

PETITIONER:
SWASTIK RUBBER PRODUCTS LTD. ETC. ETC.

Vs.

RESPONDENT:
MUNICIPAL CORPORATION OF THE CITY OF POONA & ANR.

DATE OF JUDGMENT 16/09/1981

BENCH:
DESAI, D.A.
BENCH:
DESAI, D.A.
KOSHAL, A.D.
MISRA, R.B. (J)

CITATION:
1981 AIR 2022 1982 SCR (1) 729
1981 SCC (4) 219 1981 SCALE (3) 1477
CITATOR INFO :
RF 1992 SC1277 (34)

ACT:
Bombay Provincial Municipal Corporation Act 1949, Ss.
127 (2), 149 and Rule 62B and octroi Rules 1962, Rule 5(8)-
Scope and effect of.

HEADNOTE:

The Bombay Provincial Municipal Corporations Act, 1949 came into operation in the city of Poona on 15th of February, 1950. Section 127(2) thereof authorised the Corporation to impose octroi and other taxes, while section 149 prescribed the procedure to be allowed in levying taxes.

In the year 1957, the Corporation in order to boost industrial development and to encourage the industrialists to establish industries in the city, decided to give certain concession in the nature of exemption from octroi duty. Pursuant to this objective the Corporation made rule 62-B in Chapter VIII to the Schedule of the said Act in 1957, which envisaged the creation of an "Industrial Estate or Area", by which was meant the area which the Corporation may from time to time demarcate as the area in which industries can be suitably located in the interest of industrialisation of the city. Under this rule no levy of octroi was to be made for a period of twelve years. Later on, the Corporation framed extensive new octroi Rules under their resolution dated 7th of August, 1962. Rule 5(8) of the new Rules provided for exemption in respect of levy of octroi.

The Corporation had been levying octroi on the materials received by the appellants. The appellants sought exemption under rule 5(8). The Corporation rejected their claim for exemption of octroi on the ground that exemption can only be granted if the area within which the concern was situated was declared as industrial area and demarcated for the purpose.

Being aggrieved, the appellants filed petitions under Article 226 of the Constitution in the High Court for the issue of a writ of Mandamus requiring the respondent Corporation to define and demarcate the area where their factories were situated as industrial area, within the meaning of rule 5(8), and to exempt them from payment of

octroi. During the pendency of these petitions rule 5(8) was repealed. The appellants amended the writ petitions and further contended that (1) that the repeal of rule 5(8) was illegal and/or ultra vires and, therefore, rule S(8) still continues to be effective and (2) that in any event they were entitled to get the benefit of rule 62-B which had not been repealed. The High Court repelled both the contentions and held that old rule 62B and the new rule

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5(8) were repealed and that there was no legal flaw. It however took the view that despite the repeal of Rule S(8) the appellant could still get the relief under rule 5(8) because if the proviso attached to the repealing rule the area in question was not demarcated as industrial estate or area for the purpose of rule S(8) and that it was solely in the discretion of the Corporation to demarcate an area as industrial estate. It consequently dismissed the writ petitions.

In the appeals to this Court it was contended on behalf of the appellants (I) that the disputed area had been included in the development plan under the Bombay Town Planning Act, 1954 before the promulgation of rule S(8) and had thus automatically become an industrial estate or area for the purposes of that rule. (2) The Corporation had refused to grant exemption to the appellants on the arbitrary ground that the concern of the appellants was not a new one. (3) There had been violation of Article 14 of the Constitution in as much as some industries in similar situations have been granted exemption while the appellants have been deprived of the benefit of rule S(8) and (4) while denying the benefit of rule S(8) the Corporation had taken into consideration extraneous or irrelevant considerations.

Dismissing the appeals

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HELD: 1 (i) No area had been declared as industrial area under the Development plan before 1957 and in fact it was only after the enforcement of the development plan on 15th of August, 1966 that the disputed area became an industrial area under the Bombay Town Planning Act. [735 C-D]

(ii) A bare perusal of rule 5(8) makes it apparent that for the purpose of the exemption from octroi, an industrial estate or area means the area which the Corporation may from time to time demarcate for the purpose of the rule as the area in which industries can be suitably located for the interest of industrialisation of the City. Therefore, the demarcation made under the Town Planning Act will not be a demarcation for the purpose of rule S(8) and unless there is a demarcation as contemplated by rule S(8) the appellants cannot claim exemption from octroi. The view taken by the High Court is fully warranted by rule S(8) of the octroi Rules. [735 E-G]

2. The purpose of the Town Planning Act is to plan the town and to keep industrial areas away from the residential or commercial areas and that no industries could be set up in an area other than the industrial area declared in pursuance of the Act. The purpose of demarcation as industrial estate or area under rule S(8) is for the giving of incentive and impetus to industries in a particular area. [736 B-C]

3. An analysis of the preamble to the new octroi Rules makes it clear that rule 62-B relating to octroi was repealed by implication. It is noteworthy that chapter VIII does not contain any rule relating to octroi, except rule 62-B which did not find a place in the preamble. All rules

relating to octroi and enacted under the 1901 and the 1925 Acts were also repealed without exemption. Another pointer is available in the fact that octroi was made the subject-matter of a new and comprehensive set of rules which not only dealt with the matters

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covered by the rules contained in chapter VIII and specifically mentioned in the A preamble but also the one covered by rule 62-B, namely the matter of exemption of goods from octroi in areas considered suitable for industrialisation. The promulgation of rule 5(8) as a part of an exhaustive set of new rules, has the effect of a repeal of rule 62-B by necessary implication, although not in express terms. [737 D-G]

4. The considerations which have weighed with the Corporation for denying the benefit of exemption from octroi to the appellants cannot be said to be either irrelevant or extraneous. These are within the ambit of rule S(8) of the octroi Rules. [739 B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1600, 1568 and 1416 of 1970.

From the judgment and order dated the 13th/14th February, 1969 of the Bombay High Court in Special Civil Application Nos. 295 of 1962, 1397166 and 1086 of 1966 respectively.

R.B. Datar, Lalit Bhardwaj and Miss Madhu Moolchandani for the appellant in C.A. No. 1600/70.

Dr. L.M. Singhvi, R.H. Dhebar, S.K. Dholakia, R.C. Bhatia, Mrs. Ranjana Anand and L.K. Pandey for the appellants in C.A. No. 1568/70.

V.S. Desai and Dr. Y.S. Chitaley Mrs. J. Wad for the respondent in C.A. No. 1600 and 1568.

Mrs. J. Wad for respondent in C.A. No. 1416 of 1970.

The Judgment of the Court was delivered by

MISRA, J. The present appeals by certificate are directed against a common judgment of the Bombay High Court dated 13th of February, 1969. By the impugned order the High Court dismissed the petitions filed by the appellants under Article 226 of the Constitution challenging the demand of octroi duty by the Municipal Corporation of Poona.

The Bombay Provincial Municipal Corporation Act, 1949 (for short 'the Act') came into operation in the City of Poona on 15th of February, 1950. Section 127 (2) thereof authorises the Corporation to impose octroi and other taxes. Section 149 prescribes the procedure to be followed in levying taxes. Insofar as it is material, it reads:

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"149 (1) In 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, amplifying or adding to the rules at the time in force

(2) The rules shall be submitted by the Corporation Government and the provincial Government may either refuse to sanction them or refer them back to the Corporation for further consideration or sanction them either as they stand or with such modification as it thinks fit, not, however, involving an increase in the rate or rates of the levy or the extent thereof."

It appears that sometime in the year 1957 the Corporation in order to boost industrial development and to encourage the industrialists to establish industries in the city, had decided to give certain concession in the nature of exemption from octroi duty on certain products under certain conditions. Pursuant to this objective the Corporation made rule 62-B in Chapter VIII to the Schedule of the Raid Act in 1957. It reads:

"62-B. Industrial Estate or Area" means the area which Corporation may from time to time demarcate for the purposes of the rule as the area in which industries can - be suitably located in the interest of industrialisation of the city of Poona.

In respect of any raw materials or machinery imported by any industrial manufacturing concern established or to be established in the industrial estate solely for the purpose of manufacturing finished articles in the said industrial estate, the Commissioner shall not, for a period of twelve years only, from the date on which this rule comes into force, levy octroi..."

Under this rule no levy of octroi was to be made for a period of twelve years from the date on which the rule came into force.

Later on the Corporation framed extensive new octroi Rules under their resolution dated 7th of August, 1962, which received the sanction of the Government of Maharashtra on 28th of January, 1963.

As the entire argument on behalf of the appellants is based on rule 5 (8) of the said rules, it will be appropriate to quote the rule:

"5(8). In respect of any raw materials or machinery belonging to and imported by the industrial, manufacturing, processing or assembling concern established or to be established in the industrial estate or area for the purpose of manufacturing, processing, or assembling finished articles in the said industrial estate or area, the Commissioner shall not levy octroi for a period of 10 years from the date of demarcation of such areas as an industrial estate or area. Provided that this exemption not be given in respect of any raw materials imported for the purpose of refilling, packing or repacking only.

Provided that no exemption from octroi shall be given or claimable unless the importer produces at the time of 1) import but not afterwards a certificate in the form prescribed in Schedule P signed by the proprietor or the manager of the said industrial concern certifying that the raw materials or machinery that are being imported are the property of the ownership of the said industrial concern and that the said materials or machinery are to be used or are intended to be used by the said industrial concern for the purpose of manufacturing, processing or assembling finished articles in the said industrial estate or area.

For the purpose of this exemption 'Industrial Estate' or Area shall mean the area which the Corporation may from time to time demarcate for the purposes of this rule as the area in which industries can be suitably located in the interest of industrialisation of the City of Poona."

The Corporation had been levying octroi on the materials received by the appellants. They, however, sought

to get exemption under rule 5 (8) from octroi. As the pattern of facts in each of the appeals is similar, we shall deal with the application made by the appellant in appeal No. 1568 of 1970. The appellant in this case applied on 17th of November, 1964 for exemption from payment of octroi duty under rule 5 (8) of the octroi Rules. The

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Superintendent of octroi, Poona Municipal Corporation wrote back on 5th of December, 1964 as follows:

"...exemption from payment of octroi duty can only be granted if the area within which the concern is situated is declared as industrial area and is demarcated for the purpose under the Resolution of the Corporation. As the area in question has not been demarcated as an industrial area, under the resolution of the Municipal Corporation, the question of granting exemption from the payment of octroi duty does not arise. It is, therefore, regretted that the exemption asked for cannot be granted."

Similar was the position of the appellants in the other two appeals.

In the circumstances the appellants filed petitions under Article 226 of the Constitution for a mandamus requiring the Municipal Corporation to define and demarcate the area where their factories were situate as industrial area within the meaning of sub-rule (8) of rule S and to exempt them from payment of octroi.

It appears that during the pendency of the writ petitions rule 5 (8) of the octroi Rules was repealed by a notification with effect from 1st of September, 1968. The appellants, therefore, applied for amendment of the petitions. By these amendments, the appellants sought to take up two more pleas: (1) that the repeal of sub-rule (8) of rule 5 was illegal and/or ultra vires and, therefore, rule 5 (8) still continues to be effective, and (2) that in any event the appellants can get the benefit of rule 62-B which has not been repealed.

The High Court repelled both the contentions and held that old rule 62-B and the new rule 5 (8) were repealed and there was no legal flaw. It, however, took the view that despite the repeal of rule S (8) the appellants could still get the relief under rule S (8) if other conditions were satisfied, because of the proviso attached to the repealing rule. On merits, however, the High Court did not accept the case of the appellants. In its opinion the area in ques was not demarcated as industrial estate or area for the purpose of rule 5 (8). The High Court further held that in view of rule 5 (8) of the octroi Rules it was solely in the discretion of the Corporation to demarcate an area as industrial estate. The appellants have

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now come to challenge the order of the High Court by these A appeals.

Dr. Singhvi appearing for the appellant in one of the appeals, Civil Appeal No. 1568 of 1970, has contended that if certain area has been demarcated as an industrial area under the Bombay Town Planning Act, 1954 the same shall be taken to be an industrial area within the meaning of rule S (8) of the octroi Rules. The argument proceeded in the first instance on the assumption that the disputed area had already been included in the development plan under Bombay Town Planning Act, 1954 before the promulgation of rule S (8) and had thus automatically become an industrial estate or area for the purposes of that rule. But the development plan was prepared by the Corporation on 20th of November,

1958 which was sanctioned by the Government on 7th of July, 1966 and it came into force on 15th of August, 1966. Therefore, no area had been declared as industrial area under the development plan before 1957 and in fact it was only after the enforcement of the development plan on 15th of August, 1967 that the disputed area became an industrial area under the Bombay Town Planning Act. Dr. Singhvi's assumption clearly lacks any factual basis.

Now the question is whether demarcation of a particular area as an industrial estate or area in pursuance of the Bombay Town Planning Act could be taken to be a demarcation within the meaning of rule 5 (8). On a bare perusal of rule 5 (8) it will be apparent that for the purpose of the exemption from octroi an industrial estate or area means the area which the Corporation may from time to time demarcate for the purpose of this rule as the area in which industries can be suitably located for the interest of industrialisation of the City of Poona. Obviously, therefore, the demarcation made under the Town Planning Act will not be a demarcation for the purpose of rule 5 (8) and unless there is a demarcation as contemplated by rule 5 (8) the appellants cannot claim exemption from octroi. The view taken by the High Court is fully warranted by rule 5 (8) of the octroi Rules.

It is next contended for the appellant that the Corporation has refused to grant exemption to the appellant on the arbitrary ground that the concern of the appellant was not a new one. The learned counsel seeks to support his argument by the following expression used in sub-rule (8) of rule 5:

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"...concern established or to be established in the industrial estate or area."

The expression obviously includes not only a concern to be established but also one already established. But even then the appellant cannot get exemption unless he proves that there has been demarcation within the meaning of sub-rule (8) of rule 5 of the octroi Rules. While demarcating an area for the purpose of rule 5(8) the Corporation may have to take into consideration various factors and circumstances different from those which might weigh with it for making out an area as industrial under the Town Planning Act. The purpose of that Act is to plan the town and thus to keep industrial areas away from the residential or commercial areas and no industries could be set up in an area other than the industrial area declared in pursuance of that Act, while the purpose of demarcation as industrial estate or area under rule 5(8) is the giving of incentive and impetus to industries in a particular area. In so doing the Corporation has got to see whether a particular area is or is not suitably located in the interest of industrialisation irrespective of any consideration as to how the town is to be planned.

It was next contended that there has been violation of Article 14 of the Constitution in as much as some industries in similar situation have been granted exemption while the appellants have been deprived of the benefit of rule 5(8). There is no foundation for this ground. It has not been alleged, much less proved, that any other unit has been granted exemption even without a demarcation by the Corporation under rule 5(8). There is absolutely no force in this contention.

For the respondent it was contended that rule 5(8) of the octroi Rules having been deleted the appellant cannot seek exemption under rule 5(8). Dr. Singhvi for the

appellant in reply has contended that, for one thing, the appellant can fall back on the old rule 62-B as the same has not been repealed. The preamble to the new octroi Rules reads:

"Whereas it is found necessary to rescind Rules 26, 28, 29, 33, 62 and Rules 35 and 49 (in so far as they relate to octroi) contained in Chapter VIII of the Schedule of the Bombay Provincial Municipal Corporations Act, 1949, and all other existing rules and bye-laws relating to octroi enacted under the Bombay District Municipal Act, 1901,

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and the Bombay Municipal Boroughs Act, 1925, and A whereas it is found necessary to make new rules relating to octroi under sub-section (I) of section 149 of the Bombay Provincial Municipal Corporations Act, 1949, the Municipal Corporation of the City of Poona under its Resolution No. 78, dated 7.8-1962 in pursuance of the power vesting in it under clause (7) and clause (17) of section 457 read with section 454 of the said Act is pleased to rescind the rules and bye-laws aforementioned and to make the new rules as follows."

It is true that seven rules covering the subject of octroi and contained in chapter VIII of the Schedule to the Bombay Provincial Municipal Corporation Act 1949 have been specifically mentioned in the preamble as being rescinded and rule 62B is conspicuous by its absence therefrom, which fact apparently supports Dr. Singhvi's contention. A closer analysis of the preamble under which new rules were framed, however, makes it clear that rule 62B relating to octroi was repealed by implication. It is noteworthy that chapter VIII above mentioned does not contain any rule relating to octroi, except rule 62B, which did not find a place in the preamble. All rules relating to octroi and enacted under the 1901 and the 1925 Acts were also repealed without exception. Another pointer (which is perhaps the most important in this connection) is available in the fact that octroi was made the subject-matter of a new and comprehensive set of rules which not only deal with the matters covered by the rules contained in chapter VIII and specifically mentioned in the preamble but also the one covered by rule 62B, namely, the matter of exemption of goods from octroi in areas considered suitable for industrialisation. It does not stand to reason that the rule-making authority framed new rules, of which rule 5(8) covers the entire field of the earlier rule 62B, and yet left the latter intact. It could possibly not have been the intention of that authority to have two rules on the same subject and thus create confusion. The promulgation of rule 5(8) as a part of an exhaustive set of new rules, in our opinion, has the effect of a repeal of rule 62B by necessary implication, although not in express terms.

Dr. Singhvi, however, as a second string to the bow banks upon the proviso to the resolution of the Corporation seeking to repeal rule 5(8) which is in these words:

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"Octroi Rule 5(8) is hereby repealed. Provided that notwithstanding such repeal the exemption already granted shall continue until the expiry of the respective periods of their grants."

The resolution so passed was sent to the Government and, as held in *Municipal Corporation for the City of Poona etc. v. Bijlee Product (India) Ltd. etc.*, (1) the Government accepted it in full and sanctioned the repeal of rule 5(8), as also the proposed proviso. But then the appellants would not be

entitled to any benefit by reason of the proviso because they were never granted any exemption under rule 5(8).

The other contention raised by Dr. Singhvi is that the Corporation while denying the benefit of exemption from octroi has taken into consideration extraneous or irrelevant considerations. In support of his contention he referred to paragraph 7 of the counter affidavit filed by the Corporation in the writ petition, which is as follows:

"7. The respondents grant exemptions to concerns on certain policies. The purpose of extending exemption from octroi duty is to attract new industries in the Corporation limits. This policy is also carried out with a view to develop the city and also to secure employment to citizens and thus to have progress in the economic conditions, commerce and trade for the welfare of the people in general. Moreover the aim of giving exemptions to new industries is to secure permanent sources of income for the respondents after a certain period, i.e, ten years. This is the main object in granting exemption in the cases of new industries to be started that help the development of the City and secure permanent sources of income for the respondents after a definite period. Side by side, there are certain other objects also which are kept in view while determining the question of granting exemptions. These are whether Defence needs are satisfied, whether in the interest of public health and sanitation the grant of exemptions is beneficial, whether foreign exchange is saved, whether the problem of housing accommodation is solved, to some extent and the like. The respondents will suffer

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huge loss in revenue if exemptions are granted to each and every industry falling within the industrial areas under the Town Planning Scheme. All these considerations are within the full discretion of the respondents while determining the question of grant of exemptions'

In our opinion the considerations which have weighed with the Corporation cannot be said to be either irrelevant or extraneous. These considerations are within the ambit of rule 5(8) of the octroi Rules.

A lot of argument was advanced on behalf of the appellant by Dr. Singhvi on the nature of relief to be granted to the appellant. His contention was that a writ of certiorari may not be of much avail unless the Court grants a writ of mandamus directing the Corporation to demarcate the area in question under rule 5(8) of the octroi Rules and grant him the exemption from octroi duty. A number of authorities were cited that the Court can issue a writ of mandamus in suitable cases even in respect of administrative orders. We do not think it is necessary to decide this point as in our opinion the appellants have not been able to make out a case for any relief.

In Civil Appeal No. 1600 of 1970 Shri R.B. Datar adopted the arguments advanced by Dr. Singhvi. In the third appeal, No. 1416 of 1970 also the same questions of fact and law are involved and, therefore, this judgment will govern the other two appeals.

For the reasons given above these appeals must fail. They are accordingly dismissed. The parties, however, shall bear their own costs.

N.K.A.

Appeals dismissed.

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JUDIS