
(1977) 01 GUJ CK 0014
In the Gujarat High Court

The Bhor Industries Ltd.

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 10-01-1977

Acts Referred:

Bombay Borough Municipal Act, 1925 — Section 58(j), 61(l)(n)
Bombay Provincial Municipal Corporations Act, 1949 — Section 127(1), 127(2), 3(2), 3(3), 3(3)
Gujarat Panchayats Act, 1961 — Section 9(2)

Citation : (1978) 19 GLR 65

Hon'ble Judges : S. Obul Reddi, C.J.; A.M. Ahmadi, J

Bench : Division Bench

Judgement

A.M. Ahmadi, J.—The petitioners Nos. 1, 2 and 3 are Companies incorporated under the Companies Act, 1956. The petitioner No. 4 is an Association of industrial concerns located in Jambuva and Maneja areas of District Baroda comprising 18 industries set out in Ann. A appended to the petition. Petitioners Nos. 1, 2 and 3 have their industries in villages Makarpura, Jambuva and Maneja of district Baroda.

2. By a notification dt. August 18, 1972 entitled "proclamation", (Ann. B), the Government of Gujarat proposed to alter the limits of the Baroda Municipal Corporation so as to include within limits of the said Corporation the areas shown in Schedule A to the notification under Sub-section (3) of Section 3 of the Bombay Provincial Municipal Corporations Act, 1949 (hereinafter referred to as "the Act"). In Sch. A the whole of the village Maneja, revenue S. Nos. 450 to 574 and 705 (in all 126) of village Jambuva and revenue S. Nos. 41 to 48, 50 to 112, 114, 115, 118, 166, 167, 169, 151 and 153 (in all 79) of village Makarpura were shown as proposed to be included within the limits of Baroda Municipal Corporation. On the date of the issuance of this notification, the aforesaid lands were lying within the Gram Panchayat and hence on 16th October, 1973, the Development Commissioner of the Gujarat Government in the Panchayat Department, issued a notification (Ann. C) under Sub-section (2) of Section 9 of

the Gujarat Panchayats Act, 1961, excluding the aforesaid areas proposed to be included within the limits of the Baroda Municipal Corporation from the Gram Panchayat. By the notification issued by the Government of Gujarat under Sub-section (3) of Section 3 of the Act, the persons who had any objection to the inclusion of the aforesaid areas within the limits of the Baroda Municipal Corporation, were invited to submit their objections to the Collector of Baroda within two months from the date of the said notification. In response thereto, the present petitioners amongst others submitted their objections against the inclusion of the aforesaid areas and after taking them into consideration, the Government of Gujarat issued the final notification dt. 15th November, 1973 (Ann. D) in the Panchayats and Health Department in exercise of the powers conferred by Sub-section (3) of Section 3 of the Act directing that the aforesaid areas should form part of the Baroda Municipal Corporation with effect from 1st December, 1973.

3. Sub-section (3) of Section 3 of the Act provides that the State Government may, from time to time, after consultation with the Corporation, by notification in the official Gazette alter the limits specified for the city under Sub-section (1) or Sub-section (2) so as to include therein, or to exclude therefrom, such area as is specified in the notification. Sub-section (4) of Section 3 next provides that the power to issue notification under this section shall be subject to the condition of previous publication. Accordingly, in the present case, the notification Ann. B dt. 18th August, 1972, was issued by the Government of Gujarat and objections were invited from all persons to the proposed inclusion. After these objections were received and considered as stated earlier, the final notification-Ann. D, came to be issued under Sub-section (3) of Section 3 of the Act.

4. The petitioners filed a Special Civil Application No. 1667/73 in this High Court challenging the inclusion of the aforesaid areas within the city limits of Baroda Municipal Corporation and their exclusion from the Gram Panchayats on several grounds. During the pendency of the said proceedings, the present writ petition was filed, wherein also amongst other contentions, the petitioners have contended that the inclusion of the aforesaid areas within the city limits of Baroda Municipal Corporation is illegal and bad in law. Subsequently the earlier Spl. C.A. No. 1667/73 came to be dismissed in limine and hence it is not necessary for us to go into this contention which has been raised incidentally by way of repetition in this petition. In fairness to the Learned Counsel for the petitioners, it must be said that he made no attempt before us to raise or argue the said point. We, therefore, take it as concluded so far as this Court is concerned.

5. Chapter XI of the Act deals with municipal taxation. Sub-section (1) of Section 127 makes it obligatory on the Corporation to impose property tax, and tax on vehicles, boats and animals. In addition to the aforesaid two taxes, the Corporation is empowered to impose any of the other taxes, mentioned in Clauses (a) to (f) of Sub-section (2) of Section 127 which include octroi. Section

95(d) provides that the Commissioner shall prepare and lay before the Standing Committee a statement of proposals as to the taxation which it will, in his opinion, be necessary or expedient to impose under the provisions of the Act in the next official year and an estimate of the receipts from taxation. Section 2(44) defines "official year" as meaning "the year commencing on the first day of April". Section 96(1) then provides that the Standing Committee shall consider the estimates and proposals of the Commissioner and after having obtained from the Commissioner such further detailed information, if any, as it shall think fit to require, and having regard to all the requirements of the Act shall frame therefrom subject to such modifications and additions therein or thereto as it thinks fit a Budget Estimate to be called "budget estimate "A" of the income and expenditure of the Corporation other than the income and expenditure in respect of the transport undertaking for the next official year. Clause (a) of Sub-section (2) of Section 96 next provides that in Budget Estimate "A" the Standing Committee shall propose with reference to the provisions of Chapter XI such rates and extent of municipal taxes as it thinks fit. Section 99 lays down that the Corporation shall, on or before the twentieth day of February, after considering the Standing Committee's proposals in this behalf, determine, subject to the limitations and conditions prescribed in Chapter XI, the rates at which the municipal taxes referred to in Sub-section (1) of Section 127 shall be levied in the next ensuing official year and the rates at and the extent to which any of the taxes referred to in Sub-section (2) of the said section which the Corporation decides to impose shall be levied in the next ensuing official year. Section 100 provides that subject to the requirements of Section 99, the Corporation may refer Budget Estimate "A" back to the Standing Committee for further consideration, or adopt the budget estimates or any revised budget estimates submitted to it, either as they stand or subject to such alterations as it deems expedient. Next relevant provision is Section 149, which provides that in the event of the Corporation deciding to levy any of the taxes specified in Sub-section (2) of Section 127, it shall make detailed provision, in so far as such provision is not made by this Act, in the form of rules, modifying, amplifying or adding to the rules at the time in force for the following matters: the nature of the tax, the rates thereof, the class or classes of persons, articles or properties liable thereto and the exemptions therefrom, if any, to be, granted, the system of assessment and method of recovery, etc. It will thus appear from the aforesaid group of sections that the Municipal Corporation is empowered by Sub-section (2) of Section 127 of the Act to impose octroi. The Budget proposals have to be prepared as provided by Sections 95 to 100 of the Act. After the Budget proposals are thus prepared and adopted by the Corporation, the Corporation is entitled to recover "octroi" in accordance with the Rules with effect from the financial year in respect of which, the Budget, proposals are finalised.

6. Chapter XXIX of the Act deals with Rules, By-laws, Regulations and Standing Orders. Section 453 proclaims that the rules in Schedule A as amended from time to time shall be deemed to be part of this Act. The taxation Rules in

Schedule A are to be found in Chapter VIII. We may hurriedly glance through: a few relevant Rules at this stage. Rules 26 to 29 are entitled "special provisions relating to octroi and tolls." Rule 26 requires the Commissioner to cause tables of octroi, specifying the rates at which and the articles on which the same are leviable to be printed and affixed at conspicuous position at every place at which the said octroi is levied. Rule 29 empowers the authorised officer to require a person bringing into or receiving from beyond the limits of the city any goods, to unload or reload goods and inspect and examine such goods. Rule 33 declares that octroi shall be payable on demand and Rule 35 deals with the collection of octroi. Rule 49 empowers the authorised officer to seize the goods for non-payment of octroi. Lastly, Rule 62 provides for refund of octroi if the goods are exported beyond the limits of the city within a period of six months from the date of payment. Section 454 empowers the Corporation to add to the Schedule "A" Rules which are not inconsistent with the provisions of the Act. Sub-section (1) of Section 455, however, provides that power to make, add to, alter or rescind any Rule u/s 454 shall be subject to the sanction of the State Government and to the condition of the Rules being made after previous publication. Further, Sub-section (2) of the said provisions provides that all the Rules made u/s 454 shall be finally published in the official Gazette and shall thereupon have effect as if enacted in this Act. The State Government is empowered by Section 456 to require the Corporation to make Rules u/s 454. The matters in respect of which Rules can be framed u/s 454 are set out in Section 457 and Clause (7) which deals with municipal taxes, enables making of Rules in respect a tax leviable under Sub-section (2) of Section 127 regarding the matters referred to in Sub-section (1) of Section 149. It will, therefore, appear from these group of sections that the Rules" in Schedule A, as amended from time to time, shall form part of the Act itself. It is no doubt true that Sub-section (i) of Section 455 speaks of previous publication but by virtue of Sub-section (2) the Rules made u/s 454 on publication in the official Gazette shall have effect as if enacted in the Act.

7. The next group of sections, to which our attention was drawn, deals with the making of by-laws. Section 458 empowers the Corporation to make by-laws, not inconsistent with the Act and the Rules with respect to the matters enumerated in Clauses (1) to (48) thereunder. It is pertinent to note that none of these clauses deal with the matters concerning levy or collection of octroi. Section 459 enjoins upon the Municipal Commissioner to lay the draft of by-laws before the Corporation. According to Section 460 no by-law can be made by the Corporation unless a notice of intention to make such by-law shall have been given in the official Gazette and in the local newspaper at least six weeks before the date on which the Corporation finally considers such by-law. It is further provided that all objections and suggestions which may be made in writing by any person with respect thereto within one month of the date of the notice, shall be considered by the Corporation. The by-laws have to be confirmed by the State Government and on confirmation, they shall be published in the official Gazette and shall have the force of law.

8. The Baroda Municipal Corporation came to be constituted with effect from 1st April, 1966. The Rules and the By-laws framed by the erstwhile Baroda Borough Municipality u/s 58(j) and 61(l)(n) of the Bombay Borough Municipal Act, 1925, (hereinafter referred to as "the 1925 Act"), would continue to be in force by virtue of Section 493 read with Appendix IV to the Act. Clause (a) of para 5 in Appendix IV provides as under:

Any appointment, notification, notice, tax, order, scheme, licence, permission rule by law, or form made, issued, imposed or granted under the Bombay District Municipal Act, 1901, or the Bombay Municipal Boroughs Act, 1925, or any other law in force in any local area constituted to be a City immediately before the appointed day shall, in so far as it is not inconsistent with the provisions of this Act continue in force until it is superseded by any appointment, notification, notice tax, order, scheme, licence, permission, rule, by-law, or form made, issued, imposed or granted under this Act or any other law as aforesaid, as the case may be.

Reference may also be made, at this stage, to Section 452A, which was brought on the statute book by Gujarat Act No. 16 of 1970 and which lays down that where the limits of a city are altered so as to include any area therein or exclude any area therefrom, the State Government may, notwithstanding anything contained in the Act or any other law for the time being in force, by order published in the official Gazette, provide for all or any of the following matters, namely:

(viii) the extension and commencement of all or any appointments, notifications, notices, taxes, orders, schemes, licences, permission, rules, by laws or forms made, issued, imposed or granted under this Act by, or in respect of, the absorbing local authority and in force within its area immediately before the notified day, to the area so included in a city under Clause (a), in suppression of corresponding appointments, notifications, notices, taxes, orders, schemes, licences, permission, rules, by laws or forms in force in such area immediately before the notified day.

The expression "absorbing local authority" means "the local authority in the area under whose jurisdiction an area is included". Even though the factory area of the petitioners was included within the Baroda Municipal Corporation limits with effect from 1st December, 1973, the order under Clauses (viii) & (ix) of Sub-section (1) of Section 452A was issued as late as 30th March, 1974.

9. After the Baroda Municipal Corporation came to be constituted with effect from 1-4-1966, it transpires from the various Resolutions produced along with the affidavit of Shri Ramesh N. Bhatt, Assistant Municipal Commissioner, that the Municipal Corporation levied octroi within the city limits from the year 1967-68 onwards upto the date of the institution of the present petition. In the said resolutions, which are in Gujarati language, octroi has been mentioned at Sr. No. 3. That entry shows that the rate of octroi was determined by the Municipal

Corporation according to Schedule A and the Rules and By-laws framed u/s 58(j) and 61(l)(n) of the 1925 Act. A booklet containing the Rules and Bylaws framed under the 1925 Act has been produced along with the affidavit of Shri Bhatt and by-law No. I defines "octroi limits" as under:

The octroi limits shall be co-extensive with the limits of the Baroda Borough Municipality as existing at present or as altered from time to time.

The Learned Counsel for the petitioners, therefore, contended that the resolutions passed by the Municipal Corporation from year to year imposing octroi would be governed by the By-laws framed u/s 61(l)(n) of the 1925 Act and relying on the ratio laid down by the Supreme Court in the case of Bagalkot City Municipality Vs. Bagalkot Cement Co., , counsel argued that inasmuch as the said by-laws were not re-enacted after the factory area of the petitioners was included within the limits of the Baroda Municipal Corporation, the imposition and recovery of octroi is clearly illegal and void. In other words, the submission of the Learned Counsel for the petitioners was that before framing the Rules and the by-laws under Sections 58(j) and 61 (l)(n) of the 1925 Act it was incumbent on the Corporation to invite objections and suggestions from persons likely to be effected by the said by-laws and since admittedly such objections and suggestions were not invited from the inhabitants of the area included within the Corporation limits, the said Rules and by-laws has no statutory force and no octroi could be levied or collected on the strength of such by-laws. It is indeed true that Section 61(2) of the 1925 Act makes it incumbent upon the Municipality to publish for the information of persons likely to be effected the draft of the proposed by-laws and consider the objections and suggestions, if any, received from the inhabitants of the locality before making the by-laws. Sub-section (3) of Section 61 further provides that when any by-law by a municipality is submitted to the Government for sanction, a copy of the notice published and every objection and suggestion received under the provisions of Sub-section (2) shall be submitted for the information of the Govt. along with the draft by-laws. The counsel for the petitioners, therefore, submitted that the legislature attached considerable importance to public opinion in the matter of making of by-laws u/s 61 of the 1925 Act in the present case as the by-laws have not been re-enacted after inviting objections and suggestions on the inclusion of the factory area of the petitioners within the Corporation limits, the by-laws cannot be effective against the petitioners. The entire argument of the Learned Counsel for the petitioners centres round the ratio laid down by the Supreme Court in Bagalkot City Municipality's case (supra). It would, therefore, be advantageous if we notice the ratio of the Supreme Court in the aforesaid case at this stage.

10. In that case, the appellant-municipality was constituted under the Bombay District Municipal Act, 1901. Section 4 of that Act empowers the Government to declare any local area to be a municipal district and to extend, contract, or otherwise alter the limits of any municipal district. By virtue of Section 9 for every district, there ought to be Municipality. Section 59, inter alia provides that

a Municipality may impose octroi on animals or goods or on both brought within the octroi limits for consumption use or sale therein. In exercise of the said power, the appellant-Municipality imposed octroi duty on certain goods. Section 48 of the said Act empowered the Municipality to frame by-laws for various purposes including "fixing octroi limits". The appellant Municipality framed a by-law fixing octroi limits under the said provision in the following terms:

The octroi limits of the municipal district shall be the same as municipal district.

The expression "municipal district" was not defined in the by-laws and, therefore, the definition of that expression in Section 3(5) was sought to be applied for interpreting the by-laws by seeking aid of Section 20 of the Bombay General clauses Act, 1904. u/s 3(5) the expression "municipal district" means "the municipal district of a municipality for the time being" and hence it was argued that octroi limits prescribed by the by-laws would be the municipal district as constituted from time to time. It was further argued that upon the extension of the appellant-Municipality's the municipal district, its octroi limits would stand automatically extended and the factory area of the respondent would fall within the extended limits. While dealing with these arguments, the Supreme Court pointed out that according to Section 20 of the General clauses Act, it is no doubt true that the expression used in by-laws have to be given the same meaning as they have in the Act unless there is anything repugnant in the context. Their Lordships then proceeded to point out that there was such repugnancy in the case at hand. It was pointed out that Section 48 provides that a by-law can be made only with the sanction of the Government after objections and suggestions are invited regarding the proposed by-laws for consideration from persons likely to be effected thereby. The by-law as it stood, brought the respondents' factory within the octroi limits of the appellant-Municipality though it had not been published to the respondents or the owners of those premises. Such a by-law would be invalid under the Act from the beginning for it would be a by-law made in contravention of the provisions of Section 48. Their Lordships, therefore, thought that the expression "municipal district" in the by-law must be understood as referring to "municipal district" as existing when the by-law was framed. The context, said Their Lordships, would prevent the definition of the Act being applied to interpret the by-laws. It was, therefore, concluded that the by-law cannot refer to the municipal district as from time to time existing. In the concluding lines of para 11 of the judgment on page 774, Their Lordships, however, made the following observations:

From what we have said it does not follow that a by-law cannot under some provision in the Act other than Section 48 affect people to whom it had not been published before it was made. All that we have said is that a by-law cannot be made u/s 48 so as to affect people by its own terms or force unless to them is had been previously published.

Relying on these observations made by Their Lordships, it was contended by the learned Government Pleader for the State, that the Act could make provision

automatically extending the levy and collection of octroi duty to the extended area of the Municipal Corporation without the need to invite objections and suggestions from persons or inhabitants of the newly added area. There cannot be any doubt in view of the clarification observations made by the Supreme Court in the passage quoted above, that the submission made by the learned Government Pleader is well founded. In fact, the Learned Counsel for the petitioners did not make any attempt to assail this submission.

11. The Learned Counsel for petitioners, however, invited our attention to the provisions in Chapter VII entitled "municipal taxation" of the 1925 Act with a view to pointing out that these provisions are analogous to the relevant provisions with which Their Lordships of the Supreme Court were concerned in the above cited case. In this connection, it would be sufficient if we refer to Sections 73, 75 and 76 of the 1925 Act. Section 73(1) provides that subject to any general or special orders which the State Government may make in this behalf and to the provisions of Sections 75 and 76, a municipality may impose for the purposes of this Act any of the following taxes, and Clause (iv) refers to "an octroi on animals or goods or both, brought within the octroi limits for consumption, use or sale therein". The expression "octroi limits" has not been defined in the Act but Section 61(1) (n), which entitles the Municipality to make by-laws in terms provides for fixing octroi limits and stations amongst other matters. It, therefore, follow that the octroi limits referred to in Clause (iv) of Sub-sec. (1) of Section 73 have to be interpreted by reference to the by-laws framed u/s 61(l)(n) of the 1925 Act. Section 75 deals with the preliminary procedure to be followed by a municipality before imposing a tax which includes octroi duty. It lays down that the Municipality shall, by resolution passed at a general meeting, "select for the purpose of one or other of the taxes specified in Section 73 and approve Rules framed for the purposes of Clause (j) of Section 58 prescribing the tax selected. It further provides that when such resolution has been passed the Municipality shall publish the Rules so approved with a notice in the form of Schedule II prefixed thereto. Any inhabitant of the Municipal borough objecting to the imposition of the said tax or to the amount or rate proposed may within one month from the publication of the said notice, send his objection in writing and the Municipality shall take all such objections into consideration and unless it decides to abandon the proposed tax, shall submit such objections with its opinion thereon and any modifications proposed in accordance therewith, together with the notice and rules aforesaid to the State Government. Section 76 gives powers to the State Government to refuse to sanction the Rules or return them to the Municipality for further consideration; or if no objection or no objection which is in its opinion sufficient, was made to the proposed tax within the period prescribed u/s 75, to sanction the said rules without modification, or subject to such modifications not involving an increase in the amount to be imposed, or to such conditions as to the application within the municipal borough to any purpose or purposes of the Act specified in such conditions of the whole or any part of the proceeds of the tax, as it deems fit. The Rules so sanctioned by

the Government have to be published by the Municipality. It was, therefore, pointed out by the Learned Counsel for the petitioners that even under the 1925 Act, the expression "octroi limits" has not been defined in the Act but the octroi limits have been fixed under by-laws framed u/s 61(1)(n) of the Act. It was further pointed out that u/s 61(2) it is incumbent upon the Municipality to inform the persons likely to be effected by the by-laws and consider their objections or suggestions before submitting the same for sanction by the Government. The Learned Counsel submitted that in the present case, it is an admitted fact that the by-laws framed under the 1925 Act by the erstwhile Baroda Borough Municipality were applied to the extended area i.e. the factory area of the petitioners Without following the procedure set out in Section 61(2) of the 1925 Act. Therefore, the Learned Counsel submitted that in view of the decision of the Supreme Court in Bagalkot Municipality's case the said by-laws could not be of any assistance to the respondent-corporation for the purpose of levying and collecting octroi duty from the inhabitants of the newly added area. There can be no doubt that if the respondent-corporation sought to levy and collect octroi duty on the basis of the by-laws framed u/s 61(1)(n) of the 1925 Act, the contention of the Learned Counsel would be well founded. We are, however, of the opinion that this entire connection is misconceived and we now proceed to indicate our reasons, for this conclusion.

12. We have set out in details the scheme of the Act in far as the imposition of municipal taxes is concerned. We have pointed out that Section 99 requires that the Corporation shall, on or before the 20th day of February, after considering the Standing Committee's proposal this behalf, determine, subject to the limitations and conditions prescribed in Charter XI, the rates stand the extent to which any of the taxes referred to in Sub-section (2) of Section 127, which the Corporation decides to impose, shall be levied in the next ensuing official year. Now u/s 2(42) "octroi" means "a cess on the entry of goods into the limits of a city for consumption, use or sale therein." The city, according to Section 2(8) means "an local area constituted to be a city u/s 3". Sub-section (2) of Section 3 provides that the State Government may from time to time by notification in the official Gazette constitute any other local area lying within such limits as are specified in the notification to be a city. By virtue of Section 3(3) the State Government is empowered by notification in the official gazette to alter the limits specified for any City under Sub-section (2) as to include therein such area as is specified in the notification. Therefore, in the present case, after the notification. Ann. D. dt. 15th November, 1973 came to be issued under Sub-section (3) of Section 3 of the Act, the factory area of the petitioners formed part of the Baroda Municipal Corporation with effect on and from 1st December, 1973. The first distinguishing feature which we notice in the scheme of 1925 Act and the Act with which we are presently concerned is that the latter law has not left the question of fixing the octroi limits to the by-laws. Therefore, according to the scheme of the Act, once the Corporation decides to levy the octroi duty, that duty would be levied on the entry of goods into the limits of the city for consumption,

use or sale therein. It is, therefore, obvious that when the Baroda Municipal corporation levied octroi duty from the year 1967-68 year after year the said duty was levied on the entry of goods into the limits of the city as constituted u/s 3 of the Act. We also find that Section 99 requires the Corporation to indicate the rates at and the extent to which any of the taxes referred to in Sub-section (2) of Section 127 of the Act which it decides to impose shall be levied in the next ensuing official year. We have already pointed out earlier that the expression "official year" according to Section 2(44) means "the year commencing on the first day of April". In the present case, therefore, the respondent-Corporation while acting under Section 99 of the Act, referred to the rates in Schedule A of the by-laws framed u/s 61(l)(n) of the 1925 Act for the limited purpose of importing those rates in the body of the resolutions passed year after year with a view to avoiding the necessity of reproducing those rates in the resolutions themselves. Various resolutions produced along with the affidavit of Shri Bhatt show that in so far as octroi is concerned, the respondent Corporation instead of mentioning rate in extenso corncaodity wise in its resolutions used the well known referential method by importing rates in Schedule A of the by-laws made under the 1925 Act. We are, therefore, of the opinion that the mention of the Rules and by-laws framed under the 1925 Act in the various resolutions of the respondent Corporation was for the purpose of achieving this limited objective and the Learned Counsel for the petitioners is not right when he reads these resolutions to have the effect of applying the said by-laws.

13. For the above reasons, we are of the opinion that the ratio laid down by the Supreme Court in Bagalkot Municipality's case has no application to the facts of the present petition. We have pointed out that the scheme of the Act clearly defines the octroi limits and has not left the question of fixing octroi limits to the Rules or By-laws to be made under the Act. We are, therefore, of the opinion that By-law No. 1, to which our attention was invited by the Learned Counsel for the petitioners is not attracted in the instant case as the octroi limits have been defined under the Act. We also find that the scheme of the provisions in Chapter VII of the 1925 Act dealing with municipal taxation is quite different from the scheme found in Chapters IX and XI of the Act. Therefore, the principal contention, which was canvassed before us by the Learned Counsel for the petitioners must fail and in that view of the matter, we must hold that the imposition of the octroi for the period subsequent to 1-4-1974 is valid.

14. Before we proceed to the next question one further argument made by the Learned Counsel for the petitioners based on the provisions regarding the making of Rules and By-laws in Chapter XXIV may be considered. As we have pointed out earlier, the Rules in Schedule A form part of the Act by virtue of Section 453 and the Corporation is empowered by Section 454 to add to the Rules in Schedule A. The matters in respect of which Rules may be made u/s 454 have been set out in the various clauses catalogued in Section 457. Sub-section (7) of Section 457 deals with municipal taxes. It becomes clear from Clause (c) of this provision that the Rules may be framed in respect of a tax leviable under

Sub-section (2) of Section 127 only with regard to matters referred to in Sub-section (1) of Section 149. It is no doubt true that these Rules require previous publication by virtue of Section 455. However, once, the procedure outlined in Section 455 is followed and the Rules are framed u/s 454, they become a part of the Act unlike in the case of the 1925 Act. So far as the provision regarding the making of by-laws in Section 458 is concerned, we have pointed out earlier that this section does not refer to the making of by-laws in respect of any matter concerning the imposition of tax under Sub-section (2) of Section 127 of the Act. The argument of the learned counsel for the petitioners that as Section 455 speaks of previous publication before, making Rules u/s 454, in view of Section 24 of the Bombay General clauses Act, 1904, a draft of the proposed Rules ought to be published for the information of the persons likely to be effected thereby. He next contended that in the instant case, it was indisputable that the Rules framed u/s 454 had not been re-enacted go as to make them applicable to the inhabitants including the petitioners of the newly added area. Once again the Learned Counsel sought assistance of the ratio of the Supreme Court in Bagalkot Municipality's case. While making this submission, the Learned Counsel overlooks an important distinction. The Rules framed u/s 454 of the Act, as amended from time to time, have effect as if enacted in the Act. In other Words, they are of statutory application. Once these Rules become part of the Act, the entire Act including these Rules would Apply to the city limits of a Corporation constituted u/s 3 of the Act. It would be wrong to contend that the statute applicable to the city as constituted before 1st December, 1973 would be different from the statute applicable to the included area after the reconstitution of the city from 1st December, 1973. It is perhaps to meet with such cases that the Supreme Court in the Bagalkot Municipality's case adopted a cautious approach while making the observations in the concluding part of paragraph II of the judgment, which we have reproduced earlier. In the present case, however, even if this distinction is not real and the ratio of the Supreme Court case does apply, the Learned Counsel for the petitioners has not pointed out any rule framed u/s 454 of the Act, on which the respondent-corporation relies for the purposes of imposing and collecting octroi duty from the petitioners for the period commencing from 1st April, 1974. We, therefore, do not see any merit in this submission of the Learned Counsel for the petitioners.

15. We may now consider the second submission made by the Learned Counsel for the petitioners, namely, that the recovery of octroi duty for the period from 1-12-1973 to 31-3-1974 cannot be upheld even on the view that we take in respect of the imposition and recovery of octroi duty for the period commencing from 1-4-1974. The resolution of the respondent-corporation" produced along with the affidavit of Shri Bhatt for the year 1973-74 also shows that octroi duty was levied at the rates mentioned in Appendix A of the By-laws framed u/s 61(l) (n) of the 1925 Act for the period from 1-4-1973 to 31-3-74 within the limits of the municipal Corporation. This resolution No. 917 is dated 19th February, 1973. On that date, the factory area of the petitioners was outside the city limits and,

therefore, there can be no doubt that while passing this resolution, the Corporation never considered the question of imposing octroi duty within the said area. Reliance was, however, placed by the learned advocate for the respondent corporation on Section 493 of the Act, which proclaims that the provisions of Appendix IV shall apply to the constitution of the Corporation and other matters specified therein. Reliance was placed on Clause (a) of paragraph 5 in Appendix IV, the relevant part whereof reads as under:

any tax imposed under the Bombay District Municipal Act, 1901, or the Bombay Municipal Boroughs Act, 1925 or any other law in force, in any local area constituted to be a city immediately before the appointed day, shall, in so far as it is not inconsistent with the provisions of this Act, continue in force until it is superseded by any tax, imposed under this Act or any other law as aforesaid, as the case may be.

It is an admitted fact that in the factory area of the petitioners no octroi duty was levied before its inclusion within the limits of the respondent corporation with effect from 1-12-1973. We are, therefore, of the opinion that this clause cannot come to the aid of the respondent-Corporation to save the collection of octroi duty effected from the petitioners during the aforesaid period. Our attention was then invited to Clause (viii) of Section 452A, which provides that where by a notification under Sub-section (3) of Section 3, the limits of any city are altered so as to include any area therein, the State Government may, notwithstanding anything contained in this Act or any other law for the time being in force, by order published in the official Gazette, provide for all or any of the matters, namely:

the extension and commencement of all taxes imposed under this Act by, or in respect of the absorbing local authority and in force within its area immediately before the notified day to the area so included in a city in suppression of corresponding tax in force in such area immediately before the notified day.

16. In order to avail of the extension and commencement of taxes prevailing within the absorbing local authority immediately before the notified day, the respondent-Corporation must show that the State Government had published an order in the official Gazette providing for the same. We have pointed out that even though by the notification-Ann.D the Factory area of the petitioners was included within the limits of the Baroda Municipal Corporation with effect from 1st December, 1973, the order under Sub-section (1) of Section 452A of the Act was issued as late as 30th March, 1974. We are, therefore, of the opinion that in view of the aforesaid situation, the respondent-Corporation can hardly rely on Section 452A of the Act. We are further of the opinion that even if the order under Sub-section (1) of Section 452A of the Act was issued well in time, the extension and commencement of taxes under the Act prevalent within the absorbing local authority, which means the local authority in the area under whose jurisdiction an area is included, could be only in suppression of "corresponding" taxes in force in the area so included immediately before the

notified day. Therefore, in order to attract the application of Clause (viii) of Sub-section (1) of Section 452A of the Act, the respondent-corporation must show that there existed a corresponding tax in the factory area of the petitioners before its inclusion within the Corporation limits so as to make the extension of the existing octroi duty applicable to the newly added area. In the instant case, it is an admitted fact that no octroi duty was levied within the factory area of the petitioners before its inclusion within the Corporation limits by the notification Ann.D with effect from 1st December, 1973. Therefore, the attempt on the part of the learned advocate for the respondent-Corporation to save the octroi duty collected from the petitioners for the period from 1-12-1973 to 31-3-74 must fail. We are therefore, of the opinion that the collection of octroi duty for the aforesaid four months is clearly contrary to law.

17. In the result, therefore, this petition must be partly allowed and the imposition and recovery of octroi duty from the petitioners for the period from 1-12-1973 to 31-3-1974 must be quashed as bad in law. We direct the respondent-corporation to refund the amount of octroi duty collected from the petitioners during the aforesaid period within three months from today. The challenge regarding the imposition and collection of octroi duty for the period commencing from 1-4-1974 fails and the petition to the extent must stand dismissed. Bearing in mind the extent of failure and success, we direct the parties to bear their own costs. A writ will issue accordingly and the rule is made absolute in the aforesaid terms.