

A OIL AND NATURAL GAS COMMISSION

v.

STATE OF BIHAR AND OTHERS

August 24, 1976.

B [A. N. RAY, C.J., N. L. UNTWALIA AND P. N. SHINGHAL, JJ.]

Sales Tax—Supply of crude oil by Oil and Natural Gas Commission from Assam to refinery of Indian Oil Corporation in Bihar—Supply under directions of Government at price fixed by Government—If inter-state sale liable to Central Sales Tax.

C Under the Oil and Natural Gas Commission Act, 1959, it is the business of the Oil and Natural Gas Commission to plan, promote, organise and implement programmes for the development of petroleum resources and the production and sale of petroleum products produced by it and to perform such functions as the Central Government may, from time to time, assign to it. Under s. 29 of the Act, the Commission shall be deemed to be a Company, liable for any tax or fee levied by the Central or State Government. Section 31 empowers the Central Government to make rules prescribing the conditions subject to which, and the mode in which, contracts may be entered into by or on behalf of the Commission. The Commission is engaged in the business of producing crude oil in Assam and supplying it to the refineries of the Indian Oil Corporation at Gauhati in Assam and Barauni in Bihar. It was decided by the Government of India and agreed to by the Commission, that the crude is deemed notionally to be delivered only to Barauni Refinery and not to Gauhati Refinery, and that payment of Sales-tax by the Commission is to be on the same principle.

The Commission however challenged, in a petition to this Court, its liability to pay any sales-tax either under the Central Sales Tax Act to the State of Assam or the State Sales Tax to the State of Bihar, on the ground, that, in supplying crude oil to the Corporation there was no contract of sale between the Commission and the Corporation, because, the supply was pursuant to directions and orders of the Central Government and the Commission had no volition or freedom in the matter. The Commission also contended that assuming that they are sales they are inter-state sales, under the Central Sales Tax Act, 1956, and the State of Bihar was not competent to levy any State sales-tax.

F HELD: (1) The supplies of crude oil by the Commission to the Barauni Refinery of the Corporation satisfy all the ingredients of a sale and amount to sales by the Commission to the Corporation. [356 A]

(a) Statutory orders regulating the supply and distribution of goods by and between the parties under Control Orders do not absolutely impinge on the freedom to enter into contract. [357 C]

G (b) Directions, decisions and orders of agencies of the Government to control production and supply of commodities, may fix the person who has to carry them out, the parties to whom the goods are to be supplied, and the price at which, and the time during which they are to be supplied. In such cases it cannot be said that compulsive directions rob the transactions of the character of agreement. There is privity of contract between the parties, the statute supplying the consensus and the modality of consensus. [357 D—E]

H (c) Such a transaction is a valid transfer of property for consideration and the law presumes assent when there is transfer of goods from one to the other. [357 F]

(d) Also, a sale may not require the consensual element and there may be a compulsory sale of property under a statute for a price fixed against the owner's will. [357 F]

(e) Delimiting areas for transactions or denoting parties or price for transactions are all within the area of individual freedom of contract with limited choice by reason of ensuring the greatest good for the greatest number by achieving proper supply as standard or fair price. [357 G]

(f) The transactions in substance represent the outgoing of the business and the price would come into computation of profits. [357 G]

Salar Jung Sugar Mills Ltd. Etc. v. State of Mysore & Ors. [1972] 2 S.C.R. 228 followed.

(2) The movement of crude oil from Assam to Barauni in Bihar is pursuant to and as an incident to the contract for sale between the Commission and the Corporation. The sales are therefore inter-state sales and under the Central Sales-tax Act only the State of Assam is entitled to levy central sales tax on the Commission. [358 G]

ORIGINAL JURISDICTION : Writ Petition No. 74 of 1975.

L. N. Sinha, Sol. General of India and B. Datta, for the Petitioner.

A. K. Sen, B. P. Singh, Shambhu Nath Jha and U. P. Singh for the Respondents (For State of Bihar) R-1 and R-2.

D. Mookherjee, and S. K. Nandy, for the Respondent (State of Assam) R-3 and R-4.

The Judgment of the Court was delivered by

RAY, C.J.—The Petitioner in this Writ Petition raises the question that the supplies of crude oil made by the Petitioner Oil and Natural Gas Commission, referred to as the Commission to Indian Oil Corporation Limited, referred to as the Corporation are not exigible to Sales-tax either by the State of Assam or the State of Bihar under the Central Sales Tax Act or the Bihar Sales Tax Act respectively. The petitioner contends that the supplies by the Commission to the Corporation are pursuant to directions/orders of the Central Government, and, therefore, there is no Contract of sale. The petitioner in particular contends that the Commission is obliged to supply to the Corporation and the petitioner has no volition or freedom in the matter. The petitioner, therefore, contends that there is no contract of sale between the Commission and the Corporation.

The second contention of the petitioner is that if it be held to be sales these are inter-state sales under section 3(a) of the Central Sales Tax Act, 1956 and the State of Bihar is not competent to levy Sales-tax under section 16(5) of the Bihar Sales Tax Act.

In order to find out as to whether the transactions between the Commission and the Corporation amounted to a Sale, it is necessary to ascertain the correct facts.

The letter dated 15 June 1968 is important. It is written by the Corporation to the Commission. The Corporation States as follows :

"I am writing to confirm that Indian Oil Corporation would be in a position to receive 300 tonnes a day of Lakwa crude via the Oil Pipeline any time from today. We would also wish you to augment the supplies so as to reach about a

- A million tonnes per annum as soon as possible. The above 300 tonnes will be in addition to the supplies that we are receiving currently from OIL (Oil India Ltd.) and by rail from Rudrasagar. Kindly arrange to supply full analytical data regarding the crude that you would be sending from Lakwa. I would also suggest that the pricing arrangement may also be worked out regarding the supply and intimated to us, if necessary, after consulting OIL."
- B

The next important document relates to the Minutes of the meeting held at the Office of the Chairman of the Corporation at New Delhi on 8 August, 1968. The representatives of the Corporation, the Commission and Oil India Limited were present.

- C Crude oil supplied both by the Commission and Oil India Limited come through the pipeline belonging to Oil India Limited to refineries at Gauhati and Barauni belonging to the Corporation. The manner of measurement and of payment for crude is ascertained by the Corporation from the Commission and Oil India Limited.

- D At the meeting held on 18 October 1968, the Central Government representatives and representatives of the petitioner, Oil India Limited and the Corporation were present. It was decided that crude oil which was being delivered to the refineries of the Corporation at Gauhati and Barauni is a mixture of Oil India Limited crude and the Commission crude. Oil India Limited would send the bills for the entire quantities of crude, so delivered, giving the bifurcation of crude belonging to Oil India Limited and the Commission with API gravity of each.
- E

The document dated 23 February, 1968 records the price of crude oil purchased by the Corporation from the Commission and the basis on which payment should be made.

- F Another document dated 17 February, 1969 written by the Central Government to Oil India Ltd., shows that crude oil would be supplied to the Barauni, Gauhati and Digboi refineries as mentioned therein. For the Barauni Refinery, Oil India would supply a certain quantity and the Commission the balance. In case the Commission's supply fell short, it would be made good by Oil India Limited. For the Gauhati Refinery, certain quantity would be supplied by Oil India Limited and the remainder would be deemed to have been supplied by the Commission. The requirements of Digboi refinery would be met by Oil India Limited.
- G

- H The next document is dated 7 August 1973 incorporating the Minutes of the meeting held on that day at the Ministry of Petroleum & Chemicals to discuss the Sales Tax liability of the Commission crude sold to the Corporation. The representatives of the Ministries of Petroleum & Chemicals and of Finance, the Commission and Oil India Limited were present. After discussion, it unanimously decided that whatever principle had been adopted in the past for computation of pipeline tariff payable by the Commission should also be adopted

for payment of Sales-tax by the Commission. Since for tariff computation all of Commission's crude is deemed notionally to be delivered to Barauni Refinery and none to Gauhati Refinery, the Sales-tax liability of the Commission would also accrue on the principle that all of its crude was being sold to Barauni Refinery.

The Commission is described by the Solicitor General to be a statutory body which has no option either with regard to the production or supply and the directions and decisions of the Government leave no choice with the Commission in regard to supplies.

This Court in *Salar Jung Sugar Mills Ltd. Etc. v. State of Mysore & Ors.*⁽¹⁾ laid down the following propositions : First, statutory orders regulating the supply and distribution of goods by and between the parties under Control Orders in a State do not absolutely impinge on the freedom to enter into contract. Second, directions, decisions and orders of agencies of the Government to control production and supply of commodities, may fix the parties to whom the goods are to be supplied, the price at which these are to be supplied, the time during which these are to be supplied and the persons who has to carry out these directions. In such cases it cannot be said that compulsive directions rob the transactions of the character of agreement. The reason is that the transfer of property which constitutes the agreement in spite of the compulsion of law is neither void nor voidable. It is not as result of coercion. The statute supplies the consensus and the modality of consensus is furnished by the statute. There is privity of contract between the parties.

The other third, fourth, fifth and sixth propositions are these. Third, such a transaction is neither a gift nor an exchange nor a hypothecation nor a loan. It is a transfer of property from one person to another. There is consideration for the transfer. There is assent. The law presumes the assent when there is transfer of goods from one to the other. Fourth, a sale may not require the consensual element and that there may, in truth, be a compulsory sale of property with which the owner is compelled to part for a price against his will and the effect of the statute in such a case is to say that the absence of the transferor's consent does not matter and the sale is to proceed without it. In truth, transfer, is brought into being which *ex facie* in all its essential characteristics is a transfer of sale. Fifth, delimiting areas for transactions or denoting parties or denoting price for transactions are all within the area of individual freedom of contract with limited choice by reason of ensuring the greatest good for the greatest number of achieving proper supply at standard or fair price to eliminate the evils of hoarding and scarcity on the one hand and ensuring availability on the other. Sixth, after all the transactions in substance represent the out-going of the business and the price would come into computation of profits.

Judged by the principles laid down by this Court in *Salar Jung Sugar Mills'* case, which is a decision by a seven-Judge Bench, there

(1) [1972] 2 S.C.R. 228.

A is no doubt that the transactions in the present case amounted to a sale of crude oil by the Commission to the Corporation. It is true that the Government decided and directed the Commission to supply to the Indian Oil Corporation at a price to be fixed, but the transaction is in course of business conducted by the Commission.

B It is the business of the petitioner under the statute to plan, promote, organise and implement programmes for the development of petroleum resources and the production and sale of petroleum products produced by it and to perform such functions as the Central Government may, from time to time, assign to the Commission. These are the functions of the Commission under section 14 of the Oil & Natural Gas Commission Act, 1959. Further, section 29 of the Act states that

C "the Commission shall be deemed to be a Company within the meaning of any enactment for the time being in force providing for the levy of any tax or fee by the Central Government or a State Government and shall be liable to pay such tax or fee accordingly". Section 31 contemplates power of the Central Government to make rules *inter alia* prescribing the conditions subject to which, and the mode in which, contracts may be entered into by or on behalf of the Commission.

D The provisions of the Oil & Natural Gas Commission Act show that the Commission is engaged in the business of producing crude oil in Assam and the supply of the crude oil. The supply to the Corporation is a sale transaction fulfilling all the ingredients of a sale. The supply of crude oil by the Commission to the Barauni Refinery of the Corporation is also a sale in the course of inter-state trade. The movement of crude oil from Assam to Barauni is pursuant to the Contract for sale of crude oil.

E

The directions given by the Government are because of the character and constitution of the Commission. Directions and decisions do not detract from the sale of crude oil by the Commission to the Corporation. These statutory Corporations work in collaboration with the Central Government particularly the Ministries of

F Petroleum and Finance for policy and planning.

The State of Bihar raised a feeble contention that it was not an inter-State sale. The delivery may be in Assam or in Bihar at Barauni but the movement of goods is the result of contract and as an incident to the agreement between the Commission and the Corporation. The State of Assam has lawfully levied the Central Sales Tax on the petitioner. The State of Assam is entitled to levy Central Sales Tax on the petitioner. The Commission has been paying Sales Tax since the commencement of sales. It is made clear that it is open to the Commission to make applications for refund, if any, in accordance with the Sales Tax Law.

G

For the foregoing reasons the Writ Petition is dismissed. Parties will pay and bear their own costs.

H