PETITIONER:
THE STATE OF KERALA ETC. ETC.

Vs.

RESPONDENT:
K. P. GOVINDAN TAPIOCA EXPORTER ETC. ETC.

DATE OF JUDGMENT07/11/1974

BENCH:
UNTWALIA, N.L.
BENCH:
UNTWALIA, N.L.
RAY, A.N. (CJ)
MATHEW, KUTTYIL KURIEN

CITATION:
1975 AIR 152 1975 SCR (2) 635
1975 SCC (1) 281
CITATOR INFO :
E 1976 SC2243 (20)

ACT:
Essential Commodities Act 1955-The Kerala Tapioca Manufacture and Export (Control) Order 1966-Administrative surcharged levied under a scheme formulated by the State Government-Scheme not under any provision of the Act, if surcharge could be levied.

HEADNOTE:
The Kerala Tapioca Manufacture and Export (Control) Order, 1966 was made by the State Government under the Essential Commodities Act 1955. Even before the promulgation of that order the State Government levied an. administrative surcharge under a scheme formulated by it. The, respondents plea that the levy of administrative surcharge was ultra vires the State Government and unwarranted by law had been accepted by the High Court and their writ petitions were allowed.
On an appeal by the State it was contended that the administrative surcharge on the export of tapioca wag in effect and substance a licence fee charged irk! exercise of the police powers of the State for granting permission to export Tapioca.
Dismissing the appeal,
HELD : The administrative surcharge levied by the State Government on the export of tapioca was bad. The realisations were without the authority of law.
Assuming that the' State has got the police power to charge licence fee, the levies were bad as they were not levies of licence fee for regulating the trade or for grant of permits. The scheme was not an order under any of the provisions of the Essential Commodities Act. in substance and in effect it was an impost on export which indisputably the State had no power to do. The Kerala Tapioca Manufacture Export (Control) Order 1966 did not provide for imposition of any licence fee for the grant of permits for export of tapioca.
For the appellants
Examining the Act and the provisions of the Section as a whole it is manifest that an order providing for the

granting of a licence or permit and charging for fees is still an order under Sec. 3(1).

An order of the nature mentioned in Sec. 3 (2) (ii) is an order for maintaining or increasing supplies of essential commodities and for securing their equitable distribution and availability at fair prices. it is manifestly not an order for rendering any services and admittedly no service is rendered under the provisions of Sec. 3. The power itself is simply for the benefit of the community at large. Thus Sec. 3(2)(ii) does not provide for a fee for services rendered. It is manifest from the scheme as a whole that export is banned except under a permit. The imposition is connected and is for the purposes of permission to export; is precisely what the licence fee may mean. The ground, therefore on which the High Court has acted is erroneous.

For the respondents :

Power under the Essential Commodities Act to make orders under Section 3(1) and (2) vested in the Central Government. Under Section 5 of the Central Government can delegate its powers to State Government subject to such conditions as it may choose to impose. 'the Central Government has limited the powers to delegate by Resolution No. GSR 906 dated 9-6-1966. It delegates the powers under Section 3(1) for the purposes stated in the different clauses of Section 3(2). The general power of regulation claimed by the appellant is therefore not available.

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Second clause in the delegation provides that in matters which affect transport etc. of the commodity would require the sanction of the Central Government. Since imposition of export duty restricts the transport of the commodity, sanction would be required, which is absent in this case. This also would in-validate the levy.

The levy is really not a licence fees but is on export as it clearly purports to be and is a tax. Under regulating powers no such tax can be_imposed. Article 366(28) defines a tax in wide terms and all imposts would be tax. Viewed from the point of view of even regulatory impost, it is clearly a tax for levying which Article 265 requires a legislative enactment. All taxing statutes must in clear language authorise the levy, and if authorised it must be within the legislative competence of the State. Admittedly there is no legislation. The Central Government alone would have the power to levy the tax and not the State Government. What is delegated to the State Government is merely a power to levy fee for licence, permits, etc. In such a case that must be a quid pro quo, which is admittedly absent here. The impost is clearly bad.

The levy made in connection with the export of Tapioca is not a tax. It is in the nature of a fee and it could be sustained only if there is correlation and legitimate connection between the quantum of the levy and the expenses incurred by the Government. But in the instant case. the Government have not furnished any data, i.e. any particulars about the total collections made, the nature of the services rendered and the actual expenses incurred by the Government in the matter of services rendered. No particulars whatever have been given by the, Government.

Section 3(2)(ii) does not empower the Government to levy any charge it likes and its powers in levying are circumscribed by the very words employed in Section 3 (2) (ii) the fees in relation to the permit or any other document which in the nature of things should only be nominal. It is therefore submitted that Section 3(2)(ii) has no application and cannot justify the levy.

In the counter-affidavit filed by Government, the Government has taken the specific ground that the levy is made as a fee to meet the heavy expenditure incurred on behalf of those who engage themselves in the export trade of tapioca. The Government's further stand is that unauthorised export will spoil the trade, diminish the profits of the authorised exporters and that to meet the expenditure incurred and to protect the interests of the authorised exporters and its return for the services rendered. the Government is charging a fee as a quid pro quo. In the face of this specific plea by the Government as a specific ground on which they are levying the charges, it will not be open to the Government to contend that it is not a fee for services rendered but a fee for the issue of a permit and that there is no necessity to establish any correlation between the expenses incurred and the quantum of the levy.

JUDGMENT:
CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 729 to 757 of 1972.
From the Judgment and Order dated the 27th September, 1971 of the Kerala High Court in O.P. Nos. 5103 and 5105/68 4261, 4329, 4369, 4518, 4580, 4618, 4657, 4769, 4829, 4837, 4870, 4948, 5919, and 5056/1969, 240-241, 433, 534, 536, 866, 869, 1559, 4982, 5050, and 5220, of 1970 and O.P. No. 3834 of 1969 (In CA No. 731/ 72 only), and
CIVIL APPEAL Nos. 514 of 1973 and 515 of 1973.
Appeals from the Judgments and Order dated the 28th March, 1972 and 11th February, 1972 of the Kerala High Court in Writ Petition No. 33 of 1972 and W. Appeal No. 466 of 1971 respectively.

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M. Sinha Solicitor General for India and A. G. Pudissery for the appellants, (In, all the appeals).
Y. S. Chitale, D. V. Patel K. S. Ramamurthy, V. J. Francis, V. Hassan Koyan, P. Sankaran Kutty and A. S. Nambiar for respondent No. 1 (In CA No. 746 and 748/72) respondent No. 2 (In CA 735/72, respondent No. 3 (In CA No. 754/72) and for Respondents (In rest of the Appeals).
The Judgment of the Court was delivered by
UNTWALIA, J.-All these Civil appeals filed on grant of certificates of fitness by the High Court of Kerala have been heard together ,and. are being disposed of by a common judgment as their facts and the points involved in them are identical. The respondents filed various writ petitions questioning the validity of the orders of the State Government of Kerala levying administrative surcharge on the export of tapioca. Respondents are dealers in tapioca and do the business of exporting it also outside the State of Kerala. In their writ petition, they also claimed refund of the amounts realised by the State Government on the basis of the impugned orders. Writ petitions were allowed by a bench of the Kerala-High Court and Civil Appeals 729-757 of 1972 are directed against the orders in the writ Petitions. Two of the Civil Appeals namely Civil Appeals 514 and 515 of 1973 arise out. of the Appellate order of the Kerala High Court dismissing the appeals from the orders allowing the writ petitions.
In exercise of the powers conferred by sub-section (1) and subsection (2) of Section 3 of the Essential Commodities Act, 1955 (Central Act 10 of 1955), hereinafter referred to as the Act, read with the order of the Government of India dated the 9th June, 1966 and with the prior concurrence, of

the, Central Government. the Govt. of Kerala made the Kerala Tapioca Manufacture and Export (Control) Order, 1966. Under clause 5 of the said order no person could export tapioca except under and in accordance with a permit issued by the Commissioner or any officer authorised by him in this behalf. Clause 6 of the order provides for the filling of applications for the grant of permits for tapioca in Form III and the permit for the export of tapioca shall be in form IV. Even before the promulgation of the Kerala Tapioca Manufacture and Export (Control) Order, administrative surcharge was levied under a Scheme formulated by the State Government, on the 15th April, 1966 published in the Kerala Gazette dated 3-5-1966. The rates of administrative charge levied on tapioca in the Scheme dated 15th April, 1966 was varied from time to time and a copy of the order dated 20th October, 1967 specifying the revised rates was Ext. P-1 in one of the writ petitions. A copy of the order dated 15th April, 1966 was given to us by the- learned Solicitor General appearing for the appellant State. The respondents' plea that the levy of, administrative charges, was ultra vires the State Government and unwarranted by law has been accepted by the Kerala High Court. Learned Solicitor General appearing for the appellant State submitted that the orders levying administrative charge on the export of. tapioca, was, in effect and substance a licence fee charged in the exercise of the police powers of the State for permitting the
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respondents by grant of permits to export tapioca. Such a levy counsel submitted, can very well be supported with reference to the provisions of sub-section (1) or sub-section(2) of 53 the Act, whereby the State as a result of the authorisation under section 5 of the Act is empowered to regulate the transport or export of tapioca, and essential foodstuffs.

Learned Solicitor General strenuously attached the findings of the Kerala High Court that the administrative charge imposed on the export of tapioca was a fee and since it had no correlation with the service rendered by the State, the most was bad.

In the instant case it is not necessary for us to decide whether the view aforesaid of the Kerala High Court or the submission made on behalf of the appellant in that regard is correct or not. The Tapioca Export Control Order was made by the State Government on being authorised by the Central Government in its notification dated the 9th June, 1966. A copy of the said notification was placed before us at the time of hearing of these appeals. It purported to authorise the State Government to make orders under section 3 of the Act to provide for some of the matters mentioned in the various clauses. of sub-section (2) Learned counsel for the respondents submitted that it was not a general authorisation to make an order under sub-section(1). It is not necessary for us to go into this question either.

We shall assume in favour of the appellant that while regulating or prohibiting the production, supply and distribution of tapioca and trade and commerce therein it has got the police power to charge licence fee for the purpose of regulating the tapioca trade or to charge fees for grant of issue of licences/permits or other documents in accordance with clause (ii) of sub-section(2) of Section 3 of the Act. Still we find that the impugned levies have rightly been held to be bad as they were not levies of licence fees for regulating the trade or for grant of permits. The order dated 15th April, 1966 formulating the

scheme was not an order under any of the provisions of section is 3 of the Act. It did not impose any licence fee or fee for grant of permit. It merely provided for levying of administrative surcharge for the export of tapioca and its products at the specified rates which varied from time to time. In substance and in effect it was an impost on export which indisputably the State had no power to do. The orders levying the administrative charge which followed the Tapioca Export Control Order did, not refer to the exercise of any power under the said Order. It was completely independent of it. The Tapioca Export Control Order did not provide for imposition of any licence fee for the grant of permit for export of tapioca. Argument put forward on behalf of the appellant that the order dated the 15th April, 1966 was in substance and in effect an order under section 3 of the Act runs counter to its case in the' petitions of appeal wherein it has been stated "That the deterioration in food position in the State of Kerala started from 1963 onwards and to avert the further won seeing of the food position, the Government, under Rule 125 of the

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Defence of India Rules, 1962 issued the Tapioca Control Order, 1964, whereby Government imposed certain restrictions in the export of tapioca and its products from the State and permitted the export of limited quantity through selected dealers. The State, in accordance with this order framed a scheme known as "Scheme for the export of Tapioca and its products" on 15-4-1966 whereby the Govt. clarified the manner and mode of selection of the dealer, the details regarding the submission of applications of the intending exporters, the issue of permits and the payments of Administrative Surcharge."

The stand taken in the petitions of appeal was not pursued at the time of the hearing. It is, therefore, clear that the administrative surcharge levied by the State Government on the export of tapioca,as it was bad. The realisations thereunder were without the authority of law. It will, however, be open to the State Government to impose tax or fee, as they may be advised to do in accordance with law and if permissible under it, for permitting the respondents to export tapioca outside the State of Kerala. The debatable question as to the nature of impost, its constitutional validity and legal justifiability will have to be gone into then.

On the facts as they stand in these appeals, we uphold the orders of the Kerala High Court for the reasons given by us. The appeals fail and are dismissed with costs. One hearing fee.

P.B.R. Appeals dismissed

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