

IN THE HIGH COURT OF KERALA

AT ERNAKULAM

WA.No. 2061 of 2017

1) UNION OF INDIA

**REP BY SECRETARY, MINISTRY OF FINANCE
DEPARTMENT OF REVENUE, ROOM NO.46
NORTH BLOCK, NEW DELHI-110001**

2) GST COUNCIL

**REP BY SECRETARY, 5TH FLOOR
TOWER II, JEEVAN BHARAI BUILDING
JANPATH ROAD, CONNAUGHT PALACE
NEW DELHI-110001**

Vs

1) SHIYAAD

**AGED 37 YEARS, S/O C P ALIKUNJU, CHIRAYIKANDAN HOUSE
CHELAMATTOM, OKKAL PO, PERUMBAVOOR- 683550**

2) ABDUL SAMAD

**AGED 50 YEARS, S/O KASIM, KAROTHKUDY HOUSE
ALLAPRA P.O, KANNAMTHARA, PERUMBAVOOR-683553**

3) N A FAQURUDEEN

**AGED 48 YEARS, S/O N P AHAMMADUNNI, NANETHAN HOUSE
RAYONPURAM P O VALLOM, PERUMBAVOOR-683543**

4) STATE OF KERALA

**REP BY PRINCIPAL SECRETARY, DEPARTMENT
OF FINANCE, ROOM NO.392, 1ST FLOOR, MAIN BLOCK
SECRETARIAT, TRIVANDRUM-695001**

5) PRINCIPAL SECRETARY

**DEPARTMENT OF HEALTH AND FAMILY WELFARE
STATE OF KERALA ROOM NO. 301, 3RD FLOOR
SECRETARIAT ANNEX, TRIVANDRUM-695001**

C K Abdul Rehim & R Narayana Pisharadi, JJ

Dated: April 11, 2019

Appellant Rep. by: Sri P R Sreejith, SC Central Board of Excise & Customs

Respondent Rep. by: Sr GP (Taxes) Sri Mohammed Rafiq, Sri P Sathisan, Adv

GST - 'Dispose of representation' mantra - Writ of mandamus is limited to enforcement of obligation imposed by law - Single Judge has wrongly exercised discretion in issuing a direction to GST Council: HC Division Bench

Facts: Respondents, claiming to be members of the 'Plastic Recycling Industrial Association' had sent a representation to the GST Council on 27.07.2017 by *post* alleging

that levy of 18% GST on recycled plastic products had made adverse impact on that industry; that a prayer was made for completely withdrawing levy of tax on the said recycled plastic products; that similar representations were also sent on 31.07.2017 to the Central government and the State governments and also to the Secretary of the Health Department of the State; that a Writ Petition was filed on 01.08.2017 for issuing a Writ of Mandamus to the GST Council to dispose of the representation at the earliest etc. - Single Judge had by judgment dated 02.08.2017 disposed of the Writ Petition directing the GST Council to consider and pass orders on the representation within a period of one month - UOI and the GST Council have filed appeals challenging the said judgment - Counsel for the Revenue/Council contended that it is not the function of the GST Council to receive representations from the general public and to conduct personal hearings and to pass orders on such representations and, therefore, a writ of mandamus as issued by the Court in the impugned judgment will not lie against the Council.

Held: Bench finds considerable force in this contention by Revenue - It is evident from a reading of the provisions of Article 279A of the Constitution that there is no mechanism provided in the Constitution or any other statute for the Goods and Services Tax Council to adjudicate the grievances raised by the general public - There is no mechanism for consideration and disposal of representations made by the general public to the Council after conducting personal hearing of the parties who make such representations - Writ Petitioners have not brought to the notice of the Bench any provision in the Constitution or any other statute which imposes a duty on the Goods and Services Tax Council to adjudicate on the grievances raised by the members of the general public with regard to imposition and levy of goods and services tax on any product - it is well settled that a mandamus lies to secure the performance of a public or statutory duty in the performance of which the one who applies for it has got sufficient legal interest - An order of mandamus is, in form, a command directed to a person or authority to do a particular thing pertaining to his or its office and in the nature of a public duty - In order to issue a writ of mandamus to compel a party to do something, it must be shown that the statute imposes a legal duty upon that party and that the person seeking the writ has a legal right under the statute to enforce its performance - The writ of mandamus is limited to the enforcement of the obligation imposed by law - it appears that most probably, even before the receipt of the representations by the authorities concerned, the writ petition was filed before the High Court and which indicates the lack of bonafides in filing the writ petition - prayer made by the counsel for the writ petitioners to issue a direction to the State government to consider the aforesaid representations cannot be allowed since the writ petition lacks bonafides - single Judge has wrongly exercised his discretion in issuing a direction to the Goods and Services Tax Council - Writ petition is liable to be dismissed - consequently writ appeal is allowed and the impugned judgment is set aside: High Court [para 11, 12, 13, 16, 17]

Writ Appeal allowed

Case laws cited:

Government of India v. P.Venkatesh (judgment dated 01.03.2019 in Civil Appeal No.2425 of 2019).....Para 14

Sahara India Real Estate Corporation Limited v. Securities and Exchange Board of India - 2012-TIOL-72-SC-MISC-CB.....Para 15

Anita Singh v. State of Rajasthan : MANU/RH/0350/2013.....Para 15

JUDGEMENT

Per: R Narayana Pisharadi, J:

Respondents 1 to 3 in the writ appeal claim to be the members of an association by name 'Plastic Recycling Industrial Association'. They sent Ext.P2 representation to the Goods and Services Tax Council on 27.07.2017 by post. They alleged that levy of 18% goods and services tax on recycled plastic products had made adverse impact on that industry. The prayer made in Ext.P2 representation was for completely withdrawing levy of tax on the recycled plastic products. On 31.07.2017, they sent similar representations (Exts.P1, P3 and P4) to the Central Government and the State Government and also to the Secretary of the Health Department of the State.

2. On 01.08.2017, respondents 1 to 3 in the writ appeal, filed W.P.(C) No.25613/2017 before this Court for issuing a writ of mandamus to the Goods and Services Tax Council to dispose of Ext.P2 representation at the earliest, at any rate within two weeks and also to issue a writ of mandamus to the other respondents in the writ petition to dispose of Exts.P1, P3 and P4 representations within a time to be fixed by this Court, after hearing the petitioners.

3. As per the impugned judgment dated 02.08.2017, a learned Single Judge of this Court disposed of the writ petition directing the Goods and Services Tax Council to consider and pass orders on Ext.P2 representation within a period of one month from the date of receipt of the copy of the judgment, after hearing the petitioners. The operative portion of the impugned judgment reads as follows:

“On a consideration of the facts and circumstances of the case and the submissions made across the bar, I dispose the writ petition with a direction to the 2nd respondent to consider and pass orders on Ext.P2 representation submitted by the petitioner, within a period of one month from the date of receipt of a copy of this judgment, after hearing the petitioner. The petitioner shall produce a copy of this judgment, together with a copy of the writ petition before the 2nd respondent for further action.”

4. The Union of India and the Goods and Services Tax Council, who are the first and the second respondents in the writ petition, have come up in appeal challenging the aforesaid judgment.

5. We have heard learned Senior Standing Counsel who appeared for the appellants. We have also heard learned Senior Government Pleader (Taxes) and also the learned counsel for respondents 1 to 3/writ petitioners.

6. Learned Senior Standing Counsel who appeared for the appellants contended that the Goods and Services Tax Council is a constitutional body and its functions and duties are clearly mentioned in the Constitution. Learned Senior Standing Counsel would contend that it is not the function of the Goods and Services Tax Council to receive representations from the general public and to conduct personal hearings and to pass orders on such representations and therefore, a writ of mandamus as issued by this

Court in the impugned judgment, will not lie against the Council. We find considerable force in this contention.

7. Article 279A was inserted in the Constitution of India by way of the Constitution (One Hundred and First Amendment) Act, 2016 with effect from 16.09.2016. Article 279A(2) provides that the Goods and Services Tax Council shall consist of the Union Finance Minister as the Chairperson and the Union Minister of State in charge of Revenue or Finance and the Minister in charge of Finance or Taxation or any other Minister nominated by each State Government as members.

8. Sub-clause (4) of Section 279A of the Constitution of India deals with the functions and duties of the Goods and Services Tax Council. This provision reads as follows:

“279A. Goods and Services Tax Council

(1) xxxx

xxxx

(4) The Goods and Services Tax Council shall make recommendations to the Union and the States on-

(a) the taxes, cesses and surcharges levied by the Union, the States and the local bodies which may be subsumed in the goods and services tax;

(b) the goods and services that may be subjected to, or exempted from the goods and services tax;

(c) model Goods and Services Tax Laws, principles of levy, apportionment of Goods and Services Tax levied on supplies in the course of inter-State trade or commerce under article 269A and the principles that govern the place of supply;

(d) the threshold limit of turnover below which goods and services may be exempted from goods and services tax;

(e) the rates including floor rates with bands of goods and services tax;

(f) any special rate or rates for a specified period, to raise additional resources during any natural calamity or disaster;

(g) special provision with respect to the States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand; and

(h) any other matter relating to the goods and services tax, as the Council may decide.”

9. Sub-clause (6) of Article 279A of the Constitution states that while discharging the functions, the Goods and Services Tax Council shall be guided by the need for a harmonised structure of goods and services tax and for the development of a harmonised national market for goods and services. Sub-clause (11) provides that the Goods and Services Tax Council shall establish a mechanism to adjudicate 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 side; or (c) between two or more States, arising out of the recommendations of the Council for implementation thereof.

10. On a perusal of the aforesaid provisions, it is evident that there is no mechanism provided in the Constitution or any other statute for the Goods and Services Tax Council to adjudicate the grievances raised by the general public. There is no mechanism for consideration and disposal of representations made by the general public to the Council after conducting personal hearing of the parties who make such representations. Learned counsel for the writ petitioners has not brought to our notice any provision in the Constitution or any other statute which imposes a duty on the Goods and Services Tax Council to adjudicate on the grievances raised by the members of the general public with regard to imposition and levy of goods and services tax on any product.

11. Article 226 of the Constitution provides that every High Court shall have power to issue to any person or authority orders and writs including a writ in the nature of mandamus for the enforcement of any of the rights conferred by Part III of the Constitution and for any other purpose. It is well-settled that a mandamus lies to secure the performance of a public or statutory duty in the performance of which the one who applies for it has got sufficient legal interest. An order of mandamus is, in form, a command directed to a person or authority to do a particular thing pertains to his or its office and in the nature of a public duty. In order to issue a writ of mandamus to compel a party to do something, it must be shown that the statute imposes a legal duty upon that party and that the person seeking the writ has a legal right under the statute to enforce its performance. The writ of mandamus is limited to the enforcement of the obligation imposed by law.

12. Ext.P2 representation was sent by the writ petitioners to the Goods and Services Tax Council, through post, on 27.07.2017. Exts.P1, P3 and P4 representations were sent by them, through post, to the Central and the State Governments and the Secretary of the Health Department of the State on 31.07.2017. The writ petition was filed on 01.08.2017. It also appears that Exts.P1 to P4 representations were made and the writ petition was prepared more or less simultaneously. We make such observation for the reason that the writ petition is dated 31.07.2017 and the postal receipts for sending Exts.P1 to P4 representations show that they were sent by the counsel appearing for the writ petitioners. Most probably, even before the receipt of Exts.P1 to P4 representations by the authorities concerned, the writ petition was filed before this Court. It indicates lack of bona fides in filing the writ petition.

13. Learned counsel for the writ petitioners would pray that atleast the State Government and the Secretary of the Health Department may be directed to consider Exts.P3 and P4 representations. The writ petitioners have no case that inspite of making representations to the State Government, no action was taken on such representation and it was in such circumstances that the writ petition was filed. On the other hand, as noticed earlier, the writ petition was filed on the next day of sending Exts.P3 and P4 representations by post. In such circumstances, the prayer made by the counsel for the writ petitioners to issue a direction to the State Government to consider the aforesaid representations cannot be allowed. As noticed earlier, the writ petition lacks bona fides.

14. Recently, in the judgment titled as *Government of India v. P.Venkatesh* (judgment dated 01.03.2019 in Civil Appeal No.2425 of 2019), the Apex Court has observed as follows:

“This ‘dispose of the representation’ mantra is increasingly permeating the judicial process in the High Courts and the Tribunals. Such orders may make for a quick or easy disposal of cases in overburdened adjudicatory institutions. But, they do no service to the cause of justice”.

15. After the conclusion of the hearing in the appeal, learned counsel for the appellant produced before us the copy of the decision rendered by the Hon'ble Supreme Court in *Sahara India Real Estate Corporation Limited v. Securities and Exchange Board of India* : AIR 2012 SC 3829 = **2012-TIOL-72-SC-MISC-CB** and also a decision of the Rajasthan High Court in *Anita Singh v. State of Rajasthan* : MANU/RH/0350/2013. These decisions have no application at all to the facts of the present case. Learned counsel for the appellant has not explained the applicability of the aforesaid decisions to the facts of the present case.

16. The discussion above leads to the conclusion that the learned Single Judge has wrongly exercised his discretion in issuing a direction to the Goods and Services Tax Council to consider Ext.P2 representation and pass orders thereon, after conducting personal hearing of the writ petitioners. The writ petition is liable to be dismissed.

17. Consequently, the writ appeal is allowed and the impugned judgment is set aside. The writ petition is dismissed. No costs.