(1963) 10 P&H CK 0011

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 358D of 1963

Jaswant Sugar Mills Ltd. and Another — APPELLANT

Vs

Union of India (UOI) — RESPONDENT

Date of Decision : 04-10-1963

Acts Referred:

Central Excise Rules, 1944 — Rule 8
Central Excises and Salt Act, 1944 — Section 3, 37(1), 37(2), 38
Constitution of India, 1950 — Article 14, 19(1), 31(2), 32

Citation : AIR 1964 P&H 192

Hon'ble Judges : Shamsher Bahadur, J;H.R. Khanna, J

Bench : Division Bench

Advocate : G.S. Pathak, Ved Vyas, S.N. Andley and P.C. Khanna, for the Appellant; A.N. Sanyal, Solicitor General and S.N. Shanker, for the Respondent

Judgement

1. The constitutional validity of the notification of 1st of March, 1963 (100 D) made by the Respondent, Union of India, granting exemptions on a graduated scale from payment of excise duty to units manufacturing strawboard below 5000 metric tons, has been challenged in four Civil Writ Petitions Nos. 358-D of 1963, 377-D of 1963, 378-D of 1963 and 379-D of 1963, of Jaswant Suinir Mills Ltd. Straw Products Ltd. Arvind Board and Papers Products Ltd. and Ratlam Straw Board Mills (Private) Ltd. respectively, which will all be disposed of by this judgment.

2. It is common ground that there are in all twenty-seven industrial units in India manufacturing strawboard with an aggregate manufacturing capacity of 82,400 metric tons. Some of*the units are producing less than the installed or licensed capacity and the total production of strawboard in the year 1962 is stated to be 61,500 tons'' which roughly represents the requirements of the country for this commodity. u/s 3 of the Central Excises and Salt Act, 1944 (hereinafter called the Act), excise duties are levied on products manufactured in India at rates specified in first schedule, the 17th item of which relates to paper, and different varieties of it are taxed at varying rates. The 5th sub-item under the 17th item

relating to paper is concerned with. "strawboard other than corrugated board" and the duty mentioned in the First Schedule is 11 naye paise per kilogram. This rate before the Finance Act of 1963 was 15 naye paise per kilogram and currently under the Finance Act of 1963 the excise duty on straw board is 35 naye paise per kilogram with a surcharge of 20 per cent, the aggregate duty being 42 naye paise per milogram. Sub-item (8) relates to corrugated board while the 10th one relates to "paper and paperboard, all sorts, not otherwise specified.

3. While under Sub-section (1) of Section 37 of the Act the Central Government can make rules to "carry into effect the purposes of this Act", Sub-section (2), without prejudice to the generality of the powers under Sub-section (1) inter alia authorises the Central Government under Clause (xvii) to "exempt any goods from the whole or any part of the duty imposed by this Act". The Central Excise Rules were framed in 1944, and under Rule 8:

(1) The Central Government may from time to time, by notification in the official gazette, exempt (subject to such conditions as may be specified in the notification) any excisable goods from the whole or any part of duty leviable on such goods.

(2) The Central Board of Revenue may by special order in each case exempt from the payment of duty, under circumstances of an exceptional nature, any excisable goods.

(4) The impugned notification of the 1st of March, 1963 (marked as Annexure D in all the petitions) exempts "strawboard other than corrugated board, upto the quantity prescribed in column (1) of the table hereto annexed, cleared by any manufacturer for home consumption on or after the first day of April in any financial year, from so much of the duty leviable thereon as is in excess of the amount specified in the corresponding entry in column (2) of the said table". The table under this notification is as follows:

TABLE Quantity Amount (1) (2) On the first 125 metric tonnes Nil On the next 375 metric tonnes 9 Naya paise per kg. On the next 1000 metric tonnes 15 Naya paise per kg. On the next 1500 metric tonnes 21 Naya paise per kg.

5. There are three provisos in this notification, the second of which needs to be reproduced in full as the main attack of the Petitioners is directed against it:

Provided further that the exemption shall not apply, to any factory which produced more than 5000 metric tons of paper and paper boards, including strawboards, all sorts, in any of the immedlutsly preceding three complete funancin years Broadly speaking, the effect of this notification is that the duty of 42 naye paise per kilogram levied under the Finance Act of 1963 is moderated to a varying degree under the exemption table. In the case of units producing 125 metric tons there is to be no duty at all, while for the next 375 metric tons, the duty would be reduced to 9 naye paise per kilogram. Thus, for a unit producing between 125 And 500 metric tons the duty is reduced to 9 naye paise per kilogram. For units producing upto 1500 metric tons, the duty would be 15, naye paise per kilogram, while for units producing 3000 metric tons, the duty would be 21 naye paise per kilogram. The abatement of the levy is reduced progressively as the production becomes higher and higher. The exemption is not to apply to any unit which produces more than 5000 metric tons of "paper and paper boards, including strawboards, all sorts, in any of the immediately preceding three complete financial years.

6. It is the case of the Petitioners that the second proviso is discriminatory as it creates a classification which has no just and reasonable relationship with the object of the notification which ostensibly is to help a small-scale manufacturer of Strawboard to maintain the national requirements for the commodity. It is further submitted that the difference between the two categories created by the proviso is not real and substantial but arbitrary, there being no criterion or test to fix the boundary-line between the exempted and the non-exempted units. The notification, according to the Petitioners, is violative of the guarantee of equal protection of laws enshrined in Article 14 of the Constitution.

7. The case of each Petitioner has been presented before us very fully and forcibly by Mr. Pathak for the Jaswant Sugar Mills in petition No. 358-D of 1963, Mr. S.T. Desai for Straw Products Limited (Civil Writ No. 377-D of 1963) and Mr. Ved Vyas for the remaining two Petitioners (Civil Writs Nos. 378-D and 379-D of 1963).

8. Out of the twenty-seven units, about which referenc has been made, the four Petitioners are producing over 5,000 metric tons who, between themselves, manufacture 34,450 metric tons out of the total production of 61,500 metric tons. There are three units which produce between 3,000 to 5.000 metric tons against the installed capacity of 16.000 metric tons. The remaining 20,000 metric tons are produced by the remaining twenty units, fourteen of which produce less than 1500 metric tons and the remaining six between 1500 and 3000 tons. It is the case of each Petitioner that strawboard is a commodity for the manuafcture of which there is no real distinction between small and big units so far as the costs of production are concerned, The smallest unit in the industry is of the manufacturing capacity of 600 tons and only two units produce less than 900 tons. The uniform excise duty of 15 naye paise per kilogram before the Finance Act of 1963 resulted in an equal burden for all industrial units while the exemptions granted under the impugned notification according to the Petitioners result in an unfair advantage to the smaller units. Broadly peaking, it has been stressed before us that it is impossible to say for the purposes of this notification where a small unit ends and big one begins granting that a big unit consists of a concern which produces more than 5000 metric tons. There is no difference in quality, as stated by the Petitioners, between the products of the different units and the approximate price at which the commodity is sold in the market is 55 nP. per kilogram and the cost of production is about the same for all units. The

bigger units, according to the Petitioners, do not employ any superior or economical technique or process of production which may materially affect the cost of production, and the difference between, the sizes of various units is not such that any unit can be categorised as a small industry in the sense in which the term is ordinarily used. It is the gist of the Petitioner''s complaint that the extent of advantage per ton conferred by the impugned notification-on the small units is so substantial that the big ones would be driven out of the market altogether. The following figures have been brought in the forefront of all the petitions:

Quantity Manufactured. Extent of advantage duo to exemption per ton. _____________ _________ Rs. Upto 125 tons 420 Upto 500 " 339 Upto 1500 " 273 Upto 3000 " 220 Upto 5000 " 133

9. The Union of India, represented by the Solicitor-General has opposed these petitions on the ground that the notification has been issued in the interest of maintaining both large and small scale producers of strawboard with the object of keeping up the requirements of this commodity of this country at its proper level. The notification is designed primarily to give protection to smaller producers "from unreasonable competition by bigger producers." It is asserted that there is a difference both in price and quality of strawboard produced by different manufacturers and especially those whose plant capacity is over 5000 metric tons per annum. The price of strawboard, according to the Respondent Union, varies from region to region and the cost of production in fact "varies from factory to factory depending on varying factors." According to the Respondent, the cost of raw material which is approximately the same for all is only 20 per cent and the balance of 80 per cent represents the cost incurred in the conversion of the raw material into the finished product. This cost of conversion in the case of bigger units is much less than the cost incurred by the small units. It is denied that there is a uniform price of strawboard at 55 nP. per kilogram and it is asserted that the bigger units establish a steady market for their products because of large scale production and the various other facilities at their command. The price of strawboard being uncontrolled in the market must depend, in the last analysis, on its quality which varies with different units.

10. The learned Counsel for the Petitioners have pointedly brought to our notice that the Respondent has not submitted any figures or statistics to establish that the cost of production of a smaller unit is higher than that of a big unit. It is the linchpin of their case that the cost of production is fairly constant and unvariable in this industry and it is manifest that unless this contention is made out their case would bear a somewhat pale complexion. It is a proposition which is difficult to controvert that a larger unit is able to effect economies in production as compared to a unit of smaller size. On behalf of the Petitioners, it has been stated that instead of having a large plant they have a larger number of small units to produce the aggregate capacity of 5000 metric tons or more. Even if that be so, it seems plain that there would be an economy which cannot be regarded

as negligible in managerial expenses. It would be equally necessary for a unit producing say 2000 tons or less to have a manager as it is for a unit producing 5000 tons or more. There would likewise be economies in marketing facilities and technical supervision. It cannot be gainsaid that the technical staff employed for supervision of a small unit producing 2000 tons or less has to be just as efficient as a unit producing more than 5000 tons. Whereas the costs on such major items are about the same, it would go up in proportion in the case of small units. In the affidavit filed as a rejoinder sworn by Shri Harbans Lal, it is admitted in one of the sub-paragraphs of paragraph 18 that "it is possible in certain circumstances, smaller units may be given exemption so as to set off the effect of disadvantages and handicaps under which they are working due to their small size", and we do not think that the failure of the Respondent to give figures in this respect is in any way fatal to their case. Indeed, the figures furnished by the Petitioners themselves in their rejoinder bring home the point which has been made on behalf of the Union of India that the cost of production is not a constant element and must vary with each unit. The costs of production of the four Petitioners respectively are stated in the statement underneath and the profits made by them are also shown separately:

S. No. Name of Company Cost of Pro Profit duction per ton per ton Rs. Rs. 1. Jaswant Sugar Mills Ltd. 400.84 88.18 2. Straw Products Ltd. 442.39 92.82 3. Arvind Board & Paper 400.50 79.50 Products Ltd. 4. Ratlam Strawboard Mills 516.93 8.42 Private Ltd.

11. These figures which purport to have been derived from the balance-sheets of the Petitioners, according to them, compare unfavourably with a representative unit producing less than 5000 tons, namely, Strawboard Manufacturing Co. Ltd. of Saharanpur, which, having an installed capacity of 5400 tons per year actually produced less than 5000 tons during the relevant years. When the costs of production vary between Rs. 409/84 nP., per ton in the case of Jaswant Sugar Mills Ltd; to Rs. 516.93 nP. per ton in the case of the fourth Petitioner Ratlam Strawboard Mills Private Ltd; it is not unreasonable to conclude that they must be still higher in the case of the units producing less than 5000 tons.

Mr. Desai has contended before us that the benefits conferred on smaller units by the exemptions cannot possibly be off-set by any conceivable economies in production, or other advantages possessed by the Petitioners. In particular, it has been pointed out that a unit producing 600 tons deriving benefit at the rate of Rs. 322-50 nP. per ton gains an advantage of Rs. 1,93,500, and a unit producing 3000 tons gets the benefit at the rate of Rs. 220/- per ton and a net advantage of Rs. 6.61,500/-. It becomes impossible, ''in his contention, for the units producing more than 5000 tons to compete on such terms. It is further pressed that the notification does not extend the exemption to a factory which produces strawboard less than 5000 metric tons if its total production of all sorts of paper exceeds 5000 tons. Thus, a factory producing 4000 tons of paper and 1001 tons of strawboard will be treated at par with a factory producing 5000 tons of strawboard. Again, it is pointed out that an inefficient unit which had been producing less than 5000 tons, with a licensed or installed capacity of over 5000 Ions during the three preceding years would be able to enjoy the exemption, while a factory which had been producing 5000 tons or more would have to pay the full duty of 42 nP. per kilogram. Again, if a paper manufacturer who has been producing more than 5000 tons of paper during the three preceding years wants now to switch over to produce 2000 to 3000 tons of strawboard he will not be able to get any advantage of exemption. There, is no reasonable differentia, according to the learned Counsel, in the classification which has been created between different manufacturers of straw-board. The exemption is not made applicable to units which had been producing paper in addition to strawboard of an aggregate weight of more than 5000 metric tons.

The obvious answer to this line of approach is that the benefit to be conferred is on small scale ''manufacturers with the object of maintaining at a proper level the production of strawboard. There would not be much point in giving advantage to large scale producers of paper and allied products producing more than 5000 metric tons of paper and struwboard. When a unit produces both paper and strawboard, it is reasonable to conclude that the manufacturing unit as a whole is a large scale producer when the aggregate production is more than 5000 metric tons. The aforesaid illustrations do not, in our view, establish that the impugned notification lacks the foundation of an intelligible differentia or that it has no rational or reasonable connection with the object to be ''achieved.

12. It may be that a rough and ready line has been drawn between units which are producing less or more than 5000 metric tons but it does not mean that the Court should take upon itself the task of delineating the borderline between small and large units. The Petitioners appear to be particularly hit by the exemption granted to the units producing between 3000 to 5000 metric tons and it may be that in comparison the units producing more than 5000 metric tons, which have become larger units according to the notification, suffer a comparative disadvantage.

13. That the price of strawboard is a variable factor is brought out from a letter written by the Collector of Central. Excise, Madhya Pradesh, Vidharba, on 11th of June, 1963, to the Secretary, Central Board of Revenue New Delhi. The inspection of this document was permitted to the Petitioners and according to the figures supplied by the) Collectorate the pre-budget prices before 1st March, 1963, with respect to the products in different markets varied from Rs. 66.00 to Rs. 74.00 per quintal. The impact of the levy and the exemption resulted in an increase from Rs. 93.00 to Rs. 101.00 per quintal. Different prices ranged in Bhopal, Calcutta, Madras, Bombay, Delhi and U.P. markets. The present prices range from Rs. 90/- and Rs. 128/- per quintal in different markets in respect of different qualities. The figures which, are contained in some of these communications also show that the prices also differ with the qualities produced. From some of the samples shown to us, it appears that the larger units produce

a better quality of strawboard which can command higher prices in the market. The production of these samples has been vehemently (sic) but no attempt has been made to rebut this evidence.

The gravamen of the Petitioner''s complaint mainly lies against the units manufacturing between 3000 to 5000 tons which, according to the petitions and the rejoinder, enjoy tax concession of as much as Rs. 6,61,500/- in total tonnage of production. As we have said before, these units are marginal cases and may deserve re-examination by the Government to bring about an equatisation of the burden of the excise levy and we have no doubt that the Government alone can redress the grievance if it really exists.

14. Before examining the cases which have been cited at the Bar, it would be well to refer to the second attack which has been levelled against the notification. Though much has been said in the petitions about the unconstitutionality of the delegated legislation under which the exemptions have been granted, the attack in the arguments had been centered, within narrow bounds. It has been urged that Section 38 of the Act requires all rules made and notifications issued under this Act to be published in the official Gazette, and under the proviso, every such rule has to be laid, as soon as may be after it is made, before the Parliament while it is in session, for a total period of thirty days. It is pointed out that the impugned notification has not been laid before the Parliament. The official publication of the notification in the official Gazette has not been denied. It is said that the notification in effect embodies a rule which empowers the Government to make an exemption under Clause (xvii) of Sub-section (2) of Section 37 and should have been placed before the Parliament. In our view, there is no merit in this contention. There is the undoubted power to grant exemption under the Rules and Rule 8 of the Central Excise Rules, 1944, authorises the Central Government by notification in the official Gazette to grant exemption on excisable goods. We do not see that the combined operation of the Act and the relevant rules places any interdict on the Central Government to grant exemption by notification in the official Gazette without first placing it before the Parliament.

15. The basic principle of equal protection of the laws is stated very succinctly by Willis on Constitutional Law (1936 edition) at page 579 a statement which has been cited with approval by their Lordships of the Supreme Court in Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, of the treatise the proposition as enunciated by Willis is stated as follows:

The guaranty of the equal protection of the laws means the protection of equal laws. It forbids class legislation, but does not forbid classification which rests upon reasonable grounds of distinction. It does not prohibit legislation, which is limited either in the objects to which it is directed or by the territory within which it is to operate. It merely requires that all persons subjected to such legislation shall be treated alike under like circumstances and conditions both in the privileges conferred and in the liabilities imposed.... It does not take from the

States the power to classify either in the adoption of police laws, or tax laws, or eminent domain laws but permits to them the exercise of a wide scope of discretion, and nullifies what they do only when it is without any reasonable basis. Mathematical nicety and perfect equality are not required. Similarity, not identity of treatment, is enough. If any state of facts can reasonably be conceived to sustain a classification, the existence of that state of facts must be assumed. One who assails a classification must carry the burden of showing that it does not rest upon any reasonable basis.

It becomes obvious that the Petitioners have to make out a case of discrimination and if any state of facts can reasonably be conceived to sustain a classification, the existence of that state of facts must be assumed. The figures and statistics furnished on behalf of the Petitioners do not, in our view, make out a case of discrimination, and it seems reasonable to assume that the cost of production in the case of smaller units is much higher than in the case of large industrial units. Reference may be made to Paul A. Samuelsons'' treatise on "Economics An Introductory Analysis" (1958 edition), where in Chapter 2 at page 25, in dealing with Economies of scale and mass production, it is said:

In many industrial processes, there is an increase in efficiency as their scale increases...economics of mass production'' are often related to the following circumstances:

(1) Use of power, steam, electricity etc;

(2) Automatic self-adjusting mechanisms;

(3) Use of standardized, interchangeable parts;

(4) Breakdown of complex processes into simple repetitive operations;

(5) Specialization of function and division of labour; and many other technological factors;

...Upon thought it will be evident that each of these economies or savings comes into full play only if a large enough number of units is being produced to make it worthwhile to set up a fairly elaborate productive organization.... Economies of scale are very important in explaining why so many of the goods we buy are produced by larger companies.

16. In the case of Orient Weaving Mills (P) Ltd. Vs. The Union of India (UOI), it was held that Rule 8 of the Central Excise Rules which confers upon the Central Government the power to exempt partly or wholly any excisable goods does not suffer from the vice of excessive delegation of power to exempt and is not violative of Articles 14 and 19(1)(f) of the Constitution on the ground that the power of exemption conferred is uncontrolled and unguided. The Orient Weaving Mills which moved the Supreme Court under Article 32 of the Constitution, contended that the fifth Respondent had been granted an undue advantage by exemption although it had installed 100 looms being worked by 100 workmen as

against the Petitioners which had 160 looms operating in the mill and nearly 300 employees. The exemption was defended on the ground that it was made in the interest of small producers to encourage cottage industries and small-scale industries employing a limited number of hands. Chief Justice Sinha, speaking for the Court, observed at page 102 thus:

It is always open to the State to tax certain classes of goods and not to tax others. The legislature is the best judge to decide as to the incidence of taxation, as also to the amount of tax to be levied in respect of different classes of goods. The Act recognises and only gives effect to the well-established principle that there must be a great deal of flexibility in the incidence of taxation of a particular kind. It must vary from time to time, as also in respect of goods produced by different processes and different agencies.... It is a function of the State, in order to raise revenue for State purposes, to determine what kind of taxes shall be levied and in what manner. Its function, therefore, is to raise revenues for public purposes.

The observation of Chief Justice Sinha that "Rule 8 is as much a part of the Statute as Section 37(2) Clause (xvii)" would also negative the point which has been raised by Mr. Pathak that Section 37 itself is unconstitutional and ultra vires. No specific reason has been adduced to enable us to hold that Section 37 empowering the State Government to make rules or the 17th clause of Sub-section (2) is in derogation of the legislative power of the Union. No such point was raised in the case of the Orient Weaving Mills and it was assumed by their Lord ships that Section 37 itself was a piece of good legislation even though Rule 8 made in pursuance thereof was challenged.

17. In another case before the Supreme Court, reported in the same volume, British India Corporation Ltd. Vs. Collector of Central Excise, the Petitioner, a manufacturer of Flex Shoes, moved under Article 32 to strike down imposition of excise duties on the ground that it created a discrimination in the trade as it was imposed on bigger manufacturers. The contention was repelled by Mr. Justice Hidayatullah, delivering the judgment of the Court, in these words:

Manufacturers who employ 50 or more workers can be said to form a well-defined class. Manufacturers whose manufacturing process is being carried on with the aid of power exceeding 2 H.P. are also a well-defined class.... It is well known that the bigger manufacturers are able to effect economies in their manufacturing process and their outturn being both largo and rapid they are able to undersell small manufacturers. If this were not so mass production would lose all its advantages.... Therefore, in imposing the Excise Duty, there was a definite desire to make an exemption in favour of the small manufacturer who is unable to pay the duty as easily, if at all as the big manufacturer. Such a classification in the interests of co-operative societies, cottage industries, and small manufacturers has often to be made to give an impetus to them and save them from annihilation in competition with large industry.

The ratio decidendi of these authorities, in our view is fully applicable to the facts of the present case where the exemptions on a graduated scale have been manifestly made in the interests of small manufacturers to maintain national production of straw-board at a certain level.

18. The flexibility permitted to the legislature in fiscal matters has been well recognised and it came for review latterly in a decision of the Supreme Court in Khandige Sham Bhat v. Agricultural Income Tax Officer, Kasaragod AIR 1963 SC 591 where it was held that

though a law ex facie appears to treat all that fall within a class alike, if in effect it operates unevenly on persons or property similarly situated, it may be said that the law offends the equality clause. It will then be the duty of the Court to scrutinise the effect of the law carefully to ascertain its real impact on the persons or property similarly situated.... To state it differently, it is not the phraseology of a statute that governs the situation but the effect of the law that is decisive. If there is equality and uniformity within each group, the law will not be condemned as discriminative, though due to some fortuitous circumstances arising out of a peculiar situation some included in a class get an advantage over others, so long as they arc not singled out for special treatment. Taxation law is not an exception to this doctrine. But in the application of the principles, the Courts in view of the inherent complexity of" fiscal adjustment of diverse elements, permit a larger discretion to the Legislature in the matter of classification, so long it adheres to the fundamental principles underlying the said doctrine. The power of the Legislature to classify is of wide range and flexibility so that it can adjust its system of taxation in all proper and Reasonable ways.

19. We have thus to ask ourselves the question whether the exemption creating a classification between large and small units may be termed discriminatory. The object of the classification is not assailed and it is only the limit of 5000 metric tons which has been bitterly opposed. The limit has to be drawn somewhere and the Court though bound to examine the effects of the limits so fixed and its incidence on the various types of producers, cannot substitute its own judgment for that of the Executive. Mr. Desai contends that no limit could at all be fixed and the duty once levied cannot be exempted at all. This contention obviously has been urged to avoid the necessity of asking the Court to fix the limit itself. There must be some hardship involved some where when a limit is so fixed and we have already indicated that there may be found some case of hardship for the Petitioners as compared with the units producing between 3000 to 5000 metric tons but there is nothing in the material which has been brought before us to justify a declaration that the exemption granted by the notification is discriminatory either in its form or operation.

Mr. Pathak has placed great reliance on behalf of the Petitioners on a recent decision of the Supreme Court in Karimbil Kunhikoman Vs. State of Kerala, where the constitutionality of the Kerala Agrarian Relations Bill and especially the scale of compensation granted had been assailed. The compensation which had become payable under the Act was reduced in progressive cuts as the amount of compensation increased and according to the Petitioners this amounted to discrimination between persons similarly situate, and therefore, violative of Article 14 of the Constitution. The differentiation made in the rates of compensation was found to be discriminatory and Mr. Justice Wanchoo observed at page 738 thus:

We could understand once the purchase price or the market value had been determined a uniform cut therefrom for all persons entitled to compensation. That would then raise the question of adequacy of compensation and unless the cut was so large as to make the compensation illusory the cut may be protected by Article 31(2). But in the present case there is not a uniform cut on the purchase price or the market value for all persons, the cut is higher as the purchase price or the market value gets bigger and bigger after the first slab of Rs. 15,000/-.

The learned Judge, however, made a clear distinction between a fiscal measure which levied different rates under a slab system and the one in which property had been acquired under the powers of eminent domain. The "ability to pay" test which is good enough for taxation measures was not considered suitable for cases where property has been acquired and persons similarly situate are treated differently in the matters of compensation. There can be no analogy between the case in point and the decision of their Lordships of the Supreme Court in the Kerala case.

20. This principle has also been affirmed by the Supreme Court in Raja Jagannath Baksh Singh Vs. The State of Uttar Pradesh and Another, , it is stated by Mr. Justice Gajendragadkar that:

It is also true that the legislature is competent to classify persons or properties into different categories and tax them differently, and if the classification thus made is rational, the taxing statute cannot be challenged merely because Different rates or taxation are prescribed for different categories of persons or objects. But, if in its operation; any taxing statute is found to contravene Article 14; it would be open to Courts to strike it down as denying to the citizens the equality before the law guaranteed by Article 14.

On carefully examining the merits of the present case, we find that the challenge made to the notification cannot be sustained and it can "succeed not merely by showing that the tax levied is unreasonably high or excessive, but by proving other relevant circumstances which justify the conclusion that the Statute is colourable and as such, amounts to a fraud" (as observed by Mr. Justice Gajendragadkar at page 1572).

21. The learned Solicitor-General has contended, and in our opinion rightly, that a classification should be upheld even if some reasons could be conceived for its justification as stated by Willis on Constitutional Law. He has placed reliance on an American case of Madden v. Kentucky (1940) 84 Law Ed 590 at p. 593 where

it is stated in head-note 2 that:

The broad discretion as to classification possessed by a legislature in the field of taxation has long been recognized...the passage of time has only served to underscore the wisdom of that recognition of the larger area of discretion which is needed by a legislature in formulating sound tax policies.... It has, because of this, been pointed out that in taxation, even more than in other fields, legislatures possess the greatest freedom in classification. Since the members of a legislature necessarily enjoy a familiarity with local conditions which this Court cannot have, the presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes.

22. Our attention has been drawn by him to the East India Tobacco Co. Vs. State of Andhra Pradesh, , where another passage of Willis on Constitutional Law at page 587 was approved in the judgment delivered by Venkatarama Aiyar J.:

A State does not have to tax everything in order to tax something. It is allowed to pick and choose districts, objects, persons, methods and even rates for taxation if it does so reasonably.... The Supreme Court has been practical and has permitted a very wide latitude in classification for taxation.

In short, the submission of the Solicitor-General is that the provision with regard to exemption is of a practical nature and varies from time to time, place to place and industry. The matter can be dealt with only by rules according to the exigencies and the realities of the situation. The Government has given due weight to the consideration of maintaining small-scale producers of strawboard and the total output of the units producing under 5000 metric tons being more than one-half of the total required production, they had become a worthy object of encouragement the government having reached the conclusion that they are at a disadvantage as compared to larger units. This conclusion broadly and substantially does not appear to be discriminatory and comes within the rule of flexibility which is permissible to the legislature.

We see nothing in the authority which was cited in reply by Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another, 2, to justify us in holding that the impugned notification is discriminatory. In Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another, the constitutional validity of the Travancore-Cochin Land Tax Act, 1955, was challenged on the ground that the levy of a tax at a flat rate of Rs. 2/,- per acre imposed very unreasonable restrictions on the right to hold property. Mr. Desai pointedly drew our attention to the following passage in the judgment of Chief Justice Sinha at pages 86-87 (of SCR) : at p. 556 of AIR:

The Act could not have been cast in more general terms and the proceedings under the Act could not have been more summary. It has thus the merit of brevity as also of simplicity, derived from the fact that a tax is levied at a flat rate, irrespective of the quality of the land and consequently of its productive capacity. Under the Act, the charge has to be levied, whether or not any income has been derived from the land. The Legislature was so much in earnest about levying and realising the tax that it could not even wait for a regular survey of the lands to be Assessed with a view to determining the extent and character of the land.

In the instant case the production capacity is the primary consideration in making the classification and the grounds which prevailed with their Lordships in declaring the legislation to be bad do not manifestly support the contention of the Petitioners counsel. Here, the exemption is made within well-defined categories and its foundational basis is that the small producers deserve consideration from the hands of the Executive Government to enable them to withstand the competition of larger producers.

23. In our view, the petitions must fail as no case of discrimination under Article 14 has been made out, though we would repeat that there may be some hardship to the Petitioners in respect of the exemptions granted to the units producing between 3000 to 5000 metric tons and beyond this observation there is nothing which calls for interference by this Court. The petitions fail and are dismissed. In the circumstances, we would leave the parties to bear their own costs.