State of Madhya Pradesh

Vs

Bhopal Sugar Industries Ltd.

Civil Appeal No. 491 of 1963

(CJI P. B. Gajendragodkar, K. N. Wanchoo, S. M. Sikri, J. C. Shah, N. Rajagopala Ayyangar JJ)

19.02.1964

JUDGMENT

SHAH, J. –

Bhopal Sugar Industrial Ltd. - hereinafter called 'the Company' - was incorporated under the Companies Act of the former Indian State of Bhopal. In 1953 the State of Bhopal, which was then a Part 'C' State under the Constitution of India, enacted "the Bhopal State Agricultural Income-tax Act, IX of 1953" providing for imposition and levy of tax on agricultural income. The Act was applied to the territory of the entire State of Bhopal and was brought into force on July 15, 1953.

By the States Reorganisation Act, 1956 (No. 67 of 1956), territory of the Part 'C' State of Bhopal was incorporated with effect from November 1, 1956, into the newly formed State of Madhya Pradesh. Section 119 of the States Reorganisation Act, 1956, enacted that by the constitution of the reorganized State, no change in the laws in force which immediately before November 1, 1956, extended or applied to any constituent regions, was effected, and territorial references in the laws to an existing State shall, until otherwise provided by a competent Legislature or other competent authority be construed as meaning the territories within that State immediately before November 1, 1956. By the Madhya Pradesh Adaptation of Laws (State and Concurrent Subjects) Order, 1956, promulgated by the Government of the State, all laws in force in the regions which were newly incorporated into the reorganised State of Madhya Pradesh were, with certain adaptations and modifications specified in the Order, to remain in force in those areas until altered, repealed or amended, and by that Order the Bhopal Act IX of 1953 continued to remain applicable in the territory of the former Bhopal State, in the new State of Madhya Pradesh. Later the Legislature of the Madhya Pradesh State enacted the Madhya Pradesh Extension of Laws Act, 1958, extending several Acts - Central as well as State - to the entire territory of the State, but no alteration was made in the territorial operation of Bhopal Act IX of 1953. It is common ground that in the remaining territory of the State of Madhya Pradesh there was no law providing for levy of tax on agricultural income.

The Company paid and continued to pay tax assessed under the Bhopal State Agricultural Income-tax Act, 1953, till some time in 1960. On August 4, 1960, the Company presented a petition under Art. 226 of the Constitution in the High Court of Madhya Pradesh at Jabalpur for a writ declaring that Bhopal Act IX of 1953 was unconstitutional and void as being discriminatory and for appropriate directions, writs or orders restraining the State of Madhya Pradesh from giving effect to the Act. It was claimed by the company that Bhopal Act IX of 1953 deprived the residents of the territory to which it applied, of the protection of Art. 14 of the Constitution. The High Court upheld the plea of the Company and issued a writ restraining the State of Madhya Pradesh from enforcing

the provisions of Bhopal Act IX of 1953, observing that the Act was "in clear contravention of the petitioner's right under Art. 14 of the Constitution and must be declared void".

Authority of the Part C State of Bhopal to enact the Act, as it originally stood, is not in dispute; nor are the provisions of s. 119 of the States Reorganisation Act and the Madhya Pradesh Adaptation of Laws (State and Concurrent Subjects) Order, 1956, challenged as incompetent. The plea that there is infringement of Art. 14 of the Constitution is advanced on the sole ground that in the reorganized State of Madhya Pradesh formed under States Reorganisation Act, 1956, agricultural income-tax is levied within the territory of the former State of Bhopal and not in the rest of the territories of Madhya Pradesh. Prima facie, a differential treatment is accorded by the State of Madhya Pradesh to persons carrying on agricultural operations in the Bhopal region, because the State subjects them to pay tax on agricultural income, which is not imposed upon agricultural income earned in the rest of the State. But that by itself cannot be a ground for declaring the Act ultra vires. The State is undoubtedly enjoined by Art. 14 of the Constitution not to deny to any person equal protection of the laws within the territory, but a proper classification bearing a reasonable and just relation to the object sought to be achieved by the statute does not on that account become impermissible. All persons who are similarly circumstanced as regards a subject matter are entitled to equal protection of the laws, but it is not predicated thereby that every law must have universal application irrespective of dissimilarity of objects or transactions to which it applies, or of the nature or attainments of the persons to whom it relates. The Legislature has always the power to make special laws to attain particular objects and for that purpose has authority to select or classify persons, objects or transactions upon which the law is intended to operate. Differential treatment becomes unlawful only when it is arbitrary or not supported by a rational relation with the object of the statute. This Court has held in several cases, that where application of unequal laws is reasonably justified for historical reasons, a geographical classification founded on those historical reasons would be upheld : Bhaiyalal Shukla v. State of Madhya Pradesh ((1962) Suppl. 2 S.C.R. 257) : The State of Madhya Pradesh v. The Gwalior Sugar Co. Ltd. and others ((1962) 2 S.C.R. 619) : Maharaj Kumar Prithvi Raj and another v. The State of Rajasthan and others (C.A. Nos. 327-328 of 1956 decided on Nov. 2, 1960) and Anand Prasad Lakshminiwas Ganeriwal v. State of Andhra Pradesh (AIR 1963 S.C. 853). The decision of this Court in The State of Rajasthan v. Rao Manohar Singhji ((1954) S.C.R. 996) does not lay down any contrary principle. In that case the Court accepted that historical reasons may justify differential treatment of separate geographical regions provided it bears a reasonable and just relation to the matter in respect of which it is proposed, but the differentiation in that case was regarded as infringing the equal protection of the laws because members of the same class were treated in a manner ex facie discriminatory, and no attempt was made by the State to justify the treatment as founded upon a rational basis having a just relation to the impugned statute.

It is necessary to bear in mind that the various administrative units which existed in British India were the result of acquisition of territory by the East India Company from time to time. The merger of Indian States since 1947 brought into the Dominion of India numerous Unions or States, based upon arrangements ad hoc, and the constitutional set up in 1950 did not attempt, on account of diverse reasons mainly political, to make any rational rearrangement of administrative units. Under the Constitution as originally promulgated there existed three categories of States, besides the centrally administered units of the Andaman and Nicobar islands. Part 'A' States were the former Governors' Provinces, with which were merged certain territories of the former Indian States to make geographically homogeneous units : Part 'B' States represented groups formed out of 275 bigger Indian States by mutual arrangement into Unions : Part 'C' States were the former Chief Commissioners' Provinces. These units were continued under the Constitution merely because they

formerly existed. Later an attempt was made under the States Reorganisation Act to rationalize the pattern of administration by reducing the four classes of units into two - States, and union territories - and by making a majority of the States homogeneous linguistic units. But in the States so reorganized were incorporated regions governed by distinct laws, and by the mere process of bringing into existence reorganized administrative units, uniformity of laws could not immediately be secured. Administrative reorganization evidently could not await adaptation of laws, so as to make them uniform, and immediate abolition of laws which gave distinctive character to the regions brought into the new units was politically inexpedient even if theoretically possible. An attempt to secure uniformity of laws before reorganisation of the units would also have considerably retarded the process of reorganisation. With the object of effectuating a swift transition, the States Reorganisation Act made a blanket provision in s. 119 continuing the operation of the laws in force in the territories in which they were previously in force notwithstanding the territorial reorganisation into different administrative units until the competent Legislature or authority amended, altered or modified those laws.

The reorganized State of Madhya Pradesh was formed by combining territories of four different regions. Shortly after reorganisation, the Governor of the State issued the Madhya Pradesh Adaptation of Laws (State and Concurrent Subjects) Order, 1956, so as to make certain laws applicable uniformly to the entire State and later the Legislature by the Madhya Pradesh Extension of Laws Act, 1958, made other alterations in the laws applicable to the State. But Bhopal Act IX of 1953 remained unamended and unaltered : nor was its operation extended to other areas or regions in the State. Continuance of the laws of the old region after the reorganisation by s. 119 of the States Reorganisation Act was by itself not discriminatory even though it resulted in differential treatment of persons, objects and transactions in the new State, because it was intended to serve a dual purpose - facilitating the early formation of homogeneous units in the larger interest of the Union, and maintaining even while merging its political identity in the new unit, the distinctive character of each region, till uniformity of laws was secured in those branches in which it was expedient after full enquiry to do so. The laws of the regions merged in the new units had, therefore, to be continued on grounds of necessity and the expediency. Section 119 of the States Reorganisation Act was intended to serve this temporary purpose, viz., to enable the new units to consider the special circumstances of the diverse units, before launching upon a process of adaptation of laws so as to make them reasonably uniform, keeping in view the special needs of the component regions and administrative efficiency. Differential treatment arising out of the application of the laws so continued in different regions of the same reorganised State, did not therefore immediately attract the clause of the Constitution prohibiting discrimination. But, by the passage of time, considerations of necessity and expediency would be obliterated, and the grounds which justified classification of geographical regions for historical reasons may cease to be valid. A purely temporary provision which because of compelling forces justified differential treatment when the Reorganisation Act was enacted cannot obviously be permitted to assume permanency, so as to perpetuate that treatment without a rational basis to support it after the initial expediency and necessity have disappeared.

The High Court observed that even though the State had enacted the Madhya Pradesh Extension of Laws Act, 1958, and had removed diversity in some of the laws of the component regions, no attempt was made to remove discrimination between the territory of the former Bhopal State and the rest of the territories of the State of Madhya Pradesh in the matter of levy of agricultural income-tax. This in the view of the High Court was unlawful because the State had since the enactment of the States Reorganisation Act sufficient time and opportunity to decide whether the continuance of the Bhopal State Agricultural Income-tax Act in the Bhopal region would be consistent with Art. 14 of the Constitution. We are unable to agree with the view of the High Court so expressed. It would

be impossible to lay down any definite time-limit within which the State had to make necessary adjustments so as to effectuate the equality clauses of the Constitution. That initially there was a valid geographical classification of regions in the same State justifying unequal was when the State was formed must be accepted. But whether the continuance of unequal laws by itself sustained the plea of unlawful discrimination in view of changed circumstances could only be ascertained after a full and thorough enquiry into the continuance of the grounds on which the inequality could rationally be founded, and the change of circumstances, if any, which obliterated the compulsion of expediency and necessity existing at the time when the Reorganisation Act was enacted.

Unfortunately there was no clear perception by the parties of what has to be pleaded and proved to establish a plea of denial of equal protection of the laws. The Company merely assumed that the existence a law relating to taxation which imposed agricultural income-tax in the Bhopal region, there being no similar in the rest to the State, was in law discriminatory. That is clear from the petition of the Company which merely asserted that the Act discriminated between the Company and other owners of sugarcane farms in the State of Madhya Pradesh, because it singled out the Company and other agriculturist in the Bhopal region from other agriculturists and sugarcane farm owners in the State of Madhya Pradesh and subjected them to liability without any reasonable basis for classification. The Company, therefore, baldly submitted that after the incorporation of the Bhopal region in the reorganised State, the State of Madhya Pradesh ought to have suitably modified the Act so as to make it applicable to all residents alike and by allowing the Act to operate without any modification, the State had violated the fundamental right of the Company under Art. 14 of the Constitution. The State of Madhya Pradesh did not file any affidavit in reply before the High Court, and chose to defend the petition as if its decision depended on a pure question of law, that if for historical reasons the Act in operation in a region incorporated in the new State was not discriminatory at the date when the reorganisation took place, it can never become discriminatory thereafter. The assumptions made by both the parties appear to be erroneous. The High Court was of the view that after the expiry of reasonable period during which the State has the opportunity of making necessary adaptations so as to make the Act applicable to the entirely of the new State, if the State fails to adapt the law, historical considerations which initially justified the classification must be deemed to have disappeared. That assumption without further enquiry may not be accepted as correct. It was necessary for the High Court to investigate whether at the date when the petition was filed, special treatment of the Bhopal region in the matter of levy of agricultural income-tax had a rational basis. That necessitated an enquiry into the structure of tax burden imposed directly or indirectly on or in respect of agricultural land or income from it in the different regions constituting the State. If for instance, on account of disparity in the impost of land revenue and related taxes on land and income from land in other regions, the ultimate burden on persons in the Bhopal region who were subjected to agricultural income-tax and agricultural land owners in the rest of the State did not disclose a pattern of wide variations, the mere existence of agricultural income impost in one region, and absence of such impost in another region may not necessarily justify an inference of unlawful discrimination. It was therefore necessary to ascertain the difference in the overall tax liability between persons similarly situated in the State of Madhya Pradesh in the matter of levy of agricultural tax. For that purpose an investigation was necessary whether the incidence of total burden on agriculturists was so disparate that an inference of unlawful discrimination may reasonably be made. The High Court had to ascertain the impact of diverse land taxes imposed on agricultural land in the four regions of the State, and whether the burden between persons similarly circumstanced was substantially dissimilar, and whether continuance of dissimilar levies was justified. If upon a thorough examination of the pattern of land taxes in different regions of the State, it appeared to the Court that an unreasonably larger burden was sought to be continued upon

this region, without any apparently justifiable ground, an inference of discrimination may arise.

In adjudging reasonableness of classification for the purpose of taxation, the Courts recognise greater freedom in the Legislature and if the statute discloses a permissible policy of taxation, the Courts will uphold it. The courts undoubtedly lean more readily in favour of the presumption of constitutionality of a taxing statute, but that is not to say that they will not strike down a statute unless it appears that the tax was imposed deliberately with the object of differentiating between persons similarly circumstanced. We may state that the observations to the contrary that in matters of taxation a statute may not be struck down "unless the Court finds that" the tax "has been imposed with a deliberate intention of differentiating between individual and individual" in The State of Madhya Pradesh v. Gwalior Sugar Co. Ltd. and another ((1962) 2 S.C.R. 619) was not strictly necessary for deciding that case, and was not intended to lay down any special test applicable to taxing statues in their relation to Art. 14 of the Constitution.

To arrive at a conclusion adverse to the State it was, therefore necessary to decide whether the differentiation arising from the continuation of the levy of the agricultural income-tax was unfair and not supported by a reasonable standard, and the State having the requisite information and opportunity to make the imposts reasonably uniform, had failed or neglected to do so. No set formula can be devised for solving a problem of this character. It cannot be said that because a certain number of years have elapsed or that the State has made other laws uniform, the State has acted improperly in continuing an impost which operates upon a class of citizens more harshly than upon others.

The petition filed by the Company was singularly deficient in furnishing particulars which would justify the plea of infringement of Art. 14 of the Constitution. It cannot be too strongly emphasized that to make out a case of denial of the equal protection of the laws under Art. 14 of the Constitution, a plea of differential treatment is by itself not sufficient. An applicant pleading that equal protection of the laws has been denied to him must make out that only he had been treated differently from others but he has been so treated from persons similarly circumstanced without any reasonably basis, and such differential treatment is unjustifiably made. A mere plea that the Company and other agriculturists within the region of the former Bhopal State had to pay the agricultural income-tax, whereas the agriculturists elsewhere had not to pay such tax, is not sufficient to make out a case of infringement of the fundamental right under Art. 14 of the Constitution.

The State also did not place evidence before the High Court, which would in the very nature of things be in its possession, showing a rational relation between the differential treatment and the classification and has also not placed any material before the Court throwing light on the question whether the continuance of the tax was justified : it merely chose to plead its case as on a demurrer. Both the State and the Company have by inadequate appreciation of the true position in law contributed to the manner in which the trial of petition has proceeded. We would in the circumstances not be justified in dismissing the petition on a technical view of the burden of proof. We think that this is a case in which the parties should be given an opportunity to plead their respective cases adequately and to go to trial after the requisite evidence which has a bearing is brought before the Court.

We accordingly allow the appeal, set aside the order and remand the case for retrial to the High Court. The High Court will, if the Company so desires, give opportunity to the company to amend its petition so as to adequately plead its case of infringement of the fundamental right to equal

protection of the laws supported by necessary particulars. The High Court will also give opportunity to the State to file its affidavit in reply and to place all such materials as it may rely upon the plea set up by the Company. After the pleadings are completed and the evidence is brought on the record, the High Court will proceed to decide the case according to law. Costs in this Court will be the costs in the petition before the High Court.

Appeal allowed.

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