(1970) 09 AHC CK 0044

In the Allahabad High Court

Case No : S.A. No 1143 of 67

The Zila Parishad Muzaffarnagar — APPELLANT

Vs

Baboo Ram and Others — RESPONDENT

Date of Decision : 04-09-1970

Acts Referred:

Citation : (1970) 40 AWR 773

Hon'ble Judges : J.S. Trivedi, J

Bench : Single Bench

Advocate : P.C. Gupta, for the Appellant; B.D. Mandhyan for Respondents, for the Respondent

Final Decision : Dismissed

Judgement

J.S. Trivedi, J.—Firm Baburam Prakash chand and firm Baburam Ashok Kumar were assessed to Circumstance and Property Tax by the District Board, Muzaffarnagar. Babu Ram and Prakash Chand, Respondents 1 and 2, are the partners of these firms. They objected to the assessment of the firms as such and contended that they being partners in these firms should be assessed individually. The assessment on the two firms was Rs. 2,000 each, i.e. the maximum tax that was assessable on any person. The levy was challenged on a number of grounds, including the illegality of the tax. The trial court dismissed the Plaintiffs'' suit and the lower appellate court decreed it for an injunction restraining the Defendant Appellant from in any way recovering the amount of the tax.

2. Section 114 of the District Boards Act which authorises the imposition of tax reads as under:

The power of a Board to impose a tax on circumstances and property shall be subject to the following conditions and restrictions, namely:

(a) The tax may be imposed on any person residing or carrying on business in the rural area provided that such person has so resided or carried on business for a total period of at least six months in the year under assessment;

(b) No tax shall be imposed on any person whose total taxable income is less than Rs. 600 per annum;

(c) The rate of tax shall not exceed 4 pies per rupee of taxable income;

(d) The total tax imposed on any person shall not exceed such maximum as may be prescribed by rule.

3. The only questions involved in this appeal are whether the word ''person'' includes a corporate body or a juristic person and whether the suit was bad for want of notice u/s 192 of the District Boards Act. The learned Counsel for the Appellant has argued that the word ''person'' not being defined in the Act must be governed by Section 4(33) of the UP General Clauses Act wherein ''person'' includes any company or association or body of individuals. It is true that the word ''person'' is not defined in the District Boards Act but the word has been used very often in this Act. The Act was passed to make better provision for local self government in rural areas. Chapter II of the Act deals with the constitution of the Board. Section 9 of this chapter enumerates the persons who are disqualified from being electors. The use of the word ''person'' in this chapter is obviously with reference to human beings. In Ch. VI, Section 108 onwards, there are provisions for the Board to levy taxes. u/s 116 every person who ordinarily resides in the area is given a right to file objections. Section 123 provides that the assessment and collection of taxes shall be governed by the rules. Rules have also been framed for levying a tax on circumstances and property. Rule 1, under notification dated 1-4-1943, reads as under:

The principal officer or manager or the person in charge in the case of every company, firm, factory, or other business house and every private employer shall prepare and within thirty days from the 31st March of each year shall cause to be delivered to the Secretary of the District Board a return in writing of all employees whose total emoluments in the year are not less than Rs. 2000/-.

The rule which limits the maximum tax is in these words:

The total amount of tax on circumstances and property imposed by a District Board on any single Assessee shall not in any year exceed the sum of Rs. 2000/-.

Model Rule 2 for assessment, notified in Notification dated 26th February, 1934, is as under:

Subject to the provisions of Section 114 of the Act, all the activities of an Assessee within the district whether carried under the same or different name shall be considered in calculating his total assessment.

The accepted rule of interpretation is that normally a word should be given the same meaning unless from the context it appears otherwise. The meaning which harmonises best with the context, scope and object of the enactment has to be preferred. In 1930 P.C. 120 (121) it was laid down that in coming to a determination as to the meaning of a particular word in a particular Act it is permissible to consider two points: 1. The external evidence derived from extraneous circumstances such as previous legislation and decided cases and (2) internal evidence derived from the act itself. In Anand Nivas (Private) Ltd. Vs. Anandji Kalyanji Pedhi and Others, it was laid down by their Lordships of the Supreme Court that:

Having regard to the plurality of meaning, the sense in which the expression is used in different sections and even clauses must be ascertained from the context of the scheme of an Act, the language of the provision and the object intended to be served thereby.

In Attorney General v. Prince Augustin (157) 1 All. F.R. 49 (53) Lord Simonds said "I conceive it to be my right and duty to examine every word of a Statute in its context and I use context in its widest sense as including not only other enacting provisions of the same statute, but its preamble, the existing state of, the law, other statute in pari materia and the mischief which I can, by these and other legitimate means discern that the Statute was intended to remedy".

4. The word ''person'' in the Pharmacy Act 1868 which prohibited under a penalty any person not a registered chemist from keeping open the shop for the sale of poison, the word ''person'' was given a popular sense and was held not to include a corporation. Pharmaceutical Society v. London and Provincial Association (1881) 8 QED 267 : 51 LJQB 246 (248). Dulichand Lakshminarayan Vs. The Commissioner of Income Tax, Nagpur, , it was laid down that "To import the definition of word ''person'' occurring in Section 3(42) General Clauses Act 1897 into Section 4 of the Partnership Act will be totally repugnant to the subject of the Partnership Law".

5. If the word ''person'' used in the Act is given the meaning assigned to the word in the General Clauses Act, the District Boards Act itself will become unworkable. If the intention of the authorities was to include corporate bodies within the definition of ''person'' for tax purposes, it was essential to frame a specific rule to that effect. The Scheme of the District Boards Act and the rules leave no room for doubt that the word ''person'' in Section 114 means natural persons and does not include corporate bodies. The lower appellate court was therefore correct in holding that the word ''person'' in Section 114 of the Act means a living person.

6. On the second point also the Appellant cannot succeed. It is not disputed that the suit for injunction was brought after the proceedings for distress were commenced. Under Clause (1) to Section 192, no suit can be instituted against the Board until the expiration of two months next after notice in writing has been given. Under Clause (4) an exception is made in the case of an injunction suit if the object'' ion is likely to be defeated by the postponement of the suit. After a notice of distress is issued, waiting for the period of notice would have defeated the object of the suit itself.

7. For the reasons given above, this appeal has no force and is accordingly dismissed with costs.

