Kishan Lal Lakhmi Chand And Ors. vs State Of Haryana And Ors. on 29 July, 1993

Equivalent citations: JT1993(4)SC426, 1993(3)SCALE296, 1993SUPP(4)SCC461, [1993]SUPP1SCR433

Author: K. Ramaswamy

Bench: K. Ramaswamy, R.M. Sahai, S.P. Bharucha

JUDGMENT

K. Ramaswamy, J.

1. Special Leave granted.

2. The ultra vires of the Haryana Rural Development Act 6 of 1986 for short 'the Act' was assailed but repelled by the full bench of the Punjab and Haryana High Court reported in Subhash Chander Kamlesh and Ors. v. State of Punjab and Ors. AIR 1990 Punjab and Haryana 259 against which these appeals were laid by leave. Initially the Haryana Rural Development Act 12 of 1983 was made which ultimately, this Court in Om Prakash Agarwal and Ors. v. Giri Raj Kishori and Ors. held that Section 3 thereof was unconstitutional on the ground of legislative incompetence as the levy of cess under Section 3 thereof was in the Feature of tax and not fee, quid pro quo being absent. Purporting to have removed the defects as pointed out therein, the Act came to be made and the full bench put its seal of approval of its validity.

3. Sri Shanti Bhushan, the learned Senior counsel for the appellants in his usual vehemence contended that the agriculture produce is a declared goods under Article 286(2) of the Constitution. This Court declared in Kewal Krishan Puri and Anr. v. State of Punjab and Ors. that constitutionally it is impermissible to levy market fee in excess of 2 per cent. The State Legislature is incompetent to levy sales tax in excess of 4 per cent on sale of goods. The State Legislature of Haryana, therefore, found the Act a camouflage and colourable device to circumvent the constitutional mandates, effected cosmetic changes in the Act and imposed 1 per cent fee as development fund to bypass the mandate of the Constitution and the law declared by this Court. The impost at 1 per cent is no less than a tax. It is a colourable exercise of the power by the State Legislature and the Act cannot be brought under any of the entries 45 to 63 of list II of the Seventh Schedule to the Constitution. Imposition and collection of the fee by operation of Section 5 of the Act, is not expended in any particular market or market area but to general development in rural area. The principle of quid pro quo in the region of at least 2/3 or 3/4 as envisaged in Kewal Krishan Puri's case is totally absent.

The traders as a class and appellants, in particular, are not deriving any benefit therefrom. Resultantly there is total lack of correlation between the fund collected and the service intended to be rendered to the dealers. The impost part takes the character of the tax falling within the teeth of the ratio laid in Om Prakash Aggarwal's case. The Act, therefore, is ultra vires. Sri Harish Salve, the learned Senior counsel for the State resisted the contentions.

4. Entry 28 read with entry 66 in List II of the 7th Schedule and other related entries empowers the State Legislature under Art. 246(3) of the Constitution to make the Act. The Act was made to augment agricultural production and improving its marketing and sale by expending the fund realised by imposition and collection of fee envisaged in Section 5(1) of the Act. The rate of fee on ad valorem basis was determined at 1 per cent of the sale/purchase of agricultural produce bought or sold or brought for processing in the notified market area.

5. The market area was defined to mean any area defined under Section 6 of the Punjab Agricultural Produce Markets Act, 1961. The principal market yard and sub market yard were also demarcated in Section 7 thereof. The market also was similarly defined to mean market established and regulated under that Act for the notified market area including market proper, principal market yard and sub market yard. Section 6(5) of the Act enjoins the Haryana Rural Development Fund Administration Board established and constituted under Section 3 of the Act to apply the fund "to meet the expenditure incurred in the rural area in connection with the development of roads, establishment of dispensaries, making arrangements for water supply, sanitation and other public facilities, welfare of agricultural labour, conversion of the notified market areas falling in rural area as defined under this Act into model market areas by utilising technical know-how thereto and bringing about other necessary improvements therein, construction of godowns and other places of storage, for the agricultural produce brought in the market area for sale/purchase and the construction of rest houses equipped with all modem amenities, to make the stay of visitors (both sellers and purchasers) in the market area comfortable and for any other purpose which may be considered by the Board to be in the interest of and for the benefit of the person paying the fee. The Fund may also be utilised by the Board to meet the cost of administering it." Rural area was defined to mean area other than the area of municipality administered under the Haryana Municipal Act, 1973. It would thus be clear that the levy of the fee and collection under Section 5 would go into the fund administered by the Board which would be expended only for the purposes envisaged under Sub-section (5) of Section 6 extracted hereinbefore. It is trite to reiterate the law laid down by this Court of the distinction between the tax and the fee and its demarcating line visa-vis the power of the legislation to make law for imposition of fee in that behalf. Suffice to reiterate the ratio laid in Sreenivasa General Traders and Ors. v. State of A.P. and Ors. that the traditional view that there must be actual quid pro quo for a fee has undergone a sea change. The distinction between a tax and a fee lies primarily in the fact that a tax is levied as part of a common burden, while a fee is for payment of a specific benefit or privilege although the special advantage is secondary to the primary purpose of regulation in public interest, if the element of revenue for general purpose of the State predominates the levy becomes a tax. In regard to fee, there is, and must always be, correlation between the fee collected and the service intended to be rendered. In determining whether a levy is a fee, the true test must be whether its primary and essential purpose is to render specific services to a specified area or class; it may be of no consequence that the State may ultimately and indirectly be

benefited by it. The power of any legislature to levy a fee is conditioned by the fact that it must be "by and large" a quid pro quo for the services rendered. However, correlationship between the levy and the services rendered/expected is one of general character and not of mathematical exactitude. All that is necessary is that there should be a "reasonable relationship" between the levy of the fee and the services rendered. There is no generic difference between a tax and a fee. Both are compulsory exactions of money by public authorities. Compulsion lies in the fact that payment is enforceable by law against a person in spite of his unwillingness or want of consent. A levy in the nature of a fee does not cease to be of that character merely because there is an element of compulsion or coerciveness present in it, nor is it a postulate of a fee that it must have direct relation to the actual service rendered by the authority to each individual nor that each should obtain the benefit of the service. The ratio in K.K. Puri's case that "At least a good and substantial portion of the amount collected on account of fees, may be in the neighbourhood of two-thirds or three-fourths, must be shown with reasonable certainty as being spent for rendering services in the market to the payer of fee" was held to be "an obiter" which is the main plank on which the contention of Sri Shanti Bhushan rests.

6. In Ramesh Chandra Etc. v. State of U.P. Etc. , Southern Pharmaceuticals & Chemicals Trichur and Ors. etc. v. State of Kerala and Ors. etc. benches of three Judges and Municipal Corpn. of Delhi and Ors. v. Mohd. Yasin a bench of two Judges took the same view. In Ramesh Chandra's case declaration of the entire U.P. State as market area and sub divisions thereafter as notified markets, levy and collection of 1 per cent ad valorem market fee by each market committee was held to be valid. In Sirsilk Ltd. v. Textiles Committee and Ors. JT 1988 (4) SC 592 : (1989)Suppl. 1 SCC 168 a specific argument that no individual trader was receiving benefit from the services rendered was negated. Considering the scope of the powers of the Committee under Section 3 of the Textiles Committees Act, 1963 read with Rule 21 of the Textiles, Committee Rules; 1965 this Court held that the purpose therein was quality control of all textiles. The interpretation, therefore, should be the benefit to the textiles industry as such though it has no specific relationship to the particular industry which bears the burden. The broad correlationship between the imposition of fee and the nature of the service rendered to the entire textiles industry satisfied the test of quid pro quo, though no specific service was rendered to the Payer of the fee. The administrative expenditure incurred by the Committee from the fund was held to be integral component of the fund. In Ramesh Chandra's case similar contention was rejected.

7. The Board established and constituted under Section 3 is empowered and enjoined to perform the functions and duties assigned to it by or under the Act. Sub-s.(5) of Section 6 enjoins the Board that the fund shall be applied to meet the expenditure incurred, though in the rural areas but in connection with the developments enumerated therein, for providing enumerated amenities and facilities and for conversion of the notified market areas into model market areas by utilising the technical know-how thereto etc. The object of the Act is to improve the agricultural production and the marketing and sale of the agricultural produce, bought or sold or bought for processing. The levy is on the agricultural produce and the burden is passed on to the second purchaser. The dealer bears no burden under Section 5(3). The primary and essential purpose of the impost and collection of the fee is to effect improvement of communications and other related amenities and facilities to augment agricultural production and to improve storage and marketing of agricultural products.

From the scheme of the Act it would be clear that there is broad reasonable and general correlationship between the levy and resultant benefit to the producer of the agricultural produce, dealer and purchasers as a class though no single payer of the fee receives direct or personal benefit from those services. He represents that class. Though the general public may be benefitted from some of the services like laying roads, the primary service is to the producers, dealers and purchasers of agricultural produce. In Om Prakash's case, this Court pointed put in para 10 the vices with which Act 12 of 1983 suffered from. The fund collected under Section 3 of 1973 Act was credited to the consolidated fund of the State under Section 4(1). There is no obligation therein to expend the fund collected to improve the roads etc. in the market area or facilities or services in connection therewith or leading thereto. By operation of Section 5(3) of the Act, though the levy was on the dealer under Section 5(1) for the purpose of the act, the burden imposed on him was passed on as a part of the purchase price recoverable by him from the next purchaser of the agricultural produce or the goods processed or manufactured. He is enjoined as an agent statutorily, to pay the fee under Sub-section (2) thereof to the Board which was specifically absent in Act 12 of 1983.

8. The purpose envisaged with specific reference to notified market area was totally absent in Act 12 of 1973. The definition of rural area therein was vague and the fee could be spent in any rural area under that Act and not necessarily in any notified market areas or in relation thereto. Thus it was held to be a tax. It is settled law that the legislature has no power to overrule the judgment while re-enacting the law but has power to remove the defects pointed out therein and make the law consistent with the law declared by the court and validate the invalid law thus declared earlier retrospectively from the date when the invalid law was passed. This Court in D. Dasegowda v. State of Karnataka and Ors. Civil Appeal No. 797 of 1993 dated February 19, 1993 held that when the Act was made validating the passed Acts then or proceedings taken retrospectively it was a valid Act and removing the defects declared earlier is invalid by the court. It must be deemed and shall always be deemed that the actions taken under the invalid law were valid under the Act. In Rai Ramakrishna and Ors. etc. v. State of Bihar repelling the similar contention this Court held that the legislature can validly make invalid law valid with retrospective operation to remove the defects. However, to a query put by the Court to Sri Salve as to how Section 11 of the Act could be upheld validating retrospectively by retaining the fund collected under Act 12 of 1983 with the State Govt., he stated in fairness that Section 11 was enacted only to defuse the effect of the writ of mandamus issued by this Court in Om Prakash's case, to refund the fee collected therein to the appellants therein, but under its guise the State did not intend to nor would it intend to retain the said fund collected under the predecessor Act 12 of 1983 from September 30, 1983, the date on which the notification under Section 5(1) of that Act was published in the State Gazette and the entire fund would be passed on to the credit of the Board under the Act. In that view Section 11 also is valid.

9. Accordingly we hold that Section 5(1) and 11 are valid. The fee levied therein is not a tax but a fee towards the fund to expend for the purpose enumerated under Section 6(5) of the Act. The fund would be expended accordingly. In this view we hold that the appeals bear no merit. They are accordingly dismissed with costs quantified at Rs. 5,000/- in each appeal.