

(1997) 05 GAU CK 0014

Gauhati High Court (Agartala Bench)

Case No: Civil Rule No. 207 of 1995

Tripura Chemists and Drugists
Association and Another

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision: May 16, 1997

Acts Referred:

- Constitution of India, 1950 - Article 14, 19, 19(1), 19(6), 226
- Tripura Additional Sales Tax (Amendment) Act, 1994 - Section 2
- Tripura Sales Tax Act, 1976 - Section 2, 3

Citation: (1997) 2 GLR 328

Hon'ble Judges: B.N. Singh Neelam, J

Bench: Single Bench

Advocate: K.N. Bhattacharjee, R. Debnath, S. Bhattacharjee, S. Roy and S.B. Dutta, for the Appellant; U.B. Saha, G.A., for the Respondent

Final Decision: Dismissed

Judgement

B.N. Singh Neelam, J.

This Civil Rule petition is so preferred under Article 226 of the Constitution for issuance of writ of Certiorari/Mandamus or any other writ in the nature thereof for the enforcement of the constitutional and legal rights of the Petitioner, Tripura Chemists and Drugists Association, registered under the Societies Registration Act, Agartala, District-West Tripura being represented by Shri Kanti Lal Deb, C/O. Sreema Medical Stores, Maszid Road, Agartala, West Tripura for the infringement of their rights so enshrined under Article 14, 19, 286, 301 and 304 of the Constitution.

2. The points so raised in short arc that the levy of the additional sales Tax vide the Tripura Additional Sales Tax Act, 1990, a copy of which is filed marked as Annexure-I of his writ petition with that of the Tripura Additional Sales Tax (Amendment) Act, 1994 (copy so filed with this writ petition as Annexure-2) along with its Rules as the

Tripura Additional Sales Tax Rules, 1990 (copy so filed with this writ petition as Annexure-3) are clearly unconstitutional, void and unjust and impugned enactments have thus put restrictions upon the freedom of trade and there is also infringement of the fundamental rights under Article 14 and 19(g) of the Constitution. The further case of the Petitioner is that the said Association comprising of registered dealers in medicine, have to sell medicines at the fixed price as determined by the manufacturers and most of the manufacturers are of outside the State of Tripura and thus the dealers import the medicines from outside Tripura State and sell them on the fixed price detailed by the manufacturers and the margin of profit is also rather fixed by the manufacturers which can only be said to be the income of the dealers and in that light if the additional sales Tax so made equally liable to be collected from the dealers, it would be nothing but the additional tax on the income of the dealers. The further ground, challenging the validity of the Annexures 1, 2 and 3, hereinafter to be referred as Acts with a prayer to declare them as ultra virus, it is also the case of the Petitioners that the Petitioners being not manufacturers whatsoever turn over is there, it will be entirely on the burden of the sellers because of the price fixed by the manufacturers and that being the position it can well be said to be confiscatory in nature and can well in such circumstance be treated either levy of additional tax on the income of the sellers and in that light under the provisions of Article 304(b) of the Constitution no such legislation by the State was to be made without the previous sanction of the President, which in the instant case, has not been done. The reasonable restrictions are so put on freedom of right of trade so imposed by the said Acts under challenge and furthermore on no account it can be said that the legislations under challenge was so enactment not for public interest as to be declared thus ultra virus.

3. Mr. K.N. Bhattacharjee, the learned senior Counsel for the Petitioner has dealt with at length on the points so taken in this Civil Rule petition as good grounds for declaring the Acts under challenge with its Rules ultra virus, i.e. Annexures-1, 2 and 3 of this writ petition and has submitted that since the additional tax can well be said to be levied upon the income of the dealers, the State had no jurisdiction as to impose such tax which was the jurisdiction of the Centre. It is also pointed out that the Tripura Sales Tax Act, 1976 is in force and u/s 2(m) of the said T.S.T. Act "turnover" is defined and Section 3 of the said T.S.T. Act, 1976 provides for the liability to tax and exemption from tax, but the present Acts under challenge, on no account be said to be an amendment of the said Tripura Sales Tax Act, 1976, thus in such circumstance for the enactment of the present Acts under challenge the consent of the President was necessary which was not so taken and it can be (sic) to be a reasonable restriction upon the freedom of trade and that way also infringe the rights of the Petitioners so conferred under Articles 14 and 19(g) of the Constitution. In support of the contention that because of the inter-State sale in the instant case the consent of the President was necessary under Article 304(b) of the Constitution, Mr Bhattacharjee, learned senior Counsel for me Petitioners he referred to a

reported case [Sahney Steel and Press Works Limited and Another Vs. Commercial Tax Officer and Others](#), By particularly referring to its para 10 attention is drawn distinguishing that the said levy is additional in on the income of the Petitioners and that way it was not within the jurisdiction of the State as to go for such legislation. On the point with regard to reasonable restrictions so put by the Acts under challenge on freedom of trade, Mr. Bhattacharjee, the learned senior Counsel for the Petitioner has referred to a reported case as 1975 SC 1443, Syed Ahmed Aga etc. v. The State of Mysore and Anr. etc. out particularly by referring to the contents of para 8 of the writ petition, it is point out that the Acts under challenge can well be said lo be additional restriction imposed and as the same also on no account can be said to be the part of the original legislation so made in 1976 i.e. the Tripura Sales Tax Act, 1976. The learned senior Counsel for the Petitioner on this point has also hammered much on Anr. report Case [Atiabari Tea Co., Ltd. Vs. The State of Assam and Others](#), The legislation under challenge, i.e. Annexures-1, 2 and 3 of this writ petition, it is also pointed out, were not so made for public interest because nowhere the same has been shown which was so incumbent on the part of the Respondents as lo show and in support of this contention on behalf of to Petitioner Anr. reported case [Buxa Dooars Tea Company Ltd. and Others Vs. State of West Bengal and Others](#), is referred. Since the levy of the additional tax was confiscatory in nature, the consent of the President was necessary and on this point Mr. Bhattacharjee has referred to para 11 of a reported case [K.M. Mohamad Abdul Khader Firm Vs. State of Tamil Nadu and Others](#), It has also been casually referred that when the neighbouring Slate Government of West Bengal had put such additional levy, the same was withdrawn by the Government. In the light of the argument so advanced as also detailed in this petition being supported by some of the reported cases as also in short details above, on behalf of the Petitioners Mr. K.N. Bhattacharjee, the learned (sic) Counsel has thus submitted that this is a fit case in which the Tripura Additional Sales Tax Act, 1990, Annexure-1 with that of the Tripura Additional Sale The Rules, 1990, marked as Annexure-3 and the Tripura Additional Sales Tax (Amendment) Act, 1994, marked as Annexure-2 be declared ultra virus.

4. Mr. U.B. Saha, the learned Govt. Advocate representing the Respondents also heard at length.

5. At the first instance on behalf of the Respondents it is submitted that there is no merit in this Civil Rule petition which be thus dismissed. Counter affidavit is to filed on behalf of the Respondents on 22.5.95 which is on the record and the respondents have controverted at length all the points so taken as good grounds for declaring the Acts under challenge (Annexure-I, 2 and 3 of the writ petition) as ultra virus. The legislation so made by the Slate under challenge, it is pointed out by Mr. Saha, learned Govt. Advocate to be valid, reasonable, legal and constitutional and that the State Legislature was within their competence as to levy such additional or on the purchase of goods under Entry 54 of List II of the Seventh Schedule of the

Constitution. The provisions so contained under the Acts under challenge, it is further pointed out, are in no way indiscriminatory or violative of the provisions of Articles 14, 19(1)(G), 301 or 304 of the Constitution. Turn over tax as submitted by Mr. Saha, the learned Govt. Advocate is a tax on the sales and not on income and what constitutes the gross annual turn over of the dealer is the sale proceeds of individual's sale transactions effected during the accounting period and thus any tax even in addition so imposed on the said turn over of a dealer is a tax on sales of the dealer and is purely the sales tax and on no account can be said to be any additional tax on the dealer's income. It is a tax on the dealer's purchase sale as the case may be and the legislature was completely within its competence to work out and give effect to its legislative policy in regard to the raising of the revenue of the State and to prescribe the modalities thereof. In this connection Mr. Saha has particularly referred to the Tripura Additional Sales Tax Bill, 1990 so introduced prior to such legislation of the Acts under challenge and in this connection, particularly attention is drawn to the object of the Bill with that of the technical report so submitted in this connection. It is further stated that the amount or rate of sales tax is a matter exclusively coming within the jurisdiction of the State Legislature unless the Petitioners could have succeeded to prove that the legislation of the Acts under challenge are either contrary to the provisions of the Constitution contrary to the Central Sales Tax Act or in any way such legislation coming in filing, the State Legislature having no jurisdiction as to bring such law in force. In the instant case it is vehemently argued by Mr. Saha that on all these three points raised which could have been valid grounds for challenging Annexures-1,2 and of the writ petition, have not been established the onus being heavily upon the Petitioners to establish the same and that being the position since this Civil Rule petition has not leg to stand the same be dismissed. There is no infringement of any (sic) under Article 19(1)(g) of the Constitution as well because the said enactment as made by the State Legislature to mobilise the resources of the State in the (sic) of Tamil Nadu Additional Sales Tax Act, 1970, which was the parameter and when the said Tamil Nadu Additional Sales Tax Act, 1970 was so challenged most on the same grounds as taken in this writ Petition, the Apex Court upheld the validity of the said enactment so made by the Tamil Nadu State and such additional tax was declared to be tax on the sales of goods and not upon the income of a dealer unless it is not made out that tax is confiscated which on no account can be said to be confiscated in the instant case. In support of this contention on behalf of the Respondents two of the reported cases are referred and they are [S. Kodar Vs. State of Kerala](#), M /s. S. Kodar, Petitioner v. State of Kerala, Respondent and [K.M. Mohamad Abdul Khader Firm Vs. State of Tamil Nadu and Others](#), After the perusal of these two reported cases (supra) it is further pointed out that this can well be said with all emphasis that the present case is covered up case because of the matter on the same issue in which all these points were so raised with regard to the imposition of additional sales tax by the Government of Tamil Nadu got decided by the Apex Court holding such enactments by the State to be valid, within its competence, constitutional,

reasonable and in no way infringing the rights so contained under Articles 14 and 19(1) (g) of the Constitution.

6. Mr. Saha, the learned Govt. Advocate representing the Respondent State has at this juncture taken me to the contents of the Acts under challenge. Referring to the Tripura Additional Sales Tax Act, 1990 (Annexure-1 of the writ petition), it is also pointed out that the said Act has come into force from 1st April, 1990 with regard to levy of additional Sales Tax in the case of certain dealers only, i.e. only in the case of dealers whose taxable turn over for a year exceeds ten lakhs of rupees and the dealers coming under this purview, the sales tax payable is increased by an additional rate of tax of 0.25 per cent of the taxable turn over with also a proviso put under 8, the benefit of which the dealers may avail which need not be dealt with in detail.

7. As regards the Anr. Act under challenge, the Tripura Sales Tax (Amendment) Act, 1994, it is pointed out that it is nothing but the amendment of Section 2 of the Tripura Additional Sales Tax Act, 1990 by which the rate of additional tax of the taxable turn over has been substituted and enhanced to the extent of the rate of additional tax to be 0.50% from 0.25% of the taxable turn over. As regards the Rules (The Tripura Additional Sales Tax Rules, 1990), these rules have simply given the guidelines for the assessment and collection of additional tax. That being the position Mr. Saha, the learned Govt. Advocate submits that under Entry 54 of List II of the Seventh Schedule of the Constitution and also in the background of the provisions of Article 286 of Clause-I of the Constitution, the State Legislature was competent enough to legislate such laws under challenge which was not repugnant to the provisions of any existing central law or any of the provisions of the Constitution of India and that being the position the enactments so made by the legislature on the recommendation of the Governor in which in no way as submitted on behalf of the Petitioners in such matter the consent of the President of India was required are valid. Mr. Saha has also referred to Anr. reported case (1995) STC 196 Gajanand Agarwal and Anr. v. State of West Bengal and Ors. By particularly referring to page 211 of this reported case, it is pointed out that it has been held by the West Bengal Taxation Tribunal when such matter was so raised that imposition of turn over tax is not violative of Article 14 or Article 19(1)(g) of the Constitution and the dealers thus on no account can claim themselves for the exemption from the payment of the turn over tax. The Tribunal members in the said reported case had also held that every tax imposes some restrictions, but it does not follow that the imposition of any tax in question is an un-reasonable restriction on the fundamental right to carry on trade or business and since in the Instant case as submitted by Mr. Saha, the learned Govt. Advocate that such levy of additional tax is on certain dealers coming under the purview, i.e. the additional tax is to be paid only by those dealers whose taxable turn over for a year exceeds ten lakhs of rupees, can well be said to be a distinct class on which such additional sales tax is imposed by the Acts under challenge which can safely be said to be made. In support of the contention

that the additional sales tax is not imposed on all the dealers, but to certain dealers, it is further pointed out that the tax was imposed on certain dealers as detailed in the Acts under challenge and the same Constitutes a class distinct from other dealers and thus on no account it can be said that by the said legislation there was any discrimination which is violative of Article 14 of the Constitution. Mr Saha has also submitted that the provision of Article 19(1) (g) is also to be read with Article 19(6) of the Constitution which clarifies the position and in the same way the provisions of Article 304 (1)(b) of the Constitution is to be read with Article 301 of the Constitution of Part XIII which imposes freedom of trade, Commerce and intercourse subject to the other provisions of this Part and the restrictions on the legislative powers of Union with that of the State are so put in Article 303 and 304 of the Constitution and taking all these provisions as a whole, it will transpire that by such legislations, which are under challenge in this Civil Rule petition, on no account it can be said that the said legislations were unconstitutional and liable to be declared ultra virus because even in course of argument, as submitted the Petitioners they have failed to satisfy with regard to any un-reasonable restriction so put on the freedom of trade and also the additional sales tax so levied to be treated as tax on income, which is definitely not a tax on the income of the dealers and hence coming under the purview of the State legislation the same also not to be treated as confiscated. It has also been pointed out that this additional tax is so levied on the certain dealers in the business in the State on different items, but the petition so filed for declaring the Acts under challenge ultra virus by a handful of dealers only dealing in medicine also does not give them the said right because the said enactment was so made taking a broad view of the matter for imposing such tax as to mobilise the resources of the State introducing turn over tax which was in the public interest and which was only for those dealers whose turn over was of rupees ten lakhs or above. On these grounds hence the prayer is that this Civil Rule petition be dismissed.

8. After hearing both the sides lawyers, I have carefully gone through the contents of the enactments with that of the provisions of law and the grounds so taken, particularly in this Civil Rule petition in the light of a prayer for declaring the Acts under Challenge (Annexures- 1,2 and 3 of the writ petition) ultra virus because as claimed by the Petitioners the same being un-reasonable restrictions on the freedom of trade also as claimed that in such case It was additional tax imposed on income, therefore, the consent of the President was necessary and since the said tax can well be said to have confiscated, the Petitioners had rightly filed this petition for declaring the same ultra virus.

9. After going through the contents of the Tripura Additional Sales Tax Act, 1990, it transpires that such levy of additional sales tax is only to a certain class of dealer having his taxable turn over for a year exceeding rupees ten lakhs and said additional rate of tax so imposed initially to the extent of 0.25%, by Anr. additional Sales Tax (Amendment) Act, 1994 was enhanced to 0.50%. But in Section 2 of the

said Act there is a proviso, the benefit of which even those dealers were allowed to avail who were coming under the purview of payment of such additional tax. In my considered opinion after going through the reported cases so filed, particularly [S. Kodar Vs. State of Kerala](#), [Kodar v. State of Kerala](#) and [K.M. Mohamad Abdul Khader Firm Vs. State of Tamil Nadu and Others](#), I find that the similar matter was so dealt with in these two reported cases by the Apex Court holding that such enactment imposing additional sales tax to a particular dealer can not be said to be a tax on their income also can not be said to be a restriction so put on the freedom of trade and also can well be said to be coming under the purview of the State legislation as to enact such laws. In the present case also prior to the legislation by looking into the objects and reasons for legislating such Act as detailed in the Tripura Additional Sales Tax Bill No. 1 of 1990, it transpires that the same was done in order to mobilise the resources of the State so that the State Government could earn some extra revenue in the pattern of Tamil Nadu Additional Sales Tax Act, 1970. So, it can safely be said that the pattern of the Tamil Nadu Additional Sales Tax Act, 1970 was so adopted by this State by such legislations under challenge and the Apex Court upheld such legislations of the Tamil Nadu Additional Sales Tax Act, 1970 when so challenged almost on the same grounds as taken in the instant case, which would be so apparent by going through the two reported cases so filed, [S. Kodar Vs. State of Kerala](#). That being the position after going through in detail these two reported cases, I find that this can well be said to be a covered case as already decided by the Apex Court dealing at length all the points so also taken in this Civil Rule petition, which need not be repeated, holding the said enactments to be constitutional and valid.

10. Without thus indulging much on the other limbs of argument so advanced by the learned Counsel for the Petitioners also being controverted in detail by the learned Counsel appearing for the Respondents, I am of the considered opinion that because of the circumstance and the points so raised challenging the validity of the Acts (Annexures-1, 2 and 3 of the writ petition), they are rather declared valid in similar such circumstance by the Apex Court when the validity of the additional sales tax on the turn over was so imposed by Tamil Nadu Government and this State had in the same pattern enacted imposing additional sales tax over the turn over relating to certain dealers. It can thus safely be said that the present Acts under challenge so enacted are constitutional, valid and in no way infringe any of the rights so contained under Articles 14 and 19 (1)(g) of the Constitution. The imposition of additional sales tax thus also can not be said to be an additional tax on the income and no reasonable restriction was so put on the freedom of trade and also in the present circumstance there is no base in the argument so advanced by the learned Counsel for the Petitioners that such legislations by the State under challenge required consent of the President.

11. In the result, the writ Petitioners are thus not entitled to the declaration of the Acts and Rules under challenge (Annexure-1, 2 and 3 of the writ petition) to be as

ultra virus as prayed by the Petitioners in the present case. Consequently finding thus no merit in this Civil Rule petition the same is hereby dismissed. No order as to costs.