
(1959) 03 MP CK 0005
In the Madhya Pradesh High Court
Case No : C.S.A. A. No. 709 of 1956

Tantilal	Vs	APPELLANT
Jabalpur Corporation		RESPONDENT

Date of Decision : 26-03-1959

Acts Referred:

City of Jabalpur Corporation Act, 1948 — Section 120, 175

Citation : (1960) JLJ 214

Hon'ble Judges : T.C. Shrivastava, J;P.K. Tare, J

Bench : Division Bench

Advocate : A.P. Sen, for the Appellant; R.S. Dabir and V.S. Dabir, for the Respondent

Final Decision : Allowed

Judgement

T.C. Shrivastava, J.—This case comes before us upon a reference by one of us (Tare J).

2. This appeal by the unsuccessful plaintiff is directed against the decree dated 18-4-1956 passed by Shri D.G. Mahadeokar, Third Additional District Judge, Jabalpur, confirming the decree passed by Shri L S. Khare, 1st Civil Judge Second Class, Jabalpur, in Civil Suit No 144.B of 1953 decided on 3-4-1954.

3. The appellant issued for recovery of Rs. 4446/5/- inclusive of interest by way of damages, alleging that the respondent had wrongly recovered an amount of Rs. 3446/5/- from him as octroi duty with penalty for an alleged import of 131 maunds 10 seers of kattha on 15-4-1952 without payment of the requisite octroi duty. The appellant further pleaded that he had imported 80 maunds of kottha from kheruwas from 1-1-1952 to 10-4-52 in small lots. The appellant was a licensee of the Narayanganj Range forest. He allowed some persons called Kheruwas to collect Kattha from that forest and to deliver it to him at Jabalpur. He also alleged that according to the agreement between him. and the Kheruwas, the latter were liable to pay the octroi duty. As such he contended

that there was no legal liability on him to pay the octroi duty and that the same could be recovered from the Kheruwas only. Therefore, the recovery of the octroi duty with penalty was said to be illegal and in excess of the powers conferred by the City of Jabalpur Corporation Act and the rules framed there under.

4. The respondent stated in the written statement that an anonymous letter was received in the office of the Corporation about the illegal action of the appellant in having imported the Kattha without payment of the requisite octroi duty, on 15 4 1952 in a truck bearing No. C.P. J. 1246. Therefore, the Octroi Superintendent made a demand for the amount of Rs. 3446/5/- as double the octroi duty for having imported 131 maunds 10 seers of Kattha valued at Rs. 36,750/- at the rate of Rs. 280/-per maund. The Chief Executive Officer passed an order dated 28th August. 1952 in that behalf. It was averred that the Corporation authorities having acted under the powers conferred by the City of Jabalpur Corporation Act, the suit was not tenable in a Civil Court, as the order of the Chief Executive Officer was final under the law. It was contended by the respondent that the burden of proof about payment of the octroi duty lay on the appellant, which he had failed to discharge and the suit was barred by time as it was not filed within 6 months of the presentation of the bill by the Municipal authorities.

5. The lower courts upheld the defence contentions, except on the point "of limitation, and dismissed the Suit in its entirety. Hence the present appeal. The respondent did not challenge the adverse finding.

6. The learned counsel for the appellant, referring to section 120 of the City of Jabalpur Corporation Act 1948 (No. III of 1950), pointed out that the amount was recoverable as a cess under the said section. The said Act had been passed when the Government of India Act, 1935 was in force under the legislative powers under item 49 list 2, 7th schedule of the said Act. It was pointed out that the Octroi Rules were framed, when the Corporation was not in existence and the town of Jabalpur had a Municipality. The said rules were framed on 9th April, 1929 under the Government of India Act, 1919. It was, therefore, urged that the rules did not survive, when the Municipal Committee was converted into a Corporation and particularly when the legislative list under the Constitution of India did not authorize the imposition of any cess.

7. It was further pointed out that while the City of Jabalpur Corporation Act authorized only the imposition of a cess, while the rules provided for recovery of a duty, and, in fact, what was being recovered was a tax, inasmuch as, the appellant, not having imported the said goods, was sought to be made liable for the same. Reliance was placed on Nagpur Kshatriya Khatik Samaj vs. Corporation of City of Nagpur ILR [1956] Nag. 102. The Division Bench in that case explained the distinction between a tax, a duty and a fee. However, for the purposes of the City of Jabalpur Corporation Act, we find that by virtue of section 120 (2), all the items whether mentioned as tax, cess or rate are made recoverable as a tax. In fact the provisions of the Act do not make any distinction between a tax, a rate or a cess. Although, Octroi Rules might have been framed

u/s 66 of the C. P. and Berar Municipalities Act 1922, when the Government of India," Act, 1919 was in force, we fail to see how the rules do not survive. Section 3 (2) of the said Act provides as follows:

Every appointment, rule, bye-law. form, notification, notice. tax, scheme, order, licence or permission made, issued, imposed, sanctioned or given under the Central Provinces and Berar Municipalities Act, 1922, shall so far as it relates to the Municipality of Jabalpur and so far as it is in force at the commencement of, and is not inconsistent with this Act, be deemed to have been made, issued, imposed, sanctioned or given under the provisions of this Act, and shall unless previously altered, modified, cancelled, suspended, surrendered or withdrawn, as the case may be, under this Act remain in force for the period, if any, for which it was so made, issued, imposed, sanctioned or given.

The learned counsel was unable to point out that the Octroi Rules were in any way inconsistent with the provisions of the Act, beyond pointing out the difference between a cess and a tax. We hold that the Octroi Rules were not tendered ineffective, inoperative, illegal or unconstitutional in any manner whatsoever.

8. The most important question in the present case upon which depends the decision of other questions is what was the relationship of the appellant with the Kheruwas. The learned counsel urged that the Kheruwas were subcontractors, who were authorized to collect the kattha from the forest, which the appellant had taken on lease from the Forest Department. It was further contended that the agreement was that the kheruwas should deliver the prepared and refined kattha to the appellant at Jabalpur. As such there was no liability on the appellant to pay the octroi duty. There is no written agreement between the appellant and the Kheruwas embodying the terms of the agreements. The only material on record is the receipts or passes issued by the Forest Department in favour of the kheruwas and the oral evidence led by the appellant. The learned counsel invited our attention to *Levena vs. The Commission of Inland Revenue* 13 Tax Cases 486. wherein the learned Law Lords held that the term "evasion" had a significance and was not used in the same sense as avoidance of a tax by any means permitted under the law. Our attention was invited to *Secretary. M.C, Sagar vs. Vrajlal Manilal* 1958 J.L.J. 243 for the proposition that evasion meant a deliberate avoidance by illegal means and did not include avoidance of the tax by legal means. However, a contrary view was taken in *Lord Howard De Walden vs Commissioner of Inland Revenue* 25 Tax Cases 121, by the learned Law Lords, who opined that the phrase "evasion of taxes" should be interpreted in a more comprehensive sense. In this connection our attention was also invited to *Rajniti Prasad Singh and Another Vs. Commissioner of Income Tax*, which follows the former of the two views. The case related to assessment of income tax and it was held that an assessee could avoid the tax by any means permissible under the law. In our opinion, the said question does not arise in the present case in view of the specific finding given by the learned appellate Judge that the relationship

between the appellant and the Kheruwas was that of principal and agent and not that of a seller and a buyer. This finding of fact by the Courts below is based on evidence and is not open to challenge in second appeal. It was argued by the learned counsel that the price payable by the appellant to the Kheruwas at Jabalpur was inclusive of the transport charges as also the octroi duty. It was held by the Courts below that it was the appellant, who had imported the Kattha into the limits of the Corporation, and it was his duty to see that the octroi duty was paid and under the Octroi Rules a principal could be made liable for the evasion of duty by his agent in view of this specific finding. We are of opinion that the relationship between the appellant and the Kheruwas being that of a principal and agent, he would be liable, if so found, under the Octroi Rules.

9. Rule 14 (b) of the Octroi Rules is as under:-

Any person importing or bringing any dutiable articles within the Octroi limits of the municipality without paying the duty or without giving declaration to the Octroi Moharrir shall render himself liable to pay double the duty: Provided however, if the importer is able to prove to the satisfaction of the committee that he had no intention to evade the payment of octroi duty and that he has taken all reasonable precautions to prevent short payments the committee may charge single duty. Provided further that the payment of double duty shall not prevent criminal prosecution in any case in which it may appear desirable.

Note:-For the purpose of these rules the importer shall be held liable for the neglect, acts or omission of his servant, agent, or manager, as the case may be. As we have earlier held that the appellant was the importer of the Kattha, he was clearly liable to pay the octroi duty, as also the penalty provided by the said rule.

10. It was urged by the learned counsel for the appellant that the Kattha had been imported by the appellant in small quantities during the period of more than 3 months from 1-1-1952 to 10-4-1952 from the Narayanganj forest range, while the notice issued by the Corporation authorities and the order of the Chief Executive Officer mentioned import of Kattha from Narayanganj Dhanwai range. It was pointed out that Narayanganj and Dhanwai are two separate forest ranges located at a distance of 25 miles. There is nothing on record to indicate as to from which forest range truck No. C. P. J. 1346 was loaded. The appellant had no concern with the Dhanwai forest range. If the Corporation wanted to connect the appellant with the said truck, it was for the Corporation to adduce the necessary evidence in the Civil Court. But the same was not done. The anonymous report could at best, be suspicion, which could not take the place of proof so as to form the basis for imposition of a penalty upon the appellant. The only legal basis could be the material supplied by the appellant. As such it was urged that there was no material to indicate that the import was without payment of the requisite octroi duty. He pointed out that under these circumstances a presumption should be drawn that the octroi authorities must have recovered the duty when the Kattha was imported. In our opinion no such presumption can be drawn merely from the fact that the Kattha was not

detained at one of the octroi posts. Tax evaders have various ways and means, clever, as well as crooked, to evade legitimate taxes. The appellant has given the names of 14 such Kheruwas in Schedule "A", some of whom were examined as witnesses in the case. It was not difficult for the appellant to prove the fact about payment of octroi duty, if any such duty had been paid. Nor did the Kheruwas, who were examined as witnesses produce any such proof of payment of octroi duty. In such a case we are, therefore, inclined to cast the burden on the plaintiff to prove payment of the requisite octroi duty, as the Corporation authorities in the proceedings before them held as a fact that no tax had been paid. It was for the appellant to prove that the recovery was illegal inasmuch as he had paid the requisite duty. He, not having discharged that burden, the only conclusion to be drawn is (hat no tax had been: paid by the appellant regarding the 80 maunds of Kattha shown in his Schedule.

11. However, the learned counsel for the appellant urged that there was no basis for the Corporation authorities to hold that the appellant had imported 131 maunds 10 seers of Kattha on 15-4-1952 in truck No. C.P.J. 1346. It was pointed out that the anonymous report could not constitute evidence so as to warrant a conclusion on the part of the Chief Executive Officer. The only material available to the Chief Executive officer, which could be termed evidence. was the account books of the appellant, which showed import of 80 maunds of Kattha. From a perusal of the order of the Chief Executive Officer we find that his conclusion was based on the statement of the forest guard, who stated about the loading of 131 maunds 10 seers of Kattha in truck No. C. P. J. 1346. But from his order, it is clear that he did not act on any evidence, whatsoever, so as to connect the appellant with the said truck C.P.J. 1346, If any material establishing any such connection had been before the Chief Executive Officer, his conclusion would certainly have been justified. In that event, the civil court could not sit in judgment over his finding. But, the finding suffers from a lacuna apparent on the face of the record, inasmuch as, there was no legal evidence before the Chief Executive Officer to connect the appellant with the truck. The only basis being the anonymous report, no such conclusion could be arrived at by him. Even in the Civil court no evidence was adduced on behalf of the respondent in support of the conclusion of the Chief Executive Officer. Under the circumstances, the only conclusion that can be drawn is that the appellant imported 80 maunds of Kattha from 11-1952 to 10-4-1952 and not 131 maunds 10 seers of Kattha on 15-4-1952 in truck No. C.P.J. 1346.

12. Further it was pointed out by the learned counsel for the appellant that the Chief Executive Officer had illegally assessed octroi duty on the market price of the Kattha, as prevailing in the City of Jabalpur, Reliance was placed on rule 6 (b) of the Octroi Rules, which is as follows:-

A table showing the current prices of articles liable to duty ad valorem shall be kept in the Central and Branch octroi offices and also at every outposts. The price shall be the cost price to the importer plus the cost of carriage and not the

price prevailing at the local market. Such table shall be corrected every Monday and dated and signed as corrected by the Superintendent of Octroi. In case the rate in the schedule is not acceptable to any person, he should refer the matter to the President whose decision shall be final.

There is no evidence led on behalf of the Corporation as to what rates were mentioned in the list kept in the octroi office. The only material available on record is the account books of the appellant, which show that the cost price to him upon entry of the goods into the municipal limits was Rs. 130 per maund inclusive of the transport charges. The basis on which octroi duty can be imposed is not the market price of goods which was adopted by the Corporation. It is, therefore, clear that the Chief Executive Officer acted in excess of the statutory powers in imposing the octroi duty on the value of the goods at the market rate, which is prohibited by the Octroi Rules. Such an action cannot be upheld by a Civil Court.

13. However, the learned counsel for the respondent pointed out section 175 of the City of Jabalpur Corporation Act, 1948, which is as follows: -

(i) No objection shall be taken to any valuation or assessment, nor shall the liability of any person to be assessed or taxed be questioned in any other manner or by any other authority than as provided in this Act

(ii) The State Government may make rules under this Act regulating the refund of taxes and such rules may impose limitations on such refunds.

(iii) No refund of any tax shall be claimable by any person otherwise than in accordance with the provisions of this Act and the rules there under.

It was, therefore, urged that the order of the Chief Executive Officer was final and that the Civil Court had no Jurisdiction to sit in judgment over the assessment made by the Chief Executive Officer. It is true that the powers of the Civil Courts are very limited, so far as actions of Special Tribunals or authorities are concerned. But Civil Courts can" certainly give relief when the special tribunals or authorities act in excess of the powers conferred by law. The imposition of the duty contrary to the principles laid down in the taxing provisions is in excess of jurisdiction. It can be challenged in Civil Court, as an illegal imposition.

14. It was also urged by the learned counsel for the respondent that this Court had no jurisdiction to disturb the findings of facts arrived at by the two courts below. Reliance was placed on the observations of their Lordships of the Supreme Court in *Deity Patta-bhiram swamy vs. Hanymayya and others* AIR 1959 S. C. 57. We do not think that the basis adopted by the Chief Executive Officer for assessment of the duty would be a question of fact in the present case. We may illustrate our point in this way. The Taxing authority is directed to take the cost price inclusive of the transport charges as ad valorem valuation for the purposes of imposing the duty. Instead of that, if the Taxing authority takes the market

value as the basis for imposing of the duty, which is clearly prohibited by the said rules, the conclusion of the Taxing authority would not be a simple finding of fact. It would clearly involve a question of powers of the Taxing authority to adopt a basis not warranted by the law. In our opinion the principles laid down by their Lordships of the Supreme Court are not attracted for the simple reason that the Chief Executive Officer did an illegal thing prohibited by the law. On behalf of the respondent, it was urged that the Civil Court had no jurisdiction to go into the question of validity of imposition and recovery of the tax, as it was within the exclusive jurisdiction of the Corporation authority; under the City of Jabalpur Corporation Act, Reliance was placed on *Releigh Investment Co Ltd vs. The Governor General in Council*, AIR 1947 P.C. 78. Their Lordships held that as the Income Tax Act provided for the machinery for an assessee to challenge the assessment on the ground that it was ultra vires of the powers of the assessing authority, the matter could not be agitated in the Civil Court. But such is not the case here. The City of Jabalpur Corporation Act does not provide any such machinery. Therefore, the Privy Council case is distinguishable from the present case. So far as the question of the jurisdiction of the Civil Court is concerned, this Court has held the view that the Civil Court would have the jurisdiction to examine the fact whether the special authority acted within the ambit of the powers conferred by the law. Section 9 of the CPC confers jurisdiction on Civil Courts in respect of all civil matters except where a statute has clearly and unambiguously taken away such a jurisdiction. If the special authority is found to have acted in excess of the powers conferred by the law, it is not only open to the Civil Court to examine the question, but also to declare inoperative that part of the order, which is in excess of such powers. Such has been the view of this Court as held in *Messrs. Mesuram Kishunpershad vs. Municipal Committee Jabalpur* ILR (1948) Nag 766. *Municipal Committee Karania vs. New East India Press Co. Ltd. Bombay* I. L. R. (1948) Nag, 971 and *Empress Mills. Nagpur vs. Municipal Committee. Wardha* ILR (1950) Nag. 403. In the first case it was held that the Civil Court cannot question anything done by a Municipal Committee within the powers but can certainly question acts which are beyond the statutory powers. In the second of the three cases it was held that a Municipal Committee illegally recovering a tax is liable to refund the same u/s 72 of the Indian Contract Act. We have no doubt that the Civil Court had the jurisdiction to examine the question whether the Corporation authorities acted within the powers conferred by law. This is particularly so in view of the provisions of Article 265 of the Constitution of India, which lays down that no tax shall be levied or collected except by the authority of law. In our opinion, in view of this provision it is not only permissible but incumbent on the Civil Court to examine whether a tax has been levied or collected except by authority of law, where such a grievance is made.

15 In *City of Jabalpur Corporation, Jabalpur vs Bata Shoe Company Ltd* First Appeal No. 138 of 1952, decided on 25.10.1957 by a Division Bench consisting of Bhutt J, (as he then was) and one of us (Shrivastava J), the Corporation

demand octroi duly on articles imported on the basis of the cost price in accordance with the octroi rules Prior to the disputed demand, the Municipal Committee used to give a 40 per cent rebate in the retail prices of the company. The Corporation by its demand offered a rebate of 6.1/4 per cent in the retail prices. The Sub-Divisional Officer, who was the appellate authority under the C. P. and Berar Municipalities Act, 1922 before the Constitution of the City of Jabalpur Corporation, fixed the rebate at 12 1/2 per cent and sanctioned imposing of double octroi duty for evasion by way of penalty. There was no question involved if the taxing authority had acted in excess of the powers conferred by the Statute.

16. The question relating to the exclusion of the jurisdiction of Civil Courts was decided on those facts with the following observations, which have our respectful concurrence:

There is no doubt that cases in which there is a challenge to the virus of a provision or where the matter goes beyond the limits of a statute, stand on a different footing. Thus in *Chairman of Giridib Municipality vs. Srish Chandra Mozumdar I*, L. R. 35 Cal 859, the Bengal Municipal Act, 1884, was not held to bar the jurisdiction of the civil Courts in a case where the assessment was challenged on the ground that it was ultra virus. So also in *District Council Bhandara vs. Kishorilal* 1948 N.L.J. 533 the levy of tax in excess of Rs. 50 per annum was prohibited by section 142-A of the Government of India Act, 1935, and on this ground the civil Court's jurisdiction was maintained, Likewise, in *Municipal Committee, Montgomery vs. Sant Singh I* L. R. 21 Lah. 707 the jurisdiction of the civil Courts was not held to be barred under the Punjab Municipal Act, 1911, on the ground that the tax could not be assessed on a person who was only a hirer and not the owner of lorries. Similarly *Devi Prasad Vs. Municipal Board*, and *Rama Shanker Tewari Vs. State*, are cases where tax was illegally imposed. These are cases. therefore, in which the question of virus was involved and that was the ground on which the jurisdiction of the civil Courts was not held to be barred. no such question, however, arises in the present case where there is no dispute that the articles were dutiable and the Municipal Committee had the right to levy octroi thereon. The only question was regarding the assessment of duty. And this being a matter which fell within the competence of the appellate authority, the civil Court's jurisdiction must be held to be excluded.

17 The present case belongs to the category of cases, which were distinguished in the said Division Bench case. We fully concur with that view and are of opinion that under color of powers conferred by a statute creating exclusive jurisdiction, no special authority can be permitted to act in excess of such powers The civil Court's jurisdiction is not ousted regarding actions of the special authority which are in excess of the statutory powers or where the virus of the statute are challenged To conclude, we bold that in the present case, the jurisdiction of the civil Court was not excluded for the purpose of enquiry whether the demand was

in excess of the powers conferred by" rule 6 (b) of the Octroi Rules, and whether the principle on which octroi duty is to be imposed was being altered. We further hold that the civil Court, having decided these two questions, that part of the action of the respondent, which was intra virus including the question of imposition of the penalty, cannot be questioned in the civil Court.

18. On the question, whether the appellant was liable to penalty under rule 14 (b) of the Octroi Rules, we have earlier held that he was liable to (sic) duty on 80 maunds of Kattha, which he had imported from the Narayanganj forest range through Kheruwas from 1-1-1952 to 10-4-1952. The Corporation authorities had found it as a fact that no octroi duty had been paid on Kattha found in possession of the appellant. That finding had some basis and was warranted by the material before the Chief Executive Officer. This conclusion was correct on merits and within the statutory powers conferred by law." The Chief Executive Officer, in arriving at the conclusion he "did, could not be said to have acted in excess of powers. Therefore, the burden lay on the appellant to prove in the Civil Court that the demand for octroi duty was illegal, as the Kheruwas had paid the same at the time of entry into Corporation limits, the appellant failed to establish the same and merely relied on the fact that the goods were not detained at the octroi posts. Under these circumstances the demand for payment of octroi duty so far as 80 maunds of Kattha was concerned, was justified and legal. the appellant as the principal was the real importer through his agents, the Kheruwas. Whatever t e the agreement between the appellant and the Kheruwas. it was his duty either to pay the octroi duty himself or to get it paid through the Kheruwas As principals the could not avoid liability for the default of his agents in the matter of payment of octroi duty, the action of the Corporation authorities in imposing the penalty could not be said to be illegal or in excess of powers. To conclude, we hold that the action of the Corporation authorizes in demanding duty on 80 maunds of Kattha and in imposing penalty regarding that much quantity was legal and within the powers conferred by law.

19 We cannot go behind the order of the Chief Executive, Officer, so far as it validity imposed the octroi duty and the penalty in accordance with the powers conferred bylaw. To that extent the appellant was clearly liable for the octroi duty payable on 80 maunds at the rate of Rs 130- per maund, the total duty payable being Rs. 466-8-; double the duty would be Rs. 933-, which amount alone could be collected by the Corporation authorities under the law. Any recovery in excess of the same was not only unjustified, but clearly in contravention of the specific provisions Of the City of Jabalpur Corporation Act and the Octroi Rules made there under, as also. contrary to Article 265 of the Constitution. What is protected under the Act is any action taken by virtue of the powers and in good faith done or intended to be done under the Act as per section 414 of the City of Jabalpur Corporation Act Any recovery of a duty in excess of the provisions of law would not be protected under the said section, as it would not be an act done in good faith or intended to be done in good faith. We, therefore, hold that the appellant was entitled to claim back the excess of the amount beyond what was

legally recoverable from him by the Corporation under the law.

20. In the view that we take, this appeal succeeds partly. The decrees of the Courts dismissing the suit are set aside and instead a decree entitling the appellant to the balance of the amount, namely, Rs. 2513/5/- shall be passed against the respondent.

21. In view of the partial success of the appellant, we direct that the appellant shall be entitled to two-thirds of the costs taxed in all courts.