1961

L. N. Mukherjee v. State of Madras

Raghubar Dayal J.

jurisdiction to try the offence of criminal conspiracy can also try offences committed in pursuance of that conspiracy even if those offences were committed outside the jurisdiction of that Court, as the provisions of s. 239, Criminal Procedure Code, are not controlled by the provisions of s. 177, Criminal Procedure Code, which do not create an absolute prohibition against the trial of offences by a Court other than the one within whose jurisdiction the offence is committed. On a parity of reasoning, the Court having jurisdiction to try the offences committed in pursuance of the conspiracy, can try the offence of conspiracy even if it was committed outside its jurisdiction. We therefore hold that the order under appeal is correct and, accordingly, dismiss this appeal.

Appeal dismissed.

1961

April 20.

JAGANNATH AND OTHERS

v.

UNION OF INDIA

(P. B. GAJENDRAGADKAR, A. K. SARKAR, K. N. WANCHOO, K. C. DAS GUPTA, and N. RAJAGOPALA AYYANGAR JJ.)

Excise Duty—Tobacco—Different rates for whole leaf and broken leaf—If discriminatory—Central Excises and Salt Act, 1944 (I of 1944), First Schedule Entry 4(I) Items 5 and 6—Constitution of India, Art. 14.

Item 5 of entry 4(I) of the First Schedule to the Central Excise and Salt Act, 1944, imposes an excise duty of Rs. 1-10 nP. per kilogram on tobacco other than flue cured and not actually used for the manufacture of cigarettes, smoking mixtures for pipes and cigarettes or biris in the whole leaf form. Item 6 imposes a duty of Rs. 2-20 nP. per kilogram on tobacco in the broken leaf form. The petitioners who dealt in tobacco in the broken leaf form contended that their tobacco could not be distinguished on any rational basis from the whole leaf form in Item 5 and the imposition of a double tariff on their tobacco was invalid as it was based on unconstitutional discrimination, the tariff being on the basis of use to which the tobacco was put.

Held, that there was no unconstitutional discrimination in the imposition of the excise duty on tobacco in the broken leaf form. Tobacco in the broken leaf form was capable of being used in the manufacture of biris while tobacco in the whole leaf form could not be so used economically. The two forms of tobacco were different by the test of capability of user. The tariff was not based either wholly or even primarily by reference to the use of tobacco. There was a clear and unambiguous distinction between tobacco in the whole leaf form covered by item 5 and tobacco in the broken leaf form covered by item 6 which had a reasonable relation to the object intended by the imposition of the tariff.

Kunmathat Thathunni Moopil Nair v. *The State of Kerala*, [1961] 3 S.C.R. 77, referred to.

ORIGINAL JURISDICTION: Writ Petition No. 84 of 1958.

Petition under Art. 32 of the Constitution of India for enforcement of Fundamental Rights.

G. C. Mathur, for the petitioners.

C. K. Daphtary, Solicitor-General of India, B. Sen, R. H. Dhebar and *T. M. Sen*, for the respondent.

1961. April 20. The Judgment of the Court was delivered by

GAJENDRAGADKAR, J.—This is a petition filed under Art. 32 of the Constitution challenging the validity of the excise tariff imposed by cl. (6) in entry 4(I) in the First Schedule to the Central Excises and Salt Act, 1944 (I of 1944). Petitioners Nos. 1 to 17 are tobacco cultivators and they carry on the trade and business of growing tobacco and of selling it in Kaimganj Tahsil in the District of Farrukhabad in Uttar Pradesh. Petitioners 18 to 30 are partners or proprietors or agents of firms which are private bonded werehouse licencees and they carry on trade and business of purchasing tobacco from the cultivators and of selling the same to dealers or to other private warehouse licencees. By their petition the petitioners have asked for a writ, direction or order in the nature of mandamus to be issued to the respondent, the Union of India, restraining it from levying excise duty on hooka and chewing tobacco under the impugned item and any other writ, direction or order which may be found suitable to

Gajendragadkar J.

1961

Jagannath
v.
Union of India

Gajendragadkar J.

protect the fundamental rights of the petitioners to carry on their trade and business of dealing in hooka and chewing tobacco. The attack against the validity of the impugned tariff item is based substantially on two grounds. It is urged that the rates imposed by the impugned item are excessive and they virtually destroy the petitioners' trade and it is argued that the impugned item is based on unconstitutional discrimination. Mr. Mathur, for the petitioners, fairly conceded that he would not be able to substantiate the first ground of challenge, and indeed it is obvious that a challenge to tax law on the mere ground that the tariff imposed by the tax law is heavy cannot be entertained. That leaves the question of discrimination alone to be considered in the present petition. For the purpose of this petition we will assume that if discrimination in respect of commodities taxed is proved it ultimately amounts to a discrimination against the persons taxed and therefore Art. 14 can be invoked in such a case. Mr. Mathur contends that that is the effect of the decision of this Court in *Kunmathat Thathunni Moopil Nair, etc.*, v. *The State of Kerala* (1) and as we have just observed we will assume that such a challenge can be made against the validity of a taxing statute with provisions such as we have before us and deal with the petition on that basis.

The tariff entry in dispute as it now obtains under the taxing statute is entry 4 in the First Schedule. It deals with tobacco. Under this entry "tobacco" means any form of tobacco, whether cured or uncured and whether manufactured or not, and includes the leaf, stalks and stems of the tobacco plant, but does not include any part of a tobacco plant while still attached to the earth. Clause I in entry 4 deals with unmanufactured tobacco and prescribes tariff per kilogram in respect of the several items specified in it. Item (1) under this clause deals with five categories of tobacco which are flue cured and are used in the manufacture of cigarettes as indicated in the said five sub-clauses. Item (2) deals with tobacco which is flue cured and used for the manufacture of smoking

(1) [1961] 3 S.C.R. 77.

mixtures for pipes and cigarettes. Item (3) provides for flue cured tobacco which is not otherwise specified; and item (4) is concerned with tobacco other than flue cured and used for the manufacture of (a) cigarettes or (b) smoking mixtures for pipes and cigarettes. The tariff varies from Rs. 16·15 nP. per kilogram to Rs. 1·65 nP. per kilogram. That takes us to item (5). This item deals with tobacco other than flue cured and not actually used for the manufacture of (a) cigarettes or (b) smoking mixtures for pipes and cigarettes or (c) biris. The fourth clause under this item is tobacco cured in whole leaf form and packed or tied in bundles, hanks or bunches or in the form of twists or coils. For tobacco falling under the four clauses under item (5) the tariff is Rs. 1·10 nP. per kilogram. Clause (6) in this item with which we are concerned in the present petition deals with tobacco other than flue cured and not otherwise specified. For this residuary clause the tariff prescribed is Rs. 2·20 nP. per kilogram. This tariff is double the tariff prescribed for the classes in the preceding item. Mr. Mathur's grievance is that the tobacco with which the petitioners deal cannot be distinguished on any rational basis from the tobacco covered by item (5), cl. (4), and so the imposition of a double tariff on the tobacco in which the petitioners deal is invalid inasmuch as it is based on unconstitutional discrimination. The argument proceeds on the assumption that the tariff is prescribed by reference to the use to which tobacco is put and it is urged that the tobacco with which the petitioners are concerned is not actually used either for cigarettes or smoking mixtures or biris and the fact that it is broken and not whole leaf does not afford any rational basis for classification.

In dealing with this argument it would be relevant very briefly to refer to the report of the Tobacco Expert Committee whose recommendations have furnished the main basis for the present revised tariff in respect of tobacco. In substance this report shows that the present tariff cannot be said to have been prescribed either wholly or even primarily by reference actually to the use of tobacco. Tobacco, as the

1961

Jagannath v. Union of India

Gajendragadkar J.

Committee's report points out, is a rich man's solace and a poor man's comfort. Since it is used by all classes of people in various forms it is necessary to frame the tariff in such a way that the incidence of tax shall fall equitably on all classes of people using it. The report then points out that the Intention Tariff based on the principle of intention was found to be ineffective because the assessee's declaration of intended use left large room for evasion of tax. That is why the Intention Tariff was substituted by a flat rate of duty. By experience it was found that even this method was not very effective or equitable and then was adopted the capability tariff. Under this test the criterion of assessment was to be whether or not a particular specimen of tobacco was capable of use in biri manufacturing. If so capable it was assessable on a higher rate, if not so capable then at a lower rate. The report has examined the advantages of the capability tariff and has quoted the opinion of the Taxation Enquiry Committee which made its report in 1953. The report considered the volume of evidence adduced before it and took into account all the suggestions made. "In view of the practical difficulties brought before us", says the report, "we consider that, within the present tariff, the only workable and satisfactory method of classifying tobacco will be to prescribe standards readily identifiable either visually or by other simple tests and manipulations with a view to determine empirically what is capable and what is incapable of use in biris. The position is complicated because the same tobacco is used for different purposes in different parts of the country according to the prevalent consumption habits of different types of tobacco"; and the Committee realised that any system of classification on a uniform basis for the whole of the Indian Union is bound to involve greater imposts on consumers of those areas where the prevalent custom is to consume a variety for chewing, snuff, hooka, cigar purposes while the same varieties are used in other areas for biris. The conclusion of the Committee, therefore, was that the only criterion which is safe to adopt is the one relating to the physical form

of tobacco as affecting its suitability for biri making. The Committee realised that it was very difficult to classify specified varieties as solely chewing tobacco because many of these varieties are also used for making snuff and for hooka purposes. Normally, however, most chewing varieties are in whole leaf form and are cured by addition of moisture. Tobacco cured in whole leaf form cannot be converted into flakes as readily as tobacco cured by dry curing methods, and in the opinion of the Committee, although it is possible to prepare flakes out of tobacco cured in whole leaf form the process of conversion into flakes causes much higher proportions to crumble into dust, rawa and other unsaleable forms. The Committee was conscious that the whole leaf varieties after suitable manipulation can be utilised for biri manufacturing purposes but it thought that this could be done only after converting them into graded flakes, and even thereafter only by admixture with other tobacco on a small localised scale. In regard to the broken leaf grades which the Committee recommended should be liable to assessment at the higher rate relief was recommended by permitting any owner to convert his broken leaf tobacco into fine rawa or dust in which form it will become physically unusable for biris. According to the Committee, after such manipulation of physical form, the resultant, if it fulfils the specifications for rawa and dust, may be allowed assessment at the lower rate.

We have referred to these observations made by the Committee in its report because they clearly and emphatically bring out the distinction between "tobacco other than flue cured and not otherwise specified" which is the subject-matter of the residuary clause and "tobacco other than flue cured and not actually used for the manufacture of cigarettes or smoking mixtures for pipes or cigarettes or biris" covered by cl. (5). By the test of physical form the two articles are different. By the test of capability of user they are different and in a sense according to the Committee's recommendations they partake of the character of different commodities. In this connection it may be

1961

Jagannath v. Union of India

Gajendragadkar J.

pointed out that though the tariff impost on the tobacco falling under the impugned cl. (6) is much higher, biris in the manufacture of which no process has been conducted with the aid of machines operated with or without the aid of power are not subject to any tariff, whereas cigars, chewing, cigarettes and biris in the manufacture of which any process has been conducted with the aid of machines operated with or without the aid of power are subject to tariff. The problem which the Committee had to face was to classify tobacco other than flue cured which would be used for the manufacture of biris, and with that object cl. (5) and cl. (6) have been devised. Therefore, in our opinion, the distinction between tobacco falling under cl. (5) and cl. (6), according to the report of the Committee, is so clear and unambiguous and its relation to the object intended by the imposition of tariff is so clearly reasonable that the attack against its validity on the ground of unconstitutional discrimination cannot be upheld.

There is one more point to which Mr. Mathur referred and which may be incidentally considered. Mr. Mathur contended that Nicotiana Rustica with which the petitioners deal is used exclusively for hooka and chewing in Uttar Pradesh. The petition avers that the variety of Nicotiana Rustica which is used in biris is not grown in Uttar Pradesh and that all the tobacco which is grown in Kaimganj is Nicotiana Rustica which is either pit cured or ground cured. It is used exclusively for hooka and chewing and is unfit for use in biris and cigarettes and is never so used. The argument, therefore, is that this tobacco cannot be legitimately taxed under the impugned clause. Apart from the fact that the question as to whether the particular tobacco in which the petitioners deal falls under the impugned clause or not cannot be legitimately raised in a petition under Art. 32, the answer to the plea is furnished by the counter-affidavit and the report of the Committee. In the counter-affidavit the allegations made in regard to the exclusive user of Nicotiana Rustica are generally denied, and what is more the report of the Committee specifically points

1961

Jagannath v. Union of India

Gajendragadkar J.

out that though Rustica varieties of tobacco are generally not known to be used for biris, when they are cured in broken leaf grades they can be used with admixture with biri tobacco like Pandharpuri tobacco for imparting strength to biri mixtures, and so according to the Committee no generalisation in this matter is possible and it cannot be asserted that all forms of this variety are incapable of use in biris. Besides, it would be quite possible for dealers in the said varieties of tobacco to send them to other parts of the country where they are used for the purpose of manufacturing biris. Therefore, the grievance made by the petitioners that the tobacco in which they deal can never be used for biris is obviously not well founded.

In the result the petition fails and is dismissed with costs.

Petition dismissed.

1961

April 21.

JYOTI PERSHAD

v.

THE ADMINISTRATOR FOR THE UNION TERRITORY OF DELHI

(AND CONNECTED PETITIONS)

(B. P. SINHA, C. J., S. K. DAS, A. K. SARKAR, N. RAJAGOPALA AYYANGAR and J. R. MUDHOLKAR, JJ.)

Slum Areas—Improvement and clearance of—Validity of enactment—Constitutionality—Rent Control—Operation of Rent Control Act in areas governed by Slum Areas Act—Delhi & Ajmer Rent Control Act, 1952 (38 of 1952)—Slum Areas (Improvement and Clearance) Act, 1956 (96 of 1956), s. 19—Constitution of India, Arts. 14, 19(1)(f).

The petitioner after a prolonged litigation and having fulfilled all the conditions of the Delhi Rent Control Act, obtained decrees of ejectment against the tenants.