

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2019

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE D. KRISHNAKUMAR

W.A.No.3161 of 2019

M.Rajendran

... Appellant

Vs.

1. The Government of India,
rep. by its Secretary,
Ministry of Finance,
New Delhi - 110 001.

2. The Senior Intelligence Officer,
O/o.Director General of Goods
and Services Tax Intelligence,
Hosur Regional Unit,
Hosur, Krishnagiri District.

3. The Government of Tamil Nadu,
rep. by its Finance Secretary,
Fort St. George, Chennai -9.

4. The Superintending Engineer (PWD)
Buildings (C&M), Circle, Salem - 7.

5. The Executive Engineer (PWD),
Buildings (C&M) Division,
Dharmapuri.

... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against
the Order dated 22.08.2019 made in W.P.Sr.No.95296 of 2019.

WP.SR.No.95296 of 2019 is filed under Article 226 of the
Constitution of India praying to issue a Writ of Certiorarified
Mandamus calling for the records on the file of the first
respondent in respect of issue of the Notification No.6/2015
Service Tax dated 01.03.2015 published in Government of India
Gazette Extraordinary Part II Section 3, Sub-section(i) No.120
on 01.03.2015 and quash the same and consequently to direct the
first respondent to grant exemption to the petitioner from

paying the service tax in respect of the works contract service other than commercial nature rendered to the Government, local bodies, statutory authorities etc., with effect from 01.04.2015, OR, Alternatively, in the event of this Hon'ble Court upholding the impugned notification, to issue a Writ of Mandamus directing the respondents 3 to 5 to pay to the petitioner the service tax and the interest and penalty if any thereon, that may be demanded by the second respondent from the petitioner in respect of the works contract service other than commercial nature rendered by the petitioner to the Government of Tamil Nadu during the period from 01.04.2015 to 30.06.2017 within a time frame as may be fixed by this Court.

For Appellant : Mr.N.Subramaniyan

For Respondents : Mr.P.S.Sivashanmugasundaram
Special Government Pleader

J U D G E M E N T

(Order of the Court was delivered by S.MANIKUMAR, J)

The appellant has filed WP Sr.Nos.95296 & 98152 of 2019 for the following reliefs.

"To call for the records on the file of the 1st respondent in respect of issue of the Notification No.6/2015-Service Tax dated 01.03.2015 published in Government of India Gazette Extraordinary Part II section 3, Sub-Section (i) No.120 on 01.03.2015 and to quash the same and consequently to direct the 1st respondent to grant exemption to the petitioner from paying the service tax in respect of the works contract service other than commercial nature rendered to the Government, local bodies, Statutory authorities etc., with effect from 01.04.2015, OR, Alternatively, in the event of this Court upholding the impugned notification, to issue a WRIT OF MANDAMUS directing the respondents 3 to 5 to pay to the petitioner the service tax and the interest and penalty if any thereon, that may be demanded by the 2nd respondent from the petitioner in respect of the works contract service other than commercial nature rendered by the petitioner to the Government of Tamilnadu during the period from 01.04.2015 to 30.06.2017 within a time frame as may be fixed by this Court.

2. Registry has raised objections on 05.08.2019 as hereunder:-

"prayer needs clarification, seeking the dual relief with giving option to the Hon'ble High Court, hence prayer to be curtailed with prayer consisting of single nature of prayer".

3. Learned counsel for the petitioner/appellant represented the papers with the following endorsement:-

(i) that it is elementary principle of law to seek any no. of reliefs in a single writ petition for the same cause of action, failing which further relief could not be claimed at a later date due to constructive res judicata;

(ii) The claim that the prayer is dual is without any legal basis as what has been sought is only alternative prayer;

(iii) The AE/JR, (to mean the passing official or Joint Registrar (writs)), has no right or powers to question the correctness of the prayer without any basis;

(iv) The Registry cannot raise objections, without citing any provision of law, on the whims and fancies of individual AE (to mean the passing official). It is very unfortunate that it is blindly signed up to JR without quoting any provision of law.

(v) Identical prayers in W.P.Nos. 1185, 17359 of 2018 and W.P.No.21170 of 2019 were passed and even the respondents/Hon'ble Court have not raised any such objections.

(vi) The objections being the result of misuse of powers by the officials, the same may be rejected and the writ petition to be passed."

4. WP Sr.Nos.95296 & 98152 of 2019 were placed before the writ Court for maintainability. While considering the post objections and rules viz. Rules to Regulate Proceedings under Article 226 of the Constitution of India and taking note of the decision of the Hon'ble Supreme Court P.Surendran Vs. State by Inspector of Police, reported in 2019 SCC Online SC 507 and in particular paragraph Nos.3 to 9 of the said judgment, a learned Single Judge at paragraph No.16 to 42 in WP Sr.Nos.95296 & 98152 of 2019 dated 22.08.2019 ordered as hereunder.

16. Therefore, maintainability issue is now being decided by this Court by a judicial order i.e., vide this order and hence P.Surendran's case does not help advance the case of the petitioners in these two matters.

17. On the contrary, in the considered view of this Court, the procedure adopted by the Registry in the instant case, is in tune with P.Surendran's principle laid down by Hon'ble Supreme Court as the Registry has only placed the matters before this Court for judicial orders regarding maintainability and that is also on the basis of an endorsement made by learned counsel for petitioners as mentioned supra. For the purpose of clarity and specificity, the said endorsement of learned counsel for petitioners is reproduced infra and the same reads as under:

'If Registry is not satisfied post before the Honourable Court for Maintainability.

(Signed on 09.08.2019)

C.Rajapandiyan,
Counsel for Petitioner.'

18. Therefore, this puts an end to the first aspect of submissions of learned counsel qua these matters.

19. This takes us to the second aspect of the submissions regarding maintainability which shall now be decided by this judicial order.

20. As already alluded supra, there is no disputation that there are two prayers in each of these petitions.

21. There is also no disputation or disagreement that the two prayers are independent of one another as it is the specific and emphatic submission of learned counsel that they are alternate prayers. It follows as a sequitur that two distinct prayers have been made as it is not disputed that the two prayers are alternate prayers. As already mentioned supra, one is a prayer seeking issue of Writ of Certiorarified Mandamus and the other is a prayer seeking issue of Writ of Mandamus.

22. Adverting to Rule 8 of said Rules, it is submitted by learned counsel that provisions of Rules 9 to 11 of Order IV of 1965 Appellate Side Rules of this Court shall be made applicable to petitions under Article 226 of the Constitution so far as may be applicable. Saying so, learned counsel drew the attention of this Court to Rule 9 of Order IV of Appellate Side Rules which reads as under:

'(1) Every proceeding which is not instituted in conformity with the provisions of the Code, or of these rules or of any special enactment or of the rules applicable to it, shall be returned to the party or the

practitioner concerned for amendment and representation. Unless the Registrar prescribes a shorter period, the proceeding shall be represented after compliance with all the defects pointed out, within ten days after the notification of the defect, on the Notice Board of the Court.

(2) Every proceeding represented either without rectifying all the defects pointed out or after the expiry of the time allowed under the preceding sub-rule should be accompanied by a WPSR Nos.95296 and 98152 of 2019 petition for extension of time supported by an affidavit, where necessary.

(3) The period prescribed for representation shall be computed afresh for each return pointing out fresh defects.

(4) Proceedings represented after a period of three months after the expiry of time allowed will be posted before Court marked 'not represented in time - for orders.】'

23. Adverting to sub-Rule(1), it was submitted that instant writ petitions are not in contravention of said Rules.

24. Learned counsel also submitted that under similar circumstances, a judicial order directing a writ petition to be numbered was made on 26.10.2010 in WPSR No.105565 of 2010. However, learned counsel was not able to produce a copy of the order. Therefore, this Court summoned the case-file in WPSR No.105565 of 2010 and permitted the learned counsel for petitioners to peruse the case-file and the said order.

25. A careful perusal of the said order dated 26.10.2010 made by a Hon'ble Single Judge of this Court reveals that the matters are not identical. In other words, it is not identical set of prayers.

26. However, the distinct question was whether a Writ of Declaration and Writ of Certiorarified Mandamus being sought together in one writ petition.

27. A careful perusal of the aforementioned order reveals that the Hon'ble Single Judge has clearly held that the Court is not convinced on the submission made by learned counsel for the petitioners. To be noted learned counsel before this Court now was the counsel for petitioners in that matter also. However, in view of the other similar matter having been taken on file, the Hon'ble Single Judge directed the writ petition to be numbered

making it clear that the numbering of the writ petition itself is subject to maintainability. This is articulated in paragraph-6 of the said order which reads as under:

'6. This Court, after hearing the learned counsel for the petitioner, called for the records from the Registry to verify whether the relief sought for in that writ petition is similar to the one sought for in the present writ petition. It is seen in that writ petition that a writ of declaration as well as writ of certiorarified mandamus is prayed for. This Court raised a strong issue as to how three writs, namely, Writ of Declaration, Writ of Certiorari and Writ of Mandamus are to be clubbed together in one single writ petition. Learned counsel for the petitioner would insistently and consistently emphasize on the words 'any of them' before this Court as provided in the Constitution. Though this Court is not convinced on the submission made by the learned counsel for the petitioner, in view of the reason that the earlier writ petition has been admitted by this Court in W.P.No.15156 of 2010, Registry is directed to number the writ petition and post it for admission on 29.10.2010. It is made clear that this petition is numbered, subject to the maintainability of the writ petition.

(underlining made by this Court to supply emphasis and highlight)

28. One more aspect with regard to 26.10.2010 order is that reliance had been placed on 'Rule 2 of the said Rules to regulate proceedings under Article 226 of the Constitution of India, published on 02.01.2002 in the Gazette' (hereinafter 'new Rules' for clarity).

29. There is no disputation that this new Rules have been kept in abeyance and therefore objections predicated on Rule 2 of new Rules does not arise in these cases on hand.

30. Thereafter, learned counsel drew the attention of this Court to Clause 37 of Letters Patent which deals with regulations of proceedings and pressed into service an order made by another Hon'ble Single Judge of this Court in the Madurai Bench in P.K.Sri Ram vs. The Sourashtra Higher Secondary School reported in 2012 (4) CTC 489. Learned

counsel submitted that vide P.K.Sri Ram principle, underlying principles in 'The Code of Civil Procedure 1908' ('CPC' for brevity) can be applied in the absence of direct codification of a particular point.

31. Saying so, learned counsel drew the attention of this Court to 'Order II of Rule 2' of CPC. Order II of Rule 2 deals with a situation where several reliefs can be claimed by the plaintiff qua the same cause of action and when the plaintiff chooses to claim only some of those reliefs without claiming all the reliefs. In such a scenario, the plaintiff has to obtain prior leave of the Court for not claiming some of the reliefs and preserving plaintiff's rights qua such reliefs, though it arises out of the same cause of action. In the considered view of this Court, it does not aid the petitioners in any manner and therefore, this Court does not delve into the question as to whether principles of CPC can be made applicable to proceedings under Article 226 of the Constitution.

32. In the cases on hand, this Court is clear in its mind that the prayer and the alternate prayer, i.e., two prayers do not arise out of the same cause of action. It is more so as there is no disputation that cause of action for the second alternate prayer if at all will arise only after the first prayer is decided one way or the other. Therefore, the argument predicated on Order II Rule 2 CPC is clearly misconceived.

33. Another order made by another Hon'ble Single Judge of this Court in M.Ramachandran vs. M.Palani [order pronounced on 28.11.2018 in CRP(PD) No.2207 of 2016] was also pressed into service. That was a case where this Court exercising powers under Article 227 of the Constitution of India, observed that the Subordinate Court should ensure that questions regarding admissibility of unregistered documents are not left in the realm of Registry of the Subordinate Court. This is in tune and tandem with P.Surendran principle laid down by Hon'ble Supreme Court. In other words, questions pertaining to admissibility of unregistered documents or the same being pressed into service in a suit has to be decided by way of a judicial order and should not be left to the Registry is the principle. There is no difficulty with regard to this proposition but it does not aid the petitioners in the instant cases.

34. This brings us back to the two prayers in each of the petitions which the petitioners are now seeking.

35. Petitioners have assailed a Notification dated 01.03.2015 which pertains to exemption from paying service tax in respect of works contract service other than commercial nature rendered to Government, Local Bodies, Statutory Authorities etc., and a consequential direction to first respondent to exempt the petitioners from paying the service tax. What is of importance/significance is, if these prayers are sustained that would be the end of the matters as petitioners or the entity which is giving the work contracts need not pay service tax. However, if it is negatived, service tax has to be paid. Thereafter only, the dispute (if at all) as to who has to absorb the service tax component / liability, i.e., as to whether it is the contractor, namely, petitioners or the entity which engaged service contractor will arise. It comes to light that this aspect is based on the argument that the rates were quoted by the Contractor without including service tax. In the considered view of this Court, this is a completely separate lis by itself.

36. Merely because that dispute is likely to arise if the challenge to the Notification is not sustained, it cannot be gain said that these two prayers can be made alternatively in the same writ petition in one go.

37. This takes us back to said Rules.

38. From a perusal of said Rules, more particularly, Rules 1 and 2 it emerges clearly that the reference to nature of 'relief sought' for is singular. There is no reference to 'reliefs' in plural.

39. This Court is also examined the larger canvass qua this aspect of the matter. If petitioners are permitted to make multiple prayers in one writ petition, it can lead to complexities and may even lead to chaotic situations. Each prayer will depend on different set of arguments and some arguments will be unique qua a prayer or some prayers and multiple counter-affidavits may have to be filed. Moreover, a prayer cannot be made in anticipation of a particular outcome.

40. To be noted, this Court entertains a Writ of Certiorarified Mandamus i.e., Writs Certiorari and Mandamus rolled into one though Constitution recognises them as two separate writs. This is done in cases where the Mandamus limb of the prayer is a consequential prayer. This Court has evolved such a procedure over the years and one of the cardinal principles is avoiding multiplicity of proceedings. In

the considered view of this Court, attempt to advance avoidance of multiplicity of proceedings argument in instant cases will tantamount to fitting a square peg in a round hole as in instant cases the two prayers are clearly distinct alternate prayers.

41. Therefore, in the light of facts and circumstances of cases on hand, this Court holds that the petitions containing two alternate prayers are not maintainable.

42. In the course of arguments, as a concluding submission, learned counsel for petitioners submitted that if this Court does not agree with the petitioners' submission regarding maintainability, petitioners may be permitted to bring up the Certiorarified Mandamus prayer assailing 01.03.2015 Notification alone deleting the Mandamus prayer and preserving petitioners' rights to seek Mandamus later. There is no difficulty in acceding to this request. Prayer for Certiorarified Mandamus alone can be numbered deleting the alternate Mandamus prayer directing respondents 3 to 5 to pay the service tax in the event of dismissal of Certiorarified Mandamus. If a suitable endorsement to this effect is made by learned counsel in the case-file, Registry to number the Certiorarified Mandamus prayer alone as one writ petition subject of course to there being no other objections or in other words, subject to other requirements being in order."

5. Being aggrieved, instant writ appeal is filed against the order made in WP Sr.No.95296 of 2019.

6. Written submissions filed by the appellant, are as follows:-

1. Brief facts of the case: it is submitted that the complete facts were stated in the preamble of the Grounds of Appeal as well as in the affidavit filed in support of the writ petition and I crave leave of this Hon'ble Court to refer the same for complete facts of the case.

2. Relevant Rules applicable to decide the issues raised in this writ appeal:

(i) Madras High Court Letters patent as amended-
Clauses 14 and clause 37 are relied upon by the appellant herein

(ii) Art.226 of the Constitution of India;

(iii) Rules to regulate Proceedings U/A 226 of the Constitution of India framed under Art.225 of the

Constitution of India, hereinafter referred to as "Writ Rules"- Rule 2, 3, 8 and Form-1 appended to the writ rules.

(iv) Provisions under Order IV Rules 9 to 11 of A.S rules of this Hon'ble Court which are made applicable by virtue of the mandate of Rule 8 of writ rules; (as only rules 9 to 11 alone are made applicable, all other rules of A.S Rules are not applicable)

(v) Civil Procedure Code, (Order II Rule 2 of CPC) which is made applicable to writ proceedings by this Hon'ble Court by virtue of Clause 37 of Madras High Court Letters Patent. Herein Order II rule 2 is relied upon.

3. Legal issues involved in this writ appeal:- The appellant in this writ appeal rises the following legal issues:

(1) On the issue of Jurisdiction and violation of the Rules

(a) Whether the Registry has Jurisdiction to return any proceedings filed by the counsel/parties on the reason that prayer in the writ petition is not maintainable?

(b) Whether even without returning the papers, the registry could doubt the maintainability of the prayer in writ petition and post before the Hon'ble Court for orders as to the maintainability of the writ petition even before numbering the writ petition?

(c) If the answers to the above questions is that the registry has no such powers, Whether any order of this Hon'ble Court passed based on the reference of the registry without jurisdiction is vitiated and is void ab initio and non-est and is liable to be set aside.

(2) On the issue of sustainability of the Impugned order:-

Even if the impugned order is not vitiated on the above point of jurisdictional and statutory rules, Whether on merits the prayer in the writ petition is not maintainable?

4. The legal submissions of the Appellants on the aforesaid issues:- The appellant makes the following legal submissions on each and ever, issue as hereunder:

(1) Issue No.(1)(a):- As to the Jurisdiction of registry to return the papers filed by the counsels/parties:-

(i) The registry has no jurisdiction to return the

papers filed by the counsels or parties in the absence of, or without quoting violation of any provision of CPC or writ rules as the rule 9(1) under Order IV of A.S Rules of this Hon'ble Court, wherein it is categorically stipulated that the registry shall return every proceedings which is not initiated in conformity with CPC or Writ rules. Therefore, the Registry has no jurisdiction to return the papers/proceedings filed before it. Therefore, the returning of the registry of the subject proceedings on 05.08.2019 is without jurisdiction and hence all further proceedings passed including the impugned order passed pursuant to the same is illegal, void ab initio and non est and hence is liable to be set aside;

(ii) Further, it is well settled law that any officer or authority should act only within the frame work of the rules or the law governing the subject and not beyond the same. It is submitted that the moment the he deviates and acts on his own not in accordance with rules, he loses jurisdiction on the subject and hence all the acts and proceedings issued thereafter became issued without jurisdiction and hence the returning the papers on the reasons of non-maintainability of the writ petition without quoting any provision of law and in the absence of violation of the rules is without jurisdiction and hence the impugned order having been passed pursuant to such illegal proceedings is liable to be set aside.

(2) Issue (1)(b):- as to Whether, even without returning the papers, the registry could doubt the maintainability of the prayer in writ petition and post before the Hon'ble Court for orders as to the maintainability of the writ petition even before numbering the writ petition?

(i) It is submitted that any decision as to the maintainability of writ petition is judicial function which cannot be taken by the officials of the Registry. This judicial power is conferred only on the learned judges and none other than the learned judges can decide the same.

(ii) A person who does not have the knowledge or competence to decide the maintainability of the writ petition cannot be allowed to doubt the same and refer the same to the learned judges for maintainability.

(iii) It is submitted that rule 3 of the writ rules, enable this Hon'ble Court to reject the petition even before issue of notice only after it is posted for orders after numbering. If the registry

entertains a doubt and post the matter for maintainability on their own and if the Hon'ble Court declares that the writ petition is maintainable, then such decision would be violative of the principles of natural justice in respect of the respondents as such decision would be taken without issuing notice to the respondents. It is pertinent to note that the respondents may raise the issue of maintainability on the same points again in their counter affidavit and this would make the earlier decision of the maintainability on the instigation of the registry would become purposeless. Therefore, deciding maintainability of the writ petition before numbering of the writ petition is impermissible and that is why the rule 3 enables this Hon'ble Court to pass orders after the writ petition is numbered and posted before the Hon'ble Court. Apart from the same, there is no provision under any rule authorizing the registry to seek orders of the Hon'ble Court to pass orders on maintainability before the writ petition is numbered. Therefore, the practice followed by the registry is illegal and without sanction of law and hence the impugned order passed pursuant to such illegal reference is void ab initio and hence the impugned order is liable to be set aside.

(iv) It is submitted that that is why this Hon'ble Court, Hon'ble VDPJ, in the year 2010 itself, when such issue of dual prayer is raised by the registry, his Lordship was pleased to direct the Registry to number the writ petition subject to maintainability and the writ petition was numbered as W.P.No.24634 of 2010 and granted with interim orders and are pending now.

(v) Further, allowing the registry to doubt the correctness of the prayer without any guidelines and forcing the counsels to argue before them to sustain the prayer and enabling them to reject the same and post for orders of this Hon'ble Court is nothing but conferring the powers of the court to hear the arguments of the counsel, reject the same and they have to appeal to the Hon'ble Court for orders, is nothing but putting the registry at higher pedal than an advocate that too in the matters of the maintainability of the writ petition, which would be disastrous and the situation would be worst if the Hon'ble Court rejected the objections of the registry and directed them to number the writ petition as it would preempt the respondents to raise the

maintainability issue, which is against the principles of natural justice.

(vi) It is pertinent to note that herein, W.P.Nos.1185 and 17359 of 2018 and W.P.No.21170 of 2019 having the same prayer, verbatim identical, was already passed by the registry and the same SAR and JR (writs) cleared them and interim orders were granted by the Hon'ble Division Bench of this Hon'ble Court in the said writ petitions, copies of the same are annexed in the Typed set of papers in the writ appeal and now the same registry raises doubt as to the maintainability of the prayer in this writ petition and for returning the same also duly endorsed the same SAR and JR (writs), who approved the earlier writ petitions with identical prayers), also blindly signed the return of this writ petition at the instigation of different AE. Therefore, leaving the powers to the registry to doubt the maintainability of the writ petition without any guidelines framed would seriously undermine the image of this Hon'ble Court. Herein, also, the appellant worries as to how the same High Court having passed three writ petitions earlier and granted interim orders could refuse to number the subsequent writ petition thereby the image of this Hon'ble Court would get undermined.

(vii) That is why, it is respectfully submitted, that no rules or law permits such examination of the maintainability by the registry. If the registry started questioning the correctness of the prayer without understanding of the law, and this Hon'ble Court passed any order and if aggrieved, files writ appeal like herein, and thereafter, after the writ petition is numbered, the respondents may raise same issue of maintainability which is not conducive of better administration and would lead to chaos.

(viii) That is why rule 3 of the writ rules stipulates the matter be posted for orders before the Hon'ble Court only after numbering the writ petition and enables this Hon'ble Court only to reject the writ petition before issuing notice or orders notice to the respondents. Therefore, this Hon'ble Court has no jurisdiction to entertain the issue of maintainability of the writ petition before the same is numbered on the reference from the registry and hence the same is without sanction of law and hence the impugned order having been passed on the reference of registry without sanction of law is illegal and liable to be set aside.

Judgment relied upon:- In support of the above submission The judgment of the Hon'ble Supreme Court date: 29.03.2019 rendered in Special Leave Petition (Crl) No.1832 of 2019, reported in 2019 SCC OnLine SC 507, paras-9 to 11.

Therefore, it is submitted that the registry does not have any such powers to examine or doubt the legal sustainability of the writ petition on any grounds before numbering nor it is permissible under the Constitution of India to confer such power on such low level officials.

(3) Issue No.(1)(c):- As to, If the registry has no such powers, Whether any order of this Hon'ble Court passed based on the reference of the registry without jurisdiction is vitiated and is void ab initio and non-est and is liable to be set aside

(i) It is submitted that if the very objections of the registry and referring to the decision of the Hon'ble Court is without sanction of law, the impugned order passed by the learned judge pursuant to the said reference without jurisdiction makes the entire proceedings of the learned judge void ab initio and non-est and hence the impugned order is liable to be set aside.

(ii) As stated supra, this Hon'ble Court on such reference by the registry may or may not accept the objections as to the maintainability of the writ petition. On the other hand, if this Hon'ble Court rejected the objection of the registry, again after the issue of notice, the same issue of maintainability would be raised by the respondents, which needs to be addressed again by this Hon'ble Court, which is not at all conducive for efficient and fair administration of justice, as one party would be prejudiced in the first order passed behind his back, which violates the very basic principles of nature justice.

Therefore, the impugned order passed on the reference of the registry without sanction of law is void ab initio and hence liable to be set aside.

(4) Issue no. (2):- As to the issue of sustainability of the Impugned order purely on merits:-

(i) It is submitted that the impugned order declares that the writ petition containing two prayers, (the second one being alternative) is not maintainable observing that the cause of action is not the same. It is submitted that the phrase, "cause of action" means, as held by the Hon'ble Supreme Court reported in (2004) 8 SCC 100,

"14. It is settled law that cause of action consists of a bundle of facts, which give cause to enforce the legal inquiry for redress in a court of law. other words, it is a bundle of facts, which taken with the law applicable to them, gives the allegedly affected party a right to claim relief against the opponent. It must include some act done by the latter since in the absence of such an act no cause of action would possibly accrue or would arise.

15. The expression "cause of action" has acquired a judicially settled restricted sense cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action. In the wider sense, it means the necessary conditions for the maintenance of the proceeding including not only the alleged infraction, but also the infraction coupled with the right itself. Compendiously, the expression means every fact, which it would be necessary for the complainant to prove, if traversed, in order to support his right or grievance to the judgment of the court. Every fact, which is necessary to be proved, as distinguished from every piece of evidence, which is necessary to prove such fact, comprises in of action".

16. The expression "cause of action" has sometimes been employed to convey the restricted idea of facts or circumstances which constitute either the infringement or the basis of a right and no more. In a wider and more comprehensive sense, it has been used to denote the whole bundle of material facts.

17. The expression "cause of action" is generally understood to mean a situation or state of, facts that entitles a party to maintain an action in a court or a tribunal; a group of operative facts giving rise to one or more bases for sitting; a factual situation that entitles one person to obtain a remedy in court from another person. In Black's Law Dictionary a "cause of action" is stated to be the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact, which, if traversed, the plaintiff must prove in order to obtain judgment In Words and Phrases (4th Edn.), the meaning attributed to the phrase "cause of action" in common legal parlance is existence of those facts, which give a party a right to judicial interference on his behalf.

18. In Halsbury's Laws of England (4 th Edn.) it has been stated as follows:

"Cause of action has been defined as meaning simply a factual situation, the existence of which

entitles one person to obtain from the court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse. 'Cause of has also been taken to mean that a particular act on the part of the defendant which gives the plaintiff his cause of complaint, or the subject-matter of grievance founding the action, not merely the technical cause of action."

From the above, it is clear that cause of action are the set of facts which enable a person to file writ petition, i.e., the said facts shall disclose the injury caused on, or the violation of the rights of, the petitioner; shall disclose the cause for the said injury, shall also disclose the reliefs available to the petitioner under the same set of facts.

(ii) Herein, the facts pleaded in the r it petition discloses that the petitioner is prevented from including the service tax in the rates quoted for the works contracts as the Tender conditions mandate to include only the sale tax in the tender conditions. This is one grievance of the petitioner. At the same time, the petitioner feels that the impugned notification was issued illegally and without any public interest thereby ultra vires of the Finance Act and if the same is not issued he is not required to pay service tax and get the same reimbursed from the State of Tamilnadu. Therefore, none of the facts nor any of the respondents could be omitted even to maintain two separate writ petitions for the said two prayers. Therefore, t when both the reliefs arise out of the same set of facts, it cannot be said for the same set of facts, two writ petitions are to be filed.

(iii) Further, the finding of the learned judge in the impugned order para 32 that the cause of actions for the two reliefs are not the same is purely as an abstract statement without any discussion as to which are the facts that are relevant to the 2nd relief which need not be pleaded for first relief has not been stated by the learned judge. Further, no opportunity was given to the appellant by posing the same as question to the counsel to get the same answered and hence the said finding of is violative of principles of natural justice.

(iv) It is submitted that the impugned order warrants the appellant to file two writ petitions for the same set of facts, against the same respondents

which if permitted would result in total waste of time for this Hon'ble Court and parties, unnecessary avoidable expenditure etc., which is not at all conducive to the public policy of speedy justice at minimum cost.

(v) It is pertinent to note that the finding of the learned judge that after the disposal of the first prayer alone the cause of action of the 2nd relief arises is against the public interest. It is submitted that it may take several years for the disposal of the 1st writ petition and if at one fine morning this Hon'ble Court rejects the first prayer, then immediately the petitioner is liable to pay the service tax with interest and penalty, for which, according to the petitioner, the State alone is ultimately liable to pay the service tax if such tax on the dismissal of the 1st writ petition is paid by the appellant, it would wipe out his entire capital and even the petitioner could be arrested under the Service Tax. Thereafter, he has to file the 2nd writ petition to get the same reimbursed and by the time the 2nd writ petition is disposed he would have been totally ruined. All these facts would have been placed if due hearing been had in regular hearing after numbering and in this process no such hearing is done and this Hon'ble Court took a particular view on such issues which the respondents are duty bound to raise, in their absence thereby the principle of natural justice would be violated.

(vi) Apart from the same, Form-1 Appended to the writ rules specifically uses the phrase "set out the reliefs sought" which is in plural and hence this also supports the case of the appellant that more than one prayer can be sought for in a single writ petition.

(vii) Further, the rule 2 of the rules subsequently framed by this Hon'ble Court to regulate Art.226 proceedings bars seeking more than one prayer but the same has been kept in abeyance which itself shows that this Hon'ble Court having thought of restricting the no. of prayers in a single writ petition, but immediately kept the same in abeyance which also supports the case of the appellant that the existing rules permit more than one prayer in single writ petition.

(viii) Further, a reading of Art.226 of the Constitution of India would show and especially the phrase "or any of them" obtaining therein enables a person to seek any number of reliefs under Art.226,

i.e., in a writ petition. Therefore, from the above, it is clear that more than one relief can be sought under the same writ petition."

7. Though Mr.N.Subramaniyan, learned counsel for the appellant contended that Registry has no power to raise the issue of maintainability of the petition, and that every petition / appeal filed should be automatically numbered, this Court is not inclined to accept the said contention.

8. Appeal Examiner or Scrutiny Officer of the Registry, High Court, Madras, can examine as to whether such petition / appeal / revision is maintainable with reference to the statutory provisions, on the basis of which such petition / appeal / revision, is filed. If the Appeal Examiner or the Scrutiny Officer still has any doubt after the learned counsel makes endorsement, he cannot reject the appeal / petition filed, but has to place the entire case papers before the Hon'ble Court for a decision on maintainability.

9. In P.Surendran Vs. State by Inspector of Police, reported in 2019 SCC Online SC 507, at paragraph No.9 to 13, the Hon'ble Supreme Court held thus:

"9. The nature of judicial function is well settled under our legal system. Judicial function is the duty to act judicially, which invests with that character. The distinguishing factor which separates administrative and judicial function is the duty and authority to act judicially. Judicial function may thus be defined as the process of considering the proposal, opposition and then arriving at a decision upon the same on consideration of facts and circumstances according to the rules of reason and justice. A Constitution Bench of five judges in Jaswant Sugar Mills Ltd., Meerut v. Lakshmichand, AIR 1963 SC 677, formulated the following criteria to ascertain whether a decision or an act is judicial function or not, in the following manner-

(1) it is in substance a determination upon investigation of a question by the application of objective standards to facts found in the light of pre-existing legal rule;

(2) it declares rights or imposes upon parties obligations affecting their civil rights; and

(3) that the investigation is subject to certain procedural attributes contemplating an opportunity of presenting its case to a party, ascertainment of facts by means of evidence if a dispute be on questions of fact, and if the dispute be on question of law on the presentation of legal argument, and a decision resulting in the disposal of the matter on findings based upon those questions of law and fact.

(emphasis added)

10. The act of numbering a petition is purely administrative. The objections taken by the Madras High Court Registry on the aspect of maintainability requires judicial application of mind by utilizing appropriate judicial standard. Moreover, the wordings of Section 18A of the SC/ST Act itself indicates at application of judicial mind. In this context, we accept the statement of the Attorney General, that the determination in this case is a judicial function and the High Court Registry could not have rejected the numbering.

11. Therefore, we hold that the High Court Registry could not have exercised such judicial power to answer the maintainability of the petition, when the same was in the realm of the Court. As the power of judicial function cannot be delegated to the Registry, we cannot sustain the order, rejecting the numbering/registration of the Petition, by the Madras High Court Registry. Accordingly, the Madras High Court Registry is directed to number the petition and place it before an appropriate bench.

12. Having said so, we make it clear that we have not expressed any views on the nature of the amendment, the standard of judicial review and the extent of justiciability under Section 18-A of the SC/ST Act, which is left open for the appropriate Bench to consider.

13. Before we part with this case, we note that this Court has not expressed any views on the merits of the case and the High Court is requested to consider the matter uninfluenced by the observations made herein."

10. In the reported case, the Registry itself decided the maintainability and thus, the petition was not numbered. Whereas, in the case on hand, Registry has raised a doubt as to the maintainability of the petition and placed the entire papers before the learned Single Judge.

11. As stated supra, learned Single Judge has adverted to the multiplication of prayers and ultimately at paragraph No.42, has observed as hereunder.

"In the course of arguments, as a concluding submission, learned counsel for petitioners submitted that if this Court does not agree with the petitioners' submission regarding maintainability, petitioners may be permitted to bring up the Certiorarified Mandamus prayer assailing 01.03.2015 Notification alone deleting the Mandamus prayer and preserving petitioners' right to seek Mandamus later. There is no difficulty in acceding to this request."

12. Learned Single Judge has also held that prayer for Certiorarified Mandamus alone can be numbered, deleting the alternate prayer for a Mandamus directing respondents 3 to 5 to pay the service tax in the event of dismissal of Certiorarified Mandamus, if a suitable endorsement to that effect is made by the learned counsel in the case-file, and the Registry was directed to number the Certiorarified Mandamus prayer alone as one writ petition subject of course to there being no other objections or in other words, subject to other requirements being in order.

13. It is well known that prerogative writ for mandamus, certiorari, declaration, prohibition and habeas corpus are issued by Courts in exercise of the powers under Article 226 of the Constitution of India.

14. Writ of certiorari means,

"Certiorari is an extraordinary common law remedy of ancient origin. It is not a writ of right but one of discretion. The object of the writ is to curb excess of jurisdiction, to keep the inferior Courts and tribunals within their bounds. Its purpose is to bring for review before a superior Court the proceedings and judgments of inferior Courts and tribunals clothed with authority to act judicially, where no appeal or other adequate remedy is available and is appropriate in all such cases where substantial rights of an applicant have been so far invaded as to prejudicially affect him. The Court does not substitute its own decision nor does it direct the

body whose decision is quashed as to the decision it is to come to on reconsidering the matter. But of court, it will reach its decision in the light of the court's ruling so that if a decision is quashed for a procedural error, the correct procedure as indicated by the Court must be followed where the matter is to be considered afresh."

15. Writ of mandamus means,

"A writ of Mandamus may be defined as a command issuing from the High Court or Supreme Court, directed against the State or the Authority mentioned in Article 32 as well as under Article 226 of the Constitution requiring the performance of a particular duty therein specified, which duty results from the official duty or by operation of law. In other words prerogative writ of Mandamus is imposed for securing judicial enforcement of public duties, performance of which has been wrongfully refused. The writ of Mandamus is of a most extensive remedial nature. Mandamus is a public law remedy and will not, therefore, be available in respect of duties of private nature."

16. Combination of the prayer, certiorari to annul, set aside, rescind an order or proceeding impugned in the writ petition with a prayer for the mandamus, in the nature of order or direction, command cannot be said to be erroneous, for the reason that if an order / proceeding impugned is set aside, annulled or modified, an aggrieved party is also entitled to seek for a consequential relief for issuance of a mandamus or an order of direction in the nature of writ. Thus, a combination of writ of certiorari and mandamus, in this Court as certiorarified mandamus. Multiple prayers or directions in the nature of mandamus can also be sought for, depending upon the facts and circumstances of the case. At this juncture, we would only state that if a litigant seeks for multiple prayers in a writ petition for a certiorarified mandamus, or any other alternative prayer, it is for the Court to decide on the merits and circumstances of the case, as to whether multiple prayers sought for, can be granted or not.

17. We are of the view that litigant need not be asked to file separate writ petitions on the same cause of action for different prayers. Order II Rule 2 of Civil Procedure Code, reads thus:-

"2. Suit to include the whole claim

(1) Every suit shall include the whole of the

claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Relinquishment of part of claim- Where a plaintiff omits to sue in respect of, or internationally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) Omission to sue for one of several reliefs- A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

Explanation- For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action."

18. Order II Rule 2 of the Civil Procedure Code, can be made applicable, if the cause of action is one, giving rise to filing of the writ petition, and in our considered view, multiple or alternative prayers can always be sought for. To illustrate, in a case relating to the prayer for enforcement of a contract under the Specific Relief Act, an alternate prayer of refund of money paid, is sought for. Courts also have the power to mould the relief prayed for, and issue directions.

19. Alternate prayer sought for in WP.Sr.No.95296 of 2019 should be allowed, subject of course to the decision of the Court to adjudge on merits of the case and decide as to whether such relief should be granted or not. In the light of the above discussion, we are of the view that it is open to the litigant to seek for multiple prayers in the petition, on a same cause of action.

20. As stated supra, Registry has placed the entire cause papers before the Writ Court, which has decided the maintainability. Such course should be allowed to continue. Otherwise, it would be mere ministerial act of just numbering any petition / appeal, like verification of vakalat, cause title, no of days in filing and court fee, etc. Duty of a Scrutiny Officer / Appeal Examiner is to find out whether the petition/appeal/revision filed satisfy the provisions of the statute / rules based on which appeals are filed. Say for instance, whether an appeal is filed under Section 96 or 100 of

Civil Procedure Code, as the case made be, in the matter of first appeal and second appeal; Revision under Section 301 or 401 of Cr.P.C., as the case may be and so on and so forth.

21. On the civil/criminal/writ side, the moment a petition/appeal/revision is filed, a SR (Stamp Register) No is given for accounting court fee paid. On the original side it is Diary No. Thereafter, the papers are scrutinised. The particulars, which the appeal examiner, has to verify, among others, are as follows:-

- (i) Grounds
- (ii) Judgment and Decree
- (iii) Stamp Papers
- (iv) Synopsis
- (v) Dates and Events
- (vi) TNP Form
- (vii) Typed Set of Papers
- (viii) Vakalat
- (ix) Delay Column

22. It is the duty of the Scrutiny Officer or the Appeal Examiner to ascertain the above details and if everything is in order and number the petition / appeal / revision, as the case may be and considering the facts and circumstances of the instant case, we are of the view that no serious error is committed by the Registry. Registry has not rejected, the numbering / registration of the petition, but, has only placed the entire cause papers before the learned Judge.

23. In the case on hand, Registry, High Court, Madras, has not exercised any judicial power or answered the maintainability of the petition, but only placed the same before the Hon'ble Judge.

24. In the light of the above discussion, writ appeal is allowed and the order made in WP Sr.No.95296 of 2019 dated 22.08.2019, impugned before us is modified. Accordingly, Registry is directed to assign appropriate number, to WP SR.No.95296 of 2019, with multiple prayers, as sought for.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Secretary,
Government of India,
Ministry of Finance,
New Delhi - 110 001.

2. The Senior Intelligence Officer,
O/o.Director General of Goods
and Services Tax Intelligence,
Hosur Regional Unit,
Hosur, Krishnagiri District.

3. The Finance Secretary,
Government of Tamil Nadu,
Fort St. George, Chennai -9.

4. The Superintending Engineer (PWD)
Buildings (C&M), Circle, Salem - 7.

5. The Executive Engineer (PWD),
Buildings (C&M) Division,
Dharmapuri.

Copy to : The Sub Assistant Registrar,
Writ A.E.Section,
High Court, Chennai -104.

AKM/29.11.19/24P-7C /

W.A.No.3161 of 2019

सत्यमेव जयते

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