
(1959) 02 MP CK 0024

In the Madhya Pradesh High Court

Case No : Civil Miscellaneous Petition No. 11 of 1959

J.C. Mills

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 05-02-1959

Acts Referred:

Central Provinces and Berar Electricity Duty Act, 1949 — Section 3
Constitution of India, 1950 — Article 226

Citation : AIR 1959 MP 365 : (1959) JLJ 467 : (1959) 4 MPLJ 1215

Hon'ble Judges : H.R. Krishnan, J;A.H. Khan, J

Bench : Division Bench

Advocate : Chitale, for the Appellant;

Final Decision : Dismissed

Judgement

The petitioner is an industrial concern producing, for its own consumption, electric energy in its own power house. It has been taxed to electricity duty u/s 3 of the Central Provinces and Berar Electricity Duty Act of 1949 as amended by the Madhya Pradesh Taxation Laws Amendment Act, 1956 (Act VII of 1956 Chap IV). It has prayed that a proper writ or direction should be granted declaring the Electricity Duty Act as ultra vires of the Constitution and void as against him, and consequently to enjoin the State Government from levying the duty, and ordering it to refund the duty already collected.

The petition has been fully and very ably presented by Shri Chitale, who has on our request, dealt with all the grounds he relies upon. Firstly, it is urged that even within the framework of the Act as amended, the duty cannot be levied from a producer producing electric power for his own consumption or a consumer using electric power produced by himself. Secondly, the argument is that, even if the Act as it stands, did enable the levy of the electricity duty on such a producer, still it is ultra vires of the Constitution, and incompetent even under entry 53 of List II.

One has only to refer to the relevant sections including the table to find that both the arguments are unsustainable. Shri Chitale has urged, rightly from his view point, that the petition may be admitted and notice be issued on the State Government, I am on principle against what may be called the mechanical admission of such applications simply because some ground is urged. Certainly, an application should be admitted if there is at least an arguable case.

But if on the face of it there is no arguable case, and the mere reading of the enactment is sufficient to show the baselessness of the grounds, then the petition should be dismissed summarily. Obviously, a notice to the respondent is issued only, when there is something which he must face and explain, and not where the mere examination of the petitioner's grounds shows that they are without any force.

The Central Provinces and Berar Electricity Duty Act, 1949 (X of 1949) was originally intended only to cover distributors of electric energy as defined in the Act itself. But the amendment of 1956 has introduced far-reaching changes. The preamble now monitions, "sale or consumption of electrical energy". "Consumer" and "Producer" are now defined, the former including a producer also. "Producer" here again means one who generates electrical energy at more than a voltage exceeding 100 volts for his own consumption or for supplying to others".

The taxing section has been amended to read,

". ... every producer electrical energy sold or supplied to a consumer or consumed by himself or his employees...."

The operative table reads "electrical energy supplied for consumption for light etc. etc." Shri Chitale has started by emphasising two propositions, about which there can be no doubt whatsoever. Firstly, that a taxing statute should be construed strictly, and, when ambiguous, in favour of the citizen. Secondly, a general taxing section alone will not be sufficient, but there should be an operative section.

In other words, besides the general provision such as we have in the Income Tax Act, there should also be an operative provision such as we usually have in the Finance Act. In the present instance there are respectively the Section 3 proper, and the table appended to that section.

The point to note is that under the amended Act it is not merely "a distributor" that is liable, but a producer also. To make the matter still clearer the statute has defined "producer" as one who generates electrical energy, whether for his own consumption or for supplying the others. Conversely, the "consumer" is one, who used up power produced by another and bought" by him, or produced -- by himself for his own consumption. In the latter event, the producer is himself the consumer--a vey common happening in every walk of life, including the use of electrical power.

Here again, "consumer" has been defined so as to include the producer himself.

The taxing section itself mentions "producer" and specifically provides, "electrical energy consumed by himself" should be taxed. The words "consumer", "consumed", "consumption" are all cognate, and when one is defined, the contents of the definition go into all of them, wherever they occur in the same Act. The table mentions "supply for consumption", in other words, supply for "use" or "wasting" or "spending" (vide Oxford English Dictionary).

There is a further argument, that the word "supply" is used in the table, without being defined in the Act, and that, therefore, it should be understood in the special sense of, supply of somebody other than the consumer. I fail to understand why the word "supply" which is found in the table, and in the section itself, should be given any peculiar meaning. "Supplied to a consumer" or "supplied for consumption" involve the same idea, namely of its going into the light, fan or other machinery, that is actually using up the power.

Where it comes from is altogether immaterial for this purpose. It may come from power plant owned by the consumer himself, or it may come from a power plant, owned by somebody else, in which latter event, the consumer may be paying a price. While taxing the consumer for the electrical energy supplied to him for consumption, the State is not concerned with the place of its origin.

The word "supply" means "to give", or "to provide or to afford something that is necessary". (O. E. D.). Thus we find no occasion for a definition of this word in the Central Provinces and Berar Electricity Duty Act, 1949. It has also been urged that this word should be read in the sense in which it has been used in the Indian Electricity Act (IX of 1910)

Sections (b) and (c). This latter Act is not on *pari materia* with the present one, and was enacted to control by licences the business of persons producing and selling electrical energy.

Naturally, the consumer there is one who is "being supplied by a licensee or is connected with a licensee for the purposes of supply of energy" because "supply" there is supply by a licensee. That is for the limited purposes of that Act. In fact, if one read "supply" in the sense wanted by the petitioner in the present enactment, it will give rise to the most absurd results. To conclude, therefore, I find that in view of the express wording of the enactment there is no force in the contention that the petitioner cannot be taxed with electricity duty under the Act as it stands.

The second ground is also without any force. Entry 53 List II Schedule 7 reads:

"Taxes on consumption or sale of electricity".

In other words, a State legislature is competent to legislate for taxation on the mere fact of consumption of electrical energy, whether that energy is produced by the consumer himself or purchased from somebody else. Shri Chitale has urged that the word "consumption" should not be understood in the usual dictionary meaning; of the word "consume", that is to say, "the action or fact of

consuming by use, waste, etc". ("consume" itself meaning "waste", "use up", "Spend"), but in a special sense and, in accordance with what he describes as "accepted notions of economics and finance". With all respect, it is difficult to follow this argument.

As for, what is called "the accepted notions" there is unanimity amongst specialists up to a particular point, and difference of opinion later on. Clearly we are not concerned with the discussions about advisability of taxing consumption or, in other words, the using up by anybody of electrical energy. The Constitution enables the State Legislature to tax some body on the mere fact that he consumes electrical energy. It is also urged that this is such a departure from accepted notions that it should properly be treated as it is not a residuary subject within the exclusive legislative competency of the Parliament. I do not agree. The words "consumption of electrical energy" have been put in entry 53 and it is difficult to understand how one can call it "residuary", simply because the actual legislation taxing consumption is a novelty. I, therefore, find that the State legislature is therefore competent to enact the amendments contained in the Madhya Pradesh Taxation Laws Amendment Act, 1956 (Act VII of 1956).

The application is accordingly dismissed summarily.

Khan, J.

I agree.