

(2006) 08 JH CK 0022

Jharkhand High Court

Case No: Writ Petition (S) No. 5374 of 2003 and W.P. (T) No. 4987 of 2004

Coal Mines Officers' Association
of India

APPELLANT

Vs

State and Others
 Rungta
Project Ltd. and Another Vs State
of Jharkhand and Others

RESPONDENT

Date of Decision: Aug. 24, 2006

Acts Referred:

- Constitution of India, 1950 - Article 14, 19(1), 21, 246, 265
- Hazaribagh Mines Board Act, 1936 - Section 13, 13(1), 32

Citation: (2006) 4 JCR 547

Hon'ble Judges: S.J. Mukhopadhyaya, Acting C.J.; D.P. Singh, J; D.K. Sinha, J

Bench: Full Bench

Advocate: Binod Poddar, Ananda Sen, S.K. Mishra and Vikash Kr., Devi Pal, H.K. Jha and M. Upadhyay, Satya Delabehra, Bhaiya Vishwajeet Kumar and Shankar Singh, in W.P.T No. 4987/04, P.K. Sinha and Rohit Roy, in W.P. T No. 4987/04, Jagdeep Dhankar, Indrajit Sinha, P.A.S. Pali and K. Sarkhel in W.P.T No. 6067/04, M.S. Mittal, A.K. Yadav, N.K. Pasari and A.R. Choudhary, in W.P.T No. 22/05, Y.N. Mishra, Addl. C.G.C. and J.P. Gupta, Asstt. C.G.C, for the Appellant; K.K. Jhunjhunwala, G.P.III, S.K. Verma, S.C. (Mines) and M.J. Rahman, J.C. to G.P.2, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

S.J. Mukhopadhyaya, A.C.J.

- In all the cases as common questions of law are involved, they were heard together and are being disposed of by this common judgment.

2. Petitioner Coal Mines Officers" Association of India of W.P.(S) No. 5374 of 2003 has challenged the Notification No. 1308 dated 29th May, 2003, whereby and where under, the State of Jharkhand, in exercise of power conferred by Section 13(c) of the Hazaribagh Mines Board Act, 1936 (hereinafter referred to as "Mines Board Act, 1936"), framed Hazaribagh Mines Board Profession Tax Bye-laws, 2003" and imposed Professional Tax on different items, such as salary, purchase of coal and other minerals. The consequential orders passed by one or other authority have also been challenged by the petitioners.

Petitioner Rungta Project Ltd. & anr. of W.P.(T) No. 4987 of 2004 while sought for a declaration that the Hazaribagh Mines Board Act, 1936 is ultra vires to entry 54 List 1 of VIIth Schedule of the Constitution of India, further sought for a declaration that imposition of professional tax on the activities, operations and functions of the mining areas in the district of Hazaribagh is ultra vires to Article 14, 19(1)(g) and 21 of the Constitution of India.

Petitioner Steel Authority of India Ltd. of W.P.(T) No. 6067 of 2004 while sought for a declaration that the "Hazaribagh Mines Board Profession Tax Bye-laws, 2003" is ultra vires to Article 265 of the Constitution and, therefore, unconstitutional, further prayer has been made for a declaration that Clause-9 of the Hazaribagh Mines Board Profession Tax Bye-laws, 2003 is unconstitutional being ultra vires to Article 276(2) of the Constitution of India as it imposes profession tax beyond the upper limit of Rs. 2500/- per annum as mandated by Clause-2 of Article 276 of the Constitution of India. The consequential relief has also been sought for against the order, contained in letter dated 10th September, 2003, issued by the State of Jharkhand, being illegal.

Petitioner Tata Iron & Steel Co. Ltd. of W.P.(T) No. 22 of 2005 while made similar prayer for a declaration that the "Hazaribagh Mines Board Profession Tax Bye-laws, 2003" is ultra vires to Articles 265 as well as 276(2) of the constitution and, therefore, unconstitutional, it has also prayed to set aside the consequential orders, contained in letter dated 14th January, 2004 and 10th June, 2004, issued by the Secretary, Hazaribagh Mines Board.

3. As all the cases can be disposed of on a short point, it is not necessary to discuss all the facts, except the relevant one.

Petitioners, Coal Mines Officers" Association of India, CCL and others of W.P.(S) No. 5374 of 2003 have challenged Clause-4 of the Hazaribagh Mines Board Profession Tax Bye-laws, 2003, (hereinafter referred to as "the Profession Tax Bye-laws, 2003") as quoted hereunder:

SALARY

Any person responsible for paying any salary shall at the time of payment deduct profession tax on the amount payable at the rate of 0.5% for the month in which the

payment is made. Provided that salary include all the allowances paid, except traveling allowance.

On the other hand, other petitioners, such as, Steel Authority of India Limited of W.P.(T) No. 6067 of 2004; Rungta Project Limited & another of W.P.(T) No. 4987 of 2004 and Tata Iron & Steel Company Limited of W.P.(T) No. 22 of 2005 have challenged Clause-9 of the said Profession Tax Bye-laws, 2003, as quoted hereunder:

9. Purchase of Coal and other Minerals;

Every person, being a seller, at the time of debiting of the amount payable by the buyer to the account of the buyer or at the time of receipt of such amount from the said buyer in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, collect from the buyer of coal or any other mineral, a sum equal to half percent (0.5%) of such amount as Professional Tax,

4. The main plea taken by the petitioners is that the State of Jharkhand has no jurisdiction to enact any subordinate legislation with respect to levy of Professional Tax by invoking powers granted u/s 13(1)(c) of the Hazaribagh Mines Board Act, 1936.

According to petitioners, the State Government has not been empowered u/s 13(1)(c) of the Hazaribagh Mines Board Act, 1936 to frame a Bye-laws relating to Professional Tax, as it does not at all deal with Professional Tax.

The other ground taken by the petitioners is that the Statute under which the subordinate legislation, such as Profession Tax Bye-laws, 2003 has been made having not authorized the State to impose such Professional Tax, the State of Jharkhand has no competence to issue such Profession Tax Bye-laws.

5. Learned Counsel for the petitioners also relied on Article 276(2) of the Constitution, wherein upper limit of Rs. 2,500/- Per annum has been imposed for levying Professional Tax. It was submitted that the Professional Tax having been imposed more than the upper limited, prescribed under Article 276(2), Clause-4 & 9 of the Profession Tax Bye-laws, 2003 are ultra vires to Article 276(2). Further, according to petitioners, Professional Tax cannot be levied without authority of law as mandated under Article 265 of the Constitution.

6. It has already been pointed out that Profession Tax Bye-laws, 2003 has been framed by the State of Jharkhand, in exercise of power conferred u/s 13(1)(c) of the Hazaribagh Mines Board Act, 1936, as quoted hereunder:

13. The Hazaribagh Mines Board Fund - (1) There shall be formed for the Board a fund to be called "the Hazaribagh Mines Board Fund" which shall be vested in the board and there shall be placed to the credit thereof:

(a)...

(b) ...

(c) all sums realized by the Board, as costs, fees or otherwise under this Act or any by-laws framed thereunder.

The aforesaid provision does not provide for any subordinate legislation with respect to levy of Professional Tax, So far as the "Hazaribagh Mines Board Act, 1936" as regard the power to make Bye-laws is contained Section 32 of the said Act deals with the same, which reads as follows:

32. Power of the Board to make bye-laws.-(1) The Board may make bye-laws to regulate:

(a) the erection or re-erection of buildings intended for the use and habitation of labourers employed by mine owners;

(b) the steps to be taken by owners or occupiers of lands and buildings within the mining areas, to secure cleanliness and to prevent any nuisances;

(c) the manufacture, storage or sale of any specified article of food or drink;

(d) the inspection of any place used for the manufacture, storage or sale of any specified article of food or drink;

(e) any form of traffic on roads;

(f) the prevention of obstructions and encroachments and of nuisances on or near roads;

(g) the preservation of roads;

(h) the temporary closing of roads or other words for any necessary purposes;

(i) the provision to be made by person in charge of a mine situated in the mining areas for the medical relief of inhabitants of the mining areas; and

(j) the sanitation, drainage and conservancy of the mining areas;

(2) Bye-laws made by the Board shall not have effect until they have been confirmed by the State Government.

(3) The State Government may, after giving reasonable notice to the Board rescind any bye-law which it has confirmed, and thereupon such bye-law shall cease to have effect.

(4) In making any bye-law under this section, the Board may direct that the breach thereof shall be punishable with fine which may extend to fifty rupees, and when the breach is a continuing one, with a further fine not exceeding five rupees for every day after the date of the first conviction during which the offender is proved to have persisted in the offence.

It would be seen that the Hazaribagh Mines Board Act, 1936 does not contain any provision with respect to levy of professional tax in any manner whatsoever. No tax can be imposed by any bye-laws or rule or regulation unless the Statute under which such subordinate legislation is made specifically authorized imposition of such tax. In this connection, one may refer the decision of the Supreme Court in the case of [Bimal Chandra Banerjee Vs. State of Madhya Pradesh etc.,](#) .

It is a settled law that in fiscal matter, in absence of a express provision, a delegated "authority cannot impose tax or fee; there should be specific provision for imposing tax. The delegated authority bound to act strictly within the parameters of the authority delegated with under the Act.

Article 265 of the Constitution requires following conditions to be fulfilled before a tax can be levied or collected:

- (i) There must be a law to impose tax;
- (ii) The law must authorize the tax;
- (iii) The tax must be levied and collected in accordance with law.

In the case of [Mafatlal Industries Ltd. and Others Vs. Union of India \(UOI\) and Others,](#) , a Nine Judge Bench of the Supreme Court held as under:

Article 265 forbids the State from making an unlawful levy or collecting taxes unlawfully. The bar is absolute. It protects the citizens from any unlawful exaction of tax. So long as Article 265 is there, the State cannot be permitted to levy any tax without authority of law and if any tax has been collected unlawfully that must be restored to the person from whom it was collected.

In the case of [District Mining Officer and Others Vs. Tata Iron and Steel Co. and Another,](#) , the supreme Court reiterated the aforesaid proposition of law and held as under: -

Under Article 265 of the Constitution, no tax shall be levied or collected except by authority of law. It is thus explicit that not only the levy, but also the collection of a tax must be under the authority of some law. The authority of law refers to a valid law, which in turn would mean that the tax proposed to be levied must be within the legislative competence of the Legislature, imposing the tax and the law must be validly enacted. It must also not contravene the specific provisions of the Constitution and the tax in question must be authorized by such valid law.

Article 276 of the Constitution of India deals with Taxes on professions, trades, callings and employments, as quoted hereunder:

Article 276. Taxes on professions, trades, callings and employments:

- (1) Notwithstanding anything in Article 246, no law of the legislature of a State relating to taxes for the benefit of the State or of a municipality, district board, local

board or other local authority therein in respect of professions, trades, callings or employments shall be Invalid on the ground that it relates to a tax on income.

(2) The total amount payable in respect of any one person to the State or to any one municipality, district board, local board or other local authority in the State by way of taxes on professions, trades, calling and employments shall not exceed (two thousand and five hundred rupees) per annum.

(3) The power of the legislature of a State to make laws as aforesaid with regard to taxes on professions, trades, callings and employments shall not be construed as limiting in any way the power of parliament to make laws with respect to taxes on income accruing from or arising out of professions, trades, calling and employments.

The provision of Clause 4 & 9 of the Hazaribagh Mines Board Profession Tax Bye-laws, 2003, as it evident, run contrary to the provisions of Article 276(2) of the Constitution of India, which imposes Professional Tax at the rate of a sum equal to 0.5% of the total amount of a transaction.

In the case of [Cantonment Board, Mathura Vs. Krishna Bricks and Lime Factory,](#), the supreme Court held as follows:

Article 276 of the constitution, within a prescribed limit, enables the legislature of a State to make law for imposition of taxes on income for the benefit of the State or municipality, district board, local board or other local authority from professions, trades, calling saying that such law shall not be invalid on the ground that it relates to a tax on income. In view of Clause (2) of Article 276, no law of legislature of a State relating to imposition of taxes for the benefit of the State or of a municipality, district board, local board or other local authority therein in respect of professions, trades, callings shall be valid, if it provides the total amount payable in respect of any one person to the State or to any one municipality, district board, local board or other local authority in the State, exceeding the limit fixed by Clause (2).

Thus, it is apparent that the Hazaribagh Mines Board Profession Tax Bye-law, 2003 is ultra vires and unconstitutional being violative of Articles 265 and 276 of the Constitution of India.

From the Bye-laws (1)(b) of the Hazaribagh Mines Board Profession Tax Bye-law, 2003, it is evident that the said Bye-laws shall come into force, from the date as may be decided by Hazaribagh Mines Board.

7. During the hearing of the cases, respondent, Hazaribagh Mines Board was directed to file affidavit, enclosing a copy of the decision, if any taken by the Hazaribagh Mines Board giving effect to Profession Tax Bye-laws, 2003 and the Notification, if any, issued giving such effect.

In the counter affidavit, the respondents have admitted that the Hazaribagh Mines Board has not yet taken any decision to give effect to Hazaribagh Mines Board Profession Tax Bye-law, 2003 and thus, it is clear that the Hazaribagh Mines Board Profession Tax Bye-laws, 2003 has not yet come into force. It was informed that the Profession Tax Bye-laws, 2003, issued vide Notification No. 1308 dated 29th May, 2003 has been stayed by a subsequent Notification No. 2394 dated 17th December, 2004.

According to respondents, the State of Jharkhand has taken decision to rescind the Profession Tax bye-laws, 2003, as communicated by the Notification dated 17th December, 2004; the issue, raised in the present cases, has become academic.

It was submitted on behalf of the Hazaribagh Mines Board that the cess, which was levied by it on the minerals, having been declared to be invalid by the reasons of the decision of Supreme Court in the case of District Mining Officer v. TISCO" reported in AIR 2001 SC 3134; the Board had to face acute financial crisis. Consequently, the Board had no fund by which they could discharge the statutory financial and other obligations. Faced with the dire need for the fund, the Hazaribagh Mines Board, by letter dated 10th September, 2003, requested M/s. Central Coalfields Limited (M/s. CCL for short) to deduct professional tax at source in terms of bye-laws, which had been approved by the State Government. It was submitted that in view of the aforesaid fact, even though no notification was issued for appointing the date of giving effect to the bye-laws, bye-laws was given effect to by officers. In compliance thereof, M/s. CCL deducted tax and deposited the said amount in the Treasury, which was credited to the account of the Hazaribagh Mines Board's fund.

8. Dr. Debi Pal, learned Senior Counsel appearing on behalf of Hazaribagh Mines Board accepted that the impugned bye-laws cannot be defended but opposed the prayer of some of the petitioners for refund of professional tax already collected on the ground that the amount has already been spent and the Hazaribagh Mines Board is passing through a difficult financial condition and is not in a position to pay back the amount. Reliance was placed on the decision of the Supreme Court in the case of India Cement Ltd. and Others Vs. State Of Tamil Nadu and Others, ; in the case of Koluthara Exports Ltd. Vs. State of Kerala and Others, and in the case of Godfrey Phillips India Ltd. and Another Vs. State of U.P. and Others .

9. In the case of India Cement Limited (supra), the Supreme Court while restrained the State Government from levying the cess u/s 115 of the Madras Panchayats Act, declared Section 115 ultra vires, ordered to operate prospectively and thereby save the State Government from liability to refund the cess already realized.

In the case of Kolutham Exports Ltd. (supra), the Supreme Court held that Section 4(2) of Kerala Fishermens" Welfare Fund Act, 1985, as amended by Act 15 of 1987 levying impost by way of contribution from purchaser/exporter of fishes invalid as it lacks legislative competence. However, taking into consideration the submission

made on behalf of the respondents that the amount credited to the welfare fund by the dealers had already been spent by the Board for welfare of fishermen, the Supreme Court did not allow refund in favour of dealers/contributors.

In the case of Godfrey Philips India Limited (supra), the Supreme Court while held imposition of luxury tax was beyond legislative competence of the State, following principle laid down in M/s. Somaiya Organics (India) Ltd. Vs. State of Uttar Pradesh and Another, refused to allow any refund of the taxes already paid, which were charged from consumers/customers.

It would be pertinent to notice that the principles, as explained in the case of Somoiya Organic (India) Ltd. (supra), are based on the decision of the Supreme Court rendered in the case of Synthetics and Chemicals Ltd. and Others Vs. State of U.P. and Others, wherein the Supreme Court elaborately explained the principle of "prospective overruling".

In the instant cases, the respondents have accepted that the State Government was not competent to frame bye-laws imposing professional tax, which was fairly accepted by the counsel for the respondents. They have also accepted that the bye-laws was never given effect to, apart from the fact that the bye-laws, in question, is unconstitutional and ultra vires the parent Act. Therefore, the respondents cannot take advantage of the decisions of the Supreme Court, as referred to above.

10. In the present cases, the question of prospective overruling is not applicable as the bye-laws was never given effect and thereby the aforesaid judgment is of no help to the respondents.

In most of the cases, the petitioners having opposed the bye-laws, have not paid the professional tax and prayed for interim relief.

On 12th January, 2005, a Bench of this Court observed that if any professional tax is deducted from one or other petitioner, the same shall be subject to the decision of the cases.

M/s. CCL, thereafter, deducted total sum of Rs. 72,38,427.62 paise towards professional tax for the period from 16th January, 2005 to 1st April, 2005 from two of the writ petitioners, including Steel Authority of India Limited, though prior to the same, the bye-laws was stayed vide Notification dated 17th December, 2004.

11. The Hazaribagh Mines Board has taken plea that it has no fund to refund the professional tax already collected in its favour. Now, the question arises as to who will be liable to pay back/refund the professional tax already collected from some of the petitioners in favour of Hazaribagh Mines Board. It is the State of Jharkhand, who issued the impugned bye-laws, 2003 and imposed professional tax, though it was not competent to frame such bye-laws u/s 13 of the Hazaribagh Mines Board Act. The Hazaribagh Mines Board Act had not given effect of the said bye-laws and it

was subsequently stayed by the State Government vide Notification dated 17th December, 2004. Thereafter, it was not open for M/s. CCL to deduct the amount from any of the petitioners and to deposit with Hazaribagh Mines Board.

12. Learned Counsel appearing on behalf of M/s. CCL submitted that they were asked to collect the professional tax from the petitioners in view of bye-law, 2003, framed by the State. Subsequently, Notification dated 17th December, 2004, by which bye-laws was stayed, was not communicated to M/s. CCL.

13. From the aforesaid fact, it will be evident that because of the notification issued by the State of Jharkhand dated 29th May, 2003 framing bye-laws, 2003 and the intimation given to M/s. CCL, the professional tax was collected by M/s. CCL.

It is not in dispute that Hazaribagh Mines Board is a creature of the State Government, created under Hazaribagh Mines Board Act. It is the State Government, which has made provision under the said Act to generate fund. As per the said Act, the State Government is to release grant in favour of Hazaribagh Mines Board for its survival. Thus, according to us, it will be the liability of the State Government to pay back and refund the professional tax already collected from one or other petitioner in favour of Hazaribagh Mines Board, Hazaribagh.

The respondent-State of Jharkhand is, accordingly, directed to refund the amount of professional tax, as may have been collected from one or other petitioner, immediately.

Concerned petitioner(s) may claim for such refund from the concerned department of the State of Jharkhand, enclosing a copy of the relevant evidence in support of payment of professional tax already made by such petitioner(s). The respondent-State of Jharkhand, if so required, may make appropriate verification from M/s. CCL. and will refund the admitted amount. All the writ petitions are allowed, with the aforesaid observations and directions.

However, in the facts and circumstances, there shall be no order as to costs.