Konduri Buchirajalingam vs State Of Hyderabad & Ors on 3 April, 1958

Equivalent citations: AIR 1958 SUPREME COURT 756

Bench: S.K. Das, A.K. Sarkar

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           CASE NO.:
Appeal (civil)  192 of 1955

PETITIONER:
KONDURI BUCHIRAJALINGAM

RESPONDENT:
STATE OF HYDERABAD & ORS.

DATE OF JUDGMENT: 03/04/1958

BENCH:
S.R. DAS  (CJ) & T.L.V. AIYYAR & S.K. DAS & A.K. SARKAR & V. BOSE

JUDGMENT:
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JUDGMENT 1958 AIR (SC) 756 The Judgment was delivered by THE JUDGMENT OF S. R. DAS, C.J., VENKATARAMA AIYAR, S. K. DAS AND SARKAR, JJ., WAS DELIVERED BY SARKAR, J. BOSE, J. :

The Judgment of S. R. Das, C.J., Venkatarama Aiyar, S. K. Das and Sarkar, JJ., was delivered by Sarkar, J. Bose, J., delivered a separate Judgment.

SARKAR, J. - This appeal raises a question under the Hyderabad General Sales Tax Act, 1950. It is from a judgment of a Full Bench of the High Court at Hyderabad, dated September 11, 1953, which, by a majority, dismissed a petition by the appellant asking for the issue of certain writs.

In Warangal in Hyderabad State there was an Association of oil mill owners called the Warangal Subha Oil Mill Owners' Association. The appellant was a member and the Vice-President of that Association. The members of the Association in the course of their business purchased ground-nuts for the purpose of converting them into oil and trading in the same.

The Hyderabad General Sales Tax Act came into force on May 1, 1950. The members of the Association who were "dealers" as defined in the Act, got themselves registered under its provisions. Soon after the Act came into force the Sales Tax Officer, Warangal, verbally informed the members of the Association that they would have to

pay tax on the purchase of ground-nuts made by them. Thereafter certain correspondence ensued between the Association and the taxing authorities in which the Association took up the position that the members should collect the tax that they were called upon to pay from the persons from whom then bought the ground-nuts including the actual growers thereof whom we shall hereafter refer to as the agriculturists. The Association requested the market Superintendent at Warangal to assist its members in collecting the tax from the agriculturists according to the practice prevailing in Hyderabad. The Market Superintendent informed the Association that the members should not collect any tax from the agriculturists. The Association carried on further correspondence with the higher Sales Tax Authorities insisting that its members should be allowed to collect from the agriculturists the tax on the purchases made from them and requested that the collection of tax from the members should be suspended till a decision of the question of their right to collect the tax from the agriculturists was arrived at. On December 23, 1950, the Commissioner of Sales Tax, Hyderabad, wrote to the Association stating that a dealer had no right to collect the tax from an agriculturist and that the sale of agricultural produce by an agriculturist did not attract the liability to tax under the Act, and therefore the members of the Association could not collect any tax from the agriculturists. He added that under rule 5(2) of the Rules framed under the Act, the turnover on which the tax was payable in respect of sales of ground-nuts was the amount for which the goods were bought and therefore the sellers of groundnuts were not liable to pay any tax. He also intimated that a dealer in ground- nuts was at liberty to collect the tax paid by him on his purchases of ground-nuts, from the person to whom he subsequently sold the ground-nuts and in the cases in which he converted the ground-nuts into oil, he was entitled to include the tax in the price of the oil sold by him. The Association then addressed the Finance Minister of the Government of Hyderabad on the same question, on January 9, 1951. Before a reply was received from the Finance Minister the members of the Association were pressed by the local tax Authorities to submit their returns and this they thereupon did, claiming in such returns a deduction of tax on ground-nuts purchased by them from the agriculturists. Assessments were duly made on these returns but the deductions claimed was not allowed. Demands for payment of tax were thereafter made on the members of the Association in terms of the orders of assessment. The assessees preferred appeals from the orders of assessment but these appeals had not been disposed of on the date when the petition for the issue of writs, out of which the present appeal arises, was filed. On June 5, 1951, the Finance Minister replied to the Association's representation stating that sales tax in respect of ground- nuts was to be collected on the total turnover of the purchaser and therefore the turnover of the sellers of the commodity was exempt from the tax, that the dealers could not be exempted from payment of sales tax for the period for which permission had been refused to them to collect tax from the agriculturists because the agriculturists could have refused to pay the tax as they had no liability to pay and there was nothing to show that the agriculturists would have agreed to accept a reduction of the price to the extent of the tax, if asked to do so. On June 19, 1951, the Sales Tax Officer made

fresh demands for the payment of the tax in terms of the orders of assessment. In these circumstances the petitioner on July 5, 1951, filed the petition asking for the issue of a writ of certiorari quashing the orders contained in the letters of June 5, 1951, and June 19, 1951, and a writ of prohibition restraining the Government from proceeding further in the matter of levying the tax and lastly and in the alternative, a writ of mandamus directing the Government of Hyderabad to withdraw or cancel the orders contained in the letters of December 23, 1950, and June 5, 1951. He made the State of Hyderabad, the Commissioner of Sales Tax, Hyderabad, the Sales Tax Officer, Warangal, and the Sales Tax Officer, Kareemnagar, the respondents to the petition. The respondents appeared to oppose the petition and as we have earlier stated it was dismissed on September 11, 1953. From that judgment the present appeal has come to this Court. The question to be decided is whether under the Hyderabad bad General Sales Tax Act, 1950, a dealer as defined in it, purchasing ground- nuts from an agriculturists is liable to pay tax on the purchase, it being conceded that the petitioner is such a dealer.The learned Advocate for the appellant first raised the point that a purchase from an agriculturist is outside the Act and cannot be taxed. It is said that in the Court below the respondents had stated that a purchase from an agriculturist was outside the Act. We find nothing on the record to support this statement of the learned Advocate for the appellant. The learned Solicitor-General, who appeared before us for the respondents, does not agree that a purchase from an agriculturist is outside the Act.

The learned Advocate for the appellant then stated that sections 3 and 4 of the Act showed that a purchase from an agriculturist is outside the scope of the Act. Sections 3 and 4 are sections levying the tax. These sections make every dealer and every casual trader whose turnover in the periods mentioned exceeds a specified amount, liable to pay tax on so much of his turnover as is attributable to transactions in goods other than exempted goods, which it may be stated ground-nuts were not. It will not be necessary to refer to a casual dealer hereafter as this appeal is not concerned with any. The learned Advocate's contention is that the tax is by these sections really levied on a dealer, in respect of his turnover attributable to some of his transactions. He then referred to the definition of a dealer in the Act which is substantially that a dealer is a person engaged in the business of selling or supplying goods. He points out that an agriculturist is not a dealer because his business is not to sell or supply the agricultural produce but to grow them. We will for the purpose of the appeal assume that an agriculturist is not a dealer. We say assume, because it is conceivable that a producer of crops may also engage in the business of selling or supplying and become a dealer within the Act. The learned Advocate next said that sections 3 and 4 levy a tax only on the transactions of a dealer and therefore the transactions of an agriculturist are not taxable. He then pointed out that in a transaction of sale by an agriculturist there are two aspects, namely, a sale by him and a purchase by another person. His contention is that since a transaction of sale by an agriculturists is not liable to tax, both aspects of it are exempt from taxation and therefore where an agriculturist sells to a dealer the purchase by the dealer is also not liable to tax, for

> otherwise a transaction by an agriculturist would not be wholly exempt.He sought to reinforce his argument by referring to a proviso added to the definition of turnover by the Hyderabad General Sales Tax (Amendment) Act, 1953. This amendment was not in force in the period with which this appeal is concerned. The definition of turnover in section 2(m) of the Act with the proviso added to it by the amendment reads as follows :
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> "Turnover means the aggregate amount for which goods are either bought by or sold by a dealer .....
>
> Provided that the proceeds of the sale by a person of agricultural ..... produce grown by himself or grown on any land in which he has an interest ..... shall be excluded from his turnover."

The learned Advocate contends that the proviso only makes clear what was previously implicit in the Act. By excluding from the turnover the sale of agricultural produce mentioned in it, it emphasises that an agriculturist is not a dealer within the meaning of the Act. We think that this is a misapprehension of the proviso. The proviso leaves the main portion of the definition intact and it only says that certain things shall be excluded from a person's turnover. The main portion of the definition, however, shows that "turnover" only refers to the turnover of a dealer and not of an agriculturist. Therefore, the proviso deals with a person who is both an agriculturist and a dealer and it excludes the proceeds of the sale by him of his own agriculturist produce from his turnover as a dealer in goods. It is not necessary to discuss the proviso further, for we have assumed that an agriculturist is not a dealer within the meaning of the Act.

We are however unable to agree that sections 3 and 4 do not impose a tax on a purchase by a dealer from an agriculturist. Under these sections the tax is on he turnover, that is to say, the aggregate amount for which the goods are either bought or sold. The sections no doubt limit the taxable turnover to transactions in goods which are not exempted goods. But this only means that the buying or selling, whichever is taxed, is not to be of the exempted goods. It may be pointed out here that under section 5 of the Act the tax is made payable at every point in a series of sales by successive dealers but the buyer and the seller are not both to be taxed in respect of the same transaction of sale, and where a dealer is taxed as the buyer of goods he shall not be taxed in respect of a subsequent sale by him of the same goods, and under rule 5(2) of the Rules framed under the Act, in the case of ground-nuts the turnover shall be the amount for which they were bought by the dealer. The result therefore is that under the Act tax is leviable on a sale either on the seller or on the buyer but not on both and it has been provided by rule 5(2) that in the case of sale of ground-nuts the buyer shall pay the tax provided of course he is a dealer. In respect of ground-nuts therefore tax is payable by a dealer on his turnover of purchases of these goods. The seller of these goods, whether he is an agriculturist or not, is not, in any case, as the Act and the Rules stand, liable to pay tax. For the purposes of the Act an agriculturist, not being a dealer, has no turnover. That being so, no question of exemption of the transactions by an agriculturist from the liability to pay the tax arises.The learned Advocate for the appellant then argued that his client as a registered dealer was under section 11 of the Act and rule 10 of the Rules entitled to collect the tax which was leviable

upon him, from the persons from whom he purchased the goods, and as he had been prevented from collecting them from his agriculturist sellers by the order of the Government earlier mentioned, the Government was not entitled to claim any tax from him. Section 11 of the Act authorises a registered dealer to collect an amount by way of tax under it subject to the conditions and restrictions prescribed by the rules. Rule 10 states that he shall not collect any amount as tax at a rate exceeding the rates specified in it and that he shall pay the amounts so collected by him to the Government. The learned Advocate therefore points out that there is nothing in the Rules to prevent his client from collecting the tax from the agriculturist seller. We think it enough to say in regard to this contention that section 11 authorises a dealer only to collect a tax payable under the Act and where no such tax is payable, a dealer has no right to collect anything under that section. Now under the Act a dealer is liable to pay the tax and an agriculturist, not being a dealer, has no such liability. It follows that no tax can be collected from the latter. A dealer therefore has no right to collect any tax from an agriculturist under the Act. The respondents' view that the appellant had no right to collect any tax from the agriculturist was right and the appellant can make no grievance on that account.

It is then said that the sales tax is essentially an indirect tax and therefore it cannot be demanded of the appellant without allowing him to recoup himself by collecting the amount of the tax from the persons with whom he deals. This Court has already decided in the case of Tata Iron & Steel Co. Ltd. v. The State of Bihar 1958 (9) STC 267), that in law a sales tax need not be an indirect tax and that a tax can be a sales tax though the primary liability for it is put upon a person without giving him any power to recoup the amount of the tax payable, from any other party. We do not think it necessary to go into the question whether the respondents were right in informing the appellant that he could recoup himself of the amount paid by him as tax by collecting the tax from the persons to whom he in his turn sold the ground-nuts or if he converted them into oil, by adding the amount of the tax to the price of the oil, for the primary liability for the tax was on the appellant and it made no difference whether he was able to recoup himself the amount paid or not.The last point of the learned Advocate for the appellant is that, ground-nuts had been declared an essential commodity by Parliament and therefore under Article 286(3) of the Constitution no tax was leviable in respect of it. That provision in the Constitution, which was later repealed, was in these terms :

> "No law made by the legislature of a State imposing, or authorising the imposition of, a tax on the sale or purchase of any such goods as have been declared by Parliament by law to be essential for the life of the community shall have effect unless it has been reserved for the consideration of the President and has received his assent."

It was pointed out that the Essential Supplies (Temporary Powers) Act (Act XXIV of 1946) was extended to Hyderabad with effect from August 17, 1950, by a Notification made under Act LII of 1950. It is said that this Act declared ground-nuts to be an essential commodity. Therefore, it is said, a sale of ground-nuts was not liable to be taxed under the Hyderabad General Sales Tax Act as it had neither been reserved for the consideration of the President nor received his assent. The contention of the learned Advocate for the appellant is, in our view, unsustainable. The law declaring goods to be essential for the life of the community contemplated by Article 286(3) is a law of the "Parliament" and therefore a law passed after the Constitution came into force, Act XXIV of 1946 was passed

before the Constitution had been promulgated and is therefore not such a law. But it is said that it was applied to Hyderabad by a Parliamentary law, namely, Act LII of 1950, and therefore as applied to Hyderabad it became a Parliamentary law. We are not sure that this argument is correct but we think it unnecessary to discuss it here. We will assume for the purposes of the present case that it is correct. Even then it does not seem to us that Act XXIV of 1946 is a Parliamentary law declaring goods to be essential as contemplated by Article 286(3). The law of Parliament declaring goods to be essential contemplated by clause (3) of Article 286 is a law making a declaration for the purposes of that clause. An Act like the Essential Supplies (Temporary Powers) Act of 1946, which declares certain goods essential for its own purposes is not a law within the meaning of the provision in the Constitution. Section 3(1) of Act XXIV of 1946 shows why the Act declared certain goods to be essential commodities. That section is in these terms :

> "Section 3(1) - The Central Government, so far as it appears to it to be necessary or expedient for maintaining or increasing supplies of any essential commodity, or for securing their equitable distribution and availability at fair prices, may by order provide for regulating or prohibiting the production, supply and distribution thereof, and trade and commerce therein."

The object of the declaration by the Act of goods as essential was not to prevent sales tax being levied on them. The Act had nothing to do with Article 286(3) of the Constitution and in fact did not declare any goods to be essential for the life of the community at all. It therefore seems to us that Act XXIV of 1946 was not an Act declaring any commodity essential for the life of the community within the contemplation of Article 286(3). In our view, any Act of Parliament declaring certain goods to be essential for its own purposes, as Act XXIV of 1946 does, is not an Act within the contemplation of Article 286(3). The Parliamentary Act, there contemplated, has to be passed in exercise of the powers contained in it and must clearly be referable to it. In fact such an Act was later passed by Parliament. That was "The Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act, LII of 1952 "

> , which came into force on August 9, 1952. Its preambles states it to be an Act to declare in pursuance of clause (3) of Article 286 of the Constitution, certain goods to be essential for the life of the community and section 3 sets out substantially the provisions of that clause of Article 286 of the Constitution. It cannot therefore be contended that in view of Article 286(3) no tax can be levied on the sale of a commodity declared essential by Act XXIV of 1946. We may add that Act LII of 1952 is not available to the appellant either, for it had not been passed at the date when the levy of the tax objected to in this case was made.In the result this appeal must fail and it is dismissed with costs.
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> BOSE, J. - With deep respect I am unable to accept the distinction drawn in the majority judgment between an "essential commodity" under the Essential Supplies (Temporary Powers) Act, 1946 and "goods essential for the life of the community" under Article 286(3).

The Hyderabad General Sales Tax Act came into force in Hyderabad on May 1, 1950. At that date there was no Parliamentary statute declaring ground-nuts to be an "essential commodity" in the State of Hyderabad. The Essential Supplies Act of 1946 did not apply to Hyderabad, but even if it had, Article 286(3) would not have applied because this was not a law made by Parliament. Therefore, I agree that the law taxing ground-nuts was not hit by this Article.

But the position changed on August 17, 1950, when Parliament applied the Essential Supplies (Temporary Powers) Act of 1946 to Hyderabad. On and from that date this Act became a Parliamentary enactment so far as the State of Hyderabad was concerned. Therefore, the declaration in that Act about essential commodities became a Parliamentary declaration for that areas.

Now what does the Act say ? It is an Act to provide, for a limited period, power to control the production, supply and distribution of, and trade and commerce in, certain commodities.

Section 3 confers power to control certain "essential commodities." But "essential" for what ? In my opinion, section 2 furnishes the answer. The essential commodities set out there include foodstuffs, cattle fodder, textiles, cotton, paper etc. Section 3 deals with them in greater detail. Then there are penalties for contravention of the orders made under section

3. Now what was all this for ? Surely, it can only be because these commodities were considered essential for the life of the community. How can it be said that food and clothing are not essential for the life of the community ? They may be essential for other purposes as well but surely it is impossible to say that they are not essential for the life of the community; and when Parliament goes out of its way to declare them essential and provides penalties for contravention of orders made about them, it seems to me, with the deepest respect, that we shut our eyes to reality when we hold that Parliament meant them to be essential for some subsidiary and unessential purpose but not essential for the one thing for which, apart from subtle technicalities, one would have thought food and clothing and raiment are primarily essential, namely the life of the community. With the utmost respect, I cannot accept this subtlety of thought and I would hold broadly and boldly that when Parliament declared this commodity to be essential, it meant essential for the purposes for which such a commodity is normally essential, namely, the life of the community. It may be that there is no need to control the commodity at a given date but that does not mean that it is not essential for the life of the community. All it means is that though essential for that purpose, control is not necessary at a particular point of time.The only other point is whether the Essential Supplies (Temporary Powers) Act of 1946 is covered by Article 286(3). The Article says that -

> "No law made by the Legislature of a State etc. ..... shall have effect unless it has been reserved for the consideration of the President and has received his assent."

It is contended that the words that I have underlined indicate that the Article can only apply to laws that could have been reserved for the consideration of the President at the date they were enacted. The impugned Act came into force on May 1, 1950, and at that date no question of reservation could have arisen because Parliamentary ban affecting Hyderabad was not then in force. It did not come into force till August 17, 1950.

I am not able to construe Article 286(3) in that way. What does it say ?

> "No law etc. ..... shall have effect unless it has been reserved etc."

Was this law reserved ? The answer is no. What does it matter why it was not reserved ? The fact remains that it was not reserved and if it was not reserved, the Article says clearly and simply that it shall not take effect. In my judgment, this means that on and from the date of a Parliamentary declaration no law existing or future can take effect. To hold otherwise would land the country in this absurdity. At a certain date it is not considered necessary to regulate or control the production etc. of a given commodity. Therefore, States are free to tax sales and purchases that relate to them. An emergency arises and a ban on certain taxation becomes essential for so important a thing as the life of the community and yet, according to this view, Parliament will have no power to regulate the matter simply because control was unnecessary before the emergency. I would hesitate to hold that and prefer to apply the words of Article 286(3) as they stand without subtlety or refinement.If this correct, then the appeal must succeed and, with the utmost respect, I would so hold.

Order BY THE COURT : In accordance with the opinion of the majority the appeal is dismissed with costs.