(1967) 05 PAT CK 0004

In the Patna High Court

Case No : C.R. No. 260 of 1966

Commissioner of the Samastipur Municipality APPELLANT

Vs

Randhir Kumar Singh RESPONDENT

Date of Decision : 02-05-1967

Acts Referred:
Provincial Small Cause Courts Act, 1887 — Section 25

Citation : (1968) 16 BLJR 168

Hon'ble Judges : N.L. Untwalia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

N.L. Untwalia, J.—This is an application in revision u/s 25 of the Provincial Small Cause Courts Act by the Commissioners of Samastipur Municipality from the decision of the learned Small Cause Court Judge, dismissing the suit of the Municipality against the defendant-opposite party for realisation of professional tax for four years, i.e., from 1959-60 to 1962-63. In my opinion, the decision of the learned Small Cause Court Judge dismissing the suit is correct and it has got to be upheld, although for some different reasons, as I am going to give in my judgment.

2. u/s 82(1)(ff) of the Bihar and Orissa Municipal Act, 1922 (hearinafter called the Act), a tax on the trader, professions, callings and employments especified in the Fourth Schedule at such rates not exceeding rates specified therein as may from time to time be determined by the Commissioners at a meeting, can be imposed. The procedure prescribed for imposition of such tax has been laid down in Part IV-A of the Act, which contains Sections 150-A to 150-E. Some of the Section s are copies of similar procedure prescribed in the Patna Municipal Corporation Act u/s 177 of that Act. But all of them have not been copied or incorporated in the Act. Section 150-A of the Act says:

When it has been determined that a tax shall be imposed on professions ...every person who exercises within the municipality ...any of the professions ...specified in the Fourth Schedule, and who is liable to pay such tax, shall take out a half-yearly licence and pay the tax assessed on him in pursuance of Clause (ff) of Sub-section (1) of Section 82.

Unless the case comes within the second proviso of Section 150-A, it is clear that the tax has to be assessed every half year and the assessee is required to take out a licence half-yearly. In order to enable the Municipality to assess tax, enabling provisions are there in Section 150-B, under Sub-section (2) of which for the purpose of assessing a tax on profession it shall be lawful for the Commissioners, by notice, to require any person carrying on profession within the Municipality, to furnish any statement or return or to produce any document mentioned therein within such period as may be specified in the notice. Whether such return is filed or not, tax has got to be assessed on the assessee as indicated in Explanation (1) of Section 150(A). On the assessment of such tax, no specific provision has been made in the Act for giving a notice to the assessee informing him about the amount of tax assessed on him, as is provided u/s 177(4) of the Patna Municipal Corporation Act. But since tax has to be assessed and the assesees has got to be given an opportunity to file an application for review u/s 150-E of the Act, it goes without saying that a notice of assessment has got to be given to the assessee informing him about the amount of tax assessed. Thereafter, the assessee is required to file an application for review u/s 150-E which, under Sub-section (2) of that Section, has got to be disposed of in accordance with the procedure laid down in Sections 115, 117, 118 and 119 of the Act, as if such applications were applications presented u/s 116. The question of notice of demand for the tax comes later, after opportunity for filing a review has been given, and if any is filed, after that application has been disposed of in accordance with law. This demand notice can be given u/s 123 of the Act. If the tax is not validly assessed either in the sense of giving a valid notice of assessment or in the sense of disposal of the review application in accordance with law, the assessment, of professional tax is ultra vires and illegal, and no demand for payment of such tax can be made nor can the tax be realised by filing a suit.

3. In the back-ground of the principles of law which I have enunciated with reference to the relevant provisions of the Act, I find, on the statements of fact given to me, that notice u/s 150-B(2)-Exhibit 4-was given asking the defendant to file return in respect of the year 1958-59 and first half of the year 1959-60. Notices of assessment, which are Exhibits A and A (1), were given intimating to the defendant that a sum of Rs. 30 had been imposed upon him as professional tax for the years 195.9-1960 and 1960-61. Firstly, giving of notice for two financial years was illegal and unjustified. Assessment has got to be made and its notice has got to be given for each half-year, unless the case is covered by the second proviso to Section 150-A. Even then, the defendant filed his objection, which is Exhibit 5, u/s 150-E. But this objection was not disposed of in accordance with law. u/s 117 it has got to be disposed of, and it is necessary that

a notice has got to be given about the hearing to the person who has filed his review application objecting to the assessment made on him. No such notice was given to the defendant. A general notice given to the public by beat of drum two or three days before the date fixed for the hearing of the objections filed by all persons was no notice in the eye of law and no reasonable and legal opportunity was given to the defendant-assessee which can be said to be an adequate opportunity to him for the hearing of his review application. That being so, in my opinion this is an additional reason that the notice of assessment given in respect of the veto''s 1959-60 and 1960-61 cannot induce him to hold that the assessment of professional tax on the defendant was valid even in respect of those two years. 11 is undisputed that no other assessment notice was given in respect of any year or any half-year in question. I, therefore, hold that on account of failure of the Municipality to follow the procedure warranted by law for assessment of professional tax, the alleged assessment and demand of tax is ultra vires and cannot be decreed.

4. In the result, I dismiss the application in revision, but I shall make no order as to costs.