
(1964) 03 MP CK 0016
In the Madhya Pradesh High Court
Case No : M.P. No. 212 of 1963

Amalgamated Coalfields Ltd. and others	APPELLANT
Vs	
Janapada Sabha, Chhindwara	RESPONDENT

Date of Decision : 31-03-1964

Acts Referred:

Citation : (1965) JLJ 892 : (1965) MPLJ 690

Hon'ble Judges : P.V. Dixit, C.J.; K.L. Pandey, J

Bench : Division Bench

Advocate : A.P. Sen, for the Appellant; B.L. Seth, for the Respondent

Final Decision : Dismissed

Judgement

P.V. Dixit, C.J.

This order will also govern the disposal of Misc. Petitions Nos. 204, 213, 214, 231 and 309, all of 1963.

The Petitioner in each of these six applications under Articles 226 and 227 of the Constitution prays that a direction be issued to the Janapada Sabha, Chhindwara, who is the Respondent in each petition, commanding it to refund to the Petitioner the amount recovered by it during certain years as "coal-tax" in excess of the rate of three pies per ton on "coal and coal-dust" sold within the State of Madhya Pradesh, and further to refund the amount of tax collected at the rate of nine pies per ton on sales of coal outside the State of Madhya Pradesh during certain years. The Petitioners claim that they are entitled to the refund of this amount under the decision of the Supreme Court in Amalgamated Coal-fields Ltd., v. Janapada Sabha, Chhindwara (1) 1964 MPLJ 934 (SC) C.A. Nos. 469 and 470 of 1962 decided on 24-9-1962.

The facts and circumstances in which the coal tax was levied by the Janapada Sabha have been stated in the judgment of this Court in The Amalgamated Coalfield Ltd. v. The Janapada Sabha, Chhindwara M.P. Nos. 25 and 213 of 1961

decided on the 16th December 1961 against which Civil Appeals Nos. 469 and 470 of 1962 were filed in the Supreme Court. It is not necessary to repeat here those facts and circumstances. Those appeals were allowed by the Supreme Court and it was held by the Supreme Court that the Janapada Sabha was not entitled to recover the coal-tax at a rate higher than three pies per ton and that it was not also entitled to recover any additional tax in respect of the years for which the assessments had already become final under Rule 10 of the rules notified by the Government on 16th December 1935. Accordingly the Supreme Court issued directions restraining the Sabha from recovering the tax at a rate higher than three pies per ton and further restraining it from recovering any additional tax in respect of the years for which tax had already been assessed against the Appellants in the Supreme Court. The Supreme Court did not make any direction for the refund of any amount of tax to the Petitioners who had gone up in appeal to the Supreme Court.

Learned Counsel for the Petitioners contended that even if the Supreme Court did not give any direction for the refund of any tax amount, yet the effect of the Supreme Court's decision was that the Petitioners were entitled to the refund of the amount claimed by them in these petitions and that the Janapada Sabha was under an obligation to refund the tax amount and that obligation could be enforced by a writ of mandamus. We are unable to accede to this contention. As held in *Suganlal Nandlal v. State of M.B.* 1961 MPLJ 751, a writ of mandamus cannot be granted for the execution of a decision. Mandamus does not lie for the enforcement of the general law of the land which may be enforced by action; and where the applicant has the ordinary legal remedy of execution, a writ of mandamus cannot be issued. The Petitioners' obvious remedy is to file suits for the refund of the amount which they claim they are entitled to get back as a result of the decision of the Supreme Court in the appeals referred to above.

The Petitioners' claim in these petitions is a pure and simple money claim. Such a claim cannot be enforced by a petition under Article 226 of the Constitution. The relief claimed by the Petitioners in these cases is not any consequential relief claimed in circumstances similar to those obtaining in *Sales Tax Officer, Banaras and Others Vs. Kanhaiya Lal Mukundlal Saraf*, , *Bashesar Nath Vs. The Commissioner of Income Tax, Delhi and Rajasthan and Another*, and *State of M.P. v. Bhailal Bhai* 1964 MPLJ 705: AIR 1964 M P 1006. Even in those cases the Supreme Court has observed that the special remedy under Article 226 is not intended to supersede completely the modes of obtaining relief by an action in a civil Court or to deny defences legitimately open in such actions.

In these cases, before any direction for refund of any amount can be made in favour of the Petitioners, the questions that must be first decided would be (1) whether in any year or years any recovery of the tax was made from the Petitioners at a rate in excess of three pies per ton and the excess amount recovered, (2) whether the assessments for the years in which the excess amount of tax is said to have been recovered had become final under Rule 10,

(3) whether the Janapada Sabha is entitled to levy any tax on coal sold outside the State or outside its limits and the amount of tax imposed on such outside sales-All these questions, except the question of the competency of the Janapada Sabha to tax the sales outside Madhya Pradesh or its limits, are questions of fact. They can properly be determined in a suit and not in proceedings under Article 226 of the Constitution. Shri Seth, Learned Counsel appearing for the Janapada Sabha, however, conceded that the Janapada Sabha would refund, or give credit to the Petitioners in fresh assessment proceedings that have been initiated the amount of tax recovered by the Sabha in excess of three pies per ton during the years for which the assessments have not become final, and that the Sabha would also refund to the Petitioners the amount of tax recovered on sales of coal outside the State of Madhya Pradesh, if any, or would give credit to the Petitioners for that amount. He, however, added that according to the Sabha all the sales effected by the Petitioners were within the State of Madhya Pradesh.

For these reasons, all these petitions are dismissed. In the circumstances of the case, we leave the parties to bear own costs of the petitions. The outstanding amount of security deposit shall be refunded to the Petitioner.