Sheo Prasad Kanhaya Lal vs Municipal Board Bahraich on 16 March, 1955

Equivalent citations: AIR1955ALL508, AIR 1955 ALLAHABAD 508, ILR (1956) 2 ALL 707

JUDGMENT

Kidwai, J.

1. Messrs. Sheo Prasad Kanhaiya Lal & Rameshwar Lal Bisheshwar Lal are two registered firms having their offices within the municipal limits of Bahraich and having a rice mill in the district of Bahraich outside municipal limits. Lalas Kanhaya Lal and Bisheshwar Lal are the managing partners of their respective firms.

2. The Municipal Board of Bahraich imposed a circumstances and property tax amounting to Rs. 534 and Rs. 569/- on the two firms respectively for the year 1948 to 1949.

3. On 23-3-1949 the firm of Sheo Prasad Kanhaiya Lal instituted suit No. 135 of 1949 in the court of the Munsif Bahraich against the Municipal Board of Bahraich and on 24-3-1949 Messrs. Rameshwar Lal Bisheshwar Lal instituted suit No. 137 of 1949 in the same court against the same defendant.

4. The plaintiff's of the two suits contested the validity of the tax on the ground that it was in excess of Rs. 50/- which is the maximum limit of such a tax under Act 20 of 1941 (The Professions Tax Limitation Act). They also alleged that the Municipal Board had issued notices of demand and was about to realise the tax by drastic methods. It was accordingly prayed that perpetual injunction be issued to the defendant not to realise more than Rs. 50/- as tax.

5. In each case the defendant pleaded that the plaintiffs have a very big Kothi and shop having goods worth several lakhs of rupees within municipal limits and that they carry on business on a large scale. It was further alleged that the tax was a very small amount in proportion to the value of the property of the plaintiffs and that the Professions Tax Limitation Act did not apply to the case. It was also pleaded that the suit was barred by Section 164, U.P. Municipalities Act.

6. The learned Munsiff framed the following seven issues;

> "(1) Whether the tax in suit, as assessed by the Municipal Board is illegal and without jurisdiction beyond Rs. 50/- in view of Professions Tax Limitation Act 20 of 1941 as alleged by the plaintiffs.

(2) Whether the plaintiffs are estopped from bringing the suit as alleged in para. 12 of the written statement.

(3) Whether the suit for injunction is maintainable without previous notice to Municipal board as alleged.

(4) Whether the suit is barred under the provisions of Section 164, U.P. Municipalities Act.

(5) To what relief, if any, is the plaintiff entitled?

(6) Whether the suit is barred by Ordinance No. 17 of 1949 as alleged.

(7) Whether the Ordinance is ultra vires".

The learned Munsif found:

(1) That a tax on circumstances and property could not exceed Rs. 50/- Per annum:

(2) That the amendment of Professions Tax Limitation Act by Ordinance No. 17 of 1949 and later by Act 61 of 1949 was ultra vires: (3) That the suit was not barred by Section 164 (1) because it did not assail the amount of the tax but the basis on which the tax was sought to be levied: (4) That the suit was not barred by Section 326(1), U.P. Municipalities Act.

6a. As a result of these findings the learned Munsif directed the issue of an injunction restraining the defendant from realising more than Rs. 50/- per annum as tax from each of the plaintiffs.

7. The defendant filed appeals in both cases and the appeals were allowed. The learned first Civil Judge of Bahraich held:

(1) That Ordinance No, 17 of 1949 and Act 61 of 1949, validly amended Act 20 of 1941 and that therefore it was possible for the Municipal Board to assess the circumstances and property tax at a figure exceeding Rs. 50/- per annum: and (2) That the laws were given retrospective effect and consequently the assessment of more than Rs. 50/- though made before the Ordinance was issued, was a valid imposition. (8) The two plaintiffs have come up to this Court and have filed Second Civil Appeals Nos. 270 and 317 of 1950.

9. Their learned Counsel has contended that the tax is hit by the provisions of the Professions Tax Limitation Act (20 of 1941) and is, therefore, invalid for a sum exceeding Rs. 50/-. This is the sole point involved in these appeals.

10. Attempts having been made by some Provincial Legislatures to impose a tax on incomes derived from professions, trades, callings or employment and the validity of such taxes having been questioned by reason of the fact that under Section 100 read with item 54 of List I of Schedule 7, Government of India Act it was the Central Legislature alone that could impose a tax on incomes other than agricultural income, the English Parliament stepped in and in 1940 inserted Section 142A, Government of India Act. This section, while it legalised taxation of incomes derived from specified sources, imposed a limit on such taxation. The maximum in the case of, taxation after 31-3-1939 was to be Rs. 50/- per annum while in the case of existing taxes it was to be the maximum which was payable in the financial year ending on that date. The Federal Legislature of India was, by a proviso to the section, given authority to reduce the latter maximum to such a figure as it thought fit.

11. In pursuance of the power so conferred the Central Legislature enacted the Professions Tax Limitation Act (20 of 1941) Section 2 of which provided that all taxes payable by any one person "by way of a tax on professions, trades, callings or employments shall from and after the commencement of this Act cease to be levied to the extent to which such tax exceeds rupees fifty per annum".

Section 3 provided that the taxes mentioned in the schedule to the Act were to be exempt from the operation of Section 2. Among the taxes so exempt was the tax on trades and callings leviable under Section 128, U.P. Municipalities Act. The circumstances and property tax leviable by the District and Municipal Boards was not entered in the schedule.

12. In 1943 a Full Bench of the erstwhile Allahabad High Court held in --'District Board, Ferrukhabad v. Prag Dutt', AIR 1948 All 382(FB) (A), that the nomenclature was immaterial and that the tax known as the circumstances and property tax imposed by a District Board was in fact a tax on income derived from trade and was subject to the limitation of rupees fifty per annum imposed by the Professions Tax Limitation Act.

13. As a result of the above mentioned decision Central Ordinance No. 17 of 1949 was issued on 21-7-1949 and was later replaced by the Professions Tax Limitation (Amendment and Validation) Act 61 of 1949 which received the assent of the Governor General on 26-12-1949. These laws amended the schedule to Act 20 of 1941. Act 61 of 1949 inserted items 3A and 3B. Item 3A is in the following words:

> "The tax on inhabitants assessed according to their circumstances and property, imposed under Clause (ix) of Sub-section 1 of Section 128, U.P. Municipalities Act, 1916 (U.P. Act 2 of 1916)".

14. Section 3 of Act 61 of 1949 enacted:

> "(i) no tax on circumstances and property imposed before the commencement of this Act under Clause (ix) of Sub-section (1) of Section 128, U.P. Municipalities Act, 1916 (U.P. Act 2 of 1916) .....shall be deemed to be or ever to have been invalid merely on

> the ground that the tax imposed exceeded the limit of Rs. 50 per annum prescribed by the said Act, and the validity of the imposition of any such tax shall not be called in question in any Court."

15. The learned Munsif has held both the Ordinances and the Act to be ultra vires because he considered that the proviso to Section 142A, Government of India Act enabled the Central Legislature to reduce the maximum limit of the tax but "once the limit of tax has been brought down to Rs. 50/- by the Professions Tax Limitation Act, 1941, the Government of India Act bars it to be raised any further; and no amount of amendments or a new Act can validate."

16. There is nothing in Section 142A, or any other section, of the Government of India Act which imposes any such restriction on the power of the Central Legislature. In fact a reading of the proviso to Section 142A makes it clear that the maximum limit fixed by it may be altered from time to time. The important words (which the learned Munsif seems to have ignored) are:

> "Unless 'for the time being' provision to the contrary is made by a law of the Federal Legislature."

17. The use of the words "for the time being" makes it clear that the maximum could be reduced only temporarily by the Federal Legislature if it so desired arid that that Legislature could make laws fixing the maximum for the time being.

18. Thus a legislature which was competent to do so amended Act 20 of 1941 so as to take the tax with which we are concerned out of the mischief of that Act and it expressly gave the amendment retrospective effect. There can thus be no challenge of the validity of the amending enactment and it must now be held that the limit of Rs. 50/- formerly imposed on such tax is no longer applicable.

19. It was, therefore, open to the Municipal Board to assess the taxes which it has done and the suits of the plaintiffs were rightly dismissed by the lower appellate Court. We dismiss these appeals with costs. The costs of the lower Courts shall be in accordance with the decree of the lower appellate Court. The injunction order dated 4-4-1951 is vacated.