AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WP No. 6442 of 2005

Reserved on : 04/03/2020

Delivered on : 17/07/2020

South Eastern Coalfields Ltd., a company duly registered under the Indian Companies Act, 1956, having its registered office at Seepat Road, Bilaspur, through: the Chief General Manager, Chirmiri Area, District Korea, Chhattisgarh

---- Petitioner

Versus

1. State of Chhattisgarh, Through Secretary, Ministry, D.K.S. Bhawan, Raipur, Chhattisgarh
2. The Municipal Corporation, Chirmiri, District Korea, through: Commissioner, Municipal Corporation, Chirmiri, District Korea, Chhattisgarh

---- Respondents

AND

WP No. 1613 of 2004

South Eastern Coalfields Ltd., A company duly registered under the Indian Companies Act, 1956, having its registered office at Seepat Road, Bilaspur, through: the Chief General Manager, Bhatgaon Area, District Baikunthpur

---- Petitioner

Versus

1. State of Chhattisgarh, Through The Secretary, Ministry of Housing and Environment, D.K.S. Building, Mantralaya, Raipur Chhattisgarh
2. Nagar Panchayat, Bhatgaon, through: the Chief Municipal Officer, Bhatgaon

---- Respondents

AND

WP No. 4428 of 2005

The South Eastern Coalfields Ltd., through: its Chief General Manager, Kusumunda Area, District Korba, Chhattisgarh

---- Petitioner

Versus

1. State of Chhattisgarh, Through Secretary, Department of Urban Development, D.K.S. Bhawan, Raipur, Chhattisgarh
2. The Municipal Corporation, Korba, through: its Commissioner, Korba, Chhattisgarh

---- Respondents

AND

WP No. 4644 of 2005

The South Eastern Coalfields Ltd., through: its Chief General Manager, Korba Area, District Korba, Chhattisgarh

---- Petitioner

Versus

1. State of Chhattisgarh, Through Secretary, Department of Urban Development, D.K.S. Bhawan, Raipur, Chhattisgarh
2. The Municipal Corporation, Korba, through: its Commissioner, Korba, Chhattisgarh

---- Respondents

AND

WP No. 4645 of 2005

The South Eastern Coalfields Ltd., through: its Chief General Manager, Gevra Area, District Korba, Chhattisgarh

---- Petitioner

Versus

1. State of Chhattisgarh, Through Secretary, Department of Urban Development, D.K.S. Bhawan, Raipur, Chhattisgarh
2. The Municipal Corporation, Korba, through: its Commissioner, Korba, Chhattisgarh

---- Respondents

For Petitioners	:	Mr. Shailendra Shukla, Advocate
For State	:	Mr. Jitendra Pali, Dy. A.G.
For Respondent No.2	:	Mr. B.D. Guru, Advocate

Hon'ble Shri Justice P. Sam Koshy

C.A.V. ORDER

1. Since all these bunch of writ petitions arise of the same cause of action, the issues involved in the present writ petition and the stand taken by the respondents all being common in nature, these writ petitions are being disposed of by this common order.

2. Primarily, the challenge in all these writ petitions are to the order/ resolution passed either by the respondent Municipal Corporation/

Municipal Council or the Nagar Panchayat increasing the rate of Terminal Tax imposed upon the transportation of coal.

3. The petitioners in all these petitions are the same a company registered under the Companies Act and which is a subsidiary company of Coal India Limited of which 100% shares vests with the Government of India. The petitioner-company is the largest coal producing company in India and the petitioners-establishment have got mines spread over different districts in the State of Chhattisgarh as well as in the State of Madhya Pradesh. The State Government empowered the concerned Municipal Corporation and the local body for collecting tax called the Terminal Tax upon the goods which are exported from within the municipal limits or within the limits of local body. The rate of tax, the limitations and the conditions prescribed were those which were enacted by the State Government from time to time.

4. The State Government in exercising of the powers conferred under the Municipal Corporation Act, 1956 as also the Madhya Pradesh/Chhattisgarh Municipalities Act, 1961 has framed Rules to regulate the assessment and collection of terminal tax on goods, which shall be exported from within the limits of the Municipal Corporation, the Municipal Council and the concerned Nagar Panchayat. The said Rules was known as the “Terminal Tax (Assessment and Collection) on Goods Exported From MP/CG Municipal Limit Rules, 1996. The schedule appended to the aforementioned Rules of 1956 prescribes the rate at which the terminal taxes is to be levied as also the maximum rate leviable. The terminal tax imposed upon the coal falls under the category reflected at serial No. 15 of the schedule, which is categorized as “Other Local Products”. The enactment of the Rules

and the rates prescribed therein would suggest that the Municipal Corporation or the Municipalities or even the Nagar Panchayat as the case may be would have to charge the terminal tax at the rate specified in the schedule appended in the Rules of 1996, this in other words means that the terminal tax to be collected cannot be in excess to the rates prescribed in the schedule. In all the petitions under consideration in this bunch there is an order issued by either the Commissioner, Municipal Council or the Chief Municipal Officer in the case of Nagar Panchayat, who had issued orders by themselves enhancing the rate of terminal and the tax have been enhanced substantially by these officers by issuing orders on the administrative side.

5. The respondents-Municipal Corporation, Municipality, Nagar Panchayat have purportedly enhanced the terminal tax exercising the powers under Section 133 of the Municipal Corporation Act of 1956 or Section 355 read with Clause XVI of Sub-section (1) of Sections 127 & 129 of the Municipal Act of 1961. It is this enhancement of tax which has been challenged by the petitioners.

6. Primarily the challenge is on the competency of the authorities in issuing the order of enhanced rate of tax. According to the petitioners, the authorities, who have issued the orders have not been empowered for issuing such orders in the teeth of the Rules framed by the State Government in 1996, under which there is already a schedule prescribed with the maximum rate also prescribed. According to the petitioners, any change to the rate of tax would have been only by the State Government that to by amending the provisions of Rules of 1996 and the schedule appended thereto. The stand of the Municipal Corporation and even of the Nagar Panchayat is that the Constitution

of India by way of the 74th amendment provided certain powers to the Municipalities and the Municipal Corporations, so also to the Nagar Panchayats constituted in the rural areas and Article 243-X provides for imposition of taxes and raising of funds.

7. According to the counsel appearing for the respondents, it is this power, which has been exercised by the respective authorities in the course of enhancing the terminal tax highlighting the different provisions of the Municipal Corporation Act as also the Municipal Act. The State counsels emphasized on the ground that the enhancement of terminal tax is well within the authority of the Municipal Corporation, Municipality or the Nagar Panchayat as the case may be and that there was no illegality in it. According to the counsel for the respondents, the petitioners are erroneously relying upon the Rules of 1996, which as on date is no longer in force. The stand of the State Government in these writ petitions also remains to be the same and they have tried to defend the action on the part of the Municipal Corporation and the Nagar Panchayat in raising the rates of terminal tax to be collected.

8. Having heard the counsels appearing on the either side it was noticed that the issue involved in this bunch of writ petitions came up before the Madhya Pradesh High Court as early as in the year 2002, wherein in identical set of facts in two writ petitions in the case of **"Lal Narayan Singh v. Chief Municipal Officer & others" reported in 2003(2) MPLJ 340** decided on 04.04.2002 and again in the case of **"Gajanand Agarwal v. State of M.P. & others" reported in 2003(2) MPLJ 26** decided on 26.08.2002 the High Court of Madhya Pradesh have decided the bone of contentions involved in the present writ petitions in the two judgments referred to above.

9. In the case of "**Lal Narayan Singh**" (supra) the Hon'ble High Court of Madhya Pradesh dealing with the aforesaid issue involved in the present writ petitions in paragraph Nos. 9 to 16 held as under:

> **"9. The first question to be examined is whether the action of the Municipal Council for prescribing the rates at 2% on export of liquor is permissible.**
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> **10. Rules of 1996 framed by State of M.P. came into force from 7th March, 1997. These rules specifically prescribe the rate on all sorts of liquor at the rate of 1%. Rule 9 of the Rules provides that from the date of commencement of these rules, the M.P. Municipalities Terminal Tax on the Goods and Animals Imported into or Exported out of the Municipal Limits (Assessment and Collection) Rules, 1991 shall stand repealed. Under sub-rule (2) rule (1) of the rules prescribes that these rules shall come into force in Municipal Corporation, Municipal Council and Nagar Panchayat under clause XVI of sub-section (1) of section 127. These rules shall come into force from the date of publication of these rules in M.P. Rajpatra. Sub-rule (2) of rule (1) of Rules of 1996 is quoted below:-**
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> **(2) These rules shall come into force in a Municipal Corporation, Municipal Council and Nagar Panchayat on such date on which such Municipal Corporation under clause (o) of sub-section (2) of section 132 of M.P. Corporation Act and Municipal Council or Nagar Panchayat under Clause (xvi) of sub-section (1) of section 127 of M.P. Municipalities Act, 1961, impose the terminal tax on goods exported from the municipal limits.**
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> **Provided that where the Corporation or Council has already imposed the said tax, these rules shall come into force from the date of publication of these rules in the M.P. Rajpatra.**
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> **11. Power under sub-section (1) of section 127 of M.P. Municipalities Act is subject to general or special order of State Government in this behalf. Sub-section (6) of section 127 of the Municipalities Act also makes it clear that in addition to tax specified in sub-section (2) of section (1) subject to any general or special order may impose any of the taxes mentioned in sub-section, clause (n) of sub-section (6) of section 127 provides for imposition of terminal taxes on goods or animals exported from the limits of the Council. Thus, the power of Municipal Council is not unfettered it cannot violate the general or special order issued by the State Government. In the instant cases statutory rules framed in the year 1996 by State Govt. contain general provisions.**
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> **12. Reliance on the rules of 1984 by Municipal Council is not permissible for the reasons under rules of 1984 Terminal Tax can be levied on export of all kinds of burnable woods, building woods, mines coal and wooden coal from the limits of Municipality as provided under rule 5 of the Rules.**
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> **13. Rule 5 of the Rules of 1984 makes it clear that the terminal tax shall be levied on coal and woods. The procedure prescribed under section 127 was followed with respect to those articles mentioned specifically in the rules of 1984. The 1984 Rules were framed in exercise of powers conferred by clauses (a) and (b) of**

sub-section (2) of section 127 and sub-section (1) of section 355 and sub-section (5) of section 356 of M.P. Municipalities Act; the Rules of 1984 are totally inapplicable to the liquor. Thus, it cannot be said that simply by passing a resolution it was open to Municipality to impose tax in question; at higher rate than prescribed under the Rules of 1984 which have not been amended, hence no such tax on liquor could be imposed under Rules of 1984. While passing the impugned resolution P/2 the procedure prescribed under section 129 was not followed. State Government has not approved by any general or special order the imposition of tax at the rate of 2%; the resolution P/2 was not at all referred to the State Government for its approval. It runs contrary to the statutory rules of 1996 already in force which cannot be superseded by a resolution but only by rules framed by Municipality with approval of Government.

14. In Chief Municipal Officer Nagar Panchayat, Kymore vs. Eternit Everest Ltd. and another, 2000(2) MPLJ 291 : 2000(1) MPHT 33 this Court laid down that Municipal Council exercises legislative function while imposing export tax; the same statutory function cannot be undermined or be superseded by issuing of any circular or exercising the statutory power by any authority under the Rules. It was also laid down that State Government could have framed the rules, therefore, the State Government framed rules in the year 1996 and published them in the Gazette dated March 7th 1997. These rules become binding on Municipalities.

15. In the instant cases the decision was taken by the Municipal Council in contravention of the rules of 1996. The action could be taken by Municipal Council within the purview of rules of 1996.

16. Thus, it is held that decision of the Municipal Council to collect the tax at the rate of 2% export of liquor is in contravention of the rules of 1996. As per Rules, the export tax could be realised only at the rate of 1%."

10. Reiterating the same stand, the Hon'ble High Court of Madhya Pradesh again in the case of "**Gajanand Agarwal**" (supra) referring to the issue in paragraph No.2 in paragraph No.10 has held the enhancement of rate by the Municipal Council to be ultra vires the provisions of Municipal Corporation Act. For ready reference the paragraph Nos. 2 & 10 of the aforesaid judgment are reproduced hereinunder:

"2. The challenge is in two fold firstly on the ground that imposition is not made following the procedure of law; second ground is that the Municipal Council has exceeded the rate as prescribed in the rules called Terminal Tax (Assessment and Collection) on the Goods exported from M.P. Municipal Limits Rules, 1996 (for short "the Rules")

10. Thus, imposition of rate of 2% on value is ultra vires of the powers; sub-section (6) of section 127 limits the power of the Municipal Council to impose the tax. It has to be exercised subject to any general or special order of the State Government. The rules of 1996 have to be taken as general directions issued

> **within the purview of sub-section (6) of section 127 of the Act. Thus, imposition of tax at a higher rate than prescribed under the Rules is not permissible."**

11. It would be also pertinent to mention that the Madhya Pradesh High Court on an earlier occasion dealing with a similar issue in the case of "**Chief Municipal Officer, Nagar Panchayat, Kymore v. Eternit Everest Ltd. and another" 2000(2) MPLJ 291**. In the said case the High Court has held that though the Municipal Council exercises legislative functions while imposing export tax, the same statutory function can not be undermined or be superseded by issuing any circular or exercising the statutory power by an authority under the Rules and it was also held in the said judgment that once when the government has framed the Rules in the year 1996, the Rules becomes binding upon the Municipalities, which in the instant case would also be applicable upon the Municipal Corporations so also upon the Nagar Panchayats.

12. The ratio laid down by the Madhya Pradesh High Court and the issue involved in the present writ petitions came up for consideration before the Hon'ble Supreme Court in the case of **"ACC Ltd. v. State of M.P. & another" (2005) 5 SCC 347**. The Hon'ble Supreme Court while considering the issue of power of Municipality viz-a-viz the power of the State Government, so far as imposition of the rates for collecting terminal tax in paragraph Nos. 4, 12, 14 & 15 held as under:

> **"4. A writ petition was filed by the appellant questioning the demand. It was contended that the Municipality is only entitled to recover the export tax on cement at the rate prescribed by the State Government and not as claimed by the municipality. It cannot impose tax on its own as the imposition is always subject to the approval of the State Government. Since the State Government in order to bring uniformity all over the State of Madhya Pradesh had issued a Government Order dated 15.12.1995 fixing the rate at 0.20 per cent on the price of cement, the Municipal Council cannot recover the tax at the old rate.**

12. **The present dispute relates to Clause (xvi) of Sub-section (1) of Section of the Act. Under the constitutional scheme the power to levy the tax of the nature levied under Section of the Act is that of the State Government which is clear from the fact that though the Council may impose any tax for the purposes of the Act, the same is subject to any general or special order which the State Government may make in that behalf. Furthermore, Sub-section (2) of Section authorises the State Government to regulate the imposition, assessment and collection of tax under the Act and also prescribes the maximum and minimum limits as to the amount or rate of tax. The position is also clear from Clause (xxiii) which empowers the Municipality to levy such tax, which the State Legislature has power to impose under the Constitution of India. The source of power to levy is the one conferred on the State Legislature. The Municipality does not have any independent source. The power under Section is exercised by the Municipality by delegation and is a case of delegated legislation. Section is the procedural section dealing with the procedure for imposing taxes. The conditions contemplated in Section are: (a) proposal to be passed by the Council for the purpose of imposition of any tax under Section 127; (b) when a resolution in terms of Sub-section (1) is passed the Council is required to publish a Notification in the prescribed form and manner along with the resolution; (c) under Sub-section (3) any inhabitant of the Municipality may submit his objection in writing to the Council within the specified period; (d) under Sub-section (4) the proposal and all objections received thereto are to be placed for consideration at a special meeting. The procedure to be followed when the Council decides to modify the proposal is also indicated. Sub-section (5) is very relevant for the present dispute in the sense that on receiving the proposal the State Government has two options. It may either sanction the proposal or refuse to sanction the same. When the State Government sanctions the proposal with modification or with such modification not involving in increase of the proposed rates as it thinks fit or subject to such conditions as to the application within the Municipality to any purpose or purposes of the Act which may be specified regarding application of the whole or any part of the proceeds of the tax. When any proposal for tax has been sanctioned under Sub-section (5), the State Government may under Sub-section (7) by Notification direct the imposition of the tax as sanctioned in the manner prescribed. Sub-section (8) provides that when a Notification of the imposition of tax under the Section is issued the same is conclusive evidence that the tax has been imposed in accordance with the provisions of the Act. Subsection (6) is of great importance in the sense that no modification affecting the substance under Sub-section (5) shall be made unless and until the modification had been accepted by the Council at a special meeting. Section deals with abolition or variation in tax by the Council with prior approval of the State Government. Section deals with power of the State Government having regard to the relief in taxes. The provision can be set in motion on receipt of any complaint or suo motu by the State Government. In the latter case, the State Government can act if it appears to it that any tax levied by Council is unfair in its incidence or that levy or any part thereof is obnoxious to the interest of the inhabitants of the Municipality. In either of the situations, the State Government may require the Council to remove objections to any such tax within a specified time and in case the Council fails to comply with the order within the time so specified to the satisfaction of the State Government, it may by Notification and subject to such conditions or restrictions as may be specified abolish, suspend or reduce the amount or rate of any tax.**

> **14. Though the Government Order refers Sections and 129 of the Act, it is to be noted that there was no proposal by the Municipal Council for reduction of the rate of tax. In terms of Sub-section (1) of Section the power to impose the tax has to be exercised by the Council which is of course subject to any general or special order of the State Government. The Municipal Council exercises the power as a delegate and the power exercised under Section as noted above is a delegated legislation. Since the Municipal Council has not proposed for any variation in the rate of tax the question of the State Government passing any general or special order in that regard is not contemplated. It is to be further noted that the Government Order treats the matter as instruction to all municipalities.**
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> **15. So far as Section is concerned, there is no question of any suo motu fixation of rate by the State Government. In fact while acting on the proposal by the Municipal Council, the State Government can direct modification affecting the substance of the proposal. But the same cannot be given effect to unless and until the modification has been accepted by the Council at a special meeting. In the instant case that contingency has not arisen. Though in terms of Section the State Government can initiate the action for reduction in the rate that can only be done if the enumerated circumstances exist. That situation has also not arisen in the instant case and admittedly the State Government has not acted in terms of Section of the Act. Therefore, the Division Bench is right in its view that the circular of the State Government dated 15.12.1995 is really of no consequence. Further changes under Section can be introduced in terms of Sub-section (2) of Section by framing rules. In the instant case, the rules were framed in March 1997 and did not have any retrospective effect."**

13. Yet again in the year 2012, there was again a bunch of writ petitions of similar nature, which came up for consideration before the Madhya Pradesh High Court, the lead case being that of **"Mohan Chopada v. State of M.P. & others" 2012 (4) MPLJ 690**, wherein referring to all the earlier judicial pronouncements on the subject matter including the judgment of the Hon'ble Supreme Court in the case of "**ACC Limited**" (supra), the Hon'ble Madhya Pradesh High Court from paragraph Nos. 11 to 14 has held as under:

> **11. The power and authority of the municipality to levy tax at higher rates than the rates prescribed by the Rules of 1996 was assailed before this Court in the case of Chief Municipal Officer, Kymore vs. Eternit Everest Ltd. and another, 2000 (2) MPLJ 291. In the aforesaid decision the Division Bench of this Court held that while the Municipal Council or Nagar Panchayat concerned had the power to impose terminal tax by passing a resolution under section 129 of the Act on obtaining the approval of the State Government at the rates decided by them prior to coming into force the Rules of 1996, however, after coming into force the Rules of 1996, the Municipal Council or the Nagar Panchayat were bound to levy terminal tax at the rate prescribed by the**

Rules of 1996 and not above the same in view of the express provisions of section 127 (6) of the Act which specifically prescribes that the tax enumerated in that sub-section would be subject to any special and general order issued by the State Government. The judgment of this Court in the aforementioned case travelled to the Supreme Court and has been affirmed by the judgment rendered in the case of Associated Cement Companies Ltd. vs. State of MP and another, 2005 (5) SCC 347.

12. As far as the Municipal Council, Umariya is concerned, they continued to enhance the rates of terminal tax by passing resolutions even after coming into the force the Rules of 1996 as is evident from the documents Annexures P/5, P/6 and P/8 and therefore, certain persons who were exporting liquor and Mahua from the limit of Municipal Council, Umariya filed petitions before this Court assailing the enhancement of terminal tax which were registered as W.P. Nos. 3277/99 and 5215/99. Relying on the decision of this Court rendered in the case of Chief Municipal Officer, Kymore (supra), this Court allowed W.P. No. 5215/99 by order dated 4-4-2002 reported as 2003 (2) MPLJ 340, Lal Narayan Singh vs. Chief Municipal Officer, and another quashing the resolution of the municipal council to impose terminal tax at higher rates than the rates prescribed by the Rules of 1996. Writ Petition No. 3277/99 was decided in similar terms by order dated 26-8-2002, reported as 2003 (2) MPLJ 26, Gajanand Agrawal vs. State of M.P. and another.

13. In view of the aforesaid pronouncements of law by this Court as well as the Supreme Court, the issue regarding powers of the municipalities to levy tax above the rates prescribed by the Rules of 1996 is no longer res integra and stands specifically concluded by the aforesaid judgment wherein it has been held that the Municipal Council, Umariya or for that matter any other Municipality or Nagar Panchayat cannot levy terminal tax above the rates prescribed by the Rules of 1996.

14. In view of the aforesaid facts and circumstances, the law laid down by this Court and the Supreme Court in the case of Chief Municipal Officer, Kymore (supra) which was followed by this Court in the case of Municipal Council, Umariya itself in the decisions reported in 2003 (2) MPLJ 26, Gajanand Agrawal vs. State of M.P. and another and 2003 (2) MPLJ 340, Lal Narayan Singh vs. Chief Municipal Officer and another, I am of the considered opinion that the resolution of the Municipal Council, Umariya prescribing higher rate of terminal tax than the rate prescribed in the Rules of 1996 even after coming into force of the aforesaid Rules of 1996, with effect from 7-3-1997, is without any authority of law as the Municipal Council, Umariya is bound to levy terminal tax at the rates prescribed by the State Government in the Rules and therefore, the Municipal Council, Umariya can levy terminal tax on all sort of timber used for building construction only at the rate of 0.50% w.e.f. 7-3-1997 and not above or beyond the aforesaid rates till they are revised by the State itself. Consequently, the decisions of the respondent/Municipal Council, Umariya levying terminal tax at the rate above 0.50% after 7-3-1997 are hereby quashed."

14. In the light of the authoritative pronouncements on the subject matter by the Madhya Pradesh High Court and also which stand affirmed by the Hon'ble Supreme Court, the grounds raised by the learned State

counsel to the extent of the non-applicability of the Rules of 1996 or the Rules of 1996 having lost its efficacy in the light of the subsequent orders being passed by the authorities Incharge of the local body does not have any leg to stand and the same stands negated.

15. As a consequence of the authoritative decisions discussed in the preceding paragraphs, this Court has no hesitation in reaching to the conclusion that the resolutions and the impugned orders under challenged in this bunch of writ petitions are contrary to law and also have been issued by the authorities who have not being conferred with the power to prescribe the rates at which the terminal tax should be collected. The impugned orders/resolutions in each of these writ petitions therefore deserves to be and are accordingly set-aside/quashed. As a result of the quashing of all the impugned orders, consequences to follow.

16. All these writ petitions stands allowed.

Sd/-
(P. Sam Koshy)
Judge

Ved