

ALLAHABAD HIGH COURT

Raghubir Singh

Vs.

Town Area Committee

S.A. No. 2367 of 1957 (Second Appeal against the judgment and decree passed by B.L. Goel, Addl. Civil Judge, Moradabad in suit No. 100 of 1956).

(Bishambhar Dayal, J.)

21.07.1961

JUDGMENT

Bishambhar Dayal, J.

1. This is a Plaintiffs' Second Appeal who were served with a notice by the Town Area Committee Kanth that they were liable to pay tax on their circumstances and property and the present suit was filed by the Plaintiffs for an injunction restraining the Defendant- Town Area Committee-from realising the tax from the Plaintiffs. The contention on behalf of the Plaintiffs was that such a tax could not be imposed upon them as they were teachers in aided schools and their only source of income was the pay which they received from the schools. It had not been definitely pleaded that the tax was unconstitutional and, therefore, not realisable. Several pleas were taken in defence which have now become unnecessary. The trial court dismissed the suit holding that the Plaintiffs were residing within the town area limits and were thus liable to pay tax according to their circumstances and property. The Plaintiffs filed an appeal before the District Judge and that time the only question argued was that they were not liable to pay the tax merely because of their residence when their income from the school was exempt from taxation. The lower appellate court dismissed the appeal and hence the present Second Appeal.

2. In this Court Learned Counsel for the Appellants has contended that the tax, as imposed by the Town Area Committee, was ultra vires and that such a tax could only be imposed by the Central Government. The power to impose circumstances and property tax was given to the Town Area committee by an amendment of Section 14 of Town Areas Act by Act No. XXIII of 1950, which came into force on 10-7-50 after the Constitution came into force. Though it was given retrospective effect but the legislature having no power to pass it could not do so. By this amendment Cl. (f) was added to sub S. (1) of Section 14 of the Town Areas Act. This section authorized the Town Area Committee to impose a tax on the persons assessed according to their

circumstances and property and not exceeding such rate and subject to such limitation and restriction as may be prescribed.

3. Rule 3 thereof was framed for the imposition of this tax on circumstances and property which runs as follows:

- "3(1) The tax assessed on circumstances of an Assessee may be imposed on any person residing or carrying on business within the limits of the Town Area;
Provided that such person has so resided or carried on business for a total period of at least six months in the year of assessment.
- (2) No tax shall be imposed on any person whose total taxable income is less than Rs. 200 per annum;
- (3) The rate of tax shall not exceed four pies in the rupee on the total taxable income.
- (4) The total amount of tax assessed on any person shall not, in any year exceed a sum of Rs. 250."

Clauses (2), (3) and (4) quoted above clearly indicate that this tax on circumstances and property is purely a tax on income and has to be assessed according to the income of each individual. A very similar case arose under the District Boards' Act which was decided by a Full Bench of this Court in *District Board of Farrukhabad v. Prag Dutt*¹, In the District Board's Act also Section 114 provided for the imposition of a tax on circumstances and property and certain conditions were laid down for imposition of such a tax. Among those conditions, condition (b) runs as follows:-

- "No tax shall be imposed on any person whose total taxable income is less, then Rs. 200 per annum, and
- (c) The rate of tax shall not exceed four pies in the rupee on the total taxable income."

Upon a consideration of these provisions, it was held that the tax was really a tax on income but it was protected u/Art. 277 of the Constitution as it had been imposed before coming into force of the Constitution. The same point was again considered by a Full Bench of this Court in *The Tata Oil Mills Company Ltd. v. The District Board of Allahabad*², Some provisions of the District Boards Act and the conditions imposed Under Section 114 of the Act were considered and the learned Judges, who decided the case, came to the conclusion that it was a tax on income. Such a tax is mentioned in item No. 82 of the Union List and obviously cannot be imposed by a State or a local body under a State.

4. Since this tax has been imposed after coming into force of the Constitution, it is not protected under Article 277 of the Constitution.

5. The result therefore is that the tax imposed is ultra vires and cannot be realized. The appeals allowed and the suit filed by the Plaintiffs is decreed. But since the question of law now raised was never raised earlier, parties will bear their own costs throughout.

¹1948 AWR (HC) 346: 1948 ALJ 338

²1955 AWR (HC) 520

6. Learned Counsel for the Respondents asked for leave to file a Special Appeal

which is refused.

Appeal allowed.