
(1966) 04 P&H CK 0011
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 540-D of 1959

S.B. Gurbaksh Singh

APPELLANT

Vs

Sales Tax Officer and Another

RESPONDENT

Date of Decision : 29-04-1966

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1966) 18 STC 500

Hon'ble Judges : S.K. Kapur, J

Bench : Single Bench

Advocate : A.C. Chawla and Yogeshwar Dayal, for the Appellant; S.N. Shankar and N. Srinivasa Rao, for the Respondent

Judgement

S.K. Kapur, J.—This judgment will dispose of Civil Writ Petitions Nos. 305-D, 436-D, 540-D and 556-D of 1959. The facts of all the petitions need not be set out as the result depends on a common question arising in all the cases, namely, the validity of Rule 28 of the Delhi Sales Tax Rules, 1951. This rule was, however, omitted from 11th November, 1959. The learned counsel for the parties have agreed that whatever be the decision in Civil Writ No. 540-D of 1959, it will cover the other writ petitions. I am, therefore, confining myself to the facts of Civil Writ No. 540-D of 1959.

2. The petitioner is a building contractor carrying on the business of execution of building contracts in the Union Territory of Delhi. For the year 1954-55 the petitioner was assessed to sales tax of Rs. 13,945-14-0 on part of the payments received by him on account of the execution of various building contracts. Besides that, a penalty of Rs. 200 was also imposed on the petitioner by an order of the Sales Tax Officer dated 8th December, 1955, for nonfiling of returns. Sale price liable to sales tax was determined in accordance with Rule 28 of the Delhi Sales Tax Rules, 1951. After various proceedings by way of appeals and revisions the matter was sent back to the Sales Tax Officer to reexamine the case, who, with respect to the year 1954-55, determined the sale price in accordance with

Rule 28. It is not disputed that in case Rule 28 is held ultra vires, the assessment order will have to be quashed. It is further alleged in the petition that the Assessing Authority proposes to make assessments for the years 1955-56 and 1956-57 also in accordance with Rule 28. Rule 28 is in the following terms :-

In computing the sale price for the carrying out of any such contract, as is referred to in Sub-Clause (i) of Clause (h) of Section 2, a dealer may deduct from the amount payable to him as sale price for the carrying out of any contract:-

(1) in the case where the registered dealer produces to the satisfaction of the appropriate Assessing Authority evidence showing the cost of materials and the cost of labour used in respect of such contract, the sum obtained by multiplying the amount so payable by $\frac{Y}{X+Y}$ where X is the cost of materials used in the execution of the contract and Y is the cost of labour employed ; or

(2) in other cases, the following percentages of the amount payable, namely :-

(a) in the case of an electrical contract-20 per cent.

(b) in the case of a structural contract-30 per cent.

(c) in the case of sanitary or gas contract-33? per cent.

(d) in the case of overhaul or repair of any motor vehicles-60 per cent.

3. The contention of the petitioner is that Rule 28 is invalid for the reasons given in the various decisions mentioned hereinbelow and also for the reason that there is a sweeping delegation of legislative power. The decisions relied upon are :-

(1) Pandit Banarsi Das v. State of Madhya Pradesh and Ors. [1955] 6 S.T.C. 93 (MP). Damodaran v. The Agricultural Income Tax and Rural Sales Tax Officer, Devicolam and Ors. [1956] 7 S.T.C. 417 (MP) Jubilee Engineering Co. Ltd. v. Sales Tax Officer, Hyderabad City, and Ors. [1956] 7 S.T.C. 423 (Ori) Kenchappa and Ors. v. Sales Tax Officer, Fourth Circle, Bangalore [1957] 8 S.T.C. 329 (Bang) Bhuramal and Others Vs. State of Rajasthan, Dukhineswar Sarkar & Bros. Ltd. v. Commercial Tax Officer and Ors. [1957] 8 S.T.C. 478 (Ori).

4. In Bhuramal's case [1957] 8 S.T.C. 463 a Division Bench of the Rajasthan High Court struck down explanation (i) to Section 2(t) of the Rajasthan Sales Tax Act, 1954, and Rule 7 framed thereunder on the ground that these provisions allowed the executive to fix the sale price on an artificial basis without any relation whatsoever to the real value of the materials. Explanation (i) to Section 2(t) of the said Act was in the following terms :-

The amount for which goods are sold or supplied shall, in relation to a contract, be deemed to be the amount payable to the dealer for carrying out such contract less such portion as may be prescribed of said amount representing the usual proportion of the cost of labour to the cost of materials used in carrying out such contract.

5. Rule 7 prescribed certain percentages on various types of contracts, which were to be deducted in order to arrive at the price of the materials deemed to have been sold u/s 2(c) in relation to a building contract. Wanchoo, C.J. (as he then was) observed :

We are of opinion that there is force in this argument. Payment is made to such contractors when the work is complete either on a lump sum basis, or on the basis of schedule rates, which include both labour and materials. Entry 54 of List II contemplates tax on the actual sale price of the goods. But the method followed by the Legislature by providing explanation (i) to Section 2(t), and leaving it to the Government to frame a rule accordingly is artificial, and there is no knowing whether the amount that is left over after the deduction has been made according to Rule 7, is only the price of materials supplied, or also includes something over and above that. It is obvious that if it includes something over and above that, the Legislature is taxing not only the sale price of the goods, but also the labour supplied by the contractor, and the work of the contractor himself, which, of course, it could not do under entry 54. Consequently this artificial rule cannot be sustained as a valid piece of legislation under entry 54.

6. Similarly, in Dukhineswar Sarkar's case [1957] 8 S.T.C. 478 the provisions of the Bengal Finance (Sales Tax) Act, 1941, in so far as they sought to bring within the net of taxation goods including materials, commodities and articles supplied in the execution of the construction, fitting out, improvement or repair of any building, and in so far as they declared that to be a sale of goods were held to be outside the legislative competence of the State Legislature. In Kenchappa's case [1957] 8 S.T.C. 329(Mys) the Mysore High Court decided that the levy of sales tax on moneys realised for execution of works contracts in accordance with the provisions of the Mysore Sales Tax Act and the Rules framed thereunder was violative of Article 14 of the Constitution.

7. In the course of the arguments the learned counsel for the petitioner felt some difficulty in applying the ratio of the various decisions holding certain provisions to be unconstitutional because of the limitation on the State Legislatures to enact such a legislation under Entry 54 of List II of the Seventh Schedule of the Constitution of India in view of the fact that the sales tax law in Delhi could suffer from no such limitation. He, therefore, rested his case on the sole contention that the definition of "sale price" as given in Section 2(h) before the amendment in 1959 illegally delegated legislative power to the executive and consequently Rule 28 was a bad piece of legislation. The definition of "sale price" as in force at the relevant time was as under :-

"Sale-price" means-

(i) in the case of a sale which consists in the transfer of property in goods supplied in the execution of a contract (hereinafter referred to as a sale involved in the execution of a contract)-such portion of the amount of the money consideration for the contract as may be prescribed, representing the price of the

goods supplied ;

(ii) in other cases of sale-the amount of the money consideration for the sale, less any sum allowed as cash discount according to ordinary trade practice, but including any sum charged for anything done by the dealer in respect of the goods at the time of, or before delivery thereof, other than the cost of freight or delivery or the cost of installation when such cost is separately charged.

8. In short, the argument is that the Legislature has completely effaced itself and left it absolutely to the discretion of the executive to include any portion of the money consideration, received for the contract as it may consider fit, in the sale price. He further points out that Rule 28, as framed, has in fact fixed the sale price arbitrarily and on an artificial basis irrespective of the amount of actual sale involved. There is force in this argument. By Section 2(h), as then in force, the Legislature appears to have completely abdicated its function in favour of the executive. The executive has been given a free hand to fix any part of the amount received on account of any building contract to represent the price of goods. Perusal of Rule 28 would also show that the basis adopted by the executive may result in taxation of something which is not truly a sale of goods or, in other words, taxation of not only the amount representing the sales but other amounts as well. Such delegation of legislative power cannot be permitted. Significant delegation, without the prescription of standards by the Legislature itself has never been upheld under our system of laws. Though there is no watertight separation of powers in India the law-making function is assigned principally to the Legislature and the power to make laws cannot be delegated to any other body or authority. The Legislature may not in any degree abdicate its power; it may not make the effectiveness of a specific act dependent upon the will of another, and certainly it may not delegate to another the power to enact a law. So long as the Legislature does not completely efface itself and prescribes the guiding principles within the framework of which the delegate has to act, there is no illegal delegation. By enacting Section 2(h) of the said Act, the Legislature has delegated the lawmaking power to the executive without providing any guiding principles or laying down any standards. Rule 28 enacted in exercise of power u/s 2(h) cannot be sustained.

9. In the result, it must be held that Rule 28 suffers from the vice abovementioned and is a bad piece of legislation. A writ of certiorari, therefore, must issue quashing the assessment order dated 10th August, 1959, made by the Sales Tax Officer and the consequent demand notice dated 14th August, 1959. With respect to the years 1955-56 and 1956-57 it is stated by the petitioner that the Sales Tax Officer is threatening to make assessments in accordance with Rule 28. That rule having been declared ultra vires, the authorities cannot make the assessment on the basis of the said rule. A writ of prohibition may, therefore, issue to the respondents prohibiting them from making the assessment or calculating the sale price in accordance with Rule 28. It will, however, be open to the respondents to make fresh and/or proper

assessments in accordance with law.

10. The relief to be allowed in other writ petitions, namely, Nos. 305-D, 436-D and 556-D of 1959 has been mentioned in the short judgments dealing with the said writ petitions.