

(1980) 08 OHC CK 0012

In the Orissa High Court

Case No : Original Jur. Case No. 659 of 1980

Western Coal Fields Ltd.

APPELLANT

Vs

Notified Area Council, Brajrajnagar and Another

RESPONDENT

Date of Decision : 29-08-1980

Acts Referred:

Constitution of India, 1950 — Article 285(1)
Orissa Municipal Act, 1950 — Section 131, 290

Citation : AIR 1981 Ori 18 : (1980) 50 CLT 605

Hon'ble Judges : R.N. Misra, J;N.K. Das, J

Bench : Division Bench

Advocate : R. Mohanty, for the Appellant; C.V. Murty and C.A. Rao, for the Respondent

Final Decision : Partly Allowed

Judgement

R.N. Misra, J.—Challenge in this application under Article 226 of the Constitution is to the levy of holding tax raised by the Notified Area Council of Brajrajnagar (hereafter referred to as the "Council") in respect of the holdings of the petitioner located within the jurisdiction of the Council. Petitioner-Company also challenges the demand of licence fee u/s 290 of the Orissa Municipal Act of 1950.

2. Petitioner -- Western Coalfield Limited -- is a subsidiary Company of Coal India Limited which is a Government Company within the meaning of Section 617 of the Companies Act of 1956 Three collieries by the names of HemgirRampur Coal Company Limited, Orient Colliery Limited and Ib-River Colliery Limited were privately owned collieries. On 30th of January, 1973, under Central Ordinance 1 of 1973, the management of these collieries was taken over by the Government of India. The Ordinance was replaced by Central Act 15 of 1973. Under the Act, the management of the mines vested in the Central Government and the definition of "mine" given in Section 2 of the Act includes buildings, houses, plants, machineries, etcetera. These collieries along with several others were nationalised under the provisions of Central Act 20 of 1973. The Central

Government created the Coal Mines Authority Limited in June. 1973. In 1975, the name was changed to Coal India Limited. On 1-11-1975, the petitioner-Company came to be incorporated. There is no dispute that the Company is wholly owned by the Central Government.

The Council has been constituted under the Orissa Municipal Act of 1950. Under that Act, the Council has power to levy holding tax u/s 131. It has also power to levy licence fee u/s 290. Petitioner challenges the demand " of tax relying on Article 285 of the Constitution and demand of licence fee is assailed on the ground that no service is rendered and in the absence of quid pro quo the demand of fee takes the colour of tax collection whereof is not authorised by the statute.

3. Opposite parties 1 and 2 are the Council and its Executive Officer respectively. They have filed a counter-affidavit through the Executive Officer. They have contended that Coal India Limited is a Government Company having an independent legal existence and is not a Department of the Central Government. As such, the protection of Article 285 of the Constitution is not invocable. They have also pleaded that service has been provided in the areas where coal mines are located by establishing roads, drains and wells. Lighting facilities have been provided and arrangements have been made for removal of the garbage. Schools as also weekly markets have been established. These, it is contended, are sufficient service and demand of licence fee should, therefore, not be permitted to be resisted. It has next been contended that up to the end of 1979-76 taxes have been paid and licence fee has also been paid without demur. There is no justification for offering resistance at this stage.

A rejoinder has been filed on behalf of the petitioner to support its claim.

4. Article 285 of the Constitution provides:--

"(1) The property of the Union shall, save in so far as Parliament may by law otherwise provide, be exempt from all taxes imposed by a State or by any authority within a State.

(2) Nothing in Clause (1) shall, until Parliament by law otherwise provides prevent any authority within a State from levying any tax on any property of the Union to which such property was immediately before the commencement of this Constitution liable or treated as liable, so long as that tax continues to be levied in that State."

Admittedly to the facts of the present case, Sub-article (2) of Article 285 of the Constitution has no application. There is no dispute before us that the restriction in Sub-article (1) applies to demand of tax by the Council. In case the buildings which are subjected to holding tax are property of the Union, there is no scope ? or disputing the petitioner's stand that the same must be exempted from holding tax. The only question for examination, therefore, is whether the buildings which have been subjected to tax are property of the Union

Under the Coal Mines (Nationalisation) Act (26 of 1973) provision has been made for acquisition of the rights of owners of coal mines. Sub-section (1) of Section 3 of that Act provides:--

"On the appointed day, the right, title and interest of the owners in relation to the coal mines specified in the Schedule shall stand transferred to, and shall vest absolutely in, the Central Government free from all incumbrances."

Section 5 of that Act provides:--

"(1) Notwithstanding anything contained in Sections 3 and 4, the Central Government may, if it is satisfied that a Government company is willing to comply, or has complied, with such terms and conditions as that Government may think fit to impose, direct, by an order in writing, that the right, title and interest of an owner in relation to coal mines referred to in Section 3 shall, instead of continuing to vest in the Central Government, vest in the Government company either on the date of publication of the: direction or on such earlier or later date (not being a date earlier than the appointed day), as may be specified in the direction.

XX XX XX"

Undoubtedly, there is no dispute that the Central Government has taken action u/s 5 (1) of the Act Originally u/s 3 (1), the ownership of the mines vested in the Central Government and when the Company came into existence under the direction of the Central Government by governmental action, the mines have now vested in the petitioner-Company. At the relevant time the Company has thus been the owner of the property.

5. Mr. Mohanty for the petitioner has taken the stand that the Company is an instrumentality of the State and, therefore, is entitled to the protection of Article 285 (1) of the Constitution. Reliance has been placed on the ratio of the Supreme Court decision in the case of Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, , and also on the observations in the case of Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, . We are afraid, the angle from which the matter was being examined in those two decisions was very different and, therefore, petitioner would not be entitled to fall back upon the principles decided in those cases to support its present contention before us. In Sukhdev Singh's case (supra) two questions arose for consideration, viz., firstly, whether an order for removal from service contrary to regulations framed under the Oil and Natural Gas Commission Act, 1959; the Industrial Finance Corporation Act, 1948; and the Life Insurance Corporation Act, 1956 would enable the employees to a declaration against the statutory corporation of continuance in service or would only give rise to a claim for damages; secondly, whether an employee of a statutory corporation was entitled to claim protection of Articles 14 and 16 of the Constitution against the

Corporation. As these were the questions for examination, the Court proceeded to consider whether the Corporations were authorities within the meaning of Article 12 of the Constitution so as to be State. In the Airport Authority's case (*supra*), the Court was again called upon to decide whether the International Airport Authority established under the International Airport Authority Act (43 of 1971) is State.

In the second case, most of the decisions of the Supreme Court pertinent to that question were referred to for finding out whether the Airport Authority would be an instrumentality of the State. There can be no dispute that several agencies or bodies would be instrumentalities of the State and yet have their independent existence. Such instrumentalities would have legal persons, complete independent existence and a different fund even though subject to supervision and control by the Central Government. Therefore, merely because an institution would be an instrumentality of the State or would come within the ambit of "other authorities" as contemplated under Article 12 of the Constitution and thereby become subject to review jurisdiction of the Court in regard to its actions in the same way as State action is amenable to judicial review, property owned by such institution cannot be said to be State owned. One of the well-settled principles of law of Corporation is that an incorporated company has independent existence and is a legal person different from those who constitute it. That a company incorporated under the Companies Act is different from the State though wholly owned by it does not require argument to support the proposition. Gajendragadkar, C. J. speaking for the Court in the case of *A. P. State Road Transport Corporation v. I. -T. Officer* AIR 1964 SC 1486, quoted with approval the observations of Lord Denning in the case of *Tamlin v. Hannaford* (1950) 1 KB 18. The Master of Rolls pointed out:--

"In the eye of the law, the corporation is its own master and is answerable as fully as any other person or corporation. It is not the Crown and has none of the immunities or privileges of the Crown. Its servants are not civil servants, and its property is not Crown property. It is as much bound by Acts of Parliament as any other subject of the King. It is, of course, a public authority and its purposes, no doubt, are public purposes, but it is not a government department nor do its powers fall within the province of government."

The learned Chief Justice added:--

"These observations tend to show that a trading activity carried on by the corporation is not a trading activity carried on by the State departmentally, nor is it a trading activity carried on by a State through its agents appointed in that behalf."

In the premises we are not prepared to accept the contention advanced on behalf of the petitioner that protection is available under Article 285 (1) of the Constitution against levy of holding tax.

6. So far as licence fee is concerned, the settled position is that unless there be

quid pro quo, the Council would not be entitled to levy fee. It is true that the quid pro quo need not be cent per cent but has to be substantial. No attempt has been made by the Council to establish that there is substantial quid pro quo. Maintaining roads, keeping the areas sanitary, providing lights and establishing schools are not any special service to the collieries. These are obligations of the Council under the Orissa Municipal Act and out of its other revenue, the obligations have to be discharged. There could be scope for levying a fee only when there would be quid pro quo, i.e. a special service would be rendered in lieu of the fee charged. There is no material before us to come to such a conclusion. We would accordingly hold that until provision is made for specific service in return for the fee, the Council would not be entitled to licence fee. That part of the claim of the petitioner succeeds and the Council is directed not to levy any licence fee until service germane to the licence is provided.

7. The writ application succeeds in part. Both parties are directed to bear their own costs.

N.K. Das, J.

I agree.