(1979) 10 CAL CK 0005

In the Calcutta High Court

Chittranjan Das and Another — APPELLANT

Vs

State of West Bengal and Others — RESPONDENT

Date of Decision : 31-10-1979

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 257, 276
Income Tax Act, 1961 — Section 2, 3

Citation : 84 CWN 478

Hon'ble Judges : Sabyasachi Mukharji, J

Bench : Single Bench

Advocate : Abhijit Banerjee and Asim Kumar Mukhopadhyay, for the Appellant; R.N. Bajoria and S.N. Dutta, for the Respondent

Final Decision : Dismissed

Judgement

1. In this application under Article 226 of the Constitution, the petitioners, who are two in number, claim that the provisions of the West Bengal State Tax on Professions, Trades, Calling and Employment Act, 1979 and the Rules framed thereunder should not be given effect to in the case of the petitioners. The petitioner No. 1 is working in Life Insurance Corporation of India. I. H. O. Unit, Metropolitan Group and his total emoluments is Rs. 2,054.40 and he states that he paying income tax which is deducted at source. The petitioner No. 2 is also an employee under Life Insurance Corporation of India. They challenge the application of the said Act in the case of the said petitioners mainly on two grounds. Incidentally, I may mention that the vires of the provisions of the West Bengal State Tax on Professions, Trades, Callings & Employment Act, 1979 and the competency of the State legislature to impose the tax in the case of the Advocates practicing in the high Courts and the Supreme Court were challenged before me in several Writ applications being C. R. No. 4689(W) of 1970 and others (Debabrata Basu and Others Vs. State of West Bengal and Others,). By a judgment delivered by me on the 9th & 10th August, 1979, I had upheld the validity of the said Act except a particular section with which I am not concerned I this application. Incidentally, I may mention that in the petition, the petitioners

have also challenged section 26(2) of this Act on the ground that it amounts to giving uncanalised powers. In view of my aforesaid decision, Mr. Banerjee appearing for the petitioners did not press this point seriously. He, however, concentrated his attack on two grounds. His first contention is that the charging section is vague and this does not bring in the petitioners within the net of this section. In this connection he referred to the sections and drew my attention to the definitions given in Sec. 2(f), Section 2(k), Sec. 2(i) and Sec. 2(b). In this connection it may not also be inappropriate to refer to Sec. 2(j) to which may attention was drawn by Sri Bajoria appearing fort the respondents. According tot the petitioners, the expression ''enlargement'' is vague. My attention was drawn to sub-section (2) of Sec. 3 of the said Act which provides as follows :-

(2) Every person engaged n any profession, trade, calling or employment and falling under one or the other of the classes mentioned in the second column of the Schedule shall be liable to pay to the State Government tax at the rate mentioned against the class of such persons in the third column of the said Schedule ;

Provided that entry 19 in the Schedule shall apply only to such classes of persons as may be specified by the State Government by notification from time to time.

2. It was urged that in view of the definitions of employer and employee in conjunction with the definition of ''profession tax'' the expression ''engaged'' is vague and in view of this vague expression, in a fiscal statute, the said provisions could not be enforced. It is well settled that if a taxing statute is vague and is not capable of being made certain, then, it should not be enforced and the petitioners cannot be brought within the net of the taxing orbit of the statute. For the purpose of argument that the expression ''enlargement'' is vague, my attention was drawn to Stroud''s Judicial Dictionary'' 3rd Edition, Volume 3 page 1650. My attention was also drawn to Hulsbury''s Laws of England, 4th Edition, Vol. 23 at page 67, paragraph 82 where Hulsbury states that normal rules of statutory construction apply to taxing Acts, but in addition there are certain other consideration of such Acts. Halsubury further states that it is a general principle of fiscal legislation that to be liable to tax the subject must fall normally within the words or charge imposing the tax, otherwise he goes free; and it is for the Crown to establish that the charge prima facie extends to the subject matter sought to be charged. On behalf of the petitioners, it was stated that expression persons engaged in sub-section (2) of Sec. 3 is vague, as indeed it was pointed out that there is no definition of engagement as such in the statute though there are definitions of employers and employees. Now, Section 2 (f) of the Act defines person to mean any person who is engaged in any profession, trade, calling or employment in West Bengal. For the same proposition, it may be relevant to refer to Craies on Statute Law, 7th Edition, page 113 which reiterate that in order to come within the provisions of fiscal statute the subject matter must clearly come within its net. Reliance was also placed on Crawford''s Statutory Construction, Interpretation of Laws, 1940 Edition, page 503, Article 257 and the

same proposition was also reiterated by the Supreme Court in the case of Income Tax Officer, Tuticorin Vs. T.S. Devinath Nadar and Others, and case of Commissioner of Income Tax, Hyderabad Vs. Motors and General Stores (P.) Ltd., . Learned advocate for the petitioners also drew my attention to Sec. 2(31) of Income Tax Act, 1961. In my opinion, in so far as the proposition that taxing statute must clearly bring in a subject within its net, no exception can be taken. It is well settled that if any expression is vague and not capable of being made certain in the context of a particular statute specially in a fiscal statute such a provision should not be enforced or allowed to operate. These propositions were also not disputed. But, whether a particular expression is vague or not, naturally depends upon the context and the normal meaning of the expression used. It is true that in some context the expression ''engaged'' may be vague and may be capable of more than one meaning. Speaking forensically, one may say that literally the expression ''engaged'' is very often used in relation to men and women before they are married. But that is not the context in which the expression has been used in the present statute. Reading the entire placement of this section along with the Constitutional provisions of Article 276, it is clear in my opinion, that the expression ''engaged is meant to convey one who is occupied in employment. That is the essential ingredient and the meaning of expression ''engaged''. It that is so then the fact that the expression ''engaged is not, as such, defined in the Act is of on consequence.

3. My attention was also drawn to a decision in the case of Chintaman Rao and Another Vs. The State of Madhya Pradesh, which, of course, the learned advocate rightly pointed out was a decision on Factories Act which implies that in order to mean ''employment'' there must be an employer, there must be employee and, thirdly, there must be a contract of service and very often in this case, there is no contract of service. But it was stressed that employment is regulated by rules and regulations and contract and is voluntary bargain between the parties. Therefore, one of essential ingredients of employment as indicated before in case of employees like the petitioners, is absent. But, on behalf of the Respondent it was stressed that in order to be ''employment'', there must be an employer whose order or directions the person who is called an employee is bound to obey, though, looking at the present day context one is tempted to express doubt as to whether employers dictate the orders to the employees or the employees dictate the order to the employers. But still legally that is the concept upon which we operate that employer is one who gives orders or directions which are meant or bound to be followed or obeyed by the employee and his relationship is regulated either by bargain between the parties or by certain rules which are accepted voluntarily by the parties who join the service. Therefore, looking from that point of view, in my opinion though in some cases, like the Government service it is status and not a question of contract, but still there are binding rules, the acceptance of these rules and it can be construed in that light that there is a set of rules regulating the conduct and all the ingredients of the employment are present. In this connection, Mr. Banerjee, learned Advocate for the petitioners,

also stressed upon the meaning of the expression ''means'' in Sec. 2(f). It was stressed that the expression ''means'' is restrictive and not inclusive while the expression ''includes'' is more extensive. This again in an indisputable proposition which cannot be challenged. The expression ''means'' is restrictive and it defines the persons who came within the ambit of that definition and the expression ''includes'' is often used to bring in others who normally and literally would not have come within the meaning of the expression. But that again, in my opinion, would not be of much assistance to the petitioners because if the petitioners are engaged, that is to say, are occupied in the job or employment then the expression ''means'' would include the petitioners.

4. Next aspect of challenge was on the ground of violation of Article 14 of the Constitution. In this connection, my attention was drawn to item (1) of the Schedule and it was stressed that in order to pass the test of reasonableness under Article 14, there should be a reasonable nexus with the object sought to be achieved and the differentiation if made, the same should be intelligible and the classifications should not be vague. But, in this case, the tax is, as I have mentioned, a tax on professions, trade, calling and employment. As I have indicated in the unreported judgment since reported Debabrata Basu and Others Vs. State of West Bengal and Others, , referred to herein before, these different occupations or avocations could have been, by virtue of Article 276 subjected to different statutes brought in within the taxing net. But, if the legislature enacts one Act for all these classes and treats them differently on a separate basis, keeping a demarcation of these classes separate and distinct, there is no violation of Article 14 or any violation of the provisions of Article 276 of the Constitution. But it was stressed on behalf of the petitioners that the different categories mentioned in clauses (I) to (VII) and in item I of the Schedule bear no reasonable nexus with the object of the tax. The object of the tax, as mentioned in the Preamble, is to raise additional revenue. It is well settled that in order to raise additional revenue, the State should, as far as practicable, take into consideration the capacity of the persons of the source from which the revenue should be recovered and provided that capacity to pay has been taken into consideration, in my opinion, the measure or the method by which that capacity has been taken into consideration is not a matter of judicial scrutiny. Indeed, it cannot be disputed that persons who earn less than Rs. 500 have less capacity or supposed to have less capacity to pay tax than the persons who earn more than Rs. 500 or Rs. 750 and so on, as mentioned in different classes in item 1. There cannot be any mathematical accuracy or mathematical correlation between the capacity to pay with the object but if there is a rational nexus and if the capacity to pay has been, in some form or other taken into consideration in a fiscal provision intended to raise additional revenue, in my opinion, such a provision can not be struck down as violative of Article 14 or as arbitrary. In this connection, reliance was placed on certain observation of the Supreme Court in the case of Jaila Singh and Another Vs. State of Rajasthan and Others, . Now, whether in a particular case, Article 14 has been violated or not is very often a

question of fact. So long as the basic principles are borne in mind, in what context that principle has been tested and decided and decided and decided in a particular case, must follow and depend on the facts and circumstances of the case. In the other judgment, I mentioned, where the limit is Rs. 250/- and where the capacity to pay has been taken into consideration and grouped and where slab system has been provided for a particular category of persons, in my opinion, it cannot be condemned or said there is no nexus, as such, with the object sought to be achieved and, as such, there has been violation of Article 14 of the Constitution. Reliance was also placed on certain observations of mine in the case of State Bank of India vs. State of West Bengal 79 CLJ 360 where I had occasion to deal with the tax on multi-storied buildings. As mentioned before, whether in particular case, there is any violation of Article 14 or not depends on the actual provisions, on the object of the tax and on the system provided in the tax. Indeed, the group or slab system is more or less common or universal in all fiscal legislations and the incomes, where certain grouped incomes are treated differently from another grouped income that cannot be condemned as violative of Article 14 of the Constitution.

5. Another aspect of argument sought to be urged is about Item Nos. 16 & 17. But these items re of different categories and, as such, the way they have been treated, in my opinion, is not relevant for the present purpose.

6. For the reasons aforesaid, in my opinion, the challenge to the application of this Act by the petitioners cannot be accepted and, therefore, the application must fail and is accordingly dismissed. In this case, no Rule was issued. In the facts and circumstances of the case, there will, however, be no order as to costs.

