
(1964) 03 CAL CK 0041

In the Calcutta High Court

Case No : Civil Revision Case No. 661 (W) of 1961

Hiralal Ram Kumar

APPELLANT

Vs

Sainthia Anchal Panchayat and Others

RESPONDENT

Date of Decision : 02-03-1964

Acts Referred:

Constitution of India, 1950 — Article 246, 276, 276(1)

Citation : 68 CWN 1132

Hon'ble Judges : D.N. Sinha, J

Bench : Single Bench

Advocate : R.N. Sarkar, for the Appellant; Arun Kumar Dutta with Mohanlal Roy for the Opposite Party No. 1, N.C. Chakraborty for the Opposite Parties Nos. 18-22 and Haridas Chatterjee for Opposite party No. 2, for the Respondent

Final Decision : Dismissed

Judgement

D.N. Sinha, J.—This application has been made by a partnership firm of the name of Hiralal Ramkumar, which has three partners, Ramkumar Anchlia, Suganchand Anchlia and Jitmal Anchlia. The application, is in respect of a tax imposed by the Sainthia Anchal Panchayat, in exercise of powers conferred upon it by section 57 of the West Bengal Panchayat Act, 1956 (hereinafter referred to as the "said Act"). The relevant provisions in the said section run as follows :--

57(1). Subject to such rules and such maximum rates or scales as may be prescribed by the State Government in this behalf, an Anchal Panchayat--

(a). shall impose yearly a tax upon persons who are the owners or occupiers or owners and occupiers of lands or buildings or both within the local limits of the jurisdiction of the Anchal Panchayat according to the circumstances of such persons within the limits of the Anchal Panchayat and according to the value of the property within such limits of the said persons

Rules have been prescribed under the said Act, known as the "West Bengal Panchayat Rules, 1958, (hereinafter referred to as the "said rules"). The rates

and scale mentioned in sub-section (1) of section 57 have been prescribed by rule 110. The maximum rates of tax on persons who are owners or occupiers or owners and occupiers of lands or buildings or both, have been prescribed. It is stated that the scale is according to the estimated total annual income of the persons concerned. In explanation (1), the term "annual income" has been explained. Clause (a) deals with agricultural lands, clause (b) with tanks, fisheries, forests, etc., clause (c) with non-agricultural lands and clause (d) with buildings. With regard to non-agricultural lands, if such lands are not let out to tenants, the annual income is calculated upon the estimated income from such lands during the year of assessment, after making certain deductions. Where such lands are let out to tenants, it means the gross rental at which such lands have been let out during the year of assessment. With regard to buildings, if it is let out to tenants, "annual income" means the gross rental at which such buildings have been let out during the year of assessment. If it is not let out to tenants, it means an amount which shall not exceed seven and a half per cent, of the value of the lands and buildings, at the time of the assessment, excluding the value of any furniture which may be in the buildings. Rule 111 of the said Rules, deals with the "assessment list". It provides that by the third quarter of each year, the total assessable income of a person shall be determined, on which he shall be liable to pay tax during the following year. Explanation (1) provides that the expression "Total assessable income" means the income which a person derived from lands and buildings, trade or business or any other occupation held within the limits of the Anchal Panchayat. Explanation (2) provides that no person shall be assessed who does not own or occupy lands or buildings within the limits of the Anchal Panchayat. Coming back to section 57, we find that the tax that is to be imposed is primarily a tax upon the person of the assessee. The first requisite is that such a person shall be the owner or occupier of lands or building or both within the local limits of the jurisdiction of the particular Anchal Panchayat which is imposing the tax. The tax, however, is to be imposed by taking into consideration two factors. The first is the "circumstances" of the assessee and the second is the value of the property within the limits of the said Anchal Panchayat, belonging to the assessee. In that sense, it becomes a composite tax. What is the meaning of "circumstances", has been the subject-matter of a number of decisions, because similar provisions are to be found in the Bengal Municipal Act, 1932, the Village Self-Government Act and other statutes. It is unnecessary to deal with other decisions, because the word has now been explained in a decision of the Supreme Court-- Pandit Ram Narain Vs. The State of Uttar Pradesh and Others, . That case dealt with the provisions of the U.P. Town Areas Act (Act 2 of 1914). Section 14 of that Act, was couched in similar language. There also, the tax to be assessed by the Municipality was based on two things, namely, the "circumstances" and the "property", if any, owned by the person to be taxed, within the jurisdiction of the Municipality. S.K. Das, J. said as follows:

A tax on "circumstances" and "property" is a composite tax and the word

"circumstances" means a man's financial position, his status as a whole depending, among other things, on his income from trade or business.

2. Mr. Dutt has drawn my attention to a certain Allahabad decision where an extended meaning has been given to the word "circumstances" and the learned Judge has gone to the extent of saying that even the turnover of a business could be taken into consideration, See District Board of Farrukhabad Vs. Prag Dutt and Others, . For our purposes, it is not necessary to consider these fine distinctions, because the West Bengal Panchayat Rules clearly lay down the method of computation and, according to the rules, the total assessable income has been defined and it consists of income which a person derives from lands, buildings, trade or business or any other occupation, held within the limits of the Anchal Panchayat. Thus, we are spared the task of determining the status of a person by importing other considerations. What has happened in this case is that an assessment was made and it was found that in respect of Messrs. Hiralal Ramkumar, the income from building was Rs. 9375/- and from trade or business Rs. 30,000/- during the relevant year. The, quantum of this assessment has not been challenged before me. But what has been argued is that section 57 of the said Act and rules 110 and 111 are all ultra vires the power of the State Legislature because the assessment empowered thereby involves the imposition of a tax on income, which is the sole prerogative of the Central Legislature. The Constitution in its various schedules has laid down the spheres upon which the Central Legislature and the State Legislature should respectively function, as also the Concurrent List in which they are both permitted to function subject to certain conditions. So far as tax on income is concerned, it is item 82 of List 1 in the 7th Schedule. This relates to "tax on income other than agricultural income". It is not disputed that the State Legislature cannot impose a tax on income, other than agricultural income, with which we are not concerned in this case. We find here that the State Legislature has sought to impose a tax, and the question is under what heading has it done so. The learned Government Pleader has admitted that in List 2 of the 7th schedule, it could come under two headings only, namely, item 49 which relates to "tax on land and buildings" and item 60 which relates to "taxes on professions, trades, callings and employments". Mr. Sarkar appearing on behalf of the petitioner argues that so far as the tax is assessed on property, he has no grievance, because the property has been assessed after taking the value and calculating seven and a half per cent, upon it, which is permitted under clause (d) of explanation (1), in rule 110 of the Rules. He says however that in the case of trade or business, the assessment of the tax has been made on the income, and this is plainly an encroachment on the prerogative of the Central Legislature under item 82 of List 1, namely, imposition of income tax. Both the learned Government Pleader and Mr. Dutt, appearing on behalf of the respondents have admitted that upon this heading it cannot be denied that there has been an attempt to assess the tax on the basis of income. They have however argued that the vires of the Act is saved by the provision of Article 276(1) of the Constitution. That provision runs as follows:

Notwithstanding anything in Article 246, no law of the Legislature of a State relating to taxes for the benefit of the State or of a municipality, District Board, Local Board or other local authority therein in respect of professions, trades, callings or employments, shall be invalid on the ground that it relates to a tax on income.

3. There is however a restriction which has been imposed by the Constitution itself, and a ceiling has been put, of Rs. 250/- per annum which cannot be exceeded in any one year, but subject to certain relaxations stated in the proviso: The position, therefore, is as follows: An assessment by the Anchal Panchayat is authorised by the State Legislature u/s 57. So far as property is concerned, there is no difficulty, but so far as it is based on "circumstances" of the assessee, it includes an assessment based on income derived from trade or business or other occupation carried on within the jurisdiction of the municipality. In a sense, therefore, it is a tax on income. But the vires of the section as well as the rules made to carry out its provisions, is saved by article 276 of the Constitution. It is accepted on all hands that municipalities and other Public Bodies cannot continue to exist unless they have some source from which they can gather funds for the purpose of meeting their requirements. The imposition of rates and taxes by such Bodies is" a practice which has existed for a very long time, in all parts of the world. The yard-stick for the computation of such rates and, taxes is primarily based upon the value of property which the assessee has within the jurisdiction of the Public body concerned, but to an extent it is also based on the. "status" of a person, under which heading it is customary to include the income that a person has in his trade, business or other occupation carried on within the territorial limits of the Public body concerned. This practice has been recognised by the Constitution, which has made provision for it. While it has purported to save legislation in this behalf made by the State Legislatures, it has also imposed restrictions. If the State Legislature could once again tax incomes without a ceiling, as is permissible for the Central Legislature, then the assessee would be in a very precarious position. That is why a ceiling has been laid down. In the present case, however, it is the vires of the Act and the rules that have been challenged but the quantum has not been challenged. In my opinion, the provisions of section 57 of the said Act and the relative rules mentioned above are intra vires but while the State Legislature has got the power to make such legislation, the ceiling laid down under article 276 must be observed and cannot be exceeded. Whether the rules made for the purposes of carrying out the provision of section 57 violate the ceiling imposed or not, is a point which unfortunately cannot be gone into in this case because the quantum of tax imposed has not been challenged. The learned Government Pleader says that the ceiling has not been violated. Mr. Sarkar does not admit this, but unfortunately I cannot hear him in this application on the question of quantum. That matter will have to be considered on an appropriate occasion. The result is that this application, in so far as it challenges the vires of section 57 of the said Act and the relative rules mentioned above, fails, and must be dismissed. The

Rule is accordingly discharged. Interim order, if any, is vacated. There will be no order as to costs.