(1990) 02 AHC CK 0014

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 189 of 1979

Smt. Mohra Bai and Others APPELLANT

Vs

Municipal Board and Another RESPONDENT

Date of Decision : 14-02-1990

Acts Referred:

Constitution of India, 1950 — Article 14
Uttar Pradesh Municipalities Act, 1916 — Section 126(l)(3)

Citation : (1990) 1 AWC 632

Hon'ble Judges : Madan Mohan Lal, J;A.N. Varma, J

Bench : Division Bench

Advocate : V.M. Sahai and S.P. Tripathi, for the Appellant; M.C. Dwivedi and S.C., for the Respondent

Final Decision : Allowed

Judgement

A.N. Varma, J.—This petition seeks quashing of notification dated 2-8-1969 (Annexure "1" to the writ petition) issued by the Commissioner, Allahabad Division, Allahabad, imposing tax on the trade of dyeing and printing in the Municipal Board of Farrukhabad Fatehgarh in the purported exercise of powers u/s 126(l)(3) of the U.P. Municipalities Act. The Petitioners are persons engaged in this trade. They are running factories for dyeing and printing. Sizes of the factories and the strength of the labour employed by them, however, differ. They have assailed the validity of the notification mentioned above on the ground that the same is violative of Article 14 of the Constitution of India inasmuch as the tax is in the first place uncertain and umabiguous and secondly it treates unequals equal which is forbidden by the Constitution of India. The contention is that sizes of the factories run by the Petitioners as well as their potentialities and the number of workmen employed therein widely differs but the impugned notification imposes a flat rate of tax being Rs. 100/- per annum per factory.

2. The submission is fully supported by a decision of a learned Single Judge of this Court in Civil Misc. Writ Petition No. 2891 of 1971, Shanti Swarup v.

Municipal Board Farrukhabad-cum-Fatehgarh, rendered on 8-10-1974. The facts of that case are materially similar to those obtaining in the present case. In that case the Petitioners who were running sawing machines, lathe and oil expellers, challenged the constitutionality of a notification issued by the State Government as well as the rules framed by the Municipal Board, Farrukhabad-cum-Fatehgarh, inter alia, on the ground that unilateral rate of lax had been imposed on the machines used without having regard to their sizes, horse-powers or capacity. Thus tax was payable on sawing machine at the rate of Rs. 100/- while on the lathe machine it was Rs. 50/- on each persons engaged in the trade or vocation of running those machines even though the capacity of the units widely differed. Relying on the decision of the Supreme Court reported in The State of Kerala Vs. Haji K. Haji K. Kutty Naha and Others etc., , as well as on an earlier decision reported in New Manek Chowk Spinning and Weaving Mills Co. Ltd. and Others Vs. Municipal Corporation of The City of Ahmedabad and Others, , the learned Single Judge observed as under:

Inasmuch as, the Municipal Board in the instant case has levied flat rate of tax without having regard to the relevant considerations like the size, the capacity and the horse power of the machine it violates the fundamental right of equality contained in Article 14 of the Constitution. For all these reasons, I am constrained to hold that the impugned tax is unauthorised and is ultra vires.

3. We fully agree with the decision of the learned Single Judge supported at it is by Supreme Court decisions in which it was stressed that if the Legislature has while imposing a tax not taken into consideration the class to which a building (in that case) belonged, that is, the nature of the construction, purpose for which it was used, its situation and its capacity for profitable use and other relevant considerations bearing on the matters of taxation, the imposition would clearly expose itself to the vice of discrimination prohibited under Article 14 of the Constitution of India.

4. The situation in the present case is materially the same. In this case also we find that the tax does not distinguish between one factory and another. It has been imposed at a flat rate irrespective of the size, capacity and the potentiality of the factories covered by the tax.

5. In the result, the petition succeeds and is allowed. The impugned notification dated 9-8-1968, a true copy whereof is Annexure ''1'' to the writ petition, in so far as imposition of tax of Rs. 100/- per factory per annum on the trade of printing and dyeing is concerned, is quashed. The Respondent Municipal Board shall not levy or realise the tax in question from the Petitioners under the aforesaid notification. However, there will be no order as to costs.

