

(1985) 10 KAR CK 0005
In the Karnataka High Court
Case No : Writ Petition No. 13437 of 1978

S.K. Sarawagi and Co. (P.) Ltd.

APPELLANT

Vs

The Government of Karnataka

RESPONDENT

Date of Decision : 29-10-1985

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Sales Tax Act, 1957 — Section 13 (2) (ii), 13 (2A)

Citation : (1986) 62 STC 218

Hon'ble Judges : R.S. Mahendra, J;K.S. Puttaswamy, J

Bench : Division Bench

Advocate : C.R. Sridhar, for K.R. Prasad, for the Appellant; S. Rajendra Babu, High Court Government Advocate, for the Respondent

Judgement

Puttaswamy, J.—On a reference made by Rajasekhara Murthy, J., this case has been posted before us for disposal.

2. Among others the petitioner is an assessee on the file of the Commercial Tax Officer, I Circle, Bellary (C.T.O.), under the Karnataka Sales Tax Act, 1957 (the Act). For the assessment years 1967-68 to 1972-73, the C.T.O. completed the assessments against the petitioner under the Act, issued consequent demand notices, from time to time, calling upon it to pay the taxes specified therein. For various reasons that are not necessary to notice the petitioner did not pay the taxes due from it on or before the dates specified in the respective demand notices and then ultimately on 2nd April, 1977, it paid all the taxes due for the aforesaid years. For such delay in payment of taxes, the C.T.O. called upon the petitioner to remit penalty or interest due to the State u/s 13(2)(ii) of the Act.

3. On 2nd April, 1977, the petitioner made an application (exhibit C) before the Government u/s 13(2A) of the Act, praying for waiver of penalty of a sum of Rs. 25,059.92 that had become due then. On 15th/19th June, 1978 (exhibit F), Government has rejected this application. In this petition under article 226 of the Constitution, the petitioner has challenged the order of Government and has

sought for a writ in the nature of mandamus to the respondent to waive the aforesaid penalty in entirety.

4. On doubting the correctness of the view expressed by Jagannatha Shetty, J. (as his Lordship then was), in *Amarappa Arli Vs. Commercial Tax Officer, Gangavathi and Others*, Rajasekhara Murthy, J., has referred this case to a Division Bench for disposal.

5. Sri C. R. Sridhar, learned counsel for the petitioner, contends that before rejecting the application made by his client, it was obligatory on Government to afford it an opportunity of oral hearing and such failure was violative of the principles of natural justice and the views expressed by Jagannatha Shetty, J. (as his Lordship then was), in *Amarappa Arli Vs. Commercial Tax Officer, Gangavathi and Others*, is not sound.

6. Sri S. Rajendra Babu, learned Government Advocate appearing for the respondent, contends that the petitioner was only "seeking for a concession" at the hands of Government and it was not entitled for an opportunity of oral hearing and the view expressed in *Amarappa Arli Vs. Commercial Tax Officer, Gangavathi and Others*, does not call for reconsideration.

7. As the impugned order is liable to be quashed on another ground urged before us, we consider it unnecessary to examine this question and pronounce on the same. We, therefore, leave open this question.

8. Sri Sridhar next contends that the order made by Government was without a genuine application of its mind, arbitrary and illegal. In support of his contention Sri Sridhar strongly relies on the ruling of the Supreme Court in *The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI) and Another*, and a Division Bench ruling of this Court in *S. Sannaiah Vs. Commissioner of Income Tax, Mysore and Another*,

9. Sri Rajendra Babu, in refuting this contention of Sri Sridhar, contends that the order made by Government u/s 13(2A) of the Act, was not reviewable by this Court under article 226 of the Constitution. In support of this contention, Sri Rajendra Babu strongly relies on the ruling of the Supreme Court in *G. Krishna Goud & J. Bhoomiah v. State of Andhra Pradesh* (1975) 7 UJ (SC) 951. As this latter contention goes to the root of the matter, it is necessary to examine the same first.

10. Article 226 of the Constitution couched in very wide terms, empowers this Court to examine any order made by Government in exercise of its executive, administrative or quasi-judicial powers as is the case. An order made by Government in exercise of the powers conferred by section 13(2A) of the Act, is not immune from challenge and judicial review under article 226 of the Constitution. The scope and ambit of article 226 of the Constitution is so well-settled that it is too late in the day to cite authorities for the same. The ratio in *Krishna Goud's* case (1975) 7 UJ (SC) 951 dealing with the powers of pardon

and remission by the President of India and Governors of States does not bear on the same. We see no merit in this contention of Sri Rajendra Babu and we reject the same.

11. As we have rejected the preliminary objection urged by Sri Rajendra Babu, we proceed to examine the merits.

12. In its detailed application made before Government, running to four closely typed pages, the petitioner had set out a number of circumstances, which accordingly to it, justified waiver of penalty u/s 13(2A) of the Act. But that application made by the petitioner met with a cryptic endorsement issued by Government on 15th/19th June, 1978 (exhibit F), which reads thus :

"I am directed to state that it is regretted that your request for waiver of penalty due from your concern cannot be conceded."

The only merit of this order is its extreme brevity and nothing else. From this order, it is crystal-clear that the Government had not genuinely applied its mind to the case pleaded by the petitioner in its application. An order that is subject to judicial review must on the face of it disclose that it has been made on the application of mind and for purpose of the Act. On an examination of all the facts and circumstances it is undoubtedly open to Government to accept or reject them also. But that should be apparent from the order itself failing which this Court is not handicapped in exercising its power under article 226 of the Constitution.

13. In the *The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI)* and Another, the Supreme Court speaking through by Bhagwati, J. (as his Lordship then was), emphasised the necessity for application of mind and reasons to be furnished in support of an order in these inimitable words :

"If courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases, with the proliferation of administrative law, they may have to be so replaced. It is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi-judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is, like the principle of *audi alteram partem*, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law."

While this is the law declared by the Supreme Court on the point, *Jagannatha Shetty, J.* (as his Lordship then was), in *Amarappa Arli Vs. Commercial Tax*

Officer, Gangavathi and Others, rejecting the very ground and sustaining a similar order has expressed thus :

"It is true that the Government have not given any reason for rejecting the request of the petitioner for waiving penalty. But, I see no obligation on the Government to give any such reason. Section 13(2A) does not contemplate an order adjudicating the civil rights of any party and, therefore, the order to be made thereunder need not be a speaking order."

With great respect to his Lordship, we are of the view that this enunciation is not in accord with the enunciation made by the Supreme Court in the *The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI) and Another*, reiterated in all the latter cases. Even otherwise, we are of the view that this enunciation made by his Lordship with great respect, is too wide and is not sound. With great respect to his Lordship we regret our inability to subscribe to these views and overrule the same.

14. On the foregoing discussion, it follows that the order made by the Government which is plainly arbitrary is liable to be quashed and a mandamus issued to the Government to re-examine the application made before it by the petitioner and pass appropriate orders in accordance with law. But till that time it is also necessary to direct the petitioner to keep the bank guarantee, if any, furnished by it in pursuance of the interim order of this Court in force with liberty to regulate the amounts as may ultimately found due from such bank guarantee and otherwise.

15. In the light of our above discussion, we quash the impugned order (exhibit F) and direct Government to restore the application made by the petitioner (exhibit C) to its original file and dispose of the same in accordance with law and the observations made in this order with all such expedition as is possible in the circumstances of the case. But till then the petitioner is directed to keep the bank guarantee, if any, furnished by it in pursuance of the interim order of this Court in force. Liberty reserved to modulate the recoveries that may ultimately be found due from such bank guarantee and otherwise in accordance with law.

16. Writ petition is disposed of in the above terms. But, in the circumstances of the case, we direct the parties to bear their own costs.

17. Let this order be communicated to the respondent within ten days from this day.

Ordered accordingly.