
(1987) 09 MP CK 0036

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 2582 and 2583 of 1987

Dinesh Chandra Agrawal

APPELLANT

Vs

State of Madhya Pradesh and Another

RESPONDENT

Date of Decision : 04-09-1987

Acts Referred:

Constitution of India, 1950 — Article 226

Madhya Pradesh Entertainments Duty and Advertisements Tax Act, 1936 — Section 4D

Citation : AIR 1988 MP 213 : (1988) MPLJ 66

Hon'ble Judges : N.D. Ojha, C.J.; K.K. Adhikari, J

Bench : Division Bench

Advocate : R.D. Jain and Y.K. Munshi, for the Appellant;

Final Decision : Dismissed

Judgement

N.D. Ojha, C.J.

This Order shall also govern the disposal of M .P. No. 2583/87.

The petitioner in each of these two cases is the same person and runs a cinema house at Gwalior in the name of Kailash Talikes. Two orders have been passed against the petitioner u/s 4-C of the M.P. Entertainments Duty and Advertisement Tax Act, 1936 (hereinafter referred to as the Act). Against these orders, an appeal is preferable u/s 4-D of the Act. In place of preferring an appeal however, the petitioner has filed these two writ petitions asserting that the provision of Section 4-D of the Act was ultra vires inasmuch as it requires deposit of certain amount of tax and penalty as a condition precedent for the maintainability of the appeal.

Having heard learned counsel for the petitioner, we find it difficult to take the view that Section 4-D can be held to be ultra vires on that ground. A similar question came up for consideration before the Supreme Court in The Anant Mills Co. Ltd. Vs. State of Gujarat and Others, in this connection with Section 406(2) (e) of the Bombay Provincial Municipal Corporations Act. Its requirement was

summarised as hereunder :

"Section 406(2)(e) as amended, states that no appeal against a rateable value or tax fixed or charged under the Act shall be entertained by the Judge in the case of an appeal against a tax or in the case of an appeal made against a rateable value after a bill for any property tax assessed upon such value has been presented to the appellant, unless the amount claimed from the appellant has been deposited by him with the Commissioner. According to the proviso to the above clause, where in any particular case the Judge is of opinion that the deposit of the amount by the appellant will cause undue hardship to him, the Judge may, in his discretion, dispense with such deposit or part thereof, either unconditionally or subject to such conditions as he may deem fit".

Two questions were considered in that case in this connection : The first question was as to whether in view of the proviso referred to above, such of the persons who were not relieved of the requirement of making deposit, were discriminated against or not. The second question was as to whether the requirement to deposit the tax as a condition precedent for the maintainability of the appeal was valid or not. Dealing with the question of discrimination, it was held :

"All that the statutory provision seeks to do is to regulate the exercise of the right of appeal. The object of the above provision is to keep in balance the right of appeal which is conferred upon a person who is aggrieved with the demand of tax made from him and the right of the Corporation to speedy recovery of the tax. The impugned provision accordingly confers a right of appeal and at the same time prevents the delay in the payment of the tax. We find ourselves unable to accede to the argument that the impugned provision has the effect of creating a discrimination as is offensive to the principle of equality enshrined in Article 14 of the Constitution, It is significant that the right of appeal is conferred upon all persons who are aggrieved against the determination of tax or rateable value. The bar created by section 406(2)(e) of the entertainment of the appeal by a person who has not deposited the amount of tax due from him and who is not able to show to the appellate Judge that the deposit of the amount would cause him undue hardship arises out of his own "mission and default. The above provision, in our opinion, has not the effect of making invidious distinction or creating two classes with the object of meting out differential treatment to them....."

In regard to the power of the Legislature to make the requirement of deposit of tax as a condition precedent to the maintainability of an appeal, it was held : --

""The right of appeal is the creature of a "statute. Without a statutory provision creating such a right, the person aggrieved is not entitled to file an appeal. We fail to understand as to why the legislature, while granting the right of appeal, cannot impose conditions for the exercise of such right. In the absence of any special reasons, there appears to be no legal or constitutional impediment to the imposition of such conditions. It is permissible, for example, to prescribe a

condition in criminal cases that unless a convicted person is released on bail, he must surrender to custody before his appeal against the sentence of imprisonment would be entertained. Likewise, it is permissible to enact a law that no appeal shall lie against an order relating to an assessment of tax unless the tax had been paid. Such a provision was on the statute book in Section 30 of the Indian Income Tax Act, 1922. The proviso to that section provided that ".....no appeal shall lie against an order under Sub-section (1) of Section 46 unless the tax had been paid" Such conditions merely regulate the exercise of the right of appeal so that the same is not abused by a recalcitrant party and there is no difficulty in the enforcement of the order appealed against in case the appeal is ultimately dismissed. It is open to the legislature to impose an accompanying liability upon a party upon whom a legal right is conferred or to prescribe conditions for the exercise of the right, any requirement for the discharge of that liability or the fulfilment of that condition in case the party concerned seeks to avail of the said right is a valid piece of legislation."

It was urged by learned counsel for the petitioner that Clause (e) of Section 406(2) of the Bombay Provincial Municipal Corporations Act contained a proviso enabling the Judge to relieve the appellant of the obligation to deposit the amount of tax in case he was of the opinion that it was expedient to do so, but no such proviso is to be found in the impugned Section 4-D of the Act. Suffice it to say so far as, this submission is concerned, that dealing with the question as to whether a provision containing the requirement for discharging of tax liability by the party which seeks to avail of the right of appeal is a valid piece of legislation or not this was not the circumstance, which weighed with the Judges. What weighed- with them was that since the right of appeal is a creature of statute and it is open to the legislature while creating that right, to impose even such a condition as was the condition in Section 30 of the Indian Income Tax Act, 1922, the provision creating the right of appeal with such condition would be a valid piece of legislation.

In this connection, it may be pointed out that even in Section 30 of the Income Tax Act, 1922, there was no such proviso as is to be found in Clause (e) of Section 406(2) of the Bombay Provincial Municipal Corporation Act. Indeed, Section 30 of the Indian Income Tax Act, 1922 seems to contain a more stringent provision in this behalf than the impugned Section 4-D of the Act. u/s 4-D where the amount of duty or tax and penalty does not exceed Rs. 1,000.00, the full amount of duty and tax and penalty is to be deposited, but where the amount of duty and tax and penalty exceeds Rs. 1,000.00, the amount which is required to be deposited is Rs. 1,000.00, or 1/3rd of the amount of duty and tax and penalty whichever is higher. In view of the law laid down by the Supreme Court in the case of *The Anant Mills Co. Ltd. Vs. State of Gujarat and Others*, therefore, it is not possible to declare Section 4-D of the Act as ultra vires on the ground that it makes the deposit of the amount as contained in the table mentioned therein a condition precedent to the maintainability of an appeal

In so far as the merits of the orders passed u/s 4-C of the Act are concerned, since an appeal is maintainable, we are not inclined to entertain these writ petitions inasmuch as apart from determination of a question of law, determination even of questions of fact is involved therein.

It has been pointed out by learned counsel for the petitioner that the limitation for preferring an appeal has by now, expired. In *S. Jagadeesan Vs. Ayya Nadar Janaki Ammal College and Another*, a writ petition had been filed challenging an order against which a statutory appeal was maintainable. The writ petition was allowed by the High Court. On the matter being taken to the Supreme Court in appeal by special leave, the Order of the High Court was set aside on the ground that since an alternative remedy of preferring an appeal was available, the writ petition should not have been entertained. However, while setting aside the order of the High Court, the following observation was made :

"We set aside the judgment of the High Court and dismiss the writ petition filed by the respondent No. 1 with a direction that respondent No. 1 may prefer an appeal to the prescribed authority u/s 37 of the Act, if so advised. If such an appeal is preferred within 30 days of the passing of this order, the prescribed authority shall entertain and decide the appeal on merits, without any objection as to limitation."

In the interest of justice, we are of the opinion that on the facts of the instant case also, a similar direction may be given.

In view of the foregoing discussion, both these writ petitions are dismissed but with a direction that if the petitioner prefers appeals against the impugned orders to the prescribed authority, who in the instant case we are informed is the Commissioner, u/s 4D of the Act if so advised, within 30 days of the passing of this Order, the Commissioner shall entertain and decide the appeals on merits without any objection as to limitation, provided of course that the other conditions prescribed for maintainability of an appeal, as required by the Act, are satisfied. No order as to costs.