



IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3391 OF 2011

LIFE INSURANCE CORPORATION OF INDIA ...APPELLANT(S)

VERSUS

THE STATE OF RAJASTHAN AND ORS. ...RESPONDENT(S)

WITH

CIVIL APPEAL NO. 3849 OF 2011

CIVIL APPEAL NO. 3393 OF 2011

CIVIL APPEAL NO. 3394 OF 2011

CIVIL APPEAL NO. 3395 OF 2011

J U D G M E N T

PAMIDIGHANTAM SRI NARASIMHA, J.

1. The issue for consideration is whether the state of Rajasthan has the power and jurisdiction to levy and collect stamp duty on policies of insurance issued within the state. For the reasons to follow, we have rejected the contention of the Life Insurance Corporation, the appellant herein, regarding the lack of legislative competence of the state and have also affirmed the power to levy and collect stamp duty under the Rajasthan Stamp Law

(Adaptation) Act, 1952¹ and the rules made thereunder. While dismissing the appeal, we have however set aside certain findings of the High Court and granted relief to the appellant in the facts and circumstances of the case. We will first refer to the necessary facts before analysing the provisions and drawing our conclusions.

2. *Facts:* The appellant issued various insurance policies within the state of Rajasthan between 1993-94 and 2001-02. As per the prevailing law relating to stamp duty, the appellant was required to affix stamps by paying stamp duty on the policies of insurance issued by it in accordance with the Indian Stamp Act, 1899, as adapted to the state of Rajasthan by the 1952 Act.

2.1 On 19.08.1991, the appellant wrote to the Collector, Jaipur regarding the non-availability of 'Agents License Fee stamps'. On 07.10.1991, the Treasury Officer, Jaipur replied to the appellant that 'India Insurance Stamps' are the property of the central government and their supply and distribution is not related to their department.

2.2 On 15.04.2004 and 06.05.2004, the Inspector General (Registration and Stamps) Rajasthan, Ajmer issued a letter to the appellant to deposit a sum of Rs. 1.19 crores for causing loss of

¹ Hereinafter '1952 Act'.

revenue to the state of Rajasthan as it had purchased insurance stamps between 1993-94 and 2001-02 from the state of Maharashtra for insurance policies that were issued within the state of Rajasthan. Pursuantly, the Additional Collector (Stamps), Jaipur issued a show-cause notice under Section 37(5) of the Rajasthan Stamp Act, 1998² for payment of the amount.

2.3 By order dated 16.09.2004, the Additional Collector (Stamps), Jaipur confirmed the show-cause notice and directed the appellant to deposit the amount. It was held that the correspondence between the appellant and the department pertained to Agents Fee Stamps and not India Insurance stamps that are affixed on insurance policies and were available at the relevant time. Similar orders were passed on 16.10.2004 for Rs. 1.07 crores, 11.10.2004 for Rs. 1.18 crores, 01.11.2004 for Rs. 1.87 crores, and 28.10.2004 for Rs. 43.68 lakhs. The appellant also challenged these orders by way of separate writ petitions, which have been disposed of in the judgment impugned before us.³

2.4 The appellant filed a writ petition challenging the order of the Additional Collector dated 16.09.2004, which came to be

² Hereinafter '1998 Act'.

³ In D.B. Civil Writ Petition No. 3418/2006, D.B. Civil Writ Petition No. 3419/2006, and D.B. Civil Writ Petition No. 3420/2006, and D.B. Civil Writ Petition No. 8187/2004, judgment dated 21.02.2011 ('impugned judgment').

dismissed by the High Court single judge⁴ on the ground that the appellant has an alternative efficacious remedy of filing a revision under Section 65 of the Rajasthan Stamp Act.

2.5 The appellant preferred a writ appeal before the division bench, which was initially disposed of by an order dated 11.12.2004 wherein the High Court directed the Chief Secretary of the Rajasthan government to constitute a High Powered Committee under his chairmanship to decide the matter by a reasoned order. It was also held that if either party is dissatisfied with the decision of the committee, they could file for revival of the writ appeal. The Committee constituted pursuant to this order rejected the appellant's representation, due to which the writ appeal was restored and decided in the impugned judgment⁵.

3. *Reasoning of the High Court:* It is necessary to briefly discuss the reasoning of the High Court in dismissing the writ appeal and confirming the imposition of stamp duty. The High Court relied on Sections 2, 3(v), and 3A of the 1952 Act read with Rules 2(d) and 3 of the Rajasthan Stamp Rules, 1955. Section 2 provides that subject to the other provisions of this Act, the Indian Stamp Act,

⁴ In S.B. Civil Writ Petition No. 7013 of 2004, judgment dated 08.10.2004.

⁵ In D.B. Civil Special Appeal (Writ) No. 670/2004, judgment dated 21.02.2011 (impugned judgment).

1899 shall apply to the whole state of Rajasthan on and from 01.04.1958. Section 3(v) provides that reference in the Indian Act to 'government' shall, unless the context otherwise requires, be construed as reference to the state government. Section 3A(1) provides for payment of stamp duty in cash when stamps are not available for sale.

3.1 Rule 2(d) of the Rajasthan Stamp Rules, 1955 defines government as state government and Rule 3 provides for the mode of payment of stamp duty to the state government.

3.2 Relying on these provisions, specifically Section 3A(1), the High Court held that the appellant should have paid the stamp duty in cash and the receipt would be affixed on the instrument as envisaged under this provision. It was also held that there was no legal sanction under the scheme of the Act that permits the appellant to purchase such stamps from outside the state in case of non-availability.⁶ It further held that in any case, only Agents License Fee stamps were unavailable while the imposition of stamp duty was on India Insurance Stamps.⁷

3.3 Relying on Rule 2(d) that defines 'government' as meaning government of Rajasthan and Rule 3 that mandates payment of

⁶ Impugned judgment, p. 15.

⁷ *ibid.*

stamp duty to the state government, the High Court held that the stamps must only be purchased from the Rajasthan government.⁸ The only exception provided is under Section 3A when the person can deposit cash with the government treasury in case of non-availability of stamps and affix the receipt of challan with the instrument.⁹ The 1952 Act and the 1955 Rules do not permit the appellant to purchase stamps from outside the state that do not bear the superimposition of the words 'Rajasthan' or letters 'RAJ' as provided in the Explanation to Rule 3.¹⁰ On such reading of the law and facts, the High Court upheld the order of the Collector dated 16.09.2004.

4. The High Court also dealt with the arguments by the parties on the competence of the state government to impose stamp duty on insurance policies based on the distribution of legislative fields in the Seventh Schedule on stamp duty. The High Court held that Entry 91 of List I (Union List) empowers the Parliament to enact a law relating to rate of stamp duty in respect of various instruments, including policies of insurance. Entry 44 of List III (Concurrent List) empowers both the Parliament and state

⁸ *ibid*, p.17.

⁹ *ibid*.

¹⁰ *ibid*.

legislatures to enact laws with respect to “*stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty*”.

4.1 The High Court held that the 1952 Act has been enacted under Entry 44, List III and has received Presidential assent. It does not occupy the field covered by Entry 91 of List I as it does not fix or prescribe the rate of duty for insurance stamps but only provides for the collection of stamp duty. The High Court hence rejected the submission by the appellant that the state government does not have the power to demand payment for insurance stamps as they fall under the Union List.

4.2 It also rejected the appellant’s reliance on this Court’s judgment in *VVS Rama Sharma v. State of Uttar Pradesh*¹¹ by differentiating it as in that case, there was no state law that had received Presidential assent and instead the consideration was under Rule 115A of the UP Stamp Rules, 1942.¹² Since the 1952 Act had received Presidential assent, it was held to be a special law that has overriding effect, which was not the case in *VVS Rama Sharma* (supra) where the Indian Stamp Act read with rules framed

¹¹ (2009) 7 SCC 234.

¹² Impugned judgment, p. 19.

by the state of UP was applicable.¹³ It also differentiated the case on facts as *VVS Rama Sharma* (supra) pertained to the commission of criminal offences under the Indian Penal Code and the Indian Stamp Act, 1899.¹⁴

5. *Submissions by the appellant:* The learned ASG, Mr. N. Venkataraman, appeared on behalf of the appellant and has made two primary arguments. The gist of his submission is: *First*, that on the basis of Entry 91 of List I, Entry 63 of List II, and Entry 44 of List III, the state of Rajasthan does not have the legislative competence to impose and collect stamp duty on insurance policies as the same falls under the Union List. *Second*, that the show-cause notice and the proceedings are under the 1998 Act, which does not provide for imposition of stamp duty by the state on policies of insurance. Alternatively, even if the 1952 Act applies, the appellant had no option but to purchase the stamps from Maharashtra due to their admitted unavailability and in view of Section 3A(4) of the 1952 Act. The detailed arguments are as follows:

5.1 Learned ASG has relied on Entry 47 of List I on insurance and Entry 91 of List I that empowers the Parliament to prescribe

¹³ *ibid*, p. 20.

¹⁴ *ibid*.

the rate of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts. He has argued that since insurance falls under the Union list and more specifically, since only the Union can prescribe the rate of stamp duty on insurance policies, the state government cannot demand that the stamp duty on insurance policies must necessarily be paid to it and that the stamps cannot be purchased from other states. He relied on *VVS Rama Sharma* (supra) on the point that a state cannot require that insurance stamps, which are property of the central government, must be purchased only from that particular state when the insurance policy is issued within its territory. Challenging the imposition of stamp duty by the state government, the learned ASG has further submitted that a levy of stamp duty is in the nature of tax and that there is no valid imposition of tax unless there is a rate of taxation. Relying on *Govind Saran Ganga Saran v. Commissioner of Sales Tax*¹⁵ and *Mathuram Agrawal v. State of Madhya Pradesh*¹⁶, he has submitted that the rate of stamp duty must be clearly and unambiguously ascertainable, without which there is no valid tax

¹⁵ 1985 Supp SCC 205, para 6.

¹⁶ (1999) 8 SCC 667, para 12.

law. Since the state does not have the domain competence to prescribe the rate of stamp duty in the present case, it cannot validly impose and demand the payment of such duty. Lastly, the learned ASG has argued that Entry 44 of List III is not in the nature of a taxation entry by relying on *State of West Bengal v. Kesoram Industries*¹⁷ and *State of Karnataka v. State of Meghalaya*¹⁸. He submits that it is well-settled in taxation law that entries pertaining to taxation are clearly demarcated between the Union List and the State List. There is no head of taxation in the Concurrent List. Hence, the state government cannot impose stamp duty on the appellant by claiming legislative competence under Entry 44 of List III.

5.2 Apart from arguing that levy of stamp duty by the state is contrary to the constitutional scheme, the learned ASG has also argued that stamp duty cannot be imposed in the present case under the specific state enactments. He has argued that the 1998 Act applies in the present case as the notice for recovery has been issued under Section 37(5) of the 1998 Act. Section 3 of the 1998 Act is the charging provision that provides that instruments shall be chargeable with duty of the amount indicated in the Schedule.

¹⁷ (2004) 10 SCC 201.

¹⁸ (2023) 4 SCC 416, para 92.

By comparing entry 47 of Schedule I of the Indian Stamp Act, 1899 (which provides the rates of stamp duty for various kinds of policies of insurance) and the Schedule under the 1998 Act, he has argued that there is no parallel entry in the Schedule of the 1998 Act that provides the rate of stamp duty on insurance policies. Since Section 3 only provides for imposition of stamp duty as per rates prescribed in the Schedule and there is no such rate of duty indicated, the state government cannot demand stamp duty from the appellant on insurance policies. Alternatively, the learned ASG has argued that even if the 1952 Act applies, as considered by the High Court in the impugned judgment, the stamp duty could not have been paid to the Rajasthan government in the present case due to the admitted unavailability of India Insurance stamps with the treasury. Relying on the letter from the department dated 07.10.1991, he argued that the High Court erred in holding that only Agents License Fee stamps were unavailable when the letter clearly mentioned India Insurance stamps. Further, the letter also stated that these stamps are central government property and their supply and sale is not related to the state government. Relying on this letter by the department, the learned ASG has submitted that the government could not have then demanded

payment of stamp duty in 2004. Lastly, he has argued that the High Court's reliance on Section 3A to hold that the duty could have been paid in cash in case of unavailability of stamps is misplaced as sub-clause (4) of Section 3A clearly stipulates that the provision does not apply to payment of stamp duty chargeable on instruments specified in Entry 91 of List I. Since insurance policies are an instrument that fall under this entry, Section 3A does not apply to it and the appellant could not have paid the stamp duty in cash. The High Court erred in its conclusion as it had entirely failed to consider this sub-clause. A similar provision is also contained in Section 4(4) of the 1998 Act. Hence, he concluded that there was no way for the appellant to have paid stamp duty to the Rajasthan government and they had to purchase the stamps from outside the state as non-payment of duty would lead to evasion and an unstamped insurance policy would not be admissible in evidence.

6. *Submissions by the respondent:* Dr. Manish Singhvi, learned senior counsel for the state, has argued that the state has the power to impose and collect stamp duty on insurance policies under Entry 44 of List III. He has argued that while the power to prescribe the rate of such duty falls within the exclusive domain of

the Parliament, the power to collect and impose the duty and to frame a charging provision lies with the Parliament and the state legislatures under Entry 44 of the Concurrent List, which is a *sui generis* provision. The legislative competence of the states extends to collecting stamp duty on instruments specified in Entry 91 of List I but does not extend to prescribing the rate of duty for such instruments. The power to prescribe the rate of stamp duty is clearly demarcated between the Union and the states through Entry 91 of List I and Entry 63 of List II. The state government can impose the duty at such rate that is prescribed by the Parliament. He has also argued that Entry 44 of List III is a taxation provision, as has been clearly held in *Bar Council of Uttar Pradesh v. State of Uttar Pradesh*¹⁹.

6.1 Dr. Manish Singhvi further submits that the 1952 Act applies since the period of levy is for policies issued between 1993-94 to 2001-02, which is prior to the 1998 Act coming into force (on 27.05.2004). The 1952 Act received Presidential assent and hence prevailed over the Indian Stamp Act, 1899 in the state as per Article 254(2). Section 3(vi) of this Act adopts the Schedule from the central Act for the purpose of rate of stamp duty. Hence, the

¹⁹ (1973) 1 SCC 261.

stamp duty must be paid to the state government for insurance transactions occurring within the territory of the state after the 1952 Act came into force as per the rate prescribed in entry 47 of Schedule I of the Indian Stamp Act. Alternatively, he has argued that even if the 1998 Act applies, Sections 90 and 91 of that Act have the effect of adopting the Indian Stamp Act with respect to instruments contained in Entry 91 of List I. Lastly, he has differentiated the present case from *VVS Rama Sharma* (supra) as that case pertained to the registration of a criminal case against the officers of LIC for non-payment of stamp duty and the lack of criminal intent, leading to the quashing of FIR.

7. *Issues:* Having heard the learned ASG for the appellant and Dr. Manish Singhvi for the respondent, the following issues arise for our consideration:

- I. Whether the 1952 Act or the 1998 Act applies to the facts of the present case?
- II. Whether the state government has the legislative competence to impose and collect stamp duty on policies of insurance as per Entry 91 of List I read with Entry 44 of List III?

III. Whether the 1952 Act requires the purchase of insurance stamps from and payment of stamp duty to the Rajasthan government for insurance policies issued within the state?

IV. Whether, in the facts of the present case, the appellant is liable to pay stamp duty?

I. Applicable Law

8. It is first important to determine whether stamp duty in the present case can be imposed under the 1952 Act or the 1998 Act. The High Court has relied on the provisions of the 1952 Act while arriving at its conclusion. We agree with the High Court on this aspect as the stamp duty must be levied as per the law in force as on the date of execution of the instrument.²⁰ In the present case, the insurance policies were issued between 1993-94 to 2001-02. Section 3 of the 1998 Act²¹, which is the charging provision, imposes stamp duty on every instrument mentioned in the Schedule that is executed in the state on or after the date of

²⁰ *Vijay v. Union of India*, 2023 SCC OnLine SC 1585, 2023 INSC 1030, para 11.

²¹ The relevant portion of Section 3 of the 1998 Act reads:

“3. Instrument chargeable with duty.— Subject to the provisions of this Act and the exemptions contained in the Schedule, the following instruments shall be chargeable with duty of the amount indicated in the Schedule as the proper duty therefor respectively, that is to say,—

(a) every instrument mentioned in that Schedule, which, not having been previously executed by any person, is executed in the State on or after the date of commencement of this Act;

(b) every instrument mentioned in that Schedule, which, not having been previously executed by any person, is executed out of the State on or after the said date, relates to any matter or thing done or to be done in the State and is received in the State, or relates to any property situate in the State.”

commencement of the Act. The 1998 Act came into force only on 27.05.2004 by way of a notification. Hence, at the time that the relevant instruments were executed, the 1952 Act was still in force and the stamp duty is leviable under the same.

II. Legislative Competence

9. The learned ASG has forcefully contended that the state does not have the power to collect and levy stamp duty on insurance policies under the state enactment as only the Union can prescribe the rate of stamp duty for such instruments. He has taken us through the constitutional scheme on the fields of legislation under the Seventh Schedule on matters of stamp duty. The relevant entries are Entry 91 of List I, Entry 63 of List II, and Entry 44 of List III, which have been extracted here for reference:

Entry 91 of List I:

“91. Rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts.”

Entry 63 of List II:

“63. Rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty.”

Entry 44 of List III:

“44. Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty.”

10. Article 246 of the Constitution states that the Parliament has the exclusive power to make laws with respect to any matter in List I, the Parliament and the legislatures of any state have the power to make laws with respect to any matter in List III, and the legislature of any state has the exclusive power to make laws for such state or any part thereof with respect to any matter in List II.²²

11. Reading the relevant entries of the Seventh Schedule in the context of Article 246, the distribution of legislative competence with respect to legislation on stamp duty is as follows. The Parliament has the exclusive power to legislate on the *rate of stamp duty* with respect to certain instruments, namely: bills of exchange, cheques, promissory notes, bills of lading, letters of credit, *policies of insurance*, transfer of shares, debentures, proxies and receipts, under Entry 91 of List I. As per Entry 63 of List II,

²² Article 246 reads:

“246. Subject-matter of laws made by Parliament and by the Legislatures of States.—(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the “Union List”).

(2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the “Concurrent List”).

(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the “State List”).

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included ² [in a State] notwithstanding that such matter is a matter enumerated in the State List.”

the legislatures of the states have the exclusive power to legislate on the *rate of stamp duty* with respect to documents other than those specified in Entry 91 of List I for their state or any part of their state. In other words, there is a distribution of instruments between the Parliament and the state legislatures as regards the legislative competence to fix rates of stamp duty. However, as per Entry 44 of List III, the Parliament and the legislatures of the states have concurrent powers to legislate on stamp duties (other than duties or fees collected by means of judicial stamps), but not including rates of stamp duty.

12. A combined reading of the constitutional scheme shows that the power to prescribe the rate of duty is mutually exclusive and has been clearly demarcated between the Parliament and the legislatures of the state.²³ Insurance policies, which are the relevant instrument for the purpose of the present case, fall under Entry 91 of List I for the purpose of prescription of rate of duty. This means that only the Parliament holds the exclusive power and the legislative competence under the Constitution to prescribe the rate of stamp duty on insurance policies. There is no dispute regarding this point.

²³ *VVS Rama Sharma* (supra), paras 14-15.

13. The issue however that falls for our consideration is whether the state government can enact a law that imposes stamp duty on insurance policies by using the rate prescribed by the Parliament by sourcing legislative competence through Entry 44 of List III.

14. This Court in *VVS Rama Sharma* (supra) has answered this question in the affirmative and has held that under Entry 44 of List III, “*the power to levy stamp duty on all documents, is concurrent. But the power to prescribe the rate of such levy is excluded from Entry 44 of List III and is divided between Parliament and the State Legislatures.*”²⁴ Therefore, the charging provision for imposition of stamp duty, even on documents contained in Entry 91 of List I, can be enacted by both the Parliament and the state legislatures, subject to the provisions of Article 254.²⁵ These principles have been summarised in *VVS Rama Sharma* (supra) as follows:

“23. As mentioned earlier, under Entry 44 of List III, the power to levy stamp duty on all documents is concurrent. But the power to prescribe the rate of such levy is excluded from Entry 44 of List III and is divided between Parliament and the State Legislatures. If the instrument falls under the categories mentioned in Entry 91 of List I, the power to prescribe the rate will belong to Parliament, and for all other instruments or documents, the power to prescribe the rate belongs to the State Legislature under Entry 63 of List II. Therefore, the meaning of Entry 44 of List III is that excluding the power to prescribe the rate, the charging provisions of a law relating to stamp duty can be made both by the Union and the State Legislature, in the concurrent sphere,

²⁴ *ibid*, para 14.

²⁵ *ibid*, para 15.

subject to Article 254 in case of repugnancy. So, in the case at hand, it is Entry 91 of List I of the Seventh Schedule which would be applicable and the States do not have the power to circumvent a Central law.”

15. In a recent judgment in *Vijay v. Union of India*,²⁶ this Court has again held that *the power to levy stamp duty on all documents is concurrent* under Entry 44 of List III. Only the power to prescribe the rate of such duty is with the Parliament, and subject to Entry 91 of List I, with the state legislatures.²⁷

16. From the above precedents, it is clear that the state of Rajasthan has the power to impose and collect stamp duty on insurance policies under Entry 44 of List III, albeit such duty must be imposed as per the rate prescribed by a Parliamentary legislation under Entry 91 of List I.

17. In view of the above explanation, the issue relating to legislative competence raised by the learned ASG conclusively ends. However, the learned ASG has raised additional arguments regarding the requirements of a valid tax law and on whether Entry 44 of List III is a taxation entry. Although we find these submissions to be unnecessary, we will deal with them as they have been raised.

²⁶ 2023 SCC Online SC 1585, 2023 INSC 1030.

²⁷ *ibid*, para 12.

18. Relying on this Court's decisions in *Govind Saran Ganga Saran* (supra) and *Mathuram Agarwal* (supra), the learned ASG has argued that the rate of taxation is an essential component for a valid imposition of tax. Since the state legislature cannot prescribe the rate of stamp duty on insurance policies, he has argued that there can be no valid imposition of stamp duty on these instruments by way of a state enactment. This argument must be rejected in view of the above conclusion that even if the state legislature cannot prescribe the rate of stamp duty, it can levy such duty at the rate as provided by the Parliament. Both the decisions relied on by the learned ASG pertain to cases where the charging provision was ambiguous in defining an essential component of a valid tax law, i.e., the subject of the tax, the person who is liable to pay the tax, and the rate at which the tax is to be paid²⁸. In the present case, while it is certainly true that the state cannot prescribe the rate of duty on insurance policies, that by itself does not mean that there is ambiguity or lack of clarity regarding the rate of such duty. Rather, the rate of duty is unambiguous, clear, and defined by the Parliament and is adopted by the state to levy and collect stamp duty. Hence, this submission must be rejected.

²⁸ *Mathuram Agarwal* (supra), para 6.

19. The other submission by the learned ASG that there is no taxation entry in the Concurrent List is based on this Court's decisions in *Kesoram Industries* (supra) and *State of Karnataka v. State of Meghalaya* (supra). The learned ASG has pointed us to relevant portions of these judgments. However, it must be noted that these judgments pertain to taxation entries, rather than to entries on stamp duty. While stamp duty is certainly in the nature of a tax,²⁹ it has not been specifically considered by this Court in these judgments. A three-judge bench of this Court in *Bar Council of Uttar Pradesh v. State of UP* (supra) held that payment of stamp duty pertains to the domain of taxation and the imposition of such duty falls in pith and substance under Entry 44 of List III.³⁰ This judgment came prior to the decisions relied on by the learned ASG but has not been considered by the Court in those cases as they did not pertain to stamp duty. Hence, it is clear that Entry 44 of List III is a taxation entry that falls under the Concurrent List and this submission must also be rejected. We hold that the state legislature has the legislative competence to impose and collect stamp duty on policies of insurance under Entry 44 of List III, as per the rate prescribed by the Parliament under Entry 91 of List I.

²⁹ *Government of Andhra Pradesh v. P. Laxmi Devi*, (2008) 4 SCC 720, para 19.

³⁰ *Bar Council of Uttar Pradesh* (supra), para 14.

III. Liability to Pay Stamp Duty Under the 1952 Act:

20. *Provisions and Imposition of Stamp Duty Under the 1952 Act:*

Section 2 of the 1952 Act reads as follows:

“2. Application of Indian Act.—*Subject to the other provisions of this Act, the Indian Stamp Act, 1899 (II of 1899) of the Central Legislature as amended from time to time, hereinafter referred to as the Indian Act shall apply to the whole of the State of Rajasthan on and from the 1st day of April, 1958.”*

(emphasis supplied)

21. Section 2 of the 1952 Act adopts the Indian Stamp Act, 1899 and makes it applicable to the state of Rajasthan subject to certain adaptations that are contained in Section 3. Sections 3(v) and 3(vi) are relevant for our purpose, and are as follows:

“3. Adaptations.—*For the purposes of section 2,—*
(v) references in the Indian Act to any Government shall, unless the context otherwise requires, be construed as references to the State Government, that is to say, to the Government of the State of Rajasthan as formed by section 10 of the States Re-organisation Act, 1956 (Central Act 37 of 1956):
Provided that in clause (i) of section 3 of the Indian Act, the word “Government” wherever occurring shall mean the State Government as well as the Central Government.

(vi) references in the Indian Act to Schedule I shall be construed as references to the Second Schedule of the Rajasthan Stamp Law (Adaptation) Act, 1952 (Rajasthan Act VII of 1952)”

22. Further, Rules 2(d) and 3 of the Rajasthan Stamp Rules, 1955 read as follows:

“2(d) “Government” means the Government of the State of Rajasthan”
“3. Mode of payment of duty-Except as otherwise provided by the Act, or by these rules, -

(1) all duties with which any instrument is chargeable shall be paid, and such payment shall be indicated on such instruments, by means of stamps issued by the Government for the purpose of the Act and these Rules; and

(2) a stamp which by any word or words on the face of it is appropriated to any particular kind of instrument shall not be used for any instrument of any other kind.

Explanation: - For the purpose of clause (1), a stamp of the central Government or of the Government of any covenanting State shall be deemed to have been superimposed with word "Rajasthan" or with the letters "RAJ".

Rule 3, read with Rule 2(d), provides that the stamps *issued by the state government* will indicate the payment of stamp duty that is chargeable on an instrument. Therefore, the stamp must be issued by and the stamp duty must be paid to the state government for an instrument to be 'duly stamped'³¹ under the 1952 Act.

23. Pursuant to the adaptations by the 1952 Act, the relevant portion of Section 3 and Schedule I of the Indian Stamp Act, 1899 as adapted to the state of Rajasthan by the 1952 Act is as follows:

"3. Instruments chargeable with duty.—*Subject to the provisions of this Act and the exemptions contained in Schedule I, the following instruments shall be chargeable with duty of the amount indicated in that Schedule as the proper duty therefore respectively, that is to say—*

(a) every instrument mentioned in that Schedule which, not having been previously executed by any person, is executed in India on or after the day on which the Act comes into force in the State of Rajasthan;

³¹ Section 2(11) of the Indian Stamp Act, 1899 as adapted to the state of Rajasthan reads:

"2. Definitions. — *In this Act, unless there is something repugnant in the subject or context, —*

(11) "Duly stamped". — "duly stamped", as applied to an instrument, means that the instrument bears an adhesive or impressed stamp of not less than the proper amount and that such stamp has been affixed or used in accordance with the law for the time being in force in India"

(b) every bill of exchange payable otherwise than on demand, or promissory note drawn or made out of India on or after that day and accepted or paid or presented for acceptance or payment, or endorsed, transferred or otherwise negotiated, in India; and

(c) every instrument (other than a bill of exchange or promissory note) mentioned in that Schedule, which, not having been previously executed by any person, is executed out of India on or after that day, relates to any property situate, or to any matter or thing done or to be done, in India and is received in India.”

Schedule I of the central Act, as adapted to the state of Rajasthan, reads as follows:

**“SCHEDULE I
Stamp Duty on Instruments**

(See section 3)

[In this Schedule, given under the Indian Stamp Act, 1899, only those articles are reproduced for which no specific provision is made in the Rajasthan Amending Act, No. 7 of 1952.]

47. Policy of insurance—

D- LIFE INSURANCE OR GROUP INSURANCE OR OTHER INSURANCE NOT SPECIFICALLY PROVIDED FOR, except such a RE-INSURANCE , as is described in Division E of this article—	If drawn singly	If drawn in duplicate for each part.
(i) for every sum insured not exceeding Rs. 250;	Ten paise.	Five paise.
(ii) for every sum insured exceeding Rs. 250 but not exceeding Rs. 500;	Ten paise.	Five paise.
(iii) for every sum insured exceeding Rs. 500 but not exceeding Rs. 1,000 and also for every Rs. 1,000/- or part thereof in excess of Rs. 1,000.	Twenty paise.	Ten paise.

N.B.- If a policy of group insurance is renewed or otherwise modified whereby the sum insured exceeds the sum previously insured on

which stamp-duty has been paid, the proper stamp must be borne on the excess sum so insured.

Exemption

Policies of life-insurance granted by the Director-General of Post Offices in accordance with rules for Postal Life-Insurance issued under the authority of the Central Government

24. From reading the above provisions, rules, and the Schedule together, it can be seen that Section 2 of the 1952 Act provides that the Indian Stamp Act, 1899 will apply in the state of Rajasthan subject to certain adaptations. The relevant adaptations for our purpose are that 'government' shall refer to state government (as per Section 3(v) of the 1952 Act) and that reference to Schedule I of the central Act shall be construed as reference to the Second Schedule of the 1952 Act (as per Section 3(vi) of the 1952 Act). The Second Schedule of the 1952 Act prescribes the rates of stamp duty on certain instruments. However, since policies of insurance are specified in Entry 91 of List I, only the Parliament has the legislative competence to prescribe the rate of stamp duty to be imposed on them. Consequently, the Second Schedule to the 1952 Act does not contain any entry on rates of duty for policies of insurance, and rightly so. Rather, when we read Entry 47(D) of Schedule I of the Indian Stamp Act, 1899 as adapted

to the state of Rajasthan, we see that the rate that has been prescribed under the central law has been adopted within the state as well.

25. The power to levy and collect stamp duty is relatable to the legislative competence of the state, followed by clear authority of law through statutory prescription. Having recognised the legislative competence of the state of Rajasthan, the state has the power to collect stamp duty under Section 3 of the Indian Stamp Act, 1899 as adapted to the state of Rajasthan that provides that an instrument shall be chargeable with the duty of the amount indicated in the Schedule if it is executed within the state of Rajasthan.

26. The mandate of Section 3 is also found in Rule 3 of the Rajasthan Stamp Rules, 1955 that provides for “*mode of payment*”. Rule 3, read with Rule 2(d), provides that the duty with which any instrument is chargeable shall be paid by means of a stamp issued by the state government. The relevant event flowing from Section 3 and Rule 3 authorising the levy and imposition of stamp duty is the execution of the policy of insurance within the state. The liability to purchase the stamps from the state of Rajasthan is therefore clear and unambiguous. Consequently, for instruments

executed within the state, the purchase of stamps from outside the state will equate to evasion of stamp duty and the instrument will not be 'duly stamped'.

27. *Differentiating VVS Rama Sharma (supra)*: The learned ASG has placed reliance on the following portions of *VVS Rama Sharma (supra)* to contend that the state government cannot demand that insurance stamps must only be purchased from it for policies issued within the state:

“29. In the case at hand, it has been stated in the FIR that the Divisional Office of LIC, Varanasi has not purchased the insurance stamps from the Treasury Office of U.P. but the same were purchased from the stamp vendors, outside of State, which caused loss to the State exchequer to the tune of Rs 1,67,21,520.00 to the State Government. So, the sole allegation against the appellants is that they have purchased the insurance stamps from outside the State of U.P. However, as we have already noted that the said act of the appellants cannot be said to be inconsistent with any provisions of the Stamp Act or any other rules. So, the allegation made in the FIR even if proved by the prosecution does not constitute any offence.

32. It is wholly immaterial whether the appellants are purchasing the insurance stamps from the State of U.P. or from any other State. In fact, as mentioned earlier, Rule 115-A of the U.P. Stamp Rules itself declares that “Stamps which are the property of the Central Government”. That being the legal position, it is legally untenable to contend that the insurance stamps must be purchased from the State of U.P. only.”

(emphasis supplied)

28. These portions of the judgment must be seen in the context of the facts and the law applicable in that case. While arriving at its conclusion, this Court in *VVS Rama Sharma (supra)*

interpreted Rule 115A of the UP Stamp Rules, 1942³² (these Rules were framed by the state government pursuant to rule-making powers given to states under Sections 74 and 75 of the Indian Stamp Act, 1899³³) read with the provisions of the Indian Stamp Act, 1899.³⁴ It was held that since the Stamp Rules have been framed under the central Act, their scope is only to the extent provided in Sections 74 and 75 and they cannot circumvent the provisions of the central Act.³⁵ In these facts, this Court held that the State of UP could not require that stamps on insurance policies must only be purchased within the state and cannot be validly purchased from other states.

³² Rule 115A of the UP Stamp Rules, 1942 has been extracted in *VVS Rama Sharma* (supra), para 20 that reads as follows:

“20. Further, Rule 115-A of the Stamp Rules provides for the mode of sale of such stamps. It reads as follows:

“115-A. Stamps which are the property of the Central Government and which are required to be sold to the public through post offices e.g. Central excise revenue stamps, defence (or national) savings stamps, shall be obtained by post offices from local and branch depots and sold to the public in the same manner as ordinary postage stamps.

Tobacco excise duty labels and insurance agent licence fee stamps shall be sold to the public at local and branch depots at which they are stocked.”

³³ Sections 74 and 75 of the Indian Stamp Act, 1899 read as follows:

“74. Powers to make rules relating to sale of stamps. — *The State Government may make rules for regulating—(a) the supply and sale of stamps on stamped papers,*

(b) the persons by whom alone such sale is to be conducted, and

(c) the duties and remuneration of such persons:

Provided that such rules shall not restrict the sale of ten naye paise or five naya paise adhesive stamps.

75. Power to make rules generally to carry out Act. — *The State Government may make rules to carry out generally the purposes of this Act, and may by such rules prescribe the fines, which shall in no case exceed five hundred rupees, to be incurred on breach thereof.”*

³⁴ *VVS Rama Sharma* (supra), paras 18-23.

³⁵ *ibid.*

29. The law under consideration in the facts of the present case is different. In the present case, the imposition of stamp duty by the state government is under the 1952 Act, which is a state law that has been enacted under Entry 44 of List III, and has received Presidential assent as contemplated under Article 254.³⁶ Article 254(2) clearly stipulates that when a state law with respect to a matter in the Concurrent List is repugnant to the provisions of an earlier law made by the Parliament or an existing law with respect to that matter, then the law passed by the state shall prevail in that state “*if it has been reserved for the consideration of the President and has received his assent*”. The 1952 Act that occupies the field in the present case has undisputedly received Presidential

³⁶ Article 254 of the Constitution reads as follows:

“254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States.—*(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.*

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.”

assent and hence it prevails over the Indian Stamp Act, 1899 so far as the state of Rajasthan is concerned.³⁷

30. This Court in *VVS Rama Sharma* (supra) did not consider any such law enacted by the state legislature that received Presidential assent and was applicable within the state over the central Act. Further, a stamp duty is a tax,³⁸ and hence under Article 265³⁹, its levy and collection must be by the ‘authority of law’⁴⁰. In *VVS Rama Sharma* (supra), there was no charging provision that was considered by the Court that required the payment of stamp duty on insurance policies to the government of UP. Rather, the case was concerned with the interpretation of Rules framed by the state under the central Act. Hence, the final conclusion in that case is differentiable on facts and law from the present case.

31. *Conclusions on this issue:* We have undertaken a detailed analysis of the provisions of the 1952 Act and the Rajasthan Stamp Rules, 1955 that impose stamp duty on insurance policies issued by the appellant within the state. Section 3 of Indian Stamp Act,

³⁷ *UP Electric Supply Co Ltd v. R.K. Shukla*, (1969) 2 SCC 400, para 9; *M. Karunanidhi v. Union of India*, (1979) 3 SCC 431, paras 7-8.

³⁸ *Government of Andhra Pradesh v. P. Laxmi Devi* (supra), para 19.

³⁹ Article 265 reads as follows:

“265. Taxes not to be imposed save by authority of law.—No tax shall be levied or collected except by authority of law.”

⁴⁰ *Balaji v. ITO*, AIR 1962 SC 123; *Municipal Council, Kota, Rajasthan v. Delhi Cloth and General Mills Co. Ltd, Delhi*, (2001) 3 SCC 654.

1899 as adapted to the state of Rajasthan is the charging provision as per which the appellant must pay stamp duty to the state government on insurance policies executed within the state. The rate at which stamp duty is payable on policies of insurance under the 1952 Act has been adopted from Schedule I of the central Act, in accordance with Entry 91 of List I. The charging provision has thus been validly enacted by the state government under Entry 44 of List III. Therefore, the state government in the present case can impose stamp duty on the issuance of insurance policies within its territory and require the payment of such stamp duty by the appellant. Under these circumstances, the commencement of proceedings for recovery of stamp duty under the state law and the rules made thereunder is legal, valid, and justified.

IV. Liability of the Appellant in the Facts of the Present Case:

32. The learned ASG has relied on the letter by the Treasury Officer, Jaipur dated 07.10.1991, the contents of which have been extracted hereinunder:

“In reference to above it is to submit that Government of India Insurance Stamp is the property of Central Government, whose supply and distribution is not related with this Department.”

33. From the contents of the letter, it is clear that the department has admitted the non-availability of India Insurance stamps and

has also stated that it is not concerned with their supply and distribution as they are the property of the central government. The appellant submits that due to such representation by the respondent-government, they were compelled to purchase the stamps from Maharashtra, without which they could not have issued the insurance policies in the state of Rajasthan. The High Court, in the impugned judgment, has held that the correspondence of the appellant with the department pertained to Agents License Fee stamps.⁴¹ However, it has evidently not taken note of the letter dated 07.10.1991 while arriving at such finding. The High Court has therefore erred in this regard.

34. Further, the High Court has held that even if the stamps were unavailable, the appellant was duty-bound to pay the stamp duty to the state government in cash as provided under Section 3A(1) of the 1952 Act.⁴² The relevant portions of Section 3A have been extracted:

“3A. Payment of stamp duty in cash.— (1) *Where the State Government or the Collector under instructions of the State Government, by order published in the Official Gazette, declares that adhesive or impressed stamps of any denomination are not in stock for sale in sufficient quantity; then, notwithstanding anything contained in this Act or the rules made thereunder and during the period the said order remains in force,—*
(i) *any instrument chargeable with the stamp duty under this Act may be executed on an unstamped paper;*

⁴¹ Impugned judgment, p. 15.

⁴² Impugned judgment, p. 15.

(ii) the stamp duty chargeable on such instrument under this Act may be paid to or collected by any Government treasury in cash and a receipt or challan therefor shall be duly given by the officer receiving the cash;

(iii) the officer-in-charge of the Government treasury shall, as soon as may be, after the stamp duty chargeable on any such instrument under this Act has been received in cash, make on the instrument for which the stamp duty has been paid in cash, the following endorsement, after due verification that the stamp duty had been paid in cash for such instrument, and after cancelling such receipt or challan so that it cannot be used again, namely:-

‘Stamp duty of Rs.paid in cash, vide receipt/challan No.dated.....

(iv) the instrument endorsed under clause (iii) shall be deemed to be duly stamped under this Act and may be used or acted upon as such to all intents and for all purposes;

Explanation.- For the purposes of sub-section (1) "Government treasury" includes a Government sub-treasury and any other place as the State Government may by notification in the Official Gazette, appoint in this behalf.

(4) Nothing contained in this section shall apply to the payment of stamp duty chargeable on the instruments specified in entry 91 of List I of the Seventh Schedule to the Constitution of India.”

35. However, the High Court entirely failed to consider sub-section (4), despite quoting it, which excludes instruments under Entry 91, List I from the application of Section 3A. Therefore, the High Court has committed an error in holding that the appellant could have paid the stamp duty in cash.

36. In view of the above circumstances, the appellant had no choice but to purchase the insurance stamps from outside the state. While it made every endeavour to purchase the stamp from within the state, due to the letter by the department and the lack of mechanism for payment of stamp duty under the 1952 Act in case of unavailability of insurance stamps, it was unable to

purchase the stamps and pay the stamp duty to the Rajasthan government.

37. Therefore, having considered the matter in detail, we finally hold that:

- I. The preliminary issue relating to the applicability of the relevant state law, i.e., the 1952 Act or the 1998 Act, is answered by holding that the Rajasthan Stamp Law (Adaption) Act, 1952 applies to the present case.
- II. We hold that the state legislature has the legislative competence to impose and collect stamp duty on policies of insurance under Entry 44 of List III, as per the rate prescribed by the Parliament under Entry 91 of List I.
- III. We hold that for the execution of insurance policies within the state of Rajasthan, the appellant is bound to purchase India Insurance Stamps and pay the stamp duty to the state of Rajasthan.
- IV. While we have upheld the power and jurisdiction of the state to levy and collect stamp duty on insurance policies, in the facts and circumstances of the case as indicated hereinabove, we direct that the state government shall not demand and collect the stamp duty as per the orders dated

16.09.2004, 16.10.2004, 11.10.2004, 01.11.2004, and
28.10.2004.

38. In conclusion, we dismiss the appeals and affirm the judgment of the High Court dated 21.02.2011 in D.B. Civil Special Appeal (Writ) No. 670 of 2004, D.B. Civil Writ Petition No. 3418 of 2006, D.B. Civil Writ Petition No. 3419 of 2006, D.B. Civil Writ Petition No. 3420 of 2006 and D.B. Civil Writ Petition No. 8187 of 2004. We also set aside certain findings of the High Court to the extent indicated in issue no. IV and direct the State Government not to demand and collect stamp duty as per the orders dated 16.09.2004, 16.10.2004, 11.10.2004, 01.11.2004, and 28.10.2004.

39. Parties shall bear their own costs.

.....**J.**
[PAMIDIGHANTAM SRI NARASIMHA]

.....**J.**
[ARAVIND KUMAR]

NEW DELHI;
APRIL 30, 2024.