(1992) 08 PAT CK 0033

In the Patna High Court

Case No : C.W.J.C. No. 3440 of 1992

Hindustan Granite Stone Works — APPELLANT

Vs

State of Bihar and Others — RESPONDENT

Date of Decision : 27-08-1992

Acts Referred:

Citation : (1992) 08 PAT CK 0033

Judgement

S.B. Sinha and Radha Mohan Prasad, JJ.—In this application, the petitioner has prayed for a declaration that the Cess and other Taxes on Minerals (Validation) Ordinance, 1992 is unconstitutional (hereinafter referred to as ''the said Ordinance''.)

2. Before proceeding to determine the said question, certain undisputed facts may be noticed. Bengal Cess Tax Act, 1880, operative in the State of Bihar also, in terms of which cess used to be realised inter alia, on minerals from the owners of mines.

3. In India Cement Ltd. and Others Vs. State Of Tamil Nadu and Others, Section 115 of the Tamil Nadu Panchayats Act which provision was in pari materia with Section 6 of the Bengal Cess Tax Act, 1880 was declared to be ultra vires prospectively, i.e., with effect from 25-10-1989.

4. The constitutionality of the Bengal Cess Tax Act came up for consideration before a Division Bench of this Court in Central Coalfields Ltd. and Others Vs. The State of Bihar and Others and this Court declared the same ultra vires following the decision of the Supreme Court in India Cement case.

5. The Supreme Court thereafter again considered the matter in M/s. Orissa Cement Ltd. and Others Vs. State of Orissa and others, wherein it was held that no cess collected by the State can be directed to be refunded up to the date of the said judgment, namely, 4th April, 1991.

6. The Supreme Court again in The Federation of Mining Associations of Rajasthan, and Vs. State of Rajasthan and Another, held that if any amount of

tax remains to be paid in respect of earlier periods, it will have to be paid by the assessee.

7. However, in Orissa Cement, the Supreme Court fixed different dates in respect of different State laws so far as the matter relating to refund of the amount collected by way of cess is concerned.

8. It appears that in order to bring uniformity, the President of India promulgated the said Ordinance.

9. Section 2 of the said Ordinance reads as follows:

2(1) The laws specified in the Schedule to this Ordinance shall be, and shall be deemed always to have been, as valid as if the provisions contained therein relating to cesses or other taxes on minerals had been enacted by Parliament and such provisions shall be deemed to have remained in force up to the 4th day of April, 1991.

(2) Notwithstanding any judgment, decree or order of any court, all actions taken things done rules made notifications issued or purported to have been taken gone made or issued and cesses or other taxes on minerals realised under any such laws shall be deemed to have been in force at all material times when such actions were taken things were done, rules were made, notifications were issued, or cesses or other taxes were realised and no suit or other proceeding shall be maintained of continued in any court for the refund of the cesses or other taxes realised under any such laws.

(3) For the removal of doubts, it is hereby declared that nothing in Sub-section (2) shall be construed as preventing any person from claiming refund of any cess or tax paid by him in excess of the amount due from him under any such laws.

10. Mr. K. D. Chatterjee, learned Counsel appearing on behalf of the petitioner, inter alia, submitted that as by reason of the aforementioned Ordinance a legal fiction has been created to the effect that the said levy would be deemed to have been imposed by the Parliament, the State of the Bihar must be held to have no jurisdiction whatsoever to collect the amount of cess after the coming into force of the said Ordinance, The learned Counsel submitted that the said Ordinance is ultra vires Article 266 read with Entry 97 of List I of the Seventh Schedule of the Constitution of India,

11. We, however, feel that the question of interpretation of the said Ordinance as also the question as to whether the said Ordinance is unconstitutional or not need not be decided at the present juncture.

12. By reason of the said Ordinance merely the levy of cess levied by the States has been validated as if the said Act was enacted by the Parliament.

13. Thus, so far as the State of Bihar is concerned, even if the said Ordinance had not been promulgated, the petitioner was liable to pay cess up to 4-4-1991 in terms of the judgments of the Supreme Court and this Court and any cess

realised by the State of Bihar from him up to the aforementioned date could not have been directed to be refunded.

14. The questions raised at the bar, thus, are wholly academic in nature. It is now well known that constitutionality of a statute should not be decided by this Court unless it becomes necessary so to do. It is also well known that this Court does not issue a futile writ.

15. We were also informed at the bar that the said Ordinance has been replaced by a Parliamentary Act and thus the said Ordinance is no longer in force.

16. For the reasons aforementioned, this application is dismissed.

