

(1969) 06 OHC CK 0009

In the Orissa High Court

Case No : Spl. Jurisdiction Case No. 33 of 1964

Jagabandhu Sahu

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 26-06-1969

Acts Referred:

Constitution of India, 1950 — Article 141
Orissa Sales Tax Act, 1947 — Section 6

Citation : AIR 1969 Ori 299 : (1969) 35 CLT 817 : (1969) 24 STC 240

Hon'ble Judges : G.K. Misra, C.J.;B.K. Patra, J

Bench : Division Bench

Advocate : N.N. Bhattacharya, for the Appellant; Govt. Advocate, for the Respondent

Judgement

G.K. Misra, C.J.—The Sales Tax Tribunal has referred the following question u/s 24(1) of the Orissa Sales Tax Act for the opinion of the High Court:

"Whether in the facts and circumstances of the case, ginger is not a vegetable according to the test as finally settled by the Supreme Court."

"Vegetables" are not taxable under the Orissa Sales Tax Act. If ginger is vegetable, it is not taxable. This is how the question gathers importance.

2. The Tribunal has found that ginger is not vegetable. Its view is based on ILR (1961) Cul 175, Dhadi Sahu v. Commissioner of Sales Tax, Orissa, in paragraph 8 their Lordships laid down the following test:

"On the basis of those decisions one can safely find that "vegetables" would cover only such plants which are grown in the kitchen garden and cultivated for the purpose of food. In other words vegetables shall include such plants, roots, etc. which are primarily used for the purpose of food. The description of the word "vegetable" as appears from the authorities stated above, only means that if a particular plant or vegetable is used for the primary purpose of being served as a food, then it will be treated as a vegetable. As is well known, while giving a

meaning to the word "vegetable" we have to look to the meaning of the law as is intended by the Legislature, the people for whom it is intended, and the area or place for which it is intended to apply. The test therefore would be whether green pepper are treated as a principal item of food in Orissa as vegetables like brinjals, tomatoes, potatoes etc., or it is applied to other vegetable or non-vegetable preparations for the purpose of adding taste or flavour."

Mr. Government Advocate also relies on this Division Bench decision. If the aforesaid passage represents the correct law, the conclusion of the Tribunal is unassailable. Ginger is never used in Orissa for the primary purpose of being served as food. It is definitely used in this part of the country for the purpose of adding taste or flavour to the main item of food whether vegetarian or non-vegetarian.

3. It is to be noticed that this is the only decision in India which lays down the test that, in order to come within the meaning of "vegetable" the particular vegetable must be used for the primary purpose of food. Mr. Bhattacharya contends that the aforesaid decision is directly contrary to the view expressed by the Supreme Court and can no longer be held to be good law. The view of the Division Bench was based on a passage appearing in *Corpus Juris Secundum* 91 C. J. S. 804 which is as follows:--

"It has been held that in the common language of the people, whether sellers or consumers of provisions, all these are vegetables which are grown in kitchen gardens, and which, whether eaten cooked or raw, are like potatoes, carrots, parsnips, turnips, beets, cauliflower, cabbage, celery and lettuce, usually served at dinner in, with or after the soup, fish or meats which constitute the principal part of the repast, and not, like fruits generally, as dessert."

The meaning given to this passage by the Division Bench is quite different from the meaning it conveys. In the passage the principal items consist of soup, fish or meats. Other items like potatoes, carrots etc. are served at the dinner as subsidiary items. Though so served as subsidiary items still they were construed as vegetables. Unfortunately, the Division Bench by mistake was of the impression that in order to be vegetables they must be used for the primary purpose of being served as food. The passage quoted above does not support the conclusion of the Division Bench. We are aware of the position that a subsequent Division Bench cannot overrule an earlier Bench decision by pointing out certain palpable errors. If this were the only ground on which we were to take a different view, the question would have been referred to a larger Bench, but the necessity for referring to a larger Bench does not arise on account of the consistent view taken by the Supreme Court laying down the meaning of the expression "vegetable". It is to be remembered that in a wide sense all things belonging to the vegetable world are vegetables, but in the taxing statutes they have been construed to be used in a restricted sense.

In *Ramavatar Budhaiprasad Etc. Vs. Assistant Sales Tax Officer, Akola*, , the

question for consideration was whether betel-leaves were vegetables. After reviewing the entire law on the question their Lordships laid down the following tests:

"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."

This decision was followed in *Motipur Zamindary Co. (P) Ltd. Vs. The State of Bihar*, and applying that test sugarcane was held not to be a vegetable. Though sugarcane and betel-leaves might be grown either in a kitchen garden or in a farm they are not used for the table. It is to be noticed that the test laid down by the Supreme Court does not refer to the use of vegetable as primary or subsidiary for the purpose of food. Take for instance Podina (mint) or Dhania (coriander). They are used for the purpose of preparation of chutney, but are not used for the primary purpose of food and are used to give flavour or taste to the food. In common parlance in Orissa they are vegetables, are grown in the kitchen garden and are used for the table.

Judged by the Supreme Court decisions indicated above, the view taken by the Division Bench of this Court is no longer good law. As there is direct authority of the Supreme Court on the point which is the law for the country, there is no necessity to refer the question to a larger Bench. The Orissa decision however remains good law so far as the second test is concerned, namely whether in common parlance a particular vegetable would be vegetable or not would depend on the particular area or locality. What may be a vegetable in Kerala may not be a vegetable in Orissa on the application of the aforesaid restricted definition of the expression Vegetable."

On the aforesaid analysis ginger is a vegetable. Doubtless it is not used for the primary purpose of food, but is used to give flavour or taste to the food: but it is grown in the kitchen garden and is used for the table.

4. The same view has been taken in *Krishna Iyer Vs. State of Kerala*, and *Wazi Ahmed Vs. State of West Bengal and Others*, and no contrary view has been brought to our notice.

5. In the result we hold that the Tribunal took a wrong view. We would answer the question by saying that ginger is a vegetable. In the circumstances parties to bear their own costs. The petitioner is however entitled to refund of the money deposited u/s 24(1) of the Orissa Sales Tax Act.

B.K. Patra, J.

6. I agree.