
(1969) 02 BOM CK 0014

In the Bombay High Court

Case No : Special Civil Application No. 55 of 1967

Ramchand Maroti Mandwale

APPELLANT

Vs

Malkapur Municipal Council, Malkapur and Another

RESPONDENT

Date of Decision : 19-02-1969

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 246, 265, 276(2)
Maharashtra Education (Cess) Act, 1962 — Section 3, 4, 5(1), 6, 9(1)

Citation : AIR 1970 Bom 154 : (1970) 72 BOMLR 240 : (1971) ILR (Bom) 165 : (1969) MhLj 540

Hon'ble Judges : Padhye, J; Chandurakar, J

Bench : Division Bench

Advocate : B.R. Mandlekar, for the Appellant; C.S. Dharmadhikari, Asst. Govt. Pleader and A.G., for the Respondent

Judgement

Padhye, J.—By this petition under Articles 226 and 227 of the Constitution, the petitioner seeks to challenge the demand notice dated 21st January 1967 as being illegal and prays for a writ of prohibition to the respondents from making the recovery of the education tax on the basis of the said demand notice dated 21st January 1967. The petitioner also seeks a direction that the respondent No. 2, the state of Mahara-shtra, be ordered to restore and repay the amount of Rs. 775.50 to the petitioner which has been collected by the respondent No. 1 for respondent No. 2 towards the education tax for the period from 1962-63 to 1964-65. The petitioner further wants a prohibition against the respondents prohibiting them from further recovering any amount under the Maharashtra Education (Cess) Act, 1962 and the Rules thereunder. A relief is also claimed for a declaration that the Maharashtra Education (Cess) Act 1962 be declared as ultra vires of the Constitution.

2. The petitioner is a resident of Malkapur, taluq Malkapur, District Buldana and owns several lands and buildings in the town of Malkapur. Most of these buildings are let out to tenants and the petitioner gets rent for those buildings. Besides, the petitioner is also a cultivator and carries on business of moneylending. The

petitioner has set out in paragraph 1 of his petition the several houses in different wards of the town of Malkapur. Education cess is being demanded by the Malkapur Municipal Council from the petitioner since October 1962 at the rate of two per cent of the annual letting value of lands and buildings owned by the petitioner within the limits of the Malkapur Municipal Council. By a notice dated 16-2-1965 an amount of Rs. 775.00 was demanded by the Municipal Council towards the education cess for the period 1962-63 to 1964-65 along with other municipal taxes. The petitioner protested against the said demand contending that it was illegal and ultra vires and requested the Municipal Council to withdraw the demand or education tax. The petitioner, however, was further served with other demand bills dated 2-12-1966 for Rs. 190 and Rs. 174 for the years 1965-66 and 1966-67 respectively on account of the education tax and the petitioner was further pressed to pay the education tax for the period 1962-63 to 1964-65, in order to avoid any coercive process, the petitioner is alleged to have paid under protest on 3-12-1966 an amount of Rs. 775.50 towards the education cess for the years 1962-63 to 1964-65. The petitioner again received another demand bill on 19th December 1966 for Rs. 82 towards the education tax for the period 1965-66 and 1966-67. The representation by the petitioner to the Chief Officer of the Municipal Council was rejected on or about 5th January 1967. The petitioner again received another demand bill dated 21st of January 1967 for Rs. 364-50 towards the education tax with a threat that in case of failure to pay the amount, the amount would be recovered by issuing a warrant under the provisions of the Maharashtra Municipalities Act, 1965. The petitioner has given a schedule in paragraph 7 of his petition showing the amount of education cess or tax paid by him or demanded of him during each of the years 1962-63 to 1966-67. The education cess demanded for 1962-63 for the second half was Rs. 153.50, for 1963-64 was Rs. 307, for 1964-65 Rs. 295, for 1965-66 Rs. 223 and for 1966-67, it was Rs. 223. In view of the demand made by the Municipal Council for the unpaid education cess, coupled with the threat by the Municipal Council to recover the amount by coercive process, the petitioner is led to file this writ petition for the reliefs claimed by him as stated above.

3. The petitioner's contentions are: (1) The Maharashtra Education (Cess) Act, 1962, Act No. XXVII of 1962, is ultra vires the powers of the state Legislature of Maharashtra because the state List prescribed under the Seventh Schedule of the Constitution of India does not empower the state to impose education tax; (2) The imposition of education tax by the State of Maharashtra offends the directive principles laid down under Article 45 of the Constitution of India. It was urged that the Constitution directs that education should be free and this implies that no direct impost could be levied by the state and the expenditure has necessarily to be met from the general revenue raised by the State. As a part of the same contention, it has been urged that it is the duty of the respondent No. 1 under the Constitution to impart education and that the direct taxes could not be imposed for carrying out the said duty when the general revenue was provided for meeting the same. (3) The imposition of education tax exempting

lands and buildings having annual letting value less than Rs. 75 and without any maximum per annum and in direct proportion to the annual letting value of the lands and buildings irrespective of any services rendered or not to the assessee is ultra vires of the Constitution of India. It was stated that the impost was strictly in the nature of tax and not fee, (4) The education tax is a tax on houses and lands in direct relation to the annual letting value of the same and such levy being exclusively reserved for the public authorities or local bodies for their purposes, the state had no jurisdiction for the same. These are, in substance, the contentions which are advanced on behalf of the petitioner. It is also urged that the Act does not provide for giving any opportunity at any stage to the assessee to raise objections to the assessment or to dispose of any such objection, if raised, and therefore, the Act offends against the accepted principles of natural justice and the assessment lists prepared have no legal force so far as the education cess is concerned, as there are no guiding principles prescribed under the Act for the levy of the assessment of these taxes.

4. The Maharashtra Education (Cess) Act, 1962, Act No. 27 of 1962, has been enacted by the state Legislature and was published on or about the 13th August 1962. This Act has been made, as will appear from the preamble, for providing for the creation of a fund for the promotion of education in the state of Maharashtra, and for matters connected with the purposes aforesaid. Section 3 of the Act provides that for the purpose of providing for the cost of promoting education in the state of Maharashtra there shall be levied and collected in the manner hereinafter provided, the taxes in the next succeeding section described as the "Education Cess". The levy and collection was to be made with effect from the 1st of October 1962 and the levy was made on the basis of two per cent of the annual letting value of lands and buildings. Section 4 mentions this levy to be a tax on lands and buildings. Section 5 (1) provides that where more than one land or building in a municipal area is owned by the same person, the tax on lands and buildings shall be assessed on the annual letting value of all such lands and buildings. Section 6 provides that the proceeds of the Education Cess and penalties (not being a fine)" recovered under this Act shall first be credited to the Consolidated Fund of the State; and after deducting the expenses of collection and recovery shall, under appropriation duly made by law in this behalf, entered in, and transferred to, a separate fund called the state Education Cess Fund and the amount transferred to the state Education Cess Fund shall be charged on the Consolidated Fund of the state and further, the amount in the Fund shall be expended, in such a manner and under such conditions as may be prescribed, for the purposes mentioned in Section 3, that is, for promoting the education in the state of Maharashtra. Section 9 (1) (b) authorises the municipality to collect the tax and Sub-section (2) (b) provides the machinery for collecting the tax in the same manner in which the property tax is collected in that area under the relevant municipal law", or where no property tax is levied by the municipality, the tax is to be collected in such manner as may be prescribed. Sub-section (3) of Section 9 further authorises the appropriate municipal authority appointed to

collect the property tax on behalf of such municipality to collect the education tax and the penalty. After making the collection, the municipality is to be given such rebate as may be prescribed to compensate the cost of the collection of the tax. From this latter provision, it would appear that the tax is levied by the state Government for augmenting its funds for the purpose of education and the municipality is only a Collecting Agent for the state and after Collection the account has to be credited to the state fund.

5. The main contention of the learned counsel for the petitioner is that the impugned Act is ultra vires of the state legislature as no entry in the state List empowers the state Legislature to make such a law. It is contended that the subject with respect to the levy of the education cess or tax does not fall under any of the entries in the List II or List III or the Seventh Schedule and as such, the state Legislature has no competence to make such a law. It is further contended that the cess contemplated is in fact a tax and as such, it is only the Union that can make such a law and not the State. It is also argued that this cess is in fact a tax on income which is also within the competence of the Union Legislature and the state Legislature has no power to make such a law. It is true that in the impugned Act itself, the Legislature has described this levy as a tax as will appear from the various provisions in the said Act. The cess is in fact a tax and that is so held by the Supreme Court in *Shinde Brothers etc. Vs. Deputy Commissioner and Others, etc.*, and *Ahmedabad Manufacturing and Calico Printing Co. Ltd., Ahmedabad and Others Vs. State of Gujarat and Others*, . Under List II of the Seventh Schedule to the Constitution, the state Legislature is empowered to make laws for the levy of taxes under several entries, such as Entries Nos. 46, 49, 50, 52 to 58 and 60 to 62. Entry No. 11 in List II deals with the subject of education including Universities subject to the provisions of Entries 63, 64, 65 and 66 of List I and Entry 25 of List III. Entry No. 49 provides for taxes on lands and buildings and Entry No. 60 relates to taxes on professions, trades, callings and employments. As has been observed by the Supreme Court in *Raja Jagannath Baksh Singh Vs. The State of Uttar Pradesh and Another*, :

"It is an elementary cardinal rule of interpretation that the words used in the Constitution which confer legislative power must receive the most liberal construction and if they are words of wide amplitude, they must be interpreted so as to give effect to that amplitude. It would be out of place to put a narrow or restricted construction on words of wide amplitude in a Constitution. A general word used in the entry must be construed to extend to all ancillary or subsidiary matters which can fairly and reasonably be held to be Included in it."

6. Article 265 of the Constitution provides that no tax shall be levied or collected except by authority of law. Therefore, for levying and collecting any tax a law has to be made and that law must be made by a Legislature which has competence to make that law. the state Legislature has made this law for the purpose of levying and collecting the education cess and the authority to make such a law is to be found in List II or List III of the Seventh Schedule to the Constitution. Entry

No. 11 in the List n relates to education and the purpose of levying the education cess under the Maharashtra Act is for promoting the education in the state of Maharashtra and it is for this purpose that the impugned Act has been made. Giving a wide amplitude to the word "education" as has been observed by the Supreme Court in the case cited supra, levying and collecting of the cess for the purpose of promoting the education would also be covered by the term "education". If the state is to impart education, it must have funds for the purpose without which it would not be possible for the state to carry on that obligation. Hence whatever is necessary for the purpose of carrying out the main object, that is, of education, would be within the competence of the state Legislature and raising of funds being essential for the purpose of imparting education, the Entry No. 11 in the List II would also take in the said subject, namely, levying and collecting of a cess or tax for the purpose of augmenting the funds. It may be stated, and has been so said, on behalf of the petitioner that the matter of tax would not be covered in Entry No. 11 because in the same List wherever power has been given to impose taxes, it has been so specifically stated in the different entries, for example. Entry No. 46 and onwards in List II, and hence Entry No. 11 could not empower the state Legislature to impose any cess or tax though for the purpose of education. Assuming, however, that the subject of this tax is not covered by Entry No. 11, it can still be brought under Entry No. 49, Entry No. 49 relates to taxes on lands and buildings. The impugned Act in effect levies this tax as a tax on lands and buildings, as would be seen from Section 4 of the Act. This would be found repeated in several provisions of the said Act. This is, therefore, a tax on the lands and buildings just as the municipalities have been authorised to levy and collect conservancy tax, water rate, fighting tax, property tax and other taxes. Though the purpose of this levy is for the promotion of education, the incidence of this tax falls on lands and buildings and is thus a tax on lands and buildings which the state Legislature is competent to impose under Entry No. 49. It is an addition to an existing tax levied by the municipalities under the Maharashtra Municipalities Act or the earlier Municipal Acts prevalent within the different regions of the State. Being a tax on lands and buildings, the state Legislature is competent to make a law in that respect and it cannot be said that the impugned Act is beyond the competence of the state Legislature.

7. It was urged that in cases where a person derives a rental income from his house property, the incidence of this tax would fall on that rental income which is an income of the owner and this tax on such income would amount to an Income Tax which is wholly within the competence of the Union Legislature. It may be that some persons might be deriving income by letting their houses, but the levy is not only on such persons, but also on persons, who occupy their own houses and do not derive any rent from them. Besides, the Act provides that in respect of the education cess which the owner might be required to pay in respect of the house in occupation of the tenants the owner is entitled to charge the said increase on the tenants and thus, it would appear that this is really not a tax on

the income which a person derives as rent, but for the occupation of the lands or buildings and the incident of taxation falls on all persons, whether the person is an owner or a tenant occupying the land or a building. This tax would, therefore, wholly fall within Entry No. 49 of List II of the Seventh Schedule.

8. The next contention that was raised was that Article 45 of the Constitution of India, which is in Chapter of Directive Principles of State Policy in Part IV of the Constitution, places a duty on the state to endeavour to provide for free and compulsory education for all children until they complete the age of fourteen years. It is urged that it being the duty of the state to impart free education to all children, it cannot impose any taxes on the citizens for meeting the expenses of such education. Mr. Mandlekar contended that the cost of education to the children must be met by the state out of the consolidated fund which it collects from the various sources and no tax under the head "Education" could be levied and collected by the State. It is true that the directive principle embodied in Article 45 provides for free education of children, and that is the endeavour that is being made by the state in that direction. The state has provided for free education of children up to the age of 14 years and no fees are recovered from such students. Article 45 only directs the imparting of free education to the children, but does not prohibit collection of taxes for that purpose to meet the expenses of such education from other sources and further a tax on lands and buildings or a tax on professions, trades, callings and employments would be other sources for meeting the expenses of free education. If the state is enjoined to provide for free education for all children, then it must necessarily have funds for carrying out that purpose and it is no answer to say that without levying any further tax, the education must be provided out of the revenues from the consolidated fund. It has to be seen, that this is not the only obligation on the State, but the consolidated fund is required for other obligations which the state has to discharge. The contention of the learned counsel for the petitioner, therefore, on this point cannot be accepted.

9. As regards the third contention that the imposition is in direct proportion to the annual letting value of the lands and buildings irrespective of any services rendered or not to the assessee and hence the imposition is ultra vires, the same reasoning will apply as on the first point. The new imposition is, a tax on lands and buildings just as a property tax is imposed on lands and buildings under the Municipalities Act. The property tax has also no relation to the services rendered, but is a tax on the property itself, which is authorised by Entry No. 49 in List II and the impugned Act cannot be held ultra vires on that account, as contended on behalf of the petitioner.

10. The next contention is also similar to the one already dealt with. It is true that the education tax is levied on a percentage basis on the annual letting value of the lands and buildings, but that is a mode of determining the quantum of tax imposed on the person who owns lands and buildings. None-the-less, it is a tax on lands and buildings and not on the income, as contended by the petitioner or

exclusively reserved for local bodies. For the purposes of carrying out the municipal administration, the state Legislature has passed the Maharashtra Municipalities Act and in order to meet the needs of the administration has made provision authorising the Municipal Councils or Municipal Committees to raise the revenue and conservancy, water rate, property tax etc., are some of the taxes which the Municipalities are authorised to levy for their purposes. The obligation to give free education is cast on the state by the directive principles and therefore, it is the state which has to meet the expenses for providing free education. the state has got the power to impose tax on lands and buildings and that power cannot be taken away because part out of it has been given to the, local bodies. the state is not divested of its power to impose tax on lands and buildings because the state has also authorised the municipalities to levy some taxes on lands and buildings. That power is, for all the time, preserved to the state and the state is empowered to make this law which is impugned in this case.

11. The next ground that is urged was that there is no machinery provided for the manner of levying or imposing the taxes. There is no opportunity afforded to the taxpayers to raise any objections nor any machinery provided to hear and decide those objections to the levy of the tax. It was also contended that there is no machinery for the determination of the tax by providing any method in the Act itself. It has to be noticed that this Act provides for levy of certain percentage on the annual letting value of the lands and buildings which annual letting value is already determined by the municipalities in respect of each land and house for the purposes of levying and collecting the municipal taxes such as conservancy, water rate, the property tax etc. It was not, therefore, necessary to evolve an independent method for the purpose of determining the quantum of the assessment to be imposed on lands and buildings afresh for the purpose of the education cess. Under the Municipalities Act, the machinery is provided for dealing with the objections which might be raised by the tax-payers to the valuation of the lands and buildings and for the determination of the annual letting value of the lands and buildings. That opportunity having been provided, it is not necessary to provide further opportunity by this Act for raising objections to the annual letting value.

12. A similar objection was raised in a case arising in the state of Gujarat in Ahmedabad Manufacturing and Calico Printing Co. Ltd., Ahmedabad and Others Vs. State of Gujarat and Others, which was also a case under the Gujarat Education Cess Act and has finally been decided by the Supreme Court. It was urged there that the Education Cess Act was bad because it was not self-contained in the matter of assessment. It did not provide its own procedure of assessment and did not give the tax-payers an opportunity for putting forward their objections by way of representation, appeal or otherwise before the tax was finally fixed and hence offered the principles of natural justice. While dealing with the contention, the Supreme Court held :

"The cess is nothing more than an addition to existing taxes. As it is a percentage of another tax, the determination of the cess is not by an independent assessment. It is an arithmetical calculation based on the result of assessment under other Act or Acts. Those Acts allow the raising of objections and provide for appeals. It is only the result of assessment after scrutiny, objection and appeals which forms the basis for the application of a percentage. There is no need for further scrutiny, objection or appeals. Nor is the Cess Act bad because it is not self-contained in the matter of assessment. In all cases of imposition of cesses for special administrative purposes (such as health cess, road cess, education cess, etc.) this method is followed. Being an addition to another tax this is the only method possible. The legislation on the subject of the imposition, levy and collection of a cess is made complete by incorporation of and reference to another piece of legislation.

This practice is neither ineffective nor unconstitutional and cannot be said to be bad."

It will thus be seen that this contention of the petitioner also had no force.

13. Lastly, it was urged that the education tax in excess of Rs. 250 could not be recovered from the petitioner in any one year as it would offend the provisions of Article 276 of the Constitution. Article 276(2) provides that the total amount payable in respect of any one person to the state or to any one municipality, district board, local board or other local authority in the state by way of taxes on professions, trades, callings and employments shall not exceed two hundred and fifty rupees per annum. The contention of the petitioner is that the letting of houses by the petitioner and deriving income from them is a profession or a calling of the petitioner and hence even if each house which he owns were to be assessed to tax separately, the total amount of tax could not exceed Rs. 250 in one year. This would be so if the said Act would fall wholly under Entry 60 of List II of the Seventh Schedule and would not be covered by any other entry. We have already held that this subject is wholly covered by Entry No. 49 relating to tax on lands and buildings and the Supreme Court has also held in the Gujarat case referred to above that it is an addition to the existing tax on lands and buildings and hence it would fall under Entry No. 49. There is no limit fixed so far as taxes falling under Entry No. 49 are concerned and the tax payable by the petitioner could not be limited to Rs. 250, as contended by him and Article 276(2) of the Constitution would have no application to the present case.

14. On the basis of Sub-section (1) of Section 5 of the impugned Act it was contended that if a person owns more than one land and building in a municipal area, the tax on the lands and buildings has to be assessed on the annual letting value of all such lands and buildings and hence, it is contended that the sum total of the annual letting value of all the lands and buildings has to be taken for imposing a total tax on the owner and that tax should not exceed Rs. 250 as provided by Article 276(2) of the Constitution. It appears that this provision has been made for facilitating the demand to be made on the owner owning more

than one land or building and for the facility of recovering the said tax, which has nothing to do with the limit of tax provided in Article 276(2) of the Constitution. We do not see any force in this contention also. None of the contentions raised on behalf of the petitioner can, therefore, be accepted and in our opinion, the petitioner is not entitled to any of the reliefs claimed by him.

15. The petition thus fails and is dismissed with costs.

16. Petition dismissed.