Malhar Stone Lime Co. Ltd., Calcutta Vs State of Vindhya Pradesh and another

Court: Madhya Pradesh High Court

Date of Decision: Aug. 3, 1956

Acts Referred: Constitution of India, 1950 â€" Article 264, 286, 286(1), 286(1)(a), 286(1)(a)
Government of India Act, 1935 â€" Section 292

Hon'ble Judges: Jagat Narayan, J.C.

Bench: Single Bench

Advocate: Lal Guruprasanna Singh, for the Appellant; Maheshwari Prasad, Govt. Advocate Maheshwari Prasad, Govt. Advocate, for the State and Janki Prasad and Moti Lal in No. 1 of 1956, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Jagat Narayan, J.C.

1. These two cases have been heard together as the same questions of law arise in them. The then Raj Pramukh of the United State of Vindhya

Pradesh promulgated Vindhya Pradesh Sales Tax Ordinance, 1949 which was published in Vindhya Pradesh gazette extraordinary dated 25-1-

49. It was to extend to such areas as may be notified by the Vindhya Pradesh Government in the government gazette and was to come into force

on a date to be notified in the gazette. It is however not brought into operation in any part of the United State of Vindhya Pradesh"" in 1949.

After the administration of the State had been taken over by the Central Government, the Vindhya Pradesh (Administration) Order, 1950 was

issued in exercise of the powers conferred by Ss. 3 and 4, Extra-Provincial Jurisdiction Act, 1947 cls. 5 and 6 of which run as follows:

Existing Laws to continue.- All laws in force in Vindhya Pradesh or any part thereof immediately before the commencement of this order shall

continue in force until repealed or amended by a competent legislature or authority:

Provided that all powers exercisable under the said laws by H. H. the Raj Pramukh or the Govt, of the State shall be exercisable by the Chief

Commissioner.

Continuance of existing taxes All taxes, duties, cesses or fees which immediately before the commencement of the Order, were being lawfully

levied in Vindhya Pradesh or any part thereof shall continue to be levied and applied to the same purposes, until other provision is made by a

competent legislature or authority.

2. The Chief Commissioner published a notification in gazette dated 30-3-50 purporting to be under S. 1(2) of the Vindhya Pradesh Sales Tax

Ordinance 1949, enforcing it throughout Vindhya Pradesh with effect from 1-4-50.

3. Under S. 2(g) of the Ordinance sale is defined as:

any transfer of property in goods for cash or deferred payment or other valuable consideration including a transfer of property in goods made in

course of execution of a contract

Explanation 2 appended to the definition extended it to include the sale of any goods which are actually in Vindhya Pradesh at the time when the

contract of sale in respect thereof is made irrespective of whether the contract is made in Vindhya Pradesh or outside it. Sales-tax was assessed on

the applicant in writ application No. 121 of 1955 and on the respondent of review application No. 1 of 1956 by the State under this Ordinance on

sales which had taken place outside the State and the goods were thereafter exported, from the State for consumption in another State.

4. The first contention raised against the state by the opposite parties is that under the Vindhya Pradesh (Administration) Order, 1950 the vindhya

Pradesh Sales Tax Ordinance, 1949, did not continue as it had not come into force immediately before the commencement of the Order, It is

argued that under cl 5 only such laws continued as were actually in operation immediately before the. commencement of the Order. Clause 6 is of

no help to the State as admittedly no sales-tax was being levied in any part of Vindhya Pradesh before the commencement of the Order.

5. On behalf of the State reliance was placed on Hem Chand v. State of Vindhya Pradesh, AIR 1951 VP. 39 (A) in which it was held that the

Vindhya Pradesh Sales-tax Ordinance, 1949 was in force although it had not been brought into operation in any part of Vindhya Pradesh. It was

observed that the very making of an enactment brings it into force without necessarily bringing it into operation. With all respect I am unable to

agree With the reasoning given by my learned predecessor.

6. Section 1 of the Ordinance runs as follows:

Short title, extent, commencement and savings:

(1) This Ordinance may be cited as the Vinphya Pradesh Sales Tax Ordinance, 1949.

(2) It shall extend to such areas as may be notified by the Vindhya Pradesh Government in She Government Gazette.

(3) It shall come into force on the date it is notified in the Government Gazette.

(4) This Ordinance shall not in any way affect the provisions of the Vindhya Pradesh Sales Tax on Coal Ordinance and shall not apply to coal.

Sub-section (2) provides for a notification in the gazette extending the Ordinance to particular areas Sub-section (3) provides for a notification

Notifying the date from which the Ordinance shall come in operation in the areas referred to in sub-s (2). The notification of the Chief

Commissioner published in gazette dated 30-3-50 extended the operation of the Ordinance to the whole of Vindhya Pradesh with effect from 1-4-

1950.

7. As observed in The State of Bombay Vs. Heman Santlal Alreja, if one were to give a plain natural construction to the expression ""law in force

in contradistinction to the expression ""existing law"" the latter expression is a term of wider concept than the former. ""Existing law"" would include all

laws whether actually in force or potentially in operation. ""Law in force"" has a narrower and more restricted connotation. It seems to indicate laws

actually in force, not laws whose operation is suspended or which have not been extended to certain territories. But the heading of cl. 5 of the

Vindhya Pradesh (Administration) Order, 1950, shows that the expression Haws in force"" was used in the sense of ""existing laws"". The same was

done in S. 292, Government of India Act, 1935.

The marginal note to that section is ""existing law of India to continue in force"" but the section Itself speaks of the continuance in force of all ""the law

in force in British India"". Maxwell points out at page 45 that the rule regarding the rejection of marginal notes for the purposes of interpretation is

now of imperfect obligation and the learned author cites with approval the language of Collins M. R. in Bushell V. Hammond, 1904 73 LJ KB

1005 at p 1007 (C):

The side note, although it forms no part of the section is of some assistance, inasmuch as it shows the drift of the section."" Headings are not merely

marginal notes. Headings prefixed to sections or sets of sections in some modern statute are regarded as preambles to those sections. (Maxwell on

Interpretation of Statutes, page 54.) In the Bombay ruling (B) referred to above some other cases are also cited in which the expressions ""existing

law"" and ""law in force"" were used as interchangeable, that is, in the same sense.

I accordingly hold that the Vindhya Pradesh Sales Tax Ordinance, 1949 continued as an existing law under the Vindhya Pradesh (Administration)

Order, 1950 and was validly brought into force with effect from 1-4-50 under the Chief Commissioner''s Notification published in the gazette

dated 30-3-1950.

8. The next contention against the State is that the provision of the Ordinance authorising the imposition of sales-tax on sales taking place outside

the State became void and inoperative with effect from 26-1-50 when the Constitution came into force as it is consistent with Art. 286 (1) (a). This

Article is in Part XII of the Constitution the first Article of which namely Art. 264 runs:

In this Part, unless the context otherwise requires,

(b) ""State"" does not include a State specified in Part C of the First Schedule;

The argument advanced on behalf of the State is that Vindhya Pradesh being a Part C State the provisions of Art. 286 (l)(a) are not applicable to

it. On behalf of the opposite parties it is contended that the context of Art. 286(1) (a) requires that the word "State" used in it should include Part

C states also. I find myself in agreement with this contention.

It was observed in The Bengal Immunity Company Limited Vs. The State of Bihar and Others,

It is a sound rule of construction of a statute firmly established in England as far back as 1584 when "Heydon"s case, (1584) 3 Co Rep 7a (E) was

decided that

...for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things

are to be discerned and considered:

1st. What was the common law before the making of the Act.

2nd. What was the mischief and defect for which the common law did not provide.

3rd. What remedy the Parliament has resolved and appointed to cure the disease of the Commonwealth, and

4th. The true reason of the remedy; and then the office of all the judges is always to make such construction as shall suppress the mischief and

advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and "pro privato commodo", and to add force

and life to the cure and remedy, according to the true intent of the makers of the Act, "pro bono publico".

In "Eastman Photographic Material Co. v. Comptroller General of Patents, Designs and Trade Marks", 1898 AC 571 at p. 576 (F) Earl of

Halsbury re-affirmed the rule as follows:

My Lords, it appears to me that to construe the Statute in question, it is not only legitimate but highly convenient to refer both to the former Act

and to the ascertained evils to which the former Act had given rise, and to the later Act which provided the remedy. These three being compared I

cannot doubt the conclusion.

It appears to us that this rule is equally applicable to the construction of Art. 286 of our Constitution. In order to properly interpret the provisions

of that Article it is, therefore, necessary to consider how the matter stood immediately before the Constitution came into force, what the mischief

was for which the old law did not provide and the remedy which has been provided by the Constitution to cure that mischief.

The position with respect to taxation on sales or purchases of goods that prevailed in the country had better be stated in the language of Patanjali

Sastri C.J. who delivered the majority judgment in the - The State of Bombay and Another Vs. The United Motors (India) Ltd. and Others, .

In exercise of the legislative power conferred upon them in substantially similar terms by the Government of India Act, 1935, the Provincial

Legislatures enacted Sales Tax laws for their respective Provinces, acting on the principle of territorial nexus referred to above; that is to say, they

picked out one or more of the ingredients constituting a sale and made them the basis of their sales tax legislation. Assam and Bengal made, among

other things, the actual existence of the goods in the Province at the time of the contract of sale the test of taxability.

In Bihar the production or manufacture of the goods in the Province was made an additional ground. A net of the widest range perhaps was laid in

the Central Provinces and Berar where it was sufficient if the goods were actually "found" in the Province at any time after the Contract of Sale or

Purchase in respect thereof was made. Whether the territorial nexus put forward as the basis of the taxing power in each case would be sustained

as sufficient was a matter of doubt not having been tested in a Court of law.

And such claims to taxing power led to multiple taxation of the same transaction by Provinces and cumulation of the burden falling ultimately on the

consuming public. This situation posed to the Constitution makers the problem of restricting the taxing power on sales or purchases involving

interstate elements, and alleviating the tax burden on the consumer. At the same time they were evidently anxious to maintain the State power of

imposing non-discriminatory taxes on goods imported from other States, while upholding the economic unity of India by providing for the freedom

inter-State trade and commerce. In their attempt to harmonise and achieve these somewhat confiding objectives they enacted Arts. 286, 301 and

304.

Leaving olit, for the moment, the question a to whether Arts. 301 and 304 have any bearing of the question of construction of Art. 286, as to

which we entertain a contrary opinion, the above passage quite adequately depicts the picture of Chacon and confusion that was brought about, in

inter-State trade or commerce by indiscriminate exercise of taxing power by the different Provincial Legislatures founded on the theory of territorial

nexus between the respective Provinces and the sales of purchases sought to be taxed. It was to cure this mischief of multiple taxation and to

preserve the free flow of inter-State trade or commerce in the Union of India regarded as one economic unit without any provincial barrier that the

Constitution makers adopted Art. 286 in the Constitution.

9. The reasons which impelled the Parliament to enact Art. 286 (1)(a) are equally applicable to Part C States. It must therefore be held that the

context of Art. 286(1) requires that the word "State used in it should include Part C State.

It is noteworthy that when after the judgment of the Supreme Court in the Bengal Immunity Co. case (D) the Sales-tax Laws Validation Act, 1956

was passed validating laws of States imposing taxes on the sale or purchase of goods in the course of inter-State trade or commerce an

explanation was added to make it clear that laws of Part C States were also included within the purview of the Act.

10. I accordingly allow writ application No. 121 of 1955 and direct that the State shall not re-cover the sum of Rs. 2645/5/6 as sales-tax from the

applicant for the period 1-4-50 to 30-9-50 on goods sold outside the State within the meaning of Art. 286(l)(a) of the Constitution. I direct that

the parties shall bear their own costs.

11. Review application No. 1 of 1956 is dismissed with costs.