IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL No.4056 – 4064 of 1999

IN THE MATTER OF:

Mineral Area Development Authority & Anr. … Appellant

Versus

Steel Authority of India & Anr. Etc. … Respondents

Brief Note of Submissions by Tapesh Kumar Singh, Sr. Advocate, on behalf of the State of Jharkhand

The question which has been urged by the assesse-companies, (and not by the States) as reflected in the order dated 25th July, 2024, is whether the majority decision upholding the legislative competence of States' viz a viz the impugned taxing provisions is to apply prospectively.

Since *Golak Nath v. State of Punjab*[1], it is well settled that only in extra-ordinary situations the doctrine of prospective overruling:

(*1*) can be invoked only in matters arising out of the Constitution;

(*2*) can be applied only by this Hon'ble Court as (only) it has the constitutional jurisdiction to declare law binding on all the courts in India;

(*3*) the scope of the retroactive operation of the law declared by this Hon'ble Court superseding its earlier decisions is left to its discretion to be moulded in accordance with the justice of the cause or matter before it.

This brief note seeks to confine itself to the statement of law enunciated in point number (3) above.

In essence, it is a recognition of the principle that this Hon'ble Court moulds the reliefs claimed to meet the justice of the case[2]. These powers

[1] (1967) 2 SCR 762 : AIR 1967 SC 1643

[2] *Somaiya Organics (India) Ltd. v. State of U.P*, (2001) 5 SCC 519

are traceable to Articles, 32, 141 and 142. However, in the facts and circumstances of this cases, the following points shall elucidate why this Hon'ble Court may not deem it fit to invoke this doctrine:

1. **Prospective overruling - Not available upon failure to discharge the burden**: Presumption is always in favour of the constitutionality of an enactment and the burden is upon him who attacks it – is a well settled principle[3]. When the burden has not been successfully discharged, there cannot be any controversy on the validity of the impugned provisions which shall, undoubtedly be, valid since inception. Thus, the authority of law to impose the exaction (Article 265[4]), if found to be originally valid, shall relate to its inception. The rights, duties and liabilities arising out of the impugned provisions shall also be relatable to the date when impugned provisions were brought into force. The date of enforcement of an enactment, though delegated sometimes to the executive, is primarily a legislative function. In adherence to doctrine of the separation of powers, constitutional courts ought not tread into an unchartered territory by procrastinating the enforcement of a law validly enacted.
2. **No extraordinary situation - Moulding impermissible when relief is denied**: While answering the reference, this Hon'ble Court has acknowledged the legislative competence of the States' qua the impugned provisions. Ruling out the question of repugnancy between the Central and the States legislations, it has further been held that MMDR Act, as it stands, has not imposed any limitations as envisaged in Entry 50 of List-II and the States have legislative competence

[3] In *Charanjit Lal Chowdhury v. Union of India*, (1950) SCR 869 Saiyid Fazl Ali, J., before quoting *Middleton v. Texas Power and Light Co.*, 63 L Ed. 527, was pleased to thus observe:

> " … it is the accepted doctrine of the American Courts, which I consider to be well founded on principle, that the presumption is always in favour of the constitutionality of an enactment, and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles."

[4] Article 265: Taxes not to be imposed save by authority of law. –No tax shall be levied or collected save by authority of law.

under Article 246 read with Entry 49 of List-II to tax lands which comprise of mines and minerals. Thus, the challenge foisted by the assesse-companies upon the States' legislations stands repelled. As a sequel to the reference having been so answered, it is the assesse-companies who shall be disentitled to any relief. The question of moulding the relief by this Hon'ble Court, on the request of the party which has lost, does not arise.

3. **No co-relation between 'Royalty' and Jharkhand MADA Act[5]**: A scrutiny of the MADA Act shall reveal that the Appellant in the lead case is a "Statutory Authority" created and burdened with wide ranging responsibilities and duties. Tax is proposed to be levied upon the land declared and notified under 'Section 3' vide the impugned 'section 89' titled "*Levy of Tax on use of Land for other than agricultural and residential purposes*". The exaction under the impugned provisions of the MADA Act are directly on land, and the measure of tax is the unit area in 'square metres'. No imposition of 'Cess on Royalty' is mandated under this Act, not even as a 'measure of Tax'. Thus, there never was any repugnancy with MMDR Act.
4. **Redundancy of pre-existing liabilities under the 8 legislations:** By virtue of section 132 (1) of the MADA Act, the application of eight previous legislations on the land so notified under section 3 have ceased, thereby shifting the duties and responsibilities under these legislations to the Appellant from the date of its constitution. The existing liabilities of the assesse-companies under these old laws have also been replaced. The mandate of statutes which have ceased to have effect are:
   i. The Jharia Water Supply Act, 1914 (Act 3 of 1914);
   ii. The Bihar and Orissa Mining Settlements Act, 1920 (Act 4 of 1920);
   iii. The Hazaribagh Mines Board Act, 1936 (Act 3 of 1936);

[5] The "Mineral Area Development Authority Act, 1986", (Bihar Act 9 of 1986) as amended vide Bihar Act 24 of 1992.

iv. The Bihar Restrictions of Uses of Land Act, 1948 (Act 23 of 1948);
v. The Bihar Town Planning and Improvement Trust Act, 1951 (Act 35 of 1951);
vi. The Bihar Regional Development Authority Act, 1981 (Act 40 of 1982); and
vii. The Bihar Panchayat Samities and Zila Parishads Act, 1961

5. **Duties and responsibilities of the Appellant under the MADA Act:** Crucial duties and responsibilities have been delegated to the Appellant under the MADA Act, the cost of which is to be defrayed by the impugned levy. On account of the assesses' refusal to remit the amounts assessed and payable under the impugned section 89 of the MADA Act, the Appellant has accumulated huge dues and arrears over the years. These are on account of arrears of salary, post-retirement benefits and revisions of scale of pay to its employees, electricity charges, etc.
6. **States not liable to refund tax validly collected**: The Respondent – States, whose legislations were upheld by the respective High Courts, continues to utilize the revenue so generated for the public welfare. They cannot be restrained from collecting the tax or directed to refund the amount already collected.
7. **Assesses have been making profit throughout**: The declared motive of the assesse companies is profit making. Data available in public domain (i.e. their Profit and Loss Account, etc.) reflects that the assesses have been 'in green' and have been continuously making profit out of their business during the period the relevant period (1993 – 2024). Therefore, they cannot claim exemption on the ground of equity.
8. **No interim relief granted by this Hon'ble Court**: The parties before this Hon'ble Court, neither at the time of admission of their respective cases, nor anytime thereafter, were granted any interim relief or stay of the impugned judgments.

9. **Affirmative directions to comply with the provisions impugned**: During the pendency of this batch of matters, there are positive orders and directions passed by this Hon'ble Court asking the assesse to continue to file returns and deposit the amount assessed so as to meet their respective liabilities under the impugned provisions.
10. **Unjust enrichment**: Even otherwise, in the absence of pleading or proof, there cannot be a valid claim for adjustment of the liabilities under the impugned provisions because the possibility of 'unjust enrichment' (that the assesse have already passed on the tax burden to consumers in the intervening period) cannot be ruled out.

New Delhi.
Date: 30.07.2024.

Circulated by:
Ms. Sansriti Pathak
(Nodal Counsel)