Vijayalashmi Rice Mill And Ors vs Commerical Tax Officers, Palakol And ... on 7 August, 2006

Equivalent citations: AIR 2006 SUPREME COURT 2897, 2006 (6) SCC 763, 2006 AIR SCW 4031, (2006) 5 ANDHLD 44, (2006) 7 SCALE 525, (2006) 201 ELT 329, (2006) 6 SUPREME 292, (2006) 8 SCJ 294, MANU/SC/3847/2006

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Bench: Ashok Bhan, Markandey Katju

CASE NO.:
Appeal (civil) 5120-5132 of 1999

PETITIONER:
Vijayalashmi Rice Mill and Ors.

RESPONDENT:
Commerical Tax Officers, Palakol and Ors.

DATE OF JUDGMENT: 07/08/2006

BENCH:
Ashok Bhan & Markandey Katju

JUDGMENT:

JUDGMENT MARKANDEY KATJU, J.

Civil Appeal Nos.5120-5132 of 1999 have been filed against the Judgment and Order dated 25.9.1998 of the High Court of Andhra Pradesh passed in Writ Petition Nos.19213, 19299, 19384, 19385, 19387, 19388, 19389, 19523, 19526, 19707, 19709, 19915 and 22448 of 1998, by which the Constitutional validity of the Andhra Pradesh Rural Development Act, 1996 has been upheld.

Heard Shri M.N. Rao, learned Senior counsel for the appellants, and Shri Rakesh Dwivedi, learned Senior counsel for the respondents.

Most of the petitioners-appellants are registered firms, while some of them are individual traders engaged in the business of rice milling. It is alleged that they are regularly submitting returns to the Commercial Tax Authorities reflecting their turnovers of purchase of paddy as well as sale of rice every year and accordingly they pay purchase and sales tax. They are challenging the levy of cess under the Andhra Pradesh Rural Development Act, 1996 (hereinafter referred as "the Act") which levies cess in addition to the purchase or sales tax being paid by them. It is alleged that the aforesaid cess under the Act does not fall under any of the entries in List-II or List III of the Seventh Schedule to the Constitution. Hence it is alleged that the aforesaid levy of cess is invalid.

Entry 54 of List II of the Seventh Schedule no doubt empowers the State Legislatures to levy tax on purchase or sale of goods, but since the goods in question have been declared as declared goods under the Central Sales Tax Act, it is submitted by the appellant that the maximum sale or purchase tax can be 4% and the appellants have already paid more than that as sale/purchase tax. Hence it is contended that the levy of cess under the Act is invalid.

On the other hand, Shri Rakesh Dwivedi, learned Senior counsel for the State of Andhra Pradesh, has submitted that the cess in question is in fact a fee, and hence it comes under Entry 66 of List-II of the Seventh Schedule to the Constitution.

Shri Rao, learned Senior counsel for the appellants contended that there was no quid pro quo in the levy of the cess, and hence it cannot be said to be a fee. He has invited our attention to the allegation in para 5 of the affidavit in support of the writ petition, where it has been alleged "The cess is collected from a dealer and nothing is done specially to benefit the dealer. The cess partakes the character of a tax".

A copy of the Andhra Pradesh Rural Development Act, 1996 has been annexed as annexure P-1. In the Statement of Objects and Reasons of the Act, it is stated :

> "It is observed that the development in the rural areas in the State has not been accelerated due to paucity of funds. The Government are of the view that there is an imperative need to provide financial assistance for the development of rural areas in the State by creating infrastructure facilities, so that the economic activities in the rural areas will increase and thereby contribute for the growth of the economy. With a view to generating funds for the purpose of development of the rural areas, it is considered desirable to levy a cess @ 5% on the advalorem basis on the quantity of the purchase of goods specified in the Schedule appended to the Bill".

Section 3 of the Act empowers the State Government by notification to establish the Andhra Pradesh Rural Development Board.

Section 7(1) states: "There shall be levied and collected by the Government a cess @ 5% on the advolerem on the quantum of purchase of goods".

Section 8 establishes a fund to be called "The Andhra Pradesh Rural Development Fund" which vests in the Board. The purpose of this fund has been mentioned in Section 9 which states:

> "9. Purpose for which the Fund may be applied : The Fund shall be applied for the purposes herein specified :
>
> (i) to provide and accelerate comprehensive rural development including the construction of rural roads and bridges;
>
> (ii) to augment storage facilities for storing agricultural produce; and

(iii) for maintaining and strengthening of Public Distribution System".

The question in the present case is whether the impost in question is a fee or a tax. If it is a tax, then it will have to be held to be unconstitutional because it does not come in any of the Entries in List II of the Seventh Schedule to the Constitution. However, if it is a fee, then it comes under Entry 66 of List II.

Ordinarily, a cess means a tax which raises revenue, which is applied to a specific purpose. Thus in Guruswamy and Co. v. State of Mysore, AIR (1967) SC 1512, Hidayatullah, J. in his dissenting judgment observed :

> "The word `cess' is used in Ireland and is still in use in India although the word rate has replaced it in England. It means a tax and is generally used when the levy is for some special administrative expense which the name (health cess, education cess, road cess, etc.) indicates. When levied as an increment to an existing tax, the name matters not for the validity of the cess must be judged of in the same way as the validity of the tax to which it is an increment."

The aforesaid observations has been referred to by the Constitution Bench decision of this Court in India Cement Ltd. & Ors. v. State of Tamil Nadu & Ors., [1990] 1 SCC 12 vide para 19.

Hence ordinarily a cess is also a tax, but is a special kind of a tax. Generally tax raises revenue which can be used generally for any purpose by the State. For instance, the Income Tax or Excise Tax or Sales Tax are taxes which generate revenue which can be utilized by the Union or State Governments for any purpose, e.g. for payment of salary to the members of the armed forces or civil servants, police, etc. or for development programmes, etc. However, cess is a tax which generates revenue which is utilized for a specific purpose. For instance, health cess raises revenue which is utilized for health purposes e.g. building hospitals, giving medicines to the poor etc. Similarly, education cess raises revenue which is used for building schools or other educational purposes.

However, in such matters nomenclature is not very important and we have to see the nature of the levy. Hence, what is called a cess may be in reality a fee depending on its nature.

It is well settled that the basic difference between a tax and a fee is that a tax is a compulsory exaction of money by the State or a public authority for public purposes, and is not a payment for some specific services rendered. On the other hand, a fee is generally defined to be a charge for a special service rendered by some governmental agency. In other words there has to be quid pro quo in a fee vide Kewal Krishan Puri v. State of Punjab, AIR (1980) SC 1008.

The earlier view of the Supreme Court was that to sustain the validity of a fee some specific service must be rendered to the particular individual from whom the fee is sought to be realized. However, subsequently in Sreenivasa General Traders v. State of Andhra Pradesh, AIR (1983) SC 1246, Supreme Court observed:

> "The traditional view that there must be actual quid pro quo for a fee has undergone a sea change in the subsequent decisions. The distinctions between a tax and a fee lies preliminary in the fact that a tax is levied as part of a common burden, vide a fee is for payment of a specific benefit or privilege although the specific advantage is secondary to the primary motive of regulation in public interest. If the element of revenue for general purpose of the State predominates, the levy becomes a tax. In regard to fees there is, and must always be, correlation between the fee collected and the service intended to be rendered..... There is no generic difference between a tax and a fee. Both are compulsory exaction of money by public authorities."

Similarly in City Corporation of Calicut v. Thachambalath Sadasivan, AIR (1985) SC 756, which has placed reliance on an earlier decision of the Supreme Court in Amar Nath Om Prakash v. State of Punjab, AIR (1985) SC 218, it was held that:

> "It is thus well settled in numerous recent decisions of this Court that the traditional concept in a fee of quid pro quo is undergoing a transformation and that though the fee must have relation to the services rendered, or the advantages conferred, such relation need not be direct, and a mere casual relation may be enough. It is not necessary to establish that those who pay the fee must receive direct benefit of the services rendered for which the fee is being paid. If one who is liable to pay receives general benefit from the authority levying the fee the element of service required for collecting fee is satisfied. It is not necessary that the person liable to pay must receive some special benefit or advantage for payment of the fee."

Subsequently, also the same view has been reiterated that there has been a sea change in the concept of a fee and now it is no longer regarded necessary that (i) some specific service must be rendered to the particular individual or individuals from whom the fee is being realized, and what has to be seen is whether there is a broad and general correlationship between the totality of the fee on the one hand, and the totality of the expenses of the services on the other, vide State of Himachal Pradesh v. M/s. Shivalik Agro Poly Products, AIR (2004) SC 4393; (ii) there need not be an exact or mathematical correlation between the amount realized as a fee and the value of the services rendered. A broad correlation between the two is sufficient to sustain the levy.

In the present case, there is no averment by the petitioner in the writ petition that there is no broad correlation between the amount realized as a cess and the amounts spent for the purposes mentioned in Section 9 of the Act, namely, to provide and accelerate rural development including the construction of rural road and bridges and storage facilities for storing growth and for maintaining and strengthening of the Public Distribution System. All that has been alleged by the petitioner in para 5 of the affidavit to the writ petition is that no specific benefit is given to the dealer from whom the cess is collected.

Thus the factual averment in the writ petition is limited to the plea that there is no specific service rendered to a particular dealer from whom the fee is realized. There is no factual averment that there is no broad correlation between the total amount of cess realized and the total value of the

service being rendered to the people living in the rural areas.

As already stated above, the concept of fee has undergone a sea change, and hence the writ petition is liable to fail on the mere ground that the writ petition was drafted under a total misconception about the legal position. As already stated above, the concept of fee has undergone a sea change, while the writ petition has been drafted in the light of the old concept of fee and not the new concept which was subsequently developed by the Supreme Court.

In Sona Chandi Oal Committee v. State of Maharashtra, AIR (2005) SC 635, this Court observed as under:

> "The traditional concept of quid pro quo in a fee has undergone considerable transformation. So far as the regulatory fee is concerned, the service to be rendered is not a condition precedent and the same does not lose the character of a fee provided the fee so charged is not excessive. It was not necessary that service to be rendered by the collecting authority should be confined to the contributories alone. The levy does not cease to be a fee merely because there is an element of compulsion or coerciveness present in it, nor is it a postulate of a fee that it must have a direct relation to the actual service rendered by the authority to each individual who obtains the benefit of the service. Quid pro quo in the strict sense was not always a sine qua non for a fee. All that is necessary is that there should be a reasonable relationship between the levy of fee and the services rendered and it is not necessary to establish that those who pay the fee must receive direct or special benefit or advantage of the services rendered for which the fee was being paid. It was held that if one who is liable to pay, receives general benefit from the authority levying the fee, the element of service required for collecting the fee is satisfied."

In State of West Bengal v. Kesoram Industries Ltd. and Ors., [2004] 10 SCC 201 a Constitution Bench of the Supreme Court (vide para 140) observed:

> ".....The imposition of cess envisaged through the SADA Act and the Rules was a step towards developing the special area. It is a matter of common knowledge, and does not need any evidence to demonstrate, that mining activity carried on the land within the special area involves extraction, removal, loading-unloading and transportation of the minerals accompanied by its natural consequences entailed on the environment and the infrastructure such as roads, water and power supply etc. within the special area. The impugned cess can, therefore, be justified as a fee for rendering such services as would improve the infrastructure and general development of the area, the benefits whereof would be availed even by the stone-crushers. Entry 66 in List II is available to provide protective constitutional coverage to the impugned levy as fee."

In Shiv Dayal Singh Ors. v. State of Haryana & Ors., AIR (1989) Punjab 87, the Punjab and Haryana High Court has upheld the validity of the Haryana Rural Development Act, which is similar to the

Act in question. We are in respectful agreement with the view taken by the Punjab and Haryana High Court in the aforesaid decision. A similar view was also taken by the Supreme Court in M/s. Kishan Lal Lakhmi Chand & Ors. v. State of Haryana & Ors., [1993] Suppl. 4 SCC 461.

Learned counsel for the appellant has relied on the Constitution Bench decision of this Court in Jindal Stainless Ltd. & Anr. v. State of Haryana and Ors., JT (2006) 4 SC 611 and he relied on para 39 of the said judgment which refers to "the principle of equivalence". In our opinion the aforesaid decision cannot be interpreted to mean that the sea change which has taken place in the concept of fee (as noted above) has vanished, and that by this decision the old concept of fee has been restored, and that now it has to be established that the particular individual from whom the fee is being realized must be rendered some specific services.

It may be noted that the decision in Jindal Stainless (supra) was given in connection with Article 301 of the Constitution, and it was not regarding the nature of a fee. Hence, it cannot be regarded as an authority explaining the nature of a fee. In our opinion the decisions of this Court in Sreenivasa General Traders v. State of A.P. (supra), City Corporation of Calicut v. Thachambalath (supra), State of Himachal Pradesh v. M/s Shivalik Agro Poly Products (supra), etc. still hold the field regarding the nature of a fee.

In our opinion the cess in question is in substance a fee as it is being levied for rendering to the rural public the service of rural development for the purposes stated in para 9 of the Act. Clearly roads, bridges and storage facilities have to be built in rural areas for progress, and naturally this will require generating funds. Thus even if no specific service is rendered to any particular individual from whom the fee has been realized, the cess in question is nevertheless a fee, for the reasons already mentioned above. Services are being rendered to the people in the rural areas as mentioned in Section 9 of the Act.

No doubt, as stated above, there has to be a broad correlation between the total amount of fees generated by the impugned cess and the total value of the services rendered, but there is no specific averment in the writ petition that there is no such broad correlation. It is true that if, say, Rs.100 crores revenue is generated every year by this cess, it is not necessary that this entire amount of Rs.100 crores must be spent for the purposes mentioned in Section 9, and it will suffice if a substantial part of this Rs. 100 crores is spent for such purposes. At the same time we would like to clarify that if, say, Rs.100 crores is generated by the cess in question and only Rs.1 crore or Rs.50 lacs is spent for the purpose mentioned in Section 9, obviously there would not be in such a case a broad correlation between the fees being realized and the service rendered.

Hence, while we uphold the validity of the Act, we leave it open to the petitioners (or any other person concerned) in the special circumstances of the case, to file a fresh petition, wherein he can make a specific averment that there is no broad correlation between the total amount of cess being realized every year under the Act and the total value of the services being rendered every year in accordance with Section 9. If the appellants (or any other concerned person) files such a fresh petition, the State of Andhra Pradesh will have to give facts and figures in their counter affidavit showing that there is a broad correlation between the total amount of cess being realized and the

total value of the services rendered. If it is found that there is no such broad correlation then obviously a suitable mandamus can be issued by the High Court, as is required by the circumstances of the case.

With the aforesaid observations these appeals are dismissed. No costs.

Civil Appeal Nos. 5133/1999, 5134-5137/1999, 5138-5140/1999, 5141/1999, 5142-5143/1999, 5144-5146/1999, 5147/1999 & 5148/1999 In view of the decisions in Civil Appeal Nos. 5120-5132 of 1999 these appeals are accordingly dismissed. No costs.