(2003) 07 AHC CK 0221

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 31159 of 2003

U.P. Public School''s Society — APPELLANT

Vs

State of Uttar Pradesh and Another — RESPONDENT

Date of Decision : 30-07-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 213(2)
Uttar Pradesh Municipal Corporation Act, 1959 — Section 173, 177

Citation : (2003) 3 UPLBEC 2262

Hon'ble Judges : R.S. Tripathi, J;M. Katju, J

Bench : Division Bench

Advocate : U.N. Sharma and Suneet Kumar, for the Appellant; Prem Chandra and S.C., for the Respondent

Final Decision : Dismissed

Judgement

M. Katju, J.—This writ petition has been tiled for quashing the impugned amendment to Section 177 (c) of the U.P. Municipal Corporation Act, 1959 (hereinafter referred to as the. Act) by the U.P. Municipal Corporation (Amendment) Ordinance, 2002.

2. The petitioner is a Society registered under the Societies Registration Act. It runs various Educational Institutions mentioned in Para 4 of the writ petition. It is alleged in Para 5 of the petition that these Educational Institutions are recognized either by the Board of High School and Intermediate Education, U.P., Allahabad or the Central Board of Secondary Education, New Delhi.

3. Section 173 of the Act states:-

"173. Property Taxes leviable.-(1) For the purposes of Sub-section (1) of Section 172 property taxes shall comprise the following taxes which shall, subject to the exceptions, limitations and conditions hereinafter provided, be levied on building and lands in the city-

(a) a general tax which may be levied, if the Corporation so determines, on a graduated scale;

(b) a water tax;

(c) drainage tax leviable in areas provided with sewer system by the Mahapalika;

(d) a conservancy tax in areas in which the Mahapalika undertakes the collection, removal and disposal of excrementitious and polluted matter from privies, urinals and cesspools.

(2) Save as otherwise expressly provided in this Act or Rules made there under, these taxes shall be levied on the annual value of buildings or land as the case may be."

4. Before its amendment by the U.P. Municipal Corporation (Amendment) Ordinance, 2002, Section 177 of the Act stated:-

"177. General Tax on what premises to be levied.-The general tax shall be levied in respect of all buildings and lands in the city except:-

(a) buildings and lands solely used for purposes connected with the disposal of the dead;

(b) buildings and lands or portions thereof solely occupied and used for public worship or for a charitable purpose;

(c) buildings solely used as jails, Court houses, treasuries, schools and colleges."

5. Thus, buildings used for Schools and Colleges were exempt for the general tax u/s 173.

6. Subsequently by the impugned Ordinance of 2002, Clause (c) of the Section 177 has been substituted by the following clause:-

"(c) building solely used as Schools and Intermediate colleges run and managed or aided by the State Government."

7. A perusal of the new Sub-section (c) of Section 177 shows that only those schools and colleges which arc run, managed or aided by the State Government are exempted from the general tax, and hence other schools and colleges are not exempted.

8. The submission of learned Counsel for the petitioner is that this amendment violates Article 14 of the Constitution as it discriminates against schools and colleges which are not run, managed or aided by the State Government.

9. In our opinion, there is no merit in this petition. It is for the legislature to decide as to which schools or colleges should be granted exemption and which schools or colleges should not. Schools and Colleges which are not run, managed or aided by the State Government clearly belong to a different class from those which arc run, managed or aided by the State Government.

10. It is possible that the Governor, while issuing the impugned Ordinance may have been of the view that private Educational Institutions which are not run, managed or aided by the State Government are more like business enterprises operating for private profit, and hence they should pay the general tax, while institutions run, managed or aided by the Government are usually not run for private profit. There could also be some other reason for the Governor to differentiate between these two classes of Educational Institutions. However, in our opinion, this Court cannot go into the Governor''s motives. An Ordinance is on the same legal footing as an Act of the legislature vide Article 213(2) of the Constitution, and it is well settled that the Court cannot go into the motive of a legislation vide K.C. Gajapati Narayan Deo and Others Vs. The State of Orissa, Ashok Kumar alias Golu Vs. Union of India and others, Jaora Sugar Mills (P) Ltd. Vs. State of Madhya Pradesh and Others, , Federation of Hotel and Restaurant Association of India, etc., Vs. Union of India (UOI) and Others, R.S. Joshi, Sales Tax Officer, Gujarat and Others Vs. Ajit Mills Limited and Another, etc.

11. The petitioner has not challenged the legislative competence of the Governor, but it may be pointed out that the property tax mentioned in Section 173 of the Act comes within the ambit of Entry 49 of List II and hence the municipality has jurisdiction to levy the tax.

12. Although tax laws are also subject to Article 14 of the Constitution vide ITO v. NTR Rymbai AIR 1976 SC 670 , a larger discretion in classification is given to the legislature in tax matters than in other spheres vide The Anant Mills Co. Ltd. Vs. State of Gujarat and Others, R.K. Garg v. Union of India (1982) 1 UPTC 355 (SC) ; Malwa Bus Service (Private) Limited and Others Vs. State of Punjab and Others, This is in view of the inherent complexity of fiscal adjustment of diverse elements vide ITO v. NTR Rymbai; AIR 1976 SC 670; Amalgamated Tea Estate Co. Ltd. v. State of kerala 1975 UPTC 89. A taxing statute is not open to attack on the ground that it taxes some persons or objects and not others vide East India Tobacco Co. v. State of A.P. AIR 1962 SC 1733 . The State has a wide discretion in selecting the objects or persons that it will tax vide Khyerbari Tea Co. Ltd. and Another Vs. The State of Assam, and in order to tax something it is not bound to tax everything vide Orient Weaving Mills (P) Ltd. Vs. The Union of India (UOI), ; State of Madhya Pradesh Vs. Bhopal Sugar Industries Ltd., It can pick and choose objects, areas, persons, rates, etc. vide V. Venugopala Ravi Varma Rajah Vs. Union of India and Another, ; ITO v. NTR Rymbai AIR 1976 SC 670 . Thus, a house tax imposed by a municipality only on Civil Lines Area is not invalid vide Gopal Narain Vs. State of Uttar Pradesh and Another, Similarly, where the State Legislature selects two articles, which are the main products of the State, for taxation, it is valid vide Khyerbari Tea Co. Ltd. and Another Vs. The State of Assam, A tax imposed only on tea and jute is valid vide Atiabari Tea Co., Ltd. Vs. The State of Assam and Others, Imposition of tax on cane jaggery and exempting palm jaggery is not discriminatory vide T.G. Venkataraman, etc. Vs. State of Madras and Another, A tax law is not discriminatory merely because different rates are prescribed for different items vide Malwa Bus Service (Private)

Limited and Others Vs. State of Punjab and Others,

13. Where a law provided that if the assessee sold to a person other than the Government at any time within 10 years in which the motor vehicle was acquired he would forfeit the rebate, but if he sold it to the Government he would not, it was held that there is no violation of Article 14. The asessee has a choice of selling it to the Government or to another person. The discrimination, if any, arises out of the choice of the persons vide Chittoor Motor Transport Co. (P.) Ltd. Vs. Income Tax Officer, Chittoor,

14. The classification of companies into domestic and foreign companies is valid vide Amalgamated Tea Estates Co. v. State of Kerala 1975 UPTC 89 . So also is the classification between Virginia tobacco and country tobacco vide East India Tobacco Co. Vs. State of Andhra Pradesh, and a classification between big manufacturers and small ones vide British India Corporation Ltd. Vs. Collector of Central Excise, A classification of traders or shopkeepers selling gold ornaments for giving the benefit of exemption from sales tax into those who themselves work and produce the ornaments and those who are commission agents is valid vide Epari Chinna Krishna Moorthy, Proprietor, Epari Chinna Moorthy and Sons, Berhampur, Orissa Vs. State of Orissa, Classification of tobacco into luxury and non-luxury categories is valid vide East India Tobacco Co. Vs. State of Andhra Pradesh, An under-inclusive ''provision in the Foreign Exchange Regulation Act was declared valid in The Superintendent and Remembrancer of Legal Affairs, West Bengal Vs. Girish Kumar Navalakha and Others, on the ground that the legislature is free to remedy parts of a mischief or to recognize degrees of evil and strike at the harm where it thinks it most acute. In the same case the Supreme Court upheld the validity of the piecemeal approach in tax legislation vide ibid.

15. In State of Bihar and Others Vs. Sachchidanand Kishore Prasad Sinha and Others, it was observed that greater latitude should be conceded to the legislature or its delegate in matters of taxation, and the Court should not substitute its own opinion in such matters.

16. It may be mentioned that there is a presumption in favour of the constitutional validity of a Statute vide Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, Madhu Limaye Vs. Sub-Divisional Magistrate, Monghyr and Others, P.J. Krishnalal v. Government of Kerala AIR 1995 1325 , Jilubhai Nanbhai Khachar, etc. etc. Vs. State of Gujarat and another, etc. etc., etc.

17. Hence we do not find any violation of Article 14 of the Constitution by the impugned Ordinance of 2002.

18. Petition is dismissed.