

(1966) 03 RAJ CK 0005

In the Rajasthan High Court

Case No : Civil Writ Petition No"s. 189 and 204 of 1965

Ratan Chand and Others

APPELLANT

Vs

Panchayat Samiti and Others

RESPONDENT

Date of Decision : 23-03-1966

Acts Referred:

Constitution of India, 1950 — Article 19(1), 276
Rajasthan Panchayat Samitis (Taxation) Rules, 1960 — Rule 10, 12, 13, 14
Rajasthan Panchayat Samitis and Zila Parishad Act, 1959 — Section 33(2)

Citation : AIR 1967 Raj 142

Hon'ble Judges : Jagat Narayan, J

Bench : Single Bench

Advocate : G.C. Kasliwal, General and Raj Narain, Deputy Govt., H.C. Jain and J.K. Jain, for the Appellant; Raj Narain, Deputy Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

Jagat Narayan, J.—These are sixteen connected writ petitions under Article 226 of the Constitution for a number of reliefs in regard to the tax on money lending imposed by the Panchayat Samiti, Sojat, on the petitioners. The petitions have been contested on behalf of the respondents.

2. Section 33(2)(i) of the Rajasthan Panchayat Samitis and Zilla Parishads Act, 1959 empowers the Panchayat Samiti to impose and levy in the prescribed manner a tax on such trades, callings, professions and industries as may be prescribed. The Rajasthan Panchayat Samitis Taxation Rules 1960 (hereinafter referred to as the Rules) were framed prescribing the manner of imposition and levy of taxes. The schedule attached to these Rules prescribes the trades, callings, professions and industries on which tax may be imposed and also lays down the maximum rate per annum of such tax. The maximum tax leviable on money lenders is Rs 200 per annum.

3. On 19-9-61 the Panchayat Samiti passed a resolution under Rule 3 of the

Rules proposing to impose a tax on money lenders at the following rates : -

(12) Income Rs. 1,000 to Rs. 5,000 Rs. 100 P. A. (13) Income Rs. 5,000 to Rs.10,000 Rs. 150 P. A. (14) Income above Rs. 10,000 , Rs. 200 P. A.,

Objections against the above proposals were Invited and were considered by the Panchayat Samiti at its meeting dated 18-11-61 and final resolution under Rule 6 was passed on that date imposing a tax on money lenders at Rs. 2 per cent of the annual income upto a maximum of Rs. 200. Money lenders having annual income of Rs. 1,000 or less were exempted. Taxes for 3 years were demanded from the petitioners in 1965.

4. The validity of the imposition and levy of the taxes is challenged on behalf of the petitioner's on a number of grounds.

5. The first ground is that the Panchayat Samiti did not decide the objections on merits and that a fresh proposal was put forward by the Collector at the meeting of the Panchayat Samiti dated 18-11-61 which was not published and the people affected thereby had no opportunity of filing any objection against it. On behalf of the respondents it is stated that the Collector did not put forward any fresh proposal.

6. What is mentioned in the resolution of the Panchayat Samiti dated 18-11-61 in this regard is that the Collector Pali put forward a suggestion about the imposition of taxes which was full of substance and that he explained at length why it was necessary to levy them. In the absence of an assertion by the petitioners that the Collector put forward some fresh proposal I am unable to hold that he did so. The resolution shows that the objections which had been filed against the imposition of taxes were placed before the Panchayat Samiti along with the comments of the Block Development Officer. They must have been duly considered by the Panchayat Samiti before it passed its final resolution imposing taxes. This ground has therefore no force.

7. The next ground is that the tax on money lenders amounts to a tax on income and as the Legislature did not expressly authorise the imposition of this tax on the basis of the annual income from money lending the imposition is invalid. This matter was considered in *Firm Jalanchand Deepchand v. Rajasthan State*, ILR (1964) 14 Raj 265 and the imposition of this tax on money lenders was held to be constitutionally valid.

8. The next contention is that Rule 10 provides for the recovery of tax in two half, yearly equal instalments and that taxes which have fallen in arrears cannot be recovered. Rule 10 runs as follows:

"Due dates of Taxes--(1) The tax on rent and rental value as provided in Clauses (a), (b) and (c) of Sub-rule (2) of Rule 3, shall become due on the dates on which the land revenue falls due.

(2) The tax on trades, callings, professions and industries shall be realised half-

yearly in two equal instalments and shall fall due on 1st May and 1st December every year.

(3) The primary education cess shall be realised annually and shall fall due, on 1st of December every year."

9. It only lays down that the tax shall be realised half yearly in two equal instalments which shall fall due on 1st May and 1st December every year. The intention behind this rule clearly is that tax for a particular year is recoverable before the expiry of that year in two instalments falling due on 1st May and 1st December of that year. It does not mean that if no demand is made during the year for which tax is recoverable then it cannot be recovered in the next year. The Panchayat Samiti is entitled to recover the tax for 3 years which has already fallen due.

10. The next ground is that Rules 12, 13 and 14 of the Rajasthan Panchayat Samitis Taxation Rules provide no machinery for the proper assessment of the tax and that the assessment is consequently invalid levy based On it being hit by Article 19(1)(f) of the Constitution. These rules run as follows:

"Rule 12. Preparation of demand and conducting of census of assesseees.--(1) The Patwari shall prepare a demand in Form I and before preparing the demand (assessment of taxes), a census of all the persons, companies, corporations, factories and other concerned including societies affected by the tax on trades, callings, professions and industries and of families for the primary education cess shall be conducted by the Patwari within his jurisdiction in the month of September every year

(2) (a) Before conducting the census as mentioned in the sub-rule above, the Patwari. In consultation with the Sarpanch of the Panchayat shall draw a programme and notify it by affixing a copy of it at a conspicuous place in the villages or area of which he proposes to conduct the census.

(b) The Patwari shall furnish a copy of the aforesaid programme to the Sarpanch of the Panchayat concerned requesting him to supervise the census

(c) The Sarpanch shall supervise such census personally as far as possible. In case of his inability to do so he may nominate a Panch of the Panchayat.

Provided that if the Sarpanch or a Panch authorised by the Sarpanch does not supervise such census the Patwari himself will do the same.

(d) When the census is over, the Sarpanch shall verify it that it is complete and correct.

Provided that if the Sarpanch does not verify the census within 15 days then the census prepared by the Patwari shall be treated to have been done as required by this rule."

"Rule 13. Approval of assessment by Tehsil dars.--The Tehsildar, after the

demand has been prepared by the Patwari, shall check it and make corrections, if any, and shall after approval forward a copy of such demand (assessment) to the Patwari/Collection Amin as the case may be, with an order of realisation. A copy of the same shall also be sent by the Tehsildar to the Panchayat Samiti for Its information."

"Rule 14, Issue of Demand Slip.--The tax or taxes shall be entered in the demand slip form II and shall be issued along with the Land Revenue Demand.

Provided that in case the dates of realisation of any tax or taxes do not coincide, with the realisation of the Land Revenue, Demand slip for such tax or taxes shall be issued separately."

11. There is a provision for filing an appeal under Rule 36 which runs as follows:

"An appeal against all orders of assessment by the Tehsildar shall lie to the Panchayat Samiti within sixty days from the date of receipt of the demand slip:

Provided that no appeal shall be, heard if the tax has not been deposited."

12. It is alleged on behalf of the petitioners that the Patwari neither drew up any programme nor notified it nor did he prepare a census as provided under Rule 12. Further that he neither made -any enquiry from the petitioners as to what their income from money lending was nor inspected their account books before preparing the demands These allegations were vaguely denied on behalf of the respondents, but no material was produced in support of this denial it was not asserted by them affirmatively either that the procedure proscribed under rules 12 and 13 was followed or that the Patwari made any enquiry from the petitioners about their income The petitioners applied for a copy of the census report of the Patwari, but it was not supplied Nor has any record of the proceedings taken under Rules 12 and 13 been placed before this court I accordingly hold that even procedure prescribed by Rule 12 was not followed by the Patwari and no enquiry was made by him from the petitioners as to their income from money lending. The assessment made by the Patwari is thus purely based on conjecture Three of the money lenders preferred appeals against the assessment made by the Patwari. Annexures A1, A2 and A3 are the copies of the decisions of the Panchayat Samiti allowing those appeals. These decisions corroborate my finding that the assessment was based by the Patwari purely on his conjecture. This is further shown by the fact that the Patwari has assessed the petitioners in writ petitions Nos. 189 to 197 on an income of above Rs. 10,000/- per year from money lending alone, None of these petitioners has been assessed to any income tax. It is not disputed that the assessment of a tax on a person is a quasi-judicial matter. If a person is assessed to tax without giving him a hearing the levy of tax based on such an assessment imposes an unreasonable restriction on his right to hold property and is violative of Article 19(1)(f) of the Constitution,

13. In *K.T. Moopil Nair v. State of Kerala* AIR 1961 Ker 552 the constitutionality

of the Travancore-Cochin Land Tax Act No. 15 of 1955 was challenged inter alia on the ground that the Act did not lay down any provision calling for a return from the assessee or for any enquiry or investigation of facts before the provisional assessment, is made. This challenge was upheld by their Lordships of the Supreme Court. The following observations were made in para 9 of the AIR Report:

"The provisions of the Act are unconstitutional viewed from the angle of the provisions of Article 19(1)(f) of Constitution also. Apart from the provisions of Sections 4 and 7 discussed above, with reference to the test under Article 14 of the Constitution, we find that Section 5(a) is also equally objectionable because it imposes unreasonable restrictions on the rights to hold property safeguarded by Article 19(1)(f) of the Constitution. Section 6 (a) declares that the Government is competent to make a provisional assessment of the basic tax payable by the holder of unsurveyed land. Ordinarily a taxing statute lays down a regular machinery for making assessment of the tax proposed to be imposed by the statute. It lays down detailed procedure as to notice to the proposed assesses to make a return in respect of property proposed to be taxed, prescribes the authority "and the procedure for hearing any objections to the liability for taxation or as to the extent of the tax proposed to be levied, and finally as to the right to challenge the regularity of assessment made by recourse to proceedings in a higher Civil Court. The Act merely declares the competence of the Government to make a provisional assessment and by virtue of Section 3 of the Madras Revenue Recovery Act, 1864, the land holders may be liable to pay the tax. The Act being silent as to the machinery and procedure to be followed in making the assessment leaves it to the Executive to evolve the requisite machinery and procedure. The whole thing from beginning to end is treated as of a purely administrative character, completely ignoring the legal position that the assessment of a tax on person or property is at least of a quasi-judicial character, Again, the Act does not impose an obligation on the Government to undertake survey proceedings within any prescribed or ascertainable period, with the result that a land-holder may be subjected to repeated annual provisional assessments on more or less conjectural basis and liable to pay the tax thus assessed. Though the Act was passed about five years ago, we were informed at the Bar that survey proceedings had not even commenced. The Act thus proposes to impose a liability on the land-holders to pay a tax which is not to be levied on a judicial basis, because (1) the procedure to be adopted does not require a notice to be given to the proposed assessee; (2) there is no procedure for rectification of mistakes committed by the Assessing Authority; (3) there is no procedure prescribed for obtaining the opinion of a superior Civil Court on questions of law, as to generally found in all taxing statutes, and (4) no duty is cast upon the Assessing Authority to act judicially in the matter of assessment proceedings. Nor is there any right of appeal provided to such assesseees as may feel aggrieved by the order of assessment."

The Rajasthan Panchayat Samitis Taxation Rules 1960 do provide for an appeal

against the assessment. But under these Rules the assessment itself is treated as an executive matter. The procedure for assessment has to be quasi-judicial. An opportunity has to be provided to the assessee to contest the proposed assessment. Failure to do so renders the assessment void. This defect is not rectified by providing an appeal.

14. I accordingly hold that the assessments made against the petitioners are void and quash the demand notices. Further I restrain the Panchayat Samiti Sojat from recovering any tax on money lending from the petitioners in future till the Rules suitably amended so as to provide for-

- (1) calling for a return from the assessee
- (2) holding a quasi-judicial enquiry before the assessment is made, and
- (3) casting a duty on the Assessing Authority to act judicially in the matter of assessment.

The writ petitions are allowed in part as indicated above, with costs. The petitioners shall be entitled to recover a sum of Rs. 500/- as lawyer's fee from the respondents.