(1966) 05 SHI CK 0001

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 2 of 1965

E.R. Samuel and Others — APPELLANT

Vs

State of Punjab and Others — RESPONDENT

Date of Decision : 06-05-1966

Acts Referred:

Constitution of India, 1950 — Article 245, 246, 265
Punjab Electricity (Duty) Act, 1958 — Section 3

Citation : AIR 1966 HP 59

Hon'ble Judges : Om Parkash, C.J

Bench : Single Bench

Advocate : Dina Nath, for the Appellant; Kirti Ram and Jai Chand, for the Respondent

Final Decision : Allowed

Judgement

Om Prakash, J.—This petition, under Article 226 of the Constitution of India, is directed against the State of Punjab, the Punjab Electricity Board and the Resident Engineer, Shanan Power House, Joginder Nagar, respectively, respondents Nos. 1, 2 and 3 The petitioners challenge the validity of the levy of electricity duty, imposed upon them, u/s 3 of the Punjab Electricity (Duty) Act 1958, hereinafter referred to as the Act. The petition is based on the following allegations:

The petitioners are the employees of respondent No. 2. They are, at present stationed at Joginder Nagar, in Himachal Pradesh and are working, in different capacities, in connection with the generation, control and supply of electrical energy, at and from the Shanan Power House, Joginder Nagar, under the control of respondent No. 2. The Legislature of the State of Punjab passed the Act for levying duty on the sale or consumption of electricity, supplied by respondent No. 2 to consumers or licensees. Presumably under the assumption, that the electricity duty under the Act, is leviable on the petitioners also respondent No. 8 started issuing bills to the petitioners in respect of electricity duty. The assumption is wholly incorrect. The Act passed by the Legislature of Punjab can have no operation in Himachal Pradesh in which territory the petitioners are supplied and consume electricity. The Act does not apply to the petitioners and the electricity duty cannot be levied on them under the Act.

2. The petition has been contested on behalf of the respondents. Respondents Nos. 2 and 3 have filed a joint return. They admit that the petitioners are employees of respondent No. 2 and are stationed at Joginder Nagar, in Himachal Pradesh and that the petitioners get electrical energy and consume it in Himachal Pradesh. The plea of the respondents is that the petitioners, as employees of respondents Nos. 1 and 2, are liable to pay electricity duty under the Act. The further plea of the respondents is that the status of the Board, respondent No. 2, in Himachal Pradesh, is that of a producer of electricity and not that of a licensee under the Electricity Act and respondent No. 2 is entitled to recover electricity duty from the petitioners on the consumption of electricity, supplied to the petitioners on a mutual voluntary basis.

3. Respondent No. 1, in its reply, has pleaded that the action of respondents Nos. 2 and 3 in demanding electricity duty from the petitioners on the consumption of electrical energy in their respective premises in Shanan is valid and in accordance with and in pursuance of obligations, imposed upon respondent No. 2, under the Act.

4. The Question, which requires decision in the petition, is whether the petitioners are liable to pay electricity duty u/s 3 of the Act for the electrical energy consumed by them in Joginder Nagar, Himachal Pradesh. Section 3 of the Act lays down that there shall be levied for and paid to the State Government on the electrical energy supplied by the Board (respondent No. 2) to a consumer or a licensee, a duty, to be called the ''electricity duty'' at certain rates The section specifies those rates. Section 4 of the Act provides for the collection and payment of electricity duty. It says that the electricity duty shall be collected and paid to the State Government by the Board or a licensee. The contention, on behalf of the petitioners, is that the Act which was enacted by the Legislature of the State of Punjab can have operation in the territory of that State only and cannot have operation in Himachal Pradesh and that as the petitioners are stationed in Himachal Pradesh and consume electricity in that territory, the provisions of the Act are not applicable to them and the electricity duty u/s 3 of the Act cannot be levied on them. The contention of the petitioners has got force. Electricity duty levied u/s 8 of the Act, has all the incidence of a tax. A tax is a compulsory exaction of money by a public authority for public purposes, enforceable by law. The imposition is made for public purposes to meet the general expenses of the State without reference to any special benefit to be conferred upon the payers of the tax, vide Mahant Sri Jagannath Ramanuj Das and Another Vs. The State of Orissa and Another, and The Hingir-rampur Coal Co. Ltd. and Others Vs. The State of Orissa and Others, The electricity duty, imposed u/s 3 of the Act, is a compulsory exaction of money. It is being imposed

by the Punjab Government, a public authority. The duty was imposed to meet the financial burden, consequent upon the introduction of free education and the provincialization of local body schools in the State of Punjab, vide Statement of Objects and Reasons. The purposes for which the electricity duty is levied are obviously public purposes. The duty does not confer any special benefit on the payer. The duty is merged in the general revenues of the State. The electricity duty levied u/s 3 of the Act is indubitably a tax.

5. A tax cap be levied or collected under the authority of law only, vide Article 265 of the Constitution. Law in that Article, means a valid law, vide Chhotabhai Jethabhai Patel and Co. Vs. The Union of India and Another, One of the attributes of a valid law is that it was within the legislative competence of the Legislature, enacting it. A law will be within the legislative competence of a Legislature, if it relates to a topic assigned to that Legislature and to the territory over which the Legislature has jurisdiction.

6. The electricity duty is being levied and collected under the Act which has been enacted by the Legislature of the State of Punjab. Entry No. 53, List II, Seventh Schedule of the Constitution confers powers on a Slate Legislature to make laws for the imposition of taxes on the consumption or sale of electricity. Rut the laws will he operative in the territory of that State only, and not in any other territory. A State Legislature has no extra-territorial jurisdiction. This is clear from a plain reading of Articles 245 and 246 of the Constitution. Though the Legislature of the State of Punjab was competent, under Entry No. 53, aforesaid, to enact the Act, yet its operation will be confined to the territory of Punjab only. The operation of the Act cannot be extended to the territory of Himachal Pradesh it is beyond the competence of the Legislature of the State of Punjab to make a law for the territory of Himachal Pradesh. Electricity duty under the Act cannot be levied on consumption of electrical energy in Himachal Pradesh. The petitioners are supplied and consume electricity in Himachal Pradesh. Electricity duty, u/s 3 of that Act, cannot be levied on them. The levy of electricity duty is illegal.

7. It is contended, on behalf of the respondents, that the petitioners are employees of respondents Nos. 1 and 2 and that there is territorial nexus between the petitioners and the State of Punjab, respondent No. 1 and the provisions of the Act apply to the petitioners on the basis of the theory of territorial nexus. It is not disputed by the petitioners that they are the employees of respondents Nos. 1 and 2. The objection of the petitioners, against the applicability of the doctrine of territorial nexus is two-fold. Firstly, it is urged that the doctrine of territorial nexus is applicable to Income Tax cases only and cannot be pressed into service for upholding the levy of electricity duty under the Act. Secondly, it is urged that there is no material or record to show tot territorial nexus exists between the petitioners and respondents Nos. 1 and 2, so as to subject the petitioners to the provisions of the Act.

8. There is no warrant for the objection of the petitioners that the doctrine of territorial nexus is applicable to income tax cases only. The theory of territorial

nexus was applied to sales tax legislation in Popatlal Shah v. State of Madras AIR 1968 SC 274, and Tata Iron and Steel Co. Ltd. v. State of Bihar AIR 1958 SC 462 , to Cross-Word Competition legislation to The State of Bombay Vs. R.M.D. Chamarbaugwala, and to legislation relating to public religious Endowments in The State of Bihar and Others Vs. Charusila Dasi, and Anant Prasad v. State of Andhra Pradesh AIR 1968 SC 853. There is no valid reason why the doctrine of territorial nexus should not be applicable to legislation imposing taxes on the consumption or sale of electricity.

9. The second objection of the petitioners that there is no material on record showing that there is territorial connection between respondent No. 1 and the petitioners has got substance. What is sufficient territorial connection, for the applicability of the doctrine of territorial nexus, was explained by their Lordships of the Supreme Court in (S) The State of Bombay Vs. R.M.D. Chamarbaugwala, supra. Their Lordships observed:

"Sufficiency of the territorial connection involves a consideration of two elements namely, (a) the connection must be real and not illusory and (b) the liability sought to be imposed must be pertinent to that connection "

10. Admittedly, the electricity, consumed by the petitioners, is generated in Himachal Pradesh and is supplied and consumed in that territory. The only fact, relied upon by the respondents, for showing territorial connection, is that the petitioners are the employees of respondents Nos. 1 and 2. This fact alone is insufficient for establishing territorial nexus between the petitioners and respondent No. 1 for the levy of electricity duty under the Act inasmuch as the levy is not pertinent to the connection of employment. There is no territorial nexus between the petitioners and respondent No. 1 and the Act cannot be applied to the petitioners on the basis of the doctrine of territorial nexus.

11. The plea of the respondents that respondent No. 2 is entitled, to recover the electricity duty, as the producer of the electricity, for the electricity supplied, as respondent No. 2 is not bound to supply electricity to the petitioners under any law and the electricity is supplied on voluntary basis and as there is no law in force in Himachal Pradesh forbidding the levying of electricity duty is devoid of any merit. There is absolutely nothing on the record to show that the petitioners have ever agreed to pay electricity duty in connection with the supply of electricity Respondent No. 2 is a statutory body. Its actions must be supported and covered by some statutory provision. The electricity duty does not constitute charges with respect to the supply of electricity. It is a tax In view of the provisions of Article 265 of the Constitution, electricity duty cannot be levied or collected except under the authority of law. The question, relevant for consideration, is whether the electricity duty is being levied on the petitioners under the authority of law. It has already been shown that it is not being done so. The point that there is no law in force in Himachal Pradesh forbidding the levying of electricity duty is wholly irrelevant. The absence of such a law cannot entitle respondent No. 2 to recover electricity duty from the petitioners.

12. The only conclusion, from the above discussion, is that the action of the respondent in levying and collecting electricity duty from the petitioners is without the authority of any law and violates the provisions of Article 265 of the Constitution. The action is illegal.

13. The petition is allowed, with costs. The respondents are restrained by the issue of a writ of prohibition, from levying or collecting electricity duty, under the provisions of the Punjab Electricity (Duty) Act, 1958 or the Rules framed thereunder, from the petitioners so long as the petitioners are stationed, and consume electricity, in Himachal Pradesh.