
(1983) 07 RAJ CK 0026

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2036 of 1974

Ratan Rice and Flour Mills

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 20-07-1983

Acts Referred:

Constitution of India, 1950 — Article 14

Income Tax Act, 1961 — Section 80HH, 80HHA, 80J, 80K

Citation : (1985) 59 STC 131 : (1983) WLN 589

Hon'ble Judges : Dwarka Prasad, J

Bench : Single Bench

Advocate : M.L. Shrimalee, for the Appellant; S.C. Bhandari and S.S. Bhandawat, Deputy Government Advocate, for the Appearing Parties

Final Decision : Allowed

Judgement

Dwarka Prasad, J.—The only question which has been canvassed by the learned Counsel for the petitioner in this writ petition is that the provisions of Section 5CC of the Rajasthan Sales Tax Act, 1954 (hereinafter referred to as "the Act") is violative of the guarantee of equality of law enshrined in Article 14 of the Constitution. Learned Counsel argued" that at least that part of Section 5CC, by which the provisions of said section has been made applicable to the industries commissioned on or after 1st day of March, 1970 must be struck down as there is no rational principle for classifying industries on the basis of their being commissioned on or after March 1, 1970. In other words, the fixation of March 1, 1970 as the starting point of the benefit envisaged under the provisions of Section 5CC is alleged to be arbitrary and as such discriminatory and violative of the provisions of Article 14 of the Constitution.

2. Section 5CC was inserted in the Rajasthan Sales Tax Act by Section 4 of the Amending Act No. 5 of 1970, which came into force with effect from April 20, 1970. Section 5CC, as it was enacted by Act No. 5 of 1970 reads as under :

5CC. Remission of tax on raw material for specified period.--(1) Notwithstanding

anything contained in Section 5 or 6A, but subject to such restrictions and conditions as may be prescribed, no tax shall be payable by a registered dealer who commissions any notified industry within the State on or after the first day of March, 1970, but before the 31st day of March, 1974, on sale to or purchase by him of any raw material up to 31st March, 1979 for the manufacture of goods for sale within the State or in the course of inter-State trade or commerce or in the course of export out of the territory of India.

(2) Where any raw material purchased by a registered dealer under Sub-section (1) is utilised by him for any purpose other than a purpose specified therein, such dealer shall be liable to pay as penalty, such amount, not less than the amount of tax on the sale of such raw material at the full rate applicable thereto u/s 5, but not exceeding $1\frac{1}{4}$ times the amount of tax at such full rate, as the assessing authority may determine, having regard to the circumstances in which such use was made.

Explanation.--For the purpose of this section "notified industry" means an industry notified by the State Government in this behalf.

3. In pursuance of the explanation to Section 5CC, the State Government issued a notification on July 1, 1970 stating that all industries with new units shall be treated as notified industries for the purpose of Section 5CC. It may be pointed out here that Section 5C, which was introduced by the Amending Act No. 13 of 1963, with effect from March 2, 1963 provides that tax payable on the sale to or purchase by a registered dealer, of any raw material for manufacture in the State of goods other than exempted goods for sale within the State or in the course of inter-State trade or commerce, shall be charged at a concessional rate of 1 per cent of sale or purchase price of such raw material. Section 5CC was subsequently introduced and in the case of new units of industrial establishments set up on or after 1st March, 1970 exemption was allowed from payment of sales tax or purchase tax on the sale or purchase of such raw material, even in respect of the concessional rate of 1 per cent which was chargeable under the proviso to Sub-section (1) of Section 5C. The concessional provisions of Section 5CC were further extended to new industries set up after 31st March, 1974 and before 31st March, 1979. The concession was made to be effective for a period of five years from the date of commissioning of notified industry;

4. The petitioner set up the case that the partnership concern M/s. Ratan Rice and Flour Mills, Sri Vijayanagar was earlier running a small-scale industry of processing rice and grinding flour. Then in the year 1972 it started a new industry for manufacture of til oil and that both the units set up by the petitioner, namely, the rice mill as well as the oil expeller, were entitled to the benefit of the provisions of Section 5CC of the Act and that the fixation of 1st March, 1970 as the date of commencement for conferring the benefit of the provisions of Section 5CC was arbitrary and without any rational basis.

5. The Assistant Sales Tax Officer, Raisinghnagar, found that the petitioner-

company set up a rice mill in the year 1967 and in July, 1968 the petitioner-firm also set up an oil expeller. Thus, although the petitioner-firm was registered with the Registrar of Firms on March 16, 1972 yet both the units set up by the petitioner, namely, the rice mill as well as the oil expeller were old units, which had already been in existence prior to the coming into force of Section 5CC and much before the stipulated date, i. e., March 1, 1970. The State Government in its reply explained that Section 5CC was introduced in order to encourage the setting up of new industries in the State of Rajasthan and as such exemption was given even in respect of the concessional rate of 1 per cent to all persons setting up new industries. It was argued by Mr. Bhandari on behalf of the State Government that the provisions of Section 5CC were neither arbitrary nor ultra vires but they have reasonable nexus to the object sought to be achieved.

6. On the other hand Mr. Shrimalee, appearing for the petitioner, submits that the provisions of Section 5CC are per se discriminatory because a distinction is sought to be made between old and new industries and the benefit of the provisions of Section 5CC has been bestowed to industries commissioned after March 1, 1970 but the same was denied to industries which may even have been commissioned a day before. Thus, according to the learned Counsel, there was no rational object behind fixing March 1, 1970 as the date with reference to which industrial units would be allowed benefit of the provisions of Section 5CC.

7. The explanation of the State for fixing March 1, 1970 as the date with reference to which the benefit of the provisions of Section 5CC was made available is that the State of Rajasthan formulated in the month of March, 1970 a legislative policy of providing an incentive to persons setting up new industrial units in the State and then a Bill to that effect was introduced in the State Legislative Assembly, which after being passed by the Legislative Assembly became law on April 20, 1970. Thus, according to the State the benefit of the provisions of Section 5CC were made applicable to new industrial units set up after March 1, 1970 because at that time the State Government formulated the legislative intent to encourage the entrepreneurs for the establishment of new industrial units. Although Section 5CC speaks of notified industries, yet the notification, which was issued by the State Government on July 5, 1970 in pursuance of the explanation to Section 5CC made it clear that all new industrial units would be treated as notified industries for the purposes of Section 5CC. Thus, the benefit of remission of tax on purchase of raw materials was made available to all new industrial units commissioned on or after March 1, 1970.

8. Learned Counsel for the petitioner relied upon the decisions of their Lordships of the Supreme Court in D.R. Nim, I.P.S. Vs. Union of India (UOI), Union of India (UOI) and Another Vs. Parameswaran Match Works and Others, and Jaila Singh and Another Vs. State of Rajasthan and Others, as also in D. 5. D.S. Nakara and Others Vs. Union of India (UOI), in support of his contention that a person cannot be deprived of the benefit applicable to industries merely because of the fixation of an arbitrary date in Section 5CC, based on wholly irrelevant

consideration. According to the learned Counsel no discrimination can be made between industries already established in the State of Rajasthan before March 1, 1970 and new industries established thereafter March 1, 1970 and it was argued that the date of commission of an industry and no nexus to the object sought to be achieved by the provision. In *D.R. Nim, I.P.S. Vs. Union of India (UOI)*, no justification offered on behalf of the Union of India for fixing May 19, 1951 as the date from which the officers of the State Police force were to count their seniority. Their Lordships of the Supreme Court observed as under in the aforesaid case:

It would be noticed that the date, May 19, 1951, to begin with, had nothing to do with the finalisation of the Gradation List of the Indian Police Services because it was a date which had reference to the finalisation of the Gradation List for the I. A. S. Further this date does not seem to have much relevance to the question of avoiding the anomalous position mentioned in para 9 of the affidavit, reproduced above. This date was apparently chosen for the I. A. S. because on this date the Gradation List for all the earlier persons recruited to the Service had been finalised and issued in a somewhat stable stage. But why should this date be applied to the Indian Police Service has not been adequately explained. Mr. B. R. L. Iyengar, the learned Counsel for the appellant, strongly urges that selection of May 19, 1951, as a crucial date for classifying people is arbitrary and irrational. We agree with him in this respect.

9. In *Union of India (UOI) and Another Vs. Parameswaran Match Works and Others*, their Lordships held that benefit of the concessional rate of excise duty was made available to the manufacturer of matches on the condition that he should give a declaration that the total clearance from his factory would not exceed 75 million matches during a financial year. The notification was amended subsequently to give benefit of the concessional rate of duty to bonafide small manufacturers whose total clearance was not estimated to be in excess of 75 million matches during a financial year. Their Lordships upheld the classification on the ground that the concessional rate of duty was intended to be given to small bona fide units which were already in the field when the amending notification was issued and that the concessional rate of duty was not intended to be applied so as to benefit the large units, which may be split up into smaller units merely in order to earn the concession. On the question of fixation of the date as the basis of classification, their Lordships observed as under :

The choice of a date as a basis for classification cannot always be dubbed as arbitrary even if no particular reason is forthcoming for the choice unless it is shown to be capricious or whimsical in the circumstances. When it is seen that a line or a point there must be and there is no mathematical or logical way of fixing it precisely, the decision of the Legislature or its delegate must be accepted unless it can be said that it is very wide of any reasonable mark.

10. In *Jaila Singh and Another Vs. State of Rajasthan and Others*, their Lordships of the Supreme Court struck down the classification of tenants, for the purpose

of allotment of land, as pre-1955 and post-1955 in the Rules made under the Rajasthan Colonisation Act, 1954 as discriminatory. It was observed by their Lordships in that case that pre-1955 and post-1955 tenants stood on the same footing and they did not constitute different classes and as such the division of tenants into two categories was made on wholly irrelevant considerations. It was held in that case that from the point of view of allotment of land, no difference could be made on the ground that the tenant was in occupation of such land for either 16 years or 18 years or 20 years. Thus, the classification of tenants for the purpose of allotment of land, with reference to October 15, 1955 was considered to be both arbitrary as also discriminatory on the ground that such a classification was not related to the object sought to be achieved.

11. In *D.S. Nakara and Others Vs. Union of India (UOI)*, the question which arose for consideration before their Lordships of the Supreme Court was as to whether the eligibility criteria devised for the grant of liberalised pension, namely, retirement after a particular date was violative of Article 14 of the Constitution on the ground of being arbitrary and discriminatory. Their Lordships of the Supreme Court held that pension to civil employees and defence personnels was granted by way of compensation for services rendered in the past and is closely akin to wages, as it serves the purpose of providing to the recipient the means to meet the expenses of living. It was held that pension payable to a government employee is earned by him by rendering long and efficient services and can be said to be a deferred portion of the compensation for services already rendered. Their Lordships held that pension was neither a bounty nor a matter of grace, depending upon the sweet will of the employer nor it was an *ex gratia* payment, but it was in the nature of compensation paid for past services and is co-related to the average emoluments drawn during last phases of service. In this view of the matter, their Lordships held that classification of retired government servants, with reference to the date of retirement, was wholly arbitrary for the application of the liberalised pension scheme. In the aforesaid case, their Lordships observed as under :

The principle that when a certain date or eligibility criteria is selected with reference to legislative or executive measure which has the pernicious tendency of dividing an otherwise homogeneous class and the choice of beneficiaries of the legislative/executive action becomes selective, the division or classification made by choice of date or eligibility criteria must have some relation to the objects sought to be achieved. And apart from the first test that the division must be referable to some rational principle, if the choice of the date or classification is wholly unrelated to the objects sought to be achieved, it cannot be upheld on the spacious plea that that was the choice of the Legislature.

12. Thus, it was held in that case that the choice of the date was arbitrary and the eligibility criteria was unrelated to the object sought to be achieved and the part of the liberalised pension scheme restricting its application to government servants who were in service on March 31, 1979 and who retired from service on

or after that date, was struck down with the result that the liberalised pension scheme was made applicable to all pensioners governed by the relevant rules, irrespective of the date of their retirement.

13. Now, it is firmly established by a series of decisions of the Supreme Court that Article 14 forbids class legislation but it does not forbid reasonable classification for the purpose of legislation. In order to pass the test of permissible classification, two conditions must be fulfilled, namely, (1) the classification must be founded upon an intelligent differentia, which distinguishes persons or things that are grouped together from those which are left out of the group, and (2) the differentia must have a rational relationship with the object sought to be achieved by that legislation. Thus, all classifications are not prohibited and every classification is nor per se bad or violative of Article 14 of the Constitution. But every classification must pass the twin test referred to above. In the cases relied upon by the learned Counsel for the petitioner, it was so apparent that the date fixed for classifying persons or things into two categories was wholly arbitrary and there was no acceptable or persuasive reason for making the division of same kind of persons or things into two groups of classes. In *D.S. Nakara and Others Vs. Union of India (UOI)*, the liberalised pension scheme was brought into being, so that the retired government employees could be better equipped to combat the spiral of rising prices and falling purchasing power of the rupee. It was in fulfilment of the socio-economic justice that the liberalisation of the pension scheme was introduced. Looking to the object of the scheme, there was no justification for any arbitrary selection of persons to be benefited by the scheme and of division of pensioners, with reference to those falling on the one or other side on the specified date. Every retired government employee suffered the pinch of the rising prices and falling purchasing power of the rupee in the same manner, irrespective of the date of his retirement and there was obviously no reason as to why the benefit of the liberalised pension scheme should be allowed to government servants who retired after a particular date.

14. I may also refer in this context to the decision of their Lordships of the Supreme Court in *D.G. Gose and Co. (Agents) Pvt. Ltd. Vs. State of Kerala and Another*, In that case the question of validity of the imposition of building tax in the State of Kerala with effect from April 1, 1973 was considered, with reference to Article 14 of the Constitution. Their Lordships held in the aforesaid case that the historical background showed that there was ample justification for choosing April 1, 1973 as the date for the levy of tax and that the Legislature did not act unreasonably nor the date fixed was wide of any reasonable mark.

15. In the present case, the question which requires to be considered is as to what was the object of the Legislature in enacting Section 5CC. Apparently, in the wake of industrialisation, the State Government desired to encourage the establishment of new industrial enterprises and the relief from payment of purchase or sales tax on raw materials was offered as one of the incentives for

the establishment of new industrial units in the State. It is well-known that the State Governments offer various facilities by way of incentives for establishing new industrial units and also provide some relief to the entrepreneurs during the teething period. Similar incentives have been offered by the Union Government in respect of new industrial undertakings in Sections 80HH, 80HHA, 80J and 80K of the Income Tax Act, 1961. The purpose of enacting these provisions is to encourage the establishment of new industrial undertakings and the object is sought to be achieved by granting exemption or concession from tax on profits earned during the first five or ten (now seven) years of their establishment. As has been argued by the learned Counsel appearing for the State, the decision with regard to the legislative policy of providing the concession to encourage the establishment of new industrial units was taken by the State Government in March, 1970 and a bill to that effect was then introduced in the State Legislative Assembly, which became law on April 20, 1970 upon its publication in the Official Gazette. The intendment of the statutory concession is that the Legislature desires to provide an incentive for setting up of new industries in the State, apparently to boost industrial progress. Now, as the object of the new provisions contained in Section 5CC was to encourage the setting up of new industrial undertakings in the State by offering incentives in the form of tax concession, the classification made between already established industries and new industrial units appears to be reasonable one. It may be pointed out that Section 5C provides a uniform concession to all industrial undertakings in the State, inasmuch as only 1 per cent tax was required to be paid on the sale or purchase of raw materials used for the manufacture of goods in the State. The aforesaid concession provided by Section 6C is available also to the existing industrial undertakings in the State and the manufacturer who manufactures goods in the State would be required to pay only 1 per cent tax on purchase of raw material used for such manufacture. A further concession has, however, been provided by Section 5CC totally exempting purchase of raw materials for manufacturing goods for sale within the State or in the course of inter-State trade or commerce, which would be available to new industrial units commissioned after 1st day of March, 1970. As the intention for enacting the provisions contained in Section 5CC was to encourage setting up of new industrial undertakings in the State with a view to provide more industrial growth as also opportunities of employment and increase in production of goods, the enactment has a direct nexus with the object sought to be achieved, namely, to provide incentives in the shape of tax concession to encourage setting up of new industrial undertakings in the State. Thus, it cannot be said that there is a hostile discrimination against old or established industries in enacting the provisions of Section 5CC. Moreover, the new industrial undertakings would enjoy the concession provided by Section 5CC for a restricted period of time specified in that section and the concession would not be available thereafter. The addition of a provision to Section 5CC in the year 1974 is also significant, as it makes clear that the tax concession would be available only for a period of five years from the date of commissioning of the new industrial unit, in case of industries set up after 31st March, 1974 but before

31st March, 1979. The tax concession available under Sub-section (1) of Section 5CC is also limited up to March 31, 1979. Thus, the intention of the Legislature appears to be to allow tax concession or relief by way of exemption from tax to the new industrial units during the period of their infancy, so that they may get some help during their teething period. Thus, it appears that the provisions of Section 5CC are not violative of Article 14 of the Constitution, as those provisions cannot be said to be either arbitrary or discriminatory and they are in the nature of incentives provided for establishment of new industrial units, in the shape of tax concession for a limited period during which the new industrial unit is expected to get firmly established.

16. In view of the aforesaid discussion, there appears to be no substance in the writ petition and the same is dismissed. The parties are, however, left to bear their own costs of this writ petition.