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Chellappan Vs. State of Kerala

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Court : Kerala

Decided On : Aug-25-1989

Reported in : (1990)IILLJ309Ker

Judge : Bhaskaran Nambiar and; Radhakrishna Menon, JJ.

Acts : Kerala Toddy Workers Welfare Fund Act. 1969

Appeal No. : Writ Appeal No. 655/1989

Appellant : Chellappan

Respondent : State of Kerala

Advocate for Def. : K.K. Babu. Adv.

Advocate for Pet/Ap. : Johnson Manayani and Raju K. Mathews, Advs.

Disposition : Appeal dismissed

Judgement :

Bhaskaran Nambiar, J.

1. The appellant conducted business in four toddy shops in the years 1987-88. He was governed by the Kerala Toddy Workers' Welfare Fund Act, 1969, under which he was bound to pay certain contributions to the Toddy Welfare Fund, in his capacity as an employer. A scheme has also been framed under the Act.

Demands have been made for the amounts due by the appellant towards the employer's contribution and revenue recovery proceedings have been initiated. At that stage, he filed O.P. No. 6033 of 1989 challenging the validity of the Act itself. A learned single Judge of this Court dismissed the writ petition and hence this appeal.

2. The only contention urged by counsel for the appellant is that Sections 4 and 5 of the Kerala Toddy Workers' Welfare Fund Act, Act 22 of 1969, impose a tax which is beyond the legislative competence of the State legislature. He submits it is a compulsory exaction of money partaking the character of a tax and as there is no entry in List II enabling the State to levy a tax of this nature, the tax levied under the Act will fall under the residuary entry, entry 97 of List I only and thus Parliament alone and not the State legislature has the competence to enact the law.

3. At one time a challenge was made on the ground that this Act was is conflict with the Employees' Provident Fund Act and cannot, therefore be enforced in the State. That contention was repelled by this Court in the decision reported in K.K. Bhaskaran and Ors. v. State of Kerala (1973-I-LLJ-204), in which it was held that both the Kerala Toddy Workers' Welfare Fund Act and the Employees' Provident Fund Act were measures intended for the welfare of labour covered by entires in the Concurrent List and as the State Government had obtained the assent of the President, it is valid and enforceable.

4. This Act is intended 'to provide for the constitution of a fund to promote the welfare of toddy workers in the State of Kerala'. The Act provides a scheme be framed and directs contribution to be made by the employer to the Fund at certain rates to each of the employees and also, in addition to the contribution, to contribute as gratuity an amount equal to five percent of the wages for the time being payable to each of the employees. The scheme has been framed and is in force. The Act, therefore, follows the general pattern of welfare legislations and according to us, falls directly under entry 24 of List III which deals with 'welfare of labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pensions and maternity benefits.'

This aspect is directly covered by a decision of the Supreme Court in Gasket Radiators Pvt. Ltd. v. E.S.I Corporation (1985-I-LLJ-506) wherein it is held as follows (p 509):

'We are afraid that the very approach of the appellant to the problem at issue suffers from a basic defect. The appellant's argument proceeds on the fundamental misconception that the payment of contribution directed to be made by the employer under the Employees' State Insurance Act or other similar payment or benefit under various other social welfare legislations must either be labelled as a tax or a fee in order to attain legitimacy or not at all. The idea that such payment, or contribution or whatever name is given to it should be so pigeon-holed and fitted in stems from a misunderstanding of the scheme of our Constitution in regard to social welfare legislation'.

'In our understanding, entries 23 and 24 of List HI, of their own force, empower Parliament or the legislature of a State to direct the payment by an employer of contributions of the nature of those contemplated by the Employees' State Insurance Act for the benefit of the employees. These contributions or for example, contributions to provident funds or payment of other benefits to workers are not required to be and cannot be labelled as taxes or fees for the sole and simple reason that the are neither taxes nor fees'.

'We see no reason to brand or stamp the contribution as a tax or fee in order to seek to legitimise it. Legitimation need not be sought fictionally from entry 97 of List I or entry 47 of List III when legitimation is directly derived for the charge from entries 23 and 24 of List III'.

In this view, it is unnecessary for us to consider whether the Act is a legislation under entry 62 of List II, imposing tax on luxuries.

5. There is thus sufficient legislative competence to enact this law and this contention cannot be accepted. The Writ Appeal fails and is dismissed.

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