Supreme Court of India
State Of Of Madhya Pradesh vs Vyankatlal & Anr on 28 March, 1985
Equivalent citations: 1985 AIR 901, 1985 SCR (3) 561
Author: R Misra
Bench: Misra, R.B. (J)

PETITIONER:
STATE OF OF MADHYA PRADESH

Vs.

RESPONDENT:
VYANKATLAL & ANR.

DATE OF JUDGMENT28/03/1985

BENCH:
MISRA, R.B. (J)
BENCH:
MISRA, R.B. (J)
FAZALALI, SYED MURTAZA

CITATION:
1985 AIR 901 1985 SCR (3) 561
1985 SCC (2) 544 1985 SCALE (1)609
CITATOR INFO :
RF 1990 SC 313 (16)
RF 1991 SC1676 (65)

ACT:
Madhya Bharat Essential Supplies (Temporary Powers) Act 1948.
Supply price and ex-factory price-Difference between-Credited to Sugar Fund-Refund of-To whom payable-Persons not identified-Can be utilized for the purpose of the creation of the Fund.

HEADNOTE:
Respondents are owners of sugar mill situated in erstwhile Jaora State which merged in the State of Madhya Bharat. After the merger, the Madhya Bharat Essential Supplies (Temporary Powers) Act, 1948 came into force. By a notification dated 5th September, 1949 the said Act included 'sugar' in the list of articles as an essential commodity. By another notification dated 5th September, 1949 the Government delegated its powers to the Director, Civil Supplies to issue orders under the Act. The Director of Civil Supplies by a notification dated 14th January, 1950 fixed ex-factory prices for different sugar factories, which were to supply and despatch sugar of Grade

E-27 at Rs. 32.400 per maund F.O.R. destination. The supply price was higher than ex-factory price. The difference between the supply price and the ex-factory price was to be credited to Madhya Bharat Government Sugar Fund.

On demand by appellants, the respondents deposited a sum of Rs. 50,000 under protest in the said Sugar Fund.

The respondents instituted a suit for the refund of the amount deposited by them towards Sugar Fund and Rs. 10,000 towards interest. Tho suit was dismissed.

On appeal, the High Court set aside the Judgment and Decree of the trial Court and decreed the suit.

Allowing the appeal of the State,

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HELD: 1. The respondents had not to pay the amount from their coffers. The burden of paying the amount in question was transferred by the respondents to the purchasers and, therefore, they were not entitled to get a refund. Only the persons on whom lay the ultimate burden to pay the amount would be entitled to get a refund of the same.[568C]

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2. The amount deposited towards the Fund was to be utilised for the development of sugarcane. If it is not possible to identify the persons on whom had the burden been placed for payment towards the Fund, the amount of the Fund can be utilised by the Government for the purpose for which the Fund was created, namely, the development of sugarcane. There is no question of refunding the amount to the Respondents who had not eventually paid the U amount towards the Fund. Doing so would virtually amount to allow the respondents unjust enrichment. [568D-E]

The Orient Paper Mills Ltd. v.. The State of Orissa & Ors. [1962] I SCR 549. State of Bombay v. The United Motors (India) Ltd. [1953] SCR 1096, Shiv Shankar Dal Mills etc. v. State of Haryana [1980] 1 SCR 1170., Newabganei Sugar Mills v. Union of India & Ors. [1976] 1 SCR 803., Sales Tax Officer, Banaras & Ors. v. Kanhaiya Lal Mukundlal Saraf, [1959] SCR 1350., M s Amar Nath Om Parkash & Ors. v. The State of Punjab & Ors., 1984 (2) SCALE 796, relied upon.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 149 of 1971.

On appeal by Certificate from the Judgment and Decree dated 28.4.69 of the Madhya Pradesh High Court in First Appeal No. 14 of 1963.

H. K.Puri for the Appellant.

UR.Lalit, S.K. Gambhir, Ashok Mahajan and S. Kirplani for the Respondents.

The Judgment of the Court was delivered by MISRA J. The present appeal by certificate is directed against the judgment deted 28th April, 1969 of the High Court of Madha Pradesh, Indore Bench.

The facts leading to this appeal are brief. The respondents are the owners of Jaora Sugar Mills situated at Jaora in the earlier State of Madhya Bharat. The erstwhile State of Jaora merged in the State of Madhya Bharat. After the merger the Madhya Bharat Essential Supplies (Temporary Powers) Act, 1948 came into force. By a notification No. 5163/XXX (49) dated 5th September, 1949 the Madhya Bharat Government in exercise of the Powers vested under the said Act included 'sugar' in the list of articles as an essential commodity- By another notification l No. 5166/XXX(49) dated the 5th September, 1949 'the Madhya Bharat Government delegated its powers to issue orders under the said Act in favour of the Director, Civil Supplies, Madhya Bharat. In exercise of the powers conferred on him under the Madhya Bharat Sugar Control Order, 1949 the Director of Civil Supplies issued a notification No. 1. C.S. 15/50 dated the 14th January, 1950 fixing ex-factory prices for different sugar factories. Under the said notification all sugar factories in Madhya Bharat were to supply and despatch sugar of Grade E-27 at Rs. 32.4.0 per maund F.O.R. destination. The supply price was a little higher than the ex-factory price. The difference between the supply price and the ex-factory price was to be credited of Madhya Bharat Government Sugar Fund.

The appellant made several demands on the respondents, the proprietors of the Jaora Sugar Mills, to credit such difference in the account of Madhya Bharat Government Sugar Fund and the respondents ultimately deposited Rs 50000 under protest.

On the 10th September, 1953 the respondents instituted a suit in the court of Fifth Additional District judge, Indore against the erstwhile State of Madhya Bharat for the refund of the sum of Rs. 50,000 which the respondents had deposited towards Sugar Fund and Rs. 10,000 towards interest at the rate of 6 per cent per annum from the date of deposit of the aforesaid sum of Rs. 50,000. The suit continued against the newly formed State of Madhya Pradesh as provided by law.

The grievance of the respondent in the main was that the change and modification made by the Madhya Bharat Government in the definition of essential commodities given in the Act by including sugar therein was against the law, that the Director of Civil Supplies had no authority before 6th September, 1949 to issue the Sugar Control order, 1949 which had been issued on 5th September, 1949; that the State Government or the Director of Civil Supplies, Madhya Bharat had no power under the Essential Supplies (Temporary Powers) Act and the Sugar Control Order to impose a levy styled as 'Sugar Fund' and to recover the same; that the levy and collection of tax/impost styled as 'Sugar Fund' by the Director of Civil Supplies being violative of Art. 265 OF the Constitution, was illegal and invalid; that the provisions of Sugar Control Order, 1949 did not empower the Director of Civil Supplies to fix any price other than ex-factory wholesale or retail price or to fix a price which be called supply price or to impose and collect levy as 'Sugar Fund'; that is was illegal and unconstitutional for the Director of Civil Supplies to fix different ex-factory prices for different sugar mills in the same State; that it was illegal and unconstitutional to collect money through certain mills for creating Sugar Fund when other factories in the same State were being exempted from

doing so that there was clear discrimination in fixing ex-factory price of sugar in respect of respondents' mill lower than ex-factory price fixed for; certain other mills in the State without there being a rational basis for the same; and that the levy and collection of certain money from the respondents being without lawful authority and without legislative competence, the State was bond to refund the same.

The State resisted the claim of the plaintiff- respondents and refuted the allegation on the points. The trial court decided all the issues against the plaintiffs and consequently it dismissed the suit. On appeal by the plaintiffs the High Court set aside the judgment and decree of the trial court and decreed the suit for refund of Rs. 50,000 deposited by plaintiffs under protest and Rs. 10,000 as interest thereon calculated at the rate of 6 per cent from the date of suit till realisation. The High Court repelled the contention of the State that the impost was not intended to augment general revenues of the State but was meant for a special purpose, i.e., for creating a fund which could be utilised for augmenting the production of sugarcane in the State so that the supply of sugar might be increased. The High Court observed that legislative competence was necessary for such imposition irrespective of the fact whether the impost was intended to augment general revenues of the State or for a special purpose, i.e., for creating a fund for augmenting the production of sugar. It further held that Art. 277 of the Constitution only saves such taxes, cesses or fees which immediately before the commencement of the Constitution were being lawfully levied by the Government of any State notwithstanding that those taxes, duties, cesses or fees are mentioned in the Union List. But in the instant case levy of 'Sugar Fund' was imposed by means of an order which was published for the first time in the Madhya Bharat Government Gazette dated 28th January, 1950 two days after the Constitution came into force.

The High Court proceeded further to hold that the power Conferred on the Director of Civil Supplies did not authorise him to fix different prices in his discretion in different parts of Madhya Bharat under s. 5 of the Sugar Control Order which in the case of some mills was higher than ex-factory price. The fixing of supply price higher than ex-factory price had nothing to do with the enforcement of the order as it does not deal with licensing, ex-factory sale price, movement or distribution of sugar. Nor did ss. 11 and 12 justify the Director of Civil Supplies recovering additional Amount apart from ex-factory price from the purchasers.

Thus, in the opinion of the High Court the State had levied and collected under the purported legal authority certain money from the plaintiffs for which it had no legislative competence to do and therefore the State must restore the same to the persons from whom it was collected and cannot keep the same on the ground that plaintiffs too have been wrongly allowed to collect, and that the persons who could claim the same were the corresponding purchasers. The High Court omitted to decide the question whether the particular purchasers can recover hereafter from the plaintiffs whatever they had collected in excess of the ex- factory sale price on the ground that it need not be determined in this case.

Feeling aggrieved the State has come up in appeal. It vainly tried to support its stand that the recovery of Rs. 50,000 from the respondents was perfectly lawful and proper and there was no discrimination as contemplated by Art. 14 of the Constitution.

On the question of refund of the amount to the plaintiffs respondents reliance was placed on The Orient Paper Mills Ltd. v. The State of Orissa & Ors (1). In that case the appellants who were registered dealers under the Orissa Sales Tax Act, 1947 used to collect sales tax from the purchasers on all sales effected by them, including sales to dealers in other States. They very assessed to and paid tax on their turnover which included sales outside the State of Orissa. After the decision of this Court in State of Bombay v. The United Motors(India) Ltd (2). the dealers applied under s.14 of the Act for refund of tax paid on the ground that sales outside the State were not taxable under cl. (l)(a) of Art. 286 of (1) [1962]1 SCR 549.

(2) [1953] SCR 1069 the Constitution read with the Explanation. Refund was refused by the Sales Tax Authorities and the Board of Revenue. The High Court, however, ordered refund of tax paid for certain period but refused it in regard to other periods. The Orissa Sales Tax Act was, however, amended in 1958 with retrospective effect incorporating s.14A which provided that refund could be claimed only by the person from whom the dealer had realised the amount by way of sales tax or otherwise. On these facts it was held by this Court that under s.14A of the Act incorporated by the Orissa Sales Tax (Amendment) Act, 1958 refund of tax which the dealer was not liable to pay could be claimed by the person from whom the dealer had actually realised it whether as sales tax or otherwise and not by the dealer.

In Shiv Shankar Dal Mills etc. v. State of Haryana (1) the appellants and the petitioners who had paid under mistake the excess sums demanded a direction to the effect that these amounts be refunded. It, however, transpired that many of the traders had themselves recovered the excess percentage from the next purchasers. It was held that to the extent the traders had paid out of their own, they were entitled to keep them, but not where they had in turn collected from elsewhere. In Newabganj Sugar Mills v. Union of India & Ors (a). this Court in a similar situation devised a new procedure to deal with a new situation where equity demanded redistribution but procedural expensiveness and cumbersomeness effectively thwarted legal action. It directed the Registrar of the High Court to receive and dispose of claims from the ultimate consumers for excess price paid on proper proof, out of the security money.

In Sales Tax Officer, Banaras & Ors. v. Kanhaiya Lal Mukundlal Saraf(3 the levy of sales tax on forward transaction was held to be ultra vires. The respondents, therefore, applied for a refund of the amounts paid by a petition under Art. 226 of the Constitution. This Court, however, took the view that the term 'mistake' under s. 72 of the Indian Contract Act comprises within its scope a mistake of law as well as a mistake of fact and that, under that section a party is entitled to recover (1) [1980] 1 S.C.R. 1177.

(2) [1976] 1 S.C.R. 803.

(3) [1959] S.C.R. 1350.

money paid by mistake or under coercion and if it is established that the payment, even though it be of a tax, has been made by the party labouring under a mistake of law, the party receiving the money is bound to repay or return it though it might have been paid voluntarily subject, however, to

questions of estoppel, waiver, limitation or the like.

Recently this Court in M/s Amar Nath Om Parkash & Ors. v, The State of Punjab & Ors (1). had the occasion to consider the question of refund to the dealers in a similar situation and it observed:

> '...We do not see how a mere declaration that the levy and collection of fee in excess of Rs.2 per hundred would automatically vest in the dealer the right to get at the excess amount when in fact he did not bear the burden of it and when the moral and equitable owner of it was the consumer-public to whom the burden had been passed on.
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> The primary purpose of sec. 23A is seen on the face of it; it prevents the refund of license lee by the market committee to dealers, who have already passed on the burden of such fee to the next purchaser of the agricultural produce and who went to unjustly enrich themselves by obtaining the refund from the market committes. S. 23A in truth, recognises the consumer-public who have borne the ultimate burden as the persons who have really paid the amount and so entitled to refund of any excess fee collected and therefore directs the market committee representing their interests to retain the amount. It has to be in this form because it would, in practice, be a difficult and futile exercise to attempt to trace the individual purchasers and consumer who ultimately bore the burden.

It is really a law returning to the public what it has taken from the public, by enabling the commitee to utilise the amount for the performance of services required of it under the Act. Instead of allowing middlemen to profiteer by illgotten (1) [1984] 2 SCALE 769.

gains, the legislature has devised a procedure to undo the wrong that has been done by the excessive levy by allowing the committees to retain the amount to be utilised hereafter for the benefit of the very persons for whose benefit the marketing legislation was enacted."

The principles laid down in the aforesaid cases were based on the specific provisions in those Acts but the same principles can safely be applied to the facts of the present case inasmuch as in the present case also the respondents had not to pay the amount from their coffers. The burden of paying the amount in question was transferred by the respondents to the purchasers and, therefore, they were not entitled to get a refund. Only the persons on whom lay the ultimate burden to pay the amount would be entitled to get a refund of the same. The amount deposited towards the Fund was to be utilised for the development of sugarcane. If it is not possible to identify the persons on whom had the burden been placed for payment towards the Fund, the amount of the Fund can be utilised by the Government for the purpose for which the Fund Was created, namely, development of sugarcane. There is no question of refunding the amount to the respondents who had not eventually paid the amount towards the Fund. Doing so would virtually amount to allow the respondents unjust enrichment.

For the foregoing discussion the appeal must succeed. It is accordingly allowed and the judgment and decree of the High Court for the refund of the amount of Rs.50,000 and interest thereon is set aside. In the circumstances of the case the parties shall bear their own costs.

A.P.J. Appeal allowed.