

W.P.(C) No.28796 of 2010

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

FRIDAY, THE 1ST DAY OF OCTOBER 2021 / 9TH ASWINA, 1943

WP(C) NO. 28796 OF 2010

PETITIONERS:

- 1 CENTRAL FINANCE & INVESTMENTS
DOOR NO.XIII/444/17,VALIAPALLY BUILDING,
KOTHAMANGALAM-686 691,REP.BY E.P.JOSE, MANAGING
PARTNER.
- 2 KAIRALY FINANCE CHITTY FUNDS
VEEPANATHU BUILDING,KOTHAMANGALAM-686 691, REPRESENTED
BY K.J.GEORGE, MG.PARTNER
BY ADV SRI.JOSE JOSEPH

RESPONDENTS:

- 1 SECRETARY,KOTHAMANGNALAM MUNICIPALITY
KOTHAMANGALAM,ERNAKULAM DISTRICT.
- 2 THE KOTHAMANGALAM MUNICIPALITY
REP.BY ITS SECRETARY,KOTHAMANGALAM, ERNAKULAM DISTRICT.
- 3 THE STATE OF KERALA REPRESENTED BY SECRETARY TO
GOVERNMENT,
DEPARTMENT OF LOCAL ADMINISTRATION(FM) ,
SECRETARIAT,THIRUVANANTHAPURAM.
BY ADVS.
SRI.PEEYUS A KOTTAM, SC, KOTHAMANGALAM MUNICIPALITY
SHRI.JOICE GEORGE, SC, KOTHAMANGALAM MUNICIPALITY
SRI.V.M.KURIAN

SRI.JOICE GEORGE, STANDING COUNSEL FOR R1 & R2
SRI.DHEERAJ, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
01.10.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

CR**JUDGMENT****Dated this the 1st day of October, 2021**

Petitioners are conducting money lending and chitty business and they are members of All Kerala Private Bankers Association, an organisation registered under the provisions of the Travancore Cochin Literary, Scientific & Charitable Societies Registration Act, 1955 with registration No.K 114/1974. The business of money lenders in the State of Kerala is regulated and controlled by stringent provisions under the Kerala Money Lenders Act, 1958. As per section 3 of the Act, every person has to obtain a licence on payment of the prescribed fee to carry on the business as a money lender.

2. The grievance highlighted by the petitioners is that the Secretary of the Municipality has assessed the profession tax of the petitioners without properly having recourse to section 245 of the Kerala Municipality Act, 1995, hereinafter called, "Act, 1994" and the Kerala Municipality (Profession Tax) Rules, 2005, hereinafter called, "Rules, 2005". According to the petitioners, under rule 3(1), a schedule is incorporated prescribing the levy of half yearly tax payable under the different slabs of income. It is submitted that a person derives income less than

Rs.12,000/- is not liable to pay any tax and further that a person can be subjected to tax only under the class appropriate to his income. Under sub-rule (2) of rule 3, the half yearly tax payable by the persons classified in sub-clauses (1) to (11) is fixed at Rs.1250/-. However, Explanation to rule 3(2) categorically stipulates that the rate of tax given in sub-rule (2) is the maximum tax that can be levied and if the income of a person is low justifying a lower rate of tax, the assessee can satisfy the local authority regarding the low income and seek a reduction of the tax correspondingly.

3. The case projected by the petitioners is that petitioners were served with demand notices viz., Exhibits P3 and P4 dated 2.2.2010 and 30.1.2010, respectively, fixing the tax at the whims and fancies of the Secretary of the Municipality and in a most arbitrary manner, liable to be interfered with by this Court. According to the petitioners, they are paying income tax and when demand notices were received, they filed objections along with supporting documents before the Secretary in order to assess the tax in accordance with the schedule prescribed under the Rules. It is also the case of the petitioners that the Audited Profit & Loss Account and Balance Sheet of the petitioners were produced before the Secretary, which are marked as Exhibits P5, P5(a) and P5(b) respectively. The objection filed by the 1st petitioner is produced as Exhibit P6 and it is also submitted that a typical objection was filed by the 2nd petitioner also.

4. Anyhow on the basis of the objections submitted, a hearing was convened on 21.5.2010, evident from Exhibit P7 notice and petitioners appeared before the Secretary and submitted Exhibits P8 & P9 objections. However, according to the petitioners, the 1st respondent without following the statutory stipulations contained under the Act, 1994 and Rules, 2005, has fixed the half yearly tax arbitrarily at the rate of Rs.600/- and Rs.750/-, respectively, and has issued Exhibits P10 and P11 demand notices directing the petitioners to remit the tax. These are the basic background facts projected by the petitioners to contend that the action of the Secretary can never be sustained under law.

5. A counter affidavit is filed by the Secretary and the Municipality jointly, refuting the claims and demands raised by the petitioners and also submitting that the profession tax is leviable on the aggregate income of the petitioners and even going by the documents produced by the petitioners, it can be seen that the levy of half yearly tax of Rs.600/- and Rs.750/-, respectively, on the petitioners are reasonable and further that the original proposal was reduced after hearing the objections submitted by the petitioners. That apart it is pointed out that it is not correct to say that the levy is on the basis of the presumptive income and the levy is made after ascertaining the real half yearly income on the basis of the records made available by the petitioners. It is also submitted that petitioners have not produced any authentic records like income tax or sales tax assessment

orders and further that since the petitioners were heard and a decision was taken by the Secretary, petitioners have not made out any case for interference, exercising the discretionary jurisdiction conferred on this Court under Article 226 of the Constitution of India.

6. I have heard, learned counsel for petitioners Sri.Jose Joseph, learned Standing Counsel for the Municipality Sri.Joice George, learned Government Pleader Sri.Dheeraj for the State and perused the pleadings and materials on record.

7. Respective counsel have addressed their arguments on the basis of the pleadings discussed above. The liability in respect of the property tax is guided by section 245 of the Kerala Municipality Act, 1994. Sub-section (1) there to stipulates that, where the Council by a resolution determines that a profession tax shall be levied that; every company which after the date specified in the notification published under section 232; transacts business in the municipal area for not less than sixty days in the aggregate to any half-year; or transacts business outside the limit of the municipal area but has its head office or place from which its business is controlled within the municipal area for not less than sixty days in the aggregate in any half-year; and every person, who after the said date in any half-year exercises a profession, art or calling or transacts business or holds any appointment, public or private within the municipal area for not less

than sixty days in the aggregate; or outside the municipal area, but who resides within the municipal area for not less than sixty days in the aggregate; or transacts business outside the municipal area but has his head office or place from which his business is controlled within the municipal area for not less than sixty days in the aggregate; or resides in the municipal area for not less than sixty days in the aggregate and is in receipt of any income from investments, shall pay a half-yearly tax assessed in accordance with the rules as may be made. Sub-section (2) thereto specifies that a person shall be chargeable under the class appropriate to his aggregate income from all the sources specified in sub-section (1) as being liable to tax.

8. In order to implement the provisions of section 245, the Government of Kerala has introduced the Kerala Municipality (Profession Tax) Rules, 2005 on and w.e.f. 31.5.2006. Rule 3 thereto deals with levy of profession tax. Sub-rule (1) prescribes that those persons who have been appointed, working or holding office for salary or wages in any office or company or firm or enterprise or establishment or institution or receiving income from deposits and those having a half-yearly income of not less than Rs.12,000/-, for the purpose of levy of profession tax as to which category they can be classified and the half yearly tax that can be levied from each shall be as described in the schedule. In order to understand the issue correctly it is better to extract the schedule, it reads thus:

SCHEDULE

Sl.No. (1)	Half-yearly Income (2)	Half-yearly Tax (3)
1.	From Rupees 12,000 to Rupees 17,999	Rupees 120
2.	From Rupees 18,000 to Rupees 29,999	Rupees 180
3.	From Rupees 30,000 to Rupees 44,999	Rupees 300
4.	From Rupees 45,000 to Rupees 59,999	Rupees 450
5.	From Rupees 60,000 to Rupees 74,999	Rupees 600
6.	From Rupees 75,000 to Rupees 99,999	Rupees 750
7.	From Rupees 1,00,000 to Rupees 1,24,999	Rupees 1000
8.	Above Rupees 1,24,999	Rupees 1,250

(2) For the purpose of levying profession tax from those engaged in self employment companies and those transacting business and not coming within the purview of sub-rule (1), as to which categories they shall be classified and how much half-yearly tax to be levied on each category shall be as described below, namely:-

Half-yearly tax

Advocates, Private Doctors, Vaidyans, para-medical experts and others engaged in similar professions.

Rupees 1,250

(3) Business establishments registered as per General Sales Tax Act.

Rupees 1,250

(4) In the case of companies registered as per Companies Act, 1956, engaged in any trade or profession

Rupees 1,250

(5) Banking instructions, Branches of Banks and Bankers

defined as Banking Company in the Banking Regulation Act.	Rupees 1,250
(6) Co-operative societies registered as per the Co-operative Societies Act (Including State, District Co-operative Banks, Urban Banks and branches of such Co-operative Banks)	Rupees 1,250
(7) (a) Those running Foreign Liquor Shops, Bar Hotels, Star Hotels.	Rupees 1,250
(b) Those running Petrol, Diesel Pumps and Service Station.	Rupees 1,250
(c) Those running Film Studio, Film Producers, Distributors Cine Artists connected with the production of at least one film in a year.	Rupees 1,250
(8) In the case of those running factory within the purview of the Factories Act and those running shop or business establishment within the purview of the Shops and Establishments Act and not included in sub rules 3,7.	Rupees 1,250
(9) In the case of owners of vehicles having granted permit to operate vehicles on rent or as stage carriage or as goods carriage as per the Motor Vehicle Act,--	
(i) Those having two or more taxi car, van or jeep.	Rupees 1,250
(ii) Those having two or more lorry, truck or bus	Rupees 1,250
(iii) Those having three or more autorikshaw (passenger carrier or goods carrier).	Rupees 1,250
(10) In the case of contractors	Rupees 1,250
(11) In the case of small scale merchants having half-yearly turnover not below Rs.30,000 and not registered under the General Sales Tax Act.	Rupees 1,250

9. Banking institutions are governed by sub-rule (5) of rule 3 and the maximum half-yearly tax prescribed is Rs.1250/-. Sub-rule (2) of rule 3 clearly prescribes that for the purpose of levying profession tax from those engaged in self employment, companies and those transacting business and not coming within the purview of sub-rule (1) as to which categories they shall be classified and how much half-yearly tax to be levied on each category shall be as described from sub-rule (3). The Explanation to rule 3 stipulates that if any person or institution belongs to more than one category of

the above schedule at the same time, such person or institution shall be deemed to belong to the category to which the highest rate of tax applicable only and tax applicable to that category shall be levied. It further specifies that in sub-rule (2) to (11) of rule 3, the maximum rates of half-yearly tax to be remitted are fixed and that the minimum rates of tax for these categories shall be described in the schedule under sub-rule (1) of rule 3. Therefore, if the tax payers satisfy the Local Self Government Institution concerned on the basis of records about their taxable income, the tax shall be assessed accordingly as described under the schedule to rule 3(1)

10. The case projected by the petitioners is basically dependent on the prescriptions contained under rule 3 of Rules, 2005, as discussed above. Therefore, the question now emerges for consideration is whether there is any illegality to Exhibits P10 and P11 demand notices issued by the Secretary of the Municipality ? Petitioners have a contention that the issue now raised is governed by Exhibit P1 judgment of a Division Bench of this Court in W.P.(C) No.26269/2006 and a connected case.

11. On going through the judgment, it is clear that the very same issue was considered and it was held that the rate of tax provided in rule 3(2) of the Rules is the maximum permissible, which can be levied as professional tax. However, if anyone is having a lower income, justifying levying a lesser amount of tax, he can move the local authority and get a reduction of the tax, which may be appropriate to his income. It was also held that the said aspect is taken care of by the Explanation given under rule 3(2) of the Rules.

12. True, respondents have a contention that petitioners had a statutory remedy to approach the appellate authority i.e., the Tax Standing Committee as provided under section 509 of the Kerala Municipality Act. But now I cannot relegate the parties to seek the said remedy since the matter was pending before this Court for the past more than 11 years and that a stay was granted by this Court when the matter came up for admission on 17.9.2010, which continues to be in force .

13. On a reading of Exhibits P10 and P11 impugned notices, it is clear that the Division Bench judgment of this Court was produced before the statutory authority. It is also clear that the petitioners have produced income tax return before the Secretary, however, it is stated by the Secretary in the impugned notices that the income tax return submitted by the petitioners is not correct and unbelievable and it was accordingly that the profession tax was imposed at the rate of Rs.600/- and Rs.750/- respectively, against the petitioners.

14. I have evaluated the rival submissions made across the Bar and I am of the considered opinion that the levy and demand of profession tax is guided by section 245 of Act, 1994 and Rules, 2005. When there are clear prescriptions contained under the Act, 1994 and the Rules, 2005 in regard to the levy of profession tax, and when a demand is made, which is objected to by the aggrieved persons, the Secretary had a duty to take into account the objections raised and apply the law applicable to the situation since the Secretary has to make the assessment in accordance with the rules applicable and the documents produced by the petitioners. From the impugned notices, I do not find any such exercise undertaken by the Secretary. Even though the Division

Bench judgment of this Court is referred to, the Secretary has not specified in the demand notices as to why it is departing from the proposition of law laid down by the Division Bench judgment of this Court.

15. In my considered opinion, a judgment rendered by this Court is binding precedent on the administrative as well as quasi judicial functionaries and therefore, whenever a judgment is produced, the authority considering a statutory aspect is duty bound to apply his mind as to whether the judgment applies to the facts, circumstances and the law involved in the subject issue pending before such authority. However the Secretary of the Municipality, in my considered estimation, has given a complete go by to the Division Bench judgment of this court and the provisions of law. When documents were produced to support the case projected in the objections, the Secretary was duty bound to assign reasons while passing the orders as to why they are not acceptable in law and the Secretary cannot brush aside such documents merely by stating that they are unbelievable to be accepted. It is clear from the impugned notices that the Secretary has not taken any effort to find out the truth of the objections filed by the petitioners by resorting to the supporting documents produced. The issue in regard to the binding nature of precedents on administrative authorities is no more *res integra* in view of various judgments of the Apex Court. In the **State of M.P. v. Sanjay Nagayach** [(2013)7 SCC 25], the relevant portion reads thus:

"We fail to see why the Joint Registrar has overlooked those binding judicial precedents and the ratio decidendi. Judicial rulings and the principles are meant to be followed by the statutory authorities while deciding similar issues based on the legal principles settled by judicial rulings. The Joint

Registrar, while passing the impugned order, has overlooked those binding judicial precedents.”

16. In that view of the matter, I am of the considered opinion that interference is required to Exhibits P10 and P11 notices issued by the Secretary of the Municipality to the petitioners bearing Nos.R3-4581/10 and R3-4581/10 dated 7.8.2010 respectively. Accordingly, I quash Exhibits P10 and P11 and direct the 1st respondent – Secretary of Kothamangalam Municipality, to reconsider the issue after taking into account the objections, documents produced and the law applicable, as discussed above, at the earliest and at any rate within two months from the date of receipt of a copy of this judgment, after providing a notice of hearing to the petitioners.

Writ petition is allowed accordingly.

Sd/-

SHAJI P.CHALY

JUDGE

smv

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : TRUE COPY OF JUDGMENT IN W.P. (C) NO.5165 OF 2009

EXT.P2 : TRUE COPY OF JUDGMENT IN W.P. (C) NO.28666 OF 2006

**EXT.P3 : TRUE COPY OF THE BILL DEMANDING PROFESSION TAX FROM
1ST PETITIONER.**

**EXT.P4 : TRUE COPY OF THE BILL DEMANDING PROFESSION TAX FROM
2ND PETITIONER.**

**EXT.P5 : TRUE COPY OF P&L ACCOUNT AND BALANCE SHEET OF 2ND
PETITIONER FOR THE YEAR ENDING 31.03.08.**

**EXT.P5(A) : TRUE COPY OF P&L ACCOUNT AND BALANCE SHEET OF 2ND
PETITIONER FOR THE YEAR ENDING 31.03.09.**

**EXT.P5(B) : TRUE COPY OF P&L ACCOUNT AND BALANCE SHEET OF 2ND
PETITIONER FOR THE YEAR ENDING 31.03.2010.**

**EXT.P6 : TRUE COPY OF PETITION FILED BY 1ST PETITIONER BEFORE
THE 2ND RESPONDENT.**

EXT.P7 : TRUE COPY OF NOTICE ISSUED BY 1ST RESPONDENT.

**EXT.P8 : TRUE COPY OF THE EXPLANATION SUBMITTED BY 1ST
PETITIONER BEFORE 1ST RESPONDENT.**

**EXT.P9 :TRUE COPY OF THE EXPLANATION SUBMITTED BY 2ND
PETITIONER BEFORE 1ST RESPONDENT.**

**EXT.P10 :TRUE COPY OF THE PROCEEDINGS OF THE 1ST RESPONDENT
ISSUED TO THE 1ST PETITIONER.**

**EXT.P11 :TRUE COPY OF THE PROCEEDINGS OF THE 1ST RESPONDENT
ISSUED TO THE 2ND PETITIONER.**