Arjunsingh Vs. Teekchand and ors.

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Court : Rajasthan

Decided On : Oct-20-1955

Reported in : AIR1957Raj226

Judge : Wanchoo, C.J. and; Dave, J.

Acts : Bikaner Municipal Act, 1953 -Sections 15; Rajasthan Municipal Boards Extension of Terms Act, 1952 - Sections 2; Rajasthan Town Municipalities Act, 1951 - Sections 2, 47, 59, 60 and 61; Constitution of India - Articles 277, 301, 304 and 372(1)

Appeal No. : Civil Writ No. 5 of 1955

Appellant : Arjunsingh

Respondent : Teekchand and ors.

Advocate for Def. : L.N. Chhangani, Govt. Adv.

Advocate for Pet/Ap. : Murlimanohar, Adv.

Disposition : Application partly allowed

Judgement :

Wanchoo, C.J.

1. This is an application under Article 226 of the Constitution of India by Arjun Singh for the issue of a writ of Quo Warranto and Mandamus or any other suitable writ or order against the respondents, asking them not to collect any tax from the applicant.

2. The main, respondent in the case is the Municipal Board of Karanpur (hereinafter called the Board) through its Secretary, and the State has also been made a party along with the Chairman and members of the Board. The main relief claimed by the applicant is that the Board should be asked not to collect any tax from the petitioner. The grounds on which this relief is claimed may be narrated seriatim:

(1) The term of office of the chairman and the members of the Board expired on the 27-9-1954, if not earlier, and as such, the chairman and the members cannot legally function, and were not authorised to collect taxes, or to appoint persons for that purpose, and the persons so appointed were not authorised to demand and collect taxes.

(2) The Board did not follow the procedure prescribed under the Rajasthan Town Municipalities Act (No. XXIII) of 1951 (hereinafter called the Act). and did not publish the proposed rules, bye-laws and rates, as required by Section 60, and never invited objections from the public as required by Section 61 of the Act.

(3) The Board did not publish the rules, and rates as required by Section 62 of the Act after their sanction by the Government.

(4) The rules, bye-laws and rates, and the copies of the Act have not been printed, published and made available to the public in Hindi as required by Section 47 of the Act.

(5) No octroi limits and stations have been fixed, and no bye-laws framed for fixing them, or for other matters mentioned in Section 46(1)(k) of the Act, and the procedure prescribed under Section 46 (2) has not been followed.

(6) The taxes are heavy and unreasonable, and are an undue restraint on trade and commerce, and thus invalid under Article 301 of the Constitution.

(7) The, Board has no authority to charge export duty on the goods on which it is chargeable.

3. The application has been opposed on behalf of the Board, and it has traversed all the points of law and fact raised on behalf of the applicant. We shall deal with these points now one by one.

4. (1) So far as the constitution of the Board is concerned, it appears that the members of the Board were elected sometimes in January 1951, and the notification under Section 23 of the Bikaner Municipal Act (No. VI) of 1923, which was then in force, was made on 17-3-1951, and the first meeting of the Board Was held on 4-4-1951, in which the President and the Vice President were elected.

The contention of the applicant, therefore, is that at the latest the Board can be said to have come into existence from 4-4-1951, and its life came to an end after three years, i.e., .on 3-4-1954. It appears that the Board, however, continued to function even afterwards and on 25-11-1954, the term was extended under Section 15 of the Act up to 31-3-1955, or till the new Board took over, whichever was earlier. This notification, however, was obviously after the term. of the Board had expired, and Section 15 of the Act does not contemplate a notification extending the term of the Board after it has expired.

Extension under Section 15 of the Act, in our opinion has to be before the term of the Board expires. While, however, arguments were proceeding in this Court, the Government came out with another notification, dated 13-9-1955. This notification was under Section 2 of the Rajasthan Municipal Boards Extension of Terms Act (No. XXV) of 1952. By this notification the term, of the Board was extended retrospectively up to 31-12-1955, by which date the new elections were expected to be completed. When therefore the arguments proceeded further, the Board and its Chairman depended upon this notification for the continuance of the Board from 31-1-1954, which was assumed in this notification to be the date on which the terms of the members of the Board expired. Section 2 of this Act (No. XXV) gives power to the Government to extend the terms of the members of the Board retrospectively or prospectively from time to time for purposes of that Act.

The purposes of this Act are to be found in the preamble which says that there was likely to be delay in the final preparation of electoral rolls for purposes of elections to the various Municipal' Boards in Rajasthan constituted or deemed to be constituted under the Rajasthan Town Municipalities Act of 1951, and the terms of some of these Boards had already expired or were likely to expire before the electoral rolls were ready. Therefore power was conferred on the Government to extend the terms of the Municipal Boards retrospectively also.

5. It is urged on behalf of the applicant that this law merely contemplated extension of the terms of the members of such. Boards whose terms had already expired in order to enable the Government to prepare the electoral rolls for purposes of new elections, and it did not authorise the Government to extend the terms of the members of such Municipal Boards in which the terms were not to expire for more than a year after the Act of 1952 was passed.

The preamble, however does not show that the power to extend the terms of the members retrospectively was to be exercised only in those applied to other cases also where the terms were the law was passed in November 1952. It clearly appplied to other cases also where the terms were likely to expire before the electoral rolls were finally ready. We cannot, therefore, accept the contention of learned counsel for the applicant that the Government had no authority to extend the terms of the members of municipal boards like this Board because there was more than a year between the passing of that Act, and the expiry of the term of this Board.

The notification of 13-9-1955, clearly shows that the elections for a new Board of Karanpur were on the way, and that is why the extension was made retrospectively under the 1952 Act. It has not been shown to us that the term of the Board in this case had not expired before the electoral rolls were ready. The Act of 1952 would apply to such Boards whose terms had expired before this Act was passed, or whose terms were likely to expire before the electoral rolls were finally ready.

Unless therefore the applicant could show us that the electoral rolls were finally ready before the term of this Board expired, extension by the Government under

Section 2 would be for purposes of the Act. The applicant has not shown that the electoral rolls were ready before the term of the Board expired either in January, 1954, or in April, 1954, and in these circumstances we are of opinion that the Government had authority to extend the term retrospectively under Section 2.

6. The next point, that is urged in this connection, is that even if the terms of the members were extended, this extension did not mean that everything that was done during the period between the date of the retrospective extension and the date of the expiry of the term of the members of the Board would be valid. We are of opinion that there is no force in this contention. The whole object of giving retrospective extension to the terms of municipal Boards is to validate everything done during that period.

If this effect was not to follow, the extension under S, 2 of 1952 Act would have no meaning. We are therefore of opinion that the Government having extended the term of the Board retrospectively on 13-9-1955, the Chairman and members of the Board, are functioning with proper authority, and then acts after 31-1-1954, are all regularised and validated by this notification. The first ground therefore, on which the applicant challenges the validity of the tax imposed by the Board, fails.

7. The second point, that js raised, is that the Board did not follow the procedure prescribed by Section 60 in as much as it did not publish the rules etc., and never invited objections under Section 61 of the Act. We may say at once that Section 61 of the Act has nothing to do with inviting objections. It is Section 60 which deals with the entire procedure including the inviting of objections and consideration of them, Section 60 (b) requires the Board to publish the rules with a notice in the form prescribed in the third schedule. Such notice states the desire of the Board to impose taxes, and invites any inhabitant of the municipality objecting to the proposed tax to send his objections in writing within one month. Along with the notice, the rules etc. are appended.

The Board in its reply says that the notice under Section 60 was issued in the form required by the third schedule to the Act on 15-2-1952, and it was posted on the notice board outside the municipal office, and objections were actually made by various persons. It has been urged that this notice was not sufficient. We are of

opinion that this argument also has no force. The notice, which was published on 15-2-1952, said that the rules had been pasted on the notice board of the Board and whoever wanted to object could do so within a month. This was, in our opinion, sufficient notice within the meaning of Section 60 of the Act.

It does appear from the other papers filed by the Board that objections were made by many merchants of Karanpur against the rates on the ground that they were excessive and would damage trade. Further, there is nothing to show that these objections were not considered by the Board as required by Section 60. We are therefore of opinion that there is no force in the contention that the rules were not framed after giving due notice as required by Section 60 of the Act, and after inviting objections and considering them.

8. The third point, that has been urged isthat the Board did not publish the rules and therates as required by Section 62 after the Governmentsanction had been received. The Board's replyto this is that this was done. This notification was issued on 14-9-1954, and laid down that thetaxes would be leviable from 15-10-1954. Thereis, therefore, no force in this contention either.

9. The fourth point that is urged is that the rules etc. and the copies of the Act were not printed, published and made available to the public as required by Section 47 of the Act. Section 47 lays down that the rules and bye-laws for the time being in force shall be kept open for public inspection by the municipal office at all reasonable times, and printed copies thereof and of this Act in Hindi shall be kept on sale at cost price.

So far as the first part of this section is con- cerned it is not the applicant's case that the rules and bye-laws were not available for inspection, All that he says is that he applied for a copy which was refused. It was. in our opinion, improper on the part of the Board to refuse to give copies of the rules and bye-laws of the Board, but this irregularity on the part of the Board would not, in our opinion make the taxes illegal or make the collection of taxes invalid.

So far as the provision of printed copies is concerned, it seems that the Board has not made such provision so far. This failure also, in our opinion, would not make

the taxes invalid. The provisions of Section 47 are, in our opinion, directory, and they should as far as possible be complied with. But if for any reason, they are not complied With, that would not make the rules and bye-laws and taxes invalid and unenforceable. There is.no force in this point either, and we reject it.

10. The fifth point that is urged is that no octroi limits had been fixed as required by Section 46(1) (k) of the Act. and the provisions of Section 46(2) relating to the making of bye-laws were not followed. So far as the fixing of octroi limits is concerned, the Board's reply is that the octroi limits were fixed under the bye-laws, and these limits are the same as the municipal limits of Karanpur municipality. It further appears from the notification of 14-9-1954, that the ways for entry into the Municipality were also fixed by that notification. There is therefore no force in the conten-tion that the octroi limits were not fixed.

11. As for the objection that Section 46(2) of the Act was not followed, the Board's reply is that that procedure was followed, and a notice was issued in that connection on 15-2-1952, and the bye-laws were appended on the notice board outside the municipality, and objections were invited. We are satisfied that the provisions of Section 46(2) were followed, and there is no force in this contention either.

12. The sixth point is that the taxes imposed were heavy and unreasonable, and were an undue restraint on trade and commerce and were thus opposed to Article 301 of the Constitution. Article 301 merely lays down that trade, commerce and intercourse throughout the territory of India shall be free subject to the other provisoins of Part XIII. The authority to impose octroi is given to the State Legislature under Article 304(b), and the Rajasthan Town Municipalities Act has been passed with the assent of the President of India. There is no provision in Part XIII of the Constitution enabling the courts to adjudicate on whether the taxes imposed are heavy and therefore unreasonable. Under these circumstances, it is not open to the courts to sit in judgment over the Taxing Authorities, and consider whether particular taxes imposed under a law passed under Article 304 are heavy, and therefore unreasonable and therefore undue restraint on trade and commerce. There is no force therefore in this contention either.

13. The last point that was urged on behalf of the applicant is about what are called export taxes. It appears that besides octroi, which was imposed by the Board from the 15-10-1954, the Board was also levying certain other taxes which had been in existence from a long time before, and which are in the nature of export taxes from the municipal limits of Karanpur. These taxes were imposed by virtue of a notification published on 29-7-1933 in the Bikaner Rajpatra. By this notification the Municipal Board of Karanpur was authorised to impose certain taxes on the export by railway of certain articles from Karanpur. These taxes are still in force, and the contention of the applicant is that these taxes being in the nature of export taxes can no longer be levied by the Board.

The reply on behalf of the Board is that these are not new taxes levied after the coming into force of the Constitution, but are being levied according to the notification of 1933, and that the law as well as the Constitution saves the imposition of these taxes, even though it may not be open to the State to pass any law now for imposition of export taxes of this nature. Reliance in this connection is placed on certain provisions of the Constitution.

14. The first Article, on which reliance is placed, is Article 372(1) which lays down that all the law in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent legislature or other competent authority. This provision is subject to the other provisions of the Constitution, This means that if the law for any reason is invalid by reason of inconsistency with any provision of the Constitution or by reason of its being against the provisions of Part III of the Constitution, it will naturally fail.

The next Article, on which reliance is placed, is Article 277 which lays down that any taxes, duties, cesses or fees, which immediately before the commencement of the Constitution were being lawfully levied by the Government of any State or by any Municipality or other local authority or body for purposes of the State, municipality, district or other lcoal area, may notwithstanding that those taxes, duties, cesses or fees are mentioned in the Union List continue to be levied and to be applied to the same purposes until provision to the. contrary is made by

Parliament by law.

15. The argument on behalf of the Board is built up in this way. Under the Bikaner Municipal Act (No. VI) of 1923, the Municipality could impose any tax with the previous sanction of His Highness' Government. The notification of the 29th of July, 1933, gave the sanction of His Highness' Government to impose export tax on articles mentioned in that notification when exported by railway. This tax was continuing till the Rajasthan Town Municipalities Act came into force in 1951. Under Section 2(b) of the Act, all taxes imposed were, so far as may be, deemed to have been imposed under the Act.

It is urged therefore that the export tax imposed by the notification of the 29th of July, 1933, must be deemed to be a tax imposed under the Act. As such it would be saved under Article 277 of the Constitution even if no new tax of this nature can be imposed after coming into force of the Constitution. This argument is, in our opinion, incorrect, and does not take into account the fact at the Constitution had come into force before the Rajasthan Town Municipalities Act of 1951 was passed. After the coming into force of the Constitution, the legislature of Rajasthan could not impose a tax which was not covered by Lists n and III of the Constitution.

If there was any tax, which was not covered by lists II and III of the Constitution, it could only be imposed by the Union Government under item 97 of List I which provides that any other matter not enumerated in Lists II and III including any tax not mentioned in either of those lists would be within the exclusive purview of the Union Legislature. Learned counsel for the Board admits that a tax like the one imposed by the notification of the 29th of July, 1933, is not included anywhere in Lists II and III. If such a tax therefore is to be imposed after 26-1-50, it can only be imposed under item 97 of List I by the Union Legislature.

Therefore when Section 2(b) of the Act lays downj that all taxes imposed shall be deemed so far as may be, to have been imposed under this Act, it can only refer to such taxes which can be imposed by the State Legislature under its powers in List II and List in. It is true that in Section 59 of the Act there is provision for imposing any other tax to the nature and object of which the approval of the Government shall have been obtained prior to the selection contemplated in Clause (a) of

Section 60. But this residuary clause cannot, in our opinion, authorise the imposition of a tax which it was not within the power of the State Legislature to impose at all under Lists II and III.

An export tax like the one imposed in 1933 cannot admittedly be imposed under List II and III, and can only be imposed under item 97 of List I. Therefore when under Section 2(b) the Rajasthan legis-laure was continuing taxes which were in existence in the municipalities before the Act was passed it could only continue those taxes which it had the power to impose. If -it had no power to impose a tax like the export tax in dispute it could not, by using the words "shall, so far as may be.....be deemed ..... to have been imposed., under this Act' mean to continue a tax under the Act, which it could not impose at all.

Therefore, this tax, which was imposed by the notification of the 29th of July, 1933, cannot be deemed to have been continued by Section 2(b) of the Act which repealed the Bikaner Municipal Act. It, therefore, follows that even if this export tax could continue under Article 277 so long as the Bikaner Act was in force by virtue of Article 372, it must be deemed to have come to an end when the Act was passed in 1951. On the passing of the Act in 1951, such a tax. not being within the power of the Rajasthan Legislature to impose, could not be and was not continued under Section 2(b) of the Act.

In this connection, we emphasise the words 'so far as may be' in Section 2(b) which make it clear that only those taxes were to continue which could be deemed to have been imposed under the Act. Export taxes could not be deemed to have been imposed under the Act even under Section 59(b)(xiii), because the Rajasthan Legislature had no power under Lists II and III to impose such tax. The result therefore is that export taxes imposed by the notification dated the 29th of July, 1933, must be deemed to have come to an end when the Bikaner Municipal Act was repealed by the Act as soon as it came into force after its enactment in 1951.

16. Our attention in this connection was drawn to Rang Raj v. Gram Panchayat, Khinwel, 1954 Raj LW 430 (A), to which one of us was a party. In that case the adoption tax imposed by a Panchayat was held valid. It is urged that if the

adoption tax was held valid by this Court in that case, there is no reason why the export tax of this case should not be valid. It is enough however to point out to the following observations in that case at p., 435:

'We may point out, however, that such of these taxes imposed under the Marwar Act, which are no longer Included in Section 64 of the Rajasthan Panchayat Act (No. XXI) of 1953, cannot be imposed after the first of January. 1954, from which date the Rajasthan Act came into force, and the Marwar Act stood repealed.'

The matter was not argued on these lines at length in that case, and that is why no reasons in detail were given for these observations. It is enough to say that in view of these observations, the adoption tax imposed by the Panchayat in that case would no longer be valid, and could not be levied after the 1st of January, 1954, for no adoption tax could be levied by the Rajasthan Legislature under Lists II and III. .

The Rajasthan Legislature could only levy a fee under item 47 read with item 5 of List III in connection with adoptions and an adoption tax as distinguished from a fee could not be levied by the Rajasthan State after the coming into force of the Constitution, and could not, therefore, be continued to be levied under the saving provisions of Section 93(1) of the Rajasthan Panchayat Act (No. XXI) of 1953. The decision in that case, therefore, does not, in our opinion, come to the help of the Board.

In the Rajasthan Panchayat Act (No. XXI) of 1953 also there is a residuary clause in Section 64(1)(j) for imposition of any other tax with the previous sanction of the State Government; but that residuary clause would not include an adoption tax, because an adoption tax, as distinguished from a fee on adoptions, could not be levied by any State Legislature under Lists II and III. It is true that the word 'imposed' has been used in that case, but the intention was that if the tax could not be imposed under the Rajasthan Panchayat Act (No. XXI) of 1953, it could not be levied and collected either after the coming into force of that Act.

17. The application is allowed to this extentonly that export taxes levied by the Municipalityof Karanpur by virtue of notification dated the 29thof July. 1933, or any

other notification, shall nolonger be levied and collected. The rest of theapplication is dismissed. Considering that the Statepassed a retrospective order while the case wasbeing heard in this Court, we pass no order as tocosts.