
(2003) 10 KAR CK 0020
In the Karnataka High Court
Case No : Writ Petition No. 8070 of 2002

Ajantha Caterers

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 15-10-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 19 (g), 265
Karnataka Sales Tax Act, 1957 — Section 29 (1) (e)

Citation : (2004) 138 STC 62

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : S.S. Angadi, for the Appellant; Niloufer Akbar, High Court
Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

R. Gururajan, J.—Petitioner M/s. Ajantha Caterers is challenging the notice at annexure B. Petitioner further seeks for a declaration declaring that the amended provision of Section 17(4)(i), by Karnataka Act No. 5 of 2001, in so far as it inserts the words "hotelier or a restaurateur operating in the same premises or premises attached to a place where liquor including beer is served", is an unreasonable restriction and that it is in violation of Articles 14, 265 and 19(g) of the Constitution.

2. Brief facts of the case are as under :

Petitioner is having contract with East Cultural Association (Club) to run catering services. It has entered into an agreement with the club in terms of annexure-D. It has made over deposits to the club in terms of the agreement. It is registered under the Karnataka Sales Tax Act, 1957 ("Act" for short). It serves food items and it is not supposed to serve liquor in the club premises. Club itself serves liquor to its member. No licence is obtained by the petitioner for dealing with liquor.

3. Intelligence wing of the department visited the premises on December 20, 2001 and they sought for production of books of accounts from the petitioner. They issued notice u/s 29(1)(e) of the Act proposing to levy tax at 10.5 per cent plus 1.5 per cent. Objections were filed by the petitioner. Petitioner states that the amended provisions in terms of the Amendment Act No. 5 of 2001 is an unreasonable restriction placed on the petitioner in the given case. According to the petitioner, it is also in violation of Articles 14 and 19(g) of the Constitution.

4. Respondents have entered appearance. They refer to the history of the case in the statement of objections. They justify their stand. They say that the liquor though not served by the petitioner is referable to the petitioner in terms of the amended Act.

5. Sri Angadi, learned counsel for the petitioner would say that the club and the petitioner are two different entities, and, that therefore, Section 17 has no application to the facts of the case. He also says that the amended provision is constitutionally invalid and illegal. Respondents counsel supports the action in terms of their objections.

6. Section 17 provides for composition of tax. Sub-section (1) provides for composition by way of election. Proviso to the said sub-section would however say that this section does not apply to the dealers in liquor and/or beer in addition to other dealers. Sub-section (4) of the said Section 17, after amendment reads as under :

"(4)(i) Notwithstanding anything contained in sub-sections (1) to (3), but subject to such conditions and in such circumstances as may be prescribed, the assessing authority of the area may, if a hotelier or a restaurateur (other than a hotelier or a restaurateur engaged in re-selling of Goods purchased by him in the course of inter-State trade or commerce or a dealer engaged in vending of liquor including beer), or a hotelier or a restaurateur operating in the same premises or a premises attached to a place where liquor including beer is served, a dealer running a sweet meat stall or ice cream parlour, so elects, accept in lieu of the amount of the tax payable by him, under this Act, during any year, by way of composition, an amount at the rate of four per cent of his total turnover."

7. In the case on hand, it is no doubt true that the petitioner is not strictly serving liquor to its members. It serves food items to the members of the club. From the material placed on record, it is seen that there is no prohibition to club members from entering the petitioner's premises. The agreement filed in the case on hand would show that the club provides kitchen to the petitioner to carry out services in addition to providing exclusive place for the storage of provisions. It further provides kitchen equipments and utensils to the petitioner. Cost of cleaning materials and of the kitchen area is to be reimbursed by the club to the petitioner. In addition, it is seen that the club has prescribed number of persons to be engaged by the petitioner. It further provides required number of persons being available during service hours. Petitioner is supposed to be a consultant to

the club. Agreement further provides that the petitioner shall provide bearers for bar service which is restricted only to the supply of liquor to the members of the main bar. The agreement further provides various other conditions to the parties. A reading of the entire agreement and the facts of this case would show that it is nothing but a sub-service being rendered by the petitioner to the members of club by way of service of food. Entry is not restricted to the petitioner's premises. Materials are supplied to the petitioner. Restriction/control is placed by the club on the petitioner. Therefore, a combined reading of the agreement on the facts of this case would show that there exists a linkage to the petitioner and that the petitioner is not alien for the purpose of club service in the case on hand. Moreover, it can be seen that when liquor is served, food articles are normally served to the consumers of liquor. Service of food items is a part of liquor service. In the given circumstances, it cannot be said that petitioner is a total stranger as argued by the petitioner.

8. In fact, the Supreme Court was considering the applicability of the ESI Act, 1948 to a theatre in Hyderabad in *Royal Talkies, Hyderabad and Others Vs. Employees State Insurance Corporation*, . In the given case, in the theatre premises, canteen and cycle stand were run by private contractors with their own employees. The question in that case was as to whether theatre owner was an employer for the purpose of ESI contributions. The Supreme Court, after taking note of various provisions, has noticed the object of the Act and it has also noticed the facts of the case. Consequently, the court holds that the canteen service is incidental to the purpose of establishment. The Court further holds that :

"No one can seriously say that a canteen or cycle stand or cinema magazine booth is not even incidental to the purpose of the theatre. The cinema goers ordinarily find such work an advantage a facility an amenity and some times a necessity. All that the statute requires is that the work should not be irrelevant to the purpose of the establishment. It is sufficient if it is incidental to it. A thing is incidental to another if it merely appertains to something else as primary. Surely, such work should not be extraneous or contrary to the purpose of the establishment but need not be integral to it either. Much depends on time and place, habits and appetites, ordinary expectations and social circumstances. In our view, clearly the two operations in the present case, namely, keeping a cycle stand and running a canteen are incidental or adjuncts to the primary purpose of the theatre."

The apex Court also notices the interpretation of the provision in the light of the Act. Court holds in para 20 as under :

"Sri Chitale tried to convince us that on a minute dissection of the various clauses of the provision it was possible to exclude canteen employees and cycle stand attendants. May be, punctilious sense of grammar and minute precision of language may sometimes lend unwitting support to narrow interpretation. But language is handmaid, not mistress. Maxwell and Fowler move along different

streets, some times. When, as in Section 2(9), the definition has been cast deliberately in the widest terms and the draftsman has endeavoured to cover every possibility so as not to exclude even distant categories of men employed either in the primary work or cognate activities, it will defeat the object of the statute to truncate its semantic sweep and throw out of its ambit those who obviously are within the benign contemplation of the Act. Salvationary effort, when the welfare of the weaker sections of society is the statutory object and is faced with stultifying effect, is permissible judicial exercise."

A reading of the judgment would show that in these types of cases what is required to be seen is as to whether other agencies are totally extraneous warranting exclusion of the same in the given circumstances. So long as the petitioner serves food to the liquor consumers of the club, petitioner is nothing but an additional advantage or facility or amenity and may be a necessity for the purpose of providing better benefit to the club members. Analogy of *Royal Talkies, Hyderabad and Others Vs. Employees State Insurance Corporation*, referred to above can be taken notice by this Court for the purpose of holding that the petitioner cannot be permitted to say that Section 17 is wholly not applicable to the petitioner. There is an inter-link between the petitioner and the club. Therefore, respondents are right in seeking composition of tax. Arguments that the petitioner is a totally independent unit cannot therefore be accepted.

9. Coming to the attack of constitutional violation, let us see as to whether a case is made out by the petitioner. Admittedly, Section 17(4) is a sub-provision providing for composition of tax. Legislature in its wisdom wanted the composition being available to certain categories of dealers. The object of Legislation is to deny composition benefit to those who deal in liquor in terms of the statute. Government wants to restrict liquor trade in the case on hand by way of denial of certain facilities. In the light of the object of the Act, I am not able to understand as to how the words "hotelier or a restaurateur operating in the same premises or premises attached to a place where liquor including beer is served" have to be excluded as sought to be made out by the petitioner. Acceptance of the argument of the petitioner would result in defeating the very object of the statute. Moreover, it is fairly well-settled that while interpreting a section the court has to bear in mind the object of the Act. In fact, in the very case of *Royal Talkies, Hyderabad and Others Vs. Employees State Insurance Corporation*, , apex Court has ruled that no interpretation would be placed which would result in the defeat of the object of the statute. I do not find that any acceptable grounds are made out under Article 19 of the Constitution. Moreover, Article 19 is not absolute. Reasonable restriction can be imposed by the State. I do not find any unreasonable restriction in the case on hand.

10. Petitioner however relies on a judgment of a Supreme Court in the case of *Krishnan Kakkanth Vs. Government of Kerala and others*, . That judgment is clearly distinguishable on facts. That was a case in which the court was dealing with the restriction in the matter of pump-sets being purchased only from

dealers approved by the Government. It was in those circumstances, the court ruled that the said restriction is in violation of Articles 14 and 19 of the Constitution. The present circumstances totally are different. In fact, in the very judgment, the court notices reasonable public interest. The court in paragraph 25 rules as under :

"25. The reasonableness of restriction is to be determined in an objective manner and from the standpoint of the interests of general public and not from the standpoint of the interests of the persons upon whom the restrictions are imposed or upon abstract consideration. A restriction cannot be said to be unreasonable merely because in a given case, it operates harshly and even if the persons affected be petty traders (Mohd. Hanif Quareshi and Others Vs. The State of Bihar,). In determining the infringement of the right guaranteed under Article 19(1), the nature of right alleged to have been infringed, the underlying purpose of the restriction imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, enter into judicial verdict (Laxmi Khandsari and Others Vs. State of U.P. and Others, , Treveli v. State of Gujarat (sic) and Harakchand Ratanchand Banthia and Others Vs. Union of India (UOI) and Others,)."

In the case on hand, restriction, if at all, is in "public interest" and that, therefore, the judgment instead of supporting the petitioner supports the State.

11. In the result, I do not find any justifiable grounds to interfere in this writ petition. Petition is rejected. Respondents are directed to decide the case on merits in the light of this judgment and pass orders accordingly in accordance with law. No costs.