

1996 (2) GCD(UJ) 39

GUJARAT HIGH COURT

Hon'ble Judges:R.Balia, J.

Mansukhbhai Devabhai Versus State Of Gujarat

Special Civil Application No. 1843 of 1996 ; *J.Date :- MARCH 18, 1996

- [GUJARAT PANCHAYATS ACT, 1961](#) Section - [202](#)

GUJARAT PANCHAYATS ACT, 1961 - S. 202 - grant of contract for Collector of octroi by public auction - mode of collection of octroi - legality and validity of - in one pending petition no. 1280 of 1990 larger issue regarding validity of Panchayat's authority to grant contract for collection of octroi is subject matter - court in that case, made grant of contract subject to certain conditions - held, respondent no. 4 is directed that in case Panchayat decides to opt for collecting octroi through contractor, grant of contract shall be subject to same conditions as has been stated by Division Bench in Sp. Civil Application no. 1280 of 1990 - application dismissed.

Imp.Para: [[8](#)]

Equivalent Citation(s):

1996 (2) GCD(UJ) 39 : 1996 GLHEL_HC 207520

JUDGMENT :-

R.Balia, J.

1 Rule. Mr. Dhaval Dave, learned A.G.P. waives service of rule for respondents Nos. 1,2 and 6. Mr. V.S. Metha waives service of rule for respondent No.4. Mr. K. S. Nanavati, waives service of rule for respondent No.7. The service of rule in respect of respondent Nos. 3 and 5 is dispensed with.

2 By a resolution dated 29.2.1996, the Gram Panchayat Talala Gir decided to give contract for collection of octroi by public auction in exercise of its power under section 202 of the Gujarat Panchayats Act. The trading community of the village had some reservation about the method of collecting octroi through contractor and had raised grievances about it before the Gram Sabha that instead of giving the contract for collection of octroi, panchayat itself should collect the octroi. Alternatively it offered a fixed amount in excess of the upset price fixed for the bid of contract for collecting octroi as its offer for securing the contract, as Talala Vivid Vyapar Mandal - respondent No. 7. In the wake of this controversy, the Collector issued a notice on 02.03.1996 stating that there are good grounds for staying the resolution of the Panchayat dated 29.2.1996 inviting bids at public auction on 19.3.1996 for the grant of said contract and he issued notice for his intention to exercise power under sec. 249(6) for canceling the resolution dated 29.2.1996. A fax message to this was also issued by the Collector. The petitioner has challenged in the aforesaid petition, the authority of

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Collector to act in the matter of exercise of power under sec. 202 by the panchayat by having recourse to his power under sec. 249(6). While issuing notice this court passed an ex parte interim order to the following effect:

"Notice returnable on 15.03.1996. The respondents are restrained from acting otherwise than in accordance with resolution dated 29.2.1996, i.e., resolution No. 3. passed by Talala Gram Panchayat at its meeting held on 29.2.1996. Annexure I to the petition. At the petitioner's cost the injunction may be communicated to respondents Nos. 2, 3 and 6 through fax message. Direct service permitted."

3 Respondent No. 7 moved a civil application No. 2807 of 1996 for vacating the interim order after it was impleaded as respondent No. 7.

4 This order disposes of the main special civil application as well as the civil application.

5 At the outset it may be stated that learned Assistant Government Pleader had made a statement that by notice dated 2.3.96, Collector has not passed any order for staying the public auction which was advertised to be held on 19.3.1996, but was only a notice for hearing prior to it. However, Mr. Raval, learned counsel for the petitioner as well as Mr. Nanavati, learned counsel for respondent No. 7. both joins issue and contends that impugned notice can only be read in the manner that it is a direction for staying the public auction to be held on 19.3.1996 until the Collector can decide on the validity of resolution of Panchayat for collecting octroi by granting contract for it through public auction.

6 in the wake of aforesaid controversy , it is also pertinent to notice that respondent No. 7. has placed on record an interim order passed by this court in Special Civil Application No. 1280 of 1990 on 14.3.1990 in respect of the very Panchayat. The petitioners in the said petition had challenged the validity of Sec. 202 authorising collection of octroi through contractors being again public policy and contrary constitutional scheme. After hearing parties thereto a Division Bench of this court had made the following order:

"Having heard the learned advocates for the parties ad-interim relief in terms of para 9(G) is confirmed. So far as the relief claimed in para-9(H) is concerned, in our view, blanket relief which is asked for cannot be granted. Instead we pass the following order:

1. Respondent No. 2 Nagar Panchayat will be permitted to enter into a contract to farm out octroi for the year beginning from 1.4.1990 upto 31.3.1991 subject to the result of this petition.

2. Respondent No.4 shall deposit with the Nagar Panchayat 20% amount as per Clause (7) of the contract within the time stipulated therein. Said security deposit will be invested by the respondent No.2 Panchayat in fixed deposit with any nationalised bank initially for a period of one year. Said fixed deposit shall not be encashed nor any loans or advances thereon shall be taken without orders of this court.

3. Respondent No.4 shall maintain an accurate account of all octroi collections made by it under the contract during the pendency of this petition and such accounts will be submitted to this court every three month and copies thereof will be furnished to the learned advocates of the petitioner as well as Nagarpanchayat.

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4. All the octroi collections shall be deposited by the 4th respondent in a separate bank account in a nationalised bank and liberty will be reserved to respondent No.4 to withdraw from the said account sufficient amount for paying installment to second respondent - panchayat from time to time as required under the contract. Respondent No.2 will be at liberty to utilize these installments for its purposes as octroi collections.

5. Respondent No.4 will also be entitled to withdraw from the balance of deposited amounts lying in the aforesaid account after paying installments to the panchayat sufficient amounts for defraying its expenses for collections of octroi and for paying wages to the employees, etc. and also for its own purposes. However, respondent No.4 will have to furnish in addition to what it has to furnish as per condition of auction-cum-contract, sufficient security to the satisfaction of the Mamlatdar, Talala, to cover the amounts withdrawn by it from the octroi deposits for meeting the collection expenses and other expenses, such securities may be furnished on regular monthly basis to the satisfaction of the Mamlatdar Talala, to the extent of monthly withdrawals either in advance or even after withdrawals.

6. Respondent No.4 shall put up boards at all octroi nakas showing the items which are exempted from payment of octroi as per the rules and regulations applicable from time to time.

7. Respondent No. 4 shall furnish copies of the receipts of octroi collections installments to the Nagarpanchayat for its record. Such copies be furnished on the next date of collection of octroi."

8. Respondent No.4 shall not recover any octroi exempted items.

7 From the aforesaid it is clear that so far as the larger issue about the validity of the panchayat's authority to grant contract for collection of octroi concerned, and which is conferred on it under statute is the subject matter of a pending petition No. 1280 of 1990 and the court instead of staying the adoption of mode of recovering octroi by grant of a contract has made the grant of contract subject to certain conditions albeit the order confined to order for the year 1990-91. Be that as it may, it is not in dispute that statute provides grant of contract for collection of octroi as a method of recovery of that revenue and until that provision is held to be ultravires, legality of authority to give the task of collecting public revenue to a contract on a fixed price cannot be held to be unauthorised collection and therefore if the panchayat had decided to adopt that method for the year 1996-97 it is not possible to hold it ultravires for the reason alone.

8 Since alternative options for collecting revenue by itself or through the agency of contractor is available to the panchayat and as per the undisputed state of affairs admitted to be existing that since 1960 octroi is being collected through the agency of contractors and a statement has also been made by the learned counsel for the states as well as the learned counsel for the panchayat that as a result of aforesaid practice at present there is no machinery at their disposal to collect directly by themselves revenue arising from octroi and such arrangement is not possible to make overnight at a short notice. In these circumstances, (it is also not desirable to restrain the respondents from adopting the method of collecting octroi through grant of contract at present as it would result in creating a hiatus in collection of octroi which is to be collected on each entry of goods within the limits of panchayat. In the circumstances,

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only viable option open to panchayat to be to enter into a contract to farm out octroi for the next financial year. In the aforesaid circumstances, I deem it just and proper to dispose-of this petition with a direction to respondent No.4 that in case Panchayat decides to opt for collecting octroi through a contractor, the grant of contract shall be subject to same conditions as has been stated by the Division Bench in Special Civil Application No. 1280 of 1990 in its order dated 14.3.1990 which has been quoted above.)

9 As I have noticed above that respondent No.7 has given an offer of a fixed amount above the upset price that should be taken as a minimum offer for considering the grant of contract. It goes without saying that in the matter of giving contracts, the settled principles of acting fairly and in the best public interest is the minimum requirement to which the authority granting contract shall adhere to.

10 Since the contention raised by respondent No.7 goes to the root of system of collecting public revenue through the agency of contract, it is desirable that the decision on that controversy is obtained as early as possible. The counsel for the State is therefore directed to take necessary steps for expediting the hearing of Special Civil Application No. 1280 of 1990.

11 As a result of the aforesaid discussion the petition Special Civil Application No.1843 of 1996 is allowed. The order of Collector contained in notice dated 2.3.1996 staying the resolution of the panchayat dated 29.2.1996 for public auction on 19.3.1996 is quashed. The interim order passed by this Court stands modified to the extent stated above and becomes part of Rule. Rule made absolute as observed above. No order as to costs.

12 In view of order passed in the main petition , civil application is dismissed. Direct Service permitted.