

A THE CANTONMENT BOARD, SECUNDERABAD

v.

G. VENKETRAM REDDY AND ORS.

MARCH 22, 1995

B [R.M. SAHAI AND S.B. MAJMUDAR, JJ.]

Cantonment Act, 1924:

C S.60—Municipal Corporation established under the Act—Whether comes within the purview of 'any Municipality in the State'—Whether could exercise power to levy octroi—Held: Yes.

Constitution of India, 1950:

D Articles 243 P, 243-Q—Meaning of 'Municipalities'—Expression 'Municipality in the State' to be read in a broad and larger sense—To include Corporation.

E The jurisdiction and power of the Cantonment Board of Secunderabad to levy and collect octroi was challenged before the High Court, and the Single Judge upheld the challenge as there was no machinery provided for the assessment of octroi. It was held that the provision for appeal against any imposition under S.84 of the Cantonment Act, 1924 did not remove the infirmity as in absence of any provision for assessment the right of appeal was illusory and non-existent.

F In appeal the Division Bench held that S.60 of the Act empowered the Board to levy any tax, but since no octroi was levied by any Municipality in the State and it was levied only by the Corporation of Hyderabad which could not be held to be a Municipality, the Board could not impose any octroi in exercise of its power under S.69 of the Act. Hence this appeal by the Board.

G Allowing the appeal, this Court.

H HELD: 1. The word 'Municipality' has a wide connotation. The Constitution also understands it in broad sense. Chapter (IX- A) deals with the Municipality. Clause (e) of Article 243-P defines Municipality. Art. 243-Q also indicates that a Corporation or a Municipal Council or Nagar

Panchayat is constituted on strength of population and the area or place where it is constituted namely rural or urban. But all the three are deemed to be municipality. A Municipal Corporation with a larger area is as much a municipality as a council with smaller area. The expression, 'Municipality in the State' thus has to be read in broad and larger sense. The Hyderabad Corporation which came into existence in 1956 is as much municipality as any other municipality in the State. Since Corporation is imposing octroi the Board could in exercise of power under Section 60 levy octroi. [940-H, 941-D-E]

2. The order passed by the High Court is set aside. The case is remitted back to the Division Bench to restore the appeal to its original number and decide the same in accordance with law. [941-E]

Webster's New Dictionary; and Black's Law Dictionary, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 774 of 1986.

From the Judgment and Order 12.12.85 of the Andhra Pradesh High Court in W.A. No. 627 of 1977.

S. Markandeya, H.P. Sharma, A.Singh and Ms. C. Markandeya for the Appellant.

Y.P. Rao, Adv. (NP) for the Respondents.

The following Order of the Court was delivered:

The question of law that arises for consideration in this appeal is whether a Municipal Corporation established under an Act is, 'any Municipality in the State' within the meaning of Section 60 of the Cantonment Act, 1924 (hereinafter referred as 'the Act').

It is the answer to this question that would determine the jurisdiction and power of the Cantonment Board of Secunderabad (in brief 'the Board') to levy and collect octroi on substitute of ghee and all kinds of food and drinks brought inside the cantonment for use, consumption and sale. The challenge to the levy was upheld by the learned Single Judge as there was no machinery provided for the 'assessment' of octroi. It was held that the provision for appeal against any imposition under Section 84 of

A the Act did not remove the infirmity as in absence of any provision for assessment the right of appeal was illusory and non-existent. In appeal filed by the Board before the Division Bench under Letters Patent the order of the learned Single Judge was maintained as there was no power to levy any octroi. It was held that Section 60 of the Act empowered the Board to levy any tax which under any enactment for the time being in force could be imposed in any Municipality in the State. But since no octroi was levied by any Municipality in the State and it was levied only by the Corporation of Hyderabad which could not be held to be Municipality the Board could not impose any octroi in exercise of its power under Section 60 of the Act.

C Section 60 of the Act reads as under:-

D "S.60 - General power of taxation:- (1) The Board may impose with the previous sanction of the Central Government in any Cantonment any tax which under any enactment for the time being in force may be imposed in any Municipality in the State wherein such cantonment is situate".

A very perusal of it would indicate that this is a general power of taxation which is enjoyed by the Board which can be exercised with the previous sanction of the Central Government. There was no dispute that the octroi was levied by the Cantonment Board after obtaining sanction of the Central Government. But what has been found is that the ambit of the power being restricted to only those taxes which for the time being in force could be imposed by any Municipality in the State wherein such cantonment was situated, the appellant was precluded from imposing octroi as no such octroi was being levied by any Municipality in the State. How the expression, 'Municipality in the State' should be understood? The word 'Municipality' has been defined in Webster's New Dictionary as, 'a town, city or borough which has local self government'. In Black's Law Dictionary it is extended to 'legally incorporated or duly authorised association of inhabitants of limited area for local governmental or other public purposes. G A body politic created by the incorporation of the People of a prescribed locality invested with the subordinate powers of legislation to assist in the civil government of the State and to regulate and administer local and internal affairs of the community'. This word thus has a wide connotation. The Constitution also understands it in broad sense. Chapter (IX-A) deals H with the Municipality. Clause (e) of Article 243-P defines Municipality to

mean, 'an institution of self- government constituted under Article 243-Q'. A
Article 243-Q reads as under:

"243-Q. Constitution of Municipalities :-

(1) There shall be constituted in every State, -

(a) a Nagar Panchayat (by whatever name called) for a transitional
area, that is to say, an area in transition from a rural area to an
urban area;

(b) a Municipal Council for a smaller urban area; and

(c) a Municipal Corporation for a larger urban area, in accordance
with the provisions of this Part:

Provided"

This definition indicates that a Corporation or a Municipal Council or
Nagar Panchayat is constituted on strength of population and the area or
place where it is constituted namely rural or urban. But all the three are
deemed to be municipality. A Municipal Corporation with a larger area is
as much a municipality as a council with smaller area. The expression,
'Municipality in the State' thus has to be read in broad and larger sense.
The Hyderabad Corporation which came into existence in 1956 is as much
municipality as any other municipality in the State. Since Corporation is
imposing octroi the Board could in exercise of power under Section 60 levy
octroi.

In the result, this appeal succeeds and is allowed. The order passed
by the High Court is set aside. The case is remitted back to the Division
Bench to restore the appeal to its original number and decide the same in
accordance with law. Since no one has appeared on behalf of the respon-
dent, there shall be no order as to costs.

G.N.

Appeal allowed.