

## DANTULURI RAM RAJU AND ORS.

A

v.

## STATE OF ANDHRA PRADESH AND ANR.

December 16, 1971

[S. M. SIKRI, C.J., J. M. SHELAT, I. D. DUA, H. R. KHANNA  
AND G. K. MITTER, JJ.]

B

*Andhra Pradesh (Krishna and Godavari Delta Area) Drainage Cess Act 1968—Whether violative of Art. 14 of the Constitution.*

C

The vires of the Andhra Pradesh (Krishna and Godavari Delta area) Drainage Cess Act 1968 has been challenged in C.A. No. 223 of 1970 and in writ petition No. 251 of 1971. The Act of 1968 applies to all the lands comprised within the delta areas of Krishna & Godavari rivers in the State of Andhra Pradesh. The Act provided for levy and collection of drainage cess on all lands comprised within the delta area of Krishna & Godavari rivers, for the purpose of raising funds to meet the expenses incurred on drainage schemes undertaken in the said area for its protection from floods and for matters connected therewith. Under the Act, for 6 years, a tax at the rate varying from Rs. 10/- for the Godavari eastern Delta to Rs. 20/- per acre per annum for Godavari Western Delta was levied. A number of points were raised by the Appellants but the High Court rejected all their contentions.

D

In appeal, the Appellants contended that the provisions of the Act is violative of Art. 14 of the Constitution, that the right of appeal provided by s. 5 of the Act is illusory and lastly, there is excessive delegation of the legislative function inasmuch as no minimum rate of the cess has been prescribed. Dismissing the appeal and the writ petition.

E

F

G

H

HELD : (1) The provisions of the impugned Act are not violative of Art. 14 of the Constitution. The floods and drainage problems of all the lands in the delta area were not similar or of equal magnitude. They varied considerably from one part of the delta area to the other and the estimated cost of the proposed work also varied from area to area. The flood strike equally all lands in the area and make no discrimination so far as quality and productive capacity of those lands are concerned. In the circumstances, it appears to be just and reasonable that each acre in a division should bear equal burden of the amount which is sought to be raised to fight the danger of flood and provide for an efficient system of drainage. Further as the cost of drainage scheme varies in the different divisions, the rate of cess has been fixed at different rates for the divisions keeping in view the cost of drainage scheme in each division. The differential in the cost of drainage schemes for the four divisions has been properly reflected in the varying rates of cess for each division. In the present case, the Act contains sufficient guidelines for the fixation of rate of cess and there is justification for a uniform rate of cess for each acre of land in a division of the deltaic area. Therefore, there is no discrimination and the provisions of the impugned Act are not violative of Art. 14 of the Constitution. The fact that on account of topographical situation some land-owners get greater benefit of the drainage scheme because of their lands being more prone to damage by floods is a fortuitous circumstance and the same would not be a valid ground for striking down the impugned legislation. [916 D-917 G]

**A** (2) The right of appeal provided by sec. 5 of the Act is not illusory. An aggrieved person can agitate in appeal about the area for which the cess is levied or the ownership of that area or that he owned an area which is less than that for which a cess is levied. Therefore, this right is not imaginary.

(3) There is also no excessive delegation of the legislative power. The State Govt. has adhered to the maximum prescribed by the Act. The absence of a minimum limit will not vitiate a taxing statute.

*Khandige Shah Bhat & Others v. The Agricultural Income-tax Officer, I, [1963] 3 S.C.R. 809, East India Tobacco Co. v. State of Andhra Pradesh, [1963] 1 S.C.R. 404, Twyford Tea Co. Ltd v. The State of Kerala, [1970] 3 S.C.R. 383, State of A.P. v. Nalla Raja Reddy, [1969] 3 S.C.R. 28, State of Kerala v. Haji K. Haji K. Kutty Naha, [1969] 1 S.C.R. 645* referred to.

**C** **CIVIL APPELLATE JURISDICTION** : C.A. No. 223 of 1970.

Appeal from the judgment and order dated March 27, 1969 of the Andhra Pradesh High Court in Writ Petition No. 998 of 1969.

**AND**

**D** **ORIGINAL JURISDICTION** : Writ Petition No. 251 of 1971. Under Article 32 of the Constitution of India for the enforcement of the Fundamental Rights.

*L. M. Singhvi, Krovidi Narasimhan, S. K. Dhingra and A. Subba Rao*, for the appellants (in C.A. No. 223 of 1970).

**E** *K. R. Chaudhuri and K. Rajendra Chowdhary*, for the petitioners (in W.P. No. 251 of 1971).

*P. Ram Reddy and P. Parameswara Rao*, for respondents (in both the matters).

The Judgment of the Court was delivered by

**F** **Khanna, J.** The vires of the Andhra Pradesh (Krishna and Godavari Delta Area) Drainage Cess Act, 1968 (Act No. 11 of 1968), hereinafter referred to as the Act, has been challenged in Civil Appeal No. 223 of 1970 as well as in Writ Petition No. 251 of 1971. Civil Appeal No. 223 has been filed on a certificate granted by the Andhra Pradesh High Court against the judgment of that Court whereby petition under article 226 of the Constitution of India presented on behalf of the eight appellants to assail the vires of the Act was dismissed at the stage of admission. Writ Petition No. 251 of 1971 has been filed by 434 petitioners. The respondents in the appeal are the State of Andhra Pradesh and the Collector of West Godavari District while those in the writ petition are the State of Andhra Pradesh and the Collector of

**G** Krishna District.

The appellants in the civil appeal belong to different Taluks of the West Godavari District and own extensive areas of land in

that district. As such, they are liable to pay land revenue. Petitioners Nos. 1 to 38 in the writ petition are residents of Tenneru within the area of Vijayawada Taluk. They own about 500 acres of land in and around that village. The rest of the petitioners are residents of different villages in Krishna district and own an area of about 4,000 acres in that district.

As the petition under article 226 of the Constitution of India which is the subject of civil appeal was dismissed at the stage of admission, no affidavit on behalf of the respondents was filed in the High Court. The respondents were consequently permitted to file an affidavit in this Court. Affidavit of Shri D. Venkatdri, Assistant Secretary, Government of Andhra Pradesh was thereafter filed on behalf of the respondents. A more detailed supplementary affidavit of Shri Venkatdri has also been filed on behalf of the respondents and the same officer has filed his affidavit in opposition to the petition under article 32 of the Constitution.

Before dealing with the different provisions of the Act and the contentions advanced, it would be apposite to reproduce the Statement of Objects and Reasons of the Bill for the purpose of understanding the historical background and the antecedent state of affairs leading up to the impugned legislation. The Statement of Objects and Reasons reads as under.:

"The coastal districts of East Godavari, West Godavari, Krishna and Guntur are being subjected to floods every year which cause immense damage to crops as well as private properties besides disrupting rail and road communications for considerable periods in the year. The intensity of the floods which occurred in 1953, 1962 and 1964 have highlighted the need for immediate action for solving this recurring problem and to suggest remedial measures for mitigating or avoiding in future the damage to crops and property in the area on account of similar floods. The Committee after having an extensive tour in the area, made some recommendations for improving all the drains in the delta area of the Krishna and Godavari rivers and also formation of flood moderating reservoirs across Budameru, Yerrakalva, Tammiluru etc. The total cost of all the drain improvement schemes as well as the flood moderating reservoirs as recommended by the Expert Committee is estimated roughly to be Rs. 27 crores. It is considered that it might be necessary to undertake in the delta area not only the schemes and works suggested by the Expert Committee but also some other schemes and works for the purpose in view. The actual cost of all the schemes and works required to be undertaken in the

**A** delta area is likely to exceed the cost, as estimated above. In view of the present difficult ways and means position, it is not possible to provide the necessary funds required for the purpose either under the flood control sector or under the irrigation sector of the State. It is, therefore, considered necessary to levy a drainage cess

**B** on all the lands comprised within each of the divisions in the delta of the Krishna and Godavari rivers, for a period of six years, at a rate not exceeding rupees ten per acre per annum in respect of lands in the Godavari eastern deltaic division and Godavari Central deltaic division, rupees twenty-five per acre per annum in respect of lands in the division comprising the Godavari western deltaic division and the Krishna eastern and Krishna Central deltaic divisions and at rupees fifteen per acre per annum in respect of lands in the Krishna western deltaic division.

**D** It is also proposed to constitute the proceeds of the drainage cess into a separate fund and to establish a Board to administer the said Fund and to apply the proceeds of the drainage cess derived in a division towards meeting the cost of drainage schemes undertaken in that division.

**E** This Bill is intended to give effect to the above objects."

**F** The Act came into force on 20th December, 1968. It applies to all the lands comprised within the delta areas of Krishna and Godavari rivers in the State of Andhra Pradesh. According to the preamble of the Act, it is "an Act to provide for the levy and collection of drainage cess on all lands comprised within the delta area of the Krishna and Godavari rivers in the State of Andhra Pradesh for the purpose of raising funds to meet the expenses incurred on drainage schemes undertaken in the said delta area and for matters connected therewith." Section 2 of the Act contains various definitions. "Board" has been defined in clause (a) to mean the Krishna and Godavari Delta Drainage Board established under section 7 of the Act. "Delta area" according to clause (c) means the area comprising the lands in the deltas of Krishna and Godavari rivers, irrigated whether by flow or lift, under the network of canals taking off from the barrage near Vijayawada on the Krishna river and the anicut near Dowlaishwaram on the Godavari river. "Division" has been defined in clause (d) to mean any of the following divisions in the delta area, namely :—

(i) the Godavari eastern delta;

- (ii) the Godavari central delta;
- (iii) the area comprising the Godavari western delta, the Krishna eastern delta and the Krishna central delta;
- (iv) the Krishna western delta;

According to clause (e), "drainage cess" means the tax leviable and collectable under section 3. Clause (f) defines 'drainage scheme" as under :

(f) "drainage scheme" means any scheme for the improvement of drains in the delta area and for the formation of flood moderating reservoirs in the upland areas across the rivers and streams flowing into the delta area and includes any scheme relating to the following works in the delta area which are owned or controlled by the Government or constructed or maintained by them and not handed over to any person :—

- (i) channels, whether natural or artificial, for the discharge of waste or surplus water, and escape channels from an irrigation work, together with dams, embankments, weirs, sluices, groynes, pumping sets and other works connected with or auxilliary to all such channels;
- (ii) all works for the protection of lands from floods or from erosion;

*Explanation.*—For the purpose of this clause, any part or stage of a scheme shall be deemed to be a scheme."

"Government" according to clause (g) means the State Government, while "land" has been defined in clause (h) to mean wet or dry land. Clause (j) defines "owner" in relation to any land as meaning the person liable to pay the land revenue due on the land and includes a ryot having a permanent right of occupancy within the meaning of the Andhra Pradesh (Andhra Area) Estates Land Act, 1908. According to the explanation to that clause, the expression "person liable to pay the public revenue" in relation to any land in respect of which no public revenue is payable means the person who would have been liable to pay public revenue had it been payable on such land.

Section 3 of the Act deals with levy and collection of drainage cess. According to sub-section (1) of the section, there shall be levied and collected by the Government, for a period of six years from the date of the commencement of the Act, as a drainage cess on every land in the delta area comprised within a division specified in column (2) of the Schedule, for the purposes of this Act in that division, a tax at such rate per acre per annum, not exceeding the rate specified in the corresponding entry in column (3)

- A** thereof, as the Government may, by notification, specify in respect of that division. According to sub-section (3) of that section, the drainage cess leviable under the section on any land shall be payable by the owner of such land while according to sub-section (2), nothing in sub-section (1) shall prevent the Government from levying and collecting at any time after the expiration of the period of six years the drainage cess or any arrears pertaining thereto, which is leviable or collectable during the said period of six years. The Schedule referred to in the section fixes the maximum rate at which drainage cess may be collected and according to it the maximum rate shall be Rs. 10 per acre per annum for the Godavari eastern delta and the Godavari central delta, Rs. 20 per acre per annum for the area comprising the Godavari western delta, Krishna eastern delta and the Krishna central delta and Rs. 15 per acre per annum for the Krishna western delta.

- B** Section 4 of the Act gives the procedure to be followed before levying drainage cess. According to this section, the collector before levying the cess in respect of any land, shall cause a notice to be served on the owner of the land, requiring him to make payment of the amount of the drainage cess within 45 days of the service of the notice. Section 5 gives a right of appeal to the person aggrieved by the levy of the drainage cess, while section 6 makes provision for order in revision by the Government. Section 7 provides for the establishment of the Krishna and Godavari Delta Drainage Board. Provision for the constitution of the proceeds of the drainage cess into a fund and its administration and application is made in section 8 which reads as under :

- F** “8(1) The proceeds of the drainage cess levied and collected under this Act, reduced by the cost of collection as determined by the Government, shall after due appropriation made by the State Legislature by law, be constituted into a fund to be called the “Krishna and Godavari Delta Drainage Cess Fund.

- G** (2) In addition to the proceeds referred to in sub-section (1), any moneys received from the State or Central Government or any other source for the purposes of this Act, shall be credited to the Fund.

- (3) The Fund shall vest in, and be administered by, the Board in such manner as may be prescribed.

- H** (4) The Fund, in so far as it relates to the proceeds of the drainage cess levied and collected in a division, shall be applied towards meeting the cost of the drainage schemes which the Board may, with the concurrence of the Government, undertake in that division.

**A**  
The expenses of the Board and its Committees shall also be met out of the Fund :

Provided that it shall not be necessary to obtain the concurrence of the Government as aforesaid in respect of such class of drainage schemes as may be prescribed;

**B**  
Provided further that the expenditure incurred by the Board for any purpose common to all or any of the divisions shall be apportioned among the divisions concerned in such manner as may be prescribed."

**C**  
According to section 9, the drainage cess payable under the Act by an owner in respect of any land shall be deemed to be public revenue due upon the said land and the provisions of the Andhra Pradesh Revenue Recovery Act, 1864, shall apply. Section 10 gives power to the Government to fix instalments for payment of drainage cess while section 11 empowers the Government to grant exemption or make reduction in case of undue hardship on account of unseen calamity or any other reasonable cause to an owner or class of owners of land. Section 12 pertains to the bar of jurisdiction of civil courts in respect of matters falling within the scope of the authorities acting under the Act. According to section 13, the provisions of the Andhra Pradesh Irrigation (Levy of Betterment Contribution and Advance Betterment Contribution) Act, 1955 in so far as they relate to drainage work, shall not apply to any drainage scheme under the Act. Section 14 gives powers to the Government to give directions to the Board. Rules under the Act are made by the Government under section 15 of the Act for carrying out all or any of the purposes of the Act.

**D**  
**E**  
The Krishna and Godavari Delta Drainage Board Cess Fund Rules made under section 15 of the Act were issued in April 1969. It is not necessary to refer to the different rules. For our purposes it would suffice to reproduce clauses (1) to (3) of rule 21 as under :

**F**  
“(1) The drainage cess shall be collected along with the land revenue and credited to “M.H. IX-Land Revenues”. Subject to the provision under sub-section (1) of section 8 at the end of each financial year, an equivalent amount shall be transferred to the Krishna and Godavari drainage cess fund account by debit to “9. Land Revenue”.

**G**  
**H**  
(2) The expenditure on the drainage schemes shall be debited to the appropriate head of account within the Consolidated Fund of the State, either in the revenue

**A** or capital head according to the expenditure falling under revenue or capital head and at the end of each financial year, an equivalent amount shall be transferred from the Krishna and Godavari Drainage Cess Fund account to the concerned head by means of a deduct entry.

**B** (3) The expenditure incurred by the Board for purposes common to all or any of the divisions, like the establishment, tools and plants, shall be apportioned among the division concerned as far as possible in the proportion in which the expenditure is incurred on the drainage schemes in these respective divisions."

**C** Following notification was issued on December 17/20, 1968 under sub-section (1) of section 3 of the Act :

**D** "In exercise of the powers conferred by sub-section (1) of section 3 of the Andhra Pradesh (Krishna and Godavari Delta Area) Drainage Cess Act, 1968 (Andhra Pradesh Act 11 of 1968), the Governor of Andhra Pradesh hereby specifies in column (3) of the Table below in respect of the division mentioned in column (2) thereof, the rate of tax per acre per annum that shall be levied and collected by the Government for the first year commencing on the 20th December, 1968 (date of commencement of the Act) as drainage cess on every land in the delta area comprised within the said division :—

TABLE

| Sl. No. | Name of the division   | Rate of drainage cess leviable and collectable |   |
|---------|--|--|---|
| F       | 1  | 2  | 3 |
| 1.      | The Godavari Eastern Delta   | Rs. 10/- per acre per annum..                  |   |
| 2.      | The Godavari Central Delta   | Rs 10/- per acre per annum.                    |   |
| 3.      | The area comprising the Godavari Western Delta, the Krishna Eastern Delta and the Krishna Central Delta. | Rs. 20/- per acre per annum.                   |   |
| 4.      | The Krishna Western Delta  | Rs. 15/- per acre per annum.                   |   |

**G** The High Court while dismissing the appellants writ petition repelled the contention that the provisions of the Act were violative of article 14 of the Constitution and that the cess levied by the Act was a fee and not a tax. Likewise, the argument put forth on behalf of the appellants that the State Legislature was not competent to levy drainage cess and there were no effective provisions for appeal and revision did not find favour with the High Court.

In appeal Dr. Singhvi on behalf of the appellants has challenged the vires of the provisions of the Act on three grounds. It is urged in the first instance that the provisions of the Act are violative of article 14 of the Constitution. Secondly, according to the learned counsel, the right of appeal provided by section 5 of the Act is illusory. Lastly, it is submitted, there is excessive delegation of the legislative function inasmuch as no minimum rate of the cess has been prescribed. The grounds that drainage cess amounted to fee and that the State Legislature was not competent to enact the Act have not been pressed in appeal.

In the writ petition under article 32 of the Constitution, Mr. Choudhury on behalf of the petitioners, has adopted the contentions advanced by Dr. Singhvi.

The above contentions have been controverted by Mr. Reddy on behalf of the respondents and according to him, the provisions of the Act suffer from no legal or constitutional infirmity.

Before dealing with the question as to whether there has been an infringement of article 14 of the Constitution, we may mention that the material on record shows that the State of Andhra Pradesh is one of the major rice producing State in the country. The Krishna Godavari Delta area has most fertile lands and paddy crop is raised thereon at an extensive scale. The Krishna-Godavari Delta system provides irrigation facilities primarily for paddy crop over an aycat area of about 22 lakh acres annually in the coastal districts of Guntur, Krishna, West and East Godavari. The irrigated lands in the above delta system are subject to frequent floods and drainage congestion resulting in heavy loss of crores of rupees per annum because of the damage to the crops. The floods are caused mainly by rivers like Budameru, Thammileru and Yerrakalva. Apart from causing damage to crops, the floods disrupt rail and road communications for long periods. Plans for ameliorating the situation were under consideration for nearly half a century. The floods of 1964 highlighted the need for immediate action for solving the recurring problem. The Government of India in the Ministry of Irrigation and Power as per resolution dated October 9, 1964 constituted an Exeprt Committee under the Chairmanship of Shri A. C. Mitra, Engineer-in-Chief, Uttar Pradesh for suggesting a comprehensive plan for controlling the floods. The terms of reference of the Committee were :

- “(i) To suggest a comprehensive Plan for control of floods in the coastal rivers like Budameru, Thammileru and Yerrakalva by construction of detention reservoirs or by diversion into adjoining valley or any other methods.

- A**
  - (ii) To consider and recommend proposals for lowering the flood level of Kelleru lake either by improving the outfall channel Upputeru or by pumping or by both.
  - (iii) To consider and recommend proposals for improving the drainage system in the area and;
- B**
  - (iv) Any other recommendation that the Committee desires to make for prevention of floods and inundation."

The Committee in its report submitted in January 1966 suggested various measures and schemes for tackling the problem of floods and drainage.

- C** The Committee noted that most of the existing drains were small in size and short in length. One of the recommendations of the Committee was that the aforesaid drains should be improved by deepening and widening them to suitable sections. Recommendation was also made that "all drains should be brought to their design section and maintained in that condition".

- D** The execution of the schemes and implementation of the measures suggested by the Mitra Committee along with the other drainage schemes as might be found necessary after detailed investigation involved an expenditure of several crores of rupees. As the financial resources of the Andhra Pradesh Government were already over-strained, the Government had to think of other measures for raising the necessary funds. The matter was thereafter discussed with the representatives of the people belonging to the area and a proposal was adopted for collection of drainage cess for tackling the problem of floods and drainage in the Krishna-Godavari delta. The Estimates Committee of the Andhra Pradesh Legislative Assembly in its report also recognized the need for solving the problem of drainage in the area and observed that the amount of drainage cess collected should be kept separate. The Bill which formed the basis of the Act was thereafter introduced in the Andhra Pradesh Legislative Assembly in June 1968.
- E**
- F**

- G** The affidavit filed on behalf of the respondents shows that the floods and drainage problems of all the lands in the delta area were not similar or of equal magnitude. As such, the need for improving the existing drainage works and constructing new works for the control of floods and drainage problems varied considerably from one part of the delta area to the other. This fact resulted in difference in the magnitude of the proposed work and the estimated expenditure for one part of the delta area and those for the other. It was, therefore, considered unjust and irrational to treat the entire delta area as single unit and collect drainage cess at a uniform rate from all the lands. The whole delta area
- H**

was consequently divided into four compact and contiguous units which were termed "divisions" by broadly adopting the following criteria :

1. The geographical features of the area.
2. The drainage characteristics and the unity of drainage system, or systems in the area.
3. The extent of improvement needed in the existing flood control and drainage work in the area and their estimated expenditure; and
4. The need to construct further flood control and drainage works in the area and their estimated expenditure.

The four divisions were : (i) Godavari Eastern Delta; (ii) the Godavari Central Delta; (iii) the area comprising the Godavari Western Delta, Krishna Eastern Delta and the Krishna Central Delta and (iv) Krishna Western Delta.

The above division of the delta area into four units was in accordance with the findings of the Mitra Committee. It was also felt that in view of the nature of floods and the drainage problems, the unity of the existing drainage systems, the geographical situation and the benefits likely to be derived from the improvements proposed, it would be neither desirable nor technically feasible to further sub-divide any of the above divisions into smaller units. On account of the difference in the nature of problems and the needs of improvement requiring different scales of expenditure in each division, it was decided that the levy of drainage cess on the lands in each division should vary in rate in accordance with the estimated expenditure for drainage work in that division. The Chief Engineer of Andhra Pradesh expressed the view that the proposed flood control and drainage schemes could be implemented in a period of six to seven years if adequate financial resources, including foreign exchange for the required dredging equipment, were made available. It was after taking into account the quantum of expenditure on the schemes proposed and the irrigated area which would be benefited as a result of those schemes in each division and also keeping in view the fact that the period of collection of drainage cess was six years that the State Legislature provided the rates of drainage cess per acre per annum for the four divisions. Originally in the Bill as introduced in the Legislature a rate of Rs. 25 per acre per annum was prescribed in respect of division comprising the Godavari western delta, Krishna eastern delta and the Krishna central delta but the Legislature reduced the rate for that division from Rs. 25 to Rs. 20 per acre per annum.

A

B

C

D

E

F

G

H

**A** At the time the above-mentioned Bill was introduced in the Legislature in July 1968 the following estimate in tabular form of the various expenditures was given on behalf of the Government :

| <b>B</b> | S. No | Name of Division                     | Total estimated expenditure on schemes in lakhs Rs. | Approximate Ayacut in acres | Maximum Rate of drainage cess per acre per annum Rs. | Total maximum amount of drainage cess anticipated to be collected over 6 years in lakhs Rs. |
|----------|-------|--------------------------------------|---|-----------------------------|--|---|
| <b>C</b> | 1.    | Krishna-Western delta                | 500   | 4,86,800                    | 15/-   | 438   |
|          | 2.    | Krishna Central                      |   | 1,25,500                    |  |   |
|          |       | Krishna Eastern and Godavari Western |   | 6,12,700                    |  |   |
|          |       | deltas.                              | 1073  | 4,90,000                    |  |   |
|          |       |                                      |   | 12,28,200                   | 25/-   | 1842  |
| <b>D</b> | 3.    | Godavari Central delta               | 150   | 2,00,000                    | 10/-   | 120   |
|          | 4.    | Godavari Eastern                     | 200   | 3,20,000                    | 10/-   | 192   |
|          |       | Total                                | 2923  | 22,35,000                   |  | 2592  |

**E** It may be noted that as against the total estimated expenditure of Rs. 2,923 lakhs, the Government proposed to raise only a sum of Rs. 2,592 lakhs through collection of drainage cess over a period of six years. The estimated expenditure, according to the affidavit filed on behalf of the respondents, was expected to go up by 10 to 20 per cent during the course of six to seven years of the completion of the scheme. The total expenditure was thus expected to go up to Rs. 35 crores and the excess over the anticipated collection amounting to about Rs. 9 crores would be borne by the State Government.

**G** As regards the argument about the infringement of the equality clause embodied in article 14, it may be mentioned that a taxing statute is as much subject to article 14 as any other statute. In the application, however, of the principle embodied in that article, the Courts, in view of the inherent complexity of fiscal adjustment of diverse elements, permit a larger discretion to the Legislature in the matter of classification so long it adheres to the fundamental principles underlying the doctrine of equality. The power of the Legislature to classify is of "wide range and flexibility", so that it can adjust its system of taxation in all proper and reasonable ways. (see *Khandige Shah Bhat and Others v. The Agricultural Income Tax Officer*<sup>(1)</sup> as well as the recent decision of this Court

(1) [1963] 3 S.C.R. 809.

in *Vivian Joseph Ferreira and Anr. v. The Municipal Corporation of Greater Bombay & Ors.*, Writ petition No. 187 of 1970 decided on November 4, 1971). Willis in his Constitution Law has summed up the position as under on page 587 :

A

"A State does not have to tax everything in order to tax something. It is allowed to pick and choose districts, objects, persons, methods and even rates for taxation if it does so reasonably. .... The Supreme Court has been practical and has permitted a very wide latitude in classification for taxation."

B

The above principle was approved by this Court in *East India Tobacco Co. v. State of Andhra Pradesh*<sup>(1)</sup> and *Twyford Tea Co. Ltd. and Another v. The State of Kerala and Another*<sup>(2)</sup>. It was also observed in the last mentioned case that burden is on a person complaining of discrimination and, for this purpose, it is necessary to prove not possible inequality but hostile unequal treatment.

C

The modern trend in all progressive countries is towards establishment of a welfare State, and with this end in view, the State has to prepare plans and devise beneficent schemes for the good of the common people. The implementation of those plans and schemes entails colossal expenditure. The State has consequently to tap various sources for augmenting its income and raising the revenue. Taxes are levied for this purpose, and the State is given a wide range of choice for the purpose of taxation. It is axiomatic that different situations call for different fiscal measures. The State is presumed to know the requirements of the situation and act accordingly. No rigidity being possible, it is difficult to apply any set formula. Much greater latitude and discretion has, therefore, to be allowed to the State for the purpose of taxation in the context of article 14 of the Constitution.

D

Dr. Singhvi on behalf of the appellants has referred to the fact that there is flat and uniform rate of cess for each acre in respect of all lands in a division irrespective of the quality and productive capacity of the land. It is urged that a flat and uniform rate for all lands in a division results in inequality and is violative of article 14. In this connection, we find that the material on record, to which reference has been made earlier, shows that the rate of cess prescribed for each division has a rational nexus with the object of the Act and is based on intelligible differentia. The object of the Act is to raise funds for the implementation of schemes to secure protection of the lands in the deltaic area from ravages of the floods. As the Act is designed to benefit the land in the divisions of the deltaic area, the levy of cess at uniform rate for each acre of the land in a division cannot be considered to offend the

E

F

G

H

I

J

K

L

**A** principle of equality. The floods strike equally all lands in the area and make no discrimination so far as the quality and productive capacity of those lands are concerned. In the circumstances, it appears to be just and reasonable that each acre in a division should bear equal burden of the amount which is sought to be raised to fight the danger of floods and provide for an efficient system of drainage. Further, as the cost of drainage scheme varies in the different divisions, the rate of cess has been fixed at different rates for the divisions keeping in view the cost of drainage scheme in each division. The differential in the cost of drainage schemes for the four divisions, in our opinion, has been properly reflected in the varying rates of cess for each division.

**C** Reference has been made on behalf of the appellants, with a view to show that lack of classification in the matter of tax can create inequality, to the following cases :

*Kunnath Thathunni Moopil Nair v. The State of Kerala and Another*<sup>(1)</sup>

**D** *New Manek Chowk Spinning and Weaving Mills Co. Ltd. and Ors. v. Municipal Corporation of Ahmedabad and Ors.*<sup>(2)</sup>

*State of Andhra Pradesh & Anr. v. Nalla Raja Reddy & Ors.*<sup>(3)</sup>

**E** *State of Kerala v. Haji K. Haji K. Kutty Naha & Ors. Etc.*<sup>(4)</sup>

In the case of K.T. Moopil Nair this Court considered the provisions of Travancore Cochin Land Tax Act, 1955 and found that all lands in the State of whatever description were to be charged basic tax at uniform rate per acre irrespective of the quality of the land and the fact whether it yielded or was capable of yielding any income.

**G** In the case of Nalla Raja Reddy this Court held the provisions of Andhra Pradesh Land Revenue (Additional Assessment) and Cess Revision Act, 1962 to be violative of article 14. The said Act was passed to bring uniformity in assessment of land revenue in the Telengana and Andhra areas of the State of Andhra Pradesh. An additional assessment at the rate of 75 per cent of the yearly assessment was imposed on dry land and the total assessment was not to be less than 50 paise per acre. On wet land the additional assessment was to be 100 per cent for land irrigated from a Government source and 50 per cent in case of other wet lands. The minimum total demand was also prescribed. The Act was considered to be discriminatory as the minimum had no

(1) [1961] 3 S.C.R. 77.

(2) [1967] 2 S.C.R. 679.

(3) [1967] 3 S.C.R. 28.

(4) [1969] 1 S.C.R. 645.

relation to the fertility of the land. It was also found that the assessment was left to the arbitrary discretion of an officer without an opportunity to question his findings. This case, as observed in the later case of *Twyford Tea Co. v. The State of Kerala and Another*<sup>(1)</sup> was peculiar to itself.

In the case of *New Manek Chowk Spinning and Weaving Mills* and *Haji K. Haji K. Kutty Naha*, the question was one of rating. What was held in those cases was that taking only the floor area of a building as the basis for determination of a tax was an arbitrary method when buildings had different rental values depending upon the nature of the construction and the purpose for which they were used. These facts were held to be vital in the rating of buildings. It is manifest that the principle involved in these cases has not much relevance for the present case.

So far as the case of *K. T. Moopil Nair* is concerned, we find that the majority quoted with approval the following observations of Das C.J. in *Shri Ram Krishna Dalmia v. Shri Justice S. R. Tendolkar and Others*<sup>(2)</sup>.

“In determining the question of the validity or otherwise of such a statute the Court will not strike down the law out of hand only because no classification appears on its face or because a discretion is given to the Government to make the selection or classification but will go on to examine and ascertain if the statute has laid down any principle or policy for the guidance of the exercise of discretion by the Government in the matter of the selection or classification. After such scrutiny the Court will strike down the statute if it does not lay down any principle or policy for guiding the exercise of discretion by the Government in the matter of selection or classification, on the ground that the statute provides for the delegation of arbitrary and uncontrolled power to the Government so as to enable it to discriminate between persons or things similarly situate and that, therefore, the discrimination is inherent in the statute itself.”

Keeping the above observations in view we find that in the present case the Act contains sufficient guidelines for the fixation of the rate of cess and there is also enough material on record to justify a uniform rate of cess for each acre of land in a division of the deltaic area. The imposition of tax on land for raising general revenue is substantially different from the levy of cess for

(1) [1970] 3 S.C.R. 383

(2) [1961] 3 S.C.R. 77

**A** implementation of a drainage scheme for the benefit of lands in an area and the principles applicable in one case would not necessarily hold good in the other.

**B** Reference has then been made on behalf of the appellants to an American case, *Village of Norwood v. Ellen R. Baker*<sup>(1)</sup>. In that case the Court considered special assessment upon an abutting property by the front door without taking special benefits into account for the entire cost and expenditure of opening a street. It was held that the exaction from the owner of a private property of the cost of public improvement in substantial excess of the special benefits accruing to him is to the extent of such excess a taking under the guise of taxation of private property for public use without compensation. Perusal of that authority shows that the Court invoked the doctrine of due process of law in arriving at the above conclusion. The aforesaid doctrine of due process of law is not applicable to India and, as such, the appellants cannot derive much assistance from that authority. Another American case referred to on behalf of the appellants is *Kansas City Southern Railway Co. v. Road Improvement Dist. No. 6*<sup>(2)</sup>. The question involved in that case was whether a railway property in an area is subject to assessment to help cost of constructing a local improvement in the nature of a country highway. The Court observed :

**E** "Obviously, the railroad companies have not been treated like individual owners, and we think the discrimination so palpable and arbitrary as to amount to a denial of the equal protection of the law. Benefits from local improvements must be estimated upon contiguous property according to some standard which will probably produce approximately correct general results. To say that 9.7 miles of railroad in a purely farming section, treated as an aliquot part of the whole system, will receive benefits amounting to \$ 67,900 from the construction of 11.2 miles of gravel road seems wholly improbable, if not impossible. Classification, of course, is permissible, but we can find no adequate reason for what has been attempted in the present case."

**G** The question involved in the above case, in our view, was materially different and, as such, the appellants cannot derive much assistance from it also.

**H** It has also been argued on behalf of the appellants that their lands are not benefited by the proposed drainage schemes as those lands are not subject to floods. Reference in this context has

been made to a statement which constitutes Appendix F to Vol. II of the report of the Mitra Committee wherein details are given of the areas damaged by floods. According to that statement, the average area damaged in floods in Godavari western delta, to which the appellants belong, during the years 1955 to 1964 was 33,091 acres. The land on which cess is proposed to be levied in the Godavari western delta, according to the estimate in tabular form given on behalf of the State Government to State Legislature in July 1968, measured 4,90,000 acres. Dr. Singhvi accordingly concludes that only 7 per cent of the land in Godavari western delta is to be benefited as a result of the drainage scheme and that 93 per cent of landowners in the Godavari western delta are being made to pay the cost of the scheme which would benefit 7 per cent of the lands in that area.

We are not impressed by the above contention. The floods have a vagary and caprice of their own, and it is difficult to predicate about the behaviour of flood waters. The problem which arises in one year cannot afford a proper guidance for the following year because the dimensions of the problems in the subsequent year may be hundredfold compared to those of the previous year. This is evident from the figures in the table relied upon by Dr. Singhvi. It would appear therefrom that in the year 1961 only 1,149 acres of land in the Godavari western delta were damaged by floods, while in the year 1959 the damage caused by the floods in that area covered 89,528 acres of land. The material on record further shows that during 1969 floods, an area of as much as 3,69,395 acres out of a total of 4,90,000 acres, that is, about 75 per cent of the area was damaged by floods in the Godavari western delta. It is, therefore, plain that we cannot stick to the average damage referred to by Dr. Singhvi in considering the scheme of drainage. An effective system of drainage has in the very nature of things to make provision not only for a normal rainfall but also to meet those contingencies as arise when there are unusual rains and heavy floods. It is indeed only then that the efficacy of a drainage system is proved. We also find it difficult to accede to the submission made on behalf of the appellants that we should not take into account the figures of damage done in the 1969 floods. The proposed drainage scheme has to provide for years to come adequate safeguards and protect against contingencies created by unusually heavy rains and floods. The fact that the impugned Act enacted in 1968 covered 4,90,000 acres of land in the Godavari western delta shows, in the light of subsequent 1969 floods, the foresight of the authors of the drainage scheme which is the subject of the impugned legislation.

The appellants lands are admittedly irrigated in the deltaic area. The benefit to the appellants land, in the circumstances, is implicit in the scheme of drainage. It is not disputed that proper

A

B

C

D

E

G

H

**A** drainage is an essential concomitant of an efficient system of irrigation. Without adequate drainage the irrigated land gradually loses its fertility, becomes saline and water logged. The following extracts from the proceedings of the First Inter-Society Conference on Irrigation and Drainage would show the importance of drainage for irrigation :

**B** "Drainage is the removal of both excess water and salines from agricultural soils. Surface drainage is the removal of excess precipitation and irrigation wastes at the surface to prevent flooding and to minimize the more costly sub-surface drainage requirements. Efficient engineering designs of surface drains require only an understanding of topographic conditions, pumping. Effective surface drainage is comparatively inexpensive and is essential to permanence of irrigation agriculture."

**C** The affidavit of Shri Venkatadri shows that apart from prevention of damage to crop by floods, the following indirect benefits are derived by irrigated land as a result of drainage :

**D** "(1) Facilitates early ploughing and planting, (2) lengthens the crop-growing season, (3) provides more available soil moisture and plant food by increasing the depth of root-zone soil (4) helps in soil ventilation (5) decrees soil erosion and gullyling, by increasing water infiltration into soils, (6) favours growth of soil bacteria, (7) leaches excess salts from soil and (8) assures higher soil temperatures."

**F** There is one integrated drainage scheme for the division in which the appellants lands are situated and the appellants, in our opinion, are beneficiaries of that scheme in the same way as the other landowners in that division. The fact that on account of topographical situation some landowners get greater benefit of the drainage scheme because of their lands being more prone to damage by floods is a fortuitous circumstance and the same would not be a valid ground for striking down the impugned legislation. It is well established that if there is equality and uniformity within each group, the law will not be condemned as discriminative though due to some fortuitous circumstances arising out of a peculiar situation, some included in a class get an advantage over others so long as they are not singled out for special treatment. (*Khandige Sham Bhat and Others v. The Agricultural Income Tax Officer*, Supra).

**H** In the case of *Vivian Joseph Ferriera and Anr. v. The Municipal Corporation of Greater Bombay & Ors.* (Supra), this Court dealt with the validity of the Bombay Building Repairs and Reconstruction Board Act of 1969. The said Act related to the problems arising out of the collapse of residential buildings and

A

B

C

D

E

F

G

H

acute shortage of housing accommodation. Provision was made in the Act for establishing a Board to deal with the said problem by carrying out structural repairs to dangerous buildings by acquiring and reconstructing buildings which were beyond repair and for the re-housing of occupiers who because of such repairs would be dishoused. Temporary levy of an additional cess on buildings and lands to meet the expenditure for the aforesaid purposes was provided for in that Act. One of the grounds which was urged on behalf of the petitioners was that the Act was violative of article 14 in that it failed to recognize the material difference between various buildings with regard to their physical conditions and treated unequal as equals. The petitioners in that case were owners of a residential building which by reason of its having been recently constructed was neither dilapidated nor in dangerous condition. Repelling the above contention this Court observed :

"The contention that some of the buildings falling in categories B and C would not need structural repairs throughout the life of the Act or that such repairs would be carried out in buildings not cared for by defaulting landlords, takes no notice of the fact that the primary object of the Act is not to repair all buildings subject to cess but to prevent the annually recurrent mischief of house collapses and the human tragedy and deprivations they cause. The cess being thus levied to prevent such disasters, there is no question of unequal treatment between one class of owners and another."

We are, therefore, of the view that the provisions of the impugned Act are not violative of article 14 of the Constitution.

There is no substance in the contention advanced on behalf of the appellants that the right of appeal provided by section 5 of the Act is illusory. The legislature has prescribed the maximum limit of the rate of cess and the notification issued under the Act has fixed that rate. The procedure to be adopted before the levy of the cess has been prescribed in section 4 of the Act. Section 5 gives a right of appeal to a person aggrieved by the levy of the drainage cess under section 4. The matters which can be agitated in appeal may relate to the area for which the cess is levied or the ownership of that area. In case a land-owner's stand is that the area owned by him is less than that for which cess is levied or that he has transferred the said land or part of it, he can agitate the matter in appeal. The fact that no discretion is given to the appellate authority to determine the rate of cess would not introduce an infirmity or make the right of appeal to be illusory.

**A** The argument that there has been excessive delegation of the legislative power in the matter of determining the rate of cess is equally devoid of force. According to Dr. Singhvi, the legislature has merely prescribed the maximum rate at which cess may be levied but has not fixed the minimum rate of the cess. The precise rate of cess is left to the Government by section 3 of the Act and, as such, according to the learned counsel, there has been excessive delegation of the legislative power. In this connection, we find that it is open to the legislature to prescribe the maximum rate of cess. The authority mentioned in the statute, subject to other legal requirements, can levy cess up to that limit. As things are the State Government in the present case has adhered to the maximum prescribed by the Act vide notification dated December 17/20, 1968. The power of the legislature to fix or change the limit of tax has been discussed in para 165 of the Law of Taxation by Cooley, 4th Edition, in the following words :

**D** *"Power of legislature to fix or change limit :* In addition to, or in place of, constitutional provisions, there are statutes in many states limiting the amount or rate of taxation by a country, town, municipality, or other local subdivision; and sometimes the limitation imposed upon a municipality is found in its charter. A valid limitation on the rate, where fixed by the legislature, is just as binding on counties and municipalities as is such a limitation fixed by the constitution."

**F** No authority has been cited before us to show that even though maximum limit of the tax has been prescribed, the absence of a minimum limit vitiates the taxing statute. It is not necessary, however, to dilate upon this aspect of the matter as we find that there are enough guidelines in the Act in respect of the rate of cess because the rate of cess in a division has to be correlated to the amount of expenditure to be incurred on the drainage scheme in that division.

**G** It may also be mentioned that subsequent to the decision of the writ petition which is the subject of the present appeal, validity of the provisions of the Act was challenged in a batch of writ petitions before the Andhra Pradesh High Court. The matter was then referred to a full bench. The learned judges constituting the full bench by means of three separate judgments upheld the constitutional validity of the provisions of the Act.

**H** As a result of the above, the appeal and the writ petition are dismissed, but, in the circumstances, without cost.