

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

W.A.No.97 of 2024

Between:

Bharat Heavy Electricals Ltd.,
A Public Sector Undertakings,
Having its unit at Indira Gandhi Industrial Complex,
Ranipet, Tamilnadu, rep.by its Senior General Manager,
Mr.M. Salaimanalan, S/o.Meivazhi Sivamuni Anandar,
Aged about 59 years, R/o.2/33, Elangovadigal Street,
Pulavar Nagar, Rangapuram, Vellore -632 009.

... Appellant

And

\$ 1. The State of Andhra Pradesh, rep. by its Principal Secretary,
Revenue (Stamps & Registration) Department,
Secretariat, Velagapudi, Amaravati, Guntur District.

2. The Collector and District Registrar,
Anantapuramu.

... Respondents

Date of Judgment pronounced on : 22-11-2024

**HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO
&
HON'BLE SRI JUSTICE HARINATH N.**

1. Whether Reporters of Local newspapers : Yes/No
May be allowed to see the judgments?
2. Whether the copies of judgment may be marked : Yes/No
to Law Reporters/Journals:
3. Whether the Lordship wishes to see the fair copy: Yes/No
Of the Judgment?

***IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI**

*** HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO**

***HON'BLE SRI JUSTICE HARINATH N.**

+ W.A.No.97 of 2024

% Dated: 22-11-2024

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... Respondents

! Counsel for Appellant : Sri P. Roy Reddy

^Counsel for Respondents : Sri K. Rathangapani Reddy
G.P for Stamps and Registration.

<GIST:

>HEAD NOTE:

? Cases referred

¹ (1998) 8 SCC 1 (paras 7, 14, 15 and 21)

² 1997 (4) ALT 118

³ (2005) 1 SCC 496

⁴ 2012 (3) ALD 317

⁵ (1995) 5 SCC 302

⁶ (2007) 1 SCC 331 (para 14)

⁷ (1987) 4 SCC 431 (paras 12, 13 and 15)

⁸ (2007) 8 SCC 514 (para 8)

⁹ (2017) 3 ALD 476

¹⁰ (1998) 8 SCC 1

¹¹ (1997(4) ALD 202 (D.B)

¹² (2007) 8 SCC 514

APHC010603642023



IN THE HIGH COURT OF ANDHRA
PRADESH
AT AMARAVATI
(Special Original Jurisdiction)

[3488]

FRIDAY, THE TWENTY SECOND DAY OF NOVEMBER
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

THE HONOURABLE SRI JUSTICE HARINATH.N

WRIT APPEAL NO: 97/2024

Between:

Bharat Heavy Electricals Ltd.,

...APPELLANT

AND

The State Of Andhra Pradesh and Others

...RESPONDENT(S)

Counsel for the Appellant:

1.P ROY REDDY

Counsel for the Respondent(S):

1.GP FOR REGISTRATION AND STAMPS (AP)

The Court made the following Judgment:

(per Hon'ble Sri Justice R. Raghunandan Rao)

The appellant herein which is a Public Sector Corporation involved in Fabrication, Erection and Operation of various machines had entered into an agreement with M/s.NREDCAP for installation of wind tools for generation of electricity.

2. The appellant had received a notice dated 05.06.2015 under Section 41-A of the Indian Stamp Act, 1899 from the 2nd respondent herein. In this notice, the 2nd respondent, on the basis of information supplied by the Vigilance and Enforcement Department, Ananthapuram had stated that the appellant, was involved in execution of a project, worth Rs.1500 crores, under an agreement executed between the appellant and M/s.NREDCAP. The 2nd respondent, after stating the above facts, estimated that the unregistered agreement should have been stamped with Rs.75 lakhs and as such stamp duty had not been paid, called upon the appellant to either pay the said amount or to put forth its objections in writing.

3. The appellant being aggrieved by show cause, approached this Court by way of W.P.No.20420 of 2015 challenging the said show cause notice, on the ground that the said show cause notice is without jurisdiction null and void and without authority as well as being ultra virus provisions of the Indian Stamp Act, 1899.

4. The writ petition was dismissed by a learned single judge of this Court, by an order dated 02.01.2023 on the ground that the appellant could approach the 2nd respondent and put forth its objections in as much as a writ petition against show cause notice need not be entertained by this Court exercising its discretionary jurisdiction.

5. Aggrieved by the said Judgment, the present appeal has been filed.

6. Sri P. Roy Reddy, learned counsel appearing for the appellant raises the following grounds of appeal:

A) The Hon'ble Supreme Court in the case of Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and Others¹ had held that there could be a challenge to a show cause notice also if it could be demonstrated that the said show cause notice is without jurisdiction. Sri P. Roy Reddy would contend that the learned Single Judge had erred in dismissing the writ petition without considering the question of whether jurisdiction had been made out or not.

B) On the merits of the case, Sri P. Roy Reddy raises five grounds:

i) The Vigilance and Enforcement Department is not part of the Registrar of Stamps and has no jurisdiction or authority either inspect any premises or to direct the authorities under the Stamp Act to levy penalties or collect stamp duty. He contends that the Vigilance and Enforcement Department had been constituted under G.O.Ms.No.268 dated 11.06.1985 and further powers had been given to the Vigilance Department by way of G.O.ms.No.504 dated 25.11.1997. He contends that

¹ (1998) 8 SCC 1 (paras 7, 14, 15 and 21)

these are at best executive instructions, issued by exercising the executive power of the State under Article 162 of the Constitution of India. Sri P. Roy Reddy contends that such executive power is not available in view of the fact that Indian Stamp Act, 1899 already occupies a field and no executive instructions *de hors* the provision of the Indian Stamp Act can be issued.

- ii) Even assuming that the Vigilance and Enforcement Department has authority under the Stamp Act, the same would not extend to undertake the exercise taken up by the Vigilance and Enforcement Department in as much as Section 73 of the Indian Stamp Act, which is the only provision which provides for any review of short falling the payment of stamp duty, does not permit such an exercise. He would also draw the attention of this Court to the amendment sought to be made to Section 73 and the rejection of the said amendment had been quashed by a Division Bench of the erstwhile High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh reported in **Canara bank and Ors. Vs. District Registrar and Collector, registration and Stamps Department and Ors.**, ²and affirmed by the

² 1997 (4) ALT 118

Hon'ble Supreme Court in the Judgment in **District Registrar and Collector, Hyderabad and Others vs. Canara bank and Ors.**³

- iii) Sri P. Roy Reddy, learned counsel would contend that the show cause notice had ostensibly been issued under Section 41-A of the Indian Stamp Act. This provision applies only to register documents which have not been stamped properly and which enforced the Collector to collect the shortfall in stamp duty within five years from the date of registration in the normal course and within ten years if aggravating circumstances such as fraud or misrepresentation are invalid. He would further submit in the admitted facts of the case, that the document in question is unregistered, there is no jurisdiction for issuance of a notice under Section 41-A of the Stamp Act. He relies upon the Judgment of a Division Bench of the erstwhile High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh reported in **Prajay Engineers Syndicate Ltd., Hyderabad vs. District Registrar and Collector, Ranga Reddy District and Others.**⁴

³ (2005) 1 SCC 496

⁴ 2012 (3) ALD 317

- iv) Sri P. Roy Reddy contends that the District Registrar had not exercised his jurisdiction but had only followed upon the instructions of the Vigilance and Enforcement Department and the same is not permissible in law as it is only authoritative who have been conferred the power who can exercise such power. He relies upon the judgment of the Hon'ble Supreme Court in **Anirudhsinhji Karansinhji Jadeja and Another vs. State of Gujarat**⁵.
- v) Sri P. Roy Reddy, the learned counsel would contend that the language in the show cause notice makes it clear that the issue put against the appellant had already been decided and only the formalities of giving a hearing are being done. He submit that in such a situation the entire exercise would have to be decided and relies upon **Shekhar Ghosh vs Union of India and Another**⁶, **K.I. Shephard and Others vs Union of India and Ors.**⁷
- vi) Sri P. Roy Reddy, would contend that the Stamp Act provides for levy of shortfall of stamp duty along with interest and other penalties only on the original document and the same cannot be collected on copies of such documents. He relies upon the judgment of the Hon'ble

⁵ (1995) 5 SCC 302

⁶ (2007) 1 SCC 331 (para 14)

⁷ (1987) 4 SCC 431 (paras 12, 13 and 15)

Supreme Court in **Hariom Agarwal vs. Prakash Chand Malviya**.⁸

7. The learned Government Pleader for Revenue would contend that the provisions of Section 73 which permit the inspection of the premises of any Public Officer would bring within its fold, the Managing Director of M/s.NREDCAP and as such the inspection of the records of M/s.NREDCAP and consequential action of seeking to obtain collection of short falling the stamp duty is in accord with Section 73 of Indian Stamp Act.

8. The learned Government Pleader for Registration and Stamps, contends that the documents in question were taken from the office of M/s.NREDCAP and as such, it is within the ambit of Section 33 of the Indian Stamp Act, 1899. It is further contend that while Section 41-A is in relation to register documents, the same would not preclude the authority under the Indian Stamp Act, 1899, from impounding documents to ensure proper payment of stamp duty on such documents under the other provisions of the Indian Stamps Act, 1899.

9. The learned Government Pleader would also submit that the issues raised in the present Writ Petition include issues of fact and such issues require to be considered by the primary authority. He would submit that in such circumstances, it is appropriate to permit the petitioner to file

⁸ (2007) 8 SCC 514 (para 8)

his objections before the authority and for a finding to be given by the authority.

Consideration of the Court:

10. Before going into the merits of the case, it is necessary to deal with the preliminary objection as to the maintainability of the Writ Petition and this Writ Appeal.

11. The learned Government Pleader contended that the writ petition had been filed against the show cause notice and such a writ was not maintainable as the petitioner could, as well, have filed its objections before the authority. The learned Single Judge following an earlier Judgment of the erstwhile High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in **T. Ranjeeth Singh vs. State of Telangana**⁹ had held that the writ petition was a premature petition, as the petitioner has an opportunity to set out its case, on merits, before the authority.

12. The Hon'ble Supreme Court in **Whirlpool Corporation vs Registrar of Trade Marks, Mumbai**,¹⁰ was dealing with a similar question of whether a writ petition is maintainable against a show cause notice, had held as follows:

⁹ (2017) 3 ALD 476

¹⁰ (1998) 8 SCC 1

19. Another Constitution Bench decision in Calcutta Discount Co.Ltd. vs Income Tax Officer Companies Distt. I AIR 1961 SC 372 laid down :

"Though the writ of prohibition or certiorari will not issue against an executive authority, the High Courts have power to issue in a fit case an order prohibiting an executive authority from acting without jurisdiction. Where such action of executive authority acting without jurisdiction subjects or is likely to subject a person to lengthy proceedings and unnecessary harassment. The High Court will issue appropriate orders or directions to prevent such consequences. Writ of certiorari and prohibition can issue against Income Tax Officer acting without jurisdiction under Section 34, Income Tax Act."

20. Much water has since flown beneath the bridge, but there has been no corrosive effect on these decisions which though old, continue to hold the field with the result that law as to the jurisdiction of the High Court in entertaining a Writ Petition under Article 226 of the Constitution, in spite of the alternative statutory remedies, is not affected, specially in a case where the authority against whom the Writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation.

21. That being so, the High Court was not justified in dismissing the Writ Petition at the initial stage without examining the contention that the show cause notice issued to the appellant was wholly without jurisdiction and that the Registrar, in the circumstances of the case, was not justified in acting as the "TRIBUNAL".

13. In view of the fact that the Writ Petition raises questions of jurisdiction, the writ petition is maintainable and can be proceeded with. Consequently, this Court can go into the merits of the questions raised by the petitioner in the writ petition.

14. The show cause notice issued by the District Registrar of Assurances states that the officials of the Vigilance and Enforcement Department, Ananthapuram while checking the records, of M/s NREDCAP, had, on account of nonpayment of proper stamp duty,

detected loss of revenue on the deeds of unregistered agreements executed by the petitioner, and had sent the relevant file to the office of the District Registrar, for collection and realization of stamp duty, as per the details furnished by the Vigilance and Enforcement Department. The show cause notices does not state anywhere that the District Registrar of Assurances, Ananthapuram had independently applied his mind to this question and was issuing the show cause notice. This issue is not being considered, at this stage, as this appeal is being allowed on other grounds. It may also be noticed that this notice is said to have been issued under Section 41- A of the Indian Stamp Act, 1899. There is no mention of any other provision, of the Indian Stamp Act, in this notice.

15. As pointed out by Sri P. Roy Reddy, learned counsel for the petitioner, Section 41-A which is extracted below, applies only to instruments which have already been registered by a registering officer and where necessary stamp duty has been short paid. The admitted case on all sides is that the documents in question are unregistered documents. The said provision does not apply. The impugned notice, if Section 41-A is to be applied to the notice, is without jurisdiction.

41-A. Recovery of Stamp Duty not levied or short levied:-

- (1) Where after the commencement of the Indian Stamp (Andhra Pradesh Amendment) Act, 1986, any instrument chargeable with duty has not been duly stamped and registered by an Registering Officer by mistake and remarked as such by the Collector or any audit party, the Collector may, within five years from the date of registration serve a notice on the person by whom the duty was payable requiring him to show cause why the proper duty or (the amount required to make up the deficit stamp duty should not be

collected from him along with a penalty of three times of the deficit stamp duty).

Provided that

2)

3)

4)

16. The learned Government Pleader contends that mere mention of a wrong provision would not render a proceeding of an authority invalid or *non est*. He would submit that such a proceeding can be validated by tracing jurisdiction or power to any other provisions of law, even if such provision is not set out in the order. There can be no quarrel with this proposition.

17. The learned Government Pleader contends that Sections 33 and 73 of the Stamp Act are sufficient, to clothe the 2nd respondent with such power.

Section 73. Books, etc, to be open to inspection- (1) Every public officer having in his custody any registers, books, records, papers, documents or proceedings, the inspection whereof may tend to secure any duty, or to prove to lead to the discovery of any fraud or omission in relation to any duty shall at all reasonable times, permit any officer whose duty it is to see that proper duty is paid or any other person authorised in writing by the Collector to inspect for such purpose the registers, books, papers, documents, and proceedings, and to take such notes and extracts as he may deem necessary, without fee or charge and if necessary to seize them and impound the same under the proper acknowledgment.

Provided that

(2)

(3)

18. Sections 73 of the Indian Stamp Act, which had been introduced by way of A.P Act 17 of 1986 empowered a Public Officer to permit the Collector to inspect any of the documents etc, which are in his custody for the purpose of ensuring due payment of stamp duty under the Act.

19. This provision was challenged on various grounds. The erstwhile High Court of Andhra Pradesh, in the case of **Canara Bank, Hyderabad vs. District Registrar and Collector, Stamps Department and Another**¹¹ had struck down the said provision. Aggrieved by the said Judgment, the State had gone in an Appeal before the Hon'ble Supreme Court. The Hon'ble Supreme Court by its Judgment in the case of **Canara Bank, Hyderabad vs. District Registrar and Collector, Stamps Department and Another** had affirmed the Judgment of the erstwhile High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh. Consequently, the provisions of Section 73 of the Indian Stamp Act, relied upon by the learned Government Pleader are not on the statute book. Such a nonexistent provision does not clothe the 2nd respondent with any power to issue the impugned notice.

20. The learned Government Pleader also relies upon Section 33 of the Indian Stamp Act. This provision reads as follows:

33. Examination and impounding of instruments.— (1) Every person having by law or consent of parties authority to receive evidence, and, every person incharge of a public office, except an

¹¹ 1997(4) ALD 202 (D.B)

officer of police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the 26 performance of his functions, shall, if it appears to him that such instruments is not duly stamped, impound the same.

(2) For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force of India when such instrument was executed or first executed

Provided that

(3)

21. The Hon'ble Supreme Court, in **Canara Bank, Hyderabad vs. District Registrar and Collector, Stamps Department and Another**, while considering the validity of Section 73 had also considered the scheme of the Act and various provisions including Section 33. The following passage is instructive:

12. The provisions of Section 29 providing for the persons by whom duties are payable have been left untouched. So is with Section 31 dealing with 'adjudication as to proper stamp' which confers power on the Collector to adjudicate upon the duty with which a document shall be chargeable, though such document may or may not have been executed. The scheme of Section 31 involves an element of voluntariness. The person seeking adjudication must have brought the document to Collector and also applied for such adjudication. The document cannot be compelled to be brought before him by the Collector. Section 33 confers power of impounding a document not duly stamped subject to the document being produced before an authority competent to receive evidence or a person incharge of a public office. It is necessary that the document must have been produced or come before such authority or person incharge in performance of its functions. The document should have been voluntarily produced. At the same time, Section 36 imposes an embargo on the power to impound, vesting in the authority competent to receive evidence, by providing that it cannot question the admission of document in evidence once it has been admitted. None of these provisions have been amended by the State of Andhra Pradesh.

13. In *Surajmull Nagoremull Vs Triton Insurance Co. Ltd.*, AIR 1925 PC 83, their Lordships of the Privy Council made it clear that the provisions of the Stamp Act cannot be held to have been framed

solely for the protection of revenue and for the purpose of being enforced solely at the instance of the revenue officials.

14. Power to impound a document and to recover duty with or without penalty thereon has to be construed strictly and would be sustained only when falling within the four corners and letter of the law. This has been the consistent view of the Courts. Illustratively, three decisions may be referred. In *Mussammatt Jai Devi Vs. Gokal Chand, 1906 (7) PLR 428*, a document not duly stamped was produced in the Court by the plaintiff along with the plaint but the suit came to be dismissed for non-prosecution. It was held by the Full Bench that the document annexed with the plaint cannot be said to have been produced in the Court in evidence and the court had no jurisdiction to call for the same and impound it. In *Munshi Ram Vs. Harnam Singh, AIR 1934 Lahore 637(1)*, the suit was compromised on the date of first hearing and decree was passed based on the compromise. The original entry in a bahi was not put in evidence and, therefore, the Special Bench held it was not liable to be impounded. In *L. Puran Chand, Proprietor, Dalhousie Dairy Farm Vs. Emperor, AIR 1942 Lahore 257*, the power to impound was sought to be exercised after the decision in the suit and when the document alleged to be not duly stamped had already been directed to be returned as not proved though it was not physically returned. The Special Bench held that the document was not available for being impounded.

22. Section 33, as interpreted by the Hon'ble Supreme Court, would come into play only when the document is produced voluntarily by a person before an authority specified in this provision. A document which has been seized from the possession of a person would not fall within the purview of Section 33 of the Indian Stamp Act. Another aspect of the matter, which requires to be seen, is the fact that, the documents, said to have been seized by the Vigilance and Enforcement Department, are not original documents and are copies of the said documents. Paragraph No.4 of the impugned notice dated 05.06.2015, extracted below clearly reflects the fact that the original document is not available with the 2nd respondent.

4. After payment of the deficit duty, you are required to produce the original document along with payment receipt for adding a certificate on it regarding the payment of the deficit duty.

23. The Hon'ble Supreme Court while considering the ambit of Sections 33 and 35 of the Indian Stamp Act, in **Hariom Agarwal vs Prakash Chand Malviya**¹² had held that the provisions of Section 33, 35 and 36 of the Stamp Act would come into play, only for the purpose of levying stamp on original documents and these provisions cannot be brought in for affixing stamp on copies of documents. The relevant passages are extracted below:

9. This Court had an occasion again to consider the scope and ambit of Sections 33(1), 35 and 36 of the Act and Section 63 of the Indian Evidence Act in *Jupudi Kesava Rao v. Pulavarthi Venkata Subbarao and others* and held that : (SCC pp.550-51, paras 13-14)-

“13. The first limb of Section 35 clearly shuts out from evidence any instrument chargeable with duty unless it is duly stamped. The second limb of it which relates to acting upon the instrument will obviously shut out any secondary evidence of such instrument, for allowing such evidence to be let in when the original admittedly chargeable with duty was not stamped or insufficiently stamped, would be tantamount to the document being acted upon by the person having by law or authority to receive evidence. Proviso (a) is only applicable when the original instrument is actually before the Court of law and the deficiency in stamp with penalty is paid by the party seeking to rely upon the document. Clearly secondary evidence either by way of oral evidence of the contents of the unstamped document or the copy of it covered by Section 63 of the Indian Evidence Act would not fulfil the requirements of the proviso which enjoins upon the authority to receive nothing in evidence except the instrument itself. Section 35 is not concerned with any copy of an instrument and a party can only be allowed to rely on a document which is an instrument for the purpose of Section 35. ‘Instrument’ is defined in Section 2(14) as including every document by which any right or liability is, or purports to be created, transferred, limited, extended, extinguished or recorded. There is no scope for inclusion of a copy of a document as an instrument for the purpose of the Stamp Act.

¹² (2007) 8 SCC 514

14. If Section 35 only deals with original instruments and not copies Section 36 cannot be so interpreted as to allow secondary evidence of an instrument to have its benefit. The words 'an instrument' in Section 36 must have the same meaning as that in Section 35. The legislature only relented from the strict provisions of Section 35 in cases where the original instrument was admitted in evidence without objection at the initial stage of a suit or proceeding. In other words, although the objection is based on the insufficiency of the stamp affixed to the document, a party who has a right to object to the reception of it must do so when the document is first tendered. Once the time for raising objection to the admission of the documentary evidence is passed, no objection based on the same ground can be raised at a later stage. But this in no way extends the applicability of Sec.36 to secondary evidence adduced or sought to be adduced in proof of the contents of a document which is unstamped or insufficiently stamped".

10. It is clear from the decisions of this Court and a plain reading of Sections 33, 35 and 2(14) of the Act that an instrument which is not duly stamped can be impounded and when the required fee and penalty has been paid for such instrument it can be taken in evidence under Section 35 of the Stamp Act. Sections 33 or 35 are not concerned with any copy of the instrument and party can only be allowed to rely on the document which is an instrument within the meaning of Section 2(14). There is no scope for the inclusion of the copy of the document for the purposes of the Indian Stamp Act. Law is now no doubt well settled that copy of the instrument cannot be validated by impounding and this cannot be admitted as secondary evidence under the Indian Stamp Act, 1899.

24. The learned counsel for the petitioner had also raised the question of whether Vigilance and Enforcement Department can step into the shoes of the Collector under the Indian Stamp Act. In view of the above findings, this Court is not going into this question and leaves it open for consideration in any future case.

25. For all the aforesaid reasons, the impugned notice, dated 05.06.2015, has been issued without jurisdiction by the 2nd respondent and the same is quashed.

26. Accordingly, the Writ Appeal is allowed. There shall be no order as to costs.

As a sequel, miscellaneous petitions, pending if any, shall stand closed.

JUSTICE R.RAGHUNANDAN RAO

JUSTICE HARINATH.N,J

RJS

HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

&

HON'BLE SRI JUSTICE N. HARINATH

WRIT APPEAL NO: 97/2024

(per Hon'ble Sri Justice R. Raghunandan Rao)

Dt: 22.11.2024

RJS