Andhra Sugars Ltd. & Anr. Etc.

Vs

State of Andhra Pradesh & Ors.

Writ Petitions Nos. 53, 100, 101, 105 and 106 of 1967

(R. S. Bachawat, G. K. Mitter, V. Ramaswami JJ)

29.09.1967

JUDGMENT

BACHAWAT, J. -

In all these writ petitions under Art. 32 of the Constitution, the petitioners ask for an order declaring that s. 21 of the Andhra Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1961 (Andhra Pradesh Act No. 45 of 1961) is unconstitutional and ultra vires and a direction prohibiting the respondents from levying tax under s. 21 and to refund the tax already collected. Section 21 of the Act is in these terms :

> "21(1) The Government may, by notification, levy a tax at such rate not exceeding five rupees per metric tone as may be prescribed on the purchase of cane required for use, consumption or sale in factory.
>
> (2) The Government may, by notification, remit in whole or in part such tax in respect of cane used or intended to be used in a factory for any purpose specified in such notification.
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> (3) The Government may, by notification, exempt from the payment of tax under this section -
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> (a) any new factory which, in the opinion of the Government has substantially expanded, to the extent of such expansion, for a period not exceeding two years from the date of completion of the expansion.
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> (4) The tax payable under sub-section (1) shall be levied and collected from the occupier of the factory in such manner and by such authority as may be prescribed.
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> (5) Arrears of tax shall carry interest at the rate of nine per cent. per annum.
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> (6) If the tax under this section together with the interest, if any, due thereon, is not paid by the occupier of a factory within the prescribed time, it shall be recoverable from him as an arrear of land revenue."
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> Section 2(i) defines a factory which means "any premises including the precincts thereof, wherein twenty or more workers are working or were working on any day during the preceding twelve months and in any part of which any manufacturing process connected with the production of sugar by means of vacuum pans is being

carried on or is ordinarily carried on with the aid of mechanical power. Section 2(m) defines the occupier of a factory. By Ordinance No. 1 of 1967 which was replaced by Act No. 4 of 1967, the following new sub-section (I-A) was inserted and other consequential amendments were made in s. 21 of the principal Act.

"(I-A) The Government may, by notification, levy a tax at such rate, not exceeding three rupees and fifty paise per metric tonne, as may be prescribed on the purchase of cane required for use, consumption or sale in a khandsari unit."

Also the following sub-sections (kk) and (kkk) were inserted in s. 2 of the principal Act :

"(kk) 'khandasari sugar' means sugar produced by open-pan process in a khandasari unit from sugarcane juice, or from rab or gur or both, containing more than eight per cent. sucrose;

(kkk) 'khandasari unit' means a unit engaged or ordinarily engaged in the manufacture of khandasari sugar and includes a bel;"

It may be mentioned that sales and purchases of sugarcane are exempt from tax under the Andhra Pradesh General Sales Tax Act. 1957. The petitioners own sugar factories as defined in s. 2(i). Their agents are the occupiers of the factories as defined in s. 2(m). They purchased cane from canegrowers within their respective factory zones. The State Government had issued notifications levying tax under s. 21. For the last several years the petitioners have paid the tax on their purchases of sugarcane and further demands are being made on them for payment of the tax. They challenge the vires and the constitutionality of s. 21 on various grounds. The principal submissions were made by Mr. M. C. Setalvad two appeared in Writ Petition No. 53 of 1967 and his arguments were adopted by counsel appearing in the other petitions. Mr. N. C. Chatterjee who appeared in Writ Petition No. 100 of 1967 raised a few additional contentions.

The submission of Mr. Setalvad is that s. 21 so far as it levies a tax on the purchases of sugarcane by or on behalf of the petitioners from the canegrowers in their respective factory zones is ultra vires the powers of the legislature under Entry No. 54, List II. Sch. VII of the Constitution in the light of the decision in State of Madras v. Gannon Dunkerley & Co. ([1959] S.C.R. 379). Now, in Gannon Dunkerley's case ([1959] S.C.R. 379), the actual decision was that the legislature had no power under List II, Entry 48, Sch. VII of the Government of India Act, 1935 to impose a tax on the supply of materials under an entire and indivisible contract for construction of buildings. But the Court also held that the phrase "sale of goods" in the Entry must be interpreted in the legal sense which it had in the Indian Sale of Goods Act, that the Provincial Legislature had no power to tax a transaction which was not a sale of goods in that sense and that in order to constitute a sale there must be an agreement for sale of goods for a price and the passing of property therein pursuant to such an agreement. Ventakarama Aiyar, J. said at pp. 397-398 :

"Thus, according to the law both of England and of India, in order to constitute a sale it is necessary that there should be an agreement between the parties for the purpose of transferring title to goods which of course presupposes capacity to contract, that it must be supported by money consideration, and that as a result of the transaction property must actually pass in the goods. Unless all these elements are present, there can be no sale."

In the light of this decision, the expression "sale of goods" in Entry 54, List II, Sch. VII of the Constitution must be given the same interpretation. On a parity of reasoning, to constitute a "purchase of goods" within this Entry, there must be an agreement for purchase of goods and the passing of property therein pursuant to such an agreement. The question, therefore, is whether the purchases by or on behalf of the petitioners from the canegrowers in their respective factory zones were made under agreements of purchase and sale.

It appears that the Cane Commissioner is empowered under s. 15 of Act No. 45 of 1961 to declare any area as the factory zone for the purpose of supply of cane to a factory during a particular crushing season. Under s. 16(1), on the declaration of the factory zone the occupier of the factory is bound to purchase such quantity of cane grown in that area and offered for sale to the factory as may be determined by the Cane Commissioner in accordance with the provisions of the schedule. Section 16(2) prohibits the canegrowers in a factory zone from supplying or selling cane to any factory or other person otherwise than in accordance with the provisions of the schedule. Section 28(2)(1) empowers the Government to make rules providing for the form of agreement to be entered into under the provisions of the Act. Rule 20 of the Andhra Pradesh Sugarcane (Regulation of Supply and Purchase) Rules, 1951 framed under the Act provides that a canegrowers or a canegrowers co-operative society may within 14 days of the order declaring an area as the factory zone or such extended time as may be fixed by the Cane Commissioner, offer in Form No. 2 to supply cane grown in that area to the occupier of the factory and such occupier of the factory within 14 days of the receipt of the offer shall enter into an agreement in Form No. 3 or Form No. 4 with the canegrowers or the canegrower's co-operative society as the case may be for the purchase of the can offered Form No. 3 is the statutory form of agreement with a canegrower. By the agreement in Form No. 3 the occupier of the factory agrees to buy and the canegrower agrees to sell during the crushing season certain sugarcane crop grown in the area at the minimum price noticed by the Government from time to time upon the terms and conditions mentioned in the agreement. The agreement contains an arbitration clause and is signed by or on behalf of the occupier of the factory an the canegrower. The agreement in From No. 4 with a canegrower's co-operative society is on the same lines. All the terms and the conditions of the agreements and the mode of their performance are fixed and regulated by the Act, the Rules and orders made under the Act. Contravention of the provisions of the Act or of any rule or order made under the Act is punishable under s. 23. The minimum price of sugarcane is fixed under the Sugarcane Control Order, 1966. The learned Attorney General and Mr. Ram Reddy attempted to argue that the occupier of the factory has some option of not buying from the canegrower and some freedom of bargaining about the terms and conditions of the agreements. But after having read all the relevant provisions of the Act and the Rules, they did not pursue this point. We are satisfied that under the provisions of Act No. 45 of 1961 and the Rules framed thereunder, a canegrower in a factory zone is free to sell or not to sell his sugarcane to the factory. He may consume it or may process it into jaggery and then sell the finished product. But if he offers to sell his cane, the occupier of the factory is bound to enter into an agreement with him on the prescribed terms and conditions and to buy cane pursuant to the agreement in conformity with the instructions issued by the Cane Commissioner. The submission of the petitioners is that as they or their agents are compelled by law to buy cane from the canegrowers their purchases are not made under agreements and are not taxable under Entry No. 54, List II having regard to Gannon Dunkerley's case ([1959] S.C.R. 379). This contention requires close examination.

Under s. 4(1) of the Indian Sale of Goods Act, 1930, a contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. By s. 3 of this Act, the provisions of the Indian Contract Act, 1872 apply to contracts of sale of goods

save in so far as they are inconsistent with the express provisions of the later Act. Section 2 of the Indian Contract Act provides that when one person signifies to another his willingness to do or to abstain from doing anything with a view to obtaining the assent of the other to such act or abstinence, he is said to make a proposal. When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal when accepted becomes a promise. Every promise and every set of promises forming the consideration for each other is an agreement. There is mutual assent to the proposal when the proposal is accepted and in the result an agreement is formed. Under s. 10, all agreements are contracts if they are made by the free consent of parties competent to contract for a lawful consideration and with a lawful object and are not by the Act expressly declared to be void. Section 13 defines consent. Two or more persons are said to consent when they agree upon the same thing in the same sense. Section 14 defines free consent. Consent is said to be free when it is not caused by coercion, undue influence, fraud, misrepresentation or mistake as defined in ss. 15 to 22. Now, under Act No. 45 of 1961 and the Rules framed under it, the canegrower in the factory zone is free to make or not to make an offer of sale of cane to the occupier of the factory. But if he makes an offer, the occupier of the factory is bound to accept it. The resulting agreement is recorded in writing and is signed by the parties. The consent of the occupier of the factory to the agreement is not caused by coercion, undue influence, fraud, misrepresentation or mistake. His consent is free as defined in s. 14 of the Indian Contract Act though he is obliged by law to enter into the agreement. The compulsion of law is not coercion as defined in s. 15 of the Act. In spite of the compulsion, the agreement is neither void nor voidable. In the eye of the law, the agreement is freely made. The parties are competent to contract. The agreement is made for a lawful consideration and with a lawful object and is not void under any provisions of law. The agreements are enforceable by law and are contracts of sale of sugarcane as defined in s. 4 of the Indian Sale of Goods Act. The purchases of sugarcane under the agreement can be taxed by the State legislature under Entry 54, List II.

Long ago in 1702, Holt, C.J. said in Lane v. Cotton (1 Ld. Raym. 646 : 91 E.R. 17) :

> "When a man takes upon himself a public employment, he is bound to serve the public as far as this employment goes, or an action lies against him for refusing."

The doctrine that one who takes up a public employment is bound to serve the public was applied to innkeepers and common carriers. Without lawful excuse, an innkeeper cannot refuse to receive guests at his inn, and a common carrier cannot refuse to accept goods offered to him for carriage. See Halsbury's Laws of England, 3rd Edn., Vol. 4, art. 375 and Vol. 21, art. 938. A more general application of the doctrine was arrested by the growth of the principle of laissez faire which had its heyday in the mid nineteenth century. Thereafter, there has been a gradual erosion of the laissez faire concept. It is now realised that in the public interest, persons exercising certain callings or having monopoly or near monopoly powers should sometimes be charged with the duty to serve the public, and, if necessary, to enter into contracts. Thus, s. 66 of the Indian Railways Act, 1890 compels the railway administration to supply the public with tickets for travailing on the railway upon payment of the usual fare. Section 22 of the Indian Electricity Act, 1910 compels a licensee to supply electrical energy to every person in the area of supply on the usual terms and conditions. Cheshire and Fifoot in their Law of Contract. 6th Edn., p. 23 observe that for reasons of social security the State may compel persons to make contracts. One of the objects of Act No. 45 of 1961 is to regulate the purchase of sugarcane by the factory owners from the canegrowers. The canegrowers scattered in the villages had no real bargaining power. The factory owners or their combines enjoyed a near monopoly of buying and could dictate their own terms. In this unequal contest between the canegrowers and the factory owners, the law stepped in and compelled the

factory to enter into contracts of purchase of cane offered by the canegrowers on prescribed terms and conditions.

In The Indian Steel & Wire Products Ltd. v. State if Madras ([1968] 1 S.C.R. 479), the Court held that sales of steel products authorised by the Controller under cls. 4 and 5 of the Iron and Steel (Control of Production and Distribution) Order, 1941 were exigible to tax under Entry 54, List II. The Court found that the parties had entered into contracts of sale though in view of the Order the area of bargaining between the buyer and the seller was greatly reduced. Hegde. J. Speaking for the Court said that as a result of economic compulsions and changes in the political outlook the freedom to contract was now being confined gradually to narrow 2 and narrower limits. We have here a case where one party to a contract of sale is compelled to enter into it on rigidly prescribed terms and conditions and has no freedom of bargaining. But the contract, nonetheless, is a contract of sale.

In Kirkness v. John Hudson & Co. Ltd., ([1955] A.C. 696) the House of Lords by a majority held that a compulsory vesting of title of the company's railway wagons in the British Transport Commission under s. 29 of the Transport Act, 1947 was not a sale within the meaning of the phrase "is sold" in s. 17 of the Income-tax Act, 1945. Under s. 29, there was a compulsory taking of property. The assent of the company to the taking was not required by statute. By force of law, the property of the company was taken without its assent. There was no offer, no acceptance and no mutual assent and no contract resulted. The House of Lords held that mutual assent was an element of a transaction of sale. In Gannon Dunkerley's case ([2959] S.C.R. 379), the Court approved of this principle and rejected the argument of counsel that an involuntary transfer of title as in Kirkness's case ([1955] A.C. 696) was a sale within the meaning of the legislative Entry. But the Court did not say that if one party was free to make a offer of sale and the other party was obliged by law to accept it and to enter into an agreement for purchase of the goods, a contract of sale did to result. In the present case, the seller makes an offer and the buyer accepts it. The parties then execute and sign an agreement in writing. There is mutual assent and a valid contract, though the assent of the buyer is given under compulsion of statute. Mr. Setalvad relied on the following passage in the Law of Contract by G. H. Treitel, at p. 5 : "Where the legislation leaves no choice at all to one party, the transaction is not a contract." But the author does not cite any authority in support of the proposition. He adds that even a compulsory disposition of property may be treated as contract for the purpose of a particular statute and cites the case of Ridge Nominees v. I.R.C. ([1962] W.L.R. 3). There, the Court distinguishing Kirkness's case ([1955] A.C. 696) held that the compulsory transfer of shares of a dissenting shareholder by a person authorised to make the transfer on his behalf under s. 209 of the Companies Act, 1948 corresponding to s. 395 of our Companies Act, 1956 was having regard to the machinery created by the section a conveyance on sale within s. 54 of the Stamp Act, 1891. The Lord Justices gave separate opinions. It is worthwhile quoting the opinion of Donovan L. J. who said :-

> "When the legislature, by section 209 of the Companies Act, 1948, empowers the transferee company to appoint an agent on behalf of a dissenting shareholder for the purpose of executing a transfer of his shares against a price to be paid to the transferor company and held in trust for the dissenting shareholder, it is clearly ignoring his dissenting and putting him in the same position as if he had assented. For the purpose of considering whether this results in a sale, one must, I think, bear that situation in mind, and regard the dissent of the shareholder as overridden by an assent which the statute imposes upon him, fictional though this may be. Thus, in the context of section 209 the transfer becomes in law a conveyance on sale. This conclusion, in my opinion, does not run counter to what was said in the House of

> Lords in Kirkness (Inspector of taxes) v. John Hudson & Co. Ltd., ([1955] A.C. 696), where, in terms of the statute there under consideration, property belonging to other persons was declared to vest on a specified date in the Transport Commission against payment of compensation. This may be no more than a difference of machinery, but machinery may make the very difference between a sale and a mere expropriation against compensation. "Lord Simonds, I venture to think, implies as much when he says he gets no assistance from the cases decided under the Stamp Acts."

In M/s. New India Sugar Mills Ltd., v. Commissioner of Sales Tax, Bihar ([1963] Supp. 2 S.C.R. 459, 469), the Court by a majority held that the supply of sugar by a sugar factory to a Provincial Government in obedience to the directions of the Sugar Controller given under the Sugar and Sugar Products Control Order, 1946 was not a sale taxable under List II, Entry 48, Sch. VII of the Government of India Act, 1935. Mr. Setalvad placed strong reliance on the following passage in the Judgment of Shah, J. at pp. 469-470 :

> "A contract of sale between the parties is therefore a pre-requisite to a sale. The transactions of despatches of sugar by the assesses pursuant to the directions of the Controller were not the result of any such contract of sale. It is common ground that the Province of Madras intimated its requirements of sugar to the Controller, and the Controller called upon the manufacturing units to supply the whole or part of the requirement to the Province. In calling upon the manufacturing units to supply sugar, the Controller did not act as an agent of the State to Purchase goods : he acted in exercise of his statutory authority. There was manifestly no offer to purchase sugar by the Province, and no acceptance of any offer by the manufacturer. The manufacturer was under the Control Order left no volition : he could not decline to carry out the order; if he did so he was liable to be punished for breach of the order and his goods were liable to be forfeited. The Government of the Province and the manufacturer had no opportunity to negotiate, and sugar was despatched pursuant to the direction of the Controller and not in acceptance of any offer by the Government".

Divorced from the context, this passage gives some support to the contention that there can be no contract if the acceptance of the offer is made under compulsion of a direction given by a statutory authority. But the passage must be read with the facts of the case. By cl. 3 of the Sugar and Sugar Products Control Order, 1946, producers of sugar were prohibited from disposing of sugar except to persons specially authorised in that behalf by the Controller to acquire sugar on behalf of certain Governments. Clause 5 required every producer or dealer to comply with the directions issued by the Controller regarding production, sales, stocks and distribution of sugar. Clause 6 authorised the Controller to fix the price of sugar. Clause 7(i) authorised the Controller to allot quotas of sugar for any Province and to issue directions to any producer or dealer for the supply of the sugar spacifying the price, quantity and type or grade of the sugar and the time and manner of supply. Contravention of the directions entailed forfeiture of stocks under cl. 11 of the Order and was punishable under r. 81(4) of the Defence of India Rules, 1939. The admitted course of dealings between the parties was that the Governments of the consuming States used to intimate to the Sugar Controller their requirement of sugar and the factory owners used to send to him statements of their stocks of sugar. On a consideration of the acquisitions and the statements of stock, the Controller used to make allotments. The allotment order used to be addressed by the Controller to the factory owner, directing him to supply sugar to the Government in question in accordance with the latter's despatch instructions. A copy of the allotment order use simultaneously to be sent to the Government

concerned and the latter then used to send to the factory detailed despatching instructions. In these circumstances, Kapur and Shah, JJ. (Hidayatullah, J. dissenting) held that by giving intimation of its requirement of sugar to the Controller and applying for allotment of sugar, the Government of Madras did not make any offer to the manufacturer. The direction of the Controller to the manufacturer to supply sugar to the Government was given in the exercise of his statutory authority and was not the communication of any offer made by the Government. The despatch of the goods in compliance with the directions of the Controller was not the acceptance by the manufacturer of any offer, nor could it be deemed to be an offer by the manufacturer to supply goods. On the special facts of that case, the majority decision was that there was no offer and acceptance and no contract resulted. That decision should not be treated as an authority for the proposition that there can be no contract of sale under compulsion of a statute. It depends upon the facts of each case and the terms of the particular statute regulating the dealings whether the parties have entered into a contract of sale of goods. Under Act No. 45 of 1961, a canegrower makes an offer to the occupier of the factory directly and the latter accepts the offer. The parties then make and sign an agreement in writing. There is thus a direct privity of contract between the parties. The contract is a contract of sale and purchase of cane, though the buyer is obliged to give his assent under compulsion of a statute. The State Legislature is competent to tax purchases of canes made under such a contract.

Mr. Setalvad submitted that there can be no levy of a purchase tax with reference to the tonnage of the cane. We cannot accept this contention. Usually the purchase tax is levied with reference to the price of the goods. But the legislature is competent to levy the tax with reference to the weight of the goods purchased.

The contention of Mr. Chatterjee that a purchase tax must be levied with reference to the turnover only is equally devoid of merit. Where the purchase tax is levied on a dealer, the levy is usually with reference to his turnover, which normally means the aggregate of the amounts of purchase prices. But the tax need not necessarily be levied on a dealer or by reference to his turnover. It may be levied on the occupier of a factory by reference to the weight of the goods purchased by him.

Mr. Chatterjee next submitted that a purchase tax must be levied on goods generally, and there can be no purchase tax with reference to their subsequent use, consumption or sale. He based his argument on paragraphs 17 to 20. Chap. III, Vol. III of the Report of the Taxation Enquiry Committee. There, the Committee while discussing the comparative merits of sales tax in relation to customs, excise and octroi, pointed out that sales tax was a major source of revenue and could be applied to the generality of goods, while customs, excise and octroi could be applied to only a limited portion of the industrial output of the country. The Committee did not express any opinion on the scope of List II, Entry 54. Under that Entry, the State legislature is not bound to levy a tax on all purchases of cane. It may levy a tax on purchases of cane required for use, consumption or sale in a factory. The legislature is competent to tax and also to exempt from payment of tax sales or purchases of goods required for specific purposes. Other instances of special treatment of goods required for particular purposes may be given. Section 6 and Sch. I, item 23 of the Bombay Sales Tax Act, 1946 levy tax on fabrics and articles for personal wear. Section 2(j)(a)(ii) of the C.P. and Berar Sales Tax Act. 1947 exempts sales of goods intended for use by a registered dealer as raw materials for the manufacture of goods.

Mr. Chatterjee submitted that the tax levied under s. 21 was a use tax and referred to Mcleod v. Dilworth & Co. (322 U.S. 327 : 88 L. Ed. 1305) and C. G. Naidu & Co. The State of Madras (A.I.R. 1953 Mad 116, 127-128). He argued that the State legislature could not levy a use tax which was essentially different from a purchase tax. The assumption of counsel that s. 21 levies a use tax is

not well-founded. The taxable event under s. 21 is the purchase of goods and not the use or enjoyment of what is purchased. The constitutional implication of a use tax in American law is entirely irrelevant. The observation in the Madras case that the Explanation to Art. 286(1)(a) of the Constitution conferred a power on the State legislature to levy a use tax is erroneous. The Explanation fixed the situs of certain sales. It did not confer upon the legislature any power to levy a use tax.

To appreciate another argument of Mr. Chatterjee, it is necessary to refer to a few facts. It appears that paragraph 21 of the Bill published in the Gazette on March 3, 1960 preliminary to the passing of Act No. 45 of 1961 provided for a levy of a cess on the entry of cane into the premises of a factory for use, consumption or sale therein. On December 13, 1960, this Court in Diamond Sugar Mills Ltd. and Another v. The State of Uttar Pradesh and Another ([1961] 3 S.C.R. 242) struck down a similar provision in the U.P. Sugarcane Cess Act, 1956 on the ground that the State legislature was not competent to enact it under Entry 52, List II as the premises of a factory was not a local area within the meaning of the Entry. Having regard to this decision, paragraph 21 of the Bill was amended and s. 21 in its present form was passed by the State Legislature. The Act was published in the Gazette on December 30, 1961. Mr. Chatterjee submitted that in the context the levy under s. 21 was really a levy on the entry of goods into a factory for consumption, use or sale therein. We are unable to accept this contention. As the proposed tax on the entry of goods into the factory was unconstitutional, paragraph 21 of the original Bill was amended and s. 21 in its present form was enacted. The tax under s. 21 is essentially a tax on purchase of goods. The taxable event is the purchase of cane for use, consumption or sale in a factory and not the entry of cane into a factory. As the tax is not on the entry of the cane into a factory, it is not payable on cane cultivated by the factory and entering the factory premises.

Mr. Setalvad submitted that s. 21 impeded free trade, commerce and intercourse and offended Art. 301 of the Constitution and relied on the decision in Firm A. T. Mehtab Majid & Co. v. State of Madras ([1963] Supp. 2 S.C.R. 435). In that case, the Court held that r. 16(2) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939 discriminated against imported hides or skins which had been purchased or tanned outside the State by levying a higher tax on them and contravened Art. 304(a) of the Constitution. At p. 442, Raghubar Dayal, J. said :

> "It is therefore now well settled that taxing laws can be restrictions on trade, commerce and intercourse, if they hamper the flow of trade and if they are not what can be termed to be compensatory taxes or regulatory measures. Sales tax of the the kind under consideration here, cannot be said to be a measure regulating any trade or a compensatory tax levied for the use of trading facilities. Sales tax, which has the effect of discriminating between goods of one State and goods of another, may affect the free flow of trade and it will then offend against Art. 301 and will be valid only if it comes within the terms of Art. 304(a)."

That case decides that a sales tax which discriminates against goods imported from the other States may impede the free flow of the trade and is then invalid unless protected by Art. 304(a). But the tax levied under s. 21 does not discriminate against any imported cane. Under s. 21, the same rate of tax is levied on purchase of all cane required for use, consumption or sale in a factory. There is no discrimination between cane grown in the State and cane imported from outside. As a matter of fact, under the Act the factory can normally buy only cane grown in the factory zone. A non-discriminatory tax on goods does not offend Art. 301 unless it directly impedes the free movement or transport of the goods. In Atiabari Tea Co. Ltd., v. The State of Assam and others ([1961] 1

S.C.R. 809, 860-861). Gajendragadkar, J. speaking for the majority said :

> "We are, therefore, satisfied that in determining the limits of the width and amplitude of the freedom guaranteed by Art. 301 a rational and workable test to apply would be : Does the impugned restriction operate directly or immediately on trade or its movement ? .....It is the free movement of the transport of goods from one part of the country to the other that is intended to be saved, and if any Act imposes any direct restrictions on the very movement of such goods it attracts the provisions of Art. 301, and its validity can be sustained only if it satisfies the requirements of Art. 302 or Art. 304 of Part XIII."

This interpretation of Art. 301 was not dissented from in Automobile Transport (Rajasthan) Ltd. v. State of Rajasthan ([1963] 1 S.C.R. 491, 533). Normally, a tax on sale of goods does not directly impede the free movement or transport of goods. Section 21 is no exception. It does not impede the free movement or transport of goods and is not violative of Art. 301.

Mr. Setalvad next submitted that s. 21 offend Art. 14 of the Constitution in several ways. It was argued that s. 21 read with s. 2(e) discriminated between producers of sugar using the vacuum pan and open pan processes. Under s. 21, as it stood before its amendment by Act No. 4 of 1967 tax was levied on purchases of cane by factories producing sugar by means of vacuum pans but purchases of cane by khandasari units producing khandasari sugar by the open pan process were entirely exempt from the tax. Even the amended s. 21 levies a lower rate of tax on the purchases of cane by khandsari units. It was also argued that there was discrimination in favour of producers of jaggery by exempting their purchase of cane from payment of the tax. But the affidavits filed on behalf of the respondents show that factories producing sugar by means of vacuum pans and khandasari units producing sugar by the open processes from distinct and separate classes. The industry using the vacuum pan process is in existence since 1932-33. No tax was levied on this industry until 1949. In 1949 when the industry became well established, tax was levied on it for the first time by s. 14 of the Madras Sugar Factory Control Act, 1949. The khandasari units carry on a small scale industry. They are of recent origin in the State of Andhra Pradesh. Until 1967, this industry was exempt from the levy. When the industry came to be somewhat established by 1967 a smaller rate of tax was levied on it. In 1965-66, factories adopting the vacuum pan process brought over 32 lakh tonnes of cane while the khandasari sugar units in the State bought about 2.70 lakh tonnes of cane. The manufacture of jaggery has no resemblance to the manufacture of sugar by the vacuum pan or the open pan system. It is a cottage industry wherein individual canegrowers process their cane into jaggery and market it as a finished product. Having regard to the affidavits, we are satisfied that the deferential treatment of the factories producing sugar by means of vacuum pans, khandasari units producing sugar by the open pan process and cane growers using cane for the manufacture of jaggery is reasonable and has a rational relation to the object of taxation. There are marked difference between the three classes of users of cane and their capacity to pay tax. The legislature could reasonably treat the three sets of users of cane differently for purposes of levy.

It was next argued that the power under s. 21(3) to exempt new factories and factories which in the opinion of the Government have substantially expanded was discriminatory and violative of Art. 14. We are unable to accept this contention. The establishment of new factories and the expansion of the existing factories need encouragement and incentives. The exemption in favour of new expanding factories is based on legitimate legislative policy. The question whether the exemption should be granted to any factory, and if so, for what period and the question whether any factory has substantially expanded and if so, the extent of such expansion have to be decided with reference to

the facts of each individual case. Obviously, it is not possible for the State legislature to examine the merits of individual cases and the function was properly delegated to the State Government. The legislature was not obliged to prescribe a more rigid standard for the guidance of the Government. We hold that s. 21 does not violate Art. 14.

The petitioner in Writ Petition No. 101 of 1967 raised the contention that it was a new factory and that the Government of Andhra Pradesh should have exempted it from payment of tax under s. 21(3)(a). The contention was controverted by the respondents. The affidavits do not give sufficient material on the point, nor is there any prayer in the petition for the issue of a mandamus directing the State Government to grant the exemption. In the circumstance, we do not think it fit to express any opinion on the matter. It will be open to the petitioner in Writ Petition No. 101 of 1967 to raise this contention in other proceedings.

In the result, the petitions are dismissed with costs, one hearing fee.

G.C.

Petitions dismissed.

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