
(1990) 08 KL CK 0065
In the High Court Of Kerala
Case No : O.P. No. 9967 of 1989

P.K. Narayanan

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 09-08-1990

Acts Referred:

Central Government Account (Receipts and Payments) Rules, 1983 — Rule 79(1)
Kerala Panchayat Act, 1960 — Section 69A

Citation : (1990) 2 KLJ 566

Hon'ble Judges : K.P. Radhakrishna Menon, J

Bench : Single Bench

Advocate : V.V.N. Menon and S. James Vincent, for the Appellant; N.N. Sugunapalan (Senior Central Govt. standing Counsel), K.R.B. Kaimal, Kunnathukal V. Sukumaran Nair, V. Krishnakumar and Govt. Pleader and K.G. Anil Babu, for the Respondent

Final Decision : Dismissed

Judgement

K.P. Radhakrishna Menon, J.—The reliefs prayed for in these Original Petitions are similar, though not identical, and therefore they are disposed of by a common judgment. I shall, for the purpose of dealing with the various contentions raised by the petitioners, extract hereunder the reliefs prayed for in O.P. 6167/90:-

(i) For a declaration that the employees of VSSC, including the petitioners, are not liable to pay profession tax under the Kerala Panchayats Act, as amended by Act 4 of 1989, to respondents 5 to 10, at any rate, until Ext. P38 representation is properly considered and disposed of by respondents 1 to 4.

(ii) issue a writ of certiorari or such other writ, direction or order quashing Exts. P7, P12, P29, P24, P24 (a), P35 and P37.

(iii) issue a writ of mandamus directing respondents 1 to 4 to consider and dispose of Ext. p38 representation and other representations pending before them in the matter of grant of exemption from payment of profession tax to the

employees of VSSC.

(iv) issue such other writ, direction or order, which this Hon'ble Court deems fit and proper in the circumstances of the case, including the costs of this Original Petition from the respondents

All the points raised in these Original Petitions except those that are specifically dealt with hereunder are points virtually identical with the points which were considered and disposed of by a Division Bench of this Court (Vide judgment in W.A. 682/89). Relevant portions therefrom read:-

In this case the only grievance is that Rule 10 of the profession Tax Rules has not been complied with. The purpose of the said rule is to get material for assigning the assessee the right slab applicable to him. Rule 15 of the Rules enables the authority to get the particulars from the employers directly, which was done in this case. The appellants have no case that the particulars given by the employer are erroneous in any manner. This is clear from Ext. R2(a). From the circular Ext. P14 issued by the employer to all the employees each employee could know what is the tax payable by each of them on the basis of the salary, for each half year. There is no case that the amount demanded from any employee is erroneous. Nevertheless the contention of the appellants is that the profession tax can be demanded from the employees only after complying with Rule 10. According to the appellants, Rule 10 is mandatory noncompliance of which will invalidate the demands of profession tax. In *Rubber House Vs. Excelsior Needle Industries Pvt. Ltd.*, the Supreme Court considered in detail when the word "shall" will be interpreted as directory. It is the duty of the court to get at the real intention of the legislature by carefully scanning the statute to be construed. In *Howard v. Bodington* (1987 (2) PD 203) Lord Penzance said that in each case the court should look into the subject matter, consider the importance of the provision that has been disregarded and the relation of that provision to the general object intended to be secured and upon a review of the case in that aspect decide the matter whether the word shall in the context is only directory. On a close scrutiny of Rule 10 in the light of the Supreme Court decision aforesaid we are of the view that non-compliance of Rule 10 does not involve invalidation of the demand in this case. The principle laid down in *A.K. Roy and Another Vs. State of Punjab and Others*, to the effect that if the manner of doing something laid down in the rule, the other modes of doing the same thing are excluded will not apply in this case as the other mode is prescribed in Rule 15. Further we are also of the view that even if there is a failure to comply with Rule 10 of the Profession Tax Rules, in this case there is no failure of justice. Fair play has been meted out. The order is not violative of any principles of natural justice or suffering from any illegality or irregularity. In the decision in *Council of Civil Service Unions v. Minister for the Civil Service*, (1984) 3 All. ER 934 the House of Lords held that the administrative action is subject to control by judicial review under three heads (1) illegality, where the decision making authority has been guilty of an error of law, eg. by purporting to exercise a power it does not possess; (2)

irrationally, where the decision- making authority has acted too unreasonably that no reasonable authority would have made the decision and (3) procedural impropriety, where have made the decision and (3) procedural impropriety, where the decision- making authority has failed in its duty to act fairly.

Questions pertaining to such points, as the ones dealt with by the Division Bench therefore require to be answered against the petitioners.

One of the additional points raised in O.P. 6167/90 can be stated thus: Recovery from the salaries or wages of the employees of V.S.S.C., on account of the profession tax levied under the Panchayat Act can be made only in terms of Rule 79 (1) of The Central Government Account Receipts and Payments Rules, for short, The Central Rules and not u/s 69A of The Kerala Panchayat Act, 1960, for short, The Panchayat Act, introduced by The Local Authorities (Amendment) Act introduced with effect from 11-11-1988. I shall read Rule 79(1):

79. Recoveries on account of profession tax, etc.- (1) Recoveries from the salaries of Government servants, on account of profession tax levied under an Act of a State Government and dues of Co-operative Societies registered under the various Co-operative Societies Acts, where such Acts impose a statutory obligation on the Government to effect such recoveries, shall be made by the drawing and disbursing officer in accordance with such procedure as may be laid down by Government from time to time.

It can be seen from this Rule, the counsel submits, that the drawing and disbursing officer can recover the profession tax from the salaries/wages only in accordance with such procedure as may be laid down by The Central Government from time to time. As the Central Government have not so far laid down any such procedure, the proceedings initiated by the drawing and disbursing officer to recover the profession tax from the salaries/wages of the employees are incompetent. I am not impressed by this argument, - Why, it may be asked. Answer is, see the discussion below. The words employed in the Rule namely "shall be made by the drawing and disbursing officer in accordance with such procedure as may be laid down by Government (Central Government, going by the definition of the word Government) from time to time" would suggest that it is not mandatory that the Government shall lay down the procedure. Laying down the procedure by the Government therefore cannot be construed as a condition precedent for the exercise of the power itself. In other words the existence of procedure is not a precondition for the exercise of the power under Rule 79. The exercise of the power under Rule 79 cannot therefore be said to depend upon the procedure the Government may lay down from time to time. (See the ruling of the Supreme Court in The The Dargah Committee, Ajmer Vs. State of Rajasthan, and Gopala-krishna Pillai v. State of Kerala, 1976 KLT 775). Another aspect, the counsel highlighted in the course of his argument was that the mode of recovery of the profession tax provided for u/s 69 A is in conflict with the mode of recovery prescribed under Rule 79 of The Central Rules. We have to consider in this connection the scope of the Section. This section

empowers the head of office or employer in relation to an office or undertaking or institution where the persons are employed for salaries or wages, after the expiry of the period mentioned in the demand notice which he is obliged to serve on the persons, to recover the amount of profession tax by deduction from their salaries/wages and remit the same to the Panchayat. Failure on the part of the officer mentioned above to recover the tax and remit it to the Panchayat would result in the said tax being recovered from him as if he is the defaulter. A comparative study of Rule 79 and Section 69A shows positively that the object, based on which both Rule 79 and Section 69A are enacted, is the same; namely to recover from salaries/wages of the employees of Government, institutions etc, on account of profession tax levied under a State enactment. It is to accomplish this object the employer is empowered to recover the tax and pay it to the Panchayat. I am therefore emboldened to observe that there is no conflict between Rule 79 of The Central Rules and Section 69 A of The Panchayat Act. Recoveries on account of profession tax can therefore be sustained either under Rule 79 of The Central Rules or u/s 69 A of The Panchayat Act. It is worthwhile to keep in view in this context the observations of the Division Bench to the effect that the case of the employees that this mode of recovery would disentitle them to object to the assessment itself, is without substance. The above contention therefore is rejected.

2. Yet another argument of the learned counsel for the petitioners is that profession tax cannot be levied from these employees because they are employed in an institution situated in a prohibited area. In support of this argument, the counsel relied on Section 3 (3) (b) of The Panchayat Act. On a reading of this section it can be seen that The Panchayat Act extends to the area where the institution is situate. The only areas to which The Act has not been extended are the areas which are within the limits of cantonments. The argument therefore is liable to be rejected.

3. The counsel then argued that, inasmuch as Section 69 A has no retrospective operation, recovery of profession tax for the period prior to 11-11-1988 cannot be had by invoking the said provision. Section 69A is only a procedural provision prescribing a mode of recovery. Under this Section, the Panchayat therefore can recover not only the tax that has become due after 11-11-1988 but the entire tax which remains unpaid at the time of the introduction of this Section. This argument also therefore is without substance. It is rejected. The petitioners in O.P. 9967/89 have raised the following additional contention. The Panchayat Act does not extend to the area where the institution is situate because it is located within the limits of a cantonment within the meaning of Section 1 (2) of The Panchayat Act. The word "cantonment" is not defined under The Panchayat Act. It has therefore become necessary to give this word a meaning taking into account the context in which the word is used. It should in this connection be remembered that it is a well settled proposition that the meaning of words in a particular context must be ascertained considering the subject-matter and the nature of the context in which they are found. We have therefore to ascertain the

various shades of meaning of this word so as to find out a particular meaning to be attached to this word. The Dictionary meaning is "lodging assigned to troops (in India also permanent military station)-Shorter Oxford Dictionary; a camp, usually of large size, where men are trained for military service, military quarters, the winter quarters of an army-per Random house dictionary, the quartering of troops; a group of more or less temporary structures for housing troops; India - a permanent military station-Websters seventh new Collegiate Dictionary. The word therefore can mean only this: in India a permanent military station. The definition of this word "cantonment" in The Cantonments Act, 1924 (Central Act 2/1924) may also be considered in this context with profit. It reads:--

The Central Government may by notification in the official gazette, declare any place or places in which any part of the Indian Army or the Indian Air Force is quartered or which, being in the vicinity of any such place or places, is or are required for the service of such forces to be a cantonment for the purpose of this Act and on all other enactments for the time being in force and may, by a like notification declare that any cantonment shall ceased to be a cantonment.

It is pertinent to note here that it is not the case of the petitioners that the Indian Army or the Indian Air Force is quartered in the area. The above contention therefore is rejected.

The Original Petitions, for the reasons stated above, are liable to be dismissed. I accordingly dismiss the same. No costs.