

Panchayat Prof. Tan

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K. BALAKRISHNAN NAIR

&

THE HONOURABLE MR. JUSTICE P. BHAVADASAN

FRIDAY, THE 20TH NOVEMBER 2009 / 29TH KARTHIKA 1931

WP(C).No. 26260 of 2008(A)

PETITIONER(S):

1. ALL KERALA PRIVATE BANKERS ASSOCIATION,  
(REGD.NO.K.114/1974) BANKERS BHAVAN, KODIMATHA,  
KOTTAYAM-686039. REP.BY ITS PRESIDENT,C.J.JOSEPH.
2. P.J.PIOUS, PROPRIETOR, NEW WELFARE  
FINANCIERS, VATANAPPALLY, THRISSUR DISTRICT.

BY ADV. SRIJOSE JOSEPH

RESPONDENT(S):

1. THE STATE OF KERALA, REP.BY SECRETARY  
TO GOVERNMENT, DEPARTMENT OF LOCAL ADMINISTRATION  
(FM), SECRETARIAT, THIRUVANANTHAPURAM.
2. VATANAPPALLY GRAMA PANCHAYAT, REP.BY ITS  
SECRETARY, VATANAPPALLY, THRISSUR DISTRICT.

ADV. SRI.N.RAGHURAJ FOR R2  
SMT.K.AMMINIKUTTY FOR R2  
BY SPL. GOVERNMENT PLEADER SRI.VINOD CHANDRAN FOR R1

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/11/2009, ALONG  
WITH W.P.(C) NO.7470/2009 & CONNECTED CASES, THE COURT ON THE SAME DAY  
DELIVERED THE FOLLOWING:



K. BALAKRISHNAN NAIR & P. BHAVADASAN, JJ.

"C R"

W.P.(C) Nos.26260/2008 & 7470, 7809,  
8674, 9074, 9484, 9609, 9633, 10588,  
10822, 11956, 12624, 12637, 14074,  
20325, 24707, 24805, 25791,  
27128, 28543 & 29874 of 2009

Dated this, the 20<sup>th</sup> day of November, 2009

**JUDGMENT**

**Balakrishnan Nair, J.**

In these Writ Petitions, the petitioners challenge the validity of the Government order dated 27.05.2008, imposing Presumptive Profession Tax on money lenders and others.

2. **W.P.(C) No.26260/2008:** This Writ Petition is treated as the main case for the purpose of referring to the parties and exhibits. The first petitioner is an Association of private bankers, engaged, mainly, in money lending. The second petitioner is a member of that Association. They challenge Ext.P2 order dated 27.5.2008, as per which presumptive profession tax has been imposed on money lenders at the rate of Rs.1250/- for a half-year. Going by Article 276 of the Constitution of India, this is the maximum amount that could be



levied by way of profession tax for a half-year. The petitioners point out that the levy of tax is governed by Section 204 of the Kerala Panchayat Raj Act. Sub-sections (2) and (3) thereof are relevant in this case. They are extracted below for convenient reference.

"204. Profession tax:--(1) .....

(2) The profession tax shall be levied at such rates as may be fixed by the Village Panchayat not exceeding the maximum rates prescribed.

(3) 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 the tax.

Explanation:- For the purpose of this section aggregate income shall not include House Rent Allowance, City Compensatory Allowance, Conveyance Allowance or Travelling Allowance."

The Government have framed the Kerala Panchayat Raj (Profession Tax) Rules, 1996, (hereinafter referred to as 'the Rules') invoking its power under Sections 204 and 205 read with Section 254 of the Kerala Panchayat Raj Act. Rule 3 thereof prescribes the rates at which profession tax should be levied from persons according to their income. The abovesaid Rules



contain elaborate provisions for assessing profession tax with reference to the aggregate income of the assessee concerned. The petitioners submit, tax can be levied from them under the provisions of Section 204 read with the aforementioned Rules. But, Ext.P2 order provides for levy of presumptive tax, which is normally levied on persons whose income cannot, ordinarily be fixed or assessed. Irrespective of the actual income, they are liable to pay tax and the same is called presumptive tax. The petitioners submit, for levying tax on them, as contemplated under Ext.P2, the charging section, namely, Section 204 of the Kerala Panchayat Raj Act has to be appropriately amended. In the absence of any statutory backing, the levy, demand and collection of tax under Ext.P2 will be hit by Article 265 of the Constitution of India. Therefore, they pray for quashing Ext.P2.

3. We notice that the petitioners have no objection in the levy of tax under the provisions of the Kerala Panchayat Raj (Profession Tax) Rules mentioned above. They admit they are already under the tax-net of the Rules mentioned above.

4. The 1<sup>st</sup> respondent State has filed a counter affidavit,



dealing with the averments in the Writ Petition. According to the Government, Ext.P2 order has been issued in the light of Recommendation No.9(1) of the Second Finance Commission, constituted under Article 243-I of the Constitution of India. The counter affidavit also says that necessary steps are being taken to give statutory support to the scheme of presumptive tax. The counter affidavit further states that if anybody is aggrieved by the presumption made regarding his probable income, he can move the Panchayat, armed with an income certificate issued by the concerned revenue authorities and seek redressal of his grievance.

5. It is said, tax is a payment made for civilization. The Government, including the local self Government institutions have to run their business. For that money is required, which they raise through taxation. But, every taxation should be supported by a valid legislation, in view of the mandate in Article 265 of the Constitution of India. In the face of that provision, no tax can be levied by issuing an executive order. So, the order Ext.P2 cannot be pressed into service to collect



presumptive tax from the petitioners or other persons liable to pay profession tax. They are already in the profession tax net under Section 204 read with the Kerala Panchayat Raj (Profession Tax) Rules, 1996. So, the Panchayats can continue to levy, demand and collect tax from them under the provisions of the said Section and the Rules mentioned above. Of course, the Government can give statutory backing for presumptive tax by amending the statutory provisions appropriately. Till such time, tax can be levied and collected only as per the provisions of the aforementioned Rules. Ext.P2 being a policy declaration made by the Government concerning collection of presumptive tax, it is not necessary to quash Ext.P2. But, it is declared that on the strength of Ext.P2 no tax can be collected from the petitioners, until corresponding amendments are carried out to the statutory provisions. The Writ Petition is disposed of as above.

6. W.P.(C) Nos.7470, 7809, 8674, 9074, 9484, 9609, 9633, 10588, 10822, 11956, 12624, 12637, 14074, 20325, 24707, 24805, 25791, 27128, 28543



WPC 26260/2008 ETC.

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**& 29874 of 2009:** The above judgment will govern these cases also. In W.P.(C) No.9484/2009, the Panchayat has taken up a stand that the tax demanded by it is not under Ext.P2 Government order mentioned above, but under the provisions of the Kerala Panchayat Raj (Profession Tax) Rules, 1996. If that be so, the petitioners therein will be free to invoke the statutory remedies available to them, if they are aggrieved by the demand of tax. If the statutory remedy is invoked, the statutory forum concerned shall deal with their grievance on merits in accordance with law. The Writ Petitions are disposed of as above.

**K. Balakrishnan Nair,  
Judge.**

**P. Bhavadasan,  
Judge.**

nm.



WPC 26260/2008

APPENDIX

PETITIONERS' EXTS.

EXT.P1 - TRUE COPY OF THE RECEIPT FOR PAYMENT OF PROFESSION TAX BY 2ND PETITIONER DATED 4.7.2008

EXT.P2 - TRUE COPY OF GOVERNMENT ORDER (EO) NO.143/08/LSGD DATED 27.5.2008.

EXT.P3 - TRUE COPY OF THE NOTICE ISSUED BY THE 2ND RESPONDENT DATED 19.08.2008.

EXT.P4 - R.R.DEMAND NOTICE DATED 10.10.2008.

RESPONDENTS' EXTS. NIL

/TRUE COPY/