

# RAJASTHAN HIGH COURT

Bhairon Dan

Vs.

State of Rajasthan

Civil Writ Petition No. 31 of 1956

(Dave and Modi, JJ.)

09.08.1957

## JUDGMENT

### **Dave J.**

1. These are two writ applications under Art. 926 of the Constitution of India. The first one has been presented by Bhairon Dan and 15 others who are residents of the Bikaner District, while the second one has been filed by Ram Bux and 8 others who are residents of Jodhpur City. Since common questions of law are involved in both the applications, they are being disposed of together.

2. It is stated by the petitioners in both the applications that they deal in betel leaves and that they have been asked by the Sales-Tax Officers, Bikaner and Jodhpur to submit and furnish returns of their turnover for the prescribed period in the prescribed form and manner as provided under section 7 of the Rajasthan Sales Tax Act (No XIX of 1951) so that assessment may be made under section 10 and the tax may be recovered from them under section 11 of the said Act. It is urged by them that they are not liable to pay sales-tax on the sale or turnover of the betel leaves on two grounds. In the first place it is contended that the Rajasthan Sales Tax Bill was not introduced or moved on the recommendation of the Rajpramukh as provided in Art. 207 of the Constitution of India and therefore it is ultra vires of the Constitution. Secondly, it is contended that even if the sales Tax Act is held to be valid, the petitioners are exempt from paying any tax because 'betel leaves' come under the category either of 'vegetables' or of plants which have been specifically exempted from payment of tax under the Schedules appended to the said Act.

3. It is admitted by the non-petitioners that the petitioners deal in betel leaves and that

they have been asked by the sales Tax officers to submit and furnish their returns of turnover. It is, however, contended that the Sales Tax (Act No. XIX of 1954) is quite valid and that the petitioners are not entitled to claim any exemption under the said Act.

4. Thus, the two questions which arise for determination in these petitions are :

- (i) whether the Sales Tax Act No. XIX of 19--4 (which will hereinafter be referred to as the Act) is invalid, and
- (ii) (in case point No. I is decided against the petitioners) whether the petitioners are exempt from paying any tax under the said Act.

5. To begin with the first point, learned advocates for the petitioners have urged that the bill relating to the Rajasthan Sales Tax was a money bill as defined in Art. 199 of the Constitution of India and therefore it could not be introduced or moved in the Legislature except on the recommendation of the Rajpramukh as provided in the Art. 207 of Constitution. It is urged that the said bill was not introduced or moved on the recommendation of the Rajpramukh that the constitutional provisions were thus infringed and so the Act was invalid This allegation was denied in the reply filed by the State of Rajasthan. In the first reply which was filed by non-petitioners, the denial was no doubt made in vague terms, but the learned Government Advocate has now presented a definite reply saying that the Sales Tax Bill of 1954 was introduced on the recommendation of the Rajpramukh. He has even produced a true copy of the recommendation made by the Rajpramukh on 13-9-1954. Under the circumstances, the objection raised by the petitioners does not stand. We strongly disapprove the petitioners' action in stating a wrong fact and making such allegation without any basis. We may further point out that this objection of the petitioners could not stand even if the fresh reply and copy of the said recommendation were not filed by the Government Advocate in view of the provisions of Art. 255 of the Constitution, which runs as follows : 'No Act of Parliament or of Legislature of a State specified in Part A or Part B of the First schedule, and no provision in any such Act, shall be invalid by reason only that some recommendation or previous sanction required by this Constitution was not given, if assent to that Act was given-

- (a) Where the recommendation required was that of the Governor, either by the Governor or by the President;

(b) Where the recommendation required was that of the Rajoramukh, either by the Rajpramukh or by the president;

(c) Where the recommendation on previous sanction required was that of the President by the President

6. It is clear from the provisions of the said Article that in cases where the Constitution required that a bill cannot be moved or introduced without the recommendation or previous sanction of the President or the Governor or the Rajpramukh the Act would not be invalid simply because such a recommendation or a previous sanction is not made provided subsequent assent is given by that authority whose recommendation or previous sanction was necessary or by the higher authority, namely the President. In the present case it is common ground between the parties that this Act received the assent of the President of India on 22nd December 1954 as published in Rajasthan Gazette Extraordinary, dated 30.12.1954. So even if we were to find that the bill was not introduced or moved on the recommendation of the Rajpramukh we could not hold the Act invalid since it had received the assent of the President of India.

The first objection has, therefore, no legs to stand and is fit to be dismissed .

7. Coming to the next objection raised by the petitioners it may be observed that the decision thereof rests on the interpretation of two words appearing in Column 2 of the Schedule appended to the Act which describes certain goods on which no tax is payable under that Act. Serial No. 2 of the Schedule under which the petitioners want to bring their case runs as follows :-

'Fresh fruits, sugarcane, vegetables, and flower seeds, bulbous, plants excluding onions and garlic, edible, tubers, vegetable orchids.

8. Learned Advocates for the petitioners have urged that the term 'vegetables' is very wide in its meaning and the betel leaves are covered thereby They have referred to the meaning of this word as given in Webster's New International Dictionary, Vol. 2, page 2823. It is as follows :

'Vegetable-noun-a plant specifically in etc; also the edible part or parts of such common usage; a herbaceous plant cultivated plants, as prepared for market or table. for food as the cabbage, turnip, potato, bran There is no well-drawn distinction between vegetables and fruits in the popular sense ; but it has been held by the courts that all those which, like potatoes, carrots, peas, celery,

lettuce. tomatoes etc., are eaten (whether cooked or raw) during the principal part of a meal are to be regarded as vegetables, while those used only for dessert are fruits.

9. It is true that the word 'vegetable' is used both in its wide as well as in its narrow sense. In its wide sense it may embrace the entire vegetable kingdom and all kinds of plants and fruits would also come under that term. But as pointed out in Webster's Dictionary itself this word when used in its narrower sense (in which it is generally used in common parlance) means a herbaceous plant cultivated for food and even fruits would fall outside its ambit. In our opinion the word vegetable has been used in the Act in its narrower sense meaning those classes of vegetables which are grown in kitchen gardens to supplement the food. This is clear from the language of Clause (2) of the Schedule itself. It mentions fresh fruits, sugarcane, vegetables, onion and garlic etc. at one place. If the word 'vegetables' were used in its comprehensive sense, every other article mentioned in this clause could be covered by one word 'vegetables' and it was unnecessary for the Legislature to make special mention of fresh fruits, sugarcane, onions and garlic were also mentioned, shows that the word 'vegetable' was used as meaning these vegetables which are grown in kitchen gardens and which are used to supplement the food. It may be pointed out that similar matter came for discussion in *Kokila Ram v. Province of Bihar*,<sup>1</sup> and *Madhya Pradesh Pan Merchants Association v. State of Madhya Pradesh*,<sup>2</sup> Following the view expressed in the first case, it was observed in the second case that the word 'vegetables' cannot be given the comprehensive meaning which 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*)<sup>3</sup> We respectfully agree with this observation. The same view has been adopted in the case of *Brahmanaed v. The State of Uttar Pradesh*,<sup>4</sup> and *Firm, Shri Krishna Chaudhw v. Commissioner of Sales-Tax U. P.*,<sup>5</sup> and we see no good reason to take different view.

10. We have next to see whether 'betel leaves' are covered by the word 'plant' as urged by the petitioners' learned counsel. In this connection it may be observed that some

difficulty has arisen on account of a difference in printing clause 2 in different editions of the Act. For instance, in the Act which has been published in the Rajasthan Gazette, dated 12-1954, the words used are 'bulbes and plants'. In another copy of the Act Published by the Rajasthan Law Weekly, we find that the words used are 'bulbous, plants'. It is obvious that there is some printing mistake. There is no such word in the Webster's Dictionary as 'bulbes' and it appears that the letter 'e' was wrongly printed in the schedule given in the Rajasthan Gazette Extraordinary referred to above. Similarly it appears that the publishers of the Rajasthan Law Weekly converted the word 'bulb' into 'bulbous' of their own accord. The word "bulbes" being obviously a misprint it was thought that the real word was 'bulbous' and that it was used as an adjective to the word following i. e. 'plant'. Orchids whether epiphytic or terrestrial are both bulbous plants and on this kinship it was thought that the legislature intended to exempt bulbous plants excluding orchids, members of the same genera. It was also thought that this exemption was meant for such plants as are generally grown in home gardens and are supplied by nurseries. It being doubtful that the legislature wanted to exempt all plants whether grown in home gardens or fruit orchards it was assumed that the legislature wanted to exempt only the first which are supplied by the nurseries either in the shape of seeds or in the shape of bulbs or roots e. g. lilies, cannas, dahlias, chrysanthemums, gladioli. The correct wording as assumed by their Lordships is evidently liberal and more in consonance with the general rules of interpretation. 'Bulbous' is an adjective and not a noun and could not be used in the schedule unless it was meant to qualify the noun 'plant' which follows thereafter. If the Legislature meant to insert bulbous plant, then it would mean that it only wanted to exempt those kinds of plants which are bulbous and not others. We see no reason why the Legislature exempted bulbous plants only and thus it is clear that the Legislature had used two words, namely 'bulbs' and 'plants' and it wanted to exempt both from the payment of the Sales-tax. Assuming, therefore, that the word 'plants' was not qualified by any adjective, we have to see if betel leaves can be covered by this word. It may be observed that every leaf of a plant is not a plant itself. In our opinion, the word 'plant' was used by the Legislature in the sense of a living organism which could be planted or grown. It was pointed out by the learned counsel themselves that betel leaves which are imported from outside cannot be planted like shrubs or trees and therefore they cannot be taken to be plants.

11. Learned counsels have urged in the end that if two constructions of a word are possible, the one which leans in favor of the subject should be adopted by the Court.

In support of their contention, they have referred to *State of Bombay v. R. S. Phadtare*<sup>6</sup> In that case the question which came for decision was whether 'sugarcane' was a fresh vegetable which was exempted from the provisions of the Sales Tax Act. It was held that "sugarcane' did come within the meaning of the term 'fresh vegetables' and it was further observed that if two constructions are possible in the taxing statute, the Court should lean in favour of that construction which gives relief to the subject. We respectfully agree with the above observation in principle that if two constructions of a certain word or term in the taxing statute are possible the court should lean in favour of that construction which gives relief to the subject. But in the present case we think that two constructions are not possible. Looking to the scheme of the Schedule it is not possible to include 'betel leaves' within the terms of 'vegetables' or 'plants'. As observed in *Kokila Ram v. Province of Bihar*,<sup>7</sup> 'betel leaves' are generally used as masticatory. They may sometimes be used as an aid to digestion or as a vehicle for administering Ayurvedic medicines. But we have not yet heard of a betel leaf i.e.'pan' being used as vegetable or as a plant anywhere. Under the circumstances, we think that betel leaves are not exempted in the schedule of the Act and the writ applications must, therefore, fail.

12. Before parting with the case, we may also decide one more point which has been raised in the application. It has been urged that 'betel leaf' is an article of an essential character, that it is consumed of all -lasses of people, that a levy of sales-tax on such an article is against all canons of policy of taxation and, therefore, this court must give relief to the petitioners. In this connection it would be enough to say that this Court cannot lay down any law. It is true that same States, as for example U. P. seen to have exempted this article from gales-tax as it appears from the judgment in *Firm Shri Krishna Chaudhary v. Commissioner of Sues tax U.P.*, but this is a matter which is to be considered by the Legislature. We cannot give any relief to the petitioners on extraneous considerations.

13. Both the applications thus fail and they are hereby dismissed with costs.

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Cases Referred.

1. AIR 1951 Pat 367
2. (AIR 1956 Nag. 54)

3. (1952) 1 D.L.R., 385
4. (VII Sales Tax Cases 1956, Page 206)
5. (VII Sales Tax Cases 1956, P. 742)
6. (AIR 1956 Bom. 496)
7. (AIR 1951 Pat., 367)
8. (VII Sales Tax Cases 1956, P. 742)