regard, the imposition of octroi duty is illegal. This argument is advanced on the basis that the imposition of octroi duty is by delegation to two bodies, namely, the State Government and the Council. Unless both the bodies do their job, the delegation is not complete and as such the imposition would not be legal. In the absence of any rules prescribing the maximum and minimum limits as to the amount or rate of any tax, there is no guidance to the Council in initiating the proposal for imposition of octroi duty and it would have powers to act arbitrarily, which the Legislature never intended to bestow upon the Council. It was further contended that the accord of sanction to the proposal by the the State Government would not cure the defect as by exercising powers under executive action u/s 129 (5) of the Act it cannot be said to be acting under legislative function u/s 127 (2) (c). On the other hand, learned counsel for the respondent No. 2 contended that it is not necessary for the State Government to make rules prescribing the maximum and minimum limits u/s 127 (2) (c) of the Act for imposition of tax for the first time u/s 129. According to him, u/s 129 (5) the State Government has power on receiving a proposal either to refuse-to sanction or sanction it. Therefore, the section 129 of the Act itself provides the check and balance and in that view it cannot be said that the Council would have unbridled powers of imposition of tax. Therefore, even if no rule has been made u/s 127 (2) (c) that would not matter, and the imposition of octroi duty would still be valid and not open to challenge on that ground.

Having heard learned counsel of the parties, we are of opinion that this petition has no force and must be dismissed. For the decision of the points involved, it is necessary first to refer to the various relevant provisions under the Act. The relevant portions of section 127 of the Act read as under :

Taxes which may be imposed.--

(1) A Council may, from time to time, and subject to the provisions of this Chapter and any general or special order which the State Government may make

in this behalf, impose in the whole or in any part of the Municipality any of the following taxes, for the purposes of this Act, namely.--

... ..

(2) The State Government may, by rules made under this Act,--

(c) prescribe the maximum and minimum limits as to the amount or rate of any tax.

The relevant portions of section 129 of the Act reads as follows:

129.--

(5) The State Government may, on receiving such proposal, either refuse to sanction them or sanction them--

(i) without modification or with such modifications not involving an increase of the proposed rate as it thinks fit; or

(ii) subject to such conditions as to the application within the Municipality to any purpose or purposes of this Act as may be specified, of the whole or any part of the proceeds of such tax as it may deem fit.

.. ...

(7) If any proposal for taxation has been sanctioned under sub-section (5), the State Government may, by notification, direct the imposition of the tax as sanctioned from such date which shall not be earlier than thirty days from the date of publication of such notification as may be specified therein, and thereupon the tax shall come into effect as from the date so specified.

Provided that whether the tax so imposed is payable annually--

(i) the tax shall become payable with effect from the 1st day of April, 1st day of July, 1st day of October or 1st day of January, as the case may be, next following such imposition;

(ii) and becomes payable on a date other than the 1st day of April, it shall be payable quarterly till the 1st day of April next following.

Relevant portion of section 130 reads as below:

130. Abolition or variation in tax.--

(1) A Council may abolish any tax already imposed under this Act or may within the limits prescribed under sub-section (2) of section 127, vary the amount or rate of any such tax:

.. ...

A perusal of section 127(1) would go to show that it gives power to a Municipal Council for imposition of taxes enumerated therein. Section 127 (2) (c) gives

liberty to the State Government, if it chooses to make rules prescribing the maximum and minimum limits as to the amount or rate of any tax. Section 129 deals with the procedure in imposing taxes for the first time as held in *Firm Madanlal Kishangopal and others v. Municipal Council, Tarana* and another 1974 MPLJ 251 (M.P. No. 384 of 1970, decided on 28th September 1973.), while section 130 authorises a Council to abolish any tax already imposed or may within the limits prescribed u/s 127 (2) vary the amount or rate of any such tax.

Now, the first point that arises for consideration is that in the absence of any rule made by the State Government u/s 127 (2) (c) prescribing the maximum and minimum limits as to the amount or rate of tax, the initiation of the proposal of levy of octroi duty by the respondent No. 2 is invalid and not enforceable. In other words, it may be said that the exercise of powers u/s 129 is dependable on the earlier framing of rules by the State Government u/s 127 (2) (c). We do not find any force in this submission. No doubt, u/s 127 (2) (c) of the Act, rules may be framed by the State Government, but in their absence, the power u/s 129 for the initial impost by a Council cannot be said to be abridged or dependable on the prior framing of such a rule. The object to be achieved by framing of rule u/s 127 (2) (c) is to provide a guideline to the Council in the matter of imposition of tax so that the Council may not have unbridled power in the matter and its proposal must confine within the limits prescribed. While in the matter of initial impost, the procedure prescribed u/s 129, the ultimate power rests with the State Government under subsection (5) of that section either to refuse to sanction or sanction without modification or with such modifications not involving in an increase of the proposed rate as it thinks fit. Thus, this sub-section acts as a check on the powers of the Council and the object that can be achieved by framing of a rule can still be achieved by the State Government by exercising its power of control u/s 129 (5). When such a power is provided u/s 129 itself, it would be too much to contend that framing of rule prescribing the maximum and the minimum of rate of tax by the State Government is mandatory before levy of tax. In our opinion, incorporating the provisions of section 127 (2) (c) into section 129 would be against all rules of interpretation and saying what the Legislature did not intend while delegating the authority. It is clear by reading section 130 wherein power to be exercised for variation in the existing tax is given, but the existence of rule made u/s 127 (2) (c) is mandatory. So, where the Legislature has thought framing of rule, as a condition precedent for the exercise of power, it has been made a condition under the section. There is no such condition prescribed for the exercise of power u/s 129. If we may say so, there is reason as to why a distinction has been made in the condition for the exercise of power u/s 130. u/s 130 (4), the Council is final authority and no approval of the State Government is necessary for the proposal and, therefore, the power to be exercised by the Council is subject to the rule made by the State Government prescribing the limits, while u/s 129 (5) the State Government has been given wide powers and unless it accords sanction to the proposal, the Council has no power to enforce it. In view of the matter also non-framing of rule

u/s 127 (2)(c) prescribing the maximum and minimum would not make the notification relating to levy of octroi invalid. Thus, there is a clear check provided u/s 129 (5) of the State Government in case the municipality acts arbitrarily. Looking to the scheme provided under the Act for imposition of initial impost it cannot be said that there is unbridled power with the municipality in the matter. In this connection we may refer to a direct authority on the point as laid down by their Lordships of the Supreme Court in *Gulabchand Bapalal Modi Vs. Municipal Corporation of Ahmedabad City*, instead of the two cases of the Supreme Court relied upon by the learned counsel for the Municipal Council (respondent No. 2). It may be mentioned here that out of these two decisions of the Supreme Court, one *Corporation of Calcutta and Another Vs. Liberty Cinema*, has been referred to in this decision. The point for consideration was whether the absence of a provision laying down the maximum rate is by itself sufficient to render the delegation of the power excessive. Sections 99, 123 and 129 (c) of the Bombay Provincial Municipal Corporations Act, LIX of 1949 did not fix the maximum rate at which the Corporation could levy the property tax. The relevant paras 17 to 21 of the decision read as under:

In all statutes dealing with local administration municipal authorities have inevitably to be delegated the power of taxation. Such power is a necessary adjunct to a system of Local Self-Government. Whether such delegation is excessive and amounts to abdication of an essential legislative function has to be considered from the scheme, the objects, and the provisions of the statute in question.

In *The Western India Theatres Ltd. Vs. Municipal Corporation of The City of Poona*, this Court spelt out the policy in the expression "for the purposes of this Act", an expression also used in section 127. In *Pandit Banarsi Das Bhanot Vs. The State of Madhya Pradesh and Others*, delegation of power to the executive to determine the details relating to the working of taxation laws; such as the selection of persons on whom the tax is to be levied, the rates at which it is to be charged in respect of different classes of goods and the like, was held not to be unconstitutional on the principle that so long as the Legislature retains or has the power of withdrawing or altering the power to tax delegated to a subordinate authority such delegation would be held neither an abdication nor excessive. In *Liberty Cinema* case (supra) the majority view was that the power to fix the rate of a tax was not of the essence of the legislative power and that such a power could be delegated even to a non-legislative body. But the decision laid down that when such a power is delegated, the Legislature must provide guidance for such fixation. The majority held that where rates have not been specified in the statute, the power to fix the rates as might be necessary to meet the needs of the delegate itself affords guidance. The minority view differed from the majority view, in that, according to it the power to fix the rate of tax was an essential legislative function. But, even according to that view, such a power can be delegated provided the delegate is afforded guidance by the Legislature laying down the policy and principles in the Act. It, however, disagreed with the

majority view that the raising of tax co-extensive with the needs of the delegate in implementing the purposes of the Act can afford such guidance.

The Liberty Cinema case (supra) came for consideration in *Devi Das Gopal Krishnan and Others Vs. State of Punjab and Others*, where Subba Rao C.J., speaking for the Court, said:

If this decision Liberty Cinema case (supra) is an authority for the position that the Legislature can delegate its power to a statutory authority to levy taxes and fix rates in regard thereto, it is equally an authority for the position that the said statute to be valid must give, a guidance to the said authority for fixing the said rates....

Though he did not agree as a general principle that guidance can always be spelt out from the limitation to fix the rate by the extent of the needs of and the expenses required by the delegate to discharge its statutory functions, the Court did not disapprove Liberty Cinema case (supra) but confined the principle laid down there to the provisions of the Calcutta Municipal Act in which the majority had found the requisite guidelines. No such guidance was available in the Sales Tax statute before the Bench deciding *Devi Das's* case (supra). The position which emerged from the decisions so far, therefore, was that the power to fix rates can be delegated if the statute doing so contains a policy or principles furnishing guidance to the delegate in exercising such power.

In the *Municipal Corporation of Delhi Vs. Birla Cotton, Spinning and Weaving Mills, Delhi and Another*, , the question as to the limits of delegation of taxing power once more arose. The Delhi Municipal Corporation Act, 1957, like the present Act, entrusted to the Delhi Corporation two kinds of functions, compulsory and optional. In relation to the former, the Act specified the maximum rate of tax the Corporation could raise, but not so in the case of tax relating to or for implementing the optional functions. The controversy was whether the Act contained provisions furnishing guidance to the Corporation in the exercise of the power to tax. After an analysis of the provisions of the Act, Wanchoo C.J., pointed out the following factors which furnished sufficient guidance preventing the delegation becoming invalid--

(1) that the delegation was to an elected body responsible to the people, including those who pay taxes and to whom the councillors have every four years to turn to for being elected;

(2) that the limits of taxation were to be found in the purposes of the Act for the implementation of which alone taxes could be raised and though this factor was not conclusive, it was nonetheless relevant and must be taken into account with other relevant factors;

(3) that the impugned section 150 itself contained a provision which required that the maximum rate fixed by the Corporation should have the approval of the Government;

(4) that the Act contained provisions which required adoption of budget-estimates by the Corporation annually; and

(5) that there was a check by the Courts of law where the power of taxation is used unreasonably or in non-compliance or breach of the provisions and objects of the Act.

Referring to Devi Das's case (supra) he pointed out that: (1) that case did not disapprove Liberty Cinema Case (supra) was concerned with a sales-tax statute and not with a statute dealing with bodies with limited purposes, such as local self-governing bodies. At page 268 of the report, he observed:

There is in our opinion a clear distinction between delegation of fixing the rate of tax like sales-tax to the State Government and delegation of fixing rates of certain taxes for purposes of local taxation. The needs of the State are unlimited.....The result of making delegation of a tax like sales-tax to the State Government means a power to fix the tax without any limit even if the needs and purposes of the State are to be taken into account.

Thus, the majority view in this decision, which is binding on us, shows that the mere fact that an Act delegating taxing power refrains from providing a maximum rate does not by itself render the delegation invalid.

In the light of our discussion and the view expressed which has the support of the rule laid down by the Supreme Court in the aforementioned decision, the contention of the learned counsel for the petitioners has to be rejected.

Learned counsel for the petitioners referred to us a decision of a Division Bench of this Court in which one of us (Tankha J.), was a member in *Firm Madanlal Kishangopal and others v. Municipal Council, Tarana* and another in support of his submission wherein it has been held that in the absence of any rule made u/s 127 (2) (c) the Council had no power to increase rates of octroi. It would suffice to say that the said decision has no application to the point involved in the present case. That decision was given in the light of the wordings of section 130, which makes the making of rule u/s 127 (2) a condition precedent for the exercise of power by the Council. As stated earlier, the present case relates to initial imposition of octroi duty u/s 129 and not Variation in the existing one, for which section 130 would be applicable. The procedures prescribed under the two sections are quite different. Even the other case *Municipal Corporation Jabalpur and Another Vs. Soorji Bhanji Keniya*, relied upon has no relevance to the present case.

The second limb of the contention advanced on behalf of the petitioners is that by exercising sanction u/s 129 (5) the State Government has performed an executive action, which is not the same as legislative function u/s 127 (2) (c) of the Act. Therefore, although in the present case sanction was accorded by the State Government to the proposal but in the absence of any rule prescribing the maximum and minimum rate of tax being made, the impost is legal and not

enforceable. In support reliance was placed on the decision of the Supreme Court in Mohammad Hussain Gulam Mohammad and Another Vs. The State of Bombay and Another, . This case has no application to the point in issue. In that case, u/s 11 of the Bombay Agricultural Produce Markets Act, XXII of 1939, it was provided that market committee can levy fees but that was subject to such maximum as may be prescribed by the Rules. Since no rule was made, it was held :

... the State Government cannot practically abdicate that power as it seems to have done under rule 53 by leaving it to the Committee to fix any rate it likes. We are, therefore, of the opinion that unless the State Government fixes the maximum by rule it is not open to Committee to fix any fees at all

The second case relied upon is a decision of a Full Bench of this Court in Gram Panchayat, Gorakhpur Vs. Khushali Dindayal Sahu, In the aforesaid case, the point for consideration was whether the phrase "subject to rules made in this behalf" in section 244 of the M.P. Land Revenue Code, 1959 connotes that until the contemplated rules are framed, the Gram Panchayat or the Tahsildar cannot exercise the power conferred on them for disposal of abadi sites. In view of the opening words, it was held that the power conferred u/s 244 of the M.P. Land Revenue Code, 1959 must be held to be dependant on the rules to be made. Until the rules were made, the law was incomplete. As we see the wording of section 129 here, they are quite different. Even this case is not relevant for purposes of the present case. It would suffice to say that since we have already held that absence of rules made u/s 127 (2) (c) of the Act do not come in the way of the exercise of powers by the Council and the State Government u/s 129 and, therefore, the question of performing legislative function u/s 127 (2) (c) by the State Government does not arise and non-exercise of that function is of no consequence in the present case.

For the reasons stated above, this writ petition fails and is dismissed with costs. As regards counsel's fee, respondents Nos. 1 and 2, each shall have Rs. 100/-, if certified. The outstanding amount of security, if any, shall be refunded to the petitioner.