

APPELLATE CIVIL

Before G. D. Khosla, C.J., and Daya Krishan Mahajan, J.

WALIATI RAM,—Appellant.

versus

THE MUNICIPAL COMMITTEE, RUPAR,—Respondent.

Regular Second Appeal No. 960 of 1957.

1960
August, 10th

Punjab Municipal Act, 1911—Section (i)(b)—Explanation—Purpose of—“Practising any profession or art or carrying on any trade or calling”—Meaning of—Person employed in private service—Whether included in the expression—Items in Legislative Lists—How to be interpreted.

Held, that the expression ‘Practising any profession or art or carrying on any trade or calling in section 61(I)(b) of the Punjab Municipal Act has to be given the widest meaning. Item No. 60 in List II (State Legislative List), Schedule VII of the Constitution of India uses the expression “Taxes on professions, trades, callings and employments” and it is very difficult to hold that the framers of the Constitution while using these words were using them as terms of art. The object of the entry is to enable the State Legislature to tax persons, who are carrying on any professions, trades, callings and employments. The words italicised above have not any definitive meaning distinct from that of the other. These four words do not seem to be used in a mutually exclusive sense. These words overlap one another and appear to have been used by way of abundant caution in order to make these provisions broad-based and comprehensive. None of these words has any particular technical meaning and even if they had any definitive significance, the object of putting them all together is to ensure that no particular category of persons is being eliminated. Giving these words the widest meaning, it must be held that persons in private service are carrying on a profession or calling and are liable to pay the tax imposed by a municipal committee under section 61(I)(b) of the Punjab Municipal Act.

Held, that the explanation to section 61(I)(b) of the Punjab Municipal Act merely states that certain Government servants, etc., shall be deemed to be practising a

profession within the meaning of this clause and if service is not a profession then this Explanation would be wholly useless. The very fact that by reason of this Explanation Government servants have been taxed and the Explanation has stood unchallenged for all this period also indicates that the words are of general import and were not intended to be construed narrowly.

Held, that items in the Legislative List have to be given most liberal interpretation and have to be construed in their widest amplitude and the rule of interpretation that the words should be read in their ordinary natural and grammatical meaning has no applicability to constitutional enactments conferring legislative powers.

Case referred by Hon'ble Mr. Justice Harbans Singh on 17th December, 1958, to a larger Bench for decision of the legal points involved in the case and was finally decided by the Division Bench consisting of Hon'ble Mr. Chief Justice G. D. Khosla and Hon'ble Mr. Justice Mahajan on 10th August, 1960.

Second appeal from the decree of Shri Ishar Singh Hora, Senior Sub-Judge, with enhanced appellate powers, Ambala, dated the 27th May, 1957, reversing that of Shri Dalip Singh, Sub-Judge, 1st Class, Rupar, dated the 27th April, 1956, and dismissing the plaintiff's suit with costs throughout.

Claim : For the refund of the professional tax of Rs. 52-8-0, for the years 1949-50, 1950-51, 1951-52, and for a perpetual injunction restraining the defendant from realizing the remaining tax for the years 1951-52, 1952-53, 1953-54, 1954-55, on the plea that the professional tax in dispute is illegal and ultra vires.

H. L. SIBAL, ADVOCATE, for the Appellant.

K. C. NAYAR, ADVOCATE, for the Respondents.

ORDER OF REFERENCE

HARBANS SINGH, J.—On 15th of October, 1948, Harbans Singh, J. Punjab Government notified in the Official

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Gazette under sub-section (10) of section 62 of the Punjab Municipal Act, 1911, that with effect from the 1st day of April, 1949, the following tax has been imposed by the Municipal Committee of Rupar :—

“A tax at the rate of * * * on every person carrying on a trade, profession, calling or employment in the area subject to the authority of the Committee * * *”.

In pursuance of this notification certain sums of money were recovered from Waliati Ram, Som Nath and Bhajan Singh—three employees of the Ambala Bus Syndicate Limited, Rupar. They brought three separate suits for the refund of the amounts so paid and sought an injunction prohibiting the Municipal Committee from recovering any further tax, on the plea that the Municipal Committee had no authority to impose any tax on persons in private employment. The defence taken was that the civil Court had no jurisdiction and that the tax was *intra vires* the powers of the Committee. Both the Courts below held that the civil Courts could go into the question whether the tax imposed was within the powers of the Municipal Committee, but held that the tax was not beyond the powers of the Municipal Committee. In view of this finding the three suits filed by the above-mentioned persons were dismissed and they have filed three separate Regular Second Appeals Nos. 950, 951 and 991 of 1957, respectively. The point involved in all the three appeals is the same and these were argued together.

The authority to impose this type of tax is

given to the Municipal Committees under sub-clause (b) of sub-section (1) of section 61 of the Municipal Act, which runs as follows:—

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“A tax on persons practising any profession or art or carrying on any trade or calling in the municipality :

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Explanation.—A person in the service of Government or person holding an office under the State Government or the Central Government or a local or other public authority shall be deemed to be practising a profession within the meaning of this sub-clause.”

It was urged that this authorises the Municipal Committee to impose a tax only on persons, who are (1) practising any profession or art, or (2) carrying on any trade or calling and that these categories do not cover a person in employment whether private or public and that persons in the employment of the Government or a local or other public authority have been specifically included by virtue of the explanation which does not cover the persons in private employment.

The learned counsel for the appellants referred to item No. 60 of List II (State List) of the Seventh Schedule to the Constitution wherein the State Government is given the power to impose “Tax on professions, trades, callings and employments” and urged that the fact that ‘employment’ has been specifically mentioned in this item as distinct from professions, trade and callings clearly shows that ‘employment’ is not covered by the other three expressions used therein. Even in the notification issued by the Government the word ‘employment’ has been specifically mentioned though this word does not find any

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mention in sub-clause (b) of sub-section (1) of section 61 reproduced above under which alone the imposition of such a tax can be notified.

On the other hand, the learned counsel for the Municipal Committee, Rupar, urged that the word 'profession' should be deemed to cover the persons who are in employment. In this respect he referred to the definition of the word 'profession' in the Webster's Dictionary given at 4(a) and 4(b), as follows:—

“4(a). The occupation, if not purely commercial, mechanical, agricultural, or the like, to which one devotes oneself; a calling in which one professes to have acquired some special knowledge used by way either of instructing guiding, or advising others or of serving them in some art; as the profession of arms, of teaching, of chemist. The three professions, or learned professions, is a name often used for the professions of theology, law and medicine. (b) Broadly, one's principal calling, vocation, or employment.”

I am afraid, however, this definition does not help the respondent. According to the definition in 4(b), a profession means broadly one's principal employment, i.e., the main occupation of a person, and does not mean that a person, who is an employee would be treated to be carrying on a profession.

The point involved, however, is likely to affect the powers of the Municipal Committee and large number of individuals, all over the State of Punjab and may occur frequently. I, therefore, feel that it would be in the fitness of things

that the same is decided authoritatively by a larger Bench, at an early date. I would, therefore, direct that this case may be put up before the Hon'ble the Chief Justice for necessary orders.

At the verbal request of the learned counsel for the appellants in the three appeals, I further direct that pending the decision by the larger Bench, the recovery of any further tax from the appellants shall remain stayed.

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JUDGMENT OF DIVISION BENCH

MAHAJAN, J.—This order will dispose of Regular Second Appeals Nos. 950, 951 and 991 of 1957. These appeals arise out of suits filed by three taxpayers for the refund of tax levied from them by the Municipal Committee, Rupar, under notification dated the 15th of October, 1948. These suits were decreed by the trial Court and in appeal the decision of the trial Court was reversed with the result that the plaintiff in each of the suits came up in second appeal to this Court. These appeals were heard by Mr. Justice Harbans Singh who, by his order dated the 17th of December, 1958, referred these cases to a Division Bench. This is how these appeals have been placed before us. The detailed facts are set out in the referring order. That order may be read as part of this judgment, and for that reason I am not covering the ground already covered by that order.

Mahajan, J.

Only one point has been agitated before us by learned counsel for the appellants. His contention is that the appellants are in private service and their case is not covered by the notification. The notification is in these terms :—

“A tax at the rate of * * * * on every person carrying on a trade, profession, calling or employment in the

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area subject to the authority of the
Committee * * * *”

This notification has been issued under section 61 of the Punjab Municipal Act. Relevant part of section 61 is clause (b) of sub-section (1) and is in these terms :—

“61. (1) (b) a tax on persons practising any profession or art or carrying on any trade or calling in the municipality ;

Explanation.—A person in the service of the Government or person holding an office under the State Government or the Central Government or a local or other public authority shall be deemed to be practising a profession within the meaning of this sub-clause.”

The learned counsel proceeds to argue that the word ‘employment’ in the notification is beyond the Act and therefore, while considering the case of the appellants, the notification has to be interpreted minus the word ‘employment’. This contention appears to be sound, but the question still remains whether the expression ‘carrying on trade, profession or calling’ in clause (b) of sub-section (1) of section 61 of the Act would still cover the case of the appellants. It may be mentioned that this expression minus the word ‘employment’ occurs in the Government of India Act 1935, Schedule VII, List II (Provincial Legislative List), at item No. 46, and is in these terms :—

“Taxes on professions, trades, callings and employments, subject, however, to the provisions of section one hundred and forty-two A of this Act.”

which has now been replaced by the Constitution of India wherein its equivalent is to be found in item No. 60 (State List). Therefore, this expression has to be construed on the same principles which apply to the construction of the Constitution because the power to levy taxes by the Municipality is derived from the aforesaid constitutional provision.

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It has been repeatedly held that the items in the Legislative List have to be given most liberal interpretation and have to be construed in their widest amplitude and the rule of interpretation that the words should be read in their ordinary natural and grammatical meaning has no applicability to constitutional enactment conferring legislative powers (see in this connection *Navinchandra Mafatlal v. The Commissioner of Income-tax* (1)).

Therefore, the expression 'practising any profession or art or carrying on any trade or calling' has to be given the widest meaning. In ordinary parlance the word 'profession' would cover the case of the plaintiffs. The general meaning of the word 'profession' and 'calling' as set out in 'Words and Phrases', Permanent Edition, Volume 34, page 201, is—

"The word 'profession' means a calling—an employment. It also means 'occupation, if not mechanical or agricultural or the like, to whatever one devotes one's self; the business which one professes to understand and to follow for subsistence'. Among other things, it means a vocation in which a professional knowledge of some department of science or learning is used by its practical application to the affairs of

(1) (1955) 1 S.C.R. 829.

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others, either in advising, guiding, or teaching them or, in serving their interest or welfare in the practice of an art founded on it.”

“The word ‘calling’ means ‘occupation, profession and trade’.

In the Oxford English Dictionary, Volume VIII, pages 1427-28, four meanings of the word ‘profession’ are stated, the third meaning being in these terms:—

“The occupation which one professes to be skilled in and to follow. (a) A vocation in which a professed knowledge of some department of learning or science is used in its application to the affairs of others or in the practice of an art founded upon it. Applied *spec.* to the three learned professions of divinity, law and medicine; also to the military profession.

(b) *In wider sense*: Any calling or occupation by which a person habitually earns his living.

(c) *By extension* : *by profession*—professed, professional.

(d) The body of persons engaged in a calling.”

In the same dictionary “calling” at page 38—39, Volume II, is stated to have 11 different meanings, the 10th meaning is—

“Position, estate, or station in life; rank.”

The 11th meanings is—

“Hence, Ordinary occupation, means by which livelihood is earned, business, trade.

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(b) A body of persons following a particular profession or trade.”

It is very difficult to hold that the framers of the Constitution while using these words were using them as terms of art. The object of the entry is to enable the State Legislature to tax persons, who are carrying on any *professions, trades, callings and employments*. The words under-scored above have not any definitive meaning distinct from that of the other. These four words do not seem to be used in a mutually exclusive sense. These words overlap one another and appear to have been used by way of abundant caution in order to make these provisions broadbased and comprehensive. None of these words has any particular technical meaning and even if they had any definitive significance, the object of putting them all together is to ensure that no particular category of persons is being eliminated in view of the rule of interpretation set out above and giving these words the widest meaning, it must be held that the plaintiffs are carrying on a profession or a calling. If the case of Government or private servants did not fall within the ambit of these words, the amendment to the Municipal Act after the Lahore High Court decision in *Pala Ram v. Notified Area Committee, Kot Addu* (1) to get over the pronouncement that the Government employees cannot be deemed to be carrying on

(1) I.L.R. 4 Lab. 256.

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any profession or calling by addition of the explanation would have been of no consequence because the explanation cannot enlarge the meaning of the statute. The explanation which has been quoted in the earlier part of this judgment merely states that certain Government servants, etc., shall be deemed to be practising a profession within the meaning of this clause and if service is not a profession then this explanation would be wholly useless. The very fact that by reason of this explanation Government servants have been taxed and the explanation has stood unchallenged for all this period also indicates that the words are of general import and were not intended to be construed narrowly.

It is not argued that the explanation is *ultra vires* the powers of the Legislature, for if these words had any special or technical meaning, then employment in Government service could not be treated as practising a profession. If employment as such is tantamount to practising a profession then I see no basis for the distinction between private and public employment, for in both cases the persons concerned are in employment though the category of employees is distinct. It cannot be argued that as private servants are not specified in the explanation they do not fall within the scope of the taxing provision for the simple reason that the explanation was necessitated by the High Court decision and not that their case did not fall within the substantive provisions.

No other point was raised before us.

For the reasons given above, I would dismiss these appeals, but, in the circumstances of the case, leave the parties to bear their own costs throughout.

KHOSLA, C. J.—I agree.
 R.S.