**(1954) 09 AP CK 0021**

**In the Andhra Pradesh High Court**

**Case No :** Writ Petition No. 318/5 of 1952-53

Attelliswamy and another APPELLANT

Vs

Hyderabad State and others RESPONDENT

**Date of Decision :** 30-09-1954

**Acts Referred:**
Constitution of India, 1950 — Article 14

**Citation :** (1954) 09 AP CK 0021

**Hon'ble Judges :** Misra, C.J;Siadat Ali Khan, J

**Bench :** Division Bench

**Advocate :** B.V. Subbarayudu, for the Appellant; Gopal Rao Tuljapurkar, Govt. Advocate, for the State of Hyderabad, for the Respondent

**Final Decision :** Dismissed

## Judgement

Siadat Ali Khan, J.—This is a petition for the issue of Writs of Certiorari, Prohibition and Mandamus filed by one Attelliswamy. We have heard the arguments of the learned advocate for the petitioner, Shri B. V. Subbarayudu, and, that of the learned Government Advocate, Shri Gopal Rao Tuljapurkar for the respondents.

2. The gist of the petition is that the State is not correct in demanding the huge amount of Rs. 79,379-15-8 as arrears of lease-money and the loss suffered by the resale of the contract granted to the petitioner as the petitioner himself was not granted the contracted number of toddy trees and thereby suffered huge losses.

3. The learned advocate for the petitioner conceded readily that he would not take us into the details of his claim as that would be determined by the courts in exercise of their ordinary jurisdiction. He confined himself to the simple question as to whether the State had the power to direct the realisation of the amount, mentioned above, as arrears of land revenue. He argued that the State had no such power; that though the power is conferred by S. 43, Hyderabad Abkari Act,

yet the section itself is against the equality clause of the Constitution of India and, therefore, void.

His contention appears to be that here was a contract of an abkari lease between his client and the Excise Department; that the definition of "Abkari revenue" in S. 2, sub-s. (1) of the Hyderabad Abkari Act does not include in it the Abkari lease-monies; and, therefore, evidently the arrears of lease-monies are not abkari revenue; that on the other hand, they are quite clearly lease-monies claimed by the Excise Department under a contract with his client; that when a State Department carries on a commercial undertaking, the same rules should be binding on the State and the subject alike; or, otherwise there will be discrimination and dermal of equality of opportunity and chances that the State may in its administrative capacity have recourse to the procedure of recovering the amount in dispute through the summary procedure prescribed for realising the arrears of land revenue but that can only be for the realization of taxes and dues levied in that capacity and for the realization of contractual amount, the incidence and the amount of which is not determined and which because of the petitioner contesting the State''s claim is yet to be determined by a court of law and that if the State''s claim in dispute is allowed to go unchallenged, it will be making the State a judge in its own cause and will result in unequal treatment of the two contracting parties.

4. Section 43 of the Abkari Act expressly provides that lease-monies shall be recoverable as arrears of land revenue. It is not correct to say that lease-money is not included in the definition of the Abkari revenue in S. 2(1) of the Abkari Act, For the definition includes ''fee'', ''fine'' and ''forfeiture'' in the Abakari revenue. Leases for tapping sendhi trees, as is the case of the lease granted to the petitioner, are granted under S. 4; and Ss. 6 and 15 expressly provide the imposing of a fee for a grant of a licence. There are provisions for fine and forfeiture of the leases also. Hence, a perusal of the abovementioned Ss. 4, 6 and 15 will show that the amount realised from a lease is evidently included within the meaning of Abkari revenue. No elaborate reasoning is required to arrive at this conclusion. A mere perusal of the above and other relevant sections of the Abkari Act will make it clear; and it is evident that Abkari revenue is a very profitable source of revenue to the State.

It would, therefore, appear that the distinction made by the learned advocate between the administrative and contractual capacity of the State does not obtain here, as the contract of the Excise Department with the petitioner was quite clearly a contract in the administrative capacity for the purposes of realisation of State revenue. We are, therefore, satisfied that in leasing out toddy trees the State does not carry on a commercial undertaking on a competitive basis. On the other hand, it leases out those trees for tapping purposes in order that, it may bring revenue to the State. This is self-evident, for, under the Abkari Act it is only the State which can give the leases and there is no competitor of the State in this undertaking. The State for this undertaking falls under a separate clarification and that classification being reasonable and in the interest of the public revenue, it does not infringe the equality clause. By that clause all classifications are not prohibited. Article 14 does not require things which are different in fact or in law to be treated as though they were the same. Toddy trees being a source of revenue the State can very well be treated separately in the public interest. Hence, we do not see any substance in this writ petition. It is dismissed. In the circumstances of the case we make no order as to costs.

 