IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

Writ Petition No.1337/2002
(Mohsin Ahmed Raja Ahmed .vs. State of Maharashtra and others)
with
Writ Petition No. 3214/2004
(Ram Kamlakant Pande .vs. State of Maharashtra and ors.)

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.

Mr. A.C. Dharmadhikari, Advocate for Petitioner in W.P.No.1337/2002.
Mrs. S.S. Wandile, Advocate for Respondent No.7 in W.P. No.1337/2002.
Mr. A.C. Dharmadhikari, Advocate for Intervenor in W.P.No.3214/2004.

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CORAM : B.R. Gavai & P.N. Deshmukh, JJ.
DATED : March 02, 2016.

1. The petitions were initially filed by the present petitioners challenging certain orders by the State Government in respect of respondent Nos. 8,9,10 and 11.

2. It appears that it was the basic contention of the petitioners that administrative reliefs under Section 41 of the Bombay Sales Tax Act granted in favour of the respondent Nos. 8,9,10 and 11 who were dealing in the liquor business, were granted in *mala fide* manner so as to help them in continuing their illegal activities in the liquor trade.

3. It, however, appears from various orders passed by this Court from 5.4.2002 onwards that the

Court went on enlarging the scope of these petitions directing the State Government to make inquiries with regard to the concessions granted in favour of the dealers dealing in the liquor trade.

4. It further appears that this Court vide order dated 3.5.2002 directed the Excise Department as well as the Sales Tax Department that while collecting the revenue in the matter relating to liquor industry they should scrupulously act upon the orders passed by this Court subject to the modifications and further orders passed by this Court. Various orders are passed from time to time virtually monitoring the functioning of the Excise Department and the Sales Tax Department insofar as the liquor trade is concerned. One of such order was passed on 11.04.2008 which reads thus:-

> *"Heard the learned counsel for the parties.*
>
> *After going through the order dated 3.5.2002 passed by this Court and considering the submissions made by the learned counsel for the parties, we think that instead of seeking appropriate clarification/direction from this Court, in case the authorities want to use their discretion in order to grant any concession in favour of the persons in the liquor industry trade, the authorities should pass appropriate orders and place them before the Court and the orders should come in the force only after one month from the date the orders are so placed before this Court. It is needless to say that it is open for the petitioner as well as the other respondents to comment on those orders. With this clarification, the civil*

application is disposed of."

5. It could thus be seen that the Court though permitted the authorities to pass the orders in their discretionary powers and grant concessions in favour of the persons dealing in the liquor trade, the said orders were directed to be placed before this Court and the orders were not to be given effect to till a period of one month from the date the orders are so placed before this Court. It could thus be seen that the Court assumed the appellate jurisdiction insofar as the discretionary orders passed by the authorities of the Sales Tax Department in the matter of liquor trade is concerned.

6. When the matter was listed on 8.2.2012, this Court passed order which reads thus:-

> *"Today, learned AGP has placed on record the pursis along with list of vendors granting relief/concession to them in respect of collection of sales tax. The said pursis has been filed in view of the order passed by this Court on 11/4/2008 and the same is taken on record. Learned counsel for the petitioner may take inspection of the same. Learned AGP for the State to make the stand clear as to whether any guideline is framed as to when such such administrative relief can be granted in exceptional cases or in the routine manner. Learned AGP seeks time to take instructions as to how many prosecutions were lodged in not collecting sales taxes with the Government after collecting the same from the customers. Learned AGP may keep ready the necessary file from*

> *Commissionerate Office, Mumbai, in order to find out as to in what manner the sales taxes are collected in this behalf."*

7. It could thus be seen that on the said date also various orders in respect of the relief/concession granted to the dealers dealing in liquor trade were placed before this Court. However, this Court directed the State Government to make its stand clear as to whether any guideline would be framed as to when such administrative relief is to be granted in exceptional cases. The learned AGP was also directed to seek instructions as to how may prosecutions were launched in not collecting and depositing the sales tax with the Government after the same was collected from the customers.

8. Accordingly an affidavit has been filed by Mr. Poonamchand Kanhaiyalal Agrawal, Joint Commissioner of Sales Tax VAT-ADM, Nagpur on 17.07.2015. The perusal of the said affidavit would reveal that detailed guidelines have been issued vide its order dated 18.04.2007 so as to ensure that there is no evasion of payment of sales tax or delay in depositing the same with the Government.

9. Insofar as the prosecution is concerned, it is stated that in view of the provisions contained in Section 74 of the MVAT 2002, the show cause notices have been issued to the dealers who have not filed the return at all or who have failed to file return within prescribed time

along with the requisite payment shown in the return due as payable. It is further stated that in some cases authorities have also launched prosecution against some dealers. The chart of the prosecution launched is annexed as Annexure-I to the said affidavit-in-reply.

10. It could thus be seen that the respondent-Sales Tax Department has now issued elaborate guidelines to avoid evasion of taxes and delayed payment of taxes. The responsibilities have been fixed upon the various Officers at various levels.

11. This Court as it is flooded with various types of litigations. There are petitions pending, which are pending adjudication as early as in the year 1998, 2000.

12. In any case, the Court does not possess the expertise to administer the Excise or the Sales Tax Departments of the State Government. The administration of the Sales Tax or the Excise Department is within the sole domain of the Executive. Only when the Court finds that the Executive in an illegal, arbitrary or *mala fide* manner is exercising the powers, this Court would be entitled to invoke its extra ordinary jurisdiction under Article 226 of the Constitution. However, this Court while exercising jurisdiction under Article 226, cannot control the day to day administration of the Sales Tax or the Excise Department insofar as it relates to trade in liquor.

13. In that view of the matter, no purpose would

be served in keeping the present writ petitions alive. We do hope and expect that the State Government would adhere to the guidelines issued by it. If the petitioner or any other diligent citizen brings it to the notice of this Court if any illegality is committed, so as to give an undue advantage to any of the traders, the petitioner or such a citizen is always free to knock the doors of the Court.

14. With the aforesaid observations, the writ petitions are disposed of.

JUDGE **JUDGE**

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