

(1966) 08 KL CK 0022
In the High Court Of Kerala
Case No : Writ Appeal No. 16 of 1965

P.A. Asma Beevi

APPELLANT

Vs

Commissioner, Municipal Council, Ernakulam and Another

RESPONDENT

Date of Decision : 11-08-1966

Acts Referred:

Constitution of India, 1950 — Article 277
Kerala Municipalities Act, 1960 — Section 110(1)

Citation : AIR 1968 Ker 31

Hon'ble Judges : M.S. Menon, C.J;P. Govindan Nair, J

Bench : Division Bench

Advocate : V.K.K. Menon, C.S. Padmanabha Iyer and C.J. Balakrishnan, for the Appellant; M.M. Abdulkhader and Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

1. This is an appeal by the petitioner in O.P. No. 1186 of 1963. The appeal challenges the conclusion in the judgment under appeal that Section 110(1)(b) of the Kerala Municipalities Act, 1960, is in force, and that the levy of a tax under that provision in respect of the income of the appellant from investments for the two half- years of 1962-63 the half-year ended on the 31st September 1962 and the half-year ended on the 31st March 1963 -- by the municipality of Ernakulam is valid, and binding on the appellant.

2. The Kerala Municipalities Act. 1960, replaced the Cochin Municipal Act XVIII of 1113 (M.E.). It came into force on the 1st September 1961.

3. The relevant portion of section 110 of the Kerala Municipalities Act. 1960, provides that if a municipal council by a resolution determines that a profession tax shall be levied, every person, who, after the date specified in the notification in that behalf, in any half-year resides in the municipality for not less than sixty days in the aggregate and is In receipt of any pension or income from investments shall pay a half-yearly tax assessed in accordance with the rules in Schedule 11 to the Act. Section 160 of the Act provides that the rules and tables

embodied in Schedule II to the Act shall be read as part of Chapter VI of the Act, the Chapter that deals with the subject of taxation and finance

4. Schedule II consists of two parts. The first part consisting of rules 1 to 40 embodied the Taxation Rules and the second part consisting of rules 41 to 66 embodies the Finance Rules. Rule 19 of the Taxation Rules Specifies the classes into which persons shall, for the purposes of assessment to the profession tax, be divided and the maximum half-yearly tax leviable on each class.

6. There is a proviso to rule 19, it reads as follows:--

"Provided that if in the financial year immediately preceding the commencement of the Constitution of India any municipality was imposing profession tax at a rate higher than two hundred and fifty rupees per annum and continued to levy the tax at such higher rate immediately preceding the commencement of this Act, such municipality may continue to levy profession tax at such rate."

The validity of the proviso is not in dispute before us.

6. Section 111 (1) (b) of the Madras City Municipal Act, 1919, provides for the levy of a similar tax on persons in respect of any pension or income from investments That provisions came up for consideration before the Supreme Court in C. Rajagopalachari Vs. Corporation of Madras, . The Supreme Court came to the conclusion that the tax concerned was really a tax on income, and not a tax on anything else. It said:

"The tax on the receipt of pension or on the income from investments which is referred to in the last part of section 111 (1) is in truth and substance a tax on income".

7. Taxes on income other than agricultural income is an entry, entry 82, in List 1, the Union List in the Seventh Schedule to the Constitution. Taxes on income other than agricultural income, therefore, is within the exclusive domain of parliamentary legislation. Article 277 of the Constitution, however, saved existing levies until such time as "provision to the contrary is made by Parliament by law" That article reads as follows:

"Any taxes, duties cesses or fees which. Immediately before the commencement of this Constitution, were being lawfully levied by the Government of any State or by any Municipality or other local authority or body for the purposes of the State, municipality, district or other local, area may notwithstanding that those taxes, duties, cesses or fees are mentioned in the Union List, continue to be levied and to be applied to the same purposes until provision to the contrary is made by Parliament by law."

8. At the time the Constitution came into force there were two enactments in force In the area with which we are concerned, the Cochin Income Tax Act, VI of 1117 (M.E.) and the Cochin Municipal Act. XVIII of 1113 (M.E.) It is not disputed that as a result of Article 277 the tax by the Ernakulam Municipality on pension

or income from investments could continue to be levied until provision to the contrary is made by Parliament by law

9. The Cochin Municipal Act, XVIII of 1113 (M.E.) as already stated, has been replaced by the Kerala Municipalities Act. 1960 with effect from the 1st September 1961. The Cochin Income Tax Act. VI of 1117 (M.E.) has been replaced by the Indian Income Tax Act, 1922, by Section 13 of the Finance Act. 1950, with effect from the 1st April 1950. and subsequently the Indian Income Tax Act, 1922, has been replaced by the Income Tax Act, 1961, with effect from the 1st April 1962. The only question for consideration is whether either the replacement of the Cochin Income Tax Article VI of 1117 (M.E.), by the Indian Income Tax Act, 1922, or the replacement of the latter by the Income Tax Act, 1961, amounts to a provision to the contrary made by Parliament by law within the meaning of that expression as used in Article 277 of the Constitution

10. There is no express repeal of the provision enabling municipalities to levy a tax on pensions and income from investments either in the Finance Act of 1950 or the Income Tax Acts of 1922 and 1961 Apart from this there is the significant fact that income taxation under the Cochin Income Tax Act. VI of 1117 (M.E.), and income taxation u/s 86 (1) (b) of the Cochin Municipal Act. VIII of 1118 (M.E.), continued to co-exist in virtue of Article 277 of the Constitution. A provision to the contrary, in circumstances like this, will have to be something more than a mere replacement of the Cochin Income Tax Ad, VI of 1117 (M.E.), by the Indian Income-tax Act, 1922, or the replacement of the latter by the Income Tax Act, 1961; it will have to be a provision which by apt words or apposite implication disrupts the co-existence of income taxation by the State and the Municipalities and inhibits the continuance of a municipal levy on pensions or income from investments. We look in vain for such a provision in the Finance Act of 1950 and the Income-tax Acts of 1922 and 1961.

11. Counsel for the appellant drew our attention to Adhyaksha Mathur Babu's Sakti Oushadhalaya Dacca (P) Ltd. and Others Vs. Union of India (UOI), . In that case there was no co-existence of two State enactments permitting income taxation as a result Article 277 of the Constitution. The controversy was only as regards certain provisions of certain Abkari enactments in force in the States concerned at the time the Medicinal and Toilet Preparations, Excise Duties") Act, 1955 was passed by Parliament, It has also to be noted that Section 21 of that Act embodied an express repeal in the following terms:

"If, immediately before the commencement of this Act, there is in force in any State any law corresponding to this Act, that law is hereby repealed; Provided that all rules made, notifications issued, licences or permits granted, powers conferred under any law hereby repealed shall, so far as they are not inconsistent with this Act, have the same force and effect, as if they had been respectively made, issued, granted or conferred under this Act and by the authority empowered hereby in that behalf."

12. In these circumstances the Supreme Court referred to Article 277 of the Constitution and said:

"Therefore, so long as Parliament did not make any law relating to medicinal and toilet preparations, the position under the Government of India Act would continue and the States would have the power to continue levying duties of excise on medicinal and toilet preparations to the same extent to which they were levying them immediately before the commencement of the Constitution. In 1955, Parliament passed the Act for levy of duties of excise on medicinal and toilet preparations. This Act was brought into force from April 1, 1957, and the consequence of this enactment was that the power of the States to levy duties any further on medicinal and toilet preparations came to an end in view of Article 277 of the Constitution. There can in our opinion be no doubt that Article 227 which saved the power of the States to levy duties of excise etc., which came in the Union List on the passing of the Constitution is no longer applicable as soon as Parliament makes a provision to the contrary. Once therefore a provision to the contrary is made, the saving provided in Article 277 comes to an end and thereafter the State Governments cannot continue to levy any duty which they might have been levying by virtue of Article 277 till provision to the contrary was made. Further, this conclusion which follows from Article 277 is made perfectly clear by Section 21 of the Act, which provides that "if immediately before the commencement of the Act there is in force in any State any law corresponding to this Act, that law is hereby repealed."

The effect of this repeal is that the Excise Acts of the various States under which duty was being levied on medicinal and toilet preparations containing alcohol must be deemed to have been repealed, in so far as they apply to such medicinal and toilet preparations. It is not necessary that the State should have had a separate law for levy of duties of excise on medicinal and toilet preparations, for the repeal in Section 21 of the Act to come into effect. The Excise Acts of the various States were undoubtedly law under which duty was being levied on medicinal and toilet preparations containing alcohol and these Excise Acts must be deemed to correspond to the Act for the purposes to levy of duty on medicinal and toilet preparations and must be held to have been repealed by Section 21 so far as medicinal and toilet preparations were concerned."

13. To the same effect is Hyderabad Chemical and Pharmaceutical Works Ltd. etc. Vs. State of Andhra Pradesh and Others, . In that case the Supreme Court said:

"In view of this provision Article 227 of the Constitution all duties and charges levied by the State before the coming into force of the Constitution on the manufacture of medicinal preparations could continue to be levied until law was made by Parliament otherwise. It is not in dispute that the Act came into force from April 1, 1957 and is a law made otherwise by Parliament within the meaning of Article 277, and therefore duties and other charges levied by the State in connection with medicinal preparations could no longer be levied by it.

Further the Act specifically provides in Section 21 that "if" immediately before the commencement of this Act, there is in force in any State any law corresponding to this Act, that law is hereby repealed", it is true that the Hyderabad Abkari Act was a general law which was concerned with liquor and intoxicating drugs generally; it thus applied to alcohol also (treating it as liquor) used for manufacturing medicinal preparations. The effect of section 21 therefore is that so far as the Hyderabad Abkari Act applied to the use of alcohol, treating it to be liquor, in the manufacture of medicinal and toilet preparations, the Hyderabad Abkari Act must be deemed to have been repealed to that extent only by Section 21."

14. We do not consider the two decisions mentioned above as in any way supporting the appellant's contention that in the circumstances of the case before us we should hold that the replacement of the Cochin Income-tax Act, VI of 1117 (M.E.), by the Indian income tax Act, 1922, or the replacement of the latter by the Income tax Act, 1961, would amount to a provision to the contrary made by Parliament by law within the meaning of that expression as used in Article 277 of the Constitution. It follows that this writ appeal should fail and has to be dismissed. We do so, but in the circumstances of the case without any order as to costs.