

(1958) 02 AP CK 0007

In the Andhra Pradesh High Court

Case No : Writ Petition No. 266 of 1956

K. Rudra Rao

APPELLANT

Vs

Income Tax Officer and Another

RESPONDENT

Date of Decision : 20-02-1958

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1922 — Section 22(2), 22(4)

Citation : (1958) ALT 528

Hon'ble Judges : P. Satyanarayana Raju, J

Bench : Single Bench

Advocate : N. Narasimha Ayyangar, for the Appellant;

Final Decision : Dismissed

Judgement

Satyanarayana Raju, J.—This is an application for the issue of a writ of mandamus directing the respondents, namely (I) the Income Tax Officer, Special Survey Circle, Vijayawada, and (2) the Inspecting Assistant Commissioner, Vijaywada, "to forbear from over-stepping the limits and bounds that the Income Tax Act has prescribed for the exercise of the power for conducting the enquiry pending assessment and to confine their acts to the procedure laid down under the Act and to complete the assessment of the petitioner in G. I. No. T.C. 161. v. 1955-56, according to law without any further delay."

2. The petitioner is a resident of Vijayawada, at which place he has been dealing in radios and electrical goods since July, 1951. In order to appreciate the contentions raised in the their chronological sequence. On the 8th August, 1955, the Income Tax Officer, who was in charge of the Special Survey Circle, at the time, made an inspection of the account books of the petitioner at his shop. On the following day, the first respondent issued a notice to the petitioner, u/s 22(2) of the Income Tax Act, to submit a return of his income. On the same day towards the evening, the exact time is not ascertainable from the record but it is asserted by the petitioner that is was at about 5 p.m., the first respondent sent a

notice to the petitioner u/s 22(4) of the Act calling upon him to submit his account books for eight years, from the 1st April, 1946. The notice specified that the petitioner was to submit those account books at 11 a.m. on the following day. On the 10th August, 1955, the petitioner produced his account books from the year 1951. The first respondent asked the petitioner to keep the books in his office as he had no time to look into them that day. They were eventually returned to the petitioner on the 13th August, 1955. On the 12th September, 1955, the petitioner submitted his return wherein he disclosed a total income of Rs. 2, 117-12-0. On the same day the first respondent again issued a notice to the petitioner under sections 22(4) and 23(2) to produce his account books and evidence. On the 15th September, 1955, the petitioner, through his authorised representative, produced his books which were examined by the first respondent. On the 23rd September, 1955, the petitioner received a letter from the first respondent calling for certain particulars and asking him to appear before him on the 5th October, 1955. On the 5th October, 1955, the petitioner wrote a letter to the first respondent requesting time till the end of the month. On the 28th October, 1955, the petitioner submitted his reply to the letter of the first respondent, dated the 23rd September, 1955. On the 12th January, 1956, the first respondent again wrote to the petitioner asking for details of the amounts lent by him to his parents. This he was asked to submit on or before the 16th January, 1956. On the 16th January, 1956, the petitioner's authorised representative asked for time till the end of January, 1956. On the 2nd February, 1956, the first respondent reminded the petitioner with regard to his letter, dated 12th January, 1956, and asked him to produce his books. This was followed by two letters by the petitioner to the first respondent on the 6th February, 1956, and 7th March, 1956, and a short while petition in this court. At the time when the above events took place, one Shri Kasi Viswanatha Pillai was the Inspecting Assistant Commissioner at Vijayawada, and one Shri Balasubrahmanyam was the Income Tax Officer in charge of the Special Survey Circle. The petitioner has stated that there were certain ill-feelings and misunderstandings between the said two officers on the one hand and his father, who was formerly the Appellate Assistant Commissioner at Vijayawada, on the other; and that due to personal prejudice and with the active support and connivance of his immediate superior, Shri Kasi Viswanatha Pillai, Shri Balasubrahmanyam was harassing the petitioner in all possible ways and was trying to bring him and his family into disrepute. The petitioner has averred that the officer had been persecuting him by misusing the powers vested in him under the Income Tax Act.

3. In support of his case, the petitioner has filed an affidavit of an Income Tax practitioner who appeared before the officer on his behalf. It was stated by the Income Tax practitioner that Sri S. Balasubrahmanyam (the Income Tax Officer) had told him "that the information sought for during the course of the proceedings against the petitioner was at the instance and on the specific instructions given to him by his immediate superior, Sri M. Kasi Viswanatha Pillai, Inspecting Assistant Commissioner of Income Tax, but not because he has any

assessable income". The complaint made by the petitioner, therefore, is that under the guise of exercising the powers conferred on him under the Income Tax Act, the officer and his superior were in fact trying to "settle their old scores" with his father and that this court should, therefore, interfere and issue appropriate directions to them to keep themselves within the limits and bounds of the Income Tax Act. It has been stated by the learned counsel for the respondent that both the officers have since been transferred from Vijayawada and that they are now serving at other places. The present officer serving at Vijayawada has filed a counter-affidavit denying the allegations contained in the petitioner's affidavit. When allegations of mala fides are made against officers, it is proper that the individuals against whom those allegations are directed must themselves answer them and it should not be left to some other officer to do so. As the concerned individuals have not, in the first instance, filed affidavits in this court, I gave them a further opportunity at the request of the learned counsel for the Department, and Sri Kasi Viswanatha Pillai and Sri K. Balasubrahmanyam have since filed their counter-affidavits in this court denying the allegations made against them. The officer has stated that he never transgressed the limits of the law and that he was always trying to do his duty honestly and fairly.

4. The allegations that the officer and his superior had some grievance against the petitioner's father when he was serving as the Appellate Assistant Commissioner of Income Tax at Vijayawada, has been categorically denied by the two officers. In particular, Sri Kasi Viswanatha Pillai denied that he never asked the officer to initiate and prosecute the proceedings against the petitioner. Sri K. Balasubrahmanyam has similarly affirmed that this superior did not ask him to do so and the averment contained in the affidavit filed by the Income Tax practitioner is untrue.

5. The learned Advocate-General appearing for the petitioner has argued that a mere consideration of the various dates and events mentioned above would establish the arbitrary and capricious nature of the proceedings and has relied particularly on two circumstances as affording clinching proof of the want of bona fides on the part of the officer. He has invited my attention to the provisions of section 22(4) of the Income Tax Act which reads : "22. (4) The Income Tax Officer may serve on any person who has made a return under sub-section (1) or upon whom a notice has been served under sub-section (2) a notice requiring him, on a date to be therein specified, to produce, or cause to be produced, such accounts or documents as the Income Tax Officer may require, or to furnish in writing and verified in the prescribed manner information in such form and on such points or matters (including, with the previous approval of the Commissioner, a statement of all assets and liabilities not included in the accounts) as the Income Tax Officer may require for the purposes of this section : Provided that the Income Tax Officer shall not require the production of any accounts relating to a period more than three years prior to the previous year."

6. In the notice issued by him to the petitioner on the 9th of August, 1955, the officer has called upon the petitioner to produce his accounts for 8 years from 1st April, 1946. The notice was undoubtedly issued u/s 22(4) and not under any other provision of the Income Tax Act. It is not denied and indeed no justification has been attempted for the officer calling upon the petitioner to produce account books for 8 years. This, it was not denied, was contrary to the provisions of section 22(4) of the Act.

7. The next event on which comment has been made by the learned Advocate-General is that the notice was served on the petitioner on the 9th of August, 1955, at about 5 p.m. requiring him to produce the books for eight years commencing from the 1st of April, 1946, by 11 a.m. on the following day; that the first respondent had inspected the books of the petitioner on the previous day at the petitioner's shop and this notice was issued on the day following; that there was hardly an interval of a night and a few hours between the time of the notice and the time when he was to produce the books before the first respondent, and that it is difficult to justify this notice as a reasonable notice. He has submitted that, in fact, the practice of the Department is to give at least a month's notice and that in any view of the matter, a reasonable time should have been given by the officer. The learned Advocate-General has further commented upon the fact that a notice was issued to the Hindustan Ideal Insurance Co. as also to the landlord of the petitioner, both of which he has characterised as not being bona fide and were interceded to serve a collateral purpose. The officer has explained that the notice to the Hindustan Ideal Insurance Co. was given in order to verify the facts stated by the petitioner in his return and that the proceeding against the landlord of the petitioners is wholly unconnected with the proceedings against the petitioner. I do not find any ground for not accepting the statements of the officer in this regard.

8. The material placed before me is not sufficient to form the foundation for the serious allegation as to mala fides on the part of the respondents. I am satisfied that the allegation of personal bias made against the officer and his superior has not been proved.

9. The question then is, whether the officer has acted in an unreasonable manner. In administering a tax law, irritations to the assesseees are inevitable; an officer is bound to do his duty irrespective of the susceptibilities of the assesseees or even at the risk of hurting their amour proper. But this would not justify the officers functioning under the Act doing things in an unreasonable way. As has been pointed out by Maxwell on the Interpretation of Statutes, at page 123, tenth edition, all public officer in whom powers are vested by statutes must exercise those powers "within the limits to which an honest man competent to the discharge of his office ought to confine himself, that is, within the limits and for the objects intended by the legislature". It cannot be that an officer with such a large experience would have overlooked the provisions of section 22(4) of the Act which vests him with a power only to call for the accounts relating to a period

of three years preceding the previous year. Then also giving a night's time to the assessee to produce his account books for a period of eight years, cannot, even after giving every conceivable credit to the good intentions of the officer, be called reasonable. After considering the material placed before me, I cannot help giving expression to a feeling left in my mind that the officer has taken the risk of over-stepping the line in the interests of what he perhaps considered to be "efficient administration". Having said this, I must now address myself to the question as to whether the relief sought for by the petitioner can be granted in this petition. To a request made by me to explain the exact scope of the relief claimed by him in the writ petition, the learned Advocate General elucidated the matter by stating that what the petitioner seeks is that the further proceedings should be in strict accordance with the procedure laid down by the Act. In other words, what he seeks is a declaration from this court that the officer dealing with the petitioner's assessment should be directed to keep himself within the limits and bounds of the statute. He was however unable to place before me any decision where such a relief has been granted in an application under article 226 of the Constitution. An authority which has taken a contrary view, however, has been placed before me by the learned counsel for the Department : *Maqbulusinsa v. Union of India*. In that case, it was observed that "this court has consistently taken the view that the powers of issuing writs, orders or directions should not be utilised for giving what is in essence a declaratory relief." To the same effect is the decision of the Nagpur High Court in *Sheoshankar v. State Government of Madhya Pradesh*

10. In view of the clear enunciation of the above-cited two decisions, I am unable to agree with the learned Advocate-General that I should grant a relief, which is merely declaratory, in this writ petition. The assessment has not yet been completed and the Income Tax Act provides a hierarchy of tribunals before whom the petitioner can agitate his grievances if any of the merits, if it should become necessary for him to do so.

11. This writ petition must, therefore, be dismissed. Under all the circumstances of the case, I make no order as to costs. Petition dismissed.