

Mangulu Sahu Ramahari Sahu

Vs

The Sales Tax Officer, Ganjam

Civil Appeal No. 2286 of 1969

(K. S. Hegde, P. Jagmohan Reddy, H. R. Khanna JJ)

10.03.1974

JUDGMENT

HEGDE J.

1. This is an appeal by special leave arising from the order of the Orissa High Court summarily dismissing the writ petition under Article 227 of the Constitution. The question that arose for decision in that application was whether chillies and lemons were "vegetables" within the meaning of the Orissa Sales Tax Act, 1947. The Sales Tax Officer following the decision of the Orissa High Court in *Dhadi Sahu v. Commissioner of Sales Tax, Orissa*, (ILR 1961 Cut 175) came to the conclusion that they were not vegetables. In view of the decision in question, the appellant instead of going up in appeal against the order of the assessment authority, went straight to the High Court in a writ petition under Article 227 of the Constitution as there was no purpose in his going up in appeal to the authorities under the Sales Tax Act in view of the High Court decision. They were bound by the decision of the High Court. As mentioned earlier, the High Court summarily dismissed the writ petition evidently following its earlier decision.

2. The primary question for our consideration is whether chillies and lemons are vegetables as contemplated by the Orissa Sales Tax Act. The Orissa High Court in *Dhadi Sahu's case (supra)* had taken the view that before an item can be considered as vegetable, it should be the principal item of food. It also examined the botanical meaning of that word. The view taken by that Court is wholly wrong. This Court had occasion to consider the meaning of the expression "vegetables" in *Ramavatar Budhaiprasad v. Assistant Sales Tax Officer, Akola, and Another.* ((1962) 1 SCR 279 : (1961) 12 STC 286 : AIR 1961 SC 1325) Therein this Court observed that the word "Vegetables" must be construed neither in a technical sense nor from the botanical point of view; it should be understood as in common parlance. A word which is not defined in the Act but which is a word of every day use must be construed in its popular sense. In that case, this Court took the view that the word "vegetables" should be understood as denoting the class of vegetables which are grown in kitchen garden or in a farm and are used for the tables. There can be no dispute that both chillies and lemons are grown in kitchen gardens or at any rate in farms and they are used for the tables. Mr. Mehta, appearing for the State of Orissa, contended that in Orissa chillies and lemons are not used as articles of food. We are unable to accept this assertion as correct. Even if a section of Oriyas have a dislike for chillies and lemons, they do not cease to be vegetables for that reason. In common parlance chillies and lemons are known as vegetables. We have no doubt that chillies and lemons have always been considered as vegetables. In that view it is not necessary for us to go into the question whether at any rate they are fruits, sales or purchases of which are exempt from sales tax.

3. In the result, this appeal is allowed, the order of the High Court is set aside and the impugned

assessments are quashed. The respondent is liable to pay the costs of the appellant both in this Court as well as in the High Court. If the sales tax had been collected in pursuance of the impugned assessment orders, the State will refund the same.

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