Firm Jaswant Rai Jai Narain vs Sales Tax Officer And Ors. on 29 April, 1955

Equivalent citations: AIR1955ALL585, AIR 1955 ALLAHABAD 585

JUDGMENT

Agarwala, J.

1. This is a petition under Article 226 of the Constitution praying that the U. P. Sales Tax Act, 1948, be declared ultra vires the Constitution and that a writ of mandamus direction or other writ requiring the opposite-parties to desist from demanding and realising the sales tax from the applicant on the sale of printed cotton or silk cloth be issued.

2. The applicant is a firm carrying on business at Farrukhabad in printed cloth, both handloom and mill-made cloth and then prints it and sells it as Saris, Lihafs, Fards, bed-covers etc. The applicant firm is a wholesale dealer. It holds a licence under the U. P. Hand Printers and Hand Dyers Licensing Order, 1949. On 1-7-1951, the Government issued a Notification No. ST-1798/X-902(51)-49 wherein the Governor of the U. P. State notified that no tax was payable on the sale of cloth manufactured on handlooms with artificial silk, linen, flax and cotton or wool. In October, 1951, the applicant was required to pay the tax under the U. P. Sales Tax Act (U. P. Act No. XV of 1948).

3. It is the applicant's case that the handloom silk cloth sold by it does not lose its character of handloom silk cloth by the mere fact that it has been printed and put in the form of saris, covers for quilts and bed-covers and the sale of such cloth cannot be subjected to the payment of tax under the U. P. Sales Tax Act. Further, the applicant contends that inasmuch as (I) Under Section 2(1), U. P. . Sales Tax Act, the departments of the State and the Central Governments have been excluded from the definition of a 'dealer' and thus, exempted from the payment of the sales tax, ' (II) Under Section 3 and 4 of the Act, the Government has been given the power (which power is entirely unrestricted and arbitrary) to reduce the tax of or exempt any person or class of goods from the liability of payment of sales tax, and (III) Under Section 4, the Spinners Association and Gandhi Ashram and its branches have been exempted from payment of tax under the Act, the Act a a whole is discriminatory and has, therefore, become void under Article 14 read with Article 13 of the Constitution.

(4) Section 2(c) of the Act defines a 'dealer' as follows:

> "2(c) 'Dealer' means any person or association of persons carrying on the business of buying or selling goods in Uttar Pradesh whether for commission remuneration or otherwise, and includes any firm or Hindu Joint Family and any society, club or

> association, which sells goods to its members; but does not include any department of the State Government or of the Indian Union (hereinafter called the Central Government)."

The applicant's objection is to the clause underlined (herein ' ') above.

5. Section 3 is charging section and reads as follows:

> "3(1) Subject to the provisions of this Act, every dealer shall, in each assessment year, pay tax at the rate of 3 pies per rupee on his turnover of the previous year which shall be determined in such a manner as may be prescribed."

6. Then follow several provisos. The first proviso, as it stood in the year 1951 when the cause of action for the applicant arose, was as follows:

> "Provided that the Provincial Government may, by notification in the official Gazette, reduce the rate of tax on the turnover of any dealer or class of dealers or on the turnover in respect of any goods or class of goods."

This proviso is at present the second proviso and is in the following terms :

> "Provided, secondly, that the State Government may, by notification in the official Gazette, reduce the rate of tax on the turnover in respect of any goods or class of goods, and thereupon the tax shall be payable on such turnover at the reduced rate."

It will be noticed that the words 'any dealer or class of dealers' have been omitted from the proviso as it stands at present.

7. Section 4, Sub-section (1) is as follows :

> "4(1) No tax shall be payable on
>
> (a) .... and
>
> (b) the sale of any goods by the All India Spinners Association or Gandhi Ashram, Meerut, and their branches or such other persons or class of persons as the State Government may from time to time exempt on such conditions and on payment of such fees, if any, not exceeding one thousand rupees annually as may be specified by Notification in the official Gazette."

Under Section 8A, the tax payable by a dealer may, if he has got himself registered under the Act, be recovered from purchasers.

8. The applicant's case is that the exemption of the All India Spinner's Association and the Gandhi Ashram, Meerut, and their branches and of such other persons or class of persons as the State Government may notify materially affects the applicant inasmuch as the price payable to the applicant by purchasers would be higher than the price which a purchaser would have to pay, if he were to purchase his goods from persons exempted or whose tax might be reduced under the provisions of Sections 3 and 4 quoted above and this would adversely affect the sales by the applicant.

9. The defence of the opposite parties, who are the Sales-tax Officer, Fatehgarh, the State of Uttar Pradesh and the Commissioner, , Food and ' Civil Supplies, Government of Uttar Pradesh, is

(i) that the printed handloom articles sold by the applicant are not cloth hut ready made garments fit for personal wear and use and are, therefore, not covered by the aforementioned notification;

(ii) that the Government can reasonably be placed in a classification separate from other dealers on the ground that it sells only handloom goods for the purpose of encouraging cottage industries, as required by Article 43 of the Constitution, and does not make any profits;

(iii) that, for the same' reasons, the Spinners Association and the Gandhi Ashram, Meerut, can also be put in a category separate from other dealers; and

(iv) that the power reserved with the Government to exempt any dealer or class of dealers from payment of tax or to reduce taxes payable by them is intended for the protection of desirable industries and the discouragement of the undesirable ones and, therefore, there is a rational basis for the discrimination and the impugned Act has not become invalid under Article 14 of the Constitution. It has also been contended on behalf of the opposite parties that the impugned provisions of the various sections referred to above, even if invalid on the ground of being discriminatory under Article 14 of the Constitution, are severable from the rest of the Act and, therefore, do not affect the applicant in any way because its liability to pay the tax remains as it is; and further that since the Government has not taken action under the powers conferred upon it by the proviso to Section 3 and Section 4(1) (b), no discrimination has, in fact, been brought into existence and the applicant can have no grievance on that score, even assuming that the provisions aforesaid are invalid.

10. The first point to be decided is whether the articles sold by the applicant can be treated as 'cloth manufactured on handlooms' within the meaning of the notification mentioned above. We are of opinion that they cannot be so treated. The word, 'cloth' is to he distinguished from 'clothes' or garments. Cloth is the fabric or material from which 'clothes' are made as wearing apparel or as other articles of personal use. What is exempted under the notification is 'cloth' and not 'clothes'. What the applicant does is to take handloom cloth and either cut it into specific sizes, or to have them manufactured into specific sizes, so that the pieces can be used as saris, bed covers, lihafs (quilt covers) etc., and then to print them so that they can be readily used for the purpose, for which they are meant. It is quite obvious that the articles in which the applicant deals are 'clothes' or garments: and not 'cloth' within the meaning of the notification.

11. The next' point to be considered is whether the exemption from payment of sales tax of the departments of the State or Central Governments in Section 2(c) in the definition of the word 'dealer' and of the two specified institutions, the Spinners Association and the Gandhi Ashram, Meerut, in Section 4(1)(b) is unjustifiable as it is not based on any, reasonable classification.

The departments of the State or Central Governments mentioned in Section 2(c) clearly refer to the State or the Central Governments themselves. It is an error to think that a department of the State Government can be treated as a person in the absence of any law to that effect. The person is the State itself and not its department which is merely its agency.

The mention of the word 'department' in Section 2 was not quite accurate bat the intention of the legislature is clear that the State and the Central Governments are exempted from being considered as 'dealers' within the meaning of the Act. They have been treated separately from other dealers. A State acts in two capacities-sovereign and commercial. In its sovereign capacity it exercises the legislative, judicial and executive functions properly so called.

In that capacity, it must necessarily be placed in a different category from private individuals. When, however, the State acts as a commercial concern, it can sue and be sued like any other private person and it can be put on the same footing as the latter. Any discrimination between the State acting in its commercial capacity and another individual engaged in an activity in which the State is engaged must be justified upon principles now well settled, namely

1. that the classification made by the statute must be founded on an intelligible differentia and

2. that the differentia must have a rational relation to the object sought to be achieved by the enactment.

See -- 'Lachmandas Kewalram v. State of Bombay', AIR 1952 SC 235 (A). As was observed by one of us (Agarwala, J.) in -- 'Moti Lal v. Govt. of the State of U, P., 'AIR 1951 All 257 (FB) (B), the principles governing Article 14 "not only apply between individual and individual but also between one individual and a corporation or the State itself", and that "when the State itself descends into the arena of competition with private persons, it must compete with them on equal terms and not claim preferential treatment".

It was urged on behalf of the opposite parties that this view is no longer correct in view of what the Supreme Court has observed in -- 'V. M. Syed Mohammad & Co. v. State of Andhra', AIR 1954 SC 314 (C). We do not consider that the observations of the Supreme Court have the effect contended for. All that was held in that case was that the State does not cease to be a State when it undertakes a commercial activity.

It was not held in that case that the State cannot be treated as a 'person' so as to be subject to the law against unjustifiable discrimination as laid down in Article 14 of the Constitution. While we do maintain that the law laid down in Moti Lal's case (B), by one of us still holds the field, we do not consider that it applies to the facts of the present case. It must be noted that the observations of

Agarwala J., were made in connection with a case which fell to be determined under the provisions of the Motor Vehicles Act.

The State Vehicles carried on the activity of carrying passengers in the same way as any ordinary bus-owner. It was not shown that this activity was not done in the ordinary commercial manner or that no profit was made. In those circumstances, it was held that the discrimination between an 'ordinary carrier' and the State could not be sustained.

In the case in hand, there is evidence on the record that the activity of the State in so far as it concerns the sale of articles taxable under the Sales-tax Act is done with an object which has been enjoined by the Constitution to be the duty of the State. From the affidavit filed on behalf of the opposite parties, it is clear that the State Government engages itself in the sale of handloom cloth. The Uttar Pradesh Government has got about a dozen U. P. Government emporiums in some of the important towns of the State.

These emporiums are maintained primarily in the form of show-rooms with the object of giving encouragement to cottage industries. Goods manufactured from handloom cloth are put on view to show the advance which is being made from time to time in the cottage industries of the State. The Government purchases goods manufactured from handloom cloth and the sale is made not from a business point of view or from a profit motive but goods are sold at cost price which means the price at which they have been purchased, plus the incidental charges.

A body which is carrying on a business in this spirit and with this objective must surely stand on a footing different from a person who carries on business solely for his own benefit. Article 43 of the Constitution lays it down as the duty of the State legislatures and Governments to endeavour to promote cottage industries on an individual or cooperative basis in rural areas.

The object of the statute in exempting the State Government from being classed as a 'dealer' is to encourage cottage industries. The classification has a direct relation with this objective. If a body, which carries on business in this manner, is to be encouraged, one of the means of doing so is to exempt its activities from taxation.

In our opinion, the State in carrying on a commercial or industrial activity, not from a business or profit-making motive but purely with the object of encouraging cottage industries may legitimately claim to be a class apart from the dealers who carry on their business with the object of profit-making. There is no evidence on the record to show that the Central Government acts in any different manner in the matter of sale of handloom cloth.

12. In our opinion, the legislature could validly classify the State and Central Governments for the purposes of the Sales-tax Act as a separate class different from ordinary dealers. Similar remarks apply to the cases of the Spinners Association and the Gandhi Ashram, Meerut. It is well known that both these institutions are dedicated to the object of encouragement of cottage industries in hand-woven and hand-spun yarn and cloth.

It has not been shown to us that there was no reason at all for putting them in a separate class and we do not consider that the applicant is necessarily adversely affected by the exemption afforded to them. Moreover, they have not been impleaded in his petition, and it would be unfair to them to declare their exemption invalid in their absence.

13. As regards the provisions of Section 3, proviso (1), as it stood in 1951, and the other provisions of Section 4(1)(b), it may be pointed out that no notification having been made under them, they could not be challenged as creating an unfair discrimination. The position would be the same as if those, provisions did not exist in the Act.

The legislature, by merely empowering the State Government to make a notification which might have created an unfair discrimination as between the applicant and other persons has not itself created a discrimination. The discrimination is conditional upon the notification being issued by the State Government and so long as that condition is not fulfilled, it cannot be said that the Act, as it stands, creates any discrimination as to taxation and no relief can be given to the applicant unless the Government creates a discrimination by the issue of a notification.

It has not been urged in the petition that any such notification has been issued. In the arguments before us, it was suggested that some such notification has been made in favour of certain institutions, but no affidavit was filed and we have no proof or the same. We must, therefore, hold that as matters stand at present, the applicant is not entitled to question the validity of the said provisions.

14. We are further of opinion that it is unnecessary for us to pronounce upon the validity of the aforesaid provisions of Sections 3 and 4 of the Act, as, assuming that those provisions are discriminatory and void, they can be severed from the rest of the Act.

15. It may be noted at the outset that the Sales-tax Act is a piece of legislation intended primarily for the raising of revenue for the State. It is an Act which charges certain persons with the liability for the payment of tax upon sales of certain goods. The charging provisions are general. Every person who falls within the definition of a 'dealer' is liable to pay the tax under certain conditions. This general provision is followed up by a number of exceptions.

These exceptions are in the nature of affording relief to certain dealers or class of dealers or in respect of the sale of certain goods or class of goods. It is in the light of these facts that we have to consider whether the provisions relating to the exemptions, which are challenged as creating unreasonable discrimination, can be separated from the general provisions of the Act.

16. The principles, upon which the severability of an impugned provision of an Act is judged are well settled. As was observed by the Supreme Court in -- 'Gopalan v. State of Madras', AIR 1950 SC 27 (D), what we have to see is whether the omission of the impugned portions of the Act will "change the nature or the structure or the object of the legislation". In the words of Mahajan J. in

-- 'State of. Bihar v. Kameshwar Singh', AIR 1952 SC 252 at p. 277 (E), "The real question to decide in all such cases is whether what remains is so inextricably bound up with the part declared invalid that what remains cannot independently survive, or, it has sometimes been put, whether on a fair review of the whole matter it can be assumed that the legislature would have enacted at all that which survives without enacting the part that is 'ultra vires'."

17. In -- 'Marshal Field & Co. v. Clark', (1891) 36 Law Ed. 294 (F), the Supreme Court of America had to consider a somewhat similar question. By the 14th section of the Act of June 26th, 1884, Chapter 121, certain tonnage duties were imposed upon vessels entering the United States from any foreign port. There was, however, a provision that, in respect of sugar, there shall be paid a bounty of two cents per pound from the duties so realised. The contention was that the payment of the bounties created an unfair discrimination, It was observed by Harlan, J., delivering the opinion of the Court that "even if the position of the appellants with respect to the power of Congress to pay these bounties were sustained, it is clear that the parts of the Act in which they are interested, namely, those laying duties upon articles imported, would remain in force. It cannot be said to be evident that the provisions imposing duties on imported articles are so connected with or dependent upon those giving bounties upon the production of sugars in this country that the former would not have been adopted except in connection with the latter.

While in a general sense, both may be said to be parts of a system neither the words nor the general scope of the Act justifies the belief that Congress intended they should operate as a whole, and not separately for the purpose of accomplishing the objects for which they were respectively designed.

Unless it be impossible to avoid it a general revenue statute should never be declared inoperative in all its parts because a particular part relating to a distinct subject may be invalid. A different Rule might be disastrous to the financial operations of the government, and produce the utmost confusion in the business of the entire country."

18. In -- 'Utah Power & Light Co. v. Emmitt Host', (1931) 76 Law Ed. 1038 (G), Section 1 of the Tax of the United States provided that "any individual, corporation, etc., engaged in the generation, manufacture or production of electricity and electrical energy, by any means, for barter, sale or exchange, shall, at a specified time, pay a certain licence tax."

Section 5 provided that "all electricity and electrical energy used for pumping water for irrigation purposes to be used on lands in the State of Idaho is exempt from the provisions of this Act, except in cases where the water so pumped is sold or rented to such irrigated lands."

The validity of the Act was challenged on the ground that the exemption created an unfair discrimination. It was held that the primary object of the State statute being to raise revenue, the exemptions made by Section 5 were merely secondary. It was observed :

> "We find no warrant for concluding that the legislature would have been content to sacrifice an important revenue statute in the event that relief from its burdens in respect of particular individuals should become ineffective. On the contrary, it seems

> entirely reasonable to suppose that if the legislature had expressed itself specifically in respect of the matter, it would have declared that the tax, being the vital aim of the Act, was to be preserved even though the specified exemptions should fall for lack of validity."

It is true that in that case it was held that the exemption was valid and not ultra vires, and it is also true that in the Act there was a provision in Section 11 that an adjudication, that any provision of the Act is unconstituional, shall not affect the validity of the Act as a whole, or of any other provision or section thereof". Nevertheless, the reasoning of the Court as to the nature of the exemption and whether it was interdependent upon or independent of the main provisions of the Act is worthy of note.

19. On behalf of the applicant reliance was placed on the case in -- 'Connolly v. Union Sewer Pipe Co.', (1902) 46 Law Ed. 679 (H). In that case, a law against the creation of trusts was enacted and the breach of it was made an offence but there was an exception in favour of producers and raisers of agricultural products and five-stock. It was held that "the Act was discriminatory in its nature and, therefore, invalid as contravening the 14th amendment".

It was further held that "the exemption could not be separated from the main Act, and that the whole Act was bad because if the sections which exempted the agricultural or live-stock dealers from the penalties of the Act were eliminated as unconstitutional then the Act would apply to agriculturists and live-stock dealers and those classes would in that way be reached and fined, when evidently the legislature intended that they should not be regarded as offending against the law even if they did not combine their capital, skill, or acts in respect of their products or stock in hand."

It is interesting to note that the view of the Court that the exemption was invalid was overruled in a later decision of the Supreme Court in -- "Tigner v. State of Texas', (1940) 84 Law Ed. 1124 (I), where it was observed that "Connolly's case has been worn away by erosion of time and is no longer controlling."

20. No Government can be carried on with out taxation. In taxing statutes, the presumption is that the legislature's predominant intention was to tax and the exemptions granted were secondary in importance. If the exemptions are found to be invalid, the presumption is that the legislature would still have intended that the rest of the statute should be enforced. On the other hand, in statutes creating offences, if the exemptions are invalid, and by reason of their invalidity, certain objects or activities would be rendered unlawful and subject to punishment, no such presumption can be raised.

In such cases, both the objects must be held to be equally important. Applying these principles to the provisions of the impugned statute, we find that the dominant motive of the legislature in placing the Act on the statute book was to raise revenue, more particularly because, in the Act, the charging section is general in its scope.

A secondary and subordinate intention also appears, namely, that certain specified persons of institutions and such other persons as may be notified by the Government be exempted from taxation but the two portions of the Act are not so interdependent that it could be said that if the exemptions are eliminated, the legislature would still have not passed the main enactment.

We think that the exempted clauses can be separated from the rest of the Act which can be given effect to and all that will happen will be merely that a few exempted persons would be liable to pay the tax.

21. No other point was urged before us in arguments.

22. In the result, we dismiss this petition but, in the circumstances of the case, make no order as to costs.