

(1991) 03 KL CK 0032
In the High Court Of Kerala
Case No : O.P. 9294 of 1986-F

Harrisons Malayalam Limited

APPELLANT

Vs

Kerala State Pollution Control Board and Others

RESPONDENT

Date of Decision : 27-03-1991

Acts Referred:

Citation : AIR 1992 Ker 168

Hon'ble Judges : Varghese Kalliath, J

Bench : Single Bench

Advocate : Antony Dominic, for the Appellant; C.K.S. Panicker and Govt. Pleader, for the Respondent

Judgement

Varghese Kalliath, J.—Petitioner is a Company registered under the Companies Act. It owns 23 estates in Kerala and 2 estates in Tamil Nadu. The estates owned by the Company in Kerala are rubber estates and tea estates. The Company has tea and rubber factories in almost all the estates. For the purpose of estates, petitioner-company uses water by utilising its own water sources in the various estates. There had been no levy of water cess on the Company. For the first time, a notice was issued to the Company by the 1st respondent at its Nooply estate directing the petitioner to affix water motors and furnish details of the water consumed every month. Copy of the notice is Ext. P1. Petitioner submits that it is not carrying on any business in any specified industry so as to attract the provisions of the Water (Prevention and Control of Pollution) Cess Act, 1977 (hereinafter referred to as the "Act"). Ext. P1 is a notice issued by the Kerala State Pollution Control Board, the first respondent.

2. Petitioner contends that any of the activities of the petitioner will not result in polluting any of the water sources and that the petitioner will not come under the purview of the Act. Further, it was specifically contended that the petitioner's establishments would not come in any of the industries enumerated in the Schedule I of the Act and so the Act will not apply to the petitioner. Copy of the reply is Ext.P2.

3. Petitioner received in respect of one of the estates -- Nooply estate -- assessment orders for the periods April 1978 to March, 1986 (eight assessment orders), demanding an amount of Rs. 907,85. Ext.P3 is a copy of the demand notice enclosing the assessment orders. Copies of the assessment orders are Exts.P4, P4(a), P4(b), P4(c), P4(d), P4(e), P4(f) and P4(g). Petitioner reasonably apprehends that in respect of petitioner's other estates in Kerala, petitioner will be served with similar demand notices. So, petitioner submits that the petitioner will be put to very great loss, if action is taken for assessment of the petitioner's estates under the Act. Certainly, it will be a recurring liability and also that the petitioner will have to make investments of large amounts for installing water meters as enjoined by the Act.

4. The main thrust of the contentions of the petitioner is that the Act will not apply to the petitioner and so the respondents have no jurisdiction to issue notice under the Act to the petitioner. Hence the actions taken against the petitioner are illegal, arbitrary and liable to be quashed by this Court. Petitioner prays for the following reliefs in the Original Petition:

"(i) to declare that the Water (Prevention and Control of Pollution) Cess Act, 1977 will not apply to the petitioner in respect of the water consumed in the estates.

(ii) to issue a writ of certiorari or other appropriate writ, or order quashing Exts.P3 to P5.

(iii) to issue a writ of mandamus directing the respondents to forbear from collecting cess under the Water (Prevention and Control of Pollution) Cess Act, 1977 in respect of the estates of the petitioner.

(iv) to restrain the respondents from collecting water cess from the petitioner in respect of its estates under the Water (Prevention and Control of Pollution) Cess Act, 1977, pending final disposal of the Original Petition."

5. Petitioner submitted that a question of general importance arises in this case in so far as the primary question to be decided is as to whether the Act itself is applicable to the petitioner's estates. A consideration of the relevant provisions of the enactment in question is necessary to resolve the question raised in this Original Petition. The preamble of the Act says that the Act is intended to provide for the levy and collection of a cess on water consumed by persons carrying on certain industries and by local authorities, with a view to augment the resources of the Central Board and the State Boards for the prevention and control of water pollution constituted under the Water (Prevention and Control of Pollution) Act, 1974. The preamble itself wanted application of the enactment or collection of cess under the Act on water consumed by persons carrying on certain industries. It is obvious that all the industries are not brought under the coverage of the Act. This is made clear in Section 3 of the Act which is the charging Section wherein it is stated that there shall be levied and collected a cess for the purposes of the Water (Prevention and Control of Pollution) Act, 1974 and

utilisation thereunder and that the cess under Sub-section (1) shall be payable by every person carrying on any specified industry. So in preamble, it is said that the Act is applicable to certain industries and in the charging Section the mandate is given to levy cess on every person carrying on any specified industry. Specified industry is defined in Section 2(c) of the Act, to mean any industry specified in Schedule I. Schedule I of the Act gives 15 specified industries; they are (1) Ferrous metallurgical industry (2) Non-ferrous metallurgical industry (3) Mining industry (4) Ore processing industry (5) Petroleum industry (6) Petrochemical industry (7) Chemical industry (8) Ceramic industry (9) Cement industry (10) Textile industry (11) Paper industry (12) Fertiliser industry (13) Coal (including coke) industry (14) Power (thermal and diesel) generating industry and (15) Processing of animal or vegetable products industry. Petitioner's case is that it is not carrying on any of the specified industries and so the Act will not apply to the petitioner at all.

6. The 3rd respondent has filed a counter affidavit on behalf of respondents 1 to 4. It is stated in the counter affidavit that the industries of the petitioner are includable in item 15 of Schedule I of the Act. Item 15 of Schedule I of the Act is processing of animal or vegetable products industry. A plain reading and understanding of item 15 of Schedule 1 of the Act would postulate only processing of two items, viz., animal products and vegetable products. So item 13 of Schedule I is an industry which undertakes processing of animal products or vegetable products. In the counter affidavit, it is stated that when the Board's Engineers visited the factory of the petitioner in Nooply estate, the Board came to know that the petitioner is having other factories which consumes water for industrial purposes and discharges trade effluent, and so notices were issued asking them to submit the returns showing the consumption of water in their factories as per the Water Cess Act. Further, it is stated that the petitioner is having natural rubber processing industries in their estates. Rubber is a vegetable product as defined by the Rubber Board in the "Hand Book of Natural Rubber Products in India". Crops from the rubber trees cannot be used as such for the manufacture of rubber goods. It is stated that the following processing methods are usually carried out:

1. Ribbed smoked sheet making
2. Pale latex crepe and sole crepe processing
3. Crumb rubber manufacturing
4. Latex concentrating
5. Crepe milling

7. In the counter affidavit filed on behalf of respondents 1 to 4, the stand taken by the 3rd respondent is that manufacturing of rubber from latex involves processing of vegetable products and so it is an industry within the meaning of item 15 of Schedule I of the Act. Admittedly processing is carried on in the

rubber estates is processing of latex. So the question is whether latex is a vegetable product or not. In the counter affidavit, the 3rd respondent has referred to a "Hand Book of Natural Rubber Products in India" and claimed that in that Hand Book rubber is defined as a vegetable product. Under what circumstances and under that connotation rubber is defined as vegetable product in the said book is not clear from the counter affidavit. I repeatedly asked counsel to make available the said book to me, but he was not able to supply a copy of the said book.

8. The Supreme Court had occasion to consider the application of the Act in respect of the Company manufacturing rayon grade pulp, a base material for manufacturing of synthetics or man-made fabrics. The question considered was whether the said Company can be treated as a specified industry. In considering this question, the Supreme Court observed that in interpreting the provisions of the Act, particularly for the application of the Act the decision maker has to bear in mind that the Act is one imposing liability for cess and that the Act is fiscal in nature. So the Act must therefore be strictly construed in order to find out whether a liability is fastened on a particular industry. It is said that the subject is not to be taxed without clear words for that purpose; and also that every Act of Parliament must be read according to the natural construction of words. The Supreme Court supported the above principle relying on *Tennent v. Smith*, (1892) AC 150 and Lord Halsbury's observations at page 154 and also the observations of Lord Shnonds in *st. Aubyn v. Att. Gen.* (1951) 2 All ER 473. The Supreme Court emphasised what Justice Rowlatt of England said "a long time ago, that in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. Nothing is to be read in, nothing is to be implied. One has to look fairly at the language used". See paragraph 6 of the decision reported in *Member-secretary, Andhra Pradesh State Board for Prevention and Control of Water Pollution Vs. Andhra Pradesh Rayons Ltd. and Others*, . The same view is expressed in *Gursahai Saigal Vs. Commissioner of Income Tax, Punjab*, and : AIR 1976 SC 1935 (*Controller of Estate Duty, Gujarat v. Kantilal Trikamlal*).

9. Another principle to be borne in mind in interpreting the provisions of a fiscal statute is as to find out what is covered by the Act and the parameter to be used to examine what is covered by the Act is only the language of the Act and that what is covered must be "found out from the language according to its natural meaning fairly and squarely read". See (*IRC v. Duke of Westminster*) (1936) AC 1 at p. 24 and *A.V. Fernandez Vs. The State of Kerala, In The Martand Dairy and Farm Vs. The Union of India (UOI) and Others*, Justice Krishna Iyer in his usual inimitable style after expounding the legal philosophy that after all law is not always logic said that consideration for imposing tax stems from varied situations and controlled by administrative experience and "other factors of life and not artistic visualisation or neat logic and so the literal, though pedestrian, interpretation must prevail".

10. In considering whether a Company which is manufacturing rayon grade pulp, a base material for manufacturing of synthetics or man-made fabrics is a specified industry under Schedule I of the Act, the Supreme Court in Member-secretary, Andhra Pradesh State Board for Prevention and Control of Water Pollution Vs. Andhra Pradesh Rayons Ltd. and Others, observed that the question has to be judged normally by what that industry produces mainly. The Supreme Court observed that "Every industry carries out multifarious activities to reach its goal through various multifarious methods. Whether a particular industry falls within the realm of taxation, must be judged by the predominant purpose and process and not by any ancillary or incidental process carried on by a particular industry in running its business. The Supreme Court also held that rayon grade pulp could not be considered even remotely connected as such with chemical industry or textile industry or paper industry. It said that though in all preparations there is certain chemical process that does not make all industries chemical industries. The Supreme Court very clearly and plainly said that "Broadly and literally, in our opinion, it can be said that the Rayon Grade Pulp is neither chemical industry nor textile industry nor paper industry. We find it difficult on broad and literal construction to bring the industry of the respondent into any of these categories. In other words, to find out the intention of the legislation, if possible it should be found out from the language used in case of doubt..... The fairest and most rational method, says Blackstone, to interpret the will of the legislator, is by exploring his intentions at the time when the law was made, by signs the most natural and probable. And these signs are either the words, the context, the subject-matter, the effects and consequence, or the spirit and reason of the law".

11. In this case, the chief question that has to be considered is whether latex is a vegetable product. It is impossible to say that it is an animal product. When the legislature has used the words "Vegetable product", the question to be asked in the language of Blackstone is, what was the will of the legislator. Whether the legislator expressed his will by using the words "Vegetable product" to denote latex also. It has to be remembered, especially in fiscal statute that the words should be understood in their usual and most known signification, "although terms of art must be taken according to the acceptance of the learning in each art, trade and science". Of course, if the words are capable of ambiguity, they are dubious in nature. It is possible to establish or find out its meaning from the context which includes the preamble to the statute and other relevant context.

12. Sitting in a Division Bench of this Court I had occasion to consider the question how the words of fiscal statute have to be interpreted. The Division Bench said thus :--

"It is a well settled proposition of interpretation that if certain words are used in a statute which are capable of being construed in a popular sense, that is to say, how people in general understand the meaning of those words, such words should not be construed according to the strict or technical meaning of the

language contained in them, but have to be construed in its popular sense, that is to say, in the sense, which people conversant with the subject matter will understand them. Words in every day use when come up for interpretation before the Court, therefore, have to be construed according to their popular sense. This principle is well-settled by a catena of Indian decisions and also of English, American and Australian decisions".

(vide (1991) 1 KLT 373 (Brooke Bond India Ltd. v. State of Kerala).

The above proposition of law has got ample support of several Supreme Court decisions. In His Majesty the King v. Planters Nut and Chocolate Company Limited, 1951 CLR 122 the general question was as to whether salted peanuts and cashew nuts fell within the category of either fruits or vegetables. Cameron, J. in dealing with the question observed thus :-- "The object of the Excise Tax Act is to raise revenue, and for this purpose, to class substance according to the general usage and known determination of trade. In my view, therefore, it is not the botanist's conception as to what constitutes a "fruit" or "vegetable" which must govern the interpretation to be pleaded on the words, but neither what would ordinarily in matters of commerce in Canada be included therein. Botanically, oranges and lemons are berries, but otherwise no one would consider them as such". The same rule was stated clearly as early as 1831 by Lord Tenterden in Attorney General v. Winstenlay, (1831) 2 D & C 302.

13. Approving the decision reported in 1951 CLR 122 the Supreme Court in Commissioner of Sales Tax, Madhya Pradesh Vs. Jaswant Singh Charan Singh, held that "while interpreting items in statutes like the Sales Tax Act, resort should be had not to the scientific or technical meaning of such terms but to their popular meaning or the meaning attached to them by those dealing in them, that is to say, to their commercial sense."

14. Before considering further decisions in the matter, I may straightway refer to the decision reported in (1990) 2 KLT 924 (Travancore Sugars & Chemicals Ltd. v. Pollution Control Board), Justice Radhakrishna Menon was considering the question whether sugar factories can be considered as specified industries coming under item 15 of Schedule I of the Act -- processing of animal or vegetable products industry. Of course, in this case, the contention of the assessing authority was that sugar factories can be classified as vegetable products industries or chemical industries. The Court held that sugar industries cannot be classified as chemical industries within the meaning of item 7 in Schedule I of the Act. But the Court held that a sugar factory is includable in item 15 in Schedule I of the Act. In considering this question, the Court observed that the word "vegetable" is not defined in the Act which, undoubtedly has all the trapping of a fiscal enactment, The word "vegetables" in taxing statute is generally to be understood as in fair common parlance that is denoting class of vegetables which are grown in kitchen garden or in a farm and are used for the table. Further, the Court said that the word "vegetable" should be attributed literal meaning is the meaning a botanist would attribute to it, and not a

restricted meaning namely, denoting a class of vegetables which are grown in a kitchen garden or in a farm and are used for the table. If the narrow or restricted meaning is attributed to this word, that meaning would lead to some result which is not intended by the Parliament.

15. In (1962) 13 STC 1 : (AIR 1962 SC 660) (Motipur Zamindary Co. (Private) Ltd. v. State of Bihar), the Supreme Court had occasion to consider whether sugar-cane is green vegetable or not. Interpreting the provisions of Bihar Annual Finance Act, 1950 read with Bihar Sales Tax Act (XIX of 1947), the Supreme Court held that sugar-cane does not fall within the term "green vegetables". In holding so, Justice Kapur referred to the Bombay High Court decision reported in State of Bombay Vs. R.S. Phadtare, wherein it was held that sugar-cane is "fresh vegetable" and is therefore exempt from sales tax under the Bombay Sales Tax Act. Chagla, C. J. in that case observed thus:--

"In its plain and natural meaning a "vegetable" clearly is wide enough to cover "sugar-cane"; but what is urged by the Advocate- General is that we must not give it that wide meaning but must give it the popular meaning as understood by people who deal in vegetables or eat vegetables, and it is urged that from that narrow and restricted point of view sugar-cane is not vegetable. This is a taxing statute and if two constructions are possible, we must lean in favour of that construction which gives relief to the subject. That was exactly the approach of the Sales Tax Tribunal and in our opinion that approach was a very proper one".

16. The Supreme Court said that the above quoted observation is not in accordance with the opinion given by the Supreme Court in Ramavatar Budhaiprasad Etc. Vs. Assistant Sales Tax Officer, Akola, In the above case, the Supreme Court held that "betel leaves" are not included in the term "vegetables". Approving the decision of Nagpur High Court reported in (1956) 7 STC 99 : (AIR 1956 Nag 54) (Madhya Pradesh Pan Merchants' Association v. State of Madhya Pradesh), the Supreme Court said that the word "vegetables" in taxing statutes is to be understood as in common parlance, i.e., denoting class of vegetables which are grown in a kitchen garden or in a farm and are used for the table. In Motipur Zamindary Co. (P) Ltd. Vs. The State of Bihar, , the Supreme Court very clearly said thus :-- "If that is the meaning of the word "vegetables" sugar-cane cannot fall within entry 6 which relates to green vegetables".

17. Though in (1990) 2 KLT 924 Justice Radhakrishna Menon said that the word "vegetables" in taxing statute is generally to be understood as in common parlance that is denoting class of vegetables which are grown in kitchen garden or in a farm and are used for the table, His Lordship said that the word "vegetable" should be attributed literal meaning is, the meaning a botanist would attribute to it, and not a restricted meaning namely, denoting a class of vegetables which are grown in a kitchen garden or in a farm and are used for the table. I cannot agree with the above statement. Justice Radhakrishna Menon tells us that "the word "vegetable" should be attributed literal meaning is, the meaning a botanist would attribute to it...."

18. In *Ramavatar Budhaiprasad Etc. Vs. Assistant Sales Tax Officer, Akola*, the Supreme Court said that the word "vegetables" in item 6 of Schedule II of the C.P. and Berar Sales Tax Act, 1947, must be construed not in any technical sense nor from the botanical point of view but as understood in common parlance. It has not been defined in the Act and being a word of every day use it must be construed in its popular sense meaning "that sense which people conversant with the subject-matter with which the Statute is dealing would attribute to it". It is therefore to be understood as denoting class of vegetables which are grown in a kitchen garden or in a farm and are used for the table. In *Kokil Ram and Others Vs. Province of Bihar*, it was held that "vegetables meant plants cultivated for food and pans are not food stuffs". In view of the Supreme Court decision, I seriously doubt the correctness of the decision of Justice Radhakrishna Menon, reported in (1990) 2 KLT 924.

19. Considering the fact that vegetable product is not defined in the Act, I am bound to follow the precedents relating to construction of vegetables of the Supreme Court and also the method of interpretation adopted by the Supreme Court in regard to words which are not defined in a taxing statute. I have no hesitation to hold that the words "vegetable products" must be construed neither in a technical sense nor from the botanical point of view. It should be understood as understood in common parlance.

20. "Vegetable products", as I said earlier, are not defined in the Act, but is a phrase of every day use and so must be construed in its popular sense. If the popular sense meaning is given to vegetable products, to me it appears to be impossible to say that latex is a vegetable product. An industry to process latex cannot be considered as an industry which is processing vegetable products and so it will not come under item 15 of Schedule I of the Act."

21. Senior Central Government Standing Counsel submitted for my consideration, the ratio of the decision reported in *Kisan Sahkari Chini Mills Ltd., Sheikhpur, Budaun Vs. State of Uttar Pradesh and Others*, The Allahabad High Court was also considering the question of imposing cess under Water (Prevention and Control of Pollution) Cess Act (36 of 1977). The industry that was considered was sugar industry. The Court held that any person carrying on the sugar manufacturing industry would be covered by Entry 15 of Sch. I of the Water (Prevention and Control of Pollution) Cess Act (1977). The view expressed by the Court is that in interpreting Entry 15 of Schedule I, one has to keep in mind the words used therein, viz., processing animal or vegetable products, and said that the word "vegetable" has been used in opposition to the expression "animal" and that the word cannot be given the meaning of vegetables which are kept on the dining tables for dinner purposes. In regard to sugar industries, so many matters have to be considered. But it is difficult for me to understand that the word "vegetable" is used in Entry 15 of Schedule I in opposition to the expression "animal". Any how, I do not think that even if sugar-cane can be considered as "vegetable" and the sugar manufactured by using sugar-cane as

raw-material as an industry coming within Entry 15 of Schedule I that will not persuade me to say that latex is "vegetable" and that processing of latex is an industry within the meaning of item 15 of Schedule I of the Act.

22. Senior Central Government Standing Counsel also referred me to the decision reported in Member-secretary, Andhra Pradesh State Board for Prevention and Control of Water Pollution Vs. Andhra Pradesh Rayons Ltd. and Others, and submitted that the ratio of this decision will only support his case that an industry for processing of latex will also come within item 15 of Schedule I of the Act. I cannot agree with this submission. Counsel also referred me to the decisions reported in Ramavatar Budhaiprasad Etc. Vs. Assistant Sales Tax Officer, Akola, , Motipur Zamindary Co. (P) Ltd. Vs. The State of Bihar, , AIR 1963 SC 351 (Ram Bux v. State of Rajasthan). Mangulu Sahu Ramahari Sahu Vs. The Sales Tax Officer, Ganjam, and State of West Bengal and Others Vs. Washi Ahmed and Others, . I have already referred to Ramavatar Budhaiprasad Etc. Vs. Assistant Sales Tax Officer, Akola, , Motipur Zamindary Co. (P) Ltd. Vs. The State of Bihar, and I do not want to say anything more about these decisions. Though counsel submitted that the ratio of these decisions would only support his contention that an industry for processing latex will come under item 15 of the Schedule, I hold that the submission is not acceptable. I do not think that any assistance can be sought from the ratio of the decision in Mangulu Sahu Ramahari Sahu Vs. The Sales Tax Officer, Ganjam, . In State of West Bengal and Others Vs. Washi Ahmed and Others, , the Court was dealing with Bengal Finance (Sales Tax) Act. The Court said that green ginger is included within the meaning of the words "vegetables commonly known as sabji, tarkari or sak". In saying so, the Court said that obviously green ginger is a vegetable grown in a kitchen garden or in a farm and is used for the table. Though it may not be used as a principal item of the meal, it certainly forms part of the meal as a subsidiary item.

23. Story, J. in Two Hundred Chests of Tea, (1824) 9 Whe 430 at 438 (US) said that "the particular words used by the Legislature in the denomination of articles are to be understood according to the common commercial understanding of the terms used, and not in their scientific or technical sense, for the Legislature does "not suppose our merchants to be naturalists, or geologists, or botanists",

24. Considering all the aspects of the question highlighted by counsel on both sides, I hold that processing of latex cannot be considered as item 15 of Schedule I of the Act and so petitioner is not liable to be taxed for the water used in the process of latex in their rubber plantations. The notices and assessment orders directing levy of cess in regard to petitioner's rubber estates are quashed. I make it clear that I have not considered the question in relation to tea estates and that question is left open since both sides did not argue on that question.

25. Original Petition is disposed of as above.