BOMBAY HIGH COURT

Gajadhar Hiralal A Partnership Firm

Vs.

Municipal Committee

Civil Ref. No. 1 of 1957 with Special Civil Application No. 141 of 1957. in Civil Suit No. 77-B of 1955

(Vyas and Kotval, JJ.)

24.09.1957

JUDGMENT

Vyas, J.

1. This is a reference made by the learned Second Civil Judge, Washim, under Section 113 of the Code of Civil Procedure , in Civil Suit No. 77-B of 1955 pending in the court of the learned Judge. The learned Judge has framed a question and submitted it for decision by this court. The question submitted to us by the learned Judge is:

> "Whether the enhanced' rate of bales-tax since 1-4-1941 at the rate of Re. 0-4-0 per bale under Section 66(1)(b) of the Central Provinces Municipalities Act as applied to Berar is ultra vires of Article 276 of the Constitution of India?"

2. This reference arises in the following circumstances : The Plaintiff in Civil Suit No. 77-B of 1955 is a registered partnership firm, doing work as a cotton pressing factory at Washim. The Defendant in the suit is the Municipal Committee of Washim. The Plaintiff's case is that till 1-4-1941, the Defendant, Municipal Committee, had been recovering tax at the rate of Rs. 0-2-3 per bale of 14 maunds weight pressed in the factory from persons carrying on the trade of pressing cotton by mechanical means. By a resolution passed by the Municipal Committee on 24-3-1940, the said Committee purported to enhance the above-mentioned rate of Re. 0-2-3 per bale of 14 maunds weight pressed in the factory to Re. 0-4-0 per bale of the same weight, and the enhancement was purported to be given effect to from 1-4-1941. The Plaintiffl contends that in pursuance of the above-mentioned resolution the Municipal Committee has been recovering from it a bales tax at the rate of Re. 0-4-0 per bale. According to the Plaintiff, the enhancement of the rate of tax from Re. 0-2-3 to Re. 0-4-0 per bale is illegal as it offends against the provisions of clause (2) of Section 142-A of the Government of India Act, 1935 and is not saved by the

provisions of clause (2) of article 276 of the Constitution. The Plaintiff says that as the number of bales likely to be pressed in its factory during any year when the factory is working would exceed 2,000, the enhanced rate of the tax, namely, the rate of Re. 0-4-0 per bale, would result in a burden heavier than Rs. 50 per annum on the Plaintiffs firm. This, says the Plaintiff, was an unlawful burden to impose upon it. In these circumstances, the Plaintiff says that the resolution dated 24-3-1940, passed by the Defendant, Municipal Committee and the notice enhancing the rate of the tax from Re. 0-2-3 to Re. 0-4-0 per bale are illegal and ultra vires the powers of the Municipal Committee. It is in the aforesaid circumstances that the present reference under Section 113 of the Code of Civil Procedure is made by the learned Judge.

3. As I have mentioned above, the question referred to us is whether the enhancement of the rate of tax from Re. 0-2-3 to Re. 0-4-0 per bale of 14 maunds weight of cotton pressed in the factory is ultra vires the article 276 of the Constitution of India. The answer to this question has to be in the affirmative. Having heard the learned Advocate Mr. Bobd'e appearing for the Municipal Committee at considerable length, we have come to the conclusion that this is the only answer which is consistent with the intention expressed by the language of clause (2) of article 276 of the Constitution. Mr. Bobde says that in the financial year immediately preceding the commencement of the Constitution, there was actually being levied a tax on the trade of pressing cotton by mechanical means, the rate of which exceeded Rs. 250 per year (at the rate of Re. 0-4-0 per bale, the rate of tax recoverable upon 2,000 bales or more, annually pressed in the Plaintiff's factory, would be much more than Rs. 250 per year). Such a tax, says Mr. Bobde, could be continued to be levied until a provision to the contrary was made by Parliament by law. For making this submission Mr. Bobde relies upon the proviso to clause (2) of article 276 of the Constitution. Mr. Bobde says that the word "tax" in clause (2) of article 276 means the tax which was being actually levied on the trade, irrespective of the legality or otherwise of the tax. Mr. Bobde concedes that the rate of the tax exceeding Rs. 50 per year, in the year immediately preceding the commencement of the Constitution, was not being lawfully levied. It was an illegal levy, because it offended against the provisions of sub-section (2) of Section 142-A of the Government of India Act, 1935. All the same, says Mr. Bobde, if the rate at which the tax was actually levied exceeded Rs. 250 per year in the year preceding the commencement of the Constitution, it could be continued to be levied under the proviso to clause (2); of article 276 unless a. provision to the contrary was made by Parliament by law. On the other hand, Mr. Mudholkar for the Plaintiff says that since in the year immediately prior to the commencement of the Constitution, a tax, the rate whereof exceeded Rs. 50 per year, was not lawfully leviable, it could not be continued' to be levied after the commencement of the Constitution. Mr. Mudholkar says that such a tax is not saved by the proviso to clause (2) of article 276 of the Constitution. What is saved by the proviso to clause (2) of article 276, says Mr. Mudholkar, is a tax whose rate exceeded Rs. 250 per annum, if such a tax was being lawfully levied in the year immediately preceding the coming; into force of the Constitution.

4. We are unable to accept the contention of Mr. Bobde. In our view, the word "tax" in the

expression "there was in force in the case of any State or any such municipality, board or authority a tax" in the proviso to clause (2) of article 276 means the tax which was lawfully leviable. It could not be a tax irrespective of whether its levy was legal or not. Such a construction as the one which Mr. Bobde is asking us to put upon the word "tax" occurring in the proviso to clause (2) of article 276 would in our view, do violence to the language of article 276. The word "tax" in the proviso to clause (2) of article 276 is governed by the words "there was in force". It is difficult to agree that the learned framers of the Constitution would have intended to continue a tax that was not lawfully in force during the year immediately preceding the coming into force of the Constitution. The words "there was in force" in the proviso to clause (2) of article 276 must in our view, mean "there was lawfully in force". They could not possibly refer to a tax which was in force, irrespective of its legality or otherwise.

5. The construction of the word "tax" occurring in the proviso to clause (2) of article 276, which Mr. Bobde is contending for, appears to be against the intention of the framers of the Constitution. The learned authors of the Constitution could not have intended to confer recognition upon a tax, the levy whereof offended against the law. Mr. Bobde has invited our attention to article 277 and to the proviso to clause (2) of article 286 of the Constitution,. At both these places, the words "lawfully levied" occur. Mr. Bobde says that though the framers of the Constitution used the word "lawfully" before the word "levied" in article 277 and in the proviso to clause (2) of article 286, they omitted the word "lawfully" in the expression "there was in force in the case of, any State or any such municipality, board or authority a tax" which occur in the proviso to clause (2) of article 276, and the omission must bo a purposeful omission. The purpose, according to Mr. Bobde, was to save a tax which was being actually levied, though the levy thereof may not be a lawful levy. This is the submission which Mr. Bobde has seriously sought to make before us.

6. We are not impressed by Mr. Bobde's submission. In our view, the provisions of article 277 and the proviso to clause (2) of article 286 would clearly show what the intention of the draftsmen must have been when they drafted the proviso to clause (2) of article 276. Article 277 refers to the saving of certain taxes levied by the Government of any State or by any municipality or other local authority or body for the purposes of the State, municipality, district or other local area, notwithstanding the fact that the said taxes might be the subject of the Union List. But, before the taxes could be saved, they must be such taxes as were being lawfully levied. The proviso to clause (2) of article 286 saves a tax on the sale or purchase of goods although the imposition of such tax may be contrary to the provisions of clause (2) of article 286, but the tax saved must be a tax which was being lawfully levied immediately before the commencement of the Constitution. The proviso to clause (2) of article 276 also saves a tax, the continuance whereof would have been unlawful but for the proviso. In the absence of the proviso, a tax in respect of any one person on professions, etc. in excess of Rs, 250 per year could not have been lawfully levied. Thus, the scheme of the proviso to clause (2) of article 276, article 277, and the proviso to clause (2) of article 236 is the saving of certain taxes, and we cannot be persuaded to

accept Mr. Bobde's contention, for such indeed would be the contention of Mr. Bobde, that when the framers of the Constitution were enacting the various provisions in relation to that scheme, they used the word "tax" in the sense of lawful tax in article 277 and the proviso to clause (2) of article 286, and the same word "tax" in a different sense, namely, in the sense of a tax the levy whereof might be legal or illegal, in the proviso to clause (2) of article 276. It is true that the word "lawful" does not occur before the word "tax" in the proviso to clause (2) of article 276. It is also true that the word "lawfully" occurs before the word "levied" in article 277 and the proviso to clause (2) of article 286. In our view, however, what was made explicit by the words "lawfully levied" in article 277 and the proviso to clause (2) of article 286 was expressed by the words "there was in force in the case of any State or any such municipality, board or authority a tax" in the proviso to clause (2) of article 276. The learned authors of the Constitution could not have intended to refer to a tax. the levy whereof was contrary to law, as a tax which was in force. In our view, therefore, the words "there was in force in the case of any State or any such municipality, board or authority a tax" in the proviso to clause (2) of Article 276 could only mean that there was in force in the case of any State, etc., a, tax which was leviable under the law. Therefore, we are unable to accept Mr. Bobde's contention that the word "tax" as it occurs in the proviso to clause (2) of article 276 must be construed to mean a tax which was actually levied irrespective of whether the levy of the said tax was lawful or otherwise. In our view, the word "tax" as it is used in the proviso to clause (2) of article 276 must mean a tax lawfully levied.

7. Next Mr. Bobdc says that in the year immediately before the commencement of the Constitution, there was in force no tax, the rate of which could lawfully exceed Rs. 250 per annum. In other words, Mr. Bobde says that in the year immediately prior to the coming into force of the Constitution, the Defendant, Municipal Committee could not have lawfully levied a tax whose rate exceeded Rs. 250 per annum. The prior law on the subject was the law contained in Section 142-A of the Government of India Act, 1935. Under that law, the maximum rate of the tax in respect of any one person could not have exceeded Rs. 50 per annum. Therefore, says Mr. Bobde, immediately before the coming into force of the Constitution, there could not have been lawfully levied a tax, the maximum rate of which exceeded Rs. 250 per year. Mr. Bobde, relying upon this position, contends that the word "tax" used in the proviso to clause (2) of article 276 should be construed to mean a tax, the levy of which might have been lawful or otherwise. Mr. Bobde is not right in his submission. The clear answer to Mr. Bobde's contention is that in that case you cannot levy a tax the rate of which, in respect of any one person would exceed Rs. 250 per year. That is the answer to the contention raised by Mr. Bobde. The answer is not that the word "tax" occurring in clause (2) of article 276 should be construed to mean a tax leviable lawfully or otherwise.

8. Mr. Bobde has then proceeded to make another contention, and this contention is advanced by him upon the assumption that the word "tax" occurring in clause (2) of article 276 may be construed to mean a tax lawfully leviable. Mr. Bobde says that under Section 142-A, sub-sec. (2) of the Government of India Act, 1935. what the Legislature had done was to fix a ceiling to 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, by way of taxes on professions, trades, callings and employments. Mr. Bobde says that under Section 142-A, sub-sec. (2), the levy of the rate of Re. 0-2-3 per bale and the variation of that rate from Re. 0-2-3 to Re 0-4-0 per bale were valid and that what the Legislature had provided by this subsection was that the maximum rate of the tax in respect of any one person must not exceed Rs. 50 per annum. Mr. Bobde says that under section 142-A, sub-section (2), a municipality could validly levy a tax at a rate even higher than the rate of Re. 0-4-0 per bale, but the total amount of taxes payable in respect of any one person must not exceed Rs. 50 per annum. In this manner, Mr. Bobde says that even if we construe the word "tax" occurring in the proviso to clause (2) of article 276 as meaning a tax lawfully leviable, even so the enhanced rate of Re. 0-4-0 per bale resolved to be levied by the Municipal Committee was a lawful rate, the only restriction imposed by clause (2) of article 276, says Mr. Bobde, is that the total amount of tax payable by an individual must not exceed the rate of Rs. 250 per annum. Even this restriction is subject to a proviso and Mr. Bobde says that under the proviso, if the rate of tax exceeding Rs. 250 per annum could have been lawfully levied in the year immediately prior to the coming into force of the Constitution, the same rate could be continued even after the commencement of the Constitution. Mr. Bobde's argument in brief is that the enhancement of the rate from Re. 0-2-3 per bale of pressed cotton to Re. 0-4-0 per bale is a lawful enhancement and that what is provided by clause (2) of; article 276 is to lay down a ceiling of Rs. 250 per annum which is not to be exceeded.

9. We have carefully considered this contention of Mr. Bobde, and we are constrained to reject it. Mr. Bobde's construction of the proviso to sub-sec. (2) of Section 142-A of the Government of India Act, 1935, and of the proviso to clause (2) of article 276 of the Constitution is opposed to the plain meaning of the words "the rate or the maximum rate". If Mr. Bobde is right, the Legislature, while enacting the proviso to sub-sec. (2) of Section 142-A of the Government of India Act, and the learned framers of the Constitution, while drafting the proviso to clause (2) of article 276 would have used the words "the maximum tax" and not the words "the rate or the maximum rate". The word 'rate' is not synonymous with 'tax', but it connotes a scale according to which a tax is to be levied. Thus, in our view, the expression "the rate or the maximum rate" in the proviso to sub-sec (2) of Section 142-A of the Government of India Act and in the proviso to clause (2) of article 276 of the Constitution signifies a scale of rate. We have no doubt that when the Legislature used the words "the rate or the maximum rate" in the proviso to sub-sec. (2) of Section 142-A of the Government of India Act, and when the learned framers of the Constitution used them in the proviso to clause (2) of article 276, they intended that the scale of rate, to be a valid scale, should be such that the total amount of tax payable under it in respect of any one person must not exceed Rs. 50 per annum before the coming into force of the Constitution and Rs. 250 per annum after the commencement of the Constitution. This was the view taken by a Division Bench of the Nagpur High Court in the unreported case of *Bharat Kala Bhandar v. Municipal Committee, Dhamangaon.* In that case, the learned Chief Justice, delivering the judgment of the Bench, observed that the words "the rate or the maximum rate" in the proviso to

sub-sec (2) of Section 142-A of the Government of India Act referred to but one rate or scale of rate. With great respect that was a correct view.

10. Upon the above construction of the words "the rate or the maximum rate", it is clear that if in the year immediately prior to the coming into force of the Constitution a tax exceeding the rate of Rs. 250 per annum was lawfully leviable in respect of any one person, it could be continued even after the commencement of the Constitution. It is to be noted however that in the year immediately prior to the commencement of the Constitution the rate of tax leviable in respect of any one individual was not to exceed Rs. 50 per annum. The change which was made in this position by clause (2) of article 276 was to increase the limit of Rs. 50 per annum to Rs. 250 per annum. Thus, in the present case, there is no doubt that in the year immediately before the coming into force of the Constitution, there was not in force a tax which could justify the levy of anything more than Rs. 50 per annum by the Municipal Committee in respect of any one person. Accordingly, the enhancement of the rate from Re. 0-2-3 per bale to Re. 0-4-0 per bale, at which enhanced rate the amount of tax leviable from the Plaintiff factory would exceed Rs. 250 per annum, was ultra vires the article 276 of the Constitution and was, therefore, illegal.

11. Mr. Bobde invited our attention to certain observations in the judgment of this court in the case of *Jashoda Factory, Ltd. v. The Municipal Committee, Umerkhed*[1], by Mr. Justice Bavdekar and my learned brother. In the course of the judgment which Mr. Justice Bavdekar delivered on behalf of the Bench, he observed : "What sub-sec. (2) does is that it prevents the collecting of more than Rs. 50 as a tax upon professions, trades, or callings after 31-3-1939". The learned Judges were dealing with sub-sec. (2) of Section 142-A of the Government of India Act. With great respect to the learned Judges who decided that case, it would appear that the distinction between the word "payable" which occurs in the proviso to sub-sec. (2) of Section 142-A of the Government of India Act and "collecting of tax" was not considered by them. Accordingly, we are of the view that the above-mentioned observations of Mr. Justice Bavedekar in *Jashoda Factory, Ltd. v. Municipal Committee*, Umerkhed would not assist Mr. Bobde's client. In the case of *Municipal Committee, Karanja v. New East India Press Co. Ltd., Bombay*[2], which was decided by a Division Bench of the Nagpur High Court consisting of the learned Chief Tustice and Mudholkar, J., it was held that the enhancement of a tax levied after 31-3-1939 by a Municipal Committee on ginned cotton in excess of Rs. 50 per annum payable by one person was in contravention of Section 142-A of the Government of India Act. The same view was taken by the same High Court in the case of *Bharat Kala Bhandar v. Municipal Committee, Dhamangaon.*

12. For the reasons stated above, we answer the question raised in the reference in the affirmative and hold that the enhanced rate of bales tax, namely the rate of Re. 0-4-0 per bale, since 1-4-1941 imposed by the Municipal Committee, Washim. under Section 66 (1) (b) of the Central Provinces Municipalities Act as applied to Berar was ultra vires the article 276 of the Constitution of India.

13. Consistently with this view which we have taken in the reference. Special Civil Application No. 141 of 1957, which is an application under article 226 of the Constitution must be allowed. The prayer which is made in that application and which is allowed by us is a prayer for a declaration that the enhancement of the bales tax made by respondent No. 1 with effect from 1-4-1941 from Re. 0-2-3 to Re 0-4-0 per bale of 14 maunds was illegal and ultra vires both of respondent No. 1, the Municipal Committee, and respondent No. 2, the sanctioning authority. A prayer for an appropriate writ of mandamus has also been made. The applicant has prayed that a writ of mandamus be issued to respondent No. 1, directing it to quash the notice dated 9-4-1957. That prayer is also granted in so far as the notice refers to the excess over the rate of Re. 0-2-3 per bale. It is to be distinctly understood that we are keeping open the question whether the partnership of the Plaintiff is one entity or whether individual partners could be separately taxed.

14. No order as to costs of the reference. So far as Special Civil Application No. 141 of 1957 is concerned, the respondents will pay the costs of the applicant and bear their own.

Reference answered : Application allowed.

[1] M. P. No. 127 of 1956 which was decided on 24-1-1957

[2] ILR 1948 Nag 971 : AIR 1949 Nag 215