Municipal Council, Pusad

Vs

Gokaldas Dossa and Co. Ltd and Others

Civil Appeal No. 259(N) of 1970

(R.S. Sarkaria, O. Chinnappa Reddy JJ)

13.11.1979

JUDGMENT

SARKARIA, J. –

1. This appeal by special leave is directed against a judgment, dated July 17, 1968, of the Bombay High Court (Nagpur Bench). It arises out of these facts :

2. The appellant herein, Municipal Council, Pusad was constituted as a Municipal Committee under the Central Provinces Municipalities Act, 1922. Thereafter, on January 9, 1932 the appellant with the sanction of the local government, imposed a tax known as Boja tax and Bale tax under Section 66(1)(b), read with Section 67, sub-sections (5) and (7) of the C.P. Municipalities Act on ginning and pressing cotton. The rate fixed was annas 2 for each Boja of 392 lbs. and annas 4 for each Bale of 392 lbs. The respondents M/s. Gokaldas Dossa and Co. Ltd. were doing the business of ginning and pressing cotton by mechanical processes within the limits of the said Municipality. In pursuance of the aforesaid notification of January 9, 1932 imposing the tax, the appellant on November 22, 1966 issued demand notice and a bill for Rs. 3,971.75 in respect of Boja and Bale tax for the year 1965-66 requiring the respondents to pay that amount of tax. The respondents submitted objections to this demand on March 28, 1967. The objections were rejected by the appellant on April 7, 1967.

3. Aggrieved, the respondents filed a writ petition on April 9, 1967 in the High Court under Article 226 of the Constitution seeking a declaration that the Boja and Bale tax imposed on them was ultra vires and unconstitutional. They prayed that the sale and demand notice be quashed. They further claimed a writ of prohibition against the appellant prohibiting it from recovering the tax from the respondents beyond the maximum laid down in Article 276 of the Constitution.

4. The High Court by its order, dated April 29, 1967, granted an interim stay of recovery of the tax from respondent 1. Thereafter, by its judgment under appeal, the High Court allowed the writ petition quashed the demand notice on the ground that the tax was in excess of the ceiling limit of Rs. 250 per annum fixed in Article 276 of the Constitution.

5. The High Court purporting to follow, what it says, "a series of decisions" pronounced by that Court and the Supreme Court, has held that the demand by way of Bale and Boja tax in excess of the limits prescribed in Article 276 of the Constitution is illegal. It, therefore, quashed the demand notice in question. When the High Court spoke of "a series of decisions" of the Supreme Court, it had, perhaps, in mind two decisions of this Court, namely : Municipal Committee, Akot v. Manilal Manekji Pvt. Ltd. ((1967) 2 SCR 100 : AIR 1967 SC 1201 : (1967) 2 SCJ 274) and Ballabhdas Mathuradas Lakhami v. Municipal Committee, Malkapur (AIR 1970 SC 1002 : (1970) 2 SCC 267).

6. Mr. M. N. Phadke, appearing for the appellant, submits that on facts, the aforesaid two decisions of this Court are clearly distinguishable. According to the counsel, properly read, these decisions, support his contention that the demand for the Boja and Bale tax of the appellant is valid. It is pointed out that the tax with which this Court was concerned in Municipal Committee, Akot case ((1967) 2 SCR 100 : AIR 1967 SC 1201 : (1967) 2 SCJ 274) was a tax levied under the old Municipal Law, which was by virtue of the notification of January 27, 1924 deemed to be imposed under the C.P. Municipalities Act, 1922; that it was on this ground that this Court strictly construing item 4 of the Schedule to the Professions Tax Limitation Act, 1941, held that only taxes imposed under the C.P. Municipalities Act, 1922 and not those which are deemed to be imposed under that Act by virtue of the deeming fiction, were saved by the proviso to Article 142-A(2) of the Government of India Act, 1935, and the corresponding clause in Article 276 of the Constitution. Stress has been laid on the fact that, in the instant case, the tax was imposed under the C.P. Municipalities Act, 1922, in 1932, and there was no question of importing any deeming fiction.

7. As against this, Mr. Ratnaparkhi submits that the imposition in question was directly hit by the ratio of Municipal Committee, Akot case ((1967) 2 SCR 100 : AIR 1967 SC 1201 : (1967) 2 SCJ 274). Further, it is half-heartedly submitted, for the first time, that even under the old law, the Municipal Committee could levy a tax on professions to a maximum limit of Rs. 500 per annum, only.

8. Taking the last contention of Mr. Ratnaparkhi first, we find no substance in the same. The C.P. Municipalities Act of 1922 does not fix any ceiling on the tax on professions that may be imposed by a Municipality. We, therefore, have no hesitation in rejecting this contention.

9. Before proceeding further, it is necessary to have an idea of the various provisions bearing on the point in issue.

10. Pusad was a part of District Akola, which was one of the four Hyderabad Assigned Districts, popularly known as Berar. Those districts were not a part of British India but were administered by the Governor-General-in-Council under the Indian (Foreign Jurisdiction) Order-in-Council of 1904. In exercise of those powers, the Governor-General-in-Council enacted a law applicable in Berar, known as Berar Municipal Law, 1886, which enabled the Municipalities functioning in Berar to impose professional taxes. On January 22, 1924, the Governor-General-in-Council issued a notification, which, so far as material for our purpose, ran thus :

> 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. 8510-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 Municipalities Act, 1922 (II of 1922)(1) in Section 2, -
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> (a) for sub-section (1) the following shall be substituted, namely :
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> "(1) The Berar Municipal Law, 1886, is hereby repealed."

(b) In sub-section (2), for the word "Acts" the word "Law" shall be substituted.

The effect of this notification was that the Berar Municipal Act, 1886 was repealed and Central Provinces Municipalities Act, 1922 was made applicable to Berar; and further, the taxes imposed under the Berar Municipal Law were deemed to have been imposed or assessed under the Central Provinces Municipalities Act.

11. Thereafter on January 9, 1932, a notification was issued imposing the Boja and Bale tax under Section 66(1)(b) of the C.P. Municipalities Act, 1922. The impugned demand notice was issued by virtue of this notification. This tax came into force from the date of the publication of the notification in the Central Provinces.

12. Section 142-A(2) of the Government of India Act, 1935 provided as under :

> 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 on 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 was 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.

13. In pursuance of the powers given by the Government of India Act, 1935, the Dominion Legislature enacted the Professions Tax Limitation Act, 1941 which came into force on April 1, 1941. This Act provided that after the commencement of that Act, the municipalities would not impose or levy taxes which exceeded Rs. 50 per annum. However, by Section 3 of this Act, the taxes specified in the Schedule thereto were exempted from this ceiling. Item 4 of the Schedule is in these terms :

> The taxes on person exercising any profession or carrying on any trade or calling within the limits of the municipalities, imposed under clause (b) of Section 1 or Section 66 of the C.P. Municipalities Act, 1922.

14. On August 1, 1941, the C.P. and Berar Legislature enacted Act 15 of 1941 called C.P. and Berar Act, as a result of which, the words "and Berar" were added after the words "Central Provinces" wherever occurring in the Central Provinces Municipalities Act, 1922.

15. A provision analogous to Section 142-A(2) proviso is to be found in the proviso to Article 276(2) of the Constitution, which reads as follows :

> Provided that if in the financial year immediately preceding the commencement of

> this Constitution there was in force in the case of any State or any such municipality, board or authority a tax on professions, trades, callings or employments the rate, or the maximum rate, of which exceeds two hundred and fifty rupees per annum, such tax may continue to be levied until provision to the contrary is made by Parliament by law, and any law so made by Parliament may be made either generally or in relation to any specified States, municipalities, boards or authorities.

16. It will be seen from the above conspectus, that in order to qualify for the exemption under item 4 in the Schedule to the Professions Tax Limitation Act, 1941 (1941 Act, for short) from the limitation imposed by Section 2 of that Act, the tax in question must have been imposed under clause (b) of sub-section of Section 66 of the C.P. Municipalities Act, 1922, before the 1941 Act, passed by the Dominion Legislature by virtue of the power derived from the enabling proviso to Section 142-A(2) of the Government of India Act, 1935, came into force. This condition has been satisfied by the impugned tax. This tax was actually imposed under Section 66(1)(b) of the said Act of 1922, in 1932, when this Act was applicable and in force in Berar by virtue of the notification dated January 22, 1924 issued by the Governor-General-in-Council. Thus, even if Section 3 and item 4 of the 1941 Act were to be strictly construed, the impugned tax will squarely fall within the ambit of the exemption enacted in the aforesaid item 4.

17. Now, let us notice the Municipal Committee, Akot case ((1967) 2 SCR 100 : AIR 1967 SC 1201 : (1967) 2 SCJ 274) which was presumably relied upon by the High Court. It will be presently seen that this decision, if properly read, does not support the decision under appeal. In that case, the impugned tax was not actually imposed by the Municipal Committee after the coming into force of the 1941 Act, under the C.P. Municipalities Act of 1922, but was imposed under a notification No. 98, dated March 14, 1899. The contention on behalf of the appellant, Municipal Committee was that since this notification of 1899 would be deemed to be issued under the Central Provinces and Berar Municipalities Act, 1922 (which only changed the name of the C.P. Municipalities Act of 1922), it would be a tax 'imposed' under Section 66(1)(b) of the C.P. Municipalities Act of 1922, within the contemplation of item 4 of the Schedule to the 1941 Act. Sikri, J., speaking for the Court, repelled this contention in these terms :

> In our opinion the High Court came to the correct conclusion. First, item 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 misdescription 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 . . . . The word "imposed" . . . in our view, means that the taxes which can continue to be levied should have been imposed in the past before the Professions Tax Limitation Act, 1941, came into force. This is in consonance with Section 142-A(2) of the Government of India Act, 1935.

The crucial words are those which have been underlined (Given here in bold). These words clearly lay down that if the tax in question had in fact been imposed under Section 66(1)(b) of the Central Provinces Municipalities Act, 1922, before the coming into force of the 1941 Act, it would fall within the exemption of item 4 read with Section 3 of the Professions Tax Limitation Act, 1941, and the continuance of such an imposition in excess of the constitutional limit, will be in consonance with the proviso to Section 142-A(2) of the Government of India Act, 1935, and also Article 276(2) of the Constitution.

18. Since in the instant case, the tax in question was imposed under Section 66(1)(b) of the C.P. Municipalities Act, 1922, in 1932, long before the 1941 Act came into force, and no question of invoking any deeming fiction was involved, the ratio of Municipal Committee, Akot case ((1967) 2 SCR 100 : AIR 1967 SC 1201 : (1967) 2 SCJ 274), in fact, supports the contention of the appellant-Municipal Council, and highlights the error in the High Court decision.

19. It is not necessary to discuss the case, Ballabhdas Mathuradas Lakhani v. Municipal Committee, Malkapur (AIR 1970 SC 1002 : (1970) 2 SCC 267) because it simply follows the ratio of Municipal Committee, Akot v. Manilal Manekji Pvt. Ltd. ((1967) 2 SCR 100 : AIR 1967 SC 1201 : (1967) 2 SCJ 274).

20. In view of all that has been said above, we are of opinion that the demand notice in question does not contravene the Government of India Act, 1935, and Article 276(2) of the Constitution, and is valid. Accordingly, we allow this appeal, set aside the judgment of the High Court and dismiss the writ petition of respondent 1, leaving the parties to bear their own costs.

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