

Damodar Valley Corporation

Vs

State of Bihar and Others

Civil Appeal No. 104 of 1970

(H.R. Khanna, N.L. Untwalia, Jaswant Singh JJ)

05.08.1976

JUDGMENT

KHANNA, J. -

1. The short question which arises for determination in this appeal on certificate by Damodar Valley Corporation against the judgment of Patna High Court dismissing the writ petition filed by the appellant is whether the appellant is liable to pay electricity duty under Bihar Electricity Duty Act, 1948 as amended by Bihar Electricity Duty (Amendment) Act, 1963. The High Court answered the question in the affirmative against the appellant.

2. The appellant is a corporation established under the Damodar Valley Corporation Act, 1948 for the development of the Damodar valley in the States of Bihar and West Bengal. One of the functions of the appellant is the promotion and operation of schemes for the generation, transmission and distribution of hydroelectric and thermal electrical energy. Bihar Electricity Duty Act, 1948 (Bihar Act 36 of 1948) (hereinafter referred to as the Principle Act) was published in the Bihar gazette on October 1, 1948. It was an Act for the levy of duty on the sales and consumption of electrical energy in the province of Bihar. Material part of Sections 3 and 4, as they stood before the amendment made in 1963, read as under :

3. Incidence of duty. - (1) There shall be levied and paid to the State Government on the units of energy consumed or sold, excluding losses of energy in the transmission and transformation, a duty at the rates specified in the First Schedule :

Provided that no duty shall be leviable on units of energy :-

#(i) * * *(ii) * * *(iii) * * *(iv) * * *##

(v) consumed by, or in respect of, or sold for consumption in any -

(a) mine, as defined in the Indian Mines Act, 1923;

(b) industrial undertaking; except to the extent specified in the Second Schedule;

#(vi) * * *(2) * * *##

4. Payment of duty. - (1) Every licensee shall pay every month to the State Government at the time and in the manner prescribed the proper duty payable under Section 3 on the units of energy consumed by him or sold by him to the consumer.

(2) Every licensee may recover from the amount which falls to be paid by the licensee as duty in respect of energy sold to the consumer.

#(3) * * *(4) * * *(4a) * * *(5) * * *##

The principal Act was amended by Bihar Electricity Duty (Amendment) Act, 1963 (Bihar Act 20 of 1963) (hereinafter referred to as the amending Act). The amending Act received the assent of the President on December 4, 1963 and was published on December 17, 1963. By Section 2 of the amending Act, new Section 3 was substituted for the old Section 3. Material part of new Section 3 read as under :

3. Incidence of duty. - (1) Subject to the provision of sub-section (2), there shall be levied and paid to the State Government on the units of energy consumed or sold, excluding losses of energy in transmission and transformation, a duty at the rate or rates specified in the Schedule.

(2) No duty shall be leviable on units of energy -

#(a) * * *(b) * * *(c) * * *(d) * * *##

(e) consumed by the Damodar Valley Corporation for the generation, transmission or distribution of electricity by that Corporation;

#(f) * * *(3) * * *##

Amendment was also made in the First Schedule of the principal Act. The relevant part of the schedule read as under :

THE SCHEDULE (See Section 3) RATES OF DUTYA. For a mine or an industrial undertaking, save in respect of its premises used for energy as may be fixed by the State Government with the previous consent of the President, by order in this behalf.##

3. In the writ petition the appellant prayed for quashing three notices dated February 10, 1965 issued by the Superintendent of Commercial Taxes, Giridih as also his orders dated March 24 and 29, 1966. By the impugned notices the Superintendent of Commercial Taxes called upon the appellant to show cause as to why penal action under the principal Act, as amended, should not be taken against the appellant for having failed to get itself registered under that Act. The appellant was also called upon to apply for registration. By the impugned orders the Superintendent of Commercial Taxes directed the appellant to pay electricity duty under the Act as amended. The case of the appellant was that it enjoyed immunity from payment of tax under clause (1) of Article 288 of the Constitution. No law satisfying the requirement of clause (2) of Article 288, it was contended, had been made warranting the levy of such a duty. The High Court repelled this contention, and we find no sufficient ground to take a different view.

4. Article 288 of the Constitution reads as under :

288. (1) Save in so far as the President may by order otherwise provide, no law of a State in force immediately before the commencement of this Constitution shall

impose, or authorise the imposition of, a tax in respect of any water or electricity stored, generated, consumed, distributed or sold by any authority established by any existing law or any law made by Parliament for regulating or developing any inter-State river or river-valley.

Explanation. - The expression 'law of a State in force' in this clause shall include a law of a State passed or made before the commencement of this Constitution and not previously repealed, notwithstanding that it or parts of it may not be then in operation either at all or in particular areas.

(2) The Legislature of a State may by law impose, or authorise the imposition of, any such tax as is mentioned in clause (1), but no such law shall have any effect unless it has, after having been reserved for the consideration of the President, received his assent, and if any such law provides for the fixation of the rates and other incidents of such tax by means of rules or orders to be made under the law by any authority, the law shall provide for the previous consent of the President being obtained to the making of any such rule or order.

5. Article 288 grants exemption from tax under any law of a State in respect of any water or electricity stored, consumed, distributed or sold by any authority established by any existing law or any law made by Parliament for regulating or developing any inter-State river or river-valley, except in certain cases. Accordingly to clause (1) of the article, this exemption would not be available in respect of such tax imposed under any law of a State in force immediately before the commencement of the Constitution if the President by order so provides. Although the principal Act is a pre-Constitution law, being an Act of 1948, no order was admittedly made by the President withdrawing the exemption in respect of the appellant from levy of such tax under the principal Act. Indeed, there was no question of issue of any such order because the principal Act did not provide for the imposition of electricity duty upon a corporation like the appellant. Clause (v) of the proviso to sub-section (1) of Section 3 of the principal Act expressly stated that no duty shall be leviable on units of energy consumed by, or in respect of, or sold for consumption in any mine, as defined in the Indian Mines Act, or industrial undertakings, except to the extent specified in the Second Schedule. The appellant is admittedly an industrial undertaking, and as such, was not liable to pay electricity duty under the principal Act.

6. The case of the respondents is that the bar to the levy of the said duty was removed and the levy of the duty on the appellant was put on a sound legal basis as a result of the amendment made in the principal Act by the amending Act of 1963. The amending Act, we find, satisfies the requirements of clause (2) of Article 288. According to that clause, the legislature of a State may by law impose, or authorise the imposition of, any tax mentioned in clause (1) of that article, but no such law shall have any effect unless it has, after having been reserved for the consideration of the President, received his assent; and if any such law provides for the fixation of the rates and other incidents of such tax by means of rules or orders to be made under the law by any authority, the law shall provide for the previous consent of the President being obtained to the making of any such rule or order. The amending Act of 1963, as already mentioned, received the assent of the President before its publication. The exemption which was granted to mines and industrial undertakings from payment of electricity duty under the principal Act was withdrawn under the amending Act, except to some extent with which we are not concerned. The new schedule, substituted for the old schedule by the amending Act, prescribed the rates of duty for mines and industrial undertakings, and it was provided that the rate of duty shall be such rate or rates not exceeding 2 naye paise per unit of

energy as may, from time to time, be fixed by the State Government with the previous consent of the President, by order in this behalf.

7. It has been argued by Dr. Singhvi on behalf of the appellant that the scheme of Article 288 is to grant general exemption from the levy of tax in respect of any water or electricity stored, generated, consumed, distributed or sold by any authority established by any existing law or any law made by Parliament for regulating or developing any inter-State river or river-valley. If any law made by a State legislature, according to the submission, seeks the imposition of any such tax, such law should contain clear indication to that effect before it receives the assent of the President. The amending Act of 1963, according to the learned Counsel, did not contain any such indication. This contention, in our opinion, is wholly devoid of force. Under proviso (v) to Section 3(1) of the principal Act, mines and industrial undertakings were exempt from levy of duty. This exemption stood withdrawn as a result of substitution of new Section 3 for the old section by the amending Act. The new charging Section 3(1) roped in all industrial undertakings, including the Damodar Valley Corporation, for the purpose of levy of duty. Clause (e) of sub-section (2) of new Section 3 which was introduced by the amending Act of 1963, expressly granted exemption from levy of electricity duty on units of energy consumed by the appellant corporation for the generation, transmission or distribution of electricity by that corporation. This provision, containing express reference to the appellant corporation, clearly warrants the inference that in respect of units of energy not covered by clause (e) of sub-section (2) of Section 3 the exemption would not be available to the appellant. The contention advanced on behalf of the appellant that the amending Act did not contemplate or contain indication regarding the imposition of electricity duty upon the appellant is plainly untenable, for it would have the effect of rendering clause (e) of sub-section (2) of Section 3 to be wholly redundant. The courts, it is well-settled, should be loath to accept an argument which would have the effect of rendering redundant the provision of a statute.

8. Lastly, it has been argued that though there has been an amendment of Section 3 of the principal Act by its substitution by a new section under the amending Act of 1963, there has been no amendment of Section 4 with the assent of the President. As such, no liability to pay electricity duty can be fastened upon the appellant. This submission too is bereft of force. Section 3, as inserted by the amending Act of 1963, is the charging section. According to clause (1) of that section, subject to the provision of sub-section (2), there shall be levied and paid to the State Government on the units of energy consumed or sold, excluding losses of energy in transmission and transformation, a duty at the rate or rates specified in the schedule. The section thus deals with the incidence of duty, and makes it clear that such duty has to be paid on the units of energy consumed or sold and at the rate of rates specified in the schedule. It is further made clear by the section that the duty is to be levied and paid to the State Government. As the duty is to be levied on the units of energy consumed or sold, it would follow that the duty would have to be paid by the consumer or seller, as the case may be. Section 4 of the principal Act merely provides for the manner and mode of payment of the duty, and we find no substance in the contention that unless Section 4 of the principal Act was also re-enacted with the assent of the President, the liability for payment of duty cannot be fastened upon the appellant.

9. What is required by clause (2) of Article 288 is that the law made by the State legislature for imposing, or authorising the imposition of tax mentioned in clause (1) shall have effect only if after having been reserved for the consideration of the President it receives his assent. Another requirement of that clause is that if such law provides for the fixation of the rates and other incidents of such tax by means of rules or orders to be made under the law by any authority, the law shall provide for the previous consent of the President being obtained to the making of any such rule or

order. It is, however, not the effect of that clause that even if the abovementioned two requirements are satisfied, the provisions which merely deal with the mode and manner of the payment of the aforesaid tax should also receive the assent of the President and that in the absence of such assent, the provisions dealing with the incidence of tax, which have received the assent of the President, would remain unenforceable.

10. Some other aspects were also dealt with by the High Court, but in the light of the view we have taken in the matter, it is not necessary to deal with those aspects.

11. The appeal consequently fails and is dismissed but in the circumstances without costs.

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