M.P. Indra and Co. and anr. Vs. Union of India (Uoi) and anr.

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Court : Rajasthan

Decided On : Sep-14-1964

Reported in : AIR1965Raj104

Judge : D.S. Dave, C.J. and; Kan Singh, J.

Acts : Constitution of India - Articles 20(1) and 226; Income Tax Act, 1961 - Sections 28, 246, 256, 271, 274 and 297(2); Income Tax Act, 1922 - Sections 22(2)

Appeal No. : Civil Misc. Writ Petn. No. 439 of 1963

Appellant : M.P. Indra and Co. and anr.

Respondent : Union of India (Uoi) and anr.

Advocate for Def. : Chandmal Lodha, Adv.

Advocate for Pet/Ap. : M.L. Joshi, Adv.

Disposition : Petition dismissed

Judgement :

Kan Singh, J.

1. This is a writ petition under Article 226 of the Constitution by which the validity of a notice, issued by the Income-tax Officer A Ward, Jodhpur, on 19-4-1963 under Section 274 read with Section 271 of the Income-lax Act, 1961, to the petitioners-assessees is challenged.

2. Petitioner No. 1--Messrs. Indra and Company is a registered firm which has Jivanlal and Murlidhar as its partners. Petitioner No. 2 is Jiwanlal in his individual capacity. The petitioners are assessees in 'A' ward of the Income-tax Department, Jodhpur and their accounting year commences on 'Deepawli' every year. Before the commencement of the Income-tax Act, 1961, they were served with a notice under Section 22(2) of the Income-tax Act, hereinafter to be referred as the 'Old Act', on 30-5-1961 for the assessment year 1961-62. The petitioners, however, did not file the returns in compliance with the notice till the Income-tax Act, 1961 came into force on 1-4-1962. The 1961 Act will hereinafter be referred as the 'New Act'. Eventually they filed their returns on 28-12-1982. The Income-tax Officer, 'A' ward, completed the assessment on 19-4-1963 in accordance with the provisions of the New Act, but while doing so, he issued a notice to the petitioners under Section 274 read with Section 271 of the New Act, to show cause why penalty be not imposed on them for their failure to submit the returns in time in pursuance of the notice, dated 30-5-1981,

issued under the Old Act. On receipt of the notice the petitioners made a representation to the Income-tax Officer wherein they pointed out their difficulties in submission of their returns in due time, and also raised a legal objection that it was not competent to the Income-tax Officer to invoice the provisions of the New Act for initiating any action for the imposition of the penalty under the New Act. But, as this representation was not accepted, they have filed the present writ petition.

3. It is urged by the petitioners that, as no notice under Section 139(2) of the New Act was issued, the provisions of Section 271(1) of the New Act could not be resorted to. If at all the Income-tax Officer wanted to initiate any action by way of penalty, he could do so only under the provisions of the Old Act. Then the vires of the provisions of Section 297 (2)(g) of the New Act are attacked on the ground that the penalty provisions contained therein have been made applicable to defaults, if any, committed under the Old Act and as more onerous penalty can be inflicted under the provisions of the New Act, the same will result in infringement of the fundamental right granted under Article 20(1) of the Constitution of India. Provisions of Section 297(2)(g) of the New Act are further challenged on the ground that they result in discriminate treatment at the hands of the Income-tax Officer to the various assessees who may be similarly circumstanced. It is argued that the Income-tax Officer might delay the assessment in the case of one assessee and it may be finalised after the coming into force of New Act, whereas the return filed by other assessees similarly situated might have been finalised before the operation of the New Act at the sweet will of the Income-tax Officer. While the assessees whose assessments have been finalised before the coming into force of the New Act, will not be liable to the penalties prescribed by the New Act, the asscssees whose assessments could not be finalised simply on account of the inaction of the Income-tax Officer would be subjected to more onerous penalties under the New Act. It is, therefore, argued that this discrimination being without any reasonable basis is vlolative of Article 14 of the Constitution.

4. The writ petition has been opposed on behalf of the respondents.

5. Having heard the learned counsel on both sides, we do not feel satisfied that any case for interference in exercise of our extraordinary powers under Article 226 of the Constitution has been made out by the petitioners. Any order of penalty that may be passed under the New Act will be appealable under Section 246 thereof and it will be open to the petitioners to ventilate their grievances, if any, by an appeal to appropriate authority. Eventually the case can be brought before this Court on a reference under Section 256 of the New Act. The exceptional circumstances under which the High Court may be persuaded to interfere even at the inception of the proceedings pursuant to the notice dated 19-4-1963 have not been made out in the present case. We are not satisfied that the provisions of Section 297(2)(g) of the New Act either violate the provisions of Article 14, or those of Article 20(1) of the Constitution.

6. While under Section 28 of the Old Act, a sum not exceeding one and half times the amount of tax due could be imposed by way of penalty on account of the default in the filing of return of total income, under the provisions of Section 271 of the New Act, the maximum penalty that could be imposed will be only upto 50% of the tax due. It is not disputed by Mr. Joshi appearing for the petitioners that the maximum limit of penalty under the New Act is lower than that provided under the Old Act but he contends that inasmuch as a minimum penalty at the rate of 2% of the tax for every

month of the default is prescribed under the New Act that increases the over-all burden by way of penalty in cases of default. The relevant provisions of Section 271 of the New Act are reproduced below:

Section 271--'Failure to furnish returns, comply with notices, concealment of income, etc.-

(1) If the Income-tax Officer or the appellate Assistant Commissioner in the course of any proceedings under this Act, is satisfied that any person (a) has without reasonable cause failed to furnish the return of total income which he was required to furnish under Sub-section (1) of Section 139 or by notice given under Sub-section (2) of Section 139 or Section 148 or has without reasonable cause failed to furnish within the time allowed and in the manner required by Sub-section (1) of Section 139 or by such notice, as the case may be or

(b) XXX

(c) X X X

he may direct that such person shall pay by way of penalty,--

(i) in the cases referred to in Clause (a) in addition to the amount of the tax, if any, payable byhim, a sum equal to two per cent of the tax forevery month during which the default continued,but not exceeding in the aggregate fifty per centof the tax;

(ii) and (iii) X X'.

7. We may also reproduce the relevant provisions of Section 28 of the Old Act for facility of comparison:

Section 28--'Penalty for concealment of Income or improper distribution of profits.--(1) If the Income-tax Officer, the Appellate Assistant Commissioner (or the Appellate Tribunal), in the course of any proceedings under this Act, is satisfied that any person-

(a) has without reasonable cause failed to furnish the return of his total income which he was required to furnish by notice given under Sub-section (1) or Sub-section (2) of Section 22 or Section 34 or has without reasonable cause failed to furnish it within the time allowed and In the manner required by such notlce; or

(b) has without reasonable cause failed to comply with a notice under Sub-section (4) of Section 22 or Sub-section (2) of Section 23; or

(c) has concealed the particulars of his income or deliberately furnished inaccurate particulars of such income,

(he or it may direct) that such person shall pay by way of penalty, in the case referred to in Clause (a), in addition to the amount of the income-tax and super-tax, if any, payable by him, a sum not exceeding one and a half times that amount, and in the cases referred to in Clauses (b) and (c), in addition to any tax payable by him, a sum not exceeding one and a half times the amount of the income-tax and super-tax, if any, which have been avoided if the income as returned by such person had been accepted

as the correct income:'

In the first place, having considered the import of the above provisions, we are not satisfied that the over-all burden of penalty is increased retrospectively in respect of defaults committed prior to the commencement of the New Act so as to infringe Article 20(1) of the Constitution. In this we have to look to the maxima prescribed in this behalf by the two Acts and also to examine the above penalty provision in its proper perspective.

8. The maximum limit of penalty is obviously not enhanced by the New Act and then it is discretionary under the provisions of the New Act also that the Income-tax Officer may choose not to inflict any penalty in the circumstances of a case. However, if he chooses to do so, then a yard stick for the determination of the penalty based on each month of the default is prescribed. This rather results in rationalising the exercise of discretion by the Income-tax Officer by providing a criterion when there was no such corresponding criterion prescribed under the Old Act. Under the Old Act the Income-tax Officer was free to determine any penalty within the maximum limit prescribed. In the circumstances we, by no means, reel satisfied that Article 20(1) of the Constitution has, in any manner, been infringed.

9. Then, in the second place, on a plain reading of Article 20(1) of the Constitution, the provisions of the New Act as such, to our mind, cannot be held to be bad. If at all it is the infliction of the penalty if it is found to be greater than the one prescribed under the Old Act that may be held to be bad. Article 20(1) of the Constitution runs as under:

Article 20(1)--'No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.'

What this Article hits at is the infliction of a penalty greater than the one that could be inflicted at the time act was done. However, the procedure prescribed under the New Act cannot on this account be held to be bad. It will be open to the petitioners to urge before the Taxation Authorities at to what extent a penalty could, if at all, be legally imposed on them. We cannot postulate, in the circumstances, that the provisions of Section 297(2)(g) of the New Act are invalid on the grounds urged before us.

10. Then we may turn next to the attack on the score of the alleged violation of Article 14 of the Constitution in so enacting Section 297(2)(g) as to make a distinction between assessments completed before the coming into force of the New Act and those completed after the coming into force of New Act. In construing the validity of a statute impugned under Article 14 of the Constitution Courts have to bear in mind the well established principle that the legislature can make class legislation, provided the classification on which it purports to be based is rational and has a reasonable nexus with the object intended to be achieved by it, and so, on the failure of the party to show tbat the said classification is irrational, or bas no nexus with the object intended to be achieved by the impugned Act, the initial presumption of constitutionality would help the State to urge that the failure of the party challenging the validity to rebut the initial presumption goes against his claim that the Act is invalid. In all cases where the material adduced before the Court in matters relating to Article 14 is

unsatisfactory, the Court may have to allow the State to lean on the doctrine of initial presumption of constitutionality, vide Ratnaprova Devi v. State of Orissa, AIR 1964 SC 1195. In this behalf we have referred only to the latest decision of the Supreme Court and not to the long string of earlier cases as the principles about the application of Article 14 of the Constitution are at this date well settled. In the present case no material has been placed before us to show that this provision has been abused or is capable of being abused in any manner by the Taxation Authorities. We are also not satisfied that the legislature has not made a valid classification in drawing a line between assessments which had been completed before the coming into force of the New Act, and those which were completed thereafter. It is to be borne in mind that penalties prescribed under the Income-tax Act for failure to submit returns of income In time are not in the nature of punishment imposed for conviction of an offence. Such penalties are more or less compensatory in character to make good the loss that may be caused to the State revenues on account of late submission of returns of income and in consequence late realisation of the tax. Therefore, the provisions relating to imposition of penalties can be said to form integral parts of the proceedings relating to assessment. It was, therefore, open to the leglilature to make a distinction regarding assessments which were completed before the coming into force of the New Act and those which are to be completed after the coming into force of the New Act. Thus we are not satisfied that the distinction made by the legislature is not a valid one.

11. Lastly, we may deal with the question whether the notice issued under Section 22(2) of the Old Act on 30-6-1961 can be deemed to be a notice under Section 271 of the New Act, We may, in this connection, invite attention to the provisions of Section 297(2)(k), which are as under:

Section 297(k)- 'Any agreement entered into, appointments made, approval given, recognition granted, direction, instruction, notification, order or rule issued under any provision of the repealed Act shall, so far as it is not inconsistent with the corresponding provision of this Act, be deemed to have been entered into, made, granted, given or issued under the corresponding provision aforesaid and shall continue in force accordingly.''

To our mind, this saving provision applies to the case and the legislature could not in all probability have intended that the notices already issued under the provisions of Section 22(2) of the Old Act should be taken to be wiped out with the coming into force of the New Act. We may, in tbis connection, refer to a recent decision of the Supreme Court in State of Orissa v. M. A. Tulloch and Co., AIR 1964 SC 1284. In that case certain fees were realisable under the Orissa Act No. 27 of 1952 and which had accrued prior to 1-6-1958. Thereafter by Central Act No. 67 of 1957 the Orissa Act No. 27 of 1952 was held to have been repealed by implication. It was observed by their Lordships that an enactment which puts an end to an earlier law is presumed to intend the continuance of rights accrued and liabilities incurred under the superseded enactment unless there were sufficient indications express or implied in the later enactment designed to completely obliterate the earlier state of the law, and accordingly it was heid by their Lordships that the notices issued under the earlier Orissa Act No. 27 of 1952 were valid and the amounts due thereunder could be recovered notwithstanding the disappearance of the Orissa Act by virtue of the superior legislation of Act No. 67 of 1957 by the Union Parliament.

12. Mr. Joshi argues that what are saved by Section 297(2)(k) are only the statutory

notifications, orders, rules or notices and not any notice issued by Income-tax Officers under the provisions of Section 22(1) of the Old Act. We, however, are not satisfied that the ambit of Section 297(2) (k) is so narrow. It takes in its sweep agreements, appointments, approval given, recognition granted, directions and instructions, besides the notifications, orders or rules issued under any provisions of the Old Act. This provision will, therefore, cover administrative orders and notices and to our mind the words 'order or rule issued under any provision' will cover a notice issued under Section 22(2) of the Old Act. Thus, we are satisfied that the notice issued under the provisions of the Old Act can legitimately he considered as good as a notice issued under the New Act for purposes of invoking Sections 271 and 274 of the New Act.

13. In view of all the facts and circumstancesof the case, therefore, we are not persuaded tohold that we should interfere with the proceedingsat this stage. Consequently, we hereby dismissthe writ petition, but we pass no order as to costs.