

Alpha Chem and Another

Vs

State of U.P. and Others

Civil Appeal No. 282 of 1991

(M. N. Venkatachaliah, P. B. Sawant JJ)

08.01.1991

ORDER

1. We have heard Sri Raja Ram Agarwal learned senior counsel for the appellants and Sri R.S. Rana for the respondents. Special leave granted.

2. The appeal is against the order dated September 3, 1990 of the Allahabad High Court in Civil Misc. Writ Petition No. 1072 of 1988 in which the appellants sought to assail the vires of Section 4-A(3) of the U.P. Sales Tax Act, 1948. That provision came to be introduced by U.P. Act 25 of 1985 and was further amended by U.P. Act of 17 of 1987.

3. The High Court dismissed the writ petition on the view that the contention as to the constitutional validity of the impugned provision could be raised and adjudicated in certain revision proceedings arising out of certain orders made in exercise of powers of the impugned provision which is pending before it. Learned counsel for the appellants contends that the question of the validity of a provision cannot be assailed before and pronounced upon by the authorities constituted under the Act and, as a necessary corollary, even by the High Court in appeal or revision arising out of the proceedings taken by or before the authorities constituted under the 'Act' and that question of constitutionality can be gone into in the jurisdiction of judicial review of legislation.

4. We are of the view that there is force in this contention. The High Court was not right in its contemplation that the vires of the impugned provisions could be examined in the revision proceedings. The jurisdiction of the High Court in revision is under the same limitation insofar as the contention as to constitutionality is concerned as was indicated by this Court in K.S. Venkataraman & Co. (P) Ltd. v. State of Madras [(1966) 2 SCR 229, 247-48 : AIR 1966 SC 1089 : 17 STC 418] in the context of the reference jurisdiction of the High Court under the Income Tax Act. It was held : (SCR pp. 247-48)

"Up to this stage all the three authorities are the creatures of the Act and they function thereunder. They cannot ignore any sources of income on the ground that the relevant provisions offend the fundamental rights or are bad for want of legislative competence. The Act does not confer any such right on them .... Whether the provisions are good or bad is not their concern .... Can it be said that a question whether a provision of the Act is ultra vires of the legislature arises out of the Tribunal's order ? As the Tribunal is a creature of the statute, it can only decide the dispute between the assessee and the Commissioner in terms of the provisions of the Act. The question of ultra vires is foreign to the scope of its jurisdiction. If an assessee raises such a question, the Tribunal can only reject it on the grounds that it

has no jurisdiction to entertain the said objection or decide on it. As no such question can be raised or can arise on the Tribunal's order, the High Court cannot possibly give any decision on the question of the ultra vires of a provision ...."

Even as the authorities under the Act cannot go into vires of the very statutes under which they are constituted and draw their power and jurisdiction therefrom so is the High Court in matters arising before it from proceedings under the Act and examined the constitutionality of the statute and its provisions. The High Court can, of course, deal with the question of constitutionality in judicial review of legislation under Article 226. That is what the appellants sought to do before the court in the writ petition. The High Court was not justified in requiring the appellants to have recourse to proceedings of revision taken under the 'Act' to have the contention as to constitutionality resolved.

5. Accordingly, this appeal is allowed, the order of the High Court under appeal set aside and the writ petition remitted to the High Court for disposal in accordance with law.

6. It would, perhaps, be appropriate for the High Court, if it is otherwise feasible, to deal with the revision petition and the writ petition together.

7. Learned counsel for the appellants requested us to stay the order of the Commissioner till the disposal of the writ petition before the High Court. We do not think we should accede to this request. However, we stay that order for a period of four weeks so as to enable the appellants to approach the High Court for such interlocutory relief as the High Court may consider appropriate to grant. Parties shall bear and pay their own costs in this appeal.

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