(1967) 10 PAT CK 0001

In the Patna High Court

Case No : C.W.J.C. No. 299 of 1966

Damodar Valley Corporation APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 23-10-1967

Acts Referred:
Constitution of India, 1950 — Article 226, 227, 288

Citation : (1969) 17 BLJR 721

Hon'ble Judges : R.L. Narasimham, C.J;K.B.N. Singh, J

Bench : Division Bench

Judgement

K.B.N. Singh, J.—The petitioner has filed this application under Articles 226 and 227 of the Constitution of India, for quashing three notices dated 10th February, 1965, (Annexures ''A'' to ''A/2''), issued by the Superintendent of Commercial Taxes, Giridih, as also his orders dated the 24th and the 29th March, 1966 (Annexures ''E'' and ''E/1'').

2. By the impugned notices the Superintendent of Commercial Taxes called upon the petitioner to show cause as to why penal action under the Act should not be taken against the petitioner for its having failed to get itself registered under the Bihar Electricity Duty Act, 1948 (hereinafter referred to as the Act). These notices also required the petitioner to apply for registration under the Act. By the impugned orders (Annexures ''E'' & ''E/1'') the Superintendent of Commercial Taxes directed the petitioner to pay electricity duty under the Act by the 29th of March, 1966.

3. Mr. S.N. Dutta, appearing for the petitioner, submitted that the petitioner is incorporated by an Act of Parliament for the development of Damodar Valley which is an inter-State river Valley and thus enjoyed immunity from taxation by a pre-Constitution State law under Article 288(1) of the Constitution. According to his submission, the Bihar Electricity Duty Act, 1948, being a pre-Constitution Act, was clearly hit by Article 288(1) of the Constitution in so far as it purports to impose electricity duty on the petitioner. He further submitted that, although

Section 3 of the Act was amended by the Bihar Electricity Duty (Amendment) Act, 1963 (hereinafter referred to as the Amending Act), which received assent of the President under Article 288(2) of the Constitution, that would not save the Act, as, according to him, Section 4 was the charging Section which created the liability and not Section 3 of the Act.

4. It is true that the petitioner is a corporation incorporated by an Act of Parliament, called the Damodar Valley Act (Act XIV of 1948), for developing the Damodar Valley, which is an inter-State river valley. Under Sections 13 to 21 of this Act the petitioner is empowered to sell water and electricity subject to certain conditions as provided therein. The petitioner, undoubtedly, under Article 288(1) of the Constitution, enjoys immunity from taxation under any State legislation in force immediately before the commencement of the Condition. But " is immunity is not an absolute one and is subject to any order by the President to the contrary in this behalf,. Besides, Clause (2) of Article 288 empowers the legislature of a State to make law imposing or authorising the imposition of any tax subject to the assent of the President. Clause (2) of Article 288 of the Constitution reads thus:

The Legislature of a State may by law impose, or authorise the imposition of, any such tax as is mentioned in Clause (1), but no such law shall have any effect unless it has, after having been reserved for the consideration of the President, received his assent; and if any such law provides for the fixation of the rates and other incidents of such tax by means of rules or orders to be made under the law by any authority, the law shall provide for the previous consent of the President being obtained to the making of any such rule or order.

The parent Act u/s 3, Sub-section (1), Clause (v), granted an exemption to "industrial undertakings", as defined under the Indian Factories Act, from levy of duty under the Act. It is not disputed that the petitioner is such an undertaking and, therefore, the parent Act did not touch the petitioner until Section 3 was amended by the Amending Act (Bihar Act XX of 1963). By the Amending Act, the original Section 3 was substituted by a new Section and Schedule I of the parent Act by another Schedule, According to the submission of the learned Advocate General, Section 3 (as amended) is the charging section, which having been assented to by the President, the ban imposed under Article 288(1) of the Constitution has been lifted.

5. It will be necessary, at this stage, to quote the relevant provisions of Section 3, as amended, as also Item A of the amended Schedule:

(1) Subject to the provisions of Sub-section (2) there shall be levied and paid to the State Government on the units of energy consumed or sold, excluding losses of energy in transmission and transformation, a duty at the rate or rates specified in the schedule.

(2) No duty shall be leviable on units of energy -

* * * (e) consumed by the Damodar Valley Corporation for, the generation, transmission or distribution of electricity by that Corporation.

* * * (3) When a licensee holds more than one license, duty shall be payable separately in respect of each license.

A. For a mine or an industrial Such rate or rates not exceeding undertaking, save in respect of 2 naye paise per unit of energy its premises used for residential as may, from time to time, be or office purposes. fixed by the State Government with the previous consent of the President, by order in this behalf.

This section provided that there shall be levied and paid to the State Government on the units of energy consumed or sold a duty at the rate or rates specified in the Schedule subject to the exemptions granted under Sub-section (2). Item A of the Schedule, which has been quoted above, shows that" for "a mine" or "an industrial .undertaking", save in respect of its premises used for residential or office purposes, electricity duty shall be chargeable at a rate not exceeding two naye paise per unit or at such rates as may, from time to time, be fixed by the State Government with the previous consent of the President by order in this behalf. Thus liability of. payment of electricity duty by an industrial undertaking such as the petitioner, is created by Section 3, read with. Item A of the Schedule to the Act.

6. A reference may be made to the relevant provisions of Section 4 of the Act. Sub-section (1) of Section 4 of the Act reads thus:

(1) Every licensee shall pay every month to the State Government at the time and in the manner prescribed the proper duty payable u/s 3 on the units of energy consumed by him or sold by him to the consumer.

Sub-sections (2) and. (3) of this section authorise the licensee to recover from the consumer the amount which fails to be paid by the licensee as duty in respect of the energy sold to the consumer. Sub-sees. (4) and (4a), which are relevant are quoted below:

(4) Every person (including any department of the State Government) other than a licensee, who generates energy for his own use or for the use of his employees, or partly for such use. and partly for sale, shall pay every month at the time and in the manner prescribed the proper duly payable u/s 3 on the units of energy consumed by him or his employees or sold by him.

(4a) livery person other than a licensee who obtains, for sale or partly for his own use and partly for sale, bulk supply of energy generated by a licensee or other person shall pay every month to the State Government at the time and in the manner prescribed the duty payable u/s 3 on the units of energy so obtained and sold or partly sold and partly consumed by him.

Reading Section 4, it appears that duty has to be realised from a ''licensee'' as defined u/s 2(c) of the Act, and from persons other than a licensee. Under sub-Sees. (1), (4) and (4a) specific reference has been made to "duty payable u/s 3'' by a licensee and persons other than a licensee in the manner prescribed. This clearly lends support to the argument of the learned Advocate General that Section 4 only provides for mode of payment, of the charge and liability created u/s 3 and it is Section 3 which is the charging section and not Section 4. It is also not without significance that the petitioner in his writ petition has mentioned Section 3 as the charging section.

7. Learned Advocate Genera! submitted that assuming for the sake of argument that Section 4 was the charging section, then according to the Legislative practice prevalent in this country the President while assenting to the Amending Act must be deemed to have assented to that Act in relation to the Act it sought to amend. He relied on a Bench decision of this Court in the case of Dasu Khan and Others Vs. Mohan Bhagat and Others, in support of his argument, in which a Bench decision of the Orissa High Court in the case of Sankarsana Ramanuja Das Vs. State of Orissa and Another, was relied upon. There seems to be substance in this submission of the learned Advocate General. The President, while assenting to the Amending Act of 1963, will be deemed to have been aware of the other provisions of the present Act and also to have read the same and not only the Amending Act in isolation which amended Section 3 and the Schedules. As already stated, Sub-sections (1), (4) and (4a) of Section 4 refers to the "duty payable u/s 3" of the Act. The President, at any rate, must be deemed to have read Section 4 of the Act, while assenting to Section 3, as specific reference has been made of that section in Section 4. Thus the President, while assenting to Section 3, must be deemed to have assented to the parent Act, specially Section 4, It, therefore, follows that, even if Section 4 be the charging Section, the Act, in so far as it levies electricity duty on the petitioner, is not ultra vires of the Constitution.

8. Learned Advocate General in the alternative further argued that, even if Section 3, as amended by the Amending Act, is not the charging section, it is a law "authorising" the imposition of tax or duty under Article 288(2) of the Constitution passed by a State Legislature and assented to by the President. There seems to be substance in his submission. The President may assent to a law of the State Legislature imposing tax, or, assent to a law authorising imposition of a tax, referred to under Clause (1) of Article 288 of the Constitution. The expression ''law'' used in Article 288(2) of the Constitution will include part of a law or even an Amending Act. The President, therefore, by assenting to the Amending Act, which brought in the new Section 3 with the new Schedule, assented to a law of the State authorising imposition of electricity duty on the petitioner and lifted the ban imposed by Clause (1) of Article 288 of the Constitution. It is important to note that in the Amending Act there is specific reference to the Damodar Valley Corporation being granted certain exemptions from the payment of duty within the limit specified under Clause (c) of Sub-section (2) of Section 3 of the Act. Therefore, the assent of the President to the

Amending Act authorises the imposition of duty on the petitioner and saves the Act from the mischief of Clause (1) of Article 288 of the Constitution.

9. Looked from any point of view, the Act is not ultra vires of Article 288 of the Constitution, and there does not appear to be any substance in the contention of Mr. Dutta.

10. Mr. Dutta next contended that, even if the Act is not ultra vires of Article 288 of the Constitution, no tax is leviable on the petitioner as the petitioner is exempted from levy of duty under Clause (e) of Sub-section (2) of Section 3 of the Act. He submitted that, in the exemption clause, the expression "consumed by the Damodar Valley Corporation for the generation, transmission or distribution of electricity by that Corporation" will also include purposes incidental to generation, transmission and distribution of electricity by the Corporation. This submission requires investigation of facts and law and cannot be appropriately dealt with by this Court in exercise of its writ jurisdiction. Further, this point has not been raised in the application. This is a matter for consideration by the authorities dealing with the assessment, levy and collection of the duty under the Act, if raised before them.

11. In the result, this application fails and is dismissed with costs: hearing fee Rs. 100/-.

Narasimham, C.J.—I agree. In view, however, of the importance of the constitutional questions raised, I am giving my reasons separately.

2. The Damodar Valley Corporation was established by an Act of Parliament for regulating and developing an inter-State river valley. Hence, by virtue of Clause (1) of Article 288 of the Constitution, it is immune from payment of any tax in respect of electricity stored, generated, consumed, distributed or sold under the provisions of any ''existing law'' unless the President, by order, otherwise provides. The Bihar Electricity Duty Act, 1948 (Bihar Act 36 of 1948), is such an existing law, and it is conceded that there is no order of the President under Clause (1) of Article 288.

3. The learned Advocate General, however, relied on Clause (2) of Article 288 which says that, if a law made by a State Legislature is assented to by the President, that law may "impose, or authorise the imposition of,'' such a tax. According to him, the Bihar Electricity Duty (Amendment) Act, 1963 (Bihar Act 20 of 1963), is such a law because it was assented to by the President. That Act is described as an Amending Act by which Section 3 and the Schedule of the parent Act, viz., the Bihar Electricity Duty Act, 1948, was completely recast. Section 3, as amended, contains the heading "Incidence of duty". By virtue of that section, duty is payable to the State Government on the units of electrical energy consumed or sold subject, of course, to the provisions of Sub-section (2) of that section which says that no duty is leviable on units of energy consumed by the Damodar Valley Corporation for the generation, transmission or distribution of electricity by that Corporation. The Schedule, after the

amendment, prescribes the rate of duty.

4. In the parent Act, Section 4 dealt with payment of duty by a licensee and a person other than a licensee. The mode of payment, including the time and manner of payment, was regulated by that section subject to the rules made under the Act. The other sections of the Act were supplemental and ancillary in nature. As already pointed out, the Amending Act did not include Section 4 of the parent Act, and it may be said in a somewhat technical and factual sense that Section 4 did not receive the assent of the President so as to attract the provisions of Clause (2) of Article 288.

5. Mr. Dutta for the petitioner, therefore, urged that the charging section in the Act, as so amended, will be not only Section 3 but Section 3 read with Section 4, and that, inasmuch as Section 4 was not included in the amending Act and did not receive the assent of the President, Clause (2) of Article 288 was not attracted.

6. The Advocate General''s reply to this contention may be formulated as follows:

(i) The charging section is really Section 3 and not Section 3 read with Section 4. Section 3 alone fully dealt with the incidence of duty, and the Schedule described the rate of duty. Section 4 merely dealt with the persons liable to pay such duty, and regulated the time and manner of payment. Hence, when Section 3, as amended, received the assent of the President, the benefit of Clause (2) of Article 288 would be available to all the provisions of the parent Act as so amended.

(ii) Section 3 should be construed as either a law imposing such duty or a law authorising the imposition of such duty.

(iii) Bearing in mind the legislative practice in India in drafting Acts, it must be held as a matter of construction that, by the amending Act of 1963, the Legislature, in substance, re-enacted the parent Act incorporating the amendment therein.

7. In my opinion, all these three contentions are acceptable. Section 3 is the real charging section by which units of electrical energy (subject to the exceptions provided in Sub-section (2)) are made liable to duty at the rates specified in the Schedule. It also contains an indication as to the persons who have to pay such duty, by saying the duty shall be levied and paid "on the units of energy consumed or sold". These words indicate that a consumer or seller of electrical energy, whether he is a licensee or not, will have to pay such duty subject, of course, to the exceptions provided in Sub-section (2) of Section 3. The various clauses of Sub-section (2) relate to consumers and sellers of various categories. Again, Sub-section (3) of Section 3 expressly refers to a licensee by saying that, if a licensee holds more than one license, duty shall be payable separately in respect of each license. Section 4 is in the nature of a supplemental provision meant to regulate the mode of payment by a licensee or any other person, and it

also confers a right on a licensee to recover the duty from the consumer. It is thus a provision meant to facilitate the levy and collection of tax; but the charging section is really Section 3 read with the Schedule.

8. In view of what has been stated above, I think the Advocate General is correct in saying that Section 3 is the law which imposes such tax as is contemplated by Clause (2) of Article 288 of the Constitution. It is well known that the expression "law" in the Constitution may include a particular section of an Act, and is not necessarily restricted to an entire Act passed by the Legislature. Alternatively, it can also be urged with considerable justification that, if Section 3 be held to be not a law imposing such a tax, it is definitely a law authorising the imposition of such tax. It is by virtue of Section 3 that the Legislature empowers the authority concerned to levy the tax. The mode of levy and the person from whom it should be collected are provided in Section 4 and other sections of the Act. But, in Section 4 there is reference to Section 3 by the use of the words "proper duty payable u/s 3 on the units of energy". Thus, Section 4 does not stand to isolation but it closely interlinked with Section 3. The assent given by the President to the amending Act, therefore, makes the amending Act a law authorising the imposition of tax on electricity, and thereby confers on the law the special protection of Clause (2) of Article 288.

9. In appreciating properly the true scope and effect of an amending Act, the legislative practice prevailing in India must be given due consideration. The practice in India generally is for an amending Act to name the omissions and insertions and substitution considered necessary in the parent Act, but, if the amending Act is construed in isolation without reference to the parent Act, it may sometimes be quite unintelligible. In Sankarsana Ramanuja Das v. State of Orissa the distinction between the legislative practice in India and England in respect of the amending Acts was pointed out in connection with the construction of the Orissa Estate Abolition (Amendment) Act, 1954, which was assented to by the President. The High Court held:

The amending Act should be deemed to have been incorporated in the parent Act even though the amending Act, in express terms, provides only for textual amendment of certain clauses. The amending Act cannot stand isolated and must be held to have been read by the President, as forming part of the Act, when he gave his assent to it.

While affirming this judgment on appeal, their Lordships of the Supreme Court in Mahant Sankarsan Ramanuja Das Goswami v. The State of Orissa (1962) 3 S.C.R. 257 observed as follows at page 257:

It is to be presumed that the President gave his assent to the amending Act in its relation to the Act it sought to amend.... The amending Act must be considered in relation to the old law which it sought to extend and the President assented to such an extension or, in other words, to a law for the compulsory acquisition of property for public purpose.

In Dasu Khan and Others Vs. Mohan Bhagat and Others, , these two decisions were noticed, and it was held that, in some circumstances, an amending Act should be construed as, in substance, re-enactment of the parent Act with the amendment.

10. These principles can as well be applied here. When the President assented to the amending Act of 1963, he must be presumed to have been aware of the fact that Section 3 and the schedule by themselves are unworkable, and that they must be read and construed along with the other provisions of the parent Act, which were not included in the amendment. In particular, his attention must be presumed to have been drawn in Section 4 of the parent Act in which there is an express reference to Section 3. In the peculiar circumstances of this case, I think, it is a fair inference to make that, when the President gave his assent to the Amending Act, he, in substance, gave this assent to the parent Act, incorporating therein the amendments made by the amending Act.

11. For these reasons, I see no invalidity in the order of the appropriate authority demanding duty from the petitioner. Doubtless, as pointed out in paragraph 10 of my learned brother''s judgment, no such duty will be payable on the units of energy actually consumed by the petitioner for generation, transmission or distribution of electricity in view of the exemption provided in Clause (e) of Sub-section (2) of Section 3.

