KERALA HIGH COURT

Hotel Elite

Vs

State of Kerala

OP. Nos. 7710, 7709 of 1987

(Balakrishna Menon and Varghese Kalliath, JJ.)

23.10.1987

JUDGMENT

Balakrishna Menon, J.

1. This batch of writ petitions is by the owners of hotels and restaurants, some of them bar attached and others classified as "star hotels" having above two stars. The petitioners challenge the validity of the Kerala Finance Act 18 of 1987 in so far as it relates to the imposition of sales tax on item 67 of the First Schedule and item 4 of the Fifth Schedule of the Kerala General Sales Tax Act ("the Act" for short). Section 2(2) of the Finance Act amends Section 6(1) substituting Clauses (ii) and (iii) by Clauses (ii) to (v) introduced by the amendment. The Schedules to the Act are also amended and the Fifth Schedule is introduced by amending Sub-section (1) of Section 6. The Finance Act 18 of 1987 received the assent of the Governor of Kerala on the 20th of August, 1987 and was published in the Gazette on the same day. As per Sub-section (2) of Section 1, the Finance Act, 1987 shall be deemed to have come into force on the 1st day of July, 1987. The Act as it stood prior to the amendment had totally exempted "cooked food including coffee, tea and like articles served in a hotel, restaurant or any other place" as per entry 12 of the Third Schedule. Entry 12 of the Third Schedule was amended by adding the words "not falling under entry 57 of the First Schedule". By entry 57 of the First Schedule introduced by the amendment "cooked food including beverages not falling under any entry in the Fifth Schedule sold or served in bar attached hotels and restaurants and/or hotels above the grade of two stars" is made subject to levy of sales tax at the rate of 10 per cent at the point of first sale in the State by a dealer who is liable to tax under Section 5. Thus with effect from 1st of July, 1987 cooked food and beverages sold in bar attached hotels and hotels above the grade of two stars are liable to tax at the point of first sale in the State. As per entry 36 of the First Schedule of the Act as it stood prior to the amendment "liquor other than foreign liquor, arrack and toddy" was liable to tax at 55 per cent at the point of first sale in the State by a dealer who is liable to tax under Section 5. Explanations 1 and 2 to the entry make it clear that the expression "liquor" includes all sorts of intoxicating drinks manufactured in the State and "foreign liquor" means liquor manufactured in any country other than India and brought to India. Entry 4 of the Fifth Schedule introduced by the amendment relates to "liquor other than foreign liquor, arrack and toddy" and a levy of sales tax is imposed at two points, first at the point of first sale in the State by a dealer who is liable to

tax under Section 6, and again at the point of last sale in the State by a dealer who is also liable to tax under Section 6. The rate of tax at the first point is 46 per cent and at the second point 15 per cent.

2. The competence of the State Legislature to impose sales tax on these items is not in question in view of the Forty-sixth Amendment of the Constitution introducing Clause (29-A) to Article 366 whereby the scope of entry 54 of List II of the Seventh Schedule to the Constitution is rendered wide enough to cover cooked food and beverages served in hotels and restaurants. The aforesaid amendments to the Kerala General Sales Tax Act introduced by the Finance Act 18 of 1987 are challenged as violative of Article 14 of the Constitution. Its retrospective effect from 1st of July, 1987 is also challenged on the same ground. Even though some of the petitioners have raised a point based on Article 19(1)(g) of the Constitution in the writ petitions, no such point was argued before us. The petitioners confine their challenge to the impugned provisions of the Act based only on Article 14 of the Constitution.

3. According to the petitioners the classification of hotels and restaurants as bar attached or of above the grade of two stars into one class for the purpose of levy and all other hotels and restaurants into another class not brought into the tax net is discriminatory and violative of Article 14 of the Constitution. It is now well-established by the decisions of the Supreme Court 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, (i) the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (ii) the differentia must have a rational nexus to the object sought to be achieved by the statute in question. The classification may be founded on different bases; it may be geographical or according to objects or occupations or the like [vide *Budhan Choudhry v. State of Bihar*[1], It is also beyond controversy that taxation laws must also pass the test of Article 14. To decide whether a taxation law is discriminatory or not it is necessary to bear in mind that the State has a wide discretion in selecting the persons or objects it will tax and the statute is not open to attack on the ground that it taxes some persons or objects and not others. It is only when within the range of its selection the law operates unequally, and that cannot be justified on the basis of any valid classification that it would be violative of Article 14 (vide the decision of the Supreme Court in *East India Tobacco Company v. State of Andhra Pradesh*[2] The Supreme Court accepts the following proposition of law stated at page 587 by Willis on "Constitutional Law" :

> "A State does not have to tax everything in order to tax something. It is allowed to pick and choose districts, objects, persons, methods and even rates for taxation if it does so reasonably....The Supreme Court has been practical and has permitted a very wide latitude in classification for taxation.

The Supreme Court in *Murthy Match Works v. Assistant Collector of Central Excise*[3]

[1] AIR 1955 SC 191 (Vol. 42)
[2][1962] 13 STC 529
[3](1974) 4 SCC 428

quotes the following passage from the judgment of Holmes, J., in *Bain Peanut Co. v. Pinson*[4]

> "We must remember that the machinery of Government would not work if it were not

allowed a little play in its joints."

In *S. Kodar v. State of Kerala*[5] the Supreme Court upheld the validity of the Tamil Nadu Additional Sales Tax Act, 1970 which imposes an additional tax on dealers whose annual turnover exceeds Rs. 10 lakhs without permitting them to pass on the liability to customers. Rejecting the contention based on Article 14 of the Constitution the Supreme Court held at page (77 of STC) 427 of SCC :

> "...Classification of dealers on the basis of their respective turnovers for the purpose of graded imposition so long as it is based on differential criteria relevant to the legislative object to be achieved is not unconstitutional. A classification depending upon the quantum of the turnover for the purpose of exemption from tax has been upheld in several decided cases. By parity of reasoning, it can be said that a legislative classification making the burden of the tax heavier in proportion to the increase in turnover would be reasonable. The basis is that just as in taxes upon income or upon transfers at death, so also in imposts upon business, the little man, by reason of inferior capacity to pay, should bear a lighter load of taxes, relatively as well as absolutely, than is borne by the big one. The flat rate is thought to be less efficient than the graded one as an instrument of social justice. The large dealer occupies a position of economic superiority by reason of his greater volume of business. And, to make his tax heavier, both absolutely and relatively, is not arbitrary discrimination, but an attempt to proportion the payment to capacity to pay and thus to arrive in the end at a more genuine equality. The economic wisdom of a tax is within the exclusive province of the legislature."

It was further observed that the object of a tax is not merely to raise revenue, but also to regulate the economic life of the society. The same view is more elaborately discussed by the Supreme Court in *State of Gujarat v. Shri Ambica Mitts Ltd*[6]. wherein it is stated at page 678 :

> "In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgment."

In *Murthy Match Works' case*[7] the differential levy of excise duty on classification of match box industry into mechanised and non-mechanised and classifying the "B" and "C" categories of manufacturers into one group were in challenge before the Supreme Court. The Supreme Court upheld the classification for the following reason stated at page 437 :

> "Even so, a large latitude is allowed to the State for classification upon a reasonable basis and what is reasonable is a question of practical details and a

[4](1930) 282 US 499 at page 501
[5](1974) 4 SCC 422
[6](1974) 4 SCC 656
[7](1974) 4 SCC 428

> variety of factors which the court will be reluctant and perhaps ill-equipped to investigate. In this imperfect world perfection even in grouping is an ambition hardly ever accomplished. In this context, we have to remember the relationship between the

> legislative and judicial departments of Government in the determination of the validity of classification. Of course, in the last analysis courts possess the power to pronounce on the constitutionality of the acts of the other branches whether a classification is based upon substantial differences or is arbitrary, fanciful and consequently illegal. At the same time, the question of classification is primarily for legislative judgment and ordinarily does not become a judicial question. A power to classify being extremely broad and based on diverse considerations of executive pragmatism, the judicature cannot rush in where even the legislature warily treads."

It is further stated at page 438 :

> "Our jurisdiction halts where the constitutional touchstone of a rational differentia having a just relation to the legislative end to revenue raising is satisfied. Gratuitous judicial advice on the socialistic direction of fiscal policy is de trap. We desist from that enterprise and leave the petitioners and men of his ilk to seek other democratic remedies in that behalf, it being beyond our area normally to demolish the tax structure because micro-classification among a large group has not been done by the State."

4. Considering the validity of the Punjab Motor Vehicles Taxation Act as amended in 1981 levying Rs. 35,000 as annual tax on motor vehicles used as stage carriages, but only Rs. 1,500 per year on motor vehicles used as goods carriers, the Supreme Court held in *Malwa Bus Service (P.) Ltd. v. State of Punjab*[8]*,*

> "There is no dispute that even a fiscal legislation is subject to Article 14 of the Constitution. But it is well-settled that a legislature in order to tax some need not tax all. It can adopt a reasonable classification of persons and things in imposing tax liabilities. A law of taxation cannot be termed as being discriminatory because different rates of taxation are prescribed in respect of different items, provided it is impossible to hold that the said items belong to distinct and separate groups and that there is a reasonable nexus between the classification and the object to be achieved by the imposition of different rates of taxation. The mere fact that a tax falls more heavily on certain goods or persons may not result in its invalidity."

Following Kodar's case (1974) 4 SCC 422 the Supreme Court in *Hoechst Pharmaceuticals Ltd. v. State of Bihar*[9]*,* upheld the validity of Section 5(3) of the Bihar Finance Act which imposed a levy of surcharge on every dealer whose annual turnover exceeds Rs. 5 lakhs. A. P. Sen, J., on behalf of the Bench stated at page 97 :

> "On questions of economic regulations and related matters, the court must defer to the legislative judgment. When the power to tax exists, the extent of

[8](1983) 2 SCR 1009 (at page 1024)
[9](1983) 4 SCC 45

> the burden is a matter for the discretion of the law-makers. It is not the function of the

> court to consider the propriety or justness of the tax, or enter upon the realm of legislative policy. If the evident intent and general operation of the tax legislation is to adjust the burden with a fair and reasonable degree of equality, the constitutional requirement is satisfied. The equality clause in Article 14 does not take from the State a power to classify a class of persons who must bear the heavier burden of tax. The classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice it results in some inequalities."

It was accordingly held that the economic wisdom of a tax is within the exclusive province of the legislature. The rationality in the belief of the legislature regarding the capacity to pay the tax is also not a matter for judicial interference as violative of Article 14 of the Constitution.

5. The validity of paragraph 167 of the Electricity Tariff Notification issued by the Bihar State Electricity Board under which a fuel surcharge was levied on consumers of low tension industrial service, high tension service, extra high tension service, and railway traction service was upheld by the Supreme Court in *Rohtas Industries Ltd. v. Chairman, Bihar State Electricity Board*[10] It was held that the classification of such consumers has a rational nexus with the object and purpose of the levy of surcharge.

6. A notification issued by the Government of Tamil Nadu under Section 4(1) of the Madras Motor Vehicles Taxation Act, 1931 substantially enhancing motor vehicles tax on contract carriage vehicles leaving out stage carriage vehicles was upheld by the Supreme Court in *G.K. Krishnan v. State of Tamil Nadu*[11], Following the decision in *Shri Ambica Mills' case*[12] it is stated at page 729 :

> "In the context of commercial regulation, Article 14 is offended only if the classification rests on grounds wholly irrelevant to the achievement of the objective and this lenient standard is further weighed in the State's favor by the fact that a statutory discrimination will not be set aside if a state of facts may reasonably be conceived by the court to justify it."

The Supreme Court quotes with approval the following passage from the judgment of Stewart, J., on behalf of the majority in *San Antonio School District v. Bodrigues*[13]

> "Thus, we stand on familiar ground when we continue to acknowledge that the Justices of this Court lack both the expertise and the familiarity with local problems so necessary to the making of wise decisions with respect to the raising and disposition of public revenues. Yet, we are urged to direct the States either to alter drastically the present system or to throw out the property tax altogether in favor of some other form of taxation. No scheme of taxation,

[10] AIR 1984 SC 657
[11] (1975) 2 SCR 715
[12] (1974) 4 SCC 656
[13] (1973) 411 US 1

> whether the tax is imposed on property, income, or purchases of goods and services, has

> yet been devised which is free of all discriminatory impact. In such a complex arena in which no perfect alternatives exist, the court does well not to impose too rigorous a standard of scrutiny lest all local fiscal schemes become subjects of criticism under the Equal Protection Clause."

The following passage from the judgment of Marshall, J. (with which Douglas, J., concurred), is also quoted with approval :

> "In summary, it seems to me inescapably clear that this court has consistently adjusted the care with which it will review state discrimination in light of the constitutional significance of the interests affected and the invidiousness of the particular classification. In the context of economic interests, we find that discriminatory state action is almost always sustained, for such interests are generally far removed from constitutional guarantees. Moreover, 'the extremes to which the court has gone in dreaming up rational bases for state regulation in that area may in many instances be ascribed to a healthy revulsion from the court's earlier excesses in using the Constitution to protect interests that have more than enough power to protect themselves in the legislative hall: *Dandridge v. Williams*[14],."

It is accordingly held that the courts will be very slow in striking down a classification as arbitrary for the reason that the legislature has better means of knowledge about the needs of the society.

7. The inclusion of "khandsari" in the definition of "agricultural products" in Section 2(a) of the U.P. Krishi Utpadan Mandi Adhiniyam (Act), 1964 leaving out "khandsari sugar" and made subject to regulations under the Act by way of licences, etc., was upheld by the Supreme Court overruling the plea of violation of Article 14 of the Constitution in a recent decision reported in *Rathi Khandsari Udyog v. State of U.P*[15]*.,* The Supreme Court observed at page 693 :

> "This court has had several occasions to deal with a similar problem in the context of taxing statutes. And this court has consistently taken the view that in the matter of classification the legislature has a wide discretion in selecting the persons or objects it will tax, and that a statute is not open to attack on the ground that it taxes some persons or objects and not others. 'Everything-or-nothing' argument is basically fallacious. For, the legislature may tax or regulate the trade in some objects and not in others. Or may bring within its net some objects initially and may cast the net wider later on."

8. The State in its counter-affidavit has denied the charge of discrimination and has given its reasons for imposing a tax on bar attached hotels and hotels above the grade of two stars. It is stated that hotels graded above two stars are ordinarily required to have a bar though the condition is relaxable in the case of vegetarian hotels. Bar licences are issued only if the hotels and restaurants conform to the requirements of

[14](1970) 397 US 471 at page 520
[15] AIR 1985 SC 679

Rule 13(3) of the Foreign Liquor Rules, 1982. These Rules require hotels and restaurants to conform to the star grade. It is also averred that hotels above the grade of two stars and bar attached hotels cater mainly to a wealthier section of the people who can afford to spend more. The counter-affidavit relies also on article 47 of the Constitution which enjoins the State to endeavour to bring about prohibition of consumption of intoxicating drinks and drugs which are injurious to health. A higher price for food and drink was apparently considered as a deterrent against consumption of liquor. Section 22 of the Kerala General Sales Tax Act allows a dealer to pass on the tax burden to the consumer. The impact of the levy is therefore on the wealthier section of the society and its object is for raising revenue for the State as well as at least partially to implement the directive principle contained in article 47 of the Constitution. As adverted to earlier, it is not for this Court to consider the reasons that weighed with the legislature to make the classification for the purpose of levy of sales tax, the object of the levy is principally for raising revenue and its impact, according to the State, is mainly on the wealthier section of the society.

9. Counsel for the petitioners have placed considerable reliance on the decision of a Division Bench of the Madras High Court in *Sangu Chakra Hotels Pot. Ltd. v. State of Tamil Nadu*[16], The question before the Madras High Court was relating to the validity of the levy of sales tax on articles of food and drink sold to customers in hotels classified or approved by the Government of India, Department of Tourism, as per entry 150 of the First Schedule to the Tamil Nadu General Sales Tax Act, 1959 as amended in 1981. The Division Bench at page 137 adverts to the decisions of the Supreme Court in *East India Tobacco Co. v. State of Andhra Pradesh*[17], and *Orient Weaving Mills v. Union of India*[18], wherein it has been reiterated that the State has a wide discretion in selecting persons or objects for the purpose of taxation. The Madras High Court, however, followed its earlier decision in *Krishna Iyer v. State of Madras*[19] and struck down entry 150 of the First Schedule to the Tamil Nadu General Sales Tax Act as violative of Article 14 of the Constitution. Chandurkar, C.J., on behalf of the Division Bench stated at page 140 :

> "Just as the classification made under the proviso in question in *Krishna Iyer's case*[20] was not found to have had any reasonable basis, having a just and reasonable relation to the object of the Act; in the cases before us also we have not been able to find any reasonable basis for the classification based on the place where the articles of food and drink are sold, having any reasonable nexus with the object of the Sales Tax Act."

Referring to *Kodar's case*[21] it is stated at page 139 :

> "...The first decision is in *S. Kodar v. State of Kerala*[22], in which it was held that the additional tax levied under the Tamil Nadu Additional Sales Tax Act (14 of 1970) was really a tax on the sale of goods and not on the income of a dealer."

Kodar's case[23] as adverted to earlier, deals also with the challenge

[16](1985) 60 STC 125 [18] AIR 1963 SC 98 [20](1956) 2 MLJ 179
[17](1962) 13 STC 529 [19] AIR 1956 Mad. 480 [21](1974) 4 SCC 422
[22](1974) 34 STC 73 (SC) [23](1974) 4 SCC 422

based on Article 14 of the Constitution and upholds the legislation on the ground that the economic wisdom of 'a tax should be left to the exclusive domain of the legislature. This aspect

of the matter dealt with in the decision is not seen adverted to by Chandurkar, C. J. The decision in Krishna Iyer's case AIR 1956 Mad. 480 followed by the Madras High Court related to the validity of the proviso to Section 3(1) of the Madras General Sales Tax Act. Section 3(1) with its proviso 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 in 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 house 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."

Rajagopalan, J.,on behalf of the Division Bench has taken the view that the classification in the above provision of the Act is unrelated to the object of the Act. The proviso aforesaid, according to the Division Bench, makes a three-fold classification-(1) from the group of dealers is marked off one class of dealers, the dealers in articles of food and drink; (2) among the dealers in articles of food and drink a further division is made and dealers in such articles sold in a hotel, boarding house or restaurant are marked off from the other dealers in such articles of food and drink; (3) there is a further division among dealers in articles of food and drink sold in hotel, boarding house or restaurant; (a) those with a total turnover of Rs. 25,000 and more; (b) those with a turnover of less than Rs. 26,000. It was only the validity of the second of the classifications that was challenged before the learned Judges as can be seen from pages 351 and 352 of the report. The Division Bench dealing with the classification stated at page 353:

> "Even after listening to the full and exhaustive arguments of the learned Government Pleader, we must confess our inability to visualise a just and reasonable relation between the impugned classification underlying the proviso to Section 3(1)(b) of the Act, and the object of the Act. Dealers in articles of food and drink with a turnover of Rs. 25,000 and more are divided into two classes for purposes of taxation, and those that sell such articles in a hotel, boarding house or restaurant have to pay a higher tax. Normally, of course, only articles of food and drink prepared in the kitchen of the restaurant are sold in that restaurant. Even so, articles of food and drink sold in the restaurant are subjected to a higher tax. But the articles prepared by the same dealer and probably in the same kitchen will be subjected to a lower tax if sold in a shop next door or sold from a mobile van, both of which are familiar usages of such dealers in this City. Let us take another example. A dealer who sells cakes and pastries at a shop will pay less. He will pay more by way of tax if he sells the articles in a restaurant attached to or detached from his shop. The normal expectancy of consumption on the premises of the articles sold in a restaurant may not serve as an acceptable basis for the distinction. A daily turnover of about Rs. 70 is enough to attract the higher rate. Aerated water sold at a stall for consumption there will cost less than the same aerated water sold in a restaurant, on the assumption that the consumer ultimately pays."

It was accordingly held that the classification as "dealers in articles of food and drink sold in hotels, boarding houses and restaurants" and as "dealers in such articles of food and drink sold elsewhere" has no reasonable or just relation to the object of the Act, which is to tax the turnover of the sales of a dealer and is hence violative of Article 14 of the Constitution. This decision of the Madras High Court was expressly dissented from by a Division Bench of the Andhra Pradesh High Court in *Kadiyala Chandrayya v. State of Andhra*[24] The Andhra Pradesh High Court was considering the validity of the same proviso to Section 3(1) of the Madras General Sales Tax Act. Subba Rao, C. J., on behalf of the Division Bench consisting of himself and Manohar Pershad, J., after referring to the decision of the Supreme Court in *Budhan Choudhry v. State of Bihar*[25] and the principles stated by Willis on Constitutional Law referred to in the earlier part of this judgment has taken the view that a very wide latitude should be permitted in the matter of classification for the purpose of taxation. Dissenting from the decision of the Madras High Court in *Krishna Iyer's case*[26] Subba Rao, C. J., on behalf of the Division Bench stated :

> "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 standpoint of the citizen as well as from the standpoint of the State. From the standpoint 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 higher rates from prosperous dealers than from impecunious ones. From the standpoint 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."

[24] AIR 1957 AP 261 [26] AIR 1956 Mad. 480
[25] AIR 1955 SC 191

The decision in Kadiyala Chandrayya's case AIR 1957 AP 261 was followed in a later decision of the Andhra Pradesh High Court reported in *State of Andhra Pradesh v. Sri Chintalapudi Ramachandra Row*[27],

10. A similar question relating to the validity of Section 3 of the U. P. Sugarcane (Purchase Tax)

Act, 1961 came up for consideration before the Supreme Court in *Ganga Sugar Corporation Ltd. v. State of U.P*[28]*.,* Uttar Pradesh has a number of factories which manufacture sugar and there are also other units which with less mechanisation produce out of raw sugarcane less refined, end-products like khandsari sugar, gur or rab. The Act, by Section 3, imposes a rate of tax of Rs. 1.25 per quintal of sugarcane purchased by a factory owner, the corresponding rate for a "unit" being only 50 paise. The charge is on the purchase transaction payable by the purchaser who may be the owner of a factory or a unit. The levy was challenged, inter alia, as opposed to Article 14 of the Constitution. The Supreme Court upheld the levy at different rates on the two classes of purchasers rejecting the plea of violation of Article 14 of the Constitution. It is observed at page 236 :

> "This court has uniformly held that classification for taxation and the application of Article 14, in that context, must be viewed liberally, not meticulously. We must always remember that while the executive and legislative branches are subject to judicial restraint, 'the only check upon our exercise of power is our own sense of self-restraint."

It is further stated at page 238 :

> " is well-established that classification is primarily for the legislature and becomes a judicial issue only when the legislation bears on its bosom obvious condemnation by way of caprice or irrationality."

The plea, based on Article 14, was rejected on the ground that "in taxation, the many criteria of intrinsic intricacy and pragmatic plurality persuade the court, as a realist instrument and respecter of the other two branches, to allow considerable free play although never any play for caprice, mala fides or cruel recklessness in intent and effect."

11. In the light of the decision of the Supreme Court in Ganga Sugar Corporation's case (1980) 1 SCC 223 and the decision of the Andhra Pradesh High Court in Kadiyala Chandrayya's case AIR 1957 AP 261 we do not find it possible to agree with the view expressed by the Madras High Court in *Sangu Chakra Hotels Pvt. Ltd. v. State of Tamil Nadu*[29]*,*

12. The challenge against the classification as violative of Article 14 of the Constitution cannot, therefore, be sustained. The levy on liquor at two points as per the Fifth Schedule of the Act introduced by the Finance Act 18 of 1987 is for enhancement of revenue and no question of violation of Article 14 arises against such enhancement. We therefore hold that the levy on cooked food as per entry 57 of the

[27](1962) 13 STC 697 [29](1985) 60 STC 125

[28](1980) 1 SCC 223

First Schedule and the levy on liquor as per entry 4 of the Fifth Schedule to the Act as amended by the Kerala Finance Act 18 of 1987 are perfectly valid and the challenge against the same as violative of Article 14 is clearly unsustainable.

13. Counsel appearing for the petitioners challenge also the validity of Section 1(2) of the Kerala Finance Act 18 of 1987 as per which the Act is brought into force with retrospective effect from 1st of July, 1987. The Act, as adverted to earlier, received the assent of the Governor on 20th of

August, 1987 and was published in the Gazette on the same day. The learned Advocate-General appearing on behalf of the State submits that even though the retrospective levy can be legally supported, he assures on behalf of the Government that the tax as per entry 57 of the First Schedule and entry 4 of the Fifth Schedule will be collected only with effect from 20th of August,, 1987 and that no collection will be made or recovery effected of the tax as per the amended provision relating to the above entries for the period between 1st of July, 1987 and 19th of August, 1987. We record this submission made by the Advocate-General and direct that tax as per the amended provisions on the two items mentioned above will not be recovered for the period prior to the date of publication of the Kerala Finance Act 18 of 1987 in the Gazette. Subject to the above direction these original petitions are dismissed. There will, however, be no order as to costs. Immediately on pronouncement of the judgment counsel for some of the petitioners made an oral representation for leave to appeal to the Supreme Court. We do not see any substantial question of law of general importance which, in our opinion, needs to be decided by the Supreme Court. The prayer for leave is accordingly rejected.
Leave refused.