(1961) 01 RAJ CK 0006

In the Rajasthan High Court

Case No : Civil Writ No''s. 313, 314, 315, 316 and 348 of 1958 and 95 and 96 of 1959

Mangal Singh and Others APPELLANT

Vs

The State of Rajasthan and Another RESPONDENT

Date of Decision : 17-01-1961

Acts Referred:
Constitution of India, 1950 — Article 246, 265, 286

Citation : (1962) 13 STC 801

Hon'ble Judges : Sarju Prasad, C.J;B.P. Beri, J

Bench : Division Bench

Advocate : H.P. Gupta, for the Appellant; Kan Singh, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Sarjoo Prosad, C.J.—The question raised in these writ applications is about the validity of the assessment and levy of sales tax on certain commodities in respect of transactions after the 1st of April, 1956. The commodities in question are gur, cloth, petroleum and petroleum products as mentioned in the respective applications.

2. To appreciate the arguments of the learned counsel for the petitioners it may be necessary to refer to some of the provisions of the Rajasthan Sales Tax Act, 1954, with its amendment in 1956, as also the relevant Articles of the Constitution. Article 286(3) of the Constitution prior to the sixth amendment in 1956, was as follows : -

No law made by the Legislature of a State imposing, or authorising the imposition of, a tax on the sale or purchase of any such goods as have been declared by Parliament by law to be essential for the life of the community shall have effect unless it has been reserved for the consideration of the President and has received his assent.

3. It would thus appear that although under item 54 of the Second Schedule of the Constitution read with Article 246, the State Legislature is authorised to impose taxes on the sale or purchase of goods, by virtue of paragraph 3 of Article 286 any such legislation would not have effect in respect of such goods as have been declared by Parliament by law to be essential for the life of the community, unless the legislation has been reserved for the consideration of the President and has received his assent. We find that by virtue of the provisions of the Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act, 1952, the aforesaid commodities were declared as essential for the life of the community. It follows, therefore, that in respect of these goods the State Legislature would be empowered to legislate subject to the conditions mentioned in paragraph 3 of Article 286, namely, that the legislation in question must receive the assent of the President. The Rajasthan Sales Tax Act, 1954 (Act No. XXIX of 1954) was enacted and came into operation under Government notification on the 30th December, 1954. This Act, there is no question, received the assent of the President and as such could not be assailed as ineffective even in respect of essential commodities within the meaning of Article 286 of the Constitution. Section 3 of this Act is the charging section and provides the incidence of taxation. Therefore, on the authority of this legislation taxes could be validly levied on the sale or purchase of those goods. Section 28 of this Act, as it stood originally, provides for the duration of the application of its provisions in respect of essential commodities. This section lays down that the provisions of the Act so far as they relate to goods declared to be essential for the life of the community by the Essential Goods Act, 1952, shall remain in force till 31st day of March, 1956. After the above date the provisions of the Act could not operate on goods declared to be essential for the life of the community ; and since these goods were essential, therefore, after 31st day of March, 1956, the provisions of the Act would not apply. In 1956, however, there was an amendment to this provision of the Rajasthan Sales Tax Act. This was done by the Rajasthan Sales Tax (Amendment) Act, 1956 (Act No. V of 1956). Section 2 of this Amending Act provides that in Section 28 of the Rajasthan Sales Tax Act, 1954, for the figures "1956", the figures "1957" shall be substituted, and shall be deemed always to have been substituted. This amendment was made without obtaining the assent of the President. The argument of the learned counsel for the petitioners, therefore, is that the amendment was hit by paragraph 3 of Article 286 and no tax could be levied or imposed by virtue of this amendment after the expiry of the relevant date, i.e., 31st March, 1956. Before we examine this contention we may have to refer to the Rajasthan Sales Tax (Validation) Act, 1958 (Act No. 50 of 1958). This Validation Act received the assent of the President on the 25th day of December, 1958. Sections 3 and 4 of this Act are the relevant sections. Section 3 provides :-

Notwithstanding any defect in, or want of, form, procedure, jurisdiction or competent legislative sanction, the tax levied or leviable under the Rajasthan Sales Tax Act, 1954 (Rajasthan Act XXIX of 1954) on the sales of essential goods made on or after the first day of April, 1956, and till the repeal of the Central Act by Parliament as from the 5th day of January, 1957, shall be deemed to have been validly and lawfully levied or to be validly and lawfully leviable, as the case may be.

4. Section 4 further provides as under :-

Notwithstanding as aforesaid all arrears of tax referred to in Section 3 shall be recoverable in the manner provided in the Rajasthan Sales Tax Act, 1954 (Rajasthan Act XXIX of 1954) as if the tax had been validly and lawfully assessed under and in accordance with the provisions of that Act.

5. It may be stated that the Central Act to which a reference has been made in Section 3 of this Validation Act means the Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act, 1952. This Central Act was repealed with effect from 5th January, 1957. The dispute, therefore, lies in regard to taxation made on sale of the goods in question between 1st April, 1956 to 5th January, 1957. The contention of the learned counsel for the petitioners is that the Validation Act will not save the amendment of 1956, which was without the assent of the President, because all that the Validation Act does is to validate the levy of the taxes in question and there is nothing about the validation of the Amending Act itself. The learned counsel has further tried to draw a distinction between the imposition of tax and the levy of tax and has referred to certain provisions of the Constitution in order to show that there is a marked difference between the two expressions. According to the learned counsel Section 4 of the Validation Act merely speaks of levy of tax and not of assessment or imposition of tax which alone could be done under a valid law. We find ourselves unable to entertain these contentions of the learned counsel.

6. Article 265 of the Constitution provides that no tax shall be levied or collected except by authority of law. The marginal note to the Article says that taxes are not to be imposed save by authority of law. The word "levy", therefore, is a compendious expression which implies the process of imposition and collection also ; otherwise it is not possible that tax can be lawfully levied unless it has been validly imposed by authority of law. In this case, therefore, we have to see whether the taxes in question were validly imposed on the authority of law. There can be no doubt that the Rajasthan Sales Tax Act was passed by a competent Legislature and on the authority of this legislation taxes could be levied. The only argument is that since the duration of the Act of 1954 with reference to goods essential for the life of the community expired on the 31st March, 1956, there was no further authority left to levy taxes on those goods after that date. It would have been obviously so but for the fact that the Amending Act came into force in 1956. By virtue of this amendment we have to read, as if on the relevant date the figures "1956" were substituted by the figures "1957" and should be deemed always to have been so. In other words on the strength of Section 28 read with the amendment the provisions of the Rajasthan Sales Tax Act, 1954, continued to operate in respect of essential goods

till the 31st day of March, 1957, when the Essential Goods Act itself ceased to exist. The learned counsel, however, points out that this amendment was without the assent of the President and, therefore, should be ignored. The amendment has the effect of being incorporated in the law itself and in the main body of the statute. It is true that this defect of the assent of the President not having been obtained was there, but we have to examine whether the defect was removed by the Validation Act. We have quoted already the relevant provisions of the Validation Act and, in our opinion, they are comprehensive enough to cure that defect and to validate actions which have been taken on the authority of the Rajasthan Sales Tax Act in imposing and levying taxes on the goods in question during the period aforesaid. The language of Sections 3 and 4 of the Validation Act is comprehensive enough to cover the defect not only in the amendment in question but also in regard to any action that may have been taken on the authority of that legislation. Any defect in form or procedure or jurisdiction or competent legislative sanction in respect of taxes levied or leviable under the Rajasthan Sales Tax Act is sought to be cured by the Validation Act. The word "levy" or "leviable" has been used because it implies that on the authority of the Rajasthan Sales Tax Act the taxes were imposed and levied or the taxes were liable to be imposed and levied ; and Section 4 of the Validation Act further provides for recovery of arrears of taxes in the manner provided by the Sales Tax Act. We are not inclined to accept the argument of the learned counsel that the Validation Act does not cure the defect of the amendment itself for want of the President''s assent. As we pointed out the amendment was incorporated in the Act itself and the Validation Act cures all that has been done or all actions which have been taken or have to be taken on the authority of the Sales Tax Act. In other words, it validates both the imposition of taxes and the levy of taxes under the legislation in question. We have, therefore, no hesitation in holding that the taxes so levied were validly and lawfully levied under the terms of the Validation Act on the authority of the Rajasthan Sales Tax Act as amended and any defect for want of assent of the President in regard to the amendment in 1956 was adequately cured by this Validation Act.

7. We accordingly find no substance in these applications which are accordingly rejected. There will be no order as to costs.

