

Virudhunagar Steel Rolling Mills Ltd.

Vs

Government of Madras

Writ Petition No. 38 of 1967

(K. N. Wanchoo, R. S. Bachawat, J. M. Shelat, G. K. Mitter, C. A. Vaidialingam JJ)

10.01.1968

JUDGMENT

WANCHOO C.J. –

The petitioner is public limited company manufacturing bars, rods and agricultural implements out of scrap iron and steel and consumes energy of high tension supply for the purpose. Its case is that it is governed by the Industries (Development and Regulation) Act 1951 (65 of 1951) (hereinafter referred to as the Central Act), even though issued by the Central Government under section 29-B by which industrial undertakings having fixed assets not exceeding rupees ten lakh were not required to obtain a licence thereunder irrespective of the number of persons employed in such undertakings. The petitioner commence functioning from February, 1963. The Madras Legislature passed the Madras Electricity (Taxation on Consumption) Act, 1962 (IV of 1962) (here in after referred to as the Madras Act) by which tax was imposed on the consumption of energy both of high tension and low tension electricity for various purposes at varying rates. Section 12 of the Madras Act however provided that where energy und

The petitioner requested the Government of Madras for exemption from tax on the ground that even though it was not licensed under section 11 of the Central Act it was governed by that Act. The Madras Government rejected its prayer on the ground that no exemption could be granted to undertakings which were not licensed under the Central Act as provided in section 12 of the Madras Act. Thereupon the petitioner filed a writ petition in the High Court of Madras attacking section 12 of the Madras Act under article 14 of the Constitution and claiming that it should also have been granted exemption. The petition was dismissed by the learned single judge of the High Court without issue of notice by short order to the effect that the petitioner was not entitled to the benefit of section 12 of the Madras Act and the validity of the section could not be attacked as the exemption provided was based on sound principles.

The petitioner then went in Letters Patent Appeal and the appeal was heard by a Division Bench of the High Court. The Division Bench held that the exemption was a concession and could not be claimed as a matter of right and that as section 12 did not provide for exemption in favour of undertakings like the petitioner's it could not claim exemption. The Division Bench also rejected the argument that article 14 was applicable in this case. In consequence, the appeal was dismissed.

The present petition was filed by the petitioner soon after the appeal had been dismissed by the High Court and its contention before us is that it should have been given the exemption under section 12 of the Madras Act in view of article 14 of the Constitution. The petitioner however did not file any appeal from the order of the Division Bench of the High Court. The petition has been opposed on

behalf of the State of Madras and a preliminary objection has been taken that as the petitioner did not file an appeal from the order of the Division Bench, it is not open to it to file this is further contended that section 12 of the Madras Act is not hit by article 14.

We are of opinion that the preliminary objection must prevail. It is urged on behalf of the petitioner that the decision in the case of Daryao shows that it was only when notice had been issued on a writ petition and it is decided on contest that the principle of res judicata would apply and a petitioner losing on such contest in the High Court would not be entitled come to this court under article 32 of the Constitution. In this connection reference has been made to the observation at page 592, where this court observed that, "if... a writ petition filed by a party under article 225 it thus pronounced would continue to bind the parties unless it is otherwise modified or reversed by appeal or other appropriate proceedings permissible under the Constitution." But it was later observed on that very page that "If the petition filed in the High Court under article 226 is dismissed not on the merits but because of the laches of the party applying for the writ or because it is held that the party had an alternat

It is true that this court said in that case that if a writ petition under article 226 is dismissed on merits after contest it would bar petition under article 32 on the same facts. But the later observations at the same page show that that was not the only case in which there would be a bar of res judicata. Even where notice might not have been issued by the High Court and the writ petition dismissed in limine, the question whether such dismissal would bar a petition under article 32 would depend upon the nature of the order dismissing it in limine. This is perfectly clear from the later observations made at page 592 in the same case. Where therefore, a writ petition is a dismissed without notice to the other side but the order of dismissal is speaking order and the petition is disposed of on merits that would still amount to res judicata and would bar a petition under article 32. The petitioner's only proper remedy in such a case would be to come in appeal from such a speaking order passed on the merits ev

In the present case the petition is clearly barred in view of the decision in Daryao's case. The learned single judge who first dealt with the petition passed a short order dealing with the merits and stating that the validity of section 12 of the Madras Act could not be attacked as the exemption was based on sound principle. He there repelled the attack on section 12 of the Madras Act based on article 14 of the Constitution. The petitioner then went in appeal to the Division Bench. The order of the Division Bench is more comprehensive than the order of the learned single judge and the Division Bench has dealt with the attack under article 14 of the Constitution. It has rejected the contention that there was any element of hostile discrimination. It has also held that there was no arbitrary or unreasonable classification by section 12 of the Madras Act. It has finally held that it could not be said that there was not nexus between the conditions specified in the Madras Act and the Central Act which seeks for rea

We may add that if we were to go into the merits of the case ourselves we would see not reason to differ from the view taken by the Division Bench as to the application of article 14.

The petition is dismissed with costs.

Petition dismissed.

</html