The State of Mysore and Another

Vs

Pendakur Virupanna Setty and Sons and Another, Etc. Etc.

Civil Appeals Nos. 1827-1830 of 1968

(J. M. Shelat, A. N. Grover, I. D. Dua JJ)

27.04.1971

JUDGMENT

GROVER, J. -

These appeals by certificate arise from a judgment of the Mysore High Court delivered in certain petitions filed under Article 226 of the constitution challenging the demand of a cess levied in exercise of the power conferred by Section 11(1) of the Madras Commercial Crops Market Act, 1933 - hereinafter called the 'Act' - the provisions of which were applicable to the Bellary district of the State of Mysore.

2. The respondents were served a notice by the Secretary of the Bellary Market Committee established under the Act to pay the cess on groundnut seeds bought or sold in the notified area of the Committee. As the respondents failed to comply with the demand complaints were filed against them for contravention of Section 11(1) of the Act and of certain rules and bye-laws famed thereunder. The respondents filed petitions under article 226 of the Constitution challenging the validity of the levy of cess. The High Court quashed the demand on the ground that what was being really demanded was the payment of sales tax and since the maximum rate of sales tax authorised by Section 15 of the Central Sales Tax Act, 1956, read with Section 5(4) of the Mysore Sales Tax Act, 1957 had already been imposed the Market Committee could not make any further or additional levy. A direction was also made for refund of the cess collected during a period of three years preceding the date of the presentation of the Writ Petition.

3. For the purposes of determination of the points which have been raised it is necessary to set out the background and the history of legislation in so far as it is relevant concerning Bellary district. By the Andhra State Act, 1953 (General Act 30 of 1953) a Part A State to be known as "Andhra" came into existence, by Section 4 of that Act there was added to the State of Mysore the territory which immediately before the appointed day was comprised in the Taluks of Bellary district other than Alur, Adoni and Rayadrug in the State of Mysore and the said territories thereupon ceased to form part of the State of Madras. By virtue of section 53 of the Central Act 30 of 1953 all laws which were in force immediately before the appointed day in the territories which became a part of the state of Mysore were to continue to be in force until otherwise provided by the legislature of that State. The Act became applicable to that area of the Bellary district which became a part of the State of Mysore. Section 11(1) of the act as it originally stood empowered the Market Committee to levy fees subject to such rules at might be made on the notified commercial crop or crops bought and sold in the notified area at such rates as it might determine. In certain decisions of the Madras High Court the view was expressed that the fee levied under Section 11(1) as it originally stood was not for services rendered but was really a tax levied for raising funds for constructing the market. With a

view to avoid the legality of the levy being questioned the Madras Legislature amended Section 11(1) by Madras Act 33 of 1953. It was stated in the objects and reasons of the Bill, which was introduced in the legislative assembly of that State, that it was proposed to make it clear that the levy was a cess by way of sales tax and that it was in addition to the sales tax levied under the Madras General Sales Tax Act, 1939 and was also subject to the provisions of Article 286 of the constitution. The following sub-section was substituted for sub-section (1) of section 11 of the Act :

> "Notwithstanding anything contained in the Madras General Sales Tax Act, 1939 (Madras Act IX of 1939), the Market Committee shall subject to such rules as may be made in this behalf, levy a cess by way of sales tax on any commercial crop bought and sold in the notified area at such rates as the State Government may, by notification, determine.
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> Explanation ...." Since that part of Bellary district which had been included in the Mysore State by virtue of the Central Act 30 of 1953, was no longer a part of the State of Madras the above amendment made in 1955 did not apply there. The amended section, however was applicable to South Kanara district which then formed part of State of Madras. By the States Reorganisation Act, 1956 the district of South Kanara, with the exception of the Taluk of Kollegal and certain other areas became part of the new States of Mysore, Section 7(a) of the Act contained a provision similar to Section 53 of the Central Act 30 of 1953. The laws operating in the State of Madras became applicable to areas which were formerly in that State. Thus Section 11 of the Act, as amended, in the year 1955 by the legislature of the State of Madras continued to apply to the South Kanara district of of Bellary which became part of the former State of Mysore Section 11 of the Act was in force at it stood before it amendment in 1955 by the Madras Legislature. But Section 11, as amended, was in force in the district of South Kanara.

4. In 1958 a Bill was introduced in the Mysore Legislature to amend the Act as in force in the Madras area. In the statement of objects and reasons it was mentioned that Section 11 of the Act, as amended by the Madras Legislature in 1955 and as in force in South Kanara district empowered the South Kanara Market Committee to levy a cess by way of sales tax on any commercial crop bought and sold in the notified area at such rates as the Government might determine. No notification as contemplated by the section was issued by the Government of the erstwhile State of Madras and the Market Committee continued to levy a cess at the same rate as it was levying prior to the amendment. In the decision of the Madras High Court it had been held that the levy of cess was invalid as no notification had been issued by the State Government. The validity of the collection of the fee prior to the amendment Act of 1955 had also been questioned. It was, therefore, necessary to validate the levy and collection of the cess already made and to amend the Act to enable the Committee to continue to levy the cess. Previously an Ordinate had also be promulgated on account of the urgency of the matter. The Madras Commercial Crop Market (Mysore Amendment and Validation of Levy and cess) Act, 1958, received the assent of the Governor on November 30, 1958. By Section 2 of this amending Act, Section 11 of the Act was amended. Sub-section (1) as in force in the "Madras areas" was substituted and was to be deemed to have been substituted with effect from November 23, 1955. This subsection was as follows :

> "(1) Notwithstanding anything contained in the general sales tax law for the time being in force, the market committee shall levy a cess by way of sales tax on any commercial crop bought or sold in the notified area at the rates specified hereunder :

1. Arecanut

2. Coconut."

Section 4 validated the fee or cess collected or paid before the commencement of the amending Act of 1958.

5. Section 120 of the States Reorganization Act, 1956, empowered the appropriate Government for the purpose of facilitating the application of any law in relation to any of the States formed or territorially already to make, within the specified period, such adaptations and modification of the law, whether by way of repeal or amendment, as might be necessary expedient and every such law was to have effect subject to the adaptations or modification so made until altered, repealed or amended by the competent Legislature or other competent authority. By the Mysore Adaptation of Lows Order, 1956 "Madras area" was to mean the territory specified in clause (d) of sub-section (1) of Section 7 of the States Reorganisation Act. According to that provision South Kanara district except Kasargod Taluk and Amindivi islands and Kollegal taluk in the state of Madras became a part of the State of Mysore. In other words according to the Adaptation of Laws Order the "Madras area" was to be confined to the above territories only. The Mysore General Clauses act, 1899, after the adaptations made, contained the definition of "Madras area" in Clause 47 of Section 3 confining it to the territories specified in clause (d) of sub-section (1) of Section 7 of the States Reorganisation Act, 1956. This meant that it did not include that part of bellary district which had been incorporated in the State of Mysore by the Central act 30 of 1953. Therefore under Section 3 of the Mysore General Clauses Act in any of the Mysore Acts made after its commencement unless there was anything repugnant in the subject or context "Madras area" was to mean, the territory which was incorporated in Mysore by the States Reorganisation Act 1956 and which did not include the Bellary district with which we are concerned in the present appeals.

6. The Mysore Agricultural Produce Marketing (Regulation) Act 1966 (Mysore Act 27 of 1966), was published in the Mysore Gazette on September 15, 1966. Section 154 of that Act which relates to Repeal and Saving is as follows :

"154. Repeal and Savings. - (1) The Madras Commercial Crops Market Act, 1933 (Madras Act XX of 1933), as in force in Bellary district, the Madras Commercial Crops Market Act, 1933 (Madras Act XX of 1933), as in force in the Madras Area .... are hereby repealed."

7. As the impugned proceedings relate to levy in the Bellary district of the State of Mysore for the year prior to the enactment of the new Act of 1966 one of the main questions for determination is whether the amendment made in Section 11(1) by the amending Act of 1958 passed by the Mysore Legislature was applicable to that area or whether the amending provision was confined only to the "Madras Area" which meant the district of South Kanara with the exception of specified area which came to be incorporated in the State of Mysore in 1956. The High Court was of the opinion that the definition contained in Clause 47 of Section 3 of the Mysore General Clauses Act of "Madras Area" which was limited to the South Kanara district with the exception of specified area had to be disregarded while interpreting the expression "Madras Area" occurring in the Mysore Amending Act of 1958. It was held by the High Court that the "Madras Area" mentioned in the Amending Act of 1958 must also include the part of Bellary district which originally was a part of the State of Mysore but which came to be incorporated in that State as a result of the Central Act 30 of 1953.

8. It may be observed at this stage that the attention of the High Court does not appear to have been drawn to several matters including Section 154 of the Mysore Act 27 of 1966. Indeed before us also these matters escaped the notice of the counsel until more information was obtained under out directions which necessitated a rehearing of the case.

9. We have no manner of doubt that the Bellary district which became a part of the State of Mysore as a result of the Central Act 30 of 1953 was governed by Section 11(1) of the Act as it stood at the time it had become applicable to that area by virtue of Section 53 of the aforesaid Central Act of 1953. The amendment made by the Mysore Legislature in 1958 by which sub-section (1) of Section 11 was substituted by a new section did not apply to the bellary district and was confined only to the Madras Area which meant the district of South Kanara with the exception of specified areas. We now proceed to give our reasons for coming to the above conclusion. (1) In the statement of objects and reasons relating to the Madras Commercial Crops Market (Mysore Amendment and Validation of Levy of Cess) Bill, 1958, when it was introduced in the Mysore Legislature there was mentioned only of the Act as amended by the Madras Legislature in 1955 being in force in South Kanara district. The entire reading of the statement shows that whatever changes in law and the validation provisions which were being made were confined only to the levy of a cess by way of sales tax by the South Kanara Market Committee. (2) The Amending Act of 1958 was made applicable only to what was called the "Madras Area". This area could have reference only to the South Kanara district with the exception of the specified areas which was a part of the State of Madras immediately before the States Reorganisation Act, 1956. It would be stretching the language too far to include in it the bellary district which had ceased to be a part of the State of Madras much earlier in 1953. The adaptation made in the Mysore General Clauses Act, 1899 by virtue of the provisions contained in the States Reorganisation Act, 1956, defined "Madras Area" to mean the territory specified in clause (d) of sub-section (1) of Section 7 of that Act. That would as stated before, comprised only the territory of South Kanara district with the exception of specified areas. The reasoning of the High Court that the definition given in the General Clauses Act should not be applied to the expression "Madras Area" in the Amending Act of 1958 can by no mean be sustained. (3) the distinction between what may be called the "Bellary Area" and the "Madras Area" which came to be incorporated in the State of Mysore in 1953 and 1956 respectively is fully substantiated by Section 154 of the Mysore Act 27 of 1966. It is stated there in unambiguous language that the Act as in force in the Bellary district and as in force in the "Madras Area" was being repealed. If "Madras Area" also included the Bellary district as is the view of the High Court there was no question of Section 154 being worded as it is, making it quite clear, that the Act as applicable in Bellary district, was not the same as in force in the "Madras Area". (4) The bye-laws of the Bellary Market Committee which were framed in exercise of the powers conferred by Section 19 of the Act read with the Madras Commercial Crops Market Rules, 1948, give an indication that the Amending Act of 1958 was not applicable to the Bellary district. These bye-laws were approved in May 1960. Under bye-law 19 the Market Committee could levy fee or cess on the notified crops or commodities at the rates specified in the schedule. The schedule included cotton bales, loose cotton, Kapas, groundnut seeds, groundnut pods and various other commodities. The Amending Act of 1958 specified the rates of only two commodities Arecanut and Coconut. These are not to be found in the schedule of the bye-laws of the Bellary Market Committee. In the bye-laws of the South Kanara Market Committee which came into force on July 1, 1955, these two commodities, namely Arecanut and Coconut are the principal, if not the only, commodities which figure. The suggestion which has been made at the bar and which does not seem to be without substance is that in the South Kanara district these are only or the principal commodities which constitutes commercial crop : whereas in the Bellary district there are other commodities mentioned in the bye-laws which do not

include these two that constitute commercial crops. Certain notification have also been produced which show that rice, paddy, etc., were declared to be commercial crops for the purpose of the Act even in the "Madras Area". But the bye-laws as also the Amending Act of 1958, seem to show that Arecanut and Coconut are the main or the principal commodities in the "Madras Area" and these commodities, according to the bye-law, are confined to South Kanara district and are not included as commercial crops in the Bellary district at all.

10. Once it is held that the Mysore Amending act of 1958 did not apply to the Bellary district only fee could be levied under Section 11(1) of the Act as it originally stood. Under bye-law 19 the rate specified for groundnut seeds was 9 paise per kilogram. The notice sent by the Market Committee making the demand from the respondents employed the word "cess" but that cannot stand in the way of it being held that the demand related to a fee which alone could be levied under Section 11(1) of the Act. The finding of the High Court was that the cess demanded was a sales tax since it was levied under Section 11(1) of the Act as amended by the Amending Act of 1958. It was observed that if it was not a cess the question that remained to be considered was whether the cess demanded was a fee and if so whether the levy of the fee was open to criticism that it was not co-related to the services rendered.

11. As it has been determined by us that the demand by the Market Committee could be made lawfully only in respect of a fee the validity and legality of that levy will now have to be determined by the High Court. The distinction between a fee and tax is well known and there are a series of decisions of this Court on what is a fee and what are the tests which distinguish it from a tax. See Delhi Cloth and General mills Co. Ltd. v. Chief Commissioner, Delhi and Other. (1970(2) SCC 172 : (1970) 2 SCR 348) The High Court will no doubt afford the parties an opportunity of filing supplementary affidavits and documents. If necessary, for determining whether the levy made is a fee. After deciding that matter the Writ Petitions will have to be disposed of in accordance with law.

12. The appeals are allowed accordingly and the cases are remitted to the High Court for disposal. The parties will bear their own costs in this Court.

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