

The State of Gujarat & Anr.

v.

Paresh Nathalal Chauhan

(Civil Appeal No 4618 of 2024)

12 March 2024

[Pamidighantam Sri Narasimha* and Aravind Kumar, JJ.]

Issue for Consideration

Matter pertains to expunction of the observation by the High Court in an interim order that statutory protection contemplated u/s. 157 of the GST Act, in the nature of a good faith clause, not available to the officers of the State conducting search as their conduct, “may not” justify protection.

Headnotes

Central Goods and Services Tax Act, 2017 – s. 157 – Protection of action taken under this Act – Interim order by the High Court, criticising the prolonged stay of the search party at the residence of the respondents as unauthorized and illegal – Observation by the High Court that statutory protection contemplated u/s. 157, in the nature of a good faith clause, may not be available to the officers of the State conducting search as their conduct, “may not” justify protection – Challenged to:

Held: Statutory functionary is equally entitled to take a defense of good faith – It is for the court to adjudicate and decide – High Court was not conducting a suit, prosecution, or other legal proceeding against a statutory functionary – High Court was conscious of the principles governing good faith clauses and thus, couched its displeasure and distress by stating that such officials “may not” be protected or that it “may be difficult” to accept the contention of good faith – Observations were in the nature of advance rulings, because even before the initiation of a suit, prosecution or legal proceeding, the High Court expressed a tentative opinion – If such observations remain, they would affect the integrity and independence of that adjudication, compromising the prosecution and the defence equally – Observation of the High Court is expunged since the context as well as the conclusions of the High Court were wrong. [Paras 9-12]

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Words and phrases – Good faith – Scope and ambit of:

Held: Good faith clauses in statutes, explained in the vocabulary of the rights and duties regime, can be said to be a provision of immunity to a statutory functionary – Such provisions are in recognition of public interest in protecting a statutory functionary against suits, prosecution or legal proceedings against officials exercising statutory power– This immunity is limited – It is confined to acts done honestly and in furtherance of achieving the statutory purpose and objective – s. 3(22) explains ‘good faith’ as an act done honestly, whether it is done negligently or not – Good faith clause in a statute will be a defense – If successfully pleaded, it not only legitimises the action but also protects the statutory functionary from any legal action – If statutory functionary invokes the defence of good faith, it is for the court or a judicial body to adjudicate and determine whether the action was done in good faith or not – Such scrutiny or examination is done only in a proceeding against the statutory functionary, which would depend upon the facts and circumstances of each case – General Clauses Act, 1897 – s. 3(22) – Central Goods and Services Tax Act, 2017 – s. 157. [Paras 8, 9]

Case Law Cited

Goondla Venkateswarlu v. State of AP [\[2008\] 12 SCR 608](#) : (2008) 9 SCC 613; *Army Headquarters v. CBI* [\[2012\] 5 SCR 599](#) : (2012) 6 SCC 228 – referred to.

List of Acts

Central Goods and Services Tax Act, 2017; General Clauses Act, 1897.

List of Keywords

Expunction; Expunction of the observation by the High Court; Interim order; Statutory protection; Good faith clause; Statutory functionary; Tentative opinion; Rights and duties regime; Immunity to a statutory functionary; Defence of good faith.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No.4618 of 2024

From the Judgment and Order dated 24.12.2019 of the High Court of Gujarat at Ahmedabad in SCA No. 18463 of 2019

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Appearances for Parties

Ms. Deepanwita Priyanka, Adv. for the Appellants.

Rahul Narayan, Ms. Harshita Malik, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

Pamidighantam Sri Narasimha, J.

1. Leave granted.
2. We are called upon to expunge a portion from the interim order of the High Court and dispose of the appeal as it is represented to us that the respondent is not interested in initiating proceedings against the officers in the present matter. We have accepted the request and hereby dispose of the appeal.
3. The portion sought to be expunged is the observation of the High Court that the *good faith clause* in Section 157 of the GST Act¹, may not be available to the officers of the State as their conduct, according to the High Court, “may not” justify protection. We have expunged that portion of the order because the context as well as the conclusions of the High Court are wrong. We will explain this after indicating the relevant facts.
4. This civil appeal arises out of an interim order passed by the High Court of Gujarat² in a writ petition filed by the respondent seeking a direction for protection from arrest under section 69 read with section 132 of the GST Act. The High Court is still examining the writ petition, but by the interim order impugned herein, it criticised the prolonged stay of the search party at the residence of the respondents as unauthorized and illegal. We need not deal with the merits of the issue as the matter is still pending before the High Court, more so when the respondent has submitted that he is not

1 “**157. Protection of action taken under this Act.**—(1) No suit, prosecution or other legal proceedings shall lie against the President, State President, Members, officers or other employees of the Appellate Tribunal or any other person authorised by the said Appellate Tribunal for anything which is in good faith done or intended to be done under this Act or the rules made thereunder.

(2) No suit, prosecution or other legal proceedings shall lie against any officer appointed or authorised under this Act for anything which is done or intended to be done in good faith under this Act or the rules made thereunder.”

2 In Special Civil Application No. 18463 of 2019, order dated 24.12.2019.

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interested in proceeding against the officers and seeks a quietus to the issue.

5. In fact, while issuing notice in the appeal on 16.07.2021, this Court passed the following order. The order is indicative of the limited scrutiny sought to be made by this Court and it is evident from the following:

"Without in any manner condoning the conduct of the officers which has been commented upon, what persuades us to issue notice is the fact that there are observations to the effect that the statutory protection available to the officers would not be a defence in case proceedings were to be initiated against those officers by the original petitioners or their family members and such an observation has been made in the absence of the officers.

Issue notice limited to the aforesaid aspect returnable in six weeks."

6. The relevant portion in the order of the High Court that the statutory protection should not be made available to the officers is in paragraph 28 and it is relevant for us to extract the same.

"28. Lastly the court may sound a word of caution to the authorities exercising powers under the GST Acts. Sub-section (2) of section 157 of the GST Acts says that no suit, prosecution or other legal proceedings shall lie against any officer appointed or authorized under the Act for anything which is done or intended to be done in good faith under the Act or the rules made thereunder. An action like the present one which is not contemplated under any statutory provision and which infringes the fundamental rights' of citizens under article 21 of the Constitution of India may not be protected under this section. An action taken may be said to be in good faith if the officer is otherwise so empowered and he exceeds the scope of his authority. However, in a case like the present one where the authorization was for search and seizure of goods liable to confiscation, documents, books or things and the concerned officer converted it into a search for a person and in investigation, which is not otherwise backed by any statutory provision, it may be difficult to accept that

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such action was in good faith. Protection of such action under section 157 of the GST Acts may unleash a regime of terror insofar as the taxable persons are concerned.”

7. In the above-referred paragraph, the High Court was of the view that the protection contemplated under section 157 of the GST Act, which is in the nature of a good faith clause, “may not” be available to the officers. This is the issue with which we are concerned, and we will dwell upon it.
8. A good faith clause, explained in the vocabulary of the *rights and duties regime*, can be said to be a provision of immunity to a statutory functionary. Such provisions are in recognition of public interest in protecting a statutory functionary against prosecution or legal proceedings. This immunity is limited. It is confined to acts done honestly and in furtherance of achieving the statutory purpose and objective. Section 3(22) of the General Clauses Act, 1897 best explains ‘good faith’ as *an act done honestly, whether it is done negligently or not.*³ Good faith clauses in statutes providing immunity against suits, prosecution or other legal proceedings against officials exercising statutory power are therefore limited by their very nature, *that far, and no further*. The scope and ambit of good faith has been explained in a number of decisions of this Court,⁴ which need not be elaborated herein again.
9. A good faith clause in a statute will therefore be a defense. If successfully pleaded, it not only legitimises the action but also protects the statutory functionary from any legal action. If a statutory functionary invokes the defence of good faith in a suit, prosecution or other legal proceedings initiated against him, it is for the court or a judicial body to consider, adjudicate, and determine whether the claim that the action was done in good faith is made out or not. Such a scrutiny, enquiry, or examination is done only in a proceeding against the statutory functionary. This Court has held that the scrutiny

3 Section 3(22) of the General Clauses Act, 1897 defines ‘good faith’ as follows:

“**3. Definitions.**—In this Act, and in all Central Acts and Regulations made after the commencement of this Act, unless there is anything repugnant in the subject or context,—

(22) a thing shall be deemed to be done in “good faith” where it is in fact done honestly, whether it is done negligently or not;”

4 See *Goondla Venkateswarlu v. State of AP*, [2008] 12 SCR 608 : (2008) 9 SCC 613, paras 22 and 23; *Army Headquarters v. CBI* [2012] 5 SCR 599 : (2012) 6 SCC 228, paras 69-78

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whether the act is done in good faith or not would depend upon the facts and circumstances of each case.⁵

10. It is in the above referred context that we have examined the observations made by the High Court in Paragraph 28 extracted hereinabove. The High Court was not conducting a suit, prosecution, or other legal proceeding against a statutory functionary. We have no doubt that the High Court was conscious of the principles governing good faith clauses and therefore couched its displeasure and distress by stating that such officials “may not” be protected or that it “may be difficult” to accept the contention of good faith. We are of the opinion that these observations are in the nature of advance rulings. This is because even before the initiation of a suit, prosecution or legal proceeding, the High Court expressed a tentative opinion. If such observations remain, they will affect the integrity and independence of that adjudication, compromising the prosecution and the defence equally.
11. We say no more than reiterate that a citizen of this country has a right of accountability, for which he is entitled to initiate and adopt such legal remedies as are available to him, and in such proceedings the statutory functionary is equally entitled to take a defense of good faith. It is for the court to adjudicate and decide.
12. In view of the above, we expunge paragraph 28 and dispose of the appeal.

Headnotes prepared by: Nidhi Jain

Result of the case:
Appeal disposed of.

5 See, for example, *Army Headquarters* (supra), paras 76-78.