M/s. R. M. D. C. (Mysore) Private Ltd.

Vs

The State of Mysore

Civil Appeal No. 517 of 1960

(J. L. Kapur, M. Hidayatullah, J. C. Shah, K. Subha Rao, Raghuvar Dayal JJ)

08.08.1961

JUDGMENT

KAPUR, J. -

This is an appeal against the judgment and order of the High Court of Mysore dismissing the petition of the appellants made under Article 226 of the Constitution. The appellants were conducting since the month of August 1948, what were called "prize competitions" in the State of Mysore with the permission of the Government of the erstwhile State of Mysore. An Act called the Mysore Lotteries and Prize Competitions Control and Tax Act, 1951 (Act 27 of 1951), hereinafter called the "Mysore Act" was passed by the Mysore Legislature and came into force as from June 21, 1951. The Rules made thereunder came into force on February 1, 1952. Previous to that the Bombay Legislature had passed a similar Act called the Bombay Lotteries and Prize Competitions Control and Tax Act, 1948, which was amended in November 1952 by the Bombay Act 30 of 1952. In December 1952 and January 1953 petitions under Article 226 were filed in the High Court of Bombay challenging the Bombay Act. On January 12, 1955 the Bombay High Court held that the provisions of the Bombay Amendment Act above referred to were unconstitutional and that the taxes imposed under the provisions of that Act were hit by Article 301 of the Constitution. The result of that judgment was that though prize competitions could be controlled by the States within their respective borders, their ramifications beyond those borders could only be dealt with by action under Article 252(1) of the Constitution. It was for that reason that the States of Andhra, Bombay, Madras, U. P. Hyderabad, Madhya Bharat, Pepsu and Saurashtra passed resolutions under Article 252(1) of the Constitution authorising Parliament to legislate for the control and regulation of prize competitions and in pursuance thereof Parliament passed the Prize Competitions Act (Act 42 of 1955) hereinafter called the "Central Act" which received the assent of the President on October 22, 1955, and came into force on April 1, 1956. On February 24, 1956, the Mysore Legislature passed a resolution adopting the said Act. The resolutions passed by the various States and the resolution passed by the Mysore Legislature will be quoted in a later part of this judgment.

On April 7, 1956, the appellants filed a petition under Article 32 of the constitution in the Supreme Court challenging the validity of the Central Act but that petition was dismissed and is reported as R. M. D. C. Chamarbaugwala v. The Union of India ([1957] S. C. R. 930, 939). The appeal against the Bombay judgment declaring the Bombay Act to be unconstitution was brought in this court and was allowed and that case is reported as State of Bombay v. R. M. D. Chamarbaugwala ([1957] S. C. R. 874, 929). During the pendency of their petition under Article 32, the appellants applied for and were granted a stay of the operation of the Central Act pending the disposal of the said writ petition. This was on April 16, 1956. The judgment of the Supreme Court in that petition was given on April 9, 1957. On August 31, 1957, the Mysore Lotteries & Prize Competitions Control and Tax

(Amendment) Ordinance, 1957 (Ord. 6 of 1957) was issued by the Governor of Mysore and thus for the period of about 16 months the appellants carried on prize competitions as before.

The Ordinance was enacted into an Act on September 28, 1957, which is Mysore Act 26 of 1957. Certain amendments were made by this in the Mysore Act as originally passed in 1951. As a result of this amendment the definition of prize competition was amended the definition as given in the Central Act was adopted and sections 8 & 9 of the Mysore Act were omitted with retrospective effect from April 1, 1956; clause (b) of sub-section (1) of section 12 was amended and certain words referring to licences under section 8 were retrospectively omitted and retrospective effect was given to the Mysore Act as amended. By adding a proviso to section 15 of the Mysore Act all prize competitions conducted between March 31, 1956, and August 31 1957, were brought within the purview of the amended Act. Thus the prize competitions which as a result of the stay of the operation of the Central Act were conducted by the appellants became subject to the operation of the Mysore Act as amended. The appellants on September 10, 1957, were called upon to file their returns but at their request for extension of time, they were given another 15 days in which to file their return. They filed their return but under protest. The gross collections were of a sum of Rs. 26,47,147-5-9 and on that the appellants were "called upon to pay up provisionally" a sum of Rs. 3,30,893-7-0. As the money was not paid within the time specified proceedings were taken under section 6(1) of the Revenue Recovery Act, 1890 (Central Act 1 of 1890), and certain properties moveable and immovable were attached and one of the properties was sold and the price so realised was deposited in the Government treasury.

The Mysore amending Act was challenged in the High Court of Mysore by a petition under Article 226 which was dismissed on November 20, 1958 and against that judgment and order this appeal has been brought pursuant to a certificate of the High Court under Article 132(1) of the Constitution. The Certificate was confined to the interpretation of Article 252 of the Constitution. The respondent in the present appeal is the State of Mysore.

The challenge to the constitutionality of the Mysore Act was on the ground that (1) the Mysore Legislature by adopting the Central Act was no longer competent to pass any law in regard to prize competitions because the whole matter including the power of taxation was surrendered in favour of Parliament. (2) Even if the whole power had not been surrendered the impugned Act i. e. the Mysore Act as amended violated Article 252(2) of the Constitution inasmuch as it indirectly amends the Central Act by adding a new method of control by imposition of penalties of a monetary nature. (3) The Mysore Legislature could not amend an Act which stood repealed as a result of the enactment of the Central Act. (4) The Mysore Act as amended was repugnant to the Central Act and is therefore, to the extent of repugnancy, void under Article 254(1) of the Constitution and (5) it was colourable legislation inasmuch as the tax was imposed on the prize competitions with the object of controlling them. Certain other questions relating to the legality of the imposition of the tax and the proceedings for the recovery of the tax were also raised but on all these points the High Court found against the appellants :

> The first question raised before us is the effect of the resolution passed by the legislatures of the States above mentioned and of the resolution passed by the Mysore legislature adopting the Central Act. The resolution passed by the States was in the following terms.
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> "This Assembly do resolve that it is desirable that control and regulation of Prize Puzzle competitions and all other matters consequential and incidental thereto insofar

> as these matters are matters with respect to which Parliament has no power to make laws for the States should be regulation by Parliament by law. "

The two Houses of the Mysore Legislature passed the following resolution on February 23, 1956 and February 21, 1956, respectively :-

> Resolution passed by the Mysore Legislative Assembly on 23rd, February, 1956.
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> "Whereas for the purpose of securing uniformity in legislation, it is desirable that the control and regulation of Prize Competitions and all other matters ancillary thereto should be regulated in the State of Mysore by the Prize Competitions Act, 1955 (Central Act 42 of 1955) passed by Parliament;
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> Now, therefore, in pursuance of Clause (1) of Article 252 of the Constitution, this Assembly resolves that the Act aforesaid be adopted by the State of Mysore. "

It was contended that by these resolutions the legislatures of the various States had surrendered their power of legislation in regard to the "control and regulation of prize puzzle competitions and all other matters consequential and incidental thereto and had thus no legislative power left in regard to that matter including the power to tax. Article 252 provides :-

> Article 252(1) "If it appears to the legislature of two or more States to be desirable that any of the matters with respect to which Parliament has no power to make laws for the States except as provided in articles 249 and 250 should be regulated in such States by Parliament by law, and if resolutions to that effect are passed by all the Houses of the legislatures of those States, it shall be lawful for Parliament to pass an Act for regulating that matter accordingly, and any Act so passed shall apply to such States and to any other State by which it is adopted afterwards by resolution passed in that behalf by the House or, where there are two Houses, by each of the Houses of the Legislature of that State.
>
> (2) Any Act so passed by Parliament may be amended or repealed by an Act of Parliament passed or adopted in like manner but shall not, as respects any State to which it applies, be amended or repealed by an Act of the Legislature of that State. "

The result of the passing of a resolution under Article 252(1) is that any matter with respect to which Parliament has no power to enact laws becomes a matter for the regulation of which Parliament becomes empowered to pass any Act, and such Act, if passed by the Parliament, becomes applicable to the States passing the resolution or adopting that Act. Sub-clause (2) of that Article provides that any such Act may be amended or repealed by an Act of Parliament in the like manner i. e. in the manner provided in clause (1) and it cannot be amended or repealed by the Legislature of the State or States passing the resolution. The question then arises do the resolutions as passed and particularly the words "control and regulation of prize puzzle competitions and all other matters ancillary thereto" surrender the whole subject of prize competitions to the Central Parliament i. e. every matter and power connected therewith including the power tax. The argument raised was that the language of the resolutions was wide enough to comprise the legislative power under entries 34 and 62 of List II, the former dealing with "betting and gambling" and the latter with taxation of luxuries including "betting and gambling". One of the methods of control and regulations, it was submitted, is by taxation and as the power to control and regulate and all powers

ancillary to the subject were surrendered the power to tax being included therein was also surrendered. In support of this argument reliance was placed on certain judgments of the American Supreme Court. The first case relied upon was Rudolph Helwig v. United States ((1903) 188 U. S. 605 : 47 L. Ed. 614). In that case the question was about the jurisdiction of the United States District Court which depended upon the nature of the imposition of an additional duty i. e. whether it was penalty or not. The imposition was held to be a penalty as it was not imposed for the purpose of revenue but was based upon the particular act of the importer i. e. his undervaluation of the goods imported; in other words this additional sum was a penalty for undervaluation whether innocently done or not and whether it was called a further sum or an additional duty the amount imposed was not a duty upon imported article but a penalty and nothing else.

The next case relied upon was J. W. Bailey v. Drexel Furniture Company ((1922) 259 U. S. 33 : 66 L. Ed. 817). That was a case of colorable exercise of legislative power. Under the Child Labour Tax Law a tax of 10% of the net profits of the year could be imposed upon an employer and knowingly during any portion of the taxable period employed children within certain age limits irrespective of whether only one child was employed or several. This was held not to be a valid exercise by Congress of power of taxation but an unconstitutional regulation by the use of the tax as a penalty for the employment of child labour in the States which was exclusively a State function. That case was one in which the Congress exercised its power of regulation by imposing a tax by way of penalty in order to prevent the employment of child labour and thus by the exercise of the power which it possessed i. e. of taxation it tried to regulate a subject over which it had no jurisdiction and that really was the matter which was decided by the American Supreme Court.

The next case relied upon was Gloucester Ferry Company v. Commonwealth of Pennsylvania ((1885) 114 U. S. 196 : 29 L. Ed. 158). That was a case of interstate commerce and it was held that no State could impose a tax on that portion of interstate commerce which is involved in the transportation of persons and property whatever be the instrumentality by which it is carried on. The tax there was levied upon receiving and landing of passengers and freight which was held to be a tax on transportation i. e., upon commerce between the two States involved in such transportation. The following passage in the judgment of Field, J., at p. 162 was relied upon by counsel for the appellants :-

> "The power to regulate that commerce, as well as commerce with foreign nations, vested in Congress is the power to prescribe the rules by which it shall be governed - that is, the conditions upon which it shall be conducted; to determine when it shall be free, and when subject to duties or other exactions. "

But these observations were made in a different context, i. e., whether the tax could be levied upon transportation made in ferry boats which passed between States every hour of the day and as this transportation was within the commerce clause no tax could be levied by the States.

Reference was next made to certain observations made in the State of Bombay v. R. M. D. Chamarbaugwala ([1957] S. C. R. 874, 929) which was an appeal against the judgment of the Bombay High Court. Das C. J., observed at p. 926 :-

> "The fact that regulatory provisions have been enacted to control gambling by issuing licences and by imposing taxes does not in any way alter the nature of gambling which is inherently vicious and pernicious. "

In that case no question as to the meaning of the word "control and regulation" arose nor whether those words included the power of taxation. All that the Court was called upon the decide was whether prize competitions were trade, commerce or business or were anti-social activities.

It was then argued that it was because of the decision by the Bombay High Court in State of Bombay v. R. M. D. Chamarbaugwala (I. L. R. [1955] Bom. 680) whereby the tax imposed on prize competitions were struck down as contravening Article 304(b), that the various States combined together and passed the resolution under Article 252(1) of the Constitution. The object of the resolutions, it was submitted, was to get over the unconstitutionality pointed out by the Bombay High Court and therefore the resolutions were passed in the language used therein, i. e., for the control and regulation of prize competitions which power was transferred and surrendered to Parliament along with the powers incidental and ancillary thereto which must include taxation. It was further argued that as Parliament had failed to impose any tax it implied that it had refused to do so. In support of this argument reliance was placed on Sabine Robbins v. Taxing District of Shelby County, Tennessee (39 L. Ed. 694). It was there held that where the power of the Legislature is exclusive its failure to make express regulation indicated its will that the subject shall be left free from any restriction or imposition. The pivot of the appellants' argument is that the words "control and regulation" and "incidental and ancillary thereto" included power of taxation but this argument is not well founded. The power in regard to betting and gambling is contained in entry 34 of the State List which is as follows :

> Entry 34 : "Betting and gambling".

The power of taxation is contained in entry 62 which is as under :-

> Entry 62 : "Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling. "

In the Indian Constitution as it was in the Government of India Act the power of legislation is distributed between the Union and the States and the subjects on which the respective Legislatures can legislate are enumerated in the three Lists and in the Articles of the Constitution, provision is made as to what is to happen if there is a conflict between the Statutes passed by Parliament and the Legislatures of the States. The peculiar nature of the India Constitution is regard to the enumeration of powers in the entries in the Lists were emphasised by Gwyer, C. J., in re The Central Provinces & Berar Act No. XIV of 1938 ([1939] F. C. R. 18, 38, 73, 74) at p. 38 and by Sulaiman, J., at pp. 73 and 74. Gwyer, C. J., said :-

> "But there are few subjects on which the decision of other Courts require to be treated with greater caution than that of federal and provincial powers, for in the last analysis the decision must depend upon the words of the Constitution which the Court is interpreting; and since no two Constitutions are in identical terms, it is extremely unsafe to assume that a decision on one of them can be applied without qualification to another. This may be so even where the words or expressions used are the same in both cases; for a word or a phrase may take a colour from its context and bear different senses accordingly. "

At p. 74 Sulaiman, J., observed :

> "The heads have been separately specified in great detail; and a special head "taxes

> on the sale of goods" has been assigned to the Provinces, which did not at all find a separate and distinct place in the State or Provincial List of any of the Dominions. This peculiarity is a unique feature of the Indian Constitution, having an important bearing on the present case, as taxes on sales have been adopted as a post-war measure in most countries. "

The entries in the Lists have to be read in accordance with the words employed and it will be wholly unjustified in forcing into them a meaning which they cannot reasonable bear. See Brophy v. Att. Gen. of Manitoba ([1895] A. C. 202, 215). Similar observations were made by Lord Wright, M. R. in James v. Commonwealth of Australia ([1936] A. C. 578, 613) and both these cases were quoted with approval in re The Central Provinces and Berar Act No. XIV of 1938 by Sulaiman, J. Thus the subject of "betting and gambling" given in entry 34 of List II and the taxes on betting and gambling as given in entry 62 of List II have to be read separately as separate powers and therefore when control and regulation of prize competitions was surrendered to Parliament by the resolutions above quoted the power to tax under entry 62 of List II, which is a separate head, cannot be said to have been surrendered. See the observations of Das, C. J., in State of Bombay v. R. M. D. Chamarbaugwala quoted a little later in this judgment.

The scheme of the Indian Constitution and distribution of powers under it are entirely different from what it is in America and therefore the construction of the entries in the manner contended for by the appellants would be erroneous.

It was then contended that a tax must be levied for the purpose of revenue and cannot be for purpose of control and that in the Mysore Act was really colourable legislation in that the impugned tax had been levied for the purpose of controlling prize competitions although it was given the form of a tax. It may be remarked that the Court in construing and interpreting the Constitution or provisions of an enactment has to ascertain the meaning and intention of Parliament from the language used in the statute itself and it is not concerned with the motives of Parliament. To use the language of Gwyer, C. J., in re The Central Provinces and Berar Act No. XIV of 1938 ([1939] F. C. R. 18, 38, 73, 74) :

> "It is not for the Court to express, or indeed to entertain, any opinion on the expediency of a particular piece of legislation, if it is satisfied that it was within the competence of the Legislature which enacted it; nor will it allow itself to be influenced by any considerations of policy, for these lie wholly outside its sphere. "

Similar observations in regard to the doctrine of colourable legislation were made by Mukherjea, J., (as he then was), in K. C. Gajapati Narayan Deo & Others v. The State of Orissa ([1954] S. C. R. 1, 10), where it was observed :

> "It may be made clear at the outset that the doctrine of colourable legislation does not involve any question of bona fides or mala fides on the part of the legislature. The whole doctrine resolves itself into the question of competency of a particular legislature to enact a particular law. If the legislature is competent to pass a particular law, the motives which impelled it to act are really irrelevant. On the other hand, if the legislature lacks competency, the question of motive does not arise at all. Whether a statue is constitutional or not is thus always a question of power. "

Therefore if the Mysore Legislature had the power, which in our opinion, it had and it had not

surrendered its power to Parliament which, in our opinion, it had not then it cannot be said that the imposition of the tax is a piece of colourable legislation and is on that ground unconstitutional. It will be opposite to quote at this stage the observations of Das, C. J., in the State of Bombay v. R. M. D. Chamarbaugwala ([1957] S. C. R. 874, 929) :-

> "For the reasons stated above, we have come to the conclusion that the impugned law is a law with respect to betting and gambling under entry 34 and the impugned taxing section is a law with respect to a tax on betting and gambling under entry 62 and that it was within the legislative competence of the State legislature to have enacted it. There is sufficient territorial nexus to entitle the State legislature to collect the tax from the petitioners who carry on the prize competitions through the medium of a newspaper printed and published outside the State of Bombay. "

Thus the Central Act is with respect to betting and gambling under entry 34 of List II and the taxing sections of the Mysore Act are with respect to a tax on betting and gambling under entry 62. It is also instructive to note that Venkatarama Ayyar, J., in R. M. D. Chamarbaugwala v. The Union of India ([1957] S. C. R. 930, 939) in construing the language of the resolution was of the opinion that the use of the word "control and regulation" was requisite in the case of gambling and as regards regulation of competitions involving skill mere regulation would have been sufficient.

In view of our finding that by passing the resolution the States did not surrender their power of taxation it cannot be said that clause (2) of Article 252 of the Constitution was violated by the amendment of the Mysore Act; nor can it be said that in reality to was a piece of colourable legislation by an indirect attempt to amend the Central Act and a new method of control was devised by imposing a penalty under the name of tax. We have already held that the tax imposed under the Mysore Act was not by way of penalty but was the exercise of the power which the legislature possessed of imposing tax under entry 62.

The next contention raised was that after the passing of the Central Act, Section 12(1) (b) of the Mysore Act became void because of the provisions of Article 254(1) of the Constitution which provides :

> Article 254(1) "If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2) the law made by Parliament whether passed before or after the law made by the Legislature of such State or as the case may be, the existing law shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void. "

It was contended that because of the repugnancy between the Central Act and the Mysore Act in regard to licensing all provisions which had any reference to licensing became void under Article 254(1) and if they were void they could not be amended. On behalf of the State it was submitted that Article 252(1) was a complete code by itself and Article 254 was inapplicable because the latter Article like its predecessor, section 107 of the Government of India Act, 1935, applied where the repugnancy arose under List III of the Constitution i. e., the Concurrent List. It is not necessary to decide this latter contention or to refer to cases which have been relied upon i. e. Megh Raj v. Allah Rakhia ((1947) L. R. 74 I. A. 12, 19) or Deep Chand v. The State of Uttar Pradesh & Others ([1959]

Supp. 2 S. C. R. 8, 24, 42). The inconsistency would operate on that portion of the Mysore Act which became repugnant to sections 4 and 5 of the Central Act as to prohibition of prize competitions and licensing of prize competitions e. g., section 8 of the Mysore Act and consequently that portion of section 12(1) (b) which deals with taxes in respect of prize competitions for which a licence had been obtained under section 8 might be said to have become void and not the rest. Therefore by the omission of words "for which a licence had been obtained", under section 8, the rest of the clause would be valid. The effect of the amending Act is that the above mentioned words were deemed to have been omitted as from April 1, 1956, and the rest of clause (b) is not repugnant to any of the provisions of the Central Act. Article 254(1) therefore did not make section 12(1) (b) wholly void. All that it did was that the portion which refers to licensing became repugnant but it did not affect the rest of the section. At the time when the Mysore Act was passed it was within the legislative power of the Mysore Legislature and it may be that it was rendered unconstitutional by reason of sections 4 and 5 in the Central Act but that portion which deals with taxation cannot be held to be void because as a result of the Amending Act the words which were repugnant to the provisions of the Central Act were subsequently declared by the Mysore Legislature to be deemed to have been omitted as from April 1, 1956, the day when the Central Act came into force. This is in accord with the view taken in Deep Chand v. The State of Uttar Pradesh and Others ([1959] Supp. 2 S. C. R. 8, 24, 42), i. e. the doctrine of eclipse could be invoked in the case of a law which was valid when made but was rendered invalid by a supervening constitutional inconsistency. This disposes of the challenge to the constitutionality of the Mysore Act on the five points set out above. Therefore the law may be summed up as follows :

> (1) By passing the resolutions as to control and regulation the power to tax had not been surrendered to Parliament.
>
> (2) The amending Act was not a new method of controlling prize competitions nor was it a piece of colourable legislation.
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> (3) There was no amendment of an Act which stood repealed nor was the retroactive operation of the Amending Act affected by Article 254(1) of the Constitution.

The next three objections to the legality of the assessment were : (1) that the assessment was provisional which was not contemplated under the Act; (2) there should have been a fresh notification after the amendment of the Mysore Act and (3) at the time when the recovery proceedings were taken the tax had not become due as it was payable within a week which had not expired. On September 10, 1957, the Deputy Commissioner, Bangalore, called upon the appellants to produce accounts in respect of prize competitions conducted as from April 1, 1956, up to the date of the closure of the competitions and three days were given to comply with that notice. Their reply was that the Ordinance under which the notice was issued was unconstitutional and illegal and they also asked for thirty days in which to prepare their statements but they were granted a period of fifteen days only. They agreed to file their statements within the time allowed though under protest. These statements were submitted on October 9, 1957, and at the end of the statements which showed a gross collection of Rs. 26,47,147-5-9, there was the following endorsement :-

> "The above figures of collections are verified partly with available bank statements and partly with the books of accounts and are subject to reconciliation between the amount as per ledger and that as above. The commission and expenses deducted by Collectors are accepted as per certificate of the Management and the State Account. Collections are verified only with the Collection Register.

(Sd.).....

Chartered Accountants. "

Under this the Deputy Commissioner wrote a letter on October 16, 1957, in which it was said :-

> "You are hereby called upon to pay up provisionally a sum of Rs. 3,30,893-7-0 towards tax amount to the Reserve Bank of India and forward the challan in token of payment to this office within a week. "

As the tax was not paid the provisions of the Revenue Recovery Act were resorted to. This cannot be said to be a provisional assessment. The return submitted by the appellants as far as it went was accepted and on that the tax was demanded which was not a case of provisional assessment at all but as was held by the High Court it must be taken to be a final assessment and if and when any further assessment or a revised assessment is made the question may become relevant.

The next question as to the necessity of a fresh notification, the submission is equally unsubstantial. Its legality depends upon the constitutionality of amended section 12(1) (b) and if that is valid, as we have held it to be, the notification is equally valid. The notification was only in regard to the rate of taxation and had no reference to the obtaining or not obtaining of the licence.

The last point raised was that the tax was payable within a week which had not expired. As we have pointed out the notice of demand called upon the appellants to pay the sum therein specified and to produce the challan in token of payment within a week. It is not the case of the appellants that they had paid or were in a position to produce the challan within a week. It was not an order making the tax payable within a week. These objections, in our opinion, are without substance and are therefore overruled.

In the result this appeal fails and is dismissed with costs.

Appeal dismissed.

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