(1991) 07 KL CK 0008

In the High Court Of Kerala

Case No : O.P. No. 11304 of 1990-U

Assainar APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 08-07-1991

Acts Referred:

Kerala Panchayat (Profession Tax) Rules, 1963 — Rule 10(1), 3, 3(1)
Kerala Panchayat (Taxation and Appeal) Rules, 1963 — Rule 3, 4

Citation : (1991) 2 KLJ 285

Hon'ble Judges : K. Sreedharan, J

Bench : Single Bench

Advocate : Govinda Bharathan, for the Appellant; M.C. Gopi, Government Pleader, for the Respondent

Judgement

K. Sreedharan, J.—When C.M.P. 2683/91 came up for orders, learned Counsel appearing on either side wanted the Original Petition itself heard and disposed of. Accordingly I heard them at length. 1 am disposing of the Original Petition.

2. Petitioners, 69 in number, are working in Chapparapadava High School, situated within the jurisdiction of Chapparapadava Panchayat, the third Respondent. Panchayat resolved to levy profession tax in accordance with the Panchayat Act and the Rules. The rates of tax are specified in Rule 3 of the Kerala Panchayat (Profession Tax) Rules, 1963, hereinafter referred to as "the Rules". Executive Officer of the Panchayat, 4th Respondent, issued Exhibit P-2 order to the Headmaster of the School seeking to levy profession tax assessed at the rates which existed prior to the notification issued by Government, dated 17th May 1990. Petitioners preferred objections to that course. Fourth Respondent rejected those objections by Exhibit P-4 order. Hence this Original Petition.

3. Under the Panchayat Act as per Section 69, Profession Tax shall be levied every half year in every Panchayat Area on every person who in that half year exercises a profession tax or calling or transacts any business or holds any

appointment public or private within such Panchayat area for not less than sixty days in the aggregate. The Profession Tax shall be levied at such rate as may be fixed by the Panchayat not exceeding the maximum rate prescribed. The rules prescribe the maximum rate of half yearly tax. As per the rules in force prior to 17th May 1990 the maximum rate fixed was Rs. 125 and the minimum Rs. 4.30. This rate was changed by S.R.O. 674/90, dated 17th May 1990. As per this the minimum was fixed at Rs. 10 and the maximum at Rs. 1250. Rules further provides that it is the responsibility of the panchayat to determine the tax leviable on each class within the maximum specified. The Executive Authority shall have to assign to a person the class in the scale appropriate to the half yearly income of such person as estimated by him. The panchayat had decided to impose profession tax half yearly at the maximum rate. When the maximum rate was changed by amending Rule 3 of the rules with effect from 17th May 1990 the maximum rates payable by Petitioner who came within different slabs were reduced. Without noting this change in the maximum rate leviable the panchayat issued Ext. P-2 notice requiring the Petitioners to pay higher amounts. This claim was objected to by the Petitioners by filing objections, Executive Officer rejected the objections and proceeded to take coercive steps for realising the amounts claimed as per the unamended rules.

4. Fourth Respondent has filed a detailed counter-affidavit. The stand taken therein is to the following effect. The amendment to Rule 3(1) of the rules which came into force with effect from 17th May 1990 is not for the levy of the profession tax for the financial year 1990-91. Rule 3 of the Kerala Panchayats (Taxation and Appeal) Rules, 1963 provides that any resolution of a Panchayat determining a levy of tax enumerated in the Act shall specify the rate at which such tax shall be levied and the date from which it shall be levied. Panchayat passed a resolution on 25th September 1990 to the effect that the amended rates of profession tax shall be given effect in the Panchayat with effect from the financial year commencing from 1st April 1991. That decision has been notified in the Malayala Manorama daily dated 10th October 1990 as per Rule 4 of the Taxation and Appeal Rules. The third proviso to Rule 3 of this Rule provides that when a resolution has taken effect for a particular financial year, no proposal to alter the rates or date fixed in such a resolution so far as that financial year is concerned, shall be considered. Thus a bar is imposed on change of profession tax during that financial year. Accordingly it is contended that the amended rates of profession tax can be given effect to only from 1st April 1991 in view of the resolution passed by the Panchayat.

5. Rule 3 of the Kerala Panchayat (Taxation and Appeal) Rules, 1963 deals with the procedure for passing resolution determining levy of tax. The resolution determining to levy a tax enumerated in the Act shall specify the rate at which any such tax shall be levied and the date from which it shall be levied. Before passing the resolution imposing a tax for the first time or increasing the rate of an existing tax the Panchayat shall, publish notice as provided therein. Third Respondent Panchayat was not imposing profession tax for the first time. Nor

was it increasing the rate of the profession tax-Panchayat had decided to impose profession tax half yearly at the maximum rates fixed by the Rule. By the amendment of the Rule, as far as the Petitioners are concerned the maximum tax recoverable from them was reduced. That reduction as per Rule came into effect on 17th May 1990. So with effect from that date the Petitioners are liable to pay profession tax as per the amended Rule only. Panchayat cannot claim any amount exceeding the maximum rates prescribed as per rules from 17th May 1990.

6. Rule 10(1) of the rules states that if in the opinion of the Executive authority profession tax is or will be due from any person for any half year, he shall serve notice on such person either in that half year or in the succeeding half year requiring the person to furnish a return in the form given in the schedule. Thereupon the person has to file the return showing the income derived during the half year. Executive Authority on getting satisfied of the correctness of the return should levy profession tax, for that half year. Thus it can be seen that the assessment of profession tax is for each half year, unlike the tax on property building etc. Viewed in this light, the bar contained in 3rd proviso to Rule 3 of Taxation and Appeal Rules cannot be pressed into service in assessing a person to profession tax. 3rd proviso states that where any resolution under Rule 3 of Taxation and Appeal Rules has taken effect for a particular year, no proposal to alter the rates or dates fixed in such resolution so far as that year is concerned shall be taken into consideration by the Panchayat. Assessment to profession tax being half yearly, this proviso cannot have any effect. Therefore the argument of Respondents 3 and 4 that the maximum rates fixed in the amended rule has effect in its area only from 1st April 1991 as per its resolution, dated 25th September 1990 cannot be accepted.

7. By Exhibit P-2, the 4th Respondent required the Petitioners to pay tax above the maximum rate prescribed in Exhibit P-1. This is clearly beyond his jurisdiction. When this fact that brought to his notice by Exhibit P-3 objection, he should have rectified that mistake. Instead, he rejected the objection on untenable grounds. Since the Panchayat has no power to levy profession tax at a rate exceeding the maximum rate prescribed in Ext. P-1 Rules, I quash Exhibits P-2 and P-4. Exhibits P-5 circular issued by the second Respondent which is against the provisions contained in the Rule Exhibit P-1, cannot also stand. The 4th Respondent has made Exhibit P-7(a) order of assessment against the Petitioner levying profession tax at the rate which existed prior to Ext. P-1 notification. For the reasons stated earlier, that assessment is also illegal because 4th Respondent has called upon the Petitioners to pay tax exceeding the maximum tax fixed in Ext. P-1 Rules. So, Ext. P7(a) assessment relating to the second half year of 1990-91 has also to be quashed. I do so. In pursuance to that order of assessment, 4th Respondent has issued Exhibit P-7(b) notice u/s 74 of the Act, calling upon the Petitioners to show cause why coercive steps for the realisation of the tax should not be initiated. Since the order of assessment has been found to be illegal, no coercive step for the recovery of the tax covered by

the impugned orders of assessment can be pursued. Therefore, notices like Ext. P-7(b) issued to the Petitioners are quashed.

The Original Petition is allowed in the following terms. Petitioners are liable to pay profession tax not exceeding the maximum fixed by the State in Ext. P-1 notification for the first and second half years of 1990-91. I make no order as to costs.