

# **Power Machines India Limited v. State of Madhya Pradesh and Ors.**

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## Abstract

The case of *Power Machines India Limited v. State Of Madhya Pradesh and Ors.*<sup>2</sup> is a Supreme Court Judgement which deals with the principles of the Doctrine of excessive delegation and its consequent violation of Article 14 of the Constitution. The Appellant in this case contested that certain provisions of the Madhya Pradesh Micro and Small Enterprises Facilitation Council Rules, 2006 is ultra vires, arbitrary and violative of Article 14 of the Constitution as it is an excessive delegation of powers by the State government on the Micro and Small Enterprises Facilitation Council. Appellants also claimed that the State has exceeded its powers by enforcing these rules as there was a pre-existing remedy available under the Arbitration and Conciliation Act, 1996. This case comment critically analysis the Supreme Court's Judgement wherein it held that the impugned Act and Rules clearly laid down guidelines for the delegation of powers on the executive and therefore it was not an excessive delegation; and that the existence of remedy under the Arbitration Act will be immaterial as both the Acts' provisions have the same aim and object.

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<sup>2</sup>2017 TAXPUB(CL) 0265 (SC).

### **Facts of the Case**

The case of *Power Machines India Limited v. State Of Madhya Pradesh and Ors*<sup>3</sup>.is an appeal filed in the Supreme Court of India by the appellant, Power Machines India Ltd; against the judgement and order of the Madhya Pradesh High Court dated 18.7.2016. The case revolves around Rule 5 of the Madhya Pradesh Micro and Small Enterprises Facilitation Council Rules, 2006, which provides for the recovery of the amount for which an award is passed as arrears of land revenue under the Micro, Small and Medium Enterprises Development Act, 2006; thereby providing additional remedy for recovery of the awarded sum apart from the one provided under the Arbitration and Conciliation Act, 1996.

The appellant in this case was directed to pay the award passed under the MSMED Act, 2006 to respondent No.3 i.e. Lakshmi Engineering Industries Bhopal Pvt. Ltd. The appellant filed two Writ Petitions in the Madhya Pradesh High Court seeking to quash the recovery proceedings on the grounds that there was excessive delegation of power by the State Government and that the recovery proceedings were not in compliance with Rule 5. The High Court dismissed both the Writ petitions.

Therefore the Appellant, Power Machines Ltd. appealed before the Honourable Supreme Court claiming that Rule 5 of the Madhya Pradesh Micro and Small Enterprises Facilitation Council Rules, 2006 is ultra vires of Article 14 as it is an excessive delegation of powers and sought that the recovery proceedings against the appellant be quashed.

The Respondents have contended that Rules in question have been framed within the purview of Section 30 of the MSMED Act, 2006. It is in furtherance of the objective of the Act to provide speedy recovery. There is no repugnancy with the provisions of the MSMED Act, 2006 or the Arbitration and Conciliation Act, 1996.

### **Issues Involved**

1. Whether Rule 5 of the Madhya Pradesh Micro and Small Enterprises Facilitation Council Rules, 2006 is ultra vires, arbitrary and violative of Article 14 of the Constitution as it is an excessive delegation of Powers on the Micro and Small Enterprises Facilitation Council.
2. Whether it was permissible to the State Government to enact Rules for speedy recovery of the amount as arrears of land revenue notwithstanding the remedy as provided under the Arbitration and Conciliation Act, 1996, and therefore whether the State has exceeded its powers.

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<sup>3</sup>*Ibid.*

## **Judgement**

The Supreme Court in this case ruled in favour of the Respondents and held that since the MSMED Act, 2006 has clearly laid down the guidelines and limitation of the Micro and Small Enterprises Facilitation Council in the framing of Rules under the Act and since the Council has not violated these guidelines, the power provided to the Council to facilitate the functioning of the Act does not amount to an Excessive Delegation of Powers. With respect to the second issue the Supreme Court ruled that despite the fact that the Arbitration and Conciliation Act, 1996 contained a provision for the recovery award for arrears of land revenue, the provisions and Rules made under the MSMED Act, 2006 will not be affected as both the Acts' provisions have the same aim and object.

## **Critical Analysis of the Judgement**

### **Issue I**

With respect to whether the Rules made by the Micro and Small Enterprises Facilitation Council under the MSMED Act, 2006 amounted to excessive delegation or not; the Supreme Court held that since the MSMED Act, 2006 has clearly laid down the guidelines and limitation of the Micro and Small Enterprises Facilitation Council in the framing of Rules under the Act and since the Council has not violated these guidelines, the power provided to the Council to facilitate the functioning of the Act does not amount to an Excessive Delegation of Powers. The Court held that Rule 5 being a remedial provision is ancillary. It is open to provide for an additional speedier remedy so as to carry out the objective of the Act.

The Supreme Court in this case placed reliance on its precedence and reiterated that the power of delegation is a constituent element of the legislative power as a whole and the Legislature often find it convenient and necessary to delegate subsidiary or ancillary powers to delegates of their choice for carrying out the policy laid down by the Acts as part of the Administrative Law.<sup>4</sup> Further, The Legislature must retain in its own hands the essential legislative functions and what can be delegated is the task of subordinate legislation necessary for implementing the purposes and objects of the Act concerned.<sup>5</sup>

The Supreme Court also stated that subordinate legislation in order to be valid, must be published or promulgated in some suitable manner. Where the parent statute prescribes the mode of publication or promulgation that mode must be followed. Mode of publication of subordinate legislation should be reasonable, which is necessary, only then it will take effect.

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<sup>4</sup>Agricultural Market Committee v. Shalimar Chemical Works Ltd, (1997) 5 SCC 516.

<sup>5</sup> In Re, The Delhi Laws Act, 1912, The Ajmer-Merwara (Extension of Laws) Act, 1947, and The Part C States (Laws) Act, 1950, AIR 1951 SC 332.

## **Precedent : A Publication of Jus Dicere Center of Research In Law**

The procedure for recovery of land revenue in the instant case is reasonable as well as effectively published and promulgated by way of the Rules being published in the Official Gazette, therefore it amounted to being a valid legislation in accordance with the parent Act and was not arbitrary nor in violation of Article 14 of the Constitution.

### **Issue II**

The Second issue put before the honourable Supreme Court was whether the remedy provided by the Madhya Pradesh Micro and Small Enterprises Facilitation Council Rules, 2006 was duplicating the remedy as provided under the Arbitration and Conciliation Act, 1996, and therefore whether the State has exceeded its powers in formulating the Rules.

The Court highlighted that Section 30 of the MSMED Act, 2006 clearly authorizes the State Government to frame the rules to carry out the provisions of the Act and the power is general. The objective of the Act is to provide protection to the micro, small and medium enterprises and to facilitate their development. In order to carry out the objective of the Act speedy recovery mechanism has been provided under Rule 5 by providing that amount awarded in an arbitral award can be recovered as arrears of land revenue. The Court held that in the matter of providing such remedies, it is open to legislate different remedies which may be inconsistent. It is a question of electing a remedy. Election of a remedy for recovery of the amount would depend upon the choice of the award-holder. Both the provisions under the Arbitration and Conciliation Act of 1996 as well as Rule 5 of the Rules of 2006 intend to recover the amount though by different procedures. Intendment of provisions is same. There is no question of any prejudice being caused to the judgment debtor.

The Court relied on its precedence and held that when two remedies are provided under a statute even if inconsistent, would continue to be in operation until one of them is elected for application. Even if the two remedies happen to be inconsistent, they continue for the person concerned to choose from, until he elects one of them, for commencing an action<sup>6</sup>. It is for the person to elect one of them and there is no question of repugnancy in providing such remedy. Therefore the Supreme Court ruled that despite the fact that the Arbitration and Conciliation Act, 1996 contained a provision for the recovery award for arrears of land revenue, the provisions and Rules made under the MSMED Act, 2006 will not be affected as both the Acts' provisions have the same aim and object.

### **Conclusion**

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<sup>6</sup> In Bihar State Co-operative Marketing Union Ltd. v. Uma Shankar Sharan & Anr., AIR 1993 SC 1222.

## **Precedent : A Publication of Jus Dicere Center of Research In Law**

This Case revisits the principles of the Doctrine of Delegation of Powers and Excessive delegation. In this case, the Act provided for the State Government to delegate the task of forming Rules for the facilitation of the Act. This delegation of power is valid in the eyes of law because it the Act clearly lays down the guidelines and skeletal framework of the manner in which the Rules have to be framed. This makes it a valid delegation of power.

The Supreme Court has supported the thesis that delegation of legislative power is valid only if the delegating statute specifies the policy which the delegate is to execute by making appropriate rules. The doctrine seeks to ensure that fundamental policy decisions will be made not by bureaucracy but by the Legislature. If no standards are fixed to limit delegation of power, bureaucracy get a blank check in the area of delegation to make any law it likes and, thus, the concerned administrator, and not the legislature, becomes the primary legislator. Therefore doctrine of excessive delegation promotes democracy and curbs bureaucracy.

Therefore though the appellants contended that the Rules made under the Act was an excessive delegation of power, the Supreme Court has rightly held that it does not amount to excessive delegation of powers as the Act does not delegate any essential function of the legislation. Further since the Act provides for the guidelines in framing Rules and since the Rules by the Council have been framed as per these guidelines and has not superseded its powers, it cannot be held to be as an excessive delegation of power.