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S. K. DUTTA, INCOME-TAX OFFICER & ORS.

v.

LAWRENCE SINGH INGTY

November 7, 1967

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[K. N. WANCHOO, C.J., R. S. BACHAWAT, V. RAMASWAMI, G. K. MITTER AND K. S. HEGDE, JJ.]

Income-tax Act (11 *of* 1922), *s.* 4(3)(*xxi*) *and Income-tax Act* (43 *of* 1961), *s.* 10(26)—*Exemption from tax—Denied to government servants—If violative of Art.* 14 *of Constitution.*

C

Both under s. 4(3)(xxi) of the Income-tax Act, 1922 and s. 10(26) of the Income-tax Act, 1961, income of the members of a scheduled tribe included in Art. 366(25) of the Constitution and residing in any area specified in Part A or Part B of the Table appended to Paragraph 20 of the Sixth Schedule of the Constitution, excepting that of government servants, is exempt from income-tax. The respondent was a member of such a scheduled tribe residing in such an area, but, as he was a government servant, he was assessed to income-tax. He challenged the validity of the assessments and the High Court quashed the assessments holding that the two sections, to the extent they excluded government servants from the benefit of the exemption given thereunder, were discriminatory and therefore void.

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In appeal to this Court,

HELD : The State has a wide discretion in selecting persons or objects it will tax, but within the range of selection made by it for the purpose of exemption, namely, among members of certain scheduled tribes residing in specified areas, the law as stated in the two sections, operates unequally and the inequality cannot be justified on the basis of any valid classification. [168H; 169B-C]

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(1) The classification of tribals into government servants and others cannot be justified on the basis of administrative convenience *viz.*, that it was easy to collect taxes from government servants, because, their case does not stand on a different footing from that of the employees in statutory corporations or well-established firms. [169F-G]

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(2) There is no legislative practice or history treating government servants as a separate class for purposes of income tax. The reason for making, in the past, persons in the service of the government of British India serving outside British India subject to Indian income-tax, is not that their income was treated in a manner different from that of other salaried officers in those areas, but that the Indian Legislature had no legislative competence to tax residents of those areas but had competence to tax the income of persons in British Indian government service, serving in those areas. Further, the notification of 6th June 1890 under which the income earned by members of certain scheduled tribes, other than those in government service, was exempt from income tax, and the notification of 21st March 1922, under which income of certain indigenous hill men, other than those in government service, was exempt from tax, are not sufficient to prove a well-established legislative practice. Those notifications were issued at a time when the power of the legislature to grant or withhold any exemption from tax was not subject to any constitutional limitation. Classification based on past legislative

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practice and history does not mean that because in the past the legislature was enacting arbitrary laws it could do so now. [170A; 171D-F] A

(3) The social status and economic resources of a government servant are not different from that of another holding a similar position in a corporation or that of a successful medical practitioner, lawyer, architect etc. Therefore, merely because a tribal becomes a government servant he is not lifted out of his social environment and assimilated into the forward sections of society. [172A-B] B

(4) The portions of the two sections struck down are severable from the rest of the provisions in which they appear. [172E-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 809 of 1966.

Appeal by special leave from the judgment and order dated February 13, 1965 of the Assam and Nagaland High Court in Civil Rule No. 127 of 1963. C

Niren De, Solicitor-General, A. N. Kirpal, S. P. Nayar for *R. N. Sachthey* for the appellants.

M. C. Setalvad and *D. N. Mukherjee,* for the respondent. D

D. M. Sen, Advocate-General for the State of Nagaland, *A. R. Barthakur* and *R. Gopalakrishnan*, for the intervener.

The Judgment of the Court was delivered by

Hegde, J. The only question that arises for decision in this appeal is whether the exclusion of the government servants from the exemption given under s. 4(3)(xxi) of the Indian Income Tax Act, 1922 and later on under s. 10(26) of the Income Tax Act, 1961 is violative of Art. 14 of the Constitution. For our present purpose it may be taken that the said two provisions are similar. E

The respondent who is a government servant serving in the State of Assam has been assessed to income tax for the assessment years 1959-60, 1960-61, 1961-62 and 1962-63. He challenged the legality of his assessments in civil rule No. 127 of 1963 on the file of the High Court of Judicature of Assam. The Assam High Court accepted his petition and quashed the assessments in question holding that s. 4(3)(xxi) of the Indian Income tax Act, 1922 as well as s. 10(26) of the Income Tax Act, 1961 to the extent they excluded government servants from the benefit of the exemption given thereunder are void. The income-tax authorities as well as the Union of India have come up to this Court in appeal by special leave. F G

The facts of this case lie within a narrow compass. The respondent belongs to Mikir Scheduled Tribe and is a permanent inhabitant of United Khasi-Jaintia Hills District, an autonomous District included in Part 'A' of the Table appended to Paragraph H

A 20 of the Sixth Schedule of the Constitution of India. He is a government servant. All these are admitted facts.

The respondent in his petition before the High Court averred (in para. 7 of the petition) that "in all the autonomous districts under Table, Part A of paragraph 26 of the Sixth Schedule of the Constitution of India, there are a large number of persons B belonging to Scheduled Tribe who derive considerable income from trade, commerce and business and other sources and employments and immovable properties . . .". In the return filed by the appellants those allegations were not denied. Adverting to those allegations this is what was stated in the affidavit filed by Shri S. K. Dutta, Income-tax Officer (the first appellant in the C appeal):

> "With reference to the statements made in paragraph 7 of the petition I say that the petitioner being a government servant his case stands on a different footing other than the general public of the Scheduled Tribe."

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It may be remembered till 15-8-47, Khasi and Jaintia Hills were not parts of British India. They were under native States. They merged with British India only after this country got independence. Till their merger, none of the Indian laws applied to those areas. The Finance Act of 1955 incorporated into the Indian Income Tax Act, 1922, s. 4(3) (xxi). The relevant portion E of s. 4(3) reads thus :

> 4(3). "Any income profits, or gains falling within the following classes shall not be included in the total income of the person receiving them . . ."

> (xxi). "Any income of a member of a Scheduled F Tribe, as defined in clause (25) of Article 366 of the Constitution, residing in any area specified in Part A or Part B of the table appended to paragraph 20 of the Sixth Schedule to the Constitution, provided that such member is not in the service of Government."

Sec. 10(26) of the Income tax Act of 1961 which corresponds to G s. 4(3)(xxi) of the Indian Income Tax Act, 1922, reads thus :—

> "In the case of a member of a Scheduled Tribe as defined in clause (25) of Article 366 of the Constitution, residing in any area specified in Part A or Part B of the Table appended to paragraph 20 of the Sixth Schedule to the Constitution or in the Union Territories of Manipur H and Tripura, who is not in the service of Government, any income which accrues or arises to him, (a) from any source in the area or Union Territories aforesaid or (b) by way of dividend or interest on securities."

Part of the impugned assessments were made under the Indian Income Tax Act, 1922 and the rest, under the Income Tax Act, 1961. If the aforementioned provisions are valid, then the assessments in question are beyond challenge. Therefore the only question for decision is whether the legislature had no power to exclude the government servants from the benefit of the exemptions given under the aforementioned ss.4(3) (xxi) and 10(26).

It is seen that the income of the members of a scheduled tribe included in cl. 25 of Art. 366 of the Constitution and residing in any area specified in Part A or Part B of the Table appended to paragraph 20 of the Sixth Schedule of the Constitution, excepting that of government servants is exempt from income tax. In other words, the government servant alone is excluded from the benefit of the exemption given under the provisions quoted above. It is agreed that the respondent is a member of the scheduled tribe included in cl. 25 of Art. 366 of the Constitution, residing in an area specified in Part A of the Table appended to para. 20 of the Sixth Schedule to the Constitution, but yet he had been denied the benefit of the exemption in question on the sole ground that he is in the service of the government. It may be noted that exemption both under s. 4(3)(xxi) of the Indian Income Tax Act, 1922 and under s. 10(26) of the Income Tax Act, 1961 was given to the members of certain scheduled tribes. For the purpose of of the exemption in question the classification was made on the basis of persons being members of a particular tribe. That being so, some of the members of that tribe cannot be excluded from the benefit of those provisions unless they can be considered as belonging to a well defined class for the purpose of income tax. The respondent's contention which has been accepted by the High Court is that the government servants cannot be considered as a separate class for the purpose of income tax. On the other hand it is contended on behalf of the Department that the classification made is a reasonable one, taking into consideration administrative convenience as well as the past legislative practice and history.

It is not in dispute that taxation laws must also pass the test of Art. 14. That has been laid down by this Court in *Moopil Nair* v. *State of Kerala*(1). But as observed by this Court in *East India Tobacco Co.* v. *State of Andhra Pradesh*(2), in deciding whether a taxation law is discriminatory or not it is necessary to bear in mind that the State has a wide discretion in selecting persons or objects it will tax, and that a statute is not open to attack on the ground that it taxes some persons or objects and not others; it is only when within the range of its selection, the law operates un-

(1) [1961] 3 S.C.R. 77. (2) [1963] 1 S.C.R. 404, 409.

A equally, and that cannot be justified on the basis of any valid classification, that it would be violative of Art. 14. It is well settled that a State does not have to tax everything in order to tax something. It is allowed to pick and choose districts, objects, persons, methods and even rates for taxation if it does so reasonably.

B The complaint in this case is that within the range of the selection made by the State for the purpose of exemption, namely, members of certain scheduled tribes residing in specified areas, the law operates unequally and the inequality in question cannot be justified on the basis of any valid classification.

C There can be no distinction between the income earned by a government servant and that earned by a person serving in a company or under a private individual. More or less similar is the case in respect of the income earned by persons practising one or more of the professions. Admittedly the income earned by the members of the scheduled tribes residing in Khasi-Jaintia Hills excepting in the case of government servants is exempt from income tax be it as salaried officers, lawyers, doctors or persons in D other walks of life. Is there any legal basis for this differentiation? *Prima facie* it appears that the government servants have been discriminated against and the discrimination in question is writ large on the face of the provisions in question.

E The learned Solicitor-General contended that the classification in question can be justified on administrative grounds. He urged that a classification based on administrative convenience is a just classification in the matter of levying taxes. According to him it is easy to collect taxes from government servants. Therefore, it was permissible for the legislature to deny them the exemption extended to the other members of their tribes. This F contention appears to be without merit. It may be that for the purpose of taxation a classification can be made on the basis of administrative convenience. But we fail to see how the case of the government servants stands on a footing different from that of the employees in statutory corporations or even well recognised firms. That apart, administrative convenience which can afford G a just basis for classification must be a real and substantial one. We see no such administrative convenience. The learned Solicitor-General, next contended that the classification can be justified on the basis of past legislative practice and history. In this connection he invited our attention to the fact that before this country got independence, the income of the persons in the service of the H government but serving outside British India such as in Baluchistan, or native States was subject to tax under the Indian Income Tax laws though other persons residing in those places were not subject to the income tax laws in force in British India. The

reason for the same is that the Indian legislature had no legislative competence to tax the residents of those areas, but it had competence to tax the income of the persons in government service though they might be serving outside British India.

The learned Solicitor-General next invited our attention to a notification issued by the Government of India as long back as 6-6-1890, under which the income earned by members of certain scheduled tribes other than those serving under the government was exempted from income tax. He also invited our attention to Finance department Notification No. 788F dated 21-3-1922 under which the income of indigenous hill men other than persons in the service of government, residing in certain areas were exempt from tax. On the basis of those notifications, he wanted us to spell out a well recognised legislative practice and history under which the government servants as a class were excluded from the benefit of income tax exemption extended to other persons similarly situated. In this connection, he placed reliance on the decision of this Court in *Narottam Kishore Dev Varma and Ors.* v. *Union of India and Another*(1). Therein this Court was called upon to consider the validity of s. 87B of the Code of Civil Procedure which prescribed that a Ruler of a former Indian State cannot be sued in any court otherwise competent to try the suit except with the consent of the Central Government certified in writing by a Secretary to the Government. The validity of that provision was challenged on the basis of Art. 14. This Court upheld the validity of that provision having regard to the legislative and historical background of that provision, but at the same time observed that considered in the light of basic principles of equality before law, it would be odd to allow the section to continue prospectively for all time to come. After setting out the legislative background of that provision, this Court observed :

> "The legislative background to which we have referred cannot be divorced from the historical background which is to be found for instance, in Art. 362. This Article provides that in the exercise of the power of Parliament or of any legislature of any State to make laws or in the exercise of the executive power of the Union or of a State, due regard shall be had to the guarantee or assurance given under any such covenant or agreement as is referred to in clause (1) of Art. 291 with respect to the personal rights, privileges and dignities of a Ruler of an Indian State. This has reference to the covenants and agreements which had been entered into between the Central Government and the Indian Princes before all the Indian States were politi-

(1) [1964] 7 S.C.R. 55.

A cally completely assimilated with the rest of India. The privilege conferred on the Rulers of former Indian States has its origin in these agreements and covenants. One of the privileges is that of extra territoriality and exemption from civil jurisdiction except with the sanction of the Central Government. It was thought that B the privilege which was claimed by foreign Rulers and Rulers of Indian States prior to the independence of the country should be continued even after independence was attained and the States had become part of India, and that is how in 1951, the Civil Procedure Code was amended and present sections 86, 87, 87A and 87B came to be enacted in the present form."

C In the background set out above this Court upheld the validity of s. 87B of the Code of Civil Procedure.

We know of no legislative practice or history treating the government servants as a separate class for the purpose of income tax. The government servants' income has all along been treated D in the same manner as the income of other salaried officers. We do not know under what circumstances the notifications dated 6-6-1890 and 21-3-1922, referred to earlier, came to be issued. But they are insufficient to prove a well established legislative practice. At the time those notifications were issued the power of the legislature to grant or withhold any exemption from tax E was not subject to any constitutional limitation. Hence the validity of the impugned provisions cannot be tested from what our legislatures or governments did or omitted to do before the Constitution came into force. If that should be considered as a true test then Art. 13(1) would become otiose and most, if not all, of our constitutional guarantees would lose their content. Sri F Setalvad learned counsel for the respondent is justified in his comment that classification based on past legislative practice and history does not mean that because in the past the legislature was enacting arbitrary laws it could do so now.

It was the contention of the learned Solicitor-General that exemption from income tax was given to members of certain sche- G duled tribes due to their economic and social backwardness; it is not possible to consider a government servant as socially and economically backward and hence the exemption was justly denied to him. According to the Solicitor-General, once a tribal becomes a government servant he is lifted out of his social environment and assimilated into the forward sections of the society and there- H fore he needs no more any crutch to lean on. This argument appears to us to be wholly irrelevant. The exemption in question was not given to individuals either on the basis of their social status or economic resources. It was given to a class. Hence

individuals as individuals do not come into the picture. We fail to see in what manner the social status and economic resources of a government servant can be different from that of another holding a similar position in a corporation or that of a successful medical practitioner, lawyer, architect, etc. To over-paint the picture of a government servant as the embodiment of all power and prestige would sound ironical. Today his position in the society to put it at the highest is no higher than that of others who in other walks of life have the same income. For the purpose of valid classification what is required is not some imaginary difference but a reasonable and substantial distinction having regard to the purpose of the law.

It was lastly contended by the learned Solicitor-General—a contention which was not taken either in the return or before the High Court or in the appeal memo.—that it is not possible to strike down only a portion of s. 4(3)(xxi) of the Indian Income Tax Act, 1922 and s. 10(26) of the Income Tax Act, 1961, namely, the words "provided that such member is not in the service of government" found in s. 4(3)(xxi) of the Indian Income Tax Act, 1922 and the words "who is not in the service of government" in s. 10(26) of the Income Tax Act, 1961, as those words are not severable from the rest of the provisions in which they appear. Further according to him it cannot be definitely predicated that the legislature would have granted the exemption incorporated in those provisions without the exception made in the case of government servants. Therefore if we hold that those provisions as they stand are violative of Art. 14 then we must strike down the aforementioned ss. 4(3)(xxi) and 10(26) in their entirety. We are unable to accept the contention that the words mentioned above are not severable from the rest of the provision in which they appear. They are easily severable. Taking into consideration the reasons which persuaded the legislature to grant the exemption in question we have no doubt that it would have granted that exemption even if it was aware of the fact that it was beyond its competence to exclude the government servants from the exemption in question.

For the reasons mentioned above this appeal is dismissed with costs.

V.P.S. *Appeal dismissed.*