
(1961) 07 MP CK 0009
Madhya Pradesh High Court
Case No: M.P. No. 331 of 1960

Sheroatanlal

APPELLANT

Vs

Gram Sabha, Jaitwara

RESPONDENT

Date of Decision: July 20, 1961

Acts Referred:

- Vindhya Pradesh Gram Panchayat Ordinance, 1949 - Section 37

Citation: (1961) JLJ 1160

Hon'ble Judges: P.V. Dixit, C.J; K.L. Pandey, J

Bench: Division Bench

Advocate: G.P. Singh and L.S. Baghol, for the Appellant; M.P. Shrivastava and H.L. Khaskalam, Addl. Government Advocate, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

P.V. Dixit, C.J.

By this application under Article 226 of the Constitution the petitioner challenges the legality of a tax imposed by the Gram Sabha, Jaitwara, on certain goods sent outside the limits Of Jaitwara by rail or motor trucks at certain rates and prays that a writ of certiorari be issued for quashing the decision of the Gram Sabha imposing the tax as also the notices issued by the Gram Sabha to the petitioner for the payment of tax amount of Rs. 1,400/- on goods said to have been sent out by it during the period from 1st October 1958 up to 21st March 1959.

2. On 19th June 1958 the Gram Panachayat, which is the executive committee of the Sabha, passed a resolution imposing a tax on goods sent outside Jaitwara by rail and motor truck. The resolution was published and objections to the imposition were invited. The objections were considered by the Panchayat on 17th July 1958 and rejected. A resolution was then passed confirming the previous resolution of 19th June 1958. Thereafter the Collector approved the imposition of the tax by making an

order on 24th September 1958. After the imposition of the tax the Gram Panchayat served on the petitioner a notice on 16th April 1959 calling upon it to deposit a sum of Rs. 1,400/- as tax due from it for the period from 1st October 1958 to the 31st March 1959 on certain goods sent out by it.

3. The petitioner challenges the validity of the imposition on the grounds that the tax being in the nature of an export tax is beyond the powers of the Gram Sabha; that the approval given by the Collector to the imposition of the tax was ineffective as he did not prescribe any date for the commencement of the imposition; that the resolution authorising the imposition of the tax was invalid because it did not define the class of persons to be taxed or prescribe any system of assessment; and that it violated Articles 276 and 301 of the Constitution and constituted an unreasonable restriction on the petitioner's fundamental right to carry on trade and business guaranteed under Article 19 of the Constitution.

4. In our judgment this petition must succeed on the ground of incompetency alone of the Gram Sabha to levy the impugned tax. Section 37 of the Vindhya Pradesh Gram Panchayat Ordinance, 1949, sets out the taxes which may be imposed by a Gram Sabha. The power given to a Gram Sabha is subject to the rules prescribed under the Ordinance. The Gram Sabha has the power to impose "a tax on trade, calling and profession not exceeding such rate as may be prescribed." There is no dispute that the Gram Sabha purported to levy the impugned tax in the exercise of this power to tax trade, calling and profession. Rule 221 of the Rules made under the Ordinance deal with the mode in which a tax on trade, calling and profession may be levied. That rule empowers a Gram Panchayat to pass a resolution requiring that no person shall carry on the trades mentioned in sub-rule(1) of Rule 221 without obtaining a licence for the same on payment of the annual, fee specified in the sub-rule. Sub-rule (2) permits a Panchayat to recover from cloth merchants sugar merchants, refiners and persons carrying on any other trade determined by the prescribed authority a tax on the annual income of their trade within the rates and limits mentioned in the sub-rule. As the power of a Gram Sabha to impose a tax u/s 37 is subject to the prescribed rules, it is clear that under the head of a tax on "trade, calling and profession" the Gram Sabha can only impose the levies indicated in Rule 221. The impugned tax on certain goods exported outside Jaitwara is neither a licence fee nor a tax on income of any trade. It is an export tax simpliciter and the liability to pay the tax arises when the articles subjected to levy are taken outside Jaitwara. Leaving aside the question whether a tax imposed by the Gram Sabha on the annual income of any trade would be saved under Article 276, it is clear that the impugned tax not being of the nature prescribed in Rule 221 (2) is not valid. It is also not a licence fee covered by sub-rule (1).

5. A tax on trade, calling and profession must have as its base either the occupation itself or the income derived therefrom. The classification of assessee in the levy of a tax on trade, calling and profession is according to the profession or income or

both. There is no doubt a distinction between a tax on trades, callings or professions and a tax on income arising from a trade, calling or profession. The former is paid by anyone practicing any trade, calling or profession whether he derives any income from it or not. A tax on income derived from a trade, calling or profession is strictly an income tax; but it is not invalid on the ground that it relates to a tax on income if Article 276 is attracted to the imposition. The tax which has been levied by the Gram Sabha here is neither on the occupation itself nor on the income derived therefrom, but is on the export of certain goods outside Jaitwara by any person. The tax is not with reference to a trade, calling or profession of a person but is with reference to the nature of goods and their export outside Jaitwara. In our opinion, the Gram Sabha has no power to impose any tax on export of goods outside Jaitwara. As the tax is invalid on this ground alone, it is unnecessary to consider the other objections raised in the application against the validity of the tax.

6. For these reasons this petition is accepted, The imposition of the tax levied by the Gram Sabha from 19th June 1958 on the export of certain goods is declared to be invalid and the notices (Annexures 4, 5, 6 & 7) issues to the petitioner calling upon it to pay the amout of export tax due from it are quashed. The petitioner shall have costs of this application. Council's fee is fixed at Rs. 100. The outstanding amount of the security deposit shall be refunded to the petitioner.