

Maria S.

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 628 OF 2017

Hiralal and Company,
Through its Partner,
Shri Dharendra Thakker

... Petitioner.

Versus

Union of India,
Through the Secretary,
Ministry of Finance & 2 Ors.,

... Respondents

Mr. Vaibhav Pandya, Advocate for the Petitioner.
Ms. Priyanka Kamat, Additional Government Advocate for the
Respondent nos. 2 and 3.

***Coram : N.M. Jamdar &
Prithviraj K. Chavan, JJ.***

Date : 18 December 2017.

P. C.

By this Petition, the Petitioner has sought various reliefs. For instance, a writ to declare Section 66 C(2) of Chapter V of the Finance Act, 1994 and also Rule 10 of Notification No. 28 of 2012, Notification no. 1 of 2017, Notification no. 2 of 2017 and Notification no. 3 of 2017 as ultra vires. According to the

Petitioner, these Notifications and the Rule as well as the Section are *ultra vires* an Article 14, 19, 246, 248, 265, 268A and 302 read with Entry 41 and 83 of List 1 of VII Schedule of the Constitution of India. Learned Counsel for the Petitioner submits that on identical challenge, the Karnataka High Court has issued Rule in a writ petition.

2. What we have before us is a writ petition filed by a firm. This petition is not a public interest litigation. To a query to the learned Counsel for the Petitioner as to whether any action is initiated or any order is passed against the Petitioner based on these impugned Notifications, Section and Rules, the learned Counsel for the Petitioner admits that there is no such order passed or action taken. He says that it is likely to be passed some day. Therefore, as on today, there is no cause of action that arises for the Petitioner to challenge the constitutional validity of the above mentioned Rules, Section and Notifications. The challenge is entirely academic.

3. We, therefore, need not enter into the controversy at the behest of the Petitioner, since we do not find any cause of action that accrues for the Petitioner as of today. The Petitioner can always mount a challenge and seek the above prayers as and when any notice or order is passed against the Petitioner based on the

impugned provisions. The Writ Petition is accordingly disposed of keeping all contentions of both the parties open to be considered at an appropriate stage.

Prithviraj K. Chavan, J.

N.M. Jamdar, J.