
(2014) 11 KAR CK 0161

In the Karnataka High Court

Case No : Writ Petition Nos. 53512 and 53513-53571/2014 (T-RES)

Bangalore University Jnana Bharathi Campus

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 21-11-2014

Acts Referred:

Karnataka Value Added Tax Act, 2003 — Section 38, 52, 62

Citation : (2014) 11 KAR CK 0161

Hon'ble Judges : B.V. Nagarathna, J

Bench : Single Bench

Advocate : Atul Krishna Rao Alur, Advocate for the Appellant; Venkatesh Dodderi, AGA, Advocate for the Respondent

Judgement

B.V. Nagarathna, J.—These writ petitions were listed yesterday. Learned Addl. Government Advocate, who appeared on advance notice sought time to get instructions in the matter. Hence, the writ petitions were adjourned to today.

2. Petitioner-Bangalore University has assailed order dated 15.10.2014 passed under Section 52 read with Section 38 of the Karnataka Value Added Tax Act, 2003 (Annexure-E) and also demand notice dated 15.10.2014 (Annexure-F).

3. Briefly stated the facts are that the 4th respondent initiated proceedings against the petitioner-University, pursuant to judgment of the Division Bench of this Court in the case of Manipal University v. State of KARNATAKA 2014(79) KLJ 193(HC) (DB), in which it was held that sale of prospectus of a University was subject to Value Added Tax (VAT) and thus answered the revision against the assessee therein. On 14.8.2014, the 4th respondent issued notice (Annexure-A) directing the petitioner to file objections within seven days from the date of receipt of the said notice. On 30.8.2014, petitioner requested for two months time to file its reply. Finally, fourth respondent issued an endorsement on 3.9.2014, refusing to grant two months time to the petitioner and instead two months time was granted from 14.8.2014 rather than 3.9.2014. Keeping that in mind, fourth respondent passed the impugned assessment order on 15.10.2014.

By that time petitioner had neither appeared before the authority nor filed any reply to the notice. In fact, on the next date i.e. on 16.10.2014, petitioner submitted its reply. By then the impugned order had already been passed following the decision of the Division Bench of this Court and demand notice was issued as per Annexure-F along with the impugned order. Being aggrieved by the impugned order dated 15.10.2014 (Annexure-E) and the demand notice dated 15.10.2014 (Annexure-F), petitioner has filed these writ petitions.

4. I have heard learned counsel for the petitioner and learned Addl. Government Advocate for the respondents and perused the material on record.

5. Learned Addl. Government Advocate at the outset has raised a preliminary objection regarding maintainability of these writ petitions. He states that what has been challenged in these writ petitions is an order of assessment against which, petitioner has an alternative remedy of appeal under Section 62 of the Act.

6. This submission is countered by petitioner's counsel by stating that petitioner being a University was not able to appear before the 4th respondent- authority and make its submission, the impugned order of demand has been made without participation of the petitioner before the said authority. In the circumstances, petitioner's counsel stated that an opportunity may be given to the petitioner to appear before the 4th respondent- authority by quashing the impugned order as well as demand notice.

7. I have perused the material on record. It is noted that the petitioner-University was in fact granted time to respond to the notice and also to appear before the authority. But the University has delayed in the matter and did not appear before the authority and only on 15.10.2014, the 4th respondent passed the impugned order (Annexure-E) as well as demand (Annexure-F). The University ought to have understood the final endorsement dated 3.9.2014 and filed its reply within the time that had been granted to the petitioner. In the absence of any reply being given by the petitioner, fourth respondent proceeded to pass orders based on the judgment of the Division Bench referred to supra. The person who caused the delay in filing the reply must be made responsible for it.

8. Learned counsel for the petitioner states that the petitioner is a University established under the Karnataka Universities Act, 2000. The judgment of the Division of this Court was not applicable to the petitioner- University as the Division Bench considered the matter in the case of Manipal University, which is a deemed private university and this distinction has not been brought to the notice of the fourth respondent/authority. The same was not considered only because the petitioner did not appear in time before the fourth respondent. In the circumstances what becomes apparent is the fact that the impugned order of demand has been made without hearing the petitioner. Therefore, in the interest of justice, the impugned order at Annexure - E and the demand notice at Annexure-F are quashed so as to enable the petitioner to appear before the 4th

respondent and make its submission before that authority. The authorised representative of the petitioner-University shall appear before the 4th respondent on 5.12.2014 without insisting on any separate notice from that authority. The 4th respondent shall consider the objections filed by the petitioner, a copy of which is at Annexure-G and hear the petitioner and dispose the proceeding in accordance with law. Petitioner is also permitted to raise additional objections or contentions by filing additional statement of objections on 15.12.2014.

9. With the aforesaid observations and directions, writ petitions stand disposed.

All contentions of both sides are left open.