Selmore Advertiser and Others

Vs

Administrator, Indore Municipal Corporation and Another

Civil Appeals Nos. 2795-96 of 1982

(S. C. Agarwal, A. P. Mishre JJ)

18.02.1998

ORDER

1. These appeals, by special leave, have been filed against the judgment of the High Court of Madhya Pradesh dated 6-11-1979 whereby the writ petition filed by the appellants was dismissed. In the said writ petition, the appellants had assailed the validity of the notification dated 10-8-1973 issued by the Commissioner, Municipal Corporation, Indore, for imposition of tax on advertisements other than advertisements published in the newspapers.

2. The Municipal Corporation, Indore (hereinafter referred to as "the Municipal Corporation") is a municipal corporation constituted under the Madhya Pradesh Municipal Corporation Act, 1956 (hereinafter referred to as "the Act"). The Municipal Corporation has been empowered to impose tax on advertisements other than advertisements published in newspapers under clause (1) in sub-section (2) of Section 132 of the Act. Section 133 of the Act prescribes the procedure for imposing a tax under Section 132. Sub-section (1) of Section 133, as it stood at the relevant time, provided as follows :

> "(1) The Corporation may at a special meeting bring forward a resolution to propose the imposition of any tax under Section 132 defining the class of persons or description of property proposed to be taxed, the amount or rate of tax to be imposed and the system of assessment to be adopted :
>
> Provided that no such resolution shall be passed by the Corporation for the imposition of any tax coming under clause (o) of sub-section (2) of Section 132 unless the Government shall have first given their approval to the selection of the tax by the Corporation."

By Order No. 362 dated 7-9-1970, the Administrator of the Municipal Corporation, exercising the powers of the Corporation, declared that tax is allowed to be imposed on all other advertisements except those published in the newspapers and that the tax shall be paid to the Municipal Corporation by the owners, secretary, manager or such person or persons, on the advertisements which they made by posters or exhibitions. The said order was published as required under Section 133(2) of the Act. After considering the objections received against the said proposal, the Administrator passed the final Order No. 919 dated 4-11-1972 and thereafter the impugned notification dated 10-8-1973 was issued wherein it was stated that the advertising tax shall be realised from the date of its publication in the Government Gazette.

3. The main contention urged by the appellants before the High Court was that the resolution

proposing the imposition of a tax under Section 132 should contain the system of assessment to be adopted and that in the present case the order dated 7-9-1970 which was published under Section 132(2) did not provide for the system of assessment to be adopted. According to the appellants the expression "system of assessment" in Section 133(1) connotes the procedure for assessment and collection of tax and that the procedure for assessment for collection of tax was specified only on 18-8-1978, when the bye-laws for assessment and collection of tax framed by the Municipal Corporation vide notification dated 31-5-1978 were published. It was, therefore, submitted that the imposition of tax under the impugned notification was invalid since there was non-compliance of the provisions of sub-section (1) of Section 133 of the Act.

4. The said contention was rejected by the High Court on the view that the expression "system of assessment", as used in Section 133(1) of the Act, means the stage of imposition of tax and not other stages as a whole which are relevant for assessment or collection of tax. In taking this view, the High Court has placed reliance on the decision of this Court in Vallabhdas v. Municipal Committee, Akola [AIR 1967 SC 133 : (1961) 3 SCR 618] wherein the expression "system of assessment" contained in Section 67(2) of the Central Provinces and Berar Municipalities Act, 1922 has been construed. The High Court was also of the view that the fact that till 18-8-1978, bye-laws had not been made by the Municipal Corporation under Section 427(3) of the Act for assessment and collection of tax, does not mean that the tax was inoperative before that date because no machinery existed for its assessment and collection. It was pointed out that Sections 173 to 175 which provide a machinery for recovery of corporation claims, including taxes, contemplate a quasi-judicial procedure and there is provision for an appeal. The High Court has placed reliance on the decision of this Court in CCE v. National Tobacco Co. of India [(1972) 2 SCC 560 : AIR 1972 SC 2563] wherein quasi-judicial procedure for assessment of tax was inferred from Rule 10-A of the Central Excise Rules.

5. Shri S. K. Gambhir, the learned counsel for the appellants, has urged that the decision of this Court in Vallabhdas v. Municipal Committee, Akola [AIR 1967 SC 133 : (1961) 3 SCR 618] has no application to the facts of the present case because in Vallabhdas v. Municipal Committee, Akola [AIR 1967 SC 133 : (1961) 3 SCR 618] the draft rules had been framed and had been published, while in the present case, the bye-laws were not framed till 1978. The submission of Shri Gambhir is that the "system of assessment" in Section 133(1) must be construed to include the procedure for assessment and collection of tax since imposition, assessment and collection are essential requirements of a tax law. We are unable to accept this contention. Since the expression "system of assessment" has been used in sub-section (1) of Section 133 which relates to imposition of tax, the expression has to be construed as referring to the stage of imposition of tax as found by the High Court. The said finding of the High Court is in consonance with the decision of this Court in Vallabhdas v. Municipal Committee, Akola [AIR 1967 SC 133 : (1961) 3 SCR 618] wherein this Court, while construing the expression "system of assessment of tax", has said :

> "The High Court has pointed out that what was done was a sufficient compliance with the provisions of Section 67(2) and that the words 'System of Assessment' meant only the stage of the imposition of the tax and not other stages as a whole. Sections 71, 76 and 85, as has been said above, deal with rules for assessment and for preventing evasion of taxes, rules for collection of taxes and rules for refund respectively. Read together these provisions of the Act support the decision of the High Court that the words 'System of Assessment' do not necessarily mean the whole procedure of taxation, i.e., imposition, collection and procedure in regard to collection and refunds."

In that case, the assessment and collection of the tax was to be done in accordance with the rules made under the statute, while in the present case the provision regarding assessment and collection is to be made in bye-laws made under Section 427(3) of the Act. The fact that the draft rules had been framed in Vallabhdas v. Municipal Committee, Akola [AIR 1967 SC 133 : (1961) 3 SCR 618] does not have any bearing on the construction placed by this Court on the expression "system of assessment" in Section 67(2) of the Central Provinces and Berar Municipalities Act, 1922. Since Section 133(1) contains a provision which is in pari material with Section 67(2) of the Central Provinces and Berar Municipalities Act, 1922, the expression "system of assessment" in Section 133(1) must be construed to mean as referring to the stage of imposition of tax and not to other stages, viz., assessment and collection of tax.

6. As regards the objection of the appellants that imposition of tax was inoperative till the bye-laws had been framed in 1978, we are in agreement with the view of the High Court that Sections 173, 174, 175 and 184 of the Act which provide for filing of objections against claims as well as for an appeal against a notice of demand issued under Section 174 lay down a quasi-judicial procedure for assessment and collection of tax. It cannot, therefore, be said that till the bye-laws were framed, there was no procedure for assessment and collection of tax and the tax could not be levied.

7. For the reasons aforementioned, we do not find any merit in the appeals and the same are accordingly dismissed. Under the interim order passed by this Court, the appellants were required to pay 50% of the tax and to furnish bank guarantee for the remaining 50%. It will be open to the Municipal Corporation to appropriate the tax which has been paid to the general fund and encash the bank guarantee that has been furnished by the appellants. No order as to costs.