

(1999) 08 KL CK 0029
In the High Court Of Kerala
Case No : O.P. No. 17737 of 1999

C.C. Aravindan

APPELLANT

Vs

Divisional Forest Officer and Another

RESPONDENT

Date of Decision : 12-08-1999

Acts Referred:

Kerala Forest Act, 1961 — Section 21, 21F, 75A
Kerala Plantations Tax Act, 1960 — Section 2(6)

Citation : AIR 2000 Ker 28 : (1999) 3 ILR (Ker) 838

Hon'ble Judges : K.S. Radhakrishnan, J

Bench : Single Bench

Advocate : T.M. Sreedharan and N. Unnikrishnan, for the Appellant; James Vincent, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

K.S. Radhakrishnan, J.—Question that has come for consideration in this case is whether the State Government is justified in demanding forest development tax from the petitioner for the coffee seeds purchased by him in the auction conducted on 19-9-1996 by the Divisional Forest Officer, Kalpetta u/s 75A of the Kerala Forest Act.

2. Divisional Forest Officer, Kalpetta held a public auction on 19-9-1996 for the sale of dried coffee cherry obtained from coffee plants raised in the vested forest of Pambra, Cheeyambam and Kallumala during the year 1995-96. The terms and conditions of auction were published in the Kerala Gazette dated 4-7-1995 and 3-9-1996. Petitioner was the highest bidder and the sale was confirmed in his favour by the Conservator of Forests, Northern Circle, Kozhikode by order dated 25-10-1996. The total value of the coffee cherry purchased by him was Rs. 36,36,702/-. As per the sale conditions published in the Gazette notification, he was liable to pay an amount of Rs. 1,81,836/-being forest development tax assessed at 5% of the sale value. Petitioner remitted the above mentioned Amount on 15-11-96. According to petitioner, the levy and collection of forest

development tax from the petitioner u/s 75A of the Kerala Forest Act are illegal. Petitioner therefore filed representations before the authorities for refund of the said amount. Since no action has been taken, he has approached this Court and filed O. P. No. 143 of 1997 which was disposed of by this Court directing the Divisional Forest Officer to pass orders on the petitioner's representation. His representation for refund of the amount was rejected by the said Officer on 18-6-1999, stating that amount cannot be refunded. According to the Divisional Forest Officer, payment of forest development tax was exempted by the Government for coffee as per G. O. (MS) No. 64/97 dated 23-8-1997. It is stated since the auction in this case was conducted on 19-9-1996 the said Government order is not applicable. Therefore petitioner's representation was rejected. Aggrieved by the same petitioner has now approached this Court.

3. The principal contention raised by counsel for the petitioner. Sri Sreedharan, is that levy and collection of forest development tax are illegal and unauthorised. According to counsel coffee is not a forest produce as per the definition contained in Section 2 (f) of the Kerala Forest Act, and therefore Section 75A of the Act is not applicable to the coffee seeds purchased by the petitioner. Counsel also referred to a decision of this Court in Mrs. Aliakutty Paul Vs. The State of Kerala and Others, and submitted that a Division Bench of this Court has already held that coffee is not a forest produce.

4. Learned Government Pleader Sri Noble Mathew on the other hand contended that petitioner, after having participated in the auction with open eyes, and paid the amount. Is not entitled to seek refund of the said amount. According to learned Government Pleader, if tax was not payable, he could have objected to the then and there. Therefore other tenderers could have participated.

5. In order to appreciate the rival contentions raised by the parties, it is necessary to examine and decide whether the levy and collection of forest development tax is legal or not. Admittedly levy and collection of forest development tax are made u/s 75A of the Act. Relevant portion of the same is extracted below :

"75A Levy of forest development tax :--(1) Notwithstanding anything contained in this Act, in respect of forest produce disposed of by the Government by sale, there shall be levied and collected a tax at the rate of five per cent of the amount of consideration paid therefor:"

Explanation to the sub-section says that the term "sale" has the meaning assigned to it in the KGST Act. Sub-section (2) also provides that the tax payable under Sub-section (1) in respect of any forest produce shall be collected along with the consideration paid therefor. It is also stated that the tax levied under Sub-section (1) in respect of any forest produce shall be in addition to and not in lieu of any tax payable in respect of such forest produce under the K.G.S.T. Act, or under any other law for the time being in force.

6. Forest development tax collected by the State shall be credited to the Kerala

Forest Development Fund. Kerala Forest Development Fund was established u/s 75B of the Act. The said provision says, the proceeds of the tax levied and collected u/s 75A shall be first credited to the Consolidated Fund of the State and after deducting the expenses for collection as determined by the Government, the remaining amount shall under appropriation duly made by law in this behalf be entered into and transferred to the Development Fund. Sixty per cent of the fund would be utilised for planting and maintenance of soft-wood trees and other species of trees, which form raw material for industries, and forty per cent for forest research.

7. The object of constituting such a fund is laudable and it has got a purpose to achieve. But the question is whether levy and collection of forest development tax in respect of coffee seeds from the plantation owned by the State are justified. Section 2(f) of the Act defines forest produce. It includes timber, charcoal, wood oil, gum, resin, natural varnish, bark lac, fibre and roots of sandalwood and rosewood, etc. We need not elaborately go into the said question since the same was considered by a Division Bench of this Court in Aliakutty Paul's case. It is profitable to refer to a portion of the judgment, which reads as follows :

"A careful analysis of this definition indicates that Clause (i) deals with certain commodities which are not easily perishable, and which are the natural produce of the forest. Clause (ii)(a) deals with leaves, flowers and fruits and all other parts of produce which are the result of spontaneous growth in forest and the natural produce of the trees in the forest. Clauses (ii)(b) deals with plants which are not trees, produce like grass, creepers, reeds, moss, etc. Sub-clause (c) of Clause (ii) deals with silk cocoons, honey and wax which are normally found in the forest and which are the result of acts of insects which are not the result of man's efforts. Sub-clause (d) of Clause (ii) deals with peats, surface soil, rock and minerals, including limestones, laterite, mineral oils and all products of mines or quarries. One significant fact about this particular definition is that it does not include products which are the result of plantation, agriculture and cultivation. The definition of "forest produce" only includes articles which are normally found in the forest and which are the spontaneous and wild growth in the forest. The produce found stored in the godowns and stores in this case is coffee, cardamom, arecanuts, pepper, and rubber sheets. These are all products which are obtained by raising plantations and by cultivating the plantations regularly. They cannot be termed as spontaneous or wild growth of a forest....."

8. It is therefore evident that coffee seeds do not come within the meaning of "forest produce". In this connection it is also relevant to refer to the provisions of Kerala Plantations Tax Act, 1960. Section 2 (6) of the Act deals with the definition of "plantation" meaning the land used for growing one or more of the following :

(1) coconut trees; (2) arecanut trees; (3) rubber plants; (4) coffee plants; (5) tea plants; (6) cardamom plants."

It is therefore clear from the definition of "forest produce" under the Forest Act as well as the definition of "plantation" under the Kerala Plantation Tax Act, 1960, coffee was never intended to be treated as a forest produce. Section 75A gives authority only to levy and collect development tax only in respect of forest produce. Since coffee comes outside the definition of "forest produce", I am of the view that the levy and collection of forest development tax u/s 75A are unauthorised and illegal. Article 269 of the Constitution specifically says that no tax shall be collected except with the authority of law. Since I found that levy and collection of development tax as far as coffee is concerned are unauthorised and illegal, respondents are bound to refund the amount to the petitioner. Counsel for the petitioner submitted that respondents may be directed to refund the amount with interest. I am of the view this cannot be accepted, since petitioner has participated in the auction with open eyes and paid the amount. If the petitioner was not prepared to pay tax, probably, there would have been other bidders, who could have participated in the auction. In view of the said circumstances, the demand for interest cannot be sustained. Since I found that levy and collection are illegal, there will be a direction to respondents to refund the amount within a period of one month from the date of receipt of a copy of this judgment, failing which the amount will carry interest at the rate of 18% per annum, from today.

O. P. is allowed as above.