(2001) 02 RAJ CK 0068

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1760 of 2000

Jodhpur Chartered Accountants Society and Another APPELLANT

Vs

State of Rajasthan and Another RESPONDENT

Date of Decision : 19-02-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 226, 245, 246(3)
Income Tax Act, 1961 — Section 17, 2(24)
Rajasthan Provisional Collection of Taxes Act, 1958 — Section 3
Rajasthan Tax on Professions, Trades, Callings and Employments Act, 2000 — Section 3, 30, 4, 6, 7

Citation : (2001) 107 CompCas 42 : (2001) 2 RLW 943 : (2001) 2 WLC 17 : (2001) 4 WLN 170

Hon'ble Judges : Bhagwati Prasad, J;A.R. Lakshmanan, J

Bench : Division Bench

Advocate : L.R. Mehta and B.C. Mehta, for the Appellant; S.M. Mehta, Genera, Sundeep Bhandawat and Sanjeev Johari, for the Respondent

Judgement

Lakshmanan, CJ.

(1). The petitioner No.1 is a society of Chartered Ac-countanls registered under the provisions of (he Rajasthan Societies Registration Acl, 1958. According to the petitioners the society has been formed inter alia with the object of espousing and advocating the cause of the profession and its members and also to represent them before the Authorities and Courts. Petitioner No.2 is a Chartered Accountant and President of the Society and filed this wril petition for himself and for and on behalf of the society and all its members.

(2). The State government of Rajasthan has introduced the Rajasthan Tax on Professions, Trades, Callings and Employments Act, 2000 in the Rajasthan Legislative Assembly on 30th March, 2000, while inter-alia, invoking and giving the declaration u/s 3 of the Rajasthan Provisional Colleclion of Tax Act, 1958, proposed to enact the Rajasthan Tax on Professions, Trades, Callings & Employments Act, 2000, to provide for the levy and collection of tax on

Professions, Trades, Callings & Employments in the State of Rajaslhan.

(3). The Association has challenged the Notification dated, 30th March, 2000 issued by the respondents prescribing the rates at which the professional will be taxed under the Rajasthan Tax on Professions, Trades, Callings and Employments Act, 2000 (Act No. 12 of 2000).

(4). The writ Petition was earlier heard by Hon''ble Justice V. G. Palshikar. The learned Judge, afler considering the entire case from all perspectives felt that it is a matter affecting the entire community of Chartered Accounts in the State of Rajasthan and involved substantial question of interpretation of law and Constitution of India in so far as notification mentioned above is concerned and taking into consideration the nature of dispute, the number of persons involved and the need for an expedient and final adjudication of the dispute and likelihood of either of the party taking of the matter in appeal before the Division Bench and possibly to the Supreme Court, referred the matter to the Division Bench for an authoratitive pronouncement on this matter which would obviate the delay that may be caused due to appeal. The mailer was placed before the Chief Justice for appropriate directions regarding hearing of this petilion and as ordered, the mailer was placed before this Bench.

(5). The above Act No. 12 of 2000 was enacted lo provide for the levy and collection of tax on Professions, Trades, Callings and Employments in the State of Rajasthan. It received the assent of the Governor on the 9th day of May, 2000. Act extends to the whole of the State of Rajasthan.

(6). Section-3 of the Act deals with the power lo make declaration under the Act, which reads as under:

"Subject to the provisions of Art. 276 of the Conslitution of India and of this Act, there shall be levied and collected a tax on professions, traders, callings and employments at such rates not exceeding rupees two thousand five hundred per annum per individual person, as . may be notified by the State Government in the Official Gazette."

(7). In pursuance of the Rajaslhan Provisional Colleclion of Tax Act, 1958 (Act No. 23 of 1958), il is declared that il is expedient in public interest that this Act No. 12/2000 shall have immediate effect under the said Act. In the statement of Objects and Reasons it is stated that in order to increase the resource base, a tax on professions, trades, callings and employments is proposed to be imposed as an instrument for additional resource mobilisation. The terms ''calling'', ''employee'', ''employer'', ''person'', ''profession'', ''salary'' or ''wage'' and ''tax'' have been defined u/s 2(c), 2(g), 2(h), 2(1), 2(6), 2(p) and 2(q) of the Act respectively, which are reproduced as under:

"2(c) "calling" - includes usual occupalion, vocation, business or trade of a person;

2(g) "employee" means a person employed on salary or wages; and

(i) a Government servant receiving pay from the revenues of the Central Government or any State government or the Railway Fund;

(ii) a person in the service of a body, whether incorporated or not, which is owned or controlled by the Central Government or any State Government, where the body operates in any part of the State, even though its headquarters may be outside the State;

(iii) a person engaged in any employment of an employer, not covered by items (i) and (ii) above;

2 (h) "employer" in relation to an employee earning any salary or wages on tegular basis under him means the person or the officer who is responsible for disbursement of such salary or wages and includes the head of the office of any establishment as well as the manager or agent of the employer.

2(l) "person" means any individual or association or body of individuals and includes a Hindu Undivided Family or Joint Family, a firm, a company whether incorporated or not, a co- operative society, a trust, a club, an institution, an agency, a corporation, a local authority and a Department of the Central or the State Governments, engaged actively or otherwise in any profession, trade, calling or employment in the State of Rajasthan, but does not include any person who earns wages on a casual basis;

2(o) "Profession" means the occupation which one professes to be skilled in and by which a person mainly earns his livelihood;

2(p) "salary" or "wage" includes pay or, dearness allowance and all other remunerations received by -any individual on regular basis, whether payable in cash or kind and also includes perquisites and profits in lieu of salary, as defined in Sec. 17 of the Income Tax Act, 1961 (Central Act No. 43 of 1961), but does not include bonus in any form, and on any account or gratuity;

2 (q) "lax" means the tax on professions, trades, callings and employments levied under this Act."

(8). Section-3 which deals with levy of tax and its rate, is the charging section and reproduced above. Sections 4 and 5 of the Act are also reproduced as under:

"4. Exemption from Tax- Notwithstanding any thing contained in this Act, where the Slate government is of the opinion that it is necessary or expedient in the public interest so to do, it may, by notification in the Official Gazette, exempt fully or partially, whether prospectively or retrospectively from tax any person or class of persons, without any condition or with such''condition as may be specified in the notification."

"5. Employers'' liability to deduct and pay tax on behalf of employees-The lax payable under this Act by any person earning a salary or wage, shall be deducted by his employer from the salary or wage payable to such person, before such salary or wage is paid to him, and such employer shall, irrespeclive of whether such deduction has been made or not, when the salary or wage is paid to such person, be liable to pay tax on behalf of all such persons;

Provided that, if the employer is an officer of Government, the Stale Government may, notwithstanding anything contained In this Act, prescribe by rules the manner in which such employer shall discharge me said liability:

Provided further that, where any person earning a. salary or wage is simultaneously engaged in employment of more than one employer, and such person furnishes to his employer or employers a certificate in the prescribed form declaring inter alia, that he shall get enrolled under sub Sec. (2) of Sec.- 6 and pay and tax himself, then the employer or employers of such person shall not deduct the tax from the salary or wage payable lo such person and such employer or employers, as the case may be, shall not be liable to pay lax on behalf of such person."

(9). The Stale of Rajaslhan while exercising powers conferred by Sec. 3 of the Rajasthan Tax on Professions, Trades, Callings and Employments Bill (Bill No. 6 of 2000) has notified by the Notification No. F.4(l) F.D./Tax Div./2000-315 dated, 30th March, 2000 as under:

(1) That tax shall be levied under the said Bill from the persons, as enumerated in Clause 3 i.e. Salary or Wage Earners, Legal Practitioners, including Solicitors, Technical and Professional Consultants, including Architects, Engineers & Tax Consultants and Chartered Accountants etc., at the rate mentioned in Clause 2, provided such person is Income Tax Payer in the immediately preceding year, and in case, such person has not paid any Income Tax, in the immediately preceding year, but is liable to pay tax, under the said Bill.

(2) That the Tax shall be levied at the rate specified hereunder:

S.No

Salary/Wages/Income (per month)

Rate of Tax (per month)

1.

Rs. 12,5007- or less

Nil

2.

Rs. 12,501/- to Rs. 16,5007-

Rs. 100/-

3.

Rs. 16,501A to Rs. 20,000/-

Rs. 150A

4.

Rs. 20,001/- and above

Rs. 200/-

NOTE : (I) That for the purpose of Clause 2 above, the term ''Salary'' or ''Wage'' will have the meaning as defined in Section 2(p) of the said Bill, while the term "Income" will have the meaning as defined under the Income Tax Act, 1961.

(II) That the income as disclosed by the person duly supported by an affidavit will be accepted. However, Government in Finance Department can conduct test checking, if so required.

(3) That the lax shall be levied at the rate specified in clause 2, from the following persons, provided they are covered in clause 1 above:

S. Class of Persons No. 1. Salary or Wage earners 2. Legal Practitioners including Solicitors 3. Medical Practitioners including Medical Consultants and Dentists 4. Technical and Professional Consultants, including Architects, Engineers, Tax Consultants, Chartered Accountants, Actuaries and Management Consultants.

(10). The Notification issued by the Dy. Secretary to Government of Rajaslhan, Finance Department, Jaipur dated, 30th March, 2000, is submitted and marked as Annexure-2.

(11). The Stale of Rajasthan while exercising powers conferred by Sec. 4 of the Bill read with Sec. 3 of the Act of 1958 had exempted certain persons from levy of tax vide Government Notification No. F.4 (1) F.D./Tax Div./2000-316, dated, 30th March, 2000. The copy of the said Government Notification issued by the Dy. Secretary to the Government, Finance Department, Government of Rajasthan, Jaipur, is marked as Annexure-3.

(12). The Slate while exercising the powers conferred by Sec. 7 of the Rajasthan Tax on Professions, Trades, Callings & Employments Bill, 2000 read with Sec. 3 of the Act of 1958 has notified the time intervals for depositing the amount of tax due from Enrolled persons for each year as specified in their Enrollment Certificates vide Government Notification No. F/4(1) F.D./Tax/Div. 2000/317 dated, 30th March, 2000. The copy of the said Notification is marked as Annexure-4.

(13). The Rajasthan Legislative Assembly has enacted an Act, namely, "The Rajasthan Tax on Professions, Trades, Callings and Employments Act, 2000, (Act No. 12 of 2000), which has already received the assent of the Governor on 9th May, 2000. The provisions of the said Act No. 12 of 2000 are now applicable and enforced in the Slate.

(14). While exercising the powers conferred by Section 30 of the Act of 2000, the Slate Government has made the Rules. The terms "Prescribed Authority" has been defined under Rule 2(e). Rules- 4 and 6 of the Rules of 2000 deal with grant of Certificate of Enrollment and Exhibition of Certificate.

(15). Though, the petitioners filed the Writ Petition challenging constitutional validity and legality of the charging Section-3 and Section-6 of the Act and relevant Rules 4 and 6 of the Rules of 2000 and actions on the part of the respondents for notifying the levy of tax from certain persons at certain rates vide Government Notification dated, 30th March, 2000 (Annex. 2), have given up the challenge in regard to the constitutional validity and legality of the charging Sections 3 and 6 of the Act of 2000 and Rules 4 and 6 of the Rules of 2000 at the time of hearing. In view of this no argument was advanced on the side of the petitioners in this regard.

(16). Shri L.R. Mehta, learned Senior Counsel submitted that Sections-3 and 6 of the Act of 2000 and rules 4 and 6 of the Rules 2000 are liable to be declared illegal, null and void. In the alternative, he would submit that if this Court comes lo the conclusion that Sections-3 and 6 of the Act and Rules 4 and 6 of the Rules are legal, valid and constitutional and having pace with and harmonious to the Entry 60 of List II of the VIIth Schedule and Article 276 of the Constitution* of India, the impugned actions on the part of the respondents for notifying the levy of lax, from me persons as enumerated in Clause 3, at the rate as mentioned in Clause 2, vide Govt. Notification No. 2000-315, dated, 30th March, 2000 while exercising powers conferred by Sec. 3 are illegal and that the Notification daied, 30th March 2000 is liable to be set aside being contrary to the law laid down under Sec. 3 of the Act itself. According to Shri Mehta, the levy by the Stale Legislature by way of tax under Entry-60 read with Art. 246(3), Art. 276(1) and 276 (2) of the Constitution of India cannol exceed Rs. 2,500/- per year and by virtue of the charging Section-3, the State Government is empowered to levy and collect the tax on the class of persons, who are engaged in any Profession, Trade, Callings and Employments and at such rate not exceeding Rs. 2,500/- per annum per individual, but cannot levy and collect the tax on the salary/wage/ income of the said class of persons enumerated in Clause 3 and at such rate as mentioned in Clause 2 of the Government Notification dated, March 30,2000, (Annex. 2), and mat too, from the persons who are engaged in professions, trades and callings and not from the salary or wage earners on the income, as defined U/s 2(24) of the Income Tax Act, 1961. It is also submitted that the State Government cannot levy and collect tax from the persons who are salary or wage earners on the salary or wages as defined U/s 2(P) of the Act, including pay and dearness allowance and all other remunerations received by any individual on regular basis whether payable in cash or kind and includes perquisite and profits in lieu of salary as defined U/s 17 of the Income Tax Act, 1961.

(17). According to the learned Senior Counsel, the State Government have no power lo levy and collect tax on the salary or wages On the income of the said class of persons, enumerated In Clause 3 at such rate, as mentioned in Clause

(2) of the Government Notification No. 2000-315 dated, 30th March, 2000 and the Parliament alone is competent under the Constilulion of India to levy tax on salary/wages/income of the persons who are engaged in Professions, Trades, Callings and Employments under Entry 82 of the Union List forming part of Vllth Schedule of the Constitution of India and their salaries, wages or income are already subject to tax and are suffering the incidence of tax as per the provisions laid down under the Income Tax Act. Shri L.R. Mehla further submitted that the criteria of either salary/wages or income as defined U/s 2(p) read with Sec. 17 of the Income Tax Act and income as defined U/s 2(24) cannot be a basis of levy and collection of Tax, as provided U/s 3 of the Act and for determining the Tax liability under Clause 2 of the said Govt. Notification (Annex.2). The criteria of standing in Profession and Callings of any of the persons, who are engaged in the Professions and Callings shall be a basis or shall be adopted for levying and collecting Tax and for determining the tax liability as provided U/s 3 of the Act. The Criteria of Salary/Wages or Income is having no nexus or bearing for the said purpose.

(18). In order to appreciate this contention, Shri Mehta sought support of the relevant extracts of Schedule-I of the Gujarat State Tax on Professions, Trades, Callings and Employments Act, 1976 and also relevant extracls of Schedule attached to Madhya Pradesh Virtikar Adhiyniyam, 1995, which are reproduced as under:

SCHEDULE-I

(See Section 3 and Seclion 5(3)

Rates of tax on Professions, Trades, Callings and Employments

S. No.

Class of persons

Rate of Tax

1. Salary and Wages earners, whose monthly salaries or wages are-

2.(1) (a) Legal Pracllltoners including solicitors and Notaries Public.

(b) Medical Practitioner Including medical consultants and dentists.

(c) Technical and professional consultants including Architects, Engineers, RCC Consultants, Tax Consultants, Chartered Accountants, Actuaries and Management Consultants.

(d) Chief Agents. Principal Agents, Special Agents, Insurance Agents and Surveyors or Loss Assessors, registered or licensed under the Insurance Act, 1938 (4 of I93S).

(e) Plumbers.

(f) All contractors other than building contractors.

(g) Commission agents, Dalals and Brokers other than estate Brokers:

Where the standing in the Profession or Calling of any of the persons mentioned above is.''

(i)

upto five years

Nil

(ii)

more than five years but not more than ten years- ''

Rs. 150 every year

(iii)

more than ten years.

Rs. 250 every year

(2)Nothing in this entry shall apply to a person whose annual income exclusively earned out of the profession or calling or both of them in the year immediately preceding does not exceed Rs. 10,000.

SCHEDULE

(See Section 3)

SCHEDULE OF RATES OF TAX ON PROFESSIONS, TRADES, CALLINGS AND EMPLOYMENTS

S. No.

Class of persons

Rate of Tax

1. Persons in employment whose Annual Salary of Wages:

2. Where the standing in profession or calling of :

(a) Legal practitioner including solicitors and notaries public.

(b) Medical practitioner including medical consultants and dentists.

(c) Technical and professional consultants including Architects, Engineers, RCC Consultants, Tax Consultants, Chartered Accountants, Actuaries and Management Consultants.

(d) Chief Agents, Principal Agents, Special Agents, Insurance Agents and Surveyors or Loss Assessors, registered or licenced under the Insurance Act, 1938 (4 of 1938).

(e) All contractors.

(f) Commission agents, Dalals and brokers other than Estate workers.

(A) In a place having a population of less than 50,000 is:

(B) In a place having a population of 50,000 and above but less than 1,00,000 is:

(C) In a place having a population of 1,00,000 or more is:

(i) less than five years

Nil

(ii) Five years or more but less than 10 years.

Rs.1,000

(iii) ten years or more butless than fifteen years

Rs.1,500

(iv) Fifteen years or more

Rs.2,500

(19). It is the contention of Shri Mehta that the criteria of either taxable salary/ wages or taxable income only, duly computed, after effecting the deductions permissible under the provisions of the Income Tax Act, shall be adopted for determining the lax liability under Clause 2 of the said Government Notification dated, 30th March, 2000 and not the salaries/wages or income as defined U/s 2(p) of the Act read with Section 17 of the Income Tax Act, 1961 and income, as defined U/s 2(24) of the Income Tax Act, Therefore, he submitted that the Notification dated, 30th March 2000 is illegal, null and void. Our attention was drawn to the various annexures filed along with the writ petition.

(20). The writ petition was opposed by the State of Rajasthan. Shri S.M. Mehta, learned Advocate General, submitted that the provisions of Sections 3 and 6 of the Act of 2000 and (he provisions of Rules 4 and 6 of the Rules of 2000 are valid, legal and (he Notification dated, 30th March 2000 (Annex.2) is jus! and proper and calls for no interference and that the action of the respondents is just and proper and are not in any manner, violative of Articles 14, 19(1 J (g), 265, 286,300A, 301 read with Art. 304 of [he Constitution of India. It is the contention of the learned Advocate General Ihat the State Government has legislative competence to enact Rajasthan Tax on Professions, Trades, Collections and Employments Act, 2000 and frame the Rules of 2000. It will be relevant to mention that under Article 276(1) of the Constitution of India it has been laid down that "Notwithstanding anything contained under Art. 245 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 Ihat it relates to a tax on income", i.e. mandate has been given for imposition of tax. A rider has been put under Article 276(2) that it shall nol exceed Rs. 2,500/- per annum. Sub-Clause (3) of Article 276 provides that the power of the State Legislature to make laws as aforesaid with respect to taxes on Profession, Trades, Callings and Employments shall not be construed as limiting any way the power of the Parliament to make laws with respect to taxes on income accruing from or arising out of Professions, Trades, Callings and Employment. Therefore, it is submitted Ihat the State Government has power to levy tax on the salaries or wages or income of the said class of persons as enumerated and as such, the rate prescribed under the Notification dated, 30th March, 2000. Il is denied that the Parliamenl alone is competent under the Constitution of India to levy lax on salaries and wages and on the income from Professions, Trades and Callings and that there is no inconsistency with the provisions of the Income Tax Act. Il is further argued Ihat the criteria of standing in Profession and Callings of any of the persons, who are engaged in the Professions and Callings are perfectly justified and both the classes form separate category and, therefore, there is valid classification between the two.

(21). We have given our anxious consideration lo the rival submissions made by both the learned counsel appearing for the Association and to the State of Rajasthan.

(22). The Act received the assent of the Governor on 9th May, 2000 and it extends to the whole of the Slate of Rajasthan. It was published in the Gazette on 10.5.2000. The Notifications were issued by the Finance Department on March 30, 2000. The authorities have not initiated any action on the basis of the new Act and the Nolifica-tions issued thereon. It is not brought to our notice that any assessment notice has been so far issued or any assessment has already been made on the basis of the charging Seclion 3. According to the learned Advocate General Section 13 deals with the situation which authorises the prescribed authority at any time or from time to lime by notice in wriling require any person from whom any amount is due or may become due (o such an employer or person who has failed to pay due tax or other sum on demand by the prescribed authority and to proceed in the manner specified in the notice. Learned Advocate General submitted Ihat the grievance expressed by the members of the petitioner Association can only be stated to be imaginary and premature. It is contended by Shri Mehta Ihat by virtue of charging section-3, the State Government is empowered to levy and collect lax on the class of persons and at such rates nol exceeding Rs. 2,5007- per annum per individual, bul cannot levy and collect the tax on the salary/wage/income of the said class of persons enumerated in Clause 3 and at such rate as mentioned in Clause 2 of the said Government Notification dated, 30th March, 2000, as defined U/s 2(24) of the Income Tax Act. It is further submitted that the State Government cannot levy and colled lax from the persons who are salary or wage earners on the salary or wages as defined U/s 2(p) of the Act including pay or dearness allowance and all other remunerations received by any individual on regular basis, whether payable in cash or kind and includes perquisites and profits in lieu of salary as defined U/s 17 of the Income Tax Act.

(23). In our view, the acceptability of the legal contentions raised by Shri Mehta can be considered only when the notice is issued and the assessment orders are passed. This Court would be in a position to analyse the correctness of the notice or the assessment orders etc. only after the notices are issued and after the passing of the consequential orders. Therefore, each case of the individual has lo be separately considered and tested and not at this stage, which in our opinion, is premature. In our opinion, this Court is asked to decide the question in as abstract proposition.

(24). As already noticed, though the writ petition was filed by the Association lo declare Rules 4 and 6 of the Rajasthan Tax on Professions, Trades, Callings and Employments Rules, 2000 as unconstitutional and ultravires to the fundamental rights guaranteed by the Constitution of India and also to declare the Government Notification dated, 30th March, 2000 as null and void, ultravires and unconstitutional. Prayers (iv) and (v) made in the writ petition read thus:

(iv) To hold that Rules 4 and 6 of the Rules, 2000 and related Govt. Notificatioa No. 2000-315 dated 30th March, 2000 (Annex. 2), are not applicable to the persons, who are engaged in Professions and Callings etc.

(v) Grant further relief/reliefs, which may do complete justice to the petitioners in the facts and circumstances of the case."

(25). At Ihis stage, in the absence of any material placed before us either by way of notice or by assessment orders or otherwise, Ihis Court is not in a position to hold the Rules 4 and 6 of the Rules 2000 and the Government Notification dated, 30th March, 2000 are nol applicable to the persons who are engaged in the Professions and Callings etc. and, therefore, this Court is not in a position to grant any relief lo the petitioners at this stage.

(26). There can be no quarrel to the settled legal proposition that a person or Association can approach this Court in writ jurisdiction when his or their right is threatened or there is an imminent danger to a right or imminent violation of a right, but threat or imminent danger to the right or imminent violation of a right has to be determined on the basis of the alleged overt act as ''the protection of a legal right is to be distinguished from its restoration or remedy after violation. Law surely cannot take action for internal thoughts but can act only after the overt act is done. If the overt-act and violation have already been done and the same has come to the knowledge of the person threatened with that violation and he approaches the Courl under Arlicle 226 of the Constitution, giving sufficient particulars of proximate actions as would immediately lead to violation of the rights'', the Court can interfere for the reason that if "a threatened invasion of a right is removed by restraining the potential violator from taking any steps towards violation, the rights remain protected and the compulsion against its violation is enforced. If the right has already been violated, what is left is the remedy against such violation and for restoration of the right." (Vide S.M.D. Kiran Pasha vs. Government of Andhra Pradesh (1), Vedprakash Devkinandan Chiripal vs. Slate of Gujarat and another (2), A.K. Gopalan vs. State of Madras (3), and K.K. Kochunni vs. State of Madras (4). More so, a writ petition under Article 226 of the Constilulion is maintainable for enforcing the statutory right or when there is a complaint by the petitioner that there is a breach of statutory duty on the part of the respondent and the same has adversely affected the petitioner. Therefore, there must be judicially enforceable right for the enforcement of which the writ jurisdiction can be resorted to. The Courl can enforce the performance of a statutory duly by public bodies through its writ jurisdiction al the behest qf a person, provided such person satisfies the Court mat he has a legal right to insist on such writ jurisdiction, (State of Kerala vs. K.G. Madhavan Pillai (5), State of Kerala vs. Smt. A. Lakshmikutly (6), Mani Surat Jain and others vs. State of Haryana (7), Calcutta Gas Company (Propriety) Ltd. vs. Stale of West Bengal and others (8) and Smt. Rampati Jaiswal vs. State of Uttar Pradesh and others (9).

(27). In Rajendra Singh vs. State of Madhya Pradesh and others (10), the Apex Court held lhat mere violation of each and every provision of law does not furnish a ground for the High Court to interfere in its jurisdiction under Article 226 of the Constitution. In most of the cases, substantial compliance of law would be enough and unless it is established that violation of law has caused substantial prejudice to the petitioner, no interference is warranted. Similar view has been reiterated in Rani Laxmibai Kshetriya Gramin Bank vs. Chand Behari Kapoor & ors. (11), wherein the Hon''ble Supreme Court held that petitioner must fully aver the facts to show that some rights flow therefrom in his favour.

(28). The Writ Petition has been filed by the Association apprehending that the authorities would levy and collect the tax on the salary, wage, income of the class of persons enumerated in Clause 3 and as mentioned in clause 2 of the Government Notification dated, 30th March, 2000 and thai too from the persons who are engaged in the Professions, Trades and Callings and not from the salary or wage earners on the income, as defined u/s 2(24) of the income Tax Act. It is also their apprehension that the State Government may levy tax on all other remunerations received by any individual on regular basis, whether payable in cash or kind and includes percuisits and profits in lieu of salary as defined U/s 17 of the Income Tax Act, 1961. No material has been placed on record to substantiate the said apprehensions. If the authorities have exercised their power or jurisdiction erroneously or illegally, the members of the petitioners Association have an alternative remedy for filing a writ petition in this Court. In such a fact situation and when the pensioner''s Association is not entitled to maintain the writ petition, we fail to understand as to how the writ petition can be maintained at this stage. The authorities who are empowered to deal with the provisions of the Act are expected to abide law and act in accordance with law. There is no reason to believe that such gross irregularity or illegality would be committed by making wilful departure from the statutory provisions.

(29). In Balmadies Plantations Ltd. and another vs. The State of Tamil Nadu (12), in an identical case, the Supreme Court has observed in Para-21 as follows:

"The last submission which has been made on behalf-the petitioner-appellants relates to Section 17 of the Act regarding the rights of plantation lessees. It is slated thai it would be open to the Government under the above position to terminate by notice the right of the lessees. Such a termination of the lessee rights under the above provision, according to the submission made on behalf of the petitioner-appellants would be violative of their rights under Arts. 14, 19 and 31 of the Constitution. It is, in our opinion, not necessary to deal with this aspect of the matter. It is admitted that no notice about the termination of the lessee rights has been issued u/s 17 of the Act to any of the petitioner-appellants. Indeed, the question of issuing such a notice can only arise after the Acl comes into force. Even after the Act comes into force, the Government would have to apply its mind to the question as to whether in its opinion it is in public interest to terminate the rights of the plantation lessees. Till such time as such a notice is given, the matter is purely of an academic nature. In case the Government decides not to terminate the lease of the plantation lessees, any discussion in the matter would be an exercise in futility. If on the contrary, action is laken by the Government u/s 17 in respect of any lease of land for purposes of the cultivation of plantation crop, the aggrieved party can approach the Court for appropriate relief."

(30). In Harsharan Verma vs. Charan Singh & Ors. (13), the Supreme Court held that the questions of mere academic importance are not decided by the Supreme Court.

(31). In R.S. Nayak vs. A.R. Anlulay (14), the Supreme Court in Para-69 of the judgment has observed as follows:

"In view of the conclusions reached by us, we consider it unnecessary to ascertain which would be the authority competenl lo sanction prosecution of MLA as envisaged by section 6, though it must be frankly confessed that considerable time was spent in the deliberations in search of competenl sanclioning authority. The vital question has become one of academic interesl. We propose to adhere to the accumulated wisdom which has ripened into a settled practice of this Court not to decide academic quesiions. The question is left open."

(32). In Rajaslhan Adult Education Association and another vs. Ashoka Bhatacharya (KM) and Another (15), the question, whether the Rajasthan Adult Education Association Is a ''State'' amenable to writ jurisdiction of the High Court was posed for consideration as one of the issues. The Supreme Court has nol decided this question because the mailer could be disposed of on other ground and held that the academic questions need nol be decided.

(33). As already stated, there was no material before the assessing authorities concerned and there is no material before us from which we can conclude that the respondents have violaled the provisions of law. This Court cannot issue a declaration on hypothetical grounds or on imaginary possibilities. He, who assails, must.satisfac torily eslablish that there has been a violation of the provisions of the Act and the rules made thereunder.

(34). In the instant case, while issuing notice to the respondents and to the learned Advocate General, a learned Single Judge passed the following order on 4.7.2000:

"....Till then, no coercive measures be adopted by the Government against the Professional/Salaried people."

(35). The interim order was allowed to continue and the same is In force even now.

(36). It is settled law that a statutory authority or even a Writ Court can stay operation of an order passed under the law, but the Court has no competence to stay the operalion of the law. The Writ Court can strike down statutory provision if its validity is under challenge, but it,cannot stay operation of the law itself, even as an interim measure, till validity of the impugned provision is struck down. At the most, it can stay operation of an order passed under said stalutory provision. Granting relief as sought in the instant case would tentamounl to staying the operation of law, which is not permissible as the Court cannot restrain the Authorily from performing its duties and functions.

(37). In the instant case, the petitioners'' Association had obtained interim order on 4.7.2000. The members of the Association had enjoyed the benefit of the interim order passed by this Court for a period of nearly 7 monlhs. Though, the Association has filed the writ petition questioning Constitutional validity of the provisions of the Nolification, however, at the time of hearing, did not press these pleas. In the facts and circumstances of the case, there is no measure to compensate the respondents, although, it is a fit case where the respondents should be sufficiently compensated. However, we do not propose to impose any costs on the petitioners, but dismiss the writ petition as not maintainable and premature. The interim order dated, 4.7.2000 and as extended from time to time during pendency of the writ petition shall stand vacated.

(38). The Writ Petition is ordered accordingly. No costs.

