

(1957) 10 KL CK 0002

In the High Court Of Kerala

Case No : O.S. No's. 41, 42 and 53 of 1950 and A.S. No's. 384 and 349 of 1953 (M) and 651 of 1954 (M)

State of Madras

APPELLANT

Vs

The Cochin Coal Co.

RESPONDENT

Date of Decision : 09-10-1957

Acts Referred:

Citation : AIR 1958 Ker 146 : (1958) 9 STC 69

Hon'ble Judges : P.T. Raman Nayar, J;K. Sankaran, J;G. Kumara Pillai, J

Bench : Full Bench

Advocate : K.N. Narayanan Nair, Government Pleader, for the Appellant; S. Nataraja Iyer, V.N. Sreenivasa Rao, C.M. Devan, V. Seshadri, K.S. Ramamurthi and V.N. Sivaramakrishna Iyer, for the Respondent

Final Decision : Dismissed

Judgement

Raman Nayar, J.—The judgment of Sankaran and Raman Nayar, JJ., was delivered by Raman Nayar, J.—These appeals arise out of three suits brought by the same plaintiff (a company called the Cochin Coal Company Ltd.) against the State of Madras for the refund of sales tax collected for the years ending 31st March, 1946, 31st March, 1947, and 31st March, 1948, under the provisions of the Madras General Sales Tax Act. The suits, O. S. Nos. 41, 42 and 53 of 1950 on the file of the Subordinate Judge's Court, Kozhikode, were decreed by that court (excepting to a very small extent which may be ignored), the contention of the plaintiff that the sales on which the tax was assessed and collected took place, not within the Province of Madras but within the Indian State of Cochin, being upheld. (All references to territorial units will be in accordance with the state of affairs prevailing at the time). The State has appealed. A. S.No. 651 of 1954 (withdrawn to the High Court from the District Court, South Malabar, where it was A. S. No. 4 of 1953) is its appeal from O.S. No. 41; A. S. No. 348 of 1953 its appeal from O. S. No. 42 ; and A. S. No. 349 of 1953, from O. S. No. 53.

2. The only question in the appeals is whether the sales in question took place in

the Indian State of Cochin as contended by the plaintiff or in the District of Malabar in the Province of Madras as contended by the defendant.

3. The plaintiff company, as its name indicates, trades in coal and has its office in Fort Cochin in the Malabar District of the Madras Province. It has its coal dump in an island called the Candle Island, also in the Malabar District. The sales in question are of three kinds: F. O. R. or free on rail (Cochin Harbour Terminus); F. O. W. or free on walloms (wallom is Malayalam for boat); and T. I. B. or trimmed into bunkers. O. S. No. 42 of 1950 and O. S. No. 53 of 1950 concern themselves only with T. I. B. sales but in O. S. No. 41 of 1950 all three kinds of sales are involved, F. O. R. sales amounting to Rs. 1,82,771-5-9, F. O. W. sales to Rs. 45,139-13-4 and T. I. B. sales to Rs. 1,37,137-8-6.

4. The evidence adduced by the plaintiff which stands uncontroverted and which has been accepted by the court below shows, that with regard to F. O. R. sales, delivery in execution of the contract is effected straight from the steamer in which the coal is brought into wagons drawn up on the railway siding alongside the jetty (called the B. T. Jetty) to which the steamer is moored. The railway siding, the jetty, and the water in which the steamer stands, are all located in Willingdon Island which forms part of the territory of the State of Cochin.

5. In F.O.W. sales, delivery is from the steamer bringing the coal to walloms drawn up alongside the steamer.

6. In T. I. B. sales, coal is sold (on contracts entered into with steamship agents) for the use of steamers in port. The coal is brought from the company's dump in Candle Island by the company's contractor. And the requisite quantity is trimmed into the bunkers of the steamer. It has been shown that in all but a very few cases the steamers were in Cochin State waters.

7. So far as F. O. W. and T. I. B. sales are concerned, the learned Government Pleader has not attempted to assail the finding of the lower Court that property in the goods passed (except to the very small extent to which it has disallowed the plaintiff's claim) in Cochin State waters. In F. O. W. sales it would appear that the coal was never within the limits of the Madras Province. In the case of T. I. B. sales, however, the coal was at the time of the contract of sale in Candle Island within the Madras Province although the delivery and the consequent passing of property, took place within the Cochin State. But this makes no difference since all the transactions with which we are concerned took place before Explanation II to Section 2(h) of the Madras General Sales Tax Act (which defines "sale") was introduced by Madras Act XXV of 1947. It would therefore follow from the Supreme Court decision in Poppatlal Shah Vs. The State of Madras, that the Province of Madras cannot levy sales tax in respect of either F. O. W. or T. I. B. sales.

8. Coming now to the F. O. R. sales, here also it is not disputed that property passes when the coal is loaded into the railway wagons. The Cochin Harbour Terminus Station, as also the siding to the jetty, are in Willingdon Island which,

as we have already said, is within the limits of the Cochin State. But it is contended on behalf of the defendant that the land occupied by the railway was ceded to the British Government by the Raja of Cochin, and that this land forms part of the Malabar District for all purposes of Government. In the court below reliance was placed in support of this contention on a notification issued by the Government of India in 1906, a copy of which has been marked as Ex. B-16, and which by itself cannot, of course, prove the cession. But here we have been taken through the treaty or agreement by which the cession was effected. It is printed (as No. 25) at page 267 of Vol. X of Aitchison's Treaties and it runs as follows :--

Agreement entered into by the Raja of Cochin regarding the cession of jurisdiction on the Cochin portion of the Shoranur-Cochin Railway, 1899.

I, Rama Varma, Raja of Cochin, hereby cede to the British Government full and exclusive power and jurisdiction of every kind over the lands in the said State, which are or may hereafter be, occupied by the Shoranur-Cochin Railway (including all lands occupied for stations, for out-buildings, and for other railway purposes) and over all persons and things whatsoever within the said lands.

P. Rajagopala Chari, Diwan of Cochin. The Palace, Trippunithurai, Rama Varma, The 22nd day of August, 1899. Raja of Cochin.

9. That this agreement did not cede the lands themselves but only jurisdiction over them and that the lands remained part of the territory of Cochin State is apparent from its very wording as also from the circumstance that the British Government treated the lands as foreign territory and provided for the exercise of its jurisdiction over them by orders made under the (British) Foreign Jurisdiction Act, 1890 (53 and 54 Viet. c. 37).

10. It is nevertheless argued that the cession of "full and exclusive power and jurisdiction of every kind over the lands" is virtually a surrender of all the attributes of sovereignty including the power of taxation, and that the agreement gave the kernel of de facto sovereignty to the British Government leaving the Raja of Cochin with the bare shell of de jure title.

11. We are by no means certain that this is so. But, it is unnecessary for us to decide the question for, assuming that, by virtue of the agreement, the British Government acquired the power of taxation over the lands occupied by the railway, it will still be necessary for the defendant to show that this power was assigned by it to the Province of Madras. For this reliance is placed on the notification in Ex. B-16 which reads thus :--

Notification of the Government of India, Foreign Department No. 5096--1-B, d/ Fort William, dated 27th December, 1906.

Whereas H. H. the Maharaja of Travancore and H. H. the Raja of Cochin have ceded to the British Government full and exclusive power and jurisdiction of every kind over the lands lying within their respective States which are, or may

hereafter be occupied by the Shoranur-Cochin Railway (including the lands occupied by stations, by outbuildings, and for other railway purposes) and over all persons and things whatsoever within the said lands:

In exercise of such power and jurisdiction and of the powers conferred by the Indian (Foreign Jurisdiction) Order in Council, 1902, the Governor-General-in-Council is pleased to provide as follows for the administration of justice within the said lands :--

(i) The said lands shall be deemed to be part of the Cochin taluk of the Malabar district.

(ii) All laws for the time being in force in the Malabar district of Madras Province shall be deemed to be in force in the said lands.

(iii) The Governor-in-Council of Fort St. George and all officers subordinate to the Government of Madras who, for the time being exercise authority within the Cochin taluk of the Malabar district, shall exercise the like authority within the said lands.

* * * * (iv) All courts having jurisdiction within the Cochin taluk of the Malabar district shall have the like jurisdiction within the said lands.

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It is said that under Clause 1 of paragraph 2 of this notification the railway lands must be deemed to be part of the Malabar District and that by reason of Clause 2 all laws for the time being in force in the Malabar District, including the Madras General Sales Tax Act must be deemed to be in force in the said lands. But this argument loses sight of the vital qualifying words, "for the administration of justice" in the body of the paragraph. The clauses that follow are provisions for the administration of justice, and even as a matter of pure grammatical construction the qualifying words, "for the administration of justice", must be read into each clause. It is only for that purpose namely, for the administration of justice, that the lands are deemed to be part of the Malabar District, and the laws in force deemed to be in force in the said lands. The levy of a sales tax is certainly not part of the administration of justice, and it would therefore follow that for that purpose the lands are not part of the Malabar District and that the laws in force there are not in force in the said lands. In other words, the Province of Madras has no jurisdiction whatsoever over the lands in so far as the levy of sales tax (or for that matter anything unconnected with the administration of justice) is concerned.

12. The Order in Council of 1902, under which the notification purports to have been issued, was made under the Foreign Jurisdiction Act, 1890, and is reproduced at page 418 of Ilbert's "Government of India" (Third edition). A study of the order, as of the provisions of the Act, makes it fairly plain that jurisdiction to levy taxes could not have been assumed, but it is unnecessary to labour the point since, as we have found, it was not in fact assumed.

13. We hold that the F.O R. sales also took place outside the Province of Madras.

14. It follows from what we have said that no tax was leviable in respect of any of the sales covered by the three suits (except to the small extent allowed by the court below) and that the decrees for refund in favour of the plaintiff are correct.

15. The appeals fail and are dismissed with costs.

Kumara Pillai, J.

16. I agree to the dismissal of these appeals, and except as regards one matter I am in general agreement with the opinion expressed in the judgment of my learned brothers. While I agree with them that, in view of the language used in the Notification of the Government of India, Foreign Department, No. 5096-1-B, d/Fort William, dated 27th December, 1906, which directs that the lands occupied by the Shoranur-Cochin Railway shall be deemed to be part of the Malabar District only for the administration of justice, it is unnecessary to decide in these cases whether, by the Treaty of the 22nd August, 1899, the Raja of Cochin had surrendered to the British Government all the attributes of sovereignty including the power of taxation or not, I desire to make it clear that I do not share in the doubt expressed by my learned brothers in the sentence "we are by no means certain that this is so" in paragraph 11 of their judgment. I am inclined to hold that by the said Treaty all the attributes of sovereignty including the power of taxation over the lands occupied by the Shoranur-Cochin Railway were surrendered by the Raja of Cochin to the British Government. But, of course, the surrender to the British Government would not empower the legislature of the Province of Madras to exercise the power of taxation over these lands unless the British Sovereign had lawfully delegated that power to the said legislature. I would put my concurrence to the dismissal of the appeals on this ground.