**(1957) 11 KL CK 0017**

**In the High Court Of Kerala**

**Case No :** O. P. No''s. 70 and 71 of 1956 (K)

Abdul Kader APPELLANT

Vs

State of Kerala RESPONDENT

**Date of Decision :** 08-11-1957

**Acts Referred:**

Constitution of India, 1950 — Article 14

**Citation :** (1957) KLJ 1177

**Hon'ble Judges :** K.T. Koshi, C.J;M.S. Menon, J;C.A. Vaidialingam, J

**Bench :** Full Bench

**Advocate :** K. Kuttikrishna Menon, V. Balakrishna Eradi and M. Madhavan Nair, for the Appellant; K. V. Suryanarayana Iyer ), for the Respondent

**Final Decision :** Dismissed

## Judgement

M. S. Menon, J.—The petitioners are Stockits or ''A'' Class licensees under the Rules framed in exercise of the powers conferred by section 5 of the Cochin Tobacco Act, VII of 1084, and published in the Travancore-Cochin Government Gazette (Extraordinary) dated the 25th January 1951. Section 5 of the Act reads as follows:

The Diwan may, from time to time, after previous publication, make rules consistent with this Act, to permit absolutely or subject to any conditions, and regulate all or any of the following matters:-

(a) the possession of tobacco for the purpose of sale.

(b) the transport of tobacco,

(c) the import or export of tobacco,

(d) the sale of tobacco and the form of duty leviable on the sale of tobacco by retail, and cultivation of tobacco.

All such rules shall be published in the Cochin Government Gazette and shall then have the force of law.

Rule 14 of the Rules provides that "the vend of tobacco of all kinds is prohibited throughout the State, except under a license"; Rule 15 that the "license for the vend of tobacco shall be of the following descriptions:-

(i) Stockist or ''A'' Class license

(ii) Wholesale or ''B'' Class license and

(iii) Retail or ''C'' Class license"; and

Rule 16 (1) and (ii)

(i) Holders of Stockist or ''A'' Class licenses shall be entitled to purchase tobacco from any dealer within or without the State without any quantitative restriction. This class of licensees shall sell only to other ''A'' Class licensees or to ''B'' Class licensees.

(ii) The annual fees for these licenses shall be as follows:

Variety of tobacco Stocked.

Maximum quantity Cds.

Minimum fee prescribed Rs.

Fee payable for stocking additional quantities.

A. Jaffna tobacco

100

1500

Rs. 1000 for additional quantity of 100 Cds. or fraction thereof.

B. Tobacco produced in India (unmanufactured)

100

1000

Rs. 750 do.

C. Beedi or/and Beedi tobacco

25

1000

Rs. 750 for additional quantity of 25 candies or fraction thereof.

D. Tobacco preparation of all kinds

To the value of Rs. 20,000

 

1000

Rs. 750 for additional quantity to the value of Rs. 20,000 or fraction thereof.

N. B.- For the purpose of calculating Stockist license fee in respect of tobacco preparations the cost price of the article will be taken into account. The license fees will be realized only for the quantities brought in from outside the State.

2. These petitions were heard along with O. P. Nos. 2, 6 and 7 of 1955 (E) in which the questions in controversy related to the Rules framed in exercise of the powers conferred by Section 31 of the Travancore Tobacco Act, 1 of 1087, and published in the Travancore-Cochin Gazette (Extraordinary) dated the 25th January 1951 and we have come to the conclusion that for the reasons stated in our judgment in those petitions (a copy of which is attached hereto) these petitions also have to be dismissed.

3. The material portion of section 31 of the Travancore Tobacco Act, I of 1087, under which the Rules concerned in O. P. Nos. 2, 6 and 7 of 1955 (E) were framed reads as follows:

Our Dewan may, with Our sanction, from time to time by Notification in the Gazette, make rules consistent with this Act-

(a) permitting absolutely or subject to the payment of any duty or fee or to any other conditions, and regulating, within the whole or any specified part of Travancore, the cultivation, manufacture, possession, transport, import, export and sale of tobacco.

4. The words "with Our sanction" and "or subject to the payment of any duty or fee" do not occur in Section 5 of the Cochin Tobacco Act, VII of 1084. In the view we have taken of the powers of the Maharaja of Travancore in the matter of delegation in paragraph 10 of our judgment in O. P. Nos. 2, 6 and 7 of 1955 (E)- a view which is equally applicable to the Maharaja of Cochin-the ommission of the words "with our sanction" is by no means material. In our opinion the omission of the words "or subject to the payment of any duty or fee" is also of no consequence as the words "or subject to any conditions" occurring in Sections 5 of the Cochin enactment will be sufficient to sustain the levy impugned in these petitions.

5. It was submitted that the absence of legislation similar to the Travancore Tobacco Act, I of 1087, and the Cochin Tobacco Act, VII of 1084, in that portion of the Kerala State which until the 1st November 1956 was part of the Madras State (and not of Travancore-Cochin) violates article 14 of the Constitution. We see no merit in this contention. In Jamath Mosque v Joseph 1955 KLT 406 the question as to whether the absence of identity in certain aspects of tenancy legislation between the Travancore and Cochin areas of the Travancore-Cochin State arose for consideration. The High Court said:

The development of tenancy legislation in the two States has not been uniform, and a complete identity of provisions in every respect cannot but be a matter for the future. The legislative history provides an ample justification for the differences that obtain;

and

This should be sufficient to dispose of the contention based on Article 14 of the Constitution. Differentiation by itself does not make a piece of legislation obnoxious. It is the lack of a valid foundation for the differentiation that indicates the vice and abrogates a statute.

These observations apply with equal force to the tobacco legislation with which we are concerned.

The petitions are hereby dismissed. No costs.