
(1964) 09 KL CK 0044
In the High Court Of Kerala
Case No : O. P. No. 1103 of 1963

Travancore Minerals Ltd

APPELLANT

Vs

Commissioner, Quilon Municipality and Another

RESPONDENT

Date of Decision : 22-09-1964

Acts Referred:

Constitution of India, 1950 — Article 276(2)

Citation : (1965) KLJ 376

Hon'ble Judges : M. S. Menon, C.J; M. Madhavan Nair, J

Bench : Division Bench

Advocate : P. K. Kurien, V. Desikan, K. A. Nayar and K. Sukumaran, for the Appellant; V. K. K. Menon, C. J. Balakrishnan for 1st Respondent and Government Pleader for 2nd Respondent, for the Respondent

Final Decision : Allowed

Judgement

M. S. Menon C. J

1. The Travancore Minerals Limited, Quilon, is the petitioner before us. The first respondent is the Commissioner of the Quilon Municipality and the second, the State of Kerala. The petition invokes Art. 226 of the Constitution and challenges the validity of Ext G, and demand for profession tax under the Kerala Municipalities Act, 1960, in respect of the first half of the financial year 1962-63. The questions for determination are; (1) Can the petitioner be assessed to profession tax under the Kerala Municipalities Act, 1960, and if it can be assessed under that Act, how should the liability be quantified ? (2) Is it possible to levy a profession tax above two hundred and fifty rupees per annum in view of Art. 276 (2) of the Constitution? and (3) Is the surcharge claimed u/s 4 of the Kerala Surcharge on Taxes Act, 1957, violative of Art. 276 (2) of the Constitution?

2. Question No, 1: S. 110 of the Kerala Municipalities Act, 1960 provides that if a municipal council by a resolution determines that a profession tax shall be levied, every company which after the date specified in the notification published under

S. 98, transacts business in the Municipality for not less than sixty days in the aggregate in any half-year, shall pay a half-yearly tax assessed in accordance with the rules in Schedule II. It is not disputed that the requisite resolution has been passed and that the necessary publication has been effected.

3. R 20 of the Taxation and Finance Rules in Schedule II to the Kerala Municipalities Act, 1960, provides that a company shall be deemed to have transacted business within a municipality if such company has an office within such municipality. It is not denied that the petitioner has all along maintained an office within the Quilon Municipality; and it must follow that it must be considered as transacting business within that municipality and thus liable to assessment.

4. The petitioner transacts business not only within the area of the Quilon Municipality but also outside it. The provision applicable to it, therefore, is R. 21 (2) of the Taxation and Finance Rules in Schedule II of the Kerala Municipalities Act, 1960, which says that where a company transacts business other than money-lending-- the petitioner is not concerned with money-lending--partly in the area of a Municipality and partly outside such area, the income of such company from the transaction of business in the area of the Municipality shall, for the purpose of levying profession tax under the Act, be deemed to be the percentage prescribed under clause (b) of sub-rule (1) of the turnover of such business transacted in such area during the half-year or the corresponding half-year of the previous year, as the case may be.

5. We entertain no doubt that the assessment of the petitioner should be under the provisions of R. 21 (2). Ext. G is not in pursuance of R. 21 (2) and has hence to be quashed and the municipality left free to make a fresh assessment in accordance with the law. We do so.

6. Question No. 2: Art. 276 (2) of the Constitution provides that the total amount payable in respect of any one person to the State or to any one municipality, district board, local board or other local authority in the State by way of taxes on professions, trades, callings and employments shall not exceed two hundred and fifty rupees per annum. Then follows a proviso which is worded as follows:

Provided that if in the financial year immediately preceding the commencement of this Constitution there was in force in the case of any State or any such municipality, board or authority a tax on professions, trade;, callings or employments the rate, or the maximum rate, of which exceeded two hundred and fifty rupees per annum, such tax may continue to be levied until provision to the contrary is made by Parliament by law, and any law so made by Parliament may be made either generally or in relation to any specified States, Municipalities, boards or authorities.

We are not concerned with any parliamentary legislation and it is not contended that profession tax in excess of two hundred and fifty rupees per annum cannot be levied if the Travancore District Municipalities Act, 1116, had continued to be

in force. The only contention is that the repeal of that enactment by Section 2 of the Kerala Municipalities Act, 1960, affects the question and makes the proviso inapplicable to the levy now sought to be made.

7. The contention ignores the proviso to rule 19 (1) of the Taxation and Finance Rules in Schedule II to the Kerala Municipalities Act, 1960. That proviso is in the following terms:

Provided that if in the financial year immediately preceding the commencement of the Constitution of India any municipality was imposing profession tax at a rate higher than two hundred and fifty rupees per annum and continued to levy the tax at such higher rate immediately before the commencement of this Act, such municipality may continue to levy profession tax at such rate.

The proviso is, in our opinion, sufficient to negative the petitioner's submission, All that we need add is that what the provisos to Article 276 (2) and rule 19 (1) visualise is a continuance; and that it is not permissible to make alterations to the detriment of an assessee in the terms and conditions of a levy in excess of two hundred and fifty rupees per annum.

8. Question No. 3: Section 4 of the Kerala Surcharge on Taxes Act, 1957. reads as follows:

The profession tax or tax on companies payable by a person or company whose half-yearly income is not less than one thousand and five hundred rupees to the respective local authorities under the Trivandrum City Municipal Act, the Travancore District Municipalities Act, 1116, the Cochin Municipal Act, XVIII of 1113, the Madras District Municipalities Act, 1920, the Travancore-Cochin Panchayats Act, 1950, the Madras Village Panchayats Act, 1950, or the Madras District Boards Act, 1920, shall be increased by a surcharge for the purpose of the Government at the rate of five per centum of the profession tax or tax on companies so payable and the local authorities concerned shall levy and collect the said surcharge along with the profession tax or the tax on companies in the same manner as if it were a profession tax or a tax on companies, and the provisions of law governing the levy and collection of such taxes, shall in all respects apply therefor.

The surcharge leviable u/s 4 of the Kerala Surcharge on Taxes Act, 1957, should have been limited to two hundred and fifty rupees per annum. This has not been done and it is not possible to impose such a limit by invoicing the doctrine of severability or separability in enforcement.

9. Under the section, as it stands, more than two hundred and fifty rupees could be collected for the purpose of the State not only by all the municipalities and village panchayats in the State together but by each and every one of them. To make the wording of the section conform to the Constitution is by no means easy; it would require substantial and elaborate amendments, and we must hold that those amendments are possible only by legislative intervention and that

they are beyond the purview of this Court to undertake.

10. It follows that we cannot but accept the view of Mr. Justice Vaidialingam in *Malayalam Plantations Ltd. v Commissioner, Quilon Municipality* (1964 K.L.J. 389) that S. 4 of the Kerala Surcharge on Taxes Act, 1957, is violative of Article 276(2) of the Constitution and should be struck down on that account. We decide accordingly. The petition is allowed in the manner and to the extent indicated above. In the circumstances of the case, however, there will be no order as to costs.