
(2011) 08 MP CK 0063

In the Madhya Pradesh High Court

Case No : Writ Petition No. 11702 of 2011

NTPC Ltd.

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 24-08-2011

Acts Referred:

Madhya Pradesh Avsanrachna Tatha Sadak Vikas Adhiniyam, 2005 — Section 2(a), 3

Citation : (2011) 08 MP CK 0063

Hon'ble Judges : Vimla Jain, J;K.K. Lahoti, J

Bench : Division Bench

Judgement

Krishn Kumar Lahoti, J.—I.A.9797/11 for vacating ad interim writ dated 29.7.2011.

2. This is an application filed on behalf of Respondents No. 1,3 and 4 for vacating the ad interim writ dated 29.7.2011. The grounds as stated in the application are that the Petitioner has filed this petition with the collusion of Respondent No. 2 against which the recovery was initiated. The Apex Court in identical matters has passed order in which it was directed that the Assessee shall file return before the Authority and to make payment of tax as per the assessment order. The Apex Court on 6.12.2010 has adjourned the hearing of SLP to facilitate the Assessee for the payment of tax as per assessment order without prejudice to its rights and contentions before the Apex Court.

3. Shri Nagrath, learned Addl. A.G. submitted that the aforesaid facts were not brought into the notice of this Court when ad interim writ dated 29.7.2011 was issued by this Court and prays that in view of the order passed by the Apex Court, the ad interim writ dated 29.7.2011 may be vacated and the writ petition filed by the Petitioner be also dismissed.

4. Shri H.S. Shrivastava, learned Senior Advocate for the Petitioner opposed the aforesaid contention and submitted that W.P. No. 11702 of 2011 M/s NTPC Ltd. State of Madhya Pradesh and Ors. 24.08.2011 the prayer which is made in this

petition is entirely different and the contention of the Petitioner that the tax under M.P. Rural Infrastructure and Road Development Act, 2005 (hereinafter referred as the Act of 2005) for the period from 1.8.2007 to 31.3.2007 is not chargeable as it was included in the royalty. It is also submitted that the entire royalty has been paid by the Petitioner to Respondent No. 2 so the Petitioner is not liable to make payment of any tax to the Respondents.

5. Shri Greeshm Jain, learned Counsel appearing for the Respondent No. 2 submitted that the Respondent No. 2 vide Annexure P-3, demanded the amount from the Petitioner in compliance of the order passed by the Apex Court. However, it is submitted by him that the aforesaid tax was included in the royalty and was not separately payable. That an SLP preferred by the Respondent No. 2 is pending before the Apex Court. Apart from this, another consumer of Respondent No. 2 namely M/s Hindalco Industries Ltd. has also approached to the Apex Court in S.L.P.(civil) No. 35849/2010 which is also pending before the Apex Court in which on 28.1.2011 interim order has been passed directing that No. coercive steps shall be taken against that Petitioner. That the Apex Court had already issued ad interim writ in other identical matters and the aforesaid fact may be taken care of.

6. To appreciate rival contention of the parties, we have perused the record. In this case the Petitioner sought following reliefs:

1. To hold that the tax i.e. MPGATSVA under the Act was not payable additionally when the full amount of W.P. No. 11702 of 2011 M/s NTPC Ltd. State of Madhya Pradesh and Ors. 24.08.2011 royalty has been paid by subsuming the tax as per the notification.

2. To issue a writ of certiorari quashing the demand of the tax raised vide letter dt. 22.6.2011/ 5.7.2011 (Annexure P.3) and taking coercive recovery proceeding.

3. To call for all relevant case records and the recovery records of collector and NCL (Respondent No. 2 and 3).

4. To hold that the action of the Collector and Tahsildar in demanding tax over and above royalty is arbitrary and in disregard of the Government of India notification 1.8.2007.

5. Any other suitable relief deemed fit in the facts and circumstances of the case may also kindly be granted together with the cost of this petition.

7. Earlier to it, the Respondent No. 2 and Ors. have filed a writ petition challenging the vires of the Act of 2005. The matter was heard by a Division Bench of this Court and by a common order dated 18.8.2006, the validity of the Act of 2005 was upheld. It will be pertinent to mention here that the matter of Respondent No. 2 which was pending before this Court was not heard and decided by order dated 18.8.2006 and remained pending before this Court. An application was filed by Respondent No. 2 for amendment of W.P. No. 4892/06 by which it was submitted that the provision of the Act of 2005 were contrary to the

notification dated 1.8.2007 and the royalty includes the amount of the tax. This matter came up for hearing before another Division Bench of this Court on 3.2.2011 and on the aforesaid date the Division Bench passed an order which reads thus:

In the instant petition the validity of Sections 2(a) and 3 of the M.P. Avsanrachna Tatha Sadak Vikas Adhiniyam, 2005 (Act No. 7/2005) is under challenge.

Division Bench of this Court vide common judgment dated 18.8.2006 has dismissed the bunch of writ Petition No. 10081/2005 alongwith other connected petitions wherein constitutional validity of the aforesaid provisions was under challenge. A copy of the said judgment is filed alongwith I.A. No. 2543/2011, an application for vacation of stay.

Since the validity of the aforesaid provision has already been upheld by the Division Bench of this Court vide judgment dated 18.8.2006 for the reasons assigned in the aforesaid judgment this petition also stands dismissed in similar terms.

Interim order passed by this Court on 5.4.2006 stands vacated.

8. Thereafter Respondent No. 2 preferred an SLP before the Apex Court. The aforesaid SLP was registered as No. 4191/2011 and the Apex Court passed an order dated 21.2.2011 that in the meantime, No. coercive steps shall be taken against the Petitioner. Thereafter on 21.4.2011 the Apex Court passed an order thus:

Leave granted in the special leave petition. List the appeal along with Civil Appeal Nos. 4056-4064 of 1999 and connected matters.

The interlocutory Application is disposed of in terms of the order dated 6.12.2010 made in I.A. Nos. 3-4 in Civil Appeal No. 4745 of 2006 etc.

9. In Civil Appeal No. 4745 of 2006, the Apex Court passed an order dated 6.12.2010 which is relevant to be referred, which reads thus:

Heard learned Counsel on both sides.

We direct each of the Assesseees, appearing before us to file returns under the relevant statute. If they have filed the returns the Assessing officer will complete the assessment by a reasoned order in accordance with law. If that order is against the Assessee(s), the Assessee(s) should prefer an appeal in accordance with law. If any matter is pending before the Appellate Authority in appeal, the Appellate Authority will decide the matter in accordance with law. It is made clear that, pending appeal(s), every Assessee will pay the taxes without prejudice to its rights and contentions in the pending appeal (s).

The interlocutory applications are accordingly, disposed of.

Place Civil Appeal Nos. 4056-4064 of 1999 and connected matters on 13th January, 2011, subject to over-night part-heard, if any.

10. Now it is stated that the matter has been referred by the Apex Court to a larger Bench of nine Judges. Another consumer of Respondent No. 2 namely M/s Hindalco Industries Ltd. filed a writ petition before this Court which was registered as W.P.16628/2010. The writ petition was heard by another Division Bench of this Court on 25.11.2010 and the petition was dismissed. For ready reference, we quote the order dated 25.11.2010, which reads thus:

25/11/2010:

Shri R.N. Singh, learned Senior Advocate with Shri Aditya Adhikari, learned Counsel for the Petitioner.

Shri Naman Nagrath, learned Additional Advocate General for the State.

Heard on the question of admission and interim relief.

Challenging the demand notices annexure P-1, P-2 and P-3 issued by the Northern Coal Fields Limited seeking deposit of the amounts indicated therein towards deposit of the tax under M.P. Rural Infrastructure Development Act, 2005 (MPGATSV Act, 2005), Petitioner has filed this writ petition and the prayer made is to quash the demand notices.

Having heard Shri R.N. Singh, learned Senior Advocate and Shri Naman Nagrath, learned Additional Advocate General for the State, it is seen that the demand impugned is made by the Respondents in view of certain interim orders passed by the Supreme Court in C.A. No. 4745/06 and various other cases in which the orders were passed on 02/08/2010. Shri R.N. Singh, learned Senior Counsel tried to emphasize that in view of stay granted by this Court on 04/04/06 in W.P. No. 4915/06 i.e. the petition filed by the Petitioners challenging the constitutional validity of the M.P.GATSV Act, 2005 and further the fact that Petitioners are furnishing bank guarantee in accordance to interim order, it is submitted that recovery is not permissible at this stage when the interim order of stay is still in operation. That apart, it is argued by Shri R.N. Singh that adjustment of the amount in accordance to notification issued by the Government of India under the Mines and Minerals (Development and Regulation) Act, 1957 vide notification dated 05/08/57 has not granted.

Shri Naman Nagrath learned Counsel points out that the writ petition filed by the Petitioners being W.P. No. 4915/06 is already transferred to the Supreme Court and is registered as SLP (c) No. 564/2000, that apart, Shri Nagrath submits that when the action is taken by the Respondents in pursuance to the interim order passed by the Supreme Court and further when the constitutional validity of the M.P.GATSV Act, 2005 is already upheld by a Division Bench of this Court in the case of M/s. Neogy & Sons v. State of Madhya Pradesh and Anr., in W.P. No. 10081/2005 decided on 18/08/2006, it is stated that interference in the matter by this Court is not warranted.

Having considered the rival contention, it is seen that the claim made by the Petitioner in this writ petition is already subjudice before the Supreme Court in

the pending SLP That apart when the constitutional validity of the MPGATSV Act is already upheld by this Court and when the impugned recovery is being made in pursuance to interlocutory order passed by the Supreme Court in the pending proceedings pertaining to the constitutional validity of the M.P.GATSV Act judicial propriety demand that this Court should not interfere into the matter and the Petitioner should seek proper relief by initiating appropriate proceedings in the Supreme Court.

So far as right available to Petitioner by virtue of notification issued under the MMRD Act is concerned the said notification pertains to recovery of royalty and will not be applicable in the matter of assessment of tax under the M.P. Rural Infrastructure Development Act, 2005 (MPGATSV Act).

Accordingly, for the aforesaid reasons we see No. ground to interfere in the writ petition at this stage, the petition is, therefore, dismissed.

11. Now the case of the Petitioner may be examined. The Petitioner has sought the aforesaid relief on the ground that the royalty includes the amount of tax as imposed under the Act of 2005 and the Petitioner is not liable to make the aforesaid tax separately apart from the royalty.

12. Shri Nagrath, learned Counsel appearing for the State submitted that the aforesaid tax is not on the coal but it is the tax on the land bearing minerals and the aforesaid royalty does not include the aforesaid tax. That the notification of the Central Government dated 1.8.2007 makes it clear that any amount including any tax imposed in the matter should not exceed the maximum limit as has been fixed by the Central Government. Meaning thereby that the notification is applicable in respect of the States which levy tax on the coal but by the aforesaid Act, No. tax has been imposed on the coal but it is imposed on the land bearing minerals.

13. From the perusal of the facts, it is apparent that the matter is subjudice before the Apex Court in respect of the constitutional validity of the Act of 2005. So far as this Court is concerned the validity has already been upheld in W.P.10081/05 and other connected matters on 18.8.2006. So far as the interpretation of notification dated 1.8.2007 is concerned, the matter has already been decided by this Court in W.P.16628/2010 in M/s Hindalco Industries Ltd. v. Northern Coal Fields Ltd. and now the matter is subjudice before the Apex

14. The Petitioner who is the consumer of Respondent No. 2 was well aware with the aforesaid factual position and the order passed by the Apex Court. In this regard our attention was drawn to Annexure P-3 dated 22.6.2011 issued by the Respondent No. 2 to the Petitioner and letter dated 5.7.2011 issued by the Respondent No. 2 to the Petitioner mentioning of the facts. Meaning thereby that the Petitioner was well aware of the facts and various orders passed by the Apex Court on the date of hearing i.e. on 29.7.2011 but an impression was given to this Court that the aforesaid royalty on coal includes the tax which is apparently not correct. Apart from this, Petitioner ought to have brought to our notice all the

aforesaid orders passed by the Apex Court. Unfortunately, the Respondent No. 2 who was present in Court supported the Petitioner and in these circumstances, order dated 29.7.2011 was passed by this Court by which recovery of various RRCs as contained in Annexure P-4 cumulatively three numbers were stayed. The Petitioner is an entity/undertaking of Central Government and was expected to disclose, bring into the notice before this Court all the facts truly and correctly. Similar is the position with Respondent No. 2 who is also government undertaking and ought to have brought all the facts before this Court but it appears that by concealing the aforesaid facts, the order dated 29.7.2011 was obtained by the Petitioner which ought not to have been done by the Petitioner.

15. The Respondent No. 2 approached the Apex Court and in its matter, the Apex Court passed a specific order dated 21.4.2011 and the order dated 6.12.2010 passed in Civil Appeal No. 4745 of W.P. No. 11702 of 2011 M/s NTPC Ltd. State of Madhya Pradesh and Ors. 24.08.2011 2006 by the Apex Court, were to be complied with by the Respondent No. 2. The Respondent No. 2 initiated proceedings for recovery for the payment of tax and when issued a notice in this regard, the Petitioner approached to this Court and without placing all these facts, prayed for ad interim writ, which was granted to it. Apart from this, the tax is on land bearing minerals and it has No. concern with the royalty deposited by the Petitioner. By the aforesaid act, Petitioner tried to circumvent the order passed by the Apex Court and obtained the order which is contrary to the orders passed by the Apex Court which Petitioner ought not to have done.

16. In these circumstances, we find that the Petitioner by suppressing the aforesaid orders of the Apex Court sought order dated 29.7.2011 by which recovery of tax was stayed. The Respondent No. 2 had also not disclosed the aforesaid facts though these are disclosed subsequently after filing of the return by the Respondent No. 1. In these circumstances, we not only vacate the ad interim writ dated 29.7.2011 but dismiss this petition, because of concealment of the aforesaid facts, not bringing the facts specifically into the notice of this Court and various orders passed by the Apex Court, we impose cost of Rs. 5,00,000/- [Rupees five lakhs only] on the Petitioner. The aforesaid cost be paid by the Petitioner to the State within a period of 90 days from today.

C.C. as per rules.