(2003) 04 AHC CK 0111

In the Allahabad High Court

Case No : C.W.M.P. No. 44795 of 2001

Dharmendra Kumar APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 25-04-2003

Acts Referred:

Stamp Act, 1899 — Article 38A

Citation : (2003) 3 AWC 2587 : (2003) 94 RD 670

Hon'ble Judges : R.S. Tripathi, J;M. Katju, J

Bench : Division Bench

Advocate : Dharmendra Singh, for the Appellant; B.N. Singh and C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

M. Katju, J.—This writ petition has been filed challenging the constitutional validity of the Indian Stamp (U.P. Second Amendment) Act 1997 (U.P. Act No. 23 of 1998) as well as the Notification, dated 9.9.1998 Annexure-2 to the writ petition and the order dated 14.9.1998 Annexure-3 to the writ petition. The petitioner has also prayed for a mandamus directing the respondents not to realise the stamp duty on the basis of the above amendment in the Stamp Act, and to grant/renew licenses of the petitioner in this petition and in the connected writ petitions without compelling the petitioners to deposit stamp duty under the aforesaid U.P. Act No. 23 of 1998.

2. The petitioners have annexed a copy of the impugned U.P. Act No. 23 of 1998 as Annexure-1 to the writ petition.

3. A perusal of the above Act shows that by it, a new Article 38A has been added in Schedule 1B to the Indian Stamp Act. By this provision, new stamp duty on the licenses for various weapons as well as for various forms have been prescribed.

4. It is alleged in paragraph 21A to the writ petition that till 18.12.1997, the fee

for grant of licence and renewal to arms dealers in Form 11, 12 and 13 was Rs. 10, and no fee was charged for licence u/s 14. The aforesaid fee on licenses in Form 11, 12 and 13 was enhanced to Rs. 200. The impugned Amendment Act of 1998 has Increased the licence fee for licenses in Form 11 and 12 to Rs. 10,000, for Form 13 to Rs. 5.000 and for Form 14 to Rs. 3,000. For renewal fees licenses in Form 11 and 12 has been Increased to Rs. 3,000, for Form 13 to Rs. 2,000 and for Form 14 to Rs. 1,000 by the impugned Act. Thus, the fee increased is 50 times in the case of From 11 and 12 and 25 times in the case of Form 13. For Form 14 whereas earlier no duty was charged now a sum of Rs. 3,000 will be demanded.

5. In paragraphs 35 to 40 of the writ petition it is alleged that the petitioner had submitted an application for renewal of his arms dealers licence vide Annexures-8 and 9 to the writ petition, but no order has been passed on the same, and instead the respondents are demanding duty in accordance with U.P. Act No. 23 of 1998.

6. The respondents have filed a counter-affidavit and we have perused the same. In paragraph 5 of the same it is stated that stamp duty can be levied under Entries 91 to 96 of the Union List, Entry 63 of the State List and Entry 44 of the Concurrent List to the VIIth Schedule of the Constitution. The State of U.P. acting under Entry No. 63 of the State List amended the Indian Stamp Act as applicable in U.P. by inserting Article 38A in Schedule 1B of the Indian Stamp Act for including licenses for arms and ammunition chargeable with stamp duty. The State Government by another Notification dated 10.5.1999 has withdrawn levy of stamp duty on renewal of firearms. A true copy of the Notification dated 10.5.1999 has been annexed as Annexure-C.A. 1 to the counter-affidavit. It is alleged that the State Legislature is fully competent to amend the Stamp Act in U.P. The insertion of Section 38A in the Stamp Act was done only with the prior approval of the President of India.

7. We have carefully considered the submissions of the learned counsel for the parties.

8. Learned counsel for the petitioner has submitted that the subject of arms falls within Entry No. 5 of List I of the VIIth Schedule to the Constitution, and hence only Parliament can impose stamp duty on arms or arms dealers'' licenses. Hence he has alleged that U.P. Act No. 23 of 1998, is beyond the legislative competence of the State Legislature. We do not agree with this submission. It may be mentioned that regarding stamp duty, Entry 91 in List I of the Schedule VII states as under :

"Rates of stamp duty in respect of Bills of Exchange, Promissory Notes, Bills of Lading, Letters of Credit, Policies of Insurance, Tribunal of Shares, Debenture, Proxies and Receipts."

9. In our opinion, stamp duty on arms or arms dealers'' licenses does not fall within Entry 91 of List I of the VIIth Schedule because it does not relate to any of

the items referred to in Entry 91.

10. On the other hand, Entry 63 of List II of the VIIth Schedule states :

"Rates of stamp duty in respect of documents other than those specified in the provision of List I with regard to rates of stamp duty."

Entry 44 of List III (the Concurrent List) states :

"Stamp duty other than duties or fees collected by means of Judicial stamps but not including rates of stamp duty."

11. In view of the above, it is evident that the State Legislature has legislative competence to enact the impugned enactment under Entry 63 of List II of the State List. It has adequate legislative powers to fix the rates of stamp duty in respect of the licenses in question. We have to, therefore, negative this submission of the learned counsel for the petitioner.

12. The next submission of the learned counsel for the petitioner is that increase in the duty by the impugned enactment is excessive and exorbitant. We do not agree with this submission. No doubt the amount of stamp duty had been increased considerably but it is basically for the Legislature to fix the amount of stamp duty. This Court cannot sit as a super Legislature above the Legislature created by the Constitution. There is a presumption in favour of the constitutional validity of an enactment vide Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, ; Madhu Limaye Vs. Sub-Divisional Magistrate, Monghyr and Others, and Sunil Batra Vs. Delhi Administration and Others etc., , etc. This Court should not ordinarily interfere unless there is clear violation of some provisions of the Constitution or lack of Legislative competence.

13. We do not find violation of any provision of the Constitution by the impugned Act, and we are clearly of the opinion that it is within the legislative competence of the State Legislature. Thus, there is no force in this petition and it is dismissed.

