Jaora Sugar Mills [P.] Ltd.

Vs

State of Madhya Pradesh and Others

Civil Appeal No.531 of 1964

(CJI P. B. Gajendragadkar, M. Hidayatullah, K. N. Wanchoo, J. C. Shah, S. M. Sikri JJ)

19.08.1965

JUDGMENT

GAJENDRAGADKAR. J. –

The principal question of law which arises in this appeal is in regard to the validity of the Central Act - The Sugarcane Cess [Validation] Act, 1961 [No. 38 of 1961] [hereinafter called the Act]. It arises in this way. The appellant, Jaora Sugar Mills [Pvt.] Ltd. is a Private Limited liability company incorporated under the Indian Companies Act. Its registered office is at Jaora within the premises of the Sugar Mills owned by it. The appellant manufactures sugar and carries on the business inter alia, of the production and sale of the said commodity since 1955 when it was incorporated. The sugarcane season for the manufacture of sugar generally covers the period December to March, and the sugarcane crushing season usually beings on the 1st October and ends on the 30th June.

Respondent No. 1 the State of Madhya Pradesh enacted the Madhya Pradesh Sugarcane [Regulation of Supply and Purchase] Act, 1958 [No. 1 of 1959] [hereinafter called the Madhya Pradesh Act]. Section 23 of the said act made a sugarcane cess payable as prescribed by it. Rules 60 to 63 of the Madhya Pradesh Sugarcane [Regulation of Supply and Purchase] Rules, 1959, made under the said act, provide for the method of collection of cess. Section 21 of the said act prescribes for the payment of commission to the Cane Development Council which was proposed to be constituted under s. 5 Rules 45 to 47 prescribe the quantum of commission payable to the said Council and refer to the manner in which the said payment has to be made.

The validity of s. 23 of the Madhya Pradesh act was challenged before the Madhya Pradesh High Court under Article 226 of the constitution in The Bhopal Sugar Industries v. State of Madhya Pradesh [Misc. petition No. 27 of 1961]. Before the writ petition challenging the validity of the said act came to be heard before the said High Court, a similar provision in the U. P. Sugarcane Cess act, 1961 [U. P. Act XXII of 1966] had already been struck down by this court as unconstitutional in Diamond sugar Mills Ltd.. and Anr. v. The State of Utter Pradesh and Anr. The common feature of the charging sections in both the Madhya Pradesh and the U. P. acts was that they authorised the respective State Government to impose a cess on the entry of cane into the premises of a factory for use, consumption or sale therein. It was urged before this court in the case of Diamond Sugar Mills Ltd. that the premises of a factory was not a local area within the meaning of Entry 52 in List II of the Seventh Schedule to the constituti

The validity of s. 21 of the Madhya Pradesh Act prescribing the payment of commission to the Cane Development council, was also challenged before there Madhya Pradesh High Court by the Bhopal sugar Industries Ltd. by another writ petition [Misc. petition No. 340 of 1961]. The said High Court

held that the commission directed to be paid by the impugned section was a fee and the delegation to the State Government to implement the said provision by prescribing Rules thereunder amounted to valid delegation and as such, the impugned section was not open to any effective challenge. In the result, s. 21 was upheld. This decision was pronounced on January 30, 1962.

In appears that as a result of the decision of this court in the case of Diamond Sugar Mills Ltd. the U. P. Sugarcane Cess [Validation] Act, 1961 was passed by the Central Legislature on March 21, 1961 [No. IV of 1961], and it received the assent of the president the same day. It may be mentioned that the decision of this court in the case of Diamond Sugar Mills was pronounced on December 13, 1960 and Parliament though that it was necessary to validate the imposition and collection of ceases made under the said act; and so the U. P. sugarcane Cess [validation] Act. 1961 was passed.

Parliament, however, realized that there were several other State Acts which suffered from the same infirmity, and so, on September 11, 1961, the act with which we are concerned in the present proceeding, was passed. It has also received the assent of the president the same day. This act purports to validate the imposition and collection of cesses on sugarcane under ten different acts passed by the legislature of seven different states. Section 3 of the act is the main valiging section. Section 5 purported to amend the specified provision in the U. P. Sugarcane Cess [Validation] Act, 1961. The said section was brought into force at once, and the remaining provisions of the act were to come into force in the respective states as from the dates which may be specified in that behalf by a notification issued by the Central Government and published in the Official Gazette. The relevant date, so far as the respondent State is concerned, is December 26, 1961.

On March 17, 1962 respondent No. 2, the Collector of District Ratlam, issued a notice to the appellant demanding payment of sugarcane cess at the rate prescribed by the respondent state under the relevant rules. The said notice also demanded payment of cane commission for the years 1959-60 and 1960-61, as prescribed by the relevant Rules.

The appellant challenged the validity of these demands and addressed respondent No. 2 in that behalf. It alleged that both the demands were invalid, because the act under the authority of which they purported to have been made, was itself ultra vires and unconstitutional. In respect of the demand for cane commission for the years 1959-60, the appellant urged an additional ground that the Cane Development Council itself had come into existence on August 26, 1960, and so, it was not permissible for respondent No. 2 to make a demand for commission in respect of the year 1959-60. It was also alleged that the demand for cane commission at the flat rate of 3 np, per maund was not related to the services proposed to be rendered by the said Council and as such, was invalid.

These pleas were resisted by the respondents. It was urged on their behalf that the impugned act was valid, and that the demands made by respondent No. 2 for the recovery of the cess and the commission were fully justified. On theses pleadings, the Madhya Pradesh High Court considered the two broad issues which arose before it. It has held that the provisions of the impugned act are constitutionally valid, and that the demand for cess made by respondent No. 2 could not be effectively challenged. In regard to the demand for cane commission, the High Court was not impressed by the plea made by the appellant, particularly in relation to the sugarcane season of 1959-61 and it held that even though the council may not have come into existence, a demand could be made with a view to provide for the constitution of the said council and thus enable it to afford service and assistance to the mills like the appellant. That is why the High Court rejected the appellant's contentions in that behalf and dismissed its writ

The appellant then applied for and obtained a certificate from the High Court and it is with the said certificate that it has come to this court by appeal. That is how the principal question which arises for our decision is whether the High Court was right in holding that the act is constitutionally valid. A subsidiary question also falls to be decided and that has relation to the demand for commission for the year 1959-60.

The Constitutional position with regard to the legislative competence of the State Legislatures on the one hand, and Central Legislature on the other in respect of the cess in question is not in doubt. We have already referred to the decision of this court in Diamond Sugar Mills and in view of the said decision, it is obvious that the cess in question was outside the legislative competence of the States. This very conclusion leads to he irresistible inference that parliament would have legislative competence to deal with the subject matter in question having regard to Art. 248 read with Entry 97 in List I of the Seventh Schedule to the Constitution. Article 245 [1] provides inter alia, that subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India; and the relevant Entry relates to any other matter not enumerated in List II or List III including any tax not mentioned in either of those lists. Article 248 Provides:

> [1] Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List.
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> [2] Such power shall included the power of making any law imposing a tax not mentioned in either of those Lists.

It is not disputed that if Parliament intended to make law in regard to the levy of a cess such as has been prescribed by s. 3 of the Act, its legislative competence is not open to doubt. Mr. Pathak for the appellant, however, contends that what the Act purports to do, and in fact and in substance has done, is to validate the invalid state Statues; the act, in other words, does not represent provisions enacted by Parliament as such, but it represents an attempt made by Parliament to validate laws which are invalid on the ground that the State legislative which enacted the said laws, had no legislative competence to do so. That is the main ground on which the validity of the Act has been challenged before us. This ground has, no doubt, been placed before us in two or three different forms.

Before dealing with these contentions, it is necessary to refer to the provisions of the Act. The act purports to have been passed to validate the imposition and collection of cesses on sugarcane under certain state acts and to amend the U. P. Sugarcane cess [Validation] Act 1961. Section 5 which was achieved this latter purpose has already been mentioned. With the aid section we are not concerned in the present appeal. Section 1 [2] provides for the date from which the provisions of the act shall come into force in different States and as we have already noticed, the relevant dates for the respective States would be the dates which would be the notification issued by the Central Government and published in the Official Gazette. Section 2 is a definition section s. 2 [a] defines cess as meaning the cess payable under any State Act and includes any sum recoverable under any such act by way of interest or penalty. Section 2 [b] deafness a state act as meaning any of the ten acts specified by it which were in f

> "3. [1] Notwithstanding any judgment, decree or order of any Court, all cesses imposed, assessed or collected or purporting to have been imposed, assessed or collected under any State Act before he commencement of this act shall be deemed to have been validly imposed, assessed or collected in accordance with law, as if the

provisions of the State Acts and of all notifications, orders and rules issued or made thereunder, in so ar as such provisions relate to the imposition, assessment and collection of such cess had been included in and formed part of this section and this section had been in force at all material times when such cess was imposed, assessed or collected; and accordingly.

[a] no suit or other proceeding shall be maintained or continued in any court for the refund of any cess paid under any state Act;

[b] no court shall enforce a decree or order directing the refund of any cess paid under any state Act and

[c] any Cess imposed or assessed under any State Act before the commencement of this act but not collected before such commencement may be recovered [after] assessment of the cess, where necessary] in the manner provided under that Act.

[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 any state act and rules made thereunder the assessment of any cess for any period; or

[b] from claiming refund of any cess paid by him in excess of the amount due from him under any state act and the rules made thereunder."

Section 4 provides that nothing in this Act shall be construed as validating section 11 of the Bombay Sugarcane Cess Act, 1948 [Bombay Act No. 82 of 1948] and accordingly the said section shall be omitted. Section 5 refers to the amendment of U. P. Sugarcane Cess [Validation] Act, 1961. That, in brief, is the position with regard to the provisions of the Act.

Mr. Pathak contends that what the Act has done is to attempt to cure the legislative incompetence of the State Legislature by validating acts which were invalid on the ground of absence of legislative competence in the respective State Legislatures. His case is that if an act is invalid not because the Legislature enacting the impugned act has no legislative competence, but because some of its provisions contravene the fundamental rights of citizens unjustifiably, It is possible to validate the said act by removing the invalid provision from its scope. Similarly, if an act passed by the State Legislature is substantially valid, but is invalid in regard to a portion which trespassed in a filed not within the legislative competence of the State Legislature, it would be possible to validate the Act by removing the invalid portion from its scope. In fact, if the invalid provision is severable from the rest of the Act, courts dealing with the question of its validity may strike down the invalid portion alone and

The difficulty in accepting Mr. Pathak's argument, however, arises from the fact that the assumption on which the whole argument is founded, is not justified on a fair and reasonable construction of s. 3. Section 3 does not purport to validate the invalid State Statutes. What parliament has done by enacting the said section is not to validate the invalid State Statutes, but to make a law concerning the cess covered by the said statutes and to provide that the said law shall come into operation respectively. There is a radical difference between the two position. Where the legislature wants to validate an earlier Act which has been declared to be invalid for one reason or another, it proceeds to remove the infirmity from the said act and validates its provisions which are free from the said

act and validates its provisions which are free from any infirmity. That is not what parliament has done in enacting the present act. Parliament knew that the relevant state acts were invalid, because the state legislature enient to make a compendious provision such as is contained in s. 3. The plain meaning of s. 3 is that the material and relevant provisions of the State acts as well as the provisions of notifications, orders and rules issued or made thereunder are included in s. 3 and shall be deemed to have been included at all material times in it. In other words, what s. 3 Provides is that by its order and force, the respective cesses will be deemed to have been record, because the provisions in relation of the recovery of the said cesses have been incorporated in the Act itself. The command under which the cesses would be deemed to have been recovered would, therefore, be the and of parliament because all the relevant sections, notifications, orders, and rules have been adopted by the Parliamentary statutes itself. We are, therefore, satisfied that the sole basis on which Mr. Pathak's argument rests is invalid, because the said basis is inconsistent with the plain and clear meaning of s. 3. As we have already indicated,

The same contention has been placed before us by Mr. Pathak in another form. He suggests that the act in question is a colourable piece of legislation. His case is that when parliament realised that as a result of the invalidity of different State Statutes, the respective states were faced with the problem of refunding very large amounts to the persons from whom the cesses wee recovered, it has passed the present act not for the purpose of levying a cess of its own, but for the purpose of enabling the respective states to retain the amounts which they have illegally collected. This aspect of the matter, says Mr. Pathak, makes the act a colourable piece of legislation. We are not impressed by this argument.

The challenged to the validity of a Statute on the ground that it is a colourable piece of legislation is often made under a misconception as to what colourable legislation really means. As observed by Mukherjea J. in K. C. Gajapati Narayan Deo and others v. The State of Orissa "the idea conveyed by the expression colourable legislation is that although apparently a legislature in passing a statute purported to act within the limits of its powers, yet in substance and in reality it transgressed these powers, the transgression being veiled by what appears, on proper examination, to be a mere pretense or disguise." This observation succinclty and effectively brings out the true character of the contention that any legislation is colourable legislation. Where a challenge is made on this ground, what has to be proved to the satisfaction of the Court is that though the act ostensibly is within the legislative competence of the legislature in question, in substance and in reality it covers a field which is outsid

Mr. Pathak has raised another contention against the validity of the Act. he argues that the act has not been passed for the purposes of the Union of India, and the recoveries of cesses which are retrospectively authorised by it are not likely to go in the Consolidated Fund of India. He contends that the recoveries have already been made by the respective states and they have gone into their respective consolidated Funds. In support of this arguments, Mr. Pathak has referred to the general scheme of the devolution of revenues between the Union and the States which is provided for by the relevant article contained in Part XII of the constitution and he has rallied more particularly on the provisions of Art 266. Article 266, no doubt, provides for two different consolidated Funds and public Accounts, one in relation to Indian and the other in relation to the respective states reads thus:-

> "266. [1] Subject to the provisions of article 267 and to the provisions of this Chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to State, all revenues received by the Government of India, all loans

raised by that government by the issue of treasury bills, loans or ways and means advances and all moneys received by that Government in repayment of Loans shall form one consolidated fund to be entitled the Consolidated Fund of India, and all revenues received by the Government by the issue of treasury bills, loans or ways and means advances and all loans or ways and means advance and all moneys received by that government in repayment of loans shall form one consolidated fund to be entitled the consolidated fund of the state.

[2] All other public moneys received by or on behalf of the Government of Indian or the Government of a state shall be credited to the public account of India or the public account of the state, as the case may be.

[3] No moneys out of the consolidated Fund of India or the Consolidated Fund of a state be appropriated except in accordance with law and for the purposes and in the manner provided in this Constitution.

It will be noticed that the contention raised by Mr. Pathak on the basis of Art. 266 makes an assumption and that is that the cesses already recovered by the different states will not be transferred to the consolidated fund of India, but will remain with the respective states; and that such a position would invalidate the law itself. We are not prepared to accept this argument as well. What happens to the cesses already recovered by the respective states under their invalid laws after the enactment of the impugned act, is a matter with which we are not concerned in the present proceedings. It is doubtful whether a plea can be raised by a citizen in support of his case that the Central Act is invalid because the moneys raised by it are not dealt with in accordance with the provisions of Part XII generally or particularly the provisions of Art 266. We will, however, assume that such a plea can be raised by a citizen for the purpose of this appeal. Even so, it is difficult to understand how the act can be said

It would thus be seen that thought Mr. Pathak presented his argument in three different forms, in substance his grievance is very simple. He says that s. 3 of the act does not purport to act prospectively; it act merely retrospectively and its effect is just to validate collections illegally made in pursuance of invalid statutory provisions enacted by State legislatures. So, the crucial question is if collections are made under statutory provisions which are invalid because they deal with a topic outside the legislative competence of the State legislatures, can Parliament, in exercise of its undoubted legislative competence, pass a law retrospectively validating the said collections by cavorting their character from collection made under the state statutes to that of the collection made under its own statute operating retrospectively ? In our opinion, the answer to this question has to be in the affirmative, because to hold otherwise would be to cut down the width and amplitude of the legislature competence

There is, however, one subsidiary question which still remains to be considered and that has relation to the demand for cess commission for the year 1959-60. The appellant's case is that this demand is invalid. The material facts in relation to this point are not in dispute. We have already noticed that the sugarcane crushing season is usually between 1st October and the 30th June, and that the cane Development council was constituted for the first time on August 26, 1960. In Other words, the Council was not in existence throughout the period covered by the demand in question which relates to the year 1959-60. Section 21 of the Madhya Pradesh Act provides for the payment of commission on purchase of cane; and rules 45 to 47 prescribe the manner in which the said payment has to be made. It is true that the functions of the Cane Development Council as prescribed by s. 6 of the said

act show that the Council is expected to render service to the mills like the appellant; and so, it can be safely assumed that the

In the result, the appeal substantially fails and the order passed by the High Court is confirmed, subject to the modification in regard to the demand for the payment of cane commission for the year 1959-60. There would be no order as to costs.

Appeal dismissed and order modified.

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