

HC: Condemns use of violence and torture against suspected tax evaders

Agrawal Foundries Private Limited Rama Tower v. Union of India¹

The question for determination before the division bench of the Hon'ble Telangana High Court in this case was whether an officer of the Director General of Goods and Services Tax ('GST') Intelligence ('DGGI') can resort to physical violence while conducting an interrogation.

- The DGGI officer conducted a raid on the office and residential premises of the petitioner, simultaneously followed by summoning the petitioners and his relatives including those not connected with the business of the petitioner. All the persons summoned are co-petitioners to the present writ.
- All the petitioners, along with the employees of the Company, were retained at the office of the Company for interrogation. The petitioners were allegedly abused physically and verbally during the interrogation. The employees of the Company called the police on the helpline number and a case number was allotted for it, the police did not register a First Information Report ('FIR') against the DGGI officers, nor did they interfere with the interrogation.

- Subsequently, the DGGI officer filed a FIR alleging that the petitioner had assaulted the DGGI officer, misbehaved with the officer during the search and accused them of committing offences of obstructing a public servant from performing his duties, voluntarily causing hurt etc. under the Indian Penal Code, 1860.
- The petitioners alleged that the interrogation violated their fundamental right to life and liberty under Article 21 and 22 of the Constitution.
- The petitioners hold a record of being the highest GST payer in the TMT steel industry in the state of Telangana, a Star Export House under the Foreign Trade Policy 2004-09 and 2009-14 and was issued certificates of appreciation and for acknowledging their compliant tax record under various taxpayer categories.
- The petition records specific instances of abuse, hospital OPD records with respect to injuries sustained by the petitioners, record of the help sought from the police helpline number and case number allotted therein, summons issued at midnight asking the petitioner to be present at half past midnight in the summons itself etc.

¹ 2020 VIL 540 (TEL)



- The petitioners approached the Hon'ble High Court seeking the following reliefs:
 - Declare the interrogation as unconstitutional in terms of Article 14 and 21 of the Constitution;
 - Request to transfer the inquiry to another competent authority or directing the DGGI authority currently investigating the case to follow the due process of law and principle of natural justice;
 - Permit the petitioners to appear before the DGGI authorities pursuant to a summon only in the presence of their lawyer; and
 - Stay any further proceedings, including arrest against the petitioners.
- The Hon'ble High Court granted interim relief stay against arrest and directed the respondent to record the statement of the petitioner between 10:30 AM and 5:00 PM in the presence of their lawyer.

The DGGI office contended the case strongly, by submitting as follows:

- The petitioners was not cooperating with the officer in conducting the interrogation and one of the petitioners fled from the office with some crucial evidence on the pretext of being injured and went to a hospital of his choice. The conduct of the petitioners was discourteous and provocative, and the allegations of torture were made with an aim to get the matter transferred.
- It was necessary to record an on the spot statement of one of the petitioners, who was the director of the Company and directly involved in the alleged GST evasion quantified to be more than ₹ five crores, therefore, the summon were issued at midnight and that section 70 of the Central Goods and Service Tax Act, 2017 ('the Act') doesn't prohibit conducting an inquiry at midnight.
- The inquiry was conducted in the presence of the local police officers and was in accordance with the due process of law.

The Hon'ble High Court held as under in the present case

- The documents on record established that one of the petitioners was rendered incapable of walking

by himself after spending the day with the DGGI officers, as admitted in an affidavit filed by the DGGI officer themselves.

- The contentions of the DGGI office that the petitioners went to a private hospital of their choice, and the evidence produced in that regard ought to be disbelieved, was rejected on the grounds that there is no presumption in law that only doctors in government hospitals speak the truth. In such a scenario, one looks for the closest hospital to get medical assistance.
- The Hon'ble High Court also made a note of the timeline involved in the petitioners seeking help on the police helpline number, filing of a FIR being refused to the petitioners, the petitioner being treated in the hospital followed by the DGGI officer registering a FIR and held that although not conclusive, the evidence on record *prima facie* suggest the possibility of use of violence.
- Furthermore, it was observed that owing to the statutory framework established under the Protection of Human Rights Act, 1993 the DGGI authorities can't claim any liberty to torture or use physical force during a search, investigation or interrogation proceedings under the Act against suspected tax evaders.
- The provisions of the Act do not authorize an officer to use violence against a suspected tax evader while discharging their duties under the Act. Protection against torture by state actors is a recognised fundamental right to life and liberty guaranteed under Article 21 of the Constitution.
- The judgement also notes that cause or reason for urgency to issue summons and record the statement at midnight is not justifiable and is a deprivation of personal liberty of the petitioners.
- Furthermore, the High Court did not accept the plea of the DGGI officers that they did not act contrary to established procedure, that the search proceedings were carried out as per the applicable law and procedure, and no harm or damage was made to any person or property and that no sentiments were hurt.



- With respect to the judgment in the case of *P.V Ramana Reddy*² the principle laid down in the judgment with respect to entertainment of an application for pre-arrest protection under Article 226 of the Constitution and the power being used sparingly, it was held that the facts and circumstances of the present case demanded such protection and is undoubtably maintainable.
- With respect to the request for transfer of the case also it was held that the facts and circumstances of the case demanded that the case be transferred. In the absence of a counter-affidavit from the particular respondent who allegedly indulged in physical violence and the statement by the legal representative for the DGGI officer that the particular respondent will not participate in proceedings initiated against the petitioners, the Court thought it to be appropriate to transfer the case.
- The Court also allowed the presence of a lawyer at the summons proceeding in visible range though not within hearing range.
- The Court observed that the plea of the petitioners that they do not have any intention of avoiding the inquiry initiated against them is supported by their conduct, as the petitioners has cooperated with the authorities and participated in the investigation even after the interim relief was granted by the Court.

Dhruva Comments:

India is a party to International covenant on civil and political rights and the International covenant on economic, social and cultural rights adopted by the general assembly of United Nations on 16 December, 1966. India is a signatory to the aforesaid conventions and the human rights embodied in the said conventions are substantially protected by the Constitution. However, despite the Constitutional mandate and multiple judicial precedents on the subject matter, it is often seen that taxpayers are summoned and harassed so as to coerce them to pay taxes during the inquiry stage and before completion of investigation.

This decision of the Hon'ble High Court assumes importance considering the specific provisions with respect to arrest and prosecution and the wide powers bestowed upon the tax authorities, under the provisions of the GST Law. While condemning the department for the possible use of force, The Hon'ble High Court notes as under:

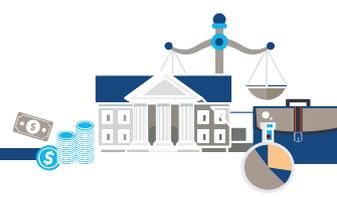
"74. No provision of any law is cited before us by the respondents to say that they are entitled to use physical violence against persons they suspect of being guilty of tax evasion while discharging their duties under the CGST Act, 2017."

Section 70 (Power to summon persons to give evidence and produce documents) can't be exercised in a way that is unreasonable and deprives the person of his right to life and liberty, bearing this in mind, the on the spot summons issued at midnight were held to be bad in law. It is important for taxpayers to be fully aware of their rights under the constitution and protest against any unfair treatment accorded by the authorities while conducting such inquiries. The important point to be kept in mind while being subjected to interrogation involving force or violence is that the person who is being interrogated must collate proof to substantiate their claim of use of force and violence against them. A Writ Court cannot engage in fact finding however, placing on record such evidence has high persuasive value and may go a long way in obtaining relief from the Court. Recently in the case of *Sundeeep Mahendrakumar Sanghavi v. Union*³ the Hon'ble Gujarat High Court observed that in the absence of credible material on record, it could not be concluded that the writ applicant was harassed. The Hon'ble High Court also held that there should not be any unnecessary harassment to a person summoned for the purpose of interrogation under section 108 of the Customs Act, 1962.

Further, where statement recorded is not voluntary, it is important that the same be retracted as soon as possible or immediately after the statement was recorded.

² 2019 VIL 173 TEL

³ 2020 VIL 513 GUJ CU





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