

A M/S FARIDABAD CT. SCAN CENTRE
v.
D.G. HEALTH SERVICES AND ORS.

SEPTEMBER 15, 1997

B [M.M. PUNCHHI, CJ., SUJATA V. MANOHAR AND B.N. KIRPAL, JJ.]

Customs Act, 1962 :

C S.3.25(1)—Notification No. 64/88—Customs dated 1.3.1988—“Hospital equipment”—Import of—Exemption from Customs duty—Diagnostic Centre run by a private individual not attached to any hospital—Held, not entitled to benefit of Notification.

D *Mediwell Hospital and Health Care Pvt. Ltd. v. Union of India and Ors.*, [1997] 1 SCC 759’ explained and affirmed.

Constitution of India, 1950 :

E Article 14—Individual diagnostic centre not attached to any hospital—Claiming exemption under Notification No. 64/88 Custom dated 1.3.1988 on the ground that other similar units got the benefit—Held, benefit cannot be extended to appellant on the ground that such benefit has been wrongly extended to others.

F *Mediwell Hospital and Health Care Pvt. Ltd. v. Union of the India and Ors.*, [1997] 1 SCC 759, Granting relief to appellant on the basis of Article 14 of the Constitution, disapproved.

Union of India (Railway Board) and Ors., v. J.V. Subhaiah and Ors., [1996] 2 SCC 258, relied on.

G CIVIL APPELLATE JURISDICTION : Special Leave Petition (C) No. 23964 of 1996.

From the Judgment and Order dated 18.11.96 of the Delhi High Court in C.W.P. No. 2495 of 1994.

H Pradeep Jain and Ms. Manjula Gupta for the Petitioner.

N.K. Bajpai and W.A. Qadri for the Respondents.

A

The following Order of the Court was delivered :

This petition for special leave was originally dismissed by an order dated 16.12.96 passed by a Bench of two Judges—Verma, J. (as he then was) and Kirpal, J. In view, however, of a judgment of another Bench of two Judges (K. Ramaswamy and G.B. Pattanaik, JJ.), in a similar matter *Mediwell Hospital and Health Care Pvt. Ltd. v. Union of India and Ors.*, [1997] 1 SCC 759, the order of 16.12.96 was recalled by the order of 8.8.97. The reasons for recall as set out in the order of 8.8.97 are :-

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“After we had dismissed S.L.P. (C) No. 23964 of 1996 on 16.12.1996, another 2-Judge Bench appears to have granted relief in a similar matter which may give impression that the view taken therein is different. It is, therefore, appropriate that the possible ambiguity or uncertainty on the question of law should be removed by judgment of a 3-Judge Bench. We therefore, recall our order dated 16.12.1996 dismissing the special leave petition and direct that the special leave petition be listed for hearing before a 3-Judge Bench. The papers be placed before the Hon' ble C.J.I. for constituting the Bench.”

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D

Accordingly, we have heard the parties. In the case of *Mediwell Hospital and Health Care Pvt. Ltd. v. Union of India & Ors.*, (supra), this Court on the merits of the case has not taken a view different from the view taken by the Bench in this case while passing the order of dismissal. In para 10 of that judgment it is recorded as follows :

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“Thus a diagnostic centre run by a private individual purely on commercial basis may not be entitled to the exemption under the notification issued by the Central Government. The conclusion of the Central Government as well as that of the High Court on this score, therefore, may not be held to be incorrect.”

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The Court, however, granted relief to the appellant in that case on the ground that several other individual diagnostic centres not attached to any hospital had been granted the exemption under the notification in the question and hence there should not be any discrimination against the appellant under Article 14. The relief was granted entirely on the basis of Article 14.

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We fail to see how Article 14 can be attracted in cases where wrong orders are issued in favour of others. Wrong orders cannot be perpetuated

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- A with the help of Article 14 on the basis that such wrong orders were earlier passed in favour of some other persons and, therefore, there will be discrimination against others if correct orders are passed against them. In fact, in the case of *Union of India [Railway Board] & Ors. v. J.V. Subhaiah and Ors.*, [1996] 2 SCC 258, the same Learned Judge in his judgment has observed
- B in para 21 that the principle of equality enshrined under Article 14 does not apply when the order relied upon is unsustainable in law and is illegal. Such an order cannot form the basis for holding that other employees are discriminated against under Article 14. The benefit of the exemption notification, in the present case, cannot, therefore, be extended to the petitioner on the ground that such benefit has been wrongly extended to others. With respect,
- C the decision in *Mediwell Hospital (supra)* does not lay down the correct law on this point.

In the premises, the special leave petition is dismissed.

R.P.

Petition dismissed.