

**State Vs. Bansilal Chatarlal and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/760910](http://sooperkanoon.com/760910)

**Court :** Rajasthan

**Decided On :** Mar-28-1985

**Reported in :** 1985(2)WLN283

**Judge :** Guman Mal Lodha, J.

**Appeal No. :** S.B. Civil First Appeal No. 128 of 1974

**Appellant :** State

**Respondent :** Bansilal Chatarlal and ors.

**Disposition :** Appeal dismissed

**Judgement :**

**Guman Mal Lodha, J.**

1. This is a defendant's civil first appeal against the judgment of the Civil Judge. Udaipur dated 11-2-1974 granting a decree in favour of the plaintiff for an amount of Rs. 16340/- with costs.
2. The plaintiff firm filed a suit for refund on the ground that the defendants have realised Rs. 5/- per quintal on export of food grain without the authority of law.
3. The plaintiff obtained permits for export of 3268 quintals of Tuar and Urd pulses from the Collector, Udaipur during the period 23-12-1967 to 13-2-1968 and

paid an amount of Rs. 16340/- for obtaining these export permits calculated at rate of Rs. 5/- per quintal. The amount was deposited in the Government Treasury, Udaipur by means of challans filed in the case and which are in dispute.

4. The plaintiff's case is that charging of Rs. 5/- per quintal for giving permit for export of pulses was not based on any legal authority and consequently it was illegal. It amounts to a tax or fee for exporting goods in which he was trading and is violative of Article 265 of the Constitution of India.

5. The defendant denied the allegations made by the plaintiff but asserted that it was a voluntary contribution in the agricultural development fund and therefore the question of refund in the suit would not arise.

6. After framing of issues and recording of evidence, the trial court came to the conclusion that this amount was not realised as a tax and cannot be realised as such being hit by Article 265 of the Constitution. It was further held that it cannot be sustained even as a fee as it has a legal sanction behind it.

7. The trial court while discussing the question of voluntary contribution pointed out that the payment was not made voluntary because under the instructions from the Food Commissioner in writing by a secret letter no permit was to be given unless the dealer pays an amount of Rs. 5/- per quintal in this fund. In substance the payment of this amount by sine qua non for obtaining a permit and this condition precedent was put by the State functionaries without any authority of law.

8. In detailed judgment the trial court has considered the entire facts and circumstances, the evidence oral as well as documentary and came to the conclusion that it cannot be called a voluntary contribution because it was a compulsory exaction of the amount from dealers who wanted a permit.

9. Mr. Bhandari appearing for the State has challenged the above finding of the trial court only on the ground that it was a voluntary contribution and there was no compulsion. According to Mr. Bhandari the State being a social welfare functionary, but it is required to carry on several welfare activities. He, therefore, submits that it is not necessary that these funds should be realised only by tax or

fee or revenue but it can also be arranged by other methods like voluntary contribution funds. Mr. Bhandari submits that there was nothing unfair, if a businessman wanted to give profits to the Agriculturists who are actually the producers of the pulses. Mr. Bhandari's submission is that the profit goes to the businessman and the poor agriculturists inspite of their labour is exploited as he does not get his reasonable profit and it was on this pious objective that the Government started agricultural development fund.

10. Factually Mr. Bhandari is not wrong and appears to be correct. However, we are living and functioning under a written Constitution and wedded and committed to the rule of law. One of the important features of our Constitution is that no tax or fee can be realised except with due authority of law and after adopting the procedure provided in law. An object will be very pious and sacred but the manner and means to achieve it, if questionable or not sanctioned by law would not be sustained in a court of law. The donation to agricultural development fund can be appreciated and any voluntary agency involved in the work of development on the agricultural sector to get support from all who gain profit out of the labour and effort of the cultivators and dealers deserves appreciation. But even then when the State comes in the picture as a collecting agency and by written letter directs the State functionaries to ensure such a collection before granting the permit, it abuses the dimension of compulsory extraction which is antithesis of voluntary contribution.

11. In the instant case there is a letter of the Food Commissioner Mr. Gupta in which he has mentioned clearly that no permits should be granted unless the dealer contributes to this fund by payment at rate of Rs. 5/-per quintal. Though this factor was agreed to but it only shows that the said functionaries never gave option to the dealers to make payment or not to make payment. Once a dealer has come to the State Functionaries to take the permit, he was required to fill in a challan and make the payment in treasury and then come for taking the permit. Thus payment to this agricultural development fund become sine qua non for getting the permit. Even the State functionaries have no choice to grant a permit without payment because of the instructions from the Food Commissioner in writing.

12. It is also not without significance that the Food Commissioner instead of framing some rules issued the direction in writing. No such rules have been produced in this case and it appears that considerably no such rules were framed. What happened in this case is also a matter of surmises and conjectures because nothing has come on record.

13 Even after holding that the collection was illegal I would not have granted a decree in favour of the plaintiff if the dealer has realised this amount from the customers and the State has spent this amount for the benefit of Agriculturists. Nothing of the sort has been pleaded or proved in this case and, therefore the State in the absence of such pleading and proof has left no option to this Court but to confirm the decree of the trial court directing the refund of the amount.

14. In view of the above, it is not necessary to discuss the entire facts and evidence on each issue separately because the only point raised is about the voluntary nature of the contribution as alleged by the State and as held not proved by the trial court and rightly so. Moreover, I am in agreement with the finding of the trial court so far as the issues are concerned, namely that no such contribution in the form of voluntary contribution can be extracted by compulsion. The facts and circumstances prove that it was a compulsory extraction and therefore, it cannot be presumed as a voluntary contribution.

15. The result of the above discussion is that this appeal fails. Since the contribution was raised for an ideal purpose, I leave the parties to bear their own costs throughout.