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RAM BACHAN LAL

v.

THE STATE OF BIHAR

February 28, 1967

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[K. SUBBA RAO, C.J., J. C. SHAH, S. M. SIKRI, V. RAMASWAMI
AND C. A. VAIDIALINGAM, JJ.]

Bihar and Orissa Municipal Act (B. & O. Act 7 of 1922), Ss. 82(1)(ff), 150A-E, 388 and 389—Profession tax—If infringes fundamental rights—Constitution of India, Arts. 14, 19 & 31.

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The respondent—Notified Area Committee—imposed profession tax under the Bihar and Orissa Municipal Act, 1922 and issued demand notices to the petitioner. The petitioner filed a petition under Art. 32 of the Constitution challenging the provisions of Act as infringing Arts. 14, 19 and 31 of the Constitution on the grounds that (i) Ss. 388 and 389 of the Act gave arbitrary power to the Government to constitute either a municipality under s. 4 of the Act or a notified area committee under s. 388; (ii) the rate of tax to be levied had been left to the discretion of the Commissioner and the Government without giving any guidance as to the amount of tax; (iii) proviso (iv) to s. 82(1) was void as it did not give any indication as to the circumstances under which the Government should direct the Commissioners to levy tax under s. 82(1)(ff); (iv) the Act did not lay down proper procedure for the assessment and determination of the tax; and (v) no appeals or references were provided in the Act and the only remedy of an assessee who was aggrieved by the assessment, was to file a review under s. 150E.

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Held: The petition must be dismissed.

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(i) Sections 4 and 388 of the Act give sufficient guidance to the Government. Section 4(i) contemplates a town containing not less than five thousand inhabitants and a town of a particular density of population, and further that three-fourths of the adult male population should be engaged in pursuits other than agriculture. These requirements show that the area has reached such a stage of development that the Government should constitute a municipality in the area. Section 388 would come into picture only if the requirements of s. 4 are not satisfied but yet the Government considers it necessary to make administrative provisions for all or any of the purposes of this Act. [7 C-D]

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(ii) Schedule IV specified the maximum amount of tax that can be levied and s. 150 D lays down the purposes for which the tax can be utilised. This gives sufficient guidance to the Commissioners or the State Government to fix the rate of tax. [7 G]

The Corporation of Calcutta v. Liberty Cinema [1965] 2 S.C.R. 477. relied upon.

(iii) The Government will only direct the Commissioner to levy the tax if the Commissioners do not carry out their duty properly. [8 C-D]

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(iv) Explanation (i) to S. 150-A of the Act clearly provides that if a person is assessable to income tax under the Indian Income Tax Act, 1922 his taxable income would be determined according to the provisions of the Income Tax Act, and if he is not assessable, his taxable income

would be computed as far as may be in accordance with the procedure laid down in the said Act. **A**

(v) In the circumstances, S. 150-E gives a reasonable remedy to an aggrieved party. Section 150-E(2) directs that the application has to be heard and determined in accordance with the procedure laid down in Ss. 115, 117, 118 and 119. The subject-matter of Profession Tax is not very complicated and the procedure provided for the assessment and review is reasonable. [8 E-F] **B**

Rohtas Industries Ltd., Dalmianagar v. State of Bihar [1965] Bihar L.J.R. 886, referred to.

ORIGINAL JURISDICTION : Writ Petition No. 194 of 1966.

Petition under Art. 32 of the Constitution of India for the enforcement of fundamental rights. **C**

B. Sen and K. K. Sinha, for the petitioner.

B. P. Jha, for the respondents.

The Judgment of the Court was delivered by

Sikri, J. In this petition under art. 32 of the Constitution a notice of demand issued by the Dehri-Dalmianagar Notified Area Committee demanding Rs. 100/- on account of Profession Tax levied under the Bihar and Orissa Municipal Act, 1922 (B. & O. Act VII of 1922)—hereinafter referred to as the Act—for the period 1963-64 to 1965-66 from the petitioner, Shri Ram Bachan Lal, Land Officer, who is in the employment of Rohtas Industries Ltd., Dalmianagar, is sought to be quashed on the ground that the provisions of the Act under which it has been issued infringe the fundamental rights of the petitioner under arts. 14, 19 and 31 of the Constitution. **D**

The Dehri-Dalmianagar Notified Area Committee was constituted by notification dated May 23, 1942, issued in exercise of the powers conferred by sub-s. (1) of s. 388 of the Act. Section 388 reads as follows : **E**

“388. Constitution of notified area—

(1) The State Government may by notification declare that it is necessary to make administrative provision for all or any of the purposes of this Act in any area specified in the notification, other than a municipality or a cantonment. **F**

(2) An area in respect of which such a notification has issued is hereinafter called a notified area.” **G**

Section 389 enables the State Government to impose taxation in, apply enactments to and constitute committee in the Notified area. This section reads thus : **H**

A "389. Power to impose taxation in, apply enactments to and constitute committees in, notified area.—

The State Government may by notification :—

B (a) apply or adapt to a notified area or to any part of a notified area any provision of this Act which may be applied to a municipality, or any rule or by-law in force or which can be made in any municipality under this or any other Act;

C (b) impose in a notified area or in any part of a notified area any tax which could be imposed by the Commissioners if the notified area were a municipality; and

(c) appoint or make rules for appointment or election of a committee to carry out the purpose of this Act in the notified area."

D In exercise of the powers under s. 389 by notification dated May 23, 1941, the Governor of Bihar applied to the notified area the following provisions of the Act :

"Chapter I Section 3.

Chapter II Sections 21-27, 29-48, 51-52 clauses (b), (c) and (d).

E Chapter III Sections 58-78 and 81.

Chapter IV Sections 82(1)(b), (c), (f), (i), (j) and Sections 82(2), 84, 86-88, 98-150, 154-163.

The whole of Chapters V, VI, VII, VIII and X.

Chapter XI section 340, 341 and 342-343.

F The whole of Chapters XII and XIII."

The Act was amended by the Bihar Municipal (Amendment) Act, 1953 (Bihar Act XXXII of 1953). It inserted cl. (ff) in sub-s. (1) of s. 82, which reads as follows :

"82. Power to impose taxes.—

G (1) The Commissioners may, from time to time, at a meeting convened expressly for the purpose, of which due notice shall have been given, subject to the provisions of this Act and with the sanction of the State Government, impose within the limits of the municipality the following taxes and fees, or any of them :—

H (ff) a tax on the trades, professions, callings and employments specified in the Fourth Schedule at such

rates not exceeding the rates specified therein as may from time to time be determined by the Commissioners at a meeting;

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Provided that the rates determined by the Commissioners at a meeting shall be subject to the approval of the State Government and subject to such modification in the rates of taxes and exemption of classes of profession, trades and callings to be taxed as the State Government may direct."

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Proviso (iv) was added to sub-s. (1) of s. 82 of the Act by Bihar Act III of 1959, and reads as follows :

"Provided that the Commissioners—

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(iv) shall, if so directed by the State Government by notification, impose within limits of a municipality the taxes mentioned in clauses (c), (b), (f) or (ff) at such rates, subject to the maxima specified in sections 84 and 85 and the First and the Fourth Schedules, and from such dates, notwithstanding anything contained in this Act, as may be specified in the notification."

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The Bihar Municipal (Amendment) Act, 1953, also inserted Chapter IV-A, which deals with the tax on profession, trades, callings and employments. Chapter IV-A consists of s. 150A to s. 150E. Section 150A provides that the person liable to pay such a tax shall take out a half-yearly licence and pay the tax assessed on him in pursuance of clause (ff) of sub-section (1) of section 82, provided that such tax shall be imposed on the income accrued within the municipality during the year next preceding the year for which the tax is imposed. The second proviso exempts persons whose taxable income does not exceed Rs. 1,500 per annum or the value of whose place of business does not exceed Rs. 10 per mensem or whose income from employment does not exceed Rs. 2,400 per annum. The explanations to s. 150A may be set out :

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"Explanation (1)—The taxable income of any person liable to pay the tax under this section shall be deemed to be the amount computed in accordance with the provisions of the Indian Income Tax Act, 1922, and where any such person is not subject to assessment of income-tax under the said Act, his taxable income shall be the amount which shall be computed, so far as may be, in accordance with the procedure laid down in the said Act.

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Explanation (2).—The onus of providing the amounts of the taxable income computed under the said

A Act shall lie on the person liable to pay the tax under this section."

Section 150B enables the Commissioners to call for information. Section 150C renders statements and returns furnished under s. 150B confidential. Section 150D, which deals with the application of money received from tax on professions, trades, callings and employments, reads thus :

B "150D. All moneys collected by the Commissioners, on account of a tax on professions, trades, callings and employments imposed under clause (ff) of sub-section (1) of section 82, shall—

C (1) in any municipality in which there is a provision for the supply of piped water, in accordance with a scheme for water-supply sanctioned under section 292, be applied notwithstanding anything contained in this Act and after deduction of such proportionate share of the cost of collection and supervision as the Commissioner at a meeting may fix, in whole or in part and subject to such conditions and exceptions, if any, as the State Government may direct, in defraying the expenses on account of extending or maintaining the water supply and in repaying or paying interest on debts incurred in connection with the scheme of the said water-supply and where only a part of the proceeds of the tax is so applied, the balance shall form part of the municipal fund;

D (2) in any other municipality in which there is no such provision for the supply of piped water form part of the municipal fund."

Section 150E provides for review in the following terms :

E "150E. Application for review.—(1) Any person who is dissatisfied with the assessment of the total income or taxable income or the determination of the amount of tax payable by him or who disputes his liability to be assessed may apply to the Commissioner to review the assessment of his total income or taxable income or the amount of tax assessed upon him or to exempt him from the liability to be assessed.

G (2) Every application presented under sub-section (1) shall, as nearly as may be, be heard and determined in accordance with the procedure laid down in sections 115, 117, 118 and 119, as if such applications were applications presented under section 116."

H On March 1, 1957, the Governor of Bihar applied the provisions of cl. (ff) of sub-s. (1) of s. 82, and sections 150A to

150E, of the Act to the Dehri-Dalmianagar Notified area. It appears that the petitioner was not aware that these provisions had been applied to the Dehri-Dalmianagar Notified area. On March 4, 1957, the Governor of Bihar sanctioned the imposition by the Dehri-Dalmianagar Notified area Committee of the tax on trades, professions, callings and employments. The notification provided that the tax shall be levied at the maximum rates specified in the Fourth Schedule of the Act. On March 23, 1959, the Governor of Bihar, in exercise of the powers conferred by proviso (iv) to sub-s. (1) of s. 82 directed the Commissioners of the Municipalities as well as the Notified Areas Committees specified in the Schedule, which included Dehri-Dalmianagar Notified Area Committee, to levy tax mentioned in cl. (ff) of sub-s. (1) of s. 82 at the maximum rates specified in the Fourth Schedule to the said Act with effect from April 1, 1959. Thereupon the Dehri-Dalmianagar Notified Area Committee imposed the profession tax and sent separate demand notices to the petitioner for the years 1963-64, 1964-65 and 1965-66, and later sent the impugned demand notice covering all these three years.

Number of points had been raised in the petition but Mr. B. Sen, the learned counsel who appeared for the petitioner, has raised only two points before us. He urged (1) that ss. 388 and 389 of the Act violate art. 14 of the Constitution, and (2) that s. 82(1)(ff), ss. 150A to 150E, and the Fourth Schedule offend arts. 14, 19(g) and 31 of the Constitution.

Regarding the first point, the ground of attack was that ss. 388 and 389 give arbitrary power to the Government either to constitute a municipality under s. 4 of the Act or to constitute a notified area committee under s. 388. It would be noticed that the Notified Area Committee was constituted as long ago as 1942. Without deciding the point, we assume that Mr. B. Sen is entitled to challenge the validity of ss. 388 and 389. It seems to us that there is no substance in this point. Section 4(1)(a) and (b) provide as under :

“4. Declaration of intention to constitute or alter limits of municipality.—

(1) (a) When the State Government is satisfied that three-fourths of the adult male population of any town are engaged on pursuits other than agriculture and that such town contains not less than five thousand inhabitants, and an average number of not less than one thousand inhabitants to the square mile of the area of such town, the State Government may declare its intention to constitute such town, together with or exclusive of any railway station, village, land or

A building in the vicinity of such town, municipality, and to extend to it all or any of the provisions of this Act.

(b) When the State Government is satisfied that any municipality, or any area in a municipality, does not fulfil the conditions specified in clause (a), or when the Commissioners at a meeting have made a recommendation in this behalf, the State Government may declare its intention to withdraw such municipality from the operation of this Act, or to exclude such area from such municipality.”

C It would be noticed that s. 4(1) contemplates a town containing not less than five thousand inhabitants and a town of a particular density of population, and further that three-fourths of the adult male population should be engaged in pursuits other than agriculture. Now, these requirements show that the area has reached such a stage of development that the government should constitute a municipality in the area. Section 388 would come into the picture only if the requirements of s. 4 are not satisfied but yet **D** the Government considers it necessary to make administrative provisions for all or any of the purposes of this Act. In our opinion, this gives sufficient guidance to the Government and thus no arbitrary power has been conferred on the Government.

E Coming to the second point, s. 82 is challenged on various grounds. First, it is said that the proviso to s. 82(1)(ff) enables the Government to exempt any classes of profession, trades or callings from the tax, without giving any guidance as to which classes should be exempted. We do not find it necessary to deal with this academic point because, first, the Government has not exercised this power and, secondly, even if we were to hold this proviso to be violative of art. 14, it would be severable and would **F** not give any relief to the petitioner. The second ground of attack is that the rate of tax to be levied has been left to the discretion of the Commissioners under s. 82(1)(ff) and of the Government under proviso (iv) to s. 82(1) without giving any guidance as to the amount of tax. We see no force in this contention. Schedule IV specifies the maximum amount of tax that can be levied and s. 150D lays down the purposes for which **G** the tax can be utilised. This, in our view, gives sufficient guidance to the Commissioners or the State Government to fix the rate of tax. In *The Corporation of Calcutta v. Liberty Cinema*⁽¹⁾ this Court, by majority, upheld the validity of s. 548 of the Calcutta Municipal Act. Speaking for the majority, Sarkar J., as he then was, observed :

H “It seems to us that there are various decisions of this Court which support the proposition that for a

(1) [1965] 2 S. C. R. 477.

statutory provision for raising revenue for the purposes of the delegate, as the section now under consideration is, the needs of the taxing body for carrying out its functions under the statute for which alone the taxing power was conferred on it, may afford sufficient guidance to make the power to fix the rate of tax valid.”

In view of these observations it is clear that s. 150D gives sufficient guidance to the Commissioners and the State Government to fix the rate of taxation.

Mr. Sen then urged that proviso (iv) to s. 82(1) is void because it does not give any indication as to the circumstances under which the Government should direct the Commissioners to levy the tax under s. 82(1)(ff). It seems to us that the Government will only direct the Commissioners to levy the tax if the Commissioners do not carry out their duty properly. Chapter XIII of the Act, which has been applied to the Notified Areas, confers powers of control on the State Government over the Notified Areas and the Government would only act under proviso (iv) to s. 82(1) if it is necessary in view of the circumstances of the case.

Mr. B. Sen then argued that the Act does not lay down proper procedure for the assessment and the determination of the tax. We see no force in this contention. We have already set out the explanations to s. 150A. Explanation (1) clearly provides that if a person is assessable to income tax under the Indian Income-tax Act, 1922, his taxable income would be determined according to the provisions of the Indian Income-tax Act, and if he is not assessable, his taxable income would be computed as far as may be in accordance with the procedure laid down in the said Act.

Some complaint was made about Explanation (2) that unnecessary burden was being placed on the person liable to tax, but we are unable to appreciate this point. The assessee has only to produce the order from the assessing authorities to establish the amount of his taxable income.

The last complaint was that no appeals or references are provided in the Act and the only remedy of an assessee who was aggrieved by the assessment is to file a review under s. 150F. In the circumstances we consider that s. 150E gives a reasonable remedy to an aggrieved person. Sub-section (2) of s. 150E directs that the application has to be heard and determined in accordance with the procedure laid down in ss. 115, 117, 118, and 119. These sections have been applied to the Notified Area Committees. Under s. 117 a review would be heard by a Committee consisting of not less than three Commissioners and the Committee is further entitled to take evidence and to make such enquiries as

A it deems necessary. The subject-matter of Profession Tax is not very complicated and, in our view, the procedure provided for the assessment and review is reasonable.

B We may mention that similar points were raised before the Patna High Court and the High Court rejected them in *Rohtas Industries Ltd. Dalmianagar v. State of Bihar*⁽¹⁾.

In the result the petition fails and is dismissed with costs.

Y.P.

Petition dismissed.

(1) [1965] Bihar L.J.R. 886.
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