SUPREME COURT OF INDIA

Goa Glass Fibre Ltd.

Vs.

State of Goa

Writ Petition No.199 of 2002

(R.V.Raveendran and H.L.Dattu JJ.)

03.05.2010

JUDGMENT

H.L.Dattu,J.

1. The above writ petitions are filed under Article 32 of the Constitution of India, inter alia calling in question the vires and Constitutional validity of

> "The Goa (Prohibition of Further Payment and Recovery of Rebate Benefits) Act, 2002 (hereinafter referred to as `the Act') enacted by the Legislature of the State of Goa. The petitioners seek a declaration from this court that the Act is ultra vires of the Constitution of India and in the alternative seek a limited declaration that Sections 2,3,5 and 6 of the Act are unconstitutional and liable to be struck down."

2. The Act is attacked as unconstitutional mainly on the following grounds:

> "That it seeks to nullify a judgment of this Court dated 13.02.2001 affirming the view taken by High Court of Bombay Goa Bench, in its judgment dated 21.01.1999.
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> That it seeks to give effect to the decision of the High Court of Bombay dated 19/24th April 2001, which judgment has the effect of over ruling the judgment of this Court dated 13.02.2001.
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> That it seeks to give effect to the judgment of High Court of Bombay Panaji Bench, dated 19/24th April 2001, when the said judgment is the subject matter of appeal before this Court in several Special Leave Petitions and thus seeks to frustrate the rights of the petitioners herein under Article 136 of the Constitution of India.
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> That it seeks to take away the fundamental rights guaranteed to the petitioners under Article 14 and 19(1)(g) of the Constitution of India.

That it is contrary to plethora of judgments of this Court.

That as an Explanatory Memorandum and the Statement of Objects and Reasons of the Act relies upon the decision of the High Court of Bombay Panaji Bench, rendered on 19/24th April 2001 which held the Notifications dated 15.5.1996 and 1.8.1996 were issued without complying with the requirements of Article 166 (3) of the Constitution of India, when the very judgment is under appeal before this Court and the State without getting a Judgment rendered by this Court and frustrating adjudication by this Court has passed the Act impugned.

That the Act does not seek to validate any action which has been held to be invalid by any Court of Law, but only seeks to nullify the judgment of this Court [under Section 2 of the Act].

That the Act under Section 3 gives power to the State to recover rebate already given to consumer like petitioners, which grant has already been upheld by the High Court by its judgment dated 21.1.1999 and affirmed by this Court by its judgment dated 13.2.2001.

That the Act is unconstitutional because of non-application of mind, as Section 5 thereof speaks of consequences of non- refund and Section 2 which prohibits further payments.

That the Act seeks to nullify a judgment of this Court and to give effect to judgment of High Court which has the effect of overruling the judgment of this Court, inasmuch as, the law of validation as settled by this Court in a catena of decisions stipulates that the Legislature is not competent to nullify a judgment of a Court of competent jurisdiction except where the judgment is rendered by a Court of law on the basis of any invalidity or illegality in the Act because of which the Statute or Act is declared invalid, in which event the Legislature is Competent to enact a validating Act by removing the basis of that invalidity or illegality in the earlier Statute. If the Legislature chooses to enact a law only for the purpose of nullifying a judgment that the same is impermissible."

3. The respondent - State of Goa has joined issues with petitioners and has filed a detailed Counter-Affidavit, inter alia, in support of the constitutionality of the impugned Act.

4. The State in its Counter-Affidavit after setting out the factual background leading to the issue of the Notifications dated 15.05.1996 and 01.08.1996 and the filing of Writ Petition No. 316 of 1998 and the judgment of the High Court of Bombay Panaji Bench therein, has contended, that, the State deemed it expedient not only to prohibit any further payment under the said Notification, but also deemed it expedient to recover the benefits already availed of by certain consumers including the petitioners in terms of the earlier Notifications, having regard to the fact that the action in issuing the notifications was unauthorized and wholly

illegal and that the parties could not be allowed to reap the benefits of an illegal act. It is stated by the respondent State, that, with this intent and object, the State Assembly passed the Bill known as Goa (Prohibition of Further Payments and Recovery of Rebate Benefits) Bill 2002, which was introduced in the House on 16.01.2002.

5. With reference to the principal contention of the petitioners that the Act impugned is unconstitutional and it seeks to nullify the judgment of this Court in G.R. Ispat's case, the State contends that the Act impugned is constitutionally valid and has been passed by the Legislature keeping in view the objects behind the Bill; that even assuming but not admitting in any manner that the impugned Act nullifies the judgment of this Court, the Legislature under the Constitution of India has the power to enact a law which may result in nullifying the Judgment or Order passed by the Courts, if the public interest and public welfare demands the Legislature to exercise its legislative power within the constitutional parameters as held by this Court in various pronouncements on the issue.

6. It is further stated that what is sought to be achieved by the impugned Act is to declare that the two notifications dated 15.05.1996 and 01.08.1996 as illegal, unauthorized, and to prohibit any further payments thereunder, in order to save public exchequer from getting denuded of its coffers. It is further stated, that, the decision of the State Government to issue Notifications mentioned above was not authorized by law in as much as the Council of Ministers had rescinded the Notification and despite this, the Power Minister himself had issued a Notification at his own level without making a reference to either the Chief Minster or the Council of Ministers or consulting the Finance Department as mandatorily required under the Rules of Business. The decision of the then Minister for Power to issue the Notifications was wholly unauthorized as he had no authority in law to issue them at his level and as the subject matter was required to be placed before the Cabinet in view of the huge financial implication involved therein and in view of the fact that the Cabinet had earlier rescinded the Notification giving rebate and any modification or variation of such decision of the Council of Ministers, it had to place it before the Council of Ministers in view of the Business Rules framed under Article 166 (3) of the Constitution of India.

> "The two notifications had imposed a heavy burden on the State Exchequer and under the Rules of Business, concurrence of Finance Department of the State Government was mandatory and there was neither concurrence of the said Department nor was there any reference of the said Notifications to the said Department. The then Power Minister had made a note on the file concerned that he had consulted the Chief Minister which was found to be false as per the police investigation conducted and that the then Chief Minister had clearly stated that neither he was ever consulted by the Power Minister nor was the file ever shown to him and that this fact was taken note of by the High Court of Bombay Panaji Bench in its Judgment dated 19/24.04.2001 in Writ Petition No. 316 of 1998, which is appealed against and pending in SLP (Civil) No. 4233 of 2001 before this Court."

7. The State also contends, that, the impugned Act is not aimed at giving effect to the Order of the High Court of Bombay dated 19/24.04.2001 in W.P No.316 of 1998 nor is it passed because the abovementioned Special Leave Petition is pending before this Court, but has been passed and aimed to save the coffers of the State and to prevent further abuse and payment out of the State Funds which the State can ill afford. The State had lost almost an amount of about Rs.16 Crores and a further sum of Rs.50 Crores of public money might have to be paid and there was neither any budgetary allocation nor any provision made for such payments and therefore instead of the monies coming into the State Exchequer by way of receipts by Government in accordance with Article 266 (1) of the Constitution of India, these payments were sought to be diverted to the private industrialists by virtue of the two notifications mentioned above and with a view to put an end to this illegality the impugned Act has been enacted in the larger public interest to safe the Public Exchequer from being drained off.

8. The State also contends, that, this Court and the High Court in the earlier round of litigation have dealt with and interpreted the rights of the Consumer to be paid the rebate on electricity tariff in view of the two notification being in force and not their validity and that such benefits could not be withdrawn by a mere administrative circular. In fact what was challenged in those writ petitions was the administrative order of the Chief Electrical Engineer dated 31.03.1998 and that the High Court held in those writ petitions that the two notifications could not be withdrawn by a mere administrative Order and it was on that basis, the High Court had sustained those two notifications. Now what is sought to be done by the present legislation, it is contended by the State, to cure the defect of any kind and thereby to ensure that public funds are not drained by resorting to dubious methods and it is in larger public interest that this Act is enacted.

9. It is reiterated by the State, that, the State of Goa is facing financial crunch and it is not possible for the State Government to bear such financial burden and therefore it is imperative that the amounts paid are recovered and further loss of public funds avoided and its payment prohibited and that it is on this ground that the legislation impugned has been enacted.

10. The State reiterates that there is nothing illegal about the impugned legislation and that the same has been passed in the larger public interest and with a view to sub serve the pubic cause and to prevent abuse of public exchequer and to remedy the fraud played by an individual Minister on the public exchequer. It is further urged by the State Government that the balance of interest is in favour of the State as the petitioners on their own showing have become the beneficiaries of an illegal act of an individual Minister which cannot be allowed.

11. The State further asserts in response to the challenge made by the petitioners to the validity of the Act, that, it is a well settled law that the legislature can render the judicial decision ineffective by enacting a valid law on the subject within its legislative field by removing the base on which the decision was rendered and that the impugned Act squarely meets and satisfies the Constitutional Test and parameters laid down by this Court in various judgments and as illustration have referred to the reported in and Indian Aluminium & by the

State, that, the State Legislature is competent to enact the Act impugned under Entry 38 of List III to the VIIth Schedule of the Constitution of India.

12. The petitioner has filed a rejoinder which reiterates more or less what is stated in the Writ Petition. In short, in the rejoinder the petitioner seeks to counter the reason and other grounds offered by the State Government in support of the Legislation impugned. It also disputes the correctness of certain statements made by the State Government in its affidavit in reply to the Writ Petition.

13. We have heard learned senior counsel Shri F.S. Nariman for the petitioners and Dr. Rajeev Dhavan and Shri Shyam Diwan, learned senior counsel for State of Goa. We also had the advantage of going through several rulings of this court cited by the learned counsels.

14. The Act impugned is attacked principally on the ground, that, it seeks to nullify a judgment of this Court dated 13.02.2001, affirming the view taken by High Court of Bombay Panaji Bench, in its judgment dated 21.01.1999 and that it seeks to give effect to the decision of the High Court of Bombay dated 19/24th April 2001, which judgment has the effect of over ruling the judgment of this Court dated 13.02.2001, more so when the said judgment is the subject matter of appeal before this Court in several Special Leave Petitions and thus seeks to frustrate the rights of the petitioners herein under Article 136 of the Constitution of India.

15. It is well settled that a Statute can be invalidated or held unconstitutional on limited grounds viz., on the ground of the incompetence of the Legislature which enacts it and on the ground that it breaches or violates any of the fundamental rights or other Constitutional Rights and on no other grounds. (*See State of A.P. vs. McDowell and Co.*[2], *Kuldip Nayar vs. Union of India and Ors.*[3]).

16. The scheme of the Act appears to be simple. The Act imposes a Prohibition [under Section 2], requires recovery [under Section 3] and "extinguishes" all liabilities of the State that accrue or arise from the Notifications dated 15.05.1996 and 01.08.1996.

17. From the language of the Act it becomes clear that the Act is not influenced by the out come of the Judgment of the High Court in Manohar Parrikar's case. By the enactment, the Legislature has imposed prohibition of further payments under the Notifications, provides for recovery of rebate benefits from the beneficiaries and extinguishes the State's Liability under the Notifications mentioned supra. This exercise by the Legislature is independent of and de hors the results of the PIL of Manohar Parrikar and can be said to be uninfluenced by the said judgment. It was well within the Legislative power of the State to respond to the undisputed and disturbing facts which had enormous financial implication on the State's Finances to enact the Law with an object of remedying the unsatisfactory state of affairs which were known to the Legislature.

18. That the object of the Act is not to undo or reverse the judgments of either this Court or that of the High Court. On a reading of the Act as a whole, it does not appear that the Legislature seeks to undo any judgment or any directions contained therein. As observed earlier the Act imposes a Prohibition [under Section 2], requires recovery [under Section 3] and "extinguishes" all liabilities of the State that accrue or arise from the Notifications dated 15.05.1996 and 01.08.1996. Therefore, no exception can be taken to the constitutionality of the Act impugned, on the ground, that it seeks to undo or reverse any judgment. The Legislature in its competence has enacted the Act to achieve the purposes indicated therein and not to frustrate any judgment of any court including that of this Court. It is to be noted that State Legislature was competent to enact the Act in its present form even before the judgment of the High Court in the PIL and the fact that it has come after the judgment in PIL does not render it unconstitutional on the ground that it seeks to nullify the judgment of this Court in the earlier proceedings.

19. The State, in the factual background leading to the issue of the Notifications dated 15.5.1996 and 01.08.1996 and the filing of Writ Petition No. 316 of 1998 and the judgment of the High Court of Bombay Panaji Bench therein, thought it fit and expedient to prohibit any further payment under the said Notifications and to recover the benefits already availed of by certain consumers including the petitioners towards the rebate in terms of these two notifications and having regard to the fact that the action in issuing the notifications was unauthorized and wholly illegal and that the parties could not be allowed to reap the benefits of an illegal act enacted the Act impugned. Thus the intent and object of the State Legislature in enacting the Act impugned is clear and unassailable.

> “Therefore, the contention of the petitioners that the Act impugned is unconstitutional and it seeks to nullify the judgment of this Court requires to be rejected.”

20. The impugned Act is not aimed at giving effect to the Order of the High Court of Bombay dated 19/24.04.2001 in W.P No.316 of 1998 nor is it passed because the abovementioned Special Leave Petition is pending before this Court, but has been passed with an object or aim to sustain the State Coffers and to prevent further abuse and payment out of the State Funds. It has been enacted in the larger public interest to save the Public Exchequer from being drained off. These amounts always belonged to the State and, therefore, it has every right to recover the same, by resorting to legislative measures within the parameters of the Constitutional provision from the beneficiaries who cannot be permitted to retain the benefits.

21. The impugned Act is not aimed at giving effect to the order of the High Court of Bombay dated 19/24.04.2001 in W.P No.316 of 1998 as has been argued by the learned senior counsel for the petitioner. It is not passed because the abovementioned Special Leave Petition is pending before this Court. It has been passed with an aim to sustain the State Coffers and to prevent further abuse and payment out of the State's Exchequer. It is placed on record by the State Government, that, the coffers of the State had already lost an amount of almost 16 Crores which the State could not afford and a further sum of Rs. 50 Crores of

public money would have been lost, had it not been checked and prevented by the Act impugned. In this regard it is necessary take notice of the reiteration of the State in its affidavit that the earlier affidavits filed for and on behalf of the State Government before the High Court in the earlier round of litigations did not reflect correct and true factual position, It is stated by the State Government that there was neither financial sanction nor budgetary provision nor cabinet approval as required under Article 166(3) of the Constitution of India and therefore the two notifications dated 15.05.1996 and 01.08.1996 in issue could not be said to be the decision of the State Government in the strict sense of law and the claims for rebate under these Notifications which run into several Crores of Rupees could not be borne by the exchequer, more so when they are devoid of any legal sanctity and that it was impossible for the State to meet or bear such an enormous liability of such a magnitude. The respondent State in its affidavit draws support from certain observations from the Judgment of the High Court of Bombay dated 19/24.04.2001, to say that the Notifications mentioned above were non-est and action taken thereunder was null and void. It is the stand of the State, that, the High Court in W.P. No. 316 of 1998 has also dealt with the issue as to why the State had failed to bring before the High Court in the earlier batch of Writ Petition decided on 21.01.1999, wherein the High Court upheld the power of the State Government to withdraw the rebate by invoking provisions of Section 21 of the General Clauses Act. According to the State, the High Court in the earlier round of litigation gave a decision as regards the financial crunch faced by the Court and that the affidavits filed for and on behalf of the State Government therein by the then Chief Electrical Engineer of Goa Mr. T. Nagarajan, who as disclosed from the police investigations was himself a supporter of the illegal act of abuse of power and he could not be expected to place all facts before the High Court. The State further contends that the High Court in its judgment in W.P No. 316 of 1998, has noted that even the attempts to have the Notifications ratified by the cabinet failed and there being legal dissent, the Cabinet refused to ratify the decision and withdrew the same.

> "Therefore, it cannot be said that the State had enacted the Act impugned to give effect to the judgment of the High Court in Writ Petition No. 316 of 1998."

22. It is also placed on record that there was neither any budgetary allocation nor any provision made for such payments and these payments were sought to be diverted to the private industrialists by virtue of the two notifications mentioned above and with a view to put an end to this illegality, the impugned Act has been enacted in the larger public interest to save the Public Exchequer from being drained off. These amounts always belonged to the State Government and the State had every right to recover the same, by resorting to legislative measures from the beneficiaries of an illegal Act, who cannot be allowed to retain the benefits. In the earlier round of litigation before the High Court, the State had taken the stand that there was financial crunch being faced by the State Government and that it was the primary reason for the State Government to withdraw the rebate. This Court and the High Court in the earlier round of litigation merely dealt with and interpreted the rights of the Consumer to recover and be paid the rebate on electricity tariff in view of the two notifications being in force. This Court and the High Court in those proceedings did not deal with or decide their validity. The question there was, whether the benefits granted by the

Notifications could be withdrawn by a mere administrative circular of the Chief Electrical Engineer dated 31.03.1998 and the High Court held in those writ petitions that the two notifications could not be withdrawn by a mere administrative Order and on that premise the High Court had directed the State to pay the amounts and this Court confirmed the same in its Order.

> "What the Legislature seeks to do by the Act impugned is to cure the defect of any kind and thereby to ensure that public funds are not drained and it is in larger public interest that this Act is enacted. The Act which has been passed in the larger public interest and with a view to sub serve the public cause and to prevent abuse of public exchequer and to remedy the fraud played by an individual on the public exchequer and to recover the amounts paid under these two Notifications and to prevent further loss of pubic funds cannot be termed as unconstitutional. It cannot therefore be said that the Act impugned is aimed at nullifying a judgment of this Court dated 13.02.2001, affirming the view taken by High Court of Bombay Panaji Bench, in its judgment dated 21.01.1999. It can not also be said that the Act impugned seeks to give effect to the decision of the High Court of Bombay dated 19/24th April 2001, in Writ Petition No 316 of 1998."

23. The Act stands totally on a different footing and the judgment of the High Court dated 19/24.04.2001 has no bearing on it. The Act stands independent of the judgment of the High Court and its validity cannot be tested on these grounds. The petitioners have strongly relied upon the different stands allegedly taken by the State in the earlier proceedings and the present proceedings in support of their challenge to the constitutionality of the Act. This Court in Sanjeev Coke Manufacturing (172)], has held that the validity of the Legislation is not to be judged by what is stated in an affidavit filed on behalf of the State and that it should fall or stand on the strength of its provisions.

24. It is no doubt true that the Judgment dated 19/24.04.2001 is in appeal before this Court in a batch of Special Leave Petitions and the validity of the impugned Act does not depend upon the result of the said Special Leave Petitions. In our opinion, the Act must stand or fall on its own strength. It cannot also be said that the Act seeks to give effect to the judgment dated 19/24.04.2001 of the High Court having regard what the State aims at or seeks to achieve by it. It is a well settled law that the legislature can render the judicial decision ineffective by enacting a valid law on the subject within its legislative field by removing the base on which the decision was rendered. The impugned Act meets and satisfies the Constitutional Test completely. The Act also satisfies parameters laid down by this Court in various judgments. Further the competence of the State Legislature to enact the Act impugned is traceable to Entry No. 38 in List III to the VII Schedule of the Constitution of India. The petitioners have not challenged the competence of the State Legislature to enact the Act impugned. Therefore, the challenge made by the petitioners to the constitutionality of the Act on this ground must fall.

25. The next contention urged by the petitioners is that, the Act does not seek to validate any action which has been held to be invalid by any Court of Law, but only seeks to nullify the judgment of this Court. This contention should also fail for the reasons already explained in the preceding paragraphs.

26. The next contention of the petitioners is that the impugned Act is unconstitutional, because it seeks to take away the fundamental rights guaranteed to the petitioners under Article 14 and 19(1)(g) of the Constitution of India. While the argument based on Article 19(1)(g) of the Constitution of India was not urged seriously by the petitioners and rightly so, as no citizen is before this Court with a complaint that his fundamental rights guaranteed under this Article of the Constitution is violated by the State under the Act impugned. As regards the challenge to the validity of the Act on the allegations of violation of Article 14 of the Constitution of India, the petitioners have laid no basis thereof. There is nothing in the Act which suggests invidious discrimination, unreasonable classification or manifest violation of equality clause. In the absence of any valid ground under Article 14 of the Constitution of India, the Writ Petition under Article 32 itself is not maintainable and liable to be dismissed.

27. In view of the above discussion, we are of the opinion that the Act impugned does not suffer from any invalidity and the challenge made by the petitioners to its constitutionality fails. Accordingly, the Writ Petitions are dismissed without any order as to costs.

[1]*AIR 1997 SC 3127*
[2]*(1996) 3 SCC 709*
[3]*(2006) 7 SCC 1*