

Kamta Prasad Aggarwal Etc vs Executive Officer, Ballabgarh & Anr on 20 December, 1973

Equivalent citations: 1974 AIR 685, 1974 SCR (2) 827, AIR 1974 SUPREME COURT 685, 1974 4 SCC 440, 1974 TAX. L. R. 482, 1974 2 SCR 827, 1974 (1) SCWR 238, 1974 SCC (TAX) 255

Author: A.N. Ray

Bench: A.N. Ray, Hans Raj Khanna, Kuttily Kurien Mathew, A. Alagiriswami, P.N. Bhagwati

PETITIONER:

KAMTA PRASAD AGGARWAL ETC.

Vs.

RESPONDENT:

EXECUTIVE OFFICER, BALLABGARH & ANR.

DATE OF JUDGMENT 20/12/1973

BENCH:

RAY, A.N. (CJ)

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RAY, A.N. (CJ)

KHANNA, HANS RAJ

MATHEW, KUTTYIL KURIEN

ALAGIRISWAMI, A.

BHAGWATI, P.N.

CITATION:

1974 AIR 685 1974 SCR (2) 827

1974 SCC (4) 440

CITATOR INFO :

R 1984 SC 884 (46)

ACT:

Constitution of India, 1950, Art. 276--Scope of-whether State and each of the authorities mentioned in Article can impose tax up to a limit of Rs. 250.

HEADNOTE:

Under the Punjab Professions, Trades, Callings and Employment Taxation Act, 1956, a professional tax on a graded scale, subject to a maximum of Rs. 250 per annum, had

been and was being collected by the State of Haryana. The Panchayat Samiti. Ballabgarh, in Haryana. issued a notice that it intended to levy professional tax at the maximum rate of Rs. 200 per annum according to the Scheduled specified under the Gram Panchayat Samitis and Zila Parishads Act. 1961. The appellants, in writ petitions in the High Court, contended that the imposition was in violation of Article 276 of the Constitution in that the maximum limit of Rs. 250/- mentioned in the Article applies to the totality of the tax recovered by all the authorities mentioned in the Article taken together. The High Court dismissed the petitions.

Dismissing the appeals to this Court,

HELD : The High Court was right in reaching the conclusion that the State as well as the authorities mentioned in the Article can each impose tax up to a limit of Rs. 250. [830 G-H]

(1) The power of the State to levy the tax is derived from Entry 60 of List II of the VII Schedule to the Constitution dealing with taxes on professions, trades, callings and employments. The State Legislature is therefore, competent to legislate and levy taxes on professions, trades and employments and may also by law, confer a similar authority on a local authority. [828 F]

(2) A tax on profession can be imposed if a person carries on a professions. Such a tax on profession is irrespective of the question of income. [829 G]

(3) The words in the Article that the total amount payable to the State or to any one Municipality, District Board. Local Board or local authority cannot mean that the word 'or' is used in a conjunctive sense as a substitute for the word 'and'. This is clear from the proviso to Article 276(2) which provides that if before the commencement of the Constitution any State or any, authority had imposed a tax earning the limit of Rs. 250 such tax may continue; and this indicates that both can tax separately to the limit imposed by the Article. [830 B]

(4) The words 'any one person' in the Article are used in juxtaposition with any one municipality etc. One and the same person may be engaged in more than one of the items suggested in Art. 276 and there may be imposition of tax on more than one item. The word 'total' relates to an authority levying various taxes and not to all authorities put together. [830 D]

(5) If the total of the taxes should not exceed Rs. 250/- as contended by the appellant it will mean that if a person is paying professional tax of Rs. 150 to the State the local authority can impose on him a similar tax only upto the balance of Rs. 100. This would lead to the anomalous consequences, namely (a) one of the authorities will have to tax persons with lower incomes while those with higher incomes will escape; and (b) if one authority will impose a tax of the balance sum left after deducting the tax imposed

by the State, all the other authorities may not impose the
taxes, [830 F]
828

JUDGMENT:

CIVIL APPELLATE JURISDICTION Civil Appeals Nos. 2427-2428/68 From the Judgment and Order dated the 25th August, 1967 and 17th May 1968 of the Punjab and Haryana High Court in C.W. Nos. 355 and 354 of 1967.

Brij Bans Kishore and M. M. Kshatrya, for the appellants. S.K. Mehta, K. R. Nagaraja, M. Qummaruddin and Vinod Dliawan. for respondents No. 1.

The Judgment of the Court was delivered by RAY, C.J.-.These appeals are by certificate from the judgment dated 17 May, 1967 of the Full Bench of the High Court of Punjab and Haryana.

The appellants in writ petitions in the High Court challenged the legality of notices issued by the Executive Authority, Ballabgarh Panchayat Samiti claiming Rs. 200/- on account of profession tax for the year 1963-64. The notice was issued under section 76 of the Gram Panchayat Samitis and Zila Parishads Act, 1961 referred to as the 1961 Act. The appellants contended that the claim under section 76 of the 1961 Act was in violation of Article 276 of the Constitution because a similar professional tax on a graded scale subject to a maximum limit of Rs. 250/- per annum had been and was being collected by the State of Haryana. The Full Bench of the High Court upheld the contention of the respondents that the recoveries can be made by each one of the authorities mentioned in Article 276 of the Constitution to a maximum sum of Rs. 250/- per annum. The power of the State to levy tax is derived from Entry 60 of List II in the Seventh Schedule of the Constitution. The Entry speaks of taxes on professions, trades, callings and employments. The State legislature is, therefore, competent to legislate and levy taxes on professions, trades and employments. The State legislature may also by law confer a similar authority on a Municipality, District Board, Local Board or other local authority.

The appellants contended that the maximum limit of Rs. 250/- mentioned in Article 276 applies to the totality of the tax recovered by all the authorities mentioned in the Article taken together. It was said that each authority could not levy tax up to a limit of Rs. 250/-. it was said that the opening and the concluding portions of Article 276(2) should be construed conjunctively to represent the total amount payable in respect of any person to the authorities enumerated in the Article by way of taxes on professions, trades, callings and employments not exceeding Rs. 250/- per annum.

The Punjab Professions, Trades, Callings and Employment Taxation Act, 1956 referred to as the 1956 Act by section 3 imposed liabi-

lity on persons who carried on trade or who followed profession or calling or who was in employment to pay tax in respect of such profession, trade, callings or employment at rates specified

in the Schedule. Income below Rs. 6000/- was exempted from tax. Income between Rs. 6000/- and Rs. 8500/- was subjected to a tax of Rs. 120/- per annum. The maximum sum of Rs. 250/- per annum was levied on income exceeding Rs. 2500/-. The appellants were paying Rs. 250/- per annum to the State by way of professional tax. Under section 5 of the Punjab Temporary Taxation Act, 1962 the Schedule to the 1956 Act was altered. Income between Rs. 1800/- to Rs. 3000/- was subjected to a tax of Rs. 28/- per annum. Income exceeding Rs. 11,500/- was subjected to a tax of Rs. 250/- per annum. By Punjab Act 6 of 1967 the 1956 Act was repealed. There is now no professional tax so far as the reorganised State of Punjab is concerned. The provisions of the 1956 Act however continued to be applicable to the State of Haryana and also to the Union Territory of Chandigarh under the relevant provisions of law.

The Panchayat Samiti, Ballabgarh issued a notice on 19 September-, 1962 that it intended to levy professional tax at the maximum rate of Rs. 200/- per annum according to the Schedule specified under the 1961 Act. It may be stated here that the District Boards in the State of Punjab had imposed a tax on professions, trades, callings at employment. The District Boards were abolished in consequence of the 1961 Act. There was however a saving provision in the 1961 Act. Section 64 of the 1961 Act provided that a Panchayat Samiti shall be deemed to have imposed tax at the rate at which immediately before the commencement of the Act it was lawfully levied by the District Board of the District in which the Panchayat Samiti is situate until a provision to the contrary is made by the Panchayat Samiti with the previous sanction of the Government. The rates which were adopted by the Panchayat Samiti were different rates on different slabs of income. Income exceeding Rs. 10,000/- was subjected to a tax of Rs. 200/- per annum. It is this levy of additional professional tax against which the appellants complaint. The contention of the appellants that the imposition of tax by the Panchayat Samiti amounts to double taxation and is, therefore, illegal is unsound. A tax on profession is not necessarily connected with income. This is clear from the tax on professions imposed by several municipal authorities at certain rates mentioned in the relevant statutes. A tax on income can be imposed if there is income. A tax on pro- fession can be imposed if a person carries on a profession. Such a tax on profession is irrespective of the question of income.

Article 276(2) as well is the proviso has the combined effect which precludes a challenge on the ground that the tax on profession is a tax on income or that it exceeds Rs. 250/- per annum. The proviso saves existing taxes. The proviso states that notwithstanding that a profession tax exceeds Rs. 250/- per annum it can continue to be levied until provision to the contrary is made by Parliament by law.

The provisions in Article 276(2) were contended by counsel for the appellants to indicate that the total of taxes imposed on professions, trades, callings and employments by the State, Municipality or any other authority should not exceed Rs. 250/- per annum. it was said that the words "total amount by way of taxes" shall not exceed Rs. 250/-. That is totally misreading the Article. It cannot be denied that the State Legislature has power to impose taxes. The words in Article 276 that the total amount payable to the State or to any one Municipality, District Board, local board or other local authority cannot mean that the word 'or' is used in a conjunctive sense as a substitute for the word 'and'. The word 'or' is used in a disjunctive sense. The proviso to Article 276(2) not only supports that construction but also makes the provision clear. In the proviso to Article 276(2) it is

mentioned that if before the commencement of the Constitution any State or any municipal board or authority had imposed a tax exceeding the limit of Rs. 250/- such tax may continue. Therefore, when the proviso speaks of any State or any such municipality it indicates that both can tax separately to the limit imposed by the Article. Again, the language of Article 276(2) shows that the Constitution uses the words "any one person" in juxtaposition with any one municipality, district board, local board or other authority. The provisions are clear in their effect that the word "or" occurring between the words "the State" and the words "to any one municipality" cannot be read as the word "and" in a conjunctive sense. The words "the total amount payable in respect of any one person to the State or to any one municipality, district board, local board or other authority" mean that tax of and up to the sum of Rs. 250/- can be imposed by any one of the authorities mentioned. If the Constitution wanted the total taxes to be imposed by the State and other authorities to be Rs. 250/- the Constitution would have said that the total amount payable in respect of any one person by way of tax on professions, trades, callings and other employments shall not exceed Rs. 250/- per annum whether imposed by the State, municipality, district board, local board or other local authority. Further, if the total of the taxes be a sum of Rs. 250/- as contended for by counsel for the appellants it will mean that if a person is paying professional tax of Rs. 150/- to the State, the local authority can impose on him a similar tax up to the balance sum of Rs. 100/- That may lead to two consequences. One is that one of the authorities will have to tax persons with lower income while those with higher income will escape any payment of tax. The other is that if one authority will impose a tax of the balance sum left after considering the amount imposed by the State all the authorities may not impose taxes. That will be entirely a wrong construction. High Court was right in reaching the conclusion that the State as well as the authorities mentioned in Article 276 of the Constitution can each impose tax up to a limit of Rs. 250/-. One and the same person may be engaged in more than one of the items suggested in Article 276, namely, professions, trades, callings and employments. Such imposition of tax on more than one item in respect of one and the same person cannot be anything but taxes. The word "total" relates to an authority levying various taxes and not to all authorities put together.

For these reasons the judgment of the High Court is upheld. The appeals are, therefore, dismissed. The parties will pay and bear their own costs as they did in the High Court. Appeals dismissed.

V.P.S. 13 748SCI/74