

Hari Krishna Bhargav

Vs

Union of India and Another

Writ Petition No. 17 of 1965

(CJI P. B. Gajendragadkar, M. Hidayatullah, K. N. Wanchoo, J. C. Shah, S. M. Sikri JJ)

06.10.1965

JUDGMENT

SHAH, J. –

The petitioner who is a trader at Meerut was ordered by the Income-tax Officer, D-Ward, Meerut, to pay Rs. 1,800/- as annuity deposit under Ch. XXII-A of the Income-tax Act, 1961. The petitioner has filed this petition challenging the validity of the demand on the plea that Ch. XXII-A of the Income-tax Act is unconstitutional and is otherwise violative of the fundamental right guaranteed by Art. 14 of the Constitution.

The Indian Income-tax Act 43 of 1961 was enacted by the Parliament to consolidate and amend the law relating to income-tax and super-tax. The Act came into force on April 1, 1962. The Parliament enacted Finance Act 5 of 1964 to give effect to the financial proposals of the Central Government for the financial year 1964-65, and by s. 3(1) of that Act it was provided :

"Save as otherwise provided in Chapter XXII-A of the Income-tax Act, annuity deposit for the assessment year commencing on the 1st day of April, 1964, shall be made by every person to whom the provisions of that Chapter apply at the rates specified in the Second Schedule."

By s. 44 of the Finance Act, Ch. XXII-A relating to annuity deposit containing ss. 280-A to 280-X was introduced into the Income-tax Act. By that chapter taxpayers of certain categories are required to make annuity deposits for every assessment year commencing from the assessment year 1964-65. By the Second Schedule to the Finance Act, rates of annuity deposits are prescribed. The deposit has to be made by the specified categories of taxpayers, having a total income exceeding Rs. 15,000 at the prescribed percentages rising from 5 to 12 1/2 on the adjusted total income. By the Explanation to the Second Schedule, the expression "total income" under the Schedule means the total income computed in the manner laid down in the Income-tax Act without making any allowance under s. 280-O of that Act. A taxpayer who is a resident and falls within any of the following categories is liable to make the annuity deposit :

- (i) an individual, who is a citizen of India,
- (ii) a Hindu undivided family,
- (iii) an unregistered firm,

- (iv) an association of persons or a body of individuals, whether incorporated or not (other than a company or a cooperative society), and
- (v) an artificial juridical person referred to in sub-clause (vii) of cl. (31) of s. 2 of the Income-tax Act (other than a corporation established by a Central, State or Provincial Act).

All non-residents and all companies and corporations and co-operative societies established by Central, State or Provincial Acts are accordingly exempted from the operation of the annuity deposit scheme. But a taxpayer who is required by s. 280-A to make an annuity deposit may exercise his option not to make it, by a notice in writing to the Income-tax Officer before the 30th June of the assessment year. The option once exercised is irrevocable, and operates in respect of the assessment year and all subsequent years. The taxpayer who exercises the option has to pay besides the income-tax payable on his total income, additional income-tax which is equal to half of the amount which he saves by not making the deposit. But an individual who on the last day of the relevant previous year is more than seventy years of age is exempt from payment of this additional income-tax. Section 280B defines, amongst other expressions, "adjusted total income", a percentage of which is by the Second Schedule liable to be deposited as annuity deposit. Annuity deposit has to be made in advance on the adjusted total income of the previous year, at the rate or rates prescribes by any Central Act. Authors, play-wrights, artists, musicians and actors are permitted to make at their option, deposit up to 25% of the amount derived from their profession, in addition to the amount which they are required to make. A person receiving gratuity from his employer in excess of the amount exempt from income-tax has the option of making an annuity deposit not exceeding 50% of the amount of gratuity chargeable to income-tax, in addition to the amount he is required to make. The annuity deposit is repayable in ten annual equated instalments of principal and interest at such rates as may be prescribed. The amount of annuity deposit payable by a taxpayer in any year is admissible as a deduction in computing his total income charged to tax for that year. If the adjusted total income of an assessee includes income chargeable to income-tax under the head "salaries", allowance has to be made in computing the income under that head, and if there be no income under that head or the annuity deposit required to be made exceeds the salary income, the whole of the balance of the annuity deposit is allowable as a deduction in computing the total earned income. The instalment of annuity due on any annuity deposit is chargeable to income-tax as earned income of the taxpayer in the year in which it becomes due. The Income-tax Officer on or after the 1st day of April in the financial year, may by order in writing, require the depositor who has been previously assessed to make an advance deposit computed in accordance with s. 280-E. The Income-tax Officer is also authorised to issue a demand notice and also to modify, if necessary, the notice of demand after regular assessment has been made. A depositor may make his own estimate of his adjusted total income before the last instalment is due, that is his adjusted total income for the previous year is less than the income in respect of which he is required to make the deposit. A taxpayer who fails to pay the annuity deposit by the due date is exposed to a penalty which may amount to as much as 50% of the deposit required to be made by him. A taxpayer who received income of the nature of commission, which forms part of his adjusted total income, may defer making advance deposit, when commission is receivable periodically and is not received or adjusted by the payer in the depositor's account. A person who has not been previously assessed to income-tax is liable to pay penalty if he fails to make an advance deposit on his own estimate. The Income-tax Officer is entitled to determine annuity deposit on the basis of provisional assessment or regular assessment and he is entitled to recompute the annuity deposit, when the total income of the assessee is enhanced or reduced, or the status under which he is assessed is altered or when the registration of a firm is cancelled. Arrears of annuity deposit and penalty are recoverable in the manner provided in

Ch. XXII-D of the Income-tax Act for the recovery of income-tax.

Broadly stated, the scheme of Ch. XXII-A is that certain classes of taxpayers in the comparatively higher income groups are required to make out of their total income deposits at the specified rates on the adjusted total income, with the Central Government. The amount so deposited is made returnable with interest in ten annual instalments. In computing the total income of the year in which it is made the deposit is an admissible deduction. But the instalment due in any year is liable to be adjusted in the total income of the year in which it is due. The taxpayer, however, has the option not to pay the deposit, and pay tax on his total income and fifty per cent. of the amount saved by not making the deposit.

The petitioner submits that the scheme of annuity deposit incorporated in Ch. XXII-A is invalid because (a) the Parliament had no competence to incorporate in the Indian Income-tax Act, a provision which was substantially one relating to borrowings by the Central Government from a class of taxpayers; (b) the provisions contained in Ch. XXII-A are enacted in colourable exercise of legislative power, and that in any event they are so harsh and unconscionable that they may be regarded as expropriatory and on that account not within the legislative competence of the Parliament and (c) the provisions of s. 280 and Sch. II are discriminatory and infringe the fundamental freedom under Art. 14 of equality before the law.

In our view there is no substance in any of the contentions. The Parliament has by Art. 246 read with Entry 82 in List I of the Seventh Schedule power to levy "taxes on income other than agricultural income". The Indian Income-tax Act, 1961, and the provisions of the annual Finance Acts of the Parliament which authorise levy of income-tax at the rates prescribed thereby are undoubtedly enacted in exercise of the powers conferred by entry 82 in List I. Granting that the scheme of Ch. XXII-A is for borrowing money by the Central Government from the taxpayers in the higher income group at the rates prescribes, which is repayable in instalments, power to legislate in that behalf is still within the competence of the Parliament by virtue of Entry 97 of List I of the Seventh Schedule. Counsel for the petitioner does not contend that power to collect annuity deposit is outside the Parliament's competence : he merely urges that the Parliament could not incorporate the provisions relating to the exercise of the power of borrowings exercisable under Entry 97 in a legislation which was exclusively enacted in exercise of the powers under Entry 82. But if the Parliament has the power to legislate for collecting annuity deposits from taxpayers, there is nothing in the Constitution which disentitles the Parliament as a matter of legislative arrangement to incorporate the provisions relating to borrowing from taxpayers in the Income-tax Act or any other statute. There is no prohibition against the Parliament enacting in a single statute, matters which call for the exercise of power under two or more entries in List I of the Seventh Schedule. Illustrations of such legislation are not wanting in our statute book, and the fact that one of such entries is the residuary entry does not also attract any disability. The question is one of convenience and not of power. It appears that the Parliament thought that the provisions relating to annuity deposits could appropriately be incorporated in the Indian Income-tax Act, 1961. The Parliament did enact the Compulsory Deposit Scheme Act, 1963, as a separate statute, but the does not mean that it had no power to incorporate it within the Income-tax Act, if the Parliament so desired. The Income-tax Act, 1961, is a longish statute and incorporation of other provisions therein may make it somewhat unwieldy. But it must be said that the Chapter relating to the annuity deposit scheme is closely related to the scheme of levy of income-tax. The power of assessment, and collection of annuity deposit is entrusted to Income-tax Officers, and the machinery of the Income-tax Act is utilised for that purpose. The annuity deposit is based on the total income of the taxpayer : if the taxpayer pays the deposit he is entitled to deduction of the amount in the computation of Income-tax, and if he

exercises the option not to pay the deposit, he is rendered liable to pay additional income-tax. The annuity deposit and the penalty payable for failure to make the deposit without exercising the option are made recoverable in the manner provided by Ch. XVII-D for the recovery of arrears of income-tax. If the Annuity Deposit Act were enacted as a separate Act, several provisions requiring references to the Income-tax Act and conferment of power upon the authorities constituted under the Income-tax Act would have had to be duplicated. To avoid repetition and cross references the Legislature has thought it proper to enact within the Indian Income-tax Act those provisions relating to annuity deposits and has conferred upon the Income-tax Officer power to assess and collect annuity deposits, and exercise of that power may not be cavilled at even by a purist in draftsmanship.

The argument that Ch. XXII-A is a colourable exercise of legislative power has no substance. As pointed out by this Court in *K. C. Gajapati Narayan Deo and others v. The State of Orissa* : ([1954] S.C.R. 1.)

" . . . the doctrine of colourable legislation does not involve any question of bona fides or mala fides on the part of the legislative. . . . Whether a "statute is constitutional or not is . . . always a question of power. . . . If the Constitution of a State distributes the legislative powers amongst different bodies, which have to act within their respective spheres marked out by specific legislative entries, or if there are limitations on the legislative authority in the shape of fundamental rights, questions do arise as to whether the legislature in a particular case has or has not, in respect of the subject-matter of the statute or in the method of enacting it, transgressed the limits of its constitutional powers. Such transgression may be patent, manifest or direct, but it may also be disguised, covert and indirect, and it is to this latter class of cases that the expression "colourable legislation" has been applied in certain judicial pronouncements. The idea covered by the expression is that although apparently a legislature in passing a statute purported to act within the limits of its powers, yet in substance and in reality it transgressed these powers, the transgression being veiled by what appears, on proper examination, to be a mere pretence or disguise."

It is not suggested that the power of legislate for collection and repayment of annuity deposits is within the power of the States under List II of the Seventh Schedule. If the Parliament has the power to enact legislation for levying, assessing and collecting annuity deposits and for repayment in annual instalments, by enacting that legislation the Parliament does not trespass upon powers outside its domain. In exercising power to legislate for collecting annuity deposits, the Parliament has not sought to resort to any pretence, disguise or subterfuge with the object of trespassing upon power not vested in it by the Constitution. The doctrine of colourable legislation therefore can have no application where the Parliament is invested with the authority to legislate in respect of annuity deposit and it exercises that power.

It was urged that even if the exercise of the powers to compel deposits be regarded as not unconstitutional, its exercise is harsh and the demands made by the State are excessive. Exercise of the taxing power by the State has undoubtedly to be tested in the light of the fundamental freedoms guaranteed by Ch. III of the Constitution. It is not a power which transcends the fundamental rights, as was assumed in certain earlier decisions : *Ramjilal v. Income-tax Officer* ([1951] S.C.R. 127.); *Laxmanappa Hanumantappa v. Union of India* ([1955] 1 S.C.R. 769.); and the view expressed by *Venkatarama Ayyar J.*, in *S. Anantha Krishnan v. State of Madras* (I.L.R. [1952] Mad. 933.). But it

is now settled by decisions of this Court (e.g.) *Kunnathat Thathunni Moopil Nair v. The State of Kerala and Another* ([1961] 3 S.C.R. 77.) that a taxing statute is subject to the "conditions laid down in Art. 13 of the Constitution". A taxing statute may accordingly be open to challenge on the ground that it is expropriatory; or that the statute prescribes no procedure or machinery for assessing tax, but it is not open to challenge merely on the ground that the tax is harsh or excessive.

The argument that the scheme of annuity deposit makes an unlawful discrimination between taxpayers is also devoid of force. Article 14 of the Constitution guarantees equality before the law, and equal protection of the laws. But thereby the power of the Legislature to make a reasonable classification of persons, objects or transactions for attaining certain objectives is not excluded. If a classification is based on some real and substantial distinction, bearing a just and reasonable relation to the objects sought to be achieved, it is valid. It is true that an assessee whose total income does not exceed Rs. 15,000/- is not liable to pay any annuity deposit, and the demand for annuity deposit, unlike income-tax is based on a progressively increasing percentage of the adjusted total income, and for a person having a total income exceeding Rs. 70,000/- the rate of deposit is as high as 12 1/2 per cent. But neither the exemption of taxpayers having an income below Rs. 15,000/- nor the progressively steeper rates of demand can be regarded as unreasonable. What is sought to be achieved by the Act is the twin objective of mobilisation of private savings for public purposes and imposing curbs on the inflationary trends in the economy of our country. To secure this purpose, provision has been made to collect what may reasonably be assumed to be surplus income or private savings so as to make them available for national development.

The Legislature has been of the view that persons who have an income exceeding Rs. 15,000/- per annum at the present level of taxation, and the ruling prices, may be able to make savings which may usefully augment the public finances. Nothing has been placed before us to show that the view is not reasonable. The view of the legislature that in the higher income groups there would be larger savings cannot also be said to be unreasonable. It is true that a slab system in vogue for the computation of non-corporate income-tax has not been adopted, and the demand of deposit is made at a steeply rising percentage on the adjusted total income. But that by itself is not a ground for regarding the levy as unreasonable. In order to do away the anomalies the Schedule of rates has provided marginal adjustments. It may also be noticed that simultaneously with the introduction of the annuity deposit scheme, the personal rates of income-tax have been reduced. Again it may be noticed that the scheme for the annuity deposits is in a sense not compulsory. By making a declaration it is open to an assessee not to make the contribution as required by the Act. He may elect not to make the deposit, and pay income-tax on his total income. If he has not attained the age of seventy years on the last day of the previous year he will also have to pay additional income-tax as prescribed by sub-s. (2) of s. 280-X. There is undoubtedly a distinction made between persons who are below the age of seventy years on the last day of the previous year, and those who have attained that age : the former on exercising the option not to pay annuity deposits will have to pay tax on the total income and additional income-tax, the latter will only pay tax on the total income but not additional income-tax. The Legislature is apparently of the view, having regard to the life span in our country, capacity to engage in gainful employment and other relevant circumstances, that the latter should be exempted from payment of additional tax. Every taxpayer who is otherwise required to make a deposit is permitted to declare his option under s. 280-X(1) and once he does so, he is not liable to make the annuity deposit. Such a taxpayer will be obliged to pay income-tax on his total income. Only a section out of this class of taxpayers are exempted from liability to pay additional income-tax. It is difficult to regard the provision exempting this class of persons from liability to pay additional tax as depriving other taxpayers below the age of seventy who have exercised the option under s. 280-X(1) of the guarantee of equal protection of the laws. The

classification is prima facie reasonable, and the petitioner has placed no materials before us to prove that it is not genuine or has no rational nexus to the object sought to be achieved by the Parliament.

The petition fails and is dismissed with costs.

HIDAYATULLAH, J.

I agree that this petition should be dismissed with costs. I agree generally with the reasons given by my brother Shah, but I wish to say that I do not rest my decision on entry No. 97 of List I of the Seventh Schedule. It was argued that entry No. 97 of List I must in any event cover this tax even if the entry relative to income-tax was inadequate to cover it. The very frequent reliance on entry No. 97 makes me say these few words. That entry, no doubt, confers residuary powers of registration or taxation but it is not an entry to avoid discussion as to the nature of a law or of a tax with a view to determining the precise entry under which it can come. Before recourse can be had to entry No. 97 it must be found as a fact that there is no entry in any of the three Lists under which the impugned legislation can come. For if the impugned legislation is found to come under any entry in List II, the residuary entry will not apply. Similarly, if the impugned legislation falls within any entry in one of the other two Lists recourse to the residuary entry will hardly be necessary. The entry is not a first step in the discussion of such problems but the last resort. One cannot avoid the issue by taking its aid unless such a course is open. It is always necessary to examine the pith and substance of any law impugned on the ground of want of legislative competence with a view to ascertaining the precise entry in which it can come. The entries in the three Lists were intended to be exhaustive and it would be a very remote chance that some entry would not suit the legislation which is impugned. I shall, therefore, examine the law relating to annuity-deposits from this angle first.

The relevant provisions have been summarized by my brother in great detail. The essence of these provisions, apart from the machinery sections which are either supplementary to or fitted into, the scheme of the Indian Income-tax Act, 1961, is that a person, with an income above a certain sum, may, if he so chooses and as an alternative to paying the full tax due on his income, make an annuity deposit and earn some present partial relief from taxation. It is not necessary to state the extent of the relief or the extent of the deposit. This is the scheme in a nut-shell. Now it is undoubtedly open to Parliament to give relief from a part of the income-tax the assessee has to pay on the condition that a particular amount is put into an annuity deposit. The deposit is not obligatory. Any person can elect to pay the full tax and not take advantage of the scheme. The pith and substance of the impugned provisions, therefore, rightly belong to the topic of taxes on income. The annuity deposit is in lieu of some tax and the machinery sections also take the aid of the machinery of the Indian Income-tax Act. As the enforcement of the provisions is by the agency of the Income-tax Department - and they are intimately connected with Income-tax - the provisions are very appropriately included in the Income-tax Act. No doubt the provisions for the management of the annuity deposits deal with matters slightly out of place in pure taxing measure but our Constitution has not created a water-tight compartment as is to be found in the Commonwealth of Australia Act. Our Income-tax Act can reasonably contain provisions on incidental matters and the management of annuity deposit under the scheme is such a matter.

It is argued that this is a case of "borrowing" which is defined in Art. 366(4) to include the raising of money by the grant of annuities, and "loan" is also required to be construed accordingly. It is submitted that if money was to be raised by the grant of annuities the action should have been by an Act giving effect to Art. 292. Article. 292 reads :

"292. Borrowing by the Government of India.

The executive power of the Union extends to borrowing upon the security of the Consolidated Fund of India within such limits, if any, as may from time to time be fixed by parliament by law and to the giving of guarantees within such limits, if any, as may be so fixed."

Borrowing under that Article is by executive action and it is on the security of the Consolidated Fund of India. A similar power is granted to the Executive of the State by Art. 293. This is not a legislative power except in so far as law may be made to fix the limits of borrowing and to the giving of guarantees within such limits. Otherwise it is a power for the exercise of the Executive.

Here the Annuity deposit is an alternative to paying income-tax and is a means of reduction in the amount of income-tax. The provisions relating to it rightly came under entry No. 82 of List I dealing with taxes on income. The money so collected is returned with interest in equal instalments spread over ten years and the amount is taxable in the year of refund. The entry thus covers it.

There is no entry in List II which can be said to take in the law relating to Annuity Deposits. Entry No. 30 (money-lending and money-lenders) has to be mentioned and rejected. As the subject of the annuity deposit provisions is capable of being comprehended in the entry relating to taxes on income I do not feel called upon to invoke the aid of entry No. 97 by assuming that no entry covers such provisions. This will be a fundamental error in approach to such problems. The provisions are neither colourable nor discriminatory. They apply to upper income groups and this does not lead to discrimination. They are not colourable because, though called annuity deposits, they only defer payment of tax on part of the assessable income and the name does not matter at all. Instead of charging income-tax on the amount forthwith the amounts is ordered to be kept in deposit with Government, one-tenth being returned with interest every year. The returned amount then bears the tax. An election once made is final.

I agree, therefore, that the petition be dismissed with costs.

Petition dismissed.

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