(1999) 08 SC CK 0153

In the Supreme Court Of India

Case No : Civil Appeals Nos. 1096-1104 Of 1987 With No. 11850 Of 1996

State of U.P. and Others APPELLANT

Vs

Mohan Lal Hargovind Das and Another RESPONDENT

Date of Decision : 04-08-1999

Acts Referred:

Citation : (2000) 10 SCC 347

Hon'ble Judges : S. P. Bharucha, J;N. Santosh Hedge, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Under appeal are the judgments and orders of Division Benches of the High Court of Allahabad allowing writ petitions filed by the respondents.

2. The High Court had earlier struck down sub-section (3) of Section 5 of the U.P. Tendu Patta (Vyapar Viniyaman) Adhiniyam, 1972 ("the Act"). It was replaced by the sub-section which has now been struck down. It reads thus:

"5. (3) A person to whom a permit referred to in clause (b) or clause (c) or clause (d) of sub-section (2) is granted shall be liable to pay, in the manner prescribed, a tax at the rate of three rupees per standard bag of tendu leaves."

3. The High Court was of the view that the U.P. State Legislature was incompetent to enact the said sub-section (3) because the tax therein was not on goods and it fell, accordingly, outside the purview of Entry 56 List II of the Seventh Schedule of the Constitution.

4. The Act was passed in 1972 and it created a monopoly in the State insofar as trade in tendu leaves was concerned. The Act was amended in 1973 and certain activities relating to tendu leaves were permitted to individuals who were holders of permits in that regard. Sub-section (3) of Section 5, as it then read, said that a person to whom such permit was granted "shall be liable to payment of such fee as may be prescribed". Sub-section (3) as it then read was challenged and

was struck down because the State was unable to satisfy the High Court that there was any corelation between the fee that was charged and the services that it performed. Thereupon, Validating Act 5 of 1980 was enacted and instead of sub-section (3) of Section 5 which had been struck down the sub-section as quoted above was introduced. The High Court, in the judgment and order under challenge, took the view that all that was done was to substitute "tax" for "fee" and that the tax was not on the tendu leaves so that the said Entry 56, upon which the State relied, was not attracted.

5. In the submission of the learned counsel for the State, the tax imposed by sub-section (3) of Section 5, enacted by Act 5 of 1980, was a tax on tendu leaves as was clear from the fact that it was imposed at the rate of 3 paise per standard bag of tendu leaves. It was, therefore, in his submission, competent for the State Legislature to have enacted it under the said Entry 56.

6. Learned counsel for the respondent emphasised the context in which the Validating Act (5 of 1980) had been passed. The earlier sub-section (3) had imposed a fee for the permit. It had been struck down, having regard to the law as it then stood, on the ground that no quid pro quo had been established. All that the Validating Act did was to replace the word "fee" with the word "tax". This Court had held the said Entry 56 to confer upon the State the power to enact legislation which compensated it for the use of roads and waterways and there was nothing on the record to show that sub-section (3) of Section 5 as enacted by the Validating Act was for this purpose.

7. In our view, the High Court looked at the said Entry 56 and sub-section (3) of Section 5 of the Validating Act very narrowly. As we read this sub-section (3), it requires a person who holds a permit of the nature specified therein to pay a tax and that tax is payable at a certain rate per standard bag of tendu leaves. The permit entitles the holder thereof to transport tendu leaves. The imposition is clearly on the tendu leaves which are transported and is payable at the stated rate per bag of such tendu leaves. The tax was, therefore, on the transport of goods. The enactment of this sub-section (3) was, therefore, within the competence of the State Legislature, having regard to Entry 56, which permits it to legislate in respect of taxes on goods and passengers carried by roads or waterways. The fact that the record does not indicate that this sub-section was enacted to compensate for use of roads or waterways is not, in the circumstances a factor that derogates from the clear power that the State had.

8. In the circumstances, the appeals are allowed. The judgments and orders under appeal are set aside.

9. The State was required by the order of this Court dated 21-9-1987 to make refunds in terms of the High Court''s orders on condition that the respondents furnish bank guarantees of the full amounts thereof. The State shall be entitled to enforce the bank guarantees after a period of eight weeks, this period being given to enable the respondents to make payment, if they so choose.

10. NO order as to costs.