
(1968) 02 KL CK 0018
In the High Court Of Kerala
Case No : Criminal App. No. 156 of 1967

Elias	Vs	APPELLANT
Abraham and Others		RESPONDENT

Date of Decision : 22-02-1968

Acts Referred:

Constitution of India, 1950 — Article 226, 276

Citation : (1968) KLJ 463

Hon'ble Judges : T. C. Raghavan, J;M. U. Isaac, J

Bench : Division Bench

Advocate : S. Narayanan Potti, for the Appellant; Joseph Augustine and K.J. Chacko, For 1st respondent and State Prosecutor For 2nd respondent, for the Respondent

Final Decision : Allowed

Judgement

Isaac, J.—This case raises a very important question relating to the levy of profession tax under the Kerala Panchayats Act, 32 of 1960 (hereinafter referred to as the Act). This Act and the Kerala Municipalities Act 14 of 1961 contain similar provisions in respect of levy of profession tax; and so our decision in this case may apply also to Municipalities in the State. The question that falls for determination is whether a person, who resides within one Panchayat area and has paid to that Panchayat the maximum amount of profession tax leviable by a Panchayat, is liable to pay profession tax to other Panchayats within which he exercises a profession, or transacts business. Section 66 of the Act empowers every Panchayat to levy profession tax. Section 69 contains the provision relating to the levy of the said tax; and it reads:-

69. Profession tax.-(1) The Profession tax shall, subject to such rules as may be prescribed be levied every half year in every Panchayat area on-

(i) every company which transacts business in such Panchayat area for not less than sixty days in the aggregate in that half year; and

(ii) every person who, in that half year-

(a) exercise a profession, art or calling or transacts business or holds any appointment, public or private-

(i) within such Panchayat area for not less than sixty days in the aggregate, or

(ii) without such Panchayat area but who resides in it for not less than sixty days in the aggregate, or

(b) resides in such Panchayat area for not less than sixty days in the aggregate and is in receipt of any pension or Income from investments.

(2) The profession tax shall be levied at such rates as may be fixed by the Panchayat not exceeding the maximum rates prescribed.

(3) A person shall be chargeable under the class appropriate to his aggregate income from all the sources specified in sub-section (1) as being liable to the tax.

(4) If a company or person proves that it or he has paid the sum due on account of the profession tax levied under this act, or the companies or profession tax levied under the Trivandrum City Municipal Act, 1116, the Madras District Municipalities Act, 1920, Travancore District Municipalities Act, 1116, or the Cochin Municipal Act XVII of 1113, or any tax of the nature of a profession tax imposed under the Cantonments Act, 1924, for the same half year to any Panchayat or Municipal Council or cantonment authority in the State of Kerala, such company or person shall not be liable by reason merely of change of place of business, exercise of profession, art or calling, appointment or residence to pay to any other Panchayat, Municipal Corporation or Municipal Council or cantonment authority more than the difference between such sum and the amount to which it or he is otherwise liable for the profession or companies tax for the half year under this Act or any of the aforesaid Acts.

(5) Nothing contained in this Section shall be deemed to render a person who resides within the local limits of one local authority and exercises his profession, art or calling or transacts business or holds any appointment within the limits of any other local authority or authorities liable to profession tax for more than the higher of the amounts of tax leviable by any of the local authorities. In such cases the Government shall apportion the tax between the local authorities in such manner as they may deem fit and the decision of the Government shall be final:

Provided that where one of the local authorities concerned is a cantonment authority or the port authority of a major port, the decision of the Government shall be subject to the concurrence of the Central Government.

(6) The profession tax leviable from a firm, association, joint Hindu family or Marumakkathayam tarwad or Aliyasanthana family may be levied from the agent of the firm or association or manager of the family or tarwad, as the case may be.

(7) (a) If a Company or person employs a servant or agent to represent it or him for the purpose of transacting business in any local area, such company or person shall be deemed to transact business in the local area, and such servant or agent shall be liable for the profession tax in respect of the business of such company or person whether or not such servant or agent has power to make binding contracts on behalf of such company or person.

(b) Where one company or person is the agent of another company or person, the former company or person shall not be liable separately to the profession tax on the same income as that of the principal.

Under the above section, profession tax shall be levied from every company and every person who fall within the ambit of the said provision. "Company" is defined in the Act, but not "person". In the case of a company, transacting business within the Panchayat area is the basis of the liability. In the case of a person, not only the transaction of a business, but the exercise of a profession, art or calling or holding of any appointment would also make him liable for the tax. It has been held by a Division Bench of this Court in *Velu v Executive Officer, Erumayar Panchayat* 1967 KLT 350 that pursuit of agriculture is a calling within the meaning of Section 69(1) of the Act. For the sake of brevity, we shall refer to all these activities of a person as transacting a business. There is one particular provision to be noticed in the case of a person; and it is that a person who transacts business outside a Panchayat would be liable for profession tax to that Panchayat, if he resides within its area. There can be no such provision in the case of a company; because a company has no place of residence, except places of business; and a place where it transacts business may be deemed to be a place of its residence.

2. There are a few more things to be noticed regarding the levy of profession tax. It is really a tax on income. Article 276 of the Constitution provides, among other things, that the total amount of profession tax payable in respect of any one Municipality or other local authority shall not exceed Rs. 250/- per annum. Sub-section (1) of section 69 of the Act provides that the profession tax shall be levied every half year, subject to such rules as may be prescribed; Sub-section (2) provides that the rates of tax shall be as fixed by the Panchayat concerned, but not exceeding the maximum rate prescribed. The relevant Rules are the Kerala Panchayats (Profession tax) Rules 1963 (hereinafter referred to as the Rules) made by the Government under sections 69 and 129 of the Act. Rule 3 contains the classes into which companies and persons are divided, on the basis of their half yearly income for the purposes of assessment, and also the maximum half-yearly tax leviable on each class. Consistent with the provision contained in Article 276 of the Constitution the maximum amount of half yearly tax fixed under the said Rule is Rs. 125/-. Rule 5 deals with determination of the income of a company or person transacting business, exclusively within a Panchayat area. Rule 7 deals with determination of the income of a company or person transacting business partly in the area of a Panchayat and partly outside

it. Rule 6 provides that, in such a case, the income shall be deemed to be a prescribed percentage of the turnover of the business transacted within the Panchayat. Thus under the Rules, every company and every person shall be liable to pay profession tax to every Panchayat within whose area it or he transacts business on the basis of its or his income within the said area, subject to an half yearly limit of Rs. 125/- The Rules do not contain any provision regarding the levy of profession tax by a Panchayat from a person who resides within its area, but transacts business outside it. Such a person would have no income within the Panchayat, in which he resides.

3. We shall now come to the facts of the case. The respondent is a resident within the Kanjirappally Panchayat. It is not known whether he transacts any business within that Panchayat. He is a planter; and he owns plantations within other Panchayats. The Kumaly Panchayat assessed the petitioner to pay a total profession tax of Rs. 750/- for the six half-years of 1963-64, 1964-65 and 1965-66 in respect of a plantation of 500 acres, which he has within the said Panchayat. As the respondent failed to pay the amount, he was prosecuted by the Executive Officer of the Panchayat u/s 74 of the Act before the Additional First Class Magistrate, Peermade. The respondent contended that, during the aforesaid half-years, he had paid the maximum amount of profession tax namely Rs. 250/- per year to the Kaijirapally Panchayat, and that he was not, therefore, liable to pay profession tax during the said periods to any other Panchayat. The contention was based on sub-section (5) of Section 69 of the Act. The respondent also relied on a decision of a learned Single Judge of this Court, Mathew, J. in O.P. No. 1393 of 1964 in support the said contention. The Additional First Class Magistrate accepted the contention, and acquitted the respondent. The Executive Officer of the Panchayat has, therefore, filed this appeal.

4. O.P. No 1393 of 1964 was a petition filed by the respondent in this case under Article 226 of the Constitution to quash the profession tax assessments made against him by Peruvanthanam Panchayat. In that case also, he contended that he was not liable to pay any tax to Peruvanthanam Panchayat, as he had paid the maximum amount of tax to the Kanjirappally Panchayat. The learned Judge accepted the above contention. The whole reasoning for this decision is contained in the following passage:-

It is admitted that the maximum amount payable by a person by way of profession tax for an year is Rs. 250/-. Section 69(5) is clear on that point. It is as follows.-

(Section 69(5) is quoted)

It is also admitted that the petitioner has paid the maximum tax payable for these years to one Panchayat. In these circumstances, it is for the Government to make the apportionment as among the various Panchayats.

This decision is essentially based on an admission of the very point which is in

controversy in this case. It cannot, therefore, be considered as an authority on the point. We do not also find any discussion of the question in this decision.

5. The learned counsel for the appellant contended that the admission made in the above case that the maximum amount of profession tax payable by a person in an year in all the Panchayats wherein he transacts business is Rs. 250/- is wrong, and that every Panchayat is entitled to levy profession tax from a person subject to the limit of Rs. 250/- per year. In support of this submission, the learned counsel cited another decision of Mathew J. in O. P. No. 638 of 1965. This case arose under the Kerala Municipalities Act; and it was concerned with then liability to profession tax of a "company" as defined in that Act, which transacts business within the area of more than one Municipality. Section 110 (4) of the Municipalities Act is the same as section 69 (5) of the Panchayat Act. The former contains an Explanation added to it; and the latter has a proviso thereto. But the Explanation and the proviso do not make any difference on the question under consideration. Rule 21 (1) of the Taxation and Finance Rules made under the Municipalities Act, and Rule 7 of the Kerala Panchayats (Profession Tax) Rules are also to the same effect. There is no difference between the two rules. In the above case, the learned Judge held "that any one Municipality, local board or local authority may by way of profession tax, demand up to a maximum of Rs. 250/-". The learned Judge also added that section 110 (4) of the Kerala Municipalities Act was not intended to cover a case like the one before him; that it applied only to a person residing within the local limits of one Municipality and transacting business within the limits of any other Municipality or local authority. The learned Judge has not referred to his earlier decision in O.P. No. 1393 of 1964. It can have no application to the case in O. P. No. 638 of 1965; because, as rightly pointed out by the learned Judge, section 110(4) has no application to a "company ";but it applies only to a person. The appellant's learned counsel is not, therefore, right in submitting that the learned Judge has taken a different view in O. P. No. 638 of 1965. This decision has no application to the present case

6. The respondent's learned counsel referred us to the decision of our learned brother, Govindan Nair J. in *Abraham v Executive Officer, Peruvanthanam Panchayat* 1963 KLT 113 in support of his contention that, u/s 69 (5) of the Act, the total liability of a person to profession tax to all the Panchayats within which he transacts business is limited to Rs. 250/-. In that case the respondent Panchayat assessed the petitioner to profession tax on the ground that he transacted business within its area. The petitioner objected to the assessment, slating that he was not liable to pay any tax, as he had paid the maximum amount of tax to the Panchayat within whose area he resided. This was followed by a prosecution; and therefore, the petitioner moved this Court to quash the assessment. Govindan Nair J. upheld the petitioner's contention, quashed the assessment, and directed the respondent to take immediate steps to withdraw the prosecution. After stating the facts of the case, the learned Judge said:-

It is clear from Section 69(4) of the Kerala Panchayat Act, 1960-(Section 69(4) is

a mistake for Section 69(5)-that a person cannot be held liable to two Panchayats for profession tax for the same half-year, if he has already paid total tax due from him to any one of the Panchayats which can assess. That the total tax due from the petitioner has been paid to the Perinad is fairly conceded by counsel on behalf of the respondent before me. The action taken against the petitioner therefore by demanding tax from him and later prosecuting him for not paying tax is quite unwarranted. I would have therefore compensated the petitioner in full measure for such wanton abuse of the statutory powers. However, since counsel for the respondent stated before me that the whole thing was a mistake I think I should not go to that extent.

It is true that the learned judge has unreservedly accepted the petitioner's contention in the above case; but we are constrained to observe that his decision might have been influenced by the admission of the respondent's counsel "that the whole thing was a mistake". Naturally, the question has not received adequate consideration in this decision.

7. The whole question depends on a true construction of Sub-section (5) of section 69 of the Act. Where the words of a statute are clear, there is no room for applying any of the principles of interpretation, which are merely presumptions in case of ambiguity in the Statute. Effect must be given to the clear and explicit language, whatever may be the consequences. But the language used in Subsection (5) of section 39 of the Act is very clumsy. One of the cardinal rules for the construction of a statute is that it should be construed according to the intention of the Legislature which passed it. Another equally important rule is that it should be construed in such a way as to avoid manifest absurdity or anomaly. For this purpose, words may be modified, varied or omitted. If there be a word or a phrase to which no sensible meaning can be given, it must be eliminated. A third rule of interpretation is that a statute must be construed as to conform to the Constitution. If two interpretations are possible, and one would make it Constitutional and the other would offend the Constitution, the former interpretation should be adopted. We shall examine Sub-section (5) of section 69 of the Act in the light of the aforesaid principles.

8. This Sub-section deals with a person who resides within the local limits of one local authority and transacts business "within the limits of any other local authority or authorities". Suppose such a person resides within the limits of local authority A, and transacts business within the limits of local authorities B, C, D and E. he may be liable to pay Rs. 250/- per year to each of the local authorities B, C, D and, E. The amounts of tax leviable by all the four local authorities come to Rs. 1,000/-. In such a case, the Sub-section says that he shall not be "liable to profession tax for more than the higher of the amounts of tax leviable by any of the local authorities". Now the maximum amount of profession tax which any local authority can levy for a year is Rs. 250/-. The question for determination is what does the Legislature mean by the above provision. Does it mean that such A person shall not be liable for more than Rs. 1000/- or does it mean that he

shall not be liable for more than Rs. 250/-? If the Legislature intended to provide that such a person shall not be liable for more than the maximum amount of tax payable by him to any one local authority, it could have stated so in plain and simple language. In any case, the expression "for more than the higher of the amounts of tax" conveys no meaning, unless it is read as "for more than the amounts of tax", omitting the words "the higher of". The learned counsel for the respondent submitted that the expression "any of the local authorities" in this sub-section means any one of the local authorities. If that were so, it should have used the words "amount of tax" and not "amounts of tax". The use of the words "amounts of tax" indicates that the reference is to more than one local authority. The word "any" may in a particular context mean "every one" or "all". It appears to us that it is in this sense that the word "any" has been used in this sub-section.

9. As we pointed out earlier, profession tax is a tax on income; and the basis of taxation under the Act is the income of the company or the person from the business transacted within a Panchayat area. Consistent with the said scheme of levying profession tax, what sub-section (5) of section 69 provides is that, though under clause (ii) (a) (ii) of Sub-section (1), a Panchayat is entitled to levy profession tax from a person, who resides within its area but transacts business outside it, he would not be liable to pay more than the amounts of tax leviable by all the local authorities within whose limits he transacts business. It should also be noticed in this context that the Act or the Rules do not contain any provision for assessment of profession tax on such a person by a Panchayat within whose local limits he resides. Therefore, Sub-section (5) further provides that in such a case "the Government shall apportion the tax between the local authorities". The tax means "the amounts of tax" leviable by all the local authorities together. The result would be that a Panchayat, within whose area a person resides without transacting any business therein, is not entitled to assess him to profession tax; but that Panchayat would get a share of the profession tax levied by the other local authorities in accordance with the apportionment made by the Government. In other words what this Sub-section provides is that-

(i) it limits the liability of a person to profession tax to the amounts of tax leviable from him by the local authorities within whose limits he transacts a business; and

(ii) it creates a machinery for a local authority within whose area a person resides without transacting any business therein, to get a share of the said amounts as profession tax by apportionment.

This appears to be a more reasonable construction, to which the language employed in the Sub-section would yield than the one contended for by the learned counsel for the respondent.

10. There is another compelling reason for rejecting the construction which the respondent's learned counsel sought to give to the above statutory provision.

Suppose a person resides within the limits of one local authority and transacts business within the limits of hundred other local authorities. According to the construction of sub-section (5) by the learned counsel, the liability of such a person is limited to Rs. 250/- per year, though he may have within each one of the hundred local authorities such income as would make him liable for the maximum tax of Rs. 250/- But if such a person does not reside within the limits of any local authority, or he resides outside the State, he would be liable to pay Rs. 250/- as profession tax to each one of the said hundred local authorities. Section 69 (5) admittedly does not apply to a company; and there is no corresponding provision in the Act, which would apply to a company. So a company would also be liable to pay the maximum amount of tax of Rs. 250/- per year to every one of the local authorities within which it transacts business, provided it has got sufficient income. This leads to an absurd result; and it could, never have been intended by the Legislature. The basis of the levy of profession tax under the Act being the income of a company or person from the business transacted within the area of a Panchayat, we can see absolutely no basis to differentiate between a person who resides within the limits of a local authority and who resides outside, or between a company and a person, in the matter of their liability of profession tax. The discrimination is so patent and unreasonable that it would make the provision unconstitutional. We should construe the Statute, if its language would permit it, in such a way as to give effect to the Legislative intent, to avoid any absurdity, and to conform to the Constitution. We are, therefore, unable to agree with the view taken by our learned brothers in O. P. No. 1393 of 1963 and in *Abraham v Executive Officer, Peruvanthanam Panchayat* 1963 T.K.L. 115. According to our view of the correct interpretation of Section 69 (5) of the Act, which we have stated in paragraph 10 above, the fact that the respondent has paid the maximum amount of profession tax to the Kanjirappally Panchayat, within whose limits he resides, does not affect his liability to be assessed by other Panchayats within whose limits he transacts business. If he was assessed by the Kanjirappally Panchayat purely on the basis of residence within its limits, the said assessments are wrong; Kanjirappally Panchayat can only get a profession tax assessed by the other Panchayats, as apportioned by the Government u/s 69 (5) of the Act. If the assessments by the Kanjirappally Panchayat were made on the basis of transaction of business within its limits, the said assessments are in order; and there is no question of apportionment. In the result, we allow this appeal, and set aside the order of the Additional First Class Magistrate acquitting the respondent of the offence charged against him. The learned Magistrate is directed to take the case to his file, and try and dispose of it afresh according to law.