
(1986) 03 MP CK 0040

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 410 of 1983

Hiralal Rameshwar Prasad and others

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 28-03-1986

Acts Referred:

Madhya Pradesh Karadhan Adhiniyam, 1982 — Section 9

Citation : (1986) MPLJ 514

Hon'ble Judges : J.S. Verma, Acting C.J.;B.M. Lal, J

Bench : Division Bench

Advocate : Y.S. Dharmadhikari, for the Appellant; S.S. Ray with S.L. Saxena, Dy. Advocate-General for Respondent Nos. 1 and 2 and A.P. Tare, for the Respondent

Final Decision : Allowed

Judgement

J.S. Verma, Actg. C.J.

This order shall also dispose of Misc. Petitions Nos. 864/83, 973/83, 1027/83, 1297/83, 1334/83, 1421/83, 1756/83, 2581/83, 2582/83, 70/84, 284/84, 708/84, 2119/84, 2837/84, 2882/84, 644/85, 696/85, 919/85, 920/85, 1811/85, 2951/85 and 4045/85.

The challenge made in these petitiones is to the constitutional validity of the imposition of Mineral Area Development cess by section 9 of the Madhya Pradesh Karadhan Adhiniyam, 1982 (Act No. 15 of 1982) as amended by M.P. Act No. 15 of 1983 and M.P. Act No. 13 of 1985. Section 9 has to be read with section 8 of the Act containing definitions which form Part IV of the Principal Act and together deal with the imposition called "mineral areas development cess". This imposition is payable by the person holding the mining lease for a major mineral on the land held under a mining lease for undertaking the mining operations. The challenge is on the ground of want of legislative competence of the State Legislature to enact such a law. The petitioners in all these petitions being holders of mining

lease for a major mineral are required to pay the mineral areas development cess under these provisions. Hence this challenge by them.

The Madhya Pradesh Karadhan Adhiniyam, 1982, was enacted by State Legislature to provide for levy of school building cess, forest development cess and mineral areas development cess and matters incidental thereto. Part II of the Act deals with school building cess and section 3 therein requires the holder of every holding of six hectares and above to pay the school building cess as provided therein. The proceeds of the school building cess are required to be utilised for construction and furnishing of Primary School building in non-urban areas. Part III of the Act deals with the forest development cess wherein section 7 imposes forest development cess on every sale or supply of forest produce by the Forest Department and the amount specified and the proceeds thereof are to be utilised for social forestry, afforestation, reforestation and rehabilitation of forest etc. There is no challenge in these petitions to these cesses dealt with in Part II and III of the Act and reference to them is only for the purpose of indicating the scheme of the Act.

Then comes Part IV dealing with the mineral areas development cess, the provisions of which are relevant for the purpose of these petitions and it is the charging provision contained in section 9 which has been attacked as constitutionally invalid. These provisions are as under:-

PART IV

Mineral Areas Development Cess

8. Definitions - In this part, unless the context otherwise requires,-

(a) "dead rent" means the dead rent payable under the Mines and Minerals (Regulation and Development) Act, 1957 (No. 67 of 1957);

(b) "land" means land held under a mining lease for undertaking mining operations;

(bb) "Major Mineral" means a mineral other than minor mineral and shall include all types of Limestone irrespective of its use;

(c) "mineral areas development cess" means cess levied u/s 9 on land under a mining lease for undertaking of mining operations;

(d) "royalty" means the royalty payable under the Mines and Minerals (Regulation and Development) Act, 1957 (No. 67 of 1957) and includes any payments made or likely to be made to the Central Government or the State Government as the case may be for the right of raising minerals from the land under the said Act;

(e) Words and expressions used but not defined in this part and defined in the Mines and Minerals (Regulation and Development) Act, 1957 (No. 67 of 1957) shall have the meaning respectively assigned to them in that Act.

Levy of mineral areas development cess on land under mining lease.-

(1) There shall be levied and collected-

(a) on the land held under mining lease for undertaking mining operations for a major mineral other than coal a mineral areas development cess at the rate of one hundred per centum of the rental value thereof; and

(b) on the land held under mining lease for undertaking mining operations for coal, a mineral areas development cess at the rate of one hundred twenty five per centum of the rental value thereof.

(2) For the purpose of sub-section (1) rental value shall be equal to the royalty or dead rent, as the case may be, whichever is higher.

(3) The mineral areas development cess shall, subject to and in accordance with the rules made in this behalf, be collected by such agencies and in such manner as may be prescribed and shall be applied towards development of mineral bearing areas;

Provided that if the mineral areas development cess is not paid within the prescribed date, there shall be charged interest at the rate of fifteen per cent, per annum on the amount of cess or part thereof which has not been paid or deposited before the said date from the date of cess or the part thereof has become due for payment and the same shall be recoverable as an arrear of land revenue along with costs of recovery.

Rules have been framed under this Act called "The Madhya Pradesh Mineral Areas Development Cess Rules, 1982", providing for matters relating to the mineral areas development cess. Rule 10 therein is alone relevant for the purpose of these petitions and is as under:

10. Application of Cess.- The State Government shall decide from time to time the manner in which the amount collected from cess shall be utilized for the development of mineral bearing areas.

Reference may now be made to certain entries in the Seventh Schedule with reference to which the rival contentions have to be appreciated. These entries contained in the Seventh Schedule of the Constitution are as follows:-

List I - Union List

54. Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.

Fees in respect of any of the matters in this List, but not including fees taken in any Court.

Any other matter not enumerated in List II or List III including any tax not mentioned in either of those List.

List II - State list

23. Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union.

Taxes on lands and buildings.

Taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development.

Fees in respect of any of the matters in this List, but not including fees taken in any Court.

The main arguments on behalf of the petitioners were advanced by Shri Y.S. Dharmadhikari and Shri A.S. Bobde which were adopted by the other counsel appearing on behalf of the petitioners in this group of petitions. The reply on behalf of the State was given by Shri S.S. Ray who appeared in some petitions and the same was adopted by Shri S.L. Saxena, Dy. Advocate-General appearing on behalf of the State in all the petitions as well as the other counsel appearing on behalf of the respondents. These arguments may now be stated. The want of legislative competence in the State Legislature to enact the impugned law imposing the mineral areas development cess was urged on the following grounds namely:

1) The imposition is a fee and not a tax so that it could be levied by the State Legislature only under Entry 66 read with Entry 23 of List II in the Seventh Schedule as no other Entry in the State List empowers the State Legislature to levy such a fee.

2) Entry 23 in List II is denuded by the declaration made by the Parliament in section 2 of the Mines and Minerals (Regulations and Development) Act, 1957, (Act No. 67 of 1957) under Entry 54 of List I, and, therefore, no power survives to the State Legislature to impose such a fee.

3) Even if the imposition be a tax and not a fee, it relates to the area covered by the declaration made under Entry 54 in List I by the Parliament in the Central Act No. 67 of 1957 and the Parliament alone could make this imposition. Neither Entry 49 nor Entry 50 in List II empowers the State Legislature to enact such a law and for this reason, the Parliament alone is empowered to make such an imposition by virtue of the declaration made by it under Entry 54 read with either Entry 96 or Entry 97 of List I.

In reply Shri S. S. Ray contended that the State Legislature was competent to (sic) such a law for the following reasons, namely:

1) The imposition is not a fee but "tax on land" which the State Legislature alone is empowered to impose under Entry 49 in List II.

2) Assuming that the imposition is not covered by Entry 49 in List II, it is covered by Entry 50 in List II since it is a "tax on mineral rights" which the State

Legislature alone is empowered to impose. The Parliament has no power to impose any such tax.

3) Lastly, in case, it is held to be a fee, then the source of power of the State Legislature is under Entry 60 read with Entry 23 of List II.

We shall now take up for consideration the first point arising out of the above contentions. The first question is about the true nature of the imposition in order to determine whether it is "fee" as claimed on behalf of the petitioners or a "tax" as claimed by the respondent. Firstly, it is mentioned at this stage that in several petitions averments are vague and the distinction between fee and tax has not been borne in mind and it has even been mentioned that the imposition is a tax. However, in some of these petitions it has been expressly pleaded that the imposition is in the nature of a fee and not a tax. It was not disputed that such a case set up even in one of the petitions is enough for consideration of this point since the only real question for decision in these petitions is the constitutional validity of the impugned imposition for which purpose challenge has been made in some petitions on the ground that the imposition is a fee which could be imposed only by the Parliament and not the State Legislature.

It is not necessary to refer to the several decisions cited at the bar to indicate the test laid down for distinguishing a "fee" from a "tax" since the principles are well known. It is sufficient in this connection to refer only to the recent decision in *City Corporation of Calicut Vs. Thachambalath Sadasivan and Others*, , wherein it was pointed out as under:

It is thus well settled by numerous recent decisions of this Court that the traditional concept" in a fee of quid pro quo is undergoing a transformation and that though the fee must have relation to the services rendered, or the advantages conferred, such relation need not be direct, a mere casual relation may be enough. It is not necessary to establish that those who pay the fee must receive direct benefit of the services rendered for which the fee is being paid. If one who is liable to pay receives general benefit from the authority levying the fee the element of service required for collecting fee is satisfied. It is not necessary that the person liable to pay must receive some special benefit or advantage for payment of the fee.

It was held by the Supreme Court in this decision that rendering of general services to the persons within the area is enough to indicate that the levy is a fee since tills element of general service satisfies the requirement of quid pro quo essential for a fee. It is by application of this test that the true nature of the levy in the present case has to be examined.

Section 9(4) of the Act provides that the mineral areas development cess "shall be applied towards development of mineral bearing areas". Rule 10 framed under the Act lays down that the State Government shall decide from time to time the manner in which the amount collected as mineral areas development cess shall be utilized for the development of mineral bearing areas. It is, therefore, clearly

provided that utilisation of the mineral areas development cess is to be made only for the development of the mineral bearing areas in the manner decided from time to time by the State Government. Utilisation of this cess is, therefore, for a specific purpose i.e. the development of the mineral bearing areas. The persons holding mining leases for major minerals are alone liable for payment of the mineral areas development cess on the land under their mining lease. This cess is not payable by any other person having any right or interest in the land which is not a right under a mining lease within the mineral bearing area or in other words, the cess is not payable by the land holders in general but only by holders of mining lease within the area. Since the utilisation of the amount recovered as mineral areas development cess is for development of the mineral bearing areas only, it is obvious that the lessees of the mining lease from whom this cess is recovered would receive general benefit of the services rendered as a result of the development of the mineral bearing areas. The element of quid pro quo by providing general benefit to the persons from whom the amount is recovered being present and the amount so collected being set apart for utilisation only for the mineral bearing areas, the essential test indicated by the Supreme Court for treating the levy to be a fee is satisfied. It must, therefore, be held that the mineral areas development cess is levied by section 9 of the Act is a "fee" contra distinguished from a "tax". It has now to be seen whether the State Legislature was competent to enact such a law imposing this fee. We find support for the conclusion reached by us that the mineral areas development cess is a fee distinguished from a tax from the decision of the Supreme Court in *The Hingir-rampur Coal Co. Ltd. and Others Vs. The State of Orissa and Others*, , in which similar cess imposed for the development of the mining areas by the State was held to be a fee as distinguished from a tax.

There is no dispute that if the imposition is a fee, then the State Legislature's competence has to be tested only on the basis of Entry 23 read with Entry 66 of List II and there is no other Entry empowering the State Government to impose such a fee. It follows that unless power is available to the State Legislature under Entry 23 of List II after a declaration made under Entry 54 of List I by the Parliament in section 2 of the Central Act No. 67 of 1957, no question can arise of the State Legislatures competence to impose such a fee. In the face of the Supreme Court decisions particularly those in *Hingir Rampur Coal Co. case* (supra) *State of Orissa Vs. M.A. Tulloch and Co.*, and *Baijnath Kadio Vs. State of Bihar and Others*, , it cannot be doubted that the entire field of legislation covered by Entry 23 of list II being the same as that under Entry 54 of List I and the Parliament having made the requisite declaration in section 2 of the Central Act No. 67 of 1957, Entry 23 of List II stands wholly superseded by the Parliaments power to enact laws in that field. Accordingly, no scope for legislation by the State Legislature under Entry 23 being left after the Parliament's declaration under Entry 54, nothing survives under Entry 23 for the State Legislature to impose a fee in relation to that matter by exercise of its power to levy a fee under Entry 66 of List II. It is, therefore, obvious that the State

Legislature was not competent to impose such a fee in exercise of its legislative power under Entry 23 read with Entry 66 of List II in the Seventh Schedule which alone is available and relied on by the respondents to support the imposition as a fee.

We may also see some provisions of the Central Act No. 67 of 1957 to indicate that there are specific provisions made therein to permit imposition of fees so as to cover specifically the field of legislation relating to imposition and realisation of fees. Section 13 deals with the power of the Central Government to make rules in respect of minerals. The general rule making power is in sub-section (1) while sub-section (2) lays down specific matters without prejudice to the generality of the foregoing power. As specified in section 13(2)(i) as the fixing and collection of dead rent, fines, fees or other charges and the collection of royalties in respect of prospecting licences, mining leases etc. Section 25 of the Act provides for recovery of certain amounts as arrears of land revenue and it says that any rent, royalty, tax, fee or other sum due to the Government under this Act or the rules made thereunder or under the terms and conditions of any prospecting licence or mining lease may be recovered as an arrear of land revenue. These specific provisions in addition to the declaration by the Parliament contained in section 2 of the Central Act also clearly indicate that the field of legislation relating to the imposition of any fees in respect of a matter falling under Entry 54 is covered by the Central Legislature enacted by the Parliament.

On the conclusion reached by us that the mineral areas development cess is a fee distinguished from a "tax" and the State Legislature was not competent to impose this fee under Entry 23 read with entry 66 of List II which alone is relied on to support the imposition as a fee, this imposition must be struck down. However, we shall also deal hereafter with the alternative submission on the basis that it is a tax since the basic argument of Shri Ray on behalf of the State is that it is tax on land covered by Entry 49 of List II.

The argument of Shri Ray on behalf of the State is that this imposition called mineral areas development cess is really a tax on land because in our opinion neither Entry 49 nor Entry 50 in List II is available to sustain this imposition.

The decisions of the Supreme Court in *Murty's case* and *Western Coal Fields case* (supra) are clearly distinguishable. In both these cases, the imposition was essentially on land all kinds of land and not merely on lands in respect of which rights in mineral had been given under a mining lease. In such a situation, the challenge to the imposition on the ground that it was not a tax on lands covered by Entry 49 but a tax on mineral lands covered by Entry 49 but a tax on mineral rights was repelled. The reason obviously is that the pith and substance of the legislation was "tax on lands" since otherwise the imposition could not cover lands other than those in which the mineral rights had been given. The legislation in these cases was, therefore, essentially one of imposition of tax on lands in general of all kind and that being the true nature of the imposition, it was upheld as a tax on lands within the legislative competence of the State

Legislature under Entry 49 in List II. But position before us is different. We are concerned with the imposition only on lands in which mineral rights have been given for major minerals under a mining lease and no other kinds of lands. It is significant that holder of the land having a right in the surface of the land is also not liable for this imposition. The quantum of cess payable has to be calculated on the basis of royalty or dead rent which is peculiar only to a mineral right and no other interest in land. It may also be mentioned that the amount of cess payable is liable to variation depending upon the variation in the amount of royalty payable and it is the Central Government which fixes the rates of royalty u/s 9 of the Central Act No. 67 of 1957. In this manner, the right to regulate the quantum of cess payable would ultimately be in the Central Government and not in the State Government. Some provisions of the Madhya Pradesh Land Revenue Code, 1959, also have relevance. Section 247 therein provides for permission to be obtained by the holder of a mining lease to enter upon the surface of the land where right in the surface of the land is not in him. Section 9(3) of the Act relating to Mineral Areas Development Cess makes only the person to whom the mining lease is granted liable for payment of the mineral areas development cess. The characteristic of the mineral areas development cess leaves no doubt that even if the imposition be a tax and not a fee, it is not on lands to fall under Entry 49 in the List II but only on mineral rights which is admittedly outside the ambit of Entry 49 in List II.

The above conclusion reached by us alone is consistent that the decisions of the Supreme Court in (sic) Rampur Coal Co.'s case (supra) and State of Orissa's case (supra) wherein it was clearly held that the field of legislation pertaining to the mineral areas development cess is covered by the declaration made by the Parliament under Entry 54 of List I in section 2 of the Central Act No. 67 of 1957. In none of the cases relied on by Shri Ray these two decisions have been doubted or its effect reduced. Both these decisions deal with the very question relating to the competence of the State Legislature to enact a law relating to imposition for development of mining areas and it was held that the field of legislation was available only to the Parliament under the Constitution. Entry 50 in List II empowering the State Legislature to impose "tax on mineral right" is also subject to the same limitations imposed by the Parliament by law relating to mineral development. In our opinion that Entry also is of no help to sustain the argument.

It was urged by" Shri Ray that Entry 50 in List II would at least be available to sustain the legislation enacted by the State Legislature since the Parliament had no power to impose such a tax mere being no Entry in List I corresponding to Entry 50 in List II. In our opinion, this contention cannot be accepted. Entry 50 in List II itself says that it is subject to the limitations imposed by the Parliament by law relating to mineral development from which it is evident that the power of the State Legislature under Entry 50 in List II is subject to the Parliament's power in that field. That apart, Entry 97 in List I read with Entry 54 and the residuary power of the Parliament under Article 248 of the Constitution is

sufficient to clothe the Parliament with the legislative competence to make such an imposition assuming it to be a tax and not a fee. It cannot, therefore, be accepted that it is the State Legislature alone and not the Parliament which is empowered by the Constitution to impose a tax on mineral rights. It is unnecessary for us to refer to the several decisions starting with the decision in *M.P.V. Sundararamier and Co. Vs. The State of Andhra Pradesh and Another*, cited by Shri Ray to show that the power to tax must be derived from a clear and specific taxing Entry in any one of the Lists in the Seventh Schedule since it is not covered by the general Entry on the subject. The principle is well settled and it is sufficient to say that the Parliament's power to impose tax on mineral rights is evident even from Entry 50 in List II which speaks of limitations imposed by the Parliament in exercise of the power under that Entry by the State Legislature in addition to the taxing power of the Parliament under Entry 54 read with Entry 97 and residuary power of the Parliament. We are, therefore, of the opinion that even if the imposition be in the nature of a tax and not a fee, although we have earlier expressed the opinion that it is a fee, the field of legislation in this behalf is available only to the Parliament for the reasons already given.

In our opinion, the two decisions of the Supreme Court in *Hingir Rampur Coal Co.'s case* (supra) and *State of Orissa's case* (supra) read along with the subsequent decisions of the Supreme Court cited at the Bar do not permit taking of any other view except the one which we have already indicated and that the decisions in *Murthy's case* and *Western Coal Fields' case* (supra) are clearly distinguishable and do not in any manner conflict with the decisions relied on by us as these distinguishable decisions related essentially to tax on all kinds of lands irrespective of the classification therein. For this reason we respectfully agree with the view of Venkataramiah, J., as he then was in *L.M. Co. vs. T.D. Board* (AIR 1972 Mys. 299) and we regret our inability to agree with the decision in *Laxmi Narayan Agarwalla and Others etc. Vs. State of Orissa and Others etc., .*

Consequently these petitions are allowed with costs and it is declared that the imposition of mineral areas development cess by Part IV of the Madhya Pradesh *Kardhan Adhiniyam*, 1982, as amended by M.P. Act. No. 15 of 1983 and M.P. Act No. 13 of 1985, is unconstitutional since the State Legislature was not complete to enact such a law. The respondents are, therefore, restrained from recovering any amount as mineral areas development cess under these provisions. It is also directed that the amounts which may have been recovered as mineral areas development cess by the respondents from any of these petitioners should be refunded to them. Counsel's fee Rs. 200/- if certified. Security amount, if any, be refunded to the petitioners.