

(1989) 10 KAR CK 0009

In the Karnataka High Court

Case No : Writ Petition No's. 17042 and 17043 of 1989

Banashankary Leasing Co. Ltd. and Another

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 17-10-1989

Acts Referred:

Constitution of India, 1950 — Article 14

Karnataka Tax on Professions, Trades, Callings and Employments Act, 1976 — Section 3

Citation : (1990) 182 ITR 8 : (1989) 3 KarLJ 562 : (1990) 79 STC 87

Hon'ble Judges : S. Rajendra Babu, J

Bench : Single Bench

Advocate : B. Veerabhadrappe, for the Appellant; H.L. Dattu, High Court Government Pleader, for the Respondent

Judgement

S. Rajendra Babu, J.—Petitioners in these writ petitions are companies engaged in the business of hire-purchase and automobile parts. They have called in question the constitutional validity of entry 19 of Schedule to the Karnataka Tax on Professions, Trades, Callings and Employments Act, 1976 (Karnataka Act No. 35 of 1976) (hereinafter referred to as "the Act"), levying a flat rate of tax of Rs. 2,500 per annum.

2. The grounds of attack raised by the petitioners are : that reading the entry under the Constitution at 60 of List II of the Second Schedule to the Constitution and the charging section as well as entry 19 the incidence of tax is upon profession, trade or calling; that when the tax base is profession, trade or calling, classification made by singling out a company without reference to the profession, trade, or calling carried on by it is per se bad and has totally no relevance for the purposes and objects of the Act; that even amongst companies there is no classification based upon the standing, the number of employees engaged and capital investment made and the like as has been done in cases of certain other categories of assessee falling under the Act, such as, lawyers and certain other employers; that the levy at a flat rate of Rs. 2,500 without

classification amongst the companies depending upon the nature of activity carried on by them, their standing, the number of employees engaged by them is discriminatory. The learned counsel relying upon a decision of the Supreme Court in *The State of Kerala Vs. Haji K. Kutty Naha and Others etc.*, attacked the levy of flat rate adopted without taking into consideration the nature of activity carried on, the age, size and magnitude of the company as non-classification on that basis would lead to discrimination and results in refusal to make a classification on the basis of the above criterion, which factor is itself discriminatory.

3. The charging section, viz., section 3 of the Act and entry 19 in the Schedule thereof read as follows :

"3. Levy and charge of tax. - (1) There shall be levied and collected a tax on professions, trades, callings and employments for the benefit of the State.

(2) Every person who exercises any profession or calling or is engaged in any trade or holds any appointment, public or private, or is employed in any manner in the State, specified in the second column of the Schedule, shall be liable to pay to the State Government the tax at the rate mentioned in the corresponding entry in the third column of the said Schedule.

* * *."

Sub-section (1) of the charging section provides for levy and collection of tax on professions, trades, callings and employments for the benefit of the State. Sub-section (2) provides for levy of tax on every person who exercises any profession, calling or trade specified in the second column of the Schedule to pay at the rate mentioned in the corresponding entry thereof. In *State of Tamil Nadu v. Kandaswami* [1975] 36 STC 191, the Supreme Court has stated that the scheme of a taxing statute involves three inter-related but distinct concepts which may be described as "taxable person", "taxable event" or "subject of taxation" and a charging provision in order to be effective must contain these ingredients. No tax is complete nor can a charge arise under a fiscal statute unless the subject, the object and the quantum of tax are prescribed or indicated in the provision. In doing so there can be different rates of tax levied depending upon the nature of profession carried on or depending upon the capacity of person to pay the tax or any other relevant consideration. In the present case, what has been done is that under the Schedule to the Act a broad classification based on the profession, trade or calling is made with regard to most assesseees but in relation to partnership firms and companies and certain institutions a flat rate of tax is provided. That is the provision which is under attack here. Although the learned counsel made a very subtle distinction between a company and the activity carried on by it, looking at the object of the Act, that there could be levy of tax on professions, trades and callings, there cannot be levy in isolation only with reference to profession, trade or calling without reference to the person on whom tax is levied and when that person is identified it is open to the legislature

to make different classifications. So far as individuals are concerned the classification has been made by the legislature based on respective professions carried on by them while in respect of firms and companies no such classification is made because a company itself is not a natural person and is controlled by the provisions of the Companies Act. A company has special immunities, responsibilities, rights and liabilities. Therefore, a company by itself stands as a separate class. If that classification has been made by the legislature, I do not think it can be faulted at all.

4. But what is attacked is this : although the classification of company as such may be good when it carries on a profession, there cannot be any difference between any individual or a natural person or a legal person like a company because the basis of tax is only the profession. A careful reading of the charging section would reveal that tax is levied on profession, trade or calling undoubtedly but it also takes into consideration the person who carries on the profession. Indeed, the scheme of the Act itself will indicate such classification having been maintained in respect of individuals and it takes note of the standing of the person concerned in the profession, the number of persons employed by such person which ultimately would indicate the capacity to pay tax. But, in the case of companies and firms, a distinction has been maintained on the basis they are composed of more than one individual and enjoy a superior status in the business world, thus having greater capacity to pay tax than an individual. It is too well-settled today to need any elaboration, as has been held in *S. Kodar Vs. State of Kerala*, and in *Hoechst Pharmaceuticals Ltd. and Others Vs. State of Bihar and Others*, that a person who is economically superior can pay higher rate of tax and such classification has been held to be good. Therefore, the first two aspects of the argument addressed by the learned counsel for the petitioners that classification of company as such although referable to a person is irrelevant does not hold any water.

5. So far as the last aspect of the argument is concerned, I may state that almost identical arguments are addressed in *Murthy Match Works and Others Vs. The Asstt. Collector of Central Excise, and Another*, Indeed, reference to the very decision in *The State of Kerala Vs. Haji K. Kutty Naha and Others etc.*, , relied upon by the learned counsel for the petitioners was made and the Supreme Court while holding that refusal to make a rational classification violating the mandates of article 14 of the Constitution is a sound law, entered a caveat to state that where the limited classification adopted in a case is based on relevant consideration, which is a legislative mode of taxation, the court cannot strike down the same on the basis that there is room for further classification. Refusal to classify is one thing and it bears on constitutionality; but as to whether there is need to make further classification to work out perfect justice is left to the State. It is too well-established that in modern State, particularly when exercising powers of taxation, the State has to deal with complex factors relating to the objects to be taxed, the quantum to be levied, the social and economic policies that such taxation is designed to achieve and so on and so

forth and, therefore, the court has given wide latitude to the legislature in the matter of levy of taxes and their classification therefor. What is attacked here is the flat rate of tax levied on companies at Rs. 2,500 per annum. It is not as if that flat rate of taxation is unknown to taxation law and such taxation has been upheld depending upon the extent of levy. In the present case, the maximum tax that is levied is at Rs. 2,500. Considering that a company has to carry on its activities being entitled to several privileges, an annual tax at the rate of Rs. 2,500 cannot be said to be excessive at all. To make classification on the basis of several factors referred to in the course of the arguments of the learned counsel for the petitioners may have been an excellent way to bring companies to tax, which may be a perfect way of doing justice, but merely in the absence of that it cannot be said that the legislative act is invalid. In *Murthy Match Works and Others Vs. The Asstt. Collector of Central Excise, and Another*, referred to earlier, there was a classification already in existence between those who are carrying on the activities by using power and those who are not and the classification was withdrawn. The Supreme Court observed while withdrawing the classification that if there is a broad classification that is enough and there need not be any micro classification. Indeed, in *Avinder Singh and Others Vs. State of Punjab and Others*, , where tax was levied at a flat rate of Re. 1 per bottle irrespective of the quality and the quantity of liquor contained in it, the Supreme Court upheld the same as foreign liquor itself is a class. In *Ganga Sugar Corporation Ltd. and Others Vs. State of Uttar Pradesh and Others*, the Supreme Court upheld the levy made on the basis of lots of sugarcane irrespective of the sugar contained in the sugarcane. So, it is not always necessary that there should be too scientific a classification to pass the muster of article 14 of the Constitution considering the smallness of the tax levied. In that view of the matter, I find no substance in the contentions urged on behalf of the petitioners. Consequently, these petitions are rejected.

6. Petitions dismissed.