

(1983) 09 CAL CK 0003

Calcutta High Court

Case No: C.R. No. 5755 (W) of 1983

A.C. Paul Agricultural Co. Pvt.
Ltd. and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision: Sept. 29, 1983

Acts Referred:

- Constitution of India, 1950 - Article 14, 19, 304

Citation: 88 CWN 279 : (1984) 3 ECC 200

Hon'ble Judges: C. Mookerjee, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

C. Mookerjee, J.

The petitioner No. 1 company, claims to be the owner of Girish Chandra Tea Estate situated in the District of Darjeeling. Petitioner No. 2 is a director and shareholder of the petitioner No. 1, company. The petitioner No. 1 company, has been carrying on inter alia, business of growing tea plants and of plucking and selling green tea leaves. In this rule, the petitioners have challenged the validity of levy upon green tea leaves of rural employment cess under the West Bengal Rural Employment and Production Act 1976 (West Bengal Act 14 of 1976).

2. Mr. Sitesh Roy, learned Advocate for the petitioner, has, inter alia, submitted that the West Bengal Rural Development and Production Act, 1956, imposes the said cess not upon the land comprised in tea estates but upon tea despatched from the garden and therefore the said legislation does not come within the ambit of entry No. 49, List II, in the Seventh Schedule to the Constitution of India. According to Mr. Roy, Parliament has the exclusive power to make laws in respect of said matter and the West Bengal Rural Employment and Production Act, 1976, being beyond the legislative competence of the West Bengal Legislature, is ultra vires. The learned

Advocate for the petitioners has also submitted that the provisions of the said Act and the Rules and notifications made thereunder relating to levy and collection of cess in respect of despatches of green tea leaves are arbitrary, discriminatory, unreasonable and also amount to fraud on statute. The said provisions also unreasonably restrict the petitioner No. 2's fundamental rights guaranteed under Article 19(1)(g) of the Constitution. Mr. Roy has lastly submitted that the Act imposes unreasonable restrictions on freedom of trade, commerce and intercourse in respect of green tea leaves and amendments to the Act made without the prior approval of the President of India are invalid. Mr. Bajoria, learned Advocate for the respondents, has contested the correctness of the aforesaid submissions made on behalf of the petitioners and has contended that the said Act and the Rules and notification made thereunder are *intra vires*.

3. In order to decide whether in pith and substance the West Bengal Rural Employment and Production Act, 1976, imposes a tax on land or on tea trade, I may first examine some of the main provisions of the said Act and also refer to the Rules and notifications made thereunder. The preamble of the impugned Act (West Bengal Act 14 of 1976), *inter alia*, states that it has been enacted "to provide for additional resources for promotion of employment in rural areas and for implementing rural production programme". All proceeds of the tax collected under the Act shall be credited to the fund called the West Bengal Rural Employment and Production Fund which has been established u/s 5(1) of the Act. Section 6 of the Act provides that the said fund would be utilised for implementation of rural production programme and for promotion of employment in rural areas. The said fund would be administered in such manner as may be prescribed. For deciding this rule it is not necessary to deal with Section 3(1) of the Act which imposed surcharge on land revenue payable u/s 23B of the West Bengal Land Reforms Act. Section 4(1) of the said Act, as originally enacted, laid down that on and from the commencement of the said Act, all immovable properties on which road and public works cess are assessed according to the provisions of the Cess Act, 1880, shall be liable to pay rural employment cess. After Section 4(1) was amended by Section 7 of the West Bengal Taxation Laws (Amendment) Act, 1981 (West Bengal Act 9 of 1981), rural employment cess is payable on all immovable properties which are assessed or are liable to be assessed for road and public works cess.

4. Section 4(2) of the Act, as originally enacted for the purposes of assessment of cess, classified immovable properties into three categories:

(a) land which were assessable at the rate of six paise on each rupee of development value thereof,

(b) coal mines which were assessable at the rate of fifty paise on each tonne of coal on the annual despatches thereof

(c) mines other than coal mines and quarries were assessable at a particular rate on each rupee of annual net profits thereof.

5. Section 7 of the West Bengal Taxation Laws (Amendment) Act, 1981, for the first time made separate provision for assessment of rural employment cess in respect of tea estates. The Clause (a) of Sub-section (2) of Section 4 of the Act was amended by inserting the words "in respect of lands other than a tea estate". New Clause (aa) which was inserted in Section 4(2) of the principal Act provided that rural employment cess shall be annually levied "in respect of a tea estate, at such rate not exceeding rupees six on each kilogram of tea on the despatches from such tea estate of tea grown therein, as the State Government may by notification in the Official Gazette fix in this behalf". According to the first proviso to the said Clause (aa) of Section 4(2) of the Act cess was exempted in respect despatches of tea for sale at auction centres notified by the State Government under the second proviso to the said Clause (aa) of Section 4(2) of the Act. The State Government was given power to fix different rates on despatches of different classes of tea. The explanation to the said Clause (aa) gave a wide meaning to tea so as to, inter alia, include green tea, green tea leaves, processed or unprocessed.

6. Section 7 of the West Bengal Taxation Laws (Amendment) Act, 1981, also inserted in Section 4 of the principal Act a new Sub-section (3) which inter alia, provided for registration of tea estates, and filing of returns by persons who became liable to pay cess. Provisions were also made for giving hearing and filing of appeal, revision, review from order of assessment. The said Sub-section (3) of Section 4 also provided for imposing penalty in case of default in payment of cess without reasonable cause. The explanations I and II defined the expressions "tea estate" and "owner". The State Government under Sub-section (4) of Section 4 was given power to exempt categories of despatches from liability to pay the whole or part of the cess or to reduce the rate of the cess payable u/s 4(2)(aa) of the Act.

7. Section 7 of the West Bengal Taxation Laws (Amendment) Act, 1982 (West Bengal Act 5 of 1982), inter alia, omitted the first proviso to Clause (aa) of Section 4(2) of the West Bengal Rural Employment and Production Act, 1976. Sub-section (3) of Section 4 was also amended; but it is not necessary to set out the said amendments. The West Bengal Taxation Laws (Amendment) Act, 1982, inserted in the impugned Act Section 4A which deals with levy, recovery, etc., of cess in respect of the coal mines.

8. The Governor of West Bengal by Notification No. 7440/7A-2/76 dated 1st July, 1976, made the West Bengal Rural Employment and Production Rules, 1976. From time to time the State Government issued notifications regarding the rates of rural employment cess leviable on despatches of tea, tea leaves, etc. The Government of West Bengal by a notification u/s 4(4) of the West Bengal Rural Employment and Production Act, 1976, dated 1st April, 1981, inter alia, exempted up to 15 per cent of all despatches of tea during a year from payment of rural employment cess and reduced the rate of rural employment cess leviable on despatches of tea other than

green tea sold in West Bengal otherwise than through tea auction centres recognised under the departmental notifications to dealers registered under the Bengal Finance (Sales Tax) Act, 1941, or the Central Sales Tax Act.

9. The State Government by Notification No. 1587 F.T. dated 21st April, 1981, u/s 4(4) of the Act with effect from 1st April, 1981, again altered the rate of levy of cess on despatches of tea. Green tea was totally exempted. For green tea leaves Rs. 1.20 was prescribed as rate per kilogram. In respect of tea Rs. 5 became prescribed rate.

10. On 30th April, 1981, the State Government by Notification No. 1588 u/s 4(4) of the Act exempted 15 per cent or one lakh kilogram whichever is greater of total despatches of tea during a year from payment of rural employment cess subject to the condition that the same would be inclusive of the amount of despatches of green tea and of tea actually sold at the tea auction centres. The State Government also reduced the rate of rural employment cess leviable on despatches of tea other than green tea to registered dealers. The State Government by another Notification No. 3622 F. T. dated 1st October, 1982, u/s 4(2), Clause (aa), of the Act fixed the rate at which cess would be levied in respect of despatches of tea. For green tea and green tea leaves the prescribed rate would be 30 paise per kilogram whereas in case of other kinds of tea Rs. 1.50 per kilogram became the prescribed rate.

11. The State Government by Notification No. 3623 dated 1st October, 1982, rescinded the departmental notification dated 1st April, 1981. On the same date the State Government issued another Notification No. 3624 reducing the rate of rural employment cess leviable on despatches of tea other than green tea and green tea leaves.

12. On 11th April, 1983, the State Government has issued Notification No. 1082-F.T. dated 22nd March, 1983, u/s 4(4) of the West Bengal Rural Development and Production Act, 1976, inter alia, exempting with effect from 1st April, 1983, from payment of rural employment cess up to the limit of--

(a) one lakh kilograms of tea other than green tea leaves;

(b) four lakh fifty thousand kilograms of green tea leaves.

13. I find no substance in the contention that the West Bengal Legislature had no competence to enact the West Bengal Rural Employment and Production Act, 1976, inter alia, for imposing cess on tea estates. It is not, however, within the scope of this rule to decide the legality of the levy of such rural employment cess upon other kinds of immovable properties. The various reported decisions have emphasised that the legislative entries in the Seventh Schedule to the Constitution ought to be given a large and liberal interpretation because allocation of subjects to the lists is not by way of scientific and logical definition but by way of mere simple enumeration of broad categories: vide [Ajoy Kumar Mukherjee Vs. Local Board of Barpeta](#), , [The Assistant Commissioner of Urban Land Tax and Others Vs. The](#)

[Buckingham and Carnatic Co. Ltd., etc.,](#); see also AIR 1949 81 (Federal Court) . The Supreme Court in [Ajoy Kumar Mukherjee Vs. Local Board of Barpeta,](#) , had rejected a challenge regarding the constitutionality of an annual tax levied by the local Board for use of any land for the purpose of holding market. The Supreme Court in their subsequent, decision in [The Assistant Commissioner of Urban Land Tax and Others Vs. The Buckingham and Carnatic Co. Ltd., etc.,](#) , had relied upon the Federal Court's decision in Ralla Ram's case AIR 1949 SC 81, and held that an annual tax is not necessarily a tax on annual income because the tax had adopted the annual value as the standard for determining the income. The features of the tax have to be examined to decide whether in essence it was a tax on land or not.

14. In [H.R.S. Murthy Vs. Collector of Chittoor and Another,](#) , the Supreme Court had refused to accept the contention that the demand of cess under the Madras District Boards Act, 1920, in respect of mining leases stood repealed by Mines and Minerals (Regulation and Development) Act, 1948. The Supreme Court did not accept the contention that the cess under the District Boards Act, 1920, was a tax on mineral rights merely because the basis of its levy was the rental value. I have already referred to the Supreme Court decisions in [Ajoy Kumar Mukherjee Vs. Local Board of Barpeta,](#) and in [The Assistant Commissioner of Urban Land Tax and Others Vs. The Buckingham and Carnatic Co. Ltd., etc.,](#) . In both the cases the Supreme Court held that the nature of the user of land and adoption of the annual value for determining tax liability did not make the imposition a tax on income. In [The Assistant Commissioner of Urban Land Tax and Others Vs. The Buckingham and Carnatic Co. Ltd., etc.,](#) the Court had observed that an annual tax was not necessarily a tax on income because a standard is adopted for measuring income and for determining annual value.

15. Mr. Bajoria, learned Advocate for the respondents, in this connection has also drawn my attention to the decision of the Supreme Court in the case of [The Second Gift Tax Officer, Mangalore etc. Vs. D.H. Nazareth etc.,](#) . In the said case the Gift Tax Act was challenged on the ground that it was a tax on land, and therefore, the Central Legislature had no power to enact the law. In the said case, the Supreme Court applied the test of pith and substance and had rejected the said contentions. The Court held that the gift tax imposed a tax on the gift of property which may include land and building, in any year above the exempted limit and it was not a tax imposed directly upon land.

16. I have already set out some of the salient features of the impugned Act. It is Sub-section (1) of Section 4 of the said Act which has provided for levy of cess on all immovable properties which are assessed or liable to be assessed under the Cess Act, 1880. The different clauses of Sub-section (2) of Section 4 indicate the manner in which the said cess would be imposed on different kinds of immovable properties. I have already pointed out that as originally enacted the impugned Act did not contain any separate provision for assessing cess upon tea estates. Clause (aa)

which was inserted in Section 4(2) of the Act by Section 7 of the West Bengal Taxation Laws (Amendment) Act, 1981, which for the first time made separate provisions in this behalf in respect of the tea estates, I apply the ratio of the aforesaid decisions and hold that even after the amendments made by Section 7 of the West Bengal Taxation Laws (Amendment) Act, 1981, and hold by pith and substance, the West Bengal Rural Employment and Production Act, 1976, taxation laws has continued to impose cess on the tea estates. The amended law has adopted the volume of despatches of tea and tea leaves, etc., as basis for calculating the amount of cess payable. Thus, the volume of despatches of tea has been taken as the measure for quantifying the tax imposed on lands comprised in the tea estates.

17. I have already pointed out that there has not been any material amendment of Sub-section (1) of Section 4 of the impugned Act which lays down the taxable event under the Act by levying cess on all immovable properties which are assessable to cess under the Cess Act, 1880. Although the West Bengal Rural Employment and Production Act, 1976, does not contain any definition of the expression "immovable property", I may legitimately rely upon the following definition of the expression "immovable property" given in almost identical manner in Section 4 of the Cess Act: "Immovable property includes land, benefits arising out of land and things attached to earth or permanently fastened to anything attached to earth." Land comprised in a tea estate is thus undisputedly immovable property. Since the amendments inserted by the West Bengal Taxation Laws (Amendment) Act, 1981, for the purpose of assessment of cess, tea estates have been separately treated and the cess on tea estates is assessable according to the volume of despatches of tea, etc. But the basic structure of Section 4(1) has all along remained unchanged and the subject-matter of levy of cess under the West Bengal Rural Development and Production Act continues to be immovable properties including lands comprised in tea estates (which are already assessable to road and public works cess under the Cess Act, 1880).

18. I find no repugnancy between the provisions of the West Bengal Rural Employment and Production Act, 1976, and those of the Tea Act, 1953. The object of the Tea Act, 1953, is to provide control by the Union of tea industry, of the cultivation of tea, its export and to establish a Tea Board and to levy a duty of excise on tea produced in India. The West Bengal Act does not provide for any control of tea industry and the West Bengal Act does not also deal with any of the matters covered by the Tea Act, 1953; merely because the cess on land comprised in the tea estates under the said State Act has been lined with the weight of the tea despatches, it cannot be urged that the said State Act deals substantially with the matters covered by the Tea Act. There is nothing common between the Tea Act and the West Bengal Rural Employment and Production Act, 1976: see [The Hingir-rampur Coal Co. Ltd. and Others Vs. The State of Orissa and Others](#), and [H.R.S. Murthy Vs. Collector of Chittoor and Another](#), . I also find no substance in the

petitioner's submission that the object of the West Bengal Rural Employment and Production Act, 1976, is to canalize sale of tea auction centres. The Act imposes cess on different kinds of immovable properties for raising money for the fund created u/s 5 of the said Act.

19. The pith and substance of the impugned State Act is that it imposes tax on immovable property including tea estates and not upon tea. In this connection, I may refer to the observations made in paragraph 38 and 39 of the Supreme Court's judgment in the case of [Ganga Sugar Corporation Ltd. and Others Vs. State of Uttar Pradesh and Others](#), upholding the U. P. Sugarcane (Purchase Tax) Act, 1961, which created liability on purchase of sugarcane by a factory owner or unit owner. In [Ganga Sugar Corporation Ltd. and Others Vs. State of Uttar Pradesh and Others](#), , the Court rejected a somewhat similar argument that all legislation which affected sugar industry by taxing its raw materials was in respect of the sugar industry. The Court held that the said State law did not invade entry No. 52, List 1 of the Seventh Schedule to the Constitution of India.

20. The West Bengal Rural Employment and Production Act, 1976, does not impose restriction on freedom of trade, commerce and intercourse relating to tea and tea leaves. Therefore Article 304(b) of the Constitution cannot be invoked in order to challenge the validity of the impugned Act.

21. I have already held that Section 4(1) of the West Bengal Rural Employment and Production Act, 1976, has levied cess not on tea trade but upon immovable properties including tea estates, etc. The volume of despatches of tea is only relevant for quantifying or computing u/s 4(2) of the Act, the cess imposed on tea estates. No cess has been imposed on movement or despatches of tea and the West Bengal Rural Employment and Production Act, 1976, does not restrict or impede free flow of trade in tea either directly or indirectly. The impugned Act need not seek to derive for its validity from Article 304(b) of the Constitution: see [Hans Raj Bagrecha Vs. State of Bihar and Others](#), .

22. Therefore the previous sanction of the President was not necessary for introducing either the principal Act or the amendments to the said Act.

23. I also find no substance in the petitioner's contention that the impugned Act is arbitrary, unreasonable and discriminatory. It is now settled law that taxing laws are not immune from challenge on the ground that they are ultra vires the rights guaranteed in Part III of the Constitution. But the Supreme Court in the case of [Raja Jagannath Baksh Singh Vs. The State of Uttar Pradesh and Another](#), , pointed out that the validity of a taxing statute cannot be challenged merely on the ground that it imposes an unreasonably high burden. Only if it is shown that the Act is a colourable exercise of legislative power, the said Act can be struck down.

24. Gajendragadkar, J. (as he then was), in [Raja Jagannath Baksh Singh Vs. The State of Uttar Pradesh and Another](#), pointed out that such challenge on the ground of

colourable exercise of power cannot succeed merely by showing that the tax levied is excessive; other circumstances must satisfy the conclusion that the Act is a cloak or device to confiscate property of the citizen.

25. There is no identity between the provisions of the West Bengal Agricultural Produce Marketing (Regulation) Act, 1977, and the provisions of the West Bengal Rural Employment and Production Act, 1976. The object of the two Acts are different. Therefore, the fact that the West Bengal Agricultural Produce Marketing (Regulation) Act, 1977, had not yet received the assent of the President of India is totally irrelevant for testing the validity of the West Bengal Rural Employment and Production Act, 1976 (as amended by the West Bengal Act 9 of 1981).

26. I also reject the contention that the impugned Act, the Rules and the notifications thereunder are ultra vires Article 14 and 19(1)(g) of the Constitution of India because the said provisions impose upon tea estates who do not process tea and sell to other gardens only green tea leaves. The levy under the Act cannot be considered confiscatory and/or expropriatory in nature, Therefore the impugned Act is not invalid.

27. As the Supreme Court in the case of [Avinder Singh and Others Vs. State of Punjab and Others](#), had observed in the field of taxation many complex factors enter in the fixation of the rate and flexibility is necessary for the taxing authority. The West Bengal Rural Employment and Production Act, 1976, has indicated the purpose and object of levy of cess, the items to be taxed and has also specified the maximum rates. Therefore, the delegation in favour of the Government of the power to fix rates and the limits of exemptions is valid and within permissible limits.

28. Delegation in these matters is also most appropriate and necessary in order to make the rates and exemption flexible and to adjust them with changes in circumstances: see [Devi Das Gopal Krishnan and Others Vs. State of Punjab and Others](#), , and [Avinder Singh and Others Vs. State of Punjab and Others](#), In the instant case, by different notifications issued from time to time u/s 4(4) of the said Act, the State Government has changed the rate of cess levied on tea, green tea leaves, etc., and also has varied the exemption limits. In fact, Mr. Roy himself has submitted that his client's grievances in these matters have been almost mitigated by Notification No. 1082-F.T. dated 22nd March, 1983. It is, however, not open to the petitioner to contend that the exemption of green tea leaves granted by the said notification dated 22nd March, 1983, ought to have been given retrospective effect. The Court cannot compel the Government to do so. It is, however, open to the petitioner to make representations to the State in accordance with law.

29. Mr. Bajoria, learned Advocate for the respondents, had rightly submitted that the very fact that the rates of cess and the limits of exemption from time to time have been altered, would establish that the State Government is fully alive to the

necessity of making periodical adjustments according to the exigencies of the situation.

30. The impugned Act and the notifications made thereunder do not levy flat rate of cess upon processed tea and green tea leaves. As already indicated, the exemption limits in case of green tea leaves is now higher. Therefore, I am unable to apply the ratio of the Supreme Court decision in [Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another](#), in which case the Travancore Cochin Land Tax Act was held to be confiscatory and unconstitutional by the majority decision because the Act made no attempt to classify and such lack of classification created inequality.

31. The Act impugned before me does not suffer from the vice of unconstitutionality. The Act and the notifications made thereunder have classified different kinds of immovable properties among tea estates who despatch processed tea and those despatching green tea leaves. As already observed, it is not for the court to determine what should be the exact rate of cess payable by the tea estates which despatch for sale only green tea leaves or to fix the extent of exemption which ought to be granted having regard to the nature of green tea leaves. These are matters for decision by the Government. There is nothing to indicate that in fixing the rates and in specifying the limit by notifications issued from time to time the Government had acted mala fide, arbitrarily or unreasonably. Therefore, I conclude that the provisions of the Act, the Rules and the notifications made thereunder are not discriminatory and violative of Article 14 of the Constitution of India. I have already noted that the impugned levy is proposed to be credited to the fund established u/s 5(1) of the said Act and the said fund is intended to be applied for implementation of rural production programme and employment in rural areas. Therefore, the impugned Act is in general interest. For the reasons already indicated, it must be held that the aforesaid provisions do not also unreasonably infringe the fundamental rights of the petitioner No. 2 guaranteed under Article 19(1)(g) of the Constitution of India.

32. I, accordingly, discharge this rule without any order as to costs.