

(1955) 08 BOM CK 0021

In the Bombay High Court

Case No : Criminal Application No. 806 of 1955

Purshottamdas Govindji Halai

APPELLANT

Vs

B.M. Desai

RESPONDENT

Date of Decision : 24-08-1955

Acts Referred:

Constitution of India, 1950 — Article 13, 14, 147, 22

Citation : (1955) 57 BOMLR 1062

Hon'ble Judges : M.C. Chagla, C.J.;Desai, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.C. Chagla, C.J.—The assessee is the father of the petitioner and he was assessed to Income Tax in the sum of Rs. 40,178-4-0. He failed to pay the amount, and on April 10, 1951, a certificate was issued by the Income Tax Officer certifying u/s 46(0) of the Indian Income Tax Act that this amount was due by the assessee, and the certificate was sent to the Collector who is respondent No. 1. On February 1, 1954, the Collector sent a notice of demand to the assessee. The assessee failed to pay the amount and thereupon the Collector issued a warrant of attachment on March 24, 1954. Proclamation of sale was issued on February 25, 1955, and on March 30, 1955, the Collector sold the properties of the assessee which had been attached, which were the tenancy rights and the goodwill in the firm of Indestro Sales & Service Company, of which the assessee was the sole proprietor. The sale did not realise the full amount which the assessee was liable to pay. On June 7, 1955, the Collector issued a notice upon the assessee to show cause why he should not be arrested. On June 17, 1955, the assessee showed cause, and not being satisfied with the cause that was shown by the assessee, the Collector on June 30, 1955, issued a warrant of arrest, and on July 1, 1955, the assessee was arrested and committed to civil jail. The petitioner as his son came to this Court for a writ of habeas corpus and a rule was issued by the Court, and the rule has now come up before

us for final hearing.

2. Interesting and ingenious arguments were advanced by Mr. Shah to satisfy us that Section 46(2) under which action has been taken is unconstitutional and the action taken by the Collector cannot be justified. Section 46(2) provides that the Income Tax Officer may forward to the Collector a certificate under his signature specifying the amount of arrears due from an assessee, and the Collector, on receipt of such certificate, shall proceed to recover from such assessee the amount specified therein as if it were an arrear of land revenue; and there is a proviso to this sub-section to this effect:

Provided that without prejudice to any other powers of the Collector in this behalf, he shall for the purpose of recovering the said amount have the powers which under the Code of Civil Procedure, 1908, a Civil Court has for the purpose of the recovery of an amount due under a decree.

It will be noticed that this is a procedural section and it lays down the procedure for recovering amounts of arrears due from an assessee. It does not impose any liability upon the assessee nor does it determine any liability. The liability to pay tax has been otherwise determined by the machinery provided in the Indian Income Tax Act. Section 46(2) only comes into operation after the liability has been finally determined and the assessee has no answer to the payment of arrears of Income Tax, and the machinery which is provided is that these arrears may be recovered by the Collector from the assessee as if they were arrears of land revenue. They are to be recovered not by the Income Tax Authorities but by the Collector, but the Collector's jurisdiction to recover these arrears only arises on his receiving a certificate from the Income Tax Officer that a certain amount is due from the assessee, and the proviso gives the same powers to the Collector as a Court has under the CPC to recover the amount of arrears.

3. Section 46(2) is first challenged on the ground that it offends against Article 14 of the Constitution. It is pointed out by Mr. Shah that u/s 13 of the Bombay City Land Revenue Act, 1876, under which the Collector has issued the warrant and arrested the assessee, it is provided:

If the sale of the defaulter's property shall not produce satisfaction of the demand, it shall be lawful for the Collector to cause him to be apprehended and confined in the civil jail under the rules in force at the Presidency for the confinement of debtors, for which purpose a certificate of demand under the Collector's signature sent with the defaulter shall be the sheriff's sufficient warrant, equally with the usual legal process in ordinary cases of arrest in execution of judgment for debt.

There is proviso to this part of Section 13 and this proviso in the amended form was introduced by Act XLVII of 1954 on October 8, 1954, and the proviso as it stands at present is to the following effect:

Provided that such imprisonment shall cease at any time upon payment of the

sum due and that it shall in no case exceed-

(i) a period of six months when the sum due is more than fifty rupees; and

(ii) a period of six weeks in any other case.

Prior to its amendment a very savage and drastic power was conferred upon the Collector to imprison a defaulter for one day for every one rupee of default, and as we had occasion to point out, it may mean that the Collector would have the power indefinitely to keep behind bars a defaulter, and we must say in fairness to the State Government that it was as a result of our judgment that this almost barbarous power was taken away from the Collector and the present maximum period of imprisonment was substituted in the proviso to this sub-section. Section 13 appears in the Bombay City Land Revenue Act and this Act provides for the machinery for recovering land revenue in the city of Bombay. There is another Act on the statute book which deals with recovery of land revenue throughout the State of Bombay but in places other than the City of Bombay and that is the Land Revenue Code and the relevant section on the question of arrest is Section 157, and substantially after the amendment the term of civil imprisonment which a defaulter would have to undergo if he fails to pay arrears of land revenue is the same under the Land Revenue Code and under the Bombay City Land Revenue Act.

4. But what is pointed out by Mr. Shah is that when you look at the Acts of other States for the recovery of revenue, you find different periods of imprisonment laid down for failure to pay land revenue. It is pointed out that under the Madras Revenue Recovery Act the maximum period provided is two years by Section 48, that under the Uttar Pradesh Land Revenue Act u/s 148 fifteen days is provided, that under the Punjab Land Revenue Act, 1887, u/s 69 one month is provided, and under the Central Provinces Land Revenue Act, u/s 130 the maximum sentence is three months, and what is particularly pointed out is that under the Assam Land Revenue Regulation No. 1 of 1886 the coercive machinery for recovering tax does not include the committing of the defaulter to civil imprisonment. On a comparison of these various laws the submission that is made is this that we are dealing with a Central Act, the Indian Income Tax Act, and that Act deals with defaulters who have failed to pay Income Tax. They constitute one class and with regard to this very class there is a discrimination depending upon whether they are in Bombay, Madras, Uttar Pradesh, Punjab, Central Provinces, or Assam, as to what is the liability they would incur if they fail to pay Income Tax. Mr. Shah says that a defaulter in Assam, though no rational distinction can possibly be made between him and his counterpart in Bombay, escapes scot free although he does not pay the tax, whereas in Bombay he may be committed to jail, as indeed the assessee in this case has been, and remain in jail for a period of six months. Therefore it is strenuously urged before us that such a provision clearly offends against Article 14 of the Constitution.

5. Article 14 has often come up for consideration before us and before the

Supreme Court and we are now fairly familiar with the well-known tests laid down, and the most important, the most obvious and the simplest test is that Article 14 does not require that all laws should be similar or that all laws should have universal application. What Article 14 requires is that if you make any discrimination in the application of the law as between a citizen and a citizen, there must be some reasonable basis available to you for justifying such a discrimination. It is not that Article 14 prevents classification. Far from preventing classification it permits classification, provided the classification is based on some reasonable principle. In this case there is a clear classification. The only question that we have to consider is whether the classification is a reasonable classification or based on some reasonable principle. The Union Government wants to collect Income Tax, it has no machinery of its own, it can only resort to the machinery set up by the different States in India, and what the Act provides is that the machinery which is ready at hand should be availed of for the purpose of collecting Income Tax. The machinery of collecting land revenue varies from State to State and Mr. Shah conceded that as far as the machinery itself is concerned for the purpose of collecting land revenue in the different States, that machinery was valid and could not be challenged. Therefore the position is that there is a valid machinery existing in the different States for collecting land revenue and this is the machinery that has been resorted to u/s 46(2) for the purpose of enforcing the liability of a defaulter.

6. It is difficult to understand how a classification based on this principle is not a reasonable classification. Defaulters in Bombay would be proceeded against according to the machinery subsisting in Bombay. Defaulters in Assam will be proceeded against according to the machinery subsisting in that State. If the State of Assam thinks that the coercive process of committing a defaulter to civil jail is unnecessary, then in Assam a person who does not pay Income Tax will not have that coercive machinery used against him. But if the Bombay State thinks that that coercive machinery is necessary in the State of Bombay and it is part and parcel of the machinery by which land revenue is recovered in Bombay, then undoubtedly a defaulter in Bombay will have to face as one of the consequences of not paying Income Tax that he might have to be committed to civil jail. It must be borne in mind that we are not dealing here with a case where the assessee has committed an offence and penal consequences follow upon his having committed the offence. Different considerations would arise if it can be pointed out that with regard to the same offence in one State there is one sentence and in another State there is another sentence. What is challenged is the procedure for recovering a liability which has already been determined and about which there is no dispute. It is true, as we shall presently point out, that the Supreme Court has laid down that under Article 14 equality before the law does not only mean equality before substantive law, but also equality with regard to procedure. But the procedure that the Supreme Court was contemplating was procedure with regard to trial of criminal cases where different procedure applied to the same class of accused may result in one procedure depriving one set of

accused of substantive rights of relief and defence. If one procedure does not permit an accused to have a fair and impartial trial or if it does not permit him to put forward his defence properly or deprives him of other important procedural rights which are guaranteed to him under the Criminal Procedure Code, then undoubtedly such a deprivation would result in the matter falling under Article 14. But here it is not suggested that anything in Section 46(2) deprives the assessee of any procedural right in the sense which we have indicated. All that is contended is that the term of imprisonment in a civil jail varies from State to State. If a defaulter has had every opportunity to challenge the determination of his liability, if the liability is fairly and impartially determined, if he has been given an opportunity to pay up the amount which is due from him, could it be said that the mere fact that the consequences of non-payment of arrears varies from State to State leads to an inequality which attracts the application of Article 147.

7. Turning to the authorities on which Mr. Shah has relied, the first is *The State of West Bengal v. Anwar Ali Sarkar* [1952] S.C.R. 284. That was the case where the Supreme Court held the West Bengal Special Courts Act (X of 1950) as void, and all the learned Judges were at pains to point out that the Special Courts set up under the Bengal Act resulted in substantially a different procedure from the one laid down in the Criminal Procedure Code, and that that legislation deprived the accused of certain important rights, and Mr. Justice Mukherjea points out (p. 322):

...A rule of procedure laid down by law comes as much within the purview of Article 14 as any rule of substantive law and it is necessary that all litigants, who are similarly situated, are able to avail themselves of the, same procedural rights for relief and for defence with like protection and without discrimination.

Can it be said in this case that an assessee in Bombay is deprived of any procedural right for relief and for defence which an assessee in Assam or in any other part of India possesses?

8. The other case is the one reported in *Suraj Mall Mohta and Co. Vs. A.V. Visvanatha Sastri and Another*, . In that case the Supreme Court held that Sub-section (4) of Section 5 of the Taxation on Income (Investigation Commission) Act and the procedure prescribed by the impugned Act in so far as it affected the persons proceeded against under that sub-section was a piece of discriminatory legislation and offended against the provisions of Article 14 of the Constitution and was void and unenforceable. There, again, the procedure laid down for the Investigation Commission was substantially different from the procedure to be adopted u/s 34 of the Indian Income Tax Act, and the Supreme Court took the view that the assessee who could be assessed u/s 34 were the same class as could be assessed u/s 5(4) and there was no reason why the assessee who were assessed u/s 5(4) should be deprived of the rights they had u/s 34 of the Indian Income Tax Act. The same Act came for further consideration before the Supreme Court in the case of *Shree Meenakshi Mills Ltd., Madurai Vs. Sri A.V.*

Visvanatha Sastri and Another, . As a result of the earlier Supreme Court decision Parliament had amended Section 34 of the Income Tax Act and the Supreme Court took the view that by amending Section 34 Parliament had provided that cases of those very persons who originally fell within the ambit of Section 5(1) of Taxation on Income (Investigation Commission) Act, 1947, could be dealt with u/s 34 and therefore there was no reason for the application of a separate procedure u/s 5(1) of the Taxation on Income (Investigation Commission) Act, and therefore both the categories of persons who came within the scope of Section 5(2) and Section 34 of the Income Tax Act formed one class, and therefore it was held that after the coming into force of the Indian Income Tax Amendment Act, 1954, the provisions of Section 5 had become void and unenforceable. At page 791 it is important to note that the learned Chief Justice Mahajan emphasises that the implication of Article 14 is that all litigants similarly situated are entitled to avail themselves of the same procedural rights for relief and for defence with like protection and without discrimination.

9. Strong reliance was also placed by Mr. Shah on a decision of the Madras High Court which has held Section 46(2) as void as impugning Article 14. The case is Erimmal Ebrahim Hajee Vs. Collector of Malabar at Kozhikode and Another, . With very great respect to the Madras High Court, reading the judgment of Mr. Justice Mack it appears that he seems to have proceeded on the basis that the failure to pay arrears of Income Tax entailed penal consequences, that it was an offence not to discharge your Income Tax dues, and a possible result of the default committed would be that the defaulter would be sentenced to a term of imprisonment. It is hardly necessary to point out the distinction between an of income and a default committed in the payment of Income Tax, or a penalty imposed for committing an offence and the coercion exercised against the defaulter by sending him to civil jail. If a man commits an offence he has to carry out the sentence. If a man fails to pay Income Tax and if the coercive machinery is used by committing him to civil jail it is open to him at any time to come out of the jail by discharging his legal dues. As we said earlier, different considerations would apply if this was a case of a conviction for an offence and the assessee had been sentenced to a term of imprisonment. Therefore, again with very great respect, we are unable to accept the view of Mr. Justice Mack that Section 46(2) offends against the equality before the law contemplated by Article 14 if the assessees in different parts of India are to be exposed to widely differing sentences which can. be imposed by Collectors on different grounds in different States. When we turn to the judgment of his learned colleague, Mr. Justice Krishnaswami Nayudu, he has based his judgment on the proviso to Section 46(2) and the view he has taken is that that proviso confers upon the Collector manifestly unreasonable and nakedly arbitrary power to exercise his discretion whether he should act u/s 46(2) or under the proviso to that sub-section. Before us Mr. Shah has not contended, although the point has been taken in the petition, that the proviso to Section 46(2) is void and that the discretion given to the Collector is a discretion which cannot be upheld in law.

10. In our opinion, therefore, the provisions of Section 46(2) do not offend against Article 14 of the Constitution.

11. The second contention urged by Mr. Shah is both novel and ingenious. If we hold that the provisions with regard to different terms of imprisonment to civil jail are not discriminatory within the meaning of Article 14, then really this argument does not survive. But as the argument has been advanced and pressed, we might as well notice it. It is contended that Section 13 of the Bombay City Land Revenue Act offended against Article 14, and therefore it became void, and as there was no power in the Collector to enforce a liability in respect of Income Tax dues by committing a defaulter to civil jail, such a power in the Collector u/s 157 of the Land Revenue Code would also be bad on the ground of discrimination. So according to Mr. Shah when the Constitution came into force on January 26, 1950, there was neither Section 13 nor Section 157 on the statute book and when according to Mr. Shah the Legislature purported to amend Section 13 it was not an effective exercise of legislative function. Mr. Shah says that there was nothing to amend and the position remains today as it was at the date when the Constitution came into force.

12. It is true that the Supreme Court has laid down in *Behram Khurshed Pesikaka Vs. The State of Bombay*, that if a piece of legislation offended against any article of the Constitution and thereby became void, under Article 13 it is null and void for all purposes from the date when the Constitution came into force, and reliance is placed on a passage in the judgment of the learned Chief Justice that in determining the rights and obligations of citizens the part declared void should be notionally taken to be obliterated from the section for all intents and purposes, though it may remain written on the statute book and be a good law when a question arises for determination of rights and obligations prior to January 26, 1950, and also for determination of rights of persons who have not been given fundamental rights by the Constitution. Mr. Shah overlooks the very important word used by the learned Chief Justice that it is only "notionally" that the particular section declared to be void is obliterated. What Mr. Shah wants us to do is to treat the section as obliterated not notionally but actually. A Legislature, if it follows the procedure laid down in the Constitution, may place any Act on the statute book. That Act may be bad either because the Legislature was incompetent to enact it or because it contravened, let us say, fundamental rights guaranteed to a citizen under Part III of the Constitution. But the mere fact that the Act is bad and liable to be so declared by a competent Court does not detract from the fact that it is on the statute book and that it has been passed by the Legislature according to the legislative machinery set up under the Constitution. All that can be said is that under that Act no rights can be enforced and no liabilities can be imposed. But as far as the statute book of the State is concerned, it is one of the Acts which has been placed upon it according to the Constitution. The learned Chief Justice of India points out that an Act which may be void at the date of the Constitution may still be valid to determine rights and liabilities arising prior to January 26, 1950, and even after January 26, 1950, it

may be valid for the purpose of determining rights and liabilities of persons who may not be protected under a particular article which renders the Act void. If Mr. Shah was right and the Act ceased to have even physical existence by reason of the fact that it is void under Article 13, then it is difficult to understand how a Court of law can look at it for the purpose of construing it and enforcing the rights of persons who would still be governed by it under the circumstances referred to. Further, there is a well known principle of constitutional law which we have considered in *The State of Bombay Vs. Heman Santlal Alreja*, that if an Act is unconstitutional and the unconstitutionality has been set right by the Legislature before the matter comes for determination, then what the Court has to consider is not the unamended unconstitutional Act but the Act as amended. Therefore we have not to consider what the position might have been if the Legislature had not amended Section 13 of the Bombay City Land Revenue Act. What we have to consider is what is the constitutional position today, and as far as the two Bombay Acts are concerned, the Bombay City Land Revenue Act and the Land Revenue Code, as we already pointed out, substantially the liability imposed upon the defaulter is now the same, and therefore looking at these Acts today we cannot say that there is any discrimination as between a defaulter in the city of Bombay and a defaulter outside the city of Bombay.

13. The third argument advanced by Mr. Shah is that Act XLVII of 1954, which amended Section 13 of the Bombay City Land Revenue Act, cannot be given retrospective effect and the assessee is governed by the law as it was when on February 1, 1954, the notice of demand was sent by the Collector. The amending Act came into force on October 8, 1954. What is seriously urged is that on February 1, 1954, the assessee was liable to be sent to civil jail for an indefinite period, the period to be reckoned according to the amount of the default, and that liability could not be affected retrospectively by Act XLVII of 1954 on October 8, 1954, reducing that liability and bringing that liability in line with the Land Revenue Code. We have heard of vested rights, but it is something new to be told that a defaulter has a vested right in a certain liability being imposed upon him. We think that is sufficient to dispose of that argument.

14. The next contention that was urged is that the section contravenes Article 22 of the Constitution. That article deals with protection afforded to a person against arrest and detention, but as the marginal note itself indicates, the protection given by that article is only in certain cases and not in all cases. The protection is that he cannot be detained in custody without being informed, as soon as may be, of the grounds of his arrest, he is given the right to consult and be defended by a legal practitioner of his choice, and it is incumbent upon the person arresting him to produce him before the nearest Magistrate within a period of 24 hours. It is clear, and there is high authority of the Supreme Court as we shall presently point out, that this article only applies to a case of a person who is arrested for having committed an offence or having taken part in an activity prejudicial to the interest of the State or of the public. The article does not apply and cannot apply where arrest, as in this case, is neither for having committed

an offence nor for having acted prejudicially to the interest of the public or of the State. The arrest of the assessee is as a result of the coercive machinery applied against him for failure to pay his Income Tax dues, and it is impossible to suggest that a person who has been arrested under these circumstances and committed to civil jail should be put up before a Magistrate so that a proper order of remand should be obtained from him. The very conception of a remand order and the very idea of a person being put up before a Magistrate suggests that he would be remanded to custody pending investigation and pending his trial. In this case there is no question of any investigation taking place nor is there any question of the trial of the assessee, and therefore it is obvious from the language used in Article 22 that it was not intended that it should apply to all persons arrested and detained in custody.

15. A similar question came up for consideration before the Supreme Court in *The State of Punjab Vs. Ajaib Singh and Another*, . There the Supreme Court was considering the Abducted Persons (Recovery and Restoration) Act (LXV of 1949) and they held that physical restraint put upon an abducted person in the process of recovering and taking that person into custody without any allegation or accusation of any actual or suspected or apprehended commission by that person of any offence of a criminal or quasi, criminal nature or of any act prejudicial to the State or the public interest, and delivery of that person to the custody of the officer in charge of the nearest camp u/s 4 of the Act was not arrest and detention within the meaning of Article 22(1) and (2) of the Constitution. Mr. Justice Das says (p. 268):

...The language of Article 22(1) and (2) indicates that the fundamental right conferred by it gives protection against such arrests as are effected otherwise than under a warrant issued by a court on the allegation or accusation that the arrested person has, or is suspected to have, committed, or is about or likely to commit an act of a criminal or quasi-criminal nature or some activity prejudicial to the public or the State interest.

In this case no warrant has been issued on the allegation that the assessee has or is suspected to have committed an offence or that he is likely to commit an act prejudicial to the public or State interest.

16. Mr. Shah then attempted to argue that it was because he was acting against public interest that he had been arrested and detained and according to him failure to pay Income Tax as against public interest. We entirely agree with Mr. Shah that a citizen who does not pay the tax which is legitimately due from him acts against public interest and persons who evade payment of tax even more emphatically act against public interest. But what Mr. Shah overlooks is that the cause of his detention is not that he acted against public interest but that he failed to pay arrears of Income Tax. It is in order to compel him to discharge his liability that he is confined to civil jail. It may be that a day might come when failure to discharge legitimate dues even of Income Tax may be made offences under the law of the land, but at present that is not the position, and therefore a

man can still go on refusing to pay tax due by him or evade payment of tax and yet not be branded as a criminal.

17. We think we have dealt with all the contentions put forward by Mr. Shah. As we started by saying, various other contentions have been raised in the petition, but these are all the contentions that were put forward by Mr. Shah before us.

18. The result is that the petition fails and must be dismissed.