PETITIONER:
STATE OF MYSORE & ANR.

Vs.

RESPONDENT:
PENDAKUR VIRUPANNA SETTY & SONS & A

DATE OF JUDGMENT27/04/1971

BENCH:
GROVER, A.N.
BENCH:
GROVER, A.N.
SHELAT, J.M.
DUA, I.D.

CITATION:
1971 AIR 1325 1971 SCR 526

ACT:
Andhra State Act (30 of 1953) and States Reorganisation Act, 1956--Parts of Madras State made part of Mysore State-Laws in Madras State made applicable to Bellary area and Madras Area-Mysore Adaptation of Laws Order 1956, and Mysore General Clauses Act, 1899--'Madras Area', what is.

HEADNOTE:
As a result of the Andhra State Act, 1953 a part of the Bellary district of Madras became part of the former State of Mysore, and as a result of the State Re-organisation Act, 1956 a part of the South Kanara district of Madras became part of the Mysore State. Under sections in those two Acts providing for the continuance of laws, s, 11 of the Madras Commercial Crops Market Act, 1933, as it stood before its amendment in 1955 by the Madras Legislature, was in force in the Bellary area of the Mysore State, and the section as amended in 1955, was in force in the South Kanara area. Section 11(1), before its amendment in 1955, empowered a 'Market Committee to levy fees, but after amendment, the levy was a cess by way of sales tax in addition to the sales tax levied under the Madras General Sales Tax Act. Even though no notification, as required by the section, was issued by the Government of Madras, the South Kanara Market Committee was levying the cess and continued to do so after the area became a part of Mysore. In order to validate the levy and to enable the Committee to continue the levy, the Madras Commercial Crops (Mysore Amendment and Validation of Levy of Cess) Act was passed by the Mysore Legislature in 1958. By the Mysore Amendment Act, a new section 11(1) was substituted for the s. 11 (1) as in force in the Madras area. This new sub-section also empowered the levy of cess by way of sales tax, in addition to the sales tax under the general sales tax law.
The respondents were served a notice by the Secretary of the Bellary Market Committee to pay cess on groundnut seeds bought or sold in the notified area of the committee in the Bellary area of Mysore. As the respondents failed to comply with the demands, complaints were filed against them. The respondents filed petitions under Art. 226 of the Constitution challenging the validity of the levy and the High Court quashed the demand on the ground that what was

being demanded was payment of sales-tax and since the maximum rate authorised by s. 15 of the Central Sales Tax Act, 1956, read with s. 5(4) of the Mysore Sales Tax Act, 1957, had already been imposed, the Market Committee could not make a further levy.

In appeal to this Court,

HELD: (1) Section 11(1) as substituted by the Mysore Legislature in 1958, did not apply to the Bellary area and was confined only to the 'Madras area', which meant, that part of the South Kanara district which became part of the Mysore State, because,

(a) The statement of objects and reasons of the Mysore Amendment shows that the changes in law and the validation provisions were confined only to the levy of a cess by way of sales-tax by the South Kanara Market Committee.

527

(b) The Mysore Amendment was made applicable only to the 'Madras area' and this area could have reference only to the South Kanara area of the Mysore State, since: (i) By the Mysore Adaptation of Laws Order, 1956, read with s. 7(1) of the States Re-organisation Act, 'Madras area' under the Mysore General Clauses Act, 1899 (applicable to Mysore Act) means, the South Kanara area of the Mysore State; and (ii) it would be stretching language too far to include in the expression, 'Bellary area' what had ceased to be a part of the Madras State in 1953, long before the Mysore Amendment in 1958.

(c) In s. 154 of the Mysore Agricultural Produce Marketing (Regulation) Act, 1966, it is stated that the Madras Commercial Crops Market Act as in force in the Bellary district, and the same Act as in force in the Madras area was being repealed, showing that the 'Bellary area' was not the same as the 'Madras area' of the Mysore State.

(d) The Mysore Amendment Act specifies the rates of only two commodities, namely, arecanut and coconut in the 'Madras area' and these two commodities figure as the principal commercial crops in the bye laws of the South Kanara Market Committee, whereas they are not included as commercial crops in the bye laws of the Bellary Market Committee at all. [532A-533D]

(2) If the Mysore Amendment Act, 1958, did not apply to the Bellary area, s. 11(1) of the Madras Commercial Crops Markets Act as it originally stood before its amendment in 1955 by the Madras Legislature was applicable. and under that provision only a fee and not tax could be levied. Therefore, even though the demand in the present case employed the word 'cess', it referred only to a 'fee', and not to tax. [533E]

[The matter was remitted to the High Court for determining the validity and legality of the levy as 'fee' in relation to the services rendered.]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1827 to 1830 of 1968.

Appeals from the judgments and orders dated August 22, 23, 1967, and August 23, 1967 of the Mysore High Court in writ petitions Nos. 1967 of 1966, and 1968, 1969 and 2388 of 1966.

Shyamlad Pappu, M. S. Ganesh and S. P. Nayar, for the appellants (in all the appeals).

S. V. Gupte and A. V. Rangam, for respondent no. 1 (in all the appeals.)

The Judgment of the Court was delivered by
Grover, J.-These appeals by certificate arise from a judgement of the Mysore High Court delivered in certain petitions filed under Art. 226 of the Constitution challenging the demand of a cess levied in exercise of the powers conferred by s. 11 (1) of the Madras Commercial Crops Market Act 1933-hereinafter called the 'Act'--the provisions of which were applicable to the Bellary district of the State of Mysore.
528
The respondents were served a notice by the Secretary of the Bellary Market Committee established under the Act to pay the cess on groundnut seeds bought or sold in the notified area of the Committee. As the respondents failed to comply with the demand complaints were filed against them for contravention of s. 1 1 (1) of the Act and of certain rules and bye-laws framed thereunder. The respondents filed petitions under Art. 226 of the Constitution challenging the validity of the levy of cess. The High Court quashed the demand on the ground that what was being really demanded was the payment of sales tax and since the maximum rate of sales tax authorised by s. 15 of the Central Sales Tax Act 1956 read with s. 5(4) of the Mysore Sales Tax Act 1957 had already been imposed the Market Committee could not make any further or additional levy. A direction was also made for refund of the cess collected during a period of three years preceding the date of the presentation of the writ petition. For the purpose of determination of the points which have been raised it is necessary to set out the background and the history of legislation insofar as it is relevant concerning Bellary district. By the Andhra State Act 1953 (Central Act 30 of 1953) a part A State to be known as "Andhra" came into existence. By s. 4 of that Act there was added to the State of Mysore the territory which immediately before the appointed was comprised in the Taluks of Bellary district other than Alur, Adoni and Rayadrug in the State of Mysore and the said territories thereupon ceased to form part of the State of Madras. By virtue of s. 53 of the Central Act 30 of 1953 all laws which were in force immediately before the appointed day in the territories which became a part of the State of Mysore were to continue to be in force until otherwise provided by the legislature of that State. The Act became applicable to that area of the Bellary district which became a part of the State of Mysore. Section 11(1) of the Act as it originally stood empowered the Market Committee to levy fees subject to such rules as might be made on the notified commercial crop or crops brought and sold in the notified area at such rates as it might determine. In certain decisions of the Madras High Court the view was expressed that the fee levied under s. 11(1) as it originally stood was not for services rendered but was really a tax levied for raising funds for constructing the market. With a view to avoid the legality of the levy being questioned the Madras legislature amended s. 11(1) by Madras Act 33 of 1955. It was stated in the objects and reasons of the Bill, which was introduced in the legislative assembly of that State, that it was proposed to make it clear that the levy was a cess by way of sales tax and that it was in addition to the sales tax levied
529
under the Madras General Sales Tax Act 1939 and was also subject to the provisions of Article 286' of the Constitution. The following sub-section was substituted for sub-s. (1) of S. 11 of the Act :

> "Notwithstanding anything contained in the Madras General Sales Tax Act, 1939 (Madras Act

> IX of 1939), the Market Committee shall subject to such rules as may be made in this behalf, levy a cess by way of sales tax on any commercial crop bought and sold in the notified area at such rates as the, State Government may, by notification, determine.
>
> Explanation.....

Since that part of Bellary district which had bnen included in the Mysore State by virtue of the Central Act 30 of 1953 was no longer a part of the State of Madras the above amendment made in 1955 did not apply there. The amended section, however, was applicable to South Kanara district which then formed part of the State of Madras. By the States Reorganisation Act 1956 the district of South Kanara, with the exception of the Taluk of Kollegal and certain other areas became part of the new State of Mysore. Section 7(a) of that Act contained a provision similar to s. 53 of the Central Act 30 of 1953. :The laws operating in the State of Madras became applicable to areas which were formerly in that State. Thus s. 11 of the Act as amended, in the year 1955 by the legislature, of the State of Madras continued to apply to the South Kanara district of the State of, Mysore. The situation: on that date was that in the district of Bellary which became part of the former State of Mysore s.11 of the Act was in force as it stood before its amendment in 1955 by the Madras legislature. But s. 11, as amended, was in force in the district of South Kanara.

In 1958 a Bill was introduced in the Mysore Legislature to amend the Act as in force in the Madras area. In the statement of objects and reasons it was mentioned that s. 11 of the Act, as amended by the Madras Legislature in 1955 and as in force in South Kanara district, empowered the South Kanara Market Committee to levy a cess by way of sales tax on any commercial crop bought and sold in the notified area at such rates as the Government might determine. No notification as contemplated by the section was issued by the Government of the erstwhile State of Madras and the Market Committee continued to levy a cess at the same rate as it was levying prior to the amendment. In the decision of the Madras High Court it had been held that the levy of cess was invalid' a no notification had been issued by the State Government. The validity of the collection of the fee prior to the amendment Act of 1955 had also been

34-1 S.C. India/71

530

questioned. It was, therefore, necessary to validate the levy and collection of the cess already made and to amend the Act to enable the Committee to continue to levy the cess. Previously an Ordinance had also been promulgated on account of the urgency of the matter. The Madras Commercial Crops Market (Mysore Amendment and Validation of Levy of Cess) Act 1958 received the assent of the Governor on November 30, 1958. By s. 2 of this amending Act, s. 11 of the Act was amended. Sub-s. (1) as in force in the "Madras area" was substituted and was to be deemed to have been substituted with effect from November 23, 1955. This sub-section was as follows:-

> "(1) Notwithstanding anything contained in the general sales tax law for the time being in force, the market committee shall levy a cess by way of sales tax on any commercial crop bought or sold in the notified area at the rates specified hereunder:-
>
> 1. Arecanut
> 2. Coconut."

Section 4 validated the fee or cess collected or paid before the commencement of the amending Act of 1958.

Section 120 of the States Reorganisation Act 1956 empowered the appropriate Government for the Purpose of facilitating the application of any law in relation to any of the States formed or territorially altered to make, within the specified period, such adaptations and modifications of the law, whether by way of repeal or amendment, as might be necessary or expedient and every such law was to have effect subject to the adaptation or modification so made until altered, repealed or amended by the competent legislature or other competent authority. By the Mysore Adaptation of Laws Order 1956 "Madras area" was to mean the territory specified in clause (d) of sub-s. (1) of s. 7 of the States Reorganisation Act. According to that provision South Kanara district except Kasargod taluk and Amindivi is Jands and Kollegal Taluk in the State of Madras became a part of the State of Mysore. In other words according to the Adaptation of Laws Order the "Madras area" was to be confined to the above territories only. The Mysore General Clauses Act 1899, after the adaptations made, contained the definition of "Madras area" in clause 47 of s. 3 confining it to the territories specified in clause (d) of sub-s. (1) of s. 7 of the States Reorganisation Act 1956. This meant that it did not include that part of Bellary district which had been incorporated in the State of Mysore by the Central Act 30 of 1953. Therefore under s. 3 of the Mysore General Clauses Act in any of the Mysore Acts made

531

after its commencement unless there was anything repugnant in the subject or context "Madras area" was to mean the territory which was incorporated in Mysore by the States Reorganisation Act 1956 and which did not include the Bellary district with which we are concerned in the present appeals.

The Mysore Agricultural Produce Marketing (Regulation) Act, 1966 (Mysore Act 27 of 1966) was published in the Mysore Gazette on September 15, 1966. S. 154 of that Act which relates to Repeal and Savings is as follows :

> "154. Repeal and savings. (1) The Madras Commercial Crops Market Act, 1938 (Madras Act XX of 1933) as in force in Bellary District, the Madras Commercial Crops Market Act, 1933 (Madras Act XX of 1933), as in force in the Madras Area..... are hereby repealed."

As the impugned proceedings relate to levy in the Bellary district of the State of Mysore for the year prior to the enactment the new Act of 1966 one of the main questions for determination is whether the amendment made in s. 11(1) by the amending Act of 1958 passed by the Mysore legislature was applicable to that area or whether the amending provision was confined only to the "Madras Area" which meant the district of South Kanra with the exception of specified area which came to be incorporated in the State of Mysore in 1956. The High Court was of the opinion that the definition contained in clause 47 of s. 3 of the Mysore General Clauses Act of "Madras Area" which was limited to the South Kanara district with the exception of specified areas had to be disregarded while interpreting the expression "Madras Area" occurring in the Mysore Amending Act of 1958. It was held by the High Court that the "Madras Area" mentioned in the Amending Act of 1958 must also include that part of Bellary district which originally was a part of the State of Madras but which came to be incorporated in Mysore State as a

result of the Central Act 30 of 1953.
It may be observed at this stage that the attention of the High Court does not appear to have been drawn to several matters including s. 154 of the Mysore Act 27 of 1966. Indeed before us also these matters escaped the notice of the counsel until more information was obtained under our directions which necessitated a rehearing of the case.
We have no manner of doubt that the Bellary district which became a part of the State of Mysore as a result of the Central Act 30 of 1953 was governed by s. 11(1) of the Act as it stood at the time it had become applicable to that area by virtue
532
of s. 53 of the aforesaid Central Act of 1953. The amendment made by the Mysore legislature in 1958 by which sub-s.(1) of S. II was substituted by a new section did not apply to the Bellary district and was confined only to the "Madras Area" which meant the district of South Kanara with the exception of specified areas. We now proceed to give our reasons for coming to the above conclusion. (1) In the statement of objects and reasons relating to the Madras Commercial Crops Markets (Mysore Amendment and Validation of Levy of Cess) Bill 1958 when it was introduced in the Mysore legislature there was mention only of the Act as amended by the Madras legislature in 1955 being in force in South Kanara district. The entire reading of the statement shows that whatever changes in law and the validation provisions which were being made were confined only to the levy of a cess by way of sales tax by the South Kanara I Market Committee. (2) The Amending Act of 1958 was made applicable only to what was called the "Madras Area". This area could have reference only to the South Kanara district with the exception of the specified areas which was a, part of the State of Madras immediately before the States Reorganisation Act of 1956. It would be stretching the language too far to include in it the Bellary district which had ceased to be a part of the state of madras much earlier in 1953 The adaptation made in the Mysore General clauses. Act 1899 by virtue of the provisions contained in the states Organisation Act 1956 defined' "Madras Area to mean the territory specified in clause (d) of sub-s (1) of S. 7 of that Act. That would, as stated before comprise only the territory of South Kanara district with the exception of specified areas. The reasoning of the High Court that the definition 'given in the General Clauses Act should not be applied to the expression "Madras Area" in the Amending Act of 1958 can by no means the Sustained. (3) The distinction between what may be called the "Bellary Area" and the "Madras Area" which came to be incorporated in the State of Mysore in 1953 and 1956 respectively is full " substantiated by $. 154 of the Mysore Act 27 of 1966. It is stated there in unambiguous language that the Act as in force in' the Bellary district and is in force in the "Madras Area" was being repealed. If "Madras Area" also included the Bellary district. as is the view of the High Court there 'was no question of S. 154 being worded as it is, making it quite clear, that the Act as applicable in Bellary district, was not the same as in force in the "Madras Area". (4) The bye-laws of the Bellary Market Committee which were, framed in exercise of the powers conferred by S. 19 of the Act read with the Madras Commercial, Crops Market Rules 1948 give an indication that the Amending Act of 1958 was not applicable to the Bellary district. These by-laws were approved in May 1960.Under bye-law 19 the Market committee could levy fee or cess on the notified crops or commodities at the rates specified in

the
533
schedule. The schedule included cotton bales, loose cotton, kapas, groundnut seeds, groundnut pods and various other commodities. The Amending Act of 1958 specified the rates of only two commodities Arecanut and Coconut. These are not to be found in the schedule of the bye laws. of the Bellary Market committee In the bye-laws of the South Kanara Market Committee which came into force on July 1, 1955 these two commodities, namely,Arecanut and Coconut are the principal, if not the only. commodities which figure. The suggestion which has been made at the bar and which does not seem to be without substance is that in the South Kanara district these are the only or the principal commodities which constitute commercial crops; whereas in the Bellary district there are other commodities mentioned in the bye-laws which do not include these two that constitute commercial crops. Certain notifications have also been produced which show that rice, paddy etc. were declared to be commercial crops for the purpose of the Act even in the "Madras Area". But the bye-laws as also the Amending Act of 1958 seem to show that Arecanut and Coconut are the main or the principal commodities in the "Madras Area" and these commodities, according to the bye-laws, are confined to South Kanara district and are not included as commercial crops in the Bellary district at all. Once it is held that the Mysore Amending Act of 1958 did not apply to the Bellary district only fee could levied under S. 11(1) of the Act as it originally stood. Under bye-law 19 the rate specified for groundnut seeds was 9 paise per kilogram. The notice sent by the Market Committee making the demand from the respondents employed the word "cess" but that cannot stand in the way of it being held that the demand related to a fee which alone could be levied under S. 11(1) of the Act. The finding of the High Court was that the cess demanded was a sales tax since it was levied under S. 11 (1) of the Act as amended by the Amending Act of 1958. It was observed that if it was not a tax the question that remained to be considered was whether the cess demanded was a fee and if so whether the levy of the fee was open to criticism that it was not correlated to the services rendered.

As it has been determined by us that the demand by the Market Committee could be made lawfully only in respect of a fee the validity and legality of that levy will now have to be determined by the High Court. The distinction between a fee and a tax is wel known and there are a series of decisions of this Court on what is a fee and what are the tests which distinguish it from a tax. See Delhi Cloth & General Mills Co. Ltd. v. Chief
534
Commissioner, Delhi, & Others(1). The High Court will no doubt afford the parties an opportunity of filing supplementary affidavits and documents, if necessary, for determining whether the levy made is a fee. After deciding that matter the writ petitions win have to be disposed of in accordance with law by the High Court.

The appeals are allowed accordingly and the cases are remitted to the High Court for disposal. The parties will bear their own costs in this Court.

V.P.S. Appeals allowed.

(1) [1970] 2 S. C. R. 348.
535