ANDHRA PRADESH HIGH COURT

Kadiyala Chandrayya

Vs.

State of Andhra Pradesh

T.R.C. No. 64 of 1955

(Subba Rao, C.J. and Manohar Pershad, J.)

16.11.1956

JUDGMENT

Subba Rao, C.J.

1. This is a revision against the order of the Andhra Sales Tax Appellate Tribunal confirming that of the Deputy Commissioner of Commercial Taxes.

2. The petitioner is the proprietor of a non-vegetarian meals hotel called Sri Taj Mahal Hotel, Eluru. He was assessed for 1953-54 on a turnover of Rs. 27,000 on the best of judgment in the absence of a return from him. The Tribunals estimated the turnover at 4 times the cost of the mutton purchased. The learned counsel for the petitioner contended that the said multiple is arbitrary and is not supported by any reasonable basis. The Tribunals came to the conclusion on the material placed before them, that, from 1st April, 1953 to 14th June, 1953, 2050 seers of mutton were purchased for Rs. 3,072, working out an average roughly of 30 seers per day at Rs. 1-8-0 per seer. But, as there was no evidence of other purchases such as rice, vegetables, dhall, ghee, curd, etc., which would be necessary to make a complete meal costing Rs. 1-4-0, the Tribunal estimated that four times the cost of the mutton purchased would represent the average sale proceeds per day, i.e., Rs. 180. On that footing, the net turnover for five months was fixed at Rs. 27,000. The assessment was, therefore, made on the relevant material placed before the Tribunal and we cannot say that it was mere guess work or was arbitrary.

3. The learned counsel then raised for the first time before us, the contention that the proviso to Section 3 (1) (b) offends Article 14 of the Constitution and is, therefore, void. Section 3 (1) reads :

> "Subject to the provisions of this Act
> (a) Every dealer shall pay for each year a tax on his total turnover for such year and
> (b) the tax shall be calculated at the rate of three pies for every rupee on such turnover. Provided that if and to the extent to which such turnover relates to articles of food and drink sold in a hotel, boarding bouse or restaurant, the tax shall be calculated at the rate of

four and a half pies for every rupee, if the turnover relating to those articles is not less than twenty five thousand rupees."

Under this section, if a dealer sells articles of food and drink in a hotel, boarding house or restaurant with a turnover of not less than Rs. 25,000, he would be taxed at the rate of 4-1/2 pies for every rupee of his turnover but, a dealer in similar articles with less turnover in a hotel, boarding house or restaurant or in different articles with a turnover of more than Rs. 23,000 or a dealer in any article including articles of food and drink with any turnover, whether less than Rs. 25,000 or more than that amount selling outside a hotel, boarding house or restaurant would be charged at the rate of three pies for every rupee on such turnover. It is said that this discrimination between one class of dealers from another class is irrational and offends the fundamental right of the assessee to the equal protection of laws guaranteed by Article 14 of the Constitution. The counsel appearing for the State supports this apparent discrimination on the principle of reasonable classification. .

4. The principle of classification has been authoritatively restated by the Supreme Court in *Budhan Chowdhry v. State of Bihar*[1], thus :

"It is now well-established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (1) that the classification must be founded on an intellible differentia which distinguishes persons or things that are grouped together from others left out of the group and (2) that the differentia must have a rational relation to the object sought to be achieved by the statute in question,

The classification may be founded on different bases, namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and object of the Act under consideration. It is also well established by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure." This is a concise but complete statement prescribing the limits of the rule of classification.

5. The principle of classification was construed by the Supreme Court of America more liberally in the case of taxing statutes than in other cases. In Willis on Constitutional Law at page 587, the following passage appears :

"The Supreme Court permits a wider discretion in classification under the power of taxation if possible than it does under the police power. One reason for this undoubtedly is the urgent need for revenue by the various Governmental agencies. A State does not have to tax everything in order to tax something. It is allowed to pick and choose districts, objects, person, methods and even rates for taxation if it does so reasonably. The Constitution does not say how cases shall be decided. All it says is that the States shall not deny to any person within their jurisdiction equal protection of the laws. It does not

[1]1955 SCJ 163 : AIR 1955 SC 191

> say when persons are within the jurisdiction of a State or what are equal laws. As a consequence, the Supreme Court decides cases as it thinks they ought to be decided with no other mandate than one to decide. The Supreme Court has been practical and has permitted a very wide latitude in classification for taxation."

6. For the same reasons, we should think that, even in India, a very wide latitude should be permitted in classification for the purpose of taxation.

7. Another principle that should be borne in mind when statutes are sought to be struck down on the ground of discrimination is that there is a strong presumption that discriminations in State legislation are based on adequate grounds and that every state of facts, sufficient to sustain a classification which can reasonably be conceived of as having existed when the law was adopted, will be assumed. See *Middleton v. Texas Power and Light Co*[2]*.,* and *Crescent Cotton Oil Co. v. Mississippi*[3]*,*

8. Bearing the aforesaid principle in mind, we shall consider whether the impugned provision could be sustained on the basis of reasonable classification. Section 3(1) puts different dealers in distinct categories on the basis of the nature of the articles sold, the place wherein the business is conducted and the extent of the turnover of the business. A dealer in food and drink sold in a hotel, boarding house or restaurant with a turnover of not less than Rs. 25,000, is distinguished from dealers of different articles, whether sold in a hotel, boarding house or restaurant or not, from a dealer of similar articles with less than the said turnover and from a dealer of any other article in a hotel, boarding house or restaurant or not irrespective of his turnover. The question is whether a dealer in the first category has any distinctive economic characteristics which have any relation to the object sought to be achieved.

9. The object of the Act, as set out in the preamble, is to provide for the levy of a general tax on the sale of goods in the State of Andhra. But every taxing legislation makes a genuine attempt to adjust the burden with a fair and reasonable degree of equality. It also aims to apportion the burden equitably on different categories of properties or persons with distinct economic characteristics. It is impossible in the nature of things to aim at absolute equality in the matter of taxation. The State resorts to the principle of classification in an attempt to harmonise the doctrine of equality with differences inherent in the categories of properties or persons assessed. In the present case, the object to provide for the levy of a general tax and to apportion the burden equitably between different categories of persons has a reasonable nexus with the classification adopted by the Legislature. The question can be considered from the stand point of the citizen as well as from the stand point of the State. From the stand point of the State, the classification can be justified on the ground of equitable apportionment of the burden and easy realisation of the tax. Articles of food and drink are more in demand than other articles. Even in the case of the former, there will be a larger demand in restaurants, boarding houses and hotels than in other places like way-side shops. There may be small or big dealers even in such commodities, who run hotels or keep boarding houses. The State also can reasonably recover taxes at

[2](1919) 249 US 152

[3](1921) 257 US 129

higher rates from prosperous dealers than from impecunious ones. From the stand point of the

dealer also, there is justification for the varied rates. The articles sold, the place where the business is carried on and the expectation of large profits are the characteristics of dealers who are distinct from dealers not covered by the proviso.

10. Learned counsel relied upon the decision of the Madras High Court in *Krishna Iyer v. The State of Madras*[4], (D), wherein the learned Judges took a different view from what we have taken. After pointing out that three lines of classification run through the impugned provision, the learned Judges considered only the second classification, namely, the distinction between dealers in articles of food and drink sold in hotels, boarding houses and restaurants and other dealers in such articles and held that it was sufficient to deny the validity of the impugned provision. With great respect we cannot agree. In our view, the characteristics of the dealer covered by the proviso should be cumulatively considered and, if so looked at, the said characteristics will afford a reasonable basis of classification which has a rational nexus with the object sought to be achieved. We, therefore, hold that the classification is founded on intelligible differentia distinguishing dealers like the assessee and that it has a rational relation to the object sought to be achieved.

11. In the result, the revision fails and is dismissed with costs. Advocate's fee Rs. 50.
Petition dismissed.

[4](1956) 2 MLJ 179 : AIR 1956 Mad 480