

Income-Tax officer, Alleppey

Vs

Excel Productions and Others

Civil Appeals Nos. 942 and 943 of 1966

(CJI J.C. Shah, V. Ramaswami-I, A.N. Grover JJ)

28.07.1969

JUDGMENT

GROVER J. -

These two appeals by special leave involve a common question relating to the validity of a notification issue by the Government of Kerala in August, 1963, empowering certain revenue officials including the Taluka Tahsildar to exercise the powers of a Tax Recovery Officer under the Income-tax Act, 1961, hereinafter called the Act. The notification was expressly stated to be effective from 1st April, 1962, - a date prior to the date of the notification.

The facts in one of the appeals (Civil Appeal No. 942 of 1966) may be stated : One Kunchacko of Alleppey allowed the income-tax dues from him to fall into arrears. The Income-tax Officer took steps to recover the arrears through the Tahsildar. Certain shares standing in the name of the assessee were attached by the Tahsildar. The first respondent, Ponnoose, claimed to have obtained a decree for a certain sum against the assessee. He also got the shares standing in the name of the assessee attached in execution proceedings. Ponnoose filed a petition under article 226 of the Constitution in the High Court of Kerala in which he challenged the action taken by the revenue officials including the Tahsildar for getting the shares, which had been attached, sold for satisfaction of the income-tax dues of the assessee.

The learned single judge held that the notification empowering the Tahsildar to exercise the powers of a Tax Recovery Officer under the Act with retrospective effect was invalid. Consequently, the attachments made by the Tahsildar was quashed. This view was affirmed by a Division Bench in appeal.

The Act came into force on first April, 1962. Section 2(44) defined the expression "Tax Recovery Officer" in the following terms :

"Tax Recovery Officer' means -

(i) a Collector;

(ii) an Additional Collector or any other officer authorised to exercise the powers of a Collector under any law relating to land revenue for the time being in force in a State; or

(iii) any gazetted officer of the Central or a State Government, who may be

authorised by the Central Government, by notification in the Official Gazette, to exercise the powers of a Tax Recovery Officer."

Section 4 of the Finance Act, 1963, substituted a new definition for the original definition of Tax Recovery Officer. It was provided that the new definition "shall be and shall be deemed always to have been substituted". The new definition was as follows :

"Tax Recovery Officer' means -

(i) a Collector or an Additional Collector;

(ii) any such officer empowered to effect recovery of arrears of land revenue or other public demand under any law relating to land revenue or other public demand for the time being in force in the State as may be authorised by the State Government, by general or special notification in the official Gazette to exercise the powers of a Tax Recovery Officer;

(iii) any gazetted officer of the Central or a State Government who may be authorised by the Central Government, by general or special notification in the Official Gazette, to exercise the powers of a Tax Recovery Officer."

The impugned notification dated August 14, 1963, with was published in the Kerala Gazette dated August 20, 1963, referred to the powers conferred by sub-clause (ii) of clause (44) of section 2 of the Act read with sub-rule (2) of rule 7 of the Income-tax (Certificate Proceedings) Rules, 1962, and authorised the various revenue officials mentioned therein including the Taluka Tahsildar to exercise the powers of a Tax Recovery Officer under the Act in respect of the arrears, etc. The concluding portion was : "This notification shall be deemed to have come into force on the first day of April, 1962." The Tahsildar had effected attachment of the shares subsequent to first April, 1962, but prior to August 14, 1963. In other words, on the date on which he had effected attachment, he was not a Tax Recovery Officer but he got the powers of a Tax Recovery Officer by virtue of the notification dated August 14, 1963. The short question for determination, therefore, was and is whether the State Government could invest t

Now it is open to a sovereign legislature to enact laws which have retrospective operation. Even when Parliament enacts retrospective laws such laws are - in the words of Willes J. in *Phillips v. Eyre* :

"..... no doubt, prima facie of questionable policy, and contrary to the general principle that legislation by which the conduct of mankind is to be regulated ought, when introduced for the first time, to deal with future acts, and ought not to change the character of past transactions carried on upon the faith of then existing law."

The courts will not, therefore, ascribe retrospectivity to new laws affecting rights unless by express words or necessary implication it appears that such was the intention of the legislature. Parliament can delegate its legislative power within the recognised limits. Where any rule or regulation is made any person or authority to whom such powers have been delegated by the legislature it may or may not be possible to make the same so as to give retrospective operation. It will depend on the language employed in the statutory provision which may in express terms or by necessary implication empower the authority concerned to make a rule or regulation with retrospective effect.

But where no such language is to be found it has been held by the courts that the person or authority exercising subordinate legislature functions cannot make a rule, regulation or bye-law which can operate with retrospective effect. (see Subba Rao J. in *Dr. Indramani Pyarelal Gupta v. W. R. Natu* the majority not having expressed any di

It can hardly be said that the impugned notification promulgates any rule, regulation or bye-law all of which have a definite signification. The exercise of the power under sub-clause (ii) of clause (44) of section 2 of the Act in more of an executive than a legislative act. It becomes, therefore, all the more necessary to consider how such an act which has retrospective operation can be valid in the absence of any power conferred by the aforesaid provision to so perform it as to give it retrospective operation. In *Strawboard Manufacturing Co. Ltd. v. Gutta Mill Workers' Union* an industrial dispute had been referred by the Governor to the Labour Commissioner or a person nominated by him with the direction that the award should be submitted not later than April 5, 1950. The award, however, was made on April 13, 1950. On April 26, 1950, the Governor issue a notification extending the time up to April 30. It was held that, in the absence of a provision authorising the State Government to extend from time to tim

It may next be considered whether by saying that the new definition of "Tax Recovery Officer" substituted by section 4 of the Finance Act, 1963, "shall be and shall be deemed always to have been substituted", it could be said that by necessary implication or intendment the State Government had been authorised to invest the officers mentioned in the notification with the powers of a Tax Recover Officer with retrospective effect. The only effect of the substitution made by the Finance Act was to make the new definition a part of the Act from the date it was enacted. The legal fiction could not be extended beyond its legitimate field and the aforesaid words occurring in section 4 of the Finance Act, 1963, could not be construed to embody conferment of a power for a retrospective authorisation by the State in the absence of any express provision in section 2(44) of the Act itself. It may be noticed that in a recent decision of the Constitution Bench of this court in *B. S. Vadera v. Union of India* it has been obs

The appeals therefore fail and are dismissed with costs. One hearing fee.

Appeals dismissed.

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