

(1954) 03 KL CK 0016
In the High Court Of Kerala
Case No : O.P. No. 112 of 1951

P.R. Krishna Rao

APPELLANT

Vs

Municipal Sales tax Officer and Another

RESPONDENT

Date of Decision : 26-03-1954

Acts Referred:

Cochin General Clauses Act, 1079 — Section 24, 6
Travancore-Cochin General Sales Tax Act, 1125 — Section 25

Citation : (1954) 03 KL CK 0016

Hon'ble Judges : Subramania Iyer, J;Sankaran, J;Menon, J

Bench : Full Bench

Advocate : G.V. Ramanan, for the Appellant; A.G., for the Respondent

Final Decision : Dismissed

Judgement

Subramania Iyer, J.—This matter is before the Full Bench under the following order of reference made by one of us:

The, Petitioner was a citizen of British India as it was called with his house and properties in South Kanara in the province of Madras. He was residing and doing business in Trippunithura in the erstwhile State of Cochin. He was assessed to sales tax for the year 1122 under Cochin Act, 15 of 1121. A considerable portion, of the tax was paid, leaving a small balance still due. On 22-9-1951 the 1st Respondent who is the Municipal Sales tax Officer, Ernakulam issued a notice to the Petitioner stating that a sum of Rs. 278 was still due from him and intimating that if that amount be not paid within a fortnight of the receipt of the steps notice will be taken through that State government to recover the tax due. The notice was addressed to the the Petitioner at Padu Badri, South Kanara.

The intimation is, and it is not disputed, that the amount will be recovered by proceedings against. the properties situated in South Kanara in the State of Madras. The Petitioner challenges the said notice as ultra vires the jurisdiction of the officer issuing it. The 2nd Respondent is the District Collector, Trichur.

Respondents appear through the Government Pleader and seek to support the action taken and proposed to be taken as aforesaid against the Petitioner.

2. The States of Cochin and Travancore became a single State by integration as a result of a Covenant entered into by the Rulers of the two States as from 1-7-1949 corresponding to 17th Mithunam 1124. There was at that "time in force in the Cochin State, Act 15 of 1121 as well as the Cochin General Clauses Act, 3 of 1079. The covenant contained provisions for the continuance in force of the existing laws of Cochin in the Cochin area until altered, amended or otherwise provided for by the United State of Travancore-Cochin. After the integration the State of Travancore-Cochin enacted the Interpretation and General Clauses Act, 7 of 1124 as also the General Sales Tax Act, 11 of 1125 repealing the Cochin Act, 15 of 1121. On and from 26-1-1950, the date when the Constitution of India came into force, the State of Travancore-Cochin became a part of the territory of India being one of the Part B States. Entry No. 43 in the Seventh Schedule Concurrent List (list III) reads:

43. Recovery in a State of claims in respect of taxes and other public demands including arrears of land revenue and sums recoverable as such arrears, arising outside that State.

On 20-4-1950 the Central Act called the Opium and Revenue Laws (Extension of application) Act 33 of 1950 was passed making the 1 Indian Revenue Recovery Act, I of 1890 applicable to Part B States. In the Gazette dated 18-7-1950 a notification was issued by this State to clear doubts regarding the applicability of the provisions of the said Central Act for purposes of recovering sales tax due to the State. The questions that have been raised by the Petitioner are that the Legislative sanction i relied upon to support the action taken against him will not apply to his case which relates to tax due to the erstwhile Cochin State. Entry No. 43 in the Concurrent List, Seventh Schedule of the Constitution which enabled the Central - Legislature to promulgate Act 33 of 1950 applies Only to claims arising subsequent to the date of the Constitution, that is, 26-1-1950 and that as the claim against him arose long before, is beyond the ambit of Legislation to be made pursuant to entry No. 43.

The aforesaid notification made u/s 25 of the General Sales Tax Act, 11 of 1125 is for the same reasons unavailable to his case. Being a case of a repeal and re-enactment the absence of a provision in the new Act that behalf, the provisions of the repealed statute cannot be enforced. No law of either e erstwhile State of Cochin or of the Travancore-Cochin State can have an extra territorial operation so as to justify enforcement of their mandates outside their territorial limits. Section 23 of the Travancore-Cochin Interpretation and General Clauses Act, 7 of 1125 corresponding to Section 24 of the Central Act has no application to the case, the word "Order" therein not being applicable to orders passed in particular cases.

3. Though the amount involved in the present case is small, the questions raised

are of great importance and far-reaching consequence. The proper machinery for enforcement and recovery of the demands of either the erstwhile States of Cochin or Travancore or the State of Travancore-Cochin after it became a part of the territory of India, is of moment. There is no judicial decision directly bearing upon this question. The cases in - "G. Chadayammury v. State" AIR 1952 Trav-C 217 (FB) (A) and -"Nagalinga Nadar Sons v. Ambalapuzha Taluk Head Load Conveyance Worker's Union" AIR 1951 Trav-C 203 (B) throw some but not sufficient light on the problem. As regards the interpretation of Section 24 of the General Clauses Act the views taken by the High Courts of Allahabad and Nagpur are conflicting. See - (Firm) Danmal Parshotam Dass Vs. (Firm) Babu Ram-Chhote Lal, and - Benares Bank Ltd. Vs. Shri Sri Prakasha Bhagwan Das and Others, and - "Liladhar Daulatram v. The State" AIR 1951 Nag 353 (E).

4. Under these circumstances, I consider it is necessary that this Original Petition" be referred for decision to a Pull Bench which I. do so that that Bench may determine specifically the various questions that arise for solution and give an authoritative decision. As the reference is of the whole case, I do not formulate the particular questions for decision as it is in the province of the Full Bench to do so. 16th July 1953.

Sd/- P. K. Subramania Iyer, Judge.

2. The only two questions arising for consideration are (1) whether under Entry 43, in the Concurrent List in Schedule 7 to the Constitution of India the legislative competence of Parliament is confined to claims which arise subsequent to the Constitution or whether it extends to claims that had already arisen before the Constitution of India was inaugurated and the second question is whether the absence of a provision saving the operation of the prior Act in Central Act 33 of 1950 which extended the operation of the Central Revenue Recovery Act I of 1890 to Part B States is fatal to the enforcement of claims that arose under the Cochin Revenue Recovery Act which was repealed.

3. On the first question the argument of learned Counsel for the Petitioner is that Entry 43 posits the existence of a State wherein a claim is to be enforced and of Anr. State wherein the claim arose. The States in question are those contemplated in the Constitution. They came into existence only with the Constitution and therefore it is argued that no claim prior to the date of the Constitution could have been contemplated because the claims must relate to, States whose origin was with the Constitution. We are unable to agree.

It is true that a State should exist within the meaning of the Constitution for purposes of enforcement of a claim therein but there is nothing to indicate that the claim sought to be enforced must have arisen after any particular State came into existence within the meaning of the Constitution. The existence of the two States is necessary only at the time when the recovery of a claim is sought. Entry 43 relates to recovery, in a State, of claims arising not in that State; the word "arising" used in that Entry is in our view wide enough to comprise within

its ambit claims that had already arisen as well as those thereafter to arise. The antithesis in the Entry is (between the two places where the claim arose and where it is sought to be enforced. The reference is not to the time of the arising of the claim. If the entry be read "arising before or after the Constitution" it is not contended that the language could have been inapt. The non-existence of the extra words mentioned above which are not in the entry, in our view, makes no difference and the addition to those words would have been only an unnecessary encumbrance to the Entry.

There is no reason why the legislative competence should have been restricted to future claims and should not have been extended to past ones (sic). There would certainly have been claims which had to be recovered at the time of the Constitution, and those claims may have to be recovered outside the territory wherein they arose. The constitution afforded facility which did not exist, before for enforcement of those claims. What was wanting was only a machinery for effecting the recovery and it is that machinery that is sought to be provided by Entry 43. In our judgment, Entry 43 authorised Parliament as also the States to legislate in respect of recovery of all claims, whether they accrued before the Constitution or they accrue after the Constitution.

4. As regards the second point, as mentioned in the order of reference there is conflict of judicial opinion. Section 6 of the General Clauses Act does not appear to us to be confined to cases where there has been a repeal of an enactment though it be without a re-enactment. It is true that the Act contains sections where a repeal and re-enactment are referred to. But those sections do not show that except in cases where the Act re-enacted makes a provision Section 6 will have no operation. With respect we follow the view taken by the Nagpur High Court and we disagree with the view taken by the High Court of Allahabad.

5. The result is that the Original Petition fails and is dismissed with costs. Advocates' fee Rs. 100/-.