

ALLAHABAD HIGH COURT

Zila Parishad

Vs.

Jugal Kishore Ram Swarup

Special Appeal No. 315 of 1967. from judgment of D. D. Seth J. in Civil Misc. Writ

No. 2123 of 1961

(W. Broome, H.C.P. Tripathi and S.D. Singh, JJ.)

16.09.1966.15.05.1968

JUDGMENT

Broome, J.

1. The following question has been referred to this Bench for decision :

"Whether clause (f) of sub-section (1) of section 14, U. P. Town Areas Act, 1914 is valid."

2. Section 14 of the said Act enumerates the various taxes that may be imposed by a Town Area Committee; and clause (f) of this section relates specifically to the levy of circumstances and property tax. This provision was introduced in the U. P. Town Areas Act by an amending Act (U. P. Act XXIII of 1950), which came into force in July 1950. Such a tax was not being levied by Town Areas before the commencement of the Constitution and consequently cannot be saved by Article 277. The question therefore arises whether the amendment conferring the power on Town Area Committees to levy this tax was within the legislative competence of the State Legislature. The argument advanced by learned counsel for the appellant in this connection is twofold. Firstly, it is contended that circumstances and property tax is essentially a form of income tax, which is a subject exclusively within the jurisdiction of Parliament, being covered by item no. 82 of List I of the Seventh Schedule of the Constitution. And secondly it is urged that in any case it does not fall under any of the heads enumerated in Lists II or III of the Seventh Schedule and consequently must be deemed to be a matter exclusively within the jurisdiction of Parliament by virtue of item no. 97 of the Union List.

3. Cases are not lacking where circumstances and property tax has been held to be a tax on income, vide the Single Judge decision in *Raghubir Singh v. Town Area Committee*,¹ and the Division Bench decisions in *Tata Oil Mills Co. Ltd. v. District Board of Allahabad*,² and *Western U. P. Electric Power and Supply Co. Ltd. Etawah v. Town Area Jaswant Nagar*,³ But a Full Bench of this Court in *District Board of Farrukhabad v. Prag Dutt*,⁴ has underlined the essential distinction between the two kinds of tax in the following words :

"The fundamental difference between a tax on 'income' and a tax on 'circumstances and property' is that income tax can only be levied if there is income and if there is no income, no tax is payable but in the case of circumstances and property tax, where a man's status has to be determined, his total business turnover may be considered for purposes of taxation, though he may not have earned any taxable income. As has been pointed out in 1936 A. C. 352, the measure of the tax is not itself the test. In determining the nature of the tax consideration may be given to the standard on which the tax is levied, but that is not the determining factor."

And further light is shed on the nature of circumstances and property tax by the remarks of the Supreme Court in *Ram Narain v. State of U. P.*,⁵ in which it was observed :

"A tax on 'circumstances and property' is a composite tax and the word 'circumstances' means a man's financial position, his status as a whole, depending, among other things, on his income from trade or business."

Circumstances and property tax, therefore, is essentially a tax on status or financial position combined with a tax on property and is fundamentally distinct from income tax. It is true that in the majority of cases the assessment of this tax depends on the amount of income earned by the assessee from various sources (e. g. his profession, business or property); but that will not make it an income tax. It is not essential that there should be income before such a tax can be levied; and it is purely as a matter of convenience that income is adopted as the yardstick for the assessment of the tax. We are not prepared, therefore, to equate circumstances and property tax with income tax

and we have no hesitation in repelling the contention of learned counsel for the appellant that circumstances and property tax is covered by item no. 82 of List I of the Seventh Schedule of the Constitution.

4. It now remains to be seen whether this tax comes under any of the heads mentioned in Lists II and III of the Seventh Schedule. It is clear from its very name that it is a composite tax, made up of two components; a tax on property and a tax on circumstances (which, as interpreted by the Supreme Court in Ram Narain's case, AIR 1957 Supreme Court 18, means a tax on status or financial position). The tax on property is confined to immovable property and clearly falls within the jurisdiction of the State Legislature by virtue of item no. 49 of the State List, viz. Taxes on lands and buildings. Coming to the tax on circumstances, status or financial position, we note that the Supreme Court, in the case already cited has pointed out that a man's 'circumstances' depend, among other things, on his income from trade or business; and by an obvious analogy they will also depend on the income which he may derive from his profession or employment. That being so, we are forced to conclude that a tax on a man's circumstances means a tax on his trade, business, profession or employment; and such a tax is covered by item no. 60 of the State List, viz. Taxes on professions, trades, callings and employments. Learned counsel for the appellant objects that there is a separate provision for a 'tax on trades, callings or professions' in clause (d) of section 14(1) of the U. P. Town Areas Act, which he argues, must be quite distinct from the 'tax on persons assessed according to their circumstances and property' mentioned in clause (f). But as soon as we read the section as a whole, this objection is found to be without substance. The section, in so far as it is relevant for the purposes of this case, runs as follows :-

"14. Imposition of Town Tax. - (1) Subject to any general rules or special orders of the State Government in this behalf, the taxes which a Committee may impose are the following :

- (a) A tax upon the rent payable under the provision of the U. P. Tenancy Act
- (b) A tax upon the rent received by proprietors or under-proprietors on account of land as defined in Section 3 of the U. P. Tenancy Act.....
- (c) A tax upon the assumed rental value of sir and khudkasht land.....
- (d) A tax on trades, callings or professions.....
- (e) A tax upon a building payable by the owner thereof.....

(f) A tax on persons assessed according to their circumstances and property not exceeding such rate and subject to such limitations and restrictions as may be prescribed.

Provided that such a person is not already assessed under clauses (a) to (e) above.

(g) Any other tax, being one of the taxes mentioned in sub-section (1) of section 128 of the U. P. Municipalities Act, 1916."

The proviso to clause (f) is significant. It shows that circumstances and property tax will not be imposed if a tax has already been levied under clauses (a) to (c) which relates to land, or under clause (e) which relates to buildings, or under clause (d) which relates to trades, callings and professions. Clauses (a) to (e) have thus been treated as equivalent to clause (f), for the object of the proviso is obviously to avoid the duplication of taxes. Circumstances and property tax (Clause (f)) is therefore equated with a tax on trades, callings and professions (clause (d)), corresponding to 'circumstances', plus a tax on lands and buildings (cls. (a), (b), (c), and (e)) corresponding to property. In this view of the matter there is clearly no force in the contention that the tax on trades, callings and professions, mentioned in clause (d), is something different and distinct from the tax on circumstances, livable under clause (f).

5. An attempt has been made to argue that circumstances and property tax is not completely covered by item no. 49 (taxes on lands and buildings) and item no. 60 (Taxes on professions, trades, callings and employments) of the State List, because it might be levied on other sources of income, like dividends from securities, which clearly lie outside the purview of items 49 and 60. But we have not come across any case in which this tax has been assessed on any income of that kind; and so far as the present case is concerned, learned counsel for the respondent has categorically stated that the tax has been assessed on business income alone. In our view circumstances and property tax is livable only on immovable property (lands and buildings) or on financial status derived from professions, business or employment; and legislation in relation to such a tax is clearly within the competence of the State Legislature by virtue of items 49 and 60 of List II of the Seventh Schedule of the Constitution.

6. Our answer to the question referred to us, therefore, is that section 14(1)(f) of the U. P. Town Areas Act is valid.

Answered in the affirmative.

Cases Referred.

1. 1961 All LJ 743
2. 1955 All LJ 630
3. AIR 1957 All 433
4. AIR 1948 All 382 (FB)
5. AIR 1957 SC 18