

Why should State Pay the Income Tax of Legislators, When Ordinary Citizen Pay their income tax at their own?

By Pranav Santvan, Student Member

A success story explaining How the State of Himachal Pradesh was obligated to promulgate an Ordinance/Act stopping the State from paying the Income Tax on behalf of the Members of Legislative Assembly and Ministers as an effect of a Civil Writ Petition filed in Public Interest by some practicing Advocates of Himachal Pradesh, who approached PERGO for the purpose of representation in this case and to put forward the best interest of public by challenging certain incidental provisions of law, which were ultra vires the Constitution of India and arbitrary in nature .

Background

The great Constitution of India, by the virtue of its basic structure, does not allow the State or any of its organs to work arbitrarily but still the State, owing to its enormous powers to legislate and formulate laws knowingly or unknowingly, tends to transgress the boundaries which are dynamically set in the interest of people as a whole and not just few individuals. It was observed that the provisions like the Section 6AA of Himachal Pradesh Legislative Assembly (Allowance & Pensions of the Members) Act, 1971 and Section 12 of Salaries & Allowances of Ministers (Himachal Pradesh) Act, 2000 were a serious and arbitrary transgression of the boundaries set up by the Constitution of India due to operation of which the state of Himachal Pradesh was unduly burdened with Income Tax liability of MLAs and Ministers of Himachal Pradesh. Some advocates from different parts of Himachal Pradesh approached People for Responsible Governance (PeRGo) seeking legal assistance in the matter.

Challenge laid by PeRGo

Accordingly, PeRGo challenged these provisions in the Hon'ble High Court of Himachal Pradesh on the following two grounds:

1. Provisions enacted being ultra vires to the Constitution of India owing to Legislative Incompetence.
2. Provisions being manifestly arbitrary and constitutionally invalid/unconstitutional.

Case title: CWP 1753 of 2022 Yashpal Rana versus State of Himachal Pradesh

Contentions

On the aforesaid Grounds it was contended that the Income Tax Act ,1961 has been legislated by the Parliament while exercising its powers under Entry 82 of List-1 of the 7th Schedule of the Constitution of India. No power, whatsoever of any sort, has been conferred upon the State Legislative Assembly to legislate that the income tax of Members of the Assembly or Ministers thereof will not be paid by the Members and that it shall be borne by the State. Consequently, Section 6AA of Himachal Pradesh Legislative Assembly (Allowance & Pensions of the Members) Act, 1971 and Section 12 of the Salaries & Allowances of Ministers (Himachal Pradesh) Act, 2000 was sought to be without any legislative sanction, beyond the competence of the State Legislature and the same could not stand on Statute Book. Major emphasis was laid on the principle that the assessee has to pay income tax and government cannot pay income tax on behalf of the assessee and that the provisions under challenge are contradictory to the very basics of the principles of Income Tax Act,1961 and it's operation .The due attention of the Hon'ble Court was also drawn to the various allowances, facilities and other benefits along with the salary given to the MLAs and Ministers such as Travel Allowance, House Building Advance,

Purchase of motor car advance, Office Allowance, Sumptuary Allowance, Conveyance Allowance , etc.

Similar Instances in Other States

It is pertinent to note that inspite of so many allowances, benefits and other facilities, the Income Tax burden was being borne by the state since 1971. The States of Himachal Pradesh along with Madhya Pradesh, Chhattisgarh, Haryana, Uttarakhand and Punjab was found to be paying the Income Tax on behalf of the MLAs and Ministers.

Huge Burden on Public Funds

The information sought through RTI applications for the purpose of this petition revealed that an enormous amount of Rs1,11,87,863; Rs 1,79,30,873; Rs1,78,12,311 approximately was spent for the purpose of paying Income Tax on behalf of MLAs and Ministers from year 2017 to 2020. This data was only for three years. One could imagine the colossal drain on State exchequer.

Therefore, this was prime facie unreasonable in a debt burdened State like Himachal Pradesh to bear the burden of law makers and also arbitrary as it could not pass the test of rationality laid down under Article 14 of the Constitution of India and was fit to be struck down and declared unconstitutional being manifestly arbitrary and ultra vires to the Constitution of India.

Consequences of the Petition

Upon the notices issued to the concerned parties by the High Court of Himachal Pradesh and the awareness it generated among the public at large, the government was forced to bring an Ordinance i.e. The Himachal Pradesh Payment of Income Tax on Salaries and Allowances of Certain Categories Ordinance, 2022

thus omitting the offending provisions, paving the way for payment of income tax by the legislators themselves. This was the victory of People who had the courage to raise their voice against this manifest injustice!