

SUPREME COURT OF INDIA

Lipton India Ltd.

Vs.

State of Karnataka

C.A.Nos.5425-29 of 1994,

(S. P. Bharucha and S. C. Sen, JJ.)

08.10.1996

ORDER

1. The judgment and order of a Division Bench of the High Court at Karnataka in writ appeals is challenged, with special leave, by the assessee.

2. During the course of the argument on 13th August, 1996, we found that the Division Bench had proceeded upon the basis that Government Order No. Cl 138 SPC 90 (P) dated 27th September, 1990, had not been published in the State Government Gazette. The reason for doing so was the stand of the State Government. In a rejoinder filed on behalf of the State Government in the writ appeals, the following had been stated :-

"It is submitted that the Government Order dated 27-9-1990 (vide Annexure A) was not issued in exercise of its powers under Section 8-A of the KST Act, 1957. It was neither published in the Official Gazette nor was laid before the State Legislature as contemplated under Section 39 of the Act."

(Emphasis supplied).

The averments in the rejoinder were verified on affidavit, as true to his knowledge, by R. Krishna Murthy, Deputy Commissioner of Commercial Taxes (Assessments VI). It was found during the course of the argument that the said Government Order had, in fact, been published in the State Government Gazette dated 7th March, 1991. We, therefore, passed the following order :-

"It, therefore, becomes clear that the statement made in the rejoinder verified on oath as aforementioned that the said Government Order was not published in the Official Gazette is false. It is, therefore, necessary to ascertain whether the other statement in the rejoinder, namely, that the Government Order was not laid before the Legislature as contemplated under Section 39 of the Karnataka Sales Tax Act, is also incorrect. An enquiry must be made and an affidavit setting out the true position must be filed.

It also becomes necessary to find out how a Deputy Commissioner of Commercial Taxes could verify on oath as true to his own knowledge that a Government Order relating to his own department was not gazetted, when it was. It was either done out of gross negligence or deliberately to mislead the Court.

Having regard to the seriousness of what is involved, we direct that an affidavit in regard both to the compliance with Section 39 and in regard to the Deputy commissioner's affidavit be put on affidavit to be made by the Chief Secretary of the State of Karnataka. This shall be done within 3 weeks from today.

One week, thereafter, is given to the appellants to file an affidavit in reply thereto. The matter is adjourned for 4 weeks. This shall be treated as part-heard.

The State Government Gazette dated 7-3-91 is marked as Exhibit 'A' and shall be treated as a part of the record."

3. In response to that order, Cecil Noronha, Chief Secretary of the State of Karnataka, has made an affidavit on 31st August, 1996. With respect to the stand taken in the rejoinder about the publication of the said Government order in the State Government Gazette, the Chief Secretary states that he found 'from the enquiries made that Shri R. Krishna Murthy had bona fide believed that no publication had been effected. The said Government Order was prepared and issued by the Commerce and Industries Department of the State Government. The Office and Department of Commercial Taxes to which Shri Krishna Murthy belongs had nothing to do with the preparation of the Government Order in question. Shri R. Krishna Murthy had himself personally looked through

the back numbers of the Karnataka Gazette for a period of 3 months after 27-9-90 having regard to the normal practice of State Government's Notification under S. 8-A of the KST Act being generally published within a week or two of their date of issue. The statement made to the effect that there was no publication of the Government Order in question in Official Gazette could have been circumscribed in respect of the period for which he had made a thorough search, namely, three months, instead of making it an absolute statement. However, in the circumstances of the case, what Sri R. Krishna Murthy had stated may not be construed as gross negligence on his part". The Chief Secretary goes on to state, "The conduct of Sri R. Krishna Murthy in making the statement which he did not know to be false at the time of its being made, leads me to conclude that there had been no wilful intention to mislead the Hon'ble High Court of Karnataka". Again, "In view of the above, I respectfully submit that I am of the opinion that there was no gross negligence or any deliberate intention to mislead the Hon'ble High Court on the part of Sri. R. Krishna Murthy".

(Emphasis supplied.)

4. The said officer has also made an affidavit, in which he apologizes and seeks pardon for his bona fide and unintended mistake. It was, he states, his genuine impression that if the said Government Order had been published in the State Government Gazette, it would have been published within a reasonable time from its date and, on this basis, he carefully checked and examined all the Gazettes which were issued during the subsequent three months period and found that it had not been published. He, therefore, believed that it had not been published, "having made all sincere and diligent efforts.....".

5. The Government Order states that it issued from the commerce and Industries Secretariat. A copy of the letter sending it for publication to the State Government Gazette was marked to the Commissioner for Commercial Taxes. The rejoinder makes the categorical statement that the said Government Order was not published only upon the basis that it was not published in the State Government Gazettes of the following three months. No reference was made by the said officer to the Commerce and Industries Secretariat or the relevant files of his own departments.

6. The rejoinder filed by the said officer in the High Court categorically stated that the said Government Order was not published in the State Government Gazette. The statement was made by the said officer as true to his knowledge. The statement was made on oath on behalf of the State government. The statement was made in a pending proceeding before the High Court at Karnataka. The statement was made with the intention that the High Court should act upon it. The High Court did act upon the statement. The statement now turns out to have been incorrect.

7. The administration of the State or Karnataka represented by its Chief Secretary, does not find that said officer guilty of gross negligence. The Chief Secretary does not find it unpardonable that the statement was made on oath on behalf of the State Government in a pending proceeding before the

High Court. We cannot agree. Whether the Chief Secretary thinks it necessary to take action against the said officer or not is not our concern. Our concern is that the State Government made a statement on oath before the High Court that was incorrect and the judgment of the High Court accepts and proceeds upon the basis of the statement. The High Court's judgment must, therefore, be set aside and the matter remanded to the High Court to be heard and decided afresh.

8. We must caution the High Court at Karnataka, having regard to what we have stated above, that it should be very vigilant in accepting as correct a statement, even though it be made on oath, on behalf of the State Government. It is unfortunate that we should have to say this of a State Government, but the record before us leaves us no option.

9. Learned counsel for the State Government now submits that we should not make this general observation in respect of affidavits filed on behalf of the State Government. As we have already stated, we have done so because the Chief Secretary of the State of Karnataka does not seem particularly troubled by the fact that a statement was made on oath on behalf of the State Government before the High Court which was not correct. He does not even think that the said officer was grossly negligent in making the statement that the said Government Order was not gazetted only on the basis of going through the Gazettes for the succeeding three months. We must assume that other officers of the State Government will be encouraged to make statements before the Courts on oath upon as little or no enquiry, expecting from the Chief Secretary the same unconcern.

10. The appeals are allowed. The judgment and order under appeal is set aside. The writ appeals (being Writ Appeal Nos. 274-278 of 1994) are restored to the file of the High Court at Karnataka to be heard and decided afresh, having regard to what is stated in this judgment and order. The Division Bench hearing the appeals will not be influenced by the judgment and order under appeal before us. The appeals shall be heard and disposed of with expedition and, as far as possible, within a period of four months from today. Pending the disposal of the appeals, the order passed by this court on 13th August, 1994, shall continue to operate.

11. The State of Karnataka shall pay to the appellants the costs of these appeals and thrown away, quantified in the sum of Rs. 50,000/- (Rupees fifty thousand).

Appeals allowed.