(1963) 09 MP CK 0003

In the Madhya Pradesh High Court

Case No : M.P. No. 130 of 1962

Jaora Sugar Mills Private Ltd. APPELLANT

Vs

State RESPONDENT

Date of Decision : 24-09-1963

Acts Referred:

Madhya Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1958 — Section 23(1)

Citation : (1964) JLJ 263

Hon'ble Judges : P.V. Dixit, C.J;K.L. Panday, J

Bench : Division Bench

Advocate : K.A. Chitaley and V.S. Dabir, for the Appellant; C.R. Daffatari, Attorney General, M. Adhikari, Advocate General and R.J. Bhave, Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

P.V. Dixit, C.J.—In this application under article 226 of the Constitution of India by a private limited company engaged in the business of manufacture, production and sale of sugar, the petitioner claims a declaration that the Sugarcane Cess (Validation) Act, 1961 (XXXVIII of 1961), (hereinafter referred to as the Act) passed by Parliament is beyond the Constitutional powers of Parliament and is, therefore, invalid, and prays for the issue of a writ of certiorari for quashing a notice dated 17th March 1962 given to it by the Collector of Ratlam calling upon it to pay total amount of Rs. 6,33,917.52 n.P. as due from it on account of cane cess and came commission under the Act and the Madhya Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1958, (hereinafter referred to as the local Act)

2. In order to appreciate the merits of the controversy arising in this case, it is necessary to refer first to the local Act by which a cess on sugarcane entering into an area specified in a notification issued in that behalf for consumption, use or sale therein was imposed and the occupier of a sugar factory was made liable

for the payment of commission on sugarcane purchased by the factory. The local Act was enacted in 1959 It came into force on 1st July 1959. Section 23 (1) of that Act, so far as it is material here, ran as follows:

23. (1) The State Government may, by notification, impose a cess not exceeding 25 n.P. a maund, on the entry of cane into an a, specified in such notification, for consumption, use or sale therein;

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On 4th December 1959 the State Government issued a notification in exercise of the powers conferred on it by section 23 (1) of the local Act imposing with effect from that date a cess at the rate of 12 nP. per maund on "the entry of cane during a crushing season in the area comprised within such of the factories in which the total quantity of cane entering for consumption, use or sale to the factory during such season" exceeded 10-lakh maunds. Section 21 of the local Act, reed with rule 45 of the Madhya Pradesh Sugarcane (Regulation of Supply and Purchase) Rules, 1959, made under, that Act, makes the occupier of a factory liable for the payment of a commission on every maund of cane purchased by the factory in the circumstances and at the rate mentioned in the provision and the rule. The validity of section 23 of the local Act was challenged before us in The Bhopal Sugar Industries Vs. State of M.P., M.P. No. 27 of 1961, decided on the 31st August 1961. In that case we held, following the decision of the Supreme Court in Diamond Sugar Mills Ltd. and Another Vs. The State of Uttar Pradesh and Another, , that the notification dated the 4th December 1959, in so far as it imposed a cess on the entry of cane during a crushing season in. the area comprised within such of the factories in which the total quantity of cane entering for consumption, use or sale to the factory during such season exceeded 10-lakh maunds, was invalid In Dimond Sugar Mills case (supra), the Supreme Court struck down as invalid the law as enacted in section 3 of the U.P. Sugarcane Cess Act, 1956, imposing a cess on the entry of sugarcane in the premises of a factory on the ground that the legislation did not fall within Entry 52 of the State list in the Seventh Schedule to the constitution and there was no other entry either in the State List or in the Concurrent List in which the law could fall. We pointed out in Bhopal Sugar Industries Vs. State of M.P., M.P. No. 27 of 1961, that section 23 of the local Act was an analogous provision to section 3 of the U.P. Sugarcane Cess Act, 1956, and, therefore, the decision of the Supreme Court in Diamond Sugar, Mills'' case (supra) invalidated the levy and collection of Cess on sugarcane u/s 23 (1) and the notification issued thereunder.

3. The validity of section 21 was also challenged though without success by the Bhopal Sugar Industries Ltd. by another petition in The Bhopal Sugar Industries Ltd. Sehore Vs. The State of M.P. M.P. No. 340 of 1961, decided on the 30th January 1962. The grounds of challenge were that Section 21 was invalid being beyond the legislative competence of the State Legislature and that the provision given to the Government the power to fix the rate of commission amounted to excessive delegation and was accordingly invalid. In that case, it was held by a

Division Bench of this Court that the imposition described as ''commission'' in section 21 of the Act, was a ''fee''; that the legislative power to impose the fee was to be found in Entry 27 of the State List, read with Entry 66 of that List; and that consequently the imposition of the few was within the competence of the State Legislature. On the question of excessive delegation, the Division Bench, after referring to the decisions of the Supreme Court in Harishankar Bagla and Another Vs. The State of Madhya Pradesh, , Union of India (UOI) and Others and State of Delhi (Now Delhi Administration) and Others Vs. BhanaMal GulzariMal Ltd. and Others, , and Vasantlal Maganbhai Sanjanwala Vs. The State of Bombay and Others, , expressed the following view:

In the light of these decisions, it is clear that the indication of the general purpose and policy of the Act gives adequate guidance and the delegation to the State Government to frame rules for giving effect to the policy of the Act cannot be said to be excessive even though the particular section granting the delegation does not state the limitations expressly. In the instant case, as we have already said, the amount of commission is limited by the needs of the Council for performing the functions specified in the Act; and as the imposition is a fee, it must bear reasonable proportion to the expenditure. There is, therefore, no rea on to say that the delegation is excessive.

4. In 1961 after our decision in The Bhopal Sugar Industries Vs. State of M.P., M.P. No. 27 of 1961, Decided on the 31st August 1961, declaring invalid the notification issued on 4th December 1959 u/s 23 (1) of the Act, Parliament enacted the Sugarnane Cess (Validation) Act, 1961. The Act in intituled "An Act to validate the imposition and collection of cesses on sugarcane under certain State Acts and to amend the U.P. Sugarcane Cess (Validation) Act, 1961." The Act received the assent of the President on 11th September 1961 and was published in the Gazette on 12th September 1961. Section 1 (2) of the Act provides that section 5 thereof shall come into force at once, and the remaining provisions of the Act, in so far as they relate to any State, shall come into force in that State on such date as the Central Government may, by notification in the Official Gazette, appoint. In exercise of the powers u/s 1 (2) a notification was issued on 19th December 1961 by the Central Government appointing 26th December 1961 as the date of the coming into force of the provision of the Act in Madhya Pradesh, except section 5 (See Gazette of India dated 23rd December 1961) Clause (a) of section 2 of the Act defines ''cess'' as meaning "the cess payable under any State Act and includes any sum recoverable under any such Act by way of interest or penalty" ''State Act'' has been defined by clause (b) of section 2 as meaning the local Act and the other Acts enumerated therein as in force in any State from time to time, by way of amendment or adaptation. Section 3, which is the material provision here, is as follows:

3. (1) Notwithstanding any judgment, decree or order of any Court all cesses imposed, assessed or collected or purporting to have been imposed, assessed or collected under any State Act before the commencement of this Act shall be

deemed to have been validly imposed, assessed or collected in accordance with law, as if the provisions of the State Acts and of all notification, orders and rules issued or made thereunder, in so far as such provisions relate to the imposition, assessment and collection of such cess had been include in and informed part of this section and this section had been in force at all material times when such cess was imposed, assessed or collected; and accordingly,-

(a) no suit for other proceeding shall be maintained or continued in any Court for the refund of any cess paid under any State Act;

(b) no Court shall enforce a decree or order directing the refund of any cess paid under any State Act;

(c) any cess imposed or assessed under any State Act before the commencement of this Act but not collected before such commencement may be recovered (after assessment of cess, where necessary) in the manner provided under that Act.

(2) For the removal of doubts it is hereby declared that in thing in sub-section (1) shall be construed as preventing any person-

(a) from questioning in accordance with the provisions of any State Act and rules made thereunder the assessment of any cess for any period; or

(b) from claiming refund of any cess paid by him in excess of the amount due from him under any State Act and the rules made thereunder.

We are not concerned with the remaining two sections of the Act which deal with the omission of section 11 of the Bombay Sugarcane Cess Act, 1948, and the amendment of U.P. Sugarcane Cess (Validation) Act, 1961.

5. Shri Chitale, learned counsel appearing for the petitioner-company, put the petitioner''s case thus. It was submitted that in form and substance the Act was a piece of legislation validating the levy and collection of cess on Sugarcane u/s 23 of the local Act which had been invalidated by this Court in The Bhopal Sugar Industries Vs. State of M.P., M.P. No 27 of 1961, decided on the 31st August 1961, following the decision of the Supreme Court in the case of Diamond Sugar Mills (supra) on the ground that the cess on sugarcane as imposed by the terms of section 23 of the local Act was beyond the legislative competence of the State Legislature; that it merely validated the levy and collection of the cess made by the State till 26th December 1961 when section 3 of the Act came into force in this S(sic)e and did not levy or impose any cess after that date; that the impugned Act was purported to have been enacted by Parliament under the authority of its legislative powers conferred by article 248, read with Entry 97 of the Union List; that in the exercise of these residuary powers of legislation Parliament could not do indirectly what the State legislatures had not been empowered by the Constitution to do directly; and that the residuary power could not be invoked for passing a legislation transgressing the limitations under which the State could levy and collect the cess. It was said that the cess imposed was a tax; that a tax could be imposed by Parliament in the exercise of its

residuary powers of legislation but it could be imposed only for the purposes of the Union; and that the Act under challenge was not an independent legislation imposing cess for any purpose of the Union. Learned counsel proceeded to say that the Act was a colourable piece of legislation in as much as in effect it levied a tax for State-purposes and not for Union purposes to which the power of taxation conferred by article 248 and Entry 1 of List 1 was limited; that the object of the Act was to enable the State Government to retain the amount of cess levied and collected under the Acts enumerated in section 2 (b) which they would have been otherwise required to refund; that under the scheme of the Act the Sate Government had been empowered to, collect the cess for themselves and not as agents or delegates for the Union and the amounts of cess collected by the State Governments had already become parts of the Consolidated Funds of the States; that the amounts did not go into the Consolidated Fund of India; and that the Act did not contain any provision consistent with Articles 266 and 275 of the Constitution indicating that appropriation of the proceeds of the tax out of the Consolidated Fund of India had been made to the States by Parliament. Learned counsel referred us to the provisions of Act 269 (g) and the new section 9 (4) of the Central Sales Tax Act, 1956, dealing with the assignment to a State, and retention by it, of the proceeds of any tax levied and collected under that Act in any State on behalf of the Government of India, to emphasize the contention that a provision with regard to the assignment to and retention by the States of the proceeds of the cess was necessary in the Act to give the levy and collection of cess validated by it the real character of the levy and imposition of a tax for Union purposes. Thus, it was urged, that Parliament in passing the Act transgressed the limits of its residuary power of legislation and the Act was, therefore, of a colourable nature and invalid.

6. In regard to the demand made u/s 21 of the local Act on account of commission on purchases of cane. learned counsel for the petitioner submitted that the demand of commission for the sugarcane season 1959-60 was illegal inasmuch as u/s 21 (1) (b) of the local Act the commission amount was payable to the Cane Development Council constituted u/s 5 of that Act and during the period 1959-60 no such Council had been constituted and none was in existence; that on the true construe ion of section 21 and rule 45 of the M.P. Sugarcane (Regulation of Supply and Purchase) Rules, 1959, the commission, which was a fee. could of be demanded in respect of a period when the Council to whom it was payable did not come into being and could not and did not render any service.

7. In reply, learned Attorney General appearing for the Union of India asserted the authority of Parliament to enact the law in question by saying that as held by the Supreme Court in Diamond Sugar Mills'' case (supra) there was no entry in the State List or the Concurrent List under which the various Acts enumerated in section 2 (b) of the Act imposing the cess could fall; and that, therefore, a legislation with regard to the imposition and collection of those cesses on sugarcane could validly be enacted by Parliament under article 248 read with

Entry 97 of List 1. It was said that though the Act was described as an "Act to validate the imposition and collection of cesses on sugarcane under certain States Act''s it was in substance a legislation not validating the imposition and collection made under State Acts, but one imposing under the legislative sanction of Parliament cesses at the rate and in the manner imposed, assessed or collected by the various States under the relevant States Acts, and the imposition in any State was for the period before the commencement of the Act in that State during which the cess was imposed, assessed or collected under the State Act, albeit invalidly; and that Parliament had the power to make a retrospective imposition of a tax and to pass a legislation for that purpose having effect for a short period. Learned Attorney General further urged that the Act did not trench upon the Stats Legislative field; that even if the motive of Parliament in passing the legislation was to enable the State Governments to have the benefit of the amount of cess levied and collected them under various State Acts, that did not make the Act colourable in character or alter its true nature; and that the question of motive of the legislation and its consequences were irrelevant to the issue of the legislative competence of Parliament. It was not disputed by the learned Attorney General that the cess imposed by the Act was a tax and that under article 248, read with Entry 97, a tax could be levied only for the purposes of the Union. It was, however, submitted that the imposition and collection by the various States of the cesses imposed by them being invalid, the proceeds of those cesses could never become part of the Consolidated Fund of any State; that the cesses u/s 3 of the Act being imposed by ''Parliament, their proceeds automatically formed under article 266 of the Constitution part of the Consolidated Fund of India; and that being so, the amount of cesses collected by the State Governments under the various State Acts ware nothing but moneys received by them for and on behalf of the Union Government. Learned Attorney General pointed out that the Act no where said that the proceeds of the tax would be returned by the States concerned, and it was now for Parliament to decide whether to allocate the whole or part of the proceeds of the tax to the States by making an appropriation under Article 266 or grants under Article 275; that it was not necessary to provide in the Act itself for appropriation of the proceeds of the tax as the imposition by the Act was not for a period in future after its commencement in any State; and that the absence of a provision with regard to appropriation did not make the Act colourable or invalid.

8. The argument of the learned counsel for the petitioner questioning the legality of the demand for commission u/s 21 of the local Act was answered by Shri Adhikari, learned Advocate General appearing for the State of Madhya Pradesh He sought to meet the argument by reference to the functions of the Cane Development Council set out in section 6 of the local Act. He contended that the commission levied u/s 21 was payable to the Council and it was for promoting better sugarcane cultivation by introducing better varieties of sugarcane, improving the yield providing irrigation facilities, preventing disease to crop and any other way, that the Council functioned that it was not necessary that the

Counsel should give a direct benefit to anyone that the benefit conferred by the Council was spread over a local area and was enjoyed by sugarcane cultivators as a class and to beneficial activities were not confined to a particular period; that therefore the existence of a Council was not a condition precedent for the levy or collection of commission u/s 21, and the collection could be levied and recovered in respect of a period before the coming into being of the Council with a view to pay it to the Council when constituted for enabling it to function effectively for providing the services enumerated in section 6. To support the legality of the demand for commission for the period when the Counsel was not in existence, learned Advocate General relied on the observations made by the Supreme Court in H.H. Sudhundra Thirtha Swamiar Vs. Commissioner For Hindu Religious and Charitable Endowments, Mysore, at p. 975, on the nature (sic) incidence of a fee.

9. On the arguments presented before us, the substantial question in dispute here is not simpliciter whether the Act falls, within Entry 97 of the Union List. It is whether the Act colourable in character in that under the guise or pretence of doing something permitted it is reality doing something prohibited or beyond power. The competency of Parliament to pass a legislation imposing for union purposes a tax of the type and character levied by or under the State Acts enumerated in section 2 (b) of the Act does not admit of any doubt. In the case of Diamond Sugar Mills Ltd. (supra),the Supreme Court invalidated the levy and collection of cess on sugarcane under the U.P. Sugarcane Cess Act, 1956, on the ground that the said Act was beyond the competence of the State Legislature, and observed that it did not fall within Entry 52 of the State List and there was no other entry in either the State List or the Concurrent List in which the law could fall. Following this decision of the Supreme Court; it was held by us in The Bhopal Sugar Industries Vs. State of M.P., M.P. Nos. 27 of 1961, decided of the 31st August 1961, that the cess on sugarcane as imposed by the terms of section 23 of the local Act was beyond the legislative competence of the State Legislature. If, then, the matter of imposition of cess on sugarcane as levied by the Acts mentioned in section 2 (b) dobs not fall under any entry in the State List on the Concurrent List, it follows that Parliament has power under article 248 and Entry 97 to impose a cess of that super. These constitutional provisions give to Parliament the authority of making any law for imposing a tax not mentioned in the Concurrent List or the State List. No doubt, the power of imposing a tax under Entry 97 can be exercised only for imposing a tax for the purposes of the Union. It could not be exercised for validating the levy and collection of cesses under the various State Acts the validity of which was affected by the decision of the Supreme Court in Diamond Sugar Mills'' Case (Supra) by giving to the State Legislatures the legislative competence denied by the Constitution. In the exercise of its residuary power of legislation, it is competent for Parliament to make a law imposing a tax retrospectively fur a period before the commencement of the law. This proposition is unquestionable and firmly settled by the decisions of the Supreme Court in The Union of India Vs. Madan Gopal

Kabra, , and M.P.V. Sundararamier and Co. Vs. The State of Andhra Pradesh and Another, . It also cannot be doubted that the power of legislature to pass a law includes the power to make a law which is effective only for a certain period It follows, therefore, that in the exercise of its residuary power of legislation Parliament can pass a law imposing a cess on sugarcane not falling under any entry in the State List or the Concurrent List for the purpose of the Union and for a period before the commencement of the law made. The question, therefore, for determination is narrowed down to this: whether by section 3 of the Act Parliament has imposed cesses which the State Legislatures could not for lack of legislative competency or whether it has validated the imposition made under the State Acts enumerated in section 2 (b) by clothing the State Legislatures with the legislative power which they did not possess under the Constitution and whether Parliament has attempted to do in an indirect manner that which it was not entitled to do in a direct manner.

10. It is therefore, necessary to examine and scrutinise section 3 of the Act to find out what it does. The Act has no doubt been described as an "Act to validate the imposition and collection of cesses on sugarcane under certain State Acts" and section 3 of the Act also bears the heading "Validation of imposition and collection of cesses under State Acts." But the true nature of the law is to be determined not by the name given to it or by its but by its substance. Now, section 3 of form the impugned Act first says that notwithstanding any judgment, decree or order of any Court, a cess imposed, assessed or collected or purporting to have been imposed, assessed or collected under any State Act before the commencement of the Act shall be deemed to have been validly imposed or collected in accordance with law. This deeming provision only creates an artificial imposition offenses for a period before the commencement of the Act and makes the imposition, assessment and collection thereof "in accordance with law". It does not give retrospective validity to any State Act imposing cess.

11. It is important to note that the ''law'' spoken of in the expression "in accordance with law" occurring in section 3 of the Act is not any State Act mentioned in section 2 (b); it is the law contained in section 3 itself as stated in the words and expressions which follow the phrase "in accordance with law" used in that section. The provision in section 3 "as if the provisions of the State Acts and of all notifications, orders and rules issued or made thereunder in so far as such provisions relate to the imposition, assessment and collection of such cess had been included in and formed part of this section and this section had been in force at all material times when such cess was imposed, assessed or collected" is very important and significant. Its effect is to incorporate in section 3 itself all the provisions of the State Acts and notifications, orders and rules issued or made thereunder relating to the imposition, collection and assessment of cesses. If those provisions, notifications, orders etc., are read as incorporated into section 3, they become part of it, and the imposition assessment and collection of the cess then becomes one u/s 3 itself and not under any State Act. Section 3 further enjoins that it should be read as if it had been in force at all martial times

when such cess was imposed, assessed or collected. It thus provides for the imposition, assessment and collection of cesses for a period before the commencement of the Act. It will thus be seen that the non obstante expression with which section 3 begins can only mean that the imposition by or u/s 3 of the Act shall not be treated as invalid because of any judgment, decree or order of any Court invalidating the imposition made under any State Act. It cannot be construed to mean as validating any State Act.

12. The sanction for the imposition collection and assessment of cesses dealt with by section 3 is the legislative sanction of Parliament and the impugned Act itself, and not the provisions of any State Act or of any notifications, orders or rules issued thereunder. The cess imposed in any State by section 3 of the Act for a past period would no doubt be of the same quality and character as that imposed invalidly under the State Act But from that it does no follow that the invalid imposition, assessment or collection made under a State has been validated. The imposition by section 3 of the Act is under the legislative authority of Parliament itself and not under the authority of any Slate Legislature as expressed in any State Act. What section 3 does is to adopt by reference the provisions of the State Act and all the notifications orders and rules made thereunder, and thus make the imposition, assessment and collection of the cesses done by the State Governments as acts done by them for the Union Government under the authority of section 3.

13. If. as we think, the Act is merely and simply an Act imposing taxation for Union purposes then it is clear that Parliament had the power to enact that legislation under Entry 97 of List I. But it is said that the Act is ''colourable'' in character and seeks to accomplish indirectly what Parliament could not do directly and is, therefore, invalid. The colourable'' character of the Act was suggested on two grounds. The first was that the Act is designed to enable the States to retain the proceeds of the cesses which they had invalidity imposed and collected. The second ground, which was very strongly insisted on, was that the proceeds of the cesses had already gone into the Consolidated Funds of the States and there is no provision in the Act with regard to appropriation, in conformity with article 266, of the proceeds of the cesses retained by the States. Both these grounds are unsubstantial. It may be that in enacting the legislation the object of Parliament was to allow the States ultimately the benefit of the proceeds of the cesses collected by them. But if the enactment is within the legislative competence of Parliament, then the motives which impelled Parliament to act and the consequences of the legislation are really irrelevant and have no bearing on the question whether the Act is or is not a piece of colourable legislation. The doctrine of ''colourable legislation'' has been explained by the Supreme Court in many cases, and it must now be regarded as settled law that the doctrine does not involve any question of bona fides or mala fides on the part of legislature and if the legislature is competent to pass a particular law the motives which impelled to act are really irrelevant. In K.C. Gajapati Narayan Deo and Others Vs. The State of Orissa, , the Supreme Court said:

It may be made clear at the outset that the doctrine of colourable legislation does not involve any question of bona fides or mala fides on the part of the legislature. The whole doctrine resolves itself into the question of competency of a particular legislature to enact a particular law. If the legislature is competent to pass a particular law, the motives which impelled it to act are really irrelevant. On the other hand, if the legislature lacks competency, the question of motive does not arise at all. Whether a statute is constitutional or not is thus always a question of power... If the Constitution of a State distributes the legislative powers amongst different bodies, which have to act within their respective spheres marked out by specific legislative entries, or if there are limitation on the legislative authority in the shape of fundamental rights, questions do arise as to whether the legislature in a particular case has or has not in respect to the subject matter of the statute or in the method of enacting it transgressed the limits of its constitutional powers. Such transgression may be paten'', manifest or direct, but it may also be disguised, covert and indirect and it is to this latter class of cases that the expression colourable legislation'' has been applied in certain judicial pronouncement. The idea conveyed by the expression is that although apparently a legislature in passing a statute purported to act within the limits of its powers, yet in substance and in reality it transgressed these powers, the transgression being veiled by what appears on proper examination, to be a mere pretence or disguise.

Observations to the same effect are to be found in Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, and The Board of Trustees, Ayurvedic and Unani Tibia College, Delhi Vs. The State of Delhi and Another, . These decisions of the Supreme Court make it very clear that when legislative power is granted the motive or object of the legislature in exercising it is not relevant to the question of the validity of its exercise. The Act, which Parliament was competent to enact, cannot, therefore, be treated as a piece of colourable legislation'' on the motive attributed of Parliament by the petitioner.

14. The argument that as the proceeds of the cesses had already become part of the Consolidated Funds of the States, the Act could not therefore be regarded as imposing taxation for Union purposes is fallacious. Under articles 266 all revenues received by the Government of India automatically become part of the Consolidated Fund of India. Likewise, all revenues received by the Government of a State become part of the Consolidated Fund of that State. If, as we think, the impugned Act is a legislation imposing taxation for Union purposes and the proceeds of the cesses collected by the States under the invalidated Acts are now moneys received and held by them on behalf of the Union of India, then it is manifestly clear that those proceeds, even if they went into the Consolidated Funds of the States before the State Acts were invalidated, now automatically become under article 266 part of the Consolidated Fund of India. It is true that the Act does not contain any provision with regard to the appropriation of these moneys. But none is necessary for the simple reason that it is for Parliament to

decide whether the whole or part of the proceeds of the cesses should or should not be assigned to the States. Parliament may choose not to assign any part the proceeds of the cesses to the States or it may assign the whole or part of the same to them. That being so, the omission of a provision in the Act with regard to the appropriation of the proceeds cannot make the legislation one of a colourable character or affect its validity. Even if it be assumed that later on Parliament makes an appropriation out of the proceeds of the cesses not in conformity with the provisions contained in the Constitution with regard to appropriations to be made out of the Consolidated Fund of India, that cannot reflect back upon the Act so as to make it invalid. So to hold would be to accept the altogether untenable proposition that any unauthorised expenditure of the Consolidated Fund of India or that of a State would invalidate all the Acts under or by virtue of which moneys come into that Consolidated Fund. Such a result would no doubt be astounding. The character and validity of the Act, therefore, in no way depend on the appropriation of payments to be made out of the receipts of the cesses imposed by it. In our judgment, the legislation, which is attacked, is not colorable. It admits its character upon its face. There is no justification for saying in regard to it that therein is a pretence of doing one thing under the guise of doing another and that Parliament has attempted to do in an indirect manner that which, it was not entitled to do in a direct manner. Thus the attack made against the validity of the Act must fail.

15. Before dealing with the question of validity of the demand for payment of commission u/s 21 of the local Act, it may be added that during the course of his arguments Shri Chitale, learned counsel for the petitioner, suggested that the Act was also open to attack on the ground of excessive delegation. As this objection has not been taken in the petition, learned counsel did not rightly pursue it before us. It is, therefore, unnecessary for us to consider whether when Parliament adopted the rate of cesses which had been fixed by the States as the rate for imposition of cesses by section 3, there was any abdication of essential legislative function and the delegation if any, involved in section 3 was permissible under article 258 (2) of the Constitution.

16. the petitioner''s objection to the validity of the demand of commission u/s 21 of the local Act in respect of the period during which the Cane Development Council was not in existence is not sound. The argument is made to rest on the expression "the commission shall be payable to the Council" occurring in section 21. The demand questioned no doubt pertains to the sugarcane season 195(sic)-60 when the Council had not been constituted. But reading sections 6, 8 and 21 of the local Act together, it is abundantly clear that the coming into being of the Cane Development Council is not a sine qua non for making a demand for payment of commission u/s 21. u/s 5 of the local Act a Cane Development Council has to be established for the reserved area of a factory. A declaration of reserved area for the petitioner''s factory was made here u/s 15. As provided by section 8 of the local Act, funds of the Council are made up of the grants made by the Indian Central Sugarcane Committee, and by the State Government,

sums received by the Council by way of commission u/s 21 and other sums. Its functions are enumerated in section 6. They are diverse and wide. The activities of the Council are not confined to a particular period. They are continuous with no limitation of time. A glance at the functions which the Council has to carry out shows that it cannot be in a position to render any service or confer any benefits unless it has effectively functioned for some years. The Council cannot clearly function without any funds. The formation of a Council Fund before the constitution of the Council is only a prudent measure taken for enabling the Council to function immediately after it is brought into existence. There is nothing in section 8 or section 21 to prohibit the formation of a Council Fund before the Council is constituted. Section 21, when it says that: commission shall be payable to the Council in certain proportion when the purchase of sugarcane is made through a Cane-growers'' Co-operative Society and wholly to it when the purchase is made directly from the Cane-growers, only provides for the allocation of the commission amount. The expression "shall be payable to the Council'' does not cany the implication that the Council must come into existence, and having come into existence must actually render service, before any demand for commission can be made on the occupier of a factory for payment of commission u/s 21. The commission paid by an occupier u/s 21 can be paid to the Council after it is established. The commission amount forms the bulk of the Council Fund and it is easy to see that if the rule Service first and payment of commission afterwards'' is applied, then the Council will never be able to carry out the functions entrusted to it by section 6.

17. The commission levied u/s 21 is no doubt in the nature of a fee. But according to the connotation and import of ''fee'', it is not necessary that actual services must be rendered first before it can be levied or demanded. A levy in the nature of ''fee'' can be imposed with a view to provide a specific service. This is now made clear by the following observations of the Supreme Court in H.H. Sudhundra Thirtha Swamiar Vs. Commissioner For Hindu Religious and Charitable Endowments, Mysore, at p. 975.

A levy in the nature of a fee does not cease to be of that character merely because there is an element of comparison or coerciveness present in it, nor is it a postulate of a fee that it must have direct relation to the actual services rendered by the authority to each individual who obtains the benefit of the service. If with a view to provide a specific service, levy is imposed by law and expenses for maintaining the service are met out of the amounts collected there being a reasonable relation between the levy and the expenses incurred for rendering the service, the levy would be in the nature of a fee and not in the nature of a tax.

(Underlining is-Itatics ours).

These observations support the content on advanced by the learned Advocate General that a commission u/s 21 could be demanded in respect of a period during which the Council did not come into existence for the purpose of forming the Council Fund and with a view to enable it to function effectively for providing the services mentioned in section 6 of the local Act. In our judgment, the petitioner''s contention that it is under no liability to pay any commission u/s 21 for the period when the Council was not in exist (sic) is not sound and cannot be accepted.

18. For the foregone reasons out conclusion is that the Sugarcane Cess (Validation,) Act, 1961, is a valid piece of legislation and the demand made on the petitioner by the Collector, Ratlam, for payment of Rs. 6,33,917 52 nP. as due from it on account of cane-cess and cane-commission under the Act and the local Act is valid. The result is that this petition is dismissed with costs of the Union of India and the State of Madhya Pradesh. Counsel''s fee for the Union of India is fixed at Rs. 300 and for the State of Madhya Pradesh it is assessed at Rs. 200.