(1993) 02 KL CK 0073

In the High Court Of Kerala

Case No : O.P. No. 2486/89-U

Sudeendra Nair and Others APPELLANT

Vs

State of Kerala and Others RESPONDENT

Date of Decision : 02-02-1993

Acts Referred:

Constitution of India, 1950 — Article 14
Kerala General Sales Tax Act, 1963 — Section 10, 5A

Citation : (1993) 02 KL CK 0073

Hon'ble Judges : T.L. Viswanatha Iyer, J

Bench : Single Bench

Advocate : S. Parameswaran, for the Appellant; S. Vijayan Nair, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Nayar, J.—I had declined to interfere in a similar case, O.P. No. 9935 of 1988. The challenge is one of discrimination against manufacturers of wire-cut bricks like the Petitioners. I shall just point out as to how counsel for the Petitioner developed his arguments. A notification. Ext. P-1, was issued on 19th November 1973 by the Government of Kerala u/s 10 of the Kerala General Sales Tax Act, 1963 (the Act) exempting the purchase of firewood and clay by manufacturers of tiles for use in the manufacture of tiles within the State from the levy of tax u/s 5A of the Act. Another notification, Ext. P-3, was issued on 31st March 1979 by which the purchase of firewood and clay by manufacturers of country bricks for use in their manufacture of country bricks by manual labour was exempted from payment of tax, provided the turnover of the manufacture did not exceed Rs. 20,000 in a year. Another notification, Ext. P-2, was issued on the same day 31st March 1979 exempting country bricks sold by manufacturers of country bricks whose total turnover did not exceed Rs. 20,000 a year from levy of Tax. Petitioners'' grievance is that manufacturers of country bricks with turnover of less than Rs. 20,000 in a year have been given the benefit of exemption from payment of tax on the sale of their products as also on the purchase of firewood and clay, for use in the manufacture, but no such exemption is given to manufacturers of wire-cut bricks. This is discriminatory and violative of Article 14 of the Constitution. The same argument was raised before K.A. Nayar, J. without success in O.P. No. 9935 of 1983. But in deference to the arguments addressed at length by counsel for the Petitioners, I shall deal with the point afresh.

2. Counsel for the Petitioners referred to the decisions of the Supreme Court in Moti Das Vs. S.P. Sahi, The Special Officer In Charge of Hindu Religious Trusts and Others, , The Anant Mills Co. Ltd. Vs. State of Gujarat and Others, and Ayurveda Pharmacy and Another Vs. State of Tamil Nadu, . In the first of these cases the Supreme Court seated that while Article 14 forbids class legislation, it does not forbid reasonable, classification for the purpose of legislation, and in order to pass the test of permissible classification, two conditions must be fulfilled, namely (1) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from Ors. left out of the group, and (2) that the differentia must have a rational relation to the object sought to be achieved by the statute. This was reiterated in the second case of The Anant Mills Co. Ltd. Vs. State of Gujarat and Others, . The third case referred to was one in which the distinction made in Tamil Nadu between Arishtams and Asavams on one side and medicinal preparations on the other for the purpose of sales tax was struck down as violative of Article 14 of the Constitution. The Supreme Court held that Arishtams and Asavams are medicinal preparations, and even though they have a high alcohol content, so long as they continue to be identified as medicinal preparations, they must be treated for the purpose of the Sales Tax Law, in like manner as medicinal preparations generally, including those containing a lower percentage of alcohol. Thus the levy of higher rate of sales tax on these two ayurvedic medicinal preparations on the ground that they contained a high percentage of alcohol was held discriminatory.

3. The law is settled that classification by itself is not bad provided it has a reasonable basis. The State is entitled to classify the objects even for the purpose of the law of taxation, provided a reasonable basis is discernible for the classification effected by them. As was observed by the Supreme Court in Khandige Sham Bhat v. Agricultural Income Tax Officer AIR 1963 S.C. 591 if there is equality and uniformity within each group, into which the classification is made, the law will not be condemned as discriminative. Taxation law is not an exception to this doctrine. In view of the inherent complexity of fiscal adjustment of diverse elements, the Constitution permits a larger discretion to the Legislature in the matter of classification for the purpose of taxation so long as it adheres to the fundamental principles underlying the said doctrine. So long as those within the net of taxation can be legitimately classified together indicating an intelligible differentia vis-a-vis those left out and the classification so made bears a rational nexus with the object sought to be achieved the classification is permissible and is not violative of Article 14 of the Constitution.

4. The question, therefore, is whether there is a reasonable classification in so far as small manufacturers of country bricks are concerned, while granting them the benefit of exemption under Exts. P-2 and P-3.

5. Though the point raised is one of discrimination and violation of Article 14 of the Constitution, and the writ petition was filed as early as on 17th March 1989, the Respondents have not chosen to file any counter affidavit explaining the classification which they have made between country bricks manufacturing units and wire-cut bricks manufacturing units. But I do not find any reason to brand the two notifications as discriminatory merely because of the laxity on the part of the Respondents in filing an affidavit explaining the classification.

6. The exemption under Exts. P-2 and P-3 is only in favour of manufacturers of country bricks whose turnover does not exceed Rs. 20,000 in a year. It is evidently intended for the benefit of the small manufacturers of country bricks which are generally used by the poorer sector of the population. The purpose of the exemption to country bricks manufacturers is firstly to the smaller units among the country brick manufacturers, and secondly to help the poorer sectors of the people whose country bricks for their purposes. It is intended to provide an incentive to the poorer sections to resort to manufacture of country bricks (especially by employing manual labour) to improve employment potential and make bricks available to poor people at reasonable rates. This is the underlying idea in confining the relief to small manufacturers, that too of country bricks and that too employing manual labour. As observed in Federation of Hotel and Restaurant Association of India, etc., Vs. Union of India (UOI) and Others, in order to ascertain whether persons are similarly placed, one much look beyond the classification and to the purport of the law. Mathew, J. observed in S. Kodar Vs. State of Kerala, that a large dealer occupies a position of economic superiority by reason of his volume of business and to make the tax heavier on him absolutely and relatively is not arbitrary discrimination but an attempt to proportion the payment to a capacity to pay and thus to arrive in the end at a more general equality. See also Kerala Hotel and Restaurant Association and others Vs. State of Kerala and others, .

7. It cannot therefore be said, that in granting exemption to such weaker sections of the people, or for their benefit, Government has transgressed the limits set by Article 14 against classification inasmuch as there is a very sound rationale behind the classification, and the benefits given to the smaller country bricks manufacturing units. This is sufficient to dispel the arguments of counsel for the Petitioners, wire-cut brick manufacturers whose units and investments are larger, products costlier and whose markets are expansive and among the more affluent in society. Therefore, there is no reason to brand Exts. P-2 and P-3 as discriminatory or as violating Article 14 of the Constitution.

8. In this view of the matter, there is no scop for considering the Petitioners'' prayer for directing the Respondents to remove the discrimination by extending the benefits of Exts. P-2 and P-3 to manufacturers of wire-cut bricks also even

assuming, that it is possible for this Court to entertain such a request.

Original Petition is accordingly dismissed.

