(1962) 02 PAT CK 0001

In the Patna High Court

Case No : Misc. Judicial Case No. 835 of 1960

Calcutta Chemical Co. Ltd. APPELLANT

Vs

Bhagalpur Municipality and Another RESPONDENT

Date of Decision : 15-02-1962

Acts Referred:
Bihar and Orissa Municipal Act, 1922 — Section 150A, 82(1)

Citation : AIR 1962 Patna 465

Hon'ble Judges : V. Ramaswami, C.J;R.K. Choudhary, J

Bench : Division Bench

Advocate : Basudeva Prasad, for the Appellant; Sailesh Chandra Sinha, L.S. Sinha and Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

1. In this case the petitioner has obtained a rule from the High Court calling upon the respondents to show cause why the order of the Bhagalpur Municipality, respondent No. 1, imposing professional tax on the petitioner under the provision of Section 150A, read with Section 82(1) (ff), of the Bihar and Orissa Municipal Act, should not be quashed by grant of a writ in the nature of certiorari under Article 226 of the Constitution. Cause has been shown by the learned Government Advocate on behalf of the State of Bihar to whom notice of the rule was ordered to be given. Cause has also been shown by learned counsel on behalf of respondents 1 and 2.

2. On the 6th May, 1958, the petitioner received a notice of demand of professional tax of Rs. 750/- for the period from 1st April, 1956, to 31st March, 1959. On the 3rd September, 1959, another notice of demand of professional tax for a sum of Rs. 125 /- was issued by respondent No. 1 for the period from 1st October, 1954, to 31st March, 1955. Copies of these two notices are annexures A and B to the writ application. On the 3rd June, 1960, another demand notice for the payment of Rs. 500/- as professional tax for the years 1959-60 and 1960-61 was issued by respondent No. 2. This notice is annexure E to the writ application.

The assessment of professional tax was made by respondents 1 and 2 by virtue of the provisions of Section 82 (1) (ff) of the Bihar and Orissa Municipal Act, which states as follows :

"82. (1) The commissioners may, from time to time, at a meeting convened expressly for the purpose, of which due notice shall have been given, subject to the provisions of this Act and with the sanction of the State Government, impose within the limits of the Municipality the following taxes, and fees, or any of them :

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(ff) a tax on the trades, professions, callings and employments specified in the fourth schedule at such rates not exceeding the rates specified therein as may from time to time be determined by the commissioners at a meeting : Provided that the rates determined by the commissioners at a meeting shall be subject to the approval of the State Government and subject to such modification in the rates of taxes and exemption of classes of professions, trades and callings to be taxed as the State Government may direct."

The fourth schedule of the statute states as follows :

"1. Every licence shall be granted under one or the other of the classes mentioned in the second column of the following table and there shall be paid half-yearly from 1st April to 30th September and 1st October to 31st March, for the same a tax not exceeding the amount mentioned in that behalf in the third column of the table :

Serial No. Classes Maximum half yearly tax.

1 2 3

(a)

Joint stock company transacting business within the municipality for profit or as a benefit society of which the paid-up capital is equivalent to (a) Rs. 1,00,000 or more

125-0-0

(b) Rs. 75,000 or more but less than Rs. 1,00,000 100-0-0

(c) Rs. 50,000 or more but less than Rs. 75,00 75-0-0

(d) Less than Rs. 50,000 50-0-0

x x x"

Reference may also be made to Section 150A of the Bihar and Orissa Municipal Act, which provides as follows :

"150A. When it has been determined that a tax shall be imposed on professions, trades, callings and employments, every person who exercises within the municipality, either by himself or by an agent or representative, any of the professions, trades, callings or employments specified in the fourth schedule and who is liable to pay such tax, shall take out a half-yearly licence and pay the tax assessed on him in pursuance of Clause (ff) of Sub-section (1) of Section 82 :

Provided that such tax shall be imposed on the income accrued within the municipality during the year next preceding the year for which the tax is imposed;

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X 3. The main argument put forward on behalf of the petitioner is that Section 82 (1) (ff) of the Bihar and Orissa Municipal Act is unconstitutional because the State Legislature had no authority to make a law with regard to a tax on the capital value of companies as such legislation falls within Entry No. 86, of List I of the Seventh schedule of the Constitution. In this connection learned counsel made reference to the Fourth schedule of the Act which provides that the maximum rate of tax shall be fixed with reference to the paid-up capital of the Joint Stock Company transacting business within the Municipality for profit. It was submitted by learned counsel for the petitioner that Section 82 (1) (ff) of the Act must be read along with Section 150A and also with the Fourth Schedule of the Act, and if these statutory provisions are so read it was clear that the real effect of the legislation was to tax the share capital of the Joint stock Company. We are unable to accept the argument of learned counsel for the petitioner as correct.

In our opinion the legislation contained in Section 82 (1) (ff) and the Fourth Schedule of the Bihar and Orissa Municipal Act falls within item 60 of List II of the Seventh Schedule of the Constitution, under which the State Legislature has authority to make a law for imposing taxes on professions, trades, callings and employments. Having regard to the language of Section 82 (1) (ff) of the statute and the Fourth Schedule, and having also regard to the context and scheme of the Bihar and Orissa Municipal Act, we are of opinion that in reality and in pith and substance the impugned legislative provisions fall within item 60 of the State List and not under item 86 of the Union List. The principle applicable to a case of this description has been laid down by the Judicial Committee in Gallagher v. Lynn 1937 AC 863 at p. 870 as follows :

"It is well established that you are to look at the ''true nature and character of the legislation'' .... ''the pith and substance of the legislation''. If, on the view of the statute as a whole, you find that the substance of the legislation is within the express powers, then it is not invalidated if incidentally it affects matters which are outside the authorised field. The legislation must not under the guise of dealing with one matter in fact encroach upon the forbidden field. Nor are, you to look only at the object of the legislator. An Act may have a perfectly lawful object, e.g. to promote the health of the inhabitants, but may seek to achieve that object by invalid methods, e.g., a direct prohibition of any trade with a foreign country. In other words, you may certainly consider the clauses of an Act to see whether they are passed ''in respect of the forbidden subject."

It is manifest in the present case that the tax imposed by Section 82 (1) (ff) of the Act and the Fourth Schedule is a tax on the trade of the company and is not a tax upon the share capital of the company. It is true that the Fourth Schedule provides the yard-stick for measuring the quantum of tax to be imposed on Joint Stock Companies, but that is only ancillary to the power of the State Legislature to tax trades and professions and callings. It is manifest that the ceiling of professional tax to be imposed on a Joint Stock Company is measured with reference to the share capital, but that tax thereby does not become a tax upon the share capital of the company. In determining the nature of the tax, consideration may be given to the standard on which the tax is levied but that is not the determining factor.

The view that we have expressed is borne out by the decision of the Judicial Committee in a Reference under the Government of Ireland Act, 1920 1936 AC 352 and of a Full Bench of the Bombay High Court in Sir Byramjee Jeejeebhoy, Kt. Vs. The Province of Bombay, . It was pointed out by Kama, J. in that case that the urban immovable property tax levied by Section 22 of the Bombay Finance Act of 1932 was not a tax on income or on capital value of lands and buildings and so it was not ultra vires the Provincial Government, and the urban immovable property tax was a valid tax. The same principle has been expressed in Article 276(1) of the Constitution, which states that

"notwithstanding anything in Article 246, no law of the Legislature of a State relating to taxes for the benefit of the State or of a municipality, district board, local board or other local authority therein in respect of professions, trades, callings or employments shall be invalid on the ground that it relates to a tax on Income".

For these reasons we hold that the argument of learned counsel on behalf of the petitioner with regard to the constitutional validity of Section 82 (1) (ff) and the Fourth Schedule of the Bihar and Orissa Municipal Act must be rejected as untenable.

4. It was then submitted on behalf of the petitioner that the Fourth Schedule of the Bihar and Orissa Municipal Act is in conflict with the first proviso to Section 150A of the Act and must, therefore, be held to be void and illegal. In our opinion there is no substance in this argument also. From the language of the Fourth Schedule it is clear that the Fourth Schedule only fixes the maximum rates of tax for Joint Stock Companies and certain other class of assessees upon whom the tax is imposed. It should also be noticed that the Fourth Schedule fixes certain amount of tax on Joint Stock companies "transacting business within the municipality for profit or as a benefit society". Section 150A of the Bihar and Orissa Municipal Act, on the contrary, provides that every person who is liable to

pay tax shall take out a half-yearly license and pay the tax assessed on him in pursuance of Section 82, Sub-section (1), Clause (ff), "provided that such tax shall be imposed on the income accrued within the municipality during the year next preceding the year for which the tax is imposed". It is manifest that the language of Section 150A refers to the actual imposition of tax in the case of a particular assessee with reference to the income accrued to such assessee within the municipality during the relevant year. In our opinion there is no conflict or repugnancy between the provisions of Section 150A and the Fourth Schedule of the Bihar and Orissa Municipal Act. We accordingly reject the argument of learned counsel on this aspect of the case.

5. Lastly it was submitted by learned counsel for the petitioner that in the resolution of the Municipal commissioners dated the 14th July, 1955, there is no amount of ceiling tax fixed with regard to the joint Stock companies as specified in the Fourth Schedule of the Bihar and Orissa Municipal Act. It was also contended that the sanction of the State Government has not been obtained by the Municipal Commissioners with regard to this resolution. In the course of hearing we examined the original proceeding Book of the Bhagalpur Municipality and we found that the copy furnished by the petitioner as annexure I to the writ application is erroneous. The original proceeding Book shows that a ceiling tax of Rs. 125/- has been fixed for Joint Stock Companies transacting business within the municipality for profit of which the paid-up capital is Rs. 1,00,000/- or more. We reject, therefore, the contention of learned counsel for the petitioner on this point. With regard to the approval of the State Government, no such question was raised by the petitioner in the writ application and no opportunity was given to the respondents to produce the relevant document relating to the approval of the State Government. The argument of the petitioner on this point involves a question of fact which cannot be raised for the first time in the course of argument of the case. We must reject the argument of learned counsel for the petitioner on this point.

6. For these reasons we hold that the petitioner has not made out a case for grant of a writ in the nature of certiorari under Article 226 of the Constitution. We accordingly dismiss this application with costs. Hearing fee Rs. 250/-.

