

(1956) 08 CAL CK 0016
In the Calcutta High Court
Case No : Matter No. 163 of 1955

Balihari Colliery Co. Ltd.

APPELLANT

Vs

Commercial Tax Officer and Another

RESPONDENT

Date of Decision : 17-08-1956

Acts Referred:

Bengal Finance (Sales Tax) Act, 1941 — Section 11(2), 15, 3
Bengal Finance (Sales Tax) Rules, 1941 — Rule 71

Citation : AIR 1957 Cal 160 : (1957) 8 STC 194

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : H.N. Sanyal and J.C. Pal, for the Appellant; A.G. and K.C. Mukherji, for the Respondent

Final Decision : Dismissed

Judgement

Sinha, J.—The facts in this case are very short and are as follows:

2. The petitioner is a company incorporated under the Indian Companies Act, 1913. On the 18th November, 1933 it was registered at Bombay with its registered office situate at Bombay. By a Resolution dated 15th December, 1951, confirmed by the High Court of Bombay, the registered office of the petitioner was shifted to Calcutta with effect from 1st of April, 1952. The petitioner owns collieries in Kusunde in the district of Manbhum in Bihar. On or about 6th December, 1954 an application was made by the petitioner-Company to the Commercial Tax Officer, Lyons Range Charge, for registration of the Company, as required u/s 7/8 of the Bengal Finance (Sales Tax) Act, 1941. The application was made in Form 1A which is appropriate for dealers with only one place of business in West Bengal. The business was stated to be situate at 14, Netaji Subhas Road, Calcutta, where the Company carried on business as wholesale distributors. It was further stated that the business in respect of which the application was made, had been registered with the Registrar, Joint Stock Companies, Bombay, on the 18th of November, 1933, that the Company was a

member of the Indian Colliery Owners' Association Jharia (Bihar), that the gross turnover for the period from the commencement of the current year to 30th November, 1954 was Rs. 1,70,571/4/-, that the warehouse was at the colliery at Kusunde, district Manbhum, Bihar, that the Company purchased coal and coke for re-sale, and finally that the Company was going to import from overseas in future. The Company as a dealer was accordingly registered, the registration certificate being issued on the 22nd April, 1955. On the 26th of April, 1955 the petitioner received a notice, being Notice No. LR/ 2582A/1/55-56/4585, dated 23rd April, 1955 u/s 11(2) of the Bengal Finance (Sale Tax) Act, 1941. This was issued by the Commercial Tax Officer, Lyons Range, Calcutta and commences as follows:

""Whereas I am satisfied on information which has come into my possession that you have been liable to pay tax under the Bengal Finance (Sales Tax) Act, 1941, in respect of the period commencing on 6-11-1950 and ending with 21-4-1955, but you have failed to get yourselves registered. And whereas it appears to me to be necessary to make an assessment under Sub-section (2) of Section 11 of the said Act in respect of the above named period and all subsequent periods....,""

3. It is unnecessary to set out the remaining part of the notice, which threatened the petitioner with levy of sales tax for the period mentioned in the notice together with penalty.

4. This Rule was issued on the 13th September, 1955 upon the respondents to show cause why they should not be restrained from giving effect to the said notice dated the 23rd of April, 1955 and for other reliefs. In the petition in support of this Rule, it is stated that all the activities of the petitioner-Company were- and are carried on in Bihar. It is said that the Calcutta office is merely a statutory office. The account books of the business are kept at the Colliery and decisions regarding the business and management thereof are made from there. Finally, it is stated that the petitioner-Company was carrying on in Calcutta an agency business on and from the 1st of September, 1954, distinct and different from the said colliery business. It was for this business that the petitioner had applied for registration and was registered. These facts are all denied. It is pointed out that in the application for registration, it was never stated that the registration was being sought for a business which was distinct from the colliery business, or that a new agency business was being started. On the contrary, the application stated the contrary. The substance of the application has been set out above, and a copy has been annexed to the affidavit of Sudhir Chandra Adhya affirmed on the 20th December, 1955.

5. Two points have been made out in the petition. The first is that the sales took place entirely outside the State and, therefore, are not liable for sales tax in the State of West Bengal. This naturally depends on facts, which as stated above, are all disputed. Mr. Sanyal appearing on behalf of the petitioner has realised this and has not pressed this point. The only point raised is that the notice issued by

the Commercial Tax Officer is invalid because u/s 11(2) of the Act, it is the Commissioner who has to be satisfied, and this satisfaction is subjective and cannot be delegated. It is further stated that such delegation would be ineffective because it must be based upon information which has come into the possession of the Commissioner and not anybody else. Before I proceed further, I will set out the relevant portion of Section 11(2) of the Act:

"If upon information which has come into his possession, the Commissioner is satisfied with any dealer, who has been liable to pay tax, under this Act in respect of any period but has failed to get himself registered, the Commissioner shall proceed in such manner as may be prescribed to assess to the best of his judgment the amount of tax due from the dealer in respect of such period and all subsequent periods and in making such assessment shall give the dealer a reasonable opportunity of being heard; and the Commissioner may if he is satisfied that the default was made without reasonable cause, direct that the dealer shall pay by way of penalty in addition to the amount of tax so assessed a sum not exceeding one and a half times that amount."

6. Analysing the above, we find that prima facie it is the Commissioner who has to be satisfied, upon information "which has come into his possession, that any dealer who was liable to pay tax had failed to get himself registered. We then come to Section 15 of the Act, which provides that subject to such restrictions and conditions as might be prescribed, the Commissioner might, by an order in writing, delegate any of his powers under the Act, except those under Sub-section (2) of Section 22, to any person "appointed u/s 3 to assist him. It is not disputed that the Commercial Tax Officer, Lyons Range Charge, is a person appointed u/s 3 to assist the Commissioner, We then go to Rule 71 of the Bengal Sales Tax Rules, the relevant part whereof is as follows:

""Delegation of Commissioner's Powers".

71. The Commissioner shall not delegate to any officer appointed to assist him, any powers other than those enumerated below in respect of the section mentioned, nor shall he delegate any powers specified in column 3 to any officer below the rank specified in the corresponding entry in column 4:

Serial No.	Section	Description of Power	Designation of officer
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5	11		
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		To make an assessment of tax or penalty * * * * and to exercise all other powers u/s 11 of the Act.	
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		Commercial Tax Officer.	
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7. The Commercial Tax Officer, in this case has issued the impugned notice u/s 11, read with Section 15 and Rule 71. The question is whether the notice is a valid one. Mr. Sanyal argues that so far as Section 11(2) is concerned, there is a double limitation. First of all, it depends upon the Commissioner's satisfaction,

which is a substantive satisfaction. Then again, this satisfaction must be based upon information which has come into the possession of the Commissioner and nobody else. He argues that u/s 15 there can be delegation of any of the powers of the Commissioner, but to be satisfied is not a power. He next argues that even if it is conceded that it was possible to delegate this satisfaction to the Commercial Tax Officer, such satisfaction must nevertheless be based upon information which, has come, not into the possession of the Commercial Tax Officer, but of the Commissioner. He points out that the notice, on the face of it, shows that neither of the two limitations, has been observed and that the Commercial Tax Officer states that he is satisfied and the satisfaction is based on information received by him. Consequently, according to Mr. Sanyal, the notice is bad and beyond the jurisdiction of the Commercial Tax Officer. As I have stated above, Section 11(2) prima facie talks about the satisfaction of the Commissioner upon information which has come into his possession. It cannot be denied also that u/s 15 the Commissioner can only delegate any of his powers" under the Act. Rule 71 also speaks about the delegation of "powers" conferred by Section 11 of the Act. The question, therefore, is as to whether delegation can be made in, a manner which would permit us to read the words "Commercial Tax Officer"" in the place of the word "Commissioner" in Section 11(2) of the Act. The first case to be considered is a Bench decision of this High Court, Shree Shew Sakti. Oil Mills v. Member, Board of Revenue, West Bengal ILR (1949) Cal 347 (A). This was a Reference by the Board of Revenue u/s 21(1) of the said Act, and raised the question relating to the delegation of powers by the Commissioner. It was a case u/s 11(1) of the Act which provides that if no returns were furnished by a registered dealer in respect of any period by the prescribed date, or if the Commissioner was not satisfied that the returns furnished were correct and complete, the Commissioner shall within 18 months after the expiry of such period etc., proceed in such manner as may be prescribed, to assess to the best of his judgment the amount of tax due from the dealer. The question arose whether there could be delegation of such power. Chakrabarti J., as he then was, said as follows:

""Mr. Chowdhury referred to the cardinal feature of the Act that all powers under the Act rest primarily in the Commissioner, and that other officers can acquire power only if it is delegated to them. Referring next to Section 15, Mr. Chowdhury contended that, although that section provided for delegation, it only authorised the Commissioner to delegate his powers, but not also to delegate his duties. According to Mr. Chowdhury, the issue of a notice was a matter of duty and not a matter of the Commissioner's power. The function of issuing a notice could not, therefore be delegated.There are several reasons for which this argument of Mr. Chowdhury cannot be accepted. It is impossible to say that the issue of a notice is a separate duty severable from the exercise of the power to make an assessment. It is, on the other hand, only an obligation to be discharged by the person having the power to make an assessment in the course of exercising that power. I am unable to accept the contention of Mr.

Chowdhury that the duty to issue a notice stands by itself, that is, it is a duty distinct from the powers conferred by the Act, and that, accordingly, it cannot be delegated. In my view, since this Act authorises a delegation of the power to make an assessment, it authorises a delegation of all things required to be done for the purpose at making an assessment and powers incidental there-to."

8. The next case to be considered is *H. C. Gupta v. Mackertich John* ILR (1945) Cal 604: (AIR 1946 Cal 140) (B). The defendant in this case carried on the business of a hotel known as "The Continental Hotel" in a building situate in Chowringhee at Calcutta. On November 29, 1944 the appellant Land Acquisition Collector for Calcutta, purported to requisition a portion of the building of the said hotel stating that in his opinion it was necessary and expedient for securing the defence of British India, and the efficient prosecution of the War, to requisition the buildings etc., and that the same should be requisitioned. Under the Defence of India Act, the Central Government was empowered to make Rules as appeared to it to be necessary and expedient for securing the defence of British India, the public safety, the maintenance of public order or the efficient prosecution of War etc. u/s 2(2) of the Defence of India Act the Central Government was empowered to make Rules with regard to requisition of any immovable property. Subsection (4) provided that the Central Government might by an order direct that any power or duty which by a Rule under Sub-section (1) was conferred or imposed upon the Central Government shall in such circumstances and under such conditions as may be specified, be exercised or discharged by any Provincial Government or by any officer or authority subordinate to such Government, or by any other authority. Rule 75A of the Defence of India Rules provided as follows:

"If in the opinion of the Central Government or the Provincial Government it is necessary or expedient so to do for securing the defence of British-India, public safety, the maintenance of public order or the efficient prosecution of the War, or for maintaining supplies in services essential to the life of the community, that Government may by an order in writing requisition any property, movable or immovable, and may make such further orders as appears to that Government to be necessary or expedient in connection with the requisition."

9. In or about February 27, 1943 a Notification was issued by the Government of India whereby the Central Government was pleased to direct that the powers conferred on it by Rule 75A of the Defence of India Rules were to be exercised also by the Additional Land Acquisition Collector, Calcutta and 24-Parganas, within the town of Calcutta and its suburbs and in the district of 24-Parganas.

10. Pursuant to this power, the Land Acquisition Collector of Calcutta made the requisition mentioned above. It was argued that the delegation was of the power to requisition property, but that the Land Acquisition Collector, Calcutta, had not been entrusted with either the power or the duty of forming an opinion as to whether the requisition of the premises was necessary or expedient. *Derbyshire C. J.* said as follows:

"The respondent contends, however, that that Notification which is made u/s 2(4) of the Defence of India Act, quoted above, only refers to the power to requisition the property and that the appellant had not been entrusted with either the power or the duty of forming an opinion as to whether the requisition of premises is necessary and expedient. In my view, the Notification, which unquestionably gives him the power to requisition the premises gives him power and the duty of considering whether it is necessary and expedient to requisition them. The Notification delegates to him the powers by the Government of India by Rule 75A and those powers, in my opinion, include the power to consider whether the requisitioning is necessary and expedient and also the duty. Those powers were possessed by the Government of India which has conferred them upon him. I am, therefore, in agreement with the learned Judge on this point."

Gentle J. said as follows:

"In my view, a duty of the Central Government which Section 2(4) contemplates being delegated to a substantial or express duty Such duty is not the formation of opinion indicated in Rule 75A. The exercise of the power in that Rule is subject to and dependent upon the formation of the opinion; the power is not absolute but is conditional upon the opinion being previously formed; the formation of the opinion and the making of the order are not separate and distinct and independent attributes but the former is a component or an integral part of the latter; the need for the formation of the opinion before the power can be exercised is a limitation of the power, it qualifies its extent and is a part of the power; and the formation of the opinion and the issue of the order constitute the exercise of the power. The delegation of the power includes authority to form the opinion conditioned upon which the power can be exercised. When the power has been delegated it is the responsibility of the person in whose favour the delegation is made, to form the opinion before he can exercise the power.

The validity of the delegation of the power to the appellant is not questioned; after the delegation he was the person by whom the opinion had to be formed. This is in accordance with the decision in *Kewalram Vs. Collector of Madras*, ."

11. *Kewalram's* case (C) mentioned above, was also concerned with a requisition under the Defence of India Act and the Rules. Leach C. J. said as follows:

"There is here full power of delegation, but Mr. Srinivasa Iyengar suggests that Rule 75A requires the Central Government to form its own opinion on the question of the necessity for requisition and then direct the subordinate authority to issue the order of requisition under the delegated power. This is reading into the Act and the Rules something which is certainly not there. When a power has been delegated u/s 2(4) the person or authority to whom the delegation has been made has all the power of the Central Government unless the order of delegation contains some restriction on the exercise of the power. The order of delegation under which the Collector acted contained no restriction on his power to requisition houses in Madras."

12. The next case to be considered is Jagwant Kaur Kesarsing Dang and Others Vs. The State of Bombay, . In this case, lands were acquired u/s 5 of the Rombay Land Requisition Act, 1948. The requisition was made by the Collector of Poona. Chagla C. J. said as follows:

"Three points have been urged by Mr. Kotwal for challenging the validity of this order. The first is that the order is made by the Collector to whom the power has been delegated by the State of Rombay u/s 15 of the Land Acquisition Act, and Mr. Kotwal's contention is that all that can be delegated u/s 15 is a power conferred or a duty imposed on the State Government by the Act. Mr. Kotwal's contention is that to the extent that the Collector has requisitioned the land, he has exercised the power properly delegated to him, but as far as the formation of the opinion is concerned, viz., that the requisition is necessary or expedient, that is neither a duty nor a power and the formation of the opinion cannot be delegated u/s 15 to the Collector. Therefore, Mr. Kotwal's contention comes to this that although a land may be requisitioned by a delegated authority, the opinion in the first instance u/s 5 must be formed by the State Government. In our opinion, that is not a tenable contention, because before the power can be exercised u/s 5, the condition precedent to the exercise of that power must be satisfied, and the condition precedent is that in the opinion of the State Government it is necessary or expedient to requisition the property. Therefore, a duty is cast upon the State to satisfy the condition precedent before it exercises the power conferred upon it, and not only the power can be delegated but also the duty which is attached to the exercise of the power, and therefore when the Collector forms an opinion u/s 5, he is discharging a duty and is carrying out the condition precedent laid down in Section 5. Therefore, there is no substance in this point and the Collector has rightly formed the opinion necessary u/s 5 before he could exercise the power to requisition the property."

13. Apart from the authorities quoted above, the learned Advocate General draws my attention to Rule 49 which lays down that when it appeared to an assessing authority to be necessary to make an assessment u/s 11, he shall serve a notice in Form VI upon him. "Assessing authority" has been defined by Rule I(ii)(b) as follows:

"Assessing authority means in respect of any particular dealer the person appointed u/s 3 to whom the Commissioner has delegated his powers u/s 11 in respect of such dealer.""

14. Form VI, as has been prescribed under the Rules, shows that the notice might be issued by the Commercial Tax Officer of the charge, and yet in the body of the notice it clearly appears that the person who was to be satisfied was the person who had issued the notice. It has been held in T.B. Ibrahim Vs. Regional Transport Authority, Tanjore, , that Rules made under powers given in a Statute were parts of the Statute and the learned Advocate-General argues that the Rules clearly show and describe as to who was to be satisfied.

15. In my opinion, there has been a proper delegation by the Commissioner to the Commercial Tax Officer of all the powers in Section 11 (2). The power which has been delegated is the power to assess in the manner set out therein. But the power attracts the duty to be satisfied which is a condition precedent to the exercise of the power. It is not possible to separate this duty from the power. There is no warrant for holding that if one was entrusted with the responsibility of exercising the power, that he would have to exercise that power although somebody else was satisfied, or that he could not exercise that power unless someone else was satisfied. In fact, such an exercise of power would be bad. In other words, when a person exercises a power and the condition precedent is satisfaction, it implies his own satisfaction and not that of another. If the Commercial Tax Officer was to make an assessment based upon the satisfaction of the Commissioner, he would be exercising no power at all, but would be carrying out a mechanical duty. That is not the purpose of a delegation of power, Mr. Sanyal next argued that the distinction between this case and the others quoted above, lies in the fact that in Section 11 (2), unlike Section 11 (1) of the Act there is a double limitation. He argues that assuming that the delegatee could act upon his own satisfaction, yet the express provisions of the section makes it a condition precedent that the information upon which the satisfaction should be based should be information which had come into the possession of the Commissioner, and this cannot be abrogated. After giving this argument my anxious consideration, I am unable to accept it. Just as the power to assess attracts the duty to be satisfied, it equally attracts the other condition, namely, about the information. If a man has to exercise a power based upon his own satisfaction, then it is unreasonable to say that he should base his satisfaction upon information not received by him but somebody else. After all, if the information initially came to the Commissioner and was then conveyed to the Commercial Tax Officer, it would still be information which had come into his possession. Mr. Sanyal argues that as long as the information originally came into the possession of the Commissioner, the Statute would be satisfied. This, however, is a construction which I am unable to accept. The proper way of interpreting the Act and Rules would be to hold that the Commissioner has a right to delegate, and once he has delegated the power, the name of the delegatee should be substituted for that of the Commissioner. If that is done, then there is no difficulty. There is also substance in the argument of the learned Advocate-General that the Rules and the forms prescribed thereunder indicate as to whose satisfaction would be required where power has been delegated. It is unnecessary for me to consider as to whether in Ibrahim's case (E), the Supreme Court intended to hold that Rules prescribed under power conferred by an Act could be inconsistent with the provisions or the Act. In the present case I find no inconsistency at all. Mr. Sanyal argued that this is a question of jurisdiction; The Commercial Tax Officer by virtue of a delegation may have a certain power but until the wordings of the section were directly complied with, he derives no jurisdiction. It is unnecessary to quarrel with the proposition that power and jurisdiction are not equivalent terms. But on the facts and circum

stances of this case I hold that the Commercial Tax Officer derived both power and jurisdiction by virtue of the delegation and that it was he who had to be satisfied and such satisfaction was to be grounded upon information which had come into his possession.

16. The learned Advocate-General also points out that if the matter was subject to the satisfaction of the Commissioner or based on information communicated by him, then an embarrassing position will be created inasmuch as an appeal lies to the Commissioner from the order of the Commercial Tax Officer, and obviously the appeal will be frustrated. This, in my opinion, also is in support of the view that I have taken in the matter.

17. In the premises, the notice that had been served is perfectly in order and I find nothing wrong with it. The Commercial Tax Officer, Lyons Range Charge, says that he has been satisfied from information which had come into his possession that the petitioner was liable to pay sales-tax for a certain period and yet the petitioner had not been registered. In view of my interpretation of the Act and the Rule, this Notice is quite in order. I however say nothing as to the merits of the case.

18. This being the only point which has been pressed, the application fails and must be dismissed. The Rule is accordingly discharged. All interim orders are vacated. There will be no order as to costs.