(2025) 09 GUJ CK 1073

In the Gujarat High Court

Case No : R/Special Civil Application No. 2150 Of 2001, 5083 Of 2002

Sutrapada Nagarpalika APPELLANT

Vs

State Of Gujarat & Ors RESPONDENT

Date of Decision : 12-09-2025

Acts Referred:

Constitution Of India, 1950 — Article 226
Gujarat Panchayat (Payment Of Lumpsum Contribution By Factories In Lieu Of Taxes) Rules, 1998 — Rule 3, 4, 4(2), 5, 6, 7, 8
Gujarat Gram and Nagar Panchayats Taxes and Fees Rules, 1964 — Rule 3(3), 3(3)(a), 3(3)(ii)(b), 3(3)(ii)(c), 8(2), 8(2)(iii)
Gujarat Panchayat Act, 1993 — Section 201, 201(2), 202

Citation : (2025) 09 GUJ CK 1073

Hon'ble Judges : Mauna M. Bhatt, J

Bench : Division Bench

Advocate : Dipan Desai, Pc Kavina, Sahil Trivedi, Paritosh Gupta, Trivedi, Gupta, Anshin H Desai, Tushar Mehta, Khyati P Hath

Final Decision : Disposed Of

Judgement

Mauna M. Bhatt, J

1. These two petitions are filed challenging the order dated 22.02.2001 of respondent No.1 - State of Gujarat, in exercise of its powers under Section 201 of Gujarat Panchayat Act, 1993 (hereinafter referred to as "the Act 1993") whereby, the State Government has fixed lump-sum contribution of Rs.30 lakhs for the year 2000-2001, Rs.33 lakhs for the year 2001-2002 and Rs.30 lakhs for the year 2002-2003, in lieu of octroi tax.

2. Special Civil Application No.2150 of 2001 is filed by Sutrapada Nagarpalika which used to collect Octroi from respondent No.2 - Company whereas Special Civil Application No.5083 of 2002 is filed by Gir-Somnath District Panchayat which used to receive 10% sur-charge from Sutrapada Nagarpalika. It is case of both the petitioners that the lump-sum contribution fixed by the State

Government in lieu of octroi tax is dis-proportionate in comparison to the octroi tax collected by petitioner-Sutrapada Nagarpalika and, therefore, the order dated 22.02.2001 deserves to be quashed and set aside by fixing appropriate contribution in lieu of octroi tax, on an application filed by respondent - Company.

3. Heard learned advocate Mr. Dipan Desai for the petitioner - Sutrapada Nagarpalika and learned advocate Ms. Khyati Hathi for the petitioner - Gir Somnath Dist. Panchayat in Special Civil Application Nos.2150 of 2001 and 5083 of 2002 respectively, learned AGP Mr. Sahil Trivedi for respondent No.1-State and learned advocate Mr. Paritosh Gupta for respondent No.2 - Company.

4. Learned advocate Mr. Desai for the petitioner submitted that the dispute arose between the Sutrapada Gram Panchaytat and Gujarat Heavy chemicals Ltd. - Respondent Company over levy and collection of Octroi within Panchayat's jurisdiction. It is case of Panchayat that it collected the amount of octroi from respondent- Company between the period June, 2000 to March, 2001 totaling to Rs.1,18,00,063/- and therefore, on an application, the lump-sum amount fixed of Rs. 30 lakhs for the year 2000-2001, by the State of Gujarat is disproportionate and therefore erroneous.

5. The brief facts as referred in the petition are as under:

5.1 Respondent No.2 is a Company situated within the limits of Sutrapada Gram Panchayat. Earlier, up to 31.03.2000, the Panchayat used to collect Octroi through Ijardar. The said Ijardar was given contract under Section 202 and on expiry of the said Ijara, the Panchayat decided to collect Octroi departmentally from 17.06.2000. Accordingly, for a shorter period of 13 days, the Company paid Rs.6,83,124/- towards the Octroi tax and as per the petitioner's case the annual Octroi payable by the respondent- company to the petitioner Panchayat would not be less than Rs.2,30,00,000/-. The said Octroi was collected at the minimum rate on a raw material like Cole, Lignite, Limestone, machinery, salt and other chemicals required for production of Soda Ash by the company and this aspect is evident from the annual report of the year 1998-1999.

6. It is case of the petitioner that as permitted under the Rules, the factory with the sanction of State Government can pay lumpsum contribution in lieu of all or any of the taxes levied by Panchayat, and for that it can make an application and if the Panchayat is not in agreement, the State Government is authorized to decide the amount of such contribution subject to certain conditions. Once the decision is taken by the State Government, the said decision will be binding to both Panchayat and the factory concerned. Further, by notification dated 15.09.1998, the State Government framed the Rules called Gujarat Panchayat (Payment of Lumpsum Contribution by Factories in lieu of Taxes) Rules, 1998 wherein Rule 3 provides for an application to be made by the occupier of the factory in writing to the Panchayat. Rule 4 provides for consideration of application by Panchayat. Rules 5, 6 and 7 provides for execution and Rule 8 provides for the manner of referring the dispute to the Government in case no

agreement is reached between the panchayat and factory. Accordingly in this case, an application was preferred by the respondent -Company under Rule 8 to the Panchayat on 29.03.2000 for fixation of lumpsum compensation in lieu to Octroi tax. However, on account of non-agreement on part of Panchayat, the said application was decided by the State Government under its order dated 22.02.2001 against which present petition is filed.

7. Learned advocate Mr. Desai submitted that the order dated 22.02.2001 is erroneous and deserves to be quashed and set aside because the State Government has erred in not considering the relevant facts while it decided the lump-sum contribution. Further, under Section 201 of the Gujarat Panchayat Act, the State Government is required to take into consideration Rule 4(2) of Gujarat Panchayat (Payment of Lumpsum Contribution of Factories in lieu of Taxes) Rules, 1998 ("the Gujarat Panchayat Taxes Rules" for short) which in the present case, the State Government has erred. As per Rule 4(2) of the Gujarat Panchayat Taxes Rules, the lump-sum contribution decided by the State Government may not be dis-proportionately less than the amount receivable by the Panchayat. Panchayat, can levy the tax at its normal rate after deducting the cost of the amenities. Rules 8(2) (iii) of the Gujarat Panchayat Taxes Rules provides that the State Government has to take into account the requirement of Rule 4(2) while deciding the lump-sum compensation. In this case, the State Government erred in not considering that for the period between the June, 2000 to March, 2001, the petitioner Gram Panchayat had collected an amount of Octroi of more than Rs. 1 crore departmentally from the respondent -Company and for which the details have been provided at Annexure A page 33 of the petition. Therefore, since the petitioner - Panchayat has collected Octroi for the period from June, 2000 to March, 2001 of more than Rs. 1 crore, the State Government ought not to have fixed the amount of Rs.30 lakhs only for the said period especially when Rule 4(2) read with Rule 8 (2) of the Gujarat Panchayat Taxes Rules, mandates that the lumpsum contribution shall not be dis-proportionately less than receivable by the panchayat at normal rates. In this case apparently, the amount fixed at Rs. 30 lakhs is dis-proportionately less than the amount receivable by Panchayat and, therefore, on this ground alone the order deserves to be quashed and set aside. Further, Rule 8(2) of the Rules provides to take into consideration the views of District Panchayat and in this case, in the opinion of DDO, considering the raw material brought by the respondent Company, the lump-sum contribution of Octroi should not be less than Rs.1.50 crore per year and despite that a meagre amount of Rs. 30 lakhs have been fixed.

8. Learned advocate Mr. Desai further submitted that as can be seen from the opinion of District Panchayat (DDO) that it has observed that from the figures produced by the respondent - Company of raw material, stores and spares brought by the Company in last three years, the Octroi payable approximately comes to Rs.89 lakhs, however the deduction granted by the State authorities of Rs.64.15 lakhs per year is erroneous because the said deduction was considered without there being any documentary evidence in support of the same. Moreover,

no where it was stated that the deduction granted was towards the facilities provided within the limits of petitioner - Gram Panchayat. On the contrary, the Gram Panchayat had started the facility of drainage and direct water connection in the year 2006. The facilities which are provided by the respondent -Company within its factory limits may not be attributable to the facilities provided to the village people for which, deduction is to be given. Thus, the deduction considered by the State Government being erroneous, at the most the petitioners' case may be considered for levy of approximate taxes to the tune of Rs.89 lakhs for the year 2000-2001.

Learned advocate submitted that water pipeline was installed by Sutrapada Municipality in the year 2007-2008 and the repair work was done regularly by panchayat and there was no contribution of the respondent - Company to the said facilities. Same way drainage pipeline was installed in the year 2017 and prior to that drainage pipeline was not available in the Panchayat or Municipal limits. Roads were also constructed in the year 2006 and thus none of the facilities were provided by the respondent - Company to the petitioner - Gram Panchayat and, therefore, the deduction granted being erroneous deserves to be reconsidered. Learned advocate therefore, submitted that thus the order being perverse to the extent that some irrelevant facts have been considered for which there is no document available on record and produced by the respondent - Company, the present order deserves to be quashed and set aside and appropriate lump-sum contribution towards Octroi for the year 2000-2001 may be fixed by this Court. In relation to the additional affidavit at page 211, leaned advocate Mr. Desai submitted that the breakup given by way of said affidavit was in relation to collection made towards deposit of Octroi by petitioner Gram Panchayat. However, since the respondent company was not agreeable for the payment of Octroi, the octroi paid under objection and taken as deposit. Accordingly, the receipts were issued to the company to the effect that within the period of 30 days the Company shall produce appropriate bills/records to show that such amount is not payable, failing which, the amount collected shall be forfeited by the Panchayat. Therefore, though the amount is collected under the Head deposit, it is nothing but payment of Octroi and therefore, the collection made towards Octroi and the bifurcation given once again supports the case of the petitioner.

9. Learned advocate Mr.Desai relied upon decision in the case of (1) Associated Cement Companies Limited v. State of Gujarat reported in 1985 (2) GLR 1016 to submit that for determination of Octroi and for its lump-sum payment, three aspects need to be considered i.e.

(i) Goods imported

(ii) Amenities provided

(iii) the amount lump-sum fixed is not disproportionately less. In this case as submitted earlier, octroi collected was much higher in last three preceding years and no amenities were provided by the respondent Company and, therefore, lump-sum contribution fixed being dis-proportionate, deserves reconsideration.

(2) In the case of Gujarat Guardian Limited vs. State of Gujarat reported in 2016 AIJEL_HC 235833, it is held that for levy and determination of lump-sum Octroi, the prime consideration is the amenities to be provided by the Company. In this case, the said aspect being not considered the order deserves reconsideration.

10. Opposing the petition, learned advocate Mr. Paritosh Gupta for respondent-company submitted that it is true that prior to 31.03.2000, Octroi was collected by Ijardar. For the period from 1998-1999, 1999-2000, the petitioner gave contract for collection of Octroi to Ijardar at the rate of Rs.9.75 Lakhs. This fact is evident from the affidavit filed by respondent -Company. Thus, for the entire year, Ijara was given for collection of Octroi to the tune of Rs.9.75 lakhs. However, the Ijardar collected Octroi from the respondent - Company for the period from 1998-1999 of Rs.30 lakhs. Thereafter, advertisement dated 27.03.2000 was issued for collection of Octroi through auction by putting an upset price of Rs.47 lakhs. The advertisement dated 27.03.2000 was followed by another advertisement dated 04.04.2000, fixing the upset price to the tune of Rs. 48 lakhs. At this stage, the respondent filed an application dated 29.03.2000 (page 109) under Section 201 of Panchayat Act seeking fixation of lump-sum amount, towards payment of octroi. Learned advocate Mr. Gupta submitted that the said application of the company dated 29.03.2000, is required to be considered in consonance with the rules framed by Government. The Gujarat Panchayat Taxes Rules are framed by the government in terms of the powers conferred under Section 201 of the Gujarat Panchayat Act. Referring to Rule 3(3)(a), of the Gujarat Panchayat Taxes Rules, learned advocate submitted that the said Rule provides that application should disclose amount paid during three financial years immediately preceding the financial year in which the application is made. Rules 3(3)(ii) (b) & (c) provides that the application should further disclose the details of amenities provided by the occupier and the expenditure incurred during the three financial years as referred herein above. Rule 4 provides an opportunity to the Panchayat to offer comments on an application filed by the occupier. Rule 5 provides for liberty to the State Government to pass orders as it deems it fit and just.

11. Section 201(2) provides that the decision of the State Government shall be binding to the Panchayat and factory. Therefore, the challenge made to the order dated 22.02.2001 being contrary to the provisions of Section 201(2) of the Panchayat Act, the same deserves to be rejected on this ground alone. Further, as required under the Panchayat taxation Rules, the respondent Company provided the figures of Octroi paid to Ijardar in last three financial years as also the expenditure incurred, however, there is no denial to the above facts. Therefore, the State Government basis the figures given by the respondent Company mainly considering the Octroi received in past three financial years, determined the approximate levy of Octroi to the tune of Rs.89 lakhs. Moreover,

as deduction is required to be made as per Rule 3(3)(b) & (c) of the Rules, the State Government deducted the amount of Rs.64.15 lakhs in last three proceeding financial year and this was done considering the nature of amenities provided by the respondent Company. Therefore, when a reasoned order was passed taking into consideration the documents on record and there being no contrary material available to that, the order dated 22.02.2001 does not require any interference. Learned advocate Mr. Gupta submitted that after 2001, Octroi has been abolished and, therefore, the present dispute only pertains to period from June, 2000 to April, 2001 and rest of the period is not required to be taken into consideration. Learned advocate Mr. Gupta relied upon the interim direction of this Court dated 23.04.2002, to submit that amount paid by respondent Company earlier was directed to be deposited before DDO and further directed to put the said amount in a fixed deposit to earn interest till the final disposal of this petition. Therefore, if the petition is rejected and the order dated 22.02.2001 is confirmed by this Court then the respondent - Company shall be entitled for the refund of the amount as directed under order dated 23.04.2002.

12. Learned advocate Mr. Gupta heavily relied upon the additional affidavit at page 251 to submit that along with the said affidavit actual figures by way of audited balance-sheet has been placed on record, which shows the actual payment of Octroi by the respondent Company. The statement of Octroi during the period 2000-2001, payable by the respondent Company is amounting to Rs.53,16,227/-. Breakup of all the raw material imported within the limits of Panchayat has been given at page 251. Therefore also, logically the lump-sum amount which has been fixed cannot be more than the amount actually payable by the Company which is based on the audited account placed on record by the Company. Therefore, the contention raised that the DDO has opined to determine Octroi tax for the year 2000- 2001, of Rs.89 lakhs does not merit acceptance.

13. Learned advocate Ms. Khyati Hathi appeared for petitioner in Special Civil Application No.5083 of 2002 and supported the arguments canvassed by learned advocate Mr.Desai. Learned Advocate submitted that since lesser amount has been determined, it would effect lesser payment of sur-charge to the petitioner of Special Civil Application No.2151 of 2001.

14. Learned AGP Mr.Sahil Trivedi invited attention of this Court to the order dated 22.02.2001 to submit that the order is well-reasoned order and based on the material on record. There is a subjective satisfaction arrived by the authority after taking into consideration submissions of both the parties and the material on record. Therefore, in the petition under Article 226 of the Constitution of India, it may not warrant judicial review unless perversity has been established and proved beyond doubt by the petitioner. In support of his submissions, learned advocate relied upon decision in the case of G.Veerappa Pillai Proprietor, Sathi Vilas Bus Service, Porayar, Tanjore District Madras vs. Raman and Raman Limited Kumbakonam, Tanjore District reported in 1952 (0) AIJEL-SC 9135 passed by the Constitution Bench of Hon'ble Supreme Court wherein in

paragraph Nos.18, 19 and 20 it is held as under:

"18. It is contended for the appellant that in this state of affairs the High Court acting under Article 226 of the Constitution had no right to interfere with the orders of the transport authorities.

19. It is unnecessary for the disposal of this appeal to consider and decide on the exact scope and extent of the jurisdiction of the High Court under Article 226. Whether the writs it can issue must be analogous to the writs of habeas corpus, mandamus, prohibition, quo warranto and certiorari specified therein and the power is subject to all the limitations, or restrictions imposed on the exercise of this jurisdiction, or whether the High Court is at liberty to issue any "suitable directions or orders or writs untramelled ,by any conditions, whenever the interests of justice so require, is a large and somewhat difficult problem which does not arise for solution now.

Mr. Setalvad appearing for the appellant urged two narrower grounds as sufficient for his purposes. Firstly, he urged that however wide the jurisdiction of the High Court might be under Article 226, it could never exercise its powers under the article in such a manner as to convert itself into a court of appeal sitting in judgment over every tribunal or authority in the State discharging administrative or quasi-judicial functions. Secondly, he maintained that the Motor Vehicles Act with the rules framed thereunder dealing with the grant of permits is a self- contained code and that in respect of the rights and liabil- ities created by such a statute the manner of enforcement must be sought within the statute itself. It was further urged by him that in any event, the High Court could not substitute its own view or discretion for the view taken or discretion exercised by the specified authorities, even if it was erroneous or unsound.

20. Such writs as are referred to in Article 226 are obvi- ously intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record, and such act, omission, error, or excess has resulted in manifest injustice. However extensive the jurisdiction may be, it seems to us that it is not so wide or large as to enable the High Court to convert itself into a Court of appeal and examine for itself the correctness of the decision impugned and decide what is the proper view to be taken or the order to be made.

Mr. Daphtary, who appeared for the respondent, said nothing to controvert this position. His argument was that if all along the authorities and the Government had proceeded upon a particular footing and dealt with the rights of the parties on that basis, it was not open to them afterwards to change front and give the go by altogether to the conception of the rights of parties entertained by them till then. According to him, there was manifest injustice to his client in allowing them to do so and this was the reason which impelled the High Court to make the order which is the subject-matter of challenge in this appeal."

15. Learned AGP therefore submitted that these petitions deserve rejection.

16. Considered the submissions, documents on record and the decisions relied upon. By way of these petitions, the petitioners have questioned the validity of order dated 22.02.2001. Undisputedly, order dated 22.02.2001, was passed pursuant to an application of the respondent Company seeking payment of lump-sum Octori tax for the period 2000-2001, 2001-2002, 2002-2003, 2003-2004. However, since the Octroi has been abolished thereafter from May-2001, issue in this petition is restricted for the payment of Octroi for the period from June, 2000 to May, 2001. This fact is noted by this Court in the order dated 23.04.2002. The impugned order dated 22.02.2001 was passed pursuant to an application of respondent Company dated 29.03.2000 (page No.109). Since the application is made under Section 201 of the Gujarat Panchayat Act for fixation of lump-sum amount of Octroi tax, the same is required to be considered in terms of Gujarat Panchayat (Payment of Lumpsum Contribution on Factories in lieu of Taxes) Rules, 1998. If the said rules are revisited then Rule 3 provides for application to be made by occupier. Sub-Rule (3) of Rule 3 provides for the contents of the application. Rule 4 provides for consideration of the application by Panchayat. Sub-Rule (2) of Rule 4 provides that the amount of lump-sum contribution may not be dis-proportionately less than the amount receivable by the Panchayat in respect of taxes levied by it, at the normal rates during any financial year after deducting cost of amenities, if any, provided by the occupier. Therefore, as envisaged in Sub-Rule (2) of Rule 4, of the Rules, the determination of lump-sum contribution by the authority, shall not be disproportionately less and therefore the state is duty bound to take into consideration the amount receivable by Panchayat in respect of the taxes levied at the normal rate during any financial year and once that amount has been determined, the cost of amenities, if any provided by the Company is required to be deducted. It is noticed that it is case of the petitioners that the amount determined towards lump-sum contribution to be payable by respondent Company is dis-proportionately less because it has erred in not appreciating the actual amount of contribution received by the Panchayat towards Octroi as also though no amenities have been provided by the Company huge amount to the extent of Rs.64.15 lakhs has been deducted towards amenities provided for the year 2000-2001.

17. In the above context, if the order is revisited then it is noticed that the State Government in the order dated 22.02.2001, has recorded the submissions of the parties in a greater detail. The DDO's opinion is also forming part of order dated 22.02.2001. The State Government thereafter considered two aspects, firstly that on 09.06.2000, in the meeting of petitioner-Gram panchayat, a resolution was passed fixing Rs. 1.05 crore towards payment of octroi for 10 months period and secondly as per last three years balance sheet, average of raw material, stores and spares, suggest lump-sum amount of Rs.89 lakhs towards Octroi. The

State authority, thereafter deducted average amount Rs.64.15 lakhs towards amenities provided for preceding three years and fixed the amount of Rs.30 lakhs as a lump-sum Octroi to be paid for the year 2000-2001. In the opinion of this Court, lump-sum amount of Octroi determined at Rs.89 lakhs to be payable by the company is based on preceding three years balance sheet showing raw material imported by the respondent company. However, in the opinion of this Court, the deduction given of average of Rs. 64 .15 lakhs, was without any supporting documents to justify the amenities provided, and to that extent the order is erroneous. Moreover, there is no denial to the submissions of the petitioners that the amenities like water, drainage, road etc. were started much later in the year 2001. Further, it cannot be ignored that right from beginning it was case of the petitioner that no amenities have been provided by respondent Company in the Gram Panchayat area. The basic amenities provided were within the area of factory and not for the village people. Moreover, not single evidence is produced by the respondent Company to support its case that these facilities were provided by the Company other than the area of factory. Therefore, the contention raised on behalf of the petitioner that despite no amenities provided, the State authority considered the higher amount of deduction which is contrary to Rule 4(2) of the Rules, in the opinion of this Court merits acceptance. In otherwards the consideration made by the State Government towards deduction being erroneous, to that extant the matter is required to be remanded to respondent no.1- State Government.

17.1. It is also pertinent to note that though deduction as required under Rule 4 (2) of Gujarat Panchayat Taxes Rules, is to be considered and given, noticing that though the village Panchayat is required to provide the amenities, even in the factory area since the factory is located within the limits of Panchayat, as submitted before this Court that the Gram panchayat has provided the facility of water pipeline in the Sutrapada village in the year 2007-2008, drainage in the year 2017 and roads were constructed in the year 2006; it is open for both the parties to lead their evidences in support of their claim of deduction. The State authority is directed to grant deduction in accordance with Law.

17.2. In relation to the contention on behalf of respondent Company that the amount fixed by the State Government of Rs.89 lakhs towards lump-sum contribution of Octroi cannot be higher than the actual amount to be payable by the respondent Company and also supported by audited balance sheet at page 251; it is noticed that though the order was passed in the year 2001 fixing the amount of Lump-sum Contribution toward Octroi tax payable by respondent-company at Rs. 89 lakhs, was not challenged by the respondent-company and therefore, at this stage, this Court deems it appropriate not to enter into that controversy.

18. Therefore, in the opinion of this Court, considering the amount of lumpsum octroi tax at Rs. 89 lakhs to be appropriated only for deduction to be allowed as per Rule 4(2) of the Gujarat Panchayat (Payment of Lumpsum Contribution by

Factories in lieu of Taxes) Rules, 1998. The matter is therefore remanded to respondent- state for consideration of deduction to be given to the respondent Company. Considering that the order is of the year 2001, the respondent - State is directed to decide as directed herein above within a period of three months from the date of receipt of the order. The petition is allowed to the aforesaid extent. Rule is made absolute.

19. In view of disposal of the main petition, Special Civil Application No. 5083 of 2002 also stands disposed of. Rule made absolute to the aforesaid extent.

