

CASE NO.:
Appeal (civil) 2415 of 2000

PETITIONER:
The Associated Cement Cos. Ltd.

RESPONDENT:
State of Madhya Pradesh & Anr.

DATE OF JUDGMENT: 05/04/2005

BENCH:
RUMA PAL, ARIJIT PASAYAT & C.K. THAKKER

JUDGMENT:
J U D G M E N T

ARIJIT PASAYAT, J.

Appellant calls in question legality of the judgment rendered by a Division Bench of the Madhya Pradesh High Court at Jabalpur upsetting judgment of a learned Single Judge who held that the Municipal Council, Kymore, presently known as Kymore Nagar Panchayat (hereinafter referred to as the 'Municipal Council') is bound by the Government Order dated 15.12.1995 issued by the State Government under the Madhya Pradesh Municipalities Act, 1961 (in short the 'Act'). Learned Single Judge was of the view that the power vests with the State Government who issued the said Government Order and there is no justification on the part of the Municipal Council in making the impugned demands on the basis of rates fixed by it. It was consequentially declared that the present appellant was not liable to pay the differential sum and was only required to pay tax at the rate of 0.20% as fixed by the State Government.

The factual position which is almost undisputed is essentially as follows:

The appellant, a company registered under the Companies Act, 1956 (in short the 'Companies Act') has its head office at Bombay and is engaged in manufacture of various kinds of cement. It has one cement manufacturing plant at Kymore known as Kymore Cement Works. On 2.5.1991 the Municipal Council in exercise of powers conferred under Section 127(1)(xvi) of the Act had resolved to impose export tax on cement and other commodities which are exported from the limits of the Municipal Council. A Notification was duly published in the Official Gazette on 12.7.1991 levying terminal tax on cement at the rate of 0.50 per cent on the price of the cement. Challenge was made to the said Notification before the High Court and ultimately before this Court but without any success.

Undisputedly, the Notification dated 2nd May, 1991 was issued in exercise of power conferred under sub-sections (5) and (7) of Section 129 of the Act. The State Government accorded sanction to the proposal of the Municipal Council for imposition of terminal tax within whole of the municipality in terms of clause (xvi) of sub-section (1) of Section 127 of the Act. Thereafter, the State Government issued a General Circular i.e. Government Order dated 15.12.1995 indicating that there must be uniformity in the rates of export tax all over the State of Madhya Pradesh. So far as cement is concerned, the rate prescribed was 0.20 per cent on the price of the cement. The appellant received a notice on 6.8.1996 followed by a letter dated 23.8.1996 requiring payment of export tax at the rate of 0.50 per cent on the price of the cement as was prescribed in the Notification dated 2.5.1991. Since the

appellant was paying tax at the rate of 0.20 per cent it was directed to pay the differential amount.

A writ petition was filed by the appellant questioning the demand. It was contended that the Municipality is only entitled to recover the export tax on cement at the rate prescribed by the State Government and not as claimed by the municipality. It cannot impose tax on its own as the imposition is always subject to the approval of the State Government. Since the State Government in order to bring uniformity all over the State of Madhya Pradesh had issued a Government Order dated 15.12.1995 fixing the rate at 0.20 per cent on the price of cement, the Municipal Council cannot recover the tax at the old rate.

The writ petition was contested by the Municipal Council and it was stated that there cannot be any challenge to its competence to recover the export tax on cement at the rate prescribed by the Notification dated 2.5.1991 and the order passed by the State Government cannot override the said Notification.

Learned Single Judge came to hold that the Municipal Council cannot recover the tax at the old rate being of the view that when the State Government acted in terms of Sections 127 and 129 of the Act, the Municipal Council had no option but to obey. It is to be noted that there were two writ petitions filed by the two different assessee and one of them was by the present appellant.

Learned Single Judge's order was challenged by filing two Letter Patent Appeals. By the impugned judgment, the Division Bench held that the levy was a legislative function of the Municipality and the State Government did not have a statutory power to interfere with the levy. According to the Division Bench, the Notification dated 2.5.1991 held the field and the legislative enactment could not have been subjugated or superseded by exercise of the power by the State Government under any statutory provision or executive instruction. Once the executive function had been exercised by the Municipal Council and the levy had been imposed, the State Government could have only undone the same by another legislative enactment as contemplated under sub-section (2) of Section 127 of the Act as it stood at the relevant point of time by framing rules which were subsequently framed under Section 355 read with Section 127(1)(xvi) of the Act. The rules were known as Terminal Tax (Assessment and Collection) on the Goods exported from Madhya Pradesh Municipal Limits Rules, 1996 (in short the 'Rules'). The Rules were published in the official Gazette on 7.3.1997.

In support of the appeal, learned counsel for the appellant submitted that the relevant period to which the dispute relates is from January to June, 1996. He submitted that the view taken by the learned Single Judge is the correct view. On a bare reading of various provisions the position is clear that the Division Bench's view that the Municipal Council had the legislative competence to levy the tax and that the State's role in the whole scheme was not in any way intended to override the powers conferred on it is wrong.

In response, learned counsel for the Municipal Council submitted that the Division Bench has rightly come to hold that the State Government's role was really advisory and it cannot be said that the State's Government Order/Circular which was merely in the nature of instruction had the effect of overriding the Notification dated 2.5.1991.

In order to appreciate the rival submissions it would be necessary to take note of the provisions of Sections 127, 129, 130 and 131 as they stood at the relevant point of time. They so far as relevant read as follows:-

"Section 127- (1) A Council may, from time to time, and subject to the provisions of this Chapter, and any general or special order which the State Government may make in this behalf, impose in the whole or in any part of the Municipality any of the following taxes, for the purposes of this Act, namely:-

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(v) an octroi on animals or goods brought within the limits of the Municipality for sale, consumption or use within such limits;

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(xvi) a terminal tax on goods or animals imported into or exported from the limits of the Municipality:

Provided that a terminal tax under this clause and an octroi under clause (v) shall not be in force in any Municipality at the same time;

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(xxiii) any other tax, which the State Legislature has power to impose under the Constitution of India.

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(2) The State Government may, by rules made under this Act,-

(a) regulate the imposition, assessment and collection of taxes under this Act;

(b) prevent the evasion of taxes imposed under this Act; and

(c) prescribe the maximum and minimum limits as to the amount or rate of any tax.

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(4) Subject to the provisions of Article 277 of the Constitution of India, any tax which immediately before the commencement of this Act, was being lawfully levied by the Municipal Committee, Municipal Council or Municipal Board, as the case may be, notwithstanding that such tax is not specified in sub-section (1), shall continue to be levied by the Council.

(5) The imposition of any tax under this section shall be subject to the provisions of any other enactment for the time being in force.

Section 129: Procedure in imposing taxes: (1) A Council may pass a resolution to propose the imposition of any tax under section 127. The proposal

shall define the class of persons or description of property proposed to be taxed, the amount or rate of the tax to be imposed and the system of assessment and collection to be adopted.

(2) When such a resolution has been passed, the Council shall publish a notice in the prescribed form and manner along with the resolution.

(3) Any inhabitant of the Municipality objecting to the proposed tax may, within thirty days from the publication of the notice, submit his objection, in writing to the Council.

(4) The Council shall take the proposal and all objections received thereto into consideration at a special meeting, and may modify the proposal so as not to affect their substance, and may then forward them to the State Government, along with all objections received, its decisions thereon and its reasons therefor. If the Council decides to modify the proposals so as to affect their substance, it shall publish them again in the manner prescribed in sub-section (2) along with a notice indicating that they are in modification of those previously published for objection.

(5) The State Government may, on receiving such proposal either refuse to sanction them or sanction them-

(i) without modification or with such modifications not involving in increase of the proposed rate as it thinks fit; or

(ii) subject to such condition as to the application within the Municipality to any purpose or purposes of this Act as may be specified, of the whole or any part of the proceeds of such tax, as it may deem fit.

(6) No modification affecting the substance shall be made under sub-section (5), unless and until the modification has been accepted by the Council at a special meeting.

(7) If any proposal for taxation has been sanctioned under sub-section (5), the State Government may, by notification direct the imposition of the tax as sanctioned from such date which shall not be earlier than thirty days from the date of publication of such notification as may be specified therein, and thereupon the tax shall come into effect as from the date so specified:

Provided that where the tax so imposed is payable annually-

(i) the tax shall become payable with effect from the 1st day of April, 1st day of July, 1st day of October or 1st day of January, as the case may be, next following such imposition;

(ii) and becomes payable on a date other than the 1st day of April, it shall be payable quarterly till the 1st day of April next following.

(8) A notification of the imposition of a tax under this section shall be conclusive evidence that the tax has been imposed in accordance with the provisions of this Act.

Section 130- Abolition or variation in tax: The Council may, with the prior approval of the State Government, abolish, suspend or reduce the rate of any tax.

Section 131-Power of State Government in regard to relief in taxes: If, on a complaint made to it or otherwise, it appears to the State Government that any tax levied by a Council is unfair in its incidence or that such levy or any part thereof is obnoxious to the interest of the inhabitants of the Municipality, it may, by an order, require the Council to remove the objections to any such tax within such time as may be specified therein, and on the failure of Council to comply with the order within the time so specified to the satisfaction of the State Government, the State Government may, by notification and subject to such conditions or restrictions as may be specified therein, abolish, suspend or reduce the amount or rate of any tax.

A bare reading of Section 127 shows that the Municipal Council may from time to time and subject to the provisions of the Chapter (i.e. Chapter VII relating to "Municipal Taxation") in question and its general or special order which the State Government may make in that behalf impose in the whole or in any part of the Municipality any of the taxes for the purposes of the Act.

The present dispute relates to clause (xvi) of sub-section (1) of Section 127 of the Act. Under the constitutional scheme the power to levy the tax of the nature levied under Section 127 of the Act is that of the State Government which is clear from the fact that though the Council may impose any tax for the purposes of the Act, the same is subject to any general or special order which the State Government may make in that behalf. Furthermore, sub-section (2) of Section 127 authorises the State Government to regulate the imposition, assessment and collection of tax under the Act and also prescribes the maximum and minimum limits as to the amount or rate of tax. The position is also clear from clause (xxiii) which empowers the Municipality to levy such tax, which the State Legislature has power to impose under the Constitution of India. The source of power to levy is the one conferred on the State Legislature. The Municipality does not have any independent source. The power under Section 127 is exercised by the Municipality by delegation and is a case of delegated legislation. Section 129 is the procedural section dealing with the procedure for imposing taxes. The conditions contemplated in Section 129 are: (a) proposal to be passed by the Council for the purpose of imposition of any tax under Section 127; (b) when a resolution in terms of sub-section (1) is passed the Council is required to publish a Notification in the prescribed form and manner along with the resolution; (c) under sub-section (3) any inhabitant of the Municipality may submit his objection in writing to the Council within the specified period; (d) under sub-section (4) the proposal and all objections received thereto are to be placed for consideration at a special meeting. The procedure

to be followed when the Council decides to modify the proposal is also indicated. Sub-section (5) is very relevant for the present dispute in the sense that on receiving the proposal the State Government has two options. It may either sanction the proposal or refuse to sanction the same. When the State Government sanctions the proposal with modification or with such modification not involving in increase of the proposed rates as it thinks fit or subject to such conditions as to the application within the Municipality to any purpose or purposes of the Act which may be specified regarding application of the whole or any part of the proceeds of the tax. When any proposal for tax has been sanctioned under sub-section (5), the State Government may under sub-section (7) by Notification direct the imposition of the tax as sanctioned in the manner prescribed. Sub-section (8) provides that when a Notification of the imposition of tax under the Section is issued the same is conclusive evidence that the tax has been imposed in accordance with the provisions of the Act. Sub-section (6) is of great importance in the sense that no modification affecting the substance under sub-section (5) shall be made unless and until the modification had been accepted by the Council at a special meeting. Section 130 deals with abolition or variation in tax by the Council with prior approval of the State Government. Section 131 deals with power of the State Government having regard to the relief in taxes. The provision can be set in motion on receipt of any complaint or suo motu by the State Government. In the latter case, the State Government can act if it appears to it that any tax levied by Council is unfair in its incidence or that levy or any part thereof is obnoxious to the interest of the inhabitants of the Municipality. In either of the situations, the State Government may require the Council to remove objections to any such tax within a specified time and in case the Council fails to comply with the order within the time so specified to the satisfaction of the State Government, it may by Notification and subject to such conditions or restrictions as may be specified abolish, suspend or reduce the amount or rate of any tax.

At this juncture, it would be relevant to take note of the Government Order/Circular dated 15.12.1995. The same reads as follows:

"Madhya Pradesh Government
Government of Local Administration
Mantralaya, Vallabh Bhawan, Bhopal

No.F4/1/1/A3/95

Bhopal Dt.15.12.1995

To

All Commissioners,
Municipal Council,
Madhya Pradesh

All Chief Municipal Officers,
Nagar Palika Parishad/Nagar Panchayat,
Madhya Pradesh

Subject: Regarding imposition of terminal
Tax

There is provision for levy of terminal tax under Clause xvi of sub-section (1) of Section 127 of the Madhya Pradesh Municipalities Act, 1961 and procedure for levy of terminal tax has been laid down under Section 129. In exercise of the powers

conferred under both the sections and cancelling all the earlier instructions on the subject, the State Government hereby instructs to impose the terminal tax under the following limits and conditions:

- 1) No barrier shall be put for recovery of the terminal tax neither contractual procedure will be adopted. Where barrier post has been established, that should be immediately removed. For the recovery of the terminal tax the same procedure should be adopted which is applicable for the recovery of commercial tax and in the case of Krishi Upaj Mandi their licence holder should be made responsible for the recovery of the tax. For this purpose if any amendment in the bye-law is required, that should be done accordingly.
- (2) In view of the uniformity of the terminal tax in whole of the State, the rate is proposed in the annexed schedule.
- (3) All such goods which are exported out of the country shall be exempted from the terminal tax.
- (4) All such other goods which are carried or sent from one place to another within the State for distribution under the Public Distribution Scheme by the Food Corporation of India/Civil Supply Corporation/Other Agencies of the State Government shall also be kept exempted from the terminal tax.

There is no provision for imposition of terminal tax under the Madhya Pradesh Municipal Corporation Act, 1956 but the Municipal Corporation may levy this tax under the approval of the State Government since many of the Municipal Corporation have desired to levy terminal tax, the State Government hereby grant general approval for levy of the terminal tax to all the Municipal Corporations. The above mentioned conditions shall be applicable in the case of the Municipal Corporation also.

Sd/-
(C.S. Chadha)
Principal Secretary
Government of Madhya Pradesh
Local Administration Deptt."

Though the Government Order refers Sections 127 and 129 of the Act, it is to be noted that there was no proposal by the Municipal Council for reduction of the rate of tax. In terms of sub-section (1) of Section 127, the power to impose the tax has to be exercised by the Council which is of course subject to any general or special order of the State Government. The Municipal Council exercises the power as a delegatee and the power exercised under Section 127 as noted above is a delegated legislation. Since the Municipal Council has not proposed for any variation in the rate of tax the question of the State Government passing any general or special order in that regard is not contemplated. It is to be further noted that the Government Order treats the matter as instruction to all municipalities.

So far as Section 129 is concerned, there is no question of any suo motu fixation of rate by the State Government. In fact while acting on the proposal by the Municipal Council, the State Government can direct modification affecting the substance of the proposal. But the same cannot be given effect to unless and until the modification has been accepted by the Council at a special meeting. In the instant case that contingency has not arisen. Though in terms of Section 131 the State Government can initiate the action for reduction in the rate that can only be done if the enumerated circumstances exist. That situation has also not arisen in the instant case and admittedly the State Government has not acted in terms of Section 131 of the Act. Therefore, the Division Bench is right in its view that the circular of the State Government dated 15.12.1995 is really of no consequence. Further changes under Section 127 can be introduced in terms of sub-section (2) of Section 127 by framing rules. In the instant case, the rules were framed in March 1997 and did not have any retrospective effect.

We, therefore, find no reason to interfere with the judgment of the Division Bench though some of the observations and conclusions are not correct. Ultimate conclusion that the Municipal Council's stand that Circular dated 15.12.1995 did not bind it to reduce the tax does not suffer from any infirmity.

The appeal is accordingly dismissed with no order as to costs.