

## Shewaram and Sons Vs Indore Municipal Corporation

**Court:** Madhya Pradesh High Court

**Date of Decision:** Dec. 13, 1962

**Acts Referred:** Constitution of India, 1950 " Article 226, 227

Madhya Pradesh Municipal Corporation Act, 1956 " Section 132, 132(1), 133, 3(2), 427

**Citation:** (1963) JLJ 229

**Hon'ble Judges:** P.V. Dixit, C.J; K.L. Pandey, J

**Bench:** Division Bench

**Advocate:** G.M. Chaphekar and P.D. Pathak, for the Appellant; B.P. Jhanjharia, for the Respondent

**Final Decision:** Allowed

### Judgement

@JUDGMENTTAG-ORDER

P.V. Dixit , C.J.

The Petitioner in this application under articles 226 and 227 of the Constitution of India challenges the validity of a tax

imposed on Indian and foreign liquor brought within the limits of the Indore Municipal Corporation at the rate of twenty-five per cent of the value

of the liquor as ascertained according to bye-law 19 (a) of the bye-laws framed by the Corporation u/s 427 of the Madhya Pradesh Municipal

Corporation Act, 1956. The Petitioner seeks a direction restraining the Respondent-Corporation and the Commissioner of the Corporation from

recovering octroi duty on liquor brought with in the Corporation-limits on the basis of the value as computed according to the aforesaid bye-law.

2. The city of Indore was formerly a part of the quondam Holkar State, which in 1948 merged in Madhya Bharat. In 1940 the Indore City

Municipality in the exercise of its powers under the Indore Municipal Act, 1909, imposed an octroi duty on foreign and Indian liquor for the first

time. The rate of tax was varied from time to time. In 1947 the Municipality passed new bye-laws dealing with the valuation of foods brought

within the municipal limits, collection, refund etc., of octroi tax. Byelaw 9 of these bye laws laid down the method of valuation of goods chargeable

with ad valorem octroi duty. It provided:

For the purpose of Octroi, the real value in the case of goods chargeable ad valorem shall be deemed to be:

(a) The wholesale cash price, less trade discount, for which goods of the like kind and quality are sold, or are capable of being sold, at the time

and place of import, without any abatement or deduction whatever except in the case of goods imported, or amount of octroi payable on the

import thereof, or

(2) The value made up of the cost price of the goods plus carriage and other incidental charges, less trade discount mentioned in the Bijak.

After the promulgation of these byelaws, the Indore City Municipality revised the rates of octroi duty and imposed and octroi tax of twenty-five

per cent of the value on Indian made foreign liquor and imported foreign liquor brought within the municipal limits. The Municipality then proceeded

to recover octroi duty on such liquor. In ascertaining the value of the liquor imported within the municipal limits, the Municipality added to the price

of liquor the amount of excise and customs duty paid on it. The Petitioner, who is a liquor dealer of Indore, and other liquor dealers of that place

protested against this valuation and filed a representative suit in the Court of the Additional Civil Judge, Indore, on 16th February 1949 (C.O. suit

No. 1131 of 1949), claiming a permanent injunction against the Municipality restraining it from recovering octroi duty on liquor on the basis of the

valuation adopted by it. The suit was decreed and the Municipality was restrained from including in the valuation the amount of excise duty paid on

the liquor. In obedience to this decree the Municipality started recovering octroi duty on liquor taking its price and the freight as its value. It

continued to do so till 15th December 1961.

3. In the meantime the Indore Municipal Act, 1909, was repealed by the Madhya Bharat Municipal Corporation Act, 1956, and under that Act a

Municipal Corporation was established for the city of Indore. The octroi tax imposed under the Act of 1909 and the byelaws framed under that

Act continued to be in force as deemed to have been made under the M. B. Municipal Corporation Act, 1956. The M. B. Municipal Corporation

Act was replaced the Madhya Pradesh Municipal Corporation Act, 1956 (hereinafter referred to as the Act), which came into force on 20th May

1961. The octroi tax imposed and the bye-laws framed under the repealed Act continued to be in force as if framed under the M. P. Municipal

Corporation Act of 1956. On 15th December 1961 new byelaws of the Corporation, called the "Indore Municipal Corporation cess Bye laws,

1961", purported to have been made under Sections 429, 430 and 431 were published in the Gazette of that date. The material byelaw here is 19

(a) which runs as follows:

19. (a) For the purpose of cess (octroi) the real value in case of goods chargeable ad valorem shall be deemed to be the total of its actual price

paid, freight, and other incidental charges, insurance and all the duties and taxes paid till the time of their arrival at the Naka. But this will not

include the trade discount which has been deducted from the price and is shown as such in the Bijak.

The rate of octroi duty on liquor imported in Indore city fixed under the Municipal Act of 1909, and in the background the byelaws framed

thereunder, was however not revised. Thereafter the Corporation demanded from the Petitioner, octroi duty on liquor imported in the

Corporation-limits at the rate of twenty-five per cent of the value of liquor as calculated according to bye-law 19 (a).

4. In this petition, the applicant has challenged the validity of the byelaws framed by the Corporation in 1961 on a number of grounds but only one

ground was maintained before us, namely, that the hypothetical valuation prescribed by bye-law 19 (a) in effect enhanced the rate of octroi tax on

liquor; that the Corporation could not impose a fresh octroi tax or enhance an old one without following the procedure laid down in Section 133 of

the Act; that Section 427 which gave to the Corporation the power to make byelaws consistent with the Act did not confer any taxing power on

the Corporation; and that, therefore, the enhancement in the rate of octroi duty on liquor by the Corporation by resorting to section 427(1)(1-m)

and without complying with the provisions of Section 133 was ultra vires and invalid. On the other hand, the Respondent Corporation contended

that there was no fresh imposition or enhancement of octroi tax on liquor; that the old octroi rate of twenty-five per cent of the value of liquor

continued; that bye-law (19) (a) only made a change in the method of valuation of liquor for the assessment of tax and thus in the manner of

collection of the tax; that Clause (1-m) of Section 427(1) of the Act expressly permitted the Corporation to frame a byelaw regulating "the classes

of goods on which, and the rate at which tolls and cesses on imports may be imposed and the manner of collection of such cess, or toll"; and that,

therefore, the byelaw was valid. It was said that the bye-laws were framed by the Corporation in conformity with Sections 429 to 431 of the Act.

5. The question for decision, therefore, is whether the Corporation acted within its statutory powers in altering the method of valuation of goods

chargeable with ad valorem octroi duty. The taxing powers of the Respondent-Corporation are conferred upon it by Section 132 of the Act.

Clause (e) of Section 132(1) empowers the Corporation to impose "a cess on animals or goods brought within the city for sale, consumption or

use therein". Section 133 deals with the method of imposition of any of the taxes enumerated in Section 132. That section reads as follows-

133. (1) The Corporation may at a special meeting bring forward a resolution to propose the imposition of any tax u/s 132 defining the class of

persons or description of property proposed to be taxed; the amount or rate of tax to be imposed and the system of assessment to be adopted:

Proved that no such resolution shall be passed by the Corporation for the imposition of any tax coming under clause, (o) of Sub-section (2) of

Section 132 unless the Government shall have first given their approval to the selection of the tax by the Corporation.

(2) Such resolution shall be published in the Gazette and in such other manner as may be prescribed by bye-laws. Any person resident within the

city and objecting to the proposed tax may, within thirty days from the publication of the resolution in the Gazette submit his objection in writing to

the Corporation and the Corporation at a special meeting take his objection, into consideration.

(2-A) If the Corporation decides to amend its proposals or any of them it shall publish amended proposals, along with a notice indicating that they

are in modification of those previously published for objections.

(2-B) Any objections which may be received to the amended proposals within thirty days shall be dealt within the manner prescribed in Sub-

section (2-A).

(2-C) The Corporation shall publish its final proposals in the Gazette and the tax shall then come into force on such date as may be specified in

that notification.

(3) 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 427, so far as material here, provides as follows -

The Corporation may and if so required by the Government shall, make byelaws consistent with the provisions of this Act and the rules made

thereunder for carrying out the provisions and intentions of this Act, and in particular and without prejudice to the generality of the foregoing

power, it may, make byelaws to regulate all or any of the following matters namely-

(1) (a).....

(1-m) the classes of goods on which, and the rate at which tolls and cesses on imports may be imposed and the manner of collection of such cess

or toll ;

6. It is clear from Section 133 that for the imposition of any tax mentioned in Section 132 it is essential that a resolution contemplated by Sub-

section (1) should be passed by the Corporation and that it must be published and notified in the manner prescribed in Section 133. The resolution

for the imposition of a tax must settle "the class of persons or description of property" to be taxed, the amount or rate of the proposed tax, and the

system of assessment to be adopted. In the imposition of a tax the goods or persons to be subjected to the tax, the principle of assessment and the

rate at which they are to be assessed are matters of principle and not of detail which can be regulated by rules or byelaws. The system of

assessment of a tax is as much an integral part in the imposition of the tax as the persons or goods subjected to the tax or the rate of the tax. The

taxing power of the Corporation is to be found in Section 132 and the exercise of it is regulated by Section 133. Section 427 only gives to the

corporation the power to make byelaws and rules consistent with the provisions of the Act ""for carrying out the provisions and intentions"" of the

Act. It is elementary that a byelaw or a rule framed under an Act cannot override the express provisions of the Act. It must be consistent with and

subordinate to those provisions.

7. Learned Counsel appearing for the Corporation admitted that the Corporation did not pass any resolution in conformity with Section 133

effecting an alternation in the valuation of goods chargeable with ad valorem octroi duty. He, however, urged that this case not necessary. Learned

Counsel did not dispute that if Clause (1-m) of Section 427(1) had not had the words ""the class of goods on which, and the rate at which tolls and

cesses on imports may be imposed"", it would not have been open to the Corporation to change the method of valuation of goods chargeable with

and valorem duty by framing a byelaw u/s 427 and that in that case it would have been necessary for the Corporation to determine the method of

valuation by passing a resolution in compliance with Section 133. But he said that the aforesaid words made all the difference, and they expressly

permitted the Corporation to frame a byelaw with regard to the method of arriving at the value of goods subjected to ad valorem tax. We are

unable to accept the argument, which, in our opinion, involved a misinterpretation of the effect of Clause (1-m) of Section 427(1) which must be

construed consistent with Section 133 of the Act. As Section 427 is concerned with the power of the Corporation to make byelaws and rules

consistent with the provisions of the Act and for carrying out those provisions, Clause (1-m) cannot be construed as conferring a taxing power on

the Corporation. On a sound construction, that clause only means that when there has been an affective and valid resolution of the Corporation u/s

133 to impose a tax then the Corporation can frame byelaws for giving effect to that resolution and for, the manner. In(sic) collecting the imposition

resolved. In the absence of any effective resolution u/s 133 for the imposition of a tax, the Corporation is not entitled to avail itself of Clause (1-m)

of Section 427(1) for imposing a tax. In the present case admittedly there was no resolution of the Corporation in compliance with Section 133

effecting a change in the valuation of goods chargeable with ad valorem octroi duty.

8. Learned Counsel for the Respondents submits an argument to the effect that bye-law 19 (a) did no more than provide a method of ascertaining

the value of goods for the purpose of imposition of ad valorem duty and this changed in no way resulted in any increase in the rate of tax that was

imposed on foreign liquor under the old Acts and which was continued under the Madhya Pradesh Act of 1956. The argument is unsubstantial. It

overlooks the fact when a tax is levied on certain goods at a percentage of its value, the figure of percentage as well as the method of valuation

determine the rate of tax The octroi tax that was levied on liquor under the old Act, and which was continued under the M. P. Act of 1956, was

not twenty-five per cent in vacuo, but was twenty-five per cent of the Value of the goods made up of the cost price of the goods plus freight and

other incidental charges and excluding excise duty. It is manifest that if according to the method of valuation prescribed by byelaw 19 (a) the

valuation of liquor is ascertained as a total of its actual price, freight, incidental charges, insurance and all duties and taxes paid on it, then even

though the figure of percentage, namely, 25 per cent, continues to be the same, the rate of tax is in effect and substance enhanced. Bye-law 19 (a)

thus varied the rate of octroi duty on liquor without there being any effective resolution of the Corporation u/s 133 for the variation. As the method

of valuation embodied in bye-law 19 (a) was adopted by the Corporation without complying in substance and in effect with Section 133, that bye-

law cannot be held to be valid. The mere fact that the "Indore Municipal Corporation Cess Bye-laws, 1961" were framed after complying with the

provisions of Sections 429 to 431 of the Act cannot make bye-law 19 (a) valid as the Corporation has not under Clause (1-m) of Section 427(1)

the power to frame any bye-law regulating the goods on which and rate at which an octroi tax may be imposed in the absence of an effective

resolution u/s 133 for the levy of that tax.

9. If, as we think, bye-law 19 (a) is totally ineffective and invalid, then it follows that the Corporation can levy on liquor octroi tax at the rate of

twenty-five per cent of the value of goods as determined by the old bye-law 9 framed by the Indore Municipality in 1947. The twenty-five per cent

duty on the valuation as ascertained according to that bye-law continues to be in force by virtue of Section 3(2) of the M. P. Act of 1956. In

ascertaining according to that bye-law the valuation of goods for the purpose of charging octroi duty, the excise duty, as held by the Additional

Civil Judge, Indore, in Civil suit No. 1131 of 1949, must be excluded. In that suit, a decree was passed against the Indore Municipality restraining

it from including in the valuation the amount of excise duty paid on liquor. The Corporation is bound by that decree so long as it does not vary or

after the method of valuation and thus the rate of tax after complying with the provisions of Section 133 of the Act.

10. The result is that this petition is allowed, bye-law 19 (a) is declared to be illegal, ultra vires, and totally ineffective and the Respondent-

Corporation is restrained from recovering from the Petitioner octroi duty on liquor on the basis of valuation embodied in bye-law 19 (a). The

Corporation is, however, at liberty to impose and recover octroi duty on liquor according to the old bye-law 9 as construed by the Court of the

Additional Civil Judge, Indore, in the suit referred to above. The Petitioner shall have costs of this application. Counsel's fee is fixed at Rs. 150.

The outstanding amount of security deposit shall be refunded to the Petitioner.