

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

ON THE 7TH DAY OF JANUARY, 2020

BEFORE

THE HON'BLE MR. JUSTICE RAVI MALIMATH

AND

THE HON'BLE MR. JUSTICE NATARAJ RANGASWAMY

WRIT APPEAL NO.2184 OF 2017 (GM-KEB)

BETWEEN:

KHYATI STEEL INDUSTRIES PRIVATE LIMITED
A COMPANY UNDER THE COMPANIES ACT, 2013
HAVING ITS REGISTERED OFFICE AT
THANDYA INDUSTRIAL AREA
NANJANGUD, MYSURU-571 031
REPRESENTED BY ITS
AUTHORISED SIGNATORY.

...APPELLANT

(BY SRI: MANU KULKARNI, ADVOCATE)

AND:

1. CHAMUNDESHWARI ELECTRICITY SUPPLY
COMPANY LIMITED
A COMPANY UNDER THE COMPANIES ACT, 2013
AND HAVING ITS OFFICE AT NO.927
L.J AVENUE, NEW KANTHARAJ ROAD
MYSURU-570 009
REPRESENTED BY ITS MANAGING DIRECTOR.

2. THE ADDITIONAL CHIEF ELECTRICAL INSPECTOR TO THE GOVERNMENT OF KARNATAKA NO.1360, ANIKETANA ROAD G AND H BLOCK, KUVEMPU NAGARA MYSURU-570 023.
3. STATE OF KARNATAKA KARNATAKA STATE ELECTRICAL INSPECTORATE NO.32/1-2, CRESCENT TOWERS 2ND FLOOR, CRESCENT ROAD BENGALURU-560 001 REPRESENTED BY ITS CHIEF ELECTRICAL INSPECTOR TO THE GOVERNMENT OF KARNATAKA.

...RESPONDENTS

(BY SRI: S.SRIRANGA, ADVOCATE FOR R1;
SRI: SHIVAPRABHU HIREMATH, AGA FOR R2 AND R3)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT, 1961 READ WITH RULE 27 OF THE WRIT PROCEEDINGS RULES, 1977 PRAYING TO SET ASIDE THE COMMON JUDGMENT AND ORDER DATED 04.10.2016 ONLY INsofar AS WRIT PETITION NO.8686 OF 2015 IS CONCERNED AND CONSEQUENTLY, ALLOW WRIT PETITION NO.8686 OF 2015.

THIS WRIT APPEAL COMING ON FOR FINAL HEARING THIS DAY, RAVI MALIMATH J., DELIVERED THE FOLLOWING:

JUDGMENT

Aggrieved by the order dated 04.10.2016 passed in Writ Petition No.8686 of 2015 by the learned Single Judge in dismissing the writ petition, the petitioner therein is in appeal.

2. The learned Counsel for the appellant submits that he proposes to challenge the validity of the Karnataka Electricity (Taxation and Consumption) (Amendment) Act, 2013 (for short Amendment Act, 2013). That such a prayer was not made in the writ petition, from which the impugned order arises.

3. The same is disputed to by the learned Counsel for the respondents. He contends that the writ petition of the appellant was heard along with Writ Petition No.38406 of 2013 and other various writ petitions. That the writ petitioners therein have challenged the validity of the Amendment Act, 2013. The learned Single Judge having upheld the validity in the said writ petitions, held that the

same would bind the appellant herein. Therefore, leave cannot be granted to the appellant to challenge the validity of the said enactment.

4. On hearing learned Counseis, we are of the view that appropriate interference is called for. The writ petition of the appellant was heard along with Writ Petition No.38406 of 2013 and other various writ petitions. The prayer made in Writ Petition No.38406 of 2013 includes the prayer for a declaration that Sections 3(1), 3(2) of the Amendment Act, 2013 as unconstitutional and ultra vires. The prayer made by the appellant herein before the learned Single Judge was for a mandamus to declare that the respondents have no authority to collect the electricity tax on the energy purchased and consumed from sources outside the State of Karnataka by the petitioner through inter state open access and for other consequential relief's and to quash the demand notice made thereof. Both the writ petitions were heard together by the learned Single Judge. The learned Single Judge came to the conclusion

that the Amendment Act, 2013 is neither arbitrary nor illegal. The contention raised by the appellant-writ petitioner was also rejected.

5. We have considered the order of the learned Single Judge at length. In para 9 of the order, it was held that the validity of the Amendment Act, 2013 was challenged only in Writ Petition No.38406 of 2013, but the same was not pressed and a submission was made by the learned Counsel for the petitioner that he may be permitted to withdraw the petition and submitted that he would file a memo to the said effect. Therefore, vide order dated 12.04.2016, the petitioner was permitted to file a memo for withdrawal of the petition and the registry was directed to de-link Writ Petition No.38406 of 2013 with the other writ petitions. Even though, a prayer was made in the pleadings to Writ Petition No.38406 of 2013, the same was not pressed as held by the learned Single Judge. Therefore, when the prayer has not been pressed, recording a finding on that prayer is inappropriate.

A judgment cannot be passed on a contention that has not been pressed by the learned Counsel. Therefore, the finding of the learned Single Judge with regard to the validity of the Amendment Act, 2013 in terms of para 20 onwards, cannot be sustained.

6. Insofar as the instant writ petition is concerned, there is no prayer questioning the validity of the Amendment Act, 2013. Under these circumstances, the reasoning of the learned Single Judge in upholding the Amendment Act of 2013 in the connected writ petitions, in our considered view, cannot bind the appellant-writ petitioner. He is entitled in law to challenge the Amendment Act, 2013. So also, when once the learned Counsel has stated that he does not press the contention with regard to the validity of the Amendment Act, 2013, the learned Single Judge could not have gone into the said issue. Therefore, on this ground alone, the order of the learned Single Judge with regard to the validity of the Amendment Act, 2013 cannot be sustained.

7. For all the aforesaid reasons, the appeal is partly allowed. The order dated 04.10.2016 passed in Writ Petition No.8686 of 2015 by the learned Single Judge vide para 20 of its order in upholding the validity of the Amendment Act, 2013, is set aside only on the ground as stated herein above with respect to the writ petitioners. The writ petition, therefore, being devoid of merit is dismissed. However, liberty is granted to the appellant to challenge the validity of the Amendment Act, 2013 in the manner known and in accordance with law.

Pending interlocutory applications stand rejected.

Sd/-
JUDGE

Sd/-
JUDGE

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