

State of Gujarat

Vs

Kasturchand Chhotalal Shah

Civil Appeal No.1233 of 1975

(S. Ranganathan, K. Ramaswamy JJ)

07.11.1990

JUDGMENT

1. This is an appeal by the State of Gujarat from a judgment of the High Court of Gujarat dt/- 24-7-73 by which the High Court, following an earlier decision of the Court in Patel Ranjibhai Danabhai v. Tambe, Sales-tax Officer, (ILR 1970 Guj 1020) came to the conclusion that the provisions of S. 33(6) of the Bombay Sales-tax Act, 1959 were ultra vires Art. 14 of the Constitution. It is pointed out on behalf of the State that the above decision of the Gujarat High Court has subsequently been reversed by the judgement of a five-Judge Bench of this Court in a batch of appeals, reported as State of Gujarat v. Patel Ranjibhai Dhanbhai, (1979) 3 SCR 788: (AIR 1979 SC 1098). In view of the above-cited decision of this Court, the appeal has to be allowed.

2. Learned counsel for the respondent, however, submitted that this Court, while deciding State of Gujarat v. Patel Ranjibhai (AIR 1979 SC 1098) (supra), had not issued notices to the Advocates General of the States of Bombay and Gujarat as required by the provisions of S. 100 read with O. XXVII-A of the Code of Civil Procedure..In fact we do not know whether any such notices had been issued or not. But we are not able to appreciate as to what consequences are said to follow even if this averment is correct. We may point out that the provisions cited are only intended to put the concerned State Governments on notice where it is not a party to a proceeding in which the validity of a State law is questioned. Compliance with the literal terms thereof is purely academic where, as here, the State Governments concerned were themselves parties and were duly represented. before this Court. These considerations apart, the binding effect of the decision of this Court in State of Gujarat v. Ranjibhai (supra) ]cannot be ignored by this Bench merely because there was some procedure of irregularity (assuming that there had been such a lapse) of the nature mentioned.

3. We, therefore; allow this appeal following the decision of this Court in State of Gujarat v. Ranjibai (AIR 1979 SC 1098) (supra). The Sales Tax Officer will be at liberty to take further action u/ S. 33(6) of the Bombay Sales Tax Act in accordance with law. However, there will be no order as to costs.

Appeal allowed.

</html