

(2001) 01 RAJ CK 0012

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4738 of 2000 and 2 Ors. Petitions

M/s. Jai Carrying Corporation

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 13-01-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Rajasthan Sales Tax Act, 1994 — Section 78(5)

Citation : (2001) 2 RLW 963

Hon'ble Judges : Bhagwati Prasad, J

Bench : Single Bench

Advocate : Vineet Kothari, for the Appellant; Sanjeev Johari, for the Respondent

Judgement

Prasad, J.

(1). These three writ petitions involve similar/common questions of facts and law, therefore, they are being decided by this common order.

(2). For the purposes of factual matrix the facts pertaining to M/s. Jain Carrying Corporation vs. State of Rajasthan and another (S.B. Civil Writ Petition No. 4738/2000) are being taken into consideration.

(3). The petitioner in its writ petition has alleged that the petition has been filed in the back-ground wherein the provisions of Sec. 78(5) of the Rajasthan Sales Tax Act, 1994 (referred to hereinafter as "the Act") have been declared ultra vires by a Division Bench decision of this Court in D.P. Metals vs. State (1). The case of the petitioner in this back-ground is that Sec. 78(5) of the Act having been declared ultra vires of the Constitution, the respondent State has no authority to levy any tax and issue any process in relation to a levy pertaining to Sec. 78(5) of Art. The petitioner's truck No. RJ/14 /G-3239 was coming from Delhi and was destined to go to Ahmedabad in Gujarat and Mumbai. It was intercepted and seized by the respondent No. 2 on 24.10.2000. After [he seizure a notice was given to the petitioner being notice Annex. 3. It terms of the notice

it is alleged that though the documents pertained that they were destined for Ahmedabad but, in fact, they were being carried for being detained at Jaipur. Pursuant to the notice the State has passed a final order of levying penalty on 24.11.2000.

(4). The case of the petitioner is, thus, that the notices Annex. 2 and 3 are illegal and void ab initio as sub-section (5) of Section 78 of the Act has already been declared ultra vires. Since the basic provision, which enables the State to levy penalty has been declared ultra vires, the State has no authority whatsoever to invoke the same and the notices issued by the respondents be declared illegal.

(5). Writ petition was admitted and the notices were issued to the respondents. Notice of the stay application was also issued to the respondents and an interim direction was issued. After notice the State has joined the issue. By the agreement of the parties the case was finally heard.

(6). The State has submitted in its reply that the petitioner has not come to the court with clean hands. Before filing the present writ petition the petitioner has filed a writ petition before the Jaipur Bench of this Court which was registered as (Jai Carrying Corporation vs. State & Anr. (S.B.C.W.P. No. 5416/2000). This writ petition was dismissed by the Jaipur Bench of this Court on 14.12.2000 In the following terms:-

"The petitioner has challenged the action of the respondents in regard to seizure of their goods which passed through the State of Rajasthan on several places. But the petitioner had filed this writ petition before a final order was passed by the authorities. It is informed that now the respondents have already passed the final order against which an appeal is maintainable. The petitioner, thus, clearly has an alternative remedy. He is at liberty to avail that.

The writ petition stands dismissed as premature.

Sd/-

(GYAN SUDHA MISRA), J.

(7). The aforesaid having happened, it was not open to the petitioner to have approached the Principal Seat of the Rajasthan High Court. In approaching the Principal Seat by filing a fresh writ petition on 18.12.2000, just after 4 days of its writ petition on the same cause of action has been dismissed by the Jaipur Bench. The petitioner has tried to over-reach the process of the Court. The conduct of the petitioner in this way cannot be said to be above board. The law is very clear that as and when a writ petition is dismissed by the High Court then another coordinate bench cannot entertain another writ petition on the "same cause of action.

(8). Learned counsel appearing for the State has relied upon a decision of this Court rendered in S.B. Civil Writ Petition No. 2905/98 decided on 13.10.1998) in the matter of Smt. Madhu Jajoo vs. State of Rajasthan and others (2). This Court

in the aforesaid judgment has relied upon certain Supreme Court judgments. The Hon''ble Supreme Court in Andhra State Financial Corporation vs. Gar Re : Rolling Mills (3) has observed as under-

"The Court of equity, when exercising its equitable jurisdiction, under Article 226 of the Constitution of India, must so act as to prevent perpetration of a legal fraud and the Courts are obliged to do justice by promotion of good faith, as far as it lies within their power. Equity is always known to prevent the law from crafty evasion and sublelies invented to evade law."

(9). This Court has also noticed in the aloresaid judgment another Supreme Court decision rendered in S.P. Chengelvaraya Nairiu vs. Jagannath and others (4), wherein it was observed as under by the Hon''ble Supreme Court:-

"the Courts of law are meant for imparting justice between the parties and one, who approaches the Court, must come with clean hands as "unscrupulous persons from all walks of life, find the Court process a convenient lever to retain the illegal gain indefinitely."

(10). The aforesaid statement of law as slated by the Hon''ble Supreme Court disentitles the petitioner to invoke the extraordinary jurisdiction of this Court.

(11). I have considered the rival submissions and perused the record.

(12). The present writ petition can be decided without going into the merits of the case only on the preliminary objection as stated by the State. The petitioner has filed a writ petition before the Jaipur Bench of the High Court and the same came up before a learned Single Judge of this Court on 14.12.2000. The writ petition was dismissed. Once a writ petition has been dismissed, filing of another writ petition on the same cause of action at the Principal Seat of the High Court at Jodhpur is an attempt to clearly over-reach the process of the Court. Two benches of the High Court are not meant to be misused in the manner in which the petitioner has chosen to do. The law remains the same. The case of a party having been decided by the Jaipur Bench Judge means that it has been decided for all practical purposes and any attempt to approach the principal seat on the same cause of action cannot be appreciated. The petitioner cannot be said to have come with clean hands so as to entitled itself to invoke the extraordinary jurisdiction of this Court. The principle of constructive res judicata barred the entry of the petitioner before this Court at the Principal Seat on the same cause of action.

(13). In view thereof, the petitions have no force and they are dismissed. The petitioners are directed to pay a cost of Rs. 5000/- each to the respondents.