

Federation of Mining Associations of Rajasthan

Vs

State of Rajasthan and Another

Civil Appeal Nos. 4287-91, 4293-4302, 4303-09, 4317-29, 4292, 4310 to 4316 of 1988 and Writ Petition Nos. 413 and 112 of 1988 and Civil Appeal No. 6114 of 1990 and SLP (Civil) No. 1480 of 1990 and Civil Appeal Nos. 2968, 2222-23 of 1991

(S. Ranganathan, N.D. Ojha, V. Ramaswami-II)

30.08.1991

ORDER

Special Leave Petition (C) No. 1480 of 1990

1. Leave granted. Counsel for the respondents takes notice. This appeal is disposed of along with connected appeals which have been heard today.

Writ Petition Nos. 112 and 413 of 1988

2. In the writ petitions rule nisi has already been issued. Counsel for the respondents takes notice. These petitions are heard and disposed of along with the connected appeals which have been heard today.

Civil Appeal Nos. 4287-4329/88, 6114/90, 4310-16/88, 2968/91, 2222-23/91, (sic)/91, Writ Petition Nos. 112 and 413 of 1988

3. All these matters concern the question of the validity of the provisions of Section 3 of the Rajasthan Land Tax Act, 1985 (Rajasthan Act 6 of 1985) - hereinafter referred to as 'the Act' - by which the State legislature purported to levy a tax on every land holder on the annual value of the land held or used by him insofar as it concerns land containing minerals. 'Land', inter alia, has been defined to include "land held or used for excavating, extracting, removing or utilising any ore or mineral". The "annual value" of this category of land has been defined in Section 2(a) which, insofar as is relevant, reads as follows :

"2. (a) 'Annual value' means, in the case of land held or used in a year

(i) for excavating, extracting, removing or utilising any ore or mineral, an amount equal to the amount of the annual dead rent or half of the amount of the royalty payable for the year with regard to such ore or mineral, whichever is higher."

We may mention that subsequently this provision has been amended to make the annual value equal to four times of the annual dead rent or twice the amount of the royalty payable, whichever is higher. Reference may also be made to the definition of the expression "dead rent" in Section 2(d) of the Act as follows :

"2. (d) 'dead rent' means the minimum guaranteed amount of royalty payable yearly

by the lessee under the Mines and Minerals (Regulation and Development) Act, 1957 (Central Act 67 of 1957) and the rules made thereunder or under an agreement for a mining lease."

4. The question of validity of levies of this type has come up for consideration by a seven Judge bench of this Court in *India Cement Ltd. v. State of Tamil Nadu* [(1990) 1 SCC 12] and by a three Judge bench in *Orissa Cement Ltd. v. State of Orissa* [1991 Supp (1) SCC 430 : JT 1991 (2) SC 439]. Following the above two decisions, a bench of this Court has also disposed of the challenge to a similar levy made by the Gujarat State in Writ Petition Nos. 100-116 of 1991.

5. We do not think it is necessary to set out in detail the facts and the various contentions urged before us which are practically a repetition of the contentions urged in the earlier decisions above referred to. We may only mention that the levy in the present case is practically on all fours with the levy in *Orissa Cement case* [1991 Supp (1) SCC 430 : JT 1991 (2) SC 439]. It is sufficient to say that there are no distinguishing features and we are not persuaded that the earlier decision requires reconsideration as urged by Sri Tarkunde. For the reasons set out in *India Cement* [(1990) 1 SCC 12] and *Orissa Cement* [1991 Supp (1) SCC 430 : JT 1991 (2) SC 439] cases, we are of the opinion that the State legislature did not have the competence to legislate for the levy of a tax on mineral bearing lands based on the royalty derived from the land.

6. Sri Tarkunde, learned counsel appearing for the respondent, however, sought to put forward an alternative contention that, even if a tax based on the royalty amount is held to be not a tax within the competence of the State Government, it is possible to sever that portion of the legislation and uphold the validity of the rest of it. He pointed out that tax is based on the annual value which, in turn, is based on the dead rent or royalty whichever is higher. He contended that, if the State Government had been aware of its limitation in enacting the legislation by reference to royalty, it would have based the levy on the "deed rent" which is an amount which has no reference to the exploitation of minerals from the land. In support of his contention that the State legislation should be so read as to impose the tax by reference to the amount of dead rent (even if it is invalid insofar as it purported to make royalty the basis of the tax) he relied upon the decision of this Court in *R. M. D. Chamarbaugwalla v. Union of India* [1957 SCR 930 : AIR 1957 SC 628]. The Court in that case, at page 950 of the report, laid down the following tests for severability of valid and invalid portions of a legislation : (SCR p. 950)

"1. In determining whether the valid parts of a statute are separable from the invalid parts thereof, it is the intention of the legislature that is the determining factor. The test to be applied is whether the legislature would have enacted the valid part if it had known that the rest of the statute was invalid. (vide *Corpus Juris Secundum*, Vol. 82, p. 156; *Sutherland on Statutory Construction*, Vol. 2, pp. 176-177).

2. If the valid and invalid provisions are so inextricably mixed up that they cannot be separated from one another, then the invalidity of a portion must result in the invalidity of the Act in its entirety. On the other hand, if they are so distinct and separate that after striking out what is invalid, what remains is in itself a complete code independent of the rest, then it will be upheld notwithstanding that the rest has become unenforceable. (vide *Cooley's Constitutional Limitations*, Vol. 1 at pp. 360-361 : *Crawford on Statutory Construction*, pp. 217-218).

3. Even when the provision which are valid are distinct and separate from those

which are invalid, if they all form part of a single scheme which is intended to be operative as a whole, then also the invalidity of a part will result in the failure of the whole. (vide Crawford Statutory Construction, pp. 218-219).

4. Likewise, when the valid and invalid parts of a statute are independent and do not form part of a scheme but what is left after omitting the invalid portion is so thin and truncated as to be in substance different from what it was when it emerged out of legislature, then also it will be rejected in its entirety.

5. The separability of the valid and invalid provisions of a statute does not depend on whether the law is enacted in the same section or different sections : (vide Cooley's Constitutional Limitations, Vol. 1, pp. 361-362); it is not the form, but the substance of the matter that is material, and that has to be ascertained on an examination of the Act as a whole and of the setting of the relevant provisions therein.

6. If after the invalid portion is expunged from the statute what remains cannot be enforced without making alterations and modifications therein, then the whole of it must be struck down as void, as otherwise it will amount to judicial legislation. (vide Sutherland on Statutory Construction, Vol. 2, p. 194).

7. In determining the legislative intent on the question of separability, it will be legitimate to make into account the history of the legislation, its object, the title and the preamble to it. (vide Sutherland on Statutory Construction, Vol. 2, pp. 177-178)."

7. We have considered this contention of the learned counsel for the State Government. The argument is very plausible and attractive. We are, however, of the opinion that it is not possible to sever the valid and invalid portions of the legislation before us in the manner suggested by the learned counsel. In the first place, as pointed out earlier "dead rent" has been defined as "the minimum guaranteed amount of royalty payable to the government". In other words, the dead rent also is royalty so far as the present Act is concerned and the levy by reference to the "dead rent" so defined suffers from the same vice as the levy by reference to royalty alone. Secondly, the reference to "royalty" or "dead rent" whichever is higher as the basis for the tax shows that the legislature has contemplated a single integrated scheme in which both are to be taken into account and compared. It would truncate this scheme if we were to cut out mechanically the reference to royalty alone. It is not possible to conceive, in this type of legislation, what exactly the State Government would have done if "royalty" had not been available to it as a basis for the charge of the tax proposed by them. The legislature might very well have restored to some other basis of charge for the tax. In our view, this case attracts propositions (2) and (3) rather than proposition (1) enunciated in Chamarbaugwalla case [1957 SCR 930 : AIR 1957 SC 628]. In the result, the appeals have to be dismissed and, the rules nisi in the writ petitions have to be made absolute. The enactment, insofar as it purports to levy a tax on mineral bearing lands has to be declared ultra vires. We hold accordingly.

8. Counsel for the respondents has, however, rightly pointed out that the declaration of invalidity of the levies should only be prospective and not retrospective. Both in India Cement [(1990) 1 SCC 12] as well as in Orissa Cement [1991 Supp (1) SCC 430 : JT 1991 (2) SC 439] cases, this Court has, for reasons discussed therein, declared similar legislations invalid only prospectively. In paragraphs 71 and 72 of the judgment in Orissa Cement case [1991 Supp (1) SCC 430 : JT 1991 (2) SC 439], it has been held that the levy of such tax in a State should be declared to be unconstitutional only with effect from the date of the first judgment which declares the legislation to

be invalid and not earlier. In the present case, since the High Court has upheld the levy and the levy is being declared unconstitutional only by this order, we direct that our declaration will take effect only from the date of this judgment. In other words, any tax collected under the statute so far need not be refunded by the State Government and if any amount of tax remains to be paid in respect of earlier periods, it will have to be paid by the assessee. However, as and from the date of this judgment, the impugned tax imposed by the Act in question will not be enforceable.

9. The appeals and writ petitions are disposed of accordingly. In the circumstances, we make no order as to costs.

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