

(1986) 07 RAJ CK 0043

In the Rajasthan High Court

Case No : .CSpecial Appeal No's. 854, 855 and 856 of 1986

Lodha Fabrics and Another

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 04-07-1986

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (1988) 68 STC 145

Hon'ble Judges : S.S. Byas, J;S.C. Agrawal, J

Bench : Division Bench

Advocate : B.C. Mehta, for the Appellant; B.R. Mehta, Deputy Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Mathur, J.—In all these writ petitions common question of fact and law are involved, therefore they are disposed of by a common order.

2. In all these writ petitions, the petitioners are doing the business of dyeing and printing of cloth at Pali. For the purpose of disposal of these writ petitions the facts of S.B. Civil Writ Petition No. 1872 of 1985 (Lodha Fabrics, Pali v. State of Rajasthan) are taken into consideration.

3. All these writ petitions have been directed against the assessment orders by the Commercial Taxes Officer. At the outset the question is that whether such writ petitions should be entertained or not. Mr. K.C. Bhandari, learned Counsel for the Revenue, has brought to my notice that it is settled proposition of law which has been laid by their Lordships of the Supreme Court repeatedly that under the taxing statutes when complete machinery has been created then extraordinary jurisdiction should only be involved in extraordinary circumstances. In normal course the petitioners should have filed an appeal against the order of assessment and the demand raised against the petitioners before the appellate authority and if they are still aggrieved by that order then there is remedy before

the Sales Tax Tribunal, which has been recently created. Thus, the learned Counsel for the respondents submits that these writ petitions should be dismissed on a short and sure ground. In support of this proposition the learned Counsel for the respondents cited before me the cases of Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others, and Assistant Collector of Central Excise, Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others,

4. It has been observed in the case of Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others, as under:

It is now well-recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of.

5. Similarly their Lordships of the Supreme Court in the case of Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others, observed as under:

3. In Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others, A.P. Sen, E.S. Venkataramiah and R.B. Misra, JJ., held that where the statute itself provided the petitioners with an efficacious alternative remedy by way of an appeal to the prescribed authority, a second appeal to the Tribunal and thereafter to have the case stated to the High Court, it was not for the High Court to exercise its extraordinary jurisdiction under Article 226 of the Constitution ignoring as it were, the complete statutory machinery. That it has become necessary, even now, for us to repeat this admonition is indeed a matter of tragic concern to us. Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the court must have good and sufficient reason to by-pass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged.

6. Thus, it has been emphasised that when the remedy has been created under the taxing statute then the extraordinary jurisdiction of this Court under Article 226 should be sparingly exercised except in exceptional cases. Their Lordships of the Supreme Court have deprecated the practice of entertaining taxation writ petitions under Article 226 of the Constitution.

7. Mr. Bhandari has further pointed out that the assessment orders passed in all

these cases are appealable u/s 13 of the Rajasthan Sales Tax Act, 1954 (hereinafter referred to as the Act of 1954), and appeal lies to the Deputy Commissioner, Commercial Taxes Department, and they can further approach the Sales Tax Tribunal u/s 14 and still if they are aggrieved against the order of the Tribunal, a revision lies to the High Court u/s 15. Thus, in this view of matter, this Court should not entertain these writ petitions.

8. Confronted with this position the learned Counsel for the petitioners submitted that in view of the judgment of the Board of Revenue in the case of Indian National Hosiery Factory v. Commercial Taxes Officer, Ajmer 1979 RRD 18 no useful purpose will be served by approaching the machinery created under the Act because the judgment of the Board of Revenue will be binding on them. Then he moved an application for amendment in S. B. Civil Writ Petition No. 3282 of 1984 (Lodha Fabrics, Pali v. State of Rajasthan) seeking to challenge the validity of Section 2(mm) by this amendment. Mr. Mehta also raised various other contentions on merits also and tried to impress by citing plethora of cases that this Court should interfere in this matter because it involves question that whether the petitioner is entitled to benefit of exemption u/s 5CC of the Act of 1954 and has further tried to impress that on account of the fact that certain entries have been made in his registration certificate showing that the goods are required for manufacturing purpose. He has also submitted before me the opinion of Dr. D.S. Mittal for the purpose of impressing that the caustic soda is required right from the beginning of the process of dyeing, as such same is completely exempted. Since I am disposing of the matter on the basis of preliminary objection raised by Mr. Bhandari, therefore, I need not go into the question that what role caustic soda plays for the purpose of dyeing and printing, as I leave it for the taxing authorities and the taxing Tribunal to delve into all these questions of fact. The objection raised by Mr. Bhandari is well-founded and deserves to be upheld. In the case of Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others, as well as in the case of Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others, their Lordships of the Supreme Court have very categorically expressed that while exercising powers under Article 226 care should be taken that this Court should not provide a short-circuit to such person and permit them to obtain interim orders so as to deprive the State of its legitimate revenue. In all these cases the petitioners have directly approached this Court by filing these writ petitions. Mr. Mehta had tried to impress me that due to the judgment of the Board of Revenue they have not approached the machinery created under the Act of 1954 as they are bound by the judgment of the Board of Revenue. I have gone through the judgment of the Board of Revenue in the case of Indian National Hosiery Factory 1979 RRD 18. This case was regarding the use of caustic soda as raw material for hosiery industry. But the case before us is of dyeing and printing and the question is whether caustic soda is necessary raw material for this purpose or not. This depends upon the question of fact that whether caustic soda is a raw material or not for the purpose of dyeing and

printing. The order of the Board of Revenue is for the hosiery purpose and not for the purpose of dyeing and printing. Thus, an attempt was made by Mr. Mehta to somehow persuade me to invoke the extraordinary jurisdiction of this Court, on the basis of the observations made by the Board of Revenue, is nothing but futile attempt and it does not impress me at all that these observations will be applicable in cases of dyeing and printing. Moreover, it is essentially a question of fact that whether these materials are part of the manufacturing process or it is a raw material for the purpose so as to avail exemption u/s 5CC(2) of the Act of 1954 is a question of, fact and that can only be determined after both the sides have produced necessary material before the assessing authority and satisfied them.

9. Mr. Mehta emphasised on the opinion of Dr. D. S. Mittal. This is not a forum where all these material can be produced, what is the process by which the dyeing and printing is done and at what stage the caustic soda is used, whether it is a necessary raw material or whether it is a part of the manufacturing process. All these are essentially question of fact and for that purpose the Act of 1954 has created a necessary machinery and after going through by that machinery, the petitioners can be permitted to approach this Court. Moreover now in view of the fact that the Sales Tax Tribunal has been created then there is no reason to circumvent that machinery and directly approach this Court so as to deal with all these disputed questions of fact. Thus, this submission of Mr. Mehta fails to impress so as to invoke extraordinary jurisdiction of this Court.

10. The learned Counsel for the petitioner further submitted that since he is challenging the validity of raw material as given u/s 2(mm) therefore this Court should interfere in this matter. Now so far as the question regarding validity of Section 2(mm) is concerned, I do not find it unconstitutional in any respect. Section 2(mm) reads as under:

Raw material" means an article used as an ingredient in any manufactured goods, and includes fuel and lubricant required for the process of manufacture, but does not include bullion and specie.

11. A bare reading of Section 2(mm) clearly shows that articles which are ingredient for manufacturing goods shall be known as raw material. Thus, for manufacturing any goods or the necessary ingredients which are required then those ingredients will be called raw material for those goods. This definition is not ultra vires to Article 14 or any other provisions of the Act of 1954.

12. The learned Counsel for the petitioner has relied upon the case of AIR India Vs. Nergesh Meerza and Others, This case only lays down the parameters of Article 14 and a general basis for classification. In this case it has been laid down that there should not be any discrimination amongst the persons similarly situated and it has been further observed that unreasonableness or arbitrariness or inaction can also be struck down. In this case a writ petition was filed by the employee of the Air India that the air crew were not treated at par with the other

employees similarly situated and they are discriminated. In this background their Lordships have laid down various parameters of Article 14 and also held that arbitrary and unreasonable actions can be declared null and void. But in the present writ petitions I do not find any arbitrariness or unreasonableness with the present definition of "raw material". Thus, this submission of the learned Counsel has no merit and is rejected.

13. In the result, all the writ petitions are dismissed for the reason that the petitioners have statutory alternative remedy and they should have approached the machinery under the Act of 1954 before approaching this Court under Article 226 of the Constitution. No order as to costs.

The petitioners preferred special appeals against this decision of A.K. Mathur, J.

JUDGMENT

S.C. Agrawal, J.

14. These special appeals are directed against the order dated June 20, 1986 passed by the learned single Judge (printed at page 146 supra) whereby the writ petitions filed by the appellants have been dismissed. In the said writ petitions the appellants had challenged the assessment orders passed by the Commercial Taxes Officer. Learned single Judge, while dismissing the writ petitions, has held that alternative remedy of appeal and revision in this Court was available to the appellants under the Rajasthan Sales Tax Act, 1954 and in view of the availability of the said remedies the writ petitions could not be entertained. Learned single Judge has also observed that the question raised in the writ petitions is essentially a question of fact as to whether caustic soda is a part of the manufacturing process or is a raw material for the purpose of dyeing and printing. Learned single Judge has also observed that there was no substance in the contention raised by the appellants challenging the constitutional validity in the definition of "raw material" that is contained in Section 2(mm) of the Rajasthan Sales Tax Act.

15. Shri Mehta, learned Counsel for the appellants, submitted that the remedy of appeal available to the petitioner under the Rajasthan Sales Tax Act is a futile remedy in view of the decision of the Board of Revenue in the case of Indian National Hosiery Factory v. Commercial Taxes Officer, Ajmer, since the judgment of the Board of Revenue will be binding on the authorities. Shri Mehta has also relied on the decision of the Division Bench of this Court in Commercial Taxes Officer Vs. Hindustan Radiator, and has submitted that in view of the said judgment caustic soda, as it is entered as raw material in the registration certificates of the appellants, must be treated as raw material and penalty could not be imposed u/s 5CC of the Rajasthan Sales Tax Act.

16. In our opinion it is open to the appellants to rely upon the said judgment of the Division Bench of this Court in the appeals before the appellate authority and as regards the judgment of the Board of Revenue we find that the learned

single Judge has considered the same and has pointed out that the said judgment has no application to the case of the appellants as it related to hosiery industry.

17. We find no merit in these special appeals and they are, therefore, dismissed.