
(1956) 09 KAR CK 0008

In the Karnataka High Court

Case No : Writ Petition No's. 65, 74, 75, 76, 89, 92, 93, 114, 116, 134 and 152 of 1954; 8, 23, 32, 56, 62, 66, 72, 117, 122, 142, 150, 178 and 186 of 1955 and 1, 4, 28, 29, 63, 69, 72, 107 and 144 of 1956

Kenchappa and Others

APPELLANT

Vs

Sales Tax Officer, Fourth Circle, Bangalore

RESPONDENT

Date of Decision : 12-09-1956

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Mysore Sales Tax Act, 1948 — Section 24, 29

Citation : (1956) ILR (Kar) 286 : (1957) 8 STC 329

Hon'ble Judges : Venkataramaiya, C.J.; H. Hombe Gowda, J

Bench : Division Bench

Advocate : G.S. Ullal, V. Krishnamurthy, K.S. Settur, C.K. Narayana Rao, A.B. Mariappa, K.S. Dalvi, R.L. Srinivas, K.P. Muddappa, M.L. Venkatanarasimhiah, C. Nagaraja Rao, S.K. Venkataranga Iyengar, M. Chinnaswamy, P.R. Srirangiah, R.K. Pani and Belur Krishna Iyengar, for the Appellant; The Advocate-General, for the Respondent

Judgement

Venkataramaiya, C.J.—This is a batch of petitions filed under Article 226 of the Constitution of India in which the levy of sales tax on moneys realised for execution of certain contracts called "works contract" has been challenged. The petitioners are charged with liability for payment of the tax not on the total amount received by them but on the value of goods supplied by them for fulfilment of contracts entered into with others. The value has been fixed and the tax assessed in accordance with the provisions of the Mysore Sales Tax Act and the rules framed thereunder. The objections raised and arguments advanced being the same in all the petitions these may be conveniently disposed of by a single order.

2. The grievance of the petitioners is that the articles used by them for carrying out the works undertaken by them are treated as goods sold by them and that the value of these is determined not by the actual cost paid for but by the

application of a formula. It is true that considering the object of the Act, the meaning attached to sale and the scheme of assessment provided for generally, there are reasons for the petitioners to complain of peculiarity and arbitrariness in the principle and procedure applied to them. There is no dispute about the assessment being in conformity with what is provided for by the statute and the rules made by Government in exercise of the power conferred on it by the statute. What has to be considered therefore is whether these are unauthorised, unconstitutional or unwarranted by the facts admitted or proved.

3. Three decisions, one of the Madras High Court in *Gannan Dunkerley and Co. (Madras) Ltd. Vs. State of Madras*, , another of the Nagpur High Court in *Pandit Banarsi Das v. State of Madhya Pradesh* ([1955] 6 S.T.C. 93) and the third of the Hyderabad High in *Jubilee Engineering Co. Ltd. v. Sales Tax Officer, Hyderabad* [1956] 7 S.T.C. 423 : AIR 1956 Hyd. 79), were strongly relied upon in support of the objections to the Act and the levy of the tax. In each of these, assessments similar to these now in question under analogous enactments were quashed; but the reasons for this are not identical. In the Hyderabad case the Act which the Court had to consider was passed after the Constitution came into force and the view expressed by the Madras High Court has been adopted. The other two cases were concerned with the interpretation of the scope and spirit of Entry No. 48 in List II of the Government of India Act, 1935 - tax on sale of goods. Although the conclusion in both is against the levy of the tax, emphasis is laid in one on the tax offending legislative policy and in the other on its being arbitrary, standard of assessment being artificial. An appeal against the order in the case of the Madras High Court is said to be pending before the Supreme court and the result of this may set at rest doubts now felt about the taxability of "works contract" under the Act in Madras.

4. There is however an important feature of the Mysore Sales Tax Act which distinguishes it from the Acts, the assessment under which has been attacked in these cases and calls for independent examination of the criticism levelled against the orders. The Sales Tax Act in Mysore unlike that of Hyderabad was passed prior to the Constitution and the power to enact it was not derived as in Madras or Central Provisions from any entry in the Schedule to the Government of India Act. The provisions of the Mysore Act cannot therefore be impugned on the ground of these not being within the ambit of the entry or as not in harmony with the legislative policy of the Government of India Act. For this State there was Act XVIII of 1940 called the Government of Mysore Act which received the assent of His Highness the Maharaja on 13th April, 1940, and u/s 24 of this Act : "Subject to the provisions of this Act and the terms of instrument or agreement entered into in that behalf by His Highness the Maharaja or the Government with the Government of the Dominion of India, the Assembly may make laws for the whole or any part of Mysore and for subjects of His Highness the Maharaja wherever they be". A restriction is placed by section 29 with regard to legislation on certain subjects such as foreign relations and section 36 requires recommendation of Government in fiscal matters. It is not alleged that the Sales

Tax Act is in any way or to any extent ultra vires the Government of Mysore Act.

5. Nevertheless, if the Act so far as it relates to works contract is repugnant to the provisions of the constitutions of India the petitioners are entitled to relief. A definite and express restriction on the taxation of goods for export and in the course of inter-State trade is placed by Article 286 and to that extent the operation of the State legislation is curtailed. The continuance of laws existing on the date of the Constitution is stated in Article 372 to be "subject to the provisions of the Constitution". Therefore it is now open to the petitioners to make out that what is guaranteed or enjoined by these will be infringed by giving effect to the statute. The right affected is said to be equality before the law and equal protection of the laws conferred by Article 14. In *Bell's Gap Railroad Company v. Commonwealth of Pennsylvania* ((1890) 134 U.S. 232), Bradley, J., observed :

"The provision in the 14th Amendment that no State shall deny to any personequal protection of the laws, was not intended to present a State from adjusting its system of taxation in all proper and reasonable ways..... All such regulations, and those of like character, so long as they proceed within reasonable limits and general usage, are within the desecration of the State Legislature or the people of the State in framing their Constitution. But clear and hostile discriminations against particular persons and classes, especially such as are of unusual character, unknown to the practice of our Governments, might be obnoxious to the constitution prohibition. It would, however, be impracticable and unwise to attempt to lay down any general rule or definition on the subject, that would include all cases. They must be decided as they arise."

6. The object of the Act is to levy tax on the sale of goods. "Goods" as defined in section 2(e) of the Act includes all materials, commodities and articles including those to be used in the construction, fitting out, improvement or repair of immovable property or.....movable property. According to section 2(j) "sale".....includes a transfer of property in goods involved in the execution of a works contract..... Section 2(1) : "Works contract" means any agreement for carrying out for cash or for deferred payment or other valuable consideration, the construction, fitting out, improvement or repair of any building, road, bridge or other immovable property or the fitting out, improvement or repair of any movable property. Section 3 states that subject to the provisions of the Act every dealer shall pay for each year a tax on his total turnover for such year. Section 2(d) : "Dealer" means any person who carries on the business of buying or selling goods in the State of Mysore whether for commission, remuneration or otherwise.

Section 2(k) : ""Turnover" means the aggregate amount for which goods are either bought by or sold by a dealer

Explanation. - Subject to such conditions and restrictions, if any, as may be prescribed in this behalf, -

(i) the amount for which the goods are sold shall, in relation to a works contract, be deemed to be the amount payable to the dealer for carrying out such contract, less such portion as may be prescribed of such amount representing the usual proportion of the cost of labour to the cost of materials used in carrying out such contract."

7. The explanation to rule 1(2) states that the amount to be deducted should not exceed "such percentage of the amount payable as may be fixed by the Government, from time to time for different areas, representing the usual proportion in such areas of the cost of labour to the cost of materials used in carrying out such contract, subject to the following maximum percentages :-

(a) in the case of an electrical contract 20 per cent.

(b) in the case of a structural contract 30 per cent.

(c) in the case of a sanitary contract 33 1/3 per cent.

(d) in the case of other contracts 30 per cent."

8. By a notification dated 11th April, 1952, Government has fixed percentages of the total cost at which deduction is to be allowed with respect to the contracts. This is not strictly in compliance with the requirement of the rule as what has to be fixed is the proportion between cost of labour and cost of material and not the deduction allowable for labour with reference to the total value of work carried out. The rule also contemplates determination of rates from time to time and from area to area according to prevailing conditions. A uniform rate is prescribed for the whole State and for the first time in 1952 so that a doubt may reasonably arise about the Government having applied its mind to the local conditions, differences in wages and prices between one place and another and periodic fluctuations in these. This cannot be considered a defect which has prejudiced the petitioners as the maximum allowance permitted by the rules has been granted to them. The maximum fixed by the above rule has been raised to 75 per cent. by virtue of the amendment in a Notification dated 24th December, 1955, and the percentage so fixed was made applicable to all contracts irrespective of their nature. The classification is, however, retained as shown by another Notification of the same date.

9. There is force in the contention that the levy is arbitrary and leads to unreasonable discrimination. Though the Act purports to take the value of materials used for fulfilment of a contract, the value is not ascertained from the assessee, even if he is ready and willing to furnish satisfactory proof of it but is determined by means of a rigid formula which may entail an undeserved liability. The word "deemed" in the explanation to the rule suggests that the basis of assessment is not factual but fictional and the result is that a person is taxed not on what is actually paid for the articles but what is assumed to be paid. There is thus an element of artificiality and premature determination. The classification of contracts too for the purpose of assigning particular percentages appears to be

rather rough and indefinite. Only three are of a specific kind and all the rest are included in the residuary category. The definition of "works contract" is comprehensive so as to bring works relating to immovable as well as movable property within the field of taxation and so the relegation of all contracts excepting three to one class under the denomination of "other contracts" for being treated alike is tantamount at least in some cases to enforcing equality on what is unequal.

10. Fiscal enactments are not exempt from the ban against discrimination. See *Southern Railway Co. v. Greene* ((1910) 216 U.S. 400). In *Stewart Dry Goods Co. v. Lewis* (1935) 294 U.S. 550, it was observed that "every taxing law must pass the constitution test applied by the Courts to the method of imposition". The classification is not meant to be a mechanical formality devised in a haphazard manner as cover for raising money but must disclose differentiation pertinent to the burden being heavy in some cases and light in others. In *The State of West Bengal Vs. Anwar Ali Sarkar*, , the section of the Special Courts Act which enabled Government to constitute Special Courts and refer such cases as it thought fit to these Courts for trial was held to be repugnant to Article 14. Justice Brewer pointed out in *Gulf of Colorado & Santafe Railway Co. v. Ellis* ((1897) 165 U.S. 150) :

"The mere fact of classification is not sufficient to relieve a Statute from the reach of the equality clause of the 14th Amendment and.....it must appear not only that a classification has been made but also that it is one based upon.....reasonable ground, some difference which bears a just and proper relation to the attempted classification and is not a mere arbitrary selection."

11. The principle of equality may be offended on account of dissimilarity of treatment in like instances or same treatment in cases between which resemblance is lacking. *Cumberland Coal Co. v. Board of Revisions* ((1931) 284 U.S. 23) is a case of the latter kind. It was considered that the deliberate and systematic assessment for taxation of all the coal lands in a township at the same sum per acre notwithstanding differences in actual or market value due to distances from transportation facilities and other factors, violates the equal protection clause of the 14th Amendment, although none of such lands are assessed for more than their fair market value. Hughes, C.J., in the course of the judgment at page 29 said :-

"The fact that a uniform percentage of assigned values is used, cannot be regarded as important if, in assigning the values to which the percentage is applied, a system is deliberately adopted which ignores differences in actual values so that property in the same class as that of the complaining taxpayer is valued at the same figure (according to the unit of valuation, as, for example an acre) as the property of other owners which has an actual value admittedly higher. Applying the same ratio to the same assigned values, when the actual values differ, creates the same disparity in effect as applying a different ratio to actual values when the latter are the same."

12. The classification and the rule under which it is found and the notification issued in pursuance of the rule seem to have overlooked these factors in prescribing same percentages for all areas. It is common knowledge that skilled labour and goods of special design or manufacture cost more in some places than in others and that in some the two vary inversely. Added to this is the incongruity between the definition of "works contract" and the explanation to "turnover" and the explanation to rule 1. The definition is such as to bring within the purview of "works contract" contracts in which goods or materials may not be supplied or furnished by the contractor sought to be taxed. The rule does not afford him an opportunity to show this and subjects him to liability by imputing use of materials and by requiring valuation of these in a particular manner.

13. The learned Advocate-General did not suggest any interpretation of these to justify or explain the obvious unreasonableness and irreconcilability of these. An application of these will lead to those using materials and those not using materials for execution of works being dealt with on a common footing. Contracts for execution of works are of varied types and there is no uniformity in the stipulations in all contracts. The contractor may in some be paid only for his services in advantageously utilising the articles severed by the other party for performance of the work and receive payment. The presumption generally attaching to validity of laws cannot be extended to justify provisions tending to such anomalies, inequalities and arbitrariness as persons being taxed on notional considerations shutting them out from representing the true nature and value of their transactions. This is repugnant to the principles of natural justice and Article 14.

14. The orders of assessment are, therefore, quashed. As the point involved is novel and rather intricate, we direct parties to bear their own costs.

15. Petitions allowed.