THE AMALGAMATED COALFIELDS LTD. AND OTHERS

v.

THE JANAPADA SABHA, CHHINDWARA

1961

February 10.

(B. P. SINHA, C. J., S. K. DAS, A. K. SARKAR, K. C. DAS GUPTA and N. RAJAGOPALA AYYANGAR, JJ.)

Coal Tax—Legality of—Local Legislature authorising such levy by local authority—Legislative competence—Central Provinces Local Self-Government Act, 1920 (C. P. 4 of 1920), s. 51—Government of India Act, 1915 (5 & 6 Geo. 5, Ch. 61), ss. 80A(3), 81(1)(3), 84(2)—Government of India Act, 1935 (26 Geo. 5, Ch. 2), s. 143—Constitution of India, Art. 227.

Section 51 of the Central Provinces Local Self-Government Act, 1920, empowered a district council, subject to the previous sanction of the local Government, to impose "any tax, toll or rate, other than those specified in ss. 24, 48,49, and 50." On March 12, 1935, an Independent Mining Local Board functioning in the area in which the petitioners were working certain mines situated therein, and having vested in it all the powers of a district council, resolved to impose a tax on coal, coal-dust and coke manufactured at the mines or sold within the territorial jurisdiction of the Board. The petitioners who were served with notices of demand requiring them to pay certain sums of money as the tax due by them for despatches of coal from their mines, challenged the legality of the levy of the tax on the grounds, inter alia (1) that the Act which by s. 51 authorised the imposition of the tax, had been passed by the local legislature without the previous sanction of the Governor-General, thereby contravening s. 80A(3) of the Government of India Act, 1915, and that even if it was found that the Act was validly passed before the coming into force of the Government of India Act, 1919, which introduced s. 80A into the Act of 1915, the power conferred by s. 51 to levy tax was exercised only in 1935 and by that date s. 80A had been introduced into the Government of India Act, 1915, and that thereafter there could be no legal imposition of a tax without the previous sanction of the Governor-General being obtained, (2) that s. 51 of the Central Provinces Local Self-Government Act, 1920, on its language and in the context of other provisions referred to in that section, did not authorise the levy of a tax of the nature of the coal tax, and (3) that, in any case, the tax ceased to be legally leviable after the coming

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into force of the Government of India Act, 1935, and of the Constitution of India, since a tax like that in question could be imposed only by the Central Government.

Held: (1) that the Central Provinces Local Self-Government Act, 1920, having received the assent of the Governor-General, its validity cannot be challenged in view of the saving clauses in the proviso to s. 80A(3) and s. 84(2) of the Government of India Act, 1915.

(2) that the validity of Central Provinces Local Self-Government Act, 1920, when enacted, not being open to any objection under the Government of India Act, 1915, any subsequent amendments to the latter Act could not in any manner affect its continued validity and operation.

(3) that on the proper construction of s. 51 of the Act of 1920, the levy of a coal tax is not excluded from the purview of the local authority.

(4) that the continued levy of the tax in question even after the coming into force of the Government of India Act, 1935, and the Constitution of India, is valid in view of s. 143 of the Act of 1935 and Art. 227 of the Constitution.

ORIGINAL JURISDICTION: Petition No. 31 of 1959.

Petition under Art. 32 of the Constitution of India for enforcement of Fundamental Rights.

M. C. Setalvad, Attorney-General of India, S. N. Andley, J. B. Dadachanji, Rameshwar Nath and *P. L. Vohra*, for the petitioners.

B. Sen and *I. N. Shroff*, for the respondent.

1961. February 10. The Judgment of the Court was delivered by

Ayyangar J.

AYYANGAR, J.—This petition under Art. 32 has been filed impugning the validity of two notices of demand served on the petitioners requiring them to pay what has been compendiously described as "coal tax" by the respondent, which is a Local Board constituted under the Central Provinces & Berar Local Government Act, 1948 (C. P. & Berar Act XXXVIII of 1948). The ground of challenge is that there was no legislative power for the levy of the tax and that consequently the fundamental rights of the petitioners under Art. 19(1)(f) and (g) are being violated.

It may be stated at the outset that the tax now impugned has been imposed by the local authority

from March 12, 1935 and that the first occasion when its validity was attacked was in only 1957, though if the petitioners are right in their submissions their acquiescence might not itself be a ground for denying them relief. Before however we set out the points urged by the learned Attorney-General in support of the petition, it would be convenient if we narrate briefly the history of the levy of this tax.

Section 51 of the Central Provinces Local Self-Government Act, 1920 (C. P. Act IV of 1920), which will be referred to hereafter as the Act, ran:

"51(1). Subject to the provision of any law or enactment for the time being in force, a district council may, by a resolution passed by a majority of not less than two-thirds of the members present at a special meeting convened for the purpose, impose any tax, toll or rate other than those specified in sections 24, 48, 49 and 50.

(2). The first imposition of any tax, toll or rate under sub-section (1) shall be subject to the previous sanction of the local Government."

The petitioners are working certain mines situated in the district of Chhindwara and for the area covered by the mines an Independent Mining Local Board was constituted in or about 1926 and such Boards are included in the definition of a Local Board under the Act and they have vested in them all the powers of a District Council. This Mining Board, after obtaining the previous approval of the local Government, passed on March 12, 1935, by the majority requisite under s. 51(1) of the Act a resolution to impose a tax on coal, coal-dust and coke in the following terms:

"The tax shall be levied at the rate of three pies per ton on coal, coal dust or coke, manufactured at the mines, sold for export by rail or sold otherwise than for export by rail within the territorial jurisdiction of the Independent Mining Local Board."

The tax has been levied and collected ever since.

The Local-Self Government Act of 1920 was repealed and re-enacted by the Central Provinces & Berar Local Government Act, 1948, but nothing turns on

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this, because the later enactment and certain amendments made subsequently contain provisions for the continuance of the Local Boards constituted under the repealed enactment and for the continued exigibility of the taxes and cesses in force at the date of the commencement of the Act of 1948. The respondent was, as stated earlier, constituted under the Act of 1948 and is admittedly the successor of the Independent Mining Board which imposed the tax by its resolution dated March 12, 1935, and is legally entitled to continue the levy if the original imposition was valid. There is only one other matter to be mentioned at this stage, viz., that the rate of duty which, as seen from the resolution extracted earlier, was 3 pies per ton when imposed in 1935 was raised by the local body to 9 pies per ton in 1949, this being the rate which now prevails. On August 23, 1958, the Chief Executive Officer of the respondent-Sabha served two notices of demand on the first and second petitioners requiring them to pay sums of Rs. 21,898.64 and Rs. 11,838·09 respectively as the tax due by each, for despatches of coal from their respective mines for the period January 1, 1958, to June 30, 1958. It is the validity of these notices that is impugned in this petition.

The submissions of the learned Attorney-General were three:

(1) The levy of the tax by the Independent Mining Board was invalid at the date of its original imposition in 1935, and consequently the respondent-Sabha —its successor—obtained no authority to continue the same.

(2) Assuming the levy was valid when originally imposed, it ceased to be legal after the coming into force, first of the Government of India Act, 1935 and later of the Constitution of India in 1950 under which the tax in question or some portions of it became exclusively leviable by the Central or Union Government and would not be covered by the saving as to previously existing taxes in s. 143 of the Government of India Act, 1935, and subsequently of Art. 277 of the Constitution.

(3) Assuming further that the provision contained in s. 143 of the Government of India Act covered the tax, the protection afforded by it or the continuance for which it provided, is only for a tax at the rate of 3 pies per ton prevailing before the commencement of the Government of India Act (April 1, 1937), and the increase in the rate to 9 pies per ton in 1949 rendered the levy and the demand illegal either in whole or at least in part.

We shall now proceed to deal with these points in that order:

(1) *That the imposition of the tax by the Independent Mining Board by resolution dated March 12, 1935, was invalid.* This was sought to be rested on three distinct grounds:

(a) that the levy of the tax was in contravention of s. 80A(3) of the Government of India Act, 1915. Section 80A(3) enacted, to quote only the part material:

> "The local legislature of any province may not, without the previous sanction of the Governor-General, make or take into consideration any law—
>
> (a) imposing or authorising the imposition of any new tax unless the tax is a tax scheduled as exempted from this provision by rules made under this Act; or
>
> ....."

The taxes now impugned are not within those enumerated in the schedules to the Scheduled Taxes Rules and hence the previous sanction of the Governor-General was required before a bill authorising the levy of the tax could be taken into consideration. And the Act which by s. 51 authorised the imposition of the tax, had been passed by the local legislature without the previous sanction of the Government having been obtained.

The petition as filed setting out this contention proceeds on the basis that the Act was passed after the Government of India Act, 1919, by which s. 80A was introduced into the Act of 1915 came into force. If that had been the correct position, the proviso to s. 80A(3) reading:

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"Provided that an Act or a provision of an Act made by a local legislature, and subsequently assented to by the Governor-General in pursuance of this Act, shall not be deemed invalid by reason only of its requiring the previous sanction of the Governor-General under this Act."

would be a complete answer to the above objection, since under the Government of India Act, 1915, before and after its amendment in 1919, every bill passed by a local legislative council had, after receiving the assent of the Governor, to be transmitted to the Governor-General and could become law only after the latter had signified his assent (Vide s. 81(1) & (3) of the Act). That the Governor-General had assented to the Act under this provision was never in dispute. The saving contained in the proviso is, it should be noticed, in addition to the general saving contained s. 84(2) of the Government of India Act (to read only the material words): "...the validity of any Act of... any local legislature shall not be open to question in any legal proceedings on the ground that the Act affects...a central subject" which is of wider import and designed to remove all questions of legislative competence of the type now put forward from the purview of Courts.

At the stage of the arguments, however, it was found that the Act had become law even prior to the coming into force of the Government of India Act, 1919, with the result that the contention raised in the petition based on s. 80A(3) could not be urged. From the recitals at the beginning of the Act it was found that the previous sanction of the Governor-General had been obtained to the introduction of the measure in the Local Legislature under s. 79(2) of the Government of India Act, 1915—i.e., before s. 80A(3) introduced into the Government of India Act, 1919, was brought into force.

The learned Attorney-General, therefore, modified his argument and presented it in this form: No doubt when s. 51 of the Act was enacted, it was within the competence of the Local Legislature. But the power conferred by that section to levy the tax was exercised

only in 1935 and by that date s. 80A had been introduced into the Government of India Act and thereafter there could be no legal imposition of a tax, not included in the Scheduled Taxes Rules without the previous sanction of the Governor-General being obtained. We consider this argument wholly without force. The validity of s. 51 of the Act, when enacted, not being open to any objection under the Government of India Act, 1915, the amendments effected to the Government of India Act, 1915, by the Act of 1919 did not in any manner, or to any extent, expressly or even by implication affect or trench upon the continued validity and operation of that section. Obviously, s. 80A(3) was only concerned to lay down the preliminaries for enacting a law after that provision came into force and after a law has once been enacted and is in operation, there is no question of the procedure laid down for bills being attracted. This apart, all controversy is set at rest and any argument of the type now urged is precluded by r. 5 of the Scheduled Taxes Rules which runs:

> "Nothing in these rules shall affect the right of a local authority to impose a tax without previous sanction or with the previous sanction of the local Government when such right is conferred upon it by any law for the time being in force."

The submission therefore that before the power conferred by s. 51 of the Act, the previous sanction of the Governor-General had to be obtained or that there must be fresh legislation, must be rejected.

(b) The second matter urged under this head was based on the meaning to be given to the opening words of s. 51 of the Act: "Subject to the provision of any law or enactment for the time being in force". It was suggested that the provision contained in s. 80A(3) of the Government of India Act read with the Scheduled Taxes Rules framed under that section constituted "a law for the time being in force" to which the power to levy the tax was subject. In the first place, it is clear that a law like that which is found in s. 80A(3) prescribing a procedure for enacting future Acts of the Local Legislature could not be

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comprehended within those words. But even if it did, in the face of r. 5 of the Scheduled Taxes Rules, the construction suggested could have no basis.

(c) The last reason assigned for disputing the validity of the original imposition of the tax, was that s. 51 of the Act on its language and in the context of the other provisions referred to in that section, did not authorise the levy of a tax or cess of the nature of the "coal tax". We are wholly unable to accept this argument. The relevant words of s. 51 are:

"impose any tax, toll or rate *other than those specified* in sections 24, 48, 49 and 50".

It is not suggested that "the coal tax" is one specified in any of the sections set out, and hence there was power to levy any other tax including that which is now impugned. The learned Attorney-General however suggested that the tax authorised by s. 51 should still be somewhat like the taxes referred to in the other sections, though not identical with them. Obviously, in the face of the words "other than those..." the rule of *ejusdem generis* is contra-indicated and if so on no rule of construction could "the coal tax" be excluded from the purview of the local authority.

We, therefore, hold that the original imposition of the tax in 1935 was valid.

(2) The next question is: *has the tax ceased to be legally leviable* by reason of the coming into force of the Government of India Act, 1935 and of the Constitution? Both these constitutional enactments contain express provisions whereby taxes, cesses, etc., which were previously lawfully levied by local authorities for the purposes of their local areas, might continue to be collected and applied for the same purposes notwithstanding that those taxes could thereafter be imposed only by the Central or the Union Government, as the case may be (Vide s. 143 of the Government of India Act, 1935, and Art. 277 of the Constitution). The objection therefore that "coal tax" or some of the components of it, could have been imposed only by the Central Government or the Union Government is no ground for impugning the continued validity and exigibility of the tax. It is needless to add that if the

tax fell within the Provincial or the State List, the levy would be valid under s. 292 of the Government of India Act and Art. 372 of the Constitution even without the aid of the special provision in s. 143 or Art. 277. In view of these considerations the learned Attorney-General did not address us seriously on this point.

(3) The last point urged was as regards the validity of the increase in the rate of tax to 9 pies per ton effected in 1949, i.e., after the commencement of Government of India Act, 1935. This objection was not even hinted in the petition now before us, and we did not consider it proper to permit petitioners to raise the point.

The result is that the petition fails and is dismissed with costs.

Petition dismissed.

THE CHIEF INSPECTOR OF MINES AND ANOTHER

v.

LALA KARAM CHAND THAPAR ETC.

(B. P. SINHA, C. J., S. K. DAS, K. C. DAS GUPTA, N. RAJAGOPALA AYYANGAR and J. R. MUDHOLKAR, JJ.)

Colliery Company—Violation of Coal Mines Regulations—Prosecution of all directors of company, the managing agents and the manager of company—Legality—Mines Act of 1923 repealed and re-enacted—Regulations made thereunder, if continue in force—'Anyone of directors' meaning of—Indian Coal Mines Regulations, 1926—Mines Act, 1923 (4 of 1923), s. 31(4)—Mines Act, 1952, (35 of 1952), ss. 2(1), 76—General Clauses Act, 1897 (10 of 1897), s. 24—Constitution of India, Art. 20(1).

The directors of a company, which was the owner of a colliery, the directors of the managing agents of the company, and the manager and the agent of colliery were prosecuted for offences under ss. 73 and 74 of the Mines Act, 1952, for violation