

PETITIONER:
MUNICIPAL BOARD OF ABU ROAD

Vs.

RESPONDENT:
JAISHIV & ORS. ETC.

DATE OF JUDGMENT 27/10/1987

BENCH:
MISRA RANGNATH
BENCH:
MISRA RANGNATH
RANGNATHAN, S.

CITATION:
1988 AIR 388 1988 SCR (1) 584
1987 SCC Supl. 301 JT 1987 (4) 176
1987 SCALE (2) 832

ACT:

Rajasthan Municipalities Act. 1959-S. 104 Levy of octroi by different municipalities within the State on varying basis and at varying rates-Validity of.

HEADNOTE:

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By a notification issued in 1964 under s. 104 of the Rajasthan Municipalities Act, 1959, the State Government revised the rate of octroi levied on cloth by the municipal board of Abu Road which was challenged by a batch of writ petitions. A Single Judge of the High Court held that the provisions of s. 104(1) of the Act were valid but the notification in respect of the municipal board of Abu Road relating to cloth was bad. During the pendency of the appeals before the Division Bench sub-s. (2) of s. 104 was added by s. 12 of the Rajasthan Municipalities (Amendment) Act of 1978. The Division Bench overlooked this amendment and reiterated the reasons of the Single Judge and dismissed the appeals. By another notification issued in 1976, the State Government revised the levy of octroi on all types of cloth in respect of Sujangarh Municipal Board which was challenged by another batch of writ petitions relying on the decision in the Abu municipal board cases; but the Single Judge, as also a different Division Bench which dealt with the matter did not entertain the challenge in view of the amended provision of s. 104 of the Act. These two groups of appeals arose from the two batches of writ petitions aforesaid.

Allowing the appeals preferred by the Municipal Board of Abu Road and dismissing the appeals relating to Sujangarh Municipality.

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HELD: There is no dispute as to exigibility of octroi. Every municipality under s. 7 of the Rajasthan Municipalities Act, 1959 is a body corporate. People residing within each municipal area can be classified as one group different from residing in any other municipality since octroi is to be levied by the municipality as provided in s. 104(1) subject to the control regarding the rates of levy by the State Government. The plea of discrimination on

the basis of the rates prevalent in another municipality cannot be entertained. The scheme in s. 104 takes note of the position that local conditions and needs varied and accord-

585

ingly both in the proviso to sub-s. (1) as also in sub-s. (2) itself, emphasis on that feature has been put. It is thus open to the State Government on the basis of local conditions and needs to prescribe different rates in relation to different municipalities in the matter of taxes to be levied, varying duty of octroi is, therefore, not open to challenge. The Division Bench while dealing with the appeals of Abu Road municipality should have taken note of the amendment of sub-s. (2) with retrospective effect. [588B-E]

2. In some municipalities the levy is on the value of goods while in others it is on the basis of weight. Here again, the State Government seems to have applied its mind and has authorised charge of octroi on weight basis taking into consideration the special circumstances. In bigger municipalities where there are wholesale markets particularly of cloth, a reduced rate of octroi has been prescribed to encourage larger import. In smaller municipalities where the import is for direct consumption the levy is on ad valorem basis at a higher rate. The State Government seems to have also taken into consideration that in smaller municipalities there is not much demand for costly and fine cloth which have higher prices while the position is otherwise in bigger municipal areas. This appears to be the justification for adopting the weight basis in respect of larger municipalities and ad valorem basis for the smaller municipalities. This seems to be a legitimate basis and we do not think any valid objection is available against this differential treatment. Law is well settled that if unequals are treated unequally there is no discrimination and Art. 14 of the Constitution is not available to be invoked. [588E-H]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 2255-56 of 1979.

From the Judgment and order dated 20.12.1978 of the Rajasthan High Court in Special Appeal Nos. 40 and 39 of 196.

V.M. Tarkunde, Tapas C. Ray, Chandmal Lodha, S.K. Jain, Dalveer Bhandari and Badridas Sharma for the appearing parties.

The Judgment of the Court was delivered by

RANGANATH MISRA, J. These are appeals by special leave. Two of them being Civil Appeals 2255 and 2256 of 1979 are by the Municipal Board of Abu Road. The rest of the appeals are by assessees living within the municipal area of Sujangarh. The common ques-

586

tion involved in these appeals is as to whether the levy of octroi by different municipalities- within the State of Rajasthan on varying basis-some on weight of the material and others on the ad valorem basis of the price thereof at varying rates is valid in law. The High Court decided against the Abu Road municipality while a different bench of that Court in the cases of Sujangarh municipality decided in its favour on the same question.

Entry 52 of List II of Schedule VII read with Article

246(3) of the Constitution authorises the State Legislature to raise a tax on the entry of goods into a local area for consumption, use or sale. The Rajasthan Municipalities Act, 1959 (hereinafter referred to as the Act) in Chapter VII makes provisions for imposition of taxes. Section 104 deals with obligatory taxes while section 105 authorises imposition of other taxes. As far as relevant, section 104 provides:-

"(1) Every Board shall levy, at such rate and from such date as the State Government may in each case direct by notification in the official gazette and in such manner as is laid down in this Act and as may be provided in the rules made by the State Government in this behalf, the following taxes, namely-

- (i)
- (ii) an octroi on goods and animals brought within the limits of the municipality for consumption, use or sale therein; and
- (iii).....

(2) A direction under sub-section (1) may provide for the levy of taxes at different rates in different municipalities having regard to their varying local conditions and needs, and on the same considerations and by a like direction, the State Government may, from time to time

- (i) vary uniformly or differently in relation to different municipalities, the rates of taxes levied, or
- (ii).....

587

Abu Road municipality prior to 1956 was a part of the State of Bombay and with effect from 1st November 1956, as a result of the States Reorganisation Act of 1956, became a part of the State of Rajasthan. While within the State of Bombay the Abu Road municipality had prescribed octroi duty on cloth at the rate of 1.9 annas per cent ad valorem and the rate continued till it was varied after promulgation of the Rajasthan Municipalities Act of 1959. The rates in cities like Jaipur were on the basis of weight. Judicial notice can be taken of the fact that the areas which now constitute the State of Rajasthan prior to independence of India were independent States of different dimensions and the local conditions and needs of the people inhabiting those areas considerably varied. There were 13 different Acts then in vogue governing the municipalities within that State. The Rajasthan Municipalities Act was, therefore, introduced to consolidate and amend the law relating to municipalities in that State. In February, 1962, the State Government by notification dated 13th February, 1962 issued under section 104 of the Act fixed the rate of octroi at 0.50 paise in place of 1.9 annas with effect from 15th February, 1962. By notification dated 10th of April, 1964, published in the Gazette on 20th of August, 1964, the State Government in exercise of powers under section 104 of the Act revised the rates of octroi and so far as the municipal board of Abu Road was concerned, Item 62 of the Schedule provided the rate of 1 per cent ad valorem on cloth. This led to the challenge before the High Court. The learned Single Judge who dealt with the writ petitions relied upon the provisions of section 104 of the Act as it then stood and came to hold that the provisions of section 104(1) of the Act were valid but the notification in respect of the

municipal board of Abu Road relating to cloth was bad. During the pendency of the appeals before the Division Bench of the High Court, sub-section (2) of section 104 was added by section 12 of the Rajasthan Municipalities (Amendment) Act of 1978. The Division Bench overlooked this amendment and reiterated the reasons of the learned Single Judge and dismissed the appeals by judgment dated 20th of December, 1978.

The state Government authorised levy of octroi on all types of cloth at the rate of one and a half per cent ad valorem in respect of Sujangarh Municipal Board by notification dated 3rd January, 1976. 34 writ petitions were filed before the High court challenging the levy. It was contended inter alia that there was unreasonable discrimination between the citizens and traders of cloth within Sujangarh Municipal area on the one hand and those of Jodhpur, Jaipur and other named towns on the other, as by authorising levy of octroi at different rates

588

and on different basis discrimination resulted. Reliance was placed on the decision in the Abu Board municipal cases but the Single Judge as also the Division Bench did not entertain the challenge by relying upon the amended provision of section 104 of the Act. That is how that group of appeals too has come before this Court by special leave.

There is no dispute as to exigibility of octroi. Every municipality under the Act is a body corporate. Section 7 of the Act provides for it. People residing within each municipal area can be classified as one group different from those residing in any other municipality since octroi is to be levied by the municipality as provided in section 104(1) of the Act subject to the control regarding the rates of levy by the State Government. The plea of discrimination on the basis of the rates prevalent in another municipality cannot be entertained. The scheme in section 104 of the Act takes note of the position that local conditions and needs varied and accordingly both in the proviso to sub-section (1) as also in sub-section (2) itself, emphasis on that feature has been put. It is thus open to the State Government on the basis of local conditions and needs to prescribe different rates in relation to different municipalities in the matter of rates of taxes to be levied. Varying duty of octroi is, therefore, not open to challenge. The Division Bench while dealing with the appeals of Abu Road municipality should have taken note of the amendment of sub-section (2) with retrospective effect.

In some of the municipalities the levy is on the value of the goods while in others it is on the basis of the weight. Here again, the State Government seems to have applied its mind and has authorised charge of octroi on weight basis taking into consideration the special circumstances. In bigger municipalities where there are wholesale markets particularly of cloth, a reduced rate of octroi has been prescribed to encourage larger import. In smaller municipalities where the import is for direct consumption the levy is on ad valorem basis at a higher rate. The State Government seems to have also taken into consideration that in smaller municipalities there is not much of demand for costly and fine clothes which have higher price while the position is otherwise in bigger municipal areas. This appears to be the justification for adopting the weight basis in respect of larger municipalities and ad valorem basis for the smaller municipalities. This again seems to be a legitimate basis and we do not think any valid objection is available against this differential treatment.

Law is well settled that if unequals are treated unequally there is no discrimination and Article 14 of the Constitution is not available to be invoked.

589

In view of what we have said above, the appeals preferred by A Municipal Board of Abu Road will have to succeed. They are allowed. Other group of appeals relating to Sujangarh Municipality have to be dismissed. Parties are directed to bear their own costs throughout.

Before we part with the cases we would like to suggest that in the backdrop of a consolidating and uniform municipal legislation now operating in the field, the State Government may rationalise the rate structure prevalent in different municipal areas so that assessment of octroi would be convenient, a common method would be adopted and the challenge which is raised now and again-though we have made it clear that it would be competent for the State Government to allow varying rates in different municipalities keeping the provisions in section 104 of the Act in view may be avoided.

H.L.C.

Appeals allowed.

590