

THE REGIONAL EXECUTIVE, KERALA FISHERMEN'S
WELFARE FUND BOARDS

v.

M/S. FANCY FOOD AND ANR. ETC. ETC.

APRIL 25, 1995

[R.M. SAHAI AND S.B. MAJMUDAR, JJ.]

Kerala Fishermen's Welfare Fund Act, 1985: Sections 2(d), 3 and 4.

Fishermen—Scheme for welfare of—Constitution of fund for—Liability to pay contribution—Fish exporters—Purchasing fish processing and exporting—Held exporters are dealers liable to pay contribution—A person dealing in fish meet held a dealer in fish.

Words and Phrases : 'Processing'—Meaning of.

Statutory Interpretation : Social Welfare Legislation—Interpretation of—Should be construed so as to advance the object.

Constitution of India, 1950: Article 39.

Kerala Fishermen's Welfare Fund Act, 1985—Object of—Held it is in furtherance of Article 39.

The State of Kerala enacted the Kerala Fishermen's Welfare Fund Act, 1985 which provided for constitution of a fund for promotion of welfare of fishermen in the State of Kerala. Under the provisions of the Act the persons liable to contribute towards the fund were specified. Further, the authorities were also empowered to determine the amount from persons liable to contribute after making inquiry and after giving every person liable to pay constitution an opportunity of hearing. However, without affording any opportunity to the fish exporters the authorities determined that they were liable to pay 1% of their gross sale as contribution towards the Fund. The respondent, exporters of fish, assailed the orders before the High Court. Their case was that they were not purchasing raw fish but were purchasing finished goods and doing several processes before making it export worthy. Therefore, they were not liable to contribute as dealer under the Act. The High Court allowed their petitions and set aside the assessment orders.

A Against the decision of the High Court, the Fishermen's Welfare Board preferred appeals to this Court.

 On behalf of the respondent-exporters it was contended that the fish and meat are two different commodities and they being exporters of fish meat were not within the purview of the Act.

B Disposing the appeals, this Court

C HELD : 1. The respondents who are exporters and have been processing fish after purchasing it from agents in the form of deshelled fish, or cut fish or head and tail removed, are 'dealers' within the meaning Section 4(2) read with Section 2(d) of the Kerala Fishermen's Welfare Fund Act, 1985. The assessing authorities shall determine the amount payable by them after affording opportunity of hearing to them. [795-H, 796-A-B]

D 2. The definition of 'dealer' in Section 2(d) is a definition in a welfare legislation directed towards promoting the welfare of fishermen in the State. The objective of the Act being in furtherance of directive principles of Constitution under Article 39, its provisions have to be construed so as to advance the objective of enactment. It would, therefore, be in consonance with the objective of the Act to give it purposive construction so as to achieve the objective of enactment The endeavour in such legislation should be to give it expansive rather than restrictive construction. [792-A, 793-C]

E 3. Section 2(d) is in two parts, one declaratory and other expansive. When the legislative device adopts such method the intention of widening the scope is apparent. It should be construed broadly and the Court should not make 'inroads in it by making etymological excursions'. Read plainly and simply the provision clearly applies to any person carrying on business of buying and selling fish in the State. An exporter who buys after the fish has been cleaned or deshelled or its head and tail removed is within the broad sweep of carrying on business of buying and selling fish in the State. Use of expression 'in the State of Kerala' before the expression 'the business of buying and selling' enlarges the ambit by extending it to any or every person who carries on the business in the State. An exporter who purchases fish either from fishermen directly or from agents who purchase, clean and then sell it, is a person who carries on business of buying fish. And since he exports he is a seller of fish. The legislative intention to apply the provisions of the Act to such persons is

clear. [792-D-F]

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Surendra Kumar Verma Etc. v. The Central Government Industrial Tribunal-cum-Labour Court, New Delhi & Anr., AIR (1981) SCC 422 and *Krishna Coconut Co. & Anr. v. East Godavari Coconut & Tobacco Market Committee*, [1967] 1 SCR 974, referred to.

B

4. The expression 'processing fish for export' is quite wide. It can be read either in isolation or along with the earlier expression i.e. 'carrying on within the State of Kerala the business of processing for export. In either case, processing of fish for export would be covered in it. The expression used is 'processing for export'. That is not for bringing out a new commodity or making it marketable but rendering it suitable for export. Since the respondents purchased fish and then subjected it to different processes to make it suitable for export, they are covered in the expression used in Section 2(d). [793-G-H, 794-A-C]

C

5. The word 'processing' is a word of wide amplitude. It can have various shades of meaning. It is always open to the Legislature to give a meaning different from the dictionary meaning. In the context it has been used it does not appear that the Legislature intended that the goods after processing must be a different good from that which was processed. Such construction would be defeating the objective of the Act. [794-H, 795-A]

D

Delhi Cold Storage Pvt. Ltd. v. Commissioner of Income-Tax, Delhi-I, New Delhi, [1991] 4 SCC 239 and *Collector of Central Excise, Jaipur v. Rajasthan State Chemical Works, Deedwana, Rajasthan*, AIR (1991) SC 2222, held inapplicable.

E

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3058 of 1995 Etc. Etc.

F

From the Judgment and Order dated 18.8.94 of the Kerala High Court in O.P.No. 5399 of 1992.

V.R. Reddy, Additional Solicitor General, K.K. Venugopal, T.L. Vishwanatha Iyer, P.C. Chacko, P.S. Poti, M.P. Vinod, Ms. Malini Poduval, R. Sasi Parbhu, P. Santalingam, P.K. Manohar, T.K. Gopinathan for the appearing parties.

G

The Judgment of the Court was delivered by

H

A **R.M. SAHAI, J.** Fishing and its export is a flourishing trade in the State of Kerala. Its rare varieties of shrimps, lobsters, cuttle fish and squid etc. are exported on large scale. The persons involved in it are fishermen, the agents who purchase from fishermen or those who deshell or clean and cut the fish and exporters or those who carry on business of buying and selling fish, or processing fish for export or are commission agents and brokers or non-residents. The condition of fishermen of whom 90% are traditional fishermen is miserable. Their pathetic condition was described in a report published by the Fisheries Department in 1980 thus,

C "They are all traditionally down trodden and illiterate and hence subjected to indebtedness and hardships as well as exploitation by middlemen. It is a painful fact that, through the implementation of various plan schemes for past 30 years no substantial changes have been brought about in improving their living conditions."

D In a study carried on by the State in 1987 it was found that the per capita income of fishermen was to even half of the normal per capita income of ordinary person in the State. Therefore, the State enacted The Kerala Fishermen's Welfare Fund Act, 1985 ('Act' for short) which was assented to by the President of India on 10.2.1985. The Act provides for constitution of a welfare fund for promotion of welfare of fishermen in the State of Kerala. Section 3 of the Act empowers the Government to frame a scheme for establishment of a fund for the welfare of fishermen. Sub-section (2) Section 3 gives out the contributions which shall be credited to the fund. They comprise of contributions specified in Section 4, fee levied under the schemes, damages realised under Section 21, grants or loans or advances made by the Government of India or the State Government, any penalty levied under the Kerala Marine Fishing Regulation Act, 1980 and any amount raised by the Board from other sources. Sub-section (3) vests the fund in the Board which under clause (a) of Section 2 means, 'the Kerala Fishermen's Welfare Fund Board, constituted under Section 7. And sub-section (4) provides for utilization of the fund for distress relief to fishermen in times of natural calamities, for payment of financial assistance to fishermen who suffer permanent or temporary disablement, to advance loans or grants to meet the expenses of marriage of children or expenses in connection with disease or death of dependents, or any unexpected expenditure or day to day expenditure during lean months, to provide for the fishermen and their family members education, vocational training,

employment etc.; for payment of financial assistance, for suffered of houses of fishing implements or any other damages due to natural calamities or other unexpected causes, to provide old age assistance, and for implementation of any other purpose specified in the scheme. Section 4 specifies the persons and the rate at which they shall contribute to the fund. The contribution has to be made by fishermen, owners of fishing vessel, fishing net, owners of prawn filtration area, persons who employ fishermen in a fishing vessel. The provision for contribution by a dealer reads as under :

S.4. - *Contribution to the Fund.* -

(1)

(2) A dealer shall contribute every year to the fund one per cent of his sale proceeds in the year.

Provided that the Board shall fix upon such members as may be specified in the scheme, the amount which a dealer shall contribute every year to the fund, for a period of three years from the commencement of this Act.

Provided further that the amount fixed under the preceding proviso shall not exceed one per cent of the sale proceeds of the dealer."

The other relevant Sections are 7 and 12. The former provides for constitution of the Board and the latter lays down the procedure for determination of contribution. It empowers the authorities to determine the amount from person liable to contribute after making inquiry as the authority may consider necessary and after giving every person liable to pay contribution, under Section 4 an opportunity of hearing.

After the Act was enforced its validity was challenged by filing writ petitions, on earlier occasion, and the rate of contribution at 1% of gross sale was claimed to be extortionate. The Government, however, after deliberations with representatives of exporters reduced the rate to 0.9%. The writ petitions were withdrawn. Later the rate was revised and the contribution from dealers was once more raised to 1%. The authorities, therefore, determined the amount due from various exporters at this rate. But the orders, it appears, were passed without affording any opportunity. Consequently, the exporters of fish/respondents approached the High

A Court assailing the orders passed against them, and challenging the constitutional validity of the Act both for lack of legislative competence and violation of Article 14 of the Constitution.

Even though the High Court framed issues including the constitutional challenge but professed to confine its adjudication as to whether the exporters such as respondents were dealers but allowed the writ petitions, set aside the assessment orders, and directed the authorities to hear the exporters in the light of the observations made by the court giving them liberty and permission to produce the necessary material to establish their claim that they were not dealers without deciding the basic controversy as to who would be 'dealer' within the meaning of Section 4(2) read with Section 2(d) of the Act. The observations made by the High Court are neither findings nor decisions on as to who would be 'dealer' in the Act. It has only noticed the arguments advanced by both the parties. How then the assessing authority would decide whether a particular person carrying on certain activity would be a 'dealer' or not? Therefore, it has become necessary to decide this question. The discussion hereinafter is confined to the narrow question whether a person like respondents could be a 'dealer' within the meaning of the Act.

Factual foundation laid in the writ petitions filed in the High Court was that the respondents who are exporters of fish obtained finished goods from brokers and not raw fish. It was claimed that in case of shrimps and lobsters it was meat without shell and in case of cuttle fish it was fillet, whereas the squid was obtained without head and tail. According to the respondents the agents from whom appellants purchased finished goods purchased raw fish, got it peeled from people doing the job for extraction of meat from shell and then sold it to them. According to respondents they got such finished products on competitive prices, and subjected it to other processes mainly freezing and putting in block to make it export worthy. The material averments in this regard read as under :-

"The petitioner after obtaining these finished goods has to do several other processes to make it export worthy. What is usually taking place when these goods reaches the exporter is that the exporter cleans these goods, remove the vains, shells, etc., completely, grading them in different sizes, weighing them in 2 kg. Blocks or 5 pound blocks, placing them in cartons and putting

these cartons of fish for freezing and storing in the cold storage until such time it is removed to the ship for export. Thus the fish before it reaches the ship for export has to undergo several processes under several sets of people". A

The respondents further claimed that these purchases were always from agents engaged in the fish trade and on no occasion it was directly from fishermen. In the counter affidavit filed in this Court it is stated :- B

"We purchase fish from both inside and outside the State of Kerala. What the answering respondent obtains is processed goods and not raw fish. This means in the case of shrimps and lobsters it is meat without shell, in the case of cuttle fish it is fillet, in the case of squid, it is tube without head and tail. The fish before it reaches the exporter passes through three or sometimes four sets of people, first the local agent who collects the fish from local fishermen, then there is the main agent, who collects the fish from several small agents, thirdly there is the registered peeling shed owners who separate the meat from the shell, removes its head and tail and sell the directly or through an intermediary to exporters." C D

Thus the entire thrust of the challenge is founded on premise that the fish and fish meat are two different commodities and the respondents being exporters of fish meat, they are not within the purview of the Act. How far the distinction drawn between fish and fish meat is well founded and whether the two are understood differently either in commercial sense or even common understanding shall be adverted to after examining the meaning of 'dealer' and scope of Section 4(2) of the Act. 'Dealer' has been defined in clause (d) of Section (2) of the Act to mean, E F

"any person who carries on within the State of Kerala the business of buying and selling fish or processing fish for export or domestic marketing and includes -

- (i) a commission agent, a broker, or any other mercantile agent by whatever name called; and G
- (ii) a non-resident dealer or an agent of a non-resident dealer or a local branch of a firm or company or association situated outside the State of Kerala". H

- A Before explaining its scope, it is necessary to point out that it is a definition in a welfare legislation directed towards promoting the welfare of fishermen in the State. The objective of the Act being in furtherance of directive principles of Constitution under Article 39 its provisions have to be construed so as to advance the objective of enactment. The Act is responsive to urgent social demand and attempts to ameliorate continuing social vice of exploitation of fishermen living below poverty line. It is designed to have an immediate and visible impact on their economic and social condition. Sub-section (4) of Section 3 touches life of a fishermen at every corner and if the objective is faithfully carried out it is an ideal piece of provision which promises a healthy, prosperous and assured future of such miserable lot.
- B
- C Such a provision has to be construed liberally by applying beneficent rule of construction, 'animated with purpose oriented approach'.

- The Section is in two parts one, declaratory and other expandatory. When the legislative device adopts such method the intention of widening the scope is apparent. It should be construed broadly and as observed by this Court in *Surendra Kumar Verma Etc. v. The Central Government Industrial Tribunal-cum-Labour Court, New Delhi & Anr.*, AIR (1981) SC 422, the Court should not make 'inroads in it by making etymological excursions'. Read plainly and simply the provision clearly applies to any person carrying on business of buying and selling fish in the State. An exporter who buys after the fish has been cleaned or deshelled or its head and tail removed is within the broad sweep of carrying on business of buying and selling fish in the State. Use of expression 'in the State of Kerala' before the expression 'the business of buying and selling' enlarges the ambit by extending it to any or every person who carries on the business in the State. An exporter who purchases fish either from the fishermen directly or from agents who purchase, clean and then sell it, is a person who carries on business of buying fish. And since he exports he is a seller of fish.
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- E
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- G In *Krishna Coconut Co. & Anr. v. East Godavari Coconut & Tobacco Market Committee*, [1967] 1 SCR 974 a question arose whether a dealer who was only buying goods was liable to pay fee as the fee was levied only in respect of those goods which were, 'bought and sold'. The Court held :-

- H "The words 'bought and sold' used in section 11(1) aim at those

transactions whereunder a dealer buys from a producer who brings A
to the market his goods for sale. The transactions aimed at must
be viewed in the sense in which the legislature intended it to be
viewed, that is, as one transaction resulting in buying on the one
hand and selling on the other. Such a construction is commendable
because it is not only in consonance with the words used in Section B
11(1) but is consistent with the object of the Act as expressed
through its various provisions".

It would, therefore, be in consonance with the objective of the Act to give
it purposive construction so as to achieve the objective of enactment. The
endeavour in such legislations should be to give it expansive rather than C
restrictive construction. The State needs large funds to run the scheme
effectively. It cannot cope with the amount received from various sources
mentioned in sub-sections (3), (4), (5) and (6) of Section 4 of of the Act.
The export of fish in the State is on large scale. There appears no valid
reason why an exporter should not contribute to welfare fund. The legisla- D
tive intention to apply the provisions of the Act to such persons is clear.
Therefore, unless the language used in the Section fails to achieve its
purpose or it is manifestly illegal or constitutionally invalid the provision
has to be so construed as to extend it to a person who is exporting fish.
The respondents who are carrying on business of buying the fish in the E
State of Kerala from agents and selling it by exporting are carrying on
business of buying and selling fish in the State of Kerala.

Apart from it the latter part of the definition further widens it by
extending it to processor of fish for export or domestic marketing. Literally F
it is an independent clause and therefore any person undertaking process-
ing for export would be covered in it. This is apparent from the inclusive
part of definition which brings in its fold even commission agents, brokers
and non-residents. But it is not necessary to go that far as the respondents
are buying fish on their own showing from agents, processing it and then G
selling it or exporting it. They would thus be covered in the definition. The
expression 'processing fish for export, is quite wide. It can be read either
in isolation or along with the earlier expression i.e., 'carrying on within the
State of Kerala the business of processing for export'. In either case,
processing of fish for export would be covered in it. The word 'processing'
has been used in different Acts for different purposes. In cases arising H

- A under Excise Act or Sales Tax Act it has normally been interpreted to mean 'bringing out a new commodity'. But that meaning would be out of context for interpreting the word in this Act for the simple reason that where a word has not been defined in the Act its meaning has to be gathered from the context in which it has been used. The expression used
- B is 'processing for export'. That is not for bringing out a new commodity or making it marketable but rendering it suitable for export. In the petition it is stated that chemicals are used for processing as in absence of any application of chemicals the fish in any form may become hard and unfit for human consumption. Even otherwise every process, may be freezing or
- C applying chemical so long it is undertaken to make fish worthy for export it would be covered in the definition. Since the respondents purchased fish and then subjected it to different processes to make it suitable for export, they are covered in the expression used in Section 2(d). It would not be out of place to mention that the word 'processing' has been defined in the Marine Products Export Development Authority Act, 1972 to include the
- D preservation of such products as canning, freezing, drying, salting, smoking, peeling or filleting etc. The learned counsel for the respondents may be justified in submitting that the definition of another Act cannot be read for determining the meaning of the word under this Act. But the purpose of extracting the meaning is not to read it as part of this Act but to explain
- E how the processing should be understood in relation to marine products.

- Reliance was placed on *Delhi Cold Storage Pvt. Ltd. v. Commissioner of Income-Tax, Delhi-I, New Delhi*, [1991] 4 SCC 239. It was urged that this decision would indicate that the 'processing' means bringing out a different substance from what the material was at the commencement of the process.
- F This decision came up for consideration before this Court in *Collector of Central Excise, Jaipur v. Rajasthan State Chemical Works, Deedwana, Rajasthan*, AIR (1991) SC 2222 and the word 'processing' was given a wider meaning. In fact both the decisions were concerned with the use of the word 'processing' in different context. They cannot furnish any guide for
- G determining whether the word 'processing' for export should be understood in the sense, as urged by the learned counsel for respondents, of bringing out a new commodity. As stated earlier, the word 'processing' is a word of wide amplitude. It can have various shades of meaning. It is always open to the Legislature to give a meaning different from the
- H dictionary meaning. In the context it has been used it does not appear that

the Legislature intended that the good after processing must be a different good from that which was processed. Such construction would be defeating the objective of the Act. The Act was enacted to protect the fishermen and for that purpose a welfare fund has been created to which contribution has to be made by a person who either carries on business of buying and selling fish in the State of Kerala or is processing for export. It obviously means 'processing of fish for export'. The concept of change of marketability cannot be imported while construing the definition in this Act.

Reverting to the question whether fish meat is different from fish it was vehemently argued on behalf of the respondents that since respondents were carrying on business in meat fish they could not be deemed to be person who were processing fish for export or they were dealers who were carrying on business in fish. The learned counsel submitted that fish means fish taken out from the water and not fish which has been processed after its tail and head are cut or they are sliced or their shell removed etc. The submission ignores the common understanding of the word 'fish'. The fish whether in raw form or processed form is known as fish. In Webster's Comprehensive Dictionary one of the meanings of fish is, 'the flesh of a fish used as food'. A fish after cleaning, cutting of head and tail or deshelling remains fish. A person dealing in fish meat is a dealer in fish. In an American decision, *East Texas Motor Freight Lines v. Frozen Food Express*, 100 L.Ed. 917, it was held that chicken and dressed chicken were not commercially different commodities. The decision was relied on by this Court in *Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam v. M/s. Pio Food Packers*, [1980] Supp. SCC 174, while deciding whether washing, removing inedible portion, storing and filling in cans and adding preservation resulted in bringing out change in pineapple so that it became a new commodity. And the answer was in the negative. Therefore, the cleaning, deshelling, cutting head and tail etc. of fish may be at more than one stages but that did not result in bringing out a different commodity. It was fish when it was taken out from the water. It remained fish when the respondents purchased it from agents and processed it for export.

For these reasons these appeals are disposed of by deciding that the respondents who are exporters and have been processing fish after purchasing it from agents in form of deshelled fish, or cut fish or head and

- A. tail removed are 'dealers' within meaning of Section 4(2) read with Section 2(d) of the Act.

The assessing authorities shall now in pursuance of the orders passed by the High Court determine the amount payable after affording opportunity of hearing to the respondents.

B

Parties shall bear their own costs.

T.N.A.

Appeal disposed of.