PETITIONER:
KERALA HOTEL & RESTAURANT ASSOCIATION AND ORS.ETC. ETC.

Vs.

RESPONDENT:
STATE OF KERALA AND ORS.

DATE OF JUDGMENT21/02/1990

BENCH:
VERMA, JAGDISH SARAN (J)
BENCH:
VERMA, JAGDISH SARAN (J)
RANGNATHAN, S.
OJHA, N.D. (J)

CITATION:
1990 AIR 913 1990 SCR (1) 516
1990 SCC (2) 502 JT 1990 (1) 324
1990 SCALE (1)252

ACT:
Kerala General Sales Tax Act, 1963: Sections 5, 9--First Schedule Item 57--Constitutional validity--Imposition of Sales Tax--Cooked food sold to affluent in luxury hotels--Exemption with regard to modest eating houses--Whether discriminatory and violates Article 14.
Tamil Nadu General Sales Tax Act, 1959: Section 3(2) Schedule I Item 150--Imposition of Sales Tax--Cooked food sold to affluent in luxury hotels--Exemption with regard to modest eating houses--Whether discriminatory and violates Article 14.

HEADNOTE:
The Constitutional validity of similar provisions in the States of Kerala and Tamil Nadu which result in imposition of Sales Tax on cooked food sold only in luxury hotels while exempting the same from sales tax in modest eating houses was challenged by some hoteliers in both States on the ground that this amounted to hostile discrimination and therefore violative of Article 14 of the Constitution. While the Kerala High Court rejected the challenge, the High Court of Madras upheld it. Consequently one set of appeals and a Writ Petition under Article 32 of the Constitution have been preferred by the unsuccessful hoteliers of Kerala and the other set of appeals by the State of Tamil Nadu against the decision of the Madras High Court allowing the Writ Petitions filed before it by the hoteliers.
Upholding the constitutional validity of the impugned provisions in both States, while dismissing the appeals and Writ Petition filed by the hoteliers and allowing the appeals by the State of Tamil Nadu, this Court,
HELD: It is the substance and not form alone which must be seen. The difference in the cooked food classified differently, taxed and taxfree, is as intelligible and real as the two types of customers to whom they are served at these different eating houses. This difference must also be available to support the difference in the incidence of the impugned sales tax. This classification does bear rational nexus with the
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object sought to be achieved. The object clearly is to raise the needed revenue from this source, determined by the fiscal policy, which can be achieved by taxing sale of costly food on the affluent alone in the society. The classification is made by grouping together only those places where costly food is sold leaving out the comparatively modest ones. The classification is, therefore, rounded on intelligible differentia and has a rational nexus with the object sought to be achieved. In other words, those grouped together possess a common characteristic justifying their inclusion in the group, but distinguishing them from those excluded; and performance of this exercise bears a rational nexus with the reason for the exercise. [526B-D]

The scope for classification permitted in taxation is greater and unless the classification made can be termed to be palpably arbitrary, it must be left to the legislative wisdom to choose the yardstick for classification, in the background of the fiscal policy of the State to promote economic equality as well. It cannot be doubted that if the classification is made with the object of taxing only the economically stronger while leaving out the economically weaker sections of society,- that would be a good reason to uphold the classification if it does not otherwise offend any of the accepted norms of valid classification under the equality clause. [526F-G]

The predominant object is to tax sale of cooked food to the minimum extent possible, since it is a vital need for sustenance. Those who can afford the costlier cooked food, being more affluent, would find the burden lighter. This object cannot be faulted on principle and is, indeed, laudable. In addition, the course adopted has the result of taxing fewer people who are more affluent in the society for raising the needed revenue with the added advantage of greater administrative convenience since it involves dealing with fewer eating houses which are easier to locate. This accords with the principle of promoting economic equality in the society which must, undoubtedly, govern formulation of the fiscal policy of the State. [532G-H]

The classification is made in the present case to bring within the tax next hotels or eating houses of the higher status excluding therefrom the more modest ones. A rational nexus exists of this classification with the object for which it is made ,and the classification is rounded on intelligible differentia. This being a relevant basis of classification related to the avowed object, the legislature having chosen an existing classification instead of resorting to a fresh method of classification, it cannot be a ground of invalidity even assuming there are other better
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modes of permissible classification. The classification made under the impugned provisions is neither discriminatory nor arbitrary. [533F-G; 534B]

Ganga Sugar Corporation Limited v. State of Uttar Pradesh & Ors., [1980] 1 SCC 223; M/s S. Kodar v. State of Kerala, [1974] 4 SCC 42.2; P.H. Ashwathanarayana Setty & Ors. v. State of Karnataka & Ors., [1989] Suppl. 1 SCC 696; ITO v. K.N. Takim Roy Rymbai; Federation of Hotel and Restaurant Association of India & Ors. v. Union of India & Ors., [1989] 178 ITR 97; A.R. Krishna lyer & Ors. v. State of Madras, [1956] 7 STC 346; Kadiyala Chandrayya v. The State of Andhra, [1957] 8 STC 33 and Budhan Chowdhary v. State of Bihar, [1955] 1 SCR 1045, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 912 to 20 of 1988 Etc.

From the Judgment and Order dated 23.10. 1987 of the Kerala High Court in O.P. Nos. 7976, 8543, 8385, 7712, 7761, 8058, 7461, 7709 & 7460/87.

WITH

Civil Appeal Nos. 4460 to 4480 of 1985.

(From the Judgment and Order of the Madras High Court dated 31.1. 1985 in W.P. Nos. 7, 1586, 1591, 1636, 2079, 2702, 5510, 5718, 5782, 5834, 6035, 6036, 6384, 6497, 7038, 7067, 7079/1981 and 6479/82, 2348/83, 8196/83 and 256 1985.)

AND

Writ Petition No. 281 of 1988.

(Under Article 32 of the Constitution of India).

T.S. Krishnamurthy lyer, P.S. Poti, A.S. Nambiar, C.N. Sree Kumar, Rajendra Chowdhry, V. Krishna Murthy, S. Thana Jayan, K.R. Nambiar, R.F. Nariman, K.J. John and Thomas Joseph for the appearing parties.

The Judgment of the Court was delivered by

VERMA, J. These civil appeals and the connected writ petition involve decision of the substantially common question arising out of the conflicting decisions of the High Courts of Kerala and Madras regarding constitutional validity of similar provisions in the States of Kerala and Tamil Nadu which result in imposition of sales tax in the two States on cooked food sold to the affluent in the luxury hotels while exempting the same from sales tax in the modest eating houses patronised by the lesser mortals. In both these States the eligibility to sales tax of cooked food sold only in luxury hotels was challenged on

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the ground that it amounted to hostile discrimination. The Kerala High Court rejected the challenge while the Madras High Court has upheld it. This has led to filing of Civil Appeal Nos. 912-20 of 1988 against the Kerala High Court's decision and Writ Petition (Civil) No. 281 of 1988 under Article 32 of the Constitution by the unsuccessful hoteliers of Kerala while Civil Appeal Nos. 4460-80 of 1985 are by the State of Tamil Nadu against the Madras High Court's decision. These conflicting decisions of the two High Courts giving rise to these matters are: Sangu Chakra Hotels Pvt. Ltd. v. State of Tamil Nadu, [1985] 60 STC 125 (Madras) and Hotel Elite v. State of Kerala, [1988] 69 STC 119 (Kerala).

Shorn of rhetoric and bereft of the legal embroidery which invariably constitute bulk of the armoury of constitutional attack on such a statutory provision and removing the gloss of hypertechnicality from the arguments, the real question is: Whether imposition of sales tax on the sale of cooked food in the more costly eating places alone violates the guarantee of equality enshrined in the Constitution of our 'Socialist' Republic in view of the fact that cooked food sold in the modest eating places catering to the need of the common man is not similarly taxed? The challenge is that this can be done only by taxing them equally but not otherwise. In other words, the contention is that this tax burden which is ultimately borne by the consumers of cooked food must be shared equally by all consumers and it cannot be placed only on the more affluent in the society who obviously are the ones frequenting the costlier eating houses, sale of cooked food wherein is taxed, the tax not being on the income or status of the consumer but on the sale of food for consumption. In substance the question is: Is this the kind of equality envisaged and guaranteed in our Constitution?

It is well-settled that in order to tax some thing it is not necessary to tax everything. So long as those within the tax net can be legitimately classified together indicating an intelligible differentia vis-a-vis those left out and the classification so made bears a rational nexus with the object sought to be achieved, the classification is clearly permissible and it does not violate Article 14 of the Constitution. There being obviously no controversy with this settled principle, the contention of Shri T.S. Krishnamurthy Iyer who led the attack to this imposition supported by other learned counsel appearing in these matters is, that the cooked food sold in all eating houses, be it the luxury hotels catering to the affluent or the wayside dhabas frequented by the commoner, has the common characteristic of appeasing the hunger of the consumer, the requirement of the affluent as well as the commoner to appease the hunger being common. On this basis, the main theme of
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the argument was that the common purpose of sale of cooked food in all eating houses being to appease the hunger of the consumer, there can be no reasonable basis for its classification with reference to the eating house in which it was sold to the customers and, therefore, for exigibility to sales tax the cooked food could not be classified with reference to the place of its sale. Is this the correct approach to examine the reasonableness and validity of the classification made in the present case?

In case such an argument is valid, it logically follows that in order to tax sale of cooked food the States must levy the sales tax on cooked food sold in all eating places whether it be a luxury hotel or a roadside dhaba; or not tax it at all, if it wishes to relieve the common man who is in eternal pursuit of adequate means of sustenance, of this additional burden. We must frankly admit that unless it be the clear mandate of the Constitution we would not hesitate to reject this argument which, if accepted, may lead to the disastrous consequence of equating for taxation the haves with the have-nots even in the matter of sustenance of the latter. Moreover, such a view may even tempt the legislature to tax all cooked food sold anywhere and we certainly do not wish to make any contribution to a move in that direction. Fortunately, as we read the constitutional provisions and the mandate of equality enshrined therein, such a view is not envisaged and the indication indeed is to the contrary.

The preamble to the Constitution contains the solemn resolve to secure to all its citizens, inter alia, economic and social justice along with equality of status and opportunity. The expression 'socialist' was intentionally introduced in the preamble by the Constitution (FortySecond Amendment) Act, 1976 with the principal aim of eliminating inequality in income and status and standards of life. The emphasis on economic equality in our socialist welfare society has to pervade all interpretations made in the context of any challenge based on hostile discrimination. It is on the altar of this vibrant concept in our dynamic Constitution that the attack based on hostile discrimination in the present case must be tested when the legislature intended to rest content with placing the tax burden only on the haves excluding the havenots from the tax net for satisfying the tax need from this source. The reasonableness of classification must be examined on this basis when the object of the taxing provision is not to tax sale of all cooked food and thereby tax everyone but to be satisfied with the revenue raised by taxing only the sale of costlier food consumed by those who can bear the tax burden.

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The extent to which the revenue is required from a particular source is a matter of fiscal policy and if the legislature chooses to be satisfied with the raising of that amount alone which can be recovered from the affluent, it cannot be faulted for not dragging the impecunious also in the tax net. Even otherwise the play at the joints permitted to the legislature for making classification in a taxing provision is greater and unless the classification made cannot satisfy the test of reasonableness in the context of economic equality envisaged in our society, a legislative enactment which undoubtedly benefits the common man cannot be held discriminatory or arbitrary. The Directive Principles of State Policy also enjoin the State to temper the legislation towards securing a social order conducive to the promotion of social and economic equality, eliminating as far as may be the existing inequalities between different strata in the society. This too is a pointer in the same direction.

We are here concerned with the constitutional validity of a legislative provision which has the effect of making the cooked food sold in the posh eating houses alone exigible to sales tax while exempting from that levy the cooked food sold in the moderate eating houses. Reasonableness to the classification has to be decided with reference to the realities of life and not in the abstract. A discernible dissimilarity between those grouped together and those excluded is a pragmatic test, if there be a rational nexus of such classification with the object to be achieved. in the abstract all cooked food may be the same since its efficacy is to appease the hunger of the consumer. But when the object is to raise only limited revenue by taxing only some category of cooked food sold in eating houses and not all cooked food sold anywhere, it is undoubtedly reasonable to tax only the more costly cooked food. The taxed cooked food being the more costly variety constitutes a distinct class with a discernible difference from the remaining tax-free cooked food. A blinkered perception of stark reality alone can equate caviar served with champagne in a luxury hotel with the gruel and buttermilk in a village hamlet on the unrealistic abstract hypothesis that both the meals have the equal efficacy to appease the hunger and quench the thirst of the consumer. Validity of a classification under our Constitution does not require such a blurred perception.

The cost of meal in these two distinct classes of eating houses varies considerably, the cost in a modest eating house quite often being a mere pittance of that in a posh eating house. Not only that, the incidence of sales tax on the cost of food served in a posh eating house

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quite often would not even be noticed by the customer and it may even exceed the total cost of the meal served in a modest eating house. How can the two meals be then equated and classified together by application of the unreal test that the efficacy of both meals is to appease the consumers' hunger? It is the substance and not form alone which must be seen. The difference in the cooked food classified differently, taxed and tax-free, is as intelligible and real as the two types of customers to whom they are served at these different eating houses. This difference must also be available to support the difference in the incidence of the impugned sales tax. This classification does bear a rational nexus with the object sought to be achieved. The object clearly is to raise the needed revenue from this source, determined by the fiscal policy, which can be achieved by

taxing sale of costly food alone and thereby placing the burden only on the affluent in the society. The classification is made by grouping together only those places where costly food is sold leaving out the comparatively modest ones. The classification is, therefore, rounded on intelligible differentia and has a rational nexus with the object to be achieved.

Having mentioned this broad feature of the case, we now advert to the specific provisions challenged and the various facets of the attack to their constitutional validity.

The provisions of the Kerala Act may first be stated. The Kerala General Sales Tax Act, 1963 has been amended from time to time both by the Kerala General Sales Tax (Amendment) Acts and also by the Kerala Finance Acts. Section 5 of the Kerala General Sales Tax Act is the charging section and the first Schedule specifies goods subject to single point tax thereunder. Section 9 of the Act provides for exemption from tax and the goods so exempted are specified in the third schedule to the Act. Item 12 in the third schedule as it stood prior to 1.4.1976, read:

"Item 12--Cooked food including coffee, tea and like articles served in a hotel, restaurant or any other place by a dealer whose total turnover in respect of such food is less than thirty-five thousand rupees in a year."

The above provision was amended by Act 45 of 1976 from 1.4.1976. After the said amendment, the provision read:

"Cooked food including coffee, tea and like articles served in a hotel, restaurant or any other place."

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As a result of the above amendment, cooked food specified in Item 12 mentioned above was exempt from sales tax by virtue of Section 9 of the Act.

This was the position until 1987 when the Kerala Finance Act, 1987 was passed, which was brought into force retrospectively with effect from 1.7.1987. However, we are not concerned with its retrospective operation since an undertaking was given in the High Court on behalf of the State Government that retrospective effect would not be given to this provision.

Item 57 in the First Schedule reads:

"57. Cooked food including beverages not falling in any entry in the fifth schedule in bar attached hotels of restaurants and/or hotels above the grade of two stars.	At the point of first sale in the State by a dealer who is liable to tax under section 5."

Item 12 in the Third Schedule was amended by the above Finance Act to read as follows:

"12. Cooked food including coffee, tea and like articles served in a hotel or a restaurant or any other place not falling under Entry 57 of the First Schedule."

In the Fifth Schedule dealing with goods in respect of which tax is leviable on two points under sub-section (1) or sub-section (2) of Section 5 is included foreign liquor as Item 2.

As a result of the Kerala Finance Act, 1987, Writ Petitions were filed in the Kerala High Court challenging the constitutional validity of the sales tax levied on the cooked food included under Item 57 of the First Schedule of the Act on the ground of discrimination because of Item 12 in the Third Schedule of the Act whereby cooked food including coffee, tea and the like articles served in a hotel, a restaurant or any other place not falling under Item 57 of the First Schedule was exempted. The Kerala High Court dismissed the writ petitions. That decision reported in

Hotel Elite & Ors. v. State of Kerala & Ors., [1988] 69 STC 119 is challenged in one batch of Civil Appeals before us.
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During the pendency of these civil appeals, Kerala Finance Act,1988 was passed amending Entry 57 of the Kerala General Sales Tax Act, 1963, as under:
"For the entry in column (2) against Serial No. 57, the following entry shall be substituted, namely,
"Cooked Food" including beverages not falling under entry 76A of this Schedule sold or served in,
(i) hotels and/or restaurants, the turnover in respect of which is twenty lakhs rupees and above; and
(ii) bar attached hotels and/or restaurants."

As a result of the above amendment, the category of star hotels has been removed and in its place hotels or restaurants with turnover of rupees twenty lakhs and above and bar attached hotels, etc. are substituted.

The validity of the above provision was challenged by filing an application for amendment in this Court to incorporate additional grounds mentioned in Civil Miscellaneous Petition Nos. 7569-77 of 1988 in Civil Appeal Nos 912-20 of 1988. The application for amendment was allowed by this Court and it is, therefore, necessary to also consider the validity of the said amendment introduced by Act 17 of 1988. In addition, Civil Writ Petition No. 281 of 1988 has been filed directly in this Court under Article 32 of the Constitution, challenging the constitutional validity of these amendments in the Kerala Act.

The relevant provisions of the Tamil Nadu Act may also be noticed. It is the constitutional validity of Item 150 in the First Schedule to the Tamil Nadu General Sales Tax Act, 1959 which is challenged. By an amendment with effect from 4.10. 1980 Item 150 reads as under:
"Articles of food and drinks sold to customers in three star, four star and five star hotels, as recognised by Tourism Department, Government of India whether such articles are meant to be consumed in the premises or outside."
The effect thereof was to tax sales of food and drinks covered by the above item while exempting those outside the item. Thereafter Item
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150 was substituted with effect from 12.6.1981 as under:
"Articles of food and drinks other than those specified elsewhere in this schedule, sold to customers in hotels classified or approved by the Government of India, Department of Tourism."
The challenge to levy of sales tax on the sales covered by these items is substantially on the same grounds as in the Kerala case.

We shall now mention the arguments advanced by learned counsel challenging this imposition in the two States. The power of the State Legislature to levy sales tax by virtue of Entry 54 in list II of the 7th Schedule to the Constitution and the availability of that power in the present case to impose sales tax on food and drinks by virtue of Clause (29A) inserted in Article 366 of the Constitution by the Constitution (Forty-sixth Amendment) Act, 1982, is rightly not disputed. However, it is contended that the classification made of the food and drinks taxed and those exempted is discriminatory and arbitrary. It was urged that the classification is not based on the goods taxed but on the status of the consumers which is not permissible. It was urged that the commodity taxed being the same as that exempted, the difference being only in the place of their sale, differentiation for taxation on the basis of place of

sale is impermissible. It was argued that Article 366(29A) permits imposition of tax on sale of food and drinks in any form but it does not permit.a differentiation with reference only to the place of sale. It was also urged that the classification in such cases based only on turnover may be permissible for administrative and some other reasons but not on the place of sale, the status' of the customer or difference in the impact of such tax on the customer. It was also contended that the classification made with reference to the status of hotel has no nexus with the object of imposition of sales tax because the approval for the star status is for a different purpose relating to tourism and the other amenities provided in the hotel. An attempt was also made to contend that the quality of food need not necessarily be superior in a hotel of higher star status as compared to an ordinary eating house and the charges for food served in the luxury hotels also include the service charges and not merely the cost of food. Similarly, it was urged that a distinction made on the basis of a bar being attached to this hotel has no relevance or justification for the classification made in this context. In reply, it was contended by Shri P.S. Poti and Shri K. Rajendra Choudhary on behalf of the two State Governments that such classification being permissible the mode to be
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adopted is the legislature's choice which has chosen a pragmatic mode based on an existing classification instead of undertaking the exercise of a new classification to identify the two categories of eating houses, the sales wherein should be taxed or exempted. It was urged that unless the classification so made is found to be arbitrary, there is no ground to reject the same and substitute it with another method simply because another method may be more desirable. It was also contended that the object being to raise only limited revenue from this source, it was decided to tax only the sale of costlier food and thereby confine the burden only to fewer people on whom the burden would be light with the added advantage of greater administrative convenience.

A catena of decisions was cited at the bar on the point relating to valid classification and the test to be applied when hostile discrimination is alleged. It is not necessary to refer to all those decisions which state the settled principles not in dispute even before us. The difficulty really is in the application of settled principles to the facts of each case. It is settled that classification rounded on intelligible differentia is permitted provided the classification made has a rational nexus with the object sought to be achieved. In other words, those grouped together must possess a common characteristic justifying their inclusion in the group, but distinguishing them from those excluded; and performance of this exercise must bear a rational nexus with the reason for the exercise.

The scope for classification permitted in taxation is greater and unless the classification made can be termed to be palpably arbitrary, it must be left to the legislative wisdom to choose the yardstick for classification, in the background of the fiscal policy of the State to promote economic equality as well. It cannot be doubted that if the classification is made with the object of taxing only the economically stronger while leaving out the economically weaker sections of society, that would be a good reason to uphold the classification if it does not otherwise offend any of the accepted norms of valid classification under the equality clause.

Broadly stated the points involved in the constitutional attack to the validity of this classification are, in substance, only two:
(1) Is the classification of sales of cooked food made with reference to the eating houses wherein the sales are made, rounded on an intelligible differentia? and
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(2) If so, does the classification have a rational nexus with the object sought to be achieved?

It would be useful at this stage to refer to some decisions of this Court indicating the settled principles for determining validity of classification in a taxing statute. In Ganga Sugar Corporation Limited v. State of Uttar Pradesh and Ors., [1980] 1 SCC 223, Krishna Iyer, J. speaking for the Constitution Bench held that a classification based, inter alia, on "profits of business and ability to pay tax" is constitutionally valid. Classification permissible in a taxing statute of dealers on the basis of different turnovers for levying varying rates of sales tax was considered by the Constitution Bench in M/s S. Kodar v. State of Kerala, [1974] 4 SCC 422, and Mathew, J. therein indicated the true perspective as under:

"As we said, a large dealer occupies a position of economic superiority by reason of his volume of business and to make the tax heavier on him both absolutely and relatively is not arbitrary discrimination but an attempt to proportion the payment to capacity to pay and thus arrive in the end at more genuine equality. The capacity of a dealer, in particular circumstances, to pay tax is not an irrelevant factor in fixing the rate of tax and one index of capacity is the quantum of turnover. The argument that while a dealer beyond certain limit is obliged to pay higher tax, when others bear a less tax, and it is consequently discriminatory really misses the point namely that the former kind of dealers are in a position of economic superiority by reason of their volume of business and form a class by themselves. They cannot be treated as on a part with comparatively small dealers. An attempt to proportion the payment to capacity to pay and thus bring about a real and factual equality cannot be ruled out as irrelevant in levy of tax on the sale or purchase of goods. The object of a tax is not only to raise revenue but also to regulate the economic life of the society."
(emphasis supplied)

A recent decision of this Court in P.H. Ashwathanarayana Setty and Ors. v. State of Karnataka and Ors., [1989] Supp. 1 SCC 696 gives a fresh look to the extent of classification held valid in a taxing statute; and the scope of judicial review permitted while considering its validity on the ground of equality under Article 14. The true position has been
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succinctly summarised by Venkatachaliah, J. speaking for the Court, as under:
"The problem is, indeed, a complex one not free from its own peculiar difficulties. Though other legislative measures dealing with economic regulation are not outside Article 14, it is well recognised that the State enjoys the widest latitude where measures of economic regulation are concerned. These measures for fiscal and economic regulation involve an evaluation of diverse and quite often conflicting economic criteria and adjustment and balancing of various conflicting social and economic values and interests. It is for the State to decide what economic and social policy it should pursue and what discriminations advance those social

and economic policies. In view of the inherent complexity of these fiscal adjustments, courts give a larger discretion to the legislature in the matter of its preferences of economic and social policies and effectuate the chosen system in all possible and reasonable ways. If two or more methods of adjustments of an economic measure are available, the legislative preference in favour of one of them cannot be questioned on the ground of lack of legislative wisdom or that the method adopted is not the best or that there were better ways of adjusting the competing interests and claims. The legislature possesses the greatest freedom in such areas ..... "

"The legislature has to reckon with practical difficulties of adjustments of conflicting interests. It has to bring to bear a pragmatic approach to the resolution of these conflicts and evolve a fiscal policy it thinks is best suited to the felt needs. The complexity of economic matters and the pragmatic solutions to be found for them defy and go beyond conceptual mental models. Social and economic problems of a policy do not accord with preconceived stereotypes so as to be amenable to predetermined solutions ..... "

The lack of perfection in a legislative measure does not necessarily imply its unconstitutionality. It is rightly said that no economic measure has yet been devised which is free from all discriminatory impact and that in such a complex arena in which no perfect alternatives exist, the Court does well not to impose too rigorous a standard of criti-

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cism, under the equal protection clause, reviewing fiscal services. In G.K. Krishnan v. State of Tamil Nadu this Court referred to, with approval, the majority view in San Antonio Independent School District v. Rodriguez speaking through Justice Stewart:

'No Scheme of taxation, whether the tax is imposed on property, income or purchases of goods and services, has yet been devised which is free of all discriminatory impact. In such a complex arena in which no perfect alternatives exist, the Court does well not to impose too rigorous a standard of scrutiny lest all local fiscal schemes become subjects of criticism under the Equal Protection clause'

and also to the dissent of Marshall, J. who summed up his conclusion that:

'In summary, it seems to me inescapably clear that this Court has consistently adjusted the care with which it will review State discrimination in light of the constitutional significance of the interests affected and the invidiousness of the particular classification. In the context of economic interests, we find that discriminatory State action is almost always sustained, for such interests are generally far removed from constitutional guarantees. Moreover, "(t)he extremes to which the court has gone in dreaming up rational basis for State regulation in that area may in many instances be ascribed to a healthy revulsion from the court's earlier excesses in using the Constitution to protect interests that have more than enough power to protect themselves in the legislative halls."

"The observations of this Court in ITO v. K.N. Takim Roy Rymbai made in the context of taxation laws are worth recalling.

(T)he mere fact that a tax falls more heavily on some in the same category, is not by itself a ground to render the law invalid. It is only when within the range of its selection. the law operates unequally and cannot be justified on the basis of a valid classification, that there would be a

violation of Article 14."
(emphasis supplied)
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In Federation of Hotel and Restaurant Association of India and others v. Union of India and others, [1989] 178 ITR 97 Venkatachaliah, J., delivering the majority opinion of the Constitution Bench while dealing with a similar objection to classification in a taxing statute, held as under:

"The State, in the exercise of its Governmental power, has, of necessity, to make laws operating differently in relation to different groups or class of persons to attain certain ends and must, therefore, possess the power to distinguish and classify persons or things. It is also recognised that no precise or set formula or doctrinaire tests or precise scientific principles of exclusion or inclusion are to be applied. The test could only be one of palpable arbitrariness applied in the context of the felt needs 10 the times and societal exigencies informed by experience.

Classifications based on differences in the value of articles or the economic superiority of the persons of incidence are well recognised. A reasonable classification is one which includes all who are similarly situated and none who are not. In order 10 ascertain whether persons are similarly placed, one must look beyond the classification and to the purposes of the law."
(emphasis supplied)

Thus, it is clear that the test applicable for striking down a taxing provision on this ground is one of 'palpable arbitrariness applied in the context of the felt needs of the times and societal exigencies informed by experience'; and the courts should not interfere with the legislative wisdom of making the classification unless the classification is found to be invalid by this test.

In the present case, to assail the constitutional validity of the impugned provisions reliance is placed on a decision of the Madras High Court in A.R. Krishna lyer and Ors. v. State of Madras, [1956] 7 STC 346. However, contrary view was taken by the A.P. High Court of the same provision in the Madras General Sales Tax Act, 1939 in Kadiyala Chandrayya v. The State of Andhra Pradesh, [1957] 8 STC 33. Subba Rao, C J, as his lordship then was, upheld the classification in the Andhra decision on the ground that it was made as a genuine attempt to adjust the, burden with a fair and reasonable degree of equality and to harmonise the doctrine of equality with differences
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inherent in the categories of persons assessed. After referring to the principle of classification authoritatively restated by this Court in Budban Chowdhary v. State of Bihar, [1955] 1 SCR 1045 and quoting the of quoted passage from Willis on Constitutional Law on this point, Subba Rao, CJ., as his Lordship then was, proceeded to hold as under:

"The object of the Act, as set out in the preamble. is to provide for the levy of a general tax on the sale of goods in the State of Andhra. But every taxing legislation makes a genuine attempt to adjust the burden with a fair and reasonable degree of equality. It also aims to apportion the burden equitably on different categories of properties or persons with distinct economic characteristics. It is impossible in the nature of things to aim at absolute equality in the matter of taxation. The State resorts to the principle of classification in an attempt to harmonise the doctrine of equality with differences inherent in the categories of properties or persons assessed. In the present case, the

object to provide for the levy of a general tax and to apportion the burden equitably between different categories of persons has a reasonable nexus with the classification adopted by the legislature. The question can be considered from the stand-point of the citizen as well as from the stand-point of the State. From the stand-point of the State, the classification can be justified on the ground of equitable apportionment of the burden and easy realisation of the tax. Articles of food and drink are more in demand than other articles. Even in the case of the former, there will be a larger demand in restaurants, boarding houses and hotels than in other places like way-side shops. There may be small or big dealers even in such commodities, who run hotels or keep boarding houses. The State also can reasonably recover taxes at higher rates from prosperous dealers than from impecunious ones. From the stand-point of the dealer also, there is justification for the varied rates. The articles sold, the place where the business is carried on and the expectation of large profits are the characteristics of dealers who are distinct from dealers not covered by the proviso.

Learned counsel relied upon the decision of the Madras High Court in Krishna lyer v. The State of Madras, wherein the learned Judges took a different view from what we have taken. After pointing out that three lines of clas-
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sification run through the impugned provision, the learned judges considered only the second classification, namely, the distinction between dealers in articles of food and drinks sold in hotels, boarding houses and restaurants and other dealers in such articles and held that it was sufficient to deny the validity of the impugned provision. With great respect we cannot agree. In our view, the characteristics of the dealer covered by the proviso should be cumulatively considered and, if so looked at, the said characteristics will afford a reasonable basis of classification which has a rational nexus with the object sought to be achieved. We, therefore, hold that the classification is rounded on intelligible differentia distinguishing dealers like the assessee and that it has a rational relation to the object sought to be achieved."
(emphasis supplied)

The vision of Subba Rao, C J, as his Lordship then was, portrayed in the Andhra decision more than three decades earlier, a forerunner in the field, is fully realised being consistent with the picture emerging from the decisions of this Court already noticed and promotes the principle of economic equality governing formulation of the country's fiscal policy. With great respect, we fully concur with the above view taken by Subba Rao, C J, as his Lordship then was, even prior to introduction of the word 'socialist' in the Preamble of the Constitution, which further reinforces its correctness.

The obvious reason for making the classification in the present case is to group together those eating houses alone wherein costlier cooked food is sold for the purpose of imposition of sales tax to raise the needed revenue from this source. The object apparently is to raise the needed revenue from this source by taxing the sale of cooked food only to the extent necessary and, therefore, tO confine the levy only to the costlier food. The predominant object is to tax sale of cooked food to the minimum extent possible, since it is a vital need for sustenance. Those who can afford the costlier cooked food, being more affluent, would find the burden lighter. This object cannot be faulted on

principle and is, indeed, laudable. In addition, the course adopted has the result of taxing fewer people who are more affluent in the society for raising the needed revenue with the added advantage of greater administrative convenience since it involves dealing with fewer eating houses which are easier to locate. This accords with the principle of promoting economic equality in the society which must, undoubtedly, govern formulation of the fiscal policy of the State.
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The trend of the up-to-date decisions of this Court, already noticed does indicate that a classification made whereby the tax net covers only the sale of costlier cooked food in the posh eating houses while exempting the cooked food sold in the modest eating houses at lesser prices, thereby confining the burden to the more affluent in the society, satisfies the requirements of a valid classification. Moreover, the classification so made cannot be termed as arbitrary, being within the limits upto which the legislature is given a free hand for making classification in a taxing statute.

It has not been shown that any eating house similar to those grouped together for purpose of taxation has been excluded from the group. The classification made is to group together all eating houses wherein costlier cooked food is sold. It has not been shown that the tariff of cooked food sold in any of the exempted eating houses is the same or higher than that of those taxed. The tax is applied equally to all those within the tax net.

It was urged that eating houses serving cooked food of the same quality but not recognised with the higher star status to bring it within the tax net enjoyed an undue advantage not available to those within the tax net. It was also urged that recognition of a hotel for conferment of the star status was made for a different purpose, namely, promotion of tourism and the other facilities available therein which have no relevance to the quality of food served therein. Admittedly, such recognition entails several benefits and seeking recognition depends on volition. In our opinion, such an enquiry is unwarranted for the purpose of classification in the present context. It is well-known that the tariff in hotels depends on its star status, it being higher for the higher star hotels. The object being to tax cooked food sold at a higher tariff, the status of the hotel where it is sold is certainly relevant. The classification is made in the present case to bring within the tax net hotels or eating houses of the higher status excluding therefrom the more modest ones. A rational nexus exists of this classification with the object for which it is made and the classification is rounded on intelligible differentia. This being a relevant basis of classification related to the avowed object, the legislature having chosen an existing classification instead of resorting to a fresh method of classification, it cannot be a ground of invalidity even assuming there are other better modes of permissible classification. That is clearly within the domain of legislative wisdom intrusion into which of judicial review is unwarranted. There is no material placed before us to indicate that with reference to the purpose for which the classification has' been made in
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the present case, there is a grouping together of dissimilar eating houses or that similar eating houses have been excluded from the class subject to the tax burden..

This discussion clearly shows that the attack to the constitutional validity of the impugned provisions in both

States has no merit since the classification made is neither discriminatory nor arbitrary. We have no hesitation in rejecting the challenge on the aforesaid grounds on the material produced. The writ petitions filed in both High Courts as also in this Court challenging the levy in the States of Kerala and Tamil Nadu must fail.

Consequently, Civil Appeal Nos 912-20 of 1988 against the judgment of the Kerala High Court as well as the connected Civil Writ Petition No. 281 of 1988 challenging the validity of the impugned provisions in the Kerala Act are dismissed while Civil Appeal Nos. 4460-80 of 1985 against the Madras High Court decision are allowed resulting in dismissal of those writ petitions also. In the circumstances of the case, the parties shall bear their own costs.

R.N.J.

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