

MYSORE HIGH COURT

Century Club

Vs

State of Mysore

Writ Petn. No. 690 of 1964, Connected with Writ Petns. Nos. 809, 1067 and 1630 of 1964

(K.S. Hegde and M. Santhosh, JJ.)

12.11.1964

JUDGMENT

K.S. Hegde, J.

1. A common prayer is made in these petitions, namely, that this Court should hold that Explanation to Section 2 (1) (k) and Explanation-I to Section 2 (1) (t) of the Mysore Sales Tax Act, 1957, as amended by the Mysore Sales Tax (Amendment) Act, 1963 (Mysore Act No. 9 of 1964), (the amended Act to be herein-after referred to as the "Act") are ultra vires of the powers of the State Legislature and for that reason they must be struck down. In two of these petitions, viz. in W. Ps. Nos. 690 and 1067 of 1964, it is also pleaded that those provisions are void and inoperative as being violative of Article 14 of the Constitution. In one of the petitions (in W. P. No. 1630/64) it is further prayed that this Court may be pleased to issue a Writ of Mandamus to the State requiring it not to enforce the provisions of the "Act" against the petitioner therein, in respect of the supplies made by the petitioners to its members.

2. The main contention in these petitions is that the Century Club, the Bangalore Club, the Golf Club and the Bowring Institute, being members Clubs, the Legislature had no competence to deem, the supplies made by them to their members as sales for the purpose of levying sales tax. The Bangalore Club and the Golf Club are neither registered nor incorporated. They are only associations of persons, whereas the Century Club and the Bowring Institute are either registered or deemed to be registered under the Mysore Societies Registration Act, 1960 (Act 21 of 1960).

3. The facts are not in dispute in these cases. They may be brielly stated thus: These Clubs to quote the language of Mack, J in *Cosmopolitan Club v. Deputy Commercial Tax Officer*¹, are social or members' Clubs, not conducted for gain or for profit, but with the objective of providing amenities to its members for meeting in the Club Premises, for recreative and Social activities varying from strenuous games to pastimes of less vigorous character, for social intercourse, for interchange of ideas on variety of topics, serious and light, ranging from ethics and philospny to the prattle of

¹ AIR 1952 Mad 814

idle gossip." We may assume as Mack J. did, the necessity to sustain and refresh members of a

Club indulging in these generally wholesome social and recreative activities by a supply of refreshments both liquid and solid. The expenses of the club are met from the contributions made by the members in the shape of entrance fees and periodical subscriptions and other charges. All the clubs, with which we are concerned in these cases, are members' clubs. In these clubs, there are different kinds of members, such as resident members, non-resident members, honorary members, service members, temporary members, visiting members, lady members, etc. Incidental to the objects of these clubs, they maintain establishments for preparing and supplying to their members refreshments. They also maintain bars for the benefit of their members. Goods are purchased for the consumption of their members from out of the club's funds. Only members or their guests are supplied with refreshments and drinks. The members are charged for the supplies made. No sale is effected to non-members. No cash transactions are permitted in the normal course. The value of the articles supplied is ordinarily charged in the monthly bills of the members. The prices of the articles are fixed by Committees of the Clubs.

4. The Sales Tax Authorities are taking steps to levy Sales Tax on the turnover in respect of the supplies made by the clubs to their members on the basis that those supplies are "sales" as defined in the "Act" and the concerned clubs are "dealers".

5. Under the Sales Tax Laws in force in this State, every dealer has to pay for each year tax on his total turnover at a specified rate. The Mysore Act No. 25 of 1957, before it was amended by Act 9 of 1964, defined "dealer" in Section 2 (1) (k) thus:

" 'Dealer' means any person who carries on the business of buying, selling, supplying or distributing goods in the State of Mysore directly or otherwise whether for cash or deferred payment or for other valuable consideration, and includes....."

(rest of the section is not necessary for our present purpose):
Therein, "sale" was defined in Section 2 (1) (t) as follows:

" 'Sale', with all its grammatical variations and cognate expressions means every transfer of property in goods by one person to another in the course of trade or business for cash or deferred payment or other valuable consideration and includes a transfer of property in goods involved in the execution of works contract, and in the supply or distribution of goods by a co-operative society, club, firm or any association to its members for cash or for deferred payment or other valuable consideration, but does not include a mortgage hypothecation, charge or pledge."

(Explanations annexed to this section are not relevant for our present purpose.)

On the basis of these provisions, Sales Tax was levied on the Bangalore Club for the second half of the year 1957-58 and for the year 1958-59. The validity of the said levy was challenged before the Sales Tax Authorities. The Mysore Sales Tax Appellate Tribunal set aside the assessments made holding that the supplies made by the club to its members, having not been made in the course of trade or business did not amount to, "sales" as defined. The decision of the tribunal was brought up in revision before this Court in C. R. Ps. Nos. 862 and 863 of 1959. A Bench of this Court, of which one of us (Hegde, J.) was a member, upheld the decision of the tribunal by its

Order dated 29th September 1961. Therein this Court found itself in agreement with the decision of the Madras High Court in *Deputy Commercial Tax Officer v. Cosmopolitan Club*², the decision of the Madhya Pradesh High Court in *Bengal Nagpur Cotton Mills Club, Rajnandgaon v. Sales Tax Officer, Raipur*³, and the decision of the former High Court of Mysore in *Davanagere Cotton Mills Ltd. v. State of Mysore*⁴, Possibly because of that decision, that State Legislature amended the definitions of "dealer" and "sale" as per Mysore Act No. 9 of 1964.

6. Definition of "dealer" as amended (Portion material for our present purpose) reads as follows:

" 'Dealer' means any person who carries on the business of buying, selling, supplying or distributing goods, directly or otherwise, whether for cash or for deferred payment or for commission, remuneration or other valuable consideration, and includes.

Explanation A Society (including a Co-operative Society), club or firm or an association which, whether or not in the course of business, buys, sells, supplies or distributes goods from or to its members for cash, or for deferred payment or for commission remuneration or other valuable consideration shall be deemed to be a dealer for the purposes of this Act."

The amended definition of "Sale", (the portion material for our present purpose) reads:

" 'Sale' with all its grammatical variations and cognate expressions means every transfer of the property in goods by one person to another in the course of trade or business for cash or for deferred payment or other valuable consideration, but does not include a mortgage, hypothecation, charge or pledge.

Explanation (1): A transfer of property involved in the supply or distribution of goods by a Society (including a co-operative Society). Club, firm, or any association to its members, for cash, or for deferred payment or other valuable consideration, whether or not in the course of business, shall be deemed to be a sale for the purpose of this Act....."

It is not disputed that even members' clubs are "dealers" as the definition stands at present. There is also no dispute that the definition of "sale" as it now stands brings within its net supplies made by the clubs to their members. If those definitions are intra vires of the powers of the Legislature, then there is no doubt that the Clubs in question are liable to pay Sales Tax in accordance with law, on the price realized by them on the supplies made by them to their members. In these cases, the controversy is not as regards the interpretation to be placed on the impugned provisions but as to their constitutionality. What was urged on behalf of the petitioners is that the State

² AIR 1954 Mad 1144

⁴ AIR 1957 Mys 72

³(1957) 8 STC 781 (Madh Pra)

Legislature had no legislative competence to levy sales tax on the turnover relating to supplies made by the clubs to their members, whether the clubs in question are registered clubs, or mere association of persons. Hence, the question for decision is whether the impugned provisions are ultra vires of the powers of the State Legislature or otherwise void ?

7. It is a common ground that the "Act" was enacted by the State Legislature on the basis of the powers conferred on it under Article 246 (3) read with Entry 54 of List 11 of the seventh

Schedule to the Constitution. Entry 54 reads "Taxes on the sales or purchases of goods other than newspapers". This Entry is more or less similar to Entry 48 of List II of the Seventh Schedule in the Government of India Act, 1935. What is the scope of this Entry? It is true, that the words "taxes on sales or purchases of goods" occur in the Constitution Act and confer legislative powers on the State Legislature in respect of a topic relating to taxation. Hence, they must be interpreted not in a strict sense but in a broad sense. Entry 48 in List II of Schedule VII of the Government of India Act, 1935, introduced a new topic of legislation with respect to which there was no legislative practice. According to law both in England and in India, in order to constitute "sale" it is necessary that there should be an agreement between the parties for the purpose of transferring title to goods which pre-supposes capacity to contract, that it must be supported by money consideration and that as a result of the transaction property must actually pass in the goods. The Supreme Court held in *State of Madras v. M/s. Ganon Dunkerley and Co., (Madras) Ltd⁵*, that the expression "sale of goods" in Entry 48 in a nomen juris, its essential ingredients being an agreement to sell moveables for a price and properly passing therein pursuant to that agreement. In that case, the Supreme Court laid down that a power to enact a law with respect to tax on "sale of goods" under that Entry must, to be intra vires, be one relating in fact to sale of goods and accordingly, the Provincial Legislature cannot in the purported exercise of its power to tax sales, tax transactions which are not sales by merely enacting that they shall be sales. Therein, it was held that the true legislative intent is that the expression "sale of goods" in Entry 48 should bear the precise and definite meaning it has in law and no inference to the contrary can be drawn from the fact of the absence of words linking up the meaning of the word "sale" with what it might bear in the Sale of Goods Act. The Supreme Court reiterated that view in *Firm of M/s. Peare Lal Hari Singh v. State of Punjab⁶*, and in *M/s. New India Sugar Mills Ltd. v. Commr. of Sales Tax, Bihar⁷*. The ratio of these decisions govern the interpretation of the aforementioned Entry 54. It is now well settled that the term "sale of goods" found in Entry 54 should be understood in the same manner as it is understood in Section 4 of the Sale of Goods Act, 1930. Section 4 of the Sale of Goods Act, 1930, provides:

"(1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of sale between one part-owner and another.

(2) A contract of sale may be absolute or conditional.

(3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of

⁵ AIR 1958 SC 560

⁷ AIR 1963 SC 1207

⁶ AIR 1958 SC 664

the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.

(4) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred."

To constitute a sale under Section 4 of the Sale of Goods Act, there must be; (1) a contract between the buyer and seller agreeing to sell and the buyer agreeing to buy; (2) the transfer of the property in the goods; and (3) for price in money paid or promised. As observed by Benjamin in the 8th Edition of his work on "sale".

"To constitute a valid sale there must be a concurrence of the following elements viz., (1) Parties competent to contract; (2) mutual assent; (3) a thing the absolute or general property in which is transferred from the seller to the buyer; and (4) a price in money paid or promised."

A release by a joint-owner in favor of another joint-owner for a price cannot be considered as a sale, therefore, in transaction of sale of goods which is liable to tax, there must be concurrence of the four elements, viz. (1) parties competent to contract; (2) mutual assent; (3) a thing, the absolute or general property in which is transferred from the seller to the buyer; and (4) a price in money paid or promised. Vide *Bhopal Sugar Industries Ltd., M. P. v. D. P. Dube*⁸,

8. Can the supplies of refreshments made by the clubs to their members be considered as "sales"? Can it be said that a club and its members are two parties and while supplying refreshments to the members, the club transfers its absolute or general properties in the things supplied, to its members? To answer these question, it is necessary to find out the true relationship between a club and its members. But before doing so, it is necessary to find out, to what extent a Legislature can create a legal fiction because it is by legal fictions clubs are deemed as "dealers" and supplies made by them to their members as "sales".

9. There is no limit to the creation of fiction in a Statute by a sovereign Legislature. But, where the legislative authority is limited or circumscribed, as for example by the Constitution, a fiction which has the effect of extending the scope of an enactment so as to transgress the constitutional limits must necessarily be invalid for a Legislature cannot do indirectly what it cannot do directly. In otherwords, if the effect of the deeming provisions in the Explanations in Clauses (k) and (t) of Section 2 (1) of the "Act", were to bring to tax, transactions which are not sales, those provisions will be ultra vires of the powers of the State Legislature. A power to enact a law with respect to tax on the sale of goods under Entry 54 must, to be intra vires, be one relating in fact to sale of goods, and accordingly, the State Legislature cannot, in the purported exercise of its power to tax sales, tax sales, tax transactions which are not sales by merely enacting that they shall be deemed to be sales.

10. There are several types of clubs. For our present purpose, we are concerned with the Members' Clubs. Two of the clubs before us are registered clubs and the

⁸(1963) 14 STC 406, AIR 1964 SC 1037

remaining two are unregistered clubs. The latter are mere associations of persons. They are neither judicial persons nor legal entities. The members of an unregistered club are the joint owners of all the properties of the club. That is admittedly the position so far as the Bangalore Club and the Golf Club are concerned. Hence it was urged on their behalf that when they supply goods to their members, there is no contract between two parties, as in the eye of the law, an unregistered club and its members constitute a single entity and further while so supplying goods there is no transfer of absolute or general property, in the things supplied by one person to another. It was said that the true legal effect of supply of an article by the club to one of its members is the release of joint right of all the members in his favour. In support of that contention, a unnumber of decisions English and Indian were cited. It is unnecessary to refer to them at this stage as the learned Advocate-General appearing for the State in the course of his

arguments, rightly conceded, that the contention noticed above is well founded and beyond controversy.

11. Do the registered clubs stand in the same position as the unregistered clubs as regards the relief claimed in these petitions ? On their behalf, it was contended, that they are in the same position as the unregistered Clubs. But, according to the learned Advocate General, registered Clubs have a legal personalities of their own apart from their members, they hold properties, they can sue, they can be sued and therefore, they have competence to enter into agreement not only with outsiders but even with their own members. It was further urged that the clubs are the legal owners of their properties and when they transfer any of those properties to their members they pass an absolute or general property in it to transferee. Is this position correct? In support of his contention, the learned Advocate-General relied on Sections 15, 16, 17, 19 and 20 of the Mysore Societies Registration Act, 1960. Section 15 provides that a registered society may sue or be sued in the name of the persons mentioned therein. But, it does not say that the society can sue in its own name which would have been the position in the case of an incorporated society or in the case of a juridical person. Section 16 provides for continuation of suits and proceedings despite the person suing or sued on behalf of the society, dying, or ceasing to hold the office, which he held at the time of the institution of the suit. Section 17 prescribes that judgments passed in suits instituted under Section 15 have to be enforced only against the property of the society and not against the property of the person suing or sued. Section 19 enables the society to sue its members in respect of the transactions mentioned therein. Section 20 places the members in the same position as strangers as regards the offences mentioned therein. If a registered society is complete legal entity or a juridical person, these provisions are wholly superfluous. All the rights, liabilities enumerated in Sections 15, 16, 17, 19 and 20, nay very much more, would have been there as a matter of law, without any special conferment or imposition. The very fact that the Legislature thought it necessary to enact these provisions shows, that registered clubs are not juridical persons or complete legal entities but they have been merely conferred with certain attributes of legal entities. The provisions, in our opinion, instead of supporting the contention of the learned Advocate-General, are destructive of the proposition enunciated by him. The weight of judicial authority English and Indian is against the view contended for by the learned Advocate-General.

12. The leading ease in support of the petitioner's contention is the decision of the Queens Bench in *Graff v. Evans*⁹, In that case, the manager of a *bona fide* club was prosecuted for selling by retail intoxicating liquors without a license under the Licensing Act of 1872. The question that fell for decision was whether when a Manager of Club supplies liquor to its members, the transaction in question amounts to "sale". Field, J. answered that question thus:

"I think not, I think Foster (member who was supplied with liquor in retail) was an owner of the property together with all the other members of the club. Any member was entitled to obtain the goods on payment of the price. A sale involves the element of a bargain. There was no bargain here, nor any contract with Graff (the manager of the club) with respect to the goods. Foster was acting upon his rights as a member of the club, not by reason of any new contract, but under his old contract of association by which he subscribed a sum to the funds of the club, and became entitled to have ale and whisky supplied to him as a member at a certain price. I cannot conceive it possible that Graff could have sued him for the price as the price of Goods sold and delivered. There was no

contract between two persons, because foster was vendor as well as buyer. Taking the transaction to be a purchase by foster of all the other members' shares in the goods, foster was as much a co-owner as the vendor. I think it was a transfer of a special property in the goods to Foster, which was not a sale within the meaning of that section."

Huddleston, B, the other Member of the Court, observed:

"There was no transfer of the general or absolute property in the goods to Foster, but a transfer of a special interest. That in my view, was the result of the transaction. I cannot think it was a sale of intoxicating liquors by retail."

The decision in *Graff's case*, (1882) 8 QBD 373 (Supra) was, followed in *Metford v. Edwards*¹⁰, Therein Lush, J. observed:

"If there was a club whose members owned the liquors consumed there was distribution as opposed to sale of those liquors no matter how the club was conducted."

The decision in *Graff's case* (1882) 8 QBD 373 was also followed in *Trebanog Working Men's Club and Institute Ltd. v. Macdonald*¹¹, Therein the Kings Bench was called upon to consider the legal effect of sale of liquor in retail by the appellant society, which was registered under the Industrial and Provident Societies Act, 1893. On behalf of the appellant Society, it was contended that although the Society had become a body corporate by the registration under the Industrial and Provident Societies Act, intoxicating liquors bought on the authority of the committee were bought for consumption by and were the property of the members of the society as members of the club, that in so far as the society had any property or interest in such intoxicating liquor, it was a trustee thereof for such members, and that, as there were

⁹(1882) 8 QBD 373

¹¹(1940) 1 KB 576 : 1940-1 All ER 454

¹⁰1915-1 KB 172

no shareholders in the society who were not members of the society, the supply of liquor to any of such members was merely a release of the interest of the other members therein, as in the case of club which was not incorporated. On the part of the respondent, it was contended that the appellant society was a corporate body and a legal entity apart from its members, that in its capacity as a club proprietor it was the owner of the liquor in question, and that the supply thereof to members and honorary members constituted a sale of the intoxicating liquor within the meaning of Section 65 of the Act of 1910. Rejecting the contention of the respondent Lord Hewart, L. C. J., who delivered the judgment of the Court held that in the circumstances, the transaction in question was not a sale in the statutory sense, but was rather to be deemed the transfer of a special property in the goods from all the other members of the club to the consumer, in consideration of the price paid. He further observed that what is essential is that the holding of the property by the agent or trustee must be a holding for and on behalf of, and not a holding antagonistic to the members of the club. Dealing with the decision of *Graff's case*, (1882) 8 QBD 373, this is what Lord Chief Justice observed :

"The correctness of that decision has never, so far as we are aware, been doubted. In *National Sporting Club, Ltd. v. Cope*¹², Channell, J., said that the case decided that the

settled principle that, for a pure members' club, no license is required, is not defeated by the fact that the property is vested in trustees for the purposes of conveniences, although the result of such vesting is, as the judge pointed out, that the members of the club have no legal property in the excisable articles. They retain, however, an interest in them, and in obtaining and paying for liquor by the members is treated as a mere distribution of property in which they have a common interest. In our opinion, the decision in (1882) 8 QBD 373 applies to, and governs the present case. Once it is conceded that a members' club does not necessarily require a license to serve its members with intoxicating liquor because the legal property in the liquor is not in the members themselves. It is difficult to draw any legal distinction between the various legal entities which may be entrusted with the duty of holding the property on behalf of the members, be it an individual, or a body of trustees, or a company formed for the purpose, so long as the real interest in the liquor remains, as in this case it clearly does, in the members of the club. In this connection, there is no magic in the expression "trustee" or "agent". What is essential is that the holding of the property by the agent or trustee must be a holding for and on behalf of and not a holding antagonistic to, members of the club."

Though the abovementioned cases arose out of conviction for violation of the Licensing Act or for sale of liquor without a license, underlying them all, there is the basic legal principle that a purely members' club which makes purchases through a Secretary, or manager and supplies requirements to members at a fixed rate does not in law sell these goods to members but merely distributes them, all the essential elements of a sale in the transaction being wanting. The rule laid down by the King's Bench Division in *The National Association of Local Government Officers v. Watkins*¹³, accords with that laid down in *Graffs case*¹⁴,

¹²(1900) 82 LT 352

¹³(1934) 18 Tax Cas 499

¹⁴(1882) 8 QBD 373

On behalf of the State, reliance was placed on the decision in *Ferrar's case*¹⁵, Therein, Lindlev, L. J., speaking for the Court observed that "a sale by a person to a Corporation of which he is a member is not, either in form or substance a sale by a person to himself. To hold that it is, would be to ignore the principle which lies at the root of the legal idea of a corporate body and that idea is that the corporate body is distinct from the persons composing it. A sale by a member of a corporation to the corporation itself is in every sense a sale valid in equity as well as in law." This decision is clearly distinguishable. Therein, the purchaser, as seen from the judgment was an incorporated body and not merely a registered society. We do not think that the decision in *Bonsor v. Musicians' Union*¹⁶, relied on by the learned Advocate General is helpful to the State. Therein, Lord Macdermott, Lord Keith of Avon-holm and Lord Somervell of Harrow held that a registered trade union is not a juristic person, distinguishable at any moment of time from the members of which it was composed. After referring to the various provisions of the Trade Union Act, 1871 and some of the earlier decisions bearing on the question Lord Macdermott said:

"I base this opinion primarily on the statutes. The more closely they are examined the clearer it seems to be that the legislature, though minded to bestow upon registered unions some of the gifts and attributes of legal personality, had no intention of doing more and was, indeed, averse to the idea of going the whole length and making those unions new creatures, distinct in law from their membership and fundamentally different from the

"combination" of persons which the definition requires all trade unions to be."

Lord Morton of Henryton and Lord Porter who expressed the minority view held that a registered trade union though not an incorporated body, was yet capable of entering into contracts and of being used as a legal entity, distinct from its individual members.

13. Now coming to the Indian decisions, the ratio of the decision in Graff's case (1882) 8 QBD 373 has been accepted as correct by several Courts in India, vide MR 1954 Mad 1144; *Young Men's Indian Association v. Joint Commercial Tax Officer*¹⁷, Societies registered under Societies Registration Act do not become corporations aggregate. They cannot be said to be incorporated bodies though they have been conferred with powers to sue and be sued. In *Board of Trustees Ayurvedic and Unani Tibia College, Delhi v. State of Delhi*¹⁸, the following passage from "Law relating to Unincorporated Associations" (1938 Edn.) by Dennis Lloyd was quoted with approval :

"Registration of society does not result in incorporation, but merely entitles the society so registered to enjoy the privileges conferred by the Act. These privileges are of considerable importance and certain of them go a long way towards giving registered societies . . . a status in many respects analogous to a corporation strictly so-called, but without being technically incorporated. Thus something in the nature of perpetual succession is conceded by the provision that the society's property is to vest in the trustees for the time being of the society for the use and benefit of society and its members and of all persons claiming through the members according to the society's rules, and further that

¹⁵(1888) 40 Ch. D 395 ¹⁷ AIR 190-1 Mad 03, and (1957) 8 STC 781.

¹⁶1955-3 All ER 518 ¹⁸ AIR 1962 SC 458

the properly shall pass to succeeding trustees without assignment or transfer.

In the same way, though the society, being unincorporated, is unable to sue and to be sued in its own name, it is given the statutory privilege of suing and being sued in the name of its trustees."

The decision in *Rukminamma v. Venkata Ramadas*¹⁹, and *Satyavart Sidhantalankar v. Arya Samaj, Bombay*²⁰, relied on behalf of the State cannot be considered as having laid down the law correctly. The correctness of these decisions was doubted by the Supreme Court in Board of Trustees' case, AIR 1902 SC 458. Dealing with these decisions, this is what S. K. Das, J., who spoke for the majority stated in paragraph 15 of the judgment (at p 407) :

" On behalf of the petitioner reliance has been placed on the decision in *Krishnan v. Sundaram*²¹, where Kanin, J (as he then was said.)

"The position of a society registered under the Societies Registration Act, 1800, is like that of a club or a joint stock company."

There was no discussion on the Question of incorporation, and the decision cannot be accepted as authoritatively laying down that a society registered under the Societies Registration Act is a corporation. There was a similar observation, in AIR 1940 Madras 949 and *N. A. Nannier v. Official Assignee, Madras*²², There is, however, a fairly full discussion of the Question in 48 Bom LR 341 : AIR 1946 Bombay 516, where Bhagwati, J., held that a society registered under

the societies Registration Act, 1800, was a legal entity apart from the members constituting it, and it can sue and be sued in its own name. The question which fell for decision in that case was not whether a society registered under the Societies Registration Act was "incorporated" as that term is legally understood. The question there was whether such a society could sue or be sued except in the manner provided by sections 6 and 7. It was held that it could and the reason given was thus expressed by the learned Judge : I am of opinion that the provisions contained in sections 6, 7 and 8 of the Societies Registration Act are not inconsistent with the user of the registered name of the society in connection with legal proceedings. As Lord Lindley observed in Taff Vale Railway Company's case, 1901 AC 426, " I do not say that the use of the name is compulsory but it is at least permissive". " If this is the true legal position of a society registered under the Societies Registration Act, the objection. . . that the plaintiffs and the defendants are one and the same and that the suit as framed is not maintainable by reason of the society being the plaintiffs as well as defendants disappears. The plaintiffs are suing on behalf of themselves and all the members of the society. The first defendant is the president of the society and represents the society. As I have already observed the society on its registration with the Registrar of Joint Stock Companies becomes a legal entity apart from its members; it would be therefore, idle to contend that the society are the plaintiffs as well as the first defendant in this action." It is unnecessary for us to consider the correctness or otherwise of the reason given, it is sufficient for us to state that we do not think that the decision proceeds on the footing that a society registered under the Societies

¹⁹ AIR 1940 Mad 949

²¹43 Bom LR 502 : AIR 1941 Bom 312

²⁰ AIR 1946 Bom 516

²² AIR 1951 Mad 875

Registration Act is a corporation in the sense of being incorporated as that term is legally understood, but if it does, we are unable to accept it as correct."

14. Both on principles and on authority, we are satisfied that when a registered club supplies any article to any of its members, in law there is no "sale". Hence, the State Legislature was not competent to enact any law imposing sales-tax on such supplies. To the extent the impugned provisions have purported to bring to tax supplies made by clubs unregistered as well as registered to their members, they are void and inoperative.

15. We are unable to accept the contention that the impugned provisions are violative of Article 14 of the Constitution. It was contended on behalf of the petitioners that societies, clubs, firms or associations were picked out for hostile discrimination inasmuch as "sales', supplies, or distribution of goods by them whether made in the course of business or not, are subjected to tax, and they are deemed to be "dealers" for the purposes of the "Act", while in general only sales, supplies or distribution made in the course of business or trade are considered as "sales" and persons making them as "dealers". It is true that under the main provision in section 2 (1) (k) a "dealer" is one who is carrying on business of buying, selling, supplying or distributing goods, directly or otherwise, whether for cash or for deferred payment, or for commission, remuneration or other valuable consideration. But, under the Explanation, a Society, club or firm or an association, whether or not in the course of business, buys, sells, supplies or distributes goods from or to its members for each or for deferred payment or for commission remuneration or other valuable consideration, is deemed to be a "dealer" for the purposes of the "Act". Similarly, in the main section 2 (f) (t) only transfer of the property in goods by one person to another in the course of trade or business for cash or for deferred payment or other valuable consideration, is considered as "sale". But, Explanation 1 thereto deems a transfer of property involved in the

supply or distribution of goods by a Society, Club, Firm or any association to its members, for cash, or for deferred payment or other valuable consideration, whether or not in the course of business, to be a "sale" for the purpose of the "Act".

16. The power of the State to tax is one of the most extensive and searching powers. To tax a thing or a person it need not tax all things and all persons. But, even the taxation power of the State is subject to the equality clause. At the same time, the State can classify things and persons for the purpose of taxation. Societies, clubs, firms or associations are well known classes. They can be classified differently from others for the purpose of taxation. They need not be taxed in the same manner as others are taxed. The classification made has a nexus with the object of the "Act". The preamble to the "Act" shows that the object of the "Act" was to levy tax on the purchase or sale of goods in the State of Mysore. It is not denied that the Legislature has competence to levy tax on all "sales" whether made in the course of trade or business or otherwise. In the case of some classes, it may choose to tax in one manner and in the case of others in a different manner, taking into consideration, their status, function etc. In the case of taxation measures the presumption of validity is stronger than in others. Hence, the contention based on Article 14 fails.

17. In conclusion, we declare that Sections 2 (1) (k) and 2 (1) (t) of the "Act" to the extent they attract supplies made by clubs registered as well as unregistered, to their members, to tax under the "Act" are ultravires of the powers of the State Legislature and consequently void and inoperative. The petitioners are entitled to their costs in these petitions. Advocate's fee ₹ 100.
Petitions allowed.