

(1998) 03 KL CK 0006
In the High Court Of Kerala
Case No : W.A. No. 637/91

Avanasiappan

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 18-03-1998

Acts Referred:

Kerala Abkari Act, 1077 — Section 67B, 67B(2), 67E, 67F
Kerala General Sales Tax Act, 1963 — Section 35, 36

Citation : (1998) 03 KL CK 0006

Hon'ble Judges : P.A. Mohammed, J; B.N. Patnaik, J

Bench : Division Bench

Advocate : K.K. Gopinathan Nair, for the Appellant; P.K. Santhamma, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

P.A. Mohammed, J.—This appeal is directed against the judgment of the learned Single Judge in O.P. No. 6161. of 1991. The Appellant before us is the writ Petitioner in the above O.P. wherein Exts. P-1, P-2 and P-4 orders of the Respondents 4, 3 and 2 respectively were challenged. By Ext. P-1. the 4th Respondent ordered confiscation of the vehicle No. T.C.O. 6619 in exercise of power u/s 67B(2) of the Kerala Abkari Act 1 of 1077 (for short "the Act"). As against the said order the Appellant filed an appeal before the 3rd Respondent. The 3rd Respondent by Ext. P-2 order rejected the appeal. However, the 3rd Respondent observed that Ext. P-2 order is liable to be taken up on revision by the Commissioner of Excise within 30 days from the date of order. Being aggrieved by Ext. P-2 order the Appellant filed Ext. P-3 revision petition. However, the 2nd Respondent rejected the revision petition as per Ext. P-4. The learned Single Judge dismissed the writ petition in confirmation of Ext. P-4 order. Being dissatisfied with the judgment of the learned Single Judge, the present writ appeal has been filed.

2. Section 67F of the Act is reproduced hereunder:

67F. Revision.-(1) The Commissioner may, before the expiry of thirty days from the date of an order passed u/s 67B or Section 67E, of his own motion, call for and examine the record of that order and may make such inquiry or cause such inquiry to be made and may pass such orders as he deems fit:

Provided that the Commissioner shall not call for and examine the record of any order passed u/s 67B if an appeal against such order is pending before the appellate authority:

Provided further that no order prejudicial to a person shall be passed under this section without giving him an opportunity of being heard.

(2) An order of the Commissioner under Sub-section (1) shall be final and shall not be called in question in any Court.

The above provision authorise the Commissioner of his own motion, call for and examine the record of the order passed u/s 67B or Section 67E and may make such inquiry or cause such inquiry to be made and may pass such orders as he deems fit. No doubt, the power has been given to the Commissioner under the above provision to initiate action suo motu but the question is whether an aggrieved party can file a revision petition before the Commissioner u/s 67F the Act seeking to invoke the power conferred on the Commissioner. A similar provision is seen in Section 35 of the Kerala General Sales Tax Act, 1963. That section authorises the Deputy Commissioner to exercise the power of revision suo motu and to call for and examine any order passed or proceeding recorded under the Act by any officer or authority subordinate to him. However, a Division Bench of this Court in Deputy Commissioner v. Balachandran 1889 (1) KLT 233 took the following view:

On a fair interpretation of Sections 35 and 36 of the Kerala Act, in the light of the various decisions mentioned above, we are of the view that the power of revision is conferred on the Deputy Commissioner to remedy injustice. The power is couched in very wide terms. The purpose for which the power of such amplitude is given is to safeguard the interest of the Revenue and also that of the Assessee. It is open to the Assessee or to the Revenue to bring it to the notice of the authority (Deputy Commissioner) any error made by a subordinate authority and it is for the Deputy Commissioner to consider whether the case is a fit one, in exercise of the revisional jurisdiction. Since the power of revision can be exercised to set right the error or illegality of a subordinate authority and it could be exercised for or against the Assessee, such power can be exercised, even if the Assessee has not filed an appeal against the order, for the purpose of setting right the improper or the illegal order. It is true that the language of Section 35 literally states that the power has to be exercised suo motu. When circumstances warranting the exercise of the power comes to the notice of the concerned authority, the mere fact that the circumstances for the exercise of that power are shown to exist, by the Assessee in a particular case, cannot be a factor or reason for the non-exercise or refusal to exercise the said power.

The principle laid down by the Division Bench in the above decision can be adopted in the present case. When so adopted if any party is aggrieved by an order passed u/s 67B or Section 67E can apply to the Commissioner for revision of such order u/s 67F of the Act.

3. In *Niketa Koshorekumar v. State of Kerala* 1998 (1) KLT 50 one of us (Mohammed, J.) while interpreting the very same provision took the following view:

In substance the aggrieved party can bring the illegality or irregularity contained in an order passed u/s 67B or Section 67E to the notice of the Commissioner and request him to invoke the power conferred on him u/s 67F of the Act. When such request is made by the aggrieved party the Commissioner can exercise the power suo motu on the basis of the material brought to his notice calling for and examining the records of the case in question. The Commissioner cannot refuse to invoke the power u/s 67F suo motu on the ground that no such right has been conferred on the aggrieved party. In the aforesaid premise the Petitioner is entitled to move the Commissioner requesting him to invoke the provisional power u/s 67F of the Act.

We concur with the above view for deciding the present case where a similar question is involved.

4. In the present case, on behalf of the 2nd Respondent the Secretary issued Ext. P-4 order which provides only this:

You are informed that the Excise Commissioner after examining the case has not found that there is a fit case to be taken upon suo motu revision as per Section 67F of Abkari Act.

The question posed before us is whether the above order is legally sustainable. At the outset, it may be noticed that before passing Ext. P-4 order the 2nd Respondent has not given an opportunity of being heard to the Appellant. This is a requirement in the observance of principles of natural justice. Ext. P-4 order has been passed on Ext. P-3 revision petition filed by the Appellant seeking interference u/s 67F of the Act. We are of the view that Ext. P-4 order is vitiated for two reasons. Firstly, as pointed out earlier, no opportunity had been granted to the Appellant to state his case before finally disposing of Ext. P-3. Secondly, the second Respondent had not applied his mind while holding that it was not a fit case for suo motu revision. As discussed hereinabove, the right available to the Appellant is a valid right which cannot be taken away on mere ipse dixit of the officer or the authority concerned. When the right of the Appellant to move the Commissioner to exercise the suo motu revision u/s 67F is admitted, it is crystalline that such a right cannot be obliterated by a summary order without any application of the mind. The 2nd Respondent, Commissioner of Excise, Board of Revenue is acting a quasi-judicial tribunal while dealing with the revision petition u/s 67F. It is not functioning as an administrative body which may or may not dispense with the reasons for its decisions. But a quasi-judicial tribunal

shall disclose its reasons for decision. When reasons are disclosed, it can be said that there was application of the mind by the person or authority concerned. A person affected cannot make a worthwhile representation or invoke further remedy against the adverse decision without knowing what factors may weigh against his interests. For that ground too the decisions must be supported by reasons.

5. We are sufficiently satisfied that Ext. P-4 order is grossly erroneous and therefore we are inclined to set aside the same. We do so. Consequently, we direct the second Respondent to take of Ext. P-3 revision petition on file and consider it on merits and in accordance with law after affording a reasonable opportunity of being heard to the Appellant. In the result, the judgment of the learned Single Judge is set aside and the Writ Appeal is allowed.