1960

November 30.

THE STATE OF MADHYA PRADESH

v.

THE GWALIOR SUGAR CO., LTD., AND OTHERS

(AND CONNECTED APPEAL)

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

Cess—Levy on sugar cane ordered by erstwhile Ruler—Constitutional validity—Constitution of India, Arts. 14, 265, 373.

In order to put the sugar industry on a stable footing, for which it was necessary to develop the cane area, the Ruler of the erstwhile Gwalior State by an order dated 27-7-1946 sanctioned the levy of cess of one anna per maund on all sugar cane purchased by the respondent company. When the Government of Madhya Bharat, which was the successor state of the former Gwalior State, made a demand for payment of the cess, the respondent filed a petition before the High Court of Madhya Bharat challenging the legality of the levy on the grounds (1) that the order dated 27-7-1946 was only an executive order and not a law under Art. 265 of the Constitution of India and that, therefore, there was no authority for the imposition of the cess after January 26, 1950, and (2) that the levy was discriminatory and violated Art. 14 inasmuch as while the respondent was made liable to pay the cess the other sugar factories in the State were exempt. It was found that at the time when cess was first levied there was no sugar factory in existence in the Gwalior State other than that of the respondent.

Held, that (1) the Ruler of an Indian State was an absolute monarch in which there was no constitutional limitation to act in any manner he liked, he being the supreme legislature, the supreme judiciary and the supreme head of the executive. Consequently, the order dated 27-7-1946 issued by the Ruler of Gwalior State amounted to a law enacted by him and became an existing law under Art. 372 of the Constitution of India. The levy of cess was therefore by authority of law within the meaning of Art. 265;

Madhaorao Phalke v. *The State of Madhya Bharat*, [1961] 1 S.C.R. 957, followed.

(2) the levy of cess did not contravene Art. 14 because (a) the object was cane development in the particular area and a geographical classification based upon historical factors was a permissible mode of classification, and (b) a tax could not be struck down as discriminatory unless it was found that it was imposed with a deliberate intention of differentiating between

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an individual and individual; and particularly, in the instant case, where when cess was first sought to be levied, there was no other sugar factory existing in the State.

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 98 and 99 of 1957.

Appeals from the judgment and order dated August 31, 1954, of the Madhya Pradesh High Court in Civil Misc. Case No. 9 of 1953.

R. Ganapathi Iyer and *D. Gupta*, for the appellant in C. A. No. 98 of 1957 and respondents in C. A. No. 99 of 1957.

S. K. Kapur and *Naunit Lal*, for the respondents in C. A. No. 98 of 1957 and appellant in C. A. No. 99 of 1957.

1960. November 30. The Judgment of the Court was delivered by.

MUDHOLKAR, J.—These are cross appeals from two judgments of the erstwhile High Court of Madhya Bharat. Both of them arise out of a writ petition presented by the Gwalior Sugar Company Ltd., who are respondents in C. A. 98 of 1957, in which they challenged the validity of the levy of a cess on sugarcane purchased by the respondents. The grounds on which the validity of the cess is challenged are two. The first ground is that it was not levied under any law and the second ground is that it is discriminatory against the respondents.

In order to appreciate these contentions it is necessary to set out certain facts. In the year 1940 in pursuance of an agreement entered into between the Government of Gwalior State and Sir Homi Mehta and others a sugar factory was established at Dabra. The name of that factory is The Gwalior Sugar Co., Ltd. On June 20, 1946, the Maharaja Scindia, the ruler of Gwalior State constituted a Committee to consider the desirability of imposing a "cane cess on the lines of the United Provinces or Bihar and to recommend a procedure for fixation of sugar prices within the terms of the agreement subsisting between the Government and the factory". The Report of the

Committee was submitted to the Maharaja by the Chairman on July 23, 1946. In their report the Committee observed that in order to put the industry on a sure and stable footing it was absolutely necessary to develop the cane area and yield in the shortest possible time. For this purpose the Committee recommended that it was essential to levy a cane cess of one anna per maund on all sugar cane purchased by the respondent factory. At the foot of this report the Maharaja made the following endorsement "Guzarish sanctioned, J. M. Scindia, 27-7-46". It may be mentioned that the Committee also recommended the establishment of a Cane Development Board. This recommendation was also accepted by the Ruler. On August 26, 1946, the Economic Adviser to the Government of Gwalior wrote a letter to the Manager of the respondent factory. It will be useful to reproduce the text of that letter as it will have some relevance on the second ground on which the cess is challenged. The letter runs thus:

"Dear sir,

With a view to expand cane area and cane yield in the Harsi commanded area so that the Gwalior Sugar Co., Ltd., be put on a sound and stable basis, the Gwalior Government have decided to impose a cane cess of one anna per maund on all sugarcane purchased by your factory. The operation of this cess will start from the coming sugarcane crushing season.

The proceeds of the cess have been earmarked for cane development work in the Harsi region that will be undertaken by a Cane Development Board constituted for the purpose.

The Cane Development Board expects your co-operation in this development work, which is proposed to be undertaken as soon as possible.

Yours sincerely,
Secretary,
Cane Development Board."

The respondent factory protested against this levy. After the formation of the State of Madhya Bharat,

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the respondent made a representation to the Government of Madhya Bharat against the levy of the cess. That representation was, however, rejected. They, then, paid the cess for the years 1946 to 1948 amounting to Rs. 1,17,712-8-2. The Government of Madhya Bharat made a demand from the respondents for a sum of Rs. 2,79,632-14-9 for the years 1949 to 1951. The respondents challenged the demand upon the two grounds set out above and presented a petition before the High Court of Madhya Bharat for quashing the demand. The petition was opposed on behalf of the State of Madhya Bharat which was the successor State of the former Gwalior State. The High Court granted the petition partially by holding that the State of Madhya Bharat was not entitled to recover the cess due from the respondents after January 26, 1950. It may be mentioned that it was conceded on behalf of the respondent company before the High Court that the State was entitled to recover the cess prior to January 26, 1950. Later, however, the respondents preferred a review petition to the High Court in which they sought relief even in respect of the cess for the period prior to January 26, 1950. The review petition was dismissed by the High Court upon the ground that no such petition lay. The respondents are challenging the view of the High Court in C. A. No. 99 of 1957. After the coming into force of the States Re-organization Act, 1956, the State of Madhya Pradesh has been substituted for the State of Madhya Bharat and they are shown as appellants and respondents respectively in the two appeals.

The High Court struck down the cess upon the ground that the order dated July 27, 1946, of the Gwalior Durbar was only an executive order and not a law under Art. 265 of the Constitution and that, therefore, there was no authority for the imposition of the cess after January 26, 1950. This point is covered by the decision of this Court in *Madhaorao Phalke* v. *The State of Madhya Bharat and Another* (1) decided on October 3, 1960. In the course of the judgment of this Court delivered by Gajendragadkar, J., he pointed out:

(1) [1961] 1 S.C.R. 957.

"It would thus be seen that though Sir Madhava Rao was gradually taking steps to associate the public with the government of the State and with that object he was establishing institutions consistent with the democratic form of rule, he had maintained all his powers as a sovereign with himself and had not delegated any of his powers in favour of any of the said bodies. In other words, despite the creation of these bodies the Maharaja continued to be an absolute monarch in whom were vested the supreme power of the legislature, the executive and the judiciary.

"In dealing with the question as to whether the orders issued by such an absolute monarch amount to a law or regulation having the force of law, or whether they constitute merely administrative orders, it is important to bear in mind that the distinction between executive orders and legislative commands is likely to be merely academic where the Ruler is the source of all power. There was no constitutional limitation upon the authority of the Ruler to act in any capacity he liked; he would be the supreme legislature, the supreme judiciary and the supreme head of the executive, and all his orders, however issued, would have the force of law and would govern and regulate the affairs of the State including the rights of the citizens.

"It is also clear that an order issued by an absolute monarch in an Indian State which had the force of law would amount to an existing law under Art. 372 of the Constitution."

From these observations it would be quite clear that the endorsement of the Maharaja on the Guzarish whereby he accepted the recommendation of the Committee about imposing a cess on the sugarcane crushed by the factory amounted to a law, however informal that endorsement may appear to be. Since it was a law enacted by the Maharaja then, with the coming into force of the Constitution, it became an existing law under Art. 372 and thus it satisfies the requirements of Art. 265 of the Constitution.

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Disagreeing with the High Court we therefore hold that the cess was imposed by authority of law.

What remains to be considered is whether this cess violates the guarantee of equal protection contained in Art. 14 of the Constitution. What was urged before the High Court and what was also urged before us was that this is the only sugar factory in the present State of Madhya Pradesh which is liable to pay the cess whereas other sugar factories are exempt therefrom. The result of this is that those other sugar factories do not have to pay this cess and are thus better placed in the matter of carrying on their business of manufacturing and marketing of sugar than the respondents and so there is discrimination against the respondents in that respect. It seems to us, however, that this cannot be regarded as discrimination at all, even after the formation of the State of Madhya Pradesh. The reason is that the difference arises out of the historical background to the imposition of this cess. It has recently been held by this Court in *M. K. Prithi Rajji* v. *The State of Rajasthan & Ors.* (1) decided on November 2, 1960, that geographical classification based upon certain historical factors is a permissible mode of classification. In our opinion, the principle underlying that decision would also apply to the present case. In view of the decision, Mr. Kapur the learned counsel for the respondents sought to rest his argument on a somewhat different ground. That ground is that under the order of June 27, 1946, the respondent factory alone was made liable to pay cess and that no similar liability was imposed upon any other factory in Gwalior. It would, however, appear that at that time no other sugar factory was at all in existence in the Gwalior State. The respondent factory was the first to be established and for all we know is even today the only sugar factory in the area which formerly constituted the State of Gwalior. We have already quoted the letter written by the Economic Adviser to the Gwalior Government addressed to the Management of the Gwalior Sugar Co., Ltd. From that letter it would

(1) C.A. No. 327 of 1956.

appear that the cess was imposed for a definite purpose and that was to expand the cane area in the Harsi commanded region so that the Gwalior Sugar Co., Ltd., that is, the respondent factory would be put on a sound and stable basis. It will, therefore, be clear that far from discriminating against the factory, the whole object of the cess was to do something for the benefit of the factory and for the benefit of the sugar industry in the State which was at that date in its infancy. Apart from the fact that in the matter of taxation the legislature enjoys a wide discretion, it should be borne in mind that a tax cannot be struck down as discriminatory unless the Court finds that it has been imposed with a deliberate intention of differentiating between an individual and an individual or upon grounds of race, religion, creed, language or the like. There was no question of doing anything like this in the year 1946 when no other sugar factory existed in the State of Gwalior. The cess was thus good in law when enacted and it has not been rendered void under Art. 13 by reason of the coming into force of the Constitution on the ground that it violates Art. 14. In our opinion, therefore, both the grounds on which the validity of the cess is challenged are ill-conceived and the cess is a perfectly valid one. It would, therefore, be competent to the State of Madhya Pradesh to realise that cess from the respondent factory. Upon the view we have taken in the matter in C. A. No. 98 of 1957 nothing remains to be considered in C. A. No. 99 of 1957. Accordingly we allow the appeal by the State and dismiss that of the respondents.

The costs of the appeal will be borne by the respondents in C. A. No. 98 of 1957. As both the appeals were argued together, there will be only one set of hearing fees.

Appeal No. 98 allowed.

Appeal No. 99 dismissed.