

(1962) 12 OHC CK 0012
In the Orissa High Court
Case No : S.J.C. No. 14 of 1961

K.S. Vasudevan

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 20-12-1962

Acts Referred:

Constitution of India, 1950 — Article 14
Orissa Sales Tax Act, 1947 — Section 4(1)
Orissa Sales Tax Rules, 1947 — Rule 65

Citation : AIR 1963 Ori 107 : (1963) 14 STC 220

Hon'ble Judges : S. Barman, J; R.K. Das, J

Bench : Division Bench

Advocate : P.V.B. Rao, for the Appellant; R.K. Ghosh, for the Respondent

Judgement

Barman, J.—The Sales Tax Tribunal, Orissa, in its statement of case dated June 19, 1962 referred the following question of law to this Court for decision :

"Whether old Rule 65 (new Rule 90) of the Orissa Sales Tax Rules is discriminatory and therefore offending Article 14 of the Constitution of India,"

2. A preliminary point was taken on behalf of the Sales Tax Department that the reference is not competent for the reason that if Rule 65 is discriminatory it is void under Article 14 of the Constitution and that in consequence the proceedings u/s 24(2) (3) of the Orissa Sales Tax Act (hereinafter referred to as the Act) under which the reference has been made are not maintainable. The Department's point is that the dealer's contention, -- that Rule 65 offends Article 14, -- is not one which the Sales Tax Tribunal constituted under the Act could refer u/s 24 (3), its duty being merely to administer the Act. This contention, however, has no force in the face of the position that the High Court by their Order of reference dated May 11, 1962 directed the Sales Tax Tribunal u/s 24 (3) of the Act to state a case and refer the aforesaid question to this Court.

In such a position it is well settled that the High Court is not precluded from

answering the question referred. The High Court in directing the Tribunal to refer the question must necessarily have come to the conclusion that the decision of the Tribunal in declining to refer the question was not correct, in other words, the Tribunal was not right in holding that the question did not arise out of its order and therefore it was not open to the High Court to go behind that decision. This disposes of the preliminary point in favour of the dealer.

3. Coming to the merits, the relevant facts are these : The petitioner Sri K.S. Vasudevan of Ms. South Indian Hotel of Cuttack is a dealer carrying on business of running a hotel registered under the Orissa Sales Tax Act. He was assessed by enhancement of turnover in respect of quarters commencing from quarter, ending on March 31, 1955 to quarter ending on March 31, 1957. The Tribunal reduced the assessment to some extent except for the last quarter ending on March 31, 1957 which is the subject matter of this reference.

4. the impugned Rule 65, so far as material for the present purpose, is this:

"65. Compounding of tax in certain cases.

(1) A dealer who carries on business of running a hotel or a refreshment stall or any ether establishment for selling or supplying meals, refreshments, drinks and such other articles or as the manufacturer of confectionery articles for retail sale shall pay, in lieu of the tax assessable on his taxable turnover under the provisions of the Act, a sum calculated at the rate of three quarters of an anna in the rupee on a percentage of his gross turnover on sales which have taken place in Orissa as shown below :

(a) 25 per cent, if the gross annual turnover on sales which have taken place in Orissa does not exceed Rs. 18,000/-;

(b) 40- per cent, if the gross annual turnover on sales which have taken place in Orissa exceeds Rs. 18,000/- but does not exceed Rs. 36,000/-;

(c) 50 per cent, if the gross annual turnover on sales which have taken place in Orissa exceeds Rs. 36,000/- but does not exceed Rs. 72,000/-;

(d) 60 per cent, if the gross annual turnover on sales which have taken place in Orissa exceeds Rs. 72,000/-."

Mr. P. V. B. Rao learned counsel appearing for the dealer, states that Sub-rule (2) of Rule 65 is not relevant for the present purpose. The new rule corresponding to the impugned Rule 65 is numbered as Rule 90 under the heading "Special Mode of Assessment in certain cases." The dealer's point is that Rule 65 is discriminatory for these reasons : Sales tax is a tax on gross turnover of sales, not on profession, profits or income; no slab is contemplated under the Sales Tax Act as in other taxing statutes; the provision for classification in Rule 65 has no relation with the object of the Act which is to tax on gross turnover of sales : the classification made by Rule 65 denies the dealer the equal protection of laws assured by the Constitution.

The dealer submits that sales tax is on gross sales, not on gross collections from vendees; as a general proposition increased volume of sales results in increased profits and increased ability to pay the tax; the rate of profit from retail sales generally varies with the character of goods sold; the management of a store or stores is one of the fundamental factors in determining whether or not a profit is realised and the amount of profit; as a general proposition, those merchants doing the largest amount of trade are enabled to secure the highest type of management. The question raised on behalf of the dealer is whether or not in such a back-ground the Sales Tax Act read with Rule 65, providing for graduated rate of calculation, taxes sales in an equal and arbitrary way, classifying them for the imposition of different rates without reference to any real or substantial distinction, as the dealer insists. It is on this line of reasoning that it is submitted on behalf of the dealer that Rule 65 is discriminatory and therefore offending Article 14 of the Constitution of India.

5. The Sales Tax Department on the other hand submitted that under Rule 65 the rate of tax is the same, namely, three quarters of an anna in the rupee on a percentage; the slab of the sliding scale is only for computation; it merely prescribes the mode of calculation and it does not purport to fix graduated or different rates as the dealer contends. In support of this the Sales Tax Department submits that Section 5(1), Proviso 2 of the Act shows that Government may by rules prescribe conditions for the purpose of compounding for the tax assessable on the taxable turnover of dealer under the provisions of the Act by paying in lieu thereof a sum fixed in such manners as may be prescribed by rules made under the Act

The Department further submits that there is already an initial classification u/s 4 (1) of the Act in that only dealers whose gross turnover of sales exceed Rs. 10,000/- shall be liable to pay tax on sales; that is to say, dealers whose gross turnover is below Rs. 10,000/- are exempted from paying sales tax; the fixation of such basic minimum for taxation is permissible under the Act itself. The contention that charging Section 4, fixing Rs. 10,000/- as the minimum taxable turnover for sales tax is discriminatory and void under Article 14 of the Constitution has been held unacceptable.

6. The principles in the light of which the question before us has to be considered are broadly these; 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, firstly that the classification must be founded on an intelligible difference which distinguishes persons or things that are grouped together from others left out of the group, and secondly that differentia must have a rational relation to the object sought to be achieved by the statute in question. Another principle that should be borne in mind when statutory provisions, such as the impugned Rule 65, are sought to be struck down on the ground of discrimination is that there is a strong presumption that

discriminations in State Legislation are based on adequate grounds and that every state of facts, sufficient to sustain a classification which can reasonably be conceived of as having existed when the law was adopted, will be assumed.

The requirements as to equal protection of laws do not forbid legislative classification provided such classification rests on some difference germane to the purpose of statute. A classification cannot be upheld on purely fanciful grounds and the Court has no right to conjure up possible situations which might justify discrimination. With reference to taxing statutes, the Legislature has considerable latitude in making classification but they must also satisfy the test of equal protection and are liable to be struck down if they do not. There is a strong presumption in favour of the validity of legislative classification and it is for those who challenge it as arbitrary and unconstitutional to establish it beyond all doubt. There it is for the person who assails a legislation as discriminatory to establish that it is not based on a valid classification and this burden is all the heavier when the legislation under attack is a taxing statute.

7. The only point for consideration is whether the classification involved in the slab or sliding scale laid down in Rule 65 is unreasonable or that it has no relation to the object of the Act. The object of the Act is imposition of tax on sale of goods in Orissa. The scheme of taxation under the Act is broadly laid down in Sections 4, 5 and 6 of the Act. Section 4 on incidence of taxation provides to the effect that every dealer whose gross turnover on sales which have taken place in Orissa exceeds Rs. 10,000/- shall be liable to pay tax under the Act on sales. Section 5 on rate of tax lays down that the tax payable by a dealer under the Act shall be levied at the rate of one quarter of an anna in the rupee on his taxable turnover.

Proviso 2 to Section 5 (1) is to the effect that the Govt. may permit dealers in such circumstances and under such conditions as may be prescribed, to compound for the tax assessable on their taxable turnover under the provisions of the Act by paying in lieu thereof a sum fixed in such manner as may be prescribed. It may be noticed that the word "compound" and the phrase "in lieu thereof" significantly also occur in the impugned Rule 65. Then Section 5(2) defines the expression "taxable turnover" as meaning that part of a dealer's gross turnover during any period which remains after deducting therefrom certain items as laid down in the said Sub-section (2).

8. The classification may be founded on different-bases; namely, according to objects, occupations or extent of business 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. Applying these tests, it is open to the Government to impose a tax on persons with certain extent of business and exempt other business persons who have not got business of that extent. No doubt that the tax is on sales, but it is not necessary for equal protection before the law that every business man, regardless of the financial extent of his business, must be taxed alike.

A somewhat similar question arose under the Bombay Sales Tax Act (Bombay Act III of 1953) which went up to Supreme Court in *The State of Bombay and Another Vs. The United Motors (India) Ltd. and Others*, . There, under the charging Sections 5 and 10 of the Bombay Act the minimum taxable turnover was fixed at Rs. 30,000/- and Rs. 5,000/- respectively for general tax and special tax. For appreciation of the nature of classification involved in the Bombay Act, Sections 5 and 10, so far as relevant for the present purpose, are set out as follows :-

"5. (1) GENERAL TAX : Subject to the provisions of Section 8 every dealer,-

(a) who immediately prior to the date of commencement of this Act was liable to pay a general tax under the Bombay Sales Tax (No. 2) Ordinance, 1952, or

(b) whose turnover in respect of all sales exceeds Rs. 30,000/- during the year commencing on the 1st day of April 1952, shall be liable to pay the general tax at this rate specified in Sub-section (1) of Section 6 on his taxable turnover in respect of sales of goods made on or after the date of commencement of this Act.

Provided that a dealer to whom Clause (a) does not apply but Clause (b) applies shall not be liable to pay the general tax in respect of his turnover upto Rs. 30,000/- as computed from the 1st day of April 1952.

X X X X X (5) The general tax payable by a dealer under this section shall be in addition to the tax payable on special goods u/s 10."

10(1) INCIDENCE AND RATE OF SPECIAL TAX : Every dealer-(a) who immediately prior to the date of commencement of this Act was liable to pay the special tax under the Bombay Sales Tax (No. 2) Ordinance, 1952 or

(b) whose turnover in respect of all sales of special goods exceeds Rs. 5,000/- during the year commencing on the 1st day of April 1952 shall be liable to pay a special tax at the rates specified against them in column 2 of Schedule II of his taxable turnover in respect of sales of special goods made on or after the date of commencement of this Act :

Provided that a dealer to whom Clause (a) does not apply, but Clause (b) applies shall not be liable to pay the special tax in respect of his turnover of sales of special goods upto Rs. 5000/- as computed from 1st day of April 1952.

(2) The special tax payable by a dealer under this section shall be paid in addition to the general tax, if any, payable by such dealer u/s 5."

In the Bombay case before the Supreme Court, an attempt was made on behalf of the dealer to make out that the provisions of the charging Sections 5 and 10 quoted above were discriminatory and void under Article 14 read with Article 13 of the Constitution. Their Lordships of the Supreme Court repelled the contention and observed thus :-

"..... it must be conceded that the general effect of fixing these minimum limits

must necessarily be to enable traders whose taxable turnover is below those limits to sell their goods at lower prices to their customers than dealers whose turnover exceeded those limits, for the latter have to add the sales tax to the prices of their goods. But no discrimination is involved in this classification which is perfectly reasonable when it is borne in mind that the State may not consider it administratively worthwhile to tax sales by small traders who have no organisational facilities for collecting the tax from their buyers and turn it over to Government. Each State must in imposing a tax of this nature, fix its own limits below which it does not consider it administratively feasible or worth while to impose the tax. It is idle to suggest that any discrimination is involved in such classification."

9. In the present case, the object of Rule 65 providing for compounding of tax calculated at the uniform rate of three quarters of an anna in the rupee on a graduated percentage of the dealer's gross turnover on sales which have taken place in Orissa, according to the sliding scale, is clearly to apportion the burden equitably between different categories of hotel keepers with varying extent of gross annual turnover and has a reasonable nexus with the initial classification adopted by the Legislature in Section 4(1) of the Orissa Sales Tax Act. There may be small or big dealers. The State can reasonably recover taxes on a higher percentage of gross turnover from prosperous dealers than from impecunious ones. From the standpoint of the dealer, there is justification for the varied percentage according to the sliding scale as provided in Rule 65.

10. The characteristic of the dealer with varying extent of gross annual turnover as provided in the impugned Rule 65 is to be cumulatively considered and, if so looked at, they will afford a reasonable basis of classification which has a rational nexus with the object sought to be achieved. Rule 65 puts different hotel keepers in distinct categories on the basis of the extent of the gross annual turnover on sales. The question arises whether 3 dealer in each of these different categories has distinct economic characteristics which have any relation to the object sought to be achieved. The object of the Act, as set out in the preamble, is to provide for imposition of a tax on the sale of goods in Orissa. But every taxing legislation makes a genuine attempt to adjust the burden with a fair and reasonable degree of equality. It also aims to apportion the burden equitably on different categories of persons with distinct economic characteristic. It is impossible in the nature of things to aim at absolute equality in the matter of taxation. The State resorts to the principle of classification in an attempt to harmonise the doctrine of equality with differences inherent in the categories of persons assessed. In the present case, the object to provide for imposition of a tax on the sale of goods in Orissa and to apportion the burden equitably between different categories of persons, having different gross annual turnover on sales which have taken place in Orissa, has a reasonable nexus with the classification adopted by the Legislature.

11. I am of opinion that the classification in Rule 65 is founded on intelligible differentia distinguishing dealer of different groups according to extent of gross

annual turnover and it has a rational relation with the object sought to be achieved. The Bombay Act also provides classification in three groups, first group below Rs. 5000/- second group between Rs. 5000/- and Rs. 30,000/- and third group exceeding Rs. 30,000/-. Besides Section 5 (5) of the Bombay Act provides that the general tax shall be in addition to the special tax u/s 10 and Section 10(2) provides that special tax shall be paid in addition to the general tax u/s 5. If no discrimination is involved in the Bombay classification for the purpose of levying general tax and special tax, as held by their Lordships of the Supreme Court, I do not see how on principle the classification In the impugned Orissa Rule 65 can be challenged as discriminatory and void under Article 14 of the Constitution.

12. In course of hearing of this case, both sides relied on several decisions in support of their respective contentions. Each of these cases was decided on peculiar terms of the impugned provisions which were challenged as unconstitutional as offending Article 14 of the Constitution. In none of these cases, however, a slab or sliding scale of the nature as impugned Rule 65 in the present case, came for consideration. The nearest approach to Rule 65 is the Bombay Sales Tax Act quoted above. Their Lordships of the Supreme Court held that no discrimination is involved in the Bombay classification. The other decisions are not directly applicable to the facts of the present case. The dealer also relied on an American decision *Stewart Dry Goods Co. v. Lewis* (1934) 294 US 550 : 79 Law Ed 1054 (1057, 1058). The Indian Supreme Court repeatedly expressed caution that it would not be always safe to rely upon American decisions, and that valuable as the American decisions are as showing how such questions are dealt with in a sister Federal constitution, great care should be taken in applying them in the interpretation of our Constitution. That apart, the American case is clearly distinguishable, on facts, in that the impugned provisions in the American case are somewhat different, both in language and purport, from the impugned Rule 65 in the present case.

13. It was argued on behalf of the Sales Tax Department that Rule 65 is an option to the dealer, in that it is an alternative method of assessment which -- it is submitted on behalf of the Department, -- is open to the dealer to avail himself or for being assessed in case the dealer cannot or does not show the taxable turnover. On that Mr. P. V. B. Rao, learned counsel for the dealer conceded that if there is such an option left to the dealer, then the dealer can have no grievance about the impugned Rule 65. The point, whether or not Rule 65 is optional, is outside the scope of the present reference, and we express no opinion thereon.

14. On the question referred, we are of opinion that old Rule 65 of the Orissa Sales Tax Rules is not discriminatory and therefore not offending Article 14 of the Constitution of India. The answer to the question is accordingly in the negative. The reference is answered accordingly. There will be no order for costs.

Das, J.

15. I agree with my learned brother that old Rule 65 of the Orissa Sales-tax Rules, is not discriminatory and therefore it does not offend Article 14 of the Constitution, would, however, add a few words of my own.

16. In the Reference we are concerned with the assessment for the quarter ending 31-3-57 and as such it is governed by the old Rule 65 which was substituted by the new Rule 90 with effect from 1-1-58 only. The provisions of old Rule 65 are identical with the provisions of new Rule 90 except with the difference in the title or marginal note -- Rule 65 shows "Compounding of Taxes in certain Cases" whereas in Rule 90 the title says as "Special Mode of assessment in certain cases". From the words of Rule 65 it is apparent that the said Rule provides for a payment of taxes by a dealer who carries on business of running a hotel etc..... in lieu of the tax assessable on the gross turnover under the provisions of the Act. It provides a mode for the determination of the requisite taxable turnover for the purpose of determining the sales-tax.

17. According to Mr. Rao, learned counsel for the assessee, the title or marginal note of Rule 65 is misleading and meaningless, inasmuch as it is not really a provision for compounding the tax but is the only mode of taxation provided for the hotel dealers under the provisions of the Act. According to the learned counsel for the Department, however, the hotel owners are liable to be taxed in the same way as any other dealer, but on account of the peculiar nature of the hotel business an alternative mode of determination of the taxable turnover has been prescribed and it is at the option of the dealer to choose whether to be taxed in the general way or by the process of composition of taxes under Rule 65. The wordings in Rule 65 obviously supports the contention of the Department.

The contents of Rule 65 clearly show that a dealer who runs a hotel or refreshment stall shall be permitted to be taxed in lieu of the tax assessable on the turnover under the provisions of the Act. The phrase "in lieu of" is significant. If Rule 65 was the only provision so far as the taxation of hotel keepers are concerned, then the phrase "in lieu" of would convey no meaning. In view of this provision, the contention of the assessee that this is the only mode of assessment cannot be accepted. Once it is held to be an alternative mode of assessment, and that again is at the option of the assessee it cannot in any way be said to operate as discriminatory against the dealer. Under Rule 90 the title has been changed to "special mode of assessment in certain cases". That heading appears to be more appropriate in view of the special mode of assessment prescribed for the hotel keepers. New Rule 90A, however, now permits composition of taxes in all cases.

18. It was next contended by Mr. Rao that in its practical application, the old Rule 65 operates as discriminatory even amongst the various classes of hotel keepers. According to him, the rule is discriminatory inasmuch as the classification made here is unreasonable and has no relation to the object of the Act. There is some discrimination even at the stage of fixation of initial turnovers at a certain sum so as to exempt a party altogether from taxation, cannot be doubted. In fact, it was

rightly conceded that such) discrimination is bound to exist. The real grievance of the assessee is that the slab under Rule 65 operates as a discriminatory measure in its practical application amongst different hotel-keepers and as such is void as offending Article 14. No doubt in its application the rule is bound to create some amount of discrimination. The impugned rule undoubtedly presents an appearance of discrimination as certain dealers have to pay a higher rate of tax than others of the same category.

No doubt, the taxation laws, equally like any other law, have to stand the test of equality of law laid down under Article 14 of the Constitution. But it is also undisputed that Article 14 does not forbid reasonable classification for the purpose of legislation though it forbids a class legislation. Whether a particular piece of law is based on reasonable classification or not has to be tested by its own merits. The impugned Rule 65 is more or less on the same lines as the provision in Section 3(1) (b) of the Madras General Sales Tax Act, 1939, under the proviso of which a dealer selling articles of food and drink in a hotel, boarding houses or restaurants with turnover of not less than Rs. 25,000/- would be taxed at the rate of 4 1/2 pias for every rupee of his turnover. u/s 3 (1) (b) a dealer in similar articles with less turnover in a hotel, boarding house or restaurant or in different articles with turnover of more than Rs. 25,000/- or a dealer in articles of food and drink with any turn-over selling outside any hotel, boarding house or restaurants etc. would be charged only at the rate of 3 pies per every rupee of such turnover.

19. An assessee who came under the first category challenged the proviso to Section 3(1)(b) as offending Article 14 of the Constitution and as such void and the matter came up for consideration before a Division Bench of the Andhra High Court in a case reported in Kadiyala Chandrayya Vs. State of Andhra, and their Lordships held that the classification mentioned in the section was founded in intelligible differentia distinguishing dealers like the assessee from other dealers and that it has a rational relation to the object sought to be achieved and therefore it was not void as offending Article 14 of the Constitution.

20. In the present case on the application of the slabs provided under Rule 65 different categories of dealers emerge out of the classification but each one of them is an easily distinguishable class from the other and that the classification is based upon an intelligible differentia cannot also be doubted. By its very nature, it is not possible to obtain an absolute equality in the matter of taxation and certain amount of inequalities are bound to exist. The object of the Act is nothing more than to levy a general tax on sales and it is open to the legislature to apportion the taxes equitably between different categories of dealers and it has a reasonable relation with the object of the Act.

21. In this view of the matter, it cannot be said that the provision of Rule 65 is discriminatory in nature and as such is hit by Article 14 of the Constitution.