Northern India Caterers (India) Ltd vs Lt. Governor Of Delhi on 7 September, 1978

Equivalent citations: 1978 AIR 1591, 1979 SCR (1) 557, AIR 1978 SUPREME COURT 1591, (1973) 4 S C C 36, 1978 TAX. L. R. 2316, 1978 SCC TAX 196, 1978 4 SCC 36, 42 STC 386

Author: R.S. Pathak

Bench: R.S. Pathak, P.N. Bhagwati, V.D. Tulzapurkar

PETITIONER:
NORTHERN INDIA CATERERS (INDIA) LTD.

Vs.

RESPONDENT:
LT. GOVERNOR OF DELHI

DATE OF JUDGMENT07/09/1978

BENCH:
PATHAK, R.S.
BENCH:
PATHAK, R.S.
BHAGWATI, P.N.
TULZAPURKAR, V.D.

CITATION:
1978 AIR 1591 1979 SCR (1) 557
1978 SCC (4) 36
CITATOR INFO :
RF 1981 SC1751 (1)
C 1989 SC1371 (18)

ACT:
Bengal Finance (Sales Tax) Act 1941 (as extended to the Union Territory r of Delhi)-Service of meals to non-residents in a restaurant in a Hotel-Sales Tax-If payable on price charged for meals.

HEADNOTE:
The appellant runs a hotel in which meals are served to non-residents also in the restaurant located in the hotel. The sales tax authorities treated a portion of the receipts as representing the price of foodstuffs served and levied

tax. The High Court affirmed the view of the sales tax authorities.

On the question whether the transaction constituted sale of foodstuffs.

Allowing the appeals

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HELD. 1. Service of meals to non-residents in the restaurant of 'the appellant is not taxable under the Bengal Finance (Sales Ta%) Act 1941, as extended to the Union Territory of Delhi. This is so whether a charge is imposed for the meal as a whole or according to the dishes separately ordered. [562 F;

2. In State of Punjab v. M/s. Associated Hotels of India [1972] 2 SCR 937 this Court held that there was no sale when food and drink were supplied to guests residing in the hotel. The Court pointed out that the supply of meals was essentially in the nature of a service provided to the guests and could not be identified as a transaction of sale. This Court declined to accept the position that the Revenue was entitled to split up the transaction into two parts, one of service and the other of sale of foodstuffs. If that be true in respect of hotels, a, similar approach seems to be called for on principle in the case of restaurants. Like the hotelier, a restaurateur provides many services in addition to the supply of food. He provides furniture and furnishings, linen, crockery and cutlery, and he may add music, an area for floor dancing and in some cases a floor show. The classical legal view being that a number of services are concomitantly provided by way of hospitality, the supply of meals must be regarded as ministering to a bodily want or to the satisfaction of a human need. No reason has been shown for preferring any other view. [562 B, 560 F-G, 562 C]

State of Punjab v. M/s. Associated Hotels of India Ltd. [1972] 2 SCR 937 applied.

M/s. Associated Hotels of India Ltd., Simla v. Excise and Taxation Officer Simla AIR 1961 Punjab 449 not approved.

Municipal Corporation of Delhi v. Laxmi Narain Tandon and Another AIR 1970 Delhi 244 not approved.

Crisp v. Pratt [1639] Cro. Car 549, Parker v. Flint [1699] 12 Mod. 254 Newton v . Trigg 3 Mod. 327, Saunderson v. Rowles 4 Burr. 2065 Electa B.

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Merrill v. James W. Hodson 1915-B L.R.A. 481, and Mary Nisky v. Child Company SO A.L.R. 227 referred. to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1768- 1769/ 72.

Appeals by Special Leave from the Judgment and order dated 15-7-1971 of the Delhi High Court in Sales Tax Reference No. 8 of 1969.

F. S. Nariman, (In CA 1768/72), V. S. Desai (in C.A. 1769). M. C. Bhandare (C.A. 1768/72) and Mrs. S. Bhandare and Miss M. Poduval for the Appellants.

P. A. Francis, R. N. Sachthey and Miss A. Subhashini for the Respondent.

Y. S. Chitale, Vinay. Bhasin, A. K. Srivastava and Vineet Kumar for the Interveners.

The Judgment of the Court was delivered by PATHAK, J. This and the connected appeal are directed against the judgment of the High Court of Delhi disposing of a reference made to it under section 21(3) of the Bengal Finance (Sales Tax) Act, 1941 as extended to the Union Territory of Delhi on the following question:-

> "Whether the service of meals to casual visitors in the Restaurant is taxable as a sale:
>
> (i) when charges are lumpsum per meal or
>
> (ii) when they are calculated per dish ?"

The High Court has answered the question in the affirmative.

The appellant runs a hotel in which lodging and meals are provided on "inclusive terms" to residents. Meals are served to non residents also in the restaurant located in the hotel. In the assessment proceedings for the assessment years 1957-58 and 1958-59 under the Bengal Finance (Sales Tax) Act, 1941, the appellant contended that the service of meals to residents and non-residents could not be regarded as a sale and therefore sales tax could not be levied in respect thereof. The contention was rejected by the Sales Tax authorities, who treated a portion of the receipts from the residents and nonresidents as representing the price of the foodstuffs served. At the instance of the appellant, the High Court called for a statement of the case on two questions. One was whether the supply of meals to residents, who paid a single all-inclusive charge for all services in the hotel, including board, was exigible to sales tax. The second was the A question set forth above. The High Court answered the first question in favour of the appellant and the second against it. And now these appeals by special leave.

Tax is payable by a dealer under section 4 of the Bengal Finance (Sales Tax) Act, 1941 on sales effected by him, and the expression "sale' has been defined by section 2

(g) of the Act to mean "any transfer of property in goods for cash or deferred payment or other valuable consideration including a transfer of property in goods involved in the execution of a contract.. ". The question is whether in the case of non-residents the service of meals by the appellant in the restaurant constitutes a sale of foodstuffs. It appears to us that after the view taken by this Court in State of Punjab v. M/s Associated Hotels of India Ltd.,(1) the approach to the

question before us is clearly indicated.

This is a case where the origin and historical development of an institution as profoundly influenced the nature and incidents it possesses in law. In the case of an hotelier this Court proceeded on the footing that his position in law was assimilable to that of an inn keeper. At common law an innkeeper was a person who received travellers and provided lodging and necessaries for them and their attendants and employed servants for this purpose and for the protection of travellers lodging in his inn and of their goods(2). It was hospitality that he offered, and the many facilities that constituted the components of that hospitality determined the legal character of the transactions flowing from them. Long ago, in Crisp v. Pratt(3) it was pointed out that innkeepers do not get their living by buying and selling and that although they buy provisions to be spent in their house, they do not sell them but what they do is to "utter" them. "Their gain", it was added, "is not only by uttering of their commodities, but for the attendance of their servants, and for the furniture of their house, rooms, lodgings, for their guests.. '`. This test went to the root and we find it repeated in Parker v. Flint.(4) In Newton v. Trigg(5) Holt, C.J., defined the true status of an inn-keeper by reference to the services afforded by him? that he was an "hospitator", and was "not paid upon the account of the intrinsic value of his provisions, but for other reasons: the recompence he receives, is for care and pains and for protection and security..... but the end of an inn-keeper in (1) [1972] 2 S. C. R. 937.

(2) Halsbury's Laws of England, 3rd Edn. Vol. 21 p. 442 paras 932.

(3) [1639] Cro. Car. 549.

(4) [1699] 12 Mod 254.

(5) 3 Mod . 327.

2-549SCI/78 his buying, is not to sell, but only a part of the accommodation he is bound to prepare for his guests." And for the purpose of the question before us is would be relevant to quote Professor Beale(1):

> As an inn-keeper does not lease his rooms, so he does not sell the food he supplies to the guest. It is his duty to supply such food as the guest needs, and the corresponding right of the guest is to consume the food he needs, and to take no more. Having finished his meal, he has no right to take food from the table, even the uneaten portion of food supplied to him, nor can he claim a certain portion of good as his own to be handed over to another in case he chooses not to consume it himself. The title to food never passes as a result of an ordinary transaction of supplying food to a guest." Having proper regard to those particular considerations, it is not surprising that the principle was extended in England to the service OF food at eating places or restaurants. The keeper of an eating house, or victualler, was regarded fundamentally as providing sustenance to those who ordered food to eat in the premises. That eminent and learned Judge, Lord Mansfield, saw no distinction, in Saunderson v. Rowles(2), between an innkeeper and a victualler. He observed:- '.

> The analogy between the two cases of an inn- keeper and a victualler is so strong that it cannot be got over. And we are all clear that this man (victualler) is not within these laws; upon the authority of a determined case of an inn keeper, and also upon the reason of the thing.. He buys only to spend in his house, and when he utters it again it is attended with many circumstances additional to the mere selling price."
>
> Like the hotelier, a restaurateur provides many services in addition to the supply of food. He provides furniture and furnishings, linen, crockery and cutlery, and in the eating places of today he may add music and a specially provided area for floor dancing and in some cases a floor show. The view taken by the English law found acceptance on American soil, and after some desultory dissent initially in certain states it very soon became firmly established as the general view of the law. The first edition of American Jurisprudence sets(3) forth the statement of the law in that regard, but we may go to the case itself, Electa B. Merrill v. James W. Hodson(4), from which the (1) Innkeepers & Hotels, para 169.
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> (2) 4 Burr. 2065.
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> (3) Vol. 46 p. 207 para 13.
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> (4) 1915-B L.R.A. 481.

statement has been derived. Holding that the supply of food or drink A to customers did not partake-of the character of a sale of goods, the Court commented:-

> "The essence of it is not an agreement for the transfer of the general property of the food or drink placed at the com command of the customer for the satisfaction of his desires, or actually appropriated by him in the process of appeasing his appetite or thirst. The customer does not become the owner of the food set before him, or of that portion which is carved for his use, or of that which finds a place upon his plate, or in side dishes set about it. No designated portion becomes his. He is privileged to eat, and that is all. The uneaten food is not his. He cannot do what he pleases with it. That which is set before him or placed at his command is provided tc enable him to satisfy his immediate wants, and for no other purpose. He may satisfy those wants; but there he must stop. He may not turn over unconsumed portions to others at his pleasure, or carry away such portions. The true essence of the transaction is service in the satisfaction of a human need or desire, ministry to a bodily want. A necessary incident of this service or ministry is the consumption of the food required. This consumption involves destruction, and nothing remains of what is consumed to which the right of property can be said to attach. Before consumption title does not pass; after consumption there remains nothing to become the subject of title. What the customer pays for is a right to satisfy his appetite by the process of destruction. What he thus pays for includes more than the price of the food as such. It includes all that enters into the conception of service, and with it no small factor of direct

personal service. It does not contemplate the transfer of the general property in the food supplied as a factor in the service rendered."

Subsequent cases drew on these observations, notably Mary Nisky v. Childs Company. (1) The position was radically altered in the United States by the enactment of the Uniform Commercial Code, which provides in effect that the serving for value of food or drink to be consumed either on the premises or elsewhere constitutes a sale. Nonetheless it is affirmed in the second edition of American Jurisprudence(2) that where the Code does not operate, "in general the pre- Code distinction between a contract for sale and one for the giving of services should continue."

(l) 5O A.L.R. 227. (2) Vol. 67 p. 142 para 33.

It has already been noticed that in regard to hotels this Court has in M/s. Associated Hotels of India Limited (supra) adopted the concept of the English law that there is no sale when food and drink are supplied to guests residing in the hotel. The Court pointed out that the supply of meals was essentially in the nature of a service provided to them and could not be identified as a transaction of sale. The Court declined to accept the proposition that the Revenue was entitled to split up the transaction into two parts, one of service and the other of sale of foodstuffs. If that be true in respect of hotels, a similar approach seems to be called for on principle in the case of restaurants. No reason has been shown to us for preferring any other. The classical legal view being that a number of services are concomitantly provided by way of hospitality, the supply of meals must be regarded as ministering to a bodily want or to the satisfaction of a human need. What has been said in Electa B. Merrill (supra) appears to be as much applicable to restaurants in India as it does elsewhere. It has not been proved that any different view should be taken, either at common law, in usage or under statute.

It was urged for the respondent that in Associated Hotels of India Ltd. (supra) this Court drew a distinction between the case of meals supplied to a resident in a hotel and those served to a customer in a restaurant. We are unable to find any proposition of law laid down by the court there which could lead to that inference. We may point 13 out that in the view which appeals to us we find ourselves unable to agree with the observations to the contrary made by the Punjab High Court in M/s. Associated Hotels of India Ltd., Simla v. Excise and Taxation officer, Simla(1) and by the Delhi High Court in Municipal Corporation of Delhi v. Laxmi Narain Tandon and another. (2), In the result, we hold that the service of meals to visitors in the restaurant of the appellant is not taxable under the Bengal Finance (Sales Tax) Act, 1941, as extended to the Union Territory of Delhi, and this is so whether a charge is imposed for the meal as a whole or according to the dishes separately ordered.

In the circumstances of the case, we make no order as to costs.

N.V.K. Appeals allowed

(1) A. I. R. 1966 Punjab 449.
(2) A, I. R. 1970 Delhi 244.