

(1972) 12 MAD CK 0051

In the Madras High Court

Case No : Writ Petition No's. 3191 and 3192 of 1970

Janab M.M. Sultan Ibrahim Adhum

APPELLANT

Vs

Wealth-tax Officer 1(1)

RESPONDENT

Date of Decision : 06-12-1972

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 19(5)
Wealth Tax Act, 1957 — Section 18(1)

Citation : (1973) ILR (Mad) 139 : (1973) 91 ITR 417

Hon'ble Judges : V. Ramaswami, J;G. Ramanujam, J

Bench : Division Bench

Advocate : M.R.M. Abdul Karim and M.M. Abdul Razack, for the Appellant; V. Balsubrahmanyam and J. Jayaraman, for the Respondent

Judgement

Ramaswami, J.—These two writ petitions are for the issue of a writ of certiorari or other appropriate writ to call for the records and quash the orders of the Wealth-tax Officer, Karaikudi, in his proceedings G.I.No. 1941-S/WT 1968-69 dated August 24, 1970, and 1941-S/WT 1969-70 dated August 24, 1970. In respect of the assessment years 1968-69 and 1969-70 the petitioner filed his return of wealth on May 27, 1970, admitting a net wealth of Rs. 1,97,101 and Rs. 2,09,737, respectively. The assessment was completed on June 22, 1970, u/s 16(3) of the Wealth-tax Act, 1957 (hereinafter called "the Act"), on the total wealth of Rs. 1,97,101 and Rs. 2,09,737. The wealth-tax demanded for 1968-69 and 1969-70 was Rs. 286 and Rs. 328, respectively. For late filing of the returns, a notice u/s 18(1)(a) of the Act was issued to the assessee on June 22, 1970. In his reply dated July 7, 1970, the petitioner represented that the firms in which he was a partner took their own time to complete and finalise their accounts and hence he was not able to compute his share of wealth from these firms in time. He also stated that he was under the mistaken impression that wealth-tax is leviable only on assets situated within the taxable territory and the net value of the assets within the taxable territory was below the taxable limit. After hearing the petitioner, the Wealth-tax Officer held that it was the duty of the assessee

under the Act to see that the accounts of the firms are closed in time to enable him to file his return of wealth within the due date. The Wealth-tax Officer was also not willing to accept the explanation of the petitioner that he was under a mistaken impression that wealth-tax is leviable only on the assets situated within the taxable territory. In that view he levied a penalty of Rs. 6,344 for 1968-69 and Rs. 5,470 for 1969-70. It is against these orders that the petitioner has filed the above writ petitions on the ground that Section 18(1)(a) of the Act is ultra vires, illegal and invalid.

2. The learned counsel for the petitioner submitted that Section 18(1)(a), in so far as it levies penalty at the uniform rate of one-half per cent. on the net wealth assessed, is violative of Article 14 ; secondly, the penalty imposed under that section is confiscatory in nature and, therefore, infringes Article 19(1)(f) of the Constitution ; thirdly, any penalty for non-submission of a return should have relation to the tax payable and not to the wealth and the penalty u/s 18 being not related to the tax evaded is beyond the legislative competence of Parliament.

3. The relevant portions of Section 18(1), as it stood at the relevant period, read as follows :

"18. Penalty for failure to furnish returns, to comply with notices and concealment of assets, etc.--(1) If the Wealth-tax Officer, Appellate Assistant Commissioner, Commissioner or Appellate Tribunal in the course of any proceedings under this Act is satisfied that any person-

(a) has without reasonable cause failed to furnish the return which he is required to furnish under Sub-section (1) of Section 14 or by notice given under Sub-section (2) of Section 14 or Section 17, or has without reasonable cause failed to furnish within the time allowed and in the manner required by Sub-section (1) of Section 14 or by such notice, as the case may be ; or

he or it may, by order in writing, direct that such person shall pay by way of penalty-

(i) in the cases referred to in Clause (a), in addition to the amount of wealth-tax, if any, payable by him, a sum, for every month during which the default continued, equal to one-half per cent. of-

(A) the net wealth assessed u/s 16 as reduced by the amount of net wealth on which, in accordance with the rates of wealth-tax specified in Paragraph A of Part I of the Schedule or Part II of the Schedule, the wealth-tax chargeable is nil, or

(B) the net wealth assessed u/s 17, where assessment has been made under that section, as reduced by-

(1) the net wealth, if any, assessed previously u/s 16 or Section 17, or

(2) the amount of net wealth on which, in accordance with the rates of wealth-tax specified in Paragraph A of Part I of the Schedule or Part II of the Schedule, the wealth-tax chargeable is nil,

whichever is greater,

but not exceeding, in the aggregate, an amount equal to the net wealth assessed u/s 16, or, as the case may be, the net wealth assessed u/s 17, as reduced in either case in the manner aforesaid,.... "

4. It is seen from the above provision that the penalty will be calculated on the basis of the assessed wealth as reduced by the amount of initial exemption. The penalty will be one-half per cent. of the aforesaid amount for every month during which there was a failure without reasonable cause to furnish the return subject to a maximum in the aggregate of an amount equal to the assessed net wealth.

5. For the purpose of levy of tax, Section 3, read with the Schedule to the Act as in force on April 1, 1969, classified assessees into those possessing net wealth up to Rs. 5 lakhs, those possessing net wealth exceeding Rs. 5 lakhs but not exceeding Rs. 10 lakhs, exceeding Rs. 10 lakhs but not exceeding Rs. 20 lakhs and net wealth exceeding Rs. 20 lakhs. A similar classification has also been made on the basis of net wealth possessed by a Hindu undivided family. There is a graded rate of tax on the net wealth according to the classification made in the Schedule.

6. The learned counsel for the petitioner submitted that the same classification of assessees should have been adopted for the purpose of levy of penalty also and a graded rate should have been adopted for levy of penalty or the penalty leviable should have been based on the tax payable and that by not doing so Section 18(1)(a) infringes the equality clause in Article 14 of the Constitution. He also pleaded another type of discrimination. By levy of a uniform rate of one-half per cent. on the net wealth assessed there is an inequality of treatment among persons owning different amounts of wealth and that the burden is heavy on those who are possessing smaller wealth than those possessing larger wealth. This, according to the learned counsel, amounts to treating unequal persons on an equal footing and thereby it infringes Article 14 of the Constitution.

7. What Article 14 requires is that the State shall not deny to any person equality before the law or the equal protection of the laws. But it has been held by the Supreme Court in a number of cases that it shall not prevent the State from making a law based on a reasonable classification founded on an intelligible differentia having a rational relation to the object sought to be achieved by the law. In *Budhan Choudhry and Others Vs. The State of Bihar*, the Supreme Court summed up the law as follows :

" It is now well established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; and (2) that that differentia must have a rational relation to the object sought to be achieved by the statute in question. The

classification may be founded on different basis, namely, geographical or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well established by the decisions of this court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure. "

8. In *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, the Supreme Court, after a review of the previous decisions, classified the statute which may come up for consideration on the question of its validity under Article 14 into five categories, and the first category is given thus :

" A statute may itself indicate the persons or things to whom its provisions are intended to apply and the basis of the classification of such persons or things may appear on the face of the statute or may be gathered from the surrounding circumstances known to or brought to the notice of the court. In determining the validity or otherwise of such a statute the court has to examine whether such classification is or can be reasonably regarded as based upon some differentia which distinguishes such persons or things grouped together from those left out of the group and whether such differentia has a reasonable relation to the object sought to be achieved by the statute, no matter whether the provisions of the statute are intended to apply only to a particular person or thing or only to a certain class of persons or things. Where the court finds that the classification satisfies the tests, the court will uphold the validity of the law....."

9. It has also been noted in a number of decisions that, so far as tax laws are concerned, the legislature is given a larger play in the matter of classification. Thus, in *V. Venugopala Ravi Varma Rajah Vs. Union of India and Another*, the Supreme Court observed:

"Equal protection clause of the Constitution does not enjoin equal protection" of the laws as abstract propositions. Laws being the expression of legislative will intended to solve specific problems or to achieve definite objectives by specific remedies, absolute equality or uniformity of treatment is impossible of achievement. Again tax laws are aimed at dealing with complex problems of infinite variety necessitating adjustment of several disparate elements. The courts accordingly admit, subject to adherence to the fundamental principles of the doctrine of equality, a larger play to legislative discretion in the matter of classification. The power to classify may be exercised so as to adjust the system of taxation in all proper and reasonable ways; the legislature may select persons, properties, transactions and objects, and apply different methods and even rates for tax, if the legislature does so reasonably. Protection of the equality clause does not predicate a mathematically precise or logically complete or symmetrical classification : it is not a condition of the guarantee of equal protection that all transactions, properties, objects or persons of the same genus must be affected by it or none at all. If the classification is rational, the legislature is free to choose objects of taxation, impose different rates, exempt classes of property

from taxation, subject different classes of property to tax in different ways and adopt different modes of assessment. A taxing statute may contravene Article 14 of the Constitution if it seeks to impose on the same class of property, persons, transactions or occupations similarly situate, incidence of taxation, which leads to obvious inequality. A taxing statute is not, therefore, exposed to attack on the ground of discrimination merely because different rates of taxation are prescribed for different categories of persons, transactions, occupations or objects.

It is for the legislature to determine the objects on which tax shall be levied, and the rates thereof. The courts will not strike down an Act as denying the equal protection of laws merely because other objects could have been, but are not, taxed by the legislature. ..."

10. Bearing these well-settled principles in mind, let us examine the provisions of the Wealth-tax Act, 1957. Section 18(1)(a), as extracted above, was substituted for the original Section 18(1)(a) by Finance Act of 1969 which came into force on April 1, 1969. The Finance Act has increased the scale of penalty imposable on persons who failed without reasonable cause to furnish the return of net wealth within the time allowed and for non-compliance with the notice to produce evidence, etc. It is intended to provide an effective deterrent against faults without reasonable cause in the matter of furnishing the return of wealth or the production of accounts and documents called for by notice. Failure to furnish a return and failure to furnish a return within the time specified without reasonable cause amounts to concealment or temporary concealment of wealth. The object of the provision is thus intended to prevent concealment of wealth. So far as these persons are concerned they form a class by themselves. The gravamen of the offence is failure to submit the return without reasonable cause. Whether a person is richer comparatively than the other has no relevance to this classification. Having regard to the object of this provision, in our judgment, the classification of all these defaulters, so to say, into one category is an intelligible differentia based on a rational relation to the object sought to be achieved by the statute.

11. In this connection, we may also cite the decision of the Supreme Court in *The Twyford Tea Co. Ltd. and Another Vs. The State of Kerala and Another*, . The Kerala Plantations (Additional Tax) Act, 1960, as amended by Kerala Act 19 of 1967, imposed a uniform rate of tax at Rs. 50 per hectare, exempting the first hectare. The definition of "plantation" included seven kinds of crops, namely, cocoanut, arecanut, rubber, tea, coffee and pepper. It was contended before the Supreme Court that the imposition of uniform rate of tax per hectare irrespective of the extent of the land held by a person, without any classification with respect to the situation, fertility and yield and in disregard of the income derived from the plantations, is discriminatory and violative of Article 14 of the Constitution. The Supreme Court proceeded to consider the contentions on the basis that the uniform tax falls more heavily on some plantations than others because the

profits are widely discrepant. Dealing with this contention, after citing a number of decisions, the Supreme Court observed that the State has " a wide range of selection and freedom in appraisal not only in the objects of taxation and the manner of taxation but also in the determination of the rate or rates applicable ". Again, at page 1138, the court held:

" The burden is proving not possible "inequality" but hostile "unequal" treatment. This is more so when uniform taxes are levied. It is not proved to us how the different plantations can be said to be " hostilely or unequally" treated. A uniform wheel tax on cars does not take into account the value of the car, the mileage it runs, or in the case of taxis, the profit it makes and the miles per gallon it delivers. An Ambassador taxi and a Fiat taxi give different outturns in terms of money and mileage. Cinemas pay the same show fee. We do not take a doctrinaire view of equality. The legislature has obviously thought of equalising the tax through a method which is inherent in the tax scheme. Nothing has been said to show that there is inequality much less " hostile treatment". All that is said is that the State must demonstrate equality. That is not the approach. At this rate nothing can ever be proved to be equal to another. "

12. Ultimately, the Supreme Court upheld the validity of the uniform rate of tax. As held in *V. Venugopala Ram Varma Rajah v. Union of India*, the laws being the expression of legislative will intended to solve specific problems or to achieve definite objectives by a specific remedy, absolute equality or uniformity of treatment is impossible of achievement. If the classification is rational, the legislature is free to impose different rates in different ways and adopt different modes of assessment.

13. It is also not correct to state that the burden is discriminatively cast by adopting the penalty at one-half per cent. uniformly on the net wealth assessed. Definitely, a person who is having larger net wealth pays higher penalty than the person with a smaller net wealth. The penalty also is dependent on the period of the delay as it has to be calculated at half per cent. for every month during which the default continued. It is not a uniform imposition of penalty in the sense that every defaulter, irrespective of his net wealth and the duration of the delay, is made to pay a fixed sum of money. The penalty is linked with the quantum of net wealth and the period of the delay. We do not find anything irrational in this method of levying penalty. It is not for the court, as observed by the Supreme Court in *Kunnathath Thathunni Moopil Nair Vs. The State of Kerala and Another*, , to suggest that a particular tax could have been imposed in a different way or in a way that the court might think just and equitable. The Act will have to be examined only with reference to the objects sought to be achieved by the statute. The same view was reiterated by the Supreme Court in *Jalan Trading Co. (Private Ltd.) Vs. Mill Mazdoor Union*, in considering the constitutional validity of Section 10 of the Payment of Bonus Act, 1965. This is what the Supreme Court said there:

" Whether the scheme for payment of minimum bonus is the best in the

circumstances, or a more equitable method could have been devised so as to avoid in certain cases undue hardship, is irrelevant to the enquiry in hand. If the classification is not patently arbitrary, the court will not rule it discriminatory merely because it involves hardship or inequality of burden. With a view to secure a particular object, a scheme may be selected by the legislature, wisdom whereof may be open to debate ; it may even be demonstrated that the scheme is not the best in the circumstances and the choice of the legislature may be shown to be erroneous, but unless the enactment fails to satisfy the dual test of intelligible classification and rationality of the relation with the object of the law, it will not be subject to judicial interference under Article 14. Invalidity of legislation is not established by merely finding faults with the scheme adopted by the legislature to achieve the purpose it has in view. Equal treatment of unequal objects, transactions or persons is not liable to be struck down as discriminatory unless there is simultaneously absence of a rational relation to the object intended to be achieved by the law. Plea of invalidity of Section 10 on the ground that it infringes Article 14 of the Constitution must, therefore, fail. "

14. We are, therefore, unable to accept the contention of the petitioner that Section 18(1)(a) infringes Article 14 of the Constitution.

15. We are also of the view that there is no substance in the contention of the petitioner that the penalty levied u/s 18(1)(a) is confiscatory in nature and, therefore, offends Article 19(1)(f) of the Constitution. As we have seen already Section 18 is designed to prevent evasion of tax or concealment of wealth. It is also necessary to state that, u/s 14, the return under the Wealth-tax Act shall be furnished before the thirtieth day of June of the corresponding assessment year. But the Wealth-tax Officer, if he is satisfied that it is necessary so to do, can extend the date of submission of the return. Section 18 itself requires that, in order to attract the liability for penalty, the Wealth-tax Officer must be satisfied that the person has failed to furnish the return "without reasonable cause". Thus, only fraudulent concealment attracts liability for penalty. In dealing with the provisions of Section 28 of the Indian Income Tax Act, 1922, which also provide for the levy of penalty for non-submission of Income Tax return within the time specified " without reasonable cause ", this court in *Sivagaminatha Moopanar and Sons Vs. Income Tax Officer, II Circle, Madurai and Another*, . held that a provision intended to prevent evasion and make it unremunerative to the evader is an incidental and ancillary power necessary to render effective the substantive power conferred to legislate on taxes on income, and observed:

"" The argument that the penalty which could lawfully be levied u/s 28, viz., one and a half times the tax evaded, might, in certain cases, where the average rate of tax exceeds ten annas in the rupee, exceed the income, and is, therefore, not a proper tax legislation, proceeds on a misapprehension, for the quantum of the penalty is one for the legislature and is wholly irrelevant for determining the constitutional validity of the penalty provisions. "

16. The purpose of Section 18(1)(a) is to render evasion or concealment

unprofitable and of securing to the State compensation for damages caused by attempted evasion. Evasion or concealment is quasi-criminal in nature and character and, therefore, the levy of penalty need not be compensatory but it could be penal as to prevent the offence effectively.

17. The Supreme Court has upheld some of the provisions designed to prevent evasion of tax under the *Balaji Vs. Income Tax Officer, Special Investigation Circle*, the Supreme Court upheld Section 16(3)(a)(i) and (ii) of the Indian Income Tax Act, 1922, on the ground that it was designed to prevent evasion of tax by carrying on business nominally in the name of a wife or minor child. For the same reasons, Sections 2(6A) and 12(1B) of the Indian Income Tax Act, 1922, were upheld in *Navnitlal C. Javeri Vs. K.K. Sen, Appellate Assistant Commissioner of Income Tax, "D" Range, Bombay*, . Same is the position in the United States of America, as found in a passage in 51 American Jurisprudence, page 630, which reads as follows:

" To make effective the power to levy and collect taxes, the State must necessarily have the power to discover and assess property on which to levy such taxes, if no penalty attached to the taxpayer's failure to return a true list of his property and to disclose its character and value to the officer whose duty it is to make the assessment, the taxpayer could readily conceal certain classes of property and suffer no loss when the property was discovered, for the State could then do no more than collect the taxes due..... Statutes usually impose a severe penalty of a criminal nature upon persons wilfully filing a false return, and the constitutionality of such statute is unquestionable....."

18. It should be borne in mind that any concealment of the wealth and evasion of tax is a loss to the exchequer, and consequently, a loss to the public, that is, the community in general. Any provision intended against such evasion is, therefore, eminently a provision in the interest of the general public. Section 18(1)(a) being a penal provision intended to prevent evasion of tax and concealment of wealth, it is saved under Article 19(5) as a reasonable restriction on the fundamental right of the petitioner under Article 19(1)(f) of the Constitution, in the interest of the general public. Therefore, the contention of the petitioner that Section 18(1)(a) offends Article 19(1)(f) is untenable.

19. Equally untenable is the contention that Parliament lacks legislative competence to enact Section 18(1)(a) of the Act. The contention is based on a wrong assumption that a power to levy penalty is not incidental or ancillary to the power to legislate on taxes on the capital value of assets under entry 86, List I, of the Seventh Schedule to the Constitution. This court in *Sivagaminatha Moopnar & Sons v. Income Tax Officer*, dealing with the power of Parliament to levy penalty as provided in Section 28 of the Indian Income Tax Act, 1922, for non-submission of the Income Tax return without reasonable cause, has observed as follows :

" The expression taxes on income" is of the widest import and would obviously

include laws in relation to the taxation of evaded income. Such a law may take the form of an appropriation not merely of the income evaded but even more as the tax or as the reparation for damage caused to the State by such attempted evasion. In this connection it should be borne in mind that we are interpreting the words in an organic instrument designed to endow sovereign legislative bodies with legislative power and the words should not be construed in any narrow or pedantic sense. Apart from this, the power to enact laws to prevent evasion and make it unremunerative to the evader could also be viewed as an incidental or ancillary power necessary to render affective the substantive power....."

20. Apart from this, this contention is no longer open in view of the recent decision of the Supreme Court in *Union of India v. Harbhajan Singh Dhillon*, (1972) 83 ITR 582 (SC) . In that case, having regard to the widest language employed in Article 248 and entry 97 of List I to the Seventh Schedule of the Constitution, the Supreme Court held that whenever the legislative competence of Parliament is to be decided the question to be asked is " is the matter sought by Parliament to be legislated one included in List II or List III or is the tax sought to be levied mentioned in List II ? " If the answer is in the negative, it follows that Parliament has the power to make laws with respect to that matter of tax ; thereafter, there is no need to refer to the particular entries in List I. It is not the contention of the petitioner herein that the subject-matter now in question is covered by any of the entries in List II to the Seventh Schedule to the Constitution, Parliament is, therefore, competent to legislate Section 18(1)(a) of the Wealth-tax Act, 1957.

21. In the result, the writ petitions fail and they are dismissed. The respondent will be entitled to his costs in W. P. No. 3191/70, which is fixed at Rs. 250, There will be no order as to costs in W. P. No. 3192/70.