

Divisional Level Committee and Another

Vs

Sahu Stone Crushing Industries

Civil Appeal No. ... Of 1996

(S. P. Bharucha, Faizanuddin JJ)

21.03.1996

ORDER

1. Delay condoned.

2. Special leave granted.

3. The short question which the learned Judges dealt with at the hearing of the petition before the Division Bench was with regard to the interpretation of sub-section (5)(c) of Section 4-A of the U.P. Sales Tax Act (as inserted by Act 28 of 1991) (hereinafter called "the Act"). The provision as it stood at the relevant point of time has been extracted in the judgment of the Division Bench. It would appear that the High Court while interpreting this provision went into the question as to whether the requirements of the said provision were mandatory or directory. It felt impelled to go into this question because it saw a discrimination violative of Article 14 of the Constitution, in that, the requirement that the new unit must be registered under the Factories Act, 1948 was likely to create a discrimination because some new units may be registered earlier than the others because of bureaucratic delays. The High Court says that the provision is ultra vires the Constitution for two reasons, namely, (1) that the said provision is capable of discriminating between those units in which registration is granted under the Factories Act quickly and those units in which there is a delay in granting registration and (2) that the provision is arbitrary and unreasonable. On the first question, the High Court observes :

"Prima facie, it seems to us that there is a discrimination between those persons to whom registration under the Factories Act is granted quickly and those to whom it is granted after considerable delay."

According to the High Court, while the former may enjoy the full period of exemption effective from the date of registration, the latter will be denied the full period and would be entitled to the benefit for the curtailed period only. At the same time, it held that it was not necessary to declare the provision to be ultra vires the Constitution because the reading down of clause (c) would be that it is directory and not mandatory in character. We are afraid that the Division Bench failed to visualise that even if the word "shall" in clause (c) of sub-section (5) of Section 4-A is read as "may" the discretion would be with the authorities to grant or refuse the benefit taking the relevant date as the date of registration. That would permit the authorities to act in an arbitrary manner where in a certain situation they may grant the benefit to an unregistered unit and in others they may refuse. We do not see any reason why the word "shall" should not be given the meaning it ordinarily carries because we do not think that there is any discrimination of the type envisaged by the High Court. Even if the provision was taken to be directory and if the State refused to grant the benefit for the

period during which the unit was unregistered on the assumption that the High Court's view is correct, one cannot say that the discretion was wrongly used.

4. However, Mr Puri, the learned counsel for the respondent, pointed out that the High Court had missed the real thrust of the challenge although it has made a mention of it in the judgment. The High Court points out that it was averred in para 3 of the writ petition that where the number of workers in a new unit is less than ten at the time it goes into production, such a unit would not be required to be registered under the Factories Act since under Section 2(m) thereof, only those factories in which the number of workers are ten or more can be registered. His submission was that if the benefit is relatable to the date of the registration then such new units would be totally out of the exemption purview and that is the reason why, according to him, clause (c) of sub-section (5) of Section 4-A was ultra vires. That question has not been squarely dealt with by the High Court. It is, therefore, necessary to remit the matter to the High Court for a fresh consideration.

5. In the result, the appeal is allowed. The impugned order of the High Court is set aside and the matter is remitted to the High Court for disposing of the question based on the language of Section 2(m) of the Factories Act and the argument that clause (c) of sub-section (5) of Section 4-A is ultra vires because it discriminates between new units which are registrable under the Factories Act and those that are not registrable thereunder. The High Court will reconsider the matter at an early date. No order as to costs.