

(1968) 08 DEL CK 0010

In the Delhi High Court

Case No : Civil Writ Petition Appeal No. 4 of 1967

Goruk Mal

APPELLANT

Vs

Himachal Pradesh Government

RESPONDENT

Date of Decision : 06-08-1968

Acts Referred:

Citation : (1969) 5 DLT 191

Hon'ble Judges : T.V.R. Tatachari, J;S.K. Kapur, J

Bench : Division Bench

Advocate : T.C. Chitkara, M.G. Chitkara and Chabildas, for the Appellant;

Judgement

S.K. Kapur, J.

(1) The petitioner is a registered partnership firm and is a whole-sale dealer in food-grains, Kariana, cemet, Vanaspati, molasses and general merchandise at Maranda, District Kangra. The Punjab Reorganizations Act, 1966 (Act No. 31 of 1966) came into force on November 1, 1966, and the Districts of Kangra, Kulu, Lahaul Spit and Simla (hereafter referred to as the "transferred territories"), which formed part of the State of Punjab, were merged in the Union territory of Himachal Pradesh. The transferred territories, being part of Punjab, the provisions of the Punjab Sales-tax Act, 1948, were applicable therein and by virtue of section 88 of the Punjab Reorganisation Act. 1966, continued to operate in the transferred territories until altered by to the areas comprised in the Union Territory of Himachal Pardesh before merger of the transferred territories, the East Punjab General Sales-tax Act, 1948 (hereafter referred to as the Himachal Act) was applicable with certain modifications and alterations and continued to apply in the said areas even after merger. The position after merger of the transferred territories, Therefore, was that two different laws relating to sales tax became operative in the Union territory of Himachal Pradesh. It is alleged by the petitioner that the provisions of the Punjab Act are more stringent and lay heavier tax burdens than the provisions of the Himachal Act. The principle disparity between the two Acts underlined by the petitioner lies in the fact under

the Punjab Act sales-tax is levied on all kinds of goods except those declared Tax-free under Schedule "B" of the Act, subject to conditions and exceptions mentioned in the corresponding entry in the second column of the said Schedule, while, under the Himachal Act, there is no tax except on sale of luxury goods covered by Schedule "A" of the Act, with the result that the dealers who trade and sell goods in the transferred territories pay tax on practically all the goods while others, governed by the Himachal Act, pay tax only on sale of luxury goods. Various other provisions of the two Acts have been mentioned in the petition showing the more oppressive nature of the Punjab Act as against the Himachal Act. It is, however, not necessary to elaborate further on the provisions of the two Acts as the matter can be disposed of on the assumption that the provisions of the sales-tax law applicable to the transferred territories are more onerous. One of the contentions set up by the respondents in defense of the Act is temporary duration of the disparity necessitated by territorial re-organisation of the State of Punjab and the Union territory of Himachal Pradesh. In the counter affidavit it is stated that:-

".....THE question of unification rationalisation of the taxation structure has remained under active consideration of the Government and the departments concerned. Proposals are afoot now for bringing about uniformity in the taxation structure in the old and merged areas. The pattern of sales tax would also be go arranged that no unresponsible disparity without any rational classification results amongst the people situated in similar circumstances in the State of Himachal Pradesh. The disparity ,if any, shall be removed soon. Sections 88 and 89 of the Punjab Reorganization Act were introduced as of necessity to cover the interim period and are not intended to remain permanently....." (2) The matter came up for hearing in this Court on April 4, 1968, but was adjourned as the Court was informed that the Government was proposing to move the necessary Bill in the Himachal Pradesh Legislative Assembly unification/rationalisation of the taxation structure. The learned counsel for the parties informed us that a Bill introducing uniform tax structure has been passed and forwarded to the President of India for his assent. The learned counsel for the respondents when asked about the effect of the new Bill, said that the matter should not be adjourned any further as he was prepared to argue on the assumption that the Bill has brought about uniformity in the entire territory of Himachal Pradesh and he would confine his attack only to the disparity that prevailed till the date of hearing of the petition. In view of this statement of the learned counsel for the respondents, we propose to confine our decision only to the question whether or not the disparity in the two laws that prevailed till now is violative of Article 14 of the Constitution on the assumption that now a uniform tax law has been introduced the entire Union territory of Himachal Pradesh. The learned counsel for the petitioner relied on *State of Rajasthan v Rao Manohar Singh*. In that case the Jagirdars of a part of the State of Rajasthan were by reason of certain laws prevalent in that part, under certain disabilities in the matter of management of their Jagirs, while Jagirdars in the areas of Jaipur

Bikaner, Jaisalmer, Jodhpur and Matsya Union suffered from no such disability. It was held that after the coming into force of the Constitution that discrimination could not be continued and was violative of Article 14 of the Constitution. In *State of Madhya Pradesh v. Bhopal Sugar Industries Ltd.* more or less similar question arose before their Lordships of the Supreme Court for consideration. By the States Reorganisation Act, 1956, territory of part "C" State of Bhopal was incorporated with effect from November, 1, 1956, into the newly formed State of Madhya Pradesh. The laws in force in the constituent regions were continued until altered by competent Legislature or other competent authority. As a result thereof, the Bhopal Act IX of 1953 continued to remain applicable in the territory of the former Bhopal State, in the new state of Madhya Pradesh. Later the legislature of the Madhya Pradesh State enacted the Madhya Pradesh Extension of Laws Act, 1958, extending several Acts-Central as well as State-to the entire territory of the State, but no alteration was made in the territorial operation of Bhopal Act IX of 1953. The net effect of all this was that in the constituent regions the Bhopal State Agricultural Income Tax Act 1953, continued in force while in the remaining territory of the State of Madhya Pradesh there was no law providing for levy of tax on agricultural income. This law was attacked as violative of Article 14 of the Constitution. The argument was repelled by their Lordships of the Supreme Court in the following words:-

"THE plea that there is infringement of Article 14 of the Constitution is advanced on the sole ground that in the reorganized State of Madhya Pradesh formed under the States Reorganisation Act, 1956, agricultural Income Tax is levied within the territory of the former State of Bhopal and not in the rest of the territories of Madhya Pradesh. *facie*, , a differential treatment is accorded by the State of Madhya Pradesh to persons carrying on agricultural operations in the Bhopal region because the State subjects them to pay tax on agricultural income, which is not imposed upon agricultural income earned in the rest of the State. But that by itself can not be a ground for declaring the Act ultra vires. The State is undoubtedly enjoined by Article 14 of the Constitution not to deny to any person equal protection of the laws within the territory but a proper classification bearing a reasonable and Just relation to the object sought to be achieved by the statute does not on that account become impermissible. All persons who are similarly circumstanced as regards a subject-matter are entitled to equal protection of the laws, but it is not predicted thereby that every law must have universal application irrespective of dissimilarity of objects or transactions to which it applies, or of the nature or attainments of the persons to whom it relates. The Legislature has always the power to make special laws to attain particular objects and for that purpose has authority to select or classify persons, objects of transactions upon which the law is intended to operate. Differential treatment becomes unlawful only when it is arbitrary or not supported by a rational relation with the object of the statute. This Court has held in several cases that where application of unequal laws is reasonably justified for historical reasons, a geographical classification founded on those

historical reasons would be upheld." Similarly, in *State of Madhya Pradesh v. Gwalior Sugar Co. Ltd.* the levy of cane cess on Gwalior Sugar Company Limited alone in the entire State of Madhya Pradesh was held justified on the basis of historical background and geographical classification based upon certain historical factors which was held to be a permissible mode of classification. The same view was taken in *Behavioral Shukla v. State of Madhya Pradesh* and others.

(3) The transferred territories were, before the transfer, governed by the sales-tax law in force in Punjab and necessarily so because they were part of the State of Punjab. After merger in the Union territory of Himachal Pradesh, laws had of necessity and expediency to be continued as it would have been a task impossible of achievement to leave it to the newly formed State to apply new laws without considering the various aspects necessary. Therefore and without making proper enquiries about the expediency of extending their own laws to the transferred territories. It was. Therefore necessary to maintain even while transferring territories to Himachal Pradesh, the, distinctive character of the region transferred till uniformity of laws was secured after full enquiry in the matter. The enquiries may have revealed the necessity of enacting different laws in those territories having regard to the various factors such as the geographical conditions, the Commerce in the territories and the condition of people. Particularly, with respect to the sales-tax law numerous factors would have to be gone into, namely, the nature of the trade in those territories, the availability of transport facilities, the cost of procuring the goods and the attainment of the people there in the context of commerce etc. It is unexceptionable that different laws could be applied in the transferred territories if the inhabitants thereof could legitimately be placed in a different class. The provisions of law continuing the existing laws in the transferred regions was intended to serve as a temporary measure so that the authorities could apply their mind to the special features, if any, that may obtain in diverse units before launching upon a process of applying new laws to such territories. Article 14 is not a wooden structure enjoining blind equality in arithmetical sense without regard to special conditions in different areas. For these reasons, including the historical reasons, the temporary measures adopted by the Punjab Reorganization Act, 1966, can not be struck down as violative of Article 14 of the Constitution.

(4) This petition, Therefore, fails and is dismissed but with no order as to costs.