

The State of Kerala and Others

Vs

K. P. Govindan, Tapioca Exporter and Others

The State of Kerala and Another

Vs

K. C. Abubecker

And

The State of Kerala and Another

Vs

P. Marakkar, Tapioca Merchant

Civil Appeals Nos. 729-757 of 1972, and 514 (N) and 515 of 1973

(CJI A. N. Ray, K. K. Mathew, N. L. Untwalia JJ)

07.11.1974

UNTWALIA, J. –

1. All these civil appeals filed on grant of certificates of fitness by the High Court of Kerala have been heard together and are being disposed of by a common judgment as their facts and the points involved in them are identical. The respondents filed various writ petitions questioning the validity of the orders of the State Government of Kerala levying administrative surcharge on the export of tapioca. Respondents are dealers in tapioca and do the business of exporting it also outside the State of Kerala. In their writ petitions, they also claimed refund of the amounts realised by the State Government on the basis of the impugned orders. Writ petitions were allowed by a bench of the Kerala High Court and Civil Appeals Nos. 729-757 of 1972 are directed against the orders in the writ petitions. Two of the Civil Appeals namely Civil Appeals Nos. 514 and 515 of 1973 arise out of the appellate order of the Kerala High Court dismissing the appeals from the orders allowing the writ petitions.

2. In exercise of the powers conferred by sub-section (1) and sub-section (2) of Section 3 of the Essential Commodities Act, 1955 (Central Act 10 of 1955), hereinafter referred to as the Act, read with the order of the Government of India dated June 9, 1966 and with the prior concurrence of the Central Government, the Government of Kerala made the Kerala Tapioca Manufacture and Export (Control) Order, 1966. Under Clause 5 of the said order no person could export tapioca except under and in accordance with a permit issued by the Commissioner or any officer authorised by him in this behalf. Clause 6 of the order provides for the filing of applications for the grant of permits for tapioca in Form III and the permit for the export of tapioca shall be in Form IV. Even before the promulgation of the Kerala Tapioca Manufacture and Export (Control) Order, administrative

surcharge was levied under a scheme formulated by the State Government, on April 15, 1966 published in the Kerala Gazette dated May 3, 1966. The rates of administration charge levied on tapioca in the scheme dated April 15, 1966 was varied from time to time and a copy of the order dated October 20, 1967 specifying the revised rates was Ext. P-1 in one of the writ petitions. A copy of the order dated April 15, 1966 was given to us by the learned Solicitor General appearing for the appellant State. The respondents' plea that the levy of administrative charges was ultra vires the State Government and unwarranted by law has been accepted by the Kerala High Court. Learned Solicitor General appearing for the appellants State submitted that the orders levying administrative charge on the export of tapioca was in effect and substance a licence fee charged in the exercise of the police powers of the State for permitting the respondents by grant of permits to export tapioca, Such a levy, Counsel submitted, can very well be supported with reference to the provisions of sub-section (1) or sub-section (2) of the Act, whereby the State as a result of the authorisation under Section 5 of the Act is empowered to regulate the transport or export of tapioca, and essential foodstuffs.

3. Learned Solicitor General strenuously attacked the findings of the Kerala High Court that the administrative charge imposed on the export of tapioca was a fee and since it had no co-relation with the service rendered by the State, the impost was bad.

4. In the instant case it is not necessary for us to decide whether the view aforesaid of the Kerala High Court or the submission made on behalf of the appellant in regard is correct or not. The Tapioca Export Control Order was made by the State Government on being authorised by the Central Government in its notification date June 9, 1966. A copy of the said notification was placed before us at the time of hearing of these appeals. It purported to authorise the State Government to make orders under Section 3 of the Act to provide for some of the matters mentioned in the various clauses of sub-section (2). Learned Counsel for the respondents submitted that it was not a general authorisation to make an order under sub-section (1). It is not necessary for us to go into this question either.

5. We shall assume in favour of the appellant that while regulating or prohibiting the production, supply and distribution of tapioca and trade and commerce therein it has got the police power to charge licence fee for the purpose of regulating the tapioca trade or to charge fees for grant of issue of licences/permits or other documents in accordance with clause (ii) of sub-section (2) of Section 3 of the Act. Still we find that the impugned levies have rightly the trade or for grant of permits. The order date April 15, 1966 formulating the scheme was not an order under any of the provisions of Section 3 of the Act. It did not impose any licence fee or fee for grant of permit. It merely provided for levying of administrative surcharge for the export to tapioca and its products at the specified rates which varied from time to time. In substance and in effect it was an impost on export which indisputably the State had no power to do. The orders levying the administrative charge which followed the Tapioca Export Control Order did not refer to the exercise of any power under the said Order. It was completely independent to it. The Tapioca Export Control Order did not provide for imposition of any licence fee for the grant of permit for export of tapioca. Argument put forward on behalf of the appellant that the order dated April 15, 1966 was in substance and in effect an order under Section 3 of the Act runs counter to its case in the petitions of appeal wherein it has been stated that the deterioration in food position in the State of Kerala started from 1963 onwards and to avert the further worsening of the food position, the Government under Rule 125 of the Defence of India Rules, 1962 issued the Tapioca Control Order, 1964, whereby Governments imposed certain restrictions in the export of tapioca and its products from the State and permitted the export of limited quantity through selected dealers. The State, in accordance with this order framed a scheme

known as "Scheme for the export of tapioca and its products", on April 15, 1966 whereby the Government clarified the manner and mode of selection of the dealer, the details regarding the submission of applications of the intending exporters, the issue of permits and the payments of administrative surcharge.

6. The stand taken in the petitions of appeal was not pursued at the time of the hearing. It is therefore, clear that the administrative surcharge levied by the State Government on the export of tapioca, as it was, was bad. The realisations thereunder were without the authority of law. It will, however, be open to the State Government to impose tax or fee, as they may be advised to do in accordance with law and if permissible under it, for permitting the respondents to export tapioca outside the State of Kerala. The debatable question as to the nature of impost, its constitutional validity and legal justifiability will have to be gone into then.

7. On the facts as they stand in these appeals, we uphold the orders of the Kerala High Court for the reasons given by us. The appeals fail and are dismissed with costs. One hearing fee.

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