

Income-Tax Officer, Shillong and Others

Vs

R. Takin Roy Rymbai and Others

Civil Appeals Nos. 579 to 594 of 1975

(R.S. Sarkaria, Syed M. Fazal Ali JJ)

17.02.1976

JUDGMENT

SARKARIA, J. -

1. These appeals directed against a judgment of the High Court of Judicature at Gauhati raise a common question in regard to the interpretation and constitutional validity of sub-clause (a) of clause (26) of Section 10 of the Income-tax Act, 1961 (for short, called the 1961 Act). The appeals will be disposed of by a common judgment.
2. R. Takin Roy Rymbai (respondent in Civil Appeal No. 579 of 1975) belongs to Jaintia scheduled tribe and is a permanent resident of United Khasi-Jaintia Hills Autonomous District under the Sixth Schedule of the Constitution within the State of Meghalaya. He joined service under the Government of Assam in 1941. In the previous year relevant to the assessment year 1970-71, he was posted at Shillong as Secretary to the Government of Assam. The Assam Secretariat building and office, which constitute his place of work was within that quarter of the town which is included in Shillong municipality and is not a part of the area described in para 20 of the Sixth Schedule.
3. The Income-tax Officer took the view that the assessee's income from salary in the relevant year arose in the non-scheduled area and as such, is not covered by the exemption provided under Section 10(26)(a) of the Act.
4. The assessee claimed that his income from salary had accrued or arisen within the specified area and, as such, he was entitled to the exemption. In the alternative, he contended that this was not a valid condition for denying him the benefit of the exemption under Section 10(26). The Income-tax Officer overruled these contentions and completed the assessment subjecting the assessee's salary to tax.
5. The assessee thereupon filed a petition under Article 226 of the Constitution in the High Court for impugning the assessment orders and the notices of demand for the assessment year 1970-1971, on the ground that sub-clause (a) of Section 10(26) of the Act is invalid and ultra vires Article 14 of the Constitution.
6. The writ petition was heard by a Bench of three learned Judges of the High Court, which held that this exemption clause has been enacted for the benefit of the scheduled tribes residing in specified areas. The object of this exemption clause, according to the High Court, will be frustrated and made nugatory if the income of a member of the scheduled tribe residing in the specified areas, is made subject to tax merely because the source of such an income is outside that area. In its view,

the classification between members of the scheduled tribes having income which accrues or arises to them from any source from the tribal area or the specified territories on the one hand, and the members of scheduled tribe having income which accrues or arises to them any source outside the tribal areas or specified territories on the other, is not based on any intelligible differentia; the classification is artificial and is not based on any substantial distinction having a rational nexus to the purpose of the law. On the contrary, the condition contained in sub-clause (a) would defeat the very subject of the exemption clause in Section 10(26). For this enunciation, the High Court has sought support from this Court's observation in *S. K. Dutta, Income-tax Officer v. Lawrence Singh Ingty* ((1968) 2 SCR 165 : AIR 1968 SC 658 : 28 ITR 272).

7. On the above reasoning, the High Court has struck down the aforesaid sub-clause (a) as violative of Article 14 of the Constitution, allowed the writ petition and quashed the impugned notices and the orders of assessment.

8. The department has now come in appeal before us after obtaining special leave under Article 136 of the Constitution.

9. The provisions of Section 10 of the 1961 Act are in the nature of exemptions. The various clauses of this section indicate the income which are to be excluded from computation of the total income of a person under this Act. For a proper perspective, it will be useful to have a look at the historical background of this provision.

10. The Indian Income-tax Act, 1922 did not contain any provision specifically exempting members of the scheduled tribes from the levy of income-tax. It was the Finance Act, 1955 that first incorporated in the Income-tax Act, 1922 provisions for exemption of the tribal people of the eastern region from payment of the tax. These provisions relating to such exemptions were further amended and recast by Section 3 of the Finance Act, 1938 as follows :

S. 4.(3) XXI. Any income of a member of a Scheduled Tribe 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 or in the Union Territories of Manipur and Tripura, provided that such member is not in service of Government.

11. The 1961 Act then re-enacted this clause as under :

10. (26) 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 Part 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.

12. The State of Nagaland (Adaptation of Laws on Union Subjects) Order, 1965 added with effect December 1, 1963, the State of Nagaland also, to the areas, the tribal people of which could claim this exemption.

13. The validity of the exclusion of the government servants from the exemption given under Section 10(26), as it stood before the amendment of 1970, came up for consideration before this

Court in *S. K. Datta, Income-tax Officer v. Lawrence Singh Ingty* (supra). It was held that the classification of tribals into government servants and other for purposes of this exemption was violative of Article 14 of the Constitution and, as such, invalid.

14. Thereafter, Parliament passed the Taxation Laws (Amendment) Act 42 of 1970 whereby the words "who is not in the service of the Government" appearing in Section 10(26), were deleted. The North Eastern Areas (Reorganization) (Adaptation of Laws on Union Subjects), Order, 1974, amended this provision further with effect from January 25, 1972 so that it now reads as follows :

(26) in the case of 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 (or in the State of Nagaland) Manipur and Tripura or in the Union Territories of Arunachal Pradesh and Mizoram or in the areas covered by Notification No. TAD/R/35/50/109, dated the 23rd February 1951, issued by the Governor of Assam under the proviso to sub-paragraph (3) of the said paragraph 20 [as it stood immediately before the commencement of the North Eastern Areas (Re-organization) Act, 1971 (18 of 1971)] any income which accrues or arises to him,

(a) from any source in the (Area, State or Union territories) aforesaid, or

(b) by way of dividend or interest, on securities.

15. An analysis of this provision shows that in order to entitle a person to the exemption, three conditions must co-exist :

(i) He should be a member of a scheduled tribe as defined in clause (25) of Article 366 of the Constitution;

(ii) He should be residing in any area specified in Pt. A or Pt. B of the table appended to paragraph 20 of the Sixth Schedule to the Constitution; or the State or Union territories mentioned in this provision;

(iii) The income in respect of which exemption is claimed must be an income which accrues or arises to him -

(a) from any source in the area, State or Union territories mentioned in the provision, or

(b) by way of dividend or interest on securities.

16. Article 366(25) of the Constitution provides :

"Scheduled Tribes" means such tribes or tribal communities or part of groups within such tribes or tribal communities as are deemed under Article 342 to be Scheduled Tribes for the purpose of this Constitution.

17. Article 342 empowers the President with respect to any State or Union territory, and where it is a State after consultation with the Governor thereof, by public notification, to specify tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purpose of this Constitution be deemed to be scheduled tribes, as the case may be. Clause (2) of this article empowers the Parliament to exercise the same power by enacting a law.

18. The respondent belongs to Jaintia scheduled tribe which is one of the scheduled tribes notified under Article 342(1). The first condition for applicability of Section 10(26) was thus indubitably satisfied.

19. Part II of the table appended to paragraph 20 of the Sixth Schedule of the Constitution inter alia specifies the United Khasi-Jaintia Hills District as one of the tribal areas. According to the averments in the writ petition, the respondent is a permanent resident of the United Khasi-Jaintia Hills autonomous district. This allegation has not been denied by the other side. Indeed, in the petition for special leave to appeal filed by the appellant the fact that he is a resident of a tribal area specified in Paragraph 20 of the Sixth Schedule to the Constitution, is admitted.

20. The first two conditions necessary for claiming exemption under Section 10(26) existed in the present case. Whether on the facts of the case, the third condition embodied in sub-clause (a) was satisfied or not, is a question which still remains to be determined. The High Court has advisedly left it open. The controversy has thus narrowed down into the legal issue : whether the classification made by sub-clause (a) for the purpose of the exemption under Section 10(26) between the income of a member of a scheduled tribe accruing or arising from any source in the area, State or Union territories specified in the aforesaid clause (26) and the income from a source outside such area, State or Union territory is constitutionally valid ?

21. In answering this question in the negative, the High Court has propounded the proposition that the object of clause (26) of Section 10 is to grant a blanket exemption to members of scheduled tribes as a class residing in the specified areas, and that the condition contained in sub-clause (a) is destructive of that object. In propounding this proposition, the learned Judges seem to have relied on certain observation of this Court in Lawrence Singh Ingty's case (supra).

22. Mr. Lahiri appearing for the respondent, also, reiterates the reasoning of the High Court that the exemption was given to the tribal people as a class, and not on the basis of their economic resources or source of income. In this connection Counsel has cited a few sentences from this Court's judgment in Lawrence Singh Ingty's case.

23. With due respect of the learned Judges of the High Court, we are unable to accept this reasoning. The matter now in controversy was not even obliquely in issue before this Court in Lawrence Ingty's case. Therein, the only question for decision was whether the exclusion of the government servants from the exemptions given in Section 4(3)(XXI) of the Indian Income-tax Act, 1922 and later on in Section 10(26) of the Income-tax Act, 1961, was violative of Article 14 of the Constitution. Although sub-clause (a) was very much there, its validity was not, even indirectly questioned. The contention of the Revenue, there, was that the exemption from income-tax was given to members of certain schedule tribes, due to their economic and social backwardness; that it was not possible to consider government servants as socially and economically backward and hence the exemption was justly denied to the assessee, who was a government servant having income from salary. It was further urged by the Revenue that once a tribal becomes a government servant, he is lifted out of his social environment and assimilated into forward sections of society and therefore, he needs no more crutch to lean on.

24. These arguments were found to be irrelevant and unsustainable. In that context, the Court observed :

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 as 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, lawyer, architect, etc. To overpaint the picture of a government servant as the embodiment of all power and prestige would sound ironical. Today his position in the society of put at the highest is no higher than that of others 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.

25. The sentences which have been underlined (herein in bold type) are the sheet-anchor of the arguments advanced by Mr. Lahiri. In our opinion, they cannot be torn out of the context and used for spelling out a proposition different from what was actually decided in that case. The ratio of that decision is that within the members of the scheduled tribes residing in specified areas, selected by the State for the purpose of exemption, the miniclassification between individuals who were government servants deriving income from salary those who such government servants, was not based on intelligible differentia. Since there was no rational basis whatever for this differentiation, it was held that within the range of the selection, the government servants had been unfairly discriminated against lawyers, medical practitioners, private servants, businessmen, etc. whose income was derived from non-government sources, and that the exclusion of government servants from the exemption under Section 10(26) was bad and unconstitutional. This vice of discrimination from which Section 10(26) was then suffering was removed when the Amending Act 42 of 1970 excised the obnoxious limb of the provision.

26. The decision in Lawrence Singh Ingty is thus no authority for the proposition that the exemption granted under Section 10(26) to the members of the scheduled tribes, residing in the specified areas, as a class, could not be validly subjected to the condition contained in sub-clause (a) of the provision.

27. While it is true that a taxation law, cannot claim immunity from the equality clause in Article 14 of the Constitution, and has to pass like any other law, the equality test of that article, it must be remembered that the State has, in view of the intrinsic complexity of fiscal adjustments of diverse elements, a considerably wide discretion in the matter of classification for taxation purpose. Given legislative competence, the legislature has ample freedom to select and classify persons, districts, goods, properties, income and objects which it would tax, and which it would not tax. So long as the classification made within this wide and flexible range by a taxing statute does not transgress the fundamental principles underlying the doctrine of equality, it is not vulnerable on the ground of discrimination merely because it taxes or exempts from tax some incomes or objects and not others. Nor the mere fact that a tax falls more heavily on some in the same category, is by itself a ground or render the law invalid. It is only when within the range of its selection, the law operates unequally and cannot be justified on the basis of a valid classification, the there would be a violation of Article 14, (See *East India Tobacco Co. v. State of Andhra Pradesh* ((1963) 1 SCR 404 : AIR 1962 SC 1733 : 13 STC 529); *Vivian Joseph Ferriera v. Municipal Corporation of Greater Bombay* ((1972) 1 SCC 70); *Jaipur Hosiery Mills v. State of Rajasthan* ((1970) 2 SCC 26)).

28. The validity or otherwise of the classification of income envisaged by sub-clause (a), with reference to the source of income, for the purpose of the exemption under Section 10 (26) is to be judged in the light of the above principles.

29. Classification for purposes of taxation or for exempting from tax with reference to the source of the income is integral to the fundamental scheme of the Income-tax Act. Indeed, the entire warp and woof of the 1961 Act has been woven on this pattern.

30. Section 2(45) defines total income to mean "the total amount of income referred to in Section 5 computed in the manner laid down in this Act".

31. Section 5 makes the chargeability of income dependent upon the locality of accrual or receipt of the income. It defines the extent of total income with reference to the residence of the assessee, and thus makes the incidence of taxation dependent upon whether the assessee is a resident in India. It is residence in India which entails liability to tax. A non-resident is not liable in India to get his income assessed, but if any part of his income accrues or arises whether directly or indirectly through any business connection in India or from any property in India, the same would be assessable. An ordinary resident as defined in Section 6, does not attract additional chargeability but being "not ordinarily resident" entitles a person to partial exemption from chargeability as a resident, to which exemption a person who is "ordinarily resident" is not entitled - (see Kanga and Palkhivala : Vol. I - Income-tax, 6th Edn., p. 162).

32. The 1961 Act abounds in instances whereby certain sources of income have been exempted from tax, while others are assessable.

33. Section 10 of the 1961 Act, itself contains no less than 30 instances of such classification for the purpose of granting exemptions from tax. This is so, in spite of the fact that another source of the same person's income may be assessable. A person have agricultural income apart from salary or business income. The income from the former source is not to be included in the total income of the assessee [vide Section 10(1)]; while income from the latter source is not so exempted. Again, interest realised from scheduled banks on deposits upto a certain limit is exempt, while interest realised from non-banking concerns is assessable.

34. Section 80A to 80U further provide exemptions from tax to incomes derived from certain sources. A businessman's income is assessable, but if it is from a newly established industrial undertaking or priority industry, to that extent, the same is exempted. Section 80(H) provides for deductions in cases of new industrial undertakings employing displaced persons etc.

35. It is not necessary to multiply such instances. Suffice it to say that classification of sources of income is integral to the basic scheme of the 1961 Act. It is nobody's case that the entire scheme of the Act is irrational and violative of Article 14 of the Constitution. Such an extravagant contention has not been canvassed before us. Thus the classification made by the aforesaid sub-clause (a) for purposes of exemption is not unreal or unknown. It conforms to a well recognised pattern. It is based on intelligible differentia. The object of this differentiation between income accruing or received from a source in the specified areas and the income accruing or received from a source outside such area is to benefit not only the members of the scheduled tribes residing in the specified areas but also to benefit economically such areas. If the contention advanced by Mr. Lahiri is accepted and a member of the scheduled tribe residing in a specified area is held entitled to the exemption irrespective of whether the source of his income lies within or outside such areas, it will lead to potentially mischievous results and evasion of tax by assesses who do not belong to the scheduled tribes. All that a non-tribal assessee in India need do would be to enter into a sham partnership with a member of the scheduled tribe residing in the specified area and ostensibly give him under the partnership a substantial share of the profits of the business while, in reality, pay the

tribal only a nominal amount. Moreover, but for the condition provided in sub-clause (a), the exemption granted under Section 10(26) is likely to operate unequally and cause inequality of treatment between individuals similarly situated. A tribal residing in the scheduled areas earning large income from business located outside the specified areas, would be totally exempt while the non-tribal whose source of income is a share in the same business would be taxed although with reference to the source of the income, both were similarly situated.

36. We are not persuaded to accept Mr. Lahiri's argument that the making of the exemption conditional upon the classification envisaged by sub-clause (a) would deter the members of the scheduled tribes from joining the mainstream of national life, or, would be inconsistent with the directive principle embodied in Article 46. This article contains a directive principle of State policy of promotion of educational and economic interests of the weaker sections of the people, particularly the scheduled castes and scheduled tribes. Its primary objective is to provide protection to the "weaker sections" of society. Members of the scheduled tribes who are enterprising and resourceful enough to move out of the seclusion of the tribal areas and successfully compete with their Indian brethren outside those areas and rise to remunerative positions in service or business, cease to be "weaker sections". In any case, the State is the best judge to formulate its policies and to decide how far and for what period and in what situations, the members of a particular scheduled tribe residing in a particular tribal area, should be afforded the protection and benefit in the matter of promotion of their educational and economic interests.

37. In view of what has been said above, we are of opinion that the learned judges of the High Court were in error in holding that the classification contemplated by sub-clause (a) of clause (26) of Section 10 of the 1961 Act is artificial and is not based on any intelligible differentia. We would therefore, reverse the judgment of the High Court and hold that the aforesaid sub-clause (a) is constitutionally valid.

38. Before we part with this judgment, we may note that Mr. Lahiri made a detailed survey of the history of the tribal areas of Assam and scheduled tribes residing in those 'autonomous' areas. Counsel also argued that virtually the source of the salary received by the assessee lay in the tribal areas forming the State of Meghalaya, notwithstanding the fact that on account of the exigencies of service, the office of the assessee was located in those wards of Shillong which are not a part of the tribal areas. In our opinion, it is not necessary to go into this question which, as already noticed, still remains open and undetermined.

39. In the result we allow these appeals, but in the circumstances of the case, leave the parties to pay and bear their own costs.

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