A

T. G. VENKATARAMAN ETC.

v.

STATE OF MADRAS & ANR.

July 17, 1969

B [J. C. SHAH AND G. K. MITTER, JJ.]

Madras General Sales Tax Act, 1959 *as amended by Madras Act* 2 *of* 1968—*'Cane jaggery' liable to tax but 'palm jaggery' exempted—Discrimination whether violative of Art.* 14 *of Constitution—Tax on 'cane jaggery' whether restrictive of trade and commerce within meaning of Art.* 301—*Whether colourable exercise of power.*

C As a result of a notification dated December 30, 1967 under s. 59(1) of the Madras General Sales Tax Act and later by Act 2 of 1968 sales of jaggery became liable to tax. But while by notification under s. 17 'palm jaggery was exempted from tax 'cane jaggery' was not. The appellants who were dealers in 'cane jaggery' challenged the levy by writ petitions in the High Court which were, however, dismissed. In appeal before this Court it was contended (i) that the tax on 'cane jaggery' while exempting 'palm jaggery' was discriminatory and violative of Art. 14 of the Consti-
D tution; (ii) that taxation of 'cane jaggery' was restrictive of trade and commerce and therefore violative of Art. 301; (iii) that the impugned legislation constituted a colourable exercise of power.

HELD : (i) The evidence on record clearly showed that 'cane jaggery' and 'palm jaggery' were commercially different commodities. The methods of production of 'palm jaggery' and 'cane jaggery' were different; they reached the consumers through different channels of distribution; the prices
E at which they were sold differed and they were consumed by different sections of the community. 'Cane jaggery' and 'palm jaggery' did not thus belong to the same class and in differently treating them for the purpose of taxation there was no unlawful discrimination. [620 B-E; 621 C-D]

It was incorrect to say that the State Legislature had always treated the two products on the same footing. For nearly three years before April 1, 1958 sales of 'palm jaggery' were exempt from tax but sales of
F 'cane jaggery' were not. [620 B]

Further, it is for the legislature to determine the objects on which tax shall be levied. The courts will not strike down an Act as denying equal protection merely because other objects could have been but are not taxed by the legislature. [621 B-C]

N. Venugopala Ravi Varma Rajah v. *Union of India,* [1969] 3 S.C.R.
G 827, applied.

(ii) Freedom of trade, commerce and intercourse guaranteed by Art. 301 of the Constitution is protected against taxing statutes as well as other statutes, but by imposition of tax on transactions of sale of 'cane jaggery' no restriction on the freedom of trade or commerce or in the course of trade with or within the State was imposed. [621 D—F]

State of Madras v. *N. K. Nataraja Mudaliar.* [1968] 3 S.C.R. 829,
H referred to.

(iii) The plea of colourable exercise of power had no substance because the legislature had power in the present case to levy the tax. [621 G]

K. C. Gajapati Narayan Deo & Ors. v. *State of Orissa*, [1954] S.C.R. 1, applied. A

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 281, 284, 363, 383 to 393 and 513 to 567 of 1969.

Appeals from the judgment and order dated December 6, 1968 of the Madras High Court in Writ Petitions Nos. 1659 of 1968. B

M. S. Sethu and *A. V. V. Nair*, for the appellant (in C.As. Nos. 281 and 363 of 1969).

M. S. Sethu and *P. Parameshwara Rao*, for the appellant (in C.A. No. 284 of 1969). C

H. R. Gokhale and *K. Jayaram*, for the appellant (in C.A. No. 383 of 1969).

K. Jayaram and *T. S. Vishwanatha Rao*, for the appellants (in C.As. Nos. 384 to 393 and 513 to 567 of 1969).

S. V. Gupte, *S. Mohan* and *A. V. Rangam*, for the respondent (in C.A. No. 281 of 1969). D

S. Mohan and *A. V. Rangam*, for the respondents (in C.As. Nos. 284, 363, 383 to 393 and 513 to 567 of 1969).

The Judgment of the Court was delivered by

Shah, J. At the conclusion of the hearing of these appeals on April 23, 1969, we announced that "the appeals are dismissed with costs; reasons in support of the order will be delivered thereafter". We proceed to record the reasons in support of the order. E

The appellants carry on business as dealers in "cane jaggery" in the State of Tamil Nadu. As a result of certain legislative and executive measures, transactions of sale in "cane jaggery" were made liable as from January 1, 1968 to tax under the Madras General Sales Tax Act, 1959, and transactions of sale in "palm jaggery" remained exempt from sales tax. The appellants filed petitions in the High Court of Madras challenging the validity of the levy of tax on "cane jaggery", on three grounds : F

(1) that the levy of tax on turnover from sale of "cane jaggery" was discriminatory and violated the equality clause of the Constitution; G

(2) that the levy of tax imposes a restriction on trade and commerce contrary to the provisions of Part XIII of the Constitution; and

(3) there is excessive delegation of legislative authority to the executive and on that account the levy of tax pursuant to an order made in H

A exercise of the powers under s. 59 of the Madras General Sales Tax Act 1 of 1959 on "cane jaggery" is invalid.

The High Court rejected all the contentions.

Counsel for the appellants have in these appeals urged the
B first two grounds and have in addition submitted that in levying tax on turnover from sale of "cane jaggery" legislative power has been colourably exercised. The argument that there was excessive delegation to the executive of the legislative power was abandoned before this Court, because the State of Madras has enacted Act II of 1968 authorising levy of tax on sale of jaggery by amending Sch. III to Madras Act 1 of 1959.

C

Turnover from sale of jaggery—cane or palm—was subject to tax under s. 3(1) of the Madras Act IX of 1939 at three pies per rupee. By G.O. 651 dated February 28, 1955 and G.O. 2780 dated September 7, 1955 all sales of "palm jaggery" effected through Co-operative Societies and the Palm Gur Federation were exempt from tax. By another G.O. No. 1605 dated
D April 19, 1956, all transactions of sale in "palm jaggery" were exempted from sales tax with effect from April 1, 1956. Transactions of sale in "cane jaggery" therefore continued to remain liable to tax whereas sales of "palm jaggery" enjoyed the benefit of exemption from tax.

E After the judgment of this Court in *The Bengal Immunity Company Ltd.* v. *The State of Bihar & Others*(1) the Parliament amended Art. 286 and entry 54 in List II of the Seventh Schedule and added a new Entry 92A in List I in the Seventh Schedule by the Constitution (Sixth Amendment) Act. In exercise of the power under Entry 92A List I the Parliament enacted the Central Sales Tax Act 74 of 1956. By Ch. IV of that
F Act the power reserved under the amended Art. 286 cl. (3) was exercised by the Parliament, and certain classes of goods were declared to be of "special importance in inter-State trade or commerce". By s. 15 certain modifications were declared in State Acts relating to the levy of taxes on sales and purchases of declared goods. However in the list of goods of "special impor-
G tance in inter-State trade or commerce" gur or jaggery was when the Act was enacted not included.

The Parliament then enacted the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (Act 58 of 1957). Section 3 of that Act authorised the levy and collection of additional duties in respect of several classes of goods includ-
H ing "sugar". By s. 4 it was provided that during each financial year, there shall be paid out of the Consolidated Fund of India

(1) [1955] 2 S.C.R. 603.

to the States in accordance with the provisions of the second schedule, such sums, representing a part of the net proceeds of the additional duties levied and collected during that financial year, as are specified in that Schedule. It was enacted by the proviso to cl. (2) of the Schedule that if during that financial year there is levied and collected in any State specified in the Table a tax on the sale or purchase of sugar by or under any law of that State, no sums shall be payable to that State under sub-cl. (ii) or sub-cl. (iii) of cl. (b) in respect of that financial year, unless the Central Government by special order otherwise directs. The expression 'sugar' was defined in s. 2(c) as having the same meaning as it has in the First Schedule to the Central Excises and Salt Act, 1944. The Governor of Madras issued Ordinance 1 of 1957 directing that transactions of sale of "cane jaggery" be liable to a single point tax at 5 per cent. with effect from April 1, 1957. By virtue of the Central Sales Tax Act, 1956, as amended by Act 31 of 1958 "sugar" as defined in Item No. 8 of the First Schedule to the Central Excises and Salt Act, 1944 was declared a commodity essential to the life of the community and tax could thereafter be levied on "sugar" at the rate of 2 per cent. only. But in view of the definition contained in the Central Excises and Salt Act, 1944, there was some doubt whether the expression 'sugar' included *gur*. The State of Madras being apparently of the opinion that "palm jaggery" and "cane jaggery" were subject to the provisions of the Additional Excise Act 58 of 1957, issued on April 15, 1958, G.O. No. 1457 exempting all sales of "cane jaggery" from tax with effect from April 1, 1958. Transactions of sale of "palm jaggery" were therefore exempt partially from sales tax from February 28, 1955 and wholly from April 1, 1956, and transactions of sale of "cane jaggery" were exempt from tax from April 1, 1958.

The State Legislature enacted the Madras General Sales Tax Act 1 of 1959 with effect from April 1, 1959. By s. 3 every dealer whose total turnover was not less than Rs. 10,000 became liable to pay tax for each year at the rate of 2 per cent. of his taxable turnover. By s. 8 it was provided that subject to such restrictions and conditions as may be prescribed, a dealer who deals in goods specified in the Third Schedule shall not be liable to pay any tax under the Act in respect of such goods. Item 5 in the Third Schedule was "sugar including jaggery and gur." Section 17 of that Act authorised the State Government by notification to exempt or to make reduction in rate in respect of any tax payable under the Act on the sale or purchase of any special goods or class of goods at all points or specified points in respect of sales by successive dealers or by any specified class of dealers in respect of the whole or any part of their turnover. By s. 59(1) of the Act the State Government was authorised by notification, to alter, add or cancel any of the Schedules.

A On April 1, 1959 transactions of sale of "sugar including jaggery and gur" were exempt from liability to pay tax under the Madras General Sales Tax Act 1 of 1959. The exemption applied to all transactions of sale of "cane jaggery" and "palm jaggery". On September 10, 1965 the Government of India advised the State Government that "jaggery" was not included in B the expression 'sugar' in the Additional Duties of Excise Act 58 of 1957. The State of Madras in exercise of the power under sub-s. (1) of s. 59 of the Madras General Sales Tax Act, issued G.O. 2261 dated December 30, 1967, that :

> "In the said (Third) Schedule in item 5, for the word 'including' the words 'but not including' shall be C substituted."

The State simultaneously issued another notification that :

> "In exercise of powers conferred by section 17(1) of the Madras General Sales Tax Act, 1959, the Governor of Madras granted exemption in respect of D tax payable under the Act on all sales of palm jaggery."

In consequence of the two notifications turnover from transactions of sale of "cane jaggery" which was till then exempt from tax became liable to tax under s. 3 of the Madras Act 1 of 1959 whereas sale of "palm jaggery" remained exempt from liability E to pay sales tax.

In support of the plea that the State had practised unlawful discrimination between sales of "palm jaggery" and "cane jaggery" it was urged that "cane jaggery" and "palm jaggery" which were identical commodities and were treated similarly under the successive Sales Tax Acts of the State for many years F past were without any rational nexus with the object sought to be served by the Madras General Sales Tax Act, 1959, differently treated and on that account the notification issued under s. 59 sub-s. (1) which modifies the Third Schedule is *ultra vires*.

It may be recalled that the notification under s. 59(1) which was issued in exercise of executive authority has received legis- G lative sanction by Madras Act 2 of 1968. Amendment in the Third Schedule now flows from the exercise of legislative authority and not executive authority.

Since s. 8 read with the Third Schedule as amended by Madras Act 2 of 1968 exempts only "sugar" from liability to H tax, sales of jaggery, cane and palm, now fall within the charging section. But the Government of Madras have in exercise of power under s. 17 of Act 1 of 1959 exempted transactions of sale of "palm jaggery" from tax. It is true that between April 1,

1958 and October 31, 1967 transactions of sale of "cane jaggery" and "palm jaggery" were exempt from liability to pay sales tax under the Madras General Sales Tax Acts of 1939 and 1959, but it cannot be inferred therefrom that the Legislature treated "palm jaggery" and "cane jaggery" as the "same commodity." For nearly three years before April 1, 1958 sales of "palm jaggery" were exempt from tax but sales of "cane aggery" were not.

The evidence on the record clearly shows that "cane jaggery" and "palm jaggery" are commercially different commodities. "Cane jaggery" is produced from the juice of sugarcane; "palm jaggery" is produced from the juice of the palm tree. Mr. Raghupathy, Deputy Secretary to the Government of Madras (Commercial Taxes) has stated in his affidavit that "palm jaggery" industry comes under the purview of Khadi and Village Industries Board and is one of the cottage industries which gives employment mainly to poor tappers. The tappers, according to Mr. Raghupathy, collect "neera" from palm and other trees and prepare jaggery by the traditional method of boiling "neera" in their huts and produce jaggery without the aid of any machinery. Production of "palm jaggery" in the State compared to "cane jaggery" is small. The price of "palm jaggery" and "cane jaggery" differ widely and apparently "palm jaggery" and "cane jaggery" are consumed by different sections of the community. It is clear that the method of production of "palm jaggery" and "cane jaggery" are different; they reach the consumers through different channels of distribution; the prices at which they are sold differ and they are consumed by different sections of the community.

In a recent judgment *N. Venugopala Ravi Varma Rajah* v. *Union of India and Another*(1) this Court observed :

> ".... Tax laws are aimed at dealing with complex problems of infinite variety necessitating adjustment of several disparate elements. The Courts accordingly admit, subject to adherence to the fundamental principles of the doctrine of equality, a larger play to legislative discretion in the matter of classification. The power to classify may be exercised so as to adjust the system of taxation in all proper and reasonable ways : the Legislature may select persons, properties, transactions and objects and apply different methods and even rates for tax, if the Legislatures does so reasonably. . . . . If the classification is rational, the Legislature is free to choose objects of taxation, impose different rates, exempt classes of property from taxation, subject different classes of property to tax

(1) [1969] 3 S.C.R. 827.

A in different ways and adopt different modes of assessment. A taxing statute may contravene Article 14 of the Constitution if it seeks to impose on the same class of property, persons, transactions or occupations similarly situate; incidence of taxation, which leads to obvious inequality."

B It was also said by the Court that :

> "It is for the Legislature to determine the objects on which tax shall be levied, and the rates thereof. The Courts will not strike down an Act as denying the equal protection merely because other objects could have been, but are not, taxed by the Legislature."

C

We are accordingly of the view that "cane jaggery" and "palm jaggery" are not commodities of the same class, and in any event in imposing liability to tax on transactions of sale of "cane jaggery" and exempting "palm jaggery", no unlawful discrimination denying the guarantee of equal protection was

D practised.

No serious argument was advanced in support of the plea that the freedom of trade and commerce guaranteed by Part XIII of the Constitution is infringed by the imposition of tax on "cane jaggery". Freedom of trade, commerce and intercourse guaranteed by Art. 301 of the Constitution is protected against

E taxing statutes as well as other statutes, but by imposition of tax on transactions of sale of "cane jaggery" no restriction on the freedom of trade or commerce or in the course of trade with or within the State is imposed. The tax imposed on transactions of sale of "cane jaggery" does not affect the freedom of trade within the meaning of Art. 301. As observed by this Court in *The*

F *State of Madras* v. *N. K. Nataraja Mudaliar*(1) "a tax may in certain cases directly and immediately restrict or hamper the free flow of trade, but every imposition of tax does not do so."

There is no substance in the contention that the Act which impose tax on "cane jaggery" and the notification which exempts "palm jaggery" from liability to tax imposes a colourable exercise

G of authority. If the Legislature has the power to impose the tax, its authority is not open to challenge on a plea of colourable exercise of power : *K. C. Gajapati Naravan Deo & Others* v. *The State of Orissa*(2).

There will be one hearing fee.

G.C. *Appeals dismissed.*

(1) [1968] 3 S.C.R. 829.
(2) [1954] S.C.R. 1.