

CALCUTTA HIGH COURT

Messrs. Dharmadas Paul

Vs.

Commissioner of Commercial Tax

Civil Revn. Cases Nos. 3560 and 3890 to 3905 of 1953

(H.K. Bose, J.)

04.06.1957

ORDER

H.K. Bose, J.

1. This is an application under Article 226 of the Constitution for a Writ in the nature of Mandamus directing the opposite parties to rescind or withdraw three notices issued under the provisions of the Bengal Finance (Sales Tax) Act calling upon the petitioner to produce certain books of accounts and documents and also calling upon the petitioner to show cause why penalty should not be imposed on him under Section 11(2) of the said Act and why the petitioner should not be prosecuted for not getting his firm registered in accordance with the provisions of the Act.

2. The case of the petitioner is that the petitioner is one of the Aratdars at the Howrah betel-leaf market. It is alleged that the pan or betel-leaf cultivators of Howrah and Hooghly bring their produce to the Howrah panhat where these are sold to purchasers. In that market there is a class of middle men or Aratdars who help the cultivators in the sale, by bringing the seller-growers and purchasers together, guaranteeing the price and when the price is not paid on the spot, by advancing to the seller-growers, the whole or part of the sale-price, taking upon themselves the responsibility of collecting the money due from the purchasers and for their labours the Aratdars or middle-men charge one pice per rupee on the sale-proceeds as their remuneration. In April 1951, a notice was issued upon the petitioner and several other pan agents under Section 22 (1) (a) of the Bengal Finance (Sales Tax) Act for non-registration of the petitioner firm. On the 29 August, 1951, a petition was presented by the Howrah Pan Commission Agents Association stating that pan being a vegetable within the meaning of item No. 6 in the schedule appended to the Bengal Finance (Sales Tax) Act was exempted from taxation and so the notice served should be discharged. On 27th September, 1951 the Commissioner however informed the President of the Association that the petition had been rejected. On 31st October, 1951, further notices were issued by the Commercial Tax Officer requiring the petitioner and other pan-agents to produce books of accounts and necessary documents for examination and informing them that it had been held by higher Sales Tax Authorities that pan was not a vegetable under item No. 6 of the schedule to the Sales Tax Act. The petitioner thereupon appeared before the Commercial Tax Officer and contended that pan was exempt from taxation and that the petitioner was not a dealer;

but on 17th March, 1952 the Commercial Tax Officer held that the petitioner was a dealer and pan was not a vegetable and therefore was liable to taxation. On 29th April, 1952 the petitioner made a revisional application to the Commissioner of Commercial Taxes Under Section 20(3) of the Act against the said order of the Commercial Tax Officer dated the 17th March, 1952. The said revisional application is still pending before the Commissioner of Commercial Taxes. On 13th June, 1953, the Commercial Tax Officer issued two fresh notices in Form No. VI under Sections 11 and 14(2) of the Sales Tax Act and directed the petitioner to attend before the said Officer on 20th July, 1953 with accounts and documents specified in the said notices. Both the said notices called upon the petitioner to show cause why penalty should not be imposed on him under Section 11(2) of the Act. One of the said notices bears No. 1 R-12/51/4800 and the case No. is 81 of 53-54. It sought to make the petitioner liable to assessment for the period commencing from the 17th January, 1952 and ending on the 31st Chaitra 1358 B.S. The other notice bears No. 1R-12/ 51/4801 and it relates to case no 85 of 53-54 and it seeks to make the petitioner liable in respect of the period commencing from 1st Baisakh 1359 B. S. and ending on 31st Chaitra 1359 B.S.

3. On 18th June, 1953, another notice bearing No. 1R-12/51/4799 was issued by the Commercial Tax Officer calling upon the petitioner to show cause under Section 22(1) (a) of the Act as to why the petitioner should not be prosecuted for not getting his firm registered in time. On 20th July, 1953 the petitioner produced accounts and documents before the Commercial Tax Officer and renewed his objection as to liability to pay tax on the ground that pan was an exempted article and that the petitioner was not a dealer. It is further alleged in paragraph 15 of the petition that the Pan Commission Agents including the petitioner have no authority to sell the stock of pan brought by the cultivators to the market and it is the cultivator who decides whether his produce should be sold to a particular bidder and at what price. The Pan Agents merely bring the seller-grower and the purchaser together and accept the responsibility of realising money from the purchasers, who from their long association, are usually intimately known to them. The petitioner has in the petition challenged the legality of the notices on the ground that pan is a vegetable within the meaning of item 6 and so exempt from taxation and that the petitioner is not liable to taxation as he is not a dealer within the meaning of section 2 (c) of the Sales Tax Act.

4. In the affidavit-in-opposition which has been filed on behalf of the opposite parties it has been stated in paragraph 3 that the petitioner is an Aratdar, in the Howrah Pan Market and has a stall in the said market. The system which is followed for selling pan in the market is thus described in the said paragraph :

"The system is that the producers of 'Pan' (chasis) come with their 'Pan' at the arat of the Aratdars in the market and place their goods at the respective arats. The purchasers of pan then contact the Aratdars and make bids which when accepted by aratdars the sale is made by the aratdars. The purchasers however do not pay the price of pan all at once to the arataars who allow them to remove the goods on credit. The aratdars then pay the price of the pan to the producers concerned deducting commission at the rate of one pice to the rupee from the price at which the pan is sold.

The sales are noted in the books of the aratdars and chalans are issued to the purchasers by the aratdars noting the price therein and the aratdars realize the said purchase price

from the purchasers and the producers having been already paid the price, have no concern with such realization."

5. In the affidavit-in-reply it is alleged in paragraph 3 (a) as follows :

"The cultivators of 'Pan' bring their produce to the market and place them at different 'arats', but at the control of the aratdars. The intending purchasers bid for these goods and the bids are accepted by the cultivators and not by the aratdars and the sales are also made by the cultivators themselves and not by the aratdars. When a purchaser pays the entire sale-price on the spot, the cultivator takes the money and the aratdar does not figure in the transaction at all. It is only in cases where a purchaser does not pay on the spot the sale-price or any part of it, that the aratdar pays to the cultivator full price for the goods sold and takes it upon himself to realize the price or balance of it from the purchaser. The aratdar, however, realises his commission on the entire sale-price."

6. In clause (b) of paragraph 3 it is alleged that when the price offered by the intending purchaser does not seem acceptable to the cultivator he refuses to sell his goods from a particular arat to another or to a different market altogether.

7. In view of these conflicting cases set up in the petition, the counter-affidavit and the affidavit-in-reply it is not possible to determine on affidavits the question whether the petitioner is a dealer within the meaning of section 2 (c) of the Sales Tax Act. For satisfactory determination of this point evidence has to be taken and realizing this difficulty Dr. Gupta, the learned Advocate for the petitioner, has suggested that this point whether the petitioner is a dealer or not should not be decided in this application but it should be left open for decision by the Sales Tax Authorities upon taking evidence on the point and by this Court if the matter comes on reference under section 21 of the Sales Tax Act. Mr. Majumdar, the learned Advocate for the opposite parties does not object to this course being adopted and accordingly this question is left open for decision by appropriate authorities upon taking such evidence as may be necessary on the point.

8. The only other point which has been agitated before this Court by Dr. Gupta is whether pan or betel-leaf is a vegetable within the meaning of item No. 6 of the Schedule appended to the Bengal Finance (Sales Tax) Act and as such exempt from taxation under the provisions of the said Act Item No.6 of the schedule to the Sales Tax Act is worded as follows :

"Vegetable, green or dried except when sold in sealed containers."

9. Dr. Gupta has referred to the word "vegetable" as appearing in the Oxford English Dictionary Vol. XII, page 73, for the different meanings of the word "vegetable" and particular reliance is placed on the meaning as gives in paragraph 2 in the left-hand column in that page. The said paragraph runs thus:

"A plant cultivated for food; esp. an edible herb or root used for human consumption and commonly eaten either cooked or raw with meat or other article of food". Reference is

also made to Vol. V of the Oxford English Dictionary at page 230, paragraphs 2 to 4 for the meaning of the word "herb". Paragraph 2 is as follows :

"Spec. Applied to plants to which the leaves or stem and leaves, are used for food or medicine or in some way for their scent or flavor".

Paragraph 4 is as follows :

"The leafy part of a (herbaceous) plant; esp. as distinct from the root".

10. With reference to these definitions it is argued by Dr. Gupta that as this commodity pan is of common use and although it is not eaten as a food, it is eaten with food or immediately after meals and so this article can be considered as a vegetable within the meaning of item 6 of the schedule. It is further submitted that the word vegetable should be given a wide meaning as appearing in the Oxford Dictionary to which reference has already been made and if the word "vegetable" is understood in the widest connotation of the word, there can be no doubt that betel-leaf comes within the meaning of the word "vegetable".

11. Mr. Majumdar has, on the other hand, submitted that pan does not fall within the word "vegetable" as used in item 6 of the schedule. Reference is made by Mr. Majumdar to the amendment which was effected in item No.6 in 1954 which explains the word "vegetable" as meaning Sabji Tarkari and Sak and it is argued that this amendment makes it clear that the intention of the legislature when inserting Item No. 6 in its original form in the Schedule was to confine the word "vegetable" only to commodities which answer the description of Sabji, Tarkari and Sak and not to give it any wider connotation as suggested by Dr. Gupta. It may be pointed out that this amendment has been effected after the notices which were the subject matter of the present proceeding were issued upon the petitioner and also after assessment was made in respect of certain other cases in respect of which proceedings are also pending and are before me now for decision along with the present proceeding. Mr. Majumdar has further pointed out that the Scheme of the Schedule or in other words the collocation of the different items of the schedule also makes it clear that the legislature wanted to give a restricted meaning to the word "vegetable", viz., only such vegetables which are used for food. It may not be out of place to refer in this connection to the first eight items of schedule which are as follows :

"1. All cereals and pulses (including all forms of rice raw or cooked) - Except when sold in sealed containers.

2. Flour (including atta, suji and bran).

3. Bread.

4. Meat which has not been cured or frozen.

5. Fresh fish.

6. Vegetables green or dried - except when sold in sealed containers.

7. Cooked foods, other than cakes, pastries and sweetmeats - except when sold in sealed containers.

8. Gur, Sugar and molasses".

12. With reference to these items it is submitted by Mr. Mujumdar that as all these items Nos. 1 to 8 are articles of food the meaning of the word "vegetable" should also be limited to such vegetables which are used for food. The learned Advocate has also drawn the attention of the Court to the meaning of the word "vegetable" which has been given in Webster's Dictionary at page 1598, left-hand column, paragraph 2 which is as follows:

"A plant used or cultivated for food for man or domestic animals, as the cabbage, turnip, potato, bean dandelion etc.; also the edible part of such a plant, as prepared for market or the table."

13. It may be noted that there is not any substantial or material difference between this definition as given in the Webster's Dictionary and the definition in the Oxford English Dictionary to which reference has been made by Dr. Gupta.

14. This question whether pan is a vegetable within the meaning of the expression as used in the Sales Tax Act had come up for consideration before the different High Courts. In the case of *Kokil Ram v. Province of Bihar*¹, it has been held that the word "vegetables" as used in the Bihar Government notification which was published exempting certain commodities from taxation under the Bihar Sales Tax Act is used in the more limited sense as plants cultivated for food and does not include betel-leaves which are certainly not a food stuff. It was pointed out in this case that word "vegetables" is used in two different senses, first, in a wide sense, as for example, when we speak of "the vegetable kingdom". According to this usage it would include all plants. The second sense and the more common usage, is a connoting only "herbaceous plants cultivated for food" and does not include "betel-leaves" (see Webster's Dictionary). Meredith J. construed the notification in the following words,

"The notification includes 25 items, many of which are not foodstuffs, but all the items up to 8 are foodstuffs and item 6, which we are considering, thus comes in the midst of the list of foodstuffs. Secondly, it is impossible to suppose that Government meant to exclude the entire vegetable kingdom."

After quoting items 1, 3 and 8 of the said notification, the learned Judge proceeded as follows:

"If the word "vegetables" had been used in a comprehensive sense to include all plants and their products, then items 1 and 8 would not have been separately specified. There can, therefore, in my opinion, be no doubt that Government by "vegetables" meant plants cultivated for food."

Further down, the following observations were made:

"Pan is certainly not a foodstuff. It is masticatory. Some hold that it is also a digestive. But, even so, it is not a food. It is not eaten for its food value, but at the highest as an aid to digestion. It is not served as a part of a meal, but as a supplement to it. As a digestive agent, it might perhaps be considered a medicinal preparation, but the notification is

careful to provide that in exempting vegetables, green or dried medicinal preparations are not included."

¹ AIR 1951 Pat 367

15. It is thus clear that although item No. 6 in the Bihar notification was worded - "vegetables, green or dried other than medicinal preparations and the words" medicinal preparations "are absent from item 6 as appearing in the schedule to the Bengal Finance (Sales Tax) Act, the interpretation which was put by the Patna High Court on the word "vegetable" having regard to the collocation of items 1 to 8 in the said notification is equally applicable to items 1 to 8 as appearing in the schedule to the Bengal Finance (Sales Tax) Act. It is further clear from the said decision of the Patna High Court that the learned Judges had preferred to give a narrow and restricted meaning to the word "vegetable" instead of a very wide meaning which is attributed to the word in the various English Dictionaries. This decision of the Patna High Court has been followed by the Nagpur and the Lahore High Court in the cases of *Madhya Pradesh Pan Merchants Association, Santra Market, Nagpur v. State of Madhya Pradesh, 1956-7 STC 99 : AIR 1956 Nagpur 54*, and *Brahmanand v. State of Uttar Pradesh (1956) 7 STC 206 (All)* . In the case before the Nagpur High Court the learned Judges interpreted the term "vegetables" as appearing in item No. 6 of the second schedule to the C. P. and Berar Sales Tax Act 1947 in the following words :

"In our opinion, the word "vegetables" cannot be given the comprehensive meaning the term bears in natural history and has not been given that meaning in taxing statutes before. The term "vegetables" is to be understood as commonly understood denoting those classes of vegetable matter which are grown in kitchen gardens and are used for the table. There are numerous cases in which the term "vegetables" used in taxing statutes has been expounded and it has been held in them that peanuts, cashewnuts, walnuts etc., though vegetables in the botanical sense, are not vegetables in the common acceptance of the term (See *Planters Nut and Chocolate Co. Ltd. v. The King (1952) 1 DLR 385*)."

The learned Judges also referred to the Patna decision which has been cited above with approval. In the Lahore case, Chaturvedi J., after referring to Murray's Dictionary, Oxford Dictionary and Encyclopedia Britannica and to the case of the Patna High Court cited above, held that betel-leaves did not come within the meaning of the expression "green vegetables" as used in the U. P. Government Notification dated the 7th June, 1948.

16. It may be pointed out however that in the Nagpur case, "betel leaves" was specifically mentioned as item No. 36 in the schedule which granted exemption in respect of certain commodities but this item was subsequently withdrawn from exemption by a subsequent amendment and thereafter it was sought to be argued that betel-leaves came within the meaning of vegetables as used in item 6 of the said schedule. This withdrawal of item 36, had no doubt influenced to a certain extent, the learned Judges deciding that case, in coming to the conclusion that "vegetable leaves" were not intended to be included within the term vegetable as appearing in item 6 of the second schedule. But it is also clear that the learned Judges were reluctant to attribute a wider meaning to the word "vegetables" in item 6 and they, restricted the meaning of the word only to such vegetables which are used for food. Reference has also been made by Mr. Majumdar to the case of 1952-1 DLR 385 at p. 391 (D). It is not necessary to quote extracts from

that judgment. The meaning of the word "vegetable" as given in different Dictionaries has been quoted in extenso at pages 391 and 392 of the Report, but it is not necessary to set them out here over again.

17. It may be pointed out however that the Bombay High Court in the case of *State of Bombay v. R. S. Phadtare*² has preferred to adopt the wider meaning given to the expression "vegetable" as used in the Bombay Sales Tax Act. Chagla C. J. and Tendolkar J. have held that "sugar-cane" is a commodity which comes within the word "vegetable" as used in the Act. The learned Judges in course of their judgment made the following observation:

"In its plain and natural meaning a "vegetable" clearly is wide enough to cover a "sugarcane".....This is a taxing statute and if two constructions are possible, we must, lean in favor of that construction which gives relief to the subject."

18. The learned Judges however felt that the matter was not free from doubt but in view of the fact that they had been called upon to interpret a taxing statute they decided to resolve the doubt in favor of the subject.

19. Now although the Bombay High Court has in interpreting the relevant taxing statute given a wider meaning to the word "vegetable" so as to include "sugar-cane" within the meaning of that expression I do not think that I shall be justified in adopting this wide interpretation in view of the decisions of the several High Courts which are unanimous in their opinion that "betel-leaf" is not a commodity which comes within the meaning of the word "vegetable" as used in the Sales Tax Act or the notification which came up for consideration in the cases before those High Courts. The scheme of the schedule to the Bengal Sales Tax Act is not materially different from the notifications or the schedule which were before the Patna and the Nagpur High Courts except that the words "medicinal preparations" are to be found in the Bihar notification whereas the same expression is absent from the schedule to the Bengal Act. If the matter had been *res integra*, I might have felt inclined to hold that pan comes within the meaning of the word "vegetable" as used in item 6 of the schedule but the uniform tendency of the other Courts to give a narrow and restricted interpretation to the word "vegetable" leads me to hold that "betel-leaf" is outside item 6 of the schedule to the Bengal Act. This disposes of the points that have been raised in this application, but before I conclude it may be pointed out that although this business of selling pan through Aratdars in the Howrah Hat has been carried on for quite a long time extending over several years, no attempt had been made before, to tax these Aratdars in respect of the business of selling pan of the producers who come and stock their pan in their huts.

20. In the result, this petition fails. The Rule is discharged. There will be no order as to costs.

21. The operation of the order is stayed for four weeks from date.

22. C. R. No. 3904 of 1953. In this application it is admitted that the petitioner is a dealer but the ground on which exemption from taxation is asked for is that pan or betel-leaf comes within the meaning of the word "vegetable" as found in item 6. But as I have already held in C. R. No. 3560 of 1953 that pan does not come within the meaning of the word "vegetable" as used in item 6, this petition must fail and the Rule is accordingly

² AIR 1956 Bom 496

discharged.

23. The operation of the order is stayed for four weeks from date.

24. C. R. Nos. 3890 to 3903 and C. R. No. 3905 of 1953. The order made in C. R. 3560 of 1953 will govern each of these cases.

Rules discharged.