

(1978) 03 MP CK 0038

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 354 of 1970

Amalgamated Coalfields Limited Company and Another

APPELLANT

Vs

Janapada Panchayat, Chhindwara and Others

RESPONDENT

Date of Decision : 28-03-1978

Acts Referred:

Constitution of India, 1950 — Article 226, 277, 286, 286(1)(a), 32
Government of India Act, 1935 — Section 143, 292
Sales of Goods Act, 1930 — Section 39
States Reorganisation Act, 1956 — Section 78

Citation : (1981) ILR (MP) 8 : (1978) JLJ 776 : (1978) MPLJ 811

Hon'ble Judges : A.P. Sen, C.J.; J.S. Verma, J

Bench : Division Bench

Advocate : Y.S. Dharmadhikari, for the Appellant; S.K. Seth for Respondents Nos. 1(a), 1(e) and 2 and J.M. Sood, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Sen, C.J.

This writ petition as well as seven other writ petitions, viz., (1) Miscellaneous Petition No. 351 of 1970 (The Kanhan Valley Coal Co. Pvt. Ltd. and Anr. v. The Janapada Panchayat, Chhindwara and Ors.); (2) Miscellaneous Petition No. 352 of 1970 (The Central Provinces Syndicate Pvt. Ltd. and Anr. v. The Janapada Panchayat, Chhindwara and Ors.); (3) Miscellaneous Petition No. 353 of 1970 (The Pench Valley Coal Co. Ltd. and Anr. v. The Janapada Panchayat, Chhindwara and Ors.); (4) Miscellaneous Petition No. 491 of 1970 (Oriental Coal Co. Ltd. v. The Janapada Panchayat, Chhindwara and Ors.); (5) Miscellaneous Petition No. 492 of 1970 (J.A. Trivedi Brothers v. The Janapada Panchayat, Chhindwara and Ors.); (6) Miscellaneous Petition No. 493 of 1970 (N.R. Oza and Co. Pvt. Ltd. v. The Janapada Panchayat, Chhindwara and Ors.) and (7) Miscellaneous Petition No. 500 of 1970 (Newton Chikli Collieries Ltd. v. The Janapada Panchayat, Chhindwara and Ors.) raise common questions and, therefore, they are disposed of by this common Order.

In accordance with Rules 5 and 6, read with Note below Rule 4 of the Rules for Assessment and Collection of Coal Cess imposed u/s 51 of the Local Self-Government Act, 1920, read with Section 192 proviso (b) and (c) of the Local Government Act, 1948, and further read with the provisions contained in Madhya Pradesh Koyala Upkar (Manyatakaran) Adhiniyam, 1964, the Sub Divisional Officer-cum-Officer-in-charge, Janapada Sabha, by his order, dated 29-6-1970, rejected the contentions raised on behalf of the Petitioners who are mining concessionaires, engaged in the business of getting and winning coal from their mines, in the Chhindwara district which they sold for export by rail or sold otherwise than for export by rail within the jurisdiction of the now defunct Independent Mining Local Board, and made assessment of a tax at 3 pies per tonne on coal despatched by them for the years between 1964 and 1968, as per notice of demand issued by him in accordance with the provisional assessment made by him on the basis of the final royalty figures of coal despatches from the Collectorate, Chhindwara and on the basis of the returns submitted by them.

The Petitioners filed their objections to the aforesaid assessments under Rule 8 of the Rules for the Assessment and Collection of Coal Cess and they were given a hearing on their objections. Before the Sub-Divisional Officer the only objections raised on behalf of the Petitioners were (i) that the coal cess was, in reality, a sales-tax, and inasmuch as the sales effected by the Petitioners were outside sales within the meaning of Article 286(1)(a), read with the Explanation thereto, the imposition of a tax by the Janapada Sabha at 3 pies per tonne on coal manufactured at the mines, sold for export by rail or sold otherwise than for export by rail, i.e., exported outside the State of Madhya Pradesh, was ultra vires, null and void, and (ii) the notices of demand in question were barred by limitation.

The Sub-Divisional Officer by his impugned order, dated 29-6-1970, rejected these two contentions. With respect to the first objection, following the decision of the High Court in *M/s. Newton Chikli Collieries v. Janapada Sabha, Chhindwara Misc. Petition No. 263 of 1957*, decided on 6-8-1958, the Sub-Divisional Officer rightly held that the coal cess was not a sales-tax and, therefore, Article 286 of the Constitution is not attracted. With respect to the second, he held that the Petitioners were unable to point out as to how, and under what provision, the assessments made against the Petitioners and the notices of demand served on them for the years in question, were barred by limitation.

Shri Dharmadhikari, learned Counsel for the Petitioners, frankly confessed that there was no basis for the objections raised by the Petitioners before the Sub-Divisional Officer and he, therefore, abandoned these objections. Instead, he advanced a two-fold submission, namely, (i) there was nothing to show that the despatches of coal by the Petitioners outside the State of Madhya Pradesh, were in pursuance of sales effected within the jurisdiction of the then Independent Mining Local Board, i.e., the transaction did not fall within the charging provision contained in Rule 3 of the Rules for Assessment and Collection of Coal Cess, and

(ii) that with the establishment of the Janapada Panchayats under the provisions of the Madhya Pradesh Panchayats Act, 1962 the amounts of tax assessed by the Sub-Divisional Officer on the Petitioners, were not recoverable u/s 389(2) thereto, unless there was first apportionment of assets and liabilities by the State Government in accordance with the provisions of Sections 383 and 384, as enjoined by Section 379-A(1)(ii)(a) of the Act. We are afraid, none of these contentions can be accepted.

It is needless for us to stress that the levy of coal cess u/s 51 of the Central Provinces Local Self-Government Act, 1920 by the then Independent Mining Local Board, Chhindwara and the authority of the now defunct Janapada Sabha, Chhindwara to assess and collect the tax, has survived despite several repeated attempts by the so colliery owners to have it declared ultra vires. That is now a matter of legal history. The first challenge came in *The Amalgamated Coalfields Ltd. and Others Vs. The Janapada Sabha, Chhindwara*, (Miscellaneous Petition No. 265 of 1957) where the High Court of Madhya Pradesh by its order, dated 8-8-1958, upheld the validity of the tax and its continued levy. Hidayatullah C.J., speaking for the Court, in clear and unambiguous terms, held that the coal cess in question has a lawful origin and consequently, the levy thereof continues u/s 192 of the Central Provinces and Berar Local Government Act, 1948, read with Section 143 of the Government of India Act, 1935 and Article 277 of the Constitution. He further held that this cess was a rate for special purposes well known within the powers of the local bodies. It cannot be said to be a sales-tax either on turnover or on retail sales; nor can it be said to be an excise duty because it is not a tax on production. It is more a tax on mineral rights and partakes of the rate both of which were provincial subjects under the Government of India Act, 1935 and were on the Provincial List in Government of India Act, 1935 and the State List in the Constitution and, therefore, since the impost has a lawful origin, its imposition is valid, in the absence of any legislation to the contrary.

Thereafter, in *The Amalgamated Coalfields Ltd. and Others Vs. The Janapada Sabha, Chhindwara*, the colliery owners carried on the battle to the Supreme Court, but their Lordships upheld the validity of the tax. N. Rajagopala Ayyanger J., speaking for their Lordships, held that the levy of coal cess by the Independent Mining Local Board on 2-3-1935 u/s 51 of the Central Provinces Local Self Government Act, 1920 was valid on the date of its imposition. The levy was not in contravention of Section 80A(3) of the Government of India Act, 1915 by virtue of the saving contained in Section 84(2) and the proviso to Section 80A(3). Moreover, the Act had already become a law even prior to the coming into force of the Government of India Act, 1919 which introduces Section 80A in the Act of 1915, because the previous sanction of the Governor General had been obtained to the introduction of the measure in the local Legislature u/s 79(2) of the Government of India Act, 1915, i.e., before Section 80A(3) introduced into the Government of India Act, 1919, was brought into force. According to their Lordships, the coal cess at 3 pies per tonne having been

validly levied by the Independent Mining Local Board u/s 51 of the Central Provinces Local Self-Government Act, 1920, for the purposes of its local area, the Janapada Sabha, Chhindwara was entitled to continue the levy and collect the tax at the same rate and the levy would be valid u/s 292 of the Government of India Act, 1935 and Article 372 of the Constitution.

In a batch of Writ Petitions filed in the High Court in the year 1961, the colliery owners again unsuccessfully tried to challenge the continued levy of the coal cess by the Janapada Sabha, Chhindwara, The High Court by its order in *The Amalgamated Coalfields Ltd. v. Janapada Sabha, Chhindwara* Misc. Petition No. 213 of 1961, decided on 18-12-1961 rejected their contention as regards validity of the increase in the rate of tax to 9 pies per tonne by the Independent Mining Local Board vide Notification No. 202-A, dated 19-7-1947, published in the C.P. and Berar Gazette, Part III, page 406, dated 25-7-1947, on the ground that the decision of their Lordships in *The Amalgamated Coalfields Ltd. v. Janapada Sabha* (supra) operated as *res judicata*.

Their Lordships of the Supreme Court, however, in *The Amalgamated Coalfields Ltd. and Another Vs. The Janapada Sabha, Chhindwara*, held that the validity of the increase not having been considered in the earlier decision, could not operate as *res judicata*, and that the rule of constructive *res judicata* was not applicable to writ petitions filed under Article 32 or Article 226 of the Constitution. Their Lordships then struck down the increase in the rate of tax to 9 pies per tonne on the ground that the increase being a first imposition, within the meaning of Section 51(2) of the C.P. Local Self-Government Act, 1920, as amended by C.P. Act VII of 1933, was not valid for want of sanction of the then local Government. The Supreme Court, accordingly, allowed the petitions and issued an appropriate direction or order, restraining the Janapada Sabha, Chhindwara from recovering a tax at a rate higher than 3 pies per tonne.

To rectify the defect pointed out by the Supreme Court in the imposition of the cess, the State Legislature purported to enact the Madhya Pradesh Koyala Upkar (Manyatakarana) Adhiniyam, 1964 seeking to validate the increase in the rate of tax from 3 pies to 9 pies, per tonne. The High Court in *Amalgamated Coalfields Ltd. and Others Vs. State of Madhya Pradesh and Another*, struck down Section 3 of the Validating Act on the ground that the Act was a futile attempt to cure the infirmity, in the absence of the conferment of this power i.e., the Independent Mining Local Board had not been retrospectively entrusted with the power to make the imposition to create a base on which the Validating Act could operate. On appeal, their Lordships of the Supreme Court in *Janapada Sabha Chhindwara Vs. The Central Provinces Syndicate Ltd. and Another*, upheld the decision of the High Court and held that the Janapada Sabha cannot levy cess on coal exceeding 3 pies per tonne.

As a result, the coal cess still validly exists, in the Chhindwara district, and was leviable by the Janapada Sabha at 3 pies per tonne on coal manufactured at the mines, sold for export by rail or sold otherwise than for export by rail, within the

jurisdiction of the then Independent Mining Local Board. At one stage, during the course of hearing, Shri Dharmadhikari, learned Counsel for the Petitioners, moved an application seeking permission to raise a new ground, viz, that the charging provision contained in Rule 3 of the Rules for Assessment and Collection of Coal Cess having been deleted by Notification No. 4696 D-VIII, dated 6-9-1943, the Petitioners could not be saddled with any liability to pay the cess in question. It must, however, be said to the credit of Shri Dharmadhikari that when his attention was drawn to Notification No. 8700-2253.D.VIII, dated 16-12-1935, by which the then local Government accorded sanction for first imposition of the tax, he, with his usual frankness, conceded that the question does not arise.

The whole controversy now turns on the construction of the terms of the relevant Notification dated 16-12-1935, published in the Central Provinces Gazette, Part III, p. 1613 dated 20-12-1935, by which the local Government was pleased to sanction the first imposition of the tax in question which reads as follows:

No. 8700-2253, D-VIII-In exercise of the powers conferred by Sub-section (2) of Section 51 of the Central Provinces Local Self-Government Act, 1920 (C.P. Act IV of 1920), as subsequently amended read with Clause (c) of Rule 5 of the rules framed under Clause (xvi) of Sub-section (1) of Section 79 of the said Act, the Local Government is pleased to sanction the first imposition by the Independent Mining Local Board, Chhindwara in the Chhindwara district, of a tax at three pies per ton on coal, coal dust, or coke manufactured at the mines, sold for ex port by rail or sold otherwise than for export by rail, within the jurisdiction of the Independent Mining Local Board.

The tax shall come into force with effect from the 1st January 1936.

We may also for a proper understanding of the question involved, give an extract of the Notification No. 8701-2253.D.VIII, dated 16-12-1935, issued by the local Government published in Central Provinces Gazette, Part-III, p. 1613, dated 20-12-1935 framing Rules for assessment and collection of tax on coal, at 3 pies per tonne:

No. 8701-2253.D.VIII.-In exercise of the powers conferred by Clauses (xv), (xix) and (xxx) of Sub-section (1) of Section 19 of the Central Provinces Local Self-Government Act, 1920 (C.P. Act IV of 1920), the Local Government is pleased to make the following rules for the assessment and collection of the tax on coal, coal dust or coke, manufactured at the mines, sold for export by rail or sold otherwise than for export by rail, within the jurisdiction of the Independent Mining Local Board, Chhindwara, the imposition of which has been notified by Central Provinces Gazette Notification No. 8700-2253 D.VIII, dated the 16th December 1935:

RULES

X X X

The tax shall be payable by every person, firm or company holding a mining lease for coal within the limits of Independent Mining Local Board's jurisdiction.

The tax shall be levied at the rate of three pies per ton on coal, coal dust or coke, manufactured at the mines, sold for export by rail or sold otherwise than for export by rail within the territorial jurisdiction of the Independent Mining Local Board.

As already stated, Rule 3 now stands omitted.

Placing emphasis on the words "sold for export by rail or sold otherwise than for export by rail within the jurisdiction of the Independent Mining Local Board," the learned Counsel strenuously contends that the taxable event is the sale within the jurisdiction of the then Independent Mining Local Board. According to him, there is no material on record to sustain the imposition of the tax on the Petitioners by the Janapada Sabha, Chhindwara, inasmuch as there is nothing to show that the sales were effected within the area of the then Independent Mining Local Board. The contention is, in our opinion, wholly devoid of substance. No such objection was raised by the Petitioners under Rule 8 of the Rules for Assessment and Collection of Coal Cess before the Sub-Divisional Officer; nor was the ground taken by them at the hearing before him. The question involved is a mixed question of fact and law. The Petitioners cannot, therefore, be permitted to raise the ground for the first time in these proceedings under Article 226 of the Constitution. That apart, on the Petitioner's own showing, the transactions were sales but all they contended before the Sub-Divisional Officer was that they were "outside sales" within the meaning of the Explanation to Article 286 of the Constitution. In their memorandum of objections filed before the Sub-Divisional Officer, the Petitioner assert-

(d) That according to the Assessment Rules, no tax is payable on coal sold by the Assessee out of the territorial jurisdiction of the Janapada Sabha and therefore the assessment made on total despatches of coal is incorrect. Since the assessment has been made on coal despatched for consumption outside the State of M.P., the entire assessment gets vitiated and invalid m toto.

The Sub-Divisional Officer in the impugned order has formulated their objection-

The Janapada Sabha is not empowered to assess and collect the coal cess sent for consumption outside the State inasmuch as-

(a) the coal cess is a sales Tax, and

(b) hence Article 286 of the Constitution hits the tax in so far as the coal was sent outside the State is concerned.

This, it would appear that the only ground taken by the Petitioners before the Sub-Divisional Officer was based on the Explanation to Article 286(1)(a) of the Constitution. They cannot now be permitted to say that the transactions indeed did not fall within the charging provision.

Even otherwise, the Petitioners are not right in contending that the coal cess is a tax on sales. On the contrary, as observed by Hidayatullah C.J., in *M/s. Newton Chikli Collieries (Pvt.) Ltd. v. The Janapada Sabha, Chhindwara* (supra), the coal cess imposed by the then Independent Mining Local Board u/s 51 of the Central Provinces Local Self-Government Act, 1920 was a rate on minerals for the purposes of the local area. The view of this Court that the cess was not a sales-tax or an excise duty is now beyond question in view of the later decisions of the Supreme Court. It partakes more in the nature of a rate on mineral rights in a local area.

Learned Counsel for the Petitioners then argued that the words "within the territorial jurisdiction of the Independent Mining Local Board" contained in the Notification in question, referred not only to "sold for export by rail" but also to "sold otherwise than for export by rail" and, therefore, the words "within the territorial jurisdiction of the Independent Mining Local Board, qualify both "sold for export by rail" and "sold otherwise than for export by rail". According to him therefore, the taxability is the sale effected within the territorial jurisdiction of the then Independent Mining Local Board. We are afraid the contention cannot be sustained at all.

In our judgment, the words "within the jurisdiction of the Independent Mining Local Board" qualify the words "coal manufactured at the mines" and not the words "sold for export by rail or sold otherwise than for export by rail". These expressions "sold for export by rail" or "sold otherwise than for export by rail" are merely descriptive of the goods which attract the tax. That view of ours is in consonance with the nature of the impost, which stands fortified by the various decisions referred to above.

It is futile to contend that the coal manufactured at the mines belonging to the Petitioners situate in the Chhindwara district, was not "sold within the jurisdiction of the then Independent Mining Local Board. As already stated, the Petitioners in their objections filed under Rule 8, had accepted that the transactions amounted to sales. That the sales were completed within the area of the then Independent Mining Local Board can hardly be disputed. It is an admitted fact that all the Petitioners have their sidings at their mines within such area, and the coal is loaded into wagons supplied by the Railways, for transmission to the buyer. As such, prima facie, the sales are complete the moment the coal is loaded into wagons. u/s 39 of the Sale of Goods Act, 1930, the property in goods passes to the buyer, when the goods are delivered to a common carrier. That being so, the first contention that the transactions do not fall within the charging provisions cannot be accepted.

Incidentally, we may mention that these very Petitioners filed a batch of suits claiming refund of the tax recovered by the Janapada Sabha on sales of coal effected by them. The Court of first instance partly decreed the suits holding that the recovery of tax in excess of 3 pies per tonne being invalid, they were entitled to recover only the excess amount so paid, but as regards the rest of their claim,

the suits were dismissed. The judgment of the trial Court was upheld by this Court in *M/s. J.A. Trivedi Brothers v. Janapada Sabha, Chhindwara* First Appeal No. 13 of 1971 decided on 18-1-1977. It is noteworthy that Shri Dharmadhikari, learned Counsel for the Petitioners appeared for them in these appeals and conceded that the transactions were sales. One of us (Verma J.), while delivering the judgment, observed:

The only argument advanced by Shri Y.S. Dharmadhikari in support of the Plaintiff's appeals is that the outside sales effected by the colliery owners were exempt from payment of the tax and to that extent no tax at all was leviable on such sales. However, learned Counsel has been unable to point out any evidence from the record to show that the making of such sales has been proved even assuming that such sales could be exempted from payment of the tax. In fairness, Shri Dharmadhikari also pointed out that this matter was concluded against the Plaintiff by the decision of the Supreme Court in *Amalgamated Coalfields Ltd. and Ors. v. Janapada Sabha, Chhindwara*. This being so, the only attempt made faintly to support the Plaintiff's appeals has to be rejected as without merit. There is thus no ground to grant any relief to the Plaintiffs in their appeals.

The decision of the High Court in *M/s. J.A. Triwadi Brothers v. Janapada Sabha, Chhindwara* (supra), on the question as to whether the transactions effected by the Petitioners were sales within the area of the then Independent Mining Local Board, in our view, clearly operates as constructive *res judicata*.

The next contention that the arrears of tax due to the Janapada Sabha, Chhindwara which now stands dissolved by the provisions of the Madhya Pradesh Panchayats Act, 1962, cannot be recovered by the Janapada Panchayats constituted under the Act, u/s 389(2) of the Act, unless there is apportionment of the assets and liabilities between such Janapada Panchayats u/s 379A(1)(ii)(a), is also wholly devoid of substance. The Petitioners have nowhere alleged that no such apportionment has been made by the State Government u/s 384(3) of the Act. On the contrary, we are informed that the State Government has passed the necessary orders in that behalf. Indeed, the Petitioners themselves having impleaded the Janapada Panchayats, Chhindwara, Parasia, Jemei, Tamia and Mokhed, as being the successors-in-interest of the now dissolved Janapada Sabha, Chhindwara, cannot be allowed to contend that these Janapada Panchayats are not entitled to recover the arrears of the tax due. It is not suggested that there is any other authority entitled to recover this amount. There is no reason for us not to act on the statement of Shri Seth, learned Counsel appearing for the Respondents, that the State Government has passed an order for apportionment of assets and liabilities u/s 384(3) of the Act.

On the scheme of the Act, there is no doubt in our mind that the Respondents are entitled to recover the arrears of tax due to the Janapada Sabha, Chhindwara. Section 379-A(1)(ii)(a) provides that, on and from the date of the constitution of the Janapada Panchayats under the Act, the assets and liabilities

of the outgoing Janapada Sabha shall, in accordance with the provisions of Sections 383 and 384, be apportioned to the several Janapada Panchayats that may be constituted in a Janapada Sabha area.

Here, we may notice Section 389(2), which reads:

All rates, taxes and sum of money due to the bodies aforesaid immediately before the date of coming into force of this Act shall, as from the said date, be deemed to be due to the bodies deemed to be established and constituted in their place under this Act.

Shri Dharmadhikari, learned Counsel for the Petitioners, however, contends that the words the "bodies aforesaid" in Section 389(2) obviously refer to the bodies mentioned in Sub-section (2) of Section 388. It is urged that Section 388(2) of the Act nowhere mentions a Janapada Sabha. The contention of the learned Counsel overlooks the fact that Parts A and B of Chapter XX were substituted by Section 28 of the Madhya Pradesh Act No. 9 of 1963 for the words and figures: "Chapter XXI-Repeal and Savings". It is thus clear that Section 389(2) has a limited operation.

The repeal of the Central Provinces and Berar Local Government Act, 1948, does not wipe out the tax liability of the Petitioners. The new Section 388(1) was inserted by Section 4 of the Madhya Pradesh Act No. 22 of 1964. The original Section 388(1), as it then stood, repealed the Central Provinces and Berar Local Government Act, 1948 and then provided:

Provided that the redeal shall not affect-

(a) * * * *

(b) any right, privilege, obligation or liability acquired, accrued or incurred under the repealed Act or Ordinance;

Furthermore, Section 393(1)(b) is clearly attracted, which reads as under:

393. Saving-(1) Notwithstanding the repeal of enactments specified in Section 379-A and Sub-section (1) of Section 388-

(i) such repeal shall not affect-

(a) * * * *

(b) any right, privilege, obligation or liability acquired, accrued or incurred under the repealed Acts or Ordinance;

Thus, the repeal of the Central Provinces and Berar Local Government Act, 1948, does not affect the right of the Respondent-Janapada Panchayats to recover the arrears of tax due to the Janapada Sabha, Chhindwara, nor does it affect the liability incurred by the Petitioners for payment of such arrears of tax to the Janapada Panchayats. In State of Madhya Pradesh and Ors. v. Shyama Charan Shukla (1972) 29 STC 215, their Lordships of the Supreme Court, while

construing Section 78 of the States Reorganisation Act, 1956, held that the word "arrears" in Section 78 should not be given a narrow meaning. The word "arrears" in respect of tax has been used in the sense of dues or what has become due by way of tax and that did not depend on assessment proceedings or quantification of the amount. The second contention must, therefore, also fail.

The result, therefore, is that the petitions fail and are dismissed with costs. Counsel's fee Rs. 150 in each case, if certified.