(1968) 10 P&H CK 0034

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 2067 of 1964

Amar Nath and others		APPELLANT
	Vs	
The State of Punjab and others		RESPONDENT

Date of Decision : 04-10-1968

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1968) 10 P&H CK 0034

Hon'ble Judges : P.C. Pandit, J

Bench : Single Bench

Advocate : G.P. Jain, for the Appellant; U.D. Gaur, for the Respondent

Final Decision : Dismissed

Judgement

P.C. Pandit, J.—This Judgment will dispose of three connected writ petitions (Civil Writs Nos. 1737, 1957 and 2067 of 1964) Counsel for the parties are agreed that the decision in Civil Writ No. 2067 of 1964 will govern the other two cases also. I will, therefore, refer to the facts of Civil writ No. 2067 of 1964 only.

2. This petition under Article 226 of the Constitution has been filed by Amar Nath and Smt. Shanti Devi challenging the action of the sales-tax authorities in recovering the sales tax from them by coercive methods without first trying to recover the same from the assets of the firm Messrs Brij Bhushan-Raj Kumar, of which they were partners.

3. According to the petitioners, the facts were that they were partners of Messrs Brij Bhushan-Raj Kumar, a contractual partnership firm (hereinafter called the firm), which used to carry on business at Narwana, district Sangrur. This firm was assessed to sales-tax when it was in existence. Subsequently it was dissolved and a receiver was appointed. The sales-tax related to the assessment years 1952, 53, 1953-54 and 1954 55, and the amount due was Rs. 15,389.59 Paise. Since the tax was not paid by the partnership firm, the sales-tax authorities started recovering the same by coercive methods from the

petitioners, who were its partners.

4. The only objection raised by the counsel was that although there was no doubt that the firm bad to pay that tax and the petitioners were also liable for its payment, yet the sales-tax authorities, according to the petitioners, had under the law to recover that amount from the assets of the firm in the first instance and, in case they were unable to do that, the amount could be realised from them. So the only question to be determined is it essential for the sales tax authorities to first try to recover the amount from the assets of the partnership firm and, in case they cannot do so, the amount can then be realised from its partners, or is it open to them to realise from whomsoever they like in the very first instance ?

5. It was conceded by the counsel for the petitioners that there was no bar either under the Punjab General Sales Tax Act, 1948 (Punjab Act (46 of 1948), hereinafter called the Act, or in the rules framed thereunder, in the way of the authorities realising the amount from the partners of the firm. It is true that the firm was the ''dealer'' liable to pay the tax. but under rule 40 of the Punjab General Sales Tax Rules 1949, the sales-tax authorities were empowered to realise the same from whom sever they liked in the very first instance, because under that rule the liability of the firm and its partners was joint and several. The relevant part of rule 40 says -

Rule 40(1) A dealer and his partner or partners shall be Jointly and severally responsible for payment of the tax, penalty, or any amount due under the Act or these rales.

In view of this provision it is obvious that the petitioners who were the partners were jointly and severally responsible for the payment of the tax which was due from the firm. In the instant case, the sales-tax authorities were taking action u/s 11 B of the Act which lays down that the amount of any tax and penalty imposed under the Act, which remains unpaid after the due date, would be recoverable as arrears of land revenue. Admittedly the tax had not been paid for the last ten or eleven years and, therefore, the authorities were trying to recover the same from the partners as arrears of land-revenue. Could it be said that the action taken by the authorities was without jurisdiction or in excess of the authority vested in them, because it was on the proof of these facts that this Court could interfere under Article 226 of the Constitution ? Counsel for the petitioners was unable to show that the impugned action of the sales tax authorities in any way contravened any statute or rule. Learned counsel, however, referred to a Bench decision of the Madhya Pradesh High Court in Lalji v. The Assistant Commissioner Sales Tax, Raipur (1958) 9 S.T.C. 571, where in paragraph 5 of the judgment it was observed thus-

Since the department could only assess the firm, the arrears of tax are, in the first instance, recoverable from its assets. Until the assets are realised or cannot be found the action of the taxing authorities to try to realise the amounts of tax from the partners personally is premature. The department is accordingly directed to realise the arrears of tax intitially from the assets of the partnership, whether they may be in the hands of the Court, the receiver, or any of the partners or any other person on their behalf.

It was not shown by the learned counsel whether there was any provision either in the Central Provinces and Berar Sales Tax Act, 1947, or in the Central Provinces and Berar Sales Tax Rules, 1947, framed under that Act, with which the learned Judges of the Madhya Pradesh High Court were dealing, which was like Rule 40 of the Punjab General Sales Tax Rales, 1949, as we hare in the instant case. It appears that there was no such corresponding provision either in the Central Provinces and Berar Sales Tax Act or the Rules, otherwise the learned Judges would have referred to the same when dealing with the matter before them. If it were to be held that the recovery could not be made from the partners in the first instance, then something would have to be added in rule 40 which specifically lays down that the liability of the partners is joint and several with the firm and nothing is stated therein that recovery should in the first instance be made from the assets of the firm, In any case, it has not been shown that the action that is being taken by the sales-tax authorities was being taken in violation of the Act or the rules and, therefore, it does not call for interference by this Court under Article 226 of the Constitution.

6. The writ petition is liable to be dismissed on another ground as well, namely that the petitioners should have exhausted all the remedies available to them under the Act before approaching this Court under Article 226 of the Constitution. The impugned action was being taken against the petitioners after holding that the amount of the tax, which had remained unpaid after the due date, was recoverable as arrears of land revenue from them. This order must have been passed against the petitioners u/s 11-B of the Act. Against that order they could go in appeal u/s 20 of the Act, and if they were still dissatisfied with the order of the appellate authority they could file a revision against that appellate order u/s 21 of the Act. It was held by a Division Bench of this Court, to which I was also a party, in Messrs Avtar Singh Ranjit Singh v. The Assessing Authority, Ludhiana (1963) 65 P.L.R. 422 that the East Punjab General Sales Tax Act provided a complete machinery for assessment of tax and for obtaining relief in respect of any illegal or improper order, and the aggrieved party should not, save in exceptional cases, where the imposition was clearly without jurisdiction or patently contrary to law, and further when there was nothing in the conduct of the petitioner which would justify refusal under Article 226 of the Constitution, be permitted to abandon resort to or by pass that machinery and invoke the High Court''s extraordinary jurisdiction.

7. It was conceded by the learned counsel that the petitioners were asking for a writ of mandamus in the instant case. It is undisputed that before such a writ could be grafted by this Court, the petitioners had to show that they had approached the sales-tax authorities with a specific demand that the tax should

in the first instance be realised from the assets of the firm and if they were unable to do so it could by recovered from the petitioners. This demand of justice from the sales-tax authorities themselves was a prerequisite for a writ of mandamus. In that connection learned counsel referred to Annexure ''B'' to the writ petition, which was an application submitted by Jagan Nath partner of the firm to the Excise and Taxation Officer, Sangrur, requesting, among other things, that the tax should be realised from the two assets, belonging to the firm and mentioned in that application. In the first place that application is undated and, therefore, it cannot be said when it was actually submitted. Secondly, according to the return filed by the department, it was not available on the record of the department showing thereby that the same was not sent to it. Thirdly, a perusal of that application would show that it was not In the form of a demand on the department. It talks of other things, as, for example, that the tax was actually payable by the Irrigation Department Since it has not been proved by the petitioners that they had demanded justice from the department and the latter had refused to accede to their request, no writ of mandamus can be issued by this Court and the writ petition deserves dismissal on that ground as well.

8. In view of what I have said above, this as well as the other two petitions, to which reference has been made in the earlier part of this judgment, fail and are dismissed. In the circumstances, however, there will be no order as to costs in either of the three petitions.

