
(1987) 10 KL CK 0054
In the High Court Of Kerala
Case No : O.P. No. 7284 of 1984

S. B. SANKAR

APPELLANT

Vs

STATE OF KERALA AND ANOTHER.

RESPONDENT

Date of Decision : 26-10-1987

Acts Referred:

Constitution of India, 1950 — Article 14
Income Tax Act, 1961 — Section 10

Citation : (1988) 72 CTR 9 : (1988) 171 ITR 689

Hon'ble Judges : P. C. Balakrishana Menon, J

Bench : Division Bench

Judgement

P. C. BALAKRISHANA MENON J. - This original petition is by the managing trustee of the Sree Kombai Subramania Swamy Koil Devasthanam, Madurai. The Devasthanam is a religious and charitable trust situated outside the State of Kerala. The trust owns a cardamom estate in Udumbanchola village in the State of Kerala. The entire income of the trust is to be utilised for religious and charitable purposes in connection with the affairs of the Devasthanam situated in Tamil Nadu. Thus the entire income of the estate situated in kerala and owned by the trust is to be spent for religious and charitable purposes in Tamil Nadu.

The agricultural income derived from the estate was exempted from levy of agricultural Income Tax for the periods up to 1973-74, but from 1973-74 onwards, the income from the cardamom estate is subjected to levy of agricultural Income Tax for the reason that under the amended provisions of section 4(1)(b) of the Agricultural Income Tax Act, such income spent for religious and charitable purpose outside the State of Kerala does not qualify for exemption. Section 4(1)(b) of the Act was amended by the Kerala Act 9 of 1974 which came into force on April 1, 1974. The petitioner challenges the validity of the amended section 4(1)(b) of the Act as violative of article 14 of the Constitution.

Section 3 is the charging section under which the total agricultural income of the

previous year of every person is liable to tax for each financial year subject to the provisions of the Act. As per section 4(1)(b) as it stood prior to the amendment in 1974, agricultural income derived from property held under trust or other legal obligation wholly for religious and charitable purposes was exempt from taxation to the extent such income was applied for such purposes. The Act as amended in 1974 confined the exemption to the extent such income is applied for religious or charitable purposes within the State. Thus the agricultural income derived from property held under religious or charitable trust within the State and spent for such purposes outside the State does not get the benefits of exemption after the Kerala Act 9 of 1974 came into force. According to the petitioner, the exclusion of agricultural income of a religious or charitable trust spent for such purposes outside the State from the exemption u/s 4(1)(b) as amended is discriminatory and is hence is opposed to article 14 of the Constitution.

There is no dispute that the petitioner represents a religious and charitable trust and the trust derives agricultural income from properties held by it within the State. There is also no dispute that such income is spent for religious and charitable purposes outside the State. According to the petitioner, the classification of income as spent within the State and as spent outside the State has no rational basis as in both cases the income is spent for religious and charitable purposes. I do not see any merit in the contention. Section 2, clause (a), defines agricultural income as any rent or revenue or income derived from land used for agricultural purposes. The Act has application only to such income derived from land situated within the State. Section 3 charges the total agricultural income of every person to tax under the Act subject to the exemptions contained in the Act. The exemption u/s 4(1)(b) is available only to the agricultural income contained from land within the State owned by the trust and spent for religious or charitable purposes within the State. In other words, the exemption is available only in regard to the income derived by the trust and spent within the State thus making the benefits of the trust available within the State.

It is now well-established by the decisions of the Supreme Court that while article 14 forbids class legislation, it does not forbid reasonable classification for the purpose of legislation. the classification must be founded on intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and the differentia must have a rational nexus to the object sought to be achieved by the statute in question. The classification may be founded on different bases, it may be geographical or according to objects or occupations or the like (vide *Budhan Choudhry and Others Vs. The State of Bihar*,). Even though taxation law is also subject to article 14 of the Constitution, it has been held that the State has a wide discretion in selecting the persons or objects it will tax and the statute is not open to attack on the ground that it taxes some persons or objects and not others. It is only when within the range of its selection, the law operates unequally, and that cannot be justified on the

basis of any valid classification, that it would be violative of article 14 (vide the decision of the Supreme Court in *East India Tobacco Co. v. State of Andhra Pradesh* [1962] 13 STC 529). Holmes J. in *Bain Peanut Co. v. Pinson* [1930] 282 US 499 :

"We must remember that the machinery of Government would not work if it were not allowed a little play in its joints."

The above observation was quoted with approval by the Supreme Court in *Murthy Match Works and Others Vs. The Asstt. Collector of Central Excise, and Another*, and it was held that "the economic wisdom of a tax is within the exclusive province of the Legislature." The same view is expressed in *The State of Gujarat and Another Vs. Shri Ambica Mills Ltd., Ahmedabad and Another*, , wherein it is stated at page 678 (at p. 1314 of 1974 AIR SC) :

"In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgment."

In *Hoechst Pharmaceuticals Ltd. and Others Vs. State of Bihar and Others*, , the Supreme Court, upholding the validity of section 5(3) of the Bihar Finance Act which imposed a levy of surcharge on every dealer whose annual turnover exceeds Rs. 5 lakhs, stated at page 97 of SCC and p. 1046 of AIR.

"On questions of economic regulations and related matters the court must defer to the legislative judgment. When the power to tax exists, the extent of the burden is a matter for the discretion of the law makers. It is not the function of the court to consider the propriety or justness of the tax, or enter upon the realm of legislative policy. If the evident intent and general operation of the tax legislation is to adjust the burden with a fair and reasonable degree of equality, the constitutional requirement is satisfied. The equality clause in article 14 does not take from the State a power to classify a class of persons who must bear the heavier burden of tax. The classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice it results in some inequalities."

The Supreme Court in the decisions in *G.K. Krishnan and Others Vs. State of Tamil Nadu and Others*, and in *Rathi Khandsari Udyog v. State of U.P.*, : [1985]2SCR966 , has reiterated its view that in the matter of classification, the Legislature has a wide discretion in selecting the persons or objects it will tax and that a statute is not open to attack on the ground that it taxes some persons or objects and not others.

The exemption u/s 10(26)(a) of the Income Tax Act, 1961, confined to income from any source within the tribal areas obtained by the members of the scheduled tribes mentioned therein was upheld by the Supreme Court in the decision in *Income Tax Officer, Shillong and Others Vs. R. Takin Roy Rymbai and Others*, . The question before the Supreme Court was whether the exclusion of income derived by a tribal from an area outside the tribal area from the benefit

of exception was opposed to article 14 of the Constitution. Upholding section 10(26)(a) of the Income Tax Act, the Supreme Court observed at pages 88 and 89 :

"While it is true that a taxation law cannot claim immunity from the equality clause in article 14 of the Constitution, and has to pass, like any other law, the equality test of that article, it must be remembered that the State has, in view of the intrinsic complexity of fiscal adjustments of diverse elements, a considerably wide discretion in the matter of classification for taxation purposes. Given legislative competence, the Legislature has ample freedom to select and classify persons, districts, goods properties, incomes and objects which it would tax, and which it would not tax. So long as the classification made within this wide and flexible range by a taxing statute does not transgress the fundamental principles underlying the doctrine of equality, it is not vulnerable on the ground of discrimination merely because it taxes or exempts from tax some incomes or objects and not others. Nor is the mere fact that a tax falls more heavily on some in the same category, by itself a ground to render the law invalid. It is only when within the range of its selection, the law operates unequally and cannot be justified on the basis of a valid classification, that there would be violation of article 14. (See *East India Tobacco Co. Vs. State of Andhra Pradesh*, ; *Vivian Joseph Ferreira and Another Vs. The Municipal Corporation of Greater Bombay and Others*, ; *Jaipur Hosiery Mills (P) Ltd., Jaipur Vs. The State of Rajasthan and Others*,)."

Referring to the classification in section 10(26)(a) of the Income Tax Act, the Supreme Court held at page 90 :

"Thus, the classification made by the aforesaid sub-clause (a) for purposes of exemption is not unreal or unknown. It conforms to a well recognised pattern. It is based on intelligible differentia. The object of this differentiation between income accruing or received from a source in the specified areas and the income accruing or received from a source outside such areas, is to benefit not only the members of the Scheduled Tribes residing in the specified areas but also to benefit economically such areas."

The object of section 4(1)(b) of the Agricultural Income Tax Act confining the exemption to agricultural income spent within the State is to benefit not only the concerned religious or charitable trust but also for the economic benefit of the utilisation of such income within the State. Section 4(1)(b) of the Agricultural Income Tax Act is perfectly valid and is not opposed to article 14 of the Constitution.

The original petition fails and is dismissed. No costs.