

(1962) 11 MAD CK 0026
In the Madras High Court
Case No : T.C. No. 17 of 1961

T. Mariasingha Chettiar

APPELLANT

Vs

The State of Madras

RESPONDENT

Date of Decision : 27-11-1962

Acts Referred:

States Reorganisation Act, 1956 — Section 119, 12, 3, 4, 7

Citation : (1963) 1 MLJ 365 : (1963) 14 STC 424

Hon'ble Judges : Srinivasan, J; Jagadisan, J

Bench : Division Bench

Advocate : V. Ganapathi Subramania Iyer, for the Appellant; G. Ramanujam, for Additional Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Jagadisan, J.—The petitioner is a dealer in various kinds of oil at Asaripallam and Vadaseri within the district of Kanyakumari. Before the reorganisation of States in 1956 they were places within the Travancore-Cochin State. In respect of his turnover for the year 1956-57, he claimed that the sum of Rs. 91,755-11-0 should be excluded from the taxable turnover. This sum related to sales of laurel oil effected after 1st November, 1956, to dealers at Alleppey and other places situated in the Kerala State. The assessment in respect of that year was governed by the Travancore-Cochin General Sales Tax Act. Under that Act the assessment was to be made only on the last purchaser in the State. The contention of the petitioner was that he was not the last purchaser and that the purchasers at Alleppey and other places in the Kerala State should alone be treated as the last purchasers for the purposes of levy under the Travancore-Cochin Act. This contention was overruled by the Deputy Commercial Tax Officer, Nagercoil, and also by the Commercial Tax Officer, Tirunelveli. The petitioner's further appeal to the Sales Tax Appellate Tribunal, Madras, raising the same question was also not successful. Hence this revision petition has been preferred by the assessee.

2. The short point that arises for decision in this case is whether the petitioner is liable to be assessed to sales tax under the Travancore Cochin Act on the footing that he is the last purchaser in "the State". If the word "State" is to be understood as the Madras State undoubtedly the petitioner is the last purchaser. If however the word "State" has to be read and understood as the former Travancore-Cochin State, part of which has become merged with the Madras State and part of which has gone into the making of the Kerala State, then the last purchaser would be the Alleppey purchasers or other purchasers within the erstwhile Travancore-Cochin State. There is no dispute that it is the Travancore-Cochin General Sales Tax Act alone that applies, and there is also no dispute that under that Act, it is only the last purchaser within the State who can be assessed in respect of sale of oils. In order to ascertain the true position whether the petitioner can be assessed to tax as the last purchaser we have to refer to the provisions of the States Reorganisation Act.

3. This Act received the assent of the President on 31st August, 1956. The "appointed day", that is the day on which the newly constituted States came into existence, is the first day of November, 1956. "Existing State" is defined as a State specified in the First Schedule to the Constitution at the commencement of this Act. The relevant provisions of the Act, which need be referred to for the purpose of this case, are Sections 4 and 119. They are as follows:

4. Transfer of territory from Travancore-Cochin to Madras.-As from the appointed day, there shall be added to the State of Madras the territories comprised in the Agastheeswaram, Thovala, Kalkulam, and Vilavancode taluks of Trivandrum district and the Shencottah taluk of Quilon district; and thereupon-

(a) the said territories shall cease to form part of the existing State of Travancore-Cochin ;

(b) the territories comprised in the Agastheeswaram, Thovala, Kalkulam and Vilavancode taluks shall form a separate district to be known as Kanyakumari district in the State of Madras ; and

(c) the territories comprised in the Shencottah taluk shall be included in, and become part of, Tirunelveli district in the State of Madras.

* * * * 119. Territorial extent of laws.-The provisions of Part II shall not be deemed to have effected any change in the territories to which any law in force immediately before the appointed day extends or applies, and territorial references in any such law to an existing State shall, until otherwise provided by a competent Legislature or other competent authority, be construed as meaning the territories within that State immediately before the appointed day.

4. We may also refer to Section 12 of the Act which reads :

Amendment of the First Schedule to the Constitution.-As from the appointed day, in the First Schedule to the Constitution, for Part A, Part B and Part C, the following Parts shall be substituted, namely:-

"Part A

Name Territories * * * * 7. Madras The territories which immediately before the commencement of this Constitution were either comprised in the Province of Madras or were being administered as if they formed part of that Province and the territories specified in Section 4 of the States Reorganisation Act, 1956, but excluding the territories specified in Sub-section (1) of Section 3 and Sub-section (1) of Section 4 of the Andhra State Act, 1953, and the territories specified in Clause (b) of Sub-section (1) of Section 5, Section 6 and Clause (d) of Sub-section (1) of Section 7 of the States Reorganisation Act, 1956." * * * *

5. On and from the appointed day, the area comprised in the Agas these waram, Thovala, Kalkulam, and Vilavancode taluks of Trivandrum district, became part of the Madras State and came within the unit of the Kanyakumari district. One thing about which there can be no dispute is that these territories ceased to be part of the former Travancore-Cochin State which itself ceased to exist and the new Kerala State came into being.

6. Now Section 119 is the key section and it is the interpretation of that provision which is now debated before us. Learned counsel for the petitioner contends that notwithstanding the formation of the State of Kerala and the merger of part of the erstwhile Travancore-Cochin State into the Madras State, the old laws which governed the territories previously in existence as the Travancore-Cochin State should apply and should operate as if no change in the territories has been effected at all. The contention urged on behalf of the State is in substance, Section 119 continues the old laws governing the territories and that a fiction cannot be imported, deeming that there is no change of territories from one State to another. The meaning of the section is fairly indicated by its terms. There is no doubt scope for improving the language of the section to give expression to what seems to us to be an obvious intention of the Legislature. But it is not so obscure as to be incomprehensible. Nor is it so clear as to support the contention of the learned counsel for the petitioner. In our opinion, the proper interpretation of the provision is that the laws prevailing in the erstwhile State from which the territories, newly added to another State, emerged, should continue to be in force, notwithstanding the changes in the territories and formation and reorganisation of new States. But in the application of such laws regard must be had to the concept of States as constituted under the Act. It is not possible to take the view that for the purposes of application of pre-existing laws effect should not be given to the mandatory provisions of the Act which undoubtedly on and from the appointed day creates and reorganises the States. In other words, old laws which were in operation in the territories which formed the subject-matter of reorganisation and reconstitution would apply but only consistent with the changed state of affairs resulting from the operation of the Act, in the matter of territorial distribution.

7. Learned counsel for the petitioner relied upon the decision of the Andhra Pradesh High Court in *Satyanarayanamurthi v. Income Tax Appellate Tribunal* AIR

1957 A.P. 123 in support of his contention that for purposes of the application of the Travancore-Cochin General Sales Tax Act, the Kanyakumari district must still be deemed to be part of the now defunct Travancore-Cochin State, We do not think that this case lends him any assistance. That case raised the question whether the Hyderabad Court Fees Act was applicable to the Telangana area as it was before the States Reorganisation Act after the area became part of the Andhra Pradesh State from 1st November, 1956. Telangana area formed part of the State of Hyderabad till 1st November, 1956. Section 3 of the States Reorganisation Act, 1956, added the territories comprised in that area to the Andhra Pradesh State. A writ was sought to issue against the Income Tax Appellate Tribunal constituted in the City of Hyderabad. Though the Telangana area was integrated with the Andhra Pradesh the laws of that territory were preserved under the States Reorganisation Act by virtue of Section 119 of the Act. Whether the provisions of the Hyderabad Court Fees Act would apply to the proceedings was the question that was raised. A Division Bench of the Andhra Pradesh High Court held that the law obtaining in the State of Hyderabad before the appointed day (1st November, 1956) would govern the rights of parties in the Telangana area. The law of the court fees obtaining before that date in the State of Hyderabad, namely, the Hyderabad Court Fees Act would govern the proceedings arising within that area. Therefore the petition for a writ of mandamus against a Tribunal (income tax Appellate Tribunal) situated in Hyderabad City should be governed by the Hyderabad Court Fees Act, and not by the Andhra Court Fees and Suits Valuation Act. In reaching this conclusion, Subba Rao, C.J., as he then was, observed thus at page 127 :

Section 119 enacts that, for the purpose of the application of the laws, there must be deemed to have been no change in the territories, i.e., though Telangana is now a part of the State of Andhra Pradesh, the laws of the State of Hyderabad will be in force in that area as if there was no disintegration of that area of the State of Hyderabad and integration of the same with the State of Andhra Pradesh. The laws in that area would continue to prevail and govern the rights of parties till the competent Legislature or other competent authority otherwise provides.

8. This decision is authority for the position that Section 119 of the States Reorganisation Act is a transitory provision which extends and continues the laws prevailing in the merged territories as if there had been no merger at all till Parliament or other competent authority replaces those laws by enacting new laws or by adapting other laws in the State in which they became merged. We respectfully agree with this decision but as stated already, it is no authority for the contention now urged before us by learned counsel for the petitioner.

9. In T.C. No. 100 of 1958 a Division Bench of this Court, to which one of us was a party, had occasion to consider the proper interpretation of Section 53 of the Andhra State Act, the language of which is almost identical with the language of Section 119 of the States Reorganisation Act. Section 53 of the Andhra State Act

reads :

Territorial extent of laws.-The provisions of Part II shall not be deemed to have effected any change in the territories to which any law in force immediately before the appointed day extends or applies, and territorial references in any such law to the State of Madras or of Mysore shall, until otherwise provided by a competent Legislature or other competent authority, continue to have the same meaning.

10. It is not necessary to refer to the facts of that case and it is enough to refer to the following observation in that judgment :

The result of Section 53 would to our minds be that an Act of the Madras Legislature in force in the State of Andhra by reason of Section 53 would be regarded as an Act applicable to the State of Andhra but different from the same Act as applicable to the State of Madras. It would also follow that any order made by the composite State of Madras under the provisions of the Act would be an order purporting to be made in relation to the areas included in the State of Andhra ; that is to say, an order made by the composite State of Madras in relation to the entire area prior to 1st October, 1953, would on and after 1st October, 1953, apply to each of the areas as if it were an order made by the respective States. To hold otherwise would lead to the anomalous position that an order made by the State of Madras would of its own force be valid in the State of Andhra the territory of which has been taken out of the jurisdiction of a law of the Madras State.

11. This decision also emphasises the true position that the formation and reconstitution of States do not abruptly terminate the application of the prevailing laws in the territories. Continuance of old laws until such time as they are substituted by other laws is quite essential to avoid administrative confusion and to preserve the rights of subjects. New laws have to be put in operation in the merged territories only after a lapse of time after the appointed day, so that the subject might adjust himself to the situation that would arise on the emergence of new laws and the displacement of the old laws. The only object of Section 119 is therefore to keep alive the laws and regulations in the territories taken over and merged into the new State and not to nullify the reorganisation itself by creating a fiction that they still form part of their previous State of origin which in some cases altogether ceased to exist.

12. The petitioner cannot possibly contend that the Travancore-Cochin General Sales Tax Act must apply as if the Travancore-Cochin State itself were now in existence. Such a State is no longer a constitutional unit within Part A of the Constitution. It seems to us that though statutes some times do create a fiction, no such fiction was within the intendment of the Legislature in enacting Section 119 of the States Reorganisation Act.

13. We agree with the conclusion of the Tribunal that the petitioner is the last purchaser liable to be assessed under the Travancore Cochin General Sales Tax

Act, and that he was rightly assessed by the department.

14. The petition fails and is dismissed with costs. Counsel's fee Rs. 100.