

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7483 of 2017

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Amit Pandey S/o Shri Munishwar Pandey, Resident of Migh-295,
Kankarbagh Colony, P.O.-Lohiyanagar, P.S. Kankarbagh Distict-Patna also at
Wadhwa Chambers, Patna High Court, Patna.

... .. Petitioner/s

Versus

1. The Union of India, through its Secretary, Ministry of Law and Justice, 4th
Floor, A-wing, Shastri Bhawan, New Delhi-01.
2. Additional Secretary, Good and Service Tax Council, Tower -II, 5th Floor,
Jeewan Bharti, Building ,
3. Secretary, Revenue Department, Govt. of India, North Block, New Delhi-
110001

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Amit Pandey, In Person Mr. Ashwini Kumar, Advocate Mr. Raj Kumar, Advocate Mr. M. Alam, Advocate Mr. Modassir Raza, Advocate
For the Respondent/s	:	Dr. K.N.Singh, Addl. Soc. Gen. Mr. Alok Kumar, CGC Mrs. Kanak Verma, Advocate Mr. Anshuman Singh, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE HARISH KUMAR

CAV JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 01-04-2024

The above writ petition is filed by a lawyer alleging
that Sections 2, 9, 12 and 18 of the Constitution (101st
Amendment) Act, 2016 violates the basic structure of the
Constitution of India and hence, is invalid, void and
unconstitutional.

2. The grounds raised are based on the constitution of
a Goods and Services Tax Council (for brevity ‘GST Council’),



on whose recommendations the Parliament is alleged to be acting, which, according to the writ petitioner, is an abdication of the legislative functions.

3. A detailed counter affidavit has been filed by the respondent Nos. 1 to 3, pointing out the massive exercise, which was undertaken for shifting to the goods and service tax regime and the levy of indirect taxes till then conferred on the State having been taken over by the Union Parliament for purposes of bringing out a unified law for levy of taxes on goods and services. It is hence, the Council was constituted with the Union Finance Minister as its Chairperson and the Union Minister of State, Incharge of Revenue or Finance and the Ministers Incharge of Finance or Taxation or any other Ministers nominated by each State Government, as members. There is no abdication of the legislative functions merely because the recommendations are called for from the Council, which looks into the pan India grievances as also those unique to each of the States; all of whom are represented in the Council. The Council also looks at the apportionment of tax collected between the Union and the States, for which again law has to be made by the Union Parliament and not the GST Council.

4. Before going into the contentions raised, we were



more concerned with the *locus standi* of the petitioner, who is a lawyer practicing in this Court. But for asserting public interest and having done a lot of research, the petitioner's counsel was not able to give us any valid ground to establish locus, to entertain the Public Interest Litigation.

5. The Hon'ble Supreme Court in *Ayaubkhan Noorkhan Pathan v. State of Maharashtra & Ors., (2013) 4 SCC 465* has clearly held that a stranger cannot be permitted to meddle in any legal proceeding unless he satisfies the authority or court that he falls within the category of an aggrieved person. The petitioner herein has not suffered any legal injury by the 101st Amendment, especially since he is not a person involved in commercial activities. The petitioner also does not have a case that he is registered under the Goods and Services Tax enactments. He does not even have a ground of any prejudice having been caused to him by the mechanism of reverse charge under the GST regime.

6. A writ petition under Article 226 of the Constitution, as held by the Hon'ble Supreme Court, is maintainable either for the purpose of enforcing a statutory or legal right or with respect to breach of statutory duty on the part of the authorities. The petitioner has no enforceable right



judicially recognized, insofar as the 101st Amendment to the Constitution is concerned and he does not claim any prejudice having been caused to him. The public interest asserted cannot also be entertained since the dealers registered under the earlier value added tax regime, now shifted to the goods and sales tax regime, by virtue of the 101st Amendment cannot be said to be a marginalized section, who are incapable of agitating their rights before the courts of law.

7. We find absolutely no reason to entertain the writ petition. We would have imposed cost, but we restrain from doing so only since, we are of the opinion that the writ petition was filed by reason of misguided over enthusiasm. However, we would caution the writ petitioner from further actions in the same vein.

8. The writ petition stands dismissed.

(K. Vinod Chandran, CJ)

I agree.
Harish Kumar, J:

(Harish Kumar, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	22.03.2024
Uploading Date	01.04.2024
Transmission Date	

