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July, 17

RAJAH S. V. JAGANNATH RAO

v.

COMMISSIONER OF INCOME-TAX, HYDERABAD

(S. K. DAS, M. HIDAYATULLAH and J. C. SHAH, JJ.)

Income Tax—Levy of tax on Jagirs—Jagirdar in erstwhile Hyderabad State—Validity of enactment—Retrospective effect—Claim for deduction of expenses of maintenance of elephants and bodyguards—Hyderabad Income-tax Act, 1357 Fasli; s. 14(5)(a).

The appellant who was a Jagirdar in the former Hyderabad State was assessed to income-tax and super-tax for the assessment years, 1357 Fasli and 1358 Fasli, corresponding to the years, 1948-49 and 1949-50, under the provisions of the Hyderabad Income-tax Act, 1357 Fasli, which was passed by the Hyderabad Legislative Assembly and came into force on Azur 1,1357 Fasli. The appellant challenged the validity of the assessment on the grounds (1) that under the Hyderabad Legislative Assembly *Ain* the Assembly was prohibited from introducing bills which dealt with laws affecting the relations between the holders of Jagirs on the one hand and the Nizam on the other, that the provisions of the Act in so far as they seemed to levy a tax on Jagirs amounted to an enroachment upon the relations between the Jagirdars and the Nizam, and that the bill introduced in contravention of the *Ain* was, void *ab initio*, even though it had been assented to by the Nizam, (2)that the Act could not affect, in any case, the income for the account year 1356 Fasli, corresponding to the assessment year 1357 Fasli, because the Act came into force only from Aur 1,1357 Fasli, and (3) that the Income-tax Officer erred in disallowing the claim for deduction of the amount spent on account of maintenance of elephants, stables, drummers, bodyguards, etc., in connection with management of the Jagir Estate, and in treating the amount as personal expenditure.

Held, (1) that the Hyderabad Income-tax Act, 1357 Fasli, did not affect the relations between the holders of Jagirs and the Nizam, and that even if it could be said to affect indirectly these relations, the Aet having been passed with the assent of the Nizam, was valid, and the question whether it could be introduced in the Legislative Assembly did not arise as it must be regarded as a law emanating from the Nizam, the supreme legislator in the State, whose laws promulgated in any manner were binding upon the subject.

Ameer-un-Nissa Begam v. *Mahboob Begum*, A. I. R. 1955 S. C. 352, *Director of Endowments, Government of Hyderabad* v. *Akram Ali*, A. I. R. 1956 S. C. 60 and *Madhaorao* v. *State of Madhya Bharat*, *(1961)* 1 S. C.R. 957, applied.

(2) that the income for the 1356 Fasli was rightly assessed under the provisions of the Act for the assessment year 1357 Fasli.

Union of India v. *Madan Gopal Kabra*, (1954) S. C. R. 541 and *Rajputana Mining Agencies Ltd.* v. *The Union of India*, (1961) 1 S. C. R. 453, followed.

(3) that the maintenance of elephants, stables, drummers, and bodyguards by the Jagirdar was not entirely for his personal or private ends but must be considered part and parcel of the administration of the estate, and the expenditure for such maintenance must be regarded as one incurred in connection with land and its administration within the meaning of s. 14(5)(a) of the Act. It was accordingly deductible for purposes of income-tax.

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 1661—68 of 1959.

Appeals by special leave from the judgment and decree dated April 15, 1955, of the former Hyderabad (now Andhra Pradesh) High Court in Reference Nos. 198 and 199 of 1953 and 19 of 1954.

A. V. Viswanatha Sastri and *K. R. Choudhri*, for the appellant.

K. N. Rajagopal Sastri and *D. Gupta*, for the respondent.

1961. July 17. The Judgment of the Court was delivered by

HIDAYATULLAH, J.—The appellant, Rajah S. V. Jagannath Rao, was the Jagirdar of Jatprole Samasthan in the former Hyderabad State. In the year 1357 Fasli, the Income-tax Act (1357 Fasli) was passed by the Legislature, to come into force on Azur 1, 1357 Fasli. The present appeals, with special leave, concern the assessment of the appellant's income to income-tax and super-tax under the Act of 1357 Fasli for the assessment years, 1357 Fasli and 1358 Fasli, corresponding to

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the years, 1948-49 and 1949-50. They are directed against a common judgment of the High Court of Hyderabad, by which certain questions of law referred by the Income-tax Appellate Tribunal, Bombay, in the assessment of the present appellant and some others, were answered by the High Court of Hyderabad against the present appellant.

The appellant had submitted returns of his income for the two accounting years under protest. According to him, the Income-tax Act, 1357 Fasli was *ultra vires* the by legislature. For the account year 1356 Fasli, corresponding to the assessment year, 1357 Fasli, the appellant had urged that the Act could not affect the income of that year, because it came into force only from Azur 1, 1357 Fasli. The appellant also claimed to deduct certain expenses (details of which will be given later) under ss. 14(5)(a) and (b) of the Act. These were the three matters on which the Income-tax Appellate Tribunal framed the following three questions for the decision of the High Court :

> "1. Whether the Hyderabad Income-tax Act is *ultra vires* in so far as it seems to levy a tax on Jagirs and Samasthans ?
>
> 2. Whether the provision relating to the taxation of income of 1356-F in the Hyderabad Income-tax Act is *intra vires* ?
>
> 3. Whether the sum of Rs. 14,390 and Rs. 38, 079 or a part thereof, could be allowed as revenue deduction under section 14(5)(a) or 14(5)(b) of the Hyderabad Income-tax Act ?"

As stated already, all the three questions were answered by the High Court against the appellant. He obtained special leave from this Court on three separate petitions for special leave, on December 17, 1956, and April 9, 1957, and filed the present appeals.

The second question mentioned above is covered by the decisions of this Court in *Union of India* v. *Madan Gopal Kabra* (1) and *Rajputana Mining Agencies Ltd.* v. *The Union of India and another* (2) and was, therefore, rightly answered against the appellant. Mr. A. V. Viswanatha Sastri, counsel for the appellant, conceded frankly that he had nothing to urge against the decision of the High Court on that question. We shall, therefore, confine ourselves to the two remaining questions in these appeals. It may be mentioned that the first question also arises in Civil Appeal No. 17 of 1961, and what we say here will govern the disposal *pro tanto* of that appeal also.

The contention of the appellant on the validity of the Act is this : The Act was passed by the Hyderabad Legislative Assembly and was assented to by His Exalted Highness, the Nizam. Under the Hyderabad Legislative Assembly *Ain,* there was a prohibition on the introduction of certain kinds of bills in the Assembly. The appellant relies upon sub-ss. (8) and (9) of s. 18 of the *Ain,* which in their English translation read as follows :

> "18. There shall not be introduced into, or moved in the Assembly, any bill, or motion, or resolution, or question, or other proceedings relating to or affecting the following matter :—
>
> (8) The relation of His Exalted Highness with the holders of Samasthans and Jagirdars and with such other grantees as derive grants from sanads.
>
> (9) The powers of His Exalted Highness over the present or future grants, whether they be in the form of land or cash."

(1) (1954) S.C.R. 541.
(2) (1961) 1 S.C.R. 453.

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These two sub-sections deal with laws affecting the relations between the holders of Samasthans and Jagirs on the one hand, and His Exalted Highness the Nizam, on the other. The Act in question imposes a tax and does not seek to affect the relations aforesaid. It is a little difficult to read into the Income-tax Act any encroachment upon the relations between the holders of Samasthans and Jagirs and the Nizam. Even if the Income-tax Act can be said to affect indirectly those relations, it is manifest that it was passed with the assent of the Ruler, which admittedly was given.

There have been a number of rulings of this Court on the powers of Rulers of Indian States to promulgate laws in their States in the exercise of their sovereignty and on the nature of their sovereignty. Two such cases of this Court considered the legislative powers of His Exalted Highness the Nizam, and in those cases, it was held that the legislative power of the Nizam was not subject to any limitations or control of any kind whatever. The first of these cases, *Ameer-un-Nissa Begum* v. *Mahboob Begum* (1) dealt with a *Firman* issued by His Exalted Highness the Nizam, and in dealing with his powers, in general and his legislative powers, in particular, it was observed by this Court as follows :

> "It cannot be disputed that prior to the integration of Hyderabad State with the Indian Union and the coming into force of the Indian Constitution, the Nizam of Hyderabad enjoyed uncontrolled sovereign powers. He was the supreme legislature, the supreme judiciary and the supreme head of the executive, and there were no constitutional limitations upon his authority to act in any of these capacities. The 'Firmans' were expressions of the sovereign will of the Nizam and they were binding in the same way as

(1) A.I.R. 1955 S.C. 352.

> any other law;—nay, they would override all other laws which were in conflict with them. So long as a particular 'Firman' held the field, that alone would govern or regulate the rights of the parties concerned, though it could be annulled or modified by a later 'Firman' at any time that the Nizam willed."

The same veiw was reaffirmed in the second case reported in *Director of Endowments, Government of Hyderabad* v. *Akram Ali* (1).

It is contended that a limitation on the powers of the Legislative Assembly in Hyderabad State was created by the *Ain*, which was, in essence the supreme law, and any bill introduced in contravention of the *Ain* was void *ab initio*. According to the learned counsel for the appellant, a law which was void at its inception remained so, even if subsequently assented to by the Nizam. If one were to think in terms of a legislature of limited jurisdiction, this might be true. Laws are really commands embodying rules of conduct emanating from one whose will is sovereign, or, in other words, supreme. Legislative Sovereignty must be found to uphold the laws. It depends upon the Constitution of a particular State, where it resides. It may not reside in a Ruler but in a legislature, where the Ruler has surrendered or been made to surrender his powers, as, for example, the King in Parliament in England, or it may reside in an absolute and sovereign Ruler, who has not parted with it, the legislature being merely his amanuensis. In the latter case, the will of the Ruler expressed as a rule of conduct is the law, whether made by him directly or through his legislature. The *Ain* itself derived its authority from the Nizam only, and the Nizam, as the supreme legislator, could frame a law in derogation of the *Ain*, which was his own creation. The *Ain* was

(1) A. I. R. 1956 S. C. 60.

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not a supreme law such as a Constitution, the limits imposed by which could not be exceeded even by the Nizam. The *Ain* prohibited the introduction of laws of a particular kind in the Assembly, and the Nizam could reject them as being in contravention of the *Ain* even if passed by the Assembly. The position, however, was not the same when a law which the Nizam could refuse to accept was accepted by him. As a supreme legislator, the Nizam could have written out the entire Income-tax Act in his own hand-writing and signed it; and it would have been as valid and binding as the *Ain* itself. It made no difference if the law was passed by a body of men and was sent to the Nizam for his assent, because on his assent, the law was as effective as if made by the Nizam himself. The Nizam could withhold his assent to a law contrary to the *Ain* if he chose; but once he assented to it, the law derived its vitality, not from the act of the Legislative Assembly but from the act of the Nizam. It could not be questioned any more than a Firman issued by the Nizam. The Income-tax Act must, therefore, be regarded as binding upon those affected by its terms, and the question whether it could be introduced in the Legislative Assembly hardly arises. It must be regarded as a law emanating from His Exalted Highness the Nizam, the supreme legislator in the State, whose laws promulgated in any manner were binding upon the subject. See *Madhaorao* v. *State of Madhya Bharat* (1).

The first question was thus answered correctly by the High Court.

It remains to consider the third question. In the assessment year 1357 Fasli, a sum of Rs. 14,390 was claimed as expenses under s. 14 (5) (a) or s.14(5)(b) of the Hyderabad Income-tax Act. A sum of Rs. 38,079 was similarly claimed for the assessment year 1358 Fasli. The sum of Rs.14,390 has been

(1) (1961) I S.C.R. 957.

shown in the assessment year as spent on account of "domestic servants, drummers and other paraphernalia", which the Income-tax Officer treated as personal expenditure. The sum of Rs. 38,079 for the following year consisted of these items :

(a) Stables and elephants	Rs. 16,907
(b) Festivals and Jatras	Rs. 789
(c) Charity and subscriptions	Rs. 11,233
(d) Body guards	Rs. 9,150
	Rs. 38,079

The Income-tax Appellate Tribunal allowed these expenses as being admissible under cls. (a) and (b) of s. 14(5). No reasons were given by the Tribunal for coming to this conclusion. The High Court answered the question against the assessee without advertence to the two clauses. The reason given by the High Court was as follows :

> "The jagirdar, however anxious he be to maintain his dignity, cannot claim deductions of money so spent professedly unless there be orders in exercise of prerogative powers of the grantor authorising such expenditures. For example, he may be authorised by the Sanad creating his tenure to maintain elephants or bodyguards. These expenditures would then though personal, be necessary and legal, because of the constitutional position of the grantor when the tenure was created and continued. But the statement of the case should show the legal basis upon which deductions are allowed. If the assessee was entitled to maintain elephants, stables, paraphernalia etc., under the grants, he should have filed them before the Income-tax authorities. Evidently this has not been done; at any rate there is no mention of the fact in the statement of the case. In the result, the answer to the question is in the negative."

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The relevant provisions of the law may now be read. Section 14 (5) as translated by Messrs Ramchandra Rao Kurtadikar and B. V. Subbarayudu reads as follows :

> "In respect of income from land-revenue paid to the Jagirdar by the holder of any non-Khalsa land in lieu of the use or possession thereof and in respect of any income derived by giving over Abkari trees for extracting sendhi or toddy and from 'Baithak' which under proviso 2 and Explanation respectively of clause (4) of section 2, is deemed to be non-agricultural income, such income, profits and gains shall be computed after making the following allowances :
>
> (a) All such expenses not being his private or personal expenses which the assessee may incur in relation to such land or the inhabitants thereof towards management or superintendence or on works of public welfare.
>
> (b) Such necessary expenditure as the assessee may incur under any law.
>
> (c) Five per cent of the income chargeable to tax towards necessary expenses."

The Tribunal, however, pointed out that the English text published by Government Press, Hyderabad, was slightly different. It reads as follows :

> "14 (5) The income from land revenue paid to jagirdar by the occupier of non-Khalsa land for its use or possession, the income that arises from renting of trees for extraction of sendhi or toddy, the income from Abkari rentals and the income which under the provisions of Section 2 (4) is deemed to be 'non-agricultural' income, all such incomes, profits

and gains shall be computed after making the following allowances, namely :

(a) all such expenditure, not being in the nature of capital, private or personal expenditure, incurred by the assessee in connection with land or its inhabitants for administration or on works of general improvement and benefit ;

(b) any compulsory expenditure incurred by such assessee under any law in force ; and

(c) in respect of compulsory expenditure five per cent of the income subjected to tax."

A literal translation of cl. (a) made by us reads as follows :

"All such expenditure which the assessee makes in connection with such land or its inhabitants on administration or works of public welfare, which expenses do not include his private or personal expenses."

This shows that the official translation is accurate, and we shall refer to it only.

The question thus is whether the expenditure in respect of which deduction is claimed can be described to be private or personal expenditure of the assessee, or in connection with land and its administration. The High Court apparently thought that unless it was incumbent upon the jagirdar by reason of his Sanad to maintain body-guards, elephants, etc., the expenses could not but be regarded as private or personal. In our opinion the High Court put the burden of proof somewhat strictly upon the assessee. The Tribunal, though it gave no reasons, held that the expenses were incurred in relation to the management. The conclusion is based on some evidence. The maintenance

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of elephants, stables, bodyguards, etc., is not entirely for the Jagirdar's personal or private ends, and cannot be said to be wholly unrelated to the management of the Estate. Such equipage is considered part and parcel of the administration of an estate, such as jagir. Elephants, drummers and bodyguards are used on occasions for administrative purposes, and even if these might be few and far between, the expenditure must be regarded as one incurred in connection with land and its administration. The expenses over drummers (but not over domestic servants) in the first year, and over stables, elephants and bodyguards (but not over festivals and jatras or on charities and subscriptions) in the second year, were deductible. These expenses fall within cl. (a) of s. 14 (5) as expenditure in connection with land or its administration, and they amounted to Rs. 26,057 in the year 1358 Fasli. For the year 1357 Fasli, the amount debitable to these items from Rs. 14,390 will have to be determined. The evidence before us is not sufficient to state the exact amount.

We set aside the answer of the High Court, and answer the third question in the affirmative, to the extent indicated here.

In view of the partial success in these appeals, the parties shall bear their own costs in this Court.

Appeals allowed in part.