Amalgamated Coalfields Ltd. & Anr vs Janapada Sabha Chhindwara on 24 September, 1962

Equivalent citations: AIR 1964 SUPREME COURT 1013

Bench: P.B. Gajendragadkar, K.N. Wanchoo, K.C.D. Gupta

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           CASE NO.:
Appeal (civil)  469-470 of 1962

PETITIONER:
AMALGAMATED COALFIELDS LTD. & ANR.

RESPONDENT:
JANAPADA SABHA CHHINDWARA

DATE OF JUDGMENT: 24/09/1962

BENCH:
B.P. SINHA CJ & P.B. GAJENDRAGADKAR & K.N. WANCHOO & K.C.D. GUPTA & J.C.
SHAH

JUDGMENT:
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JUDGMENT 1964 AIR (SC) 1013 = 1963 (1) Suppl.SCR 172 Civil Appeal Nos. 506, 507 and 529 to 534 of 1962.

The Judgment was delivered by GAJENDRAGADKAR, J. :

GAJENDRAGADKAR, J. for the These ten appeals and two writ petitions have been placed for hearing together in a group, because they raise common questions of law. The appellants in these matters are all colliers holding mining leases under the Government of Madhya Pradesh for the extraction of coal from collieries situated in the Chhindwara District. The respondent, Janapada Sabha, Chhindwara, has issued notices against them calling upon them to pay coal tax "for coal manufactured at the mines, sold for export by rail or sold otherwise than for export by rail within the jurisdiction of the original Independent Mining Board for the said area"

. It appears that the mining area in question was within the territorial limits of the Independent Mining Local Board which had the status and powers of a District Council under the Central Provinces Local-Self Government Act, 1920 (hereinafter called the Act). The respondent Sabha is the successor of the said Mining Board and, therefore, claims to be entitled to continue the levy and recover the tax in question.

On March 12, 1935, the Mining Board exercising its powers under section 51 of the Act, resolved to levy coal tax, and accordingly, the first imposition made by it received

the sanction of the local Government on December 16, 1935, as per Notification No. 8700-2253-D-VIII. This notification came into force from January 1, 1936. On December 16, 1935, the local Government notified the rules for the assessment and collection of the tax which it had framed in exercise of the powers conferred on it by section 79(1), Clauses (xv), (xix) and (xxx). Rule 2 of these Rules provided that the tax shall be payable by every person, firm or company holding a mining lease for coal within the limits of the Independent Mining Local Board's jurisdiction. Rule 3 provided that the tax shall be levied @ three pies per ton on coal, coal dust or coke manufactured at the mines, sold for export by rail or sold otherwise than for export by rail within the territorial jurisdiction of the Independent Mining Local Board. In 1943, the words "coke manufactured at the mines" were deleted from Rule 3 and the tax was confined to coal and coal dust. The rate thus prescribed was increased from time to time. On December 22, 1943, the rate was made 4 pies per ton; on July 29, 1946, it was made 7 pies, per ton; and on July 19, 1947, it was made 9 pies . The Mining Board continued to recover the tax at the said rates until the Act was repealed in 1948 and in its place was enacted the Central Provinces and Berar Local Self-Government Act, 1948 (No. 38 of 1948). The respondent Sabha has now taken the place of the said Mining Board and has issued the notices against the several appellants, calling upon them to pay the coal tax for the different periods mentioned in the said notices.The appellants in Civil Appeals Nos. 469 and 470 of 1962 are : The Amalgamated Coalfields Ltd., and The Pench Valley Coal Co. Ltd. They are companies incorporated under the Indian Companies Act, 1913, and both have Shaw Wallace & Co., Ltd., as their Managing Agents. On August 23, 1958, notices were served on the two appellants calling upon them to pay Rs. 21, 898/64 np and Rs. 11, 838/9 np respectively as tax assessed @ 9 pies per ton from January 1, 1958, to June 30, 1958. This tax was claimed in respect of coal which included coal despatched by the appellants outside the State of Madhya Pradesh. The validity of these notices was challenged by the appellants in this Court by their Writ Petition No. 31 of 1959. On February 10, 1961, the said writ petition was dismissed by this Court and it was held that the notices served on them were valid (Vide The Amalgamated Coalfields Ltd. v. The Janapada Sabha, Chhindwara [1962 (1) SCR 1.]).

On September 13, 1960 and March 2, 1961, two notices of demand were served on the appellants calling upon them to pay Rs. 1, 16, 776/25 nP. and Rs. 65, 261/19 nP. respectively in regard to the tax assessed @ nine pies per ton on all coal despatched by the appellants from their collieries for the half years ending June 30, 1958, December 31, 1958, June 30, 1959, December 31, 1959, June 30, 1960 and December 31, 1960. The appellants challenged the validity of these notices by a Writ Petition filed by them in the High Court of Madhya Pradesh on April 12, 1961 (No. 95 of 1961).

Whilst the said writ petition was pending before the High Court, the appellants filed another writ Petition in the same High Court (No. 213 of 1961). By this writ petition, the appellants challenged the validity of notices issued against them on June 9, 1959, by which coal tax was demanded from them for a period between April 1, 1951 to

> December 31, 1957. This tax was levied in respect of coal despatched by the appellants outside the State of Madhya Pradesh. The amounts demanded were Rs. 1, 92, 144/66 nP.

and Rs. 68, 319/36 nP. respectively.These two petitions along with eight others were heard together by the High Court. So far as the appellants' petitions were concerned, the High Court has held that the appellants' claims were barred by res judicata by reason of the earlier decision of this Court in the case of the Amalgamated Coalfields Ltd. [1962 (1) SCR

1.]. The appellants then applied for and obtained special leave from this Court on April 23, 1962 and it is by special leave thus granted to them that they have come to this Court in Civil Appeals 469 & 470 of 1962.

The appellants have also filed two Writ Petition Nos. 70 & 71/1962 under Art. 32 of the Constitution. By these writ petitions, the two appellants challenged the validity of the notices served on them on June 9, 1959 as well as on September 13, 1960. The appellants' case is that these notices are illegal and without jurisdiction and so, they want them to be quashed by an appropriate writ or order issued against the respondent in that behalf. Thus the two appellants, the Amalgamated Coalfields Ltd., and the Pench Valley Coal Co. Ltd., are concerned with the two appeals Nos. 469 & 470/1962 and Writ Petitions 70 & 71/1962.

The other appeals arise from the writ petitions filed in the High Court of Madhya Pradesh by the respective appellants which were tried along with the writ petitions filed by the Amalgamated Coalfields Ltd. & Anr. In dealing with these writ petitions, High Court has held that the decision of this Court is the case of Amalgamated Coalfields Ltd. [1962 (1) SCR 1.] concludes the points raised by them in challenging the validity of the notices, and so, following the said decision, the High Court has dismissed all the said petitions. The appellants applied for and obtained special leave to come to this Court against the said decisions and it is with the special leave thus granted to them that these appellants have come before us.Civil Appeal No. 506 arises from the decision of the High Court of Madhya Pradesh dismissing the writ petition filed before it by the appellant, the Central Provinces Syndicate (P) Ltd. By its writ petition the appellant had challenged the validity of the notice served by the respondent calling upon it to pay arrears of the tax amounting to Rs. 20, 776/88 nP. being arrears from April 1, 1951 to June 30, 1959. It appears that for the said period, the appellant had been taxed by the respondent, but the said tax was not imposed on coal which had been transported by the appellant outside the limits of the State of Madhya Pradesh. The respondent now sought to reopen the assessment levied against the appellant for that period by including a claim for tax in respect of coal sold by the appellant outside the limits of the State. The High Court has rejected the Writ Petition and that decision has given rise to Civil Appeal No. 506 of 1962.

Civil Appeal No. 507 of 1962 arises from a writ petition filed by the appellants M/s. Kanhan Valley Coal Co. (Private) Ltd., in the High Court of Madhya Pradesh in which the validity of the notice issued by the respondent calling upon the appellants to pay the coal tax amounting to Rs. 10, 970/- as arrears from April 1, 1951 to June 30, 1959 has been challenged. The High Court has dismissed the writ petition, and so, the appellants have come to this Court by their Appeal No. 507/1962.

Civil Appeals Nos. 529 to 534 of 1962 similarly arise out of six writ petitions filed by the appellants M/s. Newton Chickli Collieries (P) Ltd. & five others in the High Court of Madhya Pradesh challenging the validity of the notices of demand served on them to recover by way of arrears coal tax for the periods mentioned in the notices in regard to coal sent by them outside the State of Madhya Pradesh for export. These writ petitions were dismissed by the High Court, and the appellants have, therefore, come to this Court by appeals Nos. 529-534/1962. That, in brief, is the genesis of the ten appeals and two writ petitions which have been grouped together for hearing in this Court.It will thus be seen that Civil Appeals Nos. 469 & 470/1962 and Writ Petitions Nos. 70 & 71/1962 raise a preliminary question about the applicability of the doctrine of res judicata to writ petitions filed under Art. 226 or to petitions under Art. 32, whereas the said appeals and writ petitions as well as the other appeals raise an additional question about the validity of the notices issued against the respective appellants. We would, therefore, deal with civil appeals Nos. 469 and 470/1962 and Writ Petitions Nos. 70 and 71/1962. Our decision in these matters will govern the other appeals in this group.

The first point which falls for our decision in these appeals is one of res judicata. The High Court has held that the challenge made by the appellants against the validity of the demand notices issued against them by the respondent is barred by res judicata by virtue of the decision of this Court in the earlier case brought by the appellants themselves before this Court. The Amalgamated Coalfields Ltd. [1962 (1) SCR 1.]. Before dealing with this point it is necessary to refer to the said decision. In that case, the validity of the impugned notices was challenged on two grounds; it was urged that the levy of the tax by the Independent Mining Board was invalid at the date of its initial imposition in 1935 and so, the respondent Sabha which was the successor of the said Mining Board could claim no authority to continue the said tax. This contention was based on the assumption that before the power conferred by s. 51 of the Act could be exercised, the previous sanction of the Governor-General had to be obtained, or that there should be fresh legislation in that behalf. This Court held that the Act having received the assents of the Governor General, its validity cannot be challenged in view of the saving clauses in the proviso to section 80A(3) and s. 84(2) of the Government of India Act, 1915. That being so, it was not open to any party to suggest that any subsequent amendments of the Government of India Act could affect the continued validity and operation of the Act. The second contention raised was one of construction. It was urged that on a fair construction of s. 51, the coal tax was excluded from the purview of the local authority. This argument was based on the opening clause of s. 51 which provided that its provisions would operate subject to the provision of any law or enactment for the time being in force. It was suggested that this clause took in the provisions of s. 80A(3) of the Government of India Act read with the Scheduled Taxes Rules framed under that section, but this argument was also rejected. It appears that at the hearing of the petition, the appellants also attempted to take an additional point against the validity of the impugned notices on the ground that the rate of tax which had been increased from 3 pies to 9 pies per ton was invalid. The appellants' case was that this increase was effected after the commencement of the Government of India Act, 1935, and so, it was invalid. This argument was not considered by the Court, because it was not even hinted in the petition filed by the appellants and the Court thought that it would not be proper to permit the appellants to raise that point at that stage. That is how the appellants' challenge to the validity of the impugned notices served on them on August 23, 1958 was repelled and the writ petition filed by them in that behalf

was dismissed.It appears that the authority of the Janapada Sabha to levy the impost under s. 51 of the Act was challenged on another ground in the case of M/s. Ram Krishna Ram Nath v. Janapada Sabha [1962 (S3) SCR 70.]. This time the attack against the competence of the Janapad Sabha proceeded on the ground that in repealing the Act of 1920, the subsequent Act of 1948 had not provided for the continuance of the said power in the Janapad Sabhas which were the successors of the Independent Mining Boards. Section 192(c) purported to provide that all rates, taxes and cesses due to the District Council, Local Board or Independent Local Board shall be deemed to be due to the Sabha to whose area they pertain. But it was obvious that this clause could apply to, and save, only rates, taxes and cesses already due; it did not authorise the imposition of fresh cesses, taxes or rates in future. Having realised that the relevant provision did not save future imposts, an amending Act was passed in 1949 by which the said saving was extended to include the right of the Janapad Sabhas to continue the levy of the impugned tax and this amendment was made retrospective from June 11, 1948, when the parent Act had come into force. In the case of Ram Krishna [1962 (S3) SCR 70.] the validity and effectiveness of this amendment of 1949 was challenged. It was thus a basic challenge to the power of the Janapad Sabhas to levy any impost on the ground that the subsequent amendment was invalid. This Court repelled the said challenge and held that the retrospective operation of the amendment was valid. According to this decision, the Provincial Legislature was competent to legislate for the continuance of the tax, provided the relevant conditions of s. 143(2) of the Government of India Act 1935 were satisfied. These conditions required that the tax should be one which was lawfully levied by a local authority for the purposes of a local area at the commencement of Part III of the Government of India Act; that the identity of the body that collects the tax, the area for whose benefit the tax is to be utilised and the purposes for which it is to be utilised continue to be the same, and that the rate of the tax is not enhanced nor is its incidence materially altered, so that, in substance, it continues to be the same tax. Since these tests were satisfied by the impost levied by the Janapad Sabha, it was held that the impost was valid and that the retrospective amendment of s. 192 was effective.The present proceedings constitute a third challenge to the validity of the notices issued by the Janapad Sabha, and as we have already seen, the challenge made by the appellants by their writ petitions before the High Court has been repelled on the preliminary ground that it is barred by res judicata. In that connection, the first question to consider is whether the general principle of res judicata applies to writ petitions filed under Art. 32 of the Constitution.

This question has been considered by a special Bench of this Court in the case of Pandit M. S. M. Sharma v. Dr. Shree Krishna Sinha [1961 (1) SCR

96.]. Chief Justice Sinha, who delivered the unanimous opinion of the Court, has answered this question in the affirmative. In that connection, the learned Chief Justice has referred to an earlier decision of this court in Raj Lakshmi Dasi v. Banamali Sen, [1953 SCR 154.] where it has been laid down that the principle underlying res judicata is applicable in respect of a question which has been raised and decided after full contest, even though the first Tribunal which decided the matter may have no jurisdiction to try the subsequent suit and even though the subject-matter of the dispute was not exactly the same in the two proceedings. It ought to be added that the Tribunal which had tried the first dispute in that case was a Tribunal of exclusive jurisdiction. Then the points raised on behalf of the petitioner Sharma were considered and it was noticed that, in substance, they were the

same points which had been agitated before this Court on an earlier occasion and had been rejected. "In our opinion", said the judgment, "the questions determined by the previous decision of this Court cannot be reopened in the present case and must govern the rights and obligations of the parties which as indicated above, are substantially the same."

Thus, this decision shows that even petitions filed under Art. 32 are subject to the general principle of res judicata.The question about the applicability of the doctrine of res judicata to the petitions filed under Art. 32 came before this Court in another form in Daryao v. The State of U.P. [1962 (1) SCR 574.], and in that case it has been held that where the petition under Art. 226 is considered on the merits as a contested matter and dismissed by the High Court, the decision pronounced is binding on the parties, unless modified or reversed by appeal or other appropriate proceedings under the Constitution, and so, if the said decision was not challenged by an appropriate remedy provided by the Constitution, a writ petition filed in respect of the same matter would be deemed to be barred by res judicata. Therefore, there can be no doubt that the general principle of res judicata applies to writ petitions filed under Art. 32 or Art. 226. It is necessary to emphasise that the application of the doctrine of res judicata to the petitions filed under Art. 32 does not in any way impair or affect the content of the fundamental rights guaranteed to the citizens of India. It only seeks to regulate the manner in which the said rights could be successfully asserted and vindicated in courts of law.

The question in the present appeals, however, is somewhat different. The notices which are challenged by the appellants in the present proceedings are in respect of the tax levied for a period different from the period covered by the notices issued on August 23, 1958 which were the subject-matter of the earlier writ proceedings (The Amalgamated Coalfields Ltd. [1962 (1) SCR 1.]) Where the liability of a tax for a particular year is considered and decided does the decision for that particular year operate as res judicata in respect of the liability for a subsequent year ? In a sense, the liability to pay tax from year to year is a separate and distinct liability; it is based on a different cause of action from year to year, and if any points of fact or law are considered in determining the liability for a given year, they can generally be deemed to have been considered and decided in a collateral and incidental way. The trend of the recent English decisions on the whole appears to be, in the words of Lord Radcliffe, "that it is more in the public interest that tax and rate assessments should not be artificially encumbered with estoppels (I am not speaking, of course, of the effect of legal decisions establishing the law, which is quite a different matter), even though in the result, some expectations may be frustrated and some time wasted."

(vide Society of Medical Officers of Health v. Hope Valuation Officer [[1960] 2 W.L.R. 404, 563.]). The basis for this view is that generally, questions of liability to pay tax are determined by Tribunals with limited jurisdiction and so, it would not be inappropriate to assume that if they decide any other questions incidental to the determination of the liability for the specific period, the decisions of those incidental questions need not create a bar of res judicata while similar questions of liability for subsequent years are being examined.In that connection, it would be interesting to refer to four English decisions. In the case of Broken Hill Proprietary Co. Ltd. and Municipal Council of Broken Hill, [[1926] A.C.

94.] the question which fell for decision was how the average annual value of a mine for rating purposes had to be determined, and it was held by the Privy Council that the said value was to be ascertained by dividing the value of the output during the three years by three, not by multiplying it by 205 and dividing it by 365. One of the points which the Privy Council had to consider was whether a contrary decision reached by the High Court of Australia between the parties as to the valuation for a previous year, operated as res judicata. In rejecting the plea that the principle of res judicata applied, Lord Carson observed that "the decision of the High Court related to a valuation and a liability to a tax in a previous year, and no doubt as regards that year, the decision could not be disputed. The present case relates to a new question, viz., the valuation for a different year and the liability for that year. It is not eadem questio, and therefore, the principle of res judicata cannot apply."

(p. 100).

It, however, appears that in the same year, the Privy Council came to a somewhat contrary decision in the case of Hoystead v. Commissioner of Taxation [[1926] A.C. 155.]. In that case, the question which arose for decision was about the deduction claimable under the elevant provision of the Land Tax Assessment Act, 1916 (Aust.) Upon the assessment for 1919-20, the Commissioner allowed only one deduction of 5, 000 lbs. contending that the beneficiaries were not joint owners within the meaning of the Act. The case was then stated to the full Bench which upheld the Commissioner's view and rejected the argument that the Commissioner was estopped from coming to that conclusion in view of his decision in a previous year. When the matter went before the Privy Council, it reversed the decision of the Full Court, because it held that the Commissioner was estopped, even though in the previous litigation no express decision had been given whether the beneficiaries were joint owners, it being assumed and admitted that they were, and the Privy Council thought that the matter so admitted was fundamental to the decision then given. It would thus be seen that this decision applied the principle of res judicata even where there was no express decision on the point, but the point had been conceded in the earlier proceedings.In 1960, the House of Lords had occasion to consider this question in the case of Society of Medical Officers of Health [[1960] 2 W.L.R. 404, 563.]. We have already quoted one statement of the law from the speech of Lord Radcliffe in that case. In that case, the main reason given for the repelling the application of the principle of res judicata in rating cases, was that the jurisdiction of the Tribunal which deals with those cases is limited, in that its function begins with and ends with deciding the assessment or liability of a person for a terminable period. Besides, it was held that the position of a valuation officer is that of a neutral official charged with the recurring duty of bringing into existence a valuation list, and he cannot properly be described as a party so as to make the proceedings a lis inter partes. In coming to the conclusion that the doctrine of res judicata would not apply in such cases, Lord Radcliffe was influenced by the consideration that if decisions in rating cases are to be treated as conclusive for all time that would be to impose a needlessly heavy burden upon the administration of rating (p. 566). This decision purported to approve of the view taken in the case of the Broken Hill Proprietary Co. Ltd. [[1926] A.C. 94.] and to distinguish the view taken in the Hoystead case [[1926] A.C. 155.].

Lord Radcliffe had occasion to return to the same subject again in Gaffoor v. Income-tax Commissioner [[1961] 2 W.L.R. 794.]. Speaking for the Privy Council, Lord Radcliffe considered the problem of the application of res judicata to taxation cases, examined it in detail and came to the conclusion that the said doctrine did not apply to tax cases in the sense that the decision for the levy of a tax for one year does not operate as res judicata in dealing with the question of a tax for the subsequent year. On this occasion, emphasis was not placed so much on the limited nature of the jurisdiction of the Tribunal that deals with tax cases, but it was held that even if the matter goes to a High Court on a statement of the case, the decision of the High Court would also not create a bar of res judicata in dealing with the tax claim for a subsequent year. "The critical thing,"

> said Lord Radcliffe, "is that the dispute which alone can be determined by any decision given in the course of these proceedings is limited to one subject only, the amount of the assessable income for the year in which the assessment is challenged."

He, no doubt, recognised that in the process of arriving at the necessary decision, it was likely that the consideration of questions of law turning upon the construction of the ordinance or of other statutes or upon the general law, may be involved, but he thought that the decision of those questions should be treated as collateral or incidental to what is the only issue that is truly submitted to determination (pp. 800-801). This decision would, therefore, support the appellants, contention that the High Court was in error in dismissing their writ petitions on the preliminary ground that they were barred by res judicata.In considering this question, it may be necessary to distinguish between decision on questions of law which directly and substantially arise in any dispute about the liability for a particular year, and questions of law which arise incidentally or in a collateral manner, as Lord Radcliffe himself has observed in the case of the Society of Medical Officers of Health, [[1960] 2 W.L.R. 404, 563.] that the effect of legal decisions establishing the law would be a different matter. If, for instance, the validity of a taxing statute is impeached by an assessee who is called upon to pay tax for a particular year and the matter is taken to the High Court or brought before this Court and it is held that the taxing statute is valid, it may not be easy to hold that the decision on this basic and material issue would not operate as res judicata against the assessee for a subsequent year. That, however, is a matter on which it is unnecessary for us to pronounce a definite opinion in the present case. In this connection, it would be relevant to add that even if a direct decision of this Court on a point of law does not operate as res judicata in a dispute for a subsequent year, such a decision would, under Art. 141, have a binding effect not only on the parties to it, but also on all courts in India as a precedent in which the law is declared by this Court. The question about the applicability of res judicata to such a decision would thus be a matter of merely academic significance.

In the present appeals, the question which arises directly for our decision is : does the principle of constructive res judicata apply to petitions under Art. 32 or Art. 226 where the dispute raised is in respect of a year different from the year involved in a prior dispute decided by this Court ? We have already noticed the points actually decided by this Court against the appellants, on the earlier occasion (vide The Amalgamated Coalfields Ltd. [1962 (1) SCR 1.]). One of the points sought to be raised was in regard to the validity of the increase in the rate of tax from 3 pies to 9 pies per ton; and since this point had not been taken in the petition and relevant material was not available on record,

this Court refrained from expressing any opinion on it. The appellants contend that the order passed by this Court refusing permission to the appellants to raise this point on the earlier occasion does not mean that this Court has decided the point on the merits against the appellants; if may mean that the appellants were given liberty to raise this point later; but even otherwise, the point has not been considered and should not be held to be barred by constructive res judicata. It is significant that the attack against the validity of the notices in the present proceedings is based on grounds different and distinct from the grounds raised on the earlier occasion. It is not as if the same ground which was urged on the earlier occasion is placed before the Court in another form. The grounds now urged are entirely distinct, and so, the decision of the High Court can be upheld only if the principle of constructive res judicata can be said to apply to writ petitions filed under Art. 32 or Art. 226. In our opinion, constructive res judicata which is a special and artificial from of res judicata enacted by section 11 of the Civil Procedure Code should not generally be applied to writ petitions filed under Art. 32 or Art. 226. We would be reluctant to apply this principle to the present appeals all the more because we are dealing with cases where the impugned tax liability is for different years. In dismissing the appellants' petitions on the ground of res judicata, the High Court has no doubt referred to Art. 141 under which the law declared by this Court is binding on all Courts within the territory of India. But when we are considering the question as to whether any law has been declared by this Court by implication, such implied declaration, though binding must be held to be subject to revision by this Court on a proper occasion where the point in question is directly and expressly raised by any party before this Court. Therefore, we are inclined to hold that the appellants cannot be precluded from raising the new contentions on which their challenge against the validity of the notices is based.The first ground urged by the appellants on the merits is that the levy authorised to be imposed by the Act and the Rules framed thereunder violates the fundamental rights guaranteed to the citizens under Art. 19(1)(f) of the Constitution, and in support of this argument, reliance is placed on the decision of this Court in Kunnathat Thathunni Moopil Nair v. The State of Kerala [1961 (3) SCR 77.]. In that case, the impugned Act was struck down because it suffered from several serious infirmities; it was confiscatory in character and its provisions in regard to the levy of the impost were so arbitrary and unreasonable that the Court took the view that the Legislature had completely ignored the legal position that the assessment of a tax on person or property was at least of a quasi-judicial character. This conclusion was based on the examination of the relevant statutory provisions. In the present case, we are not satisfied that this decision can assist the appellants at all, because the nature of the statutory provisions and the Rules framed under the Act in the present appeals is entirely different.

At this stage, it is necessary to refer to the relevant statutory provisions and the Rules. Section 51 of the Act (which, in substance, corresponds to section 90 of the Act of 1948) reads thus :-

> "51. (1) Subject to the provisions of any law or enactment for the time being in force, a District Council may, by a resolution passed by a majority of not less than two-thirds of the members present at a special meeting convened for the purpose, impose any tax, toll or rate other than those specified in sections 24, 48, 49 and 50.
>
> (2) The first imposition of any tax, toll or rate under sub-section (1) shall be subject to the previous sanction of the Provincial Government.x x x x"

Sub-section (3) and the proviso are not relevant for our purpose.

Then we go to section 79 which confers power on the Provincial Government to make Rules. Section 79(1)(xv) is relevant for our purpose. It provides that :

> "The Provincial Government may make rules consistent with this Act and with reference, if necessary, to the varying circumstances of different local areas, as to the assessment and collection of the cases and rates specified in sections 48, 49 and 50 and of any tax, toll or rate imposed under section 51, as to the maximum amounts or rates at which any of them may be imposed, as to the prevention of evasion of assessment or payment thereof, as to the agency by which they shall be assessed and collected, and as to the manner in which account thereof shall be rendered by District Councils."

In pursuance of the powers conferred on the local Government by s. 79, rules have been framed on December 16, 1935. Rules 3 to 10 deal with the question of the impost of tax and provide how decisions made in that behalf by appropriate authorities become final. Rule 3 prescribed the rate at 3 pies per ton, Rule 4 provides that the figures reported by the concessionaires and the Railway companies half yearly to the Dy. Commissioner, shall be the basis for the assessment of the tax. Under Rule 5, every mining lessee has to submit a statement half yearly. On receipt of the statement, the assessment has to be made by the Chairman of the Independent Mining Local Board under Rule 6. A notice of demand follows under rule 7. Fifteen days' period is given for filing objections under Rule 8. Rule 9 provides for the consideration and disposal of the objections, and Rule 10 lays down that if no objection is filed, the Chairman's assessment shall be final, if any objection is received, the Independent Mining Local Board's decision shall be final and shall be communicated to the assessee as soon as possible. It would thus be seen that the scheme of these Rules provides ample opportunity to the assessees to object to the notice of demand served on them and in fact, the demand notices are substantially based on the figures supplied by the railway companies and the concessionaires and the statements submitted by the assessees themselves. Therefore, it would be idle to suggest that the impost of the tax authorised by the relevant statutory provisions and the Rules is a capricious administrative or executive affair and so, should be held to violate Art. 19(1)(f) of the Constitution.Then it is urged that the demand of the tax @ 9 pies per ton is invalid, because it is inconsistent with Rule 3 which has prescribed the maximum rate permissible to be levied against the assessees.

We have already noticed that s. 79(1)(XV) authorised the making of a rule as to the maximum amounts or rates at which any of the articles can be taxed. This was introduced by an amendment made in 1933 by C.P. Act VII of 1933, and so, the argument is that Rule 3 which provides that the tax shall be levied @ 3 pies per ton must be deemed to provide for the maximum rate which can be levied and that is 3 pies per ton and no more. This argument is no doubt well-founded, because Rule 3 will have to be read in the light of the power conferred on the local Government by s. 79(XV) and that would mean that the rate of 3 pies per ton has been prescribed by the Rule of the maximum rate permissible. But this argument ignores the fact that this Rule has been subsequently deleted by a notification on September 6, 1943 published in the Government Gazette on September 10, 1943.

When this notification was cited before us, the appellants conceded that the argument based on the construction of Rule 3 was not available to them. Therefore, the contention that Rule 3 prohibits the levy at a rate higher than 3 pies cannot succeed since the Rule itself has been subsequently deleted and was not a part of the Rules at the relevant time when the impugned notices were issued.

It is then argued that the impost of the tax at the rate of 9 pies per ton is not valid, because it does not comply with the requirements of s. 51(2) of the Act, and that raises the question of the construction of the said section. Section 51(1) authorises the imposition of the tax, provided, of course, the procedure prescribed by it and the requirements laid down by it are satisfied. Sub-section (2) then lays down that the first imposition of any tax shall be subject to the previous sanction of the Provincial Government. The appellants contend that in the context, the "first imposition" means not only the first imposition in the sense of an initial imposition, but it includes every fresh imposition levied at an increased rate. On the other hand, the respondent Sabha contends that the first imposition means only the initial levy or impost and cannot take in subsequent imposts or levies. In this connection, it is relevant to remember that sub-section (2) was added by the same Amending Act by which s. 79(XV) was amended, and so, it would not be unreasonable to assume that when the legislature gave power to the local Government to prescribe by rules the maximum rates permissible to be levied, it introduced sub-section (2) in s. 51 because it was thought necessary that whenever the rates were changed, the imposition of the tax at the increased rates should receive the previous sanction of the Government. If the respondent's construction is accepted, it would mean that the respondent should obtain the previous sanction of the Government at the initial levy and thereafter may go on increasing the rate of the levy to any extent without securing the sanction of the Government in that behalf. Now that Rule 3 has been deleted and no maximum has been or can be prescribed by the Rules, it would be unreasonable to hold that the respondent is given an unfettered and unguided authority to levy the impost in question at any rate it likes. Since no ceiling has been placed by the Rules in that behalf, it would, we think, be fair to hold that if the rates are increased and levy is sought to be imposed on the altered rates, the imposition of the levy at these altered rates should be deemed to be included in the expression "first imposition" under s. 51(2). We are, therefore, inclined to accept the appellants' construction of s. 51(2). That being so, it is necessary to enquire whether the imposition of the tax @ 9 pies has received the previous sanction of the local Government.During the course of his arguments, Mr. Sastri for the respondent attempted to suggest that sanction had been obtained for the increase in the rates from time to time and a typed summary of the notifications issued in that behalf was supplied to us at the time of arguments. This summary refers to the three increments made in 1943, 1946 and 1947 respectively to which we have already referred. The summary read as if the increments had been sanctioned by the State Government. But Mr. Sachin Choudhury for the appellants contended that the summary supplied by the respondent was incomplete and inaccurate and that the examination of the Gazette in which the notifications were published, would show that the amendments in the rates had been made not with the previous sanction of the Government, but by the Mining Local Board itself. Two of these notifications were then produced before us by the respondent, and they supported the contention made by Mr. Choudhury. Therefore, the argument that the imposition @ 9 pies per ton has received the sanction of the Government must fail, and so, the impugned notices which seek to recover the tax from the appellants @ 9 pies per ton must be held to be invalid. The respondent is entitled to levy tax only @ 3 pies per ton because that levy has

received the sanction of the Government, but if the respondent intends to increase the rate of the said tax, it must follow the procedure prescribed by s. 51(2), provided of course, it is open to the respondent to increase the said tax.

There is yet another point on which the appellants are entitled to succeed, and that has reference to the fact that the respondent is seeking to reopen some of the assessments made by it against the appellants. The argument is that once an assessment is made for a specific period, it becomes final and it is not open to the respondent to demand additional amount by way of tax in respect of the said period. The genesis of the tax is somewhat interesting. It appears that roads were constructed by the Independent Mining Local Board at enormous cost at the request of the Mining interests and even debt had to be incurred by the Board for completing the work of the construction of roads. Since the mining companies received substantial benefit from these roads, the Legislature thought of levying a tax on coal, and that is the origin of the tax. When the first notification was issued on December 16, 1935 it authorised and sanctioned the imposition by the Independent Mining Local Board at Chhindwara in the Chhindwara District "of a tax at 3 pies per ton on coal, coal dust or coke, manufactured at the mines, sold for export by rail or sold otherwise than for export by rail within the jurisdiction of the Independent Mining Local Board."

This tax was recovered by the Board and thereafter by the respondent in respect of coal whether sold inside the district of Chhindwara or sold outside the district of Chhindwara or even outside the State of Madhya Pradesh. In other words, the total coal produced by each mining lease- holder substantially came to be taxed. But after the Constitution came into force, doubts arose as to whether Art. 286 of the Constitution did not preclude the respondent from recovering tax in respect of coal exported out of the State of Madhya Pradesh, and in view of the advice given to the respondent by the Government of Madhya Pradesh, the respondent did not collect the tax in respect of coal which was exported by rail outside the State of Madhya Pradesh from about 1952. The respondent wanted to consult legal opinion on this point, but the State Government refused permission to the respondent to incur expenditure in that behalf. Subsequently, however, this question came to be decided by the High Court of Madhya Pradesh in a writ petition filed by M/s. Newton Chickli Collieries (Pvt.) Ltd. (No. 265 of 1957). The High Court held that the tax levied by the Janapada Sabhas under s. 51 of the Act did not amount to a sales tax nor to an excise duty, and so, the respondent thought that it could levy tax even on coal exported by rail outside the State of Madhya Pradesh. In fact after this judgment was pronounced by the High Court on August 6, 1958, the Provincial Government withdrew its instructions to the respondent not to levy tax on exported coal. That is how the respondent has issued notices against the appellants in respect of coal exported by rail out of the State of Madhya Pradesh in regard to the years for which assessment has already been levied against the appellants for the coal not so exported, and the contention of the appellants is that this reopening of the assessment is not permissible under the Rules.This contention appears to be well-founded. We have already seen the scheme of the Rules and we have noticed that Rule 10 provides that if no objection is filed, the Chairman's assessment shall be final and if an objection is received, the decision of Mining Board would be final. In other words, the scheme clearly provides that at the end of each six monthly period, the tax has to be assessed, notices to be issued to the assessee, his objections to be considered and the tax to be ultimately determined in the light of the decision on the said objections; and under Rule 10, the two decisions specified therein become final.

It may be that the Rules do not prescribe any limitation within which these steps have to be taken by the respondent for each period, but that is another matter. In view of the provisions of Rule 10, it is difficult to hold that the respondent is entitled to reopen assessments already made and rendered final under the said Rule. There is no other provision for reopening assessment as we have under sections 34 & 35 of the Indian Income Tax Act, and so, the respondent is not justified in issuing notices for the years which are covered by assessment orders already passed. The finality provided for by Rule 10 will work as much against the respondent as against the assessees.

In support of the appeals, another argument was sought to be raised against the increase of the rates. It was urged that the tax is in the nature of an excise duty or a sales-tax and, therefore, any increase in the said tax beyond the limit of 3 pies - the continuance of which has been saved by the provisions of Art. 143 of the Government of India Act, 1935 and Art. 277 of the Constitution - will be invalid. This argument is based on the terms used in the notification of December 16, 1935. Since coal is described as manufactured at the mines, the argument is that it is in the nature of an excise duty and since the notification also refers to coal sold for export by rail or sold otherwise than for export by rail, it is argued that it is a sales-tax. On the other hand, the respondent contends that it is neither a sales-tax nor an excise duty and as such, the rate can be increased subject, of course, to the requirements of s. 51(2) of the Act. It appears that by notification issued on September 6, 1943, the preamble of the Rules was modified by substituting for the words "coal, coal dust or coke" by "coal and dust coal" and by deleting the words "manufactured at the mines". Curiously enough, these amendments have not been made in the original notification itself. We have already noticed that this latter notification deleted Rule 3. Some arguments were urged before us by learned counsel on both sides as to the effect of this notification which modified the preamble to the Rules. We do not, however, think it necessary to consider these arguments in the present appeals because of our conclusion that the impugned notices levying the tax @ 9 pies per ton are invalid for two reasons : the increase in the rates has not been sanctioned by the State Government under s. 51(2) and an attempt to recover at the increased rate the tax for the years already covered by assessment orders passed in that behalf, is barred by Rule 10.The result is, the appeals and the writ petitions are allowed and an appropriate direction or order is issued restraining the respondent from recovering the tax at a rate higher than 3 pies per ton and also restraining the respondent from recovering any additional tax in respect of the years for which tax has already been assessed against the appellants. The same will be the order in the companion appeals. The appellants will be entitled to their costs, but one set of hearing fees will be taxed.

Appeals and writ petitions allowed.