**(1957) 04 PAT CK 0020**

**In the Patna High Court**

**Case No :** Title Suit No. 1 of 1956

S.S. Sahai and Others APPELLANT

Vs

The Bhagalpur Municipality RESPONDENT

**Date of Decision :** 30-04-1957

**Acts Referred:**

Bihar and Orissa Municipal Act, 1922 — Section 150A, 150B, 150C, 150D, 150E
Constitution of India, 1950 — Article 19(1)

**Citation :** AIR 1957 Patna 386 : (1957) 5 BLJR 583

**Hon'ble Judges :** Ramaswami, C.J;Kanhaiya Singh, J

**Bench :** Division Bench

**Advocate :** Thakur Prasad and Jagat Prasad Narain Sinha, for the Appellant; Govt. Advocate and S.C. Sinha, for the Respondent

**Final Decision :** Dismissed

## Judgement

Ramaswami, C.J.—The plaintiffs have brought this suit for a declaration that the resolutions of the Bhagalpur Municipality dated the 18-5-1955, 1-7-1955 and 14-7-1955, imposing a tax on trades and professions are ultra vires, illegal and void. The plaintiffs have also prayed for a permanent Injunction restraining the defendant, namely, the Bhagalpur Municipality, from realising the said tax. The plaintiffs allege that oh 4-1-1955, an emergent meeting of the Bhagalpur Municipal Board was held to consider letter No. 10332/LSG, dated the 16-11-1954, of the State Government. It was unanimously decided at that meeting that professional tax would not be levied. The resolution dated 4-1-1955, is to the following effect.

"Proceeding of the adjourned emergent meeting o? the Bhagalpur Municipal Board held on 4-1-1955, at 4 P. M. in the Municipal Office.

Agenda: -- To consider Government letter No. 10332 LSG dated 16-11-54 regarding imposition of taxes at the maximum rate on trades, professions, employments and callings in order to repay the loan of Rs. 9,12,500/- obtained from the Government.

Resolution:--It is decided unanimously that the professional tax be not Imposed for the present.

Sd/- Satyendra Narain. President. 4-1-55."

On 18-5-1955, there was another emergent meeting for considering among other matters the Inspection notes of the Junior Inspector-of Local Bodies, dated 29 and 30-3-1955. A resolution was passed, at that meeting that proper steps should be taken soon to impose tax on trades and professions. The resolution of 18-5-1955, is as follows:

"Proceeding of the emergent meeting of the Bhagalpur Municipal Board held on 19-5-1955, at 9-30 A. M. in the Municipal Office.

Agenda: -- 1. To consider inspection note No. 8 of the Junior Inspector of Local Bodies dated 29 and 30-3-1955, and to consider the recommendations made therein regarding imposition of tax on trade, introducing meters etc.

Resolution: -- It is decided after discussion over inspection note No. 8 dated 29, and 30-3-1955 of the Junior Inspector of Local Bodies:

(ka) That proper steps be taken soon to impose tax on trades etc.

(kha)

(ga)

(gha) Instead of retrenching the staff, the staff considered superfluous be employed in the departments which require hands for levying taxes on trade etc.

Sd/- Satyendra Narain. President. 18-5-55."

On 1-7-1955, there was a Special Meeting of the Municipal Board for consideration of the Municipal budget for the year 1955-56 according to Section 73 of the Bihar and Orissa Municipal Act. It was resolved at this Special Meeting that the receipt side of the budget should be increased by a sum of Rs. 2,00,000/- on account of tax on professions and trades. The resolution dated 1-7-1955, states:

"Proceeding of the Special Meeting of the Municipal Board held on 1-7-1955, at 2 P, M. in the Municipal Office.

In the absence of permanent President, Sri K. C. Mukherjee is voted to the Chair.

Agenda: -- 2. To sanction the Bhagalpur Municipal Budget for the year 1955-56 according to Section 73 of the Municipal Act, while considering the rejections and suggestions of the ratepayers and the report of the Sub-Committee.

Resolution: -- The budget for 1955-56 is sanction ed with the following additions and alterations after due consideration of the suggestion of the rate payers receipt side of the Budget of 1955-56 be increased as per details given below:

 

Budget Particulars. Provision Increased head. as per provisions budget. to be in the budget. A. 7. Tax on professions 2,00,000 2,00,000 and trades. Sd/- K. C. Mukherjee, 1-7-55. President."

On 14-7-1955, there was a special Meeting of the Municipal Board and it was resolved that a tax on trades and professions should be imposed u/s 82 (1) of the Bihar and Orissa Municipal Act with effect from 1-10-1955. This resolution is to the following effect.

"Proceeding of the Special Extra ordinary Meeting of the Bhagalpur Municipal Board held on 14-7-1955, at 4 P. M. in the Municipal Office.

In the absence of the President, Sri K.C. Mukherjee was voted to the chair.

Agenda: -- To impose tax on trades, profession, employment and callings and concerning'' medical treatment u/s 82/1 of the Municipal Act, and Bihar Municipal Amendment Act 1953, and Bihar Act 32 of 1953, according to the Board''s resolution No. 1, dated 18-5-55 ''and the budget for the year 1955-56 and to fix the rate of taxes according to the fourth schedule of Bihar Act 32 of 1953.

Resolved that the tax on trades, professions, callings and employments be imposed u/s 82 (1) of the B. & O. Municipal Act according to the Bihar Municipal Amendment Act 32 of 1953 (Bihar Act; 32 of 1953) with effect from 1st October 1955.

Further resolved that the half yearly fax on each kind of trade, profession, callings and employment as specified in the 4th Schedule of the Amendment Act 32 of 1953 be fixed as follows :

(a) Joint stock company transacting business within the Municipality for profit or as a benefit society of which the paid capital is equivalent to ;

(a) Rs. 1,00,000 or more

(b) Rs, 75,000 or more but less than Rs. 1,00,000.

(c) Rs. 50,000 or more but less than Rs. 75,000.

(d) less than Rs. 50,000.

(b) Mill owner, merchant-banker,'' money lender, trader, dealer, owner or occupier of market, bazar, theatre or place of public entertainment, proprietor of newspaper or press, printer, photographer, auctioneer, Ware-house, keeper (Goladar), dyer and cleaner, goldsmith, silversmith, coppersmith, weaver, artisan, furniture dealer, tobacco, cigarette and biri manufacturer, broker (dalal) in jute, landed property, grains, general merchandise, mica and coal, motor-garage owner, shop-keeper, order supplier, boarding house keeper, eating house-keeper, druggist, chemist, owner of houses, public carrier vehicle, taxi-cars (exceeding two), carriage (exceeding two), rickshaw (exceeding two) which ply on hire whose place of business is valued under this Act at :

 

(a) not less than Rs. 260 per mensem. ... 62- 8.0.

(b) not less than Rs. 200 per mensem. ... 50- 0-0.

(c) not less than Rs. 150 per mensem. ... 37- 8-0.

(d) not less than Rs. 100 per mensem ... 25- 0-0.

(e) not less than Rs. 75 per mensem. ... 20- 0-0.

(f) not less than Rs. 50 per mensem ... 12- 8-0.

(g) not less than Rs. 25 per mensem ... 5- 0.0.

(h) not less than Rs. 10 per mensem. ... 3.12-0.

(c) Commission agent, broker (not included in serial No. 2) architect, engineer, contractor, medical practitioner (whether registered or not), owners of pathological laboratories and clinics, dentists, barrister, legal practitioner, ferry farmer and person holding employment.

(a) In respect of whose income, Income Tax is assessed :

(i)

having Half yearly Income of not less than Rs. 15,000

... 62 8 0.

(ii)

having half yearly income of not less than Rs. 12,500, bub less than Rs. 15,000

... 50 0 0.

(iii)

having half yearly income of not less than Rs. 10,000, but less than Rs. 12,500

... 40 0 0.

(iv)

having half yearly income of not less than Rs. 7,600 but less than Rs. 10,000

... 30 0 0.

(v)

having half yearly income of not less than Rs. 5,000, but less than Rs. 7,500

... 20 0 0.

(vi)

having half yearly income of not less than Rs. 2101 but less than Rs. 5,000

... 10 0 0.

 

(b) in respect of whose income no Income Tax Is assessed :

(i)

having half yearly income from Rs. 751 to Rs. 1,200

... 3 0 0.

(ii)

having half yearly income from Rs. 1,201 to Rs. 2.100

... 3 12 0.

All persons holding any employment on a monthly salary between Rs. 201 and Rs. 350 per month

... 3 12 0.

Proposed by Sri Baidyanath Singh, Seconded by Sri Shyambehari Lal. Passed unanimously.

Sd, K. C. Mukherjee,

President, 14-7-55."

2. The contention of the plaintiff is that the resolutions dated the 18th of May 1955, 1st of July, 1955 and 14th of July, 1955, are ''ultra vires'' and Illegal because there has been violation of rule 50 of the Model Rules of Business. It is also the case of the plaintiffs that the provisions of Bihar Act 32 of 1953, which amended the Bihar and Orissa Municipal Act, 1922, arid introduced Sections 150A to 150E, are unconstitutional since there is violation of the guarantee of freedom at trade and profession under Article 19(1)(g) of the Constitution. The plaintiffs, therefore, contend that the resolutions of the Bhagalpur Municipality dated the 18th of May, 1955, 1st of July, 1955, and 14th of July, 1955, should be declared unconstitutional and void.

3. The suit has been contested by the Bhagalpur Municipality. The learned Government Advocate also appeared on behalf of the State of Bihar and supported the case of the defendant.

4. The case of the defendants that the suit is bad for want of notice u/s 80 of the CPC and also u/s 377 of the Bihar and Orissa Municipal Act. It was also alleged that the provisions of Order 1, Rule 8, CPC have not been complied with and the suit-cannot be treated as, a suit brought by the plaintiffs in a representative capacity. It was also stated on behalf of the defendant that the resolutions of the 4th January 1955, 18th May 1955, 1st July 1955 and the 14th July . 1955, are with regard to Independent subject-matters and that R. 50 of the Model Rules of Business has no application to the case. The defendant asserted that all the resolutions are perfectly legal and valid. The defendant also denied that the provisions of the Amending Act (Bihar Act 30 of 1953) are unconstitutional and

 

that there is a violation of the guarantee under Article 19(1)(g) of the Constitution.

(5) The following issues were framed :.

1. Are the resolutions of the Bhagalpur Municipality dated the 18th May 1955, 1st July 1955 and the 14th July 1955, imposing tax on trades, professions, callings and employments unconstitutional as violating the guarantee under Article 19(1)(g) of the Constitution ?

2. Have the plaintiffs any cause of action for, riling the suit against the defendant ?

3. Is the suit bad for want of notice u/s 377 of the Bihar and Orissa Municipal Act, 1922, and also for want of notice u/s 80 of the CPC ?

4. Do Rules 50 and 51 of the Rules of Business adopted by the Bhagalpur Municipality apply to resolutions dated the 18th May 1955, 1st July 1955 and 14th July 1955, ,which are challenged in this suit, and are these resolutions Illegal and void for breach of these rules ?

5. Are the plaintiffs entitled to a decree for the permanent injunction prayed for :

6. Has the suit been properly valued and is the court-fee paid sufficient ?

7. To what reliefs are the plaintiffs entitled ?

6. At the time of hearing learned Counsel for both the parties conceded that the issues 1 and 4 are the only issues to be decided in this suit and the parties would not press the other issues.

With regard to the first issue the argument put forward on behalf of the plaintiffs is that the provisions of the Amending Act (Bihar .Act 32 of 1953) are unconstitutional and that there is a violation of the guarantee of freedom of trade and occupation under Article 19(1)(g) of the Constitution. Sections 150A to 150E and also the Fourth Schedule were inserted in the Bihar and Orissa Act 7 of 1922 by Bihar Act 32 of 1953. Section 150A is to the following effect :

"150A. When it has been determined that a tax shall be imposed on professions, trades, callings and employments, every person who exercises within the Municipality, either by himself or by an agent or representative, any of the professions, trades, callings or employments specified in the Fourth Schedule and who is liable to pay such tax, shall take out a half-yearly licence and pay the tax assessed on him in pursuance of Clause (ff) of sub-section (1) of Section 82 :

Provided that such tax shall be imposed oh the income accrued within the Municipality during the year for which the tax is imposed :

Provided further that nothing in this section shall be deemed to apply to any person who exercises any such profession, trade, calling or holds any employment within the Municipality and whose taxable income does not exceed fifteen hundred rupees per annum or the value of whose place of business does not exceed ten rupees per mensem or whose income from employment does not exceed twenty-four hundred rupees per annum:

Provided also that any person liable to pay the tax under this section may, If he so desires, on application to the Commissioners, take out a yearly licence on payment of the full amount of the tax due for the whole year :

Provided also that the grant of such a licence shall not be deemed to affect the liability of the licensee to take out a licence under any other section of this Act.

" Explanation; -- (1) The taxable income of any person liable to pay the tax under this section shall be deemed to be the amount computed in accordance with the provisions of the Indian Income Tax Act, 1922, and where any such person is not subject to assessment of Income Tax under the said Act, his taxable income shall be the amount which shall be computed, so far as may be, in accordance with the procedure laid down in the said Act.''

(2) The onus of proving the amounts of the taxable income computed under the said Act shall lie on the person liable to pay the tax under this section."

It was argued on behalf of ''the plaintiffs that the provisions of Section 150A are unreasonable restrictions on the practice of trade and profession. It was pointed out that u/s 150A a licence was required to be taken out by any person who wished to exercise a profession or trade within the Municipality. It was argued that there was not only an imposition of tax, but there was an obligation to take out a licence before any person could practice a trade or profession within the Municipality." Reference was. also made by learned Counsel for the plaintiffs to Section 351 of the Municipal Act, which requires every person to whom a licence is granted to produce It before the authorities when required. Section 351 (2) provides that if any person fails to produce his licence when required to do so by any person authorised u/s 351, he shall be liable to a fine not exceeding Rs. 100, Learned Counsel also pointed out to the "provision of S, 375 of the Act which states that "the failure to take out any licence under the Act shall be deemed to be a continuing offence until the expiration of the period for which such licence is required to be taken out." On the basis of these statutory provisions it was contended by learned Counsel on behalf of the plaintiffs that there was unreasonable restriction imposed upon the practice. of trade or profession and there was a violation of the guarantee under Article 19(1)(g) of the Constitution.

7. I am unable to accept this argument- as cor rect. If the language of Sections 150A to 150E and the lan guage of the Fourth Schedule, is carefully examined, it is obvious that the requirement of a licence is only a mechanism or device for the collection of tax. There is no attempt at regulation or control of the trade or profession. It is only a taxing measure and the requirement of a licence has only been made in order to facilitate the authorities to collect the tax imposed. The requirement of a licence from ;his view point is not unconstitutional. For the State Legislature has the constitutional right to device machinery for the

 

collection of taxes and this constitutional right is derived from the constitutional authority of the State Legislature to tax under entry No. 60 of the State List. The require ment of the taking out of a licence in this connection is not, therefore, in my opinion, an unreason able restriction on the guarantee of freedom of trade or profession granted under Article 19(1)(g) of the Constitution. This view is borne out by a decision of the Supreme Court in The State of Bombay and Another Vs. The United Motors (India) Ltd. and Others, . The question at issue in that case was whether the provisions of the Bombay Sales Tax Act (Act 24 of 1952) are ultra vires under the provisions of Articles 286, 301, 304 and other Articles of the Constitution. It was held by the majority of the learned Judges that there was no violation of Article 286 or of- Articles 301 and 304 of the Constitution. The constitutional validity of the entire Act was sustained by the majority of the learned Judges. It should be noticed in this connection that the Bombay Sales Tax Act (24 of 1952) contains a provision requiring the dealers to apply for registration and also to take out licence. Section 9 of the Bombay Act states as follows:

"9. (1) Registration of dealers : No dealar shall, while being liable to pay the general tax, carry on business as a dealer unless he has applied for registration within such period as may be prescribed :

* * * * *

Section 12 of the Bombay Act is to the following effect :

"12. (1) Dealer to obtain licence : No dealer shall, while being liable to pay the special tax, carry on business as such dealer unless he has applied for a licence within such period as may be prescribed'':

Provided that for the purposes of this sub-section the turnover in respect of all sales of special goods shall be calculated without making the deductions referred to in Section 11."

* * * * *

Section 36 of the Act makes it an offence for any person to carry on business as a dealer without applying for registration or renewal of license in contravention or Sections 9 and 12, and any such dealer is liable to a simple imprisonment to the extent of six months or with fine. All these provisions of the Bombay Act were sustained as constitutional by the Supreme Court in the case already referred, namely The State of Bombay and Another Vs. The United Motors (India) Ltd. and Others, of he report Patanjali Sastri C. J., stated as follows :

"We are of opinion that it is always desirable, when relief under Article 226 is sought on allegations of infringement of fundamental rights, that the Court should satisfy itself that such allegations are well founded before proceeding further with the matter. In the present case, however, the appellants can have no grievance, as the respondents'' allegation of infringement of, their fundamental right under Article 19(1)(g) was based their contention that the Act was ultra vires the State Legislature, and that contention having been accepted by the Court below, there would clearly be an unauthorised restriction on the respondents'' right to carry on their trade, registration and licence being required only to facilitate collection of the tax imposed. As Mr. Seervai for the respondents rightly submitted, the fact, that the Court below left the question undecided, though the point was concluded by the decision of this Court in Mohammad Yasin Vs. The Town Area Committee, Jalalabad and Another, , which was brought to the notice of the learned Judges, was not the fault of the respondents and gave no real cause for complaint."

Reference should also be made on this point to a decision of the Supreme Court of the United States in United States of America v. C. T. Doremus (1919) 249 U. S. 86 (C) where it was held that Congress may select the subject of taxation and may exercise the taxing power in its discretion, subject only to the constitutional limitation that excise tax must be geographically uniform throughout the United States. It was further held that the exercise of this constitutional authority to levy excise tax is not invalidated merely because the same business may be regulated by the police power of the State. The argument of the learned Assistant Attorney General in that case is quoted at p. 494 of the report as follows :

"The same presumption prevails in favour, of the constitutionality of the means adopted by Congress to effectuate its exercise of the taxing power as prevails regarding the exercise of the power itself. It is not simply that this Court does not claim the power to decide whether the means and methods adopted by Congress'' are wise and well advised or not. The rule goes much further than this. This Court recognises that where Congress has acted clearly in the exercise of its taxing power '' (as in the case of the act now under consideration), the means employed to effectuate this legitimate functioning are in their nature practical, belonging to the field of experimentand experience, and outside of the field of judicial knowledge. Hence if it once be determined that the main provision of the Act levying the tax and defining its Incidence is constitutional (as it is undoubtedly in the act now under consideration), the means devised by Congress for the collection of the tax and the prevention of frauds in connection with it will, except in the most extraordinary cases, be held to be within the proper scope of the legislative power."

This argument was accepted by the Supreme Court and the Constitutional validity, of the impugned Act was upheld,

8. In my opinion, therefore, the provision of taking out license u/s 150A of the Bihar and Orissa Municipal Act and the requirements of the Fourth Schedule are not unreasonable restrictions on the practice of trade or profession and there is ''no violation of the guarantee under Article 19(1)(g) of the Constitution. As I have already said, there is no attempt on the part of the legislature to regulate the practice of trade or profession, but provision for a licence has only been made to facilitate the collection tax. I, therefore, reject the argument advanced

 

by Mr. Thakur Prasad, Counsel for the plaintiffs on this point 1 hold, on the contrary, that Sections 150A to 150E and the Fourth Schedule are reasonable from the procedural aspect. Section 150A exempts from taxation persons whose taxable income does not exceed Rs. 1,500 per annum or the value of whose place of business does not exceed Rs. 10 per mensem, or whose income from employment does not exceed Rs. 2,400 per annum. Section 150E is also important. This section provides for a review of assessment in the case of any person who is dissatisfied by the quantum of assessment or, who disputes the liability to be assessed. Section 150E is in the following terms :

"150(E) Any person who is dissatisfied with the assessment of the total income or taxable income or the determination of the amount of tax payable by him or who disputes his liability to be assessed may apply to the Commissioner to review the assessment of his total income or taxable income or the amount of tax assessed upon him or to exempt him from the liablility to be so assessed."

9. For these reasons I hold that the resolutions of the Bhagalpur Municipal Board which are impugned by the plaintiff''s in this case are not unconstitutional and there, is no violation of the guarantee under Article 19(1)(g) of the Constitutional and the first tissue must, therefore, be answered against the plaintiffs and in favour of the defendant.

10. As regards the fourth issue, the submission made on behalf of the plaintiffs is that R. 50 of the Model Rules of Business has been violated and the resolutions of the 18th of May 1955, 1st of July 1955, and the 14th July 1955, are ultra vires and illegal. It was contended on behalf of the plaintiffs that on the 4th January 1955 the Municipal Board passed a resolution that "professional tax should not be imposed for the present," but within six months of the passing of this resolution the Municipal Board reconsidered the matter and at its meeting held on the 18th of May 1955 the Board resolved that "proper steps should be taken soon to impose tax on trades etc."

11. It was argued that the resolutions of the Board of the 1st July 1955 and the 14th July 1955 are based on the previous resolution of the 18th July 1955 and are not independent resolutions, and these resolutions are also hit by the provisions of R. 50 of the Model Rules of Business which is to the following effect :

"50. Unless two-thirds of the number of commissioners consent by. signing a requisition in this behalf, a motion shall not raise a question substantially identical with one on which the commissioners have given a decision within the preceding, six months."

12. I am unable to accept the contention of the plaintiffs as a valid contention. The resolution of the Board passed on the 4th January 1955, was in. a different context and with regard to a different subject matter. On that date the Municipal Board had met to consider the Government letter No. 10332 L. S. G., dated the 16th November 1954, regarding imposition of taxes on trades and professions in

 

order to repay the loan of Rs. 9,12,500 taken from the Government. It was resolved by the Board that "the professional tax should not be imposed for the present." The meeting held on the 18th May 1955, was held in order to consider a different subject matter, namely, the inspection note No. 8 of the Junior Inspector of Local Bodies, dated the 29th and 30th March 1955. The resolution of the 1st July ,1955, was also different. That resolution was passed by the Municipal Board on that date with regard to the budget estimates under the provisions Section 73 of the Bihar and Orissa Municipal Act. The resolution of the Municipal Board dated the 14th. July 1955, was in accordance with the provisions of Section 82(1) of the Bihar and Orissa Municipal Act, which requires that the, imposition of taxes must be authorised by the commissioners at a meeting convened expressly for the purpose, of which due notice should have been given. The meeting of the Municipal Board held on 14th July 1955, was the only meeting held in accordance with the provisions of Section 82(1) of the Bihar and Orissa Municip''al Act. The meetings of the Municipal Board held on the 4th January 1955, 18th May 1955 and the 1st July 1955, were, not special meetings held u/s 82(1) of the Bihar and Orissa Municipal Act, and the resolutions passed in those meetings have no bearing and effect on the resolutions passed at the meeting held on the 14th July 1955, in accordance with Section 82 (1) of the Bihar and Orissa Municipal Act. In my opinion, the provisions of R. 50 of the Model Rules of Business do not apply to this case, and the resolution passed by the Municipal Board on the 14th July 1955, imposing tax on professions and trades, must be held to be legally valid and intra vires. I also hold that the resolutions passed by the Municipal Board on the 18th May 1955 and the 1st July 1955, are not affected by R. 50 of the Model Rules of Business and those resolutions should also be held to be legally valid and intra vires. It, therefore, follows that issue No. 4 must be answered against the plaintiffs and in favour of the defendant,

13. For these reasons I hold that the plaintiffs have failed to establish their case and the suit must be dismissed with costs.

Kanhaiya Singh, J.

14. I agree.

 