

(1990) 11 KAR CK 0019
In the Karnataka High Court
Case No : W.P. No. 1785/1986

K. Gopal

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 19-11-1990

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 5(3)(A)

Citation : (1991) 35 KarLJ 115

Hon'ble Judges : K. B. Navadgi, J;M. P. Chandrakantaraj Urs, J

Judgement

Chandrakantaraj Urs, J.-Petitioner on the relevant date, i.e. the presentation of the petition, was a toddy contractor who had acquired the right to vend toddy for that excise year ending 30-6-1982. The Assistant Commissioner of Commercial Taxes (Assessments), Davangere made an ex-parte best Judgment assessment on 14-11-1985 determining the tax liability at Rs. 9,62,333/- and after adjusting the tax paid issued a demand for payment of sales tax in a sum of Rs. 8,38,064.20, a copy of assessment order is enclosed to the writ petition as Annexure-A.

2. Petitioner has averred that the sale of toddy at the relevant time was taxable at the point of first sale under Section 5(3)(a) of the Karnataka Sales Tax Act, 1957, (hereinafter referred to as the "Act") read with Item 82 of the II Schedule to the said Act. Item 82 in the said Act came to be deleted with effect from 1-7-1983 by an amendment to the Act. Simultaneously, it was placed as Item No. 52 in the Fifth Schedule. Goods in the Fifth Schedule are not subject to sales tax in terms of Section 8 of the Act. Petitioner has further averred that having regard to the ruling of the Supreme Court in the case of Royala Corporation (P) Ltd. v Director of Enforcement, Delhi, AIR 1970 Supreme Court 497, omission did not amount to repeal and therefore omitting toddy from Second Schedule would not be repeal and as such no tax is liable to be paid by virtue of such omission, for the relevant assessment year ending on 30-6-1982. It is further averred that by virtue of a decision rendered by this Court in the case of R. Abdul Azeez v Commissioner of Income-tax, Karnataka-I, 128 ITR 547, which followed the

Judgment in Royala Corporation's case supra, the State amended the Karnataka General Clauses Act in order to overcome the rigour of the decision in Abdul Azeez's case while including the clause 32(a) to Section 3 of the Karnataka General Clauses Act. The amended provision was given retrospective effect from 1-11-1986 and provided for repeal to include deletion and omission. It is therefore contended by the petitioner that the State cannot legislate to insert the amendment to Section 3 of the Karnataka General Clauses Act with retrospective effect and such an amendment would require the Presidential assent and unless such an assent is given, it cannot be given effect to. Therefore, it is urged that the assessee has no liability to pay tax for the period ending 30-6-1982 for the sales conducted by him of toddy in the Davangere area. He has therefore under Article 216 has preferred this petition against the assessment order as the vires of the amendment could not be challenged before the Assessing Authority or any other authority under the Act.

3. The main relief asked for is for a declaration that clause 32(a) of Section 3 of the Karnataka General Clauses Act, 1899 is void and unenforceable for want of Presidential assent.

4. Karnataka Act 3 of 1889, i.e. the Karnataka General Clauses Act, is an Act of erstwhile State of Mysore, as amended from time to time, and by adoption of laws order of 1953 and the Karnataka Adoption of Laws Order, 1956, it became operative as if it was enacted by the new State of Karnataka. In the preamble to the Act, it is stated that the Act serves the purpose to shorten the language used in Mysore and Karnataka Acts and for other purposes. Section 3 is the section which defines various terms that normally occur in a legislation. By insertion of clause 32(a) to Section 3 as earlier noticed, nothing more was done than to include within the expression "repeal" terms "omission" and "deletion". The effect is to see that the amendment was given retrospective effect from 1-11-1956 the date, the new State of Karnataka came into being, so that Section 6 of the General Clauses Act became operative in respect of even "omissions" and "deletions" in a legislation.

5. In the entire pleadings or statement of facts, all the grounds urged in support of the relief are what we have set out earlier. No ground as such is made out as to why the amending Act of 1985 requires Presidential assent.

6. However, at the time the matter was taken up for hearing, Sri R.V. Prasad appearing for Sri K. Srinivasan, learned counsel for the petitioner, did not press the assertion in the petition that the amendment could not be given effect for want of Presidential assent. He however pressed that there was no lax liability on the part of the petitioner on the sale of toddy effected by him for the period ending 30-6-1982 because the amendment affected his right to carry on trade guaranteed under Article 301 of the Constitution. He placed reliance upon certain observations made in the case of Automobile Transport (Rajasthan) Ltd. etc. v State of Rajasthan and Others, AIR 1962 Supreme Court 1406. We do not think, those observations have any relevance to the ground urged before us. Those

observations are to the effect that Article 19 of the Constitution guarantees certain freedom including freedom to pursue any trade to the citizens of India while 301 significantly omits reference to the citizens. That means nothing more than that even non-citizens have a right to trade and commerce in the territory of India.

7. But Mr. Prasad was unable to point out how that freedom to carry on a particular trade has been affected by the amendment. That he acquired right to vend toddy under the relevant provisions of the Karnataka Excise Act and has so vend and collected tax on sales of toddy having regard to the Entry 82 as it existed in the given period in the Second Schedule to the Act is not disputed. That he was permitted to carry on trade in toddy before the amendment of Section 3 of the Karnataka General Clauses Act is also not disputed. We are unable to see how he has been prevented from carrying on the trade after the amendment. The entire challenge therefore is made only to avoid payment of tax which admittedly he has collected as is evidenced by Annexure-A, the assessment order. Therefore, the right to carry on a particular trade, is in no way affected by the amendment, under Article 19 or 301. No doubt the amendment was made to overcome the rigour of the decisions of this Court when repeal did not include omission or deletion. But that repeal now includes omission and deletion by virtue of the amendment under challenge. The liability incurred by the assessee to collect and pay tax on the sale of toddy in the relevant period is protected in favour of the revenue by operation of Section 6 of the Karnataka General Clauses Act. That cannot be said to be an impediment or unreasonable restriction imposed on the right to carry on the trade.

8. In this context it may not be out of place for us to mention that as held by the Supreme Court in the case of Cooverjee B. Bharucha, v Excise Commissioner and The Chief Commissioner, Ajmer and Others, AIR 1954 Supreme Court 220, right to trade in intoxicants is not a fundamental right at all. That decision is since followed by the later decisions of Supreme Court and this Court, particularly in the case of M/s. Jagdale & Sons v State of Karnataka, 1990(1) Kar. L.J. 18: ILR 1989 Kar. 101. Therefore, even if this Court were to hold that the amendment Act is a restriction on his right to vend toddy, then it will not affect his fundamental right.

9. Even in that view, the challenge is frivolous and motivated in order to avoid payment of tax and in order to gain unjust enrichment at the cost of the exchequer and the consumer.

We therefore dismiss this petition with costs. Advocate's fee is Rs. 500/-.

Writ Petition dismissed with costs.