PRINCIPLES OF TAXATION LAW

CASE ANALYSIS

Vidya Bharti[364]

CASE ANALYSIS

(State of West Bengal vs. Kesoram Industries Ltd.

(2004) 10 SCC 201: AIR 2005 SC 1646: MANU/SC/0038/2004)

The case specified in the analysis manages some vital Constitutional matters managed in the previously stated case. It manages matters relating to a few entries in the Union and State lists under the seventh schedule of the constitution of India, namely Entries 54 and 97 in List I and Entries 23, 49 and 50 in List II, which identify with a few matters of taxation and also the levy of cess. It explains the separation of taxation powers of Union and States under Article 246. It likewise demonstrates the degree and indicate of the residuary powers of the legislation. It also gives remarks on the basic role of taxation and manages the provisions given in the constitution to the same and likewise explains a couple of angles in the treatment of royalty received.

Name of the Case

Petitioner

State of West Bengal

vs.

Respondent

Kesoram Industries Ltd. & Ors.

Citation

(2004) 10 SCC 201

Date of Judgment

15th January, 2004

Names of the judges

[364] Student, Symbiosis Law School, Pune

Chief Justice R.C. Lahoti, Justice B.N. Agrawal,. Justice S.B. Sinha & DR. Justice AR. Lakshmanan

Judgment delivered by

Chief Justice R.C. Lahoti, Justice S.B. Sinha

Name of the court

The Hon'ble Supreme Court of India

Provisions involved

Entry 54 in List I

Entry 97 in List I

Entry 49 in List II.

Entry 50 in List II

Entry 23 in List II

Article 51 of the Constitution of India

Article 253 of the Constitution of India

Article 276 of the Constitution of India

Article 246 of the Constitution of India

Facts in brief

Initially, the proceedings were between Kesoram Industries Ltd. and Coal India Ltd. The case went to the Calcutta High Court via writ petition. The State of West Bengal turned into a gathering after it felt wronged by the choice of the divisional bench which had struck down some of the levies as ultra-vires to the constitution. The Calcutta High Court by reason of the impugned judgment in coal matters announced the cess imposed on coal to be unconstitutional inter alia having respect to the choices of the Supreme Court in **India Cement Ltd. and Ors. v. State of Tamil Nadu and Ors.**[365] **And Orissa Cement Ltd. etc. v. State of Orissa and Ors**.[366]

[365] 1990 AIR 85, 1989 SCR Supl. (1) 692
[366] 1991 AIR 1617, 1991 SCR (2) 105

Along with the cess on coal bearing land, there were cesses on tea plantation land as well, which were of a similar nature as the cess on coal-bearing land and were brought into the court via writ petitions. Along with them, the Bengal Brickfields Association's petition under Article 32 of the constitution, regarding cess on removal of brick earth and civil appeals under Article 136 of the constitution regarding the decision of the Allahabad High Court about the constitutionality of the cess levied on minor minerals, have also been heard since all raised questions of constitutional significance.

At first this matter was under the watchful eye of a three judge bench of the Supreme Court. Out of the above expressed four matters, the initial two i.e. cess on coal bearing land and tree plantation land raised common issues and were taken up for hearing together. Be that as it may, a conflict of a few prior decisions of the Supreme Court itself drove the three-judge bench to allude the matters to a constitutional bench for proper directions. Along with them, the other remaining matters were additionally put before the constitutional bench.

Issues

a. Substantive issues-

- Whether the levy of cess by the state of West Bengal unconstitutional or not.
- Whether taxation falls within the residuary powers of the parliament or not.
- Whether the impugned cess within the subject matter of the state list affects any entry of the Central list.
- Whether there exists a distinction between a general subject of legislation and taxation.

b. Procedural issues-

- Whether the amendments made by the West Bengal Taxation laws (1992) intra-vires to the Constitution of India.
- Whether the impugned Cess Act, 1980 is constitutional.
- Whether the impugned statutes imposing cess are in pari materia with the statutes which have been held ultra vires by this Court in India Cement (supra) and Orissa Cement (supra)

Arguments in brief

Cess levied is intra-vires the constitution. Entry 49 in List II. Assuming cess to be a duty on mineral rights, it would be secured by Entry 50 in List II. Incidence of duty is fit for being gone on to purchasers or customers by the mine proprietors with an escalating influence on the cost of the coal, it can't be inferred that the assessment has an unfavorable impact on mineral improvement. Entry 23 in List II discusses regulation of mines and mineral advancements, subject to the provisions of List I regarding regulation and improvement under the control of the Union. The Central Legislation has assumed control regulation and improvement of mines, and mineral advancement out in the open interest. By reference to Entry 50 of List II and Entry 54 in List I, the Central enactment has not cast any restrictions on the State Legislature's energy to duty mineral rights, or area for the matter of that. The impugned cess is a duty on coal-bearing and mineral-bearing area. It can at the most be understood to be an assessment on mineral rights. In either case, the impugned cess is secured by Entries 49 and 50 of List II. **State of Orissa and Ors. vs. Mahanadi Coalfields Ltd. & Ors**.[367] is overruled.

Decision of the Court

Leave granted in the Special Leave Petitions. The Supreme Court pointed out that the transaction may involve two or more taxable events in its different aspects. Merely because they overlap, the same does not detract from the distinctiveness of the aspects. Thus, there could be no question of a conflict solely on account of two aspects of the same transaction being made a subject matter of legislation by two legislatures falling within two fields of legislation respectively available to them. So long as the essential character of the levy is not departed from within the four corners of the particular Entry, the measure of tax or the manner of levying the tax would not have any vitiating effect.

Critical Analysis

In India, the proprietary title to onshore minerals vests in the federating states. Nonetheless, this ownership is conditional on legislation governing regulation and control of mining ordained by

[367] 1995 Supp. (2) SCC 686

the Parliament. *Entry 23 of the State List relates to "Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union.".*

However, it is expressly subject to the provisions of the Union List with respect to regulation and development under the control of the Union. *Entry 54 of the Union List provides for "Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest".*

The jurisdiction of the State Legislature under Entry 23 is subject to the limitation imposed by the latter part of the entry. The Supreme Court in **Hingir-Rampur Coal v. State of Orissa**[368] categorically spelled out that if a central act has been passed which contains a declaration by Parliament as required in Entry 54, and if the said declaration covers the field occupied by the impugned act, the impugned act would be ultra vires, not because of any repugnance between the two statutes but because the State Legislatures had no jurisdiction to pass the law. *Sarkaria Commission Report* remarks that Entry 23 of List II has not been made subject to any specific Entry of List I. This means that apart from Entry 54, there are other Entries in List I which may, to an extent, overlap and control, the field of Entry 23 of List II. The Constitutional arrangements regarding the regulation of Mines and Minerals Development are by and large on the lines of Government of India Act, 1935, except that the Entry relating to "Oil fields" has been dealt with in a distinct Entry 53 of the Union List.

In **State of Orissa v. M. A. Tulloch and Co.**[369] a constitutional bench of the Supreme Court held-

(1) subject to the provisions of List I the power of the State to enact Legislation on the topic of "mines and mineral development" is plenary.

(2) to the extent to which the Union Government has taken under its control the regulation and development of minerals that much is withdrawn from the, ambit of the power of the State Legislature under Entry 23. The legislation of the State which had rested on the existence of power under that entry would to the extent of that control be superseded or rendered ineffective, because

[368] 1961 AIR 459, 1961 SCR (2) 537
[369] 1966 AIR 365, 1964 SCR (7) 816

there is not mere repugnancy between the provisions of the two enactments but a denudation or deprivation of State legislative power by the declaration which Parliament is empowered to make.

Entry 97 in List I "Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists."

When a lease is granted and lease deed is executed, the licensee or the lessee is entitled to exploit the mineral found in the area on the terms and conditions of the license and lease granted thereof. The MMRD Act or the Rules framed under the said Act do not authorize the State Government or any of its officers to interfere with the working of the mines in the manner that has been done from time to time.

The Supreme Court clarified that in the scheme of the Lists in the Seventh Schedule, there exists a clear distinction between the general subjects of legislation and heads of taxation. They are separately enumerated. Taxation is treated as a distinct matter for purposes of legislative competence. This distinction is manifest in the language of Article 248, clauses (1) and (2) and of Entry 97 in List I. Under the scheme of the entries, taxation is regarded as a distinct matter and is separately set out. The power to tax cannot be deduced from a general legislative entry as an ancillary power.

Entries in the three lists are not powers of legislation but fields. There is a distinction between the general subject of legislation and heads of taxation. Power to tax cannot be deduced from a general legislative entry as an ancillary power. The primary power to tax may be used for regulating an industry, commodity or any other activity. Power to regulate will not include the power to tax. Union's legislative power does not deprive state's power to tax. State legislative provision for levying a cess whether by tax or fee, but without any intention of regulation and control of the subject of levy does not encroach regulation and control or development functions belonging to Central government due to the levy passed on to the buyer. The method of quantifying the tax is by reference to the annual value thereof. It is well-known that one of the major factors contributing to the value of the land is what it produces or is capable of producing. Merely because the quantum of coal produced and dispatched or the, quantum of mineral produced and dispatched from the land is the factor taken into consideration for determining the value of the land, it does not become a tax on coal or minerals.

Power of 'regulation and control' is separate and distinct from the power of taxation and so are the two fields for purposes of legislation. It is of paramount significance to note the difference between power to ‘regulate and develop' and 'power to tax'. The primary purpose of taxation is to collect revenue. Power to tax may be exercised for the purpose of regulating an industry, commerce or any other activity; the purpose of levying such tax is the exercise of sovereign power for the purpose of effectuating regulation though incidentally the levy may contribute to the revenue. A power to regulate, develop or control would not include within its ken a power to levy tax or fee except when it is only regulatory.

The Union's power to regulate and control does not result in depriving the States of their power to levy tax or fee within their legislative competence without trenching upon the field of regulation and control. Power to tax or levy for augmenting revenue shall continue to be exercisable by the Legislature in whom it vests i.e. the State Legislature in spite of regulation or control having been assumed by another legislature i.e. the Union. State Legislation levying a tax in such manner or of such magnitude as can be demonstrated to be tampering or intermeddling with Centre's regulation and control of an industry can perhaps be the exception to the rule just stated.

Entries 52, 53 and 54 in List I are not heads of taxation. They are general entries. Fields of taxation covered by Entries 49 and 50 in List II continue to remain with State Legislatures in spite of Union having enacted laws by reference to Entries 52, 53, 54 in List I. It is for the Union to legislate and impose limitations on the States' otherwise plenary power to levy taxes on mineral rights or taxes on lands; (including mineral bearing lands) by reference to Entry 50 and 49 in List II and lay down the limitations on State's power, if it chooses to do so, and also to define the extent and sweep of such limitations.

Entry 50 says “Taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development.”

Entry 49 “Taxes on lands and buildings.”

Power to tax mineral rights is with the States; the power to lay down limitations on exercise of such power, in the interest of regulation, development or control, as the case may be, is with the union. This is the result achieved by homogeneous reading of Entry 50 in List II and Entries 52 and 54 in List I. So long as a tax or fee on mineral rights remains in pith and substance a tax for

augmenting the revenue resources of the State or a fee for rendering services by the State and it does not impinge upon regulation of mines and mineral development or upon control of industry by the Central Government, it is not unconstitutional.

Conclusion

Hence, the settled position of law is that the entire field of control and regulation under the procurements of the MMRD Act can't be said to be saved for the Center. In the field involved by the inside for regulation and control, energy to require assessment and expense is accessible to the State inasmuch as it doesn't meddle with the regulation - the force accepted and possessed by the Union. Legislative control over wellbeing in mines and duty on generation rests with the Union. Minor minerals, charge on mineral rights, area and deal are inside of the legislative space of the state. Regulation of mines and mineral improvement and expenses in mineral rights are with both the levels of organization yet the state powers in these zones are liable to the MMRD Act. Charges can be imposed on separate subjects by both the levels of government. Sarkaria Commission prescribes that there is a need of an even minded way to deal with the entire issue. It says that no commonly valuable game plan for the regulation and improvement of mines and minerals, including mineral oil assets, can be advanced, unless the Union Government and the State Government embrace a methodology of collaboration and purposeful action giving a rest to inflexible details or legalities.