(1954) 07 KL CK 0007

In the High Court Of Kerala

Case No : O.P. No. 124 of 1953

C. Cheriyankunju APPELLANT

Vs

T.C. State and others RESPONDENT

Date of Decision : 30-07-1954

Acts Referred:
Constitution of India, 1950 — Article 286, 286(3)

Citation : AIR 1954 Ker 18

Hon'ble Judges : Menon, J

Bench : Single Bench

Advocate : K.S. Sebastian, for the Appellant;

Final Decision : Dismissed

Judgement

Menon, J.—The contention of the petitioner is that the Travancore-Cochin General Sales Tax Act, 1125, is ultra vires of Art. 286(3) of the Constitution in so far as it seeks to impose a tax on the sales of jaggery, a commodity which according to the petitioner has been declared by Parliament by law; to be essential for the life of the community. Article 286(3) reads:

No law made by the Legislature of a State imposing, or authorising the imposition of, a tax on the sale or purchase of any such goods as have been declared by Parliament by law to be essential for the life of the community shall have effect unless it has been reserved for the consideration of the President and has received his assent.

and it is common ground that the Travancore-Cochin General Sales Tax Act, 1125, has not been reserved for the consideration of the President and that it has not received his assent.

2. The only question, therefore, is whether the contention of the petitioner that jaggery has been declared by Parliament. by law to be essential for the life of the community and that the declaration affects the Travancore-Cochin General Sales Tax Act, 1125, is correct or not. Even on the assumption that jaggery and gur

are identical the State''s contention is that they are not - I am unable to find any declaration by Parliament by law of that commodity to be essential for the life of the community prior to the Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act, 1952, (Central Act 52 of 1952). Section 2 of that Act does provide:

The goods specified in the Schedule are hereby declared to be essential for the life of the community.

and enter gur as item No. 6 of that schedule. In view of S. 3 of the enactment, however, the declaration will not affect any law, like the Travancore-Cochin General Sales Tax Act, 1125, which was made prior to the date of its commencement, namely, 9-8-1952. Section 3 provides that:

No law made after the commencement of this Act by the Legislature of a State imposing, or authorising the imposition of, a tax on the sale or purchase of any goods declared by this Act to be essential for the life of the community shall have effect unless it has been reserved for the consideration of the President and has received his assent.

and it should be clear therefrom that the declaration will affect only enactments made after the commencement of the Act and not those made prior to it.

3. The only other enactment to which Mr. Sebastian, learned counsel for the petitioner, has drawn my attention is the Essential Supplies (Temporary Powers) Act, 1946, (Central Act 24 of 1946) which was amended and extended to Travancore-Cochin by the Essential Supplies (Temporary Powers) Amendment Act, 1950 (Central Act 52 of 1950) and which came into force in this State by virtue of S.R.O. 391 dated 17-8-1950 with effect from the said date. Central Act 24 of 1946 is not an Act passed with a view to declare, in pursuance of cl. (3) of Art. 286 of the Constitution, any goods to be essential for the life of the community but only an enactment providing for

the continuance during a limited period of powers to control the production, supply and distribution of, and trade and commerce in, certain commodities.

Section 2(a) of the Act states that in that Act, unless there is anything repugnant in the subject or context "essential commodity" means "any of the following classes of commodities" and enumerates thereunder "food stuffs" as item No. (1). Even if I assume that jaggery is included in the term "food stuffs" the assumption will not be of any avail to the petitioner as a definition clause like S. 2 of Central Act No. 24 of 1946 is not the same thing as the declaration contemplated by Art. 286(3) of the Constitution and cannot do duty for such a declaration.

4. No other point was urged before me, the petition rails and is hereby dismissed with costs, advocate''s fee Rs. 100/-.

