(1965) 01 CAL CK 0021

In the Calcutta High Court

Case No : Civil Revision Case No. 923 (W) of 1961

Balai Chand Seal APPELLANT

Vs

K.M. Chakravarti and Others RESPONDENT

Date of Decision : 05-01-1965

Acts Referred:

Constitution of India, 1950 — Article 207, 212, 255

Citation : AIR 1966 Cal 81 : 69 CWN 273 : (1966) 17 STC 300

Hon'ble Judges : B.N. Banerjee, J

Bench : Single Bench

Advocate : S.K. Acharya and Debesh Chandra Mukherjee, for the Appellant; N.C. Chakravarti and Samarendra Nath Dutt, for the Respondent

Final Decision : Dismissed

Judgement

B.N. Banerjee, J.—The petitioner was a bullion merchant and used to carry on business under the trade name Messrs. Balai Chand Seal. The said business stands closed with effect from Chaitra 25, 1363 (corresponding to April 8, 1957).

2. While he was in the business, the petitioner obtained, on December 18, 1942 his registration as a dealer u/s 7 of the Bengal Finance (Sales Tax) Act, 1941. The certificate of registration specified the following classes of goods as saleable to the petitioner free of sales tax, namely, gold, silver and specie. Subsequently, two more items, namely guineas and mohurs were added to the specification. The specification was, however, of little utility to the petitioner because up to September 24, 1955, bullion and specie were exempted from sales tax under item 22 of schedule of exempted goods read with the provisions of Section 6 of the Bengal Finance (Sales Tax) Act, 1941.

3. On August 18, 1955, there was a Bill published in the Calcutta Gazette, Extraordinary, entitled the Bengal Finance (Sales Tax) (Second Amendment) Bill, 1955, of which Clause 13 was couched in the following language:

"In the Schedule to the said Act,--(a) in item 8 the word "sugar" shall be omitted; and (b) the following items shall be omitted, namely:

(1) (2)

"23. Gold ornaments manufactured from bullion or specie.

When sold by the manufacturer who charges separately for the value of the gold and the cost of manufacture.

44. Matches ... ..."

4. While the Bill was being debated in the West Bengal Legislative Assembly, on September 12, 1955, Shri Gopika Bilas Sen Gupta, M.L.A., who happened to be the Chief whip of the Congress Party at that time, moved an amendment to Clause 13 of the Bill in the following language:

"Sir, I beg to move that in Clause 13 of the Bill, for Sub-clause (b) the following sub-clause be substituted, namely:

(b) the following item shall be omitted, namely:

''22. Bullion and specie'' "

(Vide Assembly Proceedings Official Report Twelfth Session August-October, 1955).

The amendment was passed by the West Bengal Legislature and Sections 1 and 13 of the Bengal Finance (Sales Tax) (Second Amendment) Act, 1955 read as follows:

"1. (1) This Act may be called the Bengal Finance (Sales Tax) (Second Amendment) Act, 1955

(2) This section shall come into force at once; Sections 3 and 14 shall be deemed to come into force immediately on the Bengal Finance (Sales Tax) (Amendment) Ordinance, 1955, ceasing to operate and the remaining sections shall come into force on such date or dates as the State Government may, by notification in the Official Gazette, appoint."

13. In the Schedule to the said Act:

(a) in item 8 the word "Sugar" shall be omitted; and

(b) the following item shall he omitted, namely,

1 2

"22. Bullion and specie ... ..."

5. By a notification No. 2052 F. T., dated September 25, 1955, (published on the same day in the Calcutta Gazette Extraordinary) Sections 2, 4 and 5 to 13 were brought into force with effect from September 25, 1955.

6. The legislation was, it is alleged, disliked by the bullion merchants and some

sort of agitation was set on foot. It is alleged that the State Government partially responded to the agitation and promulgated an Ordinance, on October 18, 1955, known as Bengal Finance (Sales Tax) (Second Amendment) Ordinance, 1955, whereby, inter alia, the rate of tax on sale of gold bullion or specie was reduced from Rs. 4/11 as. per cent, to 8 as. per cent, and exemption of taxes on gold ornaments was withdrawn, as had been originally intended by the Bengal Finance (Sales Tax) (Second Amendment) Bill, 1955. The provisions of the Ordinance were subsequently enacted in the Bengal Finance (Sales Tax) (Third Amendment) Act, 1955, which was published in the Calcutta Gazette, Extraordinary, on January 11, 1956.

7. Further, in order to minimise the hardship of the bullion merchants, not registered as dealers, the Commissioner of Commercial Taxes E ublished a notification granting a sort of tax-holiday for them for the period September 25 to November 24, 3955 and exempted them from registration and payment of taxes during the period.

8. For the periods ended 6th Baisak, 1363 B. S. and the Ramnavami day, 1363 B. S. (25th Chaitra, 1363 B. S.) the petitioner was assessed to taxes and penalty respectively amounting to Rs. 12958-15-3 pies and Rs. 0800 under the provisions of Bengal Finance (Sales Tax) (Second Amendment) Act, 1955. The petitioner claims to have pain a part of the tax demand and recovery proceedings are said to be pending against the petitioner for the balance.

9. The petitioner contended that the Bengal Finance (Sales Tax) (Second Amendment) Act, 1955 was an invalid piece of legislation, for reasons to which I shall presently refer, and taxation thereunder was unlawful. He also contended that in administering the Act unconstitutional discrimination was made between the registered and unregistered dealers, in that a tax-holiday was allowed to unregistered bullion merchants and not to the registered bullion dealers like the petitioner, He, therefore, called upon the respondent Commissioner of Commercial Taxes to cancel the assessment of tax upon him but failed to get relief.

10. In these circumstances, the petitioner moved this Court, under Article 226 of the Constitution, praying for a writ of Certlorari for the quashing of the assessment order upon the petitioner and for a writ of Mandamus directing the respondents not to take steps against the petitioner For the enforcement of the said order and also for a writ of Mandamus directing the respondents to refund the tax unlawfully collected from the petitioner, as aforesaid, and obtained this Rule.

11. Mr. S.K. Adharya, learned Advocate for the petitioner urged a single point in support of this Rule. He gave up the grievance that in administering the Bengal Finance (Sales Tax) (Second Amendment) Act, 1955 unconstitutional discrimination was made between the registered and the unregistered dealers and concentrated his attack on the invalidity of the Second Amendment Act.

12. Elaborating his contention Mr. Acharya argued that the Bengal Finance (Sales Tax) (Second Amendment) Bill, 1955 was a Money Bill within the meaning of Sub-clause (a) of Clause 1 of Article 199 of the Constitution and under the provisions of Clause 1 of Article 207 of the Constitution,

"A Bill or amendment making provision for any of the matters specified in Sub-clauses (a) to (f) of Clause (1) of Article 199 shall not be introduced or moved except on the recommendation of the Governor, and a Bill making such provision shall not be introduced in a Legislative Council:

Provided that no recommendation shall be required under this clause for the moving of an amendment making provision for the reduction or abolition of any tax."

Mr. Acharya contended that the recommendation of the Governor may have been obtained in respect of the Bill in its original form, proposing to impose sales tax on gold ornaments and matches but there was no recommendation from the Governor for the imposition of tax on bullion and specie. As such, in the amended form, Mr. Acharva contended, the Bill had not the coverage or the recommendation from the Governor, He further contended that bullion and gold ornaments were subject-matters of different items in the Schedule to the Bengal Finance (Sales Tax) Act, 1941 (namely, items 22 and 23 respectively); the recommendation from the Governor for amendment was obtained only in respect of item 23 (gold ornaments) and not in respect of item 22 (bullion and specie); the amendment gave a completely new form to Clause 13 of the Bill and this was not permissible under Article 207. Mr. Acharya rounded up his argument with the contention that the Bill in the amended form being invalidly introduced, the Act was an invalid piece of legislation.

13. This argument was sought to be met by the learned advocate for the respondents by placing reh''ance on Article 212 of the Constitution, which reads as follows:

"(1) The validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or member of the Legislature or a State in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any Court in respect of the exercise by him of those powers".

14. This answer again was sought to be repelled by Mr. Acharya with the contention that the immunity from judicial interference, under Article 212, was confined to irregularity in legislative procedure only and that no such immunity existed when the Legislature violated a mandatory provision of the Constitution or acted beyond its legislative competence. He further contended that the recommendation of the Governor was of fundamental importance for the validity of a Bill and being a mandatory provision in the Constitution, the requirements

must not be allowed to be ignored.

15. In my opinion, it is not necessary for me to go into the questions as to whether the recommendation contemplated by Article 207 is a matter of mere procedure or whether the provision is directory or mandatory in nature. There is a complete answer to the contention raised on behalf of the petitioner to be found in Article 255 of the Constitution, which is couched in the following language;

"No Act of Parliament or of the Legislature of a State ...... and no provision in any such Act, shall be invalid by reason only that some recommendation or previous sanction required by this Constitution was not given, if assent to that Act was given

(a), where the recommendation required was that of the Governor, either by the Governor or by the President;

(b) where, the recommendation required was that of the Rajpramukh, either by the Raj-pramukh or by the President;

(c) where the recommendation or previous sanction required was that of the President, by the President."

16. In the instant case, the assent of the Governor to the Bengal Finance (Sales Tax) (Second Amendment) Act, 1955 was published in the Calcutta Gazette, Extraordinary, on September 19, 1955. That cures the type of defect contended for by Mr. Acharya. A similar view was expressed by the Rajasthan High Court in Gauri Shanker Vs. Municipal Board, Jhunjhunu and Another, dealing with the previous Presidential sanction of the Bill, under Article 204 of the Constitution, and I respectfully agree with the view.

17. For the reasons, given, the only argument made in support of this Rule fails and I discharge the Rule with costs hearing fee being assessed at three gold mohurs.

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