

V. Nagappa vs Iron Ore Mines Cess Commissioner & ... on 10 April, 1973

Equivalent citations: 1973 AIR 1374, 1973 SCR (3) 943

Author: Kuttyil Kurien Mathew

Bench: Kuttyil Kurien Mathew, A.N. Grover

PETITIONER:

V. NAGAPPA

Vs.

RESPONDENT:

IRON ORE MINES CESS COMMISSIONER & ANOTHER

DATE OF JUDGMENT 10/04/1973

BENCH:

MATHEW, KUTTYIL KURIEN

BENCH:

MATHEW, KUTTYIL KURIEN

GROVER, A.N.

MUKHERJEA, B.K.

CITATION:

1973 AIR 1374

1973 SCR (3) 943

1973 SCC (2) 1

ACT:

Iron Ore Mines Labour Welfare Cess Act (58 of 1961), Ss. 2 and 3--Power delegated to Government to fix rate of excise duty--If suffers from vice of excessive delegation.

HEADNOTE:

Section 2 of the Iron Ore Mines Labour Welfare Cess Act, 1961, provides that the Central Government may levy as a cess for purposes of the Act, on all iron ore produced, an excise duty at such rate, not exceeding 50 P. per tonne of iron ore, as the Central Government may, from time to time, fix by notification.

The appellant, a lessee of an iron mine, challenged the validity of the Act, but the High Court dismissed the petition.

In appeal to this Court, it was contended that s. 2 of the Act suffers from the vice- of excessive delegation in that,

under the section, the Central Government has been given a blanket power to fix the rate of excise duty from time to time, without any guidelines.

Dismissing the appeal,

HELD : The necessary guidance for fixing the rate can be found in the amount of expenditure necessary for carrying out the purposes of the Act. The policy of the Act has been clearly stated, and s. 3 has specified the purposes for which the excise duty collected is to be utilised. The purposes mentioned are not vague, or indefinite, and the expenses to be incurred for those purposes could be calculated with reasonable certainty. The power to levy the duty must be taken to be limited by the expenses required to discharge the statutory function to be performed by the delegate, and so, the rate that is to be fixed should be such as would bring in the amount necessary to meet the needs of the delegate for discharging the functions. That the amount collected will be expended for the purposes enumerated in s. 3s ensured first, by requiring the Government to make an appropriation by means of parliamentary legislation, and secondly, by requiring accounts and reports to be published in the official Gazette [951 D-G]

Further, the fact that s. 2 has fixed the maximum rate would indicate that the delegate is not given an uncontrolled discretion in the matter of fixing the rate. The area within which discretion may be exercised is clearly demarcated, and hence, it cannot be said that a blanket power has been declared to the Government. [951 G-H]

Corporation of Calcutta and Another v. Liberty Cinema A.I.R. 1965 1107, Banarsidas v. State of M.P., A.I.R. 1958 S.C. 909, Municipal Board, Hapur v. Raghuvendra Kripal A.I.R. 1966 S.C. 693, Devi Das Gopal Krishnan v. State of Punjab, A.I.R. 1967 S.C. 1895, Vasantlal Maganbhai Sanjanwala v. State of Bombay, A.I.R. 1961 S.C. 4, Municipal Corporation of Delhi v. Birla Cotton and Spinning and Weaving Mills, A.I.R. 1968 S.C. 1232 Kruse v. Johnson.[1898] 2 Q.B. 91 and D. Ramaraju v. State of A.P., A.I.R. 1972 S.C. 828, referred to.

944

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1695 of 1969.

Appeal by special leave from the judgment and order dated February 20, 21, 1967 of the Mysore High Court Bangalore in Writ Petition No. 347 of 1965.

V. M. Tarkunde and D. N. Mishra, for the appellant. P. P. Rao, for the respondents.

The Judgment of the Court was delivered by MATHEW, J. The appellant, who was operating an iron mine within the State of Mysore on the basis of a lease granted by the State, filed a writ petition before the High Court of Mysore challenging the validity of the provisions of the Iron Ore Mines Labour Welfare Cess Act (Central Act 58 of 1961), hereinafter referred to as "the Act". The contentions of the appellant in the writ petition were that the Act is violative of article 14 of the Constitution in that it imposes a flat rate of excise duty on iron ore without reference to the actual content of iron in the ore and that there was excessive delegation of legislative power in that the power to fix the rate of excise duty was delegated to the government. The prayer in the petition was for a declaration of the invalidity of the Act with the consequential relief of quashing the demand made in pursuance to the Act. That petition was heard along with other similar petitions. The High Court dismissed the writ petitions by a common order and this appeal, by special leave, is against the order in so far as it affects the appellant. The Act provides for the levy and collection of a cess on iron ore for financing the promotion of welfare of labour employed in the iron ore mining industry. So far as the Mysore State was concerned, the Act was brought into force from October 1, 1963. Sections 2 and 3 of the Act contain the crucial provisions thereof. As the argument, in this case centered round the said Provisions, it is necessary to set them out :

"2. With effect from such date as the Central Government may, by notification in the official Gazette, appoint, there shall be levied and collected, as a cess for the purposes of this Act on all iron ore produced in any mine, a duty of excise at such rate not exceeding fifty naye paise per metric tonne of iron ore as the Central Government may, from time to time, fix by notification in the official Gazette.

"3. An amount equivalent to the proceeds of the duty levied under this Act, reduced by the cost of col-

lection as determined by the Central Government, together with any income from investment of the said amount and any other moneys received by the Central Government for the purposes of this Act, shall, after due appropriation made by Parliament by law, be, utilised by the Central Government to meet the expenditure incurred in connection with measures which, in the opinion of that Government, are necessary or expedient to promote the welfare of labour employed in the iron ore mining industry and in particular

(a) to defray the cost of measures for the benefit of labour employed in the Iron Ore Mining Industry directed towards :-

(i) the improvement of public health and sanitation, the prevention of disease, and the provision and improvement of medical facilities,

(ii) the provision and improvement of water supplies and facilities for washing,

(iii) the provision and improvement of educational facilities,

(iv) the improvement of standards of living including housing and nutrition, the amelioration of social conditions and the provisions of recreational facilities, and

(v) the, provision of transport to and from work;

(b) to make grants to a State Government, a local authority, the owner of an iron ore mine or any other person, of money in aid of any scheme approved by the Central Government for any purpose connected with the welfare of labour employed in the iron ore mining industry

(c) to pay annually grants in aid to such of the owners of iron ore mines as provided to the satisfaction of the Central Government welfare facilities of the prescribed standard for the benefit of labour employed in their mines, so, however, that the amount payable as grant in aid to the owner of an iron ore mine shall not exceed-

(i) the amount spent by the owner of the mine in the provision of welfare facilities, as determined by the Central Government or any person specified by it in this behalf or

(ii) such amount as may be prescribed by rules made under this Act;

whichever is less : Provided that no grant in aid shall be payable in respect of any welfare facilities provided by the owner of an iron ore mine where the amount spent thereon determined as aforesaid is less than the amount prescribed by rules made in this behalf.

(d) to meet the allowances, if any of members of the Advisory Committees constituted under section 4, and the salaries and allowances, if any, of persons appointed under Section 5."

Sections 4 and 5 empower the Central Government to appoint Advisory Committees and the necessary staff for enforcement of the provisions of the Act. Section 6 empowers the Central Government to exempt from the operation of the Act such States as those in which there is, in the opinion of the Central Government, a law making adequate provision for the financing of activities similar to those dealt with by the Act. Section 7 requires the Central Government to cause to be published in the official Gazette a report giving an account of its activities under the Act together with a statement of accounts. Section 8 empowers the Central Government to make rules for carrying into effect the purposes of the Act.

Pursuant to the power conferred by Section 8, rules called the Iron Ore Mines Labour Welfare Cess Rules 1963, were framed and published by a notification dated September 20, 1963.

On the first question decided against the appellant by the High Court, no arguments were addressed before us and we do not, therefore, think it necessary to discuss that question. The only point argued on behalf of the appellant was that s. 2 of the Act suffers from the vice of excessive delegation in that under that Section the Central Government has been given a blanket power to fix the rate of excise duty. It was contended that the section, while leaving it to the Central Government to fix the rate

and change it from time to time, has failed to give sufficient guidance to the Government in the matter of fixing the rate, nor has it indicated the basis for fixation or the relevant consideration to be taken into account for fixing the rate. The High Court relying on the decision of this Court in *Corporation of Calcutta and Another v. Liberty Cinema*(1) negated the contention.

(1) A. I.R. 1965 S. C. 1107.

in that case the validity of s. 548(2) of the Calcutta Municipal Act, 1951 which empowered the corporation to levy fees "at such rates as may from time to time be fixed by the Corporation" was challenged on the ground of excessive delegation as it provided no guidance for the fixation of the amount. The majority upheld the provision relying on the decision in *Banarsidas v. State of M.P.* (1) that the fixation of rates of tax being not an essential legislative function could be validly delegated to a non-legislative body, but observed further that when it was left to such a body, the legislature must provide guidance for such fixation. The Court found the guidance in the monetary needs of the Corporation for carrying out the functions entrusted to it under the Act. It was further observed that the power to collect taxes was limited by "the expenses required to discharge those functions". The minority, however, held that no guidance could be discovered from the provisions of the Act. According to them if the monetary needs of the Corporation could afford any guidance, applying the same principle it would have to be held that the monetary needs of the State or the union would provide sufficient guidance in case a similar power to fix the rate of tax was delegated to the Government by the legislature. The question for consideration is whether subsequent decisions of this Court have in any way modified or altered the principles laid down in this ruling and if so, to what extent, and whether s. 2 of the Act suffers from the vice of excessive delegation.

In *Municipal Board, Hapur v. Raghuvendra Kripal*(2) the validity of the U.P. Municipalities Act, 1916 was involved. The Act had empowered the municipalities to fix the rates of tax and after having enumerated the kinds of taxes to be levied, prescribed an elaborate procedure for such a levy and also provided for the sanction of the government. Section 135(3) of the Act raised a conclusive presumption that the procedure prescribed had been gone through on a certain notification being issued by the Government in that regard. This provision, it was contended, was ultra vires because there was an abdication of essential legislative functions by the legislature with respect to the imposition of tax inasmuch as the State Government was given the power to condone the breaches of the Act and to set at naught the Act itself. This, was an indirect exempting or dispensing power. Hidayatullah, J., speaking for the majority, pointed out :

"... regard being had to the democratic set up of the municipalities which need the proceeds of these taxes for their own administration, it is proper to leave to (1) A.I.R. 1958 S. C. 909.

(2) A.I.R. 1966 S. C. 693.

these municipalities the power to impose and collect these taxes. The taxes are, however, predetermined and a procedure for consulting the wishes of the People is devised" (at p.

698).

Apart from the fact that the Board was a representative, body of the local population on whom the tax was levied, there were other safeguards by way of checks and controls by government which ,could veto the action of the Board in case it did not carry out the mandate of the legislature. In *Devi Das Gopal Krishnan v. State of Punjab* (1), s. 5 of the East Punjab General Sales Tax Act, 1948 empowered the State Government to fix sales tax at such rates as it thought fit. The Court struck down the section on the ground that the legislature did not lay down any policy or guidance to the executive in the matter of fixation of rates. Subba Rao, C.J. speaking for the Court pointed out that the needs of the State and the purpose of the Act would not provide sufficient ,guidance in the fixation of rates of tax. It was further contended that s. 5 as amended only prescribed the maximum rate and did not disclose any policy giving guidance to the executive for fixing any rate other than the. maximum. The Court rejected this contention on the ground that the discretion granted to the executive to fix the rate between one pice and two pice in a rupee is insignificant and did not exceed the per-permissible limits. In this case the learned Chief Justice reiterated his views about the permissible limits of delegation, expressed in his dissenting judgment in *Vasantlal Maganbhai Sanjanwala v. State of Bombay*(2). He pointed out the danger inherent in the process of delegation thus :

"An overburdened legislature or one controlled by a powerful executive may unduly over-step the limits of delegation. It may not lay down any policy at all : It may. not set down any standard for the guidance of the executive; it may confer an arbitrary power on the executive to change or modify the policy laid down by it without reserving for itself any control ,over subordinate legislation. This self-effacement of legislative power in favour of another agency either ill whole or in part is beyond the permissible limits of delegation". (at p. 1901).

In *Municipal Corporation of Delhi v. Birla Cotton and Spinning and Weaving Mills*(3), the main question was the constitutionality of delegation of taxing powers to Municipal (1) A.I.R. 1967 S. C. 1895.

(3) A.I.R. 1968 S. C. 1232.

(2) A.I.R. 1961 S. C. 4.

Corporations. The Delhi Municipal Corporation Apt (66 of 1957) by s. 113(2) had empowered the Corporation to levy optional taxes. Under s. 150, power was given to the Corporation to define the maximum rate of such tax to be levied, the classes of persons and the descriptions of articles and properties to be, taxed, the systems of assessment to be adopted and the exemptions if any to be granted. The delegation made to the Corporation in the matter of imposing the optional taxes was said to suffer from the vice of excessive delegation. The majority of the Court held the delegation to the valid. Wanchoo, C.J. observed that there were sufficient guidance, checks and safeguards in the Act which prevented excessive delegation, The learned Chief Justice observed that statements in certain cases to the effect that the power to fix the rates of taxes was not an essential feature were

too broad. Sikri, J. (as be then was), in his concurring judgment held the view that there was "adequate guide or policy in the expression "purposes of the Act in section 113" and "it is not necessary to rely on the safeguards mentioned by the learned Chief Justice to sustain the delegation". He said.

"Apart from authority, in my view, 'Parliament has full power to delegate legislative authority to subordinate bodies. This power flows, in my judgment from art. 246 of the Constitution. The word "exclusive" means exclusive of any other legislature and not exclusive' of any other subordinate body. There is, .however, one restriction in this respect and that is also contained in art.

246. Parliament must pass a law in respect of an item or items of the- relevant list. Negatively this means that Parliament cannot abdicate its functions. It seems to me that this was the position under the various Government of India Acts and the constitution has made no, difference in this respect. I read (1883) 9 AC 117 and (1885) 10 AC 282 as laying down that legislatures like Indian legislatures had full power to delegate legislative authority to subordinate bodies. In the judgments in these cases no such words as 'policy', 'standard' or 'guidance' is men- tioned" (at p. 1266).

Wanchoo, C.J. made a functional approach to the question when he stated that "the nature of the body to which delegation is made is also a factor to be taken into consideration in determining whether there is sufficient guidance in the matter of delegation" (at 1244). According to the learned Chief Justice the fact that delegation was made to an elected body responsible to the people including those who paid taxes provided a great check on the elected councillors imposing unreasonable rates of tax. Again, guide or control on the limit of taxation could be seen in the expression "purposes of the Ace' in S. 113. The power to tax was circumscribed by the need to finance the functions which were made incumbent on the Corporation to perform. The necessity of adopting budget estimates each year as provided under the Act afforded another limit and guide-line in the matter. Further, the fact that the government was made the watchdog to control the actions of the Corporation in the matter of fixing the rates provided another check against arbitrarily exercising the power of taxation vested with the Corporation. The guidance may also take the form of providing maximum rates of tax upto which a local body may be given the discretion to make its choice. Lastly, relying on *Kruse v. Johnson*(1) the learned Chief Justice pointed out that in the case of subordinate public representative bodies, such as municipal boards, the reasonableness of their action could be reviewed by ,the Courts. Thus the majority relied on the safeguards inherent in delegating the power to an, elected body and guidelines provided under the various provisions of the Act for upholding the ,delegation. They observed the power from the angle of its exercise and gauged its propensity for abuse functionally.

In *D. Ramaraju v. State of A.P.* (2) the question was about the vires of the Andhra Pradesh (Krishna and Godavari Delta Area) Drainage Cess Act, 1968. Section 3 of that Act provided for levy and collection of drainage cess.

According to sub-section (1) of that 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 the 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) thereof, as the Government may, by notification, specify in respect of that division. The schedule referred to in the section fixed the maximum rate at which drainage cess may be collected and according to it the maximum rate shall be Rupees 10 per acre per annum for the Godavari eastern delta, and the Godavari central delta. Section 8(1) provides for a cess fund and any moneys received from the Central or State Government or any other source for the purposes of the Act shall be credited to the Fund together with the proceeds of the Drainage Cess as levied and collected under the Act. Sub- section (4) of S. 8 provides that 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.

(1) (1898) 2 S.C. 91.

(2) A.I.R. 1972 S.C. 828.

In answer to the contention that the section furnishes no sufficient guidelines for exercising the discretion to fix the rate, and therefore, the section was bad on the ground of excessive delegation of legislative power, the Court said that the Act contained sufficient guidelines for the fixation of the rate of cess, that there was enough materials on records to justify a uniform rate of cess for each acre of land in a division of the deltaic area and that the imposition of tax on land for raising general revenue is substantially different from the levy of cess for implementation of a drainage scheme for the benefit of lands in an area.

Tested in the light of the reasoning adopted in the cases referred to above, we are of opinion that the Act has furnished definite guidelines for the government to exercise the power to fix the rate of excise duty.

Section 3 has specified the purposes for which the excise duty collected is to be utilized. We do not think that the purposes mentioned are vague or indefinite or that the expenses to be incurred for those purposes cannot be calculated with reasonable certainty. The power to levy the duty must be taken to be limited by the expenses required to discharge the statutory function to be performed by the delegate and so, the rate that is to be fixed should be such as would bring in the amount necessary to meet the needs of the delegate for discharging the functions. That the amount collected will be expended for the purposes enumerated in s. 3 is ensured firstly by requiring the Government to make an appropriation by means of parliamentary legislation and secondly, by requiring, accounts and reports to be published in the official Gazette.

The policy of the Act has been clearly stated; the purposes for which the tax collected should be expended have been enumerated and the purposes are such that it is reasonably possible for the delegate to calculate the amount necessary to meet them. In these circumstances, we think that the necessary guidance for fixing the rate can be found in the amount of expenditure necessary for carrying out the purposes of the Act. Quite apart from these circumstances, the fact that s. 2 has fixed the maximum rate would indicate that the delegate is not given an uncontrolled discretion in the matter of fixing the rate. The area within which the discretion has to be exercised having been clearly demarcated, it cannot be said that a blanket power to fix the rate has been delegated to government. We dismiss the appeal with costs.

V.P.S. Appeal dismissed.