A SHETKARI SAHAKARI SAKHAR KARKHANA LTD., SANGLI, MAHARASHTRA STATE ETC.

v.

THE COLLECTOR OF SANGLI AND OTHERS

October 22, 1979

B [Y. V. CHANDRACHUD, CJ., V. R. KRISHNA IYER, N. L. UNTWALIA, P. N. SHINGHAL AND A. D. KOSHAL, J.J.]

Bombay Sugarcane Cess Act, 1948, *Ss.* 4, 7 *and* 8 *& Sugarcane Cess (Validation) Act* 1961, *Ss.* 2(*a*) *and* 3(1)(*c*)—*State Act levying sugarcane cess found to be ultra-vires—Central Act enacted adopting provisions of State Act and validating assessments made thereunder—Central Act whether validates or re-enacts the State Act—Cess whether recoverable from owner of factory.*

The Bombay Surgacane Cess Act, 1948 empowers the State Government to specify any factory the area comprised in which shall be a local area for the purposes of the Act and to levy cess on the entry of sugarcane into a local area for consumption or use therein. A duty is cast on every 'occupier' to D furnish to the prescribed authority a return stating the total quantity in tons of sugarcane which enters the local area comprised in his factory for consumption or use therein during the preceding month.

In *Diamond Sugar Mills Limited* v. *State of Uttar Pradesh & another* [1961] 3 S.C.R. 242 this Court struck down the U.P. Sugarcane Cess Act, 1956, which contained provisions similar to those of the Bombay Act on the ground E that the proper meaning to be attached to the words 'local area' under Entry 52 in List II of the Seventh Schedule to the Constitution was an area administered by a local body such as municipality, district board, or the like and that the premises of a factory were not a 'local area' within the meaning of the said Entry. Since prior to this decision, several State Legislatures had passed similar enactments, all of which became unconstitutional by reason of that decision, Parliament passed the Sugarcane Cess (Validation) Act, 1961, section F 3 sub-section (1), Clause (c) whereof provides that any cess imposed or assessed under any State Act before the commencement of the Central Act, but not collected before such enactment may be recovered (after assessment of the cess where necessary).

The appellant's petitions impugning the levy and demand of cess imposed under the Bombay Act supplemented by the Central Act were dismissed by the G Bombay High Court.

In appeals to this Court it was contended (1) that the Central Act merely authorised the collection of amounts which had already been imposed, assessed or collected and that no assessment, recovery or collection could be made under section 3 of the Central Act read with the relevant provisions of the State Act after the enforcement of the Central Act, and (2) that Parliament could not H pass a law retrospectively validating invalid assessments by converting their character from assessments under the State Acts to those under its on statute operating retrospectively.

Dismissing the appeals,

HELD : 1(i) In two earlier decisions this Court has repelled an identical argument on the ground that what Section 3 of the Central Act provides is that by its order and force, the respective cesses would be deemed to have been recovered, because the provisions in relation to the recovery of this cess have been incorporated in that Act itself so that the command under which the cesses would be deemed to have been recovered would be the command of Parliament because all the relevant sections, notifications, order and rules had been adopted by the Parliamentary statute itself. It is, therefore, plain that Section 3 of the Central Act did not merely validate what the State authorities had already done under the Bombay Act but re-enacted the provision of the Bombay Act by virtue of the authority vested in Parliament under Entry 97 in List I of the Seventh Schedule to the Constitution so that the Bombay Act became fully alive and operative *as an enactment of Parliament* as soon as the Central Act was promulgated and the authorities named in the Act were invested with full powers to assess and recover the cess not under the Bombay Act but under the Central Act into which the provisions of the Bombay Act and the rules framed as well as the notifications issued thereunder became incorporated. [988 D. 989 B-C, 990 B-C]

Jaora Sugar Mills (P) Ltd. v. *State of Madhya Pradesh* [1966] 1 S.C.R. 523; *Bhopal Sugar Industries* v. *State of Madhya Pradesh and others* [1979] 2 S.C.R. 605; referred to.

(ii) Clause (c) of Section 3 of the Central Act specifically authorises both assessment and recovery of any cess imposed under any State Act before the commencement of the Central Act. [998 A, C]

2. In *Jaora Sugar Mill's* case, this Court held that if collections were made under statutory provisions which were invalid, Parliament could pass a law retrospectively validating the collections by converting their character from collections made under the State statutes to that of collections made under its own statute operating retrospectively, because to hold otherwise would be to cut down the width and amplitude of the legislative competence conferred on Parliament by Article 248 read with Entry 97 in List I of the Seventh Schedule to the Constitution. [990 F-H]

3. It cannot be said that there is lack of authority in Parliament to pass the Central Act incorporating into it provisions of the State Act. Entry 97 in List I of the Seventh Schedule to the Constitution, provides full legislative competence to Parliament in relation to the Central Act inasmuch as it vests all residuary powers of legislation in Parliament. [991 B-C]

4. There is no substance in the contention that the managing agents alone would be liable and that the cess could not be recovered from the owners of the factories. The definition of 'occupier' has nothing to say about the person on whom the cess is to be imposed or from whom it is to be recovered. The relevant provisions indicate that the authorities assessing or recovering the tax should deal with the 'occupier', and were enacted as a matter of convenience both for the authorities and the assessees, so that an absent owner may not be unduly harrassed nor proceedings delayed by reason of his absence, and not for limiting to the occupier alone the liability to pay the cess. [991 F—992 A]

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2470 of 1968.

From the Judgment and Order dated 17-1-68 of the Bombay High Court in Special Civil Application No. 6/68.

AND

CIVIL APPEAL NOS. 39-40 *OF* 1969

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From the Judgment and Order dated 17-1-68 of the Bombay High Court in S.C.A. Nos. 4 and 5 of 1968.

AND

CIVIL APPEAL NOS. 1925-1926 *OF* 1972

C From the Judgment and Order dated 7/8-3-1972 of the Bombay High Court in Civil Application Nos. 3077/67 and 570/68.

A.K. Sen, Shanti Bhusan, B. Dutta, K. K. Manchanda and *A. K. Srivastava* for the Appellants in CA 2470/68 and CA Nos. 39-40/69.

D. V. Patel, P. H. Parakh, C. B. Singh, Miss Vineeta Caprihan and D *B. L. Verma* for the Appellants in CA 1925-1926/72.

J. L. Nain, S. P. Nayar and *M. N. Shroff* for the Respondents.

The Judgment of the Court was delivered by

KOSHAL, J. By this Judgment we shall dispose of five civil appeals E in each one of which the appellant who is a registered co-operative society, challenges a judgment of the High Court of Bombay dismissing its petition for the issuance of an appropriate writ striking down the levy and demand of the cess imposed on it under the Bombay Sugarcane Cess Act, 1948 (hereinafter referred to as the 'Bombay Act') supplemented by the Sugarcane Cess (Validation) Act, 1961 F (for short, the 'Central Act').

2. The following table indicates the name of the appellant and the amount of cess impugned in each of the appeals as also other relevant particulars :

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No. of appeal	Name of appellant	Amount of Cess (Rs.)	Period to which the amount relates	Date of the order of assessment	Authority passing the Order
1	2	3	4	5	6
Civil Appeal No. 39 of 1969.	The Shetkari Sahakari Sakhar Karkhana Ltd., Sangli.	370072·50	1-7-1959 to 30-6-1960	21-12-1960	Sugarcane Cess Officer, Sangli.

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1	2	3	4	5	6
Civil appeal No. 40 of 1969	The Shetkari Sahakari Sakhar Karkhana Ltd., Sangli.	801131·24	1-7-1960 to 30-6-1961	24-5-1966	Sugarcane Cess Officer Sangli.
Civil Appeal No. 2470 of 1968	Do.	324610·35	1-7-1961 to 31-12-1961	24-5-1966	Do.
Civil Appeal No. 1925 of 1972.	Ashok Sahakari Sakhar Karkhana Ltd., Ashoknagar.	373640·56	1-7-1961 to 31-12-1961	12-4-1962	Sugarcane Cess Officer, Ahmednagar.
Civil Appeal No. 1926 of 1972.	Girna Sahakari Sakhar Karkhana Ltd., Dabhadi.	(i) 577329·65	1-7-1960 to 30-6-1961	18-7-1962	Sugarcane Cess Officer, Nasik
		(ii) 191409·53	1-7-1961 to 31-12-1961	18-7-1962	Do.

3. It may be of advantage to reproduce here the relevant provisions of the Bombay Act, Clause (1), (2), (3) and (4) of section 2 thereof read thus :

'2. In this Act, unless there is anything repugnant in the subject or context,—

(1) "factory" means any premises including the precincts thereof, wherein twenty or more workers are working or were working on any day of the preceding twelve months and in any part of which any manufacturing process connected with the production of sugar by means of vacuum pans is being carried on, or is ordinarily carried on, with the aid of power;

(2) "local area" means any area comprised in such factories as may be specified in the notification under section 3;

(3) "notified factory" means a factory specified in the notification under section 3;

(4) "occupier" means the person who has ultimate control over the affairs of a notified factory; provided that where the affairs of such factory are entrusted to a

A managing agent, such agent shall be deemed to be the occupier;

Section 3 empowers the State Government to specify, by notification in the official gazette, any factory the area comprised in which shall be a local area for the purposes of the Act. Section 4 minus B the proviso states :

> "4. A cess at such rate not exceeding ten rupees per ton as may be specified by the State Government in a notification in the Official Gazette shall be levied on the entry of sugarcane into a local area for consumption or use therein :"

C Section 5 provides for licences to be taken out by consumers or users of sugarcane in notified factories while section 6 lays down that every occupier shall furnish to the prescribed authority before the seventh day of each month a return in the prescribed form stating the total quantity in tons of sugarcane which entered the local area comprised in his factory for consumption of or use therein during the D preceding month. Section 7 and 8 provide for the assessment, recovery and collection of the sugarcane cess. The rest of the Act consists of miscellaneous provisions which need not be referred to here.

4. Now we may detail the circumstances in which the Central Act E was made part of the statute book. In 1956 the U.P. legislature passed the U.P. Sugarcane Cess Act (hereinafter referred to as the 'U.P. Act') the provisions of which were similar to that of the Bombay Act. Section 3 of the U.P. Act authorised the State Government to impose, by notification in the official gazette, a cess not exceeding four annas per maund on the entry of sugarcane into the premises of a F factory for use, consumption or sale therein. The constitutional validity of that section was challenged in *Diamond Sugar Mills Ltd. & Another* v. *The State of Uttar Pradesh & Another.*(1) Reliance on behalf of the State was placed on Entry 52 in List II forming part of the Seventh Schedule to the Constitution of India in support of the argument that the cess was validly levied. That Entry reads thus : G

> "52. Taxes on the entry of goods into a local area for consumption, use or sale therein."

The counsel for the appellant in that case however contended that the premises of a factory were not a local area within the meaning of the Entry and that the Act was therefore beyond the competence of H the State legislature. Out of the five Judges of this Court who decided

(1) [1961] 3 S.C.R. 242.

the case, four (Jafar Imam, J. L. Kapur, K. C. Das Gupta and Raghubar Dayal, JJ.) accepted the contention and struck down the Act as a whole, being of the opinion that the proper meaning to be attached to the words 'local area' in Entry 52 was an area administered by a local body like a municipality, a district board, a local board, a union board, a Panchayat or the like and that the premises of a factory were therefore not a 'local area' within the meaning of the Entry.

By the time the *Diamond Sugar Mills'* case was decided, enactments similar in content and effect to the Bombay Act had been passed by legislatures of various States and Parliament considered it advisable to make the cess imposed by these enactments a constitutionally valid cess and that was the reason for the passage of the Central Act.

Clause (a) of section 2 of the Central Act defined 'cess' thus :

> " 'cess' means the cess payable under any State Act and includes any sum recoverable under any such Act by way of interest or penalty;"

Clause (b) of the section defined 'State Act' as any of the Acts mentioned in the latter portion of the clause as in force in any State from time to time. The Acts mentioned included the Bombay Act.

Sub-section (1) of section 3 of the Central Act may be set out *in extenso* as it is mainly that provision which has been attacked before us on behalf of the appellants :

> "3. (1) Notwithstanding any judgment, decree or order of any court, all cesses imposed, assessed or collected or purporting to have been imposed, assessed or collected under any State Act before the commencement of this Act shall be deemed to have been validily imposed, assessed or collected in accordance with law, as if the provisions of the State Acts and of all notifications, orders and rules issued or made thereunder, in so far as such provisions relate to the imposition, assessment and collection of such cess had been included in and formed part of this section and this section had been in force at all material times when such cess was imposed, assessed or collected; and accordingly,—
>
> (a) no suit or other proceeding shall be maintained or continued in any court for the refund of any cess paid under any State Act;
>
> (b) no court shall enforce a decree or order directing the refund of any cess paid under any State Act; and

A (c) any cess imposed or assessed under any State Act before the commencement of this Act but not collected before such commencement may be recovered (after assessment of the cess, where necessary) in the manner provided under that Act."

B 5. We may now take up for consideration the contentions raised at the hearing before us. Mr. A. K. Sen representing the appellant in Civil Appeal No. 2470 of 1968 argued in the first instance that the Central Act merely authorized the collection of amounts which had already been imposed, assessed or collected and that no assessment, recovery or collection could be made under section 3 of C the Central Act read with the relevant provisions of the Bombay Act after the enforcement of the Central Act. The contention is without force and in this connection we need do no more than refer to the language of clause (c) above extracted which specifically authorizes both assessment and recovery of the cess after the commencement of the Central Act, and to two earlier decisions of this Court in which an D identical argument was made and repelled. The first of those decisions is reported as *Jaora Sugar Mills (P) Ltd.* v. *State of Madhya Pradesh and Others*(1). The following observations made therein by Gajendragadkar, C.J., who delivered the judgment of the Court, are pertinent :

E "Section 3 does not purport to validate the invalid State statutes. What Parliament has done by enacting the said section is not to validate the invalid State statutes, but to make a law concerning the cess covered by the said statutes and to provide that the said law shall come into operation retrospectively. There is a radical difference between the F two positions. Where the legislature wants to validate an earlier Act which has been declared to be invalid for one reason or another, it proceeds to remove the infirmity from the said Act and validates its provisions which are free from any infirmity. That is not what Parliament has done in G enacting the present Act. Parliament knew that the relevant State Acts were invalid, because the State Legislatures did not possess legislative competence to enact them. Parliament also knew that it was fully competent to make an Act in respect of the subject-matter covered by the said invalid State statutes. Parliament, however, decided that rather H than make elaborate and long provisions in respect of the recovery of cess, it would be more convenient to make a

(1) [1966] 1 S.C.R. 523.

compendious provision such as is contained in s. 3. The plain meaning of s. 3 is that the material and relevant provisions of the State Acts as well as the provisions of notifications, orders and rules issued or made thereunder are included in s. 3 and shall be deemed to have been included at all material times in it. In other words, what s. 3 provides is that by its order and force, the respective cesses will be deemed to have been recovered, because the provisions in relation to the recovery of the said cesses have been incorporated in the Act itself. The command under which the cesses would be deemed to have been recovered would, therefore, be the command of Parliament, because all the relevant sections, notifications, orders, and rules have been adopted by the Parliamentary statute itself. We are, therefore satisfied that the sole basis on which Mr. Pathak's argument rests is invalid, because the said basis is inconsistent with the plain and clear meaning of s. 3. As we have already indicated, Mr. Pathak does not dispute—and rightly—that it is competent to Parliament to make a law in respect of the cesses in question, to apply the provision of such a law to the different States, and to make them retrospective in operation..."

The second case on the point is reported as *Bhopal Sugar Industries Ltd.*, v. *State of Madhya Pradesh and Others*(1) in which Shinghal and Desai, JJ., followed the *Jaora Sugar Mills'* case and Shinghal, J., who delivered the judgment of the Court spoke thus in connection therewith :

"The decision in *Diamond Sugar Mills'* case came up for consideration in this Court in *Jaora Sugar Mills (P) Ltd.* v. *State of Madhya Pradesh and Others* with a specific reference to the provisions of the State Act, and it was once again held, following that decision, that the imposition of the cess was outside the legislative competence of the State. While examining that aspect of the controversy, this Court made it clear that what Parliament had done by enacting section 3 of the Validation Act was not to validate the invalid State statutes, but to make a law concerning the cess covered by the said statutes and to provide that the said law shall come into operation retrospectively. This Court clarified that by virtue of section 3 of the Validation Act, the command under which the cess would be deemed to have been recovered would be the command of the Parliament, because

(1) [1979] 2 S.C.R. 605.

A the relevant sections, notifications, orders and rules had been adopted by the Parliamentary statute itself."

With respect, we also fully agree with the view expressed in *Jaora Sugar Mills'* case (supra). It is thus plain that section 3 of the Central Act did not merely validate what the State authorities B had already done under the Bombay Act but actually re-enacted the provisions of the Bombay Act by virtue of the authority vested in Parliament under Entry 97 in List I of the Seventh Schedule to the Constitution of India so that the Bombay Act became fully alive and operative *as an enactment of Parliament* as soon as the Central Act C was promulgated and the authorities named in the Act were invested with full power to assess and recover the cess not under the Bombay Act but under the Central Act into which the provisions of the Bombay Act and the rules framed as well as the notifications issued thereunder became incorporated.

D 6. The only other contention put forward by Mr. Sen (which was reiterated by Mr. Shanti Bhushan on behalf of the appellant in Civil Appeal No. 39 of 1969) was that the assessments having been made under statutory provisions which were invalid because of lack of legislative competence on the part of the Bombay Legislature, Parliament could not pass a law retrospectively validating those assessments by E converting their character from assessments under the State statutes to those made under its own statute operating retrospectively. This contention also was repelled by this Court in *Jaora Sugar Mills'* case (supra) with the following observations :

"So, the crucial question is : if collections are made F under statutory provisions which are invalid because they deal with a topic outside the legislative competence of the State legislatures, can Parliament, in exercise of its undoubted legislative competence, pass a law retrospectively validating the said collections by converting their character from collections made under the State statutes to that of collec- G tions made under its own statute operating restrospectively ? In our opinion, the answer to this question has to be in the affirmative, because to hold otherwise would be to cut down the width and amplitude of the legislative competence conferred on Parliament by Art. 248 read with Entry 97 in List I of the Seventh Schedule. Whether or not retrospective H operation of such a law is reasonable, may fall to be considered in certain cases; but that consideration has not been raised before us and in the circumstances of this case, it cannot

validity be raised either. We must, therefore, hold that the High Court was right in rejecting the appellant's case that the Act was invalid, and hence no demands could be made under its provisions either for a cess or for commission."

With the greatest respect, we find no reason at all to differ.

7. Article 265 of the Constitution of India was pressed into service by Mr. Shanti Bhushan in support of the proposition that no tax could be levied or collected except by authority of law. The proposition is unexceptionable but we fail to see in what manner Parliament lacked the authority of law while enacting the Central Act and incorporating into it the provisions of the Bombay Act. As pointed out above, Entry 97 in List I of the Seventh Schedule to the Constitution of India provides full legislative competence to Parliament in relation to the Central Act inasmuch as it vests all residuary powers of legislation in Parliament. The contention based on alleged lack of authority of law in Parliament is therefore repelled.

8. The submissions made by Mr. Patel appearing for the appellants in Civil Appeals No. 1925 and 1926 of 1972 alone now remain to be considered. He put forward two points. The first one was that section 4 of the Bombay Act was discriminatory, that the power conferred by it was unguided and uncanalised and that therefore it was hit by article 14 of the Constitution of India. When asked as to whether the point had been raised before the High Court, Mr. Patel's answer was in the negative and it transpired that no foundation for the point had been laid even in the pleadings submitted to the High Court. It was therefore not allowed to be raised by us at this late stage.

Mr. Patel's second point was that in view of the proviso to clause (4) of section 2 of the Bombay Act, the managing agents of the factories in question would alone be liable and that the assessed cess could not be recovered from his clients who were owners of the concerned factories. The point is wholly without substance and that for two reasons. For one thing, no managing agent is involved in the two appeals in which Mr. Patel has put in appearance. Secondly, clause (4) of section 2 merely defines the term 'occupier' and has nothing to say about the person on whom the cess is to be imposed or from whom it is to be recovered. There are no doubt other provisions in the Bombay Act [section 6, sub-section (1) of section 7 and section 8] which indicate that the authorities assessing or recovering the tax are primarily to deal with the occupier but those provisions have obviously been enacted as a matter of convenience

A both for the said authorities and the assessees so that an absent owner may not be unduly harassed nor proceedings delayed by reason of his absence and not for limiting to the occupier alone the liability to pay the cess. In fact sub-section (2) of section 7 which is in the following terms would indicate that the liability of the owner of the concerned factory is not excluded :

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"7. (1) .....

(2) If the occupier fails to furnish in due time the return referred to in section 6 or furnishes a return which in the opinion of the prescribed authority is incorrect or defective, the prescribed authority shall assess the amount payable by him in such manner as may be prescribed and the provisions of sub-section (1) shall apply as if such assessment has been made on the basis of a return furnished by the owner...."

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Both the submissions made by Mr. Patel are therefore repelled.

D 9. In the result all the five appeals fail and are dismissed with costs, one set.

N.V.K.

Appeals dismissed.