
(1978) 09 P&H CK 0015
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 8166 of 1976

Subhash Chander and Co.

APPELLANT

Vs

The State of Punjab and Another

RESPONDENT

Date of Decision : 05-09-1978

Acts Referred:

Constitution of India, 1950 — Article 14
Punjab General Sales Tax Act, 1948 — Section 11, 20, 5

Citation : (1979) 44 STC 331

Hon'ble Judges : S.S. Sandhawalia, C.J.; S.C. Mital, J

Bench : Division Bench

Advocate : R.C. Dogra, for the Appellant; I.S. Tiwana, Additional Advocate-General, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Sandhawalia, C.J.—The constitutional validity of Section 20(5) of the Punjab General Sales Tax Act is the sole issue that has been debated in this set of nineteen connected writ petitions.

2. As is manifest from the above, the question being pristinely legal, any reference to the facts is hardly of any relevance and it deserves notice that the Learned Counsel for the petitioner did not even remotely do so. However, to appreciate the contentions raised and noticed hereafter, it becomes necessary to recall albeit briefly the legislative history of the aforesaid provision.

3. When originally enacted on 20th November, 1948, the relevant part of Section 20 of the Punjab General Sales Tax Act read as follows:

20. Appeal.--(1) Within 60 days from the receipt of a notice issued under Sub-section (7) of Section 11 any dealer may in the prescribed manner appeal to such authority as may be prescribed against such assessment:

Provided that no appeal shall be entertained by such authority unless he is satisfied that the amount of tax assessed on the dealer has been paid.

Later, by the East Punjab General Sales Tax (Amendment) Act, 1953, the rigour of the rule requiring the payment of the tax assessed on the dealer before the appeal is to be entertained was softened by adding the following further proviso thereto:

Provided further that such authority if he is satisfied that a dealer is unable to pay the tax assessed may for reasons to be recorded in writing entertain an appeal without the tax having been paid.

The existing provision, which is under challenge, was placed on the statute book by the Punjab General Sales Tax (Amendment and Validation) Act, 1967. The material part around which necessarily the present controversy revolves is in the following terms:

20. (5) No appeal shall be entertained by an appellate authority unless such appeal is accompanied by satisfactory proof of the payment of the tax or of the penalty, if any, imposed or of both as the case may be:

Provided that if such authority is satisfied that the dealer is unable to pay the tax assessed or the penalty, if any, imposed or both, he may, for reasons to be recorded in writing, entertain an appeal without the tax or penalty or both having been paid or after part-payment of such tax or penalty or both.

4. Now, it deserves highlighting at the outset that from the very inception of the statute, the requirement of the deposit of tax has been a necessary adjunct to the entertainment of any appeal by the assessee and if at all the rigour of this rule has been mellowed down by the amendments which have followed since its original enactment. It had to be conceded even by the Learned Counsel for the petitioner that the provision in its original and amended form has now held the field for a period of exactly three decades without ever having been successfully assailed on the ground of the vice of unconstitutionality.

5. It then deserves recalling that by virtue of Article 228A, Clause (3), enacted by the Constitution (Forty-second Amendment) Act, 1976, the present Civil Writ No. 8166 of 1976 and the connected petitions were placed before a Bench of five Judges of this Court, to which I was a party. In the context of the vacation of the stay granted earlier in the writ petition, the constitutionality of Section 20(5) was argued at considerable length before the said Bench and the following order was recorded on 21st March, 1978:

Heard. The Learned Counsel for the petitioners has failed to show how the proviso to Sub-section (5) of Section 20 of the Punjab General Sales Tax Act is ultra vires the Constitution. The petitioners have, therefore, an alternative remedy by way of appeal which they have not chosen to avail of and in this view of the matter we see no reason to continue the stay which is hereby vacated.

It is evident from the very opening sentence of this order that the issue is virtually concluded against the petitioner. Nevertheless, Mr. Dogra has contended that, as the aforesaid order was not an exhaustive speaking order on the issue of

vires, he was entitled to urge the same challenge over again at the final hearing of the writ petition.

6. We may not be presumed to have acceded to the aforesaid stand of the Learned Counsel, but, as a matter of concession and in view of the significance of the issue, we have heard the matter afresh at considerable length.

7. Shorn of surplusage, the basic contention of Mr. R.C. Dogra is that the petitioners have at least one inherent right of appeal against the order of assessment which cannot be fettered or taken away by any condition imposed thereon. It was claimed that any clog on this alleged unrestricted right of appeal could not be placed by the legislature, which was unauthorised to do so. The requirement of the section regarding the deposit of tax or penalty before the appeal is to be entertained was labelled as unwarranted restriction on a vested right of appeal. Even the mellowing down of the requirement by the proviso, which enables the authority to waive the deposit if satisfied that the assessee is unable to pay the tax or penalty, according to the counsel, did not in any way remove the vice of unconstitutionality. The logical though the extreme stand appears to be that there was the vested right of appeal on which every restriction or clog by the legislature was impermissible. In the alternative, it was argued that the requirement of the deposit of tax or penalty prior to the entertainment of appeal even with the existing proviso was so onerous in nature that it either virtually took away the right of appeal or in any case rendered it illusory.

8. Even though the Learned Counsel advanced his contention with some vehemence, it seems to me that the submission stems from a basic fallacy with regard to the very nature and the content of the right of appeal, if at all, it may be so termed. It is patent and indeed not in question that the right of appeal is not a guaranteed or a constitutional right. There is nothing whatsoever in the Constitution which may even remotely vest any such inalienable right in the citizens. Mr. Dogra was compelled to concede that the right of appeal was not a fundamental right nor a constitutional one. That being so, it is equally evident that there was no inherent claim or right of appeal from an original forum and, in particular, against an assessment of tax. It is, therefore, that it has been repeatedly held that the right of appeal is the mere creature of the statute. If that be so, it is plain that the creator, that is, the legislature, which confers such a right, can equally take the same away, if necessary. It inevitably follows therefrom that if the whole right can be thus taken away it can equally be impaired, regulated or burdened with conditions either onerous or otherwise.

9. The legal position seems to be so manifestly clear and supported by the binding precedent that I would deem it wasteful to launch a long dissertation on principle. Reference in this connection may be made to the Full Bench judgment of this Court in *Gordhan Das Baldev Das v. Governor-General in Council* AIR 1952 P&H 103 , and to the observations of Chandrachud, J., (as the learned Chief Justice then was), in *Smt. Ganga Bai Vs. Vijay Kumar and Others*, . Equally

instructive in this context are the observations of Das, J., whilst speaking for the court in *State of Bombay Vs. Supreme General Films Exchange Ltd.*, However, the case which virtually concludes the matter in the specific context of the deposit of tax before the entertainment of any appeal is *The Anant Mills Co. Ltd. Vs. State of Gujarat and Others*, , wherein Khanna, J., speaking for the court, then held:

The right of appeal is the creature of a statute. Without a statutory provision creating such a right the person aggrieved is not entitled to file an appeal. We fail to understand as to why the legislature while granting the right of appeal cannot impose conditions for the exercise of such right. In the absence of any special reasons there appears to be no legal or constitutional impediment to the imposition of such conditions. It is permissible, for example, to prescribe a condition in criminal cases that unless a convicted person is released on bail, he must surrender to custody before his appeal against the sentence of imprisonment would be entertained. Likewise, it is permissible to enact a law that no appeal shall lie against an order relating to an assessment of tax unless the tax had been paid. Such a provision was on the statute book in Section 30 of the Indian Income Tax Act, 1922. The proviso to that section provided that "...no appeal shall lie against an order under Sub-section (1) of Section 46 unless the tax had been paid". Such conditions merely regulate the exercise of the right of appeal so that the same is not abused by a recalcitrant party and there is no difficulty in the enforcement of the order appealed against in case the appeal is ultimately dismissed. It is open to the legislature to impose an accompanying liability upon a party upon whom a legal right is conferred or to prescribe conditions for the exercise of the right. Any requirement for the discharge of that liability or the fulfilment of that condition in case the party concerned seeks to avail of the said right is a valid piece of legislation, and we can discern no contravention of Article 14 in it.

In the light of the aforesaid enunciation of the law and the long line of precedent, there is hardly any choice but to conclude that the legislature is perfectly within its right to regulate the right of appeal conferred by it by imposing conditions or restrictions on its exercise including the requirement of the deposit of a tax or penalty before the entertainment of an appeal. It cannot, therefore, be said that the State Legislature has in any way transgressed the limit of its authority or infringed any provision of the Constitution.

10. Mr. R.C. Dogra had frankly conceded that the other ancillary contentions which he had rather half-heartedly attempted to raise were concluded against him by the Division Bench judgment in *Sri Chand v. State of Haryana* C.W.P. No. 3365 of 1977 decided on 18th August, 1978 (Punjab and Haryana High Court). We, therefore, conclude that Section 20(5) of the Punjab General Sales Tax Act is constitutionally valid.

11. The Learned Counsel for the petitioners had further conceded that the challenge to the vires of Section 5 of the Punjab General Sales Tax Act stands

concluded against them by the Division Bench judgment of this Court in Kultar Singh & Bros. v. State of Punjab [1979] 44 S.T.C. 330 (C.W.P. No. 329 of 1978) decided on 1st August, 1978.

12. No other point was urged.

13. The writ petitions are without merit and are consequently dismissed. This, however, would not bar the petitioners from pursuing their statutory remedies by way of appeal or revision, if strictly available to them, u/s 58 of the Constitution (Forty-second Amendment) Act, 1976.

14. There will be no order as to costs.

S.C. Mital, J.

I agree.