

(1997) 04 AP CK 0061

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 28433 to 28435, 28438, 28443, 28444 and 28446 to 28449 of 1996

Sri Maruthi Lime Manufacturing Industrial Co-operative
Society Limited

APPELLANT

Vs

Principal Secretary to Government, Revenue Department and
Others

RESPONDENT

Date of Decision : 01-04-1997

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 9(1)
Constitution of India, 1950 — Article 34

Citation : (1997) 107 STC 23

Hon'ble Judges : Y. Bhaskara Rao, J; B.V. Ranga Raju, J

Bench : Division Bench

Advocate : S. Krishna Murthy, for the Appellant; The Special Government
Pleader for Taxes, for the Respondent

Judgement

Y. Bhaskar Rao, J.—This batch of writ petitions is filed assailing the constitutional validity of G.O. Ms. No. 625, Revenue, dated July 31, 1996 and seeking a writ of mandamus directing the 1st respondent to include "lime manufacturing" in the annexure to Notification XXII in G.O. Ms. No. 625, Revenue, dated July 31, 1996 and also directing the authorities not to collect tax on the purchases or sales made by the petitioners during the period from May 20, 1992 to May, 2001 during which period the petitioners are to repay the loan to the Khadi and Village Industries Board.

2. The facts of the case are that the petitioners are societies registered under the Societies Registration Act comprising of artisans engaged in picking up limestones and producing lime. The 5th respondent - Chief Executive of the A. P. Khadi and Village Industries, sanctioned loans to the petitioners for setting up B-type lime units each consisting of a kiln, godown, tools and implements. According to the Schedule of repayment, the loan amounts should be repaid before May, 2001. With the aforesaid financial assistance, the petitioners have

set up the units and commenced commercial production. The petitioners also got themselves registered with the 4th respondent as "Tiny Enterprises" and certificates of registration were also obtained. Similarly, they have also got themselves registered under the provisions of the A.P.G.S.T. and C.S.T. Acts.

3. The 1st respondent by G.O. Ms. No. 2566, Revenue, dated June 11, 1980 issued u/s 9(1) of the A.P.G.S.T. Act, exempted "the purchases or sales of goods, as the case may be, made by the categories of industrial units, financed by the Andhra Pradesh Khadi and Village Industries Board, from the purview of the A.P.G.S.T. Act". Subsequently, some more village industries were identified and included in the list of eligible units and the State Government by G.O. Ms. Nos. 622, Revenue, dated June 28, 1989, extended similar exemption to such units. As the exemption is granted under the A.P.G.S.T. Act, the petitioners being very small industries, continued their operations.

4. While so, the 1st respondent by notification in G.O. Ms. No. 625, Revenue dated July 31, 1996, removed the exemption granted to the village industries engaged in the lime manufacturing. As a result, the petitioners are required to pay purchase tax on their raw materials at 10 per cent and sales tax on the resultant products at 10 per cent. The cumulative effect is that the petitioners have to lose 20 per cent, thereby making them non-viable and the same in causing much difficulty to them. Hence the writ petitions.

5. The learned counsel for the petitioners submits that the action of the respondents in taking away the exemption granted is arbitrary, illegal and discriminatory. The petitioners have to pay the purchase tax and sales tax discriminatory. The petitioners have to pay the purchase tax and sales tax because of withdrawal of exemption granted to them. The withdrawal of exemption only in respect of lime manufacturing industries is discriminatory and violative of article 14 of the Constitution of India. Further, in view of the exemption available to lime industries under G.O. Ms. No. 2566 dated June 11, 1980, the exemption available under G.O. Ms. No. 108, Revenue, dated May 20, 1996 was removed. By withdrawing exemption by issuing G.O. Ms. No. 625 dated July 31, 1996 the petitioners lost not only the earlier exemption but also the present exemption and thus they are put to double jeopardy. The learned counsel for the petitioners submits that once exemption is granted, the same cannot be taken away. As the petitioners have believed that there will be exemption, they proceeded with the industries. If the right accrued to the petitioners is taken away, they are put to hardship and the same is against the principle of legitimate expectation and also hit by the principle of promissory estoppel. Hence the impugned G.O. is bad.

6. On the other hand, the learned Government pleader contends that it is open to the Government to withdraw the exemption granted u/s 9(1) of the A.P.G.S.T. Act and there is no illegality or arbitrariness.

7. Section 9 of the Andhra Pradesh General Sales Tax Act, 1957 (for short "the

Act") empowers the State Government to grant exemption or reduction in rate in respect of any tax or interest payable under the Act on the sale or purchase of any specified class of goods or by any specified class of persons. The scope of section 9 of the Act was considered by a Division Bench of this Court (consisting of one of us Justice Y. Bhaskar Rao) in *Roxy Roller Flour Pvt. Ltd. and Another Vs. Government of Andhra Pradesh and Others*, . The Division Bench held therein that rescinding of exemption was to augment the financial resources to recoup the deficiency caused due to implementation of prohibition of arrack in the State and therefore the same is in public interest. In that view of the matter, the doctrine of legitimate expectation sought to be invoked was held to be of no help as it does not get attracted. It was further held that a combined reading of section 9 of the Act and section 15 of the General Clauses Act makes it clear that the power to grant exemption includes the power to rescind and, therefore, the State Government has got power to rescind the exemption granted. It was further held that even the doctrine of promissory estoppel is not applicable when the exemption is rescinded in the public interest for augmentation of financial resources of the State. The above judgment squarely applies to the facts of the present case. Therefore, we have to hold that the Government has got power to rescind the exemption and the action of the Government in issuing the impugned G.O. is not in violation of either the doctrine of legitimate expectation or the doctrine of promissory estoppel.

8. The learned counsel for the petitioners relied on a decision of a Division of this Court (consisting of one of us Justice Y. Bhaskar Rao) in *Someswara Cement and Chemicals Limited and Another Vs. Government of Andhra Pradesh and Another*, . In that case, the State Government issued a notification to the effect that if industries are set up in scheduled tribal areas, they will be granted exemption for five years from payment of sales tax. In pursuance of the said notification, the petitioner therein established a cement factory at Ippalnegaon in a tribal village in the scheduled area of Asifabad taluk, Adilabad district and invested Rs. 5.9 crores. They commenced production in March, 1983. Thereafter, the State Government rescinded the exemption. This Court held therein that when once the petitioner was granted exemption for a period of 5 years and made to invest huge amount for the establishment of the industry, thereafter withdrawing the said exemption is against the doctrine of promissory estoppel and allowed the writ petition. In the instant case, the petitioners did not start industries on the promise given by the Government and there is no such promise pleaded by the petitioners. Therefore, the said decision is not applicable to the facts of the present case.

9. The learned counsel for the petitioners next contended that article 34 of the Constitution of India provides that the State should promote village and cottage industries. The same is an obligation of the State. The directive principles of State policy are equally fundamental as that of fundamental rights. Therefore, taking away exemption granted to the petitioners will violate the fundamental right of the petitioners.

10. Article 37 contained in Part IV of the Constitution of India provides that the provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. Article 31-C provides that no law giving effect to the policy of the State towards securing all or any of the principles laid down in Part IV shall be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by article 14 or article 19 and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy. By reading these articles, it is evident that the directive principles are fundamental in the governance of the country and there is an obligation on the State to enforce the same. Where a law is made to implement the directive principles of State policy, the same cannot be questioned on the ground that it is violative of article 14 or article 19 of the Constitution of India. In the present case, thea rescinding away the exemption granted to the petitioners from payment of sales tax, cannot be said that any enactment made by the State for implementation of the directive principles is under challenge. Further, the directive principles are obligations on the State to make policies as enshrined in the directive principles of the Constitution of India. But, the right created therein is not a fundamental right. Where an enactment is made as per the directive principles of State policy, the said enactment cannot be questioned on the ground that it is violative of articles 14 and 19 as per article 31-C of the Constitution. The same is not case in the present case. Therefore, the contention of the learned counsel for the petitioners that by withdrawing the impugned G.O. will violate the fundamental rights of the petitioners is not tenable.

11. The learned counsel for the petitioners further contends that the 2nd respondent issued G.O. Ms. No. 108, dated May 20, 1996, setting out the industrial policy in order to accelerate the Industrial Development of the State. In the said notification, sales tax deferment limited to 13 per cent of the capital investment or sales tax exemption to the same extent has been declared to all new industrial units whether large, medium or small other than those listed thereto. The annexure contained list of ineligible industries and in the said list, item 29 relates to "lime kiln/burnt lime/hydrated lime". Exclusion of lime industry from the purview of G.O. Ms. No. 2566 dated June 11, 1980 was mainly because of the exemption available to such units G.O. Ms. No. 2566 dated June 11, 1980. By taking away the exemption granted, the petitioners are deprived of the benefit available under G.O. Ms. No. 108 as well as the exemption granted earlier and the same amounts to double jeopardy.

12. It has to be noticed that why exemption is not granted to the petitioners in G.O. Ms. No. 108 dated May 20, 1996 is not before us. If the petitioners are entitled to the exemption under that G.O., it is for them to approach the concerned authorities and claim the same. Further, it cannot be said that because the petitioners are granted exemption under G.O. Ms. No. 2566 dated June 11,

1989 they are not granted exemption under G.O. No. 108 dated May 20, 1996. Therefore, we are unable to agree with the contention of the learned counsel for the petitioners that the action of the Government results in double jeopardy to the petitioners.

13. In view of the above stated circumstances, we do not see any merit in the writ petitions. Accordingly, the writ petitions are dismissed. No costs.

14. Writ petitions dismissed.