(1985) KLJ 115

High Court Of Kerala

Case No: O.P. No. 1799/83 etc.

Toshiba Anand Lamps Workers Association and Others		APPELLANT
	Vs	
The Executive Officer, Nedumbassery Panchayat and Others		RESPONDENT

Date of Decision: Jan. 2, 1985

Acts Referred:

- Constitution of India, 1950 - Article 14, 265, 276, 276(2), 40

Citation: (1985) KLJ 115

Hon'ble Judges: U.L. Bhat, J

Bench: Single Bench

Advocate: P. Balagangadhara Menon, M.C. Cherian, K.P.G. Menon P.N. Mohanan, A.X. Varghese and M. Ramachandran, for the Appellant; M.V. Bose, P. Santhalingam, P.V. Narayanan Nambiar, C.K. Sivasankara Panicker, K.S. Radhakrishnan, M.V. Ibrahim Kutty and P. Abraham, for the Respondent

Judgement

U.L. Bhat J.

1. Profession Tax demands by Eroor Panchayat, Kalamassery Panchayat, Nedumbassery Panchayat, Aroor Panchayat and Thrikkovilavattom Panchayat are being challenged in these original petitions by employees of certain public sector undertakings and in some cases by some of the trade unions of such employees. O. P. No. 8668/84, 9539/84 and 9615/84 relate to Eloor Panchayat. O. P. Nos. 9107/84, 9798/84, 10029/84, 10035/84 and 10271/84 relate to Kalamassery Panchayat. O. P. No. 1799/83, 1800/83, 1804/83, 1809/83 and 10013/84 relate to Nedumbassery Panchayat. O. P. Nos. 9475 and 9548/1984 relates to Aroor Panchayat. O. P. No. 9914/84 relates to Thrikkovilavattom Panchayat. O. P. Nos. 8668/84 and 9615/84 are filed by individual assessees. O. P. No. 9539/84 is filed only by a trade union. All other original petitions are filed by trade unions

together with one or more individual assessees. All these Panchayats levy profession tax under Secs. 66 (1) and 69 of the Kerala Panchayats Act, 1960 and the provisions of Profession Tax Rules, 1963 (for short "the Rules") each of the Panchayats having fixed the rate of the class of assessees subject to the maximum prescribed by the Rules.

2. Contentions of petitioners can be summarised as follows: Profession tax is leviable on aggregate income which according to the provisions of Kerala Panchayats Act would include all allowances. Under the provisions of Kerala Municipalities Act and Kerala Municipal Corporations Act, aggregate income for the purpose of levying profession tax is exclusive of such allowances. This is hostile discrimination against persons living or working within Panchayat areas. It is arbitrary and violative of Article 14 of the Constitution. Provisions of the Panchayats Act and the Rules confer unguided and absolute power on the Panchayats to assess aggregate income and levy tax. For this reason also the relevant provisions of law are violative of Article 14 of the Constitution. The Rules do not provide for pre-assessment notice; the Rules also do not enable parties to prefer objections. Since the law on the point is not valid, levy of profession tax is contrary to Article 265 of the Constitution. In most of the original petitions, contention to the effect that Rule 10 of the Rules has been violated has also been taken. All the petitioners complain that they do not know on what basis and on what date they have been assessed. However, it is accepted by both sides that the levy is made on the basis of statements of particulars furnished by the employers.

3. One of the Panchayats has filed counter affidavit in O. P. 8668/84. Another Panchayat has filed counter affidavit in O. P. 1799/83. On behalf of the State, counter affidavit has been filed in O. P. 1799/83. On behalf of respondents, arguments have been addressed on the basis of these counter affidavits.

4. It would be useful to refer to the relevant provisions of the Kerala Panchayat Act, 1960 and the Profession Tax Rules, 1963 framed thereunder. Sub-sec. (1) of Sec. 66 of this Act lays down that every panchayat shall levy in its area a building tax, a profession tax and a vehicle tax. Sub-sec. (1) of Sec. 69 states that profession tax shall subject to such rules as may be prescribed be levied every half year in every panchayat area on companies which transact business in such panchayat area for not less than sixty days in the aggregate in that half year and every person who, in that half year exercises a profession, art or calling or transacts business or holds any appointment within such Panchayat area for not less than sixty days in the aggregate or without such Panchayat area but who resides in it for not less than sixty days or resides in such Panchayat area for not less that sixty days in the aggregate and is in receipt of any pension or income from investments. Sub-sec. (2) states that profession tax shall be levied at such rates as may be fixed by the panchayat not exceeding the maximum rates prescribed. Sub-sec. (3) states that a person shall be chargeable under the class appropriate to his aggregate income from all the sources specified in sub-sec. (1) as being liable to tax.

5. State Government framed the Rules under its rule making power. Rule 3 prescribes the maximum rates of half yearly tax for various classes of companies and persons based on half yearly income of the latter, from Rs. 300/- to Rs. 15,000/- and more and rate of tax ranges from Rs. 1 to Rs. 125/-. This of course, is consistent with proviso to Article 276 (2) of the Constitution of India prescribing maximum profession tax per year of Rs. 250/-. Panchayats have to determine tax leviable from each class subject to the maximum prescribed in Rule 3. Rule 5 deals with determination of income when business is confined exclusively to a single Panchayat area. In the case of a company or a person transacting business and assessed to income tax or agricultural income tax or both, basis shall be profits and gains of the business as computed under those acts. Where the amount of profit or gains is not ascertainable or where company or person is not so assessed, basis shall be the turnover calculated with reference to Rule 6. Rule 6 furnishes the basis for computation of percentage of turnover subject to maximum. Rule 7 deals with determination of income when business is transacted in two or more Panchayat areas. Rule 8 deals with determination of turnover. Rule 9 states that Executive Authority shall assign to the company or person the class in the scale appropriate to the half yearly income of such company or person as estimated by him. Classification shall be made on general considerations with reference to the nature and reputed value of the business transacted, the quantity and number of articles dealt with, size and rental of residential and business premises, number of persons employed, amount of agricultural income derived, income tax or agricultural income tax paid by such company or person and the return, if any, furnished under sub-rule (1) of rule 10. Rule 10 requires the Executive Authority to serve notice on a company or person either in that half year or in the succeeding half year requiring the company or person to furnish within such period, not being less than thirty days as may be prescribed in the notice, a return in the form given in the schedule to the Rules showing income on the basis of which profession tax is liable to be assessed. Thereupon, it shall be open to the company or person to submit a return showing the income derived by it or him and produce any evidence on which the company or person may rely in support of the return made, If the Executive Authority is satisfied with the return made he shall levy profession tax on the basis of such return. Under Explanation to sub-rule (2), in cases not falling under rule 5 (b) or rule 7, if the company or person produces the notice of demand of income tax for the relevant year, Executive Authority shall be bound to take one half of the income mentioned in such notice or demand as income derived from the source on which profession tax is leviable. If no return is made as required under sub-rule (1) or if the Executive Authority is satisfied that any return so made is incorrect or incomplete, he shall after giving the company or person reasonable opportunity for showing cause against the action proposed, assign to such company or person class in the scale appropriate to the half yearly income of the company or person as estimated by him. Rule 11 lays down that the Executive Authority shall not call for the accounts of any company or person but any assessee may produce his accounts to show that the net income derived by him from the exercise of his profession, act or calling or the transaction of his business within the Panchayat area falls below the lowest limit of income entered at the head of the class in which the Executive

Authority has placed him and the Executive Authority shall revise the assessment if satisfied that the person should be placed in a different class. Rule 13 requires that after completion of assessment, Executive Authority shall serve on each assessee a demand notice for the tax due specifying that the tax shall be paid within 15 days of the date of service. Under rule 14, Executive Authority is invested with power to require the owner or occupier of any building or land and every secretary or manager of a hotel, boarding or lodging house, club or residential chambers to furnish within a specified time a list in writing containing the names of all persons occupying such building, land, hotel, boarding or lodging house, club or residential chambers, and specifying the profession, art or appointment of every such person and the rent if any paid by him and the period of such occupation. Rule 15 empowers Executive Authority by notice to require any employer," or the head or secretary or manager of any public or private office, hotel, boarding house or club or a firm or company to furnish within a specified time, a list in writing of the names of all persons employed by such employer or by such office, hotel, boarding house, club or firm or company as officers, servants, dubashes, agents, suppliers or contractors with a statement of the salary or income of such persons.

6. Municipalities in the State are governed by provisions of Kerala Municipalities Act, 1960. This Act empowers the Municipal Councils to levy profession tax. Relevant provisions are Secs. 96, 97, 110, 114 and 116. Maximum rates are prescribed in the Taxation and appeal Rules found in Schedule II of the Act. Profession tax is to be levied on the basis of aggregate income. Explanation to Sec. 110 of the Municipalities Act states that "aggregate income shall not include local allowances or allowances for house rent, carriage hire or travelling expenses". Rules in Schedule II prescribe maximum rates for companies or persons with income ranging from Rs. 2,400/- to Rs. 15,000/- and above for half year, rate of tax varying from Rs. 6/- to Rs. 125/.

7. Municipal Corporations in the State are governed by provisions of the Kerala Municipal Corporations Act. Sec. 113 and 118 are the relevant sections. Detailed provisions are contained in the Taxation Rules in Schedule IT to that Act. Explanation to Sec. 113 states that "aggregate income shall not include dearness or local allowances or allowances for house rent, carriage hire or travelling expenses". Income classified ranges from Rs. 600/- to Rs. 15,000/-and above and the rate of tax ranges from Rs. 3/- to Rs. 125/-.

8. In these cases, we are concerned with profession tax payable by salaried employees or officeRs. Their total emoluments include basic pay or salary and allowances of various kinds. Profession tax is a tax payable by persons engaged in profession, occupation, calling or transacting any business; however, tax is levied on the basis of the income from the profession, occupation, calling or business though it is not income tax. Under the provisions of all the three Acts referred to above, profession tax is leviable on aggregate income of the persons liable to pay profession tax. Under the provisions of Kerala Municipalities Act and Kerala Municipal Corporations Act, aggregate income shall not include allowances of various kinds referred to in the Explanation to Sec. 110 of the former Act and explanation to Sec. 113 of the latter Act. Sec. 69 of the Kerala Panchayat

Act, however, does not have any such explanation. Result is that a Municipality or Municipal Corporation can levy profession tax only on the basis of emoluments less allowances covered by the explanations mentioned above; Panchayats can levy profession tax on the aggregate income inclusive of such allowances. (See Mammad Koya Executive officer, 1979 K. L. T. 58)

9. According to petitioners, provision in the Kerala Panchayats Act providing for assessment of profession tax on the basis of aggregate income (not excluding various allowances) is discriminative in character in the face of the provisions in the Kerala Municipalities Act and the Kerala Municipal Corporations Act which exclude such allowances for the purpose of computation of aggregate income in the matter of levying profession tax. It is pointed out that employees in the same factory may be residing in different areas. Some of them may be residing within the limits of a Panchayat, some others within the limits of a Municipality and yet others within the limits of a Municipal Corporation. There is every possibility that these employees may be taxed by the various local authorities and if that happens they will be taxed on different basis. Some of them will be taxed on the basis of their income exclusive of allowance while others will be taxed on the basis of their income inclusive of allowances. This, it is argued, offends Article 14 of the Constitution.

10. Article 14 forbids classification and arbitrariness in State action. It does not forbid reasonable classification for the purpose of legislation. Classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and the differentia must have a rational relation to the object sought to be achieved by the legislation, When a law is challenged as violative of the equality clause of the Constitution, there is initial presumption of constitutionality. It must be presumed that the legislature understands and correctly appreciates the need of its own people and that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds. Burden is on the person who challenges the law as discriminatory to make out the challenge, (See Budhan Choudhry and Others Vs. The State of Bihar, , Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others, , Khyerbari Tea Co. v. State of Assam, AIR 1954 S. C. 925 and The Twyford Tea Co. Ltd. and Another Vs. The State of Kerala and Another,).

11. Doctrine of equality applies to taxation legislation also. Taxation legislation also must pass test of Article 14 of the Constitution. But in deciding whether taxation law is discriminatory or not it is necessary to bear in mind that the State has a wide range of discrimination and the statute is not open to attack on the ground that it taxes some persons and bodies and not others. It is only when within the range of its selection the law operates unequally and that cannot be rectified on the basis of classification that it would be regarded as arbitrary. Presumption of constitutionality is stronger when the law under attack is a taxing statute. (See Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another, , Jia Lal Vs. The Delhi Administration,).

12. As observed in Willis on Constitutional Law at page 587, the State does not have to tax everything. In order to tax something, it is allowed to pick and choose districts, bodies, persons, methods and even rates for taxation, if it does so reasonably. Very wide attitude is allowed in classification for the purpose of taxation.

13. Power conferred on the State to levy tax must be widely construed; it must include power to impose tax on selected articles, commodities or persons in exercise of such power. The need for revenue and the inherent compensity of fiscal adjustments of diverse elements justify a larger discretion being permitted to the legislature in the matter of classification so long as it adheres to the fundamental principle underlying the doctrine of equality. Power of legislature to classify is of wide range and flexibility so that it can adjust its system of taxation in all proper and reasonable ways. Though taxation law cannot be unreasonable, at the same time, meticulous scrutiny of the impact on different persons and interests has to be avoided. (See Khandige Sham Bhat and Others Vs. The Agricultural Income Tax Officer, & Khyerbari Tea Co. Ltd. and Another Vs. The State of Assam,).

14. Provisions of the Kerala Panchayats Act apply to all panchayats in the State. Provisions of the Kerala Municipalities Act apply to all the Municipalities in the State and provisions of Kerala Municipal Corporations Act apply to all Municipal Corporations in the State. There is no case that any of these statutes seeks to discriminate between one Panchayat and another or one Municipality and another or one Corporation and another. Each of these statutes has prescribed maximum rate of tax which could be imposed. Subject to the maximum prescribed, each Panchayat, each Municipality and each Municipal Corporation is left with an area of discretion in the matter of fixation of rate of tax. Even regarding the rate of tax there are differences in the maximum rates prescribed under the three statutes. Under the Kerala, Panchayats Act, maximum rates varying from Re. 1 to Rs. 125/- are prescribed for the half yearly income which ranges from Rs. 300/- to Rs. 15,000/- and more. Under the Municipalities Act, maximum rates prescribed range between Rs. 6/- and Rs. 125/- for half yearly income which ranges from Rs. 2,400/- to Rs. 15,000/-. Corresponding figures in the Municipal Corporations Act are Rs. 3/- to 125/- (rates of tax) and Rs. 600/- to Rs. 15,000/- and above (income range). There are such differences between the three statutes. None of these differences is characterised as hostile discrimination even by petitioners.

15. Panchayats, Municipalities and Municipal Corporations are, no doubt, part of the structure of local self-government. Article 276 of the Constitution, no doubt, refers to profession tax leviable by Panchayats, Municipalities and other local authorities subject to a maximum of Rs. 250/-per year. Article 40 of the Constitution expresses special concern for Panchayats as instruments of local self-government in the rural set up of the country. It says that the State shall take steps to organise village Panchayats and endow them with such power as may be necessary to enable them to function as units of self-government. Any successful project of self-government must necessarily depend for its success on the resources and powers at the command of the instrument of local

self-government. Of the three statutes, Kerala Panchayat Act was enacted first and the other statutes were enacted later. In enacting the later statutes, Legislature introduced a provision to state that aggregate income does not include special allowances. Such a provision was not introduced in the Kerala Panchayats Act. One of the objects of the Legislature was evidently to assure financial resources for Panchayats in the State. So far as rate of tax is concerned, the Constitution itself provides maximum of Rs. 250/- per year. Any scheme of tax must operate subject to this maximum. It was evidently in the light of these circumstances and to effectuate its anxiety to assure resources for Panchayats that the Legislature refrained from introducing any provision of exclusion regarding allowances in the Kerala Panchayats Act. In other words, Legislature wanted that income assessable for the purpose of profession tax should not be allowed to be curtailed. Panchayats on the one hand and Municipalities and Municipal Corporations on the other cannot be regarded as equal institutions, They are institutions of different kinds. If these institutions of different kinds are treated differently, particularly in the light of Article 40 of the Constitution and need to provide strong financial base for the Panchayats, it cannot be said that there is hostile discrimination. This is not a case of equals being treated unequally. This is a case of unequals being treated unequally. It could even be said that this is an attempt to reduce the inequality between institutions so that the institutions could subserve public good.

16. Similar challenge was repelled by a Division Bench of this Court in Mammed Koya"s case (1979 K. L. T. 58). Balakrishna Eradi, J. (as he then was), speaking for the Bench observed:

The legislature while enacting the Kerala Panchayats Act and empowering through its provisions the levy of profession tax by Panchayats, had the fullest freedom to decide in what manner the tax should be levied subject, of course, to the restriction imposed by Article 276 of the Constitution. The mere fact that the fiscal policy subsequently formulated by the legislature, while providing for levy of profession tax by Municipalities and Municipal Corporations in later enactments, namely, the Kerala Municipalities Act (Act 14 of 1961) and the Kerala Municipal Corporations (Act 30 of 1961) happens to be not identical with the principles incorporated in the corresponding provisions of the Panchayats Act, will not render the provisions of the Panchayats Act violative of Article 14 of the Constitution. The Panchayats, the Municipalities and the Municipal Corporations are three different types of local authorities governed by the provisions of three separate and independent enactments. The legislature was fully competent to determine with reference to the fiscal needs and other relevant circumstances obtaining in relation to the three distinct types of local authorities what policy of taxation would be best suited for each type of local authority. There is nothing in Article 14 of the Constitution which renders it obligatory for the legislature to adopt a uniform policy of taxation in respect of the different types of local authorities which are constituted under separate enactments and which are manifestly susceptible of a valid classification.....it cannot be said that manifest arbitrariness or unreasonableness results from the inclusion

of dearness allowance and other allowances in the computation of "aggregate" income" for the purpose of levy of profession tax by Panchayats.

17. It is next contended that Panchayats Act and the Rules do not lay down adequate guidelines in the matter of assessment of profession tax and as such Executive Authority would be in a position to assess tax arbitrarily. On this ground also, validity of the provisions is challenged on the basis of Article 14 of the Constitution. Of course, tax can be levied or collected only under a valid statute and not mere executive fiat. A statute may delegate powers and functions to the executive. It may vest considerable area of discretion to the executive. However, this can be done validly, only if the statute lays down principles or policy for the guidance or exercise of discretion by the executive in the matter of selection or classification. Failure to lay down such principles or policy would amount to delegation of arbitrary powers and authority so as to enable discrimination of persons or things similarly situated. Ordinarily, a taxing statute lays down a regular machinery for making assessment of tax, detailed procedure as to notice to be given to the proposed assessee to make a return; it prescribes authority and procedure for hearing objections and provides for right to challenge regularity of assessment made by recourse to higher authorities. In other words, a statute would provide for imposition of tax on a quasi-judicial basis. Otherwise, it is liable to be attacked as arbitrary. Mode of assessing tax must also be defined reasonably. Otherwise, it may offend the equality clause of the Constitution, (See Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others, & Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another,).

18. I have already referred in detail to the provisions of the Statute and the Rules. It is difficult to find anything vague or unreasonable about the concept of aggregate income found in the statute and the Rules. Expression "aggregate income" has not been defined in any technical way. Therefore, it must receive its natural meaning, being total income from various sources. Maximum rates of tax are prescribed in the statutory rules leaving it to the Panchayats to prescribe rates of tax subject to the maximum. Maximum tax prescribed is within the constitutional limits, prescribed under Article 276 of the Constitution. Detailed provisions are laid down in the statutory rules regarding method of assessment of income derived from business. Reference is made to income tax assessments and even demand notices under the statute relating to income tax, and the method of determination of turnover, Definite criteria are laid down in the statutory rules. It is of course for the executive authority to assign to the company or person the class in the scale appropriate to the half yearly income as estimated by him. But the estimate cannot be based on arbitrary assumptions. Executive Authority is to serve notice on the proposed assessee to submit a return. Executive Authority is required to consider the return. Assessee has to be given opportunity to produce evidence along with the return and it will be the duty of the Executive Authority to consider the evidence also. If no return is made or if the Executive Authority is not satisfied about the correctness or completeness of the return, he has to give a reasonable opportunity to the proposed assessee to show cause to the proposed action before assigning the company or person

the class in the scale appropriate to" the half yearly income. General considerations to be born-in-mind in doing so are also specifically laid down in Rule 10 (4) of the Rules. It is open to the proposed assessee to place his accounts before the Executive Authority. Executive Authority is also enabled to collect data from disinterested sources such as employer of the proposed assessee. If can thus be seen that the statute and the statutory rules do lay down definite principles or policy for the guidance or exercise of discretion on the part of the Executive Authority. Machinery for making assessment, detailed procedure in the matter of assessment and principles on the basis of which assessment is to be made are laid down in the statutory rules. They are also consistent with principles of natural justice.

19. Of course, Sec. 69 of the Kerala Panchayats Act or the Statutory rules by themselves do not provide for any remedy by way of appeal. But the remedy is provided in the other provisions of the Kerala Panchayats Act. Sec. 144 provides for the necessary remedy. Appeal from any notice or order issued or other action taken by the executive authority shall lie to the Panchayat. Any person aggrieved by the order of the Panchayat may appeal to the Deputy Director of Panchayats. Government is given power to call for and examine records, order or proceedings recorded under the provisions of the Act by the Deputy Director or any authority or officer for the purpose of satisfying themselves as to the legality or propriety of the order or to the regularity of such proceeding and pass such order as they think fit.

Therefore, an assessee who has a valid grievance has a hierarchy of authorities to have recourse to. I am not therefore able to agree that the provisions of the Kerala Panchayats Act or the Rules relating to Profession tax are arbitrary or confer unguided or absolute power on the Panchayats to assess income or levy tax. Law on the point is valid law for the purpose of Article 265 of the Constitution.

20. Last contention urged relates to the alleged violation of Rule 10 (1) of the Rules. Rule 10 (1) of the Rules, as we have already seen, requires the Executive Authority to serve notice on a company or person from whom in the opinion of the Executive Authority profession tax is or will be due, requiring the company or person to furnish within a specified period, not being less than 30 days, a return in the from given in the Schedule to the Rules showing income on the basis of which the company or person is liable to be assessed to profession tax. In response to such notice it is open to the company or person to submit a return and also to produce any evidence. Petitioners contend that the individual petitioners in the various petitions and members of the associations and trade unions which have joined the petitions have not been served notice under Rule 10 (1) of the Rules. This is not disputed by the Panchayats concerned. Therefore, there has been violation of Rule 10(1) of the Rules. As we have already seen this is an important provision conferring some rights on and granting protection to the proposed assessees, it must necessarily be followed by the Executive Authority concerned. Executive Authorities concerned have not followed it. Thereby these persons have been denied an important safeguard provided by the Rules, But I am not able to agree that for that reason all the

assessments made by the various Panchayats: on all the members of these associations or trade unions should be quashed or that all demands, made should be invalidated. There may be completed assessments which are accepted by the respective assessees and they might even have complied with the demands. There is no necessity to invalidate such assessments. My attention is invited to a decision of P. C. Balakrisha Menon J. in O. P. No. 10637/83. In identical circumstances the learned Judge took the view that it would be sufficient if opportunity is granted to the assessees who objected to the demands. With great respect, I am of opinion that the same course could be followed in these cases also. Petitioners and members of the trade unions and associations who have joined these petitions are therefore given opportunity to object to the demands made within a period of six weeks from today. It is open to the assessees to raise all their objections which would be considered by the Executive Authority concerned while determining liability for profession tax in respect of the objectors. Those who desire to prefer objections should submit returns as contemplated in Rule 10(1) of the Rules along with objections, showing the basic salary, various allowances, total emoluments etc. On receipt of such objections, local authority concerned will cancel the demands already made on those assessees and will proceed to determine profession tax due in respect of such assessees in accordance with the Rules. It is open to the respective local authorities to recover tax due from those who do not object to the demands made within the time specified. There will be no recovery for the next six weeks mentioned above and in respect of those assessees who object within the time specified until such time as there is fresh determination and demand.

Original petitions are thus disposed as above. There will be no direction as to costs. Issue carbon copies to parties on usual terms.