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(2008) 04 KAR CK 0023

In the Karnataka High Court

Case No : Writ Petition No. 5998 of 2008

Sandhya Bar and Restaurant and Another	APPELLANT
Vs	
Karnataka State Beverages Corporation Limited and Others	RESPONDENT

Date of Decision : 15-04-2008

Acts Referred:
Constitution of India, 1950 — Article 226, 227

Citation : (2008) 3 KCCR 223 SN

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : H.B.V. Patil and Shalini Patil, for the Appellant; Asha M. Kumbaragerimath, High Court Government Pleader, for the Respondent

Judgement

N.K. Patil, J.—Though this matter is posted for orders, with the consent of the learned Counsel appearing for both parties, this writ petition is taken up for final hearing and is disposed of as follows:

2. The petitioners, assailing the correctness of the notices both dated March 19, 2008 issued by the first respondent vide annexures D and E, have presented the instant writ petition. Further, the petitioners have sought for a direction, directing the fourth respondent to furnish the details of arrears as requested by the petitioner vide annexures F and F1, respectively.

3. The petitioners herein are CL-2 licence holders carrying on business of vending arrack for ten years and registered dealers under the Karnataka Sales Tax Act, 1957. When things stood thus, respondent No. 1 insisted upon the production of sales tax clearance certificate from respondents Nos. 2 and 3 for grant of licence. Accordingly, the petitioners have submitted their representations vide annexures F and F1. It is the case of petitioners that the impugned communication-cum-notices issued by the first respondent to these petitioners vide annexures D and E are one without jurisdiction and that, the said respondent does not have any power as such to insist upon the petitioners getting the "no-due certificate" from respondents Nos. 2 and 3. It is the further case of the petitioners that they have

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submitted their representations, requesting the CTO, Transmission, Harihar to give demand notice or the assessment orders and the same are not considered till date. Therefore, the petitioners herein felt necessitated to present this writ petition, seeking appropriate reliefs, as stated supra.

4. I have heard learned Counsel appearing for the petitioners and learned Government Pleader appearing for respondents Nos. 2 and 3. The first respondent is served and unrepresented.

5. After careful perusal of the impugned communications-cum-notices vide annexures D and E, directing the petitioners to produce the clearance certificate regarding recovery of arrears of sales tax in case of liquor dealers, I am of the considered view that, the said communications are only notices issued to the petitioners to furnish the clearance certificate. The petitioners, instead of filing reply to the impugned communications-cum-notices vide annexures D and E issued by the first respondent, have rushed to this Court and presented the instant writ petition. Therefore, the writ petitions filed by these petitioners are liable to be dismissed as misconceived and the prayer sought for by the petitioners is a premature one.

6. So far as the prayer seeking for a direction to the second and third respondents to consider the representations submitted by the petitioners vide annexures F and F1 is concerned, it can be seen that, the said representations are dated April 8, 2008. Learned Government Pleader appearing for respondents Nos. 2 and 3 on instructions from the office of the third respondent, who is present before the court along with the original records submitted that, the petitioners are due in arrears of tax for the assessment years 1997-98, 1998-99, 1999-2000 and 2000-01 in all a sum a of Rs. 1,85,332 and the petitioners, without paying the said arrears of sales tax are running the business. Therefore, the first respondent has issued the impugned communication-cum-notices dated March 19, 2008 for non-payment of arrears of sales tax in respect of the petitioners including about 34 other persons. In the light of the said communication, the first respondent has issued the impugned notice-cum-communication vide annexures D and E as referred above. Further, it is significant to note that, the petitioners have filed the appeal against the order passed by the assessing authority before the Joint Commissioner of Commercial Taxes for the assessment years 1998-99 and 1999-2000 and the same has been dismissed as early as on March 26, 2002. Further, it is relevant to note that, so far as assessment years 1997-98 and 2000-01 are concerned, the petitioners have skilfully not filed any appeal. Knowing fully well, the petitioners, being businessmen, have filed the appeal only in respect of two assessment years and not assailed the correctness or otherwise of the another two assessment years, as referred to above. Now, the petitioners are before this Court, by presenting the instant writ petition, without disclosing the true facts before this Court. The petitioners have submitted their representations requesting the competent authority to issue them the demand notice vide annexures F and F1.

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7. Further, it is the case of the petitioners that they are not aware as to the exact amount of balance of sales tax liability for the respective assessment years. In this regard, it can be seen that, the said submission is unbelievable and untenable for the reason that the petitioners have intentionally and deliberately concealed all these vital material facts before this Court and come up before this Court, pretending to be innocent and as if they are not aware of any tax liability due to be paid to respondents Nos. 2 and 3 and in a very convenient manner, have not revealed all these material facts before this Court while filing the instant writ petition. Therefore, the writ petition filed by the petitioners is liable to be dismissed in view of the suppression of material facts with exemplary cost.

8. Further, it is pertinent to note that the representations given by the petitioners are dated April 8, 2008 and the petitioners have approached this Court by presenting the instant writ petition the very next day, i.e., on April 9, 2008 without giving any breathing time to the respondents to take any decision on the said representations. Therefore, the prayer sought for by the petitioners cannot be entertained by invoking the extraordinary jurisdiction as envisaged under Articles 226 and 227 of the Constitution of India. It is settled position that any person who comes to redress his or her grievance before the court invoking the extraordinary jurisdiction, is bound to disclose the true facts and be fair in approaching the court and apprise the court of all the things that have transpired between the parties. Intentionally and deliberately, petitioners have suppressed all these vital information which were well within their knowledge, as stated supra. In my view, such persons should not be encouraged.

9. Having regard to the facts and circumstances of the case, as stated above, the writ petition filed by the petitioners is liable to be dismissed in view of the suppression of material facts and the prayer sought for by the petitioners is liable to be rejected as misconceived in nature. The writ petition is accordingly dismissed with cost of Rs. 10,000 (rupees ten thousand only) and the said cost of Rs. 10,000 is directed to be deposited in the office of the third respondent within two weeks from the date of receipt of a copy of this order. If the petitioners fail to deposit the said cost before the third respondent within the above stipulated period, the third respondent herein is reserved liberty to recover the said amount in accordance with law.

With these observations, the writ petition filed by the petitioners is disposed of.

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