(1954) 01 CAL CK 0005

Calcutta High Court

Case No: Civil Revn. No. 2675 of 1952

Sriram Jhabarmul		APPELLANT
	Vs	
S.C. Das Gupta and Others		RESPONDENT

Date of Decision: Jan. 27, 1954

Acts Referred:

- Constitution of India, 1950 - Article 13(1), 14
- Excess Profits Tax Act, 1940 - Section 14A, 14A(6), 14A(7), 21
- Income Tax Act, 1922 - Section 46, 46(2)

Citation: AIR 1954 Cal 447

Hon'ble Judges: Sinha, J

Bench: Single Bench

Advocate: Jyotish Chandra Pal and Prasun Chandra Ghosh, for the Appellant; Jagneswar Majumdar and Pramatha Kumar Chakravarty, (for Nos. 1 and 4) and Mayer and Balai Lal Pal, (for Nos. 2 and 3), for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Sinha, J.
This application concerns the assessment of excess profits tax (hereinafter referred to as the E. P. Tax) under the Excess Profits Tax Act, 1940 (Act 15 of 1840) (hereinafter referred to as the E. P. T. Act), of the firm of Sriram Jhabarmull for the chargeable accounting period, 26-3-1942 to 13-4-1943. The firm has been assessed on the footing of a Hindu undivided family, of which the Karta is Nandram Agarwalla.

2. The original E. P. T. Act did not contain any provision for provisional assessment. This was introduced by Ordinance No. 16 of 1943 which introduced Section 14A. As this provision is not generally found in the current text books, I set it out below :

"14A. ''Power to make provisional assessments''.

(1) The Excess Profits Tax Officer before proceeding to make an assessment (in this Section referred to as the provisional assessment) u/s 14, may at any time after the expiry of the period specified in the notice issued under Sub-section (1) of Section 13 as that within which the return therein referred to is to be furnished, and whether the return has or has not been furnished, proceed to make in summary manner a provisional assessment of the amount by which the profits of the chargeable accounting period, exceed the standard profits, and the amount of excess profits tax payable thereon.

(2) Before making such provisional assessment the Excess Profits Tax Officer shall give notice in the prescribed form to the person on whom, assessment is to be made of his intention to do so, and shall with the notice forward a statement of the amount of the proposed assessment, and the said person shall be entitled to deliver to the Excess Profits Tax Officer at any time within fourteen days of receipt of the said notice a statement of his objections, if any, to the amount of the proposed assessment.

(3) On expiry of one month from the date of service of the notice referred to in Sub-section (2), or earlier if the assessee agree to the proposed assessment, the Excess Profits Tax Officer may, after taking into account the objections, if any, made under Sub-section (2), make a provisional assessment, and shall furnish a copy of the order of assessment to the assessee.

Provided that assent to the amount of assessment, or failure to make objection to it, shall in no way prejudice the assessee in relation to the regular assessment.

(4) In making any such provisional assessment the Excess Profits Tax Officer shall make allowances for any deficiencies of profits for previous chargeable accounting periods which are under the provisions of Section 7 to be set off against the excess profits of the chargeable accounting period in respect of which the assessment is being made.

Provided that where such deficiencies of profits have not been determined under Sub-section (1) of Section 14, the Excess Profits Tax Officer shall estimate the amount thereof to the best of his judgment.

(5) There shall be no right of appeal against a provisional assessment under this section, and it shall, until a regular assessment is made in due course u/s 14, determine the amount of excess profits tax due from the assessee.

(6) If when a regular assessment is made in due course u/s 14, the amount of Excess Profits Tax payable thereunder is found to exceed that determined as payable by the provisional assessment, it shall be reduced by the amount determined as payable by the provisional assessment.

(7) If when a regular assessment is made in due course u/s 14, the amount of Excess Profits Tax payable thereunder is found to be less than that determined as payable

by the provisional assessment, any excess of tax paid as a result of the provisional assessment shall be refunded to the assessee together with interest at 5 per cent. per annum calculated from, the date of payment of such excess tax to the date of the order of refund, both days inclusive."

3. On 10-9-1947, the E. P. T. Officer by a provisional assessment order, assessed the tax payable at Rs. 6,00,000/-, pending regular assessment. On 10-10-1947, he issued a demand notice for the same. As the assessee defaulted in payment, a requisition was made on 10-3-1948, u/s 46(2), Income Tax Act, which has been made applicable u/s 21, E. P. T. Act. The relevant part of Section 46(2), I. T. Act is as follows:

"46(2). The Income Tax Officer may forward to the Collector a certificate under his signature specifying the amount due from an assessee, and the Collector, on receipt of such certificate, shall proceed to recover from such assessee the amount specified therein as if it were an arrear of land revenue....."

It will be observed that the Section itself does not specify the legislation to which recourse will be had for realising the amount due. In West Bengal, it is the Bengal Public Demands Recovery Act 3 of 1913, in Madras, it is the Madras Revenue Act 2 of 1864, in Bombay, it is the City Revenue Act 2 of 1876. Upon the requisition being made, certificate proceedings were started, being certificate case No. 2053 I. T. of 1947-48. Notice u/s 7, Bengal P. D. R. Act was served upon Nandram Agarwalla as the Karta. He filed objection u/s 9.

4. The final assessment was made on 31-1-1949, u/s 14 of the E. P. T. Act, when the Excess Profits Tax due was assessed at Rs. 9,05,558-11-0, which together with the compulsory deposit of Rs. 1,81,112-0-0, totalled Rs. 10,86,670-11-0. A demand notice having already issued for Rs. 6,00,000-0-0, a second demand notice was issued for the balance of Rs. 486670-11-0, on 2-2-1949. As the assessee defaulted in paying this amount, a further requisition was made u/s 46(2), Income Tax Act and a certificate case was instituted, being Case No. 502 I. T. of 1949-50.

On 17-12-1951, the assessee appealed against the final assessment (Being Appeal No. 5/EPT/CC-IV/ 51-52). On 15-1-1952, the Appellate Assistant Commissioner of Excess Profits Tax, directed that the E. P. T. assessment should be made afresh. The effect of this was to set aside the order of final assessment, dated 31-1-1949.

On 11-9-1952, this rule was issued; and further proceedings were stayed pending the disposal of the rule. The first point made on behalf of the petitioner is that the final assessment order having been set aside, the provisional order has gone with it. According to the petitioner, the whole thing will have to be gone over again, including provisional assessment.

I might mention here that the certificate proceeding is now proceeding only in respect of Rs. 6,00,000/- (the amount, of the provisional assessment). The requisition for. Rs. 4,86,670-11-0, has been withdrawn. It is argued that as soon as the order of

final assessment was passed, the order of provisional assessment merged in it, so that when it was set aside, the order of provisional assessment could not stand independently. I am unable to accept this argument.

The scheme of Section 14A, E. P. T. Act is that it enables a provisional assessment to be made and steps taken for its realisation, without waiting for the final assessment. It is meant to expedite the process of assessment and realisation of tax. u/s 14A(6) & (7), the completion of a "regular assessment", does not get rid of the temporary assessment. If the regular assessment amounts to more, it is to be reduced by the amount of the temporary assessment, which is another way of saying that it is effective only for the excess amount. This shows that the provisional assessment is not "set aside" in that sense, when a final assessment is made, nor is there any question of merger. Undoubtedly, a provisional assessment would be affected by a final assessment in a sense. Where the final assessment is less, the provisional assessment for a higher sum cannot be levied except upto the amount found due by the final assessment. This however does not mean that upon the final assessment being made, the provisional assessment vanishes or is merged into it.

In any event, this is a case where the final assessment is greater than the provisional assessment, so that Section 14A(6) is applicable, and there is no ground for saying that the provisional assessment vanished when the final assessment was made. In such a case, the setting aside of the final assessment, does not affect the provisional assessment or its recovery. It affects only the excess amount found due by the ''final'' or ''regular'' Assessment.

5. The second point taken is a constitutional point. It is argued that Section 46(2), Income Tax Act and the provisions of the Bengal Public Demands Recovery Act 3 of 1913, are void as being discriminatory and as such offending Article 14 of the Constitution (read with Article 13(1)).

6. The argument has been formulated thus : It is said that the Excess Profits Tax Act 15 of 1940 is an All India Act. Therefore, all citizens who are in default, throughout the union, form a class by themselves. Section 46(2), Income Tax Act empowers the realisation of such tax as arrears of land revenue, which attracts the provisions of different local Acts in different States. It is argued that the provisions of these local Acts are strikingly dissimilar and impose greater hardship in one case than another. These differences in the local Acts of three leading States, namely West Bengal, Madras and Bombay, have been collated in annexure ''B'' to the petition. That such differences exist is undeniable. I will notice some of them :

(1) Under the Bengal Act, (Section 16), interest at the rate of 6 per cent. per annum is chargeable upon the public demand to which the certificate relates from the date of the signing of the certificate, upto the date of realization.

Under the Madras Act, the arrears of revenue are recoverable with interest at 6 per cent. per annum upon the arrears.

Under the Bombay Act, the sum certified can be recovered. There is no provision for charging interest.

(2) Under the Bengal Act (as amended), personal execution, by arrest and detention can be resorted to, only if the defaulter has means fed pay and does not pay, or he is guilty of some dishonest transfer, concealment or removal of property or some act of bad faith in relation to his property. In this respect, the law has been brought in line with the provisions of the CPC (Section 51 read with Order 21, Rule 40). The period of imprisonment cannot exceed 6 months.

Under the Madras Act (Section 48), personal execution can only be resorted to if the sale of the property belonging to the defaulter (or that of his surety) is not enough to liquidate the arrears off revenue (together with interest and other charges) and only when the Collector shall have reason to believe that the defaulter (or his surety) was wil-fully withholding the payment, or is guilty of some fraudulent conduct. The period of imprisonment cannot exceed 6 months.

Under the Bombay Act, the Collector must first proceed against the property of the defaulter, and if it was not sufficient, then the defaulter could be arrested and put to prison for a period which will not exceed one day for each rupee that may be due. Thus, for a very large sum (as is the case here) the imprisonment may be for a very considerable period.

(3) Under the Bengal Act, the defaulter may bring a suit in a Civil Court to have the certificate, cancelled or modified, under certain circumstances (Section 34).

Under the Madras Act, no suit lies in a civil court to challenge the rate of land-revenue or as to the amount of assessment fixed (Section 58).

Under the Bombay Act, a suit may be instituted before the Revenue Judge only.

7. It is not denied that these are substantial differences. In other words, the law applicable to all defaulters who are being proceeded against in a particular state is the same, but the law applicable in different States is different, and there is no gainsaying that in particular respects it is harsher in some States than another. The question is, does this constitute such discrimination as brings the impugned legislation under the mischief of Article 14 of the Constitution (read with Art 13(1)).

8. The first thing to observe is that Section 46(2). Income Tax Act does not by itself lay down any provision of law which is discriminatory. It merely says that the certificate may be realised as arrears of land revenue. It is only in the application of it that there can be any question of discriminatory treatment.

The point therefore is as to whether it is lawful to apply these different laws prevailing in different States for the realisation of a certificate in the case of a due arising under an All India Act. From this point of view, the provisions of Section 46(2), Income Tax Act, cannot be assailed. If to-day, an uniform method of

realisation of land revenue is accepted throughout the Indian Union, no point could possibly be raised about discrimination.

Thus again, if it was a case of realising the dues of a State under a State Act, there could be no question raised as to discrimination, since all the citizens of that State are being equally treated. The difficulty only arises in the application of the Bengal Act to a claim under the Central Act. Put succinctly, therefore, the precise question that arises for solution in this case, is as follows: Are certificate proceedings under the Bengal Public Demands Recovery Act 3 of 1913, read with s 46(2), Income Tax Act (the provisions whereof are incorporated in the Excess Profits Tax Act 15 of 1940), void as offending against Article 14 of the Constitution (read with Article 13(1))?

Now, before I deal with this question, it would be well to visualise, what exactly is being done or sought to be done. There is a tax which is due to the centre and the petitioner is a defaulter, The law lays that it can be realised in the summary manner as land revenue can be recovered. Each State has a law for recovery of land revenue, which has been there for some time now and has worked excellently. Although the different States have different laws, there are means of integrating them. The Revenue Recovery Act (1 of 1890) is an All India Act. Under that Act, a Collector has been defined as "The Chief Officer to Charge of the land revenue administration of a district". The Collector of any district, if he finds that there is arrears of land revenue and the defaulter has property in another district (in, any part of the Indian Union), he can send the certificate to the Collector of such a district and the Collector of this other district must proceed to recover the amount as if it were arrears of land revenue accruing in his own district.

The word ''Collector'' has not been defined either in the Income Tax Act or the ''Excess Profits Tax Act, so that the definition in the General Clauses Act (Section 2(11)) is applicable and means in a presidency town the Collector of Madras or Bombay and elsewhere the Chief Officer-in-Charge of the revenue administration of a district.

Thus, there is no difficulty in recovering a claim which arises under a"n All India Statute. It can be sent to any Collector and he proceeds to take certificate proceedings in his own district, or he may send it to a Collector of some other district (even outside the State, and anywhere in India) if the defaulter has property in that area and then the other Collector proceeds to realise it. But in whichever district it is sought to be realised, the local laws as to realisation of land revenue Will be applicable. The classification if any here relates to the local area. All defaulters who are being proceeded against in a particular area are made subject to the same law. All defaulters, for example, in the State of West Bengal are treated alike if the certificate proceedings are taken in that area. Similarly, all defaulters within the State of Madras or Bombay are treated alike if the certificate proceedings are taken in those areas. Is this discrimination?

9. I must commence by quoting the classical passage of Professor Willis on the question of the equal protection of laws, as prevailing in the United States :

"The guarantee of the equal protection of the laws means the protection of equal laws. It forbids class legislation, but does not forbid classification which rests upon reasonable grounds of distinction. It does not prohibit legislation, which is limited either in the objects to which it is directed or by the territory within which it is to operate. ''It merely requires that all persons subjected to such legislation shall be treated alike under like circumstances and conditions both in the privileges conferred and in the liabilities imposed.'' The inhibition of the amendment was designed to prevent any person or class of persons from, being singled out as a special subject for discriminating or hostile legislation.'' It does not take from the States the power to classify either in the adoption of police laws or tax laws, or eminent domain laws but permit them the exercise of a wide scope of discretion and nullifies what they do only when it is without any reasonable basis. Mathematical nicety and perfect equality are not required. Similarly, not identity of treatment is enough. If any state-of facts can be reasonably conceived to sustain a classification, the existence of that state of facts must be assumed. One who assails a classification must carry the burden of showing that, it does not rest upon any reasonable basis" (Constitutional Law, Prof. Willis--Edn. 1 p. 578).

10. FazI All J. in --- ''State of Bombay v. F. N. Balsara'' AIR 1951 SC 318 (A), lays down. the following principles:

(1) The presumption is always in favour of the Constitutionality of an enactment, since it must be assumed that the legislature understands and correctly appreciates the needs of. its own people, that its laws are directed to-problems made manifest by experience and its-determinations are based on adequate grounds.

(2) The presumption may be rebutted in certain cases by showing that on the face of the-Statute there is no classification at all and. no difference peculiar to any individual or class and not applicable to any other individual or class, and yet the law hits only a particular individual or class.

(3) The principle of equality does not mean that every law must have universal application for all persons who are by nature, attainment or circumstances in the same position, and the varying needs of different classes of persons often require separate treatment.

(4) The principle does not take away from the State the power of classifying persons for legitimate purposes.

(5) Every classification is in some degree likely to produce some inequality, and mere production of inequality is not enough.

(6) If a law deals equally with members of a welt defined class, it is not obnoxious and it is not open to the charge of denial of equal protection on the ground that it

has no application to other persons.

(7) While reasonable classification is permissible such classification must be based upon some real and substantial distinction bearing a reasonable and just relation to the object to be attained and the classification cannot be made arbitrarily and without any substantial basis.

11. The object of the impugned legislation is to realise arrears of tax, and to realise it effectively and swiftly. There already exist in the different components of the Union, local laws to realise arrears of land revenue. There is an elaborate machinery and both the law and machinery to enforce it, have been so evolved as to act! most effectively and expeditiously in the area concerned. All have stood the test of time. In realising arrears of taxes (here the excess profits tax), the legislature had two alternatives; either to utilise the existing law and existing machinery in these particular areas, or to evolve a new law and constitute a new and inexperienced (and consequently expensive) parallel machinery to do the same work.

12. It has chosen the former, with the result that the classification falls into areas, and all areas have not the same laws, although within a particular area, the law is the same. This classification into areas is by no means a rare classification and is not necessarily unreasonable. The guarantee of equal protection does not prevent the State from applying different laws or different systems of judicature to different parts or local sub-divisions of the Country--for the clause does not secure to an persons the benefit of the SAME laws and SAME remedies -- ''Bowman v. Lewis'' (1880) 101 US 22 (B). In the '' The State of West Bengal Vs. Anwar Ali Sarkar, (C), Das J. said as follows :

"It is now well established that while Article 14 is designated to prevent a person or class of persons from being signed out from, others similarly situated for the purpose of being specially subjected to discriminating and hostile legislation, it does not insist on "abstract symmetry" in the sense that every piece of legislation must have universal application....This classification may be on different bases. It may be geographical or according to objects or occupations or the like."

13. In -- '' Kathi Raning Rawat Vs. The State of Saurashtra, (D), Patanjali Sastri C. J. said as follows :

"In the present case, however, the State Government referred not certain individual cases but offences of certain kinds committed in certain areas..... .The impugned ordinance having thus been passed to combat the increasing tempo of certain types of regional crime, the two-fold classification on the lines of type and territory adopted in the impugned Ordinance, read with the notification issued thereunder, is, in my view, reasonable and valid and the degree of disparity of treatment involved is in no way in excess of what the situation demanded."

14. Mr. Pal, appearing on behalf of the petitioner, points out that there is a distinction between the Saurashtra case and this, because the default might occur anywhere. The area of which the law is applied is not necessarily the area where the offence (if non-payment of tax can be called that) might have been committed. That is certainly so. But the real point is not that. The real point is whether an ''area'' can be made the subject-matter of a classification, if such regional classification has some nexus with the objects of the legislation.

As I have already pointed out, the object of the impugned legislation is to recover taxes. If the legislature thinks that for the purposes of speedy and more effective realisation, the Union should be divided into areas and the local law as to realisation of land revenue prevalent in each area is to be made applicable--has such a regional classification any reasonable nexus with the object of the legislation? In my opinion, it has. The classification is not arbitrary but is founded on an intelligible differentia and the differentia has a rational relation to the object sought to be achieved by the Act.

15. Mr. Pal has strenuously argued one aspect of the case. He says that it cannot be reasonable that a defaulter who is being proceeded against in Bengal should pay 61/4 per cent. interest and a defaulter who is being proceeded against in Bombay, should pay no interest. This, however, is really begging the question. If the classification into regional areas is a reasonable classification, then it is reasonable to apply the law prevailing in such areas. In Bengal there is the interest to be considered, in Bombay there is the hazard of a longer incarceration in prison. These local legislations have been evolved after long experiments and made to suit local conditions and the psychology of the people residing therein.

It is quite possible that Bengal tax-dodgers being economically at a lower level are afraid of paying more, and pay up quicker when confronted with the possibility of being charged with payment of Interest, whilst in Bombay, the payment of a larger sum by way of interest, holds no terror, so that the more drastic treatment of incarceration, in prison is an unavoidable alternative and yields better results. There might of course be the case of a Bombay man being proceeded against in Bengal. But such cases will be few and far between, and the legislature cannot always pass laws which will deal with every possible contingency. The classification being regional, the defaulter must necessarily be within that regional area or must have property there, otherwise the proceedings cannot be effective. All defaulters within that regional area have equal treatment. Hence there is no discrimination. This point accordingly fails.

16. The third and the last point taken is that the impugned legislation authorises the realisation of a tax which might have arisen outside the State. It is argued that the State Act is being utilised but the State cannot legislate on such a subject, since it falls under heading 43 of the 3rd list (concurrent list) of the seventh schedule, and no assent of the President has been taken. But the error lies is in thinking that the

State Legislature has legislated upon such a subject. The Bengal Act does not apply of its own force, but by reason of the Excess Profits Tax Act and the, Income Tax Act, both of which are Central Acts, and in respect of which, no question arises of assent. There is therefore nothing in this point also. For the reasons given above, this application fails and the rule must be discharged. All interim orders are vacated. There will be no order as to costs.