The Vishnu Pratap Sugar Works (P) Ltd vs The Chief Inspector Of Stamps, U.P on 4 May, 1967

Equivalent citations: 1968 AIR 102, 1967 SCR (3) 920, AIR 1968 SUPREME COURT 102

Author: J.M. Shelat

Bench: J.M. Shelat, R.S. Bachawat, Vishishtha Bhargava

PETITIONER:
THE VISHNU PRATAP SUGAR WORKS (P) LTD.

Vs.

RESPONDENT:
THE CHIEF INSPECTOR OF STAMPS, U.P.

DATE OF JUDGMENT:
04/05/1967

BENCH:
SHELAT, J.M.
BENCH:
SHELAT, J.M.
BACHAWAT, R.S.
BHARGAVA, VISHISHTHA

CITATION:
1968 AIR 102 1967 SCR (3) 920

ACT:
Court Fees Act, 1870 (8 of 1870), S. 7 (iv-A), (a) and S. 7 (iv-B) (b)-Acts imposiiting tax-Suit for injunction on the ground that Acts void-court fee payable.

HEADNOTE:
The appellant-company filed a suit against the State of U.P. and Union of India for a permanent injunction restraining the State from proceeding to realise cess and tax under the U.P. Sugar Cane Cess Act 1956 read with U.P. Sugar Cane Cess (Validation) Act, 1961 and the Sugar Cane Purchase Tax Act, 1961 on the ground that the Acts were invalid and void. On its plaint, the appellant paid court-fees under subs. (iv-B) (b) of s. 7 on the footing that the relief sought was an injunction. The respondent the Chief Inspector of Stamps

objected, contending that court-fees payable were under sub-s. (iv-A) of s. 7 on the ground that the suit was for a declaratory decree, where consequential relief prayed for was an injunction or of adjudging void an instrument securing money or other property having such value. The trial Court rejected the respondent's objection, which the High Court reversed. In appeal, this Court,

HELD : The court-fees payable on the plaint were tinder cl. (b) of sub-s. (iv-B) of s. 7 and neither cl. (a) of sub-s. (iv-A) of s. 7 nor sub-s. (iv-A) of s. 7 applied.

The plaint when read as a whole showed that though the appellant alleged that the Acts were void and therefore non-est for the reasons set out therein, it did not seek any declaration that they were void. The plaint proceeded on the footing that the said Acts were void and that therefore the State of U.P. or its authorities had no power to realise the tax -and the cess. It may be that while deciding whether to grant the injunction or not, the court might have to consider the 'question as to the validity or otherwise of the said Acts. But that must happen in almost every case where an injunction is prayed for. If for the mere reason that the court might have to go into such a question, a prayer for injunction were to be treated as one for a declaratory decree of which the consequential relief is injunction all suits where injunction is prayed for would have to be treated as falling under cl. (a) of sub-s. (iv) of s. 7 and in that view cl. (b) of sub-s. (iv) of s. 7 would be superfluous. [924E-H]

Ramanbhai Ashabhai Patel v. Dabhi Ajitkumar Fulsinji, [1965] 1 S.C.R. 712 : referred to.

Ordinarily a statute is not an instrument unless as in the case of Conveyancing Act, 1881, the definition includes it or as in the case of s. 205 (1) (viii) of the Law of Property Act, 1925, the statute creates a settlement and such statute is for that 'reason treated as -,in instrument, so, the Acts alleged in the plaint to be void are not instruments within the meaning of sub-s. (iv-A) of s. 7. [923 G-H]

Mohan Chowdhury v. The Chief Commissioner [1964] 3 S.C.R. 442, and Emperor v. Ravangouda Lingangouda Patil, A.T.R, 1944 Bom. 259. referred to.

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JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1668 of 1966.

Appeal by special leave from the judgment and order dated November 2, 1965 of the Allahabad High Court in Civil Revision No. 1095 of 1965.

G. N. Dixit, for the appellant.

Bishan Narain and 0. P. Rana, for the respondent. The Judgment of the Court was delivered by Shelat, J. The appellant-company filed suit No. 16 of 1963 against the State of Uttar Pradesh and the Union of India, inter alia, praying for a permanent injunction regaining the State of Uttar Pradesh, its servants and agents from realising or from proceeding to realise sugarcane cess and purchase tax amounting to Rs. 33 lakhs and odd charged under the U.P. Sugar Cane (Regulation of Supply and Purchase) Act, 1953, the Sugar Cane Cess Act, 1956 read with the U.P. Sugar Cane Cess (Validation) Act, 1961 and the U.P. Sugar Cane Purchase Tax Act, IX of 1961. In the said suit, the appellant-company, inter-alia, alleged that the Acts for the diverse reasons set out therein were invalid and void and therefore the State was not entitled to levy, collect or recover the said cess or the purchase tax and prayed, as aforesaid. that the State should be restrained from proceeding to realise the said cess or tax. The appellant- company paid court-fees on its said plaint under sub-s. (iv- B) (b) of S. 7 on the footing that the relief sought in the suit was an injunction. The Chief Inspector of Stamps objected to the court-fees being paid under cl. (b) of sub- s. (iv-B) of S. 7 contending that the court-fees payable were as provided under sub-s. (iv) (a) of s. 7 or under sub- s. (iv-A) of S. 7, that is to say, on the footing that the suit was for a declaratory decree where consequential relief prayed for was an injunction or on the footing that the suit involved cancellation of or of adjudging void an instrument securing money or other property having such value. The trial Judge rejected the objections and held that the court- fees payable were adequate as cl. (b) of sub-s. (iv-B) of S. 7 applied. The Chief Inspector of Stamps thereupon filed a revision application before the High Court reiterating the said objections. The High Court rejected the contention that s. 7 (iv) (a) applied but held that sub-s. (iv-A) of S. 7 applied as the said Acts were instruments securing money within the meaning of that subsection and that though the relief claimed in the suit was injunction, in substance and effect the suit involved adjudgment of the said Acts as void. Hence this appeal by special leave.

Sub-s. (iv-A) of S. 7 reads as follows:-

> "For cancellation or ad ' judging void instruments and decree-In suits for or involving cancellation of or adjudging void or voidable..... an instrument securing money or other property having such value".

The question which falls for determination is whether an Act passed by the Central or the State Legislature can be said to be an instrument and, if so, an instrument securing money or other property having such value. The Court-fees Act does not define the word 'instrument'. That being so we have to turn for the connotation of the word 'instrument' to its ordinary dictionary meaning. According to Stroud's Judicial Dictionary, 3rd Ed. Vol. 11, p. 1472, 'instrument' means 'a writing, and generally imports a document of a formal legal kind. Semble, the word may include an Act of Parliament (see Deed of Settlement) so in the Trustee Act, 1925 (15 Geo. 5, c. 18), S. 68..... (11) Conveyancing Act, 1881 (44 & 45 Viet. c. 41) S. 2(xiii), "'instrument' includes deed, will, inclosure, award, and Act of Parliament". Thus, an 'instrument' may include a statute enacted by Parliament if the particular statute in its context includes it as an instrument. According to Jowitt's Dictionary of English Law,, p. 984 "Instrument' means "a formal legal writing, e.g., a record charter, deed of

transfer or agreement". It is, however, observed that under the Law of Property Act, 1925, S. 205(1) (van), 'instrument' for the purposes of this Act does not include a tatute unless the statute creates a settlement. "An instrument is a writing and generally means a writing of a formal nature. But where there is a power to appoint by any deed or instrument o by will, any writing, such as a letter, which refers to the power, or which can have effect only by operating on the fund (such as a cheque or other order for payment), is an instrument. A telegram is an instrument within the meaning of the Forgery Act, 1912, s. 7, and so is an envelope with a postmark falsified for the purposes of a betting fraud". According to the same dictionary, the word 'enact' means to act, perform or effect; to establish by law; to decree and an 'enactment' means an Act of Parliament or statute or any part thereof. A statute, according to Maxwell on Interpretation of Statutes, 11th Ed. p. I is -the will of the legislature, i.e. an edict of the legislature. A statute is, however, different from a statutory instrument as defined by -the Statutory Instruments Act (9 & 10 Geo. 6, c. 36) 1946 where power to make, confirm, or approve orders, rules, regulations or other subordinate legislation is conferred on His Majesty in Council or on any Minister of 'the Crown., a document by which that power is exercised is a statutory instrument. Similarly, where by an Act passed before the enactment of the Statutory Instrument Act, 1946, power to make statutory rules is conferred on any rule- making authority, any document by which that power is exercised is a statutory instrument. Thus, whereas a statute is an edict of the legislature, a statutory instrument as distinguished from such an edict is a document whereby the rule making power is expressed. In Mohan Chowdhary v. The Chief Commissioner Tripura(1) the question arose whether the order dated November 3, 1962, passed by the President under Art. 359(1) of the Constitution suspending the right of any person to move any court for the enforcement of rights conferred by Arts. 21 and 22 during the Proclamation of Emergency was an instrument withinthe meaning of s. 8(1) of the General Clauses Act, 1897. Inconsidering that question this Court approved the meaning of the word 'instrument' given by Stroud and observed:-

> "The expression is also used to signify a deed inter-
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> parties or a charter or a record or other writing of a formal nature. But in the context of the General Clauses Act, it has to be understood as including reference to a formal legal writing like an Order made under a statute or subordinate legislation or any document of a formal character made under constitutional or statutory authority. We have no doubt in our mind for the expression 'instrument' in S. 8 was meant to include reference to the Order made by the President in exercise of his constitutional powers".

The President's Order having been made under power conferred upon him by Art. 359 that Order would have the same connota- tion as the Statutory instrument defined by the statutory Instruments Act 1946 and therefore was an instrument within the meaning of s. 8(1) of the General Clauses Act. That does not mean that a statute like the U.P. Court-fees Act which is an edict of the legislature is an instrument. In Emperor v. Rayangouda Lingangouda Patil(1) the High Court of Bombay considered whether an order of the Government delegating its power to District Magistrates under the Defence of India Rules was an instrument within the meaning of s. 8(1) of the General Clauses Act. The High Court held that an instrument, generally speaking, means a writing usually importing

a document of a formal legal kind. in but it does not include Acts of Parliament unless there is a statutory definition to that effect in any Act. There is thus ample authority to hold that ordinarily a statute is not an instrument unless as in the case of Conveyancing Act of 1881, the definition includes it or as in the case of s. 205 (I) (viii) of the Law of Property Act, 1925, the statute creates a settlement and such statute is for that reason treated as an instrument. It would not therefore be correct to say that the Acts alleged in the plaint to be void are instruments within the meaning of sub-s. (iv-A) of s. 7. In this view, it does not become necessary to decide whether the Acts are instruments securing money or other property having such value. Sub-s. (iv-A) of s. 7 would not, therefore, apply and the High Court was not right in calling upon the (1) [1964] 3 S C.R. 442.

(2) A.I.R. 1944 Bom, 259.

appellant-company to pay additional court-fees under that subsection.

Mr. Bishan Narain, however, argued that even if these Acts are not instruments, the plaint if read in substance rather than in form is for a declaratory decree with injunction as the consequential relief and therefore sub- s. (iv) (a) of s. 7 would apply and the court-fees paid merely on the footing of the suit being for an injunction would not be adequate. As stated earlier, the High Court rejected this contention as untenable. Mr. Bishan Narain, contended that he was nonetheless entitled to argue that the High Court was in error and that sub-s. (iv) (a) would apply and not cl. (b) of sub-s. (iv-B). For this purpose he relied on some observations in Ramanbhai Ashabhai Patel v. Dabhi Ajitkumar Fulsinji(l), where it has been held that as soon as special leave is granted this Court has the power to decide all the points arising from the judgment appealed against and even in the absence of an express provision like

0. XLI, r. 22 of the Code of Civil Procedure it can devise appropriate procedure to be adopted at the hearing. Assuming that Mr. Bishan Narain can urge the contention that S. 7 (iv) (a) applies in the present case the contention still fails. It is true that for purposes of the Court fees Act, it is the substance and not the form which has to be considered while deciding which particular provision of the Act applies. It cannot, however, be gainsaid that the actual relief prayed for in the plaint was an injunction restraining the State and its authorities to realise from the appellant-company the aforesaid cess and the purchase tax. It is clear from the plaint when read as a whole that though the appellant-company alleged that the Acts were void and therefore non-est for the reasons set out therein, it did not seek any declaration that they were void. The plaint procedure on the footing that the said Acts were void and that therefore this State of U.P. or its authorities had no power to realise the tax and the said cess. It may be that while deciding whether to grant the injunction or not, the court might have to consider the question as to the validity or otherwise of the said Acts. But that must happen in almost every case where an injunction is prayed for. If for the mere reason that the court might have to go into such a question, a prayer for injunction were to be treated as one for a declaratory decree of which the consequential relief is injunction all suits where injunction is prayed for would have to be treated as falling under cl. (a) of sub-s. (iv) of S. 7 and in that view cl.

(b) of sub-s. (iv-B) of s. 7 would be superfluous. The contention urged by Mr. Bishan Narain, therefore, cannot be accepted.

For the reasons aforesaid, we are of the view that neither cl. (a) of sub-s. (iv-A) of s. 7 nor sub-s. (iv-A) of s. 7 would

1) 19651 1 S.C.R 712.

apply and the court-fees payable on the plaint were under cl. (b) of sub-s. (iv-B) of S. 7. The appeal, therefore, has to be allowed. The order of the High Court is set aside and the order of the trial court is restored. The respondent will pay the appellant-company the costs of this appeal.

Y.P. Appeal allowed.