

(1963) 07 MAD CK 0036
In the Madras High Court
Case No : Writ Petition No. 330 of 1963

Virudhunagar Malaipettai and Another	APPELLANT
Vs	
State of Madras and Another	RESPONDENT

Date of Decision : 05-07-1963

Acts Referred:

Constitution of India, 1950 — Article 19(1), 265
Madras Agricultural Produce Markets Act, 1959 — Section 18

Citation : AIR 1964 Mad 458 : (1964) 77 LW 100

Hon'ble Judges : Srinivasan, J

Bench : Single Bench

Advocate : Mohan Kumaramangalam, for Mohan and K. Doraiswami, for the Appellant; A.G. for Addl. Govt. Pleader, M.M. Ismail and B. Lakshminarayana Reddi, for the Respondent

Final Decision : Dismissed

Judgement

Srinivasan, J.—The petitioners herein are two sanghams. These sanghams are registered associations and they are running two markets in

Virudhunagar. They are private markets. These markets are said to afford facilities to agriculturists who grow cotton and groundnut in and about

the area. The markets provide weighing sheds, yards for drying groundnuts, godowns etc. In 1952, the Government directed the constitution of a

Market Committee under Madras Act XX of 1933. Certain provisions of this Act were attacked as unconstitutional, but the contentions of these

petitioners that any of the provisions of that Act involved an infringement of the right on the part of the petitioners to do business failed. But their

Lordships of the Supreme Court left the question open whether any rules promulgated by the Government in exercise of the powers under the Act

imposed an unreasonable restriction on the petitioners' rights. That, in the

opinion of their Lordships, could be decided only after a market was established at Virudhunagar pursuant to the notification issued by the Government.

2. Madras Act XX of 1933 was repealed and replaced by Act XXIII of 1959. The new Act practically adopted the provisions of the old Act.

The Act W3S intended to provide for the better regulation of buying and selling agricultural produce and for the establishment and proper

administration of markets for agricultural produce. Pursuant to this Act a market is sought to be established at Virudhunagar. The contention of the

petitioners is that the establishment of this market would constitute a serious disadvantage to them and would strike at the very root of the business

which they are carrying on. It is claimed that Section 6 of the Act provides that no person within a notified area could engage in the sale or

purchase of any notified agricultural produce except under a licence granted by the Market Committee. This, it is claimed, is a serious inroad upon

the rights of the petitioners to carry on their business activities.

It is further stated that any person who buys or sells agricultural produce within the notified area will have to pay a cess to the Market Committee,

whether or "not he avails himself of any of the facilities afforded by the markets established under the Act. The petitioners claim that if that be the

position, no person would make use of their own private markets, which would involve the payment to them of certain charges, and the result

would, be that the private markets would have to cease to function. It is further contended that the levy of the cess is an arbitrary imposition being

unrelated to any service. The features attendant upon the establishment of a public market amount, it is said, to an unreasonable restriction upon the

constitutional guarantee of the petitioners to carry on their business.

3. In the counter-affidavit filed on behalf of the respondent, it is pointed out that the constitutional validity of the Act has been upheld. It is urged

that the cess, the levy of which is provided for u/s 13, of the Act is a lawful levy, which is necessary for the) proper maintenance of the markets

and the levy would in no way affect the rights of the petitioners to "carry on the business, nor operate as a restriction upon that right. The counter-

affidavit sets out many matters of detail to which it is unnecessary to refer in view of the limited question that has been argued before me.

4. Before setting out" and amplifying the question for determination, some of the provisions of the Act may be referred to. The Act is intended to

provide for better regulation, buying and selling of agricultural produce and the establishment and proper administration of markets for agricultural

produce. All agricultural produce is not brought within the Act but only those which are declared by notification by the Government. u/s 4,

Government may by notification declare a notified area. Section 5 provides for the establishment of a Market Committee for every notified area.

The trading in agricultural produce in the notified area is controlled by Section 6 and such trading in notified agricultural produce could be done in

that area only under and in accordance with the conditions of a licence granted by the Market Committee. This section contains provisions for the

grant of a licence and for an appeal against a refusal to grant a licence. The other sections deal with the constitution of the Market Committee and

the powers of such committee. Section 18 provides for the levy of a cess. It states that a cess by way of sales tax on any notified agricultural

produce bought or sold in the notified area at a rate not exceeding 50 nP. for every Rs. 100 is leviable. Section 19 provides for a different kind of

levy, that is, subscription for collecting and disseminating among subscribers information relevant to notified agricultural produce. The moneys

collected Under Sections 18 and 19 make up the market committee fund out of which all expenses under the Act are defrayed. Section 21

provides that the fund could be expended for certain purposes.

5. Mr. Mohan Kumaramangalam, learned counsel for the petitioners, in the course of his argument confined himself to the levy of the cess and its

impact upon the carrying on of the business by the petitioners. The petitioners who run the private markets charge their customers a certain sum for

the facilities which they provide. The imposition" of the cess u/s 18, according to the learned counsel, means that such customers, besides having to

pay the sum charged by these petitioners for the use of the private markets, have in addition to pay the cess as well as the licence fees under the

Act. No person would be willing to be doubly charged and it is in this context that the learned counsel argues that since the levy of the cess and

other fees would discourage or dissuade persons from making use of the private markets, petitioners" business is bound to suffer and that these

provisions place an unreasonable restriction upon the petitioners" right to carry on business.

Obviously, the mere fact that a cess has been charged, which if it is necessary for the carrying out of the purposes of the Act would be

constitutionally justified, would not advance the" petitioners" contention. Mr. Mohan Kumaramangalam therefore claims that this is a feature which

is unrelated to any service which is provided for the persons from whom the fee: is collected and that the imposition of the fee on all persons

whether "hey make use of the facilities provided by the Markets Committee or not is an unconstitutional levy, for a fee is recognised as a quid pro

quo for service rendered.

6. Section 18 of the 1959 Act provides for the levy of a cess by way of sales-tax at a specified rate. The levy is in respect of any notified

agricultural produce bought or sold in the notified market area. It makes no distinction between persons who may avail themselves of the marketing

facilities provided by the Market Committee; and those who do not. All sales of notified agricultural produce in the notified market area are subject

to the payment of the cess provided in this section. Ex facie the levy is unrelated to any service rendered by the Market Committee and it would

certainly appear to be in the nature of a tax considering that it is levied on all persons who engage in certain transactions in certain specified

commodities in the notified market area. A similar question came up for consideration in P.P. Kutti Keya and Others Vs. The State of Madras and

Others, . Dealing with Section 11 of Act 20 of 1933, which provided that the market committee shall levy fees on the notified commercial crops

bought or sold in the notified area at such rates as it may determine, the learned Judges observe thus :

The argument on behalf of the petitioners is that this levy though called a fee is in reality a tax..... The question is whether it is a fee or a tax and

to ascertain its true character, we must examine the relevant provisions thereto.

After setting out those relevant provisions, they proceed :

It is argued for the petitioners that the true object of the levy was to raise funds from the merchants for the construction of a market and that it is in

substance a tax. This contention is in our opinion well-founded. A fee is what is charged for services rendered by the person who charges it. When

the State, for example, introduces licensing, it is entitled" to charge for the expenses incurred in maintaining the establishment for licensing and that

is properly termed a fee..... But the levy u/s 11 is for no services rendered. It is really a tax levied for raising funds for constructing the

market.....

They upheld the provision as imposing a tax. In *M.C.V.S. Arunachala Nadar etc. Vs. The State of Madras and Others*, the validity of the

provisions of Madras Act XX of 1933 was again canvassed. It would suffice to say that in general the validity of this piece of legislation was

upheld.

7. In *Shanmugha Oil Mill, Erode Vs. Coimbatore Market Committee and Another*, it was contended that Section 18 of the Act of 1955, which

replaced Section 11 of Act XX of 1933, and introduced the levy of a cess by way of sales-tax, was colourable legislation. Ramachandra Iyer J.

[as he then was), observed in this regard :

It is undisputed that there is power in the State Legislature to levy a tax in the shape of sales-tax in goods. This legislation has the effect of levying

an additional sales-tax in regard to a commercial crop or crops. The Legislature having the power and there being no question of its trespassing on

the legislative power of another State or the Union of India, no question of colourable legislation can at all arise.

The learned Judge pointed out that in *P.P. Kutti Keya and Others Vs. The State of Madras and Others*, , it was held that the fee referred to in

Section 11 of Act XX of 1933 was really in the nature of a tax though mistakenly termed a fee and that the intention of the legislature was really to

levy a tax as its object was to utilise the amount collected for the construction of the market and for allied purposes. In the result, the learned Judge

held that the levy as a tax was valid.

8. The distinction between a tax and a fee was explained by the Supreme Court in *The Hingir-rampur Coal Co. Ltd. and Others Vs. The State of*

Orissa and Others, . The following part of the head-note would suffice :-

Tax recovered by public authority invariably goes into the consolidated fund which ultimately is utilised for all public purposes, whereas a cess

levied by way of fee is not intended to be and does not become part of the consolidated fund. It is ear-marked and set apart for purposes of

services for which it is levied. There is however an element of compulsion in the imposition of both tax and fee. When the Legislature decides to render a specific service to any area or to any class of persons, it is not open to the said area or to the said class of persons to plead that they do not want the service and therefore they should be exempted from the payment of the cess. Though there is an element of quid pro quo between the tax-payer and the public authority, there is no option to the tax-payer in the matter of receiving the service determined by public authority. In regard to file fees, there is and must always be correlation between the fee collected and the services intended to be rendered. Whether or not a particular cess levied by a statute amounts to a fee or tax would always be a question of fact to be determined in the circumstances of each case.....

9. The main argument of Mr. Mohan Kumaramangalam was that regarded as a fee, its imposition on all persons whether they make use of the facilities provided by the market committee" or not, is unconstitutional. In the light of the decisions referred to, it seems clear that the cess levied u/s 18 of the Act is not a fee which is intended to be correlated to any service but is a tax which is generally leviable on all persons engaging in a particular line of activity in a specified area. If it is a tax, obviously the argument that it should not fall upon persons who do not make use of the facilities provided by the market committee must necessarily fail.

10. It is well established by authority that the imposition of a tax by the State cannot be regarded as in any way amounting to an unreasonable restriction upon the fundamental right of a citizen to carry on a business or profession.

11. I am unable to see any provision in either of the Act or of the Rules as amounting to the imposition of an unreasonable" restriction on the petitioner's right to carry on business. The petition accordingly fails and is dismissed with costs of the second respondent. Counsel's fee Rs. 100.