Shree Baidyanath Ayurved Bhawan Pvt. Ltd.

Vs

State of Bihar and others

Civil Appeal No. 2043 of 1981

(S. P. Bharucha, K. S. Paripoornan JJ)

29.08.1996

JUDGMENT

1.In Adhyaksha Mathur Babu's Sakti Oushadhalaya Dacca (P) Ltd. v. Union of India, (1963) 3 SCR 957 : (AIR 1963 SC 622), the main question raised and argued in writ petitions under Article 32 of the Constitution was whether State Governments were entitled to tax three ayurvedic preparations, namely, Mritasanjibani, Mritasanjibani Sudha and Mritasanjibani Sura, under the Excise Acts in force in the respective States. A Constitution Bench of this Court came to the conclusion that the said medicinal preparations could not be taxed under the Excise Acts in force in the State and that they could be taxed only in accordance with the provisions of the Medicinal and Toilet Preparations (Excise Duties) Act. This Court stated that it passed "no order as to the claim for refund for that is a matter which the petitioners can take up with the State Governments concerned according to law". The judgment was delivered on 7th September, 1962.

2. The appellants were one of the many writ petitioners before the Court. (Their Writ Petition was No. 354 of 1961). They were, therefore, thus empowered to take up with the respondent-State their claim for refund, and they did so on 17th October, 1962. It is the case of the respondent-State itself that it rejected the claim for refund on 29th November, 1973, and communicated the rejection to the appellant on 7th December, 1973. The letter of 7th December, 1973, gave no reasons for the rejection.

3. Thereupon, the appellant filed a writ petition in the High Court at Patna to quash the order of the respondent-State refusing to refund and to direct the respondent-State to make the refund. The refund that was prayed for was for the period 20th August, 1960, to 30th September, 1962, in the sum of Rs. 91,723.80. The principal contention in the counteraffidavit filed by the respondent-State and raised at the hearing was that the writ petition was not maintainable in that the claim for refund could not be determined in the writ jurisdiction. The High court found that the writ petition, in essence, sought to obtain only a money decree and this could not be allowed. The appellant was permitted to file a suit to recover the amount of the refund that it claimed.

4. Our attention is drawn by learned counsel for the appellant to the judgment of this Court in Salonah Tea Company Ltd. v. Superintendent of Taxes Nowgong, (1988) 2 SCR 474. The appellants had filed a writ petition seeking refund of tax paid under mistake, relying upon a judgment of the High Court which had declared the assessment to be without jurisdiction. The question that arose for consideration was whether in a petition under Article 226 the Court should have directed refund. It was noted that the Courts had made a distinction between those cases where a petitioner approached the High Court seeking only the relief of obtaining a refund and those where refund was sought as a relief consequential upon the striking down of an order of assessment. Normally speaking, it was

observed, in a society governed by the rule of law taxes should be paid by citizens as soon as they were due in accordance with law. Equally, as a corollary, it followed that taxes collected without the authority of the law from a citizen should be refunded because no State had the right to receive or retain monies realised from citizens without the authority of law. The Court referred to the judgment in Suganmal v. State of Madhya Pradesh, (AIR 1965 SC 1740), to which we shall presently advert, and found that, this Court having earlier come to the conclusion that the tax was illegal, the money would be refundable on a petition under Article 226.

5. In Suganmal v. State of Madhya Pradesh, AIR 1965 SC 1740 : (1965 56 ITR 84, a Constitution Bench applied its mind to the precise question and held that though the High Courts had the power to pass any appropriate order in the exercise of powers conferred under Article 226, a writ petition solely paying for the issue of a writ of mandamus directing the State to refund monies was not ordinarily maintainable for the reason that a claim for such refund could be made in a suit against the authority which had illegally collected the money as a tax. The Court held :- (Para 6 of AIR)

> ".....that no petition for the issue of a writ of mandamus will be normally entertained for the purpose of merely ordering a refund of money to the return of which the petitioner claims a right". It was reiterated :-(Para 9 of AIR) ".....that normally petitions solely praying for the refund of money against the State by a writ of mandamus are not to be entertained. The aggrieved party has the right of going to the Civil Court for claiming the amount and it is open to the State to raise all possible defences to claim, defences which cannot, in most cases, be appropriately raised and considered in the exercise of writ jurisdiction".

6. It would appear that in the case of Adhyaksha Mathur Babu Sakti Oushadhalaya Dacca (P) Ltd. (AIR 1963 SC 622), this court expected that high constitutional authorities such as State Governments would honour a decision of the Supreme Court and take the remedial action the decision clearly contemplated, namely, of refund to the parties from whom they had collected the levy which was found to be illegal. The expectation, in so far as it related to this case, was belied.

7. Within a month and about 10 days of the judgment of this Court, i.e., on 17th October, 1962, the appellants asked the respondent-State to make the refund. It took the respondent-State 11 years to reject the claim. The letter of the respondent-State to the appellants dated 7th December, 1973, so stating is on record, and it does not give any reason whatsoever for the rejection. The writ petition that was filed by the appellants was not limited to seeking the refund. It also sought the quashing of the order of the State Government rejecting the claim for refund. We, therefore, cannot agree with the High Court that the writ petition was principally for the refund. Having regard to the fact that the order of the respondent-State rejecting the claim for refund gave no reasons for its rejection, there was much to be said about its validity.

8. But we proceed upon the basis that the writ petition was only to claim the refund.

9. It cannot be forgotten that this Court had held the levy in respect of which the refund was claimed to be bad in law. This Court's judgment clearly contemplated consequential refund but made no order in that behalf, leaving it to the writ petitioners to approach their State Governments. the refund application made by the appellants accordingly was rejected, and that without giving any reasons. Even in the counter filed by the respondent-State to the writ petition, it is difficult to read any defence other than the defence that the writ petition was not maintainable and that it was barred by limitation and a reiteration of the stand which had been rejected by this court. The writ petition

was filed within two months of this Court's decision; it was well within time. A reiteration of what had been rejected by this court carried the case of the respondent-State on writ petition no further. The only case, in reality, was that the appellants should be relegated to a civil suit. No defence upon facts being disclosed, the object was to buy time.

10. The writ petition was not a run-of-the-mill case. It was a case where the respondent-State had not acted as this Court had expected a high constitutional authority to act, in furtherance of the order of this Court. That is something that this Court cannot accept. The respondent-State was obliged by this Court's order to refund to the writ petitioners, including the appellants, the amounts collected from them in the form of the levy that was held to be illegal. If there was good reason in law for rejecting the refund claim, it should have been stated. Not to have responded to the appellants' refund claim for 11 years and then to have turned it down without reason is to have acted disrespectfully to this Court. Even assuming, therefore, that this was a writ petition only for money, the writ petition fell outside the ordinary stream of writ petitions and, acting upon it, the High Court should have ordered the refund.

11. The appeal is allowed. The order under appeal is set aside. The writ petition filed by the appellants before the High Court at Patna is allowed. The respondent-State's order dated 7th December, 1973, refusing refund is quashed. The respondent-State is ordered to pay to the appellants the sum of Rs. 91,723.80 with interest thereon at the rate of 12 per cent per annum from 1st January, 1963, until payment of realisation.

12. The respondent-State shall pay to the appellants the costs of the appeal quantified at Rs. 25,000/- (Rupees twenty five thousand). Appeal allowed.