[2023] 12 S.C.R. 767 : 2023 INSC 865

CASE DETAILS

SOUTH EASTERN COALFIELDS LTD

v.

STATE OF MADHYA PRADESH & ORS

(Civil Appeal Nos. 84-85 of 2016)

SEPTEMBER 21, 2023

[DR. DHANANJAYA Y CHANDRACHUD, CJI, J. B. PARDIWALA AND MANOJ MISRA, JJ.]

HEADNOTES

Issue for consideration: Whether the High Court was justified in rejecting the challenge raised by the owner of coal mining colliery in Madhya Pradesh as regards the levy of terminal tax within the limits of the Municipal Council.

Constitution of India – Art. 244(1), 243-X, 243-ZC, Fifth Schedule Paragraph 5 – Law applicable to Schedule Area – Terminal tax – Levy of, within the limits of the Municipal Council – Challenge to, by the owner of coal mining colliery in Madhya Pradesh – Rejected by the High Court on the ground that the land from where the owner carried out its coal mining operations fell within the limits of the Municipal Council which had power to levy the terminal tax; and that no exceptions notified to the power of the Municipal Council under the Constitution – Correctness:

Held: Paragraph 5(1) of the Fifth Schedule enables the Governor to direct either that a parliamentary or state law shall not apply to a Scheduled Area in the State or that it would apply subject to exceptions and modifications – Thus, unless a notification has been issued by the Governor indicating that a parliamentary or State law shall have no application to the Scheduled Area; or the parliamentary or State legislation would apply subject to exceptions or modifications, there would be no hindrance in the application of the law to the State – Furthermore, the inapplicability of Art. 243X wherein the legislature of the State may authorise the Municipality to levy taxes, did not

denude the State legislature to enact legislation for the State – No such notification produced before the High Court nor this Court other than the notification of 2003 specifying the Scheduled Areas – In view thereof, the conclusion of the High Court cannot be faulted – Madhya Pradesh Municipal Corporation Act 1956 – Madhya Pradesh Municipalities Act 1961 – Terminal Tax (Assessment and Collection) on the Goods Exported from Madhya Pradesh Municipal Limits Rules 1996 – r. 2(c). [Paras 13 and 16]

LIST OF CITATIONS AND OTHER REFERENCES

Central India Spinning and Weaving & Manufacturing Co. Ltd. The Empress Mills, Nagpur v. The Municipal Committee, Wardha 1958 SCR 1102 – referred to.

OTHER CASE DETAILS INCLUDING IMPUGNED ORDER AND APPEARANCES

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 84-85 of 2016.

From the Judgment and Order dated 21.07.2010 of the High Court of Madhya Pradesh at Jabalpur in WP Nos. 1340 of 2005 and 1601 of 2010.

With

Civil Appeal Nos. 91-92, 89-90, 86, 87-88 and 93 of 2016.

Appearances:

N. Venkataraman, A.S.G., Ashok Kumar Sharma, Sr. Adv., T. G. Narayanan Nair, M.T. George, Chandrasekhar Bharati, Ms. Swathi H. Prasad, Syed Shahid Hussain Rizvi, Zeeshan Rizvi, Ashwani Kumar Dubey, Kshitij Mudgal, Rishabh Shukla, Advs. for the Appellant.

Saurabh Mishra, A.A.G., S.N. Bhat, Sr. Adv., Ms. Anuradha Mutatkar, Tarun Kumar Thakur, Sunny Choudhary, Vikas Bansal, Abhinav Shrivastava, Shivang Rawat, Rahul Kaushik, Rajesh Kandari, Vikrant Singh Bais, M. P. Devanath, Abhishek Anand, Rahul Kumar, Advs. for the Respondents.

JUDGMENT/ORDER OF THE SUPREME COURT

ORDER

1. This batch of appeals arises from a judgment dated 21 July 2010 by a Division Bench of the High Court of Madhya Pradesh in a set of petitions under Article 226 of the Constitution.

2. Section 132 of the Madhya Pradesh Municipal Corporation Act 1956 provides for "taxes to be imposed under this Act". Sub-section 6(n) empowers the Corporation to levy "a terminal tax" on goods and animals exported from the limits of the Corporation. A corresponding provision is contained in the Madhya Pradesh Municipalities Act 1961; Section 127(6)(n) empowers the Municipal Council to imposed "a terminal tax on goods or animals exported from the limits of the Council". In exercise of the statutory powers conferred by the two statutes, the Terminal Tax (Assessment and Collection) on the Goods Exported from Madhya Pradesh Municipal Limits Rules 1996 have been framed. Section 2(c) defines the expression "terminal tax" in the following terms :

> "(c) "Terminal tax" means the terminal tax on goods exported from the Municipal limit in accordance with the sanction of State Government under clause (o) of sub-section (2) of Section 132 of the Madhya Pradesh Municipal Corporation Act, 1956 and the tax described in clause (xvi) of sub-section (1) of Section 127 of the Madhya Pradesh Municipalities Act, 1961."

3. The appellant is a company registered under the Companies Act, 1956 and owns the coal mines of Jamuna & Kotma Colliery. The appellant moved the High Court under Article 226 of the Constitution seeking to challenge the levy of terminal tax within the limits of the Municipal Council. The plea was rejected by the High Court on the ground that the land from where the appellant was carrying out its coal mining operations fell within the limits of the Municipal Council which has levied the terminal tax. The High Court held that the power of imposing tax was granted by a State statute which was enacted with due legislative competence. It was observed that no exceptions have been notified to the powers of the Municipal Council under any provision of the Constitution. The judgment has been carried in appeal.

4. Article 244 of the Constitution provides that the provisions of the Fifth Schedule shall apply to the administration and control of Scheduled Areas and Scheduled Tribes. A notification was issued on 29 February 2003 by the Union Ministry of Law and Justice, in exercise of the powers conferred by Paragraph 6(2) of the Fifth Schedule to the Constitution of India, by which the Scheduled Areas (States of Chhattisgarh, Jharkhand and Madhya Pradesh) Order, 2003 was promulgated. The areas specified in the notification were redefined to be the Scheduled Areas within the States of Chhattisgarh, Jharkhand and Madhya Pradesh.

5. Part IXA of the Constitution of India which was inserted by the 74th amendment provides for the Municipalities. Article 243-ZC stipulates that nothing contained in the Part shall apply to the Scheduled Areas referred to in clause (1), and the tribal areas referred to in clause (2) of Article 244.

6. Mr N Venkataraman, Additional Solicitor General, appears on behalf of the appellant in support of the appeals. The first submission which has been urged is that Article 243X empowers the Legislature of a State by law to authorise the Municipalities to levy, collect and appropriate taxes, duties, tolls and fees. Since Part IXA does not apply to Scheduled Areas, it was urged that power under Article 243X is not available in relation to a Scheduled Area. As regards Scheduled Areas, it was urged that by virtue of Paragraph 5 of the Fifth Schedule to the Constitution of India, the Governor is entrusted with the power to direct that any particular Act of Parliament or the Legislature of the State shall not apply to a Scheduled Area or shall apply subject to such exceptions and modifications as may be specified. On this foundation, it was urged that the provisions of the two municipal laws which have been noticed above, would have no application and hence, the levy of a terminal tax was ultra vires.

7. The second submission which has been urged by the Additional Solicitor General is that Entry 89 of List I of the Seventh Schedule empowers Parliament to levy terminal taxes on goods or passengers carried by railway, sea or air; and taxes on railway fares and freights. Entry 56 of List II empowers the State Legislature to levy taxes on goods and passengers carried by road or on inland waterways. Entry 52 of List II, as it stood at the material time, provided for taxes on the entry of goods into a local area for consumption, use or sale therein. The submission is that while the

expression 'terminal' used in Entry 89 of List I, Entry 56 of List II does not use that expression and hence the Rules in the present case and the levy of a terminal tax would be ultra vires.

8. We will deal with the two submissions independently.

9. Article 244(1) of the Constitution provides as follows :

> "244. Administration of Scheduled Areas and Tribal Areas.—(1) The provisions of the Fifth Schedule shall apply to the administration and control of the Scheduled Areas and Scheduled Tribes in any State other than the State of Assam Meghalaya, Tripura and Mizoram."

10. Part IX of the Constitution dealing with the Panchayats was inserted by the 73rd Constitutional Amendment. Part IXA dealing with the Municipalities was inserted by the 74th Amendment. Article 243-ZC(1) indicates that nothing contained in Part IXA would apply to the Scheduled Areas referred to in clause (1) of Article 244. However, clause (3) of Article 244 enables Parliament to extend the provisions of Part IXA to the Scheduled Areas subject to such exceptions and modifications as may be specified in such law.

11. The Fifth Schedule contains provisions for the administration and control of Scheduled Areas and Scheduled Tribes. Paragraph 3 of the Fifth Schedule, inter alia, provides that the Governor of each State having Scheduled Areas shall annually or whenever so required by the President make a report to the President regarding the administration of the Scheduled Areas in the State and the executive power of the Union shall extend to the giving of directions to the State as to the administration of the said areas. Paragraph 5 of the Fifth Schedule is in the following terms :

> "5. Law applicable to Scheduled Areas.—(1) Notwithstanding anything in this Constitution, the Governor may by public notification direct that any particular Act of Parliament or of the Legislature of the State shall not apply to a Scheduled Area or any part thereof in the State or shall apply to a Scheduled Area or any part thereof in the State subject to such exceptions and modifications as he may specify in the notification and any direction given under this sub-paragraph may be given so as to have retrospective effect.

(2) The Governor may make regulations for the peace and good government of any area in a State which is for the time being a Scheduled Area.

In particular and without prejudice to the generality of the foregoing power, such regulations may—

(a) prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in such area;

(b) regulate the allotment of land to members of the Scheduled Tribes in such area;

(c) regulate the carrying on of business as money-lender by persons who lend money to members of the Scheduled Tribes in such area.

(3) In making any such regulation as is referred to in sub-paragraph (2) of this paragraph, the Governor may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to the area in question.

(4) All regulations made under this paragraph shall be submitted forthwith to the President and, until assented to by him, shall have no effect.

(5) No regulation shall be made under this paragraph unless the Governor making the regulation has, in the case where there is a Tribes Advisory Council for the State, consulted such Council."

12. Paragraph 5 of the Fifth Schedule commences with a non obstante provision. It empowers the Governor to direct that any Act of Parliament or of the Legislature of the State shall not apply to a Scheduled Area or a part of it in the State. The second component of clause (1) of Paragraph 5 empowers the Governor to direct that an Act of Parliament or of the State Legislature shall apply to a Scheduled Area or any part in the State subject to such exceptions and modifications as he may specify in the notification.

13. The High Court in the present case has observed that the appellant did not produce any notification indicating that the statutes in question would not apply to the Scheduled Areas in the State of Madhya Pradesh or that their provisions would apply with exceptions and modifications disabling

the power of the municipality to levy a tax. Even before this Court, no such notification has been produced. The consequence of paragraph 5(1) of the Fifth Schedule is that it enables the Governor to direct either that a parliamentary or state law shall not apply to a Scheduled Area in the State or that it would apply subject to exceptions and modifications. Therefore, unless a notification has been issued by the Governor indicating that (I) a parliamentary or state law shall have no application to the Scheduled Area; or (ii) the parliamentary or state legislation would apply subject to exceptions or modifications, there would be no hindrance in the application of the law to the State.

14. The alternate submission of the Additional Solicitor General is that since Article 243ZC provides that Part IXA would have no application to a Scheduled Area, the power which is conferred on the legislature of a State to authorise the municipality to levy, collect and appropriate taxes would similarly have no application.

15. Article 243-X is in the following terms :

"243-X. Power to impose taxes by, and Funds of, the Municipalities.—The Legislature of a State may, by law,—

(a) authorise a Municipality to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits;

(b) assign to a Municipality such taxes, duties, tolls and fees levied and collected by the State Government for such purposes and subject to such conditions and limits;

(c) provide for making such grants-in-aid to the Municipalities from the Consolidated Fund of the State; and

(d) provide for constitution of such Funds for crediting all moneys received, respectively, by or on behalf of the Municipalities and also for the withdrawal of such moneys therefrom,

as may be specified in the law."

16. The impact of Article 243-ZC is that Part IXA has no application to a Scheduled Area. The inapplicability of article 243X did not denude

the state legislature to enact legislation for the State. A Scheduled Area governed by Article 244 of the Constitution is subject to the provisions contained in the Fifth Schedule which govern the administration and control of Scheduled Areas or Scheduled Tribes. Paragraph 5 confers a power on the Governor, as noted above, to direct either that parliamentary or state law shall not apply in the Schedule Area or that it would apply subject to such exceptions or modifications as may be specified. As the High Court noted, no such notification has been produced and none, we may add, has been produced before this Court other than the notification dated 29 February 2003 specifying the Scheduled Areas. In this view of the matter, the conclusion of the High Court cannot be faulted.

17. On the second aspect, it needs to be noted that the Additional Solicitor General has fairly drawn the attention of this Court to the judgment of the Constitution Bench in ***Central India Spinning and Weaving & Manufacturing Co. Ltd. The Empress Mills, Nagpur v. The Municipal Committee, Wardha***[1], (particularly paragraph 33). Since he fairly concedes that the issue which was sought to be raised has been concluded in the above decision of the Constitution Bench, no further submissions have been urged in that regard.

18. For the above reasons, we are of the view that only two issues which have been raised in the course of the present appeals are lacking in substance.

19. The appeals shall accordingly stand dismissed.

20. Pending applications, if any, stand disposed of.

Headnotes prepared by:
Nidhi Jain

Appeals dismissed.

1 1958 SCR 1102