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polling station and so many votes would have been polled by the other candidate or they would not have polled any vote at all. Petitioner should have dealt with his position *qua* each polling station so that the returned candidate could refute his position. This election petition discloses no triable issue. This petition is liable to be rejected and is accordingly rejected under Order VII Rule 11 read with Order VI Rule 16 CPC on the ground of its being vague and not giving material facts and particulars constituting complete cause of action and virtually disclosing no cause of action. Respondent No. 1 (returned candidate) shall have Rs. 3,300 as costs from the petitioner.

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**R.N.R.**

*Before Jawahar Lal Gupta & Ashutosh Mohunta, JJ.*

MATHURA DASS SETIA AND OTHERS,—*Petitioners*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents*

C.W.P. No. 15058 of 2001

29th April, 2002

*Constitution of India, 1950—Arts. 14, 226, 243-W and Part IX-A—Punjab Municipal Act, 1911—Ss. 61 & 70—Punjab Municipal Corporation Act, 1976—S. 90—Amended Acts No. 1 & 2 of 2002—Promulgation of the Acts to abolish octroi on the entry of goods within the territory of the State—Financial loss to the Local Government Bodies—State Government already facing an acute financial crunch—Government failing to provide alternative sources of revenue—Provisions of the Constitution require the State to legislate so as to make the municipalities independent—Action of the Government in abolishing octroi making municipalities dependent upon Government and defeating their declared objective is arbitrary, unreasonable and violative of the provisions of the Constitution—Petitions allowed while declaring the impugned Acts as unconstitutional.*

*Held, that :—*

- (1) Plenty to poverty is the sad story of the State of Punjab. Today, it is under a heavy debt in the region of Rs. 62000.00 Crores. It is facing an acute financial crunch.

- (2) This situation has arisen on account of the State following the policy and 'populist politics' and adopting the 'revenue sacrificing measures' such as free power, free water, abolition of octroi, house tax and Land Revenue. By abolishing 'Octroi', the State has really deprived the Municipal Committees of their primary source of revenue.
- (3) This levy was abolished with an assurance and undertaking that some alternative source/s shall be found and provided. In the interregnum, the State shall pay. However, the State's financial position being bad, it was not in a position to keep its promise and to compensate the Municipal Committees and Corporations etc. for the inevitable loss that they have suffered on account of the impugned action. In the circumstances, it is not surprising that the State has actually failed to honour its commitment.
- (4) The Constitution was specially amended in the year 1992 to empower the States to make laws so as to ensure that the Municipalities become effective instruments of local self-government in urban areas. Part IX-A of the Constitution clearly visualizes the Nagarpalikas as institutions for economic development and social justice. Schedule 12 enumerates the functions that can be entrusted to the Committees. Carrying out these measures is essential for achieving the intended objects.
- (5) The impugned Acts passed by the State Legislature debar the Municipal Committees and Corporations etc. from collecting Octroi. Despite the recommendation of the Shakar Committee, no alternative source of revenue has been provided. This has adversely affected the working of the local bodies. The execution of even the on going projects has been affected. The working staff remains idle. Payment of wages for idleness is not an ideal situation or solution. The impugned Acts clearly defeat the declared objective and violate the provisions

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of the Constitution. These are arbitrary and unreasonable. Consequently, the impugned Acts are declared unconstitutional and quashed.

(Para 63)

M/s G.S. Grewal, Senior Advocate with H.S. Grewal, Advocate, H.S. Toor, Senior Advocate with Gurinder Singh Advocate, S.C. Pathela, P.S. Dhaliwal, K.S. Dadwal, G.C. Dhuriwala, Namit Kumar and Munish Singal, Advocates—*for the Petitioners.*

Harbhagwan Singh, Advocate General, Punjab with M.C. Berry, Senior Deputy Advocate General, Punjab, Sandeep Khunger, Shailendra Sharma and R.L. Gupta, Advocates—*for the respondents.*

### JUDGMENT

*Jawahar Lal Gupta, J.*

(1) Is the action of the State of Punjab in abolishing 'Octroi' illegal and arbitrary ? Do Act Nos. 1 and 2 of 2002 as promulgated by the legislature conform to the mandate of Art. 14 and Part IX-A of the Constitution ? This is the core of the controversy in these petitions.

(2) The Municipal Councilors, past and present; the contractors and the employees appointed to collect 'Octroi', are the petitioners. They complain that the action of the State of Punjab in abolishing 'Octroi' without providing for any alternative source of revenue is arbitrary, illegal and unconstitutional. Part IX-A of the Constitution requires the State to strengthen the Municipalities as instruments of local Government. The impugned Acts violate this mandate. Thus, these should be annulled.

(3) The relevant facts may be noticed.

(4) The elections to the Punjab Legislative Assembly were held in the year 1997. At that time, the Akali-BJP alliance had made a promise to abolish 'Octroi.' It was a part of its election manifesto. The petitioners allege that the purpose was "to woo the trading community." However, 'Octroi' was a major source of revenue. Thus, the promise

was not kept.

(5) In the year 2001, when the Government was about to complete the term, it started making statements regarding abolition of octroi. These were reported in the Press. A committee was constituted to consider the question of abolition of the levy. It submitted a report. It was *inter alia* suggested that in the event of abolition of octroi, an alternative source of revenue should be simultaneously provided. On September 17, 2001, the State Government had accepted the report.

(6) The petitioners allege that octroi is a major source of income for the municipalities. To illustrate, it has been pointed out that in the Budget of the Municipal Council, Bathinda for the year 2001-2002, out of a total collection of Rs. 2489.50 lacs the Octroi alone accounts for Rs. 2000 lacs. The House Tax yields Rs. 209 lacs; the water charges amount to Rs. 173 lacs and an amount of Rs. 92 lacs is received by way of rent etc. The Council has to spend Rs. 913 lacs on establishment and contingencies. The staff appointed by the Council for collection of octroi gets a total salary of Rs. 1,08,34,436. Thus, the Council earns more than Rs. 18 crores per year by levy of octroi alone.

(7) In September, 2001, the Chief Minister and the Minister for Local Government announced that the Government had decided to abolish Octroi with effect from October 1, 2001. These statements were reported in the Press. Apprehending that the State Government would implement its decision, certain Municipal Councillors had filed Civil Writ Petition No. 15058 of 2001. The matter was placed before the Bench on September 26, 2001. A direction for the issue of notice of motion was given. As an interim measure, the respondents were restrained from taking any further steps towards the abolition of octroi.

(8) In October, other petitions viz. CWP No. 15873 of 2001 etc. were filed with the prayer that the Government be directed not to abolish octroi. It was *inter alia* averred that on September 12, 2001, a Bench of this court was hearing CWP No. 19359 of 1997. During the course of the hearing, it was stated by the Advocate General that before "deciding to abolish octroi, the alternative mechanism for augmenting the revenue of the Local Bodies for the loss suffered due to abolition of octroi will be evolved." The Government had not found any alternative source of income but "date of abolition of octroi has

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been announced.” This was contrary to the Constitutional mandate and the undertaking given to this Court. Thus, the decision deserved to be annulled.

(9) The State of Punjab filed an application for vacation of stay. The miscellaneous petition along with the connected matters was posted for hearing before the Bench on November 19, 2001. On behalf of the State of Punjab, it was pointed out by the Advocate General that the matter regarding abolition of octroi was placed before the Cabinet on September 27, 2001. Since the matter was pending in Court, the meeting was adjourned. The levy could be abolished only through the issue of a legislative enactment. The Government had taken no decision whatsoever so far. It could be taken only after the Cabinet had considered the matter. In case, it was decided to abolish octroi, the Constitutional provisions, particularly Article 243W, shall be kept in view. The apprehension expressed by the petitioners was wholly unfounded. Thus, it was prayed that the interim stay be vacated.

(10) On November 19, 2001, the interim stay order was vacated.

(11) On December 1, 2001, the State promulgated Ordinance Nos. 9 and 10 of 2001 so as to amend the provisions of the Punjab Municipal Act, 1911 and the Punjab Municipal Corporation Act, 1976. In a nutshell, it was provided that “with effect from the commencement of this Ordinance, no octroi shall be leviable except on electricity.”

(12) The writ petitions were amended so as to challenge the Ordinance. The amended petitions were filed. When these petitions were taken up for consideration, the Principal Secretary to Government of Punjab, Department of Finance, filed an affidavit averring *inter alia* that the Council of Ministers had met on November 28, 2001. A decision to abolish octroi (except on electricity) had been taken. It was “also decided by the Council of Ministers that alternate sources of revenue shall be considered by way of replacing this source of revenue for the Local Government Bodies of the State, but, in the meanwhile, the State Government will compensate the Local Government Bodies for any loss in revenue on account of this decision.” It was further stated that “the above mentioned decision of the Council of Ministers will be faithfully implemented and the loss in revenue incurred by the Local Government Bodies due to the abolition of octroi will be

compensated by the State Government on monthly basis.”

(13) On February 7, 2002, the Ordinances were replaced by the two Acts. The Amending Acts 1 and 2 of 2002 were published in the Punjab Government gazette of January 7, 2002. Consequently, the petitions were again amended to challenge the Acts. A brief reference to the averments in CWP No. 15873 of 2001 shall be useful.

(14) The petitioner alleges, “The financial position of the Punjab Government is shaky. The Government is not in a position to meet its routine liabilities towards Municipal Bodies. Certain development works are not being undertaken because of the lack of funds. people have to come to courts to claim their dues. The Government has not yet been able to find out the alternative sources of income to the Municipal Bodies. In spite of this, just to fulfil the promise made in the previous elections, the State of Punjab has passed the impugned” provision. It has been further alleged that a committee had been constituted by the State to examine the question of propriety of abolition of octroi. It had invited “all bodies of Local Self Government.” The Municipalities, Corporations and notified area committees were consulted. In the report, it has been stated that “in the cities where octroi has been abolished, the citizens do not get proper urban facilities.” The impugned Act contravenes the 74th Amendment of the Constitution, it has “deprived the Municipalities of the main source of their income by abolishing octroi which provided 70% of the income of the Municipal Bodies. What to talk of development, the Municipalities will not be able to pay the monthly emoluments to the Municipal Staff. The impugned Act has adversely affected the autonomy of the Municipal Bodies by making them dependent on the resources of the State.....” The State has “no power to deprive the Municipal Bodies of their right to tax given to them under the amendment of the Constitution. The amendment is even violative of the provisions of the Municipal Corporations Act, 1976. The impugned Act is a colourable exercise of power.” There is no justification for abolition of octroi. Parties in power need funds to contest elections. The Act seems to help the financiers of the ruling alliance. When the traders are saved from payment of octroi, they “can reciprocate” and help “in collecting at least some of the funds for elections.” On promulgation of the Act, the development works have been stopped. The municipal bodies “find it hard to pay the salaries of the employees.” Thus, the petitioner maintains that the

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impugned legislation is invalid and unconstitutional. Thus, it should be annulled.

(15) In CWP No. 15058 of 2001, the petitioners have alleged that as a result of the abolition of octroi, "the income of Municipal Council, Bathinda has been so reduced" that it is "not in a position to bear the establishment expenses and the contingency expenses which are necessary to run the municipalities." It is further alleged that in the State, the total income of the municipalities from all the sources "during previous year was about Rs. 730 crores out of which income from octroi alone was Rs. 520 crores." The properties, which were on rent, have already been sold. On account of abolition of octroi, the income of the municipalities has been reduced from Rs. 730 crores to Rs. 230 crores. As against this, the municipalities have to spend about Rs. 335 crores on the establishment, Rs. 38 crores on contingencies; Rs.150 crores on sanitation; Rs. 200 crores on water supply; Rs. 38 crores on streetlights and Rs. 42 crores on maintenance of roads. Since no alternative sources to meet these expenses have been provided, the petitioners maintain that the impugned acts are arbitrary and unconstitutional. They pray that these be annulled.

(16) Written statements to the amended petitions have been filed on behalf of the respondents by Mr. J.B. Goel, the Special Secretary-cum-Director, Local Government, Punjab. It is averred that none of the 133 Municipal Committees/Nagar Panchayats and the four Municipal Corporations having challenged the decision to abolish octroi, the petitioners have no *locus standi* to file this petition. The impugned Acts embody a policy decision. It involves the power to tax, which is a legislative function. The petitioners have no right to question the decision of the Government.

(17) On November 28, 2001, the Council of Ministers had met. It had decided to abolish octroi except on electricity and the additional excise on liquor, which is being charged in lieu of octroi. It had also taken a decision to form a committee under the Chairmanship of the Chief Secretary, Punjab that "will find out the ways and means to compensate the financial loss caused due to the abolition of octroi. This committee is to furnish the report within a period of 15 days. Further, the Council of Ministers also decided that it would be the responsibility

of the Administrative Department to ensure that all the financial help is provided for completion of on-going administrative and development works. For this purpose, the Government will provide required financial resources. The Council of Ministers has decided that no employee will be retrenched as a result of abolition of octroi. Therefore, no loss is being suffered by the Urban Local Bodies due to the abolition of octroi. There is no violation of Article 243W of the Constitution. An affidavit has also been filed by the Finance Secretary in the Hon'ble Court. The funds for the month(s) of December, 2001 and January, 2002 have already been released to the Urban Local Bodies."

(18) Abolition of octroi is a part of the wider exercise initiated by the Central Government to move towards a system of value-added taxes. From British times, octroi has been seen as an unnecessarily cumbersome tax that interferes with free trade and commerce in India. It "has been criticized as a source of considerable corruption. As such, octroi is a revenue-raising mechanism that has been demonstrated to be injurious to the public interest. At present, octroi has been abolished in most of the States in India." It is being charged only in four States in the whole country. The 73rd and 74th amendments to the Constitution have not in any way restricted the competence of the State Legislatures with respect to the municipal taxes including Octroi. Even after the amendments, the Municipalities impose taxes only as delegates of the State Legislatures. They have no right to demand that a particular type of tax may continue to be imposed.

(19) The decision was taken "after due deliberation and consideration of all facts and in public interest." The matter was debated in the Legislature. The bills were unanimously passed on January 1, 2002. An extract from the speech has been produced as Annexure R.2. The decision to abolish octroi is "accompanied by the decision to compensate the Urban Local Bodies for the loss occasioned thereby till alternative sources of revenue are provided to the Local Bodies." This fact has to be kept in view, while adjudicating on the consequences of the enactment of these Acts and Article 243W. Viewed from this angle also, Acts 1 and 2 of 2002 cannot be said to be violative of Article 243W. No power of the Municipal Councils has been taken away. The action is in conformity with law. Thus, no ground for interference is made out.



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(20) These are broadly the pleadings of the parties.

(21) Counsel for the parties have been heard. On behalf of the petitioners, it has been contended that the impugned amendments have taken away 75% of the income of the Municipal Bodies. These are violative of the Constitutional guarantee embodied in Article 243W, as also the provisions of the Act. It was further pointed out that the contracts had been arbitrarily terminated. As a result, all concerned viz. the Municipal Councils, Corporations, the contractors, the citizen and the employees were adversely affected. There was no rationale for the abolition of octroi. Thus, the impugned Acts deserve to be annulled.

(22) On the other hand, Mr. Harbhagwan Singh, Advocate General, Punjab submitted that the enactment was within the legislative competence of the State. It cannot be annulled merely because "a directory provision of the Constitution is alleged to have been violated."

(23) The short question that arises for consideration is—Do the impugned Acts conform to the mandate of the Constitution of India ?

(24) The Constitution divides the legislative power between the Parliament and the State Legislatures. The Union Parliament has the power to make laws for the whole or any part of the territory of India. The Legislature of a State can make laws for the State or any part thereof. The power is plenary. The State Legislature is not a delegate of the Parliament. Both derive their respective powers from the Constitution. The respective fields for legislation have been delineated. The power to levy tax is essentially a legislative function.

(25) Article 245 of the Constitution distributes the legislative powers between the Union and the State Legislatures. However, the exercise of this power is "subject to the provisions of this Constitution." Thus, the State and Union Legislatures are equally bound by the limits, which are imposed by the Constitution. The Legislature cannot make a law, which may violate the fundamental rights guaranteed in Part III or by ignoring the limits contained in other provisions of the Constitution.

(26) Article 246 deals with distribution of legislative powers between the Union and the State Legislatures. The Parliament has the exclusive power to legislate with respect to matters in List I and those not included in Lists II and III. Similarly, the State Legislature has the exclusive power to legislate in respect of matters specified in List II. The legislatures exercise concurrent powers in respect of matters specified in List III.

(27) The legislative subjects as given in the three Lists cannot possibly be divided into airtight compartments. Some over-lapping is inevitable. To illustrate: Entry 24 of List II empowers the State Legislature to enact laws relating to 'Industries'. However, this is subject to the power of Parliament under Entries 7 and 52 in List I. Resultantly, the Industries that are covered by the Central Legislation are excluded from the purview of the State law. Still further, the legislation enacted by a State cannot extend beyond the territorial boundaries of that State unless there is a territorial nexus.

(28) When the validity of a statute is questioned, the Court proceeds on an assumption in favour of constitutionality. It presumes that the state is the best judge of the needs of people. These have become manifest with the passage of time. Consequently, the courts are slow to interfere with matters of policy.

(29) Yet, unlike the position in various other countries, Article 226 of the Constitution vests the High Courts in India with the power of judicial review. This power was conferred with the object of ensuring that the legislative and administrative acts remain within the confines of the Constitution. Thus, this Court has the power to ensure that an Act of Legislature conforms to the Constitutional mandate. Despite the undoubted existence of power, the courts are slow to intervene in matters of policy. Why ?

(30) In the very nature of things, the legislature is entitled to take into account an unlimited range of considerations of public policy. The courts follow the rule that the exercise of legislative prerogative for general welfare ought not to be impeded by judicial intervention. Thus, the Union and the States have the undoubted right of the Union and States to levy taxes and the courts are usually reluctant to intervene. The plenary power of the legislature to legislate has been acknowledged by courts. Trying to prevent the abuse of

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power, the court cannot usurp the power. Thus, it is only when the court finds that the Legislature has traveled beyond the prescribed limitations laid down in the Constitution that it exercises its power of judicial review and declares the impugned enactment to be ultra vires. The issue as arising in this case has to be examined in this background.

(31) The Panchayats and Municipal Committees have been in existence in this country since the days of the British. These were visualized as instruments of Local Government for the rural and urban areas respectively. The Punjab Municipal Act, 1911 was enacted to "make better provision for the administration of Municipalities in Punjab." Section 61 empowers the Municipal Committees to levy taxes. Section 70 provides for the power to grant exemption. Similarly, the Punjab Municipal Corporation Act, 1976 was enacted to "provide better administration, better amenities and better planning for future in the Local authorities..." Provisions for the establishment of Municipal Corporations for certain cities in the State of Punjab were made. By Section 90, it was *inter alia* provided that the Corporation shall levy the various taxes like those on lands and buildings' octroi; on vehicles and animals; on advertisements other than those published in newspapers; on buildings payable along with the application for sanction of the building plan; and a development tax on the increase in urban land values caused by the execution of any development or improvement work. A further provision for the imposition of taxes on professions, trades, callings and employments has also been made. It is however, subject to the prior approval of the Government. The taxes have to be "levied at such rates as may, from time to time, be specified by the Government by notification...."

(32) Despite the fact that the Municipalities and Corporations have existed for a long time, the actual working has invariably left a lot to desire. There was a need to strengthen these organizations. A bill for the 74th amendment of the Constitution was introduced. In the objects and reasons, it was stated as under :—

"Objects and Reasons

A review of the working of the urban local bodies has shown that in many States they have become weak and ineffective on account of a variety of reasons, including the failure to hold regular and periodical elections,

prolonged supressions, inadequate representation of the weaker sections like the Scheduled Castes, the Scheduled Tribes and women, lack of financial resources and inadequate devolution of powers and responsibilities upon them.

2. Having regard to the inadequacies in the existing system and keeping in view the need to endow urban local bodies with such powers and authority as are necessary to enable them to function effectively as units of local self-government, it is proposed to add new provisions in the Constitution relating to the Municipalities, that is to say, the Nagarpalikas.”

With these objects in view, the Bill proposed *inter alia* to :—

“XX            XX            XX

- (i) provide for the devolution by the State Legislatures of powers and responsibilities upon the Nagarpalikas. Wards Committees and Zonal Committees with respect to the preparation of plans for economic development and social justice and for the implementation of development schemes :
- (j) provide for the sound finance of the Nagarpalikas by securing authorization from State Legislatures for grant-in-aid to the Nagarpalikas from the Consolidated Fund of the State as also assignment to, or appropriation by, the Nagarpalikas of the revenues of designated taxes, duties, tolls and fees ;
- (k) provide for a Finance Commission to review the finances of the Nagarpalikas and recommended principles on the basis of which State legislatures may determine the taxes to be appropriated by, or assigned, to, the Nagarpalikas, as also grants-in-aid to the Nagarpalikas from the Consolidated Fund of the States ;”

(33) By the 73rd and 74th amendments, an attempt has been made to take the democracy to the grass-root level and to enable them

to function as units of local Government. The provision provides for direct election in virtually the same manner as to the State and Union Legislatures. Reservation of seats for women, an Election Commission to conduct elections and a Finance Commission to ensure financial viability are some of the salient features of the amendments made to the Constitution.

(34) Part IXA comprising Articles 243P to 243ZG was inserted by the Constitution (74th Amendment) Act, 1992. It came into force with effect from June 1, 1993. Article 243P provides the definitions. In Clause (e), a 'municipality' has been defined to mean "an institution of self government constituted under Article 243Q." The definition is wide enough to include a Municipal Corporation. Article 243U contemplates a security of tenure. It inter alia provides that "every municipality... shall continue for five years...."

(35) Article 243W on which a great emphasis was laid delineates the powers, the authority and the responsibilities of the Local Bodies. Since the counsel had placed considerable reliance on the provision, it is apt to notice it in extenso. It provides as under :—

"Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow—

- (a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to—
  - (i) the preparation of plans for economic development and social justice ;
  - (ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule
- (b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in

relation to the matters listed in the Twelfth Schedule.”

(36) The matters included in the Twelfth Schedule are as under :—

1. Urban planning including town planning.
2. Regulation of land-use and construction of buildings.
3. Planning for economic and social development.
4. Roads and bridges.
5. Water supply for domicile, industrial and commercial purposes.
6. Public Health, sanitation conservancy and solid waste management.
7. Fire Services.
8. Urban forestry, protection of the environment and promotion of ecological aspects.
9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.
10. Slum improvement and up-gradation.
11. Urban poverty alleviation.
12. Provision of urban amenities and facilities such as parks, gardens, playgrounds.
13. Promotion of cultural, educational and aesthetic aspects.
14. Burials and burial grounds; cremations, cremation grounds and electric crematoriums.
15. Cattle ponds; prevention of cruelty to animals.
16. Vital statistics including registration of births and deaths.
17. Public amenities including street lighting, parking lots, bus stops and public conveniences.

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18. Regulation of slaughter houses and tanneries.”

(37) Under Article 243Y, it is provided as under :—

“(1) The Finance Commission constituted under article 243-I shall also review the financial position of the Municipalities and make recommendations to the Governor as to—

(a) the principles which should govern—

(i) the distribution between the State and the Municipalities of the net proceeds of the taxes, duties, tolls and fees leviable by the State, which may be divided between them under this Part and the allocation between the Municipalities at all levels of their respective shares of such proceeds ;

(ii) the determination of the taxes, duties, tolls and fees which may be assigned to, or appropriated by, the Municipalities ;

(iii) the grant-in-aid to the Municipalities from the Consolidated Fund of the State ;

(b) the measures needed to improve the financial position of the municipalities ;

(c) any other matter referred to the Finance Commission by the Governor in the interests of sound finance of the Municipalities.

(2) The Governor shall cause every recommendation made by the the Commission under this article together with an explanatory memorandum as to the action taken thereon to be laid before the Legislature of the State.”

(38) It is in the background of these provisions that the validity of the impugned Acts of Legislature has to be examined.

(39) The 74th amendment of the Constitution was made to ensure that the Municipalities were established as institutions of self-government. The State was required to constitute municipalities for

small and large urban areas. These were to largely consist of persons chosen by direct election from the territorial constituencies in the area. The State had to provide for the representation of persons having special knowledge or experience in municipal administration. The Wards Committees were also required to be constituted. Provision for reservation of seats had to be made. The members were to have a secure tenure of five years. The disqualifications for membership were provided in Article 243V. Provisions for conferring power and responsibilities were also required to be made. Under Article 243W, the Legislature was required to make law so as to 'endow' the municipalities with powers and authority so as to enable them to function as institutions of local self-government with respect to preparation of plans for economic development, social justice and the implementation of schemes in regard to the other matters mentioned in the Twelfth Schedule. Provision to ensure a sound financial position by levy of taxes and allocation or distribution of funds from the Consolidated Fund were also made. The State is required to take measures "to improve the financial position of the municipalities." Thus, one of the basic objects was to remedy the lack financial resources. The municipalities were to be strengthened as instruments of local self-government.

(40) Learned counsel for the petitioners submitted that collections by levy of octroi constitute 75% of the revenues of the municipalities. By abolition of octroi, the basic source of revenue has been taken away. No alternative source has been provided. This is contrary to the constitutional mandate.

(41) In the reply filed on behalf of the State, it has been *inter alia* pointed out that the State had constituted a committee for rationalisation of octroi. This committee was headed by Mr. Arunesh Shakar, a member of the Legislative Assembly. Besides him, two other Legislators; the Commissioner, Municipal Corporation, Ludhiana; Director, Local Government, Punjab; the Joint Secretary, Local Government and the Executive Officer, Municipal Council, Moga were its members. This committee had met the representatives of various Municipal Councils and people from different sections of the society. It had made its recommendations. These were duly considered. Still further, it had been decided by the Council of Ministers in the meeting held on November 28, 2001 that a committee headed by the Chief



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Secretary shall suggest the alternative sources of revenue for the municipalities. It was also decided that the State Government shall provide funds to the municipalities so that they were duly compensated for the loss caused by the abolition of octroi.

(42) On paper, the reply filed on behalf of the State seems to be wholly satisfactory. However, at the hearing, the learned Advocate General was more 'candid than candied.' He unreservedly admitted that "the State is in trouble. There are financial difficulties. It is already under a debt of approximately Rs. 62,000 crores." He also stated that on account of the impugned Acts, the Municipal Committees "would lose approximately Rs. 430 crores." The State of Punjab had to take loan from the Government of India for fulfilling its commitment to pay the municipalities. The committee constituted by the State Government was required to make its recommendation with regard to the alternative sources of revenue within 15 days. Despite the lapse of more than two months, no recommendation has been made so far.

(43) It is, thus, clear that the State is already under a heavy debt. It is facing acute financial difficulties. It had to take loans to meet its commitment to pay the municipal committees for two months. It is not in a position to make further payments. No solution is in sight. Can we still say that the State is taking "measures needed to improve the financial position of the municipalities" ? Do the Acts of legislature conform to the constitutional requirement ? The inevitable answer is —No.

(44) Despite the above-noted factual position, Mr. Harbhagwan Singh contended that under Entry 52 of List II, the State Legislature is competent to provide for tax on entry of goods. This shall include the power to abolish an existing levy.

(45) In abstract, the contention is unexceptionable. The State has the undoubted right to levy or abolish a tax. The legislature is competent to legislate and impose or abolish the tax on the entry of goods within the territory of the State. However, as already noticed, the short question is—Do the impugned Acts conform to the constitutional mandate ?

(46) The Advocate General was fair enough to produce before us a note prepared by the Finance Secretary regarding the financial

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position of the State. We have taken it on record. In the opening paragraph, it has been noticed that "the Government of Punjab has been under fiscal stress since 1984-85, when it became a 'Revenue Deficit State' from a 'Revenue Surplus State', for the first time." The mounting debt burden, heavily subsidized socio-economic services, slow growth of revenue receipt as compared to the revenue expenditure, loss making Public Sector Undertakings and the ballooning salaries and wage bills of the employees are the reasons for the resource crunch. It has been specifically recorded that the financial crisis "came to a head during the incumbency of the previous Government, which hardly took any steps to remedy the situation. Instead, the outgoing Government persisted in taking major revenue sacrificing measures such as allowing free power, free water, *abolition of octroi*, abolition of house tax, abolition of Land Revenue and also generously squandered the State's resources by following the path of populist politics. As a result, the State Government is now facing an awkward situation when it is even unable to disburse salaries and pensions out of its existing resources." The note is self-eloquent. It gives the cause for financial crisis and its effect. In a nutshell, the State is unable to honour its commitment to pay.

(47) The note clearly shows that the State is facing an acute financial difficulty. It complains that abolition of octroi was one of the major revenue sacrificing measures. Yet, the present government has chosen to support the action. It accuses the previous Government of "following the path of populist politics." Still, it has chosen to stick to the beaten track. The present Government has not changed the direction. The vice of the predecessor cannot be a virtue for the successor. There is an inherent contradiction in the stand of the State.

(48) Irrespective of that, a perusal of the note shows that Punjab has fallen from plenty to poverty. The State which was once 'sugar' is now 'sad saccharine.' Today, it owes much. It has a little. And yet, the State is depriving the municipal committees of at least Rs. 430 crores per annum. It is doing so on the promise to pay. Factually, it has failed to pay. The share of the committees in the octroi collected by the State has not yet been disbursed. In various cases, even prayer for the issue of a direction to the State to make the payment has been made. The payment for the month of March has not yet been made. As a result, the counsel pointed out that the

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employees of the municipal Committees have not received their salary for the month of February. Thus, the State is not in a position to keep its promise. In fact, it is facing an acute financial crunch. Consequently, it cannot honour its commitment. The Committees and Corporations have been deprived of crores of rupees without being provided with any alternative source or the promised financial assistance.

(49) It is undoubtedly true that no motive can be attributed to the Legislature. It is also correct that there is a presumption in favour of the constitutionality of an enactment. However, we cannot lose sight of the fact that the state is starved for funds. It is already under a heavy debt of Rs. 62,000 crores. It is borrowing to keep its promise to pay. Yet it has failed to abide by its word. In fact, the petitioners in C.W.P. No. 15058 of 2001 have filed C. Misc. Petition No. 10934 of 2002 contended that Contempt proceedings be initiated against the respondents for their failure to abide by the undertaking. A copy of the petition was served on the Advocate General Punjab on April 9, 2002. The allegations have not been controverted. In fact, it was admitted at the time of the hearing on April 27, 2002 that the payment for the month of March had not been released on account of financial hardship. Thus, it is clear that the State had made promises, which it was not capable of keeping.

(50) The state is the best judge of its needs. But it has to be remembered that we are spending our children's inheritance. Some are getting something for nothing. Some are getting nothing even when they are paying a plenty. In this scenario there is an urgent need to work for fiscal fitness. Not to forget about it. To save. Not to squander. To remember that economy can be a good source of revenue. To ensure that the 'overheads are kept under foot.' The cost of governance must be reduced. The wasteful expenditure has to be avoided. The available sources of revenue need to be augmented. Not abolished. The impugned enactments totally ignore this basic principle.

(51) It is the admitted position that a large number of employees have been employed to collect 'Octroi.' Under the directions given by the government, their services have to be continued. The salary has to be paid. The burden has to be borne. Despite the fact that they have no duty to discharge. Payment of wages for idleness is not the

ideal situation in the existing circumstances. The present case is a clear instance of a self-inflicted injury. The wisdom of the decision to keep the employees in service without any work for them is doubtful. The constitutional propriety is a clear casualty.

(52) It is human to grab gifts. As the elections approach, the expectations of the people arise. Demands are made. These are readily conceded. Such must be the situation even towards the latter half of the last year. However, acceptance often brings repentance. Resistance is the only way to ensure a dignified existence. Wrong by wrong, one can never reach the right result. The impugned Acts are an example of the politics of staying in power at all costs. Basic tenets of good governance have been clearly ignored in the present case.

(53) Legislature is undoubtedly entitled to legislate. Yet, as observed by W. Friedmann in *Legal Theory* (5th Edition), some 'check' has to be 'imposed' even 'upon legislative recklessness.' In the words of U.S. Supreme Court (*Adamson versus California*) 332 US 46(69), the courts have to "expand and contract constitutional standards to conform to the court's conception of what at a particular time constitutes civilized decency and fundamental liberty and justice."

(54) In the present case, the state has robbed Pater to pay Paul. The Municipal Bodies were looking for funds. Instead of providing for more, the state has deprived them of even what was so necessary for their sustenance. The State could have made a law to 'endow' the local bodies 'with power and authority... to enable them to function as institutions of self-government'. Endow means to 'enrich.' To 'enhance.' Not to deprive. Fiscal fitness is essential for effective functioning. The legislature could have made a law to 'furnish the institutions with an income.' It was required to enhance. Not to abolish. The State had to give. Not to take away what the municipalities were already getting.

(55) Another fact deserves mention. Local Government is a State subject under Entry 5 of List II of the Seventh Schedule. Thus, Parliament cannot enact any law relating to this subject. The insertion of Parts IX and IX-A carves out a scheme. It has to be implemented by the State. This can be done by amending the existing laws so as to ensure that these conform to the provisions of the Constitution or by enacting new laws.

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(56) The dominant principle that clearly underlies the 74th amendment is to enable the Legislature to make laws to strengthen the Local Bodies to become effective instruments of Local Government. It is manifest that the State shall not make a law that would weaken the institutions. The impugned Acts do not strengthen the municipalities. In fact, these weaken the municipal committees. The Constitution requires the States to legislate so as to make the municipalities independent. The impugned action has made the Committees and Corporations dependant. The Acts defeat the very object, which the Parliament had in view while amending the Constitution. The court cannot put its seal of approval on such an action.

(57) There is yet another aspect of the matter. Every state action, executive or legislative, must meet the test of Art. 14 of the Constitution. The 'content and reach' of the provision are not confined to the doctrine of classification. It is to ensure 'fairness.' Art. 14 strikes at arbitrariness of State action in any form. Nothing that is arbitrary, unfair or unreasonable can be sustained.

(58) The Courts have tested the validity of Statutes on the anvil of Art. 14. Various provisions have been struck down. To illustrate : S. 3A of the A.P. Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983, was considered in *Unni Krishanan, J.P. versus State of A.P. (1)*. It was held to be invalid. Similarly, in *Ashok Kumar Thakur versus State of Bihar (2)*, some of the provisions of the 1995 Ordinance relating to the reservation of vacancies for Scheduled Castes etc. were held to be violative of Art. 14. Also S. 29(1) of the Bombay Court Fees Act, 1959, in *Ashwathanarayan Setty, P.M. versus State (3)*. Such instances can be multiplied.

(59) Judged by the measures of Art. 14, it is clear that the impugned pieces of legislation taken away the right of the Local Bodies to collect Octroi. It does not provide for any alternative source. It is true that the State had promised to compensate for the loss till a provision for alternative tax was made. It was also stated that the Government shall pay for the projects. This has not been fulfilled. In

(1) AIR 1993 SC 2178 (Paras 173, 174 and 180)

(2) 1995 (5) SCC 403

(3) AIR 1989 SC 100

this situation, the Court has the choice of upholding the impugned Acts and issuing a mandamus to the State to pay. This shall however, be an exercise in futility. The State has no funds to pay. The learned Advocate General made no secret of the serious situation. We have no way to make the bare bones bleed.

(60) The Advocate General made a mild attempt to contend that the provision in Art. 243W is directory. Thus, the impugned Acts cannot be condemned as being unconstitutional.

(61) The contention cannot be accepted. 'Lack of financial resources' was one of the reasons for the 74th amendment of the Constitution. It was made to 'provide for the sound finance of the Nagarpalikas by securing authorization from State Legislatures for grant-in-aid.... from the Consolidated Fund..... as also assignment to or appropriation by, the Nagarpalikas of the revenues of designated taxes, duties, tolls and fees.' The local bodies are seen as 'institutions of self-government.' The Legislature has to make laws to 'endow' them with 'power and authority' so as to be able to prepare plans for 'economic development and social justice' and to implement the schemes 'entrusted to them.' Even the Finance Commission as constituted under Art. 243Y has to 'review the financial position of the Municipalities and make recommendations' regarding the 'measures needed to improve the financial position...'

(62) These provisions do not embody just a pious wish but a constitutional mandate. The purpose is clear. The legislature has to legislate to augment the fiscal fitness of the local bodies. It has to augment the resources. Not to abolish them. The State has to help. It has to supplement and support the Municipal Committees. Not to starve them. The impugned Acts merely deprive. These, do not 'endow.'

(63) In view of the above, it is held that :—

- (1) Plenty to poverty is the sad story of the state of Punjab. Today, it is under a heavy debt in the region of Rs. 62,000.00 crores. It is facing an acute financial crunch.
- (2) This situation has arisen on account of the State following the policy of 'populist politics' and adopting the 'revenue sacrificing measures' such as free power, free water,

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*abolition of octroi*, house tax and Land Revenue. By abolishing 'Octroi', the State has really deprived the Municipal Committees of their primary source of revenue.

- (3) The levy was abolished with an assurance and undertaking that some alternative source/s shall be found and provided. In the interregnum, the State shall pay. However, the State's financial position being bad, it was not in a position to keep its promise and to compensate the Municipal Committees and Corporations etc. for the inevitable loss that they have suffered on account of the impugned action. In the circumstances, it is not surprising that the State has actually failed to honour its commitment.
- (4) The Constitution was specifically amended in the year 1992 to empower the States to make laws so as to ensure that the Municipalities become effective instruments of local self-government in urban areas. Part IXA of the Constitution clearly visualizes the Nagarpalikas as institutions for economic development and social justice. Schedule 12 enumerates the functions that can be entrusted to the Committees. Carrying out these measures is essential for achieving the intended objects.
- (5) The impugned Acts passed by the State Legislature debar the Municipal Committees and Corporations etc. from collecting Octroi. Despite the recommendation of the Shakar Committee, no alternative source of revenue has been provided. This has adversely affected the working of the local bodies. The execution of even the on going projects has been affected. The working staff remains idle. Payment of wages for idleness is not an ideal situation or solution. The impugned Acts clearly defeat the declared objective and violate the provisions of the Constitution. These are arbitrary and unreasonable. Consequently, the impugned Acts are declared unconstitutional and quashed.

(6) The grievance made in some of these cases regarding the violation of the terms of contracts or regarding failure of the State to reimburse the money already collected on account of Octroi cannot be decided in these proceedings as there is some dispute on facts. For the settlement of these claims, the concerned petitioners are permitted to make representations to the State Government within one month. The Government shall consider and decide the matter within 3 months from the date of receipt of the respective representations by passing speaking orders.

(7) It does not appear to be proper to add to the problems of the respondents by initiating proceedings for Contempt at this stage. The CMP is dismissed.

(64) The writ petitions are allowed in the above terms. No costs.

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**R.N.R.**

*Before Jawahar Lal Gupta & N.K. Sud, JJ.*

PUNJAB PANCHAYATI UNION AND OTHERS,—*Petitioners*

*versus*

STATE OF PUNJAB,—*Respondent*

C.W.Ps. NO. 7093 & 7427 of 2002

July 9, 2002

*Punjab Panchayati Raj Act, 1994—Ss. 29-A & 209—Constitution of India, 1950—Arts. 226, 243-E & Part IX—Elections to the Gram Panchayats—Government deciding to hold election before the expiry of the term of five years—Art. 243-E permits dissolution of a panchayat before the expiry of five years under the law—Provisions of the Constitution require that a fresh election has to be completed within a period of six months from the date of dissolution—Tenure of the newly elected panchayat restricted to the remaining part of the term—No fresh election if the unexpired term is less than six months—S. 29-A empowers the State Government to dissolve a Gram Panchayat*