

**(1992) 11 KL CK 0022**  
**In the High Court Of Kerala**  
**Case No : W.A. No. 456 of 1992**

Indian Trawelers Association

APPELLANT

Vs

State of Kerala

RESPONDENT

**Date of Decision :** 18-11-1992

**Acts Referred:**

Constitution of India, 1950 — Article 31C

**Citation :** (1993) 2 LLJ 11

**Hon'ble Judges :** Varghese Kalliath, J;Thulasidas, J

**Bench :** Division Bench

**Advocate :** M.I. Joseph and Roy Thomas, for the Appellant; R.K. Venu Nair and S. Ramesh Babu and A.A. Mohammed Nazir, Govt. Pleader, for the Respondent

**Final Decision :** Dismissed

## Judgement

Varghese Kalliath, J.—This is an appeal against the judgment of a learned single Judge in O.P. No. 7787 of 1988. The Original Petition was disposed of along with a batch of cases. Petitioners in the Original Petition are Indian Trawlers Association, represented by the Secretary and one Benny, owner of a fishing vessel.

2. Before the learned single Judge, all counsel agreed that the question to be considered in all the writ petitions is the constitutional validity of the Kerala Fishermen's Welfare Fund Act, 1985 (for short "the Act"), particularly Section 4 of the Act. Section 4 of the Act is the pivotal provision in the Act and if that provision is declared unconstitutional, the other provisions of the Act, which are intrinsically integrated with Section 4 of the Act, cannot survive. The learned single Judge found that the provisions of the Act are valid and constitutional.

3. When the appeal came up for admission, we directed notice to be issued to the respondents to show cause why the appeal should not be admitted. We heard counsel on both sides.

4. Counsel for appellants confined his arguments as to the legislative

competence on the subject matter of the enactment. It is to be noted that in the common judgment the learned single Judge relied on the facts of this case as the leading case for disposing the other Original Petitions. 5. First appellant is an association of mechanised boat owners and the second appellant is a mechanised boat owner and also a dealer in fish. It was contended that the appellants are liable to pay under the Act contribution in different capacities as owner of fishing boats, owner of fishing nets, dealer in fish and as fisherman catching fish etc. It was contended before the learned single Judge that the fund collected from the appellants at varying rates will not be used for the benefit of the appellants or for the benefit of the employees of the appellants and that Section 4 of the Act mandating contribution from the petitioners cannot be justified for the simple reason that it cannot be justified as a tax, since the contribution will not come under a specific taxing entry of the State List or Concurrent List of the Constitution of India giving power to levy and collect tax. Further it was urged that it cannot be justified as a fee, since there is no specific legislative entry in the State List or Concurrent List relating to fee on the subject on which this impugned legislation is made. Further it was added as an additional ground that there must be quid pro-quo for collection of fee and the Act is not providing any quid pro-quo to the petitioners; thus it is submitted that the collection should not be justified as a fee also. It was specifically urged that if the levy sought under the Act is to be considered as a social welfare measure introduced for the welfare of the employees, then as the welfare of the employees of the appellants are not benefited at all, the Act cannot be justified under any of the entries in the Concurrent List also. In short, it was urged that the validity of the Act, if tested on the touchstone of legislative competence, the court has to declare the Act unconstitutional. The learned single Judge, as said earlier, did not accept the contentions of the appellants and dismissed the Original Petition along with similar Original Petitions.

6. A short sketch of the scheme of the Act, we feel, is appropriate for appreciating the contention raised by the appellants. The object of the Act is to provide for the constitution of a welfare fund and for promoting the welfare of fishermen and for matters incidental thereto. In the preamble it is stated that the State deems it expedient for making a welfare fund for promotion of the welfare of the fishermen in the State of Kerala. The Act envisages certain other matters incidental to the main object said above.

7. Section 3 of the Act gives power to the Government to frame a scheme to be called the Kerala Fishermen's Welfare Fund Scheme, for the establishment of a fund under the Act by name The Kerala Fishermen's Welfare Fund for the welfare of fishermen and Section 3 further provides that the fund shall be credited with the contributions specified in Section 4, the fee levied under the scheme, damages realised u/s 21, grants or loans or advances made by the Government of India or the State Government, any voluntary donations, any penalty levied under the provisions of the Kerala Marine Fishing Regulation Act, 1980, and any amount raised by the Board from other sources to augment the resources of the

Board. The fund shall vest with and be administered by the Board. The Board is defined in Section 2 to mean the Kerala Fishermen's Welfare Fund Board constituted u/s 7.

8. The purposes for which the fund may be utilised are enumerated in Sub-section (4) of Section 3. They are:

- (a) to provide for distress relief to fishermen in times of natural calamities;
- (b) for payment of financial assistance to fishermen who suffer permanent or temporary disablement;
- (c) for payment of loans or grants to fishermen to meet the expenses for the marriage of children, or expenses in connection with disease or death of dependents, or any unexpected expenditure or the day-to-day expenditure during lean months;
- (d) to provide for the fishermen and the members of their families;
- (i) education, vocational training and part-time employment;
- (ii) special education centres including reading rooms and libraries;
- (iii) sports, games and medical facilities;
- (iv) nutritious food for children; and
- (v) employment opportunities to the handicapped.

The Fund will also be utilised for giving financial assistance to fishermen who suffer loss of houses or fishing implements or any other damage due to natural calamities or other unexpected causes. It also envisages to provide old age assistance to fishermen. As a residuary clause, it is added that the Fund can be used for implementation of any other purpose specified in the Scheme.

9. It is provided under Sub-section (5) of Section 3 that every fisherman who is a member of a Fisherman's Welfare Society constituted u/s 4 of the Kerala Fishermen Welfare Societies Act, 1980 ( 7 of 1981) shall be a member of the fund.

10. The main contribution for the Fund is provided in Section 4 of the Act. It has to be remembered that the main challenge was against Section 4 of the Act. This section provides that a fisherman shall contribute to the Fund three per cent of the value of fish caught by him during a year or three per cent of the wages earned by him in a year. A dealer has to contribute one per cent of his sale proceeds in the year. The owner of a fishing vessel shall contribute to the Fund every year an amount calculated at the rates shown in the Act. The Act prescribes different rates for traditional craft, catamaran, country craft and mechanised boats. The owner of a prawn filtration area or a fish farm shall contribute every year to the fund two, percent of the value of the prawn and other fish caught from the prawn filtration area or the fish farm during the year.

Further it is provided that a person who employs a fisherman in a fishing vessel shall be liable to pay under Sub- section (7) the contribution payable by that fisherman under Sub- section (1) after deducting that amount from the wages or other remuneration due to such fisherman.

11. Before the learned single Judge, it was contended that the provisions of the Act mandate that the same person has to contribute in different capacities at varying rates. It was illustrated by saying that the owner of a boat will have to pay contribution as owner of the boat, as a dealer in fish and then as the owner of the fishing net etc. The learned single Judge has adverted to this aspect and said that the first respondent in his counter affidavit has stated that the appellants are not being compelled to pay contribution in a dual capacity as boat owners or as net owners. The contribution from net owners is the contribution from owners of China net, stake net or free net. Therefore, it is contended that the argument that a person has been made to pay contribution in different capacities and, therefore, the Act offends Article 14 of the Constitution being arbitrary is based on pure imagination and so, has no merit. Before us, even though we put a query to counsel for appellants whether the appellants are challenging the provisions of the Act, as violative of Article 14 of the Constitution, counsel submitted that he is mainly confining his arguments on the question of competence though he is not giving up the challenge under Article 14. Counsel did not specifically make any contention based on Article 14 but only submitted that the provisions of the Act are unfair, and unjust as such an attack on the basis of Article 14 in its multidimensional canvass is plausible.

12. The learned single Judge has considered the question raised before him that the Act is not giving any benefit to the employees of the appellants herein. The learned single judge observed that the term fisherman has been defined in Section 2(e) of the Kerala Fishermen Welfare Societies Act, 1980 to mean any person engaged mainly in fishing operations for his livelihood, and fishing operations include fishing by any means, mechanical or otherwise, sale of marine products by members of families of fishermen, by transporting them to different places by head-load or cycle load. Section 2 (g) of the Act defines the word fisherman to mean a fisherman as defined in Clause (e) of Section 2 of the Kerala Fishermen Welfare Societies Act, 1980 (7 of 1981). The word dealer is also defined in the Act to mean any person who carries on within the State of Kerala, the business of buying and selling fish or processing fish for export or domestic marketing and includes a commission agent, a broker, or any other mercantile agent by whatever name called, and a non-resident dealer or an agent of a non-resident dealer or a local branch of a firm or company or association situated outside the State of Kerala. The Act takes within its net all fishermen and the fishermen employed by the appellants also are covered for the purpose of the benefits of the Fund.

13. It is only logical to accept that the benefits given to the fishermen under the Act in due course, will be beneficial to the appellants also. The term "fishermen"

in the larger sense of its connotation given by the Act form the fulcrum and brace of the fishing industry. He is the sustainer, upholder and mainstay of the industry. Their welfare, contentment and progress will always constitute the best interests of the industry itself. The benefits conferred under the Act subserve the common good of fishing industry and as such it subserves the interest of the appellants also. We have no doubt that the legislation aimed and designed for the welfare of the weaker sections is a constitutional obligation of the Government. But, we hasten to add that this constitutional obligation has to be discharged by making such laws which would not transgress the mandates of the Constitution .

14. It was contended that the appellants are benefited by the hard labour of the fishermen and that naturally invite a liability to the appellants to pay contribution as the principal employer of the fishermen. The scheme of the Act directly or indirectly would benefit the employer as well. The case of the respondents is that the fishermen employed in the industry is not always identifiable. In these circumstances, the legislature thought that it is safe to fix the liability for contribution on the principal employer, viz. the boat owner.

15. The learned single Judge found that the rate of contribution is fixed on the basis of the capacity of the contributor to earn and so, the charging section cannot be considered as arbitrary. The fixation of contribution has been made by classifying the different types of the owners depending upon the nature of the vessel they are using. Some details regarding the production capacity of mechanised and non- mechanised sectors have been taken into account by the learned single Judge. We do not want to go into those details, since there was no serious challenge as regards the norms on which the rate of contribution has been fixed.

16. The varying rates prescribed by the Act and the classification made were found to be justifiable by the learned single Judge on the materials supplied in the affidavit filed on behalf of the State. We do not think that we are called upon to investigate that question again for the simple reason that the learned counsel did not make any serious attempt to make a dent in the judgment of the learned single Judge on this aspect of the matter. As we said earlier, the learned counsel who argued the case, rightly confined his arguments to the legislative competency of the Act on the basis of the entries in the State and Concurrent Lists of the Seventh Schedule in the Constitution .

17. True, the impugned legislation should fall under one or other of the entries in the State and Concurrent Lists of the Seventh Schedule of the Constitution. Entry No. 21 of List II of Seventh Schedule relates to fisheries, and the taxing power cannot be exercised under the general entry aforementioned is the contention. In this connection, a decision of the Supreme Court was referred to, *Synthetics and Chemicals Ltd. and Others Vs. State of U.P. and Others*, . In this decision, the Supreme Court observed that the Constitution must not be construed in a narrow or pedantic sense and that the interpretation which is most beneficial, giving widest possible amplitude of its power, must be adopted. The content of the

entry must be as wide as possible and it should not be cribbed into narrow limits. A broad and liberal expositional attitude should inform those whose duty is to understand and interpret the Constitution. The pith and substance formula in the matter of legislative competency is an approved and accepted norm. The entries in the three lists of the Constitution denote and demarcate the range and area for the State and Centre to make laws. The entries are heads of subjects on which the legislation can be undertaken by the Parliament and the State Legislature in regard to the subject of their respective list and the concurrent list.

18. The courts' power and obligation are to find out the true content and purpose of each entry and to examine the particular legislation in question in the light of the relevant entry applicable to the legislation. The words of entries are the condensed form of the subject which they deal with. We say so because the Supreme Court had occasion to say ancillary or subsidiary matters covering the entry or matters which can fairly and reasonably be comprehended within the content of the entry also to be taken as matters on which the power given by the entry can be exercised by the legislative body. But, one fact is to be noted that there are separate entries pertaining to taxation and other laws. Therefore, as found by the learned single Judge, counsel for the appellants is well founded in his submission that if the levy in question is to be justified as a tax, the same has to be traced to a taxing entry. Without a specific entry for taxation, the learned single Judge found that the legislation cannot be justified as a tax. Before us, that State did not try to justify the levy as a tax or fee.

19. Counsel for appellants challenged the Act on the ground of incompetency of the legislature putting forward a case that the provision contained in the Act can be justified only either as a taxing provision or as a provision for levying fee. We find that this approach is not correct. We do not want to repeat all what the learned single judge has said on this aspect of the case.

In *M.T. Joseph and Others Vs. Gift Tax Officers*, this court had occasion to say that the power to legislate on a particular topic or a subject is distinct and different from the power to levy tax. It was held that though on a particular entry a legislation is possible, for making a legislation imposing a tax in respect of those matters referred in a particular entry, requires a taxing entry in the list. Counsel rightly submitted that Entry No. 21 in the State List will not carry with it the power to levy tax.

20. Counsel also submitted that the provisions of the Act cannot be justified as a provision for levying a fee. Several decisions have been cited before the learned single Judge on this aspect of the matter. The learned single Judge after a very detailed consideration observed thus: "But in this case, we need not go into all these aspects as the levy is sought to be justified only as a social welfare measure under Entries 20, 23 and 24 of List III of the VIIth Schedule".

21. Counsel did not press any particular point referring to Entries 20, 23 and 24 of List III of the Seventh Schedule. Entries 20, 23 and 24 are the relevant

entries. We quote the same:

"20. Economic and social planning.

.... .... 23. Social security and social insurance, employment and unemployment.

24. Welfare of labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pensions and maternity benefits".

22. In the counter affidavit, it is stated specifically that the Act covers all fishermen and the fishermen employed by the petitioners/ appellants also are covered for the purpose of the benefits of fund and the benefits conferred on the fishermen under the Act, will, in due course, benefit the fishermen employed by the appellants and also appellants. Before the learned single Judge, counsel referred to the decisions reported in *Mrs. Maneka Gandhi Vs. Union of India (UOI)* and *Another*, and *Bennett Coleman and Co. and Others Vs. Union of India (UOI)* and *Others*, and submitted that the effect of the impugned Act has to be considered whatever be the form in which the Act is made, whether the impact of the Act would contravene any of the fundamental rights of the citizen. This aspect of the matter also has been convincingly considered by the learned single Judge. This contention was raised again before us to reinforce the argument that the Act is one imposing a levy of fee or tax. The learned single Judge observed thus: "Whether the pith and substance of the Act is taken, or the direct impact of the law is examined, it cannot be considered that it imposes a tax or a fee. It cannot be a tax as there is no levy under the impugned Act for a general purpose. No characteristics of a tax is present. The benefit conferred under the Act is only to subserve the common good of the fishing industry. Since the petitioners are also benefited by the hard labour of the fishermen, they also have a liability to pay contribution."

23. It is seen from the judgment of the learned single Judge that extensive and expansive arguments were advanced by counsel for petitioners/appellants and the Additional Advocate General who appeared for the respondents on the question as to whether the Act would get protection under Article 31C of the Constitution . The learned single Judge has considered the question elaborately and ultimately found referring to a number of decisions of the Supreme Court that the validity of the Act can be upheld even without recourse to Article 31C of the Constitution .

24. The learned single Judge found that the impugned legislation is a competent legislation drawing the power source from Entries 20, 23 and 24 of List III of Seventh Schedule of the Constitution . In considering this question, the following decisions were referred: 3974 KLT 867 (*New Woodlands Hotel v. Varkey*) *Mangalore Ganesh Beedi Works and Others Vs. Union of India (UOI)* and *Others*, ; *Gasket Radiators Pvt. Ltd. Vs. Employees' State Insurance Corpn. and Another*, and *Chellappan Vs. State of Kerala*, In meeting the argument of

legislative competence in regard to Beedi and Cigar Workers (Conditions of Employment) Act 1966, the Supreme Court observed: "The High Courts of Madras, Kerala, Gujarat, Mysore and Andhra Pradesh have rightly held the Act to have constitutional competence....Entry 24 in List III speaks of Labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pensions and maternity benefits. The Act is for welfare of labour. It is not an Act for industries. The true nature and character of the legislation shows that it is for enforcing better conditions of labour amongst those who are engaged in the manufacture of beedies and cigars." The Supreme Court further observed that Entries 22 to 24 in List III are wide enough to cover this place of labour welfare measure. Entry 23 deals with social security, employment and unemployment. Entry 24 deals with welfare of labour including conditions of work, provident funds, employer's liability, workmen's compensation, invalidity and old age pension and maternity benefits. The Act is valid and falls within Entries 22, 23 and 24 of List III.

25. Similarly in Gasket Radiators case (supra), the Employees' State Insurance Act was justified under Entries 23 and 24 of List III of Seventh Schedule. The Supreme Court held that the Employees' State Insurance Act (34 of 1948) is a valid piece of legislation. The argument that the contribution payable by the employer under the Act is a fee has been answered thus: "Chapter V-A headed as Transitional Provisions and providing for payment of the special contribution by the principal employer cannot be challenged as ultra vires on the ground that though the contribution payable under Chapter V-A is a fee, the Act does not contemplate the rendering of any service or the conferment of any benefit to the employer or its employees as quid pro quo for the payment as the payment of contribution by an employer towards the premium (what else is it?) of an employee's compulsory insurance under the Act falls directly within entries 23 and 24 of List III and it is wholly unnecessary to seek justification for it by recourse to entry 97 of List I or entry 47 of List III i.e. entries relating to fee, in any circumlocutory fashion. There is no reason to brand or stamp the contribution as a tax or fee in order to seek to legitimise it. Legitimation need not be sought fictionally from entry 97 of List I or entry 47 of List III when legitimation is directly derived for the charge from entries 23 and 24 of List III."

26. The above quote gives an answer to negate and to render ineffective the argument of counsel for the appellants that since the Act is in the nature of the imposition of tax or a levy of fee, the Act is ultra vires on account of lack of legislative competency. We do not want to multiply the decisions on this aspect of the matter. We are of opinion that from the scheme of the Act, the welfare fund is for the benefit of the fishermen community, and can be justified as a social welfare measure. This court in Chellappan Vs. State of Kerala, took a similar view. The court observed thus: (p.310):

"This Act is intended "to provide for the constitution of a fund to promote the welfare of toddy workers in the State of Kerala". The Act provides a scheme to

be framed and directs contribution to be made by the employer to the Fund at certain rates to each of the employees and also, in addition to the contribution, to contribute as gratuity an amount equal to five percent of the wages for the time being payable to each of the employees. The scheme has been framed and is in force. The Act, therefore, follows the general pattern of welfare legislations and according to us, falls directly under entry 24 of List III which deals with "welfare of labour including conditions of work, provident funds, employer's liability, workmen's compensation, invalidity and old age pensions and maternity benefits."

27. We agree with the findings recorded by the learned single Judge that the legislation does not lack legislative competence. We hold that the Act is a legislation coming under Entries 20, 23 and 24 of List III of Seventh Schedule of Constitution and the Act is constitutionally valid.

28. The learned single Judge found that the Act cannot be faulted under Arts, 14 and 19 of the Constitution of India. In fact, no serious arguments were advanced based on Article 14 of the Constitution of India before us. However, we are definitely of the opinion that the impugned legislation plainly and clearly manifests a commendable intention of the legislature to put in action by legislative process a new dimension of the principle of "affirmative action justice" propounded in *Regents of University of California v. Bakke* (1978), *United Steelworkers v. Weber* (1979), *Fullilove v. Klutznick* (1980), *Sheet Metal Workers' Intern. Ass'n v. E.E.O.C.* (1986), *United States v. Paradise* (1987), *International Association of Firefighters v. City of Cleveland* (1986), *Johnson v. Transportation Agency Santa Clara County, California* (1987), as a constituent of the 14th amendment of the American Constitution, the counter part of Article 14 of our Constitution. We fully agree with the learned single Judge.

29. In the result, we find no merit in this appeal and the appeal is only to be dismissed. We do so.

Dismissed.

Counsel for appellants requested for leave to appeal before the Supreme Court under Article 134A of the Constitution of India. We see no ground to grant leave. Leave refused.