(2002) 01 MAD CK 0055

In the Madras High Court

Case No : Writ Petition No''s. 466 to 469 of 1998 and W.M.P. No''s. 662, 664, 666 and 668 of 1998

Dalmia Cement (Bharat) Ltd. APPELLANT

Vs

State of Tamil Nadu RESPONDENT

Date of Decision : 22-01-2002

Acts Referred:
Tamil Nadu Panchayats Act, 1958 — Section 115

Citation : (2002) 1 MLJ 774

Hon'ble Judges : V. Kanagaraj, J

Bench : Single Bench

Advocate : Mohan Parasaran, for the Appellant; M.S.G. Kavitha, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

1. Petitioners have filed the above writ petitions seeking to issue a Writ of Certiorarified Mandamus calling for the records comprised in the proceedings of the second respondent dated 7-2-1997 and 21-3-1997 in Roc. No.226/Mines-A/97, 97-1 respectively and quash the said proceedings seeking to collect local cess or local cess surcharge or interest for the period from 1975 to 4-4-1991 and consequently forbearing the respondents in any manner taking any fresh action to levy local cess and local cess surcharge or any other sum retrospectively or in any other manner interfering with the mining operations of the petitioners treating the said demands as arrears of land revenue.

2. On a perusal of the records and upon hearing the learned counsel for both, it comes to be known that Section 115 of the Tamil Nadu Panchayats Act, 1958 levied, in every Panchayat Development Block, a local cess @ 0.45 ps. on every rupee of land revenue payable to the Government in respect of any land for every fasli and the validity of such a levy was challenged before this Court and a learned single Judge of this Court, declared that the local cess being a tax on land, it is within the legislative competence of the State Legislature and the said

decision of the learned single Judge was confirmed in a Writ Appeal; that when the matter went on appeal to the Honorable Supreme Court in the case of India Cement Limited vs. State Of Tamil Nadu, a seven Judge Bench of the Honorable Apex Court, in its judgment dated 25.10.1989 reported in , while holding that the said levy is outside the legislative competence of he Tamil Nadu Legislature, directed that the said decision shall only have prospective effect.

3. It further comes to be known that following the above decision of the Apex Court in INDIA CEMENT''s case, a Full Bench of the Apex Court by its judgment delivered in Orissa Cement Ltd. vs. State Of Orissa reported in M/s. Orissa Cement Ltd. and Others Vs. State of Orissa and others, , declared identical levies imposed by the States of Orissa, Bihar and Madhya Pradesh as incompetent and void, but having regard to the fact that decisions of the High Courts of Orissa, Bihar and Madhya Pradesh were rendered on different dates, the Bench directed that the said decision shall be operative prospectively with effects from the date of the said judgment i.e. 4.4.1991. Since the aforesaid decisions of the Apex Court had serious impact on the revenues of several State Governments, the Parliament promulgated the Cess and other Taxes on Minerals (Validation) Ordinance, 1992 on 15.2.1992, which was replaced by Act 16 of 1992, thereby validating the provisions of the laws specified in the schedule to the Act, as if those provisions were enacted by the Parliament and shall be deemed to have remained in force upto 4.4.1991 and when this Act was challenged before the Honorable Supreme Court, the Honorable Apex Court, in its judgment delivered in P. Kannadasan etc, etc. Vs. State of Tamil Nadu and others [OVERRULED], , while upholding the said Act, also held that ''not only the taxes already collected need not be refunded but the taxes and cesses which have not already been collected, also be collected''.

4. The contention of the petitioner is that by virtue of the said judgment of the Apex Court in P. Kannadasan etc, etc. Vs. State of Tamil Nadu and others [OVERRULED], , the authorities have issued the impugned orders seeking payment of local cess and local cess surcharge even after the date of 4.4.1991.

5. Today, when the above matter has been taken up for hearing, it has been brought to the notice of this Court a judgment of the Full Bench of the Apex Court delivered in District Mining Officer and Others Vs. Tata Iron and Steel Co. and Another, wherein while considering ''whether the decision in Kannadasan''s case lays down the correct law and whether what has in fact been validated is only the taxes on minerals already realized under the laws declared to be invalid or the right to levy and realize the same which became due upto 4.4.1991 on which date the Supreme Court declared the laws to be invalid'' and the Apex Court held:

"Section 2(1) of the Validation Act having used the expression "upto 4.4.1991", it unequivocally indicates that what is validated is the process of levy and collection made upto that date and no further. This being the position and the Validation Act not having provided any provision, permitting levy or collection after

4.4.1991, we are of the opinion that the Act never conferred a right of levy or collection after 4.4.1991..... and the judgment of this Court in Kannadasan''s case must be held to have been wrongly decided."

6. Since the question involved in this writ petition is also ''whether the respondents can levy local cess and local cess surcharge, even after 4.4.1991'', and further since the law pertaining to levy of local cess and local cess surcharge has been declared in the above manner by the Honorable Apex Court thereby declaring that the proposition of law held by the Apex Court in Kannadasan''s case has been wrongly decided, the only course open for this Court in the case in hand is to allow the above writ petition, in adherence to the decision of the Apex Court, the relevant part of which is extracted supra so far as the reliefs of Certiorari is concerned.

7. Insofar as the prayer relating to the relief of Mandamus as prayed for in the writ petition is concerned, it is for the consequent relief of forbearing the respondents in any manner from taking any fresh action to levy local cess and local cess surcharge or any other sum retrospectively or in any other manner interfering with the mining operations of the petitioners treating the said demands as arrears of land revenue, such a blanket relief cannot at all be granted especially, when the case of the petitioners pertaining to such a compound relief has not at all been put forth and therefore, the relief pertaining to the Writ of Mandamus is restricted to the extent of forbearing the respondents only from taking any action to levy local cess and local cess surcharge within the meaning of the decision of the Apex Court cited supra.

In result,

(i) The writ petitions are allowed following the Judgment of the Apex Court reported in District Mining Officer and Others Vs. Tata Iron and Steel Co. and Another, : and subject to the observations of para-7 above;

(ii) The order of the respondent passed in his proceedings in Roc. No.226/Mines-A/97, 97-1, dated 7-2-1997 and 21-3-1997 respectively are quashed;

(iii) Consequently, WMP Nos.662, 664, 666 & 668 of 1998 are closed;

(iv) No costs.