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(1975) 01 CAL CK 0018

Calcutta High Court

Case No: Appeal No. 137 of 1974

Spences Hotel Pr. Ltd. and Another		APPELLANT
	Vs	
The State of West Bengal and Others		RESPONDENT

Date of Decision: Jan. 2, 1975

Acts Referred:

- General Clauses Act, 1897 - Section 13

Hon'ble Judges: Sankar Prasad Mitra, C.J; S.K. Datta, J

Bench: Division Bench

Advocate: R.C. Deb with J.N. Roy and U. Banerjee, for the Appellant;D. Gupta, Standing Counsel Advocate General with, S. Basu, A Sen Gupta and P. Mallick, for the Respondent

Final Decision: Dismissed

Judgement

1. The appellant no.1 is a Private Limited Company which carries on business of a Hotel and Restaurant in the city of Calcutta. The appellant no.2 is a shareholder of this Private Limited Company.

2. In an application under I 226 of the Constitution the appellants challenged the constitutional validity of certain provisions of West Bengal Entertainments and Luxuries (Hotels and Restaurants) Tax Act, 1972, hereinafter referred to as the "Act".

3. Mr. Justice Masud by a judgment delivered on March 6, 1974 has upheld the validity of the relevant provisions of the Act and has discharged the Rule that the appellants had obtained. The present appeal is directed against the judgment of Mr. Justice Masud.

4. On the 9th November, 1972, the respondents Nos.2 and 3, namely, the Collector of Calcutta and the Assessing Officer wrote to the appellant no.2 as Proprietor/Manager, Spences Hotel I Limited to produce certain records before the

Assessing Officer for inspection in connection with the payment of luxury tax under the Act. On March 13, 1973, a reminder was sent to the Director of the said Hotel. The appellant no.2 is stated to be the President of Hotels and Restaurants Association of the Calcutta Region. In his capacity as the President of the said Association he made a representation in writing denying the liabilities of Hotels and Restaurants registered under the said Association to pay the luxury tax. The Collector of Calcutta, however, asked the appellant no.2 to make ad-hoc payments and also to maintain a register under r.9., framed under the Act.

5. On or about the 15th May, 1973, application under I 226 was filed in this Court and a Rule Nisi was obtained.

6. Mr. R. C. Deb, learned counsel for the appellants has drawn our attention to certain provisions of the Act. Section 2(d) defines ''Luxury''. It means provision for air-conditioning through air-conditioner or central air-conditioning or any other mechanical means provided in any of the rooms, or in any part of a building which constitutes a hotel or a restaurant. Section 2(e) defines a ''Luxury tax''. It means tax levied under s. 4 of the Act. Section 4 is in the following terms:

There shall be charged, levied and paid to the State Government a Luxury tax by the proprietor of any hotel and restaurant in which there is provision for luxury and such tax shall be calculated at the rate of an annual sum of rupees one hundred fifty for every ten square metres or part thereof in respect of so much of the floor area of the hotel or restaurant, as the case may be which is provided with luxury.

7. It is apparent that the legislature was seeking to levy a luxury tax on air-conditioned spaces in hotels and restaurants. The point raised for our consideration is whether the State legislature has the competence to impose such a tax. Reliance is placed on Item 62 in List II in the Seventh Schedule to the Constitution. Entry 62 runs thus :

Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling.

This entry corresponds to entry 50 in List II in the Seventh Schedule t the Government of India Act, 1935.

8. The first argument on behalf of the appellants is that under Entry 62 taxes can be imposed only on ''luxuries'' i.e. objects or articles of luxury. If the impugned Act had sought to impose taxes on air-conditioners as articles of luxury, perhaps the Act could not be challenged on this ground. But the legislature instead of imposing a tax on air-conditioners has sought to levy tax on air-conditioned floor spaces. It is a property tax on the basis of floor area, not a tax on any apparatus, instrument or article of luxury.

9. This attempt at imposition of tax on floor areas without any reference to equipments or objects of luxury is, according to counsel for the appellants, ultra

vires the powers of the State legislature.

10. In support of the proposition aforesaid several cases have been cited before us. In A. S. Bava, Tobacconist, Mattanchery v. State of Kerala (1), the Kerala Luxury Tax on Tobacco (Validation) Act of 1964 was considered by a Division Bench of the Kerala High Court. The decision of the Supreme Court in Western India Theatres v. Cantonment Board (2) was considered by the Kerala High Court. In that case the Supreme Court made the following observation on Entry 50 in List II of the Seventh Schedule to the Government of India Act, 1935.

The entry contemplated luxuries, entertainments, and amusements as objects on which the tax is to be imposed.

The Kerala High Court is of opinion that this entry refers to a tax on goods or properties as objects of luxury. It appears to us that the arguments which were advanced before us on behalf of the respondents in the instant appeal had not been considered by the learned judges of the Kerala High Court. We shall deal with these arguments at the appropriate stage.

11. The same observation will apply to the next case of the appellants, Shri Sheopat Rai & Ors. v. State of Uttar Pradesh & Ors. (3). This is a judgment of the Allahabad High Court which considered certain provisions of the U. P. Excise (Amendment) Ordinance 1972. The Allahabad High Court refers to Entry 62 in List III and states that this entry empowers the State legislature to levy tax on luxuries. The Allahabad High Court proceeds to observe that luxuries obviously mean articles of luxury.

12. There is an earlier decision of the Bombay High Court, in State of Bombay v. RMD Chamarbaugwalia & Ors. (4). The Bombay Lotteries and Prize Competitions Control and Tax Act of 1948 came up for consideration before the Chief Justice Chagla sitting with Mr. Justice Dixit. At Page 11, in paragraph 24, Chief Justice Chagla has observed:

With regard to luxuries it is significant to note that the plural and not the singular is used, and the luxuries in respect of which the tax can be imposed under Entry 62 is a tax on goods or articles which constitute luxuries, and it is again significant to note that the topic of luxuries only is to be found in entry 62 in the taxation power and not in either entry 33 or 34. That clearly shows that, what was contemplated was the tax on certain articles or goods constituting luxuries and not legislation controlling an activity which may not be a necessary activity but may be necessary and in the sense a luxury.

13. The above case was overruled by the Supreme Court vide The State of Bombay Vs. R.M.D. Chamarbaugwala, . But in the Supreme Court judgment nothing has been said as to the view of Chief Justice Chagla on imposition of tax on goods or articles which constitute luxuries.

14. In all the three judgments which learned counsel for the appellants has relied on, the indication is that a luxury tax can be imposed on articles or objects of luxury alone. But these judgments, in our view, should be confined to the facts that arose in each of those cases. In our view, to appreciate the meaning of the word ''luxuries'' in Entry 62, it is necessary to refer to certain provisions of the Constitution itself. Act. 367 (1) of the Constitution prescribes :

Unless the context otherwise requires, the General Clauses Act, 1897, shall, subject to any adaptations and modifications that may be made therein under I 372, apply for the interpretation of this Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India.

15. We have, therefore, to look into the relevant provisions of the General Clauses Act, 1897 to appreciate the meaning of ''luxuries'' in Entry 62 of list II, unless the context otherwise requires. Now, it is well known that s. 13 of the General Clauses Act lays down that in all central Acts and Regulations unless there is anything repugnant in the subject or context the words in the singular shall include the plural and vice versa. If we apply these provisions of the General Clauses Act to Entry 62 in List II in the Seventh Schedule to the Constitution the word ''luxuries'' would include ''luxury'' as well. To be more precise, both ''luxuries'' and ''luxury'' can be taxed under this entry. We have found nothing repugnant either in the subject or in the context to hold otherwise.

16. In those premises, we are of opinion that ''luxuries'' in Entry 62 of List II should not be confined to articles or objects of luxury alone. In view of the social and economic structure of our country there can be no doubt that an air-conditioned space whether in a hotel or in a restaurant is a luxury by itself. People enter into these spaces for enjoyment of a luxury. In fact, the ambit of Entry 62 which includes taxes on entertainments, amusements, betting and gambling, shows that a tax levied under Entry 62 cannot be restricted to certain articles only but may also be extended to things incorporeal. The comfort that a person derives in a hot summer day in an air-conditioned space is a luxury particularly in the context of the conditions in which the masses live in India today. In our opinion, the State legislature is competent to impose a tax on this luxury.

17. Assuming, however, that ''luxuries'' refer to articles or objects of luxury, the impugned legislation can be supported by other provisions of the Constitution. I 246(3) prescribes : "Subject to clauses (1) and (2) the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the ''State List''.)

18. Clauses (1) and (2) of I 246 deal with the subject-matter of laws made by Parliament. We find, therefore, that the State Legislature has the power under cl. (3) of I 246 to make laws "with respect to" any of the matters enumerated in list II; in

our case with respect to ''luxuries". The expression "with respect to" is of wide amplitude. A legislation with respect to air-conditioners or air-conditioning plants or equipments would also come within the powers of the State Legislature. It would be a legislation with respect to the mode of using the plant or the mode of deriving benefit from the plant.

19. In view of what we have discussed above, our answer to the first contention of the appellant is that ''luxuries'' in Entry 62 include the singular of that word, namely, luxury and air-conditioned space is a luxury in India and this luxury can be taxed under the Entry 62 of List II in the Seventh Schedule to the Constitution. Assuming that "luxuries" in Entry 62 are to be confined to objects or articles of luxury the impugned legislation is a legislation with respect to air-conditioners within the meaning of cl. (3) of I 246 of the Constitution. On the first ground of the appellant, therefore, as stated above, the Act cannot, in our opinion, be challenged.

20. We now proceed to discuss the second contention of the appellant. It is stated that s. 4 of the Act imposes a flat rate of Rs.150/- per annum on a specified air-conditioned floor space in hotels and restaurants. These hotels and restaurants may be differently situated with reference to their localities, clientale, services and amenities rendered. The Act makes no distinctions. It does not even attempt a reasonable classification of these different types of categories of hotels and restaurants. The Act, therefore, suffers from the vice of discrimination under I 14 of the Constitution.

21. Learned counsel for both the parties have referred to numerous decisions of the Supreme Court which explained the scope and ambit of I 14 of the Constitution. But the fundamental principles that apply to the construction of I 14 are now well settled and we consider it unnecessary to deal with the cases to which our attention was drawn. We shall, however, discuss the latest judgment of the Supreme Court on the subject, but before we do that let us restate the principles relating to I 14 which are relevant for the purpose of disposing of the present appeal. These principles are as follows:

(1) I 14 forbids class legislation but does not forbid classification; (vide 1959 SCR 296).

(2) Permissible classification must satisfy two conditions, namely, (1) it must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; and (ii) the differentia must have a rational relation to the object sought to be achieved by the statute in question; (vide Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others,).

(3) In permissible classification mathematical nicety and perfect equality are not required. Similarly, not identity of treatment, is enough; (vide The State of Bombay and Another Vs. F.N. Balsara,).

(4) The classification may be founded on different basis, namely, geographical or according to objects or occupations or the like; (Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others,).

(5) There is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles; (vide Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others,).

22. The five propositions aforesaid have now been established beyond doubt; and we have to apply these propositions to the facts and circumstances of the present appeal. In every case the court has to find out whether there is a classification founded on an intelligible differentia; and secondly, whether that differentia has a rational relation to the object sought to be achieved by the statute. In our case, a classification has been made between air-conditioned spaces in hotels and restaurants and non-air-conditioned spaces in hotels and restaurants. To our mind, this is an intelligible differentia and this differentia has a rational relation to the object sought to be achieved by the Act which is "to provide for the imposition of tax on entertainments and luxuries in hotels and restaurants". There may be hotels and restaurants situated at different localities in the city of Calcutta or even in the districts of West Bengal charging different rates from their customers. But the tax sought to be imposed is on the luxury of an air-conditioned space available in a hotel and restaurant. The enjoyment of a person in an air-conditioned space in a hotel in central Calcutta could not be remarkably different from the enjoyment in an air-conditioned space in a hotel in south Calcutta or in the Park Street or Chowringhee areas. There may not have been mathematical nicety or perfect equality in this legislation but it cannot be denied that it is a legislation based on similarity, and does not offend against the provisions of I 14 of the Constitution. It is a tax on the extent and volume of air-conditioning in a hotel or restaurant wherever it may be situated. The ultimate burden of this tax will go to the person who enjoys the luxury of air-conditioning as the tax imposed is bound to be taken into consideration in calculating the cost of air-conditioning.

23. We have already stated that the Supreme Court decisions to which references have been made need not be discussed by us in details. We shall, however, notice the latest judgment of the Supreme Court on I 14 reported in Murthy Match Works and Others Vs. The Asstt. Collector of Central Excise, and Another, . In paragraph 21 of this judgment the observation of Shah J. in the earlier judgment in The State of Kerala Vs. Haji K. Haji K. Kutty Naha and Others etc., has once again been quoted. These observations run thus : "Where objects, persons or transactions essentially dissimilar are treated by the imposition of a uniform tax discrimination may result, for, in our view, refusal to make a rational classification may itself in some cases operate as denial of equality." It is true that when a uniform tax is imposed on grossly or essentially dissimilar objects, the Legislature would be violating I 14. But

in our case that problem does not arise. Air-conditioned floor space in a Five-Star Hotel in Calcutta would not be grossly or essentially dissimilar to an air-conditioned floor space in central or north Calcutta or elsewhere inasmuch as the comfort that is enjoyed by a boarder or user of air-conditioned space would more or less be the same everywhere. From this point of view we do not think that the impugned legislation can be struck down on the ground of discrimination under I 14.

24. The result, therefore, is that this appeal is dismissed. There will be no order as to costs. The Registrar, Original Side, will pay to the State Government, the respondent No.1 herein all moneys lying in deposit with him under orders of this court dated April 30, 1974. The State Government of this Court dated April 30, 1974. The State Government, however, would be liable to refund all the said sums together with interest at 6% per annum in the Court and succeeding in the appeal without recourse to any other proceeding or suit in this behalf. The said refund would be made by an order passed in these proceedings, if necessary. Subject to the above order all other interim orders passed by us are vacated.

S.K. Datta, J.

25. I agree.