
(1967) 12 AHC CK 0024

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 1961 of 1967

Syed Niyaz Ahmad and Another

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 04-12-1967

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1968 All 430

Hon'ble Judges : Satish Chandra, J

Bench : Single Bench

Advocate : S.N. Kacker, A.S. Kapoor, J. Swarup and Mr. Dhar, for the Appellant;
S.C. Khare and A.P. Misra, for the Respondent

Final Decision : Dismissed

Judgement

Satish Chandra, J.—In this petition under Article 226 of the Constitution of India it is prayed that the Nagar Mahapalika, Varanasi, and the State of Uttar Pradesh be directed to continue to enforce the Nagar Mahapalika Octroi Rules, 1965, and not to give effect to the Transit Pass Rules notified on 18-7-1963.

2. The Municipal Board of Varanasi had adopted the system of refundable octroi. Under it octroi was charged on all goods entering the municipal limits, but if some of those goods were immediately exported, a proportion of the octroi was refunded. In or about 1953 the State Government promulgated the Transit Pass Rules to regulate the passage of goods in transit through the territories of the Municipal Board. These rules were amended from time to time. In 1960, the Municipal Board became the Nagar Mahapalika, Varanasi. The pre-existing rules continued in force. The Nagar Mahapalika resolved to abolish the refundable octroi and to impose in its place non-refundable octroi. It took the requisite steps to that end and ultimately the Nagar Mahapalika, Varanasi Octroi Rules, 1965 were published on 10th March, 1965. These rules were enforced with effect from November, 1965. Under Rule 19(2) of these rules it was provided that if the goods are declared to have been imported for immediate export, the clerk shall

deal with them in accordance with the procedure laid down in the Transit Pass Rules framed by the State Government from time to time.

3. The Transit Pass Rules provided that persons importing the goods shall deposit an amount equal to the amount of octroi by way of security and the same was to be refunded, if the goods were exported during the prescribed time limit. The State Government reversed this policy on 18-7-1963 by publishing Draft Transit Pass Rules in respect of all the five Nagar Mahapalikas of the State. Under it a fee called the transit pass fee was to be paid at the time of the entry of the goods. The transit pass was valid for the prescribed period of time within which the goods must leave the territorial limits of the Nagar Mahapalika. A large number of objections were received and ultimately the finalised rules were published by a notification dated April 27, 1967. The rules came into force with effect from 1st May, 1967. The Nagar Mahapalika Varanasi also applied and acted in accordance with this new transit pass rules. It permitted entry of goods in transit without asking for the requisite octroi to be deposited. These rules provided that the goods in transit must pass out the municipal limits between four or six hours as the case be. They also provided for escorts with the vehicles carrying goods in transit between barriers of import and export. Provision for punishment of offenders and defaulters was also made.

4. The action of the Nagar Mahapalika in acting in accordance with the new set of transit pass rules has given rise to the present petition. For the respondents a preliminary objection was taken. It was urged that the petitioners have no locus standi to maintain the writ petition for the reliefs prayed for. The first petitioner carries on business of manufacture and sale of steel trunks. He imports iron-sheets for consumption within the municipal limits. He pays the non-refundable octroi. The second petitioner imports Maida for making "Senwai" an edible food product. He also pays non-refundable octroi. The petitioners do not claim or allege any proprietary or personal interest in the collection of octroi made by the Nagar Mahapalika, Varanasi, but, they claim a right to maintain the present petition on the ground that they are prejudicially affected by the enforcement of the Transit Pass Rules. On this aspect the petitioners have made averments in paragraph 43 of the petition which runs:

"That in the absence of any security and risk of the security being forfeited a large scale evasion of octroi have now become prevalent with the result that the truthful and honest dealers like the petitioners are facing uneconomic competition due to the fact that persons who brought in the goods after evading the octroi sell their goods at cheaper rates while goods to the petitioners cost higher as they have to pay the octroi as usual."

This paragraph is a picture of vagueness. Not a single specific instance of the alleged large scale evasion of octroi has been mentioned. The petitioners do not state that they ever brought the so-called evasion to the notice of the Nagar Mahapalika for action. The allegation that the petitioners are facing uneconomic competition has also not been established by citing even a single case of any

rival trader of the petitioners indulging in evasion of octroi or selling their goods at cheaper rates than the petitioners. Under the circumstances the allegation in the counter-affidavit filed by the State as well as the Nagar Mahapalika that the petitioners' apprehensions are imaginary, conjectural and farfetched cannot be brushed aside, The Nagar Mahapalika in its affidavit has denied that any loss of revenue to the Mahapalika has occurred owing to the new Transit Pass Rules. On this state of facts it cannot be held that the petitioners have affirmatively established the allegations made by them that they were prejudicially affected by the enforcement of the New Transit Pass Rules.

5. In *Calcutta Gas Co. (The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*, at p. 1047 the Supreme Court held that a person other than those claiming fundamental right can also approach the Court seeking a relief, but it is implicit in the exercise of the extraordinary jurisdiction that the relief asked for must be one to enforce a legal right. The right that can be enforced under Article 226 shall ordinarily be the personal or individual - right of the petitioner himself, though "in the case of some of the writs like habeas corpus or quo warrant this rule may have to be relaxed or modified. In the present case, the petitioners have failed to establish that he had any legal right personal to himself in the subject matter so as to entitle him to the claimed relief.

6. Referring to this decision the Supreme Court in *Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others*, in paragraph 8 explained the exceptional cases in which a petitioner, who does not have a personal legal right, may also maintain a writ petition. Subba Rao, C. J. speaking for the Court observed that in exceptional cases as the expression "ordinarily" indicates, a person who has been prejudicially affected by an act or omission of an authority can file a writ even though he has no proprietary or even a fiduciary interest in the subject matter thereof. The dictum of this authority also has not been satisfied in the present case The petitioner has not been prejudicially affected by the impugned action of the Nagar Mahapalika in enforcing the new Transit Pass Rules. The petitioners are consequently not competent to apply for a writ under Article 226 of the Constitution As the petition fails on the preliminary point, it is unnecessary to go into the involved question whether the Transit Pass Rules, 1967 were valid.

7. The petition fails and is dismissed with costs.