

PUNJAB AND HARYANA HIGH COURT

Government Medical Store Depot

Vs

State of Haryana

Civil Writ No. 1183 of 1970

(D.K. Mahajan and Gopal Singh, JJ.)

18.05.1971

JUDGMENT

Gopal Singh J.

1. These are five writ petitions. They are Civil Writ Nos. 1183 and 1184 of 1970 and 1795 to 1797 of 1970. All of them have been filed by Government Medical Store Depot, Karnal against the State of Haryana and Excise and Taxation Officer, Karnal. The writ petitions embody identical questions of facts and there arise common questions of law in them.

2. In the writ petitions, it is stated that the petitioner depot is one of the six depots being run in the country by the Medical Stores Organisation. The other depots are at Madras, Bombay, Calcutta, Hderabad and Guwahati. The organisation functions under the control of Directorate General of health Services, Ministry of Health, Government of India. It is admitted that the depot is a department of the Government of India. It is also stated in the petitions that the petitioner depot is engaged in the work of meeting the demands for medical stores of the Government and the semi-Government hospitals and does not carry on any business of sale of Medical goods as such. It is added that supply of medical stores by the depot to its constituents does not involve any commercial activity and is only on no profit, no loss basis. It is contended on the basis of these facts the petitioner depot could not be registered as a 'dealer' under Section 7 of the Punjab General Sales Tax Act, 1948 as extended to the State of Haryana, hereinafter called 'the Act' and consequently the petitioner is not liable to be assessed for levy of sales tax.

3. The State of Haryana and the Excise and Taxation Officer on the other hand asserted that the petitioner is a dealer liable to registration under Section 7 of the Act and can be proceeded against for assessment of sales tax on the sale proceeds of the medical stores sold by the petitioner for the price received.

4. The facts given in the petitions have given list to the question as to whether these petitions involvting the above dispute are maintainable in the High Court in the face of the provisions of article 181 of the Constitution the dispute is exclusively determinable by the Supreme Court.

Article 131 runs as under :-

"Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other Court, have original jurisdiction in any dispute -

(a) between the Government of India and one or more States; or

(b) between the Government of India and any State or States on one side and one or more other States on the other; or

(c) between two or more States, if and in so far as the dispute involves question (whether of law or fact) on which the existence or extent of a legal right depends :

Provided that the said jurisdiction shall not extended to a dispute arising out of any treaty, agreement, covenant, engagement, sand or other similar instrument which, having been entered into or executed before the commencement of this Constitution, continues in operation after such commencement, or which provides that the said jurisdiction shall not extend to such a dispute."

5. The present dispute as to whether the State of Haryana has a legal right to proceed against the petitioner admitted to be a department of the Government of India is covered by article 131 of the Constitution. In order that Courts other than the Supreme Court be deprived of their jurisdiction and the matter be exclusively determinable by the Supreme Court, the following two conditions must be satisfied :-

(i) The dispute must be between the Government of India and one or more States as in the present case or else it may be between the Government on the other side or it may be a dispute inter-se the States.

(ii) The dispute must involve some question, whether of law or fact, on which the existence or extent of a legal right depends.

6. If these two conditions are satisfied, the only exception for exclusion of jurisdiction of the Supreme Court is in respect of disputes arising out of any treaty, agreement, covenant, engagement, sanad or other similar instruments as referred to in article 363 of the Constitution. On the basis of the facts incorporated in the writ petitions and that both these conditions are satisfied and consequently article 131 of the Constitution is a bar to the maintainability of these petitions. As regards the first condition, it is stated in para 2 of the writ petitions that the petitioner-depot is a department of the Central Government. In paras 3 and 4 of the writ petitions, it has been admitted that the Medical Store Organisation running medical stores depots including the petitioner depot functions under the control of the Directorate General of Health, Services and that the said Directorate is a part of Ministry of Health Government of India. On the footing of these admissions on the part of the petitioner, there cannot be any gain saying the fact that the petitioner depot is functioning as a limb of the Medical Stores Organisation under the control of the Directorate General of Health Services, Ministry of Health, Government of India. The petitioner has claimed itself to be part of the Government of India and hence Government of

India. The petitioner has in its petitions proceeded against the State of Haryana and specifically impleaded that state as respondent. Thus, the dispute that has arisen in these petitions is one between the Government of India on the one hand and the State of Haryana on the other. The first condition of article 131 is satisfied.

7. As already alluded to, it is contended on behalf of the petitioner that considering the nature of its functions and activity, it is not liable to be registered as 'dealer' and is exempt from assessment of sales tax under the Act. The State of Haryana have on the other hand asserted in their returns and it is urged on their behalf that the State have every legal right to have the petitioner registered as a dealer under Section 7 of the Act and the petitioner cannot resist the levy of tax upon its recovery from it. The contest of these petitions has given rise to questions both of facts and of law, on which the existence of the legal right controverted depends. Thus, the second condition of article 131 is also fulfilled.

8. In its scope, article 131 is sweepingly prohibitive against the exercise of jurisdiction by all Courts other than Supreme Court and confers exclusive jurisdiction on the Supreme Court, if the above two conditions are satisfied. If a dispute as regards the parties and its nature falls within the ambit of this article, no Court other than the Supreme Court has any jurisdiction to determine that dispute. It is only the forum of the Supreme Court, to which resort can be had by the petitioner for determination of disputed questions raised by it against the State of Haryana.

9. In the result, we hold that these petitions are not maintainable in this Court and disallow them without any order as to costs. If thought advisable, the petitioner may seek its remedy in the Supreme Court.

Petitions dismissed.