

PETITIONER:

M\S. R.S. REKHCHAND MOHOTASPINNING & ORS WEAVING MILLS LTD.

Vs.

RESPONDENT:

STATE OF MAHARASHTRA

DATE OF JUDGMENT: 07/05/1997

BENCH:

K. RAMASWAMY, S. SAGHIR AHMAD, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

This appeal by special leave arises from the judgment of the Division Bench of Bombay High Court passed in Writ Petition No. 1509 of 1981 on November 8, 1989. The primary question is: whether the state legislature has power to levy rates of cess on use of flowing water from the river "Wana'.

The facts are as under. The appellant had installed a mill in the year 1898 and has been drawing water for industrial purpose from the said river by installing water pumps at its bank with the help of artificial contrivance. Under section 70 of the maharashtra Land Revenue Code, 1966, (for short, 'the Code'), The Government of Maharashtra passed the following Resolution on June 5, 1972 thus;

"In exercise of the power conferred in it by section 70 of the Maharashtra Land Revenue Code, 1966, the Government is pleased to sanction the following rates for the use of water (the right to which vest in Government and in respect of which no rate is liable under any law in force in any part of the state) for non-agriculture purpose.

NON- AGRICULTURE PURPOSE

	Rate	Unit
1. Industrial purpose	(a) Rs.8/- for the first two years	Per ten thousand cft. of water
	(b) Rs. 10/- for the third & fourth year	-do-
	(c) Rs. 12.50 for the fifth and subsequent year	-do-
2. Purpose for the Municipality	Rs. 5/-	-do-
3. Purpose for the Railways	Rs. 12.50	-do-

4. Domestic use
(i.e. for drinking
water)

Nil

The Collector or such other officers as may be authorised in that behalf should fix the water rates in accordance with rates sanctioned above.

These orders supersede all the prevalent orders or practice in regard to the quantum or the rates chargeable under Section 70 of the Maharashtra Land Revenue Code, 1966.

These orders were issued with the concurrence of the Finance Department vide in official reference No. 7041 dated 29th April, 1972."

The Tehsildar of Hinganghat on the appellant levied cess in the sum of Rs. 18,348.30 for the period from 1967-68 to 1973-74 on the use of water for industrial purpose. The appellant, feeling aggrieved, filed an application under Section 20(2) of the Code before the Sub-Divisional officer, Hinganghat, challenging the demand of cess, dated December 19, 1974, inter alia, contending that he had easementary right to draw flowing water from the river, wane, uninterruptedly and continuously since he had been so drawing the water for over 70 years; that it had perfected as his prospective right to draw water from the flowing river, and the Government is, therefore, devoid of any power to levy cess on the use of water.

The Sub-Divisional officer dismissed the application after consideration after considering necessary evidence. The appeal filed by the appellant against the order of the Sub-Divisional officer also was dismissed. The commissioner, Nagpur dismissed the revision. Thereafter, the appellant after filing unsuccessful revision petition before Revenue Tribunal, filed a writ petition in the High court. The High court has found that the Government has power to levy cess on water; the resolution, therefore, passed by the Government under Section 70 of the Code is within the legislative competence under Article 246 of the Constitution of India. Accordingly, it upheld the action of the respondent. On leave being granted and a reference having been made to three-Judge Bench, the matter has come up before us.

Shri Sanghi, learned counsel for the appellant contends that the code envisages collection of land revenue from agriculturists for use of water for cultivation purpose. admittedly, the use of water by the appellant, is for industrial purpose. By operation of Section 70 read with Section 20 of the code, land revenue is relatable to levy on land of cess on the water used for agricultural purpose. Even if it is construed that the Resolution is valid, the legislature lacks competence to enact law since neither Entry 18 nor entry 45 or Entry 49 of List are available to sustain the demand under Section 70; therefore, it cannot be construed that section 70 is law made under any of the Entries. As a consequence, he is entitled to the relief. He further contends that in view of the fact that the High court has recorded a finding that the appellant has a natural right to draw water from the flowing river, the appellant cannot be made to make payment which has no legislative sanction. Alternatively, as the last straw on the camel's back, learned counsel for the appellant contends that the collector has no power to levy cess with retrospective effect.

Shri Andhyarujina, learned solicitor General, on the other hand, contends that though the appellant has been using the water for industrial purpose, he is using the water by artificial contrivance, drawing water from the

flowing river; the levy of cess stands vested in the state; and, therefore, the state has power to regulate the payment of cess. The Resolution came to be passed in exercise of the power under section 70 of the Code relating to the mode of payment and the manner in which the land revenue or cess can be computed. Sub-sections (2) & (3) of section 20, are the essential provisions providing for the appellate remedy which the appellant has availed of. List II Entries, namely, Entries 18, 45 and 49 are to be read with reference to the use to which land and water are put. Water is nothing but integral part of land; without land, water does not exist. Section 70 would come within Entry 45 since it relates to the use of land or water regulated in the rural India. Entry 49 relates to use of land or water in the urban area. Since the factory of the appellant is situated in a rural area, Entry 45 is the appropriate Entry and is required to be broadly interpreted so as to bring back within the legislative competence under Article 246 of the Constitution. He further contends that though the appellant had been using the water for a period of 70 years, he does not have a natural right which right is exercised with the help of artificial contrivance for carrying on industrial activity. That finding of the High Court is not correct since the appellant has been using the water for industrial purpose. The levy as land cess can be used by operation of section 70 read with section 20 and the definition of the word 'land' and 'and revenue' respectively under the code. He also contends that though the demand can be made under section 70 read with the Resolution passed by the Government, since the Legislature has authorised under section 70 the Collector to levy and collector having made the impugned demand in the year 1972, the demand could only be prospective and it cannot be given retrospective effect.

In view of the respective contentions, the question that raises for consideration is: whether the appellant has a natural right to use water from flowing river and whether the water used by it is exigible to land cess? Entry 17 of List II of the seventh schedule to the constitution reads as under:

"Whether, I.e. to say, water supplies, irrigation and canals, drainages and embedments, water storage and water power, subject to the provisions of Entry 56 List-I"

Entry 56 of List I reads as under:

"Regulation and development of Entry states rivers and river valleys to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest."

Entry 97 of list I which was relied upon by Mr. Sanghi reads as under :

"Any other matter not enumerated in List II or List III including any tax not mentioned in either of those lists.:

Entry 45 of List II reads as under :

"Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and

a lienation of revenues."

Section 70 of the code reads as under:

"70. Rates for use of water.

The State Government may authorise thus collector or the officer in charge of a survey or such other officer as it deems fit, to fix such rates as it may from time to time deem fit to sanction, for the use, by holders and other persons, of water, the right to which vests in no rate is leviable under any law relating to irrigation in force in any part of the state. Such rates shall be liable to revision at such periods as the state Government shall from time to time determine, and shall be recoverable as land revenue; Provided that, the rate for use of water for agricultural purposes shall be one rupee only per year per holder."

Section 20 of the Code reads as under :

"Title of state in all lands , public roads, etc. which rate nor property of others.

(1) All public roads, lanes and paths, the bridges, ditches, dikes and fences, on , or beside, the same, the bed of the sea and of harbours and creeks below the high watermark, and of rivers, streams, nallas, lakes and tanks and all canals and water-courses, and all lands wherever situated, which are not the property of persons, legally capable of holding property, and except in so far as any rights of such persons may be established, in or over the same, and except as may be otherwise provided in any law for the time being in force, are and are hereby declared to be, with all rights in or over the same, or appertaining thereto, the property of the State Government and it shall be lawful for the collector, subject to the orders of the Commissioner, to dispose of them in such manner as may be prescribed by the state Government in this behalf, subject always to the rights of way, and all other rights of the public or of individuals legally subsisting.

Explanation :- In this section, "high watermark" means the highest point reached by ordinary spring tides at any season of the year.

(2) Where any property or any right in or over any property is claimed by or on behalf of the Government or by any person as against the Government, it survey officer,

after formal inquiry of which due notice has been given, to pass an order deciding the claim.

(3) An order passed by the Collector or survey officer under sub-section (1) or sub-section (2) shall be subject to one appeal and revision in accordance with the provisions of this code.

(4) Any suit instituted in any civil court after the expiration of one year from the date of any order passed under sub-section (1) or sub-section (2) or, if appeal has been made against such order within the period of limitation, then from the date of any order passed by the appellate authority, shall be dismissed (through limitation has not been set up as a defence) if the suit is brought to set aside such order or if the relief claimed is inconsistent with such order, provided that in the case of an order under sub-section (2) the plaintiff has had due notice of such order.

(5) Any person shall be deemed to have had due notice of an inquiry or order under this section if notice thereof has been given in accordance with rules made in this behalf by the state Government."

A conjoint reading of the provisions of the code and the respective Entries would indicate that the land revenue including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenue lie under the broad-head 'land revenue'. It is well settled legal position that the land has been widely interpreted. In *Navinchandra Mafatlal vs. The Commissioner of Income-tax, Bombay city* [(1965) 1 SCR 829 at 836] a Constitution Bench had observed that the question before this court related to the correct interpretation of a word appearing in a Constitution Act which, as has been said, must not be construed in a narrow and pedantic sense. The interpretation of the statute would apply to the interpretation of the Entries subject to reservation that their application is of necessity conditioned by the subject matter of the enactment itself. It should be remembered that the problem before us is to construe a word appearing in Entry 54 which is a head of legislative power. It cannot be read in a narrow or restricted sense and that each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended to it. It is, therefore, clear that in construing an Entry in a List conferring legislative powers, the widest possible construction, according to their ordinary meaning, must be put upon the words used therein. Reference to legislative practice may be admissible for cutting down the meaning of a word in order to reconcile two conflicting provisions in two legislative lists. The cardinal rule of interpretation, however, is that words should be given their ordinary, natural and grammatical meaning subject to the rider that in construing words in a constitutional

enactment, conferring legislative power under Article 246, the most liberal construction should be put upon the words in the Entries in the respective Lists in the Seventh Schedule so that the same may have effect in their widest amplitude. The same principle was reiterated in Kunnathat Thatcunni Moopil Nair vs. The state of Kerala & Anr. [(1961) 3 SCR 77 at 106] by Sarkar, J. though in a dissenting tone but on this principle there is no dissent by majority and it cannot be dissented. It was said thus:

"It is well known that entries in the legislative lists have to be read as to cut down the plain meaning of the word "land" in entry 49 to give full effect to the word "forest" in entry 19. In my view, the two entries, namely, entry 49 and entry 18 deal with entirely different matters. Therefore, under entry 49 taxation on land on which a forest stands is permissible and legal.

In the case of Synthetics and chemicals & Ors. vs. State of U.P. & ors. [(1990) 1 SCC 109], a Bench of seven Judges of this court constitution and legislative Entries in paragraph 67 which reads as under:

" It is well to remember that the meaning of the expressions used in the Constitution must be found from the language used. We should interpret the words of the Constitution on the same principle of interpretation compel one to take into account the nature and scope of the Act which requires interpretation. A Constitution is the mechanism under which laws are to be made and not merely an Act which declares what the laws is to be. It is also well settled that a constitution must not be construed in any narrow or pedantic sense and that construction must not be construed in any narrow or pedantic sense and that construction which is most beneficial to the widest possible amplitude of its power, must be adopted. An exclusionary clause in any of the entries should be strictly and, therefore, narrowly construed. No entry should, however, be so read as not to rob it of entire content, A broad and liberal spirit should, therefore, inspire those whose duty it is to interpret the Constitution, and the courts are not free to stretch or to courts are not free to stretch or to pervert the language of an enactment in the interest of any legal or constitutional theory. Constitutional adjudication is not strengthened by such an attempt but it must not try to give meaning on the theory of what the law should

be but it must so look upon a organic thing and must adapt itself to the changing situations and pattern in which it has to be interpreted. It has also to be borne in mind that where division of powers and jurisdiction in a is desirable to read the Constitution in harmonious way. It is also necessary that in deciding whether any particular enactment is within the purview of one legislature or the other, it is the pith and substance of the legislation in question that has to be looked into. It is well settled that the various entries in the three lists of the Indian constitution are not powers but fields of legislation. The power to legislate is given by Articles of the Constitution. The three lists of the Seventh Schedule to the Constitution are legislation. These demarcate the area over which the appropriate legislature can operate. It is well settled that widest amplitude should be given to the language of the entries in three Lists but some of these entries in different lists or in the same list may override and sometimes may appear to be in direct conflict with each other, then and then only comes the duty of the court to find the true intent and purpose and to examine the particular legislation in question. Each genera world should be held to extend to all axillary or subsidiary matters which can fairly and reasonably be comprehended in it. In interpreting an entry it would not be reasonable to import any limitation by comparing or import ay limitation by comparing or contrasting that entry with any other in the same list. It has to be interpreted as the Constitution must be interpreted as an organic document in the light of the experience gathered. In the constitutional scheme of division of powers under the legislative lists, there are separate entries pertaining to taxation and other laws. The aforesaid principles are fairly well settled by various decisions of this court and other courts. Some of these decisions have been referred to in the decision have been referred to in the decision of this court in civil Appeal No. 62 (N)/70 India cement Ltd. v. state of Tamil Nadu

(1990) 1 SCC 12.

In recent judgment, this court, by a Bench of two Judges, to which K. Ramaswamy and G.P. Pattanaik, JJ. were members, in *Indian Aluminium co. & Ors. vs. State of Kerala & Ors.* [(1996) 7 SCC 637], considered the same question in paragraphs 12 and 20 which read as under:

"The primary question, therefore, is: whether the impugned Act enacted by the state Legislature is one under Entry 53 of the state List, viz., "Taxes on the consumption or sale of electricity". Indisputably, the title of the Act as well as the charging section 3 employ the words "duty on supply of electricity". Under Article 246(3) of the Constitution, every state legislature has explicit power to make law for that state with respect to the matters enumerated in List II (state List) to the seventh Schedule to the constitution. The entries in the three lists of the Seventh Schedule are not power of legislation but merely fields of legislation. The power is derived under Article 246 and other related articles of the constitution. The legislative fields are of enabling character designed to define and delimit the respective areas of legislative competence of the respective legislature. There is neither implied restriction imposed on the legislature nor is any duty prescribed to exercise that legislative power in a particular manner. But the legislation must be subject to the limitations prescribed under the Constitution. When the vires of an enactment is challenged, it is very difficult to ascertain the limits of the legislative power. Therefore, the controversy must be resolved as far as possible, in favour of the legislative body putting the most liberal construction upon the relevant legislative entry so that it may have the widest amplitude. The court is required to look at the substance of the registration. It is an equally settled law that in order to determine whether a tax statute is within the competence of the legislature, it is necessary to determine the nature of the tax and whether the legislature had power to enact such a law. The power to enact such a law. The primary guidance for this purpose is to be gathered from the charging section. It is the substance of the

impost and not the form that determines the nature of tax."

Thus, it is settled principle of interpretation that legislative Entries are required to be interpreted broadly and widely of as to give power to the legislature to enact law with respect to matters enumerated in the legislative Entries. Substantive power of the legislature to enact law is under Article 246 of the Constitution and legislative Entries in the respective Lists 1 to 3 of the Seventh Schedule are of enabling character, designed to define delimit the respective areas of legislative competence of the respective legislature. the substantive power in Article 246 and all other related articles.

In Province of Madras vs. Lady of Dolours Convent, Trichinopoly, represented by Mother Superior & Ors. [Air 1942 Madras 719], the word 'land' was interpreted to include land cess. In Kandukuri Bala Suryaprasada Raw & Anr. vs. secretary to state for India [AIR 1971 PC 42], the privy council had also interpreted "charge" on water in the nature of land cess. It was followed by the Madras High Court, similarly, water cess is land revenue as was held in K.S. Ardanareeswarar Gounder vs. Tahsildar, Bhavani & Anr. [Air 1976 Madras 318 at 320]. With regard to the incidence of cess on the use of water in the urban area. the Division Bench of the Andhra Pradesh High court in Nizam Sugar Factory Ltd. vs. city Municipality Bodhan & Anr. [AIR 1965 AP 91] had held that it is land revenue under Entry 49. Similarly, Allahabad High court in Raza Buland Sugar Company Ltd., Rampur vs. Municipal Board, Rampur [AIR 1962 All. 83] rates of cess on water under the municipal limits was held to be the cess of land revenue in the urban area. Thus, we hold that the legislative Entry 45 of List II of the seventh Schedule of the Constitution brings within the ambit power of the legislature under Article 246 to levy cess on use of the water even from flowing river. Therefore, section 70 of the code comes within Entry 45 of List II of the Seventh Schedule to the Constitution.

Mr. Sanghi, learned counsel for the appellant has relied upon a judgment of this court in Shankar Narayan Ranade vs. Union of India [(1964) 1 SCR 885 at 893] contending that this court made distinction between still water and flowing water. Water for the purpose of cess and the impost thereof are not referable of cess and the impost thereof are nor referable to flowing water of the river and the river water is nor amenable to land cess; therefore, it is contended that the flowing water is nor exigible to regulation of the land cess. We find no force in the contention. The use of the word "water" in the sand property was construed to exclude the running water of the river and it could nor be said that the title to the flowing water. There existing words of difference between still water in the land like in the pound and flowing water in a river. This court negatived the contention and held that the flowing water vests in the state. In that context, at page 894, the title to the bed of the river was negatived and, therefore, it was held that there were two difficulties in accepting the contention. The first difficulty was that the use of the word "water" in the sand, excluded the running water of the river. Besides, it is by no means clear that the title to the flowing water of the river necessarily goes with the title to the bed of the river. Shri Sanghi further contends that this court made distinction between the cess on sale of goods in state of Madras vs. Cannon Dunkerley & Co. (Madras) Ltd. [(1959) 1 SCR 379] which is popularly known as first Cannon

Dunkerley's case. Therein, the question was whether the material supplied to the company was exigible to sales cess under the Madras sales Tax Act. This Court held that since sale of goods is clearly covered in different legislative Entries, it is not exigible to sales cess. The ratio therein, therefore, has no application to the facts of the present case. It is seen that Section 20 of the Code clearly includes flowing water, as investing title thereof in the State as integral part of the land. The definition 'land' includes the right to the water flowing therefrom as in the definition in the Transfer of Property Act. Therefore, when the cess has been imposed by virtue of power vested under Section 70 of the Code by the state Government by way of legislation, the power of the state is traceable to the legislation, the power of the state is traceable to the legislative Entry under Entry 45 of List II of the Seventh Schedule to the Constitution. Therefore, the demand made is within the legislative competence and the legislature is competent to enact law in exercise of the power under Article 246. The Government have power under Section 70 read with section 20 of the Code to levy water cess on the use of water by the Resolution which came to be passed by the state Government determining the rate at which water cess is cessable on use of water for industrial purpose. It is true that the appellant has been using the water for over 70 years but that cannot be construed to mean that it has a right to draw water by artificial contrivance from the flowing river for use in its factory for industrial purpose. Having used the water for industrial purpose, it is taxable as incidence on cess on water as land cess and, therefore, it is liable to pay water cess at the rates prescribed by the Government.

Mr. Sanghi, learned counsel for the appellant, lastly submits that no guidelines have been fixed for demand of cess levied on use of water from flowing river. We find that the manner in which the prescription of the rates has been based, is sufficient guideline for determining the rates at which the demand can be assessed to revenue cess.

It is already seen that the machinery provision under sub-section (2) of Section 20 was adopted by the Tehsildar and after demand was made, the appellant approached the appellate authority and the reversional authority who complied with the principles of natural justice. In view of the fair stand taken by learned solicitor General that the executive cannot make any demand retrospectively, the demand must be construed to operate from the date of the Resolution passed by the Government and from that date, the appellant is liable to pay the land cess for use of the water at the rates specified therein. The respondents are directed to compute the rate on that basis and make a fresh demand; on making such demand, the appellant shall pay the amount of cess within a period of 30 days from the date of receipt of the demand.

The appeal is accordingly disposed of. No costs.