

Prakash Roadlines (Pvt.) Ltd.

Vs

Union of India and Another.

Civil Appeal No. 1800(N) of 1974

(K. N. Saikia, G. L. Oza JJ)

01.08.1989

JUDGMENT

G. L. OZA J. –

This is an appeal on leave under article 136 of the Constitution. The appellant is a transporter and it is alleged that he brought goods into the limits of Delhi and the goods were seized within the Union Territory as it was alleged that they were brought in without the payment or terminal tax. A penalty of ten times the amount of the terminal tax was also demanded from the appellant and he was informed that if the terminal tax along with the penalty is not paid within four days, his goods will be sold at his risk. By a writ petition, the appellant challenged this demand before the High Court of Delhi and, by the impugned judgment, the Delhi High Court dismissed the writ petition and hence the present appeal.

The High Court has considered the law of the Delhi Municipal Corporation Act, 1957, (hereinafter referred to as "the Act"), coupled with the provisions contained in the imposition of terminal tax and also examined the legislative competence of Parliament to enact the law and ultimately came to the conclusion that the law was applicable in the territory. There was also some controversy raised before the High Court in respect of the facts as to whether the cylinders on which the duty was demanded were empty or were full and as to whether the appellant stopped his vehicle at the post and was allowed to go and later on he was stopped by the squad or he got into the territory without payment of tax and was, therefore, caught but all these controversial questions of facts the High Court refused to consider as the appellant had an opportunity to pursue the remedy under the law where these facts could be investigated and, therefore, as that was not done and as it was a writ petition filed before the High Court, the High Court rightly did not go into the disputed questions of facts. The only question which was canvassed before the High Court and considered is the question whether this penalty imposed under section 464 of the Act could be imposed by the taxing authority without a prosecution having been filed before a competent magistrate and the High Court, in its judgment, dismissed the petition upholding the contention of the Delhi Municipal Corporation and learned counsel appearing for the appellant also canvassed that question alone as it was the question on which the High Court held against the appellant.

It was contended by learned counsel for the appellant that sections 463 and 464 both fall in the Chapter "Offences and penalties". By referring to the language of section 464, he contended that, in the body of this section, the language indicates that what is levied against the appellant is described as "fine". He also referred to sections 469 and 470 and contended that, according to the scheme of this Chapter, the punishment provided in section 463 and the penalty (or fine) provided in section 464 could only be imposed by a magistrate after a proper trial. He also contended that the learned

judges of the High Court, placing reliance on section 464, it is the tax authority who has the jurisdiction to impose the penalty but, according to learned counsel, the residuary powers of the Commissioner under section 59 are only administrative powers and, according to him, the High Court was not right in placing reliance on that.

The main emphasis by learned counsel was that the imposition of penalty as provided in section 464 where a wide discretion is given to impose penalty up to ten times the tax payable itself indicates that the functions of the authority who is expected to exercise the jurisdiction under section 464 are in the nature of judicial functions and, therefore, it could not have been left to the executive authority of the Commissioner or a delegate to whom the powers may have been delegated. According to learned counsel, for the respondent, on the other hand, contended that the language used at the heading of the Chapter which starts with section 461 itself indicates that this Chapter deals with two types of matters : (1) where offenses are alleged to have been committed, and (ii) where only penalties could be imposed, and the scheme, of this Chapter indicates that, wherever the offenses are alleged to have been committed, it has been provided that they will be tried by a competent magistrate and the punishment could be inflicted only by the competent magistrate on conviction of the person for the offences alleged against him. Whereas, wherever penalties are provided, it has been provided that where the facts attract the relevant provisions pertaining to penalty, the tax plus penalty could be imposed and these penalty provisions neither talk of any offence nor talk of any conviction before a competent court of a Magistrate. It was contended that, on the basis of this distinction, if the two sections 463 and 464 which are relevant are examined, it is clear that section 464 does not pertain to any offence and, which could only be inflicted under section 463 after conviction and, therefore, for imposition of penalty under section 464, the prosecution of the appellant before a competent Magistrate is not at all necessary. Learned counsel also contended that even the reading of the provisions of section 470 or 459 do not indicate to the contrary.

As regards the authority of the tax authority to impose this penalty. learned counsel referred to the notifications which have been relied on by the High Court and contended that section 59 confers very wide powers on the commissioner of the Municipal Corporation and he is also authorized notification, the functions have been delegated. The Commissioner had the authority as regards the authority of the tax authority to impose this penalty under section 464 and it is in this delegated authority that the terminal tax authority has imposed this penalty against the appellee as has been held by this court.

The only question which arises in this appeal is whether penalty as provided in section 464 of the Act could be imposed by the terminal tax authority or it could not be imposed unless the appellant is convicted and found guilty by a competent Magistrate as contemplated in section 463 of the Act Section 463 reads :

"463 Punishment for offences relating to terminal tax. - Whoever brings within the Union Territory of Delhi any goods liable to terminal tax without the payment of such tax shall, on conviction, be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both and the court trying an offence under this section may, on such conviction, also confiscate the goods in respect of which the offence has been committed."

Section 464 reads :

"464. Penalty for evasion of terminal tax. - Where any goods imported into Delhi are liable to the payment of terminal tax, any person, who with the intention of evading payment of the tax introduces or attempts to introduce or cause or abets introduction of any such goods within the Union Territory of Delhi, upon which payment of terminal tax due on such introduction, has neither been made nor tendered, shall be punishable with fine which may extend to ten times the amount of such terminal tax."

It is significant that, in section 463, the language used is that "a person who brings the goods into the Union Territory of Delhi liable to terminal tax without the payment of tax shall on conviction be punishable." Whereas in section 464, the section talks of bringing the goods into the Union Territory on which may extend to ten times the amount of terminal tax could be levied.

This different phraseology used in the two sections clearly goes to show that, where the ingredients of section 463 are not in doubt, it is open to the corporation authorities to launch a prosecution against the person who imprisonment but the highest limit of fine is limited to Rs. 1,000 whereas, under section 464, neither is there any reference to a conviction nor any reference to court of Magistrate and the only penalty provided is monetary which may extend to ten times. It is, therefore, clear that section 463 refers to a criminal court and. On conviction alone, the punishment could be imposed but section 464 is in the nature of a revenue provision where non-payment of tax could be remedied by imposition of penalty and the limit of penalty has been prescribed at ten times of the tax which is payable. In view of the different language used in the two cannot be said to be the same or similar.

Even the heading of the center talks of "Offenses and penalties". It, therefore, clearly appears that this chapter deals with two categories of matters : one, "offenses" and the other, "penalties", and the scheme of this Chapter indicates that so far as offenses are concerned, they could be tried only by a competent criminal court and punishment could be awarded only after conviction whereas. So far as penalties are concerned, they could be imposed by the taxing authority itself. Even the language of section 470 or 469 does not help the appellant in any manner.

It is no doubt true that, as regards the offenses, a specific provision has been made in section 469 for appointment of a municipal Magistrate but, in respect of penalties, there is no specific provision authorising any officer or authority to exercise jurisdiction under the section where, for evasion of tax, penalty could be levied, like section 464 but it could not be doubted that section 59 gives a very wide power to the Municipal Commissioner either to exercise these power himself or to delegate them, it is not in dispute that, in exercise of powers under section 59, the Municipal Commissioner had the authority and exercising the powers under section 491 of the Act by notification dated September 17, 1973, he delegated the functions under section 464 to the taxing authorities and it is the conclusion that the taxing authorities were competent under the scheme of this Act to impose the penalty to the tune of ten times of the tax which is payable.

Section 59 of the Act reads :

"59. Functions of the Commissioner. - Save as otherwise provided in this Act, the entire executive power for the purpose of carrying out the provisions of this Act other than those pertaining to the Delhi Electric Supply Undertaking and of any other Act For the time being in force which confers any power or imposes any duty on the Corporation, shall vest in the Commissioner who shall also -

- (a) exercise all the powers and perform all the duties specifically conferred or imposed upon him by this Act or by any other law for the time being in force;
- (b) prescribe the duties of, and exercise supervision and control over the acts and proceedings of all municipal officers and other municipal employees other than the Municipal Secretary and the Municipal Chief auditor and the municipal officers and other municipal officers and other municipal employees immediately subordinate to them and subject to any regulation that may be made in this behalf. Dispose of all questions relating to the services of the said officers and other employees, their pay, privileges, allowances and other conditions of service;
- (c) on the occurrence or threatened occurrence of any sudden accident or any unforeseen event or natural calamity involving or likely to involve extensive damage to any property of the corporation, or danger to human life, take such immediate action as he considers necessary and make a report forthwith to the Standing Committee and the Corporation of the action he has taken and the reasons for the same as also of the amount of costs, if any, incurred or likely to be incurred in consequence of such action, which is not covered by a budget grant;
- (d) exercise the powers and perform the duties conferred or imposed by or under this Act upon the General Manager (Electricity) in his absence or on failure by him to exercise or perform the same."

This section clearly shows that the Municipal Commissioner had wide powers and he could, therefore, exercise e powers to impose the penalty as contemplated under section 464. Section 491 of the Act reads :

"491. Power to delegate function of Commissioner. - The Commissioner may, by order, direct that any power conferred or any duty imposed on him by or under this Act shall, in such circumstances and under such conditions, if any, as may be specified in the order, be exercised and performed also by any municipal officer or other municipal employee specified in the order."

This section authorises the Commissioner to delegate the authority vested in him and it is in exercise of these powers that, in fact, he had delegated the authority to the tax officer to exercise powers under section 464.

Under these circumstances, therefore, the contention advanced by learned counsel for the appellant that the penalty under section 464 could not be imposed without a conviction by a criminal court is not sustainable in law. We, therefore, see no reason to entertain this appeal. It is, therefore, dismissed. In the circumstances of the case, parties are directed to bear their own costs.

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