NAGPUR HIGH COURT

Madhya Pradesh Pan Merchants Association

Vs

State of M.P

Misc. Petn. No. 320 of 1954

(Hidayatullah, C.J. and Mangalmurti, J.)

26.07.1955

ORDER

Hidayatullah, C.J.

1. This petition is by the Madhya Pradesh Pan Merchants Association, Nagpur, through its Secretary L.B. Borgaonkar. Respondents 2 and 3, who are the Sales Tax Officer and the Assistant Sales Tax Officer respectively in the Nagpur district, have issued notices to the dealers forming the Association to submit returns of their sales of betel leaves with a view to assessing them to sales tax. The petitioner claims exemption from the operation of the Sales Tax Act, 1947, and seeks a 'writ' or 'writs' to restrain the respondents from charging sales tax on the sale of betel leaves. In the alternative, it urges that Act 16 of 1949 by which the exemption is withdrawn is 'ultra vires' and illegal.

2. To understand the contention it is necessary to give a short history of the legislation on the subject. In Act 21 of 1947 exemption from the tax is granted by section 6 of the Act. The section reads as follows :

> "(1) No tax shall be payable under this Act on the sale of goods specified in the second column of Schedule II, subject to the conditions and exceptions if any set out in the corresponding entry in the third column thereof.
> (2) The State Government may, after giving by notification not less than one month's notice of their intention so to do by a notification after the expiry of the period of notice mentioned in the first notification amend either schedule, and thereupon such schedule shall be deemed to by amended accordingly."

In the second Schedule there were two items - Item No. 6 'vegetables', and Item No. 36 'betel leaves'. The legislature, thereafter, passed Act 16 of 1949 and amended the Second Schedule by deleting from it Item No. 36. The Petitioner contends that betel leaves were exempted under Item No. 6, though the Legislature 'ex majori cauteia' mentioned them once again in Item No. 36. The deletion of item No. 36 it is submitted, makes no difference whatever to the exemption of betel

leaves. The petitioner further contends that the Legislature having expressed its will in section 6 as to the manner in which the schedule could be amended, no other mode for the amendment thereof was possible so long as Section 6 remained intact, and that even if the Legislature wished to amend the schedule, it had to give a month's notice to the persona affected thereby, before the change could be made. It also contends that Act 16 of 1949 is 'ultra vires' the Provincial Legislature because the Bill needed the assent of the Governor-General under section 100, Government of India Act, 1935, and the assent was not obtained. The petitioner claims further that there is discrimination between Pan dealers and other vegetable dealers, and Act 16 of 1949 cannot be enforced after the inauguration of the Constitution.

3. On behalf of the respondents a preliminary objection is taken that at indeterminate body like the Pan Dealers Association cannot seek 'a writ' under Article 226 of the Constitution. It is contended that either all the persons affected thereby must join in this petition or all of them must file separate petitions. An application has now been filed by the Secretary of the Association to limit the petition to L.B. Borgaonkar who is himself a Pan dealer, in case the objection is upheld.

4. We heard the preliminary objection as well as the petition, and in view of our decision that there is no room for interference, there is no need to decide the question whether an association can move this Court under Article 226 of the Constitution on behalf of its constituent members. In Halsbury's Laws of England there are cases in which associations moved for relief, but we do not consider it necessary to go into this question in this case.

5. Shri Bobde contends on the strength of certain passages in Craie's Statute Law, p. 98. that Item No. 35 was not outside Item No. 6 but was added 'ex abundant cautela'. According to him, the exemption from the operation of the Act was granted to betel leaves dealers by Item No. 6 because the term 'vegetables' is wide enough to include even betel leaves. The deletion of Item No. 36, therefore, in no way whittled down the operation of Item No. 6 which continues to grant the same exemption which Items Nos. 6 and 36 together did in the past. For this purpose Shri Bobde contends that the word 'vegetables' should be given the widest meaning possible to include all commodities which in a botanical sense can be described as vegetables.

6. 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 terra '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, cashew-nuts, 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, and the cases collected in Words and Phrases, First Series, Vol. 8, p. 7284 and in Words and Phrases, Second Series, p. 1145). There is also the decision of the Patna High Court in - '*Kokil Ram v. Province of Bihar*[1]*',* where it has been ruled that Pans for the purposes of sales tax axe not included in the term 'vegetables'. Pans are not ordinarily used as vegetables but as a masticatory. They are not used as food.

[1] AIR 1851 Pat 367

7. We are accordingly quite clear that the exemption which was granted by Item No. 36 was withdrawn by its deletion, and the same exemption cannot be claimed under Item No. 6 which refers to vegetables, in which term betel leaves cannot be included. The cases cited to show that

the cultivation of betel leaves amounts to agriculture do not carry the matter any further.

8. This brings us to the question whether Act 16 of 1949 is 'ultra vires'. In this connection reliance, has been placed upon the decision in - '*Shriram Gulabdas v. Board of Revenue*[2]*',* In that case Explanation II to Section 2(g) introduced by Act XVI of 1949 was challenged before this Court. It was then ruled that the said Explanation was not validly enacted because it required the assent of the Governor-General, since it sought to alter the rules obtaining under the Sale of Goods Act and the Contract Act. The whole of Act 16 of 1949 was not then examined. We are aware that the cited ruling was not followed in the Andhra High Court by Chandra Reddy and Umamaheshwaram, JJ. in -'*Kameswara Rao v. State of Madras*[3]*',* They consider that the ruling is contrary to the decisions of their Lordships of the Supreme Court in - '***State of*** *Bombay v. United Motors (India) Ltd*[4]*.'.* and - '*Popatlal Shah v. State of Madras*[5]*',* and further that the observations regarding the second Explanation to Section 2(g) contradict what the Bench stated earlier on, the subject with all due respect to the learned Judges. We do not agree. The power to levy taxes on the sale of goods (Entry No. 43 of List II, Seventh Schedule to the Government of India Act, 1935) was, no doubt, plenary. But the power to make room for new Legislation in an occupied field by enacting rules contrary to existing law made, by the Centre did not, go with the entry. That power could only be exercised by taking the sanction of the Governor-General to the proposed enactment. The plenary power to make cannot be; contused with the power to make room in the occupied field for the new law in abrogation of the existing law. The Sale of Goods Act had determined the conditions before a contract for the sale of goods could be said to be complete. Any alteration with that law did not fall under entry No. 48 but under entry 10 of the Concurrent list and Sections 100/107, Government of India Act, 1935 were attracted. There is, therefore, no contradiction between the two portions of the judgment, as has been held by Chandra Reddy, J.

9. As regards the observation that the ruling must be treated as bad law in view of the decision of their Lordships of the Supreme Court in AIR 1953 Supreme Court 252, it is sufficient to point out that the ruling of this Court was considered by their Lordships of the Supreme Court in - '*Himmatlal v. State of M.P*[6]*.',* and was approved because it was in accordance with what was stated by their Lordships in AIR 1953 Supreme Court 252. This is what their Lordships said in AIR 1954 Supreme Court 403 :

> "As pointed out above, the High Court held that the new Explanation II was ultra vires the State Legislature and that the mere production of goods was not enough to make the tax payable unless the goods were appropriated to a particular contract.

[2] AIR 1952 Nag 378 [4] AIR 1953 SC 252 [6] AIR 1954 SC 403
[3] AIR 1955 And 129 [5] AIR 1953 SC 274

The correctness of this view can no longer be questioned by reason of the majority decision of this Court in AIR 1963 Supreme Court 252...,.." We are accordingly not pressed by the argument that AIR 1952 Nagpur 378 (cit. sup.) has been wrongly decided.

10. That, however, is not the end of the matter. In AIR 1952 Nagpur 378 the Bench was concerned only with Explanation II to Section 2(g) and that was held to be defectively enacted because the Governor-General had not assented to that Explanation. That did not mean that the Bench regarded the whole of the Act as ultra vires. Nor is it true to say that the entire Act needed

the assent of the Governor-General. Under the Government of India Act, 1935, the Provincial Legislature could enact valid laws within the ambit of its powers, provided the Governor assented to the measures so enacted. Act 16 of 1949 in such of its parts as bear upon this matter did not need the assent of any authority other than the Governor. To enact Explanation II to Section 2(g) a further assent of the Governor-General was required because the field was already occupied by the Sale of Goods Act, and to make room for the new Explanation the assent of the Governor-General was needed to remove repugnancy. That assent was not necessary for the rest of the Bill, and therefore the fact that the Bill was not so assented did not render invalid such portions of it as were validly enacted with the assent of the Governor. The Second Explanation to Section 2(g) is severable from the rest of the Act and must be so severed. The Bench, therefore, on the earlier occasion merely pronounced that the second Explanation was 'ultra vires'. In our opinion, the invalidity attaching to the second Explanation cannot be carried further because it is severable from the remaining portions of the Act. Indeed, as was pointed in the case of Shriram Gulabdas, the failure to enact legally the said Explanation did not work any change and the old Explanation remained current and was not affected. We accordingly hold that Act 19 of 1949, in so far as it bears upon the present matter, was not invalidly enacted and was effective.

11. As regards the contention that the amendment of the schedule was defective because the procedure under section 6 was not followed, we have only to say that under section 6 there is a delegation of power to the State Government to amend the schedule, for which certain conditions precedent have been laid down. That delegation does not rob the Legislature of its plenary power to amend the Act as and when occasion arises. It is not necessary that the delegation should be withdrawn before the Legislature itself can amend the Act. Further, the conditions created for the exercise of the power by the delegate do not bind the Legislature. The Legislature could, and can, at any time amend the whole Act including the schedule.

12. The scheme of taxation in all countries shows that only certain commodities are selected for the imposition of sales tax. It has not been contended before this that any discrimination results from the taxation of one article as against another. If the argument is carried to its extreme, every sale transaction will have to be taxed, and also equally, before sales tax can be imposed on any commodity. Such taxing measures imposing Sales tax on selected commodities and not on others cannot be regarded as discrimination between one dealer and another. We do not think that there is any discrimination when betel leaves are sought to be taxed and vegetables are exempted.

13. In our opinion, the petition has no farce and must be dismissed. We accordingly dismiss it with costs, Counsel's fee Rs. 100. The petitioner shall be entitled to a refund of the outstanding amount of the security deposited by him.
Petition dismissed.