

(1970) 01 MP CK 0002
In the Madhya Pradesh High Court
Case No : M.C.C. No. 373 of 1968

Janardan Rao

APPELLANT

Vs

Municipal Council, Sausar

RESPONDENT

Date of Decision : 01-01-1970

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 113
Constitution of India, 1950 — Article 276, 277
Government of India Act, 1935 — Section 142A, 143(2)

Citation : (1977) ILR (MP) 502 : (1973) JLJ 511 : (1973) 18 MPLJ 576

Hon'ble Judges : A.P. Sen, J

Bench : Single Bench

Advocate : J.S. Verma as Amicus curiae, for the Appellant; P.R. Padhye, for the Respondent

Judgement

A.P. Sen, J.

This reference u/s 113 of the Code of Civil Procedure, made by the Civil Judge, Class II, Sausar, refers to the High Court the following questions of law for its opinion, namely--

- (1) Whether the Haisiyat tax is a tax on income?
- (2) If so, whether the Municipal Council could enhance the amount of " Haisiyat tax" from Rs. 7,000 to Rs. 12,000, after 26th January 1950?

For a proper understanding of the questions involved, it is necessary to set out the charging provision, section 35 (a) (ii) of the Central Provinces Municipal Act, 1903, under which the tax was initially levied. It reads as follows--

35. Subject to any general rules or special orders which the Governor General in Council may make in this behalf, a committee may, for the purposes of this Act, impose, with the sanction hereinafter specified in each case and in the manner required by section 39, any of the following taxes, namely,--

(a) with the previous sanction of the Local Government.-

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(ii) a tax on persona occupying houses, buildings or lands within the limits of the municipality according to their circumstances and property within those limits;

The tax has been in existence in the Municipality since the year 1909.

The true nature of the tax, generally known as a Haisiyat tax, was explained by the Chief Commissioner of the Central Provinces, in his Letter No. 3/VII-23-15, D/- 1st June 1906, in these terms--

The so-called Haisiyat tax was adopted to the Municipal law of these Provinces from the Bengal Act, and is essentially an alternative to a house-tax. A house-tax is a form of taxation which can be easily applied in small places in which the conditions are fairly simple. It is paid by the classes who derive most benefit from the expenditure of the taxation, i. e., the owners and occupiers of houses, the owners paying it directly and the occupier indirectly in the form of enhanced rate. In some circumstances, however, the levying of taxation from the owners only might press unduly on that particular class, and to meet such cases the tax on occupiers according to their circumstances and property was devised. This tax is levied directly from the occupiers of houses whether their own are rented: It is more elastic than a house-tax, and enables taxation to be adjusted with greater nicety to the means of the payers.

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The main principles on which the tax on occupiers should be assessed are two-- one is that each person shall pay in proportion to his circumstances and property, that is to say, in proportion to his capacity to pay and to the value of his property which will derive benefit from municipal administration. The other is that the total amount which has to be raised by the tax shall be estimated beforehand and that this total amount shall be distributed among the whole body of tax-payers in the proportions indicated above.

As the name itself suggests, the Haisiyat tax is a tax on a man's financial position as reflected by his "circumstances and property", i. e., upon his capacity to pay. It is not easy to define what "circumstances" are, but in the context in which it appears, the word "circumstances" in section 35 (a) (ii) of the Act, is equivalent to "means", so that the taxation has to be according to the means and property of the rate-payer within the Municipality. Sir Ashutosh Mookerjee J., in *Chairman of Giridih Municipality v. Srish Chandra Mozumdar* 1 L R 35 Cal. 859, while dealing with section 92 of the Bengal Municipal Act, 1884, succinctly stated, thus--

The question raised is as to the precise effect of the phrase "circumstances and property", which is not defined in the Act. So far as we can make out, the question is one of first impression and our attention has not been invited to any

decided cases, which have any direct bearing upon the matter now in controversy.

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The term "property" designated as a subject of taxation without any qualification obviously includes both real and personal property or estate and intangible as well as tangible rights of value, [See, *Carrol v. Perry* (1845) 4 Mc Lean U S 25] No doubt the word "property" in any particular case must receive a construction in accordance with the context. There can be no question, I think, that, if section 85 mentioned property within the Municipality and nothing else, the whole of the income earned by the defendant would be assessable under the law. The question, therefore, resolves itself into this, viz. whether reference to the circumstances of the rate-payer within the Municipality does in effect restrict and narrow down what is indicated by property within the Municipality. I am unable to see that it has any such alleged effect. If any such effect was intended by the Legislature, the phraseology might have been appropriately made different, and one would expect that, if the test intended was not what is earned, but what is spent, the Statute would have expressly so provided. In the same way, if it was intended that a deduction should be made, either for the expenses of the rate-payer or for his indebtedness or for possible insolvency, the exemption would probably have appeared on the face of the Statute. On the other hand, if we look to section 92 of the Bengal Municipal Act. we find that "circumstances" is used as equivalent to "means", which indeed is given in the Oxford Dictionary, Vol. 2, page 435, as one of the ordinary significations of the term, "circumstances" which is defined as "condition or state as to material welfare, or means". I am unable to hold, therefore, that the word "circumstances" was introduced in section 85 to restrict the term "property". The intention, on the other hand, seems to have been to widen the scope of the section so as to make taxable what might perhaps be not properly comprised under the term "property" and at the same time ought not to escape assessment.

A few decisions dealing with the Haisiyat tax are here worth mentioning. In *Muhammad Hamid v. Municipal Committee*, Durg 23 N L R 162, Kotval J, observed that according to rule 5 (b) of the Rules framed by the Municipality, which lay down the principles of assessment of the Haisiyat tax, the tax paying capacity of a Government servant in respect of his salary does not depend solely upon the gross amount thereof. income tax must be wholly deducted therefrom. Insurance premia and house rent cannot as a matter of principle be so deducted. *Bind Basni Prasad J., in District Board of Farrukhabad Vs. Prag Dutt and Others*, stated that the tax on "circumstances and property" imposed u/s 108, Uttar Pradesh District Boards Act, 1922, is a composite tax, consisting inter alia of the tax on professions, trades, callings and employments which falls under Entry 46, and on lands and buildings which falls under Entry 42 of the Provincial Legislative List of the Government of India Act, 1935, Schedule 7. To the extent that the tax on circumstances and property is from the income derived from trades, professions, callings and employments, it cannot, in view of section 2,

Professions Tax Limitation Act, 1942, exceed fifty rupees per annum. But as this section places no limitation on "taxes on lands and buildings", leviable under Entry 42, the circumstances and property tax so far as it is referable to this heading is not subject to this restriction. D. N. Sinha J., (as he then was) in *M/s Hiralal Ramkumar v. Sainthia Anchal Panchayat* A I R 1964 Cal. 590, while dealing with section 57 of the West Bengal Panchayats Act, 1956, stated that the taxing provision was intra vires the State Legislature. He then stated--

An assessment of tax by an 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 as 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.

The "Haisiyat tax" is a combination of the property tax and the profession tax, and this composite tax is subject to the same maximum as applicable to the profession tax. There is hardly any need for me to elaborate the point any further as their Lordships of the Supreme Court have defined the precise nature of a "circumstance and property" tax. In *Pandit Ram Narain Vs. The State of Uttar Pradesh and Others*, , while dealing with the tax, S. K. Das J., speaking for the Court, stated:

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.

Their Lordships of the Supreme Court pointed out that the tax was in pith and substance, one which attracted the provisions of section 2, Professions Tax Limitation Act, 1941. Interpreting section 14 (1) (f) of the U. P. Town Areas Act, 1914, under which the tax is levied, their Lordships further stated that the taxing nexus is either residence within the limits of the town area or carrying on business within those limits. In that context, they contrasted a tax on "circumstances and property" imposed u/s 14 (1) (f) with a tax on "trades, callings or professions" levied u/s 14 (1) (d) of the Act. So far as that tax is

concerned, the nexus is that the trade, calling or professions must be carried on within the limits of town area. That is the only difference in the two taxes. Nevertheless, although the clauses are different, as their Lordships point out, there may be over-lapping between the different clauses, and to avoid the same person being taxed more than once, the proviso to clause (f) enacts that a person who is already assessed under clause (d) cannot be assessed again under clause (f). Incidentally, section 14 (1) (d) and (f) of the Uttar Pradesh Town Areas Act, 1914, are in pari materia with section 35 (a) (ii) and (iii) of the Central Provinces Municipal Act, 1903, and their Lordships' pronouncement in Ram Narain's case must, therefore, determine the nature and incidence of the Haisiyat tax in question.

There is no substance in the contention that the Haisiyat tax levied by section 35 (a) (ii) of the Act was ultra vires the municipality, as being a tax on income or on capital value of lands and buildings, falling under items 54 and 55, List I of Schedule 7 of the Government of India Act, 1935 or items 82 and 86, List I of Schedule 7 of the Constitution. As already stated, the tax is combination of the property tax and the profession tax and, therefore, it falls within the ambit of items 42 and 46, List II of Schedule 7 of the Government of India Act and items 49 and 60, List II of Schedule 7 of the Constitution. That being so, the Haisiyat tax imposed by the Municipality was a valid tax. In dealing with the legality of the Haisiyat tax imposed u/s 35 (a) (ii) of Central Provinces Municipal Act, 1903, one must have regard to the Constitutional system which was then prevalent. In the unitary system of Government, under the Government of India Acts, 1912 and 1919, no question of any vires of a tax could ever arise when the imposition of the tax by the local Legislature was with the previous sanction of the Governor General. But with the advent of the Federation, there was a distribution of legislative powers between the Federal and Provincial Legislatures in the Government of India Act, 1935, the distribution of legislative powers between the Union and the State Legislatures is continued under the Constitution and their respective fields of legislation are demarcated by the different Lists in Schedule 7.

The legislative entries relating to tax are mutually exclusive and even on general principles of construction, a tax on professions cannot be a tax on income since that is a subject of exclusive federal legislation. The Haisiyat tax could be justified on the ground that whereas in a tax on income, the income is the object of taxation, while in a tax on profession, the income is only a measure of taxation. A tax on income can be imposed only if there is income. A tax on professions can be levied if a person in fact carries on a profession, etc., and irrespective of the question of income. In law, they are, therefore, distinct and separate imposts. However, this distinction though legitimate in theory, makes a profession tax indistinguishable in practice if, the extent of income derived is taken to be the measure of and the incidence of the tax. That is the reason why section 142-A of the Government of India Act, 1935, and Article 276 of the Constitution are enacted to provide that such a tax is not to be regarded as invalid on the ground that it is a tax on income. Notwithstanding that it may be a

tax on income, the tax is saved by these provisions and continues to be levied, unless a provision to the contrary is made by the Parliament by law.

Although the tax having been lawfully levied, was preserved and continued as a pre-existing tax u/s 143(2) of the Government of India Act, 1935, and Article 277 of the Constitution, the Municipality was not competent to increase the rate of the tax as prevailing immediately before 1st January 1937. [See, Rama Krishna Ramanath Vs. The Janpad Sabha, Gondia, The Amalgamated Coalfields Ltd. and Another Vs. The Janapada Sabha, Chhindwara, and The Town Municipal Committee, Amravati Vs. Ramchandra Vasudeo Chimote and Another, The whole object of Article 277 and its predecessor, section 143(2), was to prevent a dislocation of the finances of the local Government and authorities, by reason of the coming into force of new Constitutional measures distributing heads of taxation on lines different from those which had previously prevailed. The power conferred by these provisions was simply to continue to levy the pre existing tax at the rate prevailing on 1st January 1937.

Next, the question is whether the increase in the total amount of the tax amounts to a variation in the rate of the tax. That appears to be so, according to Stone, C. J. and Bose J., in Municipal Committee, Khurai v. Seth Shrivallabha Second Appeal No. 501 of 1938, decided on the 12th July 1940. In that case, their Lordships were concerned with a variation from the amount of the tax from under Rs. 3,000 to Rs. 7,085 and they stated:

The question is: Is this a case of change in assessment or change in amount or rate of tax?

Unquestionably before the change we start with a system whereby the various tax-payers were each assigned a varying number of units. Thus A might have 5 units and B one unit while C fell outside the scheme altogether. Then the amount of the tax was settled at Rs. x (something under Rs. 3,000) and Rs. x was divided into as many parts as there were units. Say they were y units. Then A paid $5x/y$; B paid x/y ; C paid nothing.

Under the new scheme x was raised to 7085 and the 7095 was to be raised in a different way and in accordance with the rules laid down by the notification of 13th August 1934 (which rules, we observe, make it extremely difficult to assess the tax). These rules fix a definite rate depending on income and yet empower the Committee to consider a number of matters personal to the assignee including his circumstances, social position and family as though the old rules were still in force. Thus although the assessment is graded according to income A with an income of Rs. 200 might have to pay, apparently, a different tax from B with an income of Rs. 200 because B was a tailor and A a cultivator; yet the total sum had to come to Rs. 7,085 to a close approximation according to rule 5 (d). How, within the bounds created by a fixed rate varying with income, this was to be done, unless of course the rate was far larger than was necessary to raise the amount of Rs. 7,085, has not been explained.

Here the old tax was under Rs. 3,000. Suddenly the community finds that it has to pay over Rs. 7,000 not because of a change in assesement but because the Committee decides (and Government approves the decision) to raise not Rs. 3,000 but over Rs. 7,000.

The increase in the amount of the tax was struck down by their Lordships on the ground that the municipality had not followed the procedure prescribed u/s 68 (3) and (4) of the Central Provinces and Berar Municipalities Act, 1922, by not notifying its proposal to increase the amount of the tax, for the purpose of inviting objections to such increase and thereby it deprived the rate-payers of an opportunity to object. Nevertheless, the observations extracted above, coming as they, from such a high authority, cannot be disregarded as mere obiter as the question involved on which their Lordships expressed themselves was one relating to the principles of assessment of the tax. The observations are, therefore, binding on me and I would respectfully adopt the same view.

It must, accordingly, be held that the increase in the total amount of the tax from Rs. 7,000 to Rs. 12,000 on 5th May 1950 and from Rs. 12,000 to Rs. 15,000 with effect from 1st October 1960, was invalid. There shall be no order as to costs of this reference as the assessee did not enter appearance at the hearing. I must, however, record my indebtedness to Shri J. S. Verma, Advocate, who kindly consented to appear as *amicus curiae* on behalf of the assessee, for the assistance that he has rendered.