

MUNICIPAL CORPORATION FOR THE CITY OF POONA ETC. **A**

v.

BIJLEE PRODUCTS (INDIA) LTD. ETC. ETC.

September 14, 1978

[S. MURTAZA FAZAL ALI, P. N. SHINGHAL AND A. D. KOSHAL, JJ.] **B**

Bombay Provincial Municipal Corporation Act, 1949, Sections 127(1), (2), (3) r/w S. 149 of the Act—Exemption from payment of octroi duty quashed—Whether proposed repeal of rule 5(8) contrary to the exemption granted—Interpretation of Govt. Resolution dated 30-7-68.

The appellant Corporation sometime in the year 1957 invited applications for allotment of plots in the industrial estate guaranteeing that for a period of 12 years no octroi duty will be levied as provided in rule 62-B and also specifically inserted a clause at item (B) of the conveyances executed by the respondents to that effect. Some years later, the appellant passed a resolution dated 30-5-68 recommending to the Govt. to bring about an amendment in rule 62-B which, *inter alia*, contained: "octroi rule 5(8) is hereby repealed.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". However, the State Government, while accepting the recommendation of the corporation, in para 2 of its resolution dated 30-7-78 "specified 1st September 1968 as the date on which its sanction shall become operative". The respondents who felt that they were adversely affected filed separate writ petitions in the Bombay High Court, which were allowed. **C**

Allowing the appeals by certificate, the Court **D**

HELD: 1. Sub-section (2) of Section 149 of the Bombay Provincial Municipal Corporation Act, 1949 gives three alternative courses to the Government. After the matter is submitted by the Corporation to the Government (1) it may refuse to sanction the rules recommended, or (2) it may refer back to the Corporation any rule for further consideration or (3) it may sanction the rule as recommended or with certain modifications as it thinks fit. There can be no doubt that the Government had the power to make modifications in the recommendation submitted by the Corporation, but the express provision by which the Government could refer the matter back to the Corporation is clearly suggestive of the fact that the Government would refer the matter to the Corporation if it wanted to modify the proposal. [774A-C] **E**

In the instant case: **F**

(a) While exercising its power to delete rule 5(8) the Government had the following materials before it, (1) It knew that Rule 5(8) had granted exemption for a period of 10 years to some industrialists, who on the basis of the representation made by the Corporation had set up their industries; (2) the Municipal Corporation had made an express recommendation that while deleting rule 5(8) the previous concessions regarding exemption from octroi duty must **G**

H

A continue, (3) the Government could delete rule 5(8) in the exercise of the powers conferred on it by sub-sections (2) and (5) of section 149 and sub-section (1) of section 455 of the Act. [773E-F]

B (b) The Government has done nothing of the sort as required by S. 149(2) of the Act, but has clearly passed the order purely in terms of the recommendation. Therefore, the Government never intended to make any changes in the rule recommended by the Corporation particularly because the question of not accepting the condition recommended by the Corporation, namely, that the existing concessions must continue would entail taking away of vested rights and put the Corporation in a wrong box inasmuch as it would than have to go back from its own assurance. [774B-D]

C 2. The Government order dated 30th July, 1968, must be so interpreted as to include the proviso recommended by the Corporation while deleting rule 5(8), namely, that the concessions already granted to the industrialists would continue. It is true that the Government resolution does not say so in so many words, but having regard to the language in which it was couched and express reference to the letter dated 2nd July, 1968 of the Municipal Commissioner contained in the order itself which clearly mentions that rule 5(8) should be repealed provided the exemption already granted shall continue until the expiry of the respective periods of their grants, the aforesaid condition would be deemed to be included in the order dated 30-7-1968 by necessary intendment. Such an interpretation will be fully in consonance with the well settled rule of interpretation of statutes that any amendment to a statute affecting the legal rights of an individual must be presumed to be prospective unless it is made expressly or is impliedly retrospective. This principle is contained in section 7 of the Bombay General Clauses Act. [774E-G]

E In the instant case, the result of a different view would be that a valuable right vested in the respondents and others would be taken away and there is no evidence in the language of the Government order to indicate any such intention. [774G-H]

F (b) Even assuming that the order of the Government deleted rule 5(8) without any condition and without retaining the exemption granted to the respondents, the order would suffer from a very serious legal infirmity. Section 149(2) of the Act empowers the Government to modify the recommendation of the Corporation provided it does not involve any increase in the rate or rates of the levy or the extent thereof. There can be no doubt that if the concession of exemption from octroi duty given to the respondents is unconditionally withdrawn with effect from 1-9-1968 then this would have the effect of extending the application of the rules to an area where they did not apply. This is yet another reason why the Government's impugned order should be read down so as to provide for deletion of rule 5(8) with the exception that the concession already granted will continue. The deletion of Rule 5(8) has not taken away the concession already granted to the respondents. [775A-D]

H CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2009 and 2081 of 1969.

From the Judgment and Order dated 18-3-1969 of the Bombay High Court in S.C.A. Nos. 541/69 and 483/69 and

CIVIL APPEAL NOS. 355 and 356 of 1970

From the Judgments and Order dated 18-3-1969 and 12-3-1969 of Bombay High Court in S.C.A. Nos. 542/69 and 2149/68 respectively and

CIVIL APPEAL NO. 94 of 1971

Appeal by Special Leave from the Judgment and Order dated 21-12-1970 of the Bombay High Court in S.C.A. No. 2081/70.

Y. S. Chitale, J. L. Nain (In C.A. 94/71), *C. K. Ratnaparkhi* and *A. G. Ratnaparkhi* for the Appellants in C.As Nos. 2009, 2081/69, 355, 356/70 and Respondents in C.A. 94/71.

A. K. Sen, (In C.A. 2009/69) *V. S. Desai* (C.A. 94/71) *A. B. Devan* (in C.A. 356 of 1970 and also intervener in C.A. 94/71) *V. M. Tarkunde, A. K. Sen, S. M. Thakore, I. N. Shroff, H. S. Parihar* and *R. P. Kapur*; for the Respondent in C.As. Nos. 2009, 2081/69, 355, 356/70 and Appellant in C.A. 94/71 and Interveners in C.As. 2009, 2081/69 and 355-356/70.

The Judgment of the Court was delivered by

FAZAL ALI, J.—These appeals have been brought by certificate of fitness granted by the Bombay High Court against the order of the High Court in S.C.A. No. 2149 of 1968 dated 12th March, 1969. By an order dated 12-7-1970 this Court directed the four appeals to be consolidated because the points involved were the same. The appeals have been filed by the Municipal Corporation for the City of Poona (hereinafter called the Corporation) against whom a writ filed before the Bombay High Court was allowed and the orders demanding the octroi duty from the respondents were quashed.

The facts of the case insofar as they are pertinent to the decision of the points in issue lie within a very narrow compass. The entire case turns upon the interpretation of some of the provisions of the Bombay Provincial Municipal Corporation Act 1949 (hereinafter called the Act) and certain notifications issued thereunder. It appears that under section 127(1) of the Act the Corporation has got the power to impose property taxes and taxes on vehicles, boats and animals. By sub-section (2) it has the option to impose other kinds of taxes one of which is octroi with which we are primarily concerned in these appeals. Sub-section (3) provides that the Municipal taxes shall be assessed and levied in accordance with the provisions of the Act and the rules. Section 149 sub-section (1) enjoins the Corporation to make detailed provisions in connection with the assessment and

A collection of any of the taxes and sub-section (2) of section 149 enables the Government either to refuse to sanction the rules and refer the same back to the Corporation for consideration or to sanction the same with or without modifications. We shall extract the relevant sections in a later part of our judgment.

B It appears that some time in the year 1957 the Corporation in order to boost industrial development and to encourage the industrialists to establish an industrial estate in the city had decided to give certain concessions in the nature of exemption of octroi duty on certain products under certain conditions. In pursuance of this objective the Corporation made the following rule 62B :

C "62-B : 'Industrial Estate or Area' means the areas 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.

D 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."

E The Corporation invited applications for allotment of plots in the industrial estate guaranteeing that for a period of 12 years no octroi will be levied as provided in rule 62-B. Acting on the representation made by the Corporation, the respondents, namely, the Bijli Products (India) Ltd., Henley Cables India Ltd., Indian Hume Pipe Co. Ltd. and Kirloskar Pneumatic Co. Ltd. applied for the allotment of plots and sale deeds were executed as mentioned below :—

Name of the Company	Area purchased	Sum for which area was purchased.	Date of purchase
		Rs.	
G Bijlee Products India Pvt. Ltd.	86064	34,425.60	10. 9. 65
Henley Cables India Ltd. Bombay	1566006	399331.53	29. 6. 60
India Hume Pipe Co. Ltd. Bombay	164960	42064.88	10. 10. 69
	553795	134838.71	16. 1. 59
H Kirloskar Pneumatic Co. Ltd. Poona-3	754436	112093.53	23. 5. 58

The conveyances executed by the respondents contained the following clause at item (B) :

“(B) Octroi will be excused following and according to the rule made by the Poona City Municipal Corporation from the date 1-11-1957 in respect of Octroi for Hadapsar Industrial Colony Scheme. We have agreed and hereby assure that we will not rescind or alter the octroi rule made by the Poona City Municipal Corporation during the period upto 10-10-1969 in such a way as to reduce the facilities given to you according to the said rule”.

The Corporation however made rule 5(8) which runs thus :—

“In respect of any new materials or machinery belonging to and imported by any 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 area as an industrial estate or area; provided that this exemption shall 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 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 the 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”.

The combined effect therefore of rule 62-B and rule 5(8) was that the industrialists who were allotted plots in the City of Poona were to be exempted from octroi duty on any new materials or machinery belonging to them and imported by them in the industrial estate or Area for manufacturing, processing or assembling articles in the said area. The exemption was to last for a period of 10 years from the date of demarcation of such area.

A Some years later the Corporation by a resolution dated 30-5-1968 recommended to the Government to bring about an amendment in rule 62-B. This resolution may be extracted thus :—

B “Considering the reasons and recommendations given by the Municipal Commissioner in his letter under reference and considering the objections and suggestions received from citizens in response to the notification, it is resolved that concessions already granted by the Corporation should not be stopped before deletion of the Octroi Rule 5(8). However, new demarcation of industrial areas should not hereafter be made on the ground of Octroi Rule 5(8) and no new concession of Octroi Rule 5(8) hence forth be granted to any industry. Hence, the Octroi Rule 5(8) should be deleted and instead the following amendment is hereby sanctioned.

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D Sanction of the Maharashtra State Government to this amendment should be obtained by the Municipal Commissioner as required under section 455(1) of the Bombay Provincial Municipal Corporations Act, 1949.

Proposed Octroi Rule 5(8).

E 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”—

F It appears that this resolution was passed on the recommendation of the Municipal Commissioner as the purpose of giving initial concessions had already been achieved and rule 5(8) had become superfluous. The resolution however took care to keep the commitment of the Corporation intact and it was therefore recommended that there should be a proviso to the effect that the exemptions already granted under rule 5(8) were to continue until the expiry of the respective periods of the grants. Thus, the recommendation for maintaining the exemption from octroi duty to industrial areas which had already been demarcated and allotted, was made by the Corporation. When the matter reached the Government of Maharashtra it passed a resolution dated 30-7-1968 to be effective from 1-9-1968 which runs thus :—

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H “Government Resolution, Urban Development, Public Health and House, Department No. PMC/2862/15/C dated 28th January, 1963.

Government Circular, Urban Development, Public Health and Housing Department No. MUN/1164/58163/A dated 25th February, 1966. **A**

Letter No. MC/101 dated 2nd June, 1968 from the Municipal Commissioner, Poona Municipal Corporation. **B**

“Resolution : In exercise of the powers conferred by sub-sections (2) and (5) of section 149 and sub-section (1) of section 455 of the Bombay Provincial Municipal Corporation Act, 1949 Government is pleased to accord sanction to the deletion of Clause (8) of Rule 5 of the Octroi Rules of the Poona Municipal Corporation. **C**

2. In exercise of the powers conferred by sub-section (3) of section 149 of the Bombay Provincial Municipal Corporation Act, 1949 Government is pleased to specify 1st September, 1968 as the date on which this sanction shall become operative. **D**

By order and in the name of the

Governor of Maharashtra **E**

Sd./ C.F. Mathias

Under Secretary to the Government of Maharashtra, Urban Development, Public Health and Housing Department”. **F**

Thus, the Government accepted the recommendation of the Corporation and granted sanction to the deletion of clause (8) of rule 5 of the Octroi Rules of the Corporation. The Corporation in pursuance of the Government sanction sought to realise the octroi duty from the respondents and other industrialists. The respondents therefore filed separate writ petitions in the Bombay High Court for quashing the order on the ground that the Corporation having allotted the plots to the respondents on the distinct assurance and representation that the octroi duty will not be levied, was estopped from realising the octroi duty on the doctrine of *promissory estoppel*. **G**

It was also argued before the High Court that the Government order in question could not take away the vested rights of the respondents. The plea taken by the respondents in the High Court found favour **H**

A with the Court which allowed the petitions and quashed the Government order and enjoined the Corporation from realising any amount from the respondents by way of octroi duty. The High Court, however, gave certificates of fitness and hence these appeals before us.

B Dr. Y. S. Chitale, learned counsel appearing for the Corporation, raised two main points before us. In the first place, it was argued that the High Court erred in law in giving effect to the doctrine of promissory estoppel when there could be no estoppel against a statute. The Government order deleting rule 5(8) being of a statutory character could not estop the Corporation from realising octroi duty which it was bound to realise under the mandate of the law. Secondly, it was submitted that there could be no question of taking away vested rights because the Government order must be deemed to have been passed on the recommendation of the Corporation. As against this, counsel for the respondent submitted that so far as the Corporation is concerned it will be bound by the doctrine of promissory estoppel and it can refuse to realise octroi duty as enjoined by the Government order or if it realises the same, it would have to refund the same in order to keep up its commitment. Thirdly, it was submitted by the respondents as also by the intervener that having regard to the history and the circumstances in which rule 5(8) and 62-B were introduced the order of the Government dated 30-7-1968 was to be so read as to incorporate the proviso suggested by the Corporation, namely, that the concessions already granted to the industrialists would not be disturbed. Mr. Dewan submitted that even if the Government order dated 30-7-1968 sought to take away the exemption, the order itself was without jurisdiction inasmuch as the conditions required by section 149(2) of the Act had not been complied with.

F We have given our anxious consideration to the arguments advanced before us by counsel for the parties. We feel that in the circumstances of this case and in the view that we take, it is not at all necessary for us to travel into the domain of promissory estoppel. We are clearly of the opinion that reading the order dated 30-7-1968 against the history and background of the recommendation of the Corporation, the first contention of the respondents must prevail.

G It is not disputed that the Corporation in its resolution dated 30-5-1968 while recommending to the Government to delete rule 5(8) expressly recommended that the exemption already granted would continue. The last paragraph of the resolution runs thus :—

H “Octroi Rule No. 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".

Before this, the Corporation itself had taken a policy decision that the industrialists choosing to set up industries in the demarcated area would be given exemption from octroi duty as contained in rule 62B. It was on this representation that the respondents applied for allotment of the plots and spent huge amounts of money for the import of machinery and the materials and set up industries.

The resolution of the Government deleting rule 5(B) read as a whole also clearly indicates that it did not intend to depart from the recommendation made by the Corporation or to modify the same in any manner. On the other hand, the resolution clearly indicates that it was being passed on the basis of the letter of the Municipal Commissioner dated 2nd June, 1968 as would be manifestly clear from the citations in the resolution which may be extracted thus :

"Read : Government Resolution, Urban Development, Public Health and House Department No. PMC/2862/15/C dated 28th January, 1963.

Government Circular, Urban Development Public Health and Housing Department No. MUN/1164/58163/A dated 25th February, 1966.

Letter No. MC/101 dated 2nd June, 1968 from the Municipal Commissioner, Poona Municipal Corporation".

It is, therefore, evident that while exercising its power to delete rule 5(8) the Government had the following materials before it, (1) It knew that Rule 5(8) had granted exemption for a period of 10 years to some industrialists, who on the basis of the representation made by the Corporation had set up their industries; (2) the Municipal Corporation had made an express recommendation that while deleting rule 5(8) the previous concessions regarding exemption from octroi duty must continue, (3) the Government could delete rule 5(8) in the exercise of the powers conferred on it by sub-sections (2) and (5) of section 149 and sub-section (1) of section 455 of the Act.

Section 149(2) runs thus :

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

- A** This sub-section gives three alternative courses to the Government. After the matter is submitted by the Corporation to the Government (1) it may refuse to sanction the rules recommended, or (2) it may refer back to the Corporation any rule for further consideration or (3) it may sanction the rule as recommended, or with certain modifications as it thinks fit. There can be no doubt that the Government had the
- B** power to make modifications in the recommendation submitted by the Corporation, but the express provision by which the Government could refer the matter back to the Corporation is clearly suggestive of the fact that the Government would refer the matter to the Corporation if it wants to modify the proposal. In the instant case, the Government has done nothing of the sort but has clearly passed the order purely in
- C** terms of the recommendation. In these circumstances, therefore, the inference is irresistible that the Government never intended to make any changes in the rule recommended by the Corporation particularly because the question of not accepting the condition recommended by the Corporation, namely, that the existing concessions must continue would entail taking away of vested rights and put the Corporation in a
- D** wrong box inasmuch as it would then have to go back from its own assurance. The Government must certainly have been aware of these complications and if it thought that in spite of all this rule 5(8) should be deleted unconditionally, it would have referred the matter back to the Corporation in order to get its revised views in the matter. But that was not done. In these circumstances, therefore, we are of the
- E** opinion that the Government order dated 30th July, 1968 must be so read as to include the proviso recommended by the Corporation while deleting rule 5(8), namely, that the concessions already granted to the industrialists would continue. It is true that the Government resolution does not say so in so many words, but having regard to the language in which it was couched and to the express reference to the letter
- F** dated 2nd July, 1968 of the Municipal Commissioner contained in the order itself which clearly mentions that rule 5(8) should be repealed provided the exemption already granted shall continue until the expiry of the respective periods of their grants, the aforesaid condition would be deemed to be included in the order dated 30-7-1968 by necessary
- G** intendment. Such an interpretation will be fully in consonance with the well settled rule of interpretation of statutes that any amendment to a statute affecting the legal rights of an individual must be presumed to be prospective unless it is made expressly or is impliedly retrospective. This principle is contained in section 7 of the Bombay General
- H** Clauses Act. In the instant case, if we were to take a different view the result would be that a valuable right vested in the respondents and others would be taken away and we are unable to find any evidence in the language of the Government order to indicate any such intention.

Even assuming that the order of the Government deleted rule 5(8) without any condition and without retaining the exemption granted to the respondents, the order would suffer from a very serious legal infirmity. Section 149(2) of the Act empowers the Government to modify the recommendation of the Corporation provided it does not involve any increase in the rate or rates of the levy or the extent thereof. There can be no doubt that if the concession of exemption from octroi duty given to the respondents is unconditionally withdrawn with effect from 1-9-1968 then this would have the effect of extending the application of the rules to an area where they did not apply. This is yet another reason why the Government impugned order should be read down so as to provide for deletion of rule 5(8) with the exception that the concession already granted will continue.

For the reasons given above, we interpret the Government order mentioned above in the manner aforesaid and hold that the deletion of rule 5(8) has not taken away the concession already granted to the respondents and, therefore, the respondents are not affected by the order. In view of this, it is not necessary to quash the order of the Government because the respondents get the relief they wanted if we interpret the Government order as we have. The order of the High Court quashing the Government order is, therefore, set aside and the appeals are disposed off accordingly, in the circumstances without any order as to costs.

S.R.

Appeals allowed.

C.A. No. 94 of 1971

FAZAL ALI, J.—This appeal by special leave is directed against the order of the High Court dated 21st December, 1970 dismissing the petition in limine. In view of the findings given and the decision rendered by us in Civil Appeals No. 2009 and 2081 of 1969 and 355 & 356 of 1970 it is not necessary for us to go into the details of the facts of this case as we have already held that the Government order dated 30-7-1968 must be read to this effect that rule 5(8) is deleted but the previous concessions given to the industrialists concerned will continue. It appears, however, that so far as the appellant is concerned, it has not executed any sale-deed though it was allotted a plot which was also demarcated. Apart from the point which we decided in the other appeals there being additional points of law involved in this case, we do not think that this was a fit case which should have been dismissed *in limine* by the Bombay High Court. We, therefore, allow this appeal and remit the case to the High Court for re-admitting and disposal of the writ petition according to law. The point regarding the

▲ interpretation of Government order dated 30-7-1968 has already been decided by us in Civil Appeals No. 2009 and 2081 of 1969 and 355 & 356 of 1970 referred to above and will apply to the present case also, if the appellant is able to prove that it falls within the four corners of the Government order.

S.R.

Appeal allowed & remitted.