State Of Tamil Nadu And Anr. vs M. Rayappa Gounder And Ors. on 21 October, 1970

Equivalent citations: AIR1971SC231, (1971)3SCC1, AIR 1971 SUPREME COURT 231

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Bench: A.N. Grover, J.C. Shah, K.S. Hegde

JUDGMENT

K.S. Hegde, J.

1. In these appeals by special leave this Court is called upon to consider the true effect as well as validity of some of the provisions of the Madras Entertainments Tax (Amendment) Act, 1966 (Madras Act XX of 1966) (to be hereinafter referred to as the Act). For the purpose of pronouncing on the questions of law arising for decision, it is sufficient to refer to the facts of the case in Civil Appeal No. 2462 of 1969 as has been done by the High Court.

2. The 1st respondent in Civil Appeal No. 2462 of 1969, is the Managing Partner of the cinema theatre known as "the K.M.S. Theatre" at Mettupalayam in Coimbatore District. On November 7, 1965, the C.T.O. Erode, made surprise inspection of the theatre and found the booking clerk actually selling unauthorised tickets with a forged seal "C.T.O. Mettupalayam". The officer seized the forged seal and other connected materials alongwith the bogus tickets. Thereafter he served on the respondents notices calling upon them to show cause why the price of the tickets issued which had escaped assessment should not be brought to tax under the Madras Entertainments Tax Act, 1939 and further to levy surcharge on the payments for admission under the Madras Local Authorities Finance Act, 1961. The respondents' objection was duly considered and rejected. Thereafter the assessing authority levied entertainment tax and surcharge on the price of the tickets which according to him had escaped assessment. The respondents moved the High Court of Madras under Article 226 of the Constitution to quash the assessment.

3. The question as to the power of the assessing authority to re-assess the receipts that had escaped assessment under the Madras Entertainments Tax Act, 1939 had come up for consideration before the High Court of Madras in W.P.No. 513 of 1963 (Mad.) R. Sundararaja Naidu v. Entertainment Tax Officer. Therein the High Court of Madras held that there was no power to re-assess under that Act. Thereafter the State legislature enacted the Act. The Act among other provisions contains Section 7, a provision relating to validation of assessment and collection of certain taxes. That section reads:

> Notwithstanding anything contained in this Act or in the principal Act or in any judgment, decree or order of any Court no assessment or re-assessment or collection of any tax due on any payment for admission to any entertainment or any cinematograph exhibition which has escaped assessment to tax, or which has been assessed at a rate lower than the rate at which it is assessable, under Section 4 or 4-A of the principal Act, made at any time after the date of the commencement of the principal Act and before the date of the publication of this Act in the Fort St. George Gazette shall be deemed to be invalid or ever to have been invalid on the ground only that such assessment or re-assessment or collection was not in accordance with law and such tax assessed or reassessed or collected or purporting to have been assessed or reassessed or collected, shall, for all purposes, be deemed to be and to have been always validly assessed or reassessed or collected; and accordingly -
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> (a) all acts, proceedings or things done or taken by the State Government or by any officer of the State Government or by any other authority in connection with the assessment or reassessment or collection of such tax, shall, for all purposes be deemed to be, and to have always been done or taken in accordance with law;
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> (b) no suit or other proceeding shall be maintained or continued in any court against the State Government or any person or authority whatsoever for the refund of any tax so paid; and
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> (c) no Court shall enforce any decree or order directing the refund of any tax so paid.

4. The re-assessments with which we are concerned in these cases were made prior to the coming into force of the Act. Therefore all that we have to see is whether those re-assessments are validly protected by Section 7. The High Court of Madras allowed the writ petitions and quash ed the reassessments on the ground that the power to re-assess under Section 7(B) introduced by the Act is incomplete and not exercisable in the absence of prescription as to limitation contemplated by the section and hence Section 7 of the Act fails to validate the assessments in question. We do not propose to go into that question as in our opinion Section 7 of the Act is invalid in so far as it attempts to validate invalid assessments without removing the basis of its invalidity.

5. We have earlier seen that the Madras High Court had held that the provisions of the Madras Entertainments Tax Act, 1939 do not provide for reassessment. That decision has not been appealed against nor the correctness of that decision challenged before under Section 7 of the Act does not change the law retrospectively. All that it provides is that notwithstanding anything contained in the Act or in the principal Act or in any judgment, decree or order of any Court, no assessment or re-assessment or collection of any tax due on any payment for admission to any entertainment or any cinematograph exhibition which has escaped assessment to tax, or which has been assessed at a rate lower than the rate at which it is assessable under Section 4 or 4-A of the principal Act made at any time after the date of the commencement of the principal Act and before the date of the publication of this Act in the Gazette shall be deemed to be invalid or ever to have been invalid on the ground only that such assessment or re-assessment or collection was not in accordance with law

and such tax assessed or re-assessed or collected or purporting to have been assessed or reassessed or collected shall for all purposes be deemed to be to have always been validly assessed or re-assessed or collected. The effect of this provision is to overrule the decision of the Madras High Court and not to change the law retrospectively. What the provision says is that notwithstanding any judgment of the court, the reassessment invalidly made must be deemed to be valid. The legislature has no power to enact such a provision. A question similar to the one before us came up for consideration before this Court in The Municipal Corporation of the City of Ahmedabad v. The New Shrock Spg. & Wvg. Co. Ltd. . Dealing with that question this is what this Court observed:

6. This is a strange provision. Prima facie that provision appears to command the Corporation to refuse to refund the amount illegally collected despite the orders of this Court and the High Court. The State of Gujarat was not well advised in introducing this provision. That provision attempts to make a direct inroad into the judicial powers of the State. The legislatures under our Constitution have within the prescribed limits, powers to make laws prospectively as well as retrospectively. By exercise of those powers, the legislature can remove the basis of a decision rendered by a competent court thereby rendering that decision ineffective. But no legislature in this country has power to ask the instrumentalities of the State to disobey or disregard the decision given by courts. The limits of the power of legislatures to interfere with the directions issued by courts were considered by several decisions of this Court. In Shri Prithvi Cotton Mills Ltd. v. The Broach Borough Municipality . our present Chief Justice speaking for the Constitution Bench of the Court observed:

> Before we examine Section 3 to find out whether it is effective in its purpose or not we may say a few words about validating statutes in general. When a legislature sets out to validate a tax declared by a court to be illegally collected under an ineffective or an invalid law, the cause for ineffectiveness or invalidity must be removed before validation can be said to take place effectively. The most important condition of course, is that the legislature must possess the power to impose the tax, for, if it does not, the action must ever remain ineffective and illegal. Granted legislative competence, it is not sufficient to declare merely that the decision of the court shall not bind for that is tantamount to reversing the decision in exercise of judicial power which the legislature does not possess or exercise. A court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances. Ordinarily, a Court holds a tax to be invalidly imposed because the power to tax is wanting or the statute or the rules or both are invalid or do not sufficiently create the jurisdiction. Validation of a tax so declared illegal may be done only if the grounds of illegality or invalidity are capable of being removed and are in fact removed and the tax thus made legal. Sometime this is done by providing for jurisdiction where jurisdiction had not been properly invested before. Sometimes this is done by re-enacting retrospectively a valid and legal taxing provision and then by fiction making the tax already collected to stand under the re-enacted law.
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> 6-A. In Mahal Chand Sethia v. State of West Bengal, Criminal Appeal No. 75 of 1969 D/- 10-9-1969 (SC) Mitter J. speaking for the Court stated the legal position in these

words:

The argument of counsel for the appellant was that although it was open to the State legislature by an Act and the Governor by an Ordinance to amend the West Bengal Criminal Law Amendment (Special Courts) Act, 1949, it was incompetent for either of them to validate an order of transfer which had already been quashed by the issue of a writ of certiorari by the High Court and the order of transfer being virtually dead, could not be resuscitated by the Governor or the Legislature and the validating measures could not touch any adjudication by the Court.

It appears to us that the High Court took the correct view and the Fourth Special Court had clearly gone wrong in its appreciation of the scope and effect of the Validating Act and Ordinance. A legislature of a State is competent to pass any measure which is within the legislative competence under the Constitution of India. Of course, this is subject to the provisions of Part III of the Constitution. Laws can be enacted either by the Ordinance making power of a Governor or the Legislature of a State in respect of the topics covered by the entries in the appropriate List in the Seventh Schedule to the Constitution. Subject to the above limitations laws can be prospective as also retrospective in operation. A court of law can pronounce upon the validity of any law and declare the same to be null and void if it was beyond the legislative competence of the legislature or if it infringed the rights enshrined in Part III of the Constitution. Needless to add it can strike down or declare invalid any act or direction of a State Government which is not authorised by law. The position of a Legislature is however different. It cannot declare any decision of a court of law to be void or of no effect.

6. Again Shah J. (one of us in Janpada Sabha, Chhindwara v. The Central Provinces Ltd. and State of Madhya Pradesh v. Amalgamated Coal Fields Ltd., speaking for the Constitution Bench explained the legal position in these words:

The relevant words which purported to validate the imposition, assessment and collection of cess on coal may be recalled: they are "cesses imposed, assessed or collected by the Board in pursuance of the notification/notices specified in the Schedule shall, for all purposes, be deemed to be, and to have always been validly imposed, assessed or collected as if the enactment under which they were so issued stood amended at all material times so as to empower the Board to issue the said notification/notices. Thereby the enactments i.e. Act 4 of 1920 and the Rules, framed under the Act pursuant to which the notifications and notices were issued, must be deemed to have been amended by the Act. But the Act does not set out the amendments intended to be made in the enactments. Act 18 of 1964 is a piece of clumsy drafting. By a fiction it deems the Act of 1920 and the rules framed thereunder to have been amended without disclosing the text or even the nature of the amendments.

Proceeding further, it was observed:

> On the words used in the Act, it is plain that the legislature attempted to overrule or set aside the decision of this Court. That in our judgment, is not open to the Legislature to do under our Constitutional scheme. It is open to the Legislature within certain limits to amend the provisions of the Act retrospectively and to declare what the law shall be deemed to have been, but it is not open to the Legislature to say that a judgment of a court properly constituted and rendered in exercise of its powers in a matter brought before it shall be deemed to be ineffective and the interpretation of the law shall be otherwise than as declared by the Court.
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> We are clearly of the opinion that Sub-section (3) of Section 152A introduced by the Ordinance is repugnant to our Constitution.

7. The present case falls within the rule laid down by that decision. Hence it is clear that the impugned assessment cannot be sustained. In this view of the matter it is not necessary to go to the other contentions arising in the case.

8. In the result these appeals fail and they are dismissed with costs.