

(1988) 06 KL CK 0045
In the High Court Of Kerala
Case No : O.P. No. 7626 of 1987

M. C. MATHEW

APPELLANT

Vs

EDATHWA PANCHAYAT AND OTHERS.

RESPONDENT

Date of Decision : 23-06-1988

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1988) 174 ITR 455

Hon'ble Judges : T. Kochu Thommen, J

Bench : Division Bench

Judgement

T. KOCHU THOMMEN J. - The petitioner is the secretary of an association stated to represent the taxpayers of the Edathwa Panchayat. The complaint of the petitioner is that exhibit P - 1. which is a demand notice issued u/s 74 of the Kerala Panchayats Act, 1960, by the first respondent. is invalid for the reason that there was no levy of profession tax in terms of section 69 of the Act. The procedure prescribed in rule 10 of the Kerala Profession Tax Rules, 1963, and other relevant rules had not been followed before issuing exhibit P - 1. No notice had been issued to the assessee.

Counsel for the first respondent admits that exhibit P -1, which is a demand notice u/s 74, was not preceded by a notice under rule 10. Notice had been issued to the employer of the assessee under rule 15, but no notice was given to the assessee. Counsel further submits that, in any view, the petitioner has no locus standi to agitate the questions raised in this original petition on behalf of the assessees who are not parties here.

Section 69 reads :

"69. Profession tax. - (1) The profession tax shall, subject to such rules as may be prescribed, be levied every half-year in every Panchayat area on ..."

The levy postulated u/s 69 is possible only if it is made in accordance with the rules prescribed. Section 74 provides for recovery of arrears of tax, cess, etc. But

before recourse can be had to that section, there should be a proper levy. Section 74 reads :

"74. Recovery of arrears of tax, cess, etc. - Any arrear of cess, rate, surcharge or tax imposed or fees levied under this act shall be recoverable as an arrear of public revenue under the law relating to the recovery of arrears of public revenue for the time being in force ..."

Rule 10 prescribing the procedure referred to in section 69 reads :

"10. Service of notice and the levy of profession tax. -(1) If, in the opinion of the Executive Authority, profession tax is or will be due from any company or person for any half-year, he shall serve a notice on such company or person either in that half-year or in the succeeding half-year requiring the company or person to furnish within such period, not being less than thirty days, as may be specified in the notice, a return in the form given in the schedule to these rules showing the income on the basis of which, according to such company or person, it or he is liable to be assessed to profession tax for the half-year in question. Thereupon, it shall be open to such company or person to submit a return showing the income derived by it or him during the half-year for which profession tax is claimed or for the corresponding half-year of the previous year and produce any evidence on which the company or person may rely in support of the return made.

(2) If a return is made as required under sub-rule (1) and the Executive Authority is satisfied that it is correct and complete, he shall levy the profession tax on such company or person on the basis of such return.

Explanation. - In cases not falling under clause (b) of rule 5 or under rule 7, if the company or person produces the notice of demand of Income Tax served on it or him u/s 156 of the Income Tax Act, 1961, for the year comprising the half-year in question, the Executive Authority shall be bound to take one-half of the income mentioned in such notice of demand as the income derived from the sources on which profession tax is leviable under the Act, as the income on the said sources for the purposes of levying profession tax.

(3) If no return is made as required under sub-rule (1) or if the Executive Authority is satisfied that any return so made is incorrect or incomplete, the Executive Authority shall, after giving the company or person a reasonable opportunity for showing cause against the action proposed, assign to such company or person the class in the scale appropriate to the half-yearly income of the company or person as estimated by him.

(4) The Executive Authority may, when classifying any company or person under sub-rule (3), do so on general considerations with reference to the nature and reputed value of the business transacted, the size and rental of residential and business premises, the quantity and number of articles dealt with, the number of persons employed, the Income Tax or agricultural Income Tax paid and the return, if any, furnished under sub-rule (1)."

The procedural safeguards of rule 10 and the connected rules have not been admittedly complied with before issuing exhibit P - 1. In principle, therefore, the petitioners counsel, Shri K. Surendra Mohan, is right in his criticism of exhibit P-1. Exhibit P-1 and the orders following exhibit P-1 are totally unsustainable in law, and in issuing exhibit P-1, the first respondent acted contrary to law, and, therefore, acted without jurisdiction.

I must now deal with the specific contention on behalf of the respondents as regards the locus standi of the petitioner. The petitioner is the secretary of an association. The members of that association are taxpayers. The association can, of course, espouse the cause of the members in matters of public interest, such as questions of vital interest to the community as a whole without regard to their status, class or occupation (like in the case of supply of water or prevention or control of pollution) or questions which shock the conscience of the public when life or liberty is in danger and the victims are so poor or so helpless (such as a bonded labourer, a detenu, or the like) that they have no access to the law. In all these and other like situations, public interest litigation is a well-accepted mode of invoking the law by any person or an association of persons at the instance of the helpless victims.

But this petition is not concerned with any matter of public interest. but with the individual interests of the assesseees who happen to be members of the association. Each assessee is entitled to approach this court under article 226 of the Constitution of India. But he must himself do so, or by a duly authorised power of attorney holder, which the petitioner admittedly is not, and pay the requisite court fee which admittedly has not been paid. It is nowhere stated in this petition that the secretary of the association is himself an assessee. The petitioner is, therefore, not shown to be an aggrieved person.

In the circumstances, while the first respondent acted without the authority of law, the petitioner has no locus standi to challenge the impugned orders, and the petition, therefore, fails.

The fate of this petition does not, however, enable the panchayat to act outside the law. Any such action is a fraud on its constitution.

The original petition is accordingly dismissed. No costs.