
(2020) 02 RAJ CK 0357

In the Rajasthan High Court

Case No : Civil Writ Petition No. 10985 Of 2009

Bharat Sanchar Nigam Limited

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 20-02-2020

Acts Referred:

Constitution Of India, 1950 — Article 301, 304(b)

Citation : (2020) 02 RAJ CK 0357

Hon'ble Judges : Sangeet Lodha, J;Dr. Pushpendra Singh Bhati, J

Bench : Single Bench

Advocate : Pritam Solanki, Anil Bhansali, Dixit Panwar, Pukhraj Patel

Final Decision : Dismissed

Judgement

1. This writ petition is filed by the petitioner questioning the constitutional validity of the Rajasthan Tax on Entry of Goods into Local Areas Act, 1999

(for short, the "Act") on the ground that it violates freedom of trade, commerce and intercourse under Article 301, not saved by Article 304 (b)

of the Constitution of India.

2. A batch of writ petitions challenging the constitutional validity of the Act were heard and dismissed by the Division Bench of this Court. Vide

judgment dated 1.12.2014 in M/s Harit Polytech Pvt.Ltd. V/s State of Rajasthan & ors. (D.B.Civil Writ Petition No.8745/2014) and other connected

writ petitions, the Court concluded as follows:-

26. After hearing learned counsels for the parties, we are of the considered opinion that the Division Bench in M/s.Dinesh Pouches Limited(2)

Vs. State of Rajasthan & Ors. (supra), having noticed the directions of Hon'ble Supreme Court issued in the order dated 14.7.2006, exceeded the

mandate of the order issued by the Hon'ble Supreme Court, in declaring the Act to be ultra vires Article 301 of the Constitution of India, and to refund

the entire amount of Entry Tax levied and collected by the State of Rajasthan. The Division Bench was not required to decide the issue as the Civil

Appeals against the earlier judgment in the same writ petition upholding the Act were pending in the Supreme Court, alongwith other connected

matters. The directions in the order of Supreme Court dated 14.7.2006, which had not set aside the Judgments of the High Court and had remitted an

issue for recording the findings, were clear and did not admit any ambiguity or doubt. The Division Bench of this Court in M/s.Dinesh Pouches Ltd.

(2) Vs. State of Rajasthan & Ors., travelled beyond the authority given by the Hon'ble Supreme Court in the appeals arising out of the original orders,

which are still pending. The Supreme Court had only remitted an issue to record the findings, within five months and remit it within next one month, to

enable the Apex Court to decide the matter. The High Court pre-empted the final decision on its findings, which have not been considered so far by

the Supreme Court.

27. We are distressed to observe that despite availability of the judgment in M/s.Dinesh Pouches Limited (2) Vs. State of Rajasthan & Ors.(supra)

decided on 21.8.2007 to both the parties, it was not brought to the notice of the Division Bench, hearing M/s.Godfrey Philips India Limited(2) Vs. State

of Rajasthan & Ors. (supra), five months after the judgment was rendered in M/s.Dinesh Pouches Limited (2) Vs. State of Rajasthan & Ors.(supra).

On the same material, the Division Bench in M/s. Godfrey Philips India Limited(2) Vs. State of Rajasthan & Ors., and in pursuance to the same order

of the Apex Court remitting the issue, recorded contradictory findings. It however did not choose, in view of the order of remittance of the Supreme

Court dated 14.07.2006, to decide the writ petition. In our view, both the parties represented by same counsels should have drawn the attention of the

Division Bench to the earlier decision of the High Court. The review petitions have however been filed by the petitioners to review the opinion in

M/s.Godfrey Philips India Limited (2) Vs. State of Rajasthan & Ors.(supra).

28. In view of the aforesaid discussion, we hold, without any hesitation, that the Division Bench, deciding D.B.Civil Writ Petition No.21/2002

(M/s.Dinesh Pouches Limited (2) Vs. State of Rajasthan & Ors.) in its judgment

dated 21.8.2007, had after quoting the order of the Supreme Court on 14.7.2006, by which the issue was remitted to it, could not have finally decided the writ petition. We do not propose to pass any final orders in the matter, as in doing so, we will be committing the same error, which was made by the Division Bench in the judgment dated 21.8.2007 in M/s. Dinesh Pouches Limited(2) Vs. State of Rajasthan & Ors.(supra).

29. We enquired from the learned counsels appearing for the petitioners and learned Advocate General, State of Rajasthan, as to whether this Court's order dated 21.8.2007 and the order dated 18.1.2008 have been forwarded to the Hon'ble Supreme Court to be placed on the record of Civil Appeal No.3453/2002. We are informed that since Special Leave to Petitions have been filed, and have been tagged with Civil Appeal No.3453/2002, both the orders are available on the records of Supreme Court. Learned counsels appearing for the petitioners submit that since they have filed review petitions to review the judgment dated 18.1.2008 in M/s.Godfrey Philips India Limited (2) Vs. State of Rajasthan & Ors.(supra), they have not considered it appropriate to place the orders on record of Civil Appeal No.3453/2002, until the review petitions are decided.

30. In the special facts and circumstances of the case, we are of the view that since Civil Appeals arising out of the judgments passed by this Court in

M/s.Godfrey Philips India Limited(1) Vs. State of Rajasthan & Ors. (supra) and M/s.Dinesh Pouches Limited(1) Vs. State of Rajasthan & Ors.

(supra) are still pending in the Hon'ble Supreme Court, both the judgments dated 21.8.2007 and 18.1.2008, passed in pursuance to the directions issued

by the Hon'ble Supreme Court, which had remitted the issues for findings to be recorded by the High Court, be forwarded by the Registry of the High

Court to Hon'ble Supreme Court, to be placed on the record of Civil Appeal No.3453/2002. Since we have refrained ourselves from deciding the

issues, which are pending in the Hon'ble Supreme Court, we do not propose to extend the interim orders, and leave the parties to seek appropriate

remedies, for protecting their interests.

31. All the Writ Petitions are accordingly dismissed, and the interim orders are discharged. The Review Petitions are also accordingly disposed of.â??

3. Since the issue raised in this writ petition stands settled, we are of the view that the matter is covered by the reasons given in the Division Bench

Judgment in M/s Harit Polytech Pvt.Ltd. V/s State of Rajasthan & Ors. (supra) and the writ petition is liable to be dismissed.

4. The writ petition is accordingly dismissed and the interim order is discharged.