

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 5135-5157/2013

STATE OF GUJARAT & ORS.

Appellant(s)

VERSUS

RELIANCE INDUSTRIES LTD. & ANR. ETC.

Respondent(s)

WITH

SLP(C) No. 21643/2023 (IX)

(IA No.198731/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

SLP(C) No. 22289/2023 (IX)

(.FOR ADMISSION and I.R.)

SLP(C) No. 22558/2023 (IX)

(FOR ADMISSION)

SLP(C) No. 25912/2023 (IX)

(FOR ADMISSION and I.R.)

SLP(C) No. 26624/2023 (IX)

(FOR ADMISSION and IA No.239973/2023-PERMISSION TO FILE PETITION (SLP/TP/WP/..))

SLP (C)No. 26191/2023

(IA No.244960/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.244961/2023-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 07-12-2023 These appeals were called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE B.V. NAGARATHNA

HON'BLE MR. JUSTICE UJJAL BHUYAN

For Parties

Dr. Abhishek Manu Singhvi, Sr. Adv.

Mr. K. R. Sasiprabhu, AOR

Mr. Shubhanshu Padhi, Adv.

Mr. Amey Nabar, Adv.

Mr. Amit Bhandari, Adv.

Mr. Avishkar Singhvi, Adv.

Mr. Vishnu Sharma A S, Adv.

Mr. Kartikeya Astana, Adv.

Mr. Darius J. Khambata, Sr. Adv.

Dr. A.M. Singhvi, Sr. Adv.

Mr. Mahesh Agarwal, Adv.

Mr. Rishi Agrawala, Adv.

Mr. Ninad Laud, Adv.

Mr. Victor Das, Adv.

Mr. Rohan Talwar, Adv.

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Mr. Ninad Laud, Adv.
Mr. Amay Phadte, Adv.
Mr. Gokula Krishnan T., Adv.
Mr. Zubin Dash, Adv.
Mr. Dcosta Ivo Manuel Simon, AOR

Mr. Abhinabh Garg, Adv.
Mr. Chirag Nayak, Adv.
Ms. Ananya Mazumder, Adv.
Ms. Ananyaa Mazumdar, Adv.
Mr. E. C. Agrawala, AOR

Ms. Deepanwita Priyanka, AOR

Mr. Dhruv Mehta, Sr. Adv.
Mr. Dhananjaya Mishra, AOR
Mr. Arnav Dash, Adv.
Mr. Navneet Dogra, Adv.
Mr. Nikhil Bhatia, Adv.
Mr. Keith Varghese, Adv.

Mr. Mahesh Agarwal, Adv.
Mr. Rishi Agrawal, Adv.
Mr. Ankur Saigal, Adv.
Mr. Victor Das, Adv.
Mr. Rohan Talwar, Adv.
Mr. Abhinabh Garg, Adv.
Ms. Chitra Agarwal, Adv.
Ms. Manavi Agarwal, Adv.
Ms. Divya Singh, Adv.
Mr. E. C. Agrawala, AOR

M/S. Khaitan & Co., AOR
Mrs. Vanita Bhargava, Adv.
Mr. Ajay Bhargava, Adv.
Ms. Nikitha Shenoy, Adv.

Mr. Bhargava V. Desai, AOR

Mr. O. P. Gaggar, AOR
Mr. Sachindra Karn, Adv.

Mr. Shyam Divan, Sr. Adv.
Mr. Devidas Pangam Ag, Adv.
Mr. Devidas Pang Ag, Adv.
Mr. Devidas Pangam Ag, Adv.
Mr. Abhay Anil Anturkar, Adv.
Mr. Dhruv Tank, Adv.
Mr. Shubham Priolkar, Adv.
Mr. Aniruddha Awalgaonkar, Adv.
Ms. Surbhi Kapoor, AOR

contd..

Mr. Nikhil Goel, AOR

Ms. Sharmila Upadhyay, AOR

Mr. Pawan R Upadhyay, Adv.

Mr. Sarvjit Pratap Singh, Adv.

Mr. Rishab Khare, Adv.

Ms. Supriya R Pandey, Adv.

Mr. Abhinav Agrawal, AOR

UPON hearing the counsel the Court made the following

O R D E R

SLP(C) No. 21643/2023

By order dated 09.10.2023, this Court issued notice to the respondents and particularly to the State of Goa and also ordered that the said case be tagged with C.A. Nos.5135-5157 of 2013, which is filed by the State of Gujarat and Ors. and is pending before this Court. It was further directed that the matter may be listed after four weeks.

Learned senior counsel Dr. Abhishek Manu Singhvi and Mr. Darius J. Khambata, have made submissions on interim prayers sought by petitioners, since the respondents have been served and have appeared in this case.

They drew our attention to the nature of interim prayers sought for by the petitioner(s) herein and have also drawn our attention to the interim protection, which was granted to the petitioner(s) during the pendency of the Writ Petition No. 475/2014, which was filed by the said petitioner(s) before the High Court of Bombay at Goa. It was submitted that an interim order was granted on 10.06.2015 to the effect that no coercive steps be taken against the petitioner(s) [petitioner(s) before

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the High Court also] in connection with the disputed claim, which order continued till the disposal of the writ petition which is by the impugned order dated 14.09.2023.

Learned senior counsel appearing for the petitioner(s) submitted that the constitutional validity of the Goa Cess on Products and Substances Causing Pollution (Green Cess) Act, 2013. (hereinafter referred to as the 'Green Cess Act', for the sake of convenience) was assailed before the High Court. That during the pendency of the said writ petition before the High Court, no coercive steps were taken as against the petitioner(s) herein inasmuch as the petitioner(s) did not even register under the said Act nor was any demand made as against the petitioner(s). They submitted that the legislative competence of the legislature of State of Goa to pass the said legislation was under challenge in the said writ petition inasmuch as it was the contention of the petitioner(s) that no Entry in List II or List III gave competence to the Legislature of the State of Goa to pass the Green Cess Act. Therefore, the interim order which protected the petitioner(s) during the pendency of the writ petition before the High Court may be continued during the pendency of this petition before this Court.

It was further submitted that detailed submissions as to why the Legislature of the State of Goa lacked legislative competence to pass the Act were made before the High Court, which have not been appreciated in their proper perspective and hence this special leave petition.

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It was also brought to our notice that insofar as a similar Act passed by the Gujarat State Legislature is concerned, the same was also a subject matter of challenge before the Gujarat High Court but the said High Court accepted the said challenge and struck down the said Act and the State of Gujarat has preferred an appeal before this Court wherein there is an interim order in favour of the respondent(s)/Assessee(s) therein protecting the interest of the Assessee(s) after staying the impugned judgment of the Gujarat High Court. Therefore, it was submitted that a consistent interim order may be made in this case also protecting the interest of the petitioner(s)/Assessee(s).

Although, submissions have been made with regard to legislative competence of the Goa State Legislature, which has enacted the Green Cess Act, it is not necessary to detail the same as we are not only considering the case from the point of view of an interim arrangement that has to be made pending disposal of in this case.

Per contra, Shri Shyam Divan, learned senior counsel appearing for the State of Goa, at the first instance contended that unlike the ex-parte interim order that was granted by the High Court in favour of the Assessee(s), there was no such order granted by this Court, when notice was issued to the respondent/State. Secondly, it was submitted that insofar as the Gujarat Green Cess Act is concerned, the High Court had accepted the contentions regarding the validity of the Act and had struck down the Act which constrained the State of Gujarat to approach this Court and an

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interim order has been passed, wherein there is a stay of the order of the Gujarat High Court. On the contrary, in the instant case, although there may have been an ex-parte interim order in favour of the Assessee(s) before the High Court, nevertheless, the Bombay High Court has upheld the vires of the Act. Therefore, it was contended that when the vires of the Act has been upheld, for this Court, to simply stay the impugned judgment or the operation of the Act, would not be in the interest of the respondent/State and particularly the exchequer of the State.

It was further submitted that except these petitioners, all other Assesseees have been complying with the provisions of the Green Cess Act and tendering the cess amount since the year 2013 onwards and but for the ex-parte interim order passed by the Bombay High Court insofar as these petitioners are concerned, they would also had to make the payment under the said Act. It was, therefore, submitted that no interim stay of the impugned judgment or the provisions of the Act may be granted by this Court.

The detailed narration of facts and submissions made at the Bar would not call for reiteration.

At the outset, we would like to reiterate what has been stated by this Court in the case of R. K. Dalmia v/s. Justice S. R. Tendolkar and others - AIR 1958 SC 538, wherein it has been categorically held that even when the vires of an enactment is assailed, the Constitutional presumption is one aspect which has to be taken note of by the Court and unless it is established by the petitioner, who approaches the Court challenging the vires of the

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Act about its invalidity, the operation of such an enactment would not automatically be stayed. The Bombay High Court only protected the petitioners herein against any coercive action under the Act under consideration. Here is a case where, although the constitutional validity of the Green Cess Act was challenged by the petitioner(s) herein and there was an interim order in their favour, which was an ex-parte interim order which continued till the disposal of the writ petition, what is significant to note is that the High Court has now held in favour of the respondent/State by upholding the vires of the Act. Therefore, in view of the impugned judgment being passed, the operation of the Act cannot be simply stayed insofar as the petitioner(s) are concerned as such. This is particularly so, when all other Assesseees, who are covered under the Green Cess Act have been complying with the same and have been paying the Green Cess under the Act under consideration. Moreover, the interim protection granted during the pendency of the writ petition was only till the final disposal of the writ petition, which has not been in favour of the petitioner(s) herein.

In the circumstances, we do not think it just and proper to either stay the impugned judgment or the operation of the provisions of the Act insofar as the petitioner(s) are concerned. At the same time, to balance the equities between the parties as it is not known today which of the parties would succeed before this Court, we think an interim arrangement could be ordered.

Since, the petitioner has not yet registered under the provisions of the Act, it is just and proper to comply with the

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notice dated 12.10.2023 issued by the respondent as against it under the provisions of the Act. The State shall proceed to make the assessment and issue a formal demand to the petitioner herein and the petitioner shall pay to the respondent/State an extent of 50% of the said demand. It is needless to say that having regard to the fact that the issues raised in this petition are still at large, there shall be stay with regard to payment of balance 50% of the demand pending further orders from this Court. We further clarify that the aforesaid direction is by way of interim arrangement only.

In the event, the petitioner herein succeeds in the matter, the amount of 50% which has been paid shall be returned subject to a reasonable interest payable by the State, which shall be determined in accordance with law, at the time of final decision in the matter. By contrast, if the petitioner is unsuccessful, in that case, the petitioner shall pay the balance 50% and all outstanding dues to the respondent(s)/State with a reasonable rate of interest, which shall also be to be determined in accordance with law, at the time of final decision in the matter.

It is further observed that the aforesaid interim arrangement is made without prejudice to the rights, contentions and interests of either of the parties and bearing in mind the fact that the matter is still at large and has not yet reached the stage of final decision.

SLP(C) Nos. 22289/2023 and 22558/2023

Interim order passed in SLP(C) No. 21643/2023 shall also apply in these cases.

SLP(C) Nos. 25912/2023, 26624/2023 and 26191/2023

Issue notice to the respondent(s).

Mr. Abhay Anil Anturkar learned standing counsel, accepts notice on behalf of respondent(s)/State of Goa through Ms. Surbhi Kapoor, Advocate on Record.

Interim order passed in SLP(C) No. 21643/2023 shall also apply in these cases.

(NEETU SACHDEVA)
ASTT. REGISTRAR-cum-PS

(MALEKAR NAGARAJ)
COURT MASTER (NSH)