(1988) 11 J&K CK 0002

In the Jammu And Kashmir High Court

Case No : Civil Miscellaneous Petition No. 1975/86

Roroesh Kumar Gandotra APPELLANT

Vs

Roroesh Kumar Gandotra RESPONDENT

Date of Decision : 30-11-1988

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1989) JKLR 1 : (1989) KashLJ 134 : (1989) KashLJ 133 : (1989) SriLJ 547

Hon'ble Judges : A.S.Anand, C.J and M.A.Shah, J

Bench : Division Bench

Advocate : M.M.Gupta, J.M.Gupta, D.C.Raina, Advocates appearing for the Parties

Judgement

Antnd, C.J.—The petitioner has filed writ petition No. 928/1986 challenging the vires of SRO 448 dated 22101988 whereby the

Government hag provided for levy and collection of salestax at the second point of sale instead of the first point of sale. A number of writ petitions

were challenging the said SRO and have been admitted to hearing: The writ petition filed by the petitioner has also been admitted to hearing.

2. Through this application seeking interim relief the petitioner seeks the stay of the operation and implemention of SRO 448 and a direction to the

state not to recover salestax from the petitioner till the disposal of the writ petition.

3. Learned counsel for the petitioner has submitted that since in an identical writ petition No. 890 of 1982, interim relief was granted by the court

by staying the implementation of SRO448 of 1982, ' similar orders be made in this case in view of the law laid down in AIR 1987 SC 1345, which provides, according to the learned counsel, that courts cannot make any variations in its orders, where the cares ire based on identical facts.

4. Mr D. C Faira, learned counsel for the respondents has, on the other hand, submitted that in the order passed in 1982, the interest of the public

exchequre was not kept in view and that in this case no interim relief be granted but if it is granted, interest of the revenue be protected.

5. The interlim relief which was granted in writ petition No. 890 of 1982 by one of us (Anand J.) is in the following terms :

Issue notice in the stay application till further orders from this court, the implementation of SRO 448 of 1982 dated 22101982 in so ""far as the

products of Vanaspati Ghee and edible oils is concerned, is stayed. The petitioners, however, shall maintain accounts of the sale of this products

made by them and shall furnish an undertaking to the Dy. Registrar, that in the event of the dismissal of the writ petition they shall pay the sales tax

which may fall due on those sales. The undertaking shall be given within this week"".'

This exparte interim order, as submitted by Mr. Raina indeed did not protect the interest of public revenue. The short question which therefore,

arises for consideration' is, whether it is permissible for the court to vary an interim order passed by it in a case particularly in fiscal matters, in a

subsequent matter based on more or less identical facts ?

6. According to Mr. Gupta, it is not permissible and any variance between the interim order passed in matters based on more or less identical facts

and involving identical questions of law results in discrimination while Mr. Raina contends to the contrary.

7. An arguments similar to the one as raised by Mr. Gupta was raised in the Supreme court in Empire Industries Ltd. and others V. Union of India

and otherAIR 1986 S. C. 662, their lordships repelling that argument observed :

Good dear of arguments were convassed before us for variation or vacation of the interim orders passed these cases. Different courts sometimes

pass different interim orders as the. courts think fit. It is, a matter of common knowledge that the interim orders passed by particular courts on

certain considerations are not precedents for, other cases which may be on similar facts. An argument is: being built up nowadays that once an

interim order has been passed by this court on certain factors specially in fiscal matter, in subsequent matters on mere or less similar facts, there

should not be a different order passed nor should there be any variation with that kind of interim order passed. It is submitted at the bar that such

variance creates discrimination. This is an unfortunate approach. Every Bench hearing a matter on the facts and circumstances of each case should

have the right to grant interim orders on such terms as it considers fit and proper and if it has granted interim order at one stage, It should have the

right to vary or alter such interim orders."" In the tight of the settled law, the answer to the aforesaid question, therefore, is in the affirmative.

8. While passing, interim orders, particularly in fiscal matters, it is an obligation on the courts to"" balance the equity and as fact as possible avoid

prejudice to the public interest. Indeed, the courts must strive to maintain consensus among its various benches while granting relief in matters

based on more or less identical facts. This, however, does not imply that interim orders, particularly when granted exparte, can form binding

precedents and the courts cannot vary or modify those orders, cases coming before them subsequently after taking all relevant matters into

consideration.

9. The Supreme court bad occasion to consider more than once the question regarding the grant of interim orders where public revenue is

involved. Their lordships not only viewed it with concern that by interim orders collection of public revenue is stayed but also depricated the

practice of granting stay of recovery of revenue even on furnishing of bank guarantees particularly in cases of indirect taxation. In Asstt. Collector

of Central Excise, Chandan Nagar Vs. Dunlop India Ltd and othersAIR 1985 S. C. 330, their lordships opined.

Governments are not run on mere Bank Guarantees we notice that very often some courts act as if furnishing a Bank Guarantee would meet the

ends of justice. No governmental business or for that matter no business of any"" kind can be run on mere Bank Gaurantees. Liquid cash is

necessary for the running of a Government as indeed any other enterprise. We consider that where matters of public revenue are concerned, it is of

utmost importance to realise that interim orders ought not to be granted merely because a primafacie case has been shown. More is required. The

balance of conveniece must be clearly in favour of the making of an interim order and there should not be the slightest indication of a likelihood of

prejudice to the public interest.

10. In the instant case the petitioner is a dealer engaged, inter alia, in the sale 'of vanaspati, after purchasing it from the manufaturer. According to

the petitioner since the manufacturer is exempt from payment of sales tax a fact contested by the respondentsthe dealer is also not liable to pay

salestax and SRO 448 of 1989, which provides for levy and collection of sales tax at the second point of sale, is bad as it has an indirect effect of

taking away the benefit which is available to the manufacturers. Primaface, the argument appears to be misconceived, because a dealer cannot in t

any way even seek the benefit of an exemption, if any, available to the manufacturer, because the event attracting sales tax is the sale of the article

to the consumer. After collecting the salestax no equity is created in favour of the dealer not to pay it to the department. The burden of sales tax on

the sales made by the dealer tails on the consumer and the dealer, therefore, collects the salestax on behalf of the salestax department. The

petitioner, therefore, does not have even a primafacie case to seek stay of recovery of the salestax, let alone the balance of convenience in its

favour. After taking all these factors into consideration, we decline to stay the implementation of SRO 448 of 1982 or the recovery of salestax.

11. The Deputy Registrar is directed to list all connectted writ petition for orders immediately after the vacations.