Supreme Court of India
Janapada Sabha, Chhindwara Etc vs The Central Provinces Syndicate ... on 23 February, 1970
Equivalent citations: 1971 AIR 57, 1970 SCR (3) 745
Author: S C.
Bench: Shah, J.C., Hegde, K.S., Grover, A.N., Ray, A.N., Dua, I.D.

PETITIONER:
JANAPADA SABHA, CHHINDWARA ETC.

Vs.

RESPONDENT:
THE CENTRAL PROVINCES SYNDICATE LTD. AND ANR.ETC.

DATE OF JUDGMENT:
23/02/1970

BENCH:
SHAH, J.C.
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SHAH, J.C.
HEGDE, K.S.
GROVER, A.N.
RAY, A.N.
DUA, I.D.

CITATION:
1971 AIR 57 1970 SCR (3) 745
1970 SCC (1) 509
CITATOR INFO :
R 1971 SC 231 (7)
D 1975 SC2037 (11)
RF 1975 SC2299 (190,607)
RF 1984 SC1780 (8,9,11)
D 1991 SC 704 (7)

ACT:
Retrospectivity--Madhya Pradesh Koyala Upkar (Manyatakaran) Adhinayam (18 of 1964), ss. 2(a)(b) and 3(1)-Act purporting to validate levy of cess notwithstanding the judgment of a court to the contrary, but nature and text of amendment not specified-Effect of Validating Act.

HEADNOTE:
In 1935, the Independent Mining Local Board, Chhindwara, constituted under C.P. Local Self Government Act, 1920, resolved to levy a cess on coal extracted within the area at 3 pies per ton. The sanction of the Local Government, as required by s. 51(2) of the Act, was obtained 'for the levy. In 1943, the levy was enhanced to 4 pies, in 1946 to 7 pies

and in 1947 to 9 pies. The validity of the enhanced levy was challenged and this Court, in appeal, held that the increased levy would also require the previous sanction of the Local Government and such sanction not having been obtained, the levy at a rate higher than 3 pies was illegal. The State Legislature thereafter enacted the Madhya Pradesh Koyala Upkar (Manyatakaran) Adhinayam, 1964. Section 2(a) of the Act defines 'Board' to mean the Independent Mining Local Board, Chhindwara and its successor body the Janapada Sabha, Chhindwara (appellant) constituted under the C.P. and Berar Local Government Act, 1948, and s. 2(b) defines 'cess' to mean 'a cess imposed by the Independent Mining Local Board, Chhindwara or its successor'. Section 3(1) provides that 'notwithstanding a judgment of any court, cesses imposed, assessed or collected by the Board in pursuance of the notifications notices specified in the Schedule shall, for all purposes, be deemed to be, and to have always been validly imposed, assessed or collected as if the enactment under which they were issued stood amended .-It material times so as to empower the Board to issue the said notifications. In the Schedule were specified the three notifications enhancing the rate of cess.

On the question whether the enhanced levy was validated by the 1964 Act.

HELD : The Act did not give legal effect to the imposition of cess at the enhanced rates.

By a fiction s. 3(1) of the 1964-Act deems the Act of 1920 and the rules framed thereunder to have been amended. But the text or even the nature of the amendments is not disclosed. Section 51(2) of the 1920 Act could not be deemed to have been repealed by the 1964 Act, because, the latter Act, in terms is limited in its application to the Independent Mining Local Board, Chhindwara, and its successor body and only in -respect of the three notifications specified in the Schedule. An Act so limited in its application to one Local Board and to specified notifications cannot repeal the sub-section which applies to all Boards. Nor is there anything to. indicate that notifications issued by the appellant-Board without the sanc
L 10 Sup CI (NP)/70-3
746
tion of the State Government must be deemed to have been issued validly. Such an intendment cannot be implied, without express language, in a taxing statute, It was open to the Legislature within certain limits to amend the provisions of an Act retrospectively and to declare what the law shall be deemed to have been. But the Legislature, in the present case, attempted to overrule or set aside a decision of the court. It is not open to the Legislature to say that a judgment of a court porperly constituted and rendered in exercise. of its powers in a matter brought before it shall be deemed to be ineffective either as a precedent or between the parties. [750 E-F: 751 A-GI

Commissioner of income-tax v. Ajax Products Ltd., 55 I.T.R. 741 (S.C.) and Commissioner of Income-tax v. B. M. Kharwar, [1967] 2 S.C.R. 650, followed.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 125 to 134 of 1967.

Appeals from the judgment and order dated May 3, 1966 of the Madhya Pradesh High Court in Misc. Petitions Nos., 552 of 1964 etc. B. Sen S. K. Seth and I. N. Shroff, for the appellant (in As. Nos. 125 to 133 of 1967).

I. N. Shroff, for the appellant and respondent no. 6 (in C.A.No. 134 of 1967).

N. D. Karkhanis and A. G. Ratnaparkhi, for respondent no. 1. .(in C.As. Nos. 125 to 133 of 1967).

Sachin Choudhary, R. K. P. Shankardass, A. K. Verma and O.C. Mathur, for respondents Nos. I and 2(in C.A. No. 134 of 1967) The Judgment of the Court was delivered by Shah, J. These appeals are filed by the Janapada Sabha, Chhindwara-hereinafter called 'the Sabha'-against the judgment of the High Court of Madhya Pradesh declaring that the Madhya Pradesh Koyala Upkar (Manyatakaran) , Adhiniyam [Madhya Pradesh Coal Cess (Validation) Act 18 of 1964 does not "give legal effect to the imposition of cess at the rate of 4 pies, 7 pies and 9 pies per ton under the notifications" issued by the Independent Mining Local Board on December 22, 1943, July 29, 1946 and July 19, 1947 respectively, "nor to anything done in pursuance of those notifications".

The Independent Mining Local Board, Chhindwara, a Board constituted under the Central Provinces Local Self-Gov- ernment Act 4 of 1920, resolved on March 12, 1935 to levy a cess under S. 51 of the Act at the rate of 3 pies per ton on coal extracted within the area. Sanction of the local Government -was obtained to that levy. On December 22, 1943, the rate was enhanced to 4 pies per ton : it was enhanced on July 29, 1946 to 7 pies per ton and on July 19, 1947 the cess was en- hanced to 9 pies per ton. The Central Provinces Local Self- Government Act 4 of 1920 was repealed with effect from June 11, 1948 by the C.P. and Berar Local Government Act 38 of 1948. By S. 192 of Act 38 of 1948 it was enacted, inter alia that all rules, bye-laws and orders made, notifications and notices issued, taxes imposed or assessed, cesses, fees, tolls or rates levied under Act 4 of 1920 and in force immediately before the commencement of Act 38 of 1948 shall continue to be in force and shall be deemed to have been respectively made, issued, granted, imposed or assessed, levied and taken under Act 38 of 1948, and all rates, taxes and cesses due to the Independent Local Board shall be deemed to be due to the Sabha to whose area they pertain.

The levy- of coal cess by the Sabha was challenged by the Amalgamated Coal fields Ltd. & Others on diverse grounds in petitions filed in this Court under Art. 32 of the Constitution. This Court rejected the petitions holding that Act 4 of 1920 had received the assent of the Governor- Gnereal and its validity was not liable to be challenged and that "on a proper interpretation of s. 51 of the Act the

levy of coal cess was not excluded from the purview of the local authority." It was also held that the' levy of the cess was valid even after the coming into force of the Government of India Act, 1935, and the Constitution of India, in view of s. 143 of the Government of India Act, 1935 and Art. 277 of the Constitution. But the Court declined to allow the petitioners to urge that the increase in the rate of tax by Resolutions in the years 1943, 1946 and 1947 was invalid : Amalgamated Coal-fields Ltd. v. Janapadd Sabha, Chhindwara(1).

Validity of the enhanced levy was then challenged in petitions died before the High Court of Madhya Pradesh by the Amalgamated Coal-fields Ltd. and Others. In appeals against the order of the High Court of Madhya Pradesh, this Court held that since ieither the Act nor the Rules prescribed a ceiling on the levy, the Expression "first imposition" occurring in S. 51(2) would include ,very increase of the levy after its initial imposition and the increased levy would require the previous sanction of the Local Government and such sanction not being there, the levy at the ate of 9 pies per ton was illegal. The Court accordingly allowed the appeals and ordered that the appropriate directions be ssued restraining the Janapada Sabha from recovering the tax at the rate higher than 3 pies per ton and also restraining the Sabha from recovering any additional tax in respect of the years for which (1) [1962] 1 S.C.R. 1.

tax had -already been assessed against, he petitioners : The Amalgamated Coalfields Ltd. v. The Janapada Sabha, Chhindwara(1).

To rectify the defect pointed out by this Court in the imposition of the cess, the Legislature of Madhya Pradesh enacted the Madhya Pradesh Koyala Upkar (Manyatakaran) Adhiniyam Act 18 of 1964. By S. 2(a) "Board" means "the Independent Mining Local Board, Chhindwara, constituted under the Central Provinces Local Self Government Act, 1920 (IV of 1920), and its successor body, the Janapada Sabha, Chhindwara, constituted under the Central Provinces and Berar Local Government Act, 1948 (XXXVIII of 1948) ". Section 2 (b) defines "cess" as meaning "a cess imposed by the Independent Mining Local Board, Chhindwara, or its successor body, on coal, coal dust or coke, from time to time, as the case may be, produced or manufactured at the mines, sold for export outside the State, or sold otherwise than for export by rail within the territorial jurisdiction of the said Board", and by s. 2(c) "enactment" is defined as meaning "the Central Provinces Local Self Government Act, 1920 (IV of 1920), or the Central Provinces and Berar Local Government Act, 1948 (No. XXXVIII of' 1948), as the case may be, and rules made thereunder". By S. 3 it is provided "(1) Notwithstanding anything contained in any judgment, decree or order of any Court, cesses imposed, assessed or collected or purported to have been imposed, assessed or collected by the Board in pursuance of the notifications/notices specified in the Sche- dule shall, for all purposes, be deemed to be, and to have always been, validly imposed, assessed or collected as if the enactment Under which they were so issued stood amended at all material times so as to empower the Board to issue the said notifications/notices and accordingly : -

(a) all acts, proceedings or things done or taken by the Board or by any officer of the Board in connection with the imposition, assessment or collection of such cess shall, for all purposes, be deemed to be and to have always been done or taken in accordance with law;

(b) any cess imposed or assessed in pursuance of the said notifications/notices before the 20th day of May, 1964 but not collected before such date may be recovered (after assessment of the cess where necessary) in the manner provided therefor;

(c) no suit or other proceeding shall be maintained or continued in any Court against the Board or any person (1) [1963] Supp. 1 S.C.R. 172.

or authority whatsoever for the refund of any cess so paid;

(d) no Court shall enforce any decree or order directing the refund of any cess so paid.

(2) For the removal of doubts, it is hereby declared that nothing in sub-section (1) shall be construed as preventing any person-

(a) from questioning in accordance with the provisions of the enactment, the assessment of such cess for any period.

(b) for claiming refund of the cess paid to him in excess of the amount due from him under the enactment." In the Schedule, notifications dated December 22, 1943, July 29, 1946 and July 19, 1947, enhancing the rate of cess were referred to.

The levy of coal cess validated by the provisions of Act 18 of 1964 was again challenged by the Central Provinces Syndicate Ltd. and other producers of coal, by petitions filed in the High Court of Madhya Pradesh. It was claimed by the petitioners that Act 18 of 1964 was "ultra vires and ineffective", and the notices issued pursuant thereto were liable to be quashed. Dixit, C.J., and Pandey, J., who heard the petitions differed. In the view of the learned Chief Justice the Amending Act which purported to amend Act 4 of 1920 by seeking to empower the Mining Board to issue the notifications specified in the Schedule to the Act without reviving the Act of 1920 was ineffective, and that in any event the Act did not validate the levy of coal cess which had been imposed under the three notifications. Pandey, J., expressed a contrary view. He held that the provisions of s. 3 of Act 18 of 1964 were not invalid, "nor were they ineffective". The petitions were then referred to Shiv Dayal, J. The learned Judge agreed with Dixit, C.J., and held that Act 18 of 1964 did not give legal effect to the imposition of cess at the rate of 4 pies, 7 pies or 9 pies per ton under the notifications issued by the Independent Mining Local Board nor to anything done in pursuance of those notifications.

The preamble of the Act states that it is "An Act to validate the imposition and collection of cess on coal by certain local authorities". Act 18 of 1964 is a taxing statute which purports to rectify the defects pointed out by this Court. This Court declared invalid the levy of cess by the Independent Mining Local Board, Chhindwara, at a rate exceeding three pies per ton. If the Act does not by the plain language used therein carry out the object, the Court will not be justified in supplying deficiencies in the Act. As observed by Rowlatt, J., in Cape Branty Syndicate v. Commissioners of Inland Revenue(') "In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to

be read in, nothing is to be implied. One can only look fairly at the language used"

These observations were approved by the House of Lords in Canadian Eagle Oil Co. Ltd. v. King (2) . This Court has also adopted the same rule in Commissioner of Income-tax v. Ajax Products Ltd.('); and Commissioner of Income-tax v. B. M. Kharwar (4) The relevant words which purport to validate the imposition, assessment and collection of cess on coal may be recalled : they are "cesses imposed, assessed or collected by the Board in pursuance of the notifications/notices specified in the Schedule shall, for all purposes, be deemed to be, and to have always been validly imposed, assessed or collected as if the enactment under which they were so issued stood amended at all material times so as-to empower the Board to issue the said notifications notices". Thereby the enactments, i.e., Act 4 of 1920 and the Rules framed under the, Act, pursuant to which the notifications and notices were issued, must be deemed to have been amended by the Act. But the Act does not set out the amendments intended to be made in the enactments. Act 18 of 1964 is a piece of clumsy drafting. By a fiction it deems the Act of 1920 and the, rules framed thereunder to have been amended without disclosing the text or even the nature of the amendments.

Mr. B. Sen appearing on behalf of the Sabha contended that the intention of the Legislature was to repeal with retrospective effect sub-s. (2) of s. 51 of Act 4 of 1920. By s. 51 of Act 4 of 1920 it was provided:

.....

"(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 (1) 12 T.C. 358. (2) 27 T.C. 205 (H.L.) (3) 55 I.T.R. 741 (S.C.) (4) [1967] 2 S.C.R. 650.

(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.

But the Act in terms is limited in its application to the Independent Mining Local Board, Chhindwara, and its successor body the Janapada Sabha, Chhindwara constituted under Act 38 of 1948, and only in respect of the three notifications specified in the Schedule. Obviously the Act limited to one local Board in its application and to certain specific notifications cannot operate to repeal the clause insofar as it applied to other Boards.

The nature of the, amendment made in Act 4 of 1920 has. hot been indicated. Nor is there anything which enacts that the notifications issued without the sanction of the State Government must be deemed to have been issued validly under S. 51(2), without the sanction of the-Local Government., On the words used in the Act, it is plain that the Legislature attempted to overrule or set aside the decision of this Court. That, in our judgment, is not open to the Legislature to do under our constitutional scheme. It is open to the Legislature within certain limits to amend the provisions of an Act retrospectively and to. declare what the law shall be deemed to have been, but it is not open to the Legislature to say that, a judgment of a Court properly constituted and rendered in exercise of

its powers in a matter brought before it shall be deemed to be ineffecive and the interpretation of the law shall be otherwise than as declared by the Court.

This Court in The Amalgamated Coalfields Ltd.'s(1) case held that the cess was not validly imposed and levied because the sanction of the State Government was not obtained at the time of enhancing the rate of levy of tax. That judgment was binding between the parties and also by virtue of Art. 141 binding on all Courts in the territory of India. The Legislature could not say that that declaration of law was either erroneous, invalid or ineffective either as a precedent or between the parties.

It is unnecessary then to consider whether the repealed Act may be amended without reenactment.

The appeals fail and are dismissed with costs. One hearing. fee.

V.P.S. Appeals dismissed.,
(1) [1963] Supp. 1 S.C.R. 172.