

State of A.P. and Others

Vs

Ind. Natali Granite Ltd.

Civil Appeal No. 11345 of 1996

(K. Ramaswamy, G. B. Pattanaik JJ)

09.08.1996

ORDER

1. Leave granted.

2. Delay condoned.

3. Though the respondent has been served, none appears for the respondent. The respondent filed writ petition questioning the competence of the Government to levy cess on mining lease. The learned Single Judge by his judgment dated 1-10-1986 allowed the writ petition. The Government amended the District Boards Act, 1955 by Amendment Act 8 of 1989 empowering the State to levy land revenue or royalty/seigniorage fee. The respondent again filed Writ Petition No. 1 of 1987 questioning the legislative competence following the judgment of this Court in *India Cement Ltd. v. State of T.N.* [(1990) 1 SCC 12] By judgment and order dated 21-12-1989, the High Court held that the amendment was ultra vires the power of the State Legislature. Again the legislature amended the Act empowering the levy and collection of the cess on the same grounds, while appeal was filed in this Court. The respondent filed another writ petition which was allowed by the High Court on 21-12-1990. Thus, this appeal by special leave.

4. The controversy is no longer res integra. This Court in *P. Kannadasan v. State of T.N.* [(1996) 5 SCC 670] has considered elaborately the entire controversy and held that the legislature is competent to amend the law removing the invalidity pointed out in the judgment. Therefore, when an Act made by the State Legislature is invalidated by the court on the ground that the legislature was not competent to enact it, the legislature is competent to remove the lacuna and alter the basis of the judgment, as pointed out by the Court, and enact the law consistent with the constitutional scheme. The contention that Parliament must first create the levy and then give it retrospective effect was also negated holding that Parliament is not bound to adopt identical language every time it enacts a validation Act. It is open to it to employ such language as it chooses. All that the court should see is whether the language employed achieves the purpose which Parliament sets out to achieve. The language employed in Section 2 of the Validation Act does achieve the purpose. Dealing with the further contention that the validation was designed to, and provides only to validate the taxes and cesses already covered under the relevant provisions of the enactment which was declared invalid and that power cannot be utilised to empower or authorise Parliament to recover taxes and cesses payable under the invalid provisions, this Court had held that under the levy is validated, recoveries already made cannot be validated. It was for this reason that the enactment came to be made. A further contention that Parliament is devoid of the power to prescribe different rates of tax in different State as it violates Article 14. That contention was also elaborately considered and negated by this Court. Yet another contention that Parliament having

denuded the power of the State Legislature to levy tax on minerals extraction was raised and royalties is invalid unless a fresh enactment under Entry 54 of List I of the Seventh Schedule is made. That contention also was rejected. It is, thus, clear that this Court has upheld the amendments validating the collections of the cess payable under the State Acts.

5. The appeal is accordingly allowed. The judgments and orders of the High Court stand set aside. No costs, since the respondent is not appearing.