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UNION OF INDIA ETC. ETC.

v.

NATIONAL HYDROELECTRIC POWER CORPN. LTD.
AND ORS. ETC. ETC.

B

JULY 25, 2001

[B.N. KIRPAL, N. SANTOSH HEGDE AND K.G. BALAKRISHNAN, JJ.]

Water (Prevention and Control of Pollution) Cess Act, 1977 :

C *S.16(2)—Amendment of Schedule I—Units causing pollution—Levy and collection of cess from industries specified in Schedule I—Initially hydro-power generating industry not included in Schedule I—Notification No. GSR 377(E) dated 16.4.1998 issued imposing cess on hydro-power generating industry—Challenged—High Court holding that provisions of Section 16 had not been complied with while purporting to amend Schedule I—Held, High Court was right in holding that levy of cess was not in accordance with law—Though the Notification was laid before the Parliament, steps leading to passing of resolution were not even commenced, and as such it cannot be said that there was a valid amendment of Schedule I to the Act—Legislation—Amendment of an Act—Environmental Law.*

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2885 of 2000.

From the Judgment and Order dated 11.10.99 of the Himachal Pradesh High Court in C.W.P. No. 403 of 1997.

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AND

C.A. Nos. 4659-4668 of 2000 With C.A. No. 4516/2000 and 4517/2000.

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D.S. Mehra, K.K. Venugopal, Ms. B. Sunita Rao, Ms. Sushma Suri, Satish K. Agnihotri, Ms. Yogmaya Agnihotri, Anil K. Pandey, Naresh K. Sharma, Dhruv Mehta, N.S. Bawa, N.D. Kalra, Ms. Karan Nehra, Ms. Shobha, Anil Nag, Ashok Kumar Gupta, Ajit Pudussery, Sushil Kr. Jain, Ms. Jayshree Anand, Jagjit S. Chhokra, V.K. Shailendra, Krishnan Venugopal, R.S. Suri, Mahabir Singh, S.B. Upadhyay and Rajiv Nanda for the appearing parties.

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The following Order of the Court was delivered : A

Civil Appeal Nos. 2885/2000 and 4659-4668/2000

The short question which arises for consideration in these cases is :
Whether there can be a valid levy under the provisions of the Water (Prevention
and Control of Pollution) Cess Act, 1977 (hereinafter referred to as "the said B
Act") on the hydro power generating industry?

The aforesaid Act was promulgated with a view to levy and collect cess
from the units which were thought to cause pollution and the funds so realised
were to be entrusted to appropriate authorities, *inter alia*, for remedial C
measures.

According to Section 3 of the said Act, the cess was payable by every
person carrying on any specified industry and by every local authority. The
expression 'specified industry' is defined in Section 2(c) to mean any industry
specified in Schedule I. D

When the Act was promulgated, hydel power generating industry was
not included in Schedule I. In order to be able to impose cess on this industry,
a notification No. GSR 377(E) dated 16th April, 1993 was purported to be
issued under Section 16 of the Act.

The respondent filed writ petitions challenging the imposition of cess E
on the hydro power generating industry. Amongst other grounds which were
raised, it was contended on behalf of the respondents that there had been no
valid amendment of Schedule I of the Act and, therefore, no cess could be
imposed. This was one of the contentions which was accepted by the High
Court which came to the conclusion that the provisions of Section 16 had not F
been complied with while purporting to amend Schedule I of the Act.

In these appeals, it has been contended by the learned Additional
Solicitor General that a notification had been issued as contemplated by
Section 16 and the matter had been referred to a Parliamentary Committee G
and this shows that there had been sufficient compliance with the provisions
of Section 16 and the amendment should be regarded as having been duly
incorporated in Schedule I.

Section 16 reads as follows :

"16. Power to amend Schedule I. - (1) The Central Government H

A may, by notification in the Official Gazette add to Schedule I any industry having regard to the consumption of water in the carrying on of 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.

B (2) Every such notification shall be laid before each House of
 C 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 is so laid before the House of the People, and if 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.”

D Sub-section (1) gives power to the Central Government to add to Schedule I any industry, but the procedure which is to be followed is provided by sub-section (2). When a notification is issued with a view to making an addition to Schedule I, the same is required to be laid before each House of Parliament if it is sitting and if the Parliament is not in session then a time
 E limit of seven days is prescribed from the re-assembly of the Parliament within which the notification must be so placed. Sub-section (2) further requires that after the notification has been so placed, then within fifteen days of the placing of the notification, the Central Government has to seek approval of the Parliament to the issuance of the notification. Mere perusal of sub-section
 F (2) shows that there has to be a positive act of approval by the Parliament to the issuance of the notification before it can be held that Schedule I has been amended. Merely laying the notification before each House of Parliament is not sufficient compliance within the provisions of Section 16(2). There is of course no time limit within which the Houses of Parliament are required to pass a resolution once the Central Government has sought approval as
 G contemplated by sub-section (2), but in the present case the pleadings disclose that no such approval was in fact sought for.

H During the hearing of the writ petitions before the Himachal Pradesh High Court, an affidavit dated 19th July, 1999 was filed by one Dr. Jag Ram Additional Director in the Ministry of Environment & Forests, Government of India. In paragraph 4 of the said affidavit, he states as follows :

“4. That during the course of hearing on 5-7 July, 1999 before this Hon’ble Court reference was made to the averments made in paragraph 5 of the aforementioned affidavit (dated 9.12.98) by this respondent. In this connection, this respondent submits that the requisite records and bulletins of the Parliament have been further examined. It was found that no resolution relating to the above notification dated 16.4.93, had been moved.”

We see no reason to disbelieve the correctness of the averment so made in the said affidavit. The averment made is categorical and unequivocal, namely, that no resolution relating to the notification dated 16.4.1993 had been moved in the Parliament. If no resolution had been moved, the question of the Parliament giving approval does not arise. Though the first step of placing the notification in each House of Parliament had been taken, subsequent steps leading to passing of the resolution were not even commenced with the moving of the resolution. It is not necessary for us to consider what is the effect of not moving the resolution within the time frame of 15 days as prescribed by sub-section (2) as the present case is not where there has been a delay in moving the resolution. There has been in fact a non-compliance with the said requirement. With resolution not having been moved at all, it cannot be held that there was a valid amendment of Schedule I to the Act. The High Court, in our opinion, was, therefore, right in coming to the conclusion that this levy and the purported realisation of the cess was not in accordance with law.

The appeals are, accordingly, dismissed, but with no order as to costs.

Civil Appeal Nos. 4516 and 4517 of 2000.

In view of the above order, these appeals are also dismissed, but with no order as to costs.

R.P.

Appeals dismissed.