PATNA HIGH COURT

Hurdut Roy Moti Lall Jute Mills

Vs

State of Bihar

Misc. Judl. Case No. 188 of 1955

(Ramaswami, C.J. and Raj Kishore Prasad, J.)

01.08.1956

JUDGMENT

Ramaswami, C.J.

1. In this case the petitioner has obtained a rule from the High Court asking the respondents to show cause why the order of the Superintendent of Sales Tax, dated 10-2-1955, forfeiting the amount of Rs. 2,11,222/9/6 under the proviso to Section 14A, Bihar Sales Tax Act should not be called up and be quashed by a writ in the nature of certiorari under Article 226 of the Constitution. Cause has been shown by the Advocate-General on behalf of the State of Bihar and the other respondent to whom notice of the rule was ordered to be given.

2. The petitioner, Rai Bahadur Hurdut Roy Moti Lall Jute Mills, was registered as a dealer under the Bihar Sales Tax Act and was carrying on its business at Katihar in the district of Purnea. The main business of the petitioner was the manufacture and sale of gunny bags, hessian and other jute products. Under a notification dated 1-4-1950, made under Section 27 of Part 4, Bihar Finance Act (Act 17 of 1950) the Governor of Bihar fixed the rate of 3 pies in the rupee as tax on the sale and purchase of jute and jute products. During the period 1-4-1950 to 31-3-1951, the petitioner sold and despatched jute and jute products amounting to Rs. 92,24,386-1-6 to dealers outside the State of Bihar. A sum of Rs. 2,11,222/9/6 was realised by the petitioner as sales tax from such dealers. Section 14A, Bihar Sales Tax Act was introduced by Bihar Act 6 of 1949 which came into force from 1-10-1948. Section 14A then read as follows :

> "14A. Unregistered dealers not to collect tax.- No dealer who is not a registered dealer shall realise any amount by way of tax on sale of goods from purchasers, nor shall any registered dealer make any collection of such tax except in accordance with such restrictions and conditions as may be prescribed."

A proviso was added to Section 14A by the Bihar Finance Act, 1952 (Bihar Act 4 of 1952). The proviso was in the following terms :

"Provided that if any dealer collects any amount by way of tax, in contravention of the provision of this section or the conditions and restrictions prescribed thereunder, the amount so collected shall, without prejudice to any punishment to which the dealer may be liable for an offence under this Act, be forfeited to the State Government and such dealer shall pay such amount into the Government treasury in accordance with a direction issued to him by the Commissioner or any officer appointed under Section 3 to assist him and in default of such payment, the amount shall be recovered as an arrear of land revenue."

3. On 30-3-1953, the Supreme Court decided that sales tax cannot be levied on goods dispatched to other States for consumption in those States. The decision of the Supreme Court was pronounced in *State of Bombay v. United Motors Ltd*[1]*.,* The question of assessment of sales tax upon the petitioner for the period from 1-4-1950 to 31-3-1951, was taken up by the Superintendent of Sales Tax on 31-5-1953, and it was decided that the petitioner was not liable to pay sales tax on the sales of jute and jute products to dealers outside Bihar. The order of the Superintendent of Sales Tax is annexure A to the application. But on 17-6-1954, the Superintendent of Sales Tax took proceedings against the petitioner under Section 14A, Bihar Sales Tax Act and asked him to show cause why the amount of Rs. 2,11,222/- and odd should not be forfeited to the State Government. The petitioner showed cause and on 10-2-1955, the Superintendent of Sales Tax ordered that the petitioner should deposit Rs. 2,11,222/- and odd into the Government treasury within a month of the receipt of the order. The order of the Superintendent of Sales Tax is annexure D to the application.

4. Against this order the petitioner made the present application to the High Court on 24-3-1955. On the next day the High Court issued a rule against the respondents. On 1-4-1955, however, the Bihar Legislature amended Section 14A, Bihar Sales Tax Act so as to make it expressly retrospective. The amendment was made by Bihar Act 4 of 1955, which reads as follows :

"Amendment of Section 14A of Bihar Act 19 of 1947.-In the proviso to Section 14A. Bihar Sales Tax Act, 1947 (Bihar Act 19 of 1947) (hereinafter referred to in this Part as 'the said Act') after the word 'collects', the words 'or has or had collected.' shall be inserted and shall be deemed to have always been so inserted."

On behalf of the petitioner Mr. P.R. Das made the submission that the Superintendent of Sales Tax had no authority to forfeit the amount as no offence had been committed by the petitioner. The learned counsel said that the petitioner had not collected any amount of sales tax in contravention of the provision of Section 14A or the conditions and restrictions prescribed thereunder. Reference was made in this connection to R. 19 made by the State Government in exercise of the powers conferred on it by Section 31, Bihar Sales Tax Act. Rule 19 reads as follows :

"19. Restrictions on realisation of tax by registered dealers from purchasers.-No registered dealer shall realise any amount by way of tax on sale of goods from any purchaser unless such registered dealer issues of a cash memo, or bill which shall be serially numbered and

shall show separately the price of goods sold and the amount realised by way of tax :
Provided that no such registered dealer shall realise any amount by way of tax at a rate higher than the rate at which he is liable to pay tax under the Act or realise any amount by way of tax in respect of such part of his turnover as is allowed to be deducted from his gross turnover for the determination of his taxable turnover under the Act or these rules."

Rule 54 is also important in this connection. Rule 54 states :

"Any person contravening any provision of these rules shall be punishable with fine not exceeding one thousand rupees and when the offence is a continuing one, with a daily fine not exceeding twenty-five rupees during the continuance of the offence."

5. It is contended on behalf of the petitioner that the turnover of Rs. 92,24,386/- and odd was not allowed to be deducted from his gross turnover for the material period from 1-4-1950 to 31-3-1951, within the meaning of R. 19. It was pointed out that allowance was given by the Superintendent of Sales Tax on 31-5-1953, after the decision of the Supreme Court in the United Motors' case. It was, therefore, argued that at the time the petitioner realised sales tax on sale of goods outside the State no allowance had been granted and hence there was no violation of the provisions of Rule 19 or of the provisions of Section 14A. It was also submitted on behalf of the petitioner that during the period from 1-4-1950 to 31-3-1951, there was much confusion as to the state of the law, and the confusion persisted till 30-3-1953, when the question was decided by the Supreme Court. It was submitted that in these circumstances there was no mens rea to be imputed to the petitioner, and in the absence of mens rea it should not be taken that any offence was committed by the petitioner. The submission of the learned counsel was based on the decision of the Supreme Court in *Ravula Hariprasada Rao v. The State*[2], I think that the argument of the learned counsel has great force. But I do not wish to express any concluded opinion on this point for I think that the case of the petitioner must succeed on the alternative argument that the amendment made to Section 14A by Bihar Act 4 of 1955 is unconstitutional because it violates the guarantee under Article 20(1) of the Constitution.

6. The alternative argument on behalf of the petitioner is based upon the language of Article 20(1) of the Constitution, which states :

"20. (1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence."

It was submitted by the learned counsel that during the period from 1-4-1950 to 31-3-1951, the proviso to Section 14A was not in existence. The proviso was added by the
Bihar Finance Act 4 of 1952 and came into force on 1-4-1952. The proviso introduced by Bihar Act 4 of 1952 was prospective in operation and did not affect the case of the petitioner. The position was, however, changed by the amendment made by Bihar Act 4 of 1955. This amendment made the proviso to Section 14A expressly retrospective. It was not disputed by the petitioner that this case falls within the amended proviso to Section 14A as it now stands. But the argument of learned counsel of the petitioner is that the amendment made by Bihar Act 4 of 1955

in Section 14A is unconstitutional and is directly hit by Article 20(1) of the Constitution.
I have summarized the argument presented by Mr. Das on this point. I think the argument is well founded and must prevail. I agree with the contention of the petitioner that the amendment to Section 14A made by Bihar Act 4 of 1955 violates the guarantee under Article 20(1) of the Constitution. Even if the petitioner is taken to have contravened R. 19, the only punishment that could be imposed upon him was the punishment provided by R. 54 and would be a fine not exceeding Rs. 1000/-. That was the penalty which could be inflicted upon the petitioner under the law as it was in force at the time of the commission of the alleged offence. The effect of the amendment made in Section 14A by the Bihar Finance Act 4 of 1955 is that an additional penalty of forfeiture is imposed upon the petitioner for the same offence. It is obvious that the amendment made to Section 14A by Act 4 of 1955 is ex post facto law. It violates the important principle of criminal jurisprudence-namely the principle of nulla poena sine lege. The principle is embodied in Article 20(1) of the Constitution. In my opinion, the amendment made to Section 14A by Bihar Act 4 of 1955 is unconstitutional in so far as it enacts penalty of forfeiture retrospective in operation.

7. It was submitted by the Advocate General on behalf of the respondents that Article 20(1) of the Constitution is not applicable because no penalty is imposed upon the petitioner. It was submitted that the petitioner had realised money as sales tax illegally and so it was no punishment to forfeit that money to the State Government and to deprive the petitioner of the money illegally realised. I do not accept this argument as correct. It is true that the petitioner had realised tax illegally. But it is a wrong proposition to state that the title to the money is not with the petitioner or that the State Government has title to the money. The Advocate General argued as if the amount collected by the petitioner illegally as sales tax was some kind of res nullius and liable to be forfeited to the State Government. This argument is hardly tenable and must be rejected as unsound. It is true that the petitioner has realised the money illegally from the customers outside the State, but there is no obligation upon the petitioner to pay the tax illegally collected to the State Government. On the other hand, the petitioner is liable to refund the amount of tax illegally collected to the various customers from whom the amount has been realised. It is obvious that money has been paid under a mistake of law by the customers and the legal position is that there is a liability on the petitioners to refund the money to the customers. In *Shiba Prasad Singh v. Srish Chandra*[3], it was held by the Judicial Committee that Section 72, Contract Act applied to a case where money was paid under a mistaken belief that it was legally due to be paid. In the present case the petitioner is, therefore, under the obligation to pay the tax illegally collected, to the various customers and the petitioner holds the amount of money illegally collected subject to this liability. A
similar view was taken by the Madras High Court in *Tata Iron and Steel Co. Ltd. v. State of Madras*[4], and I respectfully agree with that view. It was held in that case that if a registered dealer collects tax from the purchasers under a mistaken conception, the registered dealer is not under obligation to pay the amount so collected to the State Government, but he is liable to refund the amount to the purchasers. The argument of the Advocate-General on this point is, therefore, unsound and must be rejected.

8. The point was also taken by the Advocate-General that "forfeiture" was not tantamount to "a penalty" within the meaning of Article 20(1) of the Constitution. I do not think there is any substance in this argument also. The proviso to Section 14A creates an offence and provides the punishment for that offence. The proviso states that if there is a contravention of the provision of

Section 14A or of the conditions and restrictions prescribed thereunder, the offender would be not only liable to punishment for an offence under the Act, but the amount collected would also be forfeited to the State Government. The proviso, therefore, imposes the punishment of forfeiture for a contravention of the statute or of the statutory rules. I do not think that the Advocate-General is right in contending that "forfeiture" is not equivalent to "a penalty" within the language of Article 20(1) of the Constitution. In the treatise of Craies on Statute Law, it is stated that the imposition of fine or penalty or forfeiture by a statute makes the procedure prima facie criminal (Craies on Statute Law. Edn. 3 at page 439). The expression "forfeiture" is also defined in Stroud's Judicial Dictionary, Edn. 3, at page 1140, as follows :

> "FORFEITURE. (1) The proper signification of 'forfeiture', as appears from Cowell's Interpreter and Duncange, is a 'a mulct or fine-a punishment for an offence'; and it is quite clear that it is used in that sense in a charter where the justices are empowered to punish delinquents by "fine, ransoms, amerciaments and forfeitures.' (Per Parke, *B., R. v. Dover*[5]*,*)." It is also important to notice that "forfeiture" is one of the punishments prescribed under the Indian Penal Code (see Section 53, Indian Penal Code). I am definitely of the opinion that the expression "forfeiture" in the proviso to Section 14A is tantamount to a penalty within the meaning of Article 20(1) of the Constitution, and the argument of the Advocate-General to the contrary cannot be accepted as correct.

9. It follows that the proviso to Section 14A as amended by Act 4 of 1955 is unconstitutional and void since it contravenes Article 20(1) of the Constitution. There is also a decision of the Supreme Court which bears out the view I have taken as to the interpretation of Article 20(1) of the Constitution. That decision is *Kedar Nath Bajoria v. State of West Bengal*[6]*,*

10. There is also another point I wish to make. If the proviso to Section 14A is not a penalty within the meaning of Article 20(1) of the Constitution, the provisions of Article 31(2) of the Constitution are attracted and the enactment of the proviso to Section 14A will infringe the provisions of Article 31(2) of the Constitution. If the

proviso to Section 14A imposes a penalty, then the Legislation would be saved by Article 31(5)(b)(i) of the Constitution; otherwise the legislation would be hit by Article 31(2) of the Constitution. It was held by the Supreme Court in *Dwarkadas Shrinivas v. Sholapur Spinning and Weaving Co. Ltd*[7]*.,* that the saving clause (5) of Article 31 comprehensively included within its ambit all the powers of the State in exercise of which it would deprive a person of property without payment of compensation, and that all forms of deprivation of property by the State without payment of compensation have been included within the ambit of the exception clause, while other forms of deprivation which are outside the ambit of the exception clause are inevitably within the mischief of clause (2) of the Article. I have already expressed the opinion that the proviso to Section 14A, Bihar Sales Tax Act imposes a penalty within the meaning of Article 20(1) of the Constitution. But even assuming that the Advocate-General is right in contending that the proviso to Section 14A does not impose a penalty, the legal position is that the legislation would be hit by Article 31(2) of the Constitution and it would still be unconstitutional and void.

11. In view of the opinion I have expressed I hold that the proviso to Section 14A, as amended

by Bihar Act 4 of 1955, is unconstitutional to the extent that it makes the imposition of forfeiture retrospective in operation. I further hold that the Superintendent of Sales Tax, Purnea, had no authority to order the forfeiture of the sales tax collected by the petitioner to the extent of Rs. 2,11,222/- and odd and the order of the Superintendent of Sales Tax dated 10-2-1955, directing the petitioner to deposit the amount in the Government treasury is legally invalid. In my opinion, a writ in the nature of certiorari should be issued under Article 226 of the Constitution to quash the proceedings taken against the petitioner under Section 14A, Bihar Sales Tax and also to quash the order of the Superintendent of Sales Tax dated 10-2-1955, forfeiting the amount of sales tax and directing the petitioner to deposit it in the Government treasury. I accordingly allow the application with costs. Hearing fee Rs. 250/-.

Raj Kishore Prasad, J.

12. I agree.

Application allowed.

Cases Referred

[1]1953 SCR 1069
[2]1951 SCR 322
[3]76 Ind App 244
[4]1954-5 STC 382
[5]4 LJ Ex 94
[6]1954 SCR 30 at p. 48 : (AIR 1953 SC 404 at p. 406)
[7] AIR 1954 SC 119