

Municipal Committee, Akot

Vs

Manilal Manekji Pvt. Ltd. and Another

Civil Appeals Nos. 1611 and 1612 of 1966

(S. M. Sikri, J. C. Shah, V. Ramaswami-I JJ)

17.11.1966

JUDGMENT

SIKRI, J. –

These two appeals involve the same point and can be conveniently disposed of by one common judgment. The relevant facts may be given from one appeal only.

The respondents, Manilal Manekji Pvt. Ltd. filed a petition under Articles 226 and 227 of the Constitution in the High Court of Judicature of Bombay, Nagpur Bench, praying that certain demands made by the Municipality of Akot be quashed and that the Municipality be ordered to refund the advance deposit which the respondent had made. These demands and advance deposits were in respect of a tax known popularly as 'the gin tax and press tax' levied by the Municipality of Akot. In brief, the case of the respondent was that in view of Article 276 of the Constitution, the notifications under which the tax was imposed could not be enforced except to the extent provided under Article 276(2) of the Constitution. The case of the Municipal Committee, in brief, was that the notifications were in force immediately before the commencement of the Constitution and, therefore, were not hit by Article 276(2).

It is now necessary to set out the history of the notifications and the various municipal laws which were made applicable to the Municipal Committee, Akot, from time to time. It appears that the Municipal Committee, Akot, was constituted under the Berar Municipal Law, 1886, and under section 41 of the Berar Municipal Law, 1886, the Committee was empowered to impose certain taxes. It may be mentioned that the Berar Municipal Law, 1886, was promulgated by Notification No. 3938-1 dated 5th November, 1886, by the Viceroy and Governor-General in Council. Berar, at the relevant time, was not part of the British India. The Municipal Committee, Akot issued notification No. 98, dated 14th March, 1899, regarding levy of Profession Tax. The relevant part of the notification reads as follows :-

"With reference to section 44, clause (9) of the Berar Municipal Law, 1886, it is hereby notified that the Municipal Committee of Akot has, with the sanction of the Resident, directed the imposition with effect from the 1st April, 1899, of a tax under section 41(1) A(b) of the law, on professions and trades practised in that Municipality subject to the following rule :-

(1) The tax shall, subject to the following provision, be assessable on every person who practices any profession or art or any trade in the Akot Municipality the whole or any part of whose income derived from any sources other than agriculture is not

less than Rs. 100 per annum, at the rate of one and a quarter per cent. on the taxable portion of his estimated income derived from any such source provided that,

(i) No person or firm shall be assessed at a sum exceeding Rs. 500 per annum or less than eight annas....."

Another notification was issued on 13th July, 1908, in the following terms :-

"No. 1063 - With reference to section 44, sub-sections (7) and (8), of the Berar Municipal Law, 1886, it is hereby notified that the Municipal Committee of Akot, in Akola district, has with the sanction of the Chief Commissioner, directed the imposition with effect from 1st August, 1908 of a tax on the Ginning and Pressing of Cotton under section 41(1)(A)(b) of the said law to be levied from all persons carrying on within the limit of the Akot Municipality, the trade of ginning cotton and pressing the same into bales by means of steam or mechanical process, at the following rates :-

(1) For each boja of ten maunds ginned 8 pies.

(2) For each bale of fourteen maunds pressed 10 pies.

The tax is payable in one instalment on the first of August each year."

On January 22, 1924, the following notification was issued by the Governor-General in Council :-

"No. 58-1. - In exercise of the powers conferred by the Indian (Foreign Jurisdiction) Order in Council, 1902 and of all other powers enabling him in that behalf, the Governor-General in Council is pleased to direct that the following further amendments shall be made in the First Schedule to the Notification of the Government of India in the Foreign Department, No. 3510-I.B. dated the 3rd November, 1913, applying certain enactments to Berar, namely :-

After Entry No. 149 the following entry shall be inserted, namely :-

"#150. The Central Provinces (1) In section 2 Municipalities Act, 1922 (II of 1922). (a) for sub-section (1) the following shall be substituted, namely : "(1) The Berar Municipal Law, 1886, is hereby repealed". (b) in sub-section (2), for the words "Acts" the word "Law" shall be substituted."##

It is not necessary to set out all the amendments made by the notification in the Central Provinces Municipalities Act, 1922. The effect of this notification, in brief, was to apply the Central Provinces Municipalities Act, 1922 with certain modifications, to Berar and to repeal the Berar Municipal Law, 1886, and further to save the taxes imposed and other acts done by the Municipalities by deeming them to have been made, imposed or assessed under the Central Provinces and Berar Act, 1922 (II of 1922) as applied to Berar. It was further provided by sub-section (6) of section 66 that "any tax imposed in a Municipality before the date on which this Act comes into force shall continue in operation notwithstanding that it is not a tax specified in sub-section (1)", and sub-section (7) of section 66 enabled a committee to abolish any tax to which sub-section (6) applied as if it were a tax imposed under this Act but may not vary the amount or rate thereof.

The law as applied to Berar, although called the Central Provinces Municipalities Act, 1922, was not the same law as the Central Provinces Municipalities Act, 1922, as in force in the Central Provinces.

On August 1, 1941, the Central Provinces and Berar Act (XV of 1941) - called the Berar Laws (Provincial) Act, 1941 - came into force. This Act was passed by the Governor under Section 93 of the Government of India Act, 1935, Berar having become part of the Governor's Province of the Central Provinces and Berar. Section 47 of the Government of India Act, 1935, provided that "Berar shall continue to be governed together with the Central Provinces as one Governor's Province under this Act by the name of the Central Provinces and Berar and in the same manner as immediately before the establishment of the Dominion; and any reference in this Act to the Dominion of India shall be construed as including a reference to Berar". By this Act the Governor extended various acts to Berar including the Central Provinces Municipalities Act, 1922 (II of 1922). The following amendments were made in the Central Provinces Municipalities Act, 1922 :

"(1) To sub-section (2) of section 12, the following proviso shall be added, namely :-

"Provided that in the case of two adjacent Municipalities in Berar the State Government may by a general or special order exclude the residents of one municipality from voting in a special constituency of the other municipality."

(2) After sub-section (5) of section 66, the following sub-section shall be inserted, namely :

"(5A) Any tax imposed in a municipality in Berar before the date on which this Act comes into force shall continue in operation notwithstanding that it is not a tax specified in sub-section (1).

(5B) A committee in Berar may abolish any tax to which sub-section (5A) applies as if it were a tax imposed under this Act but may not vary the amount or rate thereof."

As a result of section 2(2) of the Central Provinces and Berar Act (XV of 1941) the title of the Central Provinces Municipalities Act, 1922 (II of 1922) became the Central Provinces and Berar Municipalities Act, 1922 (II of 1922). Section 3 of this Act provided inter alia that the Central Provinces Municipalities Act, 1922, which had been applied to Berar by order under the Indian (Foreign Jurisdiction) Order in Council, 1902, shall cease to have effect "provided that all appointments, delegations, notifications, orders, bye-laws, rules and regulations which have been made or issued, or deemed to have been made or issued and all other things done or deemed to have been done under, or in pursuance of, any provision of any of the said Acts as applied to Berar by order under the said Order in Council, and which are in force at the commencement of this Act, shall be deemed to have been made or issued or done under or in pursuance of the corresponding provision of that Act as now extended, to, and in force in, Berar".

In the meantime a Bill was introduced in the Central Assembly on 21st March, 1941, which was ultimately passed as the Professions Tax Limitation Act, 1941 (XX of 1941). This Act came into force on 1st April, 1941. This Act provided :

"Section 2 - Notwithstanding the provisions of any law for the time being in force, any taxes payable in respect of any one person to a Province, or to any one municipality, district board, local board, or other local authority in any Province, by

way of tax on professions, trades, callings or employments, shall from and after the commencement of this Act cease to be levied to the extent in which such taxes exceed fifty rupees per annum".

3. The provisions of section 2 shall not apply to any tax specified in the Schedule".

The Schedule is as follows :

# "THE SCHEDULE. (See section 3.)##

Taxes to which section 2 does not apply.

1. The tax on professions, trades and callings, imposed through fees for annual licences, under Chapter XII of the Calcutta Municipal Act, 1923.
2. The tax on trades, professions and callings, imposed under clause (f) of sub-section (1) of section 123 of the Bengal Municipal Act, 1932.
3. The tax on trades and callings carried on within the municipal limits and deriving special advantages from, or imposing special burdens on, municipal services, imposed under clause (ii) of sub-section (1) of section 128 of the United Provinces Municipalities Act, 1916.
4. The tax on persons exercising any profession or art, or carrying on any trade or calling, within the limits of the municipality, imposed under clause (b) of section (1) of section 66 of the Central Provinces Municipalities Act, 1922.
5. The tax on companies, imposed under section 110 of the Madras City Municipal Act, 1919 (by section 2 of the Professions Tax Limitation (Amendment) Act, 1946 (V of 1946) (retrospectively).

On behalf of the Municipality it was inter alia contended before the High Court that the impugned tax fell within item 4 of the Schedule to the Profession Tax Limitation Act, 1941, but the High Court negatived the contention following an earlier judgment of the High Court in an unreported case (Bidarbha Mills Berar Limited v. The City Municipal Committee of Achalpur) (High Court of Judicature at Bombay (Nagpur Branch) Special Civil Application No. 104 of 1960 - judgment delivered on August 9, 1960).

The learned Solicitor-General, appearing for the appellant Municipal Committee, contended that item No. 4 in the Schedule covers the impugned tax because the Act is the same under which the tax is being imposed and recovered and the fact that the title of the Central Provinces Municipalities Act, 1922, was changed by the Berar Laws (Provincial) Act, 1941, does not make any difference. He says that there is nothing in the Profession Tax Limitation Act, 1941, to show that the exemption was intended to be given only to a particular territory. He further urges as follows : The fact that this notification, No. 98 dated 14th March, 1899, is now deemed to be issued under the Central Provinces and Berar Municipalities Act, 1922, does not make it any the less imposed under the Central Provinces Municipalities Act, 1922, within item 4; if a tax is deemed to be imposed under the Central Provinces and Berar Municipalities Act, 1922, it is still a tax 'imposed' under section 66 (High Court of Judicature at Bombay (Nagpur Bench) Special Civil Application No. 104 of 1960 - judgment delivered on August 9, 1960) of the Central Provinces Municipalities Act, 1922; it is a

case of mis-description that the word 'Berar' has not been mentioned in item 5 of the Schedule to the Profession Tax Limitation Act, 1941; the item will be otiose if any other meaning is ascribed to it.

In our opinion the High Court came to the correct conclusion. First, item No. 4 is an exemption from the limitation imposed by section 2 of the Professions Tax Limitation Act, 1941, and the exemption must be construed strictly. Secondly, the effect of section 3 and item 4 of the Schedule is to continue the leviability of a tax and, in our opinion, this item must be construed strictly like a taxing statute. If Mr. Gupte had been able to convince us that the item would be otiose if this interpretation is put there would be something to say in his favour. But the item will not be otiose even if we do not treat item 4 as a case of mis-description but give the plain meaning that the Central Provinces Municipalities Act, 1922, means the Central Provinces Municipalities Act, 1922, and not the Central Provinces and Berar Municipalities Act, 1922. Various taxes must have been imposed by the Municipalities in the Central Provinces by virtue of notifications issued under section 66(1)(b) of the Central Provinces Municipalities Act, 1922, and they would fall within the ambit of item 4. Further if we accept Mr. Gupte's argument we will not be giving full effect to the word "imposed". This, in our view, means that the taxes which can continue to be levied should have been imposed in the past before the Profession Tax Limitation Act, 1941, came into force. This is in consonance with section 142-A(2) of the Government of India Act, 1935, which was in the following terms :

"142A(2). The total amount payable in respect of any one person to the Province or to any one municipality, district board, local board, or other local authority in the Province by way of taxes on professions, trades, callings and employments shall not, after the thirty-first day of March nineteen hundred and thirty-nine, exceed fifty rupees per annum;

Provided that, if in the financial year ending with that date there was in force in the case of any Province or any such municipality, board or authority a tax on professions, trades, callings or employments the rate, or the maximum rate, of which exceeded fifty rupees per annum the preceding provisions of this sub-section shall, unless for the time being provision to the contrary is made by a law of the Dominion Legislature, have effect in relation to that Province, municipality, board or authority as if for the reference to fifty rupees per annum there were substituted a reference to that rate or maximum rate, or such lower rate, if any (being a rate greater than fifty rupees per annum), as may for the time being be fixed by a law of the Dominion Legislature; and any law of the Dominion Legislature made for any of the purposes of this proviso may be made either generally or in relation to any specific Provinces, municipalities, boards or authorities".

The proviso clearly shows that the section enabled the Dominion Legislature to make a contrary provision if in the financial year ending 31st March, 1939, there was in force a tax on professions, trades, callings or employments the rate of which exceeded Rs. 50/-. The Dominion Legislature could not authorise under the proviso a fresh imposition exceeding Rs. 50/-.

In view of our above conclusions it is not necessary to deal with the point whether the word "imposed" in item 4 of the Schedule to the Profession Tax Limitation Act, 1941, would include "deemed to be imposed" because by virtue of section 3 of the Berar Laws (Provincial) Act, 1941, the tax would be deemed to be imposed not under the Central Provinces Municipalities Act, 1922, but the Central Provinces and Berar Municipalities Act, 1922.

In the result the appeals fail and are dismissed with costs. One hearing fee.

Appeals dismissed.

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