Source : www.thehindu.com Date : 2022-05-25

A NEW ROAD FOR INDIA'S FISCAL FEDERALISM

Relevant for: Indian Polity | Topic: Issues and Challenges Pertaining to the Federal Structure, Dispute Redressal Mechanisms, and the Centre-State Relations

'An impact far wider than imagined' | Photo Credit: Getty Images/iStockphoto

On May 19, in *Union of India vs Mohit Minerals*, the Supreme Court of India delivered a ruling which is likely to have an impact far wider than what the Centre might have imagined when it brought the case up on appeal. At stake was the validity of a levy imposed on importers, of Integrated Goods and Services Tax (IGST) on ocean freight paid by foreign sellers to foreign shipping lines. The Gujarat High Court had declared the tax illegal. The Supreme Court affirmed the ruling through Justice D.Y. Chandrachud's judgment and held that the levy constituted double taxation — that is, that the importer, which was already paying tax on the "composite" supply of goods, could not be asked to pay an additional tax on a perceived "service" that it may have received.

In making this finding, the Court proceeded on a technical reading of various laws, in particular the provisions of the Central Goods and Services Tax Act. That reading, in and by itself, has limited implications. But the Court also made a slew of observations, which, if taken to their logical conclusion by State legislatures, could potentially transform the future of fiscal federalism in India. It held, for instance, that both Parliament and the State legislatures enjoy equal power to legislate on Goods and Services Tax (GST), and that the Goods and Services Tax Council's recommendations were just that: recommendations that could never be binding on a legislative body.

Editorial | A timely reminder: On Supreme Court's GST verdict

Reacting to the ruling, the Union Ministry of Finance has claimed that it "does not in any way lay down anything new", and that it "does not have any bearing on the way GST has been functioning in India, nor lays down anything fundamentally different to the existing framework of GST". But a close reading of the judgment belies this suggestion. Until now, governments across India have treated the GST Council's recommendations — even where they disagreed with them — as sacrosanct, because they believed that this was indeed the law. What *Mohit Minerals* holds, though, is that State governments, on a proper construal of the Constitution, need to hardly feel circumscribed by any such limitation. As such, according to the Court, State legislatures possess the authority to deviate from any advice rendered by the GST Council and to make their own laws by asserting, in the process, their role as equal partners in India's federal architecture.

When, in July 2017, the Union government introduced the GST regime through the 101st constitutional Amendment, it did so based on an underlying belief that tax administration across India needed unification. 'One Nation, One Tax', was the mantra. To give effect to this idea, many entries in the State list of Schedule VII of the Constitution were either deleted or amended. No longer could State governments, for example, legislate on sale or purchase of goods (barring a few exceptions, such as petroleum and liquor) through the ordinary legislative route. Instead, a power to legislate on GST was inserted through a newly introduced Article 246A. This provision overrode the general dominion granted to Parliament and State legislatures to bring laws on various subjects and afforded to them an express authority to make legislation on GST.

In addition, the 101st Amendment also established, through Article 279A, a GST Council. This body comprises the Union Finance Minister, the Union Minister of State for Finance, and

Ministers of Finance from every State government. The Council was given the power to “make recommendations to the Union and States” on several different matters. These include a model GST law, the goods and services that may be subjected to or exempted from GST and the rates at which tax is to be levied. In framing the manner in which the Council’s votes are to be reckoned with, the Union government was granted a virtual veto.

As I wrote in these pages when the Amendment was first introduced, there was some amount of confusion on whether the Council’s decisions would be binding. The use of the word “recommendations” suggested on the one hand that its decisions would be advisory, at best. But, at the same time, the fact that Article 279A directed the establishment of a mechanism to adjudicate disputes between governments on decisions taken by the Council suggested that those governments would, in fact, be bound by any advice rendered to them. If the former reading was to be deployed, the purpose behind the introduction of a common GST would be in jeopardy. But the latter interpretation effectively entailed a destruction of the well-laid plans of the Constituent Assembly. Fiscal responsibilities that had been divided with much care and attention between the Union and the States would now stand dissolved.

In its judgment in *Mohit Minerals*, the Supreme Court has provided what ought to be seen as the final word on this conundrum. Although States had until now proceeded on a tacit belief that the GST Council’s recommendations were binding, such an approach, in Justice Chandrachud’s words, would run counter both to the express words of the Constitution and the philosophical values underlying the language deployed. Our federal compact, the judgment holds, is not symmetrical, in that there are certain areas of the Constitution that contain a “centralising drift” — where the Union is granted a larger share of the power — and there are other areas where equal responsibility is vested.

Article 246A, which was introduced by the 101st Amendment, is one such clause. The provision provides concomitant power both to the Union and to the State governments to legislate on GST. It does not discriminate between the two in terms of its allocation of authority. That allocation, according to the Court, cannot be limited by a reading of Article 279A, which establishes a GST Council, and which treats the Council’s decisions as “recommendations”. “If the GST Council was intended to be a decision-making authority whose recommendations transform to legislation,” wrote Justice Chandrachud, “such a qualification would have been included in Articles 246A or 279A.” But in the present case, no such qualification can be found.

The Court’s ruling does not mean that a legislature — whether Parliament or the States’ — cannot through statutory law make the Council’s recommendations binding on executive bodies. Indeed, insofar as the laws today make such a mandate, rulemaking by the executive would necessarily have to be bound by the Council’s advice. But a constitutional power, in the Court’s ruling, can never be limited through statute. Such curbs must flow only from the Constitution. And in this case, in the Court’s analysis, no restrictions on legislative power can be gleaned on a meaningful reading of the Constitution.

Today, because of the ruling in *Mohit Minerals*, State governments will be free to exercise independent power to legislate on GST. It is possible that this might lead to conflicting taxation regimes, with the idea of ‘One Nation One Tax’ rendered nugatory. But as the Court puts it, “Indian federalism is a dialogue between cooperative and uncooperative federalism where the federal units are at liberty to use different means of persuasion ranging from collaboration to contestation.”

GST was conceived as a product of what some described as “pooled sovereignty”. But perhaps it is only in an administrative area, animated by contestation, where we can see synergy between different sovereign units, where our nation can take a genuine turn towards a more

“cooperative federalism”.

Suhrith Parthasarathy is an advocate practising in the Madras High Court

Our code of editorial values

END