(2002) 01 KL CK 0047

In the High Court Of Kerala

Case No : W.A. No. 1164 of 2001

Baby — APPELLANT

Vs

Addl. Sales Tax Officer — RESPONDENT

Date of Decision : 10-01-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 301, 302, 303(2)
Kerala General Sales Tax Act, 1963 — Section 10

Citation : (2002) 3 ILR (Ker) 352 : (2002) 126 STC 368

Hon'ble Judges : K.S. Radhakrishnan, J;K. Balakrishnan Nair, J

Bench : Division Bench

Advocate : K.M. Sathyanatha Menon, for the Appellant; Raju Joseph, Spl. Government Pleader (Taxes), for the Respondent

Final Decision : Dismissed

Judgement

K.S. Radhakrishnan, J.—This appeal is preferred by the writ petitioner. Appellant herein approached this court seeking the following relief:

"Declare as unconstitutional and void and quash or set aside the words and part of Ex. P4 notification "within the state" after the words "poultry framers" in column 2 and the words "within the State" after the words "turnover of sale of poultry reared by them in their own farm" in column 3 of the notification, by the issue of an appropriate writ, direction or order."

A writ of certiorari was also prayed for to quash Ext. P5 notice dated 16.11.2000 issued by the Sales Tax Officer, II Circle, Alappuzha. Learned Single Judge found no infirmity in the notice. Declaration prayed for was also rejected. Aggrieved by the same this appeal has been preferred. Writ Petitioner is carrying on business of running poultry farm by rearing chicken and selling chicken, both live and meat. Petitioner is having his poultry farm under the name Malar Poultry Farm at Door No. 1/231, Sukkampalayam, Majara Oonjapalayam Village in Palladom Taluk in State of Tamil Nadu. Live chicken from petitioner''s poultry farm in Tamil Nadu is brought down to the petitioner''s place of business at Arattuvazhi in

Alappuzha District for sale. According to the petitioner, he is a duly registered dealer under the Central Sales Tax Act on the file of the first respondent in respect of live chicken, chicken meat, rice and poultry feeds. Petitioner submitted return for the month of October, 2000 before the first respondent declaring total turnover of Rs. 21,60,000/-. He claimed exemption for the said turnover on the ground that sale was on the chicken reared by him in his own poultry farm in the State of Tamil Nadu.

2. Government of Kerala in exercise of its power u/s 10 of the Kerala Sales Tax Act granted exemption and reduction in the rates of sales tax for several dealers and on different goods. By S.R.O. No. 1090/99 Government of Kerala granted exemption to poultry farmers within the State of Kerala on their turnover of sale of poultry reared by them in their own farm within the State and sale of meat obtained therefrom. By S.R.O. No. 291/2000 and said exemption has been extended to all farmers within the State of Kerala on the turnover of sale of poultry reared by them in their own farm in the State. According to the petitioner, by the said notification exemption is restricted and limited to only poultry farmers within the State of Kerala while the poultry farmers having poultry farms in other States like State of Tamil Nadu are denied exemption in respect of sale of poultry reared by them in their own farm at Tamil Nadu. Counsel submitted various notifications issued by the State Government granting exemption only to those poultry farms situated in the State of Kerala and denying the same to the poultry farms situated outside the State of Kerala is discriminatory and violative of Article 14 of the Constitution of India. According to the counsel, it is not violative of Article 301 of the Constitution of India. Counsel submitted subjecting the petitioner to levy of sales tax under the Kerala General Sales Tax Act while granting exemption to identical poultry farmers in the State of Kerala is highly discriminatory violating the guarantee of Article 304(a) of the Constitution. When the matter came up for hearing we directed respondents to file an affidavit detailing the correct position. Affidavit was filed by the Assistant Commissioner (Law) II, Officer of the Deputy Commissioner (Law), Ernakulam. Affidavit reads as follows:

"In the instant case chicks or chicken reared in hatcheries or poultry farms within the State is exempted from payment of tax under the KGST Act; eventhough such persons have the liability to pay tax, the same is not collected from them. Therefore the goods namely chick or chicken are not exempted from the levy of tax..... Economic development of the State or any part of the State is also a duty cast on the State by the Constitution. As a part of discharge of that duty if the Government is giving any exemption or subsidy to any particular industry in any particular area or through out the State to a category of the industry it cannot be called a colourable legislation. In order to compensate any such concession or subsidy given by one State the other State can invoke such power by giving exemption or subsidy. Therefore, there is no basis in saying that by the exemption given the goods are differently treated and which is absolutely prohibited under the Constitution".

We find it difficult to accept the contention of the counsel for the petitioner that non-granting of exemption to petitioner is violative of Article 14 or 304(a) of the Constitution of India. Article 301 of the Constitution reads as follows:

Article 301. Subject to the other provisions of this Part, trade, commerce and intercourse throughout the territory of India shall be free.

The expressions "subject to the other provisions of this Part" according to us is very limited. That means while the general rule of freedom of trade and intercourse is enunciated in Article 301, it may be subject to restrictions imposed by law under Articles 302 and 303(2) and by State Legislature under Article 304, subject to the limitations prescribed by Articles 302 and 304 respectively. Apex Court in State of Madras v. Nataraja Mudaliyar AIR 1969 SC 147 , Lakshman and Others Vs. State of Madhya Pradesh, , State of Tamil Nadu Vs. Hind Stone and Others, held that expression "freedom used in Article 301 does not mean absolute freedom. Power of the Union or State to exercise legitimate regulatory control is independent of the restrictions imposed by Articles 302 and 305. A contention was raised by the counsel for petitioner that impugned notification is unconstitutional and violative of Article 19(1)(g) of the Constitution of India. We are of the view the said contention cannot be accepted. Not being a fundamental right, the infringement of Article 301 cannot be challenged under Article 226 of the Constitution on the ground that it violates Article 19(1)(g) of the Constitution of India. Article 304 of the Constitution enables the State Legislature to impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest. Supreme Court in Video Electronics Pvt. Ltd. and Anr. v. State of Punjab, (1990) 77 STC 82 held that Article 304(a) cannot be read in isolation. It is to be read in the context of other provisions in the Constitution and also the obligations of the State under Articles 39 and 38 of the Constitution cannot be given a goby. Viewed in the above mentioned legal perspective we are of the view the contention of the learned counsel for the petitioner cannot be sustained. We fully agree with the view of the learned Single Judge.

3. Appeal is dismissed.

