State of Madhya Pradesh

Vs

Vyankatlal and Another

Civil Appeal No. 149 of 1971

(R. B. Misra, Syed M. Fazal Ali JJ)

28.03.1985

JUDGMENT

R. B. MISRA, J. -

1. The present appeal by certificate is directed against the judgment dated April 28, 1969 of the High Court of Madhya Pradesh, Indore Bench.

2. 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 September 5, 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 No. 5166/XXX (49) dated September 5, 1949 the Madhya Bharat Government delegated its powers to issue orders under the said Act in four 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. 7.C.S. 15/50 dated January 14, 1950 fixing ex-factory prices for different sugar factories. Under the said notification all sugar factories in Madhya Bharat were to supply and dispatch 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 to Madhya Bharat Government Sugar Fund.

3. 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. 50,000 under protest.

4. On September 10, 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 are 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.

5. The grievance of the respondents 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 September 6, 1949 to issue the Sugar Control Order, 1949 which had been issued on September 5, 1949 : that the State Government or the Director of Civil Supplies, Madhya Bharat had no power

under 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/impose styled as 'Sugar Fund' by the Director of Civil Supplies being violative of Article 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 he called supply price or to impose and collect levy as 'Sugar Fund'; that it 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 bound to refund the same.

6. The State resisted the claim of the plaintiff-respondents and refuted the allegation on all 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 Article 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 January 28, 1950 two days after the Constitution came into force.

7. 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 Section 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 Section 11 and 12 justify the Director of Civil Supplies recovering additional amount apart from ex-factory price from the purchasers.

8. 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.

9. 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 Article 14 of the Constitution.

10. On the question of refund of the amount to the plaintiffs respondents reliance was placed on Orient Paper Mills Ltd. v. State of Orissa ((1962) 1 SCR 549; AIR 1961 SC 1438 : (1961) 2 SCJ 610). 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 were 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. ((1953) SCR 1069 : AIR 1953 SC 252 : 1953 SCJ 373) the dealers applied under Section 14 of the Act for refund of tax paid on the ground that sales outside the State were not taxable under clause (1)(a) of Article 286 of the Constitution read with the Explanations. 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 1985 with retrospective effect incorporating Section 14-A 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 Section 14-A 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.

11. In Shiv Shankar Dal Mills v. State of Haryana ((1980) 1 SCR 1170 : (1980) 2 SCC 437 : AIR 1980 SC 1037) 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 ((1976) 1 SCR 803 : (1976) 1 SCC 120 : AIR 1976 SC 1152) this Court in a similar situation devised a new procedure to deal with a new situation where equity demanded redistribution but procedural expansiveness 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.

12. In S.T.O. v. Kanhaiya Lal Mukundlal Saraf ((1959) SCR 1350 : AIR 1959 SC 135) the levy of sales tax on forward transactions was held to be ultra vires. The respondents, therefore, applied for a refund of the amounts paid by a petition under Article 226 of the Constitution. This Court, however, took the view that the term 'mistake' under Section 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 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 laboring 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.

13. Recently this Court in M/s Amar Nath Om Prakash v. State of Punjab ((1985) 1 SCC 345 : 1985 SCC (Tax) 92) 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.

* * *##

The primary purpose of Section 23-A is seen on the face of it; it prevents the refund of license fee 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 want to unjustly enrich themselves by obtaining the refund from the market committee. Section 23-A, 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 consumers who ultimately bore the burden. It is really a law returning to the public what it has taken from the public, by enabling the committee to utilise the amount for the performance of services required of it under the Act. Instead of allowing middlemen to profiteer by illgotten gains, the Legislature has devised a procedure to undo the wrong item 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.

14. 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.

15. 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.

</html