

(2001) 11 AP CK 0124

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 29249, 34637, 34953 of 1997 and 1186 and 2101 of 1998

Yeru Andi Jiyanna

APPELLANT

Vs

The State of A.P. and Others

RESPONDENT

Date of Decision : 02-11-2001

Acts Referred:

Andhra Pradesh Water Tax (Amendment) Act, 1997 — Section 1(2), 2, 3
Constitution of India, 1950 — Article 14, 19(1)

Citation : (2002) 5 ALT 507

Hon'ble Judges : S. Ananda Reddy, J; Bilal Nazki, J

Bench : Division Bench

Advocate : T. Durga Prasad Rao Prasad, for the Appellant;

Judgement

Bilal Nazki, J.—These writ petitions raise same question of law and fact and are disposed of by common judgment.

2. In these writ petitions Section 1 (2), Section 2 (ii) (a) and Section 3 of the A.P. Water Tax (Amendment) Act, 1997 have been challenged as being arbitrary and violative of Articles 14 and 19(1)(g) of the Constitution of India. The petitioners are the agriculturists in different villages and the lands belonging to them are wet lands. The State of Andhra Pradesh passed an Act being A.P. Water Tax, 1988 to rationalise levy and collection of water taxes in the State. The said Act was passed to levy water tax in respect of the land receiving water for irrigation from Governmental sources of irrigation. The Act has come into force retrospectively from 1.7.1986. After the Act came into force, the lands were notified by a notification in different categories. This Act was amended by an Ordinance on 2.1.1997. This Ordinance was then replaced by the Act of the State Legislature known as "A.P. Water Tax (Amendment) Act, 1997 and it was published in the gazette on 15.4.1997. The amendments made by the Amending Act, of which the petitioners are aggrieved, are sub-section (2) of Section 1 which lays down that the Act shall be deemed to have come into force with effect

from 1st July 1996, and Section 2 (ii) (a) by which the words "not less than four months" have been substituted for the words "not less than five months" in item No.1 of the explanation to Section 3. They are also aggrieved of the amendment made in the schedule u/s 3.

3. The grievance of the petitioners is that the Amendment Act is retrospective in nature and therefore it is unconstitutional. A similar controversy has been decided by the Supreme Court in a judgment reported in D.G. Ghouse & Co., V. State of Kerala 1. This was a case in which certain provisions of Kerala Buildings Tax Act, 1975 were being tested. There was no tax before 1961 and the Government wanted to impose tax on buildings and passed an Act known as "Kerala Buildings Tax Act, 1961". It was challenged in Kerala High Court and a learned single Judge held it to be invalid. A Division Bench of Kerala High Court approved the view. The Supreme Court also dismissed the SLP. That judgment was reported as The State of Kerala Vs. Haji K. Kutty Naha and Others etc., . Thereafter a fresh tax Act was sought to be passed and a bill was introduced in the Legislative Assembly of Kerala on July 5, 1973. After going through various stages and being considered by a Select Committee, the bill could not be taken up in the Assembly and consequently Kerala Buildings Tax Ordinance, 1974 was promulgated on July 27, 1974. This was followed by another Ordinance on November 11, 1974. The bill was later on passed as an Act and the Governor gave his assent to the Act on April 2, 1975. Several writ petitions were filed against the Act and the High Court upheld the validity of the Act. Thereafter appeals came to be filed before the Supreme Court. Many questions were raised before the Supreme Court, but we are concerned with only one question. This Act received the assent of the Governor on April 2, 1975. However, the Act had been applied retrospectively from April 1, 1973. So, as a matter of fact, the Act was deemed to have come into operation almost two years before its real promulgation. It was contended before the Court that the Act was unconstitutional. The Supreme Court referred to Craies on Statute Law, seventh edition, and quoted the following passage,

"A statute is to be deemed to be retrospective, which takes away or impairs any vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect of transactions or considerations already past. But a statute is not properly called a retrospective statute because a part of the requisites for its action is drawn from a time antecedent to its passing."

4. While analysing the observations, the Supreme Court imposed a test that a party complaining about the effects of retrospectivity of the statute must show that any of his vested right has been taken away or impaired. The Court found that in the case before it no such right had been vested in any party. The buildings were not subject to tax before the Act and therefore it could not be stated that there was any vested right in petitioners. The Court stated,

"It may be that there was no liability to building tax until the promulgation of the

Act (earlier the Ordinances) but mere absence of an earlier taxing statute cannot be said to create a "vested right", under any existing law, that it shall not be levied in future with effect from a date anterior to the passing of the Act. Nor can it be said that by imposing the building tax from an earlier date any new obligation or disability has been attached in respect of any earlier transaction or consideration. The Act is not therefore retrospective in the strictly technical sense".

5. Following the principles laid down in this judgment, we find that the petitioners were subject to tax under the Andhra Pradesh Water Tax (Amendment) Act, 1997 on the date of passing of the Act and what has been changed is only the rate of tax and as such the Act cannot be held to be retrospective in any way. Therefore, the first ground of attack has to fail.

6. Another grievance of the petitioners is that, by Section 2 (ii) (a) of the Amendment Act the words "not less than four months" have been substituted for the words "not less than five months" in item No.1 of the explanation to Section 3. The Government has categorised the sources of irrigation on the basis of duration of the availability of water for the purposes of irrigation. All other Government sources of irrigation which supply water for a period of not less than five months in a year were earlier regarded as category-II. Whereas by amendment all other Government sources of irrigation which supply water for a period of not less than four months now will be regarded as category-II. We do not find any discrimination on this account. It will apply to all and it is for the Legislature to decide whether sources of irrigation which supply water for a particular period in a year have to be regarded as category-II or not. In any case, we do not have even the expertise to come to a conclusion whether levy period should have been reduced from five months to four months or not. In any case, we have not been shown any law which would make such classification unconstitutional.

7. The third and last grievance of the petitioners is with regard to the amendment in the schedule. u/s 3 the Government is empowered to levy and collect tax in respect of every land receiving water for irrigation basis from any Governmental sources of irrigation at the rates specified in the schedule. The comparative table of the rates prescribed under the schedule before the amendment of the Act and after the amendment is given below,

Sl. No.	Nature of Crop	Before amendment	Category-I	Category-II	After amendment	Category-I	Category-II	Rs.	Rs.	Rs.	Rs.
1	First or single wet crop	60	40	200	100						
2	Second and third wet crop	60	40	150	100						
3	First crop irrigated dry	40	20	100	60	4	Second and third crop irrigated dry	40	20	100	60
5	Dufasal crop in Fasli year	120	80	350	350	6	Aqua-culture per year	-	-	500	500

8. It is contended by the learned counsel for the petitioners that it can be seen from the comparative table that before the amendment the rates for all types of crops under categories I and II had uniformity. The rates in category-I were higher than the rates in category-II uniformly for all types of crops, but after the amendment, for item No.5 in categories I and II this difference of rate has not been maintained. It is further contended that for first four items in categories I and II the increase is uniform almost 2 1/2 times to 3 times, whereas for item No.5 in category I the increase is 3 times and it is even 4 1/2 times in category II. Categories I and II have been created u/s 3. Before the amendment those Governmental water sources of irrigation would fall in category-II which would supply water at least for five months and those water sources of irrigation were classified as category-I which are known as major and medium irrigation projects and it is submitted at the bar that these major and medium irrigation projects of the Government supply water usually round the year. Therefore, on the basis of the availability of the water vis--vis the period in a particular year the categorisation has been made. The basis of categorisation is the availability of the water and if this categorisation is not adhered to while taxing, the tax structure itself becomes arbitrary. We do not find any infirmity in the rates for the items 1 to 4 in the schedule, the differences between categories I and II have been maintained even after amendment. For instance, for first or single wet crop under category-I the tax was Rs.60/- and under category-II it was Rs.40/- before the amendment. Now after amendment it has been made Rs.200/- and Rs.100/-. So the categorisation itself is reflected in the rates for crops mentioned in items 1 to 4 which can be seen from the comparative table given hereinabove. It is only for item No.5 in the schedule i.e., Dufasal crop in Fasli year tax of Rs.120/- under category-I and tax of Rs.80/- under category-II were levied before the amendment. Now after amendment, tax of Rs.350/- under each category has been levied. So the distinction on the basis of which the Governmental sources of irrigation were categorised has become meaningless for item No.5 in the schedule. The net result would be that those who have water sources of irrigation for whole of the year would have to pay Rs.350/-. Similarly those who have water sources available from the Governmental sources of irrigation only for a period of four months will have also to pay Rs.350/-.

9. Coming to the aqua-culture, there is a tax of Rs.500/- each under categories I and II. The learned counsel for the respondents submits that before the amendment there was no categorisation and no tax leviable on aqua-culture, and the aqua-culture has been added and tax has been levied after the amendment. He submits that availability of water from Governmental sources of irrigation for a particular period of time is not relevant for the purpose of aqua-culture, because their crops are grown in tanks and even if water is available for shorter time. It is being stored in the tanks for the purpose of aqua-culture. On the other hand the learned counsel for the petitioners submits that the water stored in tanks is not stored permanently, it has to be changed of and on, the water has to be changed particularly after a crop is ready and seeds of new crop are sown,

therefore aqua-culture is also dependant on the water sources and since there were two categories of water sources which had been created on the basis of the duration for which the water was available, therefore there could not be similar rates for both the categories. We are in agreement with the learned counsel for the petitioner.

10. Therefore, we allow the writ petitions to the extent of item Nos.5 and 6 in the schedule to Section 3 of the Amendment Act and set it aside. It will be for the appropriate Legislature to make appropriate law accordingly.