S. K. Dutta, Income-Tax Officer, Salary-Cum-S. I. B. Circle, Assam, and Others

Vs

Lawarence Singh Ingty. Treasury Officer, State of Nagaland

Civil Appeals No. 809 of 1966

(V. Ramaswami-I, R. S. Bachawat, G. K. Mitter JJ)

07.11.1967

JUDGMENT

HEGDE J. –

The only question that arises for decision in this appeal is whether the exclusion of Government servants from the exemption given under section 4(3) (xxi) of the Indian Income-tax Act, 1922, and later on under section 10(26) of the Income-tax Act, 1961, is violative of article 14 of the Constitution. For our present purpose it may be taken that the said two provisions are similar.

The respondent, who is a Government servant serving in the State of Assam, has been assessed to income-tax for the assessment years 1959- 60, 1960-61, 1961-62 and 1962-63. He challenged the legality of his assessments in Civil Rule No. 127 of 1963 on the file of the High Court of Judicature of Assam. The Assam High Court accepted his petition and quashed the assessments in question holding that section 4(3) (xxi) of the Indian Income-tax Act, 1922, as well as section 10(26) of the Income-tax Act, 1961, to the extent they excluded Government servants from the benefit of the exemption given thereunder are void. The income-tax authorities as well as the Union of India have come up to this court in appeal by special leave.

The facts of this case lie within a narrow compass. The respondent belongs to Mikir Scheduled Tribe and is a permanent inhabitant of United Khasi-Jaintia Hills District, an autonomous district included in Part A of the Table appended to paragraph 20 of the Sixth Schedule of the Constitution of India. He is a Government servant. All these are admitted facts.

The respondent in his petition before the High Court averred (in paragraph 7 of the petition) that "in all the autonomous districts under Table, Part A of paragraph 20 of the Sixth Schedule of the Constitution of India, there are a large number of persons belonging to Scheduled Tribe who derive Considerable income from trade, commerce and business and other sources and employments and immovable properties... " In the return filed by the appellants those allegations were not denied. Adverting to those allegations this is what was stated in the affidavit filed by Shri S. K. Dutta, Income-tax Officer (the first appellant in the appeal) :

> "With reference to the statements made in paragraph 7 of the petition I say that the petitioner being a Government servant his case stands on a different footing other than the general public of the Scheduled Tribe."

It may be remembered till 15th August, 1947, Khasi and Jaintia Hills were not parts of British India. They were under native States. They emerged with British India only after this country got

independence. Till their merger, none of the Indian laws applied to those areas. The Finance Act of 1955, incorporated into the Indian Income-tax Act, 1922, section 4(3) (xxi). The relevant portion of section 4(3) reads thus :

> "Any income, profits or gains falling within the following classes shall not be included in the total income of the person receiving them...
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> (xxi) Any income of a member of a Scheduled Tribe, as defined in clause (25) of article 366 of the Constitution, residing in any area specified in Part A or Part B of the Table appended to paragraph 20 of the Sixth Schedule to the Constitution, provided that such member is not in the service of Government."
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> Section 10(26) of the Income-tax Act of 1961, which corresponds to section 4(3) (xxi) of the Indian Income-tax Act, 1922, reads thus :
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> In the case of a member of a Scheduled Tribe as defined in clause (25) of article 366 of the Constitution, residing in any area specified in Part A or Paer B of the Table appended to paragraph 20 of the Sixth Schedule to the Constitution or in the Union Territories of Manipur and Tripura, who is not in the service of Government, any income which accrues or arises to him, (a) from any source in the area or Union Territories aforesaid, or (b) by way of dividend or interest on securities."

Part of the impugned assessments were made under the Income-tax Act, 1922, and the rest, under the Income-tax Act, 1961. If the aforementioned provisions are valid, then the assessments in question are beyond challenge. Therefore, the only question for decision is whether the legislature had no power to exclude Government servants from the benefit of the exemptions given under the aforementioned sections 4(3) (xxi) and 10(26).

It is seen that the income of the members of a Scheduled Tribe included in clause (25) of article 366 of the Constitution and residing in any area specified in Part A or Part B of the Table appended to paragraph 20 of the Sixth Schedule of the Constitution, excepting that of Government servants is exempt from income-tax. In other words, the Government servant alone is excluded from the benefit of the exemption given under the provisions quoted above. It is agreed that the respondent is a member of the Scheduled Tribe included in clause (25) of article 366 of the Constitution, residing in an area specified in Part A of the Table appended to paragraph 20 of the Sixth Schedule to the Constitution, but yet he had been denied the benefit of the exemption in question on the sole ground that he is in the service of the Government. It may be noted that exemption both under section 4(3) (xxi) of the Indian Income-tax Act, 1922, and under section 10(26) of the Income-tax Act, 1961, was given to the members of certain

It is not in dispute that taxation laws must also pass the test of article 14. That has been laid down by this court in Moopil Nair v. State of Kerala. But is observed by this court in East India Tobacco Co. v. State of Andhra Pradesh, in deciding whether the taxation law is discriminatory or not it is necessary to bear in mind that the State has a wide discretion in selecting persons or objects it will tax, and that a statute is not open to attack on the ground that it taxes some person or objects and not others; it is only when within the range of its selection, the law operates unequally, and that cannot be justified on the basis of any valid classification, that it would be violative of article 14. It is well settled that a State does not have to tax everything in order to tax something. It is allowed to pick and choose districts, objects, persons, methods and even rates for taxation if it does so reasonably.

The complaint in this case is that within the range of the selection made by the State for the purpose of exemption, namely, members of certain Scheduled Tribes residing in specified areas, the law operates unequally and the inequality in question cannot be justified on the basis of any valid classification.

There can be no distinction between the income earned by a Government servant and that earned by a person serving in a company or under a private individual. More or less similar is the case in respect of the income earned by persons practicing one or more of the professions. Admittedly the income earned by the members of the Scheduled Tribes residing in Khasi-Jaintia Hills excepting in the case of the Government servants is exempt from income-tax be it as salaried officers, lawyers, doctors or persons in other walks of life. Is there any legal basis for this differentiation ? Prima facie it appears that Government servants have been discriminated against and the discrimination in question is writ large on the face of the provisions in question.

The learned Solicitor-General contended that the classification in question can be justified on administrative grounds. He urged that a classification based on administrative convenience is a just classification in the matter of levying taxes. According to him, it is easy to collect taxes from Government servants. Therefore, it was permissible for the legislature to deny them the exemption extended to the other members of their tribes. This contention appear to be without merit. It may be that for the purpose of taxation a classification can be made on the basis of administrative convenience. But we fail to see how the case of the Government servants stands on a footing different from that of the employees in statutory corporations or even well recognised firms. That apart, administrative convenience which can afford a just basis for classification must be a real and substantial one. We see no such administrative convenience. The learned Solicitor-General next contended that the classification can be justifi

The learned Solicitor-General next invited our attention to a notification issued by the Government of India as long back as 6th June, 1890, under which the income earned by members of certain scheduled tribes other than those serving under the Government was exempted from income-tax. He also invited our attention to Finance Department Notification No. 788F. dated 21st March, 1922, under which the income of indigneous hill men other than persons in the service of Government, residing in certain areas were out a well recognised legislative practice and history under which the Government servants as a class were excluded from the benefit of income-tax exemption extended to other persons similarly situated. In this connection, he placed reliance on the decision of this court in Narottam Kishore Dev Varma v. Union of India. Therein this court was called upon to consider the validity of section 87B of the Code of Civil Procedure which prescribed that a Ruler of a former Indian State cannot be sued in any court ot

> "The legislative background to which we have referred cannot be divorced from this historical background which is to be found, for instance, in article 362. This article provides that in the exercise of the power of Parliament or of any legislative of any State to make laws or in the exercise of the executive power of the Union or of a State, due regard shall be had to the guarantee or assurance given under any such covenant or agreement as is referred to in clause (1) of article 291 with respect to the personal rights, privileges and dignities of a Ruler of an Indian State. This has reference to the covenants and agreements which had been entered into between the Central Government and the Indian Princes before all the Indian States were politically completely assimilated with the rest of India. The privilege conferred on the Rulers of former Indian States has its origin in these agreements and covenants.

One of the privileges is that of extra territoriality and exemption from civil jurisdiction except with

In the background set out above this court upheld the validity of section 87B of the Code of Civil Procedure.

We know of no legislative practice or history treating Government servants as a separate class for the purpose of income-tax. The Government servants' income has all along been treated in the same manner as the income of other salaried officers. We do not know under what circumstances the notifications dated June 6, 1890, and March 21, 1922, referred to earlier, came to be issued. But they are insufficient to prove a well established legislative practice. At the time those notifications were issued the power of the legislature to grant or withhold any exemption from tax was not subject to any constitutional limitation. Hence, the validity of the impugned provisions cannot be tested from what our legislatures or Governments did or omitted to do before the Constitution came into force. If that should be considered as a true test then article 13(1) would become otiose and most, if not all, of our constitutional guarantees would lose their contents. Sri Setalvad, learned counsel for the respondent, is justified

It was the contention of the learned Solicitor-General that exemption from income-tax was given to members of certain Scheduled Tribes due to their economic and social backwardness; it is not possible to consider a Government servant as socially and economically backward and hence the exemption was justly denied to him. According to the Solicitor-General, once a tribal becomes a Government servant he is lifted out of his social environment and assimilated into the forward sections of the society and therefore he needs no more any crutch to lean on. This argument appears to us to be wholly irrelevant. The exemption in question was not given to individuals either on the basis of their social status or economic resources. It was given to a class. Hence individuals do not come into the picture. We fail to see in what manner the social status and economic resources of a Government servant can be different from that of another holding a similar position in a corporation or that of a successful medical practitioner at the highest is no higher than that of other who in other walks of life have the same income. For the purpose of valid classification what is required is not some imaginary difference but a reasonable and substantial distinction having regard to the purpose of the law.

It was lastly contended by the learned Solicitor-General - a contention which was not taken either in the return or before the High Court or in the appeal memorandum - that it is not possible to strike down only a portion of section 4(3) (xxi) of the Indian Income-tax Act, 1922, and section 10(26) of the Income-tax Act, 1961, namely, the words "Provided that such member is not in the service of Government" found in section 4(3) (xxi) of the Indian Income-tax Act, 1922, and the words "who is not in the service of the government" in section 10(26) of the Income-tax Act, 1961, as those words are not severable from the rest of the provisions in which they appear. Further, according to him it cannot be definitely predicated that the legislature would have granted the exemption incorporated in those provisions without the exception made in the case of Government servants. Therefore, if we hold that those provisions as they stand are violative of article 14, then we must strike down the afore- mentioned sections 4(3

For the reasons mentioned above this appeal is dismissed with costs.

Appeal dismissed.

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