

(1956) 07 PAT CK 0014

In the Patna High Court

Case No : Misc. Judl. Case No. 414 and 415 of 1953

Hardutt Mull Jute Mills

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 06-07-1956

Acts Referred:

Bihar Sales Tax Act, 1947 — Section 13(4)
Constitution of India, 1950 — Article 226

Citation : AIR 1957 Patna 21

Hon'ble Judges : Ramaswami, C.J.; Raj Kishore Prasad, J

Bench : Division Bench

Advocate : Baldeva Sahay, Birendra Prasad and Dwarika Prasad Ojha, for the Appellant; Government Advocate and Lakshman Saran Sinha, for the Respondent

Judgement

Ramaswami, C.J.—In Misc. Judicial Case No. 414 of 1953, the assessee has a jute mill at Katihar in the district of Purnea where he carries on business in jute and jute products and cotton cloth. The assessee has also got a jute purchasing centre at Forbesganj in the same district where he carries on business of purchasing and selling Jute as well as textile. For the period 1-4-1948 to 31-3-1949, the assessee did not produce any return showing the gross turnover.

A notice u/s 13, Sub-section (4), Bihar Sales Tax Act was served upon the assessee, calling upon him to produce his accounts for the period in question. More than a dozen adjournments were granted but the assessee failed to produce the account books. Thereupon the Sales Tax Officer proceeded to make an assessment u/s 13(4) of the statute to the best of his judgment. The order of the Sales Tax Officer is dated 22-1-1950.

The Sales Tax Officer determined the taxable turnover at Rs. 1,02,31,200/- and the sales tax was computed at Rs. 1,91,835/-. The assessee took the matter in appeal to the Commissioner of Sales Tax, but the appeal was dismissed. The assessee then moved the Board of Revenue and filed an application in revision, but this application was also dismissed by the Board of Revenue. At the instance

of the assessee the Board of Revenue has stated the following question of law for the opinion of the High Court u/s 25(1), Bihar Sales Tax Act:

"Is it legal or permissible for a Sales Tax Officer to base his estimate on the report of an Inspector of the Department, without giving a copy of the same, when asked for, to the assessee, or without giving any Information about the material particulars of the report and without hearing the assessee on the same."

2. In Misc. Judicial Case No. 415 of 1953 the material facts are of similar character. The assessment is for the period 1-7-1947 to 31-3-1948, and the date of the assessment order of the Sales Tax Officer is 23-11-1949. The Sales Tax Officer determined the taxable turnover at Rs. 74,97,000 and the sales tax payable at Rs. 1,17,140/10/-.

In this case also the assessee took the matter in appeal to the Commissioner of Bhagalpur Division, but the appeal was dismissed. The assessee preferred an application to the Board of Revenue in revision, but that application also was dismissed by the Board of Revenue. At the instance of the assessee the Board of Revenue has stated a case for the opinion of the High Court on the following question of law:

"Is it legal or permissible for a Sales Tax Officer to base his estimate on the report of an Inspector of the Department, without giving a copy of the same, when asked for, to the assessee, or without giving any information about the material particulars of the report and without hearing the assessee on the same."

3. After having heard counsel for the parties we consider that the questions referred to by the Board of Revenue in these cases have not been properly framed. In our opinion the questions should be framed in the following manner so as to bring out the real controversy between the parties:

"Whether in the circumstances of the case the assessment of sales tax upon the assessee is vitiated because the Sales Tax Officer did not show to the assessee the report of the inspector or because the Sales Tax Officer did not disclose to the assessee the material particulars of the Inspector's report before making assessment for the period in question?"

4. On behalf of the assessee Mr. Baldeva Sahay put forward the argument that the assessment of sales tax made by the Sales Tax Officer was illegal since the report of the Inspector was not shown to the assessee or, at any rate, the substance of the Inspector's report was not disclosed to the assessee before the Sales Tax Officer proceeded to make the assessment. The argument of the learned counsel is based upon the circumstance that in the assessment order the Sales Tax Officer relied mainly upon the Inspector's report for estimating the gross turnover of the assessee.

It is important to notice that the assessee did not file a return, nor produce the account books for both the relevant periods. The Sales Tax Officer was, therefore, entitled to proceed to make an assessment under the provisions of

Section 13(4) of the statute to the best of his judgment.

Mr. Baldeva Sahay did not, however, challenge the right of the Sales Tax Officer to make an assessment u/s 13(4), but the point taken by the learned counsel was that before such- an assessment was made, the Sales Tax Officer should have disclosed to the assessee the substance of the Inspector's report and he should have given an opportunity to the assessee to meet the allegations made in the report against him. The contention of learned counsel is that there was a violation of the principle of natural justice and so the assessment made by the Sales Tax Officer u/s 13(4) was legally invalid. That is the summary of the argument presented by Mr. Baldeva Sahay on behalf of the assessee.

I am, not, however, prepared to accept that argument as correct. It was stated by the learned Government Advocate that the report of the Inspector was not a confidential document but was on the record of the proceeding before the Sales Tax Officer, It was also said that the assessee could have perused the document if he had appeared before the Sales Tax Officer at the proper stage and asked for inspection.

It is, however, not clear from the statement of the case whether the assessee was shown the Inspector's report before the Sales Tax Officer made the assessment. I shall, however, assume in favour of the assessee that the report of the Inspector was not shown to the assessee before the Sales Tax Officer made the order of assessment. Even so, I am of opinion that the order of assessment of sales tax made upon the assessee is not illegal in the special circumstances of this case. The reason is that all the material particulars of the report have been elaborately set out in the order of the Sales Tax Officer in both the cases, Misc. Judicial Case No. 414 of 1953 and Misc. Judicial Case No. 415 of 1953.

It is not disputed on behalf of the assessee that after the Sales Tax Officer made the assessment orders, the assessee was aware of the contents of the Inspector's report. It is also significant that in his memorandum of appeal to the Commissioner of Bhagalpur Division the assessee challenged the Inspector's report on several important points. In ground No. 7 of the memorandum of appeal the assessee states:

"7. For that the learned Superintendent of Sales Tax is not justified in basing his findings about the alleged transactions of Porbesganj on the wrong report of the inspector for the following reasons; furthermore the learned Superintendent has misled himself into dealing with the said report which seemed to refer to some period other than the period under assessment.

(a) The Inspector did not pay more than one visit. The report about the subsequent visit when 500 bales of textiles are alleged to have been found in the Forbesganj godown of the appellant for sales in Nepal is wholly wrong. Nothing could have prevented the authorities concerned to seize the said bales if they were actually found, particularly when they are reported to bear no price marks but simply for export.

(b) The appellant has not at all sold jute worth Rs. 7,50,000/- at Porbesganj which is mainly a purchasing centre.

(c) The Inspector did not sign the account books as reported.

(d) Babi Bulaki Chand Golcha did not make any statement before the Inspector as stated in the report.

(e) The alleged discovery of ruled exercise book showing sales of cloth during the period 8-3-48 to 20-5-48 worth Rs. 10,51,086/- is wholly wrong & imaginary and the finding that every page of the said ruled, exercise book has been signed by the Inspector is not correct,

(f) The Inspector is not justified in his finding to the effect that the appellant took delivery of cloths meant for sale in Nepal under the barter scheme at Jogbani Railway station and instead of sending the same to Nepal territory the appellant brings the cloths to Forbesganj by bullock-cart and sells them at exorbitant prices. Furthermore the learned Superintendent seems to have overlooked the fact that the barter scheme was abolished during the year 1946-47, i.e. before the period in appeal.

(g) The appellant has not at all sold any cloth at Katihar, what to speak of several lakhs as wrongly reported. As a matter of fact the appellant is not entitled to deal in cloth at all and as such the alleged statement of Messrs. Chothmal Chhagamal does not affect the appellant, particularly when the said alleged statement is not corroborated by any books of account of the said firm."

5. This ground has been expressly dealt with by the Commissioner in this order. The Commissioner referred to the fact that the assessee did not choose to produce books of account and other papers in order to rebut the allegations made In the Inspector's report. The Commissioner also pointed out that the assessee did not care to adduce any oral or documentary evidence in order to rebut the allegations made in the inspector's report.

The Commissioner, therefore, rejected the argument of the assessee and held that there was no reason to disbelieve the report of the inspector and the assessment made by the Sales Tax officer on the basis of the Inspector's report could not be interfered with. It was pointed out by the learned Government Advocate that under the statutory scheme of the Sales Tax Act both the Commissioner and the Board of Revenue are Tribunals of fact and that it was open to the assessee to argue before either of the Tribunals that he had been prejudiced on account of non-disclosure of the Inspector's report. I think that this argument is sound.

If the Tribunals were satisfied that this grievance had any substance, they might have taken additional evidence produced by the assessee or might have made an order of remand for taking additional evidence. In my opinion there is no question of violation of any principle of natural justice in this case.

There is no violation of the principle of "audi alteram partem" in this case, because at the appellate stage the assessee had an opportunity of showing cause against the Inspector's report and of producing documentary and oral evidence in order to rebut the allegations made in the report.

This view is borne out by a decision of a Division Bench of this Court in the case of Sheopujan Choudhury v. State of Bihar, Misc. Judi. Case No. 171 of 1954, D/-29-2-1956 -- reported in (Sheopujan Choudhury Vs. State of Bihar and Others, . It was pointed out in that case by the Division Bench that the principle of natural justice cannot be imprisoned within the straight jacket of any fixed formula, but must be applied in the context of the circumstances of each particular case. In the course of the judgment the Division Bench states:

"But as a matter of law it is not correct to state that the party adversely affected should be heard at each and every stage of the administrative process. There is no such general requirement in the principle of "audi alteram partem" on the contrary, the principle is satisfied if the party adversely affected is given sufficient opportunity to know the case he has to meet and to answer that case at some stage and not at all the stages of the administrative proceeding.

As I have said, the question as to whether a fair opportunity has been given to the party adversely affected depends very much on the particular facts of each case. I think that the concept of "natural justice" cannot be imprisoned within the straight jacket of any fixed formula. It is not a mechanical instrument applicable to all situations. As observed by Frankfurter J. in Joint Anti-Fascist Refugee Committee v. J. Howard McGrath (1950) 341 US 123 at p. 164 (B):

"Whether the ex parte procedure to which the petitioners were subjected duly observed "the rudiments of fair play", Chicago, Milwaukee & St. Paul Rly. Co. v. Polt (1913) 232 US 165 at p. 168 : 58 LEd. 554 at p. 555 (C), cannot therefore, be tested by mere generalities or sentiments, abstractly appealing. The precise nature of the interest that has been adversely affected, the manner in which this was done, the reasons for doing it, the available alternatives to the procedure that was followed, the protection implicit in the office of the functionary whose conduct is challenged, the balance of hurt complained of and good accomplished -- these are some of the considerations that must enter into the judicial judgment."

6. It is, therefore, clear that on the question whether a fair opportunity has been given, no general test can be formulated which would be applicable to all conditions. There is, however, authority for the view that the principle would be satisfied if the statute provides for an appeal to higher authority, as appeal to the Commissioner of Excise in the present case (See the judgment of Lord Coleridge C. J. in Vestry of St. James and St. John, Clerkenwell v. Feary (1890) 24 QBD 703 (D), or for making any formal representation to the authority before the order becomes finally operative (see. Attorney General v. Hooper 1893 Ch 483 (E).

A similar view has been taken in American Administrative Law where the conception of procedural due process takes the place of conception of natural justice". For example, in *Opp. Cotton Mills v. Administrator of the Wage and Hour Division of the Department of Labor*, (1940) 312 US 126(F) it was held by Stone J. that "the demands of due process do not require a hearing at the initial stage or at any particular point or at more than one point in an administrative proceeding so long as the requisite hearing is held before the final order becomes effective".

Similarly, in *Bourjois v. Clyde R. Chapman* (1936) 301 US 183 (G) it was held by Brandeis J. that due process was not denied by the statute which authorised the Health Department to refuse the issuance of certificate of registration for cosmetic preparations, which in its judgment contain injurious or poisonous substances, and which did not provide for a, hearing of the application for certificate of registration by the said Department but which provided for an appeal to the Court from the refusal of the Department to issue the certificate."

7. In the present case the assessee had opportunity to argue on the questions raised by their inspector's report at the appellate stage before the Commissioner of Bhagalpur Division and also at the revisional stage before the Board of Revenue.

The assessee did take advantage of the opportunity at both these- stages of the administrative, process and, therefore, cannot be heard to complain that because at the initial stage of assessment by the Sales Tax Officer he was not shown the Inspector's report there has been violation of any principle of natural justice. I think that the argument of Mr. Baldeo Sahay on this point cannot be accepted as correct.

8. It is necessary to deal with the decision of the Supreme Court, *Dhakeswari Cotton Mills Ltd. Vs. Commissioner of Income Tax, West Bengal*, , which was cited by Mr. Baldeva Sahay on behalf of the assessee In the Course of his argument. I do not consider that the ratio decidendi of this case has any relevance to the decision of the present case. In the case before the Supreme Court the Income Tax Officer made an estimate of gross profit on sales at 40 per cent, by pure guess. The relevant part of the assessment order was in these terms:

"From the point of view of profits, 1943 was a very good year, if not the best, for all cotton mills. Expenses on cotton and fuel show that production was undoubtedly higher whereas it is found that the gross profit disclosed by this company is low. I conclude that full amount of sales has not been accounted for. It is expected that actually the rate of gross profits should have been higher this year. In view of the higher costs of establishment, I take it that the rate of about 40%, i.e. near about the rate disclosed in 1942 accounts, should have been maintained. I add back Rs. 35 lakhs for unaccounted sales".

On appeal, the order of assessment was upheld by the Appellate Assistant

Commissioner. The assessee then appealed to the Tribunal who reduced the gross profit to 35% on the application of a different basis. The Tribunal stated in the course of its order:

"At the end of the hearing of this appeal on 25-11-1949, the Income Tax Appellate Tribunal requested the departmental representative to produce for the examination of the Income Tax Appellate Tribunal the gross profit rates shown or assessed in the cases of other similar cotton mills. The departmental representative wanted 3/4 days' time to collect information on this point. On this the appellant also wanted to be allowed to produce information regarding the gross profit rates shown or assessed by other similar cotton mills, and he was also allowed to produce information on the point.

On or about the 29th November the counsel for the appellant requested that he should be allowed time till Saturday the 3rd of December to file the above information and time for this purpose was allowed to him. On the 3rd December Mr. Banerjee the appellant's counsel saw the Accountant Member in his chamber and wanted to produce written arguments and a trunk full of books and papers in support of his case.

Mr. Banerjee was told that the arguments in the case had finished on the 25th and he was allowed time only to supply to the Court the gross profit rates shown or assessed in the cases of other similar cotton mills. He was told that it was not fair to the other side to take notice of any additional evidence or record at that stage and his trunk of books and papers was returned to him". In the context of these facts the Supreme Court held that the order of assessment was legally invalid because the Tribunal had made the assessment upon information supplied by the departmental representative without giving any opportunity to the assessee to rebut the information so supplied. There is another important fact to notice.

In the Supreme Court case the assessee offered to produce rebutting evidence before the Income Tax Tribunal and indeed his Advocate, Mr. Banerji, produced before the Accountant Member in his Chamber "a trunk-load of account books" in order to substantiate the assessee's case, but the Accountant Member refused to look at the documents on the ground that "the arguments had finished and it was not fair to the other side to take notice of any additional evidence or record at that stage". The trunk-load of books and papers were returned to the assessee.

In the circumstances it was held by the Supreme Court that there was a violation of the principle of natural Justice and the evidence tendered by the assessee was improperly rejected by the Income Tax Tribunal and the assessment made could not be upheld as legal. It is obvious that the material facts of the present case are different and the principle laid down by the Supreme Court in *Dhakeswari Cotton Mills Ltd. Vs. Commissioner of Income Tax, West Bengal*, has no application to the present case.

9. For these reasons I hold that in the circumstances of this case the assessment of sales tax upon the assessee for both the periods, namely, for the period from 1-7-1947 to 31-3-1948, and 1-4-1948, to 31-3-1949, is legally valid. Accordingly the question referred to by the Board of Revenue and as reframed by me must be answered in favour of the State of Bihar and against the assessee. There will be consolidated fee of Rs. 250/- for both these cases.

Raj Kishore Prasad, J.

10. I agree.