(2016) 09 KAR CK 0052

In the Karnataka High Court

Case No : Writ Appeal No. 3308 of 2016 (T-Res)

Ashok Kumar S. APPELLANT

Vs

State of Karnataka RESPONDENT

Date of Decision : 07-09-2016

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2017) 1 AirKarR 201 : (2016) ILRKarnataka 4723

Hon'ble Judges : Jayant Patel and S.N. Satyanarayana, JJ.

Bench : Division Bench

Advocate : Sri. Rajeswara P.N., Advocate, for the Appellant; Sri. T.K. Vedamurthy, AGA, for the Respondent Nos. 1 and 2; Sri. Madhukar Deshpande, Advocate, for the Respondent No. 3

Final Decision : Allowed

Judgement

Jayant Patel, J. - Admit.

2. Mr. T.K. Vedamurthy, learned Additional Government Advocate, appearing for respondent Nos.1 and 2 and Mr. Madhukar Deshpande, learned counsel appearing for respondent No.3 waive notice for admission.

3. With the consent of learned Advocates appearing for both the sides, the appeal is finally heard.

4. The only question, which may be required to be considered is as to whether it was a case of interference at the stage of show cause notice in exercise of the power under Article 226 of the Constitution ?

5. The other facts are not of much relevance for the purpose of considering the controversy, but the relevant facts are that a show-cause notice was issued on 22.03.2016 by respondent No.2 - Assistant Commissioner of Commercial Taxes calling upon the original petitioner-respondent No.3 herein as to why registration of dealership granted to him should not be cancelled on the ground of non-

furnishing of no-objection letter from Mr. S. Ashok Kumar, the appellant herein. It was also stated in the endorsement/notice that if the original petitioner-respondent No.3 herein had any objection in that regard, the same may be submitted within 3 days from 22.03.2016 to the Authority. At that stage, the original petitioner-respondent No.3 herein approached this Court in W.P. No.18871/2016 challenging the legality and validity of endorsement/notice dated 22.03.2016. It may be recorded that in the said petition, appellant herein, namely, Mr. S. Ashok Kumar at whose instance, the Authority initiated the proceedings was impleaded as respondent No.3, but no notice was issued to him and the learned single Judge dispensed with the notice and passed the order dated 05.04.2016, whereby the petition was allowed and respondent No.2 therein - respondent No.2 herein, was directed not to take any action as proposed in the impugned endorsement. When the appellant came to know about the aforesaid order passed by the learned single Judge, he filed the application for recalling of the same. The learned single Judge rejected the said application vide order dated 30.06.2016. Under the circumstances, respondent No.3 in the writ petition has preferred the present appeal before this Court.

6. We have heard Mr. R.N. Rajeswara, learned counsel appearing for the appellant, Mr. T.K. Vedamurthy, learned Additional Government Advocate appearing for respondent Nos.1 and 2 and Mr. Madhukar Deshpande, learned counsel appearing for respondent No.3.

7. A perusal of the endorsement/notice, which was impugned by respondent No.3 herein in the main writ petition shows that it was a show cause notice calling upon the original petitioner as to why the registration granted to him should not be cancelled and if the original petitioner had any objection in that regard, he was called upon to raise objections. Under the circumstances, when it was a show cause notice, whether the interference was called for in exercise of the power under Article 226 of the Constitution, would be an aspect to be further considered.

8. It is by now well settled that unless the show-cause notice is without jurisdiction or ultra vires to the power, this Court by way of a self-imposed restriction in exercise of power under Article 226 of the Constitution, would not interfere and would relegate the party to raise objection allowing the Authorities to independently consider the matter on merits.

9. Learned counsel appearing for respondent No.3 - original petitioner attempted to contend that it was in the nature of a decision already taken for cancellation of the registration in the absence of no-objection letter from the appellant and therefore, he submitted that the notice dated 22.03.2016 may not be construed as show cause notice.

10. Whereas, Mr. Vedamurthy, learned Additional Government Advocate appearing for the Authority, which has issued endorsement/notice, submitted that notice is by way of show cause and the original petitioner-respondent No.3

herein was called upon to submit his objections and therefore, it cannot be said as a decision already taken, as sought to be canvassed.

11. Learned counsel appearing for the appellant also contended that it was a show cause notice and not a decision already taken.

12. In our view, the language of the notice itself is clear inasmuch as it was a show-cause notice before the contemplated action for cancellation of the registration and the original petitioner was called upon to raise objections, if any, as to why the registration should not be cancelled including on the ground that no-objection letter of the appellant herein was not submitted. It may be that while taking appropriate decision, the Assistant Commissioner of Commercial Taxes - respondent No.2 herein may consider the other objections, which may be raised on behalf of the original petitioner-respondent No.3 herein, but by no stretch of imagination, it can be said that it was a decision already taken for cancellation of the registration may be on the ground of non-availability of the letter of the appellant or otherwise. Under the circumstances, it was nothing but a show-cause notice issued to the original petitioner by respondent No.2 as to why the registration should not be cancelled.

13. It is not the case of the original petitioner-respondent No.3 herein that the Assistant Commissioner of Commercial Taxes -respondent No.2 herein had not issued registration certificate. Therefore, by the provisions of General Clauses Act, 1897, the Authority, which has the power to grant registration, will have power to cancel the registration. Learned counsel appearing for respondent No.3 - original petitioner further attempted to contend that the notice issued is beyond the scope and ambit of Section 27 of the Karnataka Value Added Tax Act, 2003 (hereinafter referred to as ''the Act'') inasmuch as no such specific ground has been mentioned in the statute for cancellation of registration on the ground of non-furnishing of no-objection letter from the interested party in the property or otherwise. We may record that under Section 27(1)(e) of the Act, the words provided are as under :

"a dealer being an individual, registered under this Act dies, and for any other good and sufficient reason xxxx"

Meaning thereby, that the death of the individual, who is a dealer is one of the aspects, but at the same time, even if there is any other good and sufficient reason, the proceedings can be initiated for cancellation of the registration. Whether the ground stated in the impugned notice dated 22.03.2016 could be said as good or sufficient reason is an aspect, which is yet to be examined and finalized by respondent No.2 - Authority after giving opportunity of hearing to the original petitioner-respondent No.3 herein and concerned parties and therefore, it cannot be said that there is no authority with respondent No.2 to issue notice as the same is outside the scope and ambit of Section 27 of the Act.

14. In view of the aforesaid observations, once it is found that the impugned notice dated 22.03.2016 was not without jurisdiction, we are of the view that by

way of a self-imposed restriction in exercise of the power under Article 226 of the Constitution, it was a case not to interfere at the stage of show-cause notice and the original petitioner-respondent No.3 herein ought to have been relegated to the Authority to raise objections to the notice and the Authority ought to have been permitted to exercise the power in accordance with law.

15. In view of the aforesaid observations and discussion, the impugned order of the learned single Judge is set aside with the further observation that the impugned notice dated 22.03.2016 shall stand restored to the file of respondent No.2 - Assistant Commissioner of Commercial Taxes. The original petitioner-respondent No.3 herein as well as the appellant may submit their objections, if any, within a period of two weeks from today. After the objections are submitted, the opportunity of hearing shall be given by respondent No.2 to the original petitioner-respondent No.3 herein as well as to the appellant and appropriate order shall be passed in accordance with law. It is further observed that if the decision is to cancel the registration of the original petitioner-respondent No.3 herein, the same shall not be implemented for a period of two weeks from the date of its communication to the original petitioner-respondent No.3 herein by registered A.D. post.

16. It is further clarified that all the rights and contentions of both the sides shall remain open to be considered by respondent No.2. Any observation made by this Court in the present order shall not be read to prejudice the rights of either side for proper consideration before respondent No.2 in accordance with law.

17. The appeal is allowed to the aforesaid extent.

18. Considering the facts and circumstances, no order as to cost.

19. In view of disposal of this appeal, IA. No.2/2016 for stay does not survive for consideration and the same stands disposed of.

