
(1988) 12 PAT CK 0013

In the Patna High Court

Case No : Civil Writ Jurn. Case No. 2517 of 1985

Central Coal Fields Ltd.

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 07-12-1988

Acts Referred:

Bihar Cess Act, 1880 — Section 4, 5, 6

Mines and Minerals (Development and Regulation) Act, 1957 — Section 9(2A)

Citation : AIR 1989 Patna 210 : (1989) 37 BLJR 336 : (1989) PLJR 88

Hon'ble Judges : Narbadeshwar Pandey, J; Nagendra Prasad Singh, J

Bench : Division Bench

Advocate : K.D. Chatterjee, B.P. Sinha and Vishwa Mohan Kumar Sinha, for the Appellant; Ram Balak Mahto, General, Raghib Ahsan, Standing Counsel and Umakant Prasad, Jr. Counsel to Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

N.P. Singh, J.—This application has been filed on behalf of the petitioner for quashing a notice issued by the Certificate Officer requiring the petitioner to deposit the amount mentioned in the said notice, which is payable as the cess under the Bihar Cess Act, 1880 (hereinafter referred to as "the Cess Act"). The demand notice has been issued for realisation of cess for the period March, April and June 1977 over the coal consumed by the workmen engaged by the petitioner company for which no royalty is payable under the provisions of the Mines and Minerals (Regulation and Development) Act, 1957 (hereinafter referred to as "the Mines and Minerals Act").

2. The stand of the petitioner is that as the petitioner is not liable to pay any royalty in respect of coal consumed by the workmen engaged by the petitioner as such there is no question of payment of cess under the provisions of the Cess Act.

3. Section 5 of the Cess Act is as follows : --

"All immovable property to be liable to a local cess:-- From and after the commencement of this Act in any district or part of a district, all immovable property situate therein except as otherwise in Section 2 provided, shall be liable to the payment of a local cess."

Section 2 which has been referred to in Section 5 is not of much importance inasmuch as the said section while saying that this Act shall take effect at once in every district, the proviso thereof exempts certain immovable property within the limit of any municipality under the Bihar and Orissa Municipal Act. Several amendments were introduced in that Act by an Ordinance issued in the year 1975. By Section 2 of the said Amendment Act definition of "royalty" was introduced in Section 4 of the original Act.

4. The relevant part of Section 4 is as follows : --

"4. Interpretation clause :--

In this Act, unless there be something repugnant in the subject or context -

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"Royalty" in respect of mines and minerals means a payment made or likely to be made to the owner of mines and minerals for the right of working the same on every ton or value of such produce, and includes payment which Government may demand for the appropriation of the mines and minerals belonging to the Government."

A new Section 6 was also substituted, the relevant part whereof reads : --

"6. Cess how to be assessed :--

The local cess shall be assessed on the annual value of lands and until provision to the contrary is made by the Parliament, on the royalty of mines and quarries, sale value of the other immovable properties including forest produce and annual net profits from tramways and railways ascertained respectively as prescribed in this Act and the rate at which the local cess shall be levied for each year shall be (a) in the case of royalty, the rate will be determined by Government from time to time but it will not exceed the amount of royalty,

XX XX XX XX XX""

5. It was submitted that when by amendment royalty has been defined to mean in respect of mines and minerals any payment made or likely to be made to the owners of mines and minerals for the right of working the same" and Section 6 says that local cess shall be assessed on the annual value of the land until provision to the contrary is made by the Parliament "on the royalty of mines and quarries", the expression royalty in Section 6 has to be read to mean any amount which has been paid or likely to be paid as royalty. When admittedly there has been no payment and there is no likelihood of any payment of royalty to be made over the coal consumed by the workmen engaged in the colliery of

the petitioner, the demand made by the impugned notice per se is not only arbitrary but without any authority of law.

6. Sub-sections (1) and (2) of Section 9 of the Mines and Minerals Act enjoin the holder of a mining lease notwithstanding anything contained in the instruments of lease or in any law in force "to pay royalty in respect of any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area after such commencement, at the rate for the time being specified in the Second Schedule in respect of that mineral." Sub-section (2A) of Section 9 is as follows : --

"(2A) The holder of a mining lease, whether granted before or after the commencement of the Mines and Minerals (Regulation and Development) Amendment Act 1972 shall not be liable to pay any royalty in respect of any coal consumed by a workman engaged in a colliery provided that such consumption by the workman does not exceed one-third of a tonne per month."

7. On a plain reading it has to be held that the command of the legislature is that the holder of a mining lease either granted before or after the commencement of the Mines and Minerals Act has to pay royalty in respect of minerals removed or consumed by him at the rate specified in the Second Schedule in respect of that mineral. Sub-section (2A), however, is in the nature of a proviso to Sub-sections (1) and (2) and it exempts the holder of a mining lease from liability to pay any royalty in respect of any coal consumed by a workman engaged in a colliery within the limit prescribed in that subsection.

8. The learned counsel appearing for the petitioner, urged that in view of definition of royalty in the Cess Act and Sub-section (2A) of Section 9 of the Mines and Minerals Act there is no scope for calculating or demanding cess on the basis of any notional amount of royalty which the petitioner-company in absence of Sub-section (2A) of Section 9, would have been liable to pay. The learned counsel laid emphasis on the point that in a statute relating to revenue strict and literal construction has to be given and it is not open to Court to "speculate upon the intention, purpose, or object of the framers of the Act. Reliance in this connection was placed on the judgment in the case of *Inland Revenue Commr. v. Duke of Westminster*. (1936) AC 1 :-

"I confess that I view with disfavour the doctrine that in taxation cases the subject is to be taxed if in accordance with a courts view of what it considers the substance of the transaction, the Court thinks that the case tails within the contemplation or spirit of the statute. The subject is not taxable by inference or by analogy, but only by the plain words of a statute applicable to the facts and circumstances of his case. As Lord Cairns said many years ago in (1869) LR 4 HL 100 : "As I understand the principle of all fiscal legislation, it is this : If the person sought to be taxed comes within the letter of the law he must be taxed, however, great the hardship may appear to the judicial mind to be. On the other hand if the Crown, seeking to recover the tax, cannot bring the subject within

the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be."

In the case of AIR 1940 183 (Privy Council) it was said :--

"Their Lordships think it necessary once more to protest against the suggestion that in revenue cases "the substance of the matter" may be regarded as distinguished from the strict legal position."

Same view was expressed by the Supreme Court in the case of the State of Punjab Vs. Jullunder Vegetables Syndicate, :--

"Before we advert to the rival contentions it will be convenient to clear the ground. It is a settled rule of construction that in interpreting a fiscal statute the Court cannot proceed to make good the deficiencies, if there be any in the statute; it shall interpret the statute as it stands and in case of doubt, it shall interpret it in a manner favourable to the tax payer : See C.A. Abraham, Uppotttil, Kottayam Vs. The Income Tax Officer, Kottayam and Another, . In considering a taxing Act, the court is not justified in straining the language in order to hold a subject liable to tax."

In the case of Smt. Tarulata Syam v. Commr. of Income Tax, West Bengal AIR 1977 SC 5 802 it was pointed out that once it is shown that the case of the assessee comes within the letter of the law he must be taxed and reference was made to the case of Cape Brandy Syndicate v. I.R.C. (1921) 1 KB 64 where Rowlatt J. observed : --

""In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."

Reliance on behalf of the petitioner was placed also on the judgment of the Supreme Court in the case of Commissioner of Income Tax, Bangalore Vs. B.C. Srinivasa Setty, where while examining Section 45 of the Income Tax Act it was pointed out (at Pp. 974-975):--

"Section 45 is a charging section. For the purpose of imposing the charge, Parliament has enacted detailed provisions in order to compute the profits or gains under that head. No existing principle or provision at variance with them can be applied for determining the chargeable profits and gains. All transactions encompassed by Section 45 must fall under the governance of its computation provisions. A transaction to which those provisions cannot be applied must be regarded as never intended by Section 45 to be the subject of the charge."

9. That the court has to give strict construction to a provision relating to revenue without considering the question as to whether the provision was equitable and whether the language and scope of such provisions can be stretched to meet the ends of justice is now well settled by series of judgments, some of which have

been mentioned above. But all this has been said in respect of a charging section in a taxing statute or a provision relating to the collection of revenue. The question with which we are concerned in the present case is as to whether the same rule of construction and interpretation can be extended even in respect of a provision for assessment of cess. In the present case the controversy has arisen as to whether the expression royalty mentioned in Section 6 has to be strictly read with reference to the definition of royalty introduced in the Act or a wider and expansive meaning can be given to that expression so that the object of the Cess Act is not frustrated. There is no dispute that Section 6 is not the charging section of the Cess Act. Charging section of that Act is Section 5 which says that after the commencement of that Act in any district or part of a district any immovable property situated therein shall be liable to payment of local cess. That section does not make any exception or vest power in any authority to grant exemption from payment of cess over any immovable property. Section 6 provides the machinery and procedure for assessment of cess. The heading of Section 6 itself says "Cess how to be assessed.""

10. A Bench of this Court in the case of the Associated Cement Companies Ltd. v. State of Bihar 1979 Pat LJR 429 has examined the scope of Sections 5 and 6 while considering the question as to whether after the aforesaid amendments introduced, directing calculation of cess with reference to the royalty it will amount to imposing tax on the income of the lessee. It was held : --

"Section 5 of the Act is the charging section which says in unambiguous terms that, from and after the commencement of this Act all immovable property situate therein..... shall be liable to the payment of a local-cess." (At page 442).

".....The provision of Section 5 which remained unaltered throughout read along with those of Section 6 as amended by the impugned ordinance merely seek to impose and levy cess on lessee's land and the remaining provisions of Section 6 as also those of Sections 72, 72A and 75 similarly provide for the machinery and the mode of assessment of such cess. That cannot change the truth and substance of the character of the land tax which the charging section in unequivocal terms has made the cess payable in respect of all immovable property situate within the area concerned to be." (At page 448)

In the case of Laxmi Narayan Agarwalla and Others etc. Vs. State of Orissa and Others etc., a Full Bench also held that Section 6 of the Orissa Cess Act contains the mode, the manner and the machinery of taxation and the amount of the cess has to be calculated with reference to the royalty payable for the right of raising minerals and the cess was not a levy on royalty.

11. If the charging Section 5 creates liability to pay cess and Section 6 provides the machinery for calculation of the amount of cess, then the principles laid down by courts from time to time in respect of the strict and literal construction of the charging section without entering into the question as to what is the intention

and object of the framers of the Act cannot be applied in respect of the section which provides a mode to work out the amount which a lessee of mines and minerals is liable to pay as cess to the State Government. While construing and interpreting such a section the courts have to bear in mind that the main purpose of the Act as provided in the charging section should not be frustrated. In the case of Gursahai Saigal Vs. Commissioner of Income Tax, Punjab, , the Supreme Court pointed out what should be the approach of the Court while construing a charging section and a section laying down the machinery for calculation of tax. It was said in connection with Sub-section (8) of Section 18A of the Income Tax Act, 1922 that the said sub-section being in the nature of a charging section imposing interest it was not possible to resort to any equitable rule of construction, whereas Sub-section (6) of that section being only a provision which lays down the machinery for the calculation of the tax the rule of literal construction which applies only to a taxing provision should not be applied. In respect of a provision which can be held a machinery for calculation of tax, it was said (at Pp. 1065-1066) :--

"But obviously this provision only lays down the machinery for assessing the amount of interest for which liability was clearly created; it in substance says that in calculating the amount of interest the machinery of calculation laid down in Sub-section (6) shall be applied. The proper way to deal with such a provision is to give it an interpretation which, to use the words of the Privy Council in (1940) 8 ITR 442 (Privy Council) , "makes the machinery workable, ut res valeat potius quam pereat." We, therefore, think that we should read Sub-section (6), according to the provisions of which interest has to be calculated as provided in Sub-section (8), in a manner which makes it workable and thereby prevent the clear intention of Sub-section (8) being defeated. Now, how is that best done? As we have earlier said Sub-section (6) deals with a case in which tax has been paid and therefore it says that interest would be calculated "from the 1st day of Jan. in the financial year in which the tax was paid." This obviously cannot literally be applied to a case where no tax has been paid. If however the portion of Sub-section (6) which we have quoted above is read as "from the 1st day of Jan. in the financial year in which the tax ought to have been paid," the provision become workable. It would not be doing too much violence to the words used to read them in this way."

In my view the expression royalty in Section 6 has to be read to mean not only the amount already paid or likely to be paid but also the amount payable in accordance with the Second Schedule of the Mines and Minerals Act for the purpose of calculating cess, so that Section 6 becomes workable.

12. Learned Advocate General also submitted that although the expression "royalty" has been defined in Section 4 of the Cess Act to mean any amount which is paid or is likely to be paid, but Section 4 of that Act in which the definition of "royalty" was introduced by the ordinance aforesaid opens with the expressions "In this Act, unless there be something repugnant in the subject or

context." As such, the expression "royalty" in Section 6 has to be read in the context of Section 5. It was pointed out that if expression "royalty" in Section 6 is read strictly as defined, then the purpose and object of the charging section as contained in Section 5 shall be defeated and to that extent expression "royalty" in Section 6 shall become repugnant in the context in which it has been used.

13. Whether an expression, which has been defined in the Act or the Rules can be interpreted to mean something different in context of a section or rule of that very Act has been examined from time to time, Craies in his book on Statute Law observes at page 216 as follows : --

"Another important rule with regard to the effect of an interpretation clause is, that an interpretation clause is not to be taken as substituting one set words for another, or as strictly defining what the meaning of a term must be under all circumstances, but rather as declaring what may be comprehended within the term where the circumstances require that it should be so comprehended. If, therefore, an interpretation, clause gives an extended meaning to a word, it does not follow as a matter of course that, if that word is used more than once in the Act, it is on each occasion used in the extended meaning, and it may be always a matter of argument whether or not the interpretation clause is to apply to the word as used in the particular clause of the Act which is under consideration. "It appears to me", said Lord Selborne in *Meux v. Jacobs* 1875 23 WR 526 "that the interpretation clause does no more than say that, where you find these words in the Act, they shall, unless there be something repugnant in the context....."

14. The Supreme Court in the case of *The Vanguard Fire and General Insurance Co. Ltd., Madras Vs. Fraser and Ross and Another*, had to consider whether expression "Insurer"" defined in Section 2(9) of the Insurance Act, 1938 has to be read in different sections of the Act as defined or in some sections somewhat different meaning could be given in the context it has been used in those sections. In that connection it was pointed out as follows (at Pp. 974-975) : --

"It is well settled that all statutory definitions or abbreviations must be read subject to the qualification variously expressed in the definition clauses which created them and it may be that even where the definition is exhaustive inasmuch as the word defined is said to mean a certain thing it is possible for the word to have a somewhat different meaning in different sections of the Act depending upon the subject or the context. That is why all definitions in statutes generally begin with the qualifying words similar to the words used in the present case, namely, unless there is anything repugnant in the subject or context. Therefore in finding out the meaning of the word "insurer" in various sections for of the Act, the meaning to be ordinarily given to it is that given in the definition clause. But this is not inflexible and there may be sections in the Act where the meaning may have to be departed from on account of the subject or context in which the word has been used and that will be giving effect to the opening sentence in the definition section, namely, unless there is anything respondent in the subject or context. In view of this qualification, the court has not only to look

at the words but also to look at the context, the collocation and the object of such words relating to such matter and interpret the meaning intended to be conveyed by the use of the words under the circumstances."

In the case of Chullikana Shambatta and Others Vs. Cherakoodlu Narayana Bhatta and Others, it was observed (at p.920) :--

"The function of an interpretation clause is not, as is very often supposed, to substitute one set of words for another or to apply the meaning of the term under all circumstances, but merely to declare what may be included in the term when the circumstances required that it should be so interpreted."

A Full Bench of Kerala High Court in the case of V.K. Balakrishnan Vs. Asoka Bank Ltd., Muttathangadi, Sherlalai, :-

"A definition clause does not necessarily apply to all possible contexts in which the word may be found in particular statute. A strict adherence to the definition may lead to an anomaly or even repugnancy."

Recently the Supreme Court has again examined in the case of Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, the same question and has said "where an interpretation clause defines a word to mean a particular thing, the definition is explanatory and prima facie restrictive, and wherever an interpretation clause defines a term to include something, the definition is extensive. While an explanatory and restrictive definition confines the meaning of the word defined to what is stated in the interpretation clause, so that wherever the word defined is used in the partial statute in which that interpretation clause occurs, it will bear only that meaning unless where, as is usually provided, the subject or context otherwise requires....."

15. A Bench of this Court in the case of Radha Krishna v. State of Bihar 1988 Pat LJR 314 has examined this question in connection with the definition given of High Court in the Bihar Judicial Service (Recruitment) Rules, 1955, The expression "High Court" has been defined in that Rule to mean High Court of Judicature at Patna, but it was held that reading the expression "High Court" used in other Rules of those very Rules and in order to avoid repugnancy shall mean not only Patna High Court but any High Court.

16. As already pointed out above if the expression "royalty" in Section 6 is read only to mean an amount, which is paid or which is likely to be paid as royalty because of the definition of the expression royalty, then the mandate of the framers of the Act u/s 5 that cess shall be levied in respect of every immovable property shall be frustrated because it will be dependent on the provisions under different enactments as to whether the obligation to pay royalty has been exempted in respect of different immovable properties. For example, suppose another amendment is introduced in Section 9 saying that any coal consumed by the railway shall not be subject to payment of royalty. If the argument of the

petitioner is accepted, then by mere amendment in Section 9 of the Mines and Minerals Act the liability to pay cess in respect of such land shall also be deemed to have been exempted. In my view, there is no escape from conclusion that if the expression "royalty" in Section 6 is read strictly in accordance with the definition, it shall become repugnant in context of Section 5 of the Cess Act.

17. It need not be pointed out that the Cess Act shall be deemed to have been framed by the State legislature and the power flows from the List II of the Seventh Schedule of the Constitution, whereas the Mines and Minerals Act has been framed by the Parliament and the source of power is under List I of the aforesaid Schedule of the Constitution. As such, both Acts create liability in respect of payment of cess and royalty independently. In such a situation I fail to understand as to how any exemption regarding payment of royalty under the Central Act can affect the right of the State under the State Act to realise cess from all immovable property. By merely adding Sub-section (2A) in Section 9 of the Mines and Minerals Act the liability to pay cess in respect of such immovable property cannot be exempted. As such, for the purpose of calculation of the cess u/s 6 not only royalty actually paid or likely to be paid but what is payable in accordance with the Second Schedule of the Mines and Minerals Act has to be taken into account.

18. Accordingly, this writ application fails and is dismissed, but in the circumstances of the case, there will be no order as to costs.

N. Pandey,J.

19. I agree.