Virudhunagar Steel Rolling Mills Limited

Vs

The 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 a 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, No. 65 of 1951, (hereinafter referred to as the Central Act), even though it did not require a licence under s. 11 thereof in view of the notification issued by the Central Government under s. 29-B by which industrial undertakings having fixed assets not exceeding rupees ten lakhs were not required to obtain a licence thereunder irrespective of the number of persons employed in such undertakings. The petitioner commenced functioning from February, 1963. The Madras Legislature passed the Madras Electricity (Taxation on consumption) Act, No. IV of 1962, (hereinafter 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 under High Tension Supply is consumed in the process of manufacturing or producing the principal product in any industrial undertaking licenced under the Central Act, no electricity tax shall be payable on the energy so consumed for a period of three years from the date of the commencement of the manufacture or production of the principal product in such undertaking.

The petitioner requested the Government of Madras for exemption from tax on the ground that even though it was not licensed under s. 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 licenced under the Central Act as provided in s. 12 of the Madras Act. Thereupon the petitioner filed a writ petition in the High Court of Madras attacking s. 12 of the Madras Act under Art. 14 of the Constitution and claiming that it should also have been granted exemption. The petition was dismissed by a learned Single Judge of the High Court without issue of notice by a short order to the effect that the petitioner was not entitled to the benefit of s. 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 s. 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 Art. 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 s. 12 of the Madras Act in view of Art. 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 petition in view of the decision of this Court in Daryao v. The State of U.P. [[1962] I.S.C.R. 574]. It is further contended that s. 12 of the Madras Act is not hit by Art. 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 [[1962] I.S.C.R. 574] 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 to come to this Court under Art. 32 of the Constitution. In this connection reference has been made to the observation at p. 592 where this Court observed that "if a writ petition filed by a party under Art. 226 is considered on the merits as a contested matter and is dismissed the decision 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 Art. 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 alternative remedy available to it, then the dismissal of the writ petition would not constitute a bar to a subsequent petition under Art. 32 except in cases where and if the facts thus found by the High Court may themselves be relevant even under Art. 32. If a writ petition is dismissed in limine and an order is pronounced in that behalf, whether or not the dismissal would constitute a bar would depend upon the nature of the order. If the order is on the merits it would be a bar; if the petition is dismissed in limine without passing a speaking order then such dismissal cannot be treated as creating a bar of res judicata."

It is true that his Court said in that case that if a writ petition under Art. 226 is dismissed on merits after contest it would bar a petition under Art. 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 Art. 32 would depend upon the nature of the order dismissing it in limine. This is perfectly clear from the later observations made at p. 592 in the same case. Where therefore a writ petition is dismissed without notice to the other side but the order of dismissal is a speaking order and the petition is disposed of on merits, that would still amount to res judicata and would bar a petition under Art. 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, even though the High Court may not have issued notice to the other side. What has been decided in Daryao's case [[1962] 1 S.C.R. 574] is that the High Court should have decided the petition on the merits by a speaking order. If that is done, it is immaterial whether notice was issued to the other side or not before such a decision was given. The bar arises not because there was a notice issued but because the High Court had dealt with the merits of the petition before it and has passed a speaking order even though no notice might have been issued.

In the present case the petition is clearly barred in view of the decision in Daryao's case [[1962] 1 S.C.R. 574]. The learned Single Judge who first dealt with the petition passed a short order dealing with the merits and stating that the validity of s. 12 of the Madras Act could not be attacked as the exemption was based on sound principles. He therefore repelled the attack on s. 12 of the Madras

Act based on Art. 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 Art. 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 s. 12 of the Madras Act. It has finally held that it could not be said that there was no nexus between the conditions specified in the Madras Act and the Central Act which seeks, for reasons of national development and prosperity, to license and supervise undertakings. The order of the Division Bench in appeal is clearly a speaking order dealing with the merits of the petition where only one point under Art. 14 was raised. In our opinion it bars the making of the present petition under Art. 32 on the same facts for the same relief based on the same article of the Constitution. The petitioner did not appeal from the order of the Division Bench. The High Court made a speaking order dealing with the merits of the case and the fact that no notice was issued to the other side before such an order was passed is immaterial in the circumstances. We therefore uphold the preliminary objection.

We may add that if we were to go into the merits of the case ourselves we would see no 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.

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