

Kishan's case (F.B. Supra), stands affirmed even by a larger Bench of five Judges in *Mahant Tehal Dass v. Shiromani Gurdwara Parbhandak Committee* (6).

16. It would appear from the above that the position in law, on this point, within this Court, stands fully crystallized by a host of authorities. In the theory of precedent, it is well settled that once a point has been authoritatively decided by a Full Bench, then any passing observations by smaller Benches, whether earlier or later, would cease to be of any significance. It is, therefore, unnecessary and indeed would be wasteful to advert to authorities of smaller Benches on the point.

17. In the wake of what appears to me as settled precedent, I would agree with the legal conclusion arrived at by Dhillon, J., on issue No. (2).

Consequently it is held that the petitioner was not a hereditary office-holder and affirming the finding of the Tribunal, it is held that the petition was incompetent. In that view of the matter, it is obviously unnecessary to advert to issue No. (3). The appeal must necessarily fail and is hereby dismissed with no order as to costs.

N.K.S.

Before S. P. Goyal and J. V. Gupta, JJ.

MUNICIPAL CORPORATION,—*Petitioner.*

versus

UNION OF INDIA and others,—*Respondents.*

Civil Writ Petition No. 5152 of 1978.

February 25, 1981.

Constitution of India 1950—Articles 14, 245, 246, 248 and 252, Seventh Schedule List I, Entry 97, List II Entries 5, 6, 17 and 66—Water (Prevention and Control of Pollution) Cess Act (XXXVI of 1977)—Sections 2(c), 3 and 16—The Cess Act—Whether within the legislative competence of Parliament—Section 2(c)—Whether arbitrary and therefore violative of Article 14.

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Held, that the State Legislature was not competent to levy any tax on the water consumed by any specified industry or local authority as the same was not provided under any entry in List II of the Seventh Schedule to the Constitution of India 1950. If it is so, then the provisions of Article 248 are immediately attracted and the Parliament had the exclusive power to make any law with respect to any matter not mentioned in the State List. Sub-clause (2) of Article 248 further provides that such power shall include the power of making any law imposing a tax not mentioned either in List II or List III of the Seventh Schedule. If a Central Act is challenged as being beyond the legislative competence of Parliament, it is enough to enquire if it is a law with respect to matters or taxes enumerated in List II. If it is not, no further question arises. The Legislature of a State has the exclusive power to make laws with respect to any of the matters enumerated in List II of the Seventh Schedule whereas the Parliament has the exclusive power to make any law with respect to any matter not enumerated in the State or the Concurrent List. It has been further provided under Article 248(2) that this power shall include the power of making any law imposing a tax not mentioned in either of those lists. Admittedly, the imposition of the tax on water consumption is not mentioned in the State List. It cannot be said that in section 3 of the Act since the cess is being levied for the purposes of Water (Prevention and Control of Pollution) Act, 1974 and utilisation thereunder and that being a State subject, the Parliament could not enact any such law. The Cess Act is, therefore,, within the legislative competence of Parliament and has been validly enacted. (Paras 9 and 10).

Held, that the power to specify an industry under section 2(c) of the Act is not arbitrary and does not violate the fundamental right guaranteed under Article 14 of the Constitution. Section 16 of the Act provides ample guidelines for adding any industry to Schedule I to the Act. Before an industry is included in Schedule I, regard will have to be had to the consumption of water for the carrying on of such industry and the consequent discharge thereof resulting in pollution of any stream. Moreover, every notification issued by the Central Government under section 16 of the Act has to be approved by the Parliament. Thus, in view of the provisions of section 16 of the Act it cannot be said that no guidelines are provided for specifying an industry under section 2(c) or that it suffers from the vice of arbitrariness so as to attract the provisions of Article 14 of the Constitution. (Para 11).

Petition under Article 226 of the Constitution of India, praying that :—

- (a) *That this Hon'ble Court may declare that the Water Cess (Prevention and Control Pollution) Cess Act is illegal and ultra-vires ;*

(b) That this Hon'ble Court may issue a writ of mandamus and or a writ in the nature of mandamus restraining the respondents or any of them from implementing the said Water Cess Act against the petitioners and on levying or collecting a cess under the said Act or the rules made thereunder in regard to the water supplies effected by the petitioners within its territory and/or in any manner, enforcing the said Act or the rules thereunder against the petitioner including filing of returns.

(c) That the petitioner may have such appropriate writ/order or direction as the nature and the case may require.

(d) Cost may be awarded to the petitioner.

It is further prayed that pending the disposal of the writ petition operation of the impugned Act may kindly be stayed and service of notice of motion may be dispensed with.

M. C. Bhandare and Surjit Bindra. Advocates, for the Petitioner.

J. L. Gupta, Advocate, for respondent No. 3.

Gopi Chand, Advocate, for Respondent No. 1, A. S. Sandhu, Additional A.G., Punjab, for Respondent No. 2.

JUDGMENT

J. V. Gupta, J.

1. This order will dispose of Civil Writ Petition, No. 5152 of 1978 and Civil Writ Petition No. 3358 of 1979, as common questions of law are involved in both of them.

2. Civil Writ Petition No. 5152 of 1978, has been filed by the Municipal Corporation, Jullundur, which is a body corporate under the Punjab Municipal Corporation Act, 1976. Section 44 of the said Act provides certain obligatory functions of the Corporation including the provision for supply of water for public and private purposes. Thus, the Corporation has its own water supply system.

3. In the year 1974 the Parliament, in the exercise of its powers under Article 252 of the Constitution of India, on resolutions having been passed by the Legislatures of more than two

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States, enacted Act No. 6 of 1974, called the Water (Prevention and Control of Pollution) Act, 1974 (hereinafter called the Act of 1974), the preamble of which reads as follows :

“An Act to provide for the prevention and control of water pollution and the maintaining or restoring of wholesomeness of water, for the establishment with a view to carrying out the purposes aforesaid, of Boards for the prevention and control of water pollution, for conferring on the assigning to such Boards powers and functions relating thereto and for matters connected therewith.”

Since the Legislature of the State of Punjab had not passed any resolution under Article 252 of the Constitution, therefore, the Act of 1974, at the time of its enactment, did not apply to the State of Punjab. However, the Punjab Legislature, subsequently, adopted the same by a resolution which was passed on February 3, 1975. In pursuance of the provisions of the Act of 1974, the Central Government constituted a Central Board under section 3 of the Act of 1974, for the performance of the functions enumerated in section 16 of the Act of 1974, while the State Board was constituted by the State Government under section 4 of the Act of 1974, for performing the functions enumerated in section 16 of the Act of 1974.

4. In the year 1977, the Parliament, with a view to augment the financial resources of the Central Board and the State Boards, constituted under the Act of 1974, and to provide for levy and collection of cess on water consumed by the local authorities and the specified industries, enacted the Water (Prevention and Control of Pollution) Cess Act, 1977 (Act No. 36 of 1977), (hereinafter called the Act of 1977), the preamble of which reads:—

“An Act to provide for the levy and collection of a cess on water consumed by persons carrying on certain industries and by local authorities with a view to augment the resources of the Central Board and the State Boards for the Prevention and control of water pollution constituted under the Water (Prevention and Control of Pollution) Act, 1974.”

The Act of 1977 was applicable to all the States to which the Act of 1974 was applicable. The Act of 1977 came into force with effect from the 1st day of April, 1978, as notified by the Central Government in the official Gazette under sub-section (4) of section 1 of the Act of 1977. Section 3 of the Act of 1977, provides for the levy and collection of cess from every local authority and every person carrying on any specified industry, on the basis of the water consumed by them at such rates as may be specified by the Central Government in the official Gazette, Section 3 of the Act of 1977, reads as follows:—

- “3. Levy and collection of cess.—(1) There shall be levied and collected a cess for the purposes of the Water (Prevention and Control of Pollution) Act 1974, (6 of 1974), and utilisation thereunder.
- (2) The cess under sub-section (1), shall be payable by—
- (a) every person carrying on any specified industry; and
- (b) every local authority, and shall be calculated on the basis of the water consumed by such person or local authority as the case may be for any of the purposes specified in column (1) of Schedule II, at such rate, not exceeding the rate specified in the corresponding entry in column (2) thereof, as the Central Government may, by notification, in the Official Gazette from time to time, specify.
- (3) Where any local authority supplies water to any person carrying on any specified industry or to any other local authority and such person or other local authority is liable to pay cess under sub-section (2) in respect of the water so supplied, then, notwithstanding anything contained in that sub-section, the local authority first mentioned shall not be liable to pay such cess in respect of such water.

Explanation.—For the purposes of this section and section 4, ‘consumption of water’ includes supply of water.”

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Clause (a) of section 2 of the Act of 1977, defines 'local authority' which *inter alia* means a Municipal Corporation also. The term 'specified industry', is defined under clause (c) of section 2, which means any industry, specified in Schedule I of the Act of 1977. The petitioners, in both the writ petitions, are covered under them.

5. In both the writ petitions, the *vires* of the Act of 1977, have been challenged on the ground that the Parliament was not competent to enact any law imposing cess which is to be calculated on the basis of the water consumed by a specified industry or a local authority. Mr. M. C. Bhandare, the learned counsel for the petitioner in Civil Writ Petition No. 5152 of 1978, referred to Articles 245, 246(3) and 248 of the Constitution of India, and Lists I and II of the Seventh Schedule, and contended that the Parliament of its own was not competent to legislate the impugned Act as it touches the matters which are covered by Entries Nos. 5, 6 and 17 of List-II. In other words, the Parliament under Article 252 of the Constitution, could exercise the same powers which a state Legislature has under the Entries in List-II, and since the State Legislature itself could not levy tax on the consumption of water under list-II, as it could levy only fee under Entry 66, the Parliament could only levy fee on that matter and thus, the imposition of tax by the Parliament was beyond its legislative competence. It was further contended that it was the exclusive jurisdiction of the State Legislature to legislate for the collection of the fee on this matter, and, therefore, no tax could be levied by the Parliament even under Article 248 of the Constitution by invoking its residuary powers of legislation, read with Entry 97 of List-I of the Seventh Schedule. According to the learned counsel, the residuary powers are to be exercised by the Parliament only if they are not in conflict with List-II, that is, if the matters are not covered thereunder. The learned counsel also argued that the taxation is the incident of a named subject and if the Parliament itself could not legislate on a subject covered by List-II, no tax also could be levied by the Parliament on that subject. It was further argued that the sovereignty of the State under Article 246(3) of the Constitution could not be allowed to be violated by the Parliament and, therefore, the Parliament was not competent to enact the Act of 1977. In support of this contention, the learned counsel placed reliance on *Hari Krishna Bhargava v. Union of India and another* (1), *Sudhir Chandra Nawn v. Wealth tax Officer*,

(1) A.I.R. 1966 S.C. 619.

Calcutta and others (2). *The Second Gift Tax Officer, Mangalore v. D. H. Hazareth* (3), *Union of India, v. Harbhajan Singh Dhillon* (4), *Kesavananda v. State of Kerala*, (5), *M. P. V. Sunderramier and Co. v. The State of Andra Pradesh and another* (6). *M/s. R.M.D.C. (Mysore) Private Limited v. State of Mysore* (7), and *Kewal Krishan Puri and another v. State of Punjab and others* (8), but none of the decision, directly deals with the point at issue in the present cases.

6. Mr. Ashok Bhan, the learned counsel for the petitioner in Civil Writ Petition No. 3358 of 1979, in addition to the adoption of the aforesaid arguments advanced by Mr. Bhandare, further contended that the power to specify the industry under section 2(c) of the Act of 1977, was arbitrary and violative of the fundamental right guaranteed under Article 14 of the Constitution and, therefore, the same was liable to be struck down on this ground also.

7. Mr. Kuldip Singh, the learned counsel for the Union of India, vehemently argued that the Act of 1977 was not violative of any provision of the Constitution and that the Parliament was fully competent to enact the law in the exercise of its residuary powers under Article 248, read with Entry 97 of List-I of the Seventh Schedule of the Constitution. As a matter of fact, according to the learned counsel, fee could not be levied by the Parliament as it was within the legislative competence of the State Legislature only. Moreover, after the constitution of the Central Board and the State Boards under the Act of 1974 it was necessary for the Parliament to provide funds for those Boards in order to make them function effectively. Thus, in order to augment the financial resources of the Central Board and the State Boards for the prevention and control of water pollution, the Parliament enacted the Act of 1977. He further contended that once it was held that the Parliament was competent to enact the law, then the same could not be struck down on the ground that its working may be difficult or cumbersome to the

(2) A.I.R. 1969 S.C. 59.

(3) A.I.R. 1970 S.C. 999.

(4) A.I.R. 1972 S.C. 1061.

(5) A.I.R. 1973 S.C. 1461.

(6) A.I.R. 1958 S.C. 468.

(7) A.I.R. 1962 S.C. 594.

(8) A.I.R. 1980 S.C. 1008.

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persons affected thereby. As regards the challenge on the ground of arbitrariness and discrimination under Article 14, it was submitted that section 16 of the Act of 1977 provides necessary guidelines and, therefore, the power to specify an industry under section 2(c) of the Act of 1977 was neither arbitrary nor discriminatory. Section 16 of the Act of 1977, reads as follows:—

“16. Power to amend Schedule I. (1) The Central Government may, by notification in the official Gazette, add to Schedule I any industry having regard to the consumption of water in the carrying on such industry and the consequent discharge thereof resulting in pollution of any stream and thereupon Schedule I shall, subject to the provisions of sub-section (2) be deemed to be amended accordingly.

(2) Every such notification shall be laid before each House of Parliament, if it is sitting, as soon as may be after the issue of the notification, and if it is not sitting, within seven days of its re-assembly and the Central Government shall seek the approval of Parliament to the notification by a resolution moved within a period of fifteen days beginning with the day on which the notification if so laid before the House of the People, and if the Parliament makes any modification in the notification or directs that the notification should cease to have effect, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be, but without prejudice to the validity of anything previously done thereunder.”

8. Mr. J. L. Gupta, the learned counsel for the State Board contended that the tax on the consumption of water does not fall within the ambit of any of the Entries in List-II and any matter not covered under List-II or List-III, is covered under Entry 97 of List-I of the Seventh Schedule. He further contended that the power to impose tax is separate from the power to regulate and there being no prohibition direct, or even by necessary implication, under the Constitution, the Parliament was competent to enact the Act of 1977. In support of this contention, the learned counsel relied upon *D. H. Hazareth's case* (supra) *M. P. V. Sundararamier and Co.'s case* (supra), and *State of Karnataka v. Union of India and another* (9).

9. After hearing the learned counsel for the parties at a great length, I am of the considered opinion that the Parliament validly enacted the Act of 1977, as it was within its legislative competence under Article 248 read with Entry 97 of List-I of the Seventh Schedule of the Constitution. Article 248 provides,—

“Residuary powers of legislation.—(1) Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List.

(2) Such power shall include the power of making any law imposing a tax not mentioned in either of those Lists.”

Entry 97 of List-I of the Seventh Schedule reads :—

“Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists.”

It is the common case of the parties that the State Legislature was not competent to levy any tax on the water consumed by the petitioners as the same was not provided under any entry in List-II of the Seventh Schedule. If it is so then the provisions of Article 248 are immediately attracted and the Parliament had the exclusive power to make any law with respect to any matter not mentioned in the State List. Sub-clause (2) of Article 248 further provides that such power shall include the power of making any law imposing a tax not mentioned either in List II or List III of the Seventh Schedule. Reference in this behalf may also be made to *Harbhajan Singh Dhillon's case* (supra) wherein it has been held that if a Central Act is challenged as being beyond the legislative competence of Parliament, it is enough to enquire if it is a law with respect to matters or taxes enumerated in List II. If it is not, no further question arises.

10. The next question is: whether the levying of cess, on a matter included in the State List, by the Parliament, is violative of any provision of the Constitution. The contention that it amounts to an encroachment on the sovereignty of the State Legislature as contemplated under Article 246(2) of the Constitution is unwarranted. The Legislature of a State has the exclusive power to make laws with respect to any of the matters enumerated in List-II of the Seventh Schedule whereas the Parliament has the exclusive

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power to make any law with respect to any matter not enumerated in the State List or the Concurrent List. It has been further provided under Article 243(2) that this power shall include the power of making any law imposing a tax not mentioned in either of those lists. Admittedly, the imposition of the tax on water consumption is not mentioned in the State List. The argument that in section 3 of the Act of 1973, the cess is being levied for the purposes of the Act of 1974 and utilisation thereunder and that being on State subject, the Parliament could not enact any such law, has no force. The use of the words "for the purposes of the water (Prevention and Control of Pollution) Act, 1974 (6 of 1974) " in section 3 of the Act of 1977 is not of much consequence. The reference to the said Act therein appears to have been made for the sake of convenience only. Even in the absence of the Act of 1974 the Parliament was competent to levy tax on the water consumption, unless it could be shown that in fact, it was not for any public purpose.

11. So far as the contention raised by the learned counsel for the petitioner in Civil Writ Petition No. 3353 of 1973, that the power to specify the industry under section 2(c) of the Act of 1977, was arbitrary and violative of the fundamental right guaranteed under Article 14 of the Constitution is concerned, suffice it to say that section 16 of the Act of 1977, reproduced above, provides ample guidelines for adding any industry to Schedule I to the Act of 1977. Before an industry is included in Schedule I, regard will have to be had to the consumption of water for the carrying on of such industry and the consequent discharge thereof resulting in pollution of any stream. Moreover, every notification issued by the Central Government under section 16 of the Act of 1977, has to be approved by the Parliament. Thus, in view of the provisions of section 16 of the Act of 1977, it could not be successfully agitated that no guidelines are provided under the Act of 1977 or the same suffers from the vice of arbitrariness so as to attract the provisions of Article 14 of the Constitution.

12. No other point has been urged.

13. For the reasons recorded above, there is no merit in either of the writ petitions and the same are dismissed with costs.

N.K.S.