

(1994) 06 KL CK 0020

In the High Court Of Kerala

Case No : W.A. No"s. 405 and 410 of 1994-B

Cochin Roller Flour Mills

APPELLANT

Vs

State of Kerala and Another

RESPONDENT

Date of Decision : 03-06-1994

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (1994) 95 STC 322

Hon'ble Judges : K.P. Balanarayana Marar, J;K.K. Usha, J

Bench : Division Bench

Advocate : M. Pathros Mathai and Mariam Mathai, for the Appellant; T. Karunakaran Nambiar, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Usha, J.—Petitioners in O.P. Nos. 6616 and 6526 of 1991 are the appellants. Following the decision of the Supreme Court in Rajasthan Roller Flour Mills Association and another Vs. State of Rajasthan and others, the learned single Judge rejected the prayer made by the petitioners for a declaration that the authorities under the Kerala General Sales Tax Act shall not impose, levy or collect taxes on the sale or purchase of the whole wheat, atta, suji, rava and maida and bran at more than one stage and that the levy of tax under the Kerala General Sales Tax Act subsequent to the levy of tax at the stage of the sale of wheat to the flour mills is unconstitutional and void and that entry 158 in Schedule I defining "wheat products" meaning to include maida, atta, suji, rava and resultant atta is unconstitutional and invalid. The Supreme Court has held that maida, suji and rava derived from wheat are not "wheat" within the meaning of section 14(i)(iii) of the Central Sales Tax Act and that flour, maida and suji are distinct goods from wheat. As a result, it was held that State Legislature could tax those products as a different product from wheat.

2. The appellants do not dispute the fact that the contention raised by them in the original petitions will not stand if the word "wheat" has to be given the

meaning as interpreted by the Supreme Court. But the learned counsel appearing on behalf of the appellants submitted that if the expression "wheat" in Section 14(i)(iii) of the Central Sales Tax Act is interpreted as to exclude smaller or finer particles of wheat, namely, atta, rava, suji or maida the inclusion of rice converted from paddy by manufacturing process a similar cereal as wheat, is arbitrary and discriminatory. There is no basis or justification to single out the said goods converted out of wheat while including and treating rice as a cereal u/s 14 of the Act. The said provision which makes an invidious and hostile discrimination against the said goods and thereby the dealers of the said goods as against dealers of rice converted out of paddy violates the guarantee of equality before law under Article 14 of the Constitution. Therefore, it is imperative and mandatory to interpret the expression "wheat" in Section 14(i)(iii) of the Central Sales Tax Act as comprehending the said goods as well. Such an interpretation is consistent with the object and purpose of Article 286(3) inasmuch as the said goods are essential goods of special importance for the whole country more so in inter-State trade and commerce. In support of the contention that a provision in the statute has to be given an interpretation as far as possible consistent with the Constitution, learned counsel relied on the following decisions. R.L. Arora Vs. State of Uttar Pradesh and Others, and Kedar Nath Singh Vs. State of Bihar, . But the learned counsel very fairly conceded that such a ground was not taken in the original petition nor argued before the learned single Judge.

3. For two reasons, we are not inclined to entertain the above contention. When an argument is raised on the ground of violation of Article 14, it is mandatory that the petitioner should specifically plead and prove the same. Admittedly, there is no pleading in the original petitions on this aspect. Secondly, a point which was not pleaded or argued before a single Judge will not ordinarily be entertained in writ appeal. We are therefore not inclined to interfere with the judgment of the learned single Judge. The writ appeals therefore stand dismissed.