

(1994) 12 RAJ CK 0006

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 602 of 1993

The Municipal Board and Another

APPELLANT

Vs

Riico Agroils Ltd. and Others

RESPONDENT

Date of Decision : 22-12-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Rajasthan Municipalities Act, 1959 — Section 104, 107(5)

Citation : (1995) 1 RLW 470

Hon'ble Judges : M.P. Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.P. Singh, J.—This is Defendants' miscellaneous appeal arising out of an injunction order passed in the suit for mandatory injunction and also for permanent injunction restraining the Defendant No. 1-Municipal Board from realising octroi on raw materials, plants and machinery.

2. The case set up by the Plaintiffs was that the Government of Rajasthan had issued a Notification No. Tax/F-3-(Misc.) L.S.G./60/32 Jaipur dated July 3,1990, exempting the imposition of octroi on raw materials which were to be used by the newly established (small, medium and large scale industries) or which were to be established in the State during the Eighth Five Year Plan from April, 1990 to March 31,1995 for a period of 5 years from the date of commencement of the commercial production and also on the imported plants and machineries which are to be used in the new industrial units to be set-up during this period. On the same day similar notification was issued with regard to Municipal Board, Kota.

3. This Notification was obviously issued by the Government in order to give incentive to people to set up the industries for development of the State. It may provide more employment to the persons who needed it. On the basis of this Notification, the Plaintiff set up the industry in the year, 1991. The validity of the notification of Municipal Board, Kota was challenged in D.B. Civil Misc. Writ

Petition No. 3065/90. It was dismissed on 22.4.1993. The notification was held to be valid.

4. The suit was filed on 7.12.1991, but since in the Writ Petition No. 3965/90 the operation of the similar notification was stayed, the injunction application was rejected on the ground of the stay order having been passed by the High Court. After the dismissal of the writ petition on 24th April, 1993, regarding Kota Municipal Board, a fresh application for injunction was filed. It has been allowed On 10th September, 1993. The Municipal Board, Bundi has been restrained from realising the octroi from the date of the order. Till that date it had already recovered about a sum of Rs. 50,000/- as octroi from the Plaintiff.

5. The order passed by the District & Sessions Judge, Bundi granting injunction is under challenge in the present appeal.

6. At the admission stage, Mr. Paras Kuhad has put in appearance on behalf of the Plaintiff-Respondents. Learned Counsel for both the parties have been heard at length.

7. Mr. Kuhad raised four points for consideration.

(1) The Municipal Board has no right to impose octroi. It could be done only by the State Government exercising the power u/s 104 read with Section 107 Sub-section (5) of the Rajasthan Municipalities Act, 1959 and once the exemption having been given by the State Government, it was not open to the Municipal Board to realise the same. Its action was wholly without jurisdiction.

(2) Promissory Estoppel - The State Government vide its notification dated 3.7.1990 has permitted the Plaintiff-Respondents to believe a thing to be true and to act upon such belief that no octroi would be leviable for five years from the date of the production, it shall not be allowed to deny the truth of that declaration in the form of Notification. It was only on this assurance that the Plaintiff has set up the industry. The action of the Respondents in not honouring the statement made in the notification will be a mockery of the assurance given by the Government. It is expected to act fairly and honestly. All the actions of the State Government are required to meet the test of reasonableness.

(3) The action of the Municipal Board in realising the octroi illegally Will undermine the confidence of the public in such bodies as well as in the Government. The element of public interest will ultimately suffer.

(4) The impugned order granting injunction is just and a correct order. It does not suffer from any illegality.

8. So far as first three points are concerned, if any finding is recorded by this Court, it will effect the merit of the suit. Mr. Paras Kuhad appearing on behalf of the Respondents has fairly conceded to this proposition and he does not want any finding at this stage. Accordingly, this Court is restraining itself from examining the merit of the submissions made by him. These points should be

elaborately dealt with by the trial Court while deciding the suit on merit.

9. Only the fourth point is to be gone into. This Court is required to examine whether the injunction which has been granted by the trial Court is within the frame-work of Order 39, Rules 1 and 2 of the Code of Civil Procedure.

10. In order to obtain an interlocutory injunction, the Plaintiff has to establish that he has got a prima facie case, but that is not all. In addition to that, he has to establish further:

(1) In the event of with-holding the relief of temporary injunction, he will suffer an irreparable injury;

(2) In the event of his success in the suit in establishing his alleged legal rights, the encroachment whereof is complained against, he will not have the proper remedy in being awarded adequate damages;

(3) In taking into consideration the comparative mischief or inconvenience to the parties, the balance of convenience is in his favour or in other words that his inconvenience in the event of with-holding the relief of temporary injunction will in all events exceed to that of the Defendant in case he is restrained; &

(4) the Plaintiff has to establish a clear necessity for affording immediate protection to his alleged right or interest which would otherwise be seriously injured or impaired in case no injunction is granted.

11. Prima Facie Case - The Notification dated 3rd July, 1990 has made the Plaintiff to believe that he would be given 5 years exemption of octroi from the date of the production only. On this assurance given by the State Government, the Plaintiff set up its industry. The purpose of granting such exemption appears to be quite reasonable because whenever any new industry is set up, it has got its teething problems. It is a sort of encouragement which is given to the new entrepreneurs to enter in the field of industry for the growth of the nation. Once such understanding has been given in the form of notification, it was not open to the Government to resile from the same. Under these circumstances, the action of the Municipal Board in realising octroi was justified or not.

The State Government and its instrumentality is expected to meet the test of reasonableness and fairness. The State Government is not expected to act like a cunning private litigant whose effort always is to get the order from the court somehow or the other. The State Government is not expected to play hide and seek with its subjects. Once the State Government had made the Plaintiff to believe that no octroi would be recovered from it for a period of five years from the date of production, only then the industrial establishment was set-up by it. The Respondents are expected to honour the commitment made. The actions of the Government and the Municipal Board are definitely not fair and proper. Thus, I am of the view that the Plaintiff has established a prima facie case for grant of injunction, but that is not the end of the matter.

12. In addition to that, the Court is required to look into the other ingredients which are essential to be examined before granting injunction"".

13. The next point for consideration is that in the event of with-holding of temporary injunction, would the Plaintiff suffer an irreparable injury. Before granting injunction, the Court should have considered that if no injunction was granted and the suit succeeded subsequently, could the Plaintiff be adequately compensated or not.

14. After hearing the counsel for the parties, while examining the balance of convenience, I come to the conclusion that no injunction should have been granted in this case. The Court should have permitted the Municipal Board to realise the octroi with a direction to it to maintain a separate account of such a recovery so that in the event of success, the amount so realised, may be returned, to the Plaintiff without any delay and difficulty.

15. On the other hand, if the injunction is granted in such matters and the suit is ultimately dismissed, then it will be difficult for the Board to recover the amount without taking the recourse of filing a suit. It would be a long drawn process, causing grave irreparable injury to it. Such an injunction would affect the functioning of the Board, as it cannot discharge its statutory duty in the absence of revenue, the order may paralyse its functioning.

16. While considering this matter, the Court has to remind itself that where the public revenue is involved, it should not be unduly liberal in granting injunction.

17. In the case of Union Territory of Pondicherry and Ors. v. P.V. Suresh and Ors. J.T. 1993 (5) 410, it was observed as follows:

Passing of interim orders is not and cannot be a matter of course- nor a matter of charity. In matters touching public Revenue the Courts ought to be more cautious. For better or worse, the Courts have come to acquire a veto over the public exchequer. This power should be exercised with good amount of self-restraint and with a sense of responsibility. The power is coupled with accountability - accountability to the Constitution, the laws of the land and above all to ourselves. The Court must apply its mind to the facts of the case and must also envisage the implications and consequences of the order it proposes to make.

18. In another case Siliguri Municipality and Others Vs. Amalendu Das and Others, it was held that in reference of tax matters normally no stay order should be passed blocking the source of revenue. In such matters, grant of stay order should be treated as an exception and not as a rule. The Court should always maintain a balance in the matter and the larger public interest. The object could be achieved by asking the authority imposing tax to give undertaking to refund in case the Plaintiff succeeds in the suit. The Court was reminded to impose self imposed judicial discipline in passing the interim orders.

19. The same view has been reiterated by the Supreme Court in the case

Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others, and a further observation was made that the main relief should not be granted by means of interim orders.

20. In a very recent case decided by the Municipal Corporation of Delhi Vs. C.L. Batra, referring to its earlier decisions, it was of the view that granting interim orders against the Municipal Corporation for recovery of tax may paralyse the working of the Municipality. It may render the Municipal Corporation even not to meet its financial obligations under the Act.

21. Relying upon the ratio of the cases mentioned above, I am of the view that even if the Plaintiff has established his prima facie case the Municipal Board could not have been restrained from realising the octroi. Though the order is a discretionary one, but in my opinion, discretion has not been exercised within the parameters of Order 39, Rules 1 and 2 of the CPC nor the law laid down by the Supreme Court has been given due weight while considering the matter.

22. Accordingly, the appeal succeeds and is allowed with Rs. 1,000/- (One thousand only) as cost. The Municipal Board is permitted to recover the octroi duty from the Plaintiff- Respondent from today and a separate account will be maintained for such realisation.

23. Mr. Mehrish appearing on behalf of the Municipal Board made a statement that in case the suit succeeds, the entire amount of the octroi so recovered shall be returned by the Municipal Board within one month along with 12% interest, but according to the Plaintiff, in case he borrows the money from the bank then he has to pay 18% interest. Adjusting equity between the parties, I direct the Municipal Board to refund the entire amount of octroi recovered along with 16% interest within one month from the date of the decree if the suit decreed/This amount will be refunded only after adjusting the octroi which was payable to the Board from the date of the injunction order till today.

24. Before parting with the case, I direct the trial Court to decide the suit within three months from the date of the filing of the certified copy of this order without granting adjournment to either party.

25. Any observation made by me which touches the merit of the case, will have no effect on the suit. The trial Court will be at liberty to decide it in accordance with the evidence and the law without being prejudiced by any observations made by me.