IN THE HIGH COURT OF BOMBAY AT GOA

PIL WRIT PETITION NO. 35 OF 2019

Nagaraj Rama Kale
Son of late Shri Rama Kale
Aged about 50 years
Practicing Chartered Accountant
G-4, Kurtarkar Vihar
Opp: Costa Factory, Aquem,
Margao, Goa 403 601
PAN NO. AHNPK0563C
ADHAR No 894024154685
Mobile No:9923410236
Email id :kalenagaraj@rediffmail.com **… Petitioner.**

V/s.

1) State of Goa
Through Chief Secretary
Government of Goa
Secretariat, Porvorim
Panaji-Goa – 403 001.

2) The Secretary (Law)
Government of Goa
Secretariat, Porvorim
Panaji Goa – 403 001.

3) The Institution of Goa Lokayukta
Having its office at:
1st floor, Old GMC Building
Ribander, Goa – 403 006.

4) The Commissioner of Commercial Taxes,
Government of Goa
Old High Court Building
Panaji, Goa – 403 001.

5) Dipak Bandekar,
presently functioning as
Commissioner of Commercial Taxes
Old High Court Building
Government of Goa
Panaji, Goa – 403 001.

6) Chandresh Kunkalkar
Assistant Commissioner of Commercial Taxes
presently functioning under the
Commissioner of Commercial Taxes
Old High Court Building
Government of Goa
Panaji, Goa – 403 001.

7) Ashok Rane
Presently functioning as
Additional Commissioner of
Commercial Taxes
3rd Floor, SGPDA Complex
Margao, Goa. **...Respondents.**

Petitioner in person.
Mr. Devidas J. Pangam, Advocate General with Mr. Pravin N. Faldessai, Additional Government Advocate for Respondents no. 1, 2 and 4.

CORAM:- M. S. SONAK &
NUTAN D. SARDESSAI, JJ.

Date:- 31 July 2019

ORAL JUDGMENT: (Per M.S. Sonak, J.)

Heard Mr. Nagaraj Rama Kale, the Petitioner who appears in person. Mr. Devidas J. Pangam, learned Advocate General alongwith

Mr. Pravin N. Faldessai, Additional Government Advocate appears for Respondents no. 1, 2 and 4.

2. Mr. Kale, who is a practicing Chartered Accountant has instituted this petition, in purported public interest.

3. Before us, he has raised the following issues:

a) The issue of deletion of the provisions of Section 29(5) from the Goa Value Added Tax Act, 2005 (the said Act). He submits that the deletion of this provision is unconstitutional and has taken away the earlier vested powers to make best judgment assessment. He submits that the Assessees under the said Act are therefore suffering untold miseries and difficulties.

b) He submits that there are no properly constituted Appellate Authorities under the said Act. He submits that conferring of powers to entertain appeals upon Assistant Commissioner or Deputy Commissioner is improper since, more often than not, these officers are connected with the making of initial assessment orders. He therefore submits that vesting officers like the Assistant Commissioner or the Deputy Commissioner with appellate powers, amounts to providing appeals from Caesar to Caeser.

c) Mr. Kale submits that in terms of Section 14 of the said Act, the State is enjoined to constitute Tribunal to entertain and decide second appeals under the said Act. This contemplates that Tribunals are manned by members who have expertise in fiscal matters like those dealt with under the said Act. He submits that instead, the State has vested powers of such Tribunals in the existing Administrative Tribunal which according to him does not have the necessary expertise.

d) Mr. Kale further submits that some proceedings have been initiated against some officials of the Commercial Taxes Department before the Lokayukta. He submits that the State has provided advocates for such officers and this is not proper.

e) Finally, Mr. Kale submits that the orders made by Lokayukta are not being implemented by the State Government and this is a matter which is competent to be taken up by instituting public interest litigation. In support, he relies upon the decision of the Hon'ble Supreme Court in the case of Institution of ***Andhra Pradesh Lokayukta/Upa-Lokayukta, A.P. E vs. T. Rama Suhba Reddy & Anr.***[1] In particular, he places reliance upon last but one para of this Judgment.

1(1997) 9 SCC 42.

4. Mr. Kale submits that the issues raised by him properly fall under the realm of public interest and therefore this petition should be entertained by this Court as Public Interest Litigation.

5. Mr. Devidas Pangam, learned Advocate General opposes the entertainment of the present petition as a public interest litigation. In any case he submits that the Appellate Authorities as contemplated by this said Act have been provided. He submits that the vesting of powers in Appellate Tribunal is consistent with the provision of Section 14(10) of the said Act. He submits that in any case consequent upon the coming into the force of the GST regime, most of the provisions of the said Act have been almost rendered redundant. Provisions will apply perhaps only to pending matters or items which may not be covered under the GST regime. For all these reasons the learned Advocate General submits that this petition may not be entertained.

6. Upon due consideration of the rival contentions we are of the opinion that most of the issues raised by the petitioner cannot be considered in a public interest litigation which he has purported to institute.

7. The petitioner is a practicing Chartered Accountant who represents the cause of the dealers and other assessees under the said Act. According to us, such dealers and assessees under the said Act are

not poor or ignorant persons who are unable to espouse their own cause. In this case, the petitioner has given certain instances relating to his own clients. We are not prepared to accept that such clients, if aggrieved by any orders made by the Appellate Authorities or the Tribunals are not in a position to seek redressal for themselves. Accordingly, there is no case made out to relax the rule of locus standi and entertain this petition as a public interest litigation.

8. In any case, the Hon'ble Apex Court has held that ordinarily challenges to *vires* of legislations should not be entertained by way of public interest litigations. This is more so where the persons who claim to be affected are under no disability to raise their own grievances or pursue their own cause.

9. The deletion of Section 29(5) according to us, cannot be challenged simply on the ground that the provisions prior to deletion were better. However, we do not wish to delve any further on this issue lest, we might be preempting challenges from a proper relator.

10. On the aspect of Appellate Authorities we find that right from the date of enactment of the said Act in the year 2005, the appeals against orders from the Commercial Tax Officer have been provided to Assistant Commissioner/Additional Commissioner depending upon the valuation of the subject matter. This is in terms

of Rule 2(c) read with Section 35 of the said Act. To say that there are no Appellate Authorities or that the Appellate Authorities are not competent to exercise the appellate powers on the basis of vague allegations, certainly does not constitute any good cause of action to institute the public interest litigation.

11. Section 14 of the said Act no doubt requires the State to constitute Tribunals to exercise powers as Appellate Authorities, more particularly, Second Appellate Authorities. However, Section 14(10) of the said Act clearly provides that :

> "*Notwithstanding anything contained in this section, the Government may, by notification in the Official Gazette, confer on any Tribunal constituted or functioning under any other law for the time being in force, the powers conferred on a Tribunal by or under this Act and thereupon such other Tribunal shall be deemed to be a Tribunal constituted under this section in relation to the said law notwithstanding anything inconsistent in such other law.*"

12. There is no dispute that the State Government in exercise of powers vested in it under Section 14(10) has constituted the existing Administrative Tribunal as the Tribunal for purposes of this Act. Such constitution cannot be challenged by making vague allegations against

the members which man this Tribunal or by alleging that such members do not possess requisite expertise to deal with these matters.

13. Mr. Kale submits that in some cases concerning some persons who he claims are not his clients, the Tribunal has passed orders which may be inconsistent with the orders made by this Court or by the Hon'ble Apex Court. According to us, the persons in whose cases such orders have been made, have the remedies of questioning such orders. The learned Advocate General points out that revisional powers have been conferred on this Court in terms of Section 38 of the said Act.

14. Mr. Kale interrupts the dictation to only point out that such orders have already been questioned. If that be so, this will be additional reason why Mr. Kale should not be permitted to take up such private causes in purported public interest litigation. This jurisdiction is certainly not to be exercised to further the cause of private parties who are in a position to espouse their own cause.

15. In so far as the issue of appointment of advocates before the institution of Lokayukta is concerned, again, it is clear the petitioner is not himself the petitioner or the complainant before the Lokayukta in the case where he complains that the private Respondent ought not to have a government advocate. There is nothing on record that the complainants, if really aggrieved, are not in a position to take up their

own cause. Therefore, there is no case made out to entertain the public interest litigation on this ground as well.

16. Finally, the petitioner, relying upon a paper-cutting placed at Annexure P-11 page 106 of the paper-book complains that orders of Lokayukta are not being implemented by the State Government. Based upon such news reports we are not prepared to entertain the present petition. If there is some concrete case and any of the parties have any grievances, then no doubt the matter can always be considered. However, on basis of general reports that orders of Lokayukta are not being implemented, it is not possible to entertain such public interest litigation.

17. In the case of Institution of ***Andhra Pradesh Lokayukta/Upa-Lokayukta, A.P. E*** (supra), the issue relied was about the implementation of provisions of statutory enactments by which Lokayukta and Upa-Lokayukta were constituted. In that case one of the issues that arose was whether the reports of the Lokayukta are binding on the appropriate Governments. In this context, the Hon'ble Supreme Court in the last but one para observed that :

> "*The question may arise in a properly instituted public interest litigation as to whether the provision of Section 12(2) of the Act implies a power coupled with duty which can be enforced*

by writ of mandamus by the High Court or by writ of any other competent court but apart from such litigations and uncertainty underlying the results thereof, if would be more appropriate for the legislature itself to make a clear provision for due compliance with the report of Lokayukta or Up-lokayukta system does not get eroded and these institutions can effectively justify their creation under the statute".

18. From the aforesaid it is clear that the judgment cited is of no assistance to the petitioner, in facts of this case.

19. For all the aforesaid reasons we are satisfied that this petition cannot be entertained as public interest litigation. Accordingly, we dismiss this petition. In the facts of the present case we do not impose any cost upon the petitioner.

NUTAN D. SARDESSAI, J. ***M. S. SONAK, J.***

msr.