

(1995) 09 AHC CK 0004

In the Allahabad High Court

Case No : Civil Miscellaneous Contempt Application No. 582 of 1995

Kalyan Ji Mishra

APPELLANT

Vs

D.N. Dwivedi, Assistant Commissioner Sales Tax/Trade Tax

RESPONDENT

Date of Decision : 27-09-1995

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 353, 386, 506
Uttar Pradesh Trade Tax Act, 1948 — Section 4A, 8C(2), 8C(3), 8C(3A)
Uttar Pradesh Trade Tax Rules, 1948 — Rule 85(4)

Citation : (1995) 09 AHC CK 0004

Hon'ble Judges : B.S. Chauhan, J

Bench : Single Bench

Advocate : Rajesh Tiwari and Ashwani Mishra, for the Appellant; Alok Kumar and R.G. Padia and Prakash Padia, S.C., for the Respondent

Final Decision : Dismissed

Judgement

B.S. Chauhan, J.—The applicant established a new unit for manufacturing of Special Smokeless Fuel and Coal Tar. The applicant made an application u/s 4A of the Trade Tax Act, 1948 (hereinafter called as the Act) for grant of the eligibility certificate in its favour, meaning thereby the exemption fully or partly of the sales tax/trade tax on the goods received, brought or imported from outside State for consumption as raw material, e.g., raw coal, used for manufacturing the said Special Smokeless Fuel and Coal Tar. A circular/notification issued by the Commissioner, Sales Tax u/s 8C (3A) of the Act required to deposit the cash security for issuance of Forms 31 in cases where coal was brought from outside the State, as was necessary to protect the interest of revenue under certain circumstances.

2. During the pendency of the said application, applicant filed a Writ Petition No. 2796 (MB) of 1993 before the Lucknow Bench of this Court and in the said writ petition, this Court on 29.6.1993 passed the following interim order:

Until disposal of the exemption application of the Petitioner, the Respondents are directed not to insist on cash security for the issuance of Form No. 31 at the Check Post.

3. At this stage, it may be relevant to point out that the opposite party was not impleaded as Respondent in the said writ petition as at the relevant time, the Sales Tax Officer had been the assessing authority as per turn-over shown by the applicant. The order was complied with. Subsequently, as the turn-over had gone over and above the sum of Rs. 25 lacs, the opposite party became the assessing authority with effect from 1.2.1995. Petitioner filed the instant contempt petition on 6th April, 1995 before this Court, praying to punish the opposite party for wilful defiance of the order of this Court dated 29.6.1993. This Court vide its order dated 7th April, 1995 called upon the opposite party to explain as to why he should not be prosecuted and punished for the alleged flouting of the order dated 29.6.1993 passed in Writ Petition No. 2796 of 1993. The opposite party filed the counter-affidavit and the applicant filed the rejoinder-affidavit.

4. I have heard Dr. R.G. Padia, learned Counsel for the applicant and Sri Rakesh Dwivedi, learned Additional Advocate General of U.P. for the opposite party. The applicant has not mentioned anywhere in the petition that the opposite party had insisted for furnishing the cash security to issue Form No. 31 in contravention of the order passed by this Court on 29.6.1993. The relevant allegations in this regard are only as under:

10. The petitioner is depositing earlier security in the Check Post for importing the coal from outside State. The photo copy of the receipt dated 30.3.1995 is being filed herewith and marked as Annexure 4 to the application...

12. That in view of the aforesaid facts the opposite party had deliberately disobeyed the mandatory order of this Hon'ble Court...

5. Thus, it is clear that the contention/averments/submissions made in the contempt petition fell short for making out any case against the opposite party, to initiate the proceedings under provisions of the Act and when confronted with the said trivialities of the allegations made in the petition, learned Counsel for the applicant tried to satisfy the court by making the reference to the annexures filed alongwith the petition, wherein the reference has been made to a letter written by the applicant to the opposite party on 20.2.1995 (Annexure 3) which is quoted below:

With reference to your letter No. KCDPL/17/90/94-94, dated 8.2.95. which has been submitted in your office for taking action against above subject-matter, but in continuation of the said letter you told orally not in writing that Form 31 will be issued after depositing a Trade Tax/Sales Tax. While we have already availed an order by the Hon'ble High Court, Lucknow Bench dated 29.6.93 for issuance of Form 31 without depositing any cash security which is enclosed for your kind perusal.

6. Applicant has filed a receipt depositing an amount of Rs. 1,120 at Check Post (Annexure 4 to the contempt petition). It is admitted by the learned Counsel for the applicant that the opposite party does not sit on the Check Post. So nothing can be attributed towards the opposite party, so far as Annexure 4, Le, the receipt is concerned. It is apparent from the record of the case that the applicant had not paid the admitted tax since November, 1994 and there has been persistent demand for making the payment of arrears of the sales tax/trade tax due from the applicant. Even in the letter dated 20.2.95 there is no allegation that the opposite party had insisted for furnishing the cash security for issuing the Form No. 31. The said letter itself makes it clear that the opposite party was not issuing the Form No. 31 as the applicant was not depositing the admitted amount of sales tax/trade tax and thus it cannot be said that the opposite party has even made an attempt to defy the order passed by this Court on 29.6.93.

7. Learned Counsel for the applicant forcibly articulated that the opposite party has written a letter (Annexure SRA-7) to the applicant in which the former has stated that as the latter failed to furnish the account of 35 Forms 31 and Form 31C out of 1065 Forms issued to him earlier in the year 1994-95, the required Forms 31 were not issued in favour of the applicant. The argument of the learned Counsel for the applicant is that it was a mere refuse to avoid the punishment for contempt. This in fact is too feeble an attempt to traverse what stares on the face of the record and must be rejected as unworthy of examination. Rule 85(4) of the U.P. Trade Tax Rules, 1948 reads as under:

...No declaration form shall be issued unless the dealer has rendered an account of all such forms obtained earlier.

8. Thus the submission made above is devoid of any substance. The applicant cannot be heard complaining something contrary to the mandate of the Rules framed under the Act. A Division Bench of this Court in the case of Krishna Coal Concern, Ballia v. The Sales Tax Officer, Ballia 1975 UPTC 721, has categorically laid down that a dealer cannot claim the issuance of Forms 31 as a matter of right. It is subject to discretion of the assessing authority and for compelling the authority to issue Forms 31, Article 226 of the Constitution is not a proper remedy. The authority must also prevent the unscrupulous dealers/assesseees to misuse blank Forms by selling them to other persons to facilitate Improper import of goods from outside Uttar Pradesh.

9. Learned Counsel for the applicant has relied upon some contents of the rejoinder affidavit wherein the applicant has tried to improve his case. The main allegations made there are as under:

...It is empathetically submitted that the Respondent, Sri D.N. Dwivedi also supported issuing Form No. 31 without insisting on cash security in terms of the interim order granted by the Hon"ble Court and he issued as many as 1033 Forms No. 31 without insisting on cash security between the period from 7th July, 1995 upto 24th July, 1995. Thereafter abruptly without any rhyme or

reason, without giving any orders oral or in writing and without giving any notice or opportunity to the Petitioner, he abruptly stopped the supply of Form 31 for extrenuous consideration...

10. Even in the rejoinder affidavit, the accusation has fallen short by all means. The real allegation is that the opposite party did not issue Form 31 for extrenuous consideration. Here also, it has not specifically been alleged that the opposite party insisted upon furnishing the cash security for Issuing Form 31. At the most, the substance of the charge on this count is an indirect imputation of extrenuous consideration. In the beginning, I got the impression that the accusation of contempt of court, though not clear, as might have been shrouded in a jumble of facts would come out clearly. It is based on misconceived notions/ impressions of the applicant and nothing can be attributed against the opposite party. However, it appears that the relations between the parties had been acerbic, as would be discussed later.

11. There is another aspect of the matter. Applicant has also filed another Writ Petition No. 350 of 1995. Kalyan Coal Depo Put. Ltd. Mirzapur v. Assistant Commissioner (Assessment), Mirzapur and Ors. in which a specific prayer was made for a direction to the opposite party for issuing of Form 31 to the applicant without Insisting for making payment of trade tax due from the applicant. The contention of the applicant had been that he was entitled for such acquits relief on the strength of the interim order dated 29.6.1993 the said writ petition was dismissed by this Court vide Its order dated 24.3.1995 with following observation:

The relief sought for in this writ petition is the same as the one prayed for in Writ Petition No. 2796 (MB) of 1993 pending on the file of the High Court of Judicature, Lucknow Bench, Lucknow. The proper course open to the petitioner is to pursue that writ petition and if necessary to seek amendment of the prayer in the writ petition for the appropriate relief. In view of the pendency of the writ petition on the file of the High Court of Judicature, Lucknow Bench, Lucknow, we do not see any ground to admit this writ petition. It is therefore, dismissed at the admission stage with no costs.

12. From the aforesaid order, it becomes clear that the applicant wanted a further direction from this Court to the opposite party for issuing Form 31 but could not succeed.

13. After meeting his Waterloo before the Division Bench on 24.3.95, the applicant filed another Writ Petition No. 743 of 1995 before the court in summer vacations praying to issue appropriate direction to opposite party to issue Form 31. In the said writ petition, the applicant did not disclose the material facts particularly filing of the earlier Writ Petition No. 350 of 1995 and its dismissal by this Court vide its order dated 24th March, 1995. In the said Writ Petition No. 743 of 1995, opposite party filed the counter-affidavit alleging the concealment of the material facts and thus the applicant has chosen not to press it. In the

said Writ Petition No. 743 of 1995, this Court on 23.6.1995 passed the following order:

Learned Counsel for the petitioner states that he does not want to press this petition. It is accordingly dismissed as not pressed.

14. On the one hand, applicant could not succeed to obtain the order from this Court, though tried twice, on the other hand, he blames the opposite party that the later defied the order of this Court.

15. The case of the applicant for the grant of eligibility certificate u/s 4A of the Act was rejected by Divisional Level Committee on 28th July, 1995 (Annexure CA-2). Opposite party sent a show cause notice to the applicant on 6th September, 1995 u/s 8C(2)/(3) in which the applicant was directed to show cause as to why the applicant should not furnish the cash security as his application for the grant of eligibility certificate u/s 4A of the Act has been rejected.

16. Thus, it becomes clear that opposite party complied with the order of the court passed on 29.6.1993 inspite of the fact that the opposite party was not Impleaded as Respondent in the main writ petition and the opposite party has never insisting upon furnishing the cash security for issuing Forms 31. It appears from the record that the applicant had not hesitated even to resort to Illegal activities and wanted to force the opposite party to issue Forms 31 at the gun point, in respect of which the First Information Report under Sections 386/353 and 506, I.P.C. was lodged against the applicant (Annexure CA-3).

17. In the instant petition, learned Counsel for the applicant tried to convince the court to proceed as if the instant proceeding has arisen from the civil suit or can be treated at par with the civil writ petition and vehemently argued that the technicalities when pitted against equity should not be allowed to be sustained in the interest of justice.

18. In the case of Jai Jai Ram Manohar Lal v. National Building Material Supply Gurgaon AIR 1969 SC 1269 , it has been observed that the rules of procedure are intended to be a handmade to the administration of justice. A party cannot be refused Just relief merely on some mistake, negligence, inadvertance or even infraction of the rule of the procedure. A similar view has been taken by the Supreme Court in the case of Ganesh Trading Co. Vs. Moji Ram, . No doubt the court must mould the prayer as per the requirement of the circumstances of a particular case as per the law laid down in AIR 1941 5 (Federal Court) and also in the case of Ram Chand & others v. Union of India (1994) 1 SCC 4, but I am afraid as it is not permissible for the court to do so when a court exercises its Jurisdiction under the provisions of this Act. In case of Andre Paul Terence Ambard v. Attorney General for Trinidad and Tabago AIR 1936 PC 141, the Privy Council has observed that the proceedings under the Contempt Act are quasi-criminal in nature and orders passed in those proceedings are to be treated as orders passed in criminal cases. In case of Sukhdeo Singh v. Hon"ble the Chief

Justice Teja Singh and Hon"ble Justice the Par Pepsu High Court at Patiala AIR 1954 SC 186 , Supreme Court has taken the same view. A Full Bench of Punjab High Court in the case of S. Sher Singh Vs. Raghu Pati Kapur and Another, . has held that the contempt proceedings are by all means, a quasi criminal and the Respondents are entitled to the benefit of doubt. A Division Bench of Madras High Court in the case of B. Yegnanaryanah AIR 1974 Mad 313, has held that the contempt proceedings being quasi-criminal in nature, the case against the Respondents must be proved beyond reasonable doubt.

19. In the case of Homi Rustom G. Pardiawala v. Sub-Inspector Baig and Ors. AIR 1941 Lah 196. It was observed as under:

The court may have its suspicions but it cannot act upon them. These proceedings, though not criminal, are of a quasi-criminal nature and...where there is any reasonable doubt, the Respondents are entitled to the benefit of such doubt.

20. In the case of Shri Baradakanta Mishra Vs. The Registrar of Orissa High Court and Another, , the Supreme Court has observed as under:

The court being the guardian of peoples" rights, it has been held repeatedly that the contempt Jurisdiction should be exercised with scrupulous care and only when the case is clear and beyond reasonable doubt", vide R. v. Bray (1907) 2QB 36.

21. To sum up the legal propositions it is clear that the contempt proceedings are quasi-criminal in nature and all the principles of criminal jurisprudence are applicable. The only departure which is permissible is that the procedure applicable in the criminal law is not to be strictly followed and all that necessary is that a fair procedure is adopted, the contemner should be aware of the charge against him and he should be given a fair and reasonable opportunity to defend himself.

22. By applying the aforesaid tests, the applicant has miserably failed to prove any case whatsoever against the opposite party. It is settled law that the contempt proceedings cannot be permitted to be used by any one as legal thumb-screw" against any other person. Abdul Razack Sahib Vs. Mrs. Azizunnissa Begum and Others, .

23. In the case of Debabrata Bandopadhyay and Others Vs. The State of West Bengal and Another, , the Supreme Court has observed as under:

To take action in unclear case is to make the law of contempt do duty for other majors and is not to be encouraged.

24. A similar view has been taken in the cases of B.K. Kar Vs. The Chief Justice and His Companion Judges of The High Court of Orissa and Another, ; Bharat Coking Coal Limited Vs. State of Bihar and Ors, .

25. In the totality of the circumstances, I am of the view that there is no

allegation against the opposite party that he has even tried to subvert or has trifled with the order passed by this Court on 29.6.1993. and thus it is not only doubtful but it can be said with certainty that no reasonable person would take a view that with such mistaken and misconceived approach on the part of the applicant, the offence of contempt of court in this respect can be said to have committed by the opposite party.

26. Before parting with the case, it is desirable to mention that from the scrutiny of the facts of the Instant case, it is explicit that the instant petition has been filed with the definite purpose of compelling the Respondent to submit to the whims of the Petitioner. From the clinical assessment of the entire allegations, it transpires that the Respondent has never even tried to flout the order of this Court. On the other hand, Respondent tried to co-operate to the maximum possible extent. The mala fide intention of the petitioner is the writ large from the circumstances inasmuch as that after getting the order dated 29.6.1993 the applicant filed the 2nd and 3rd writ petition, concealing the most material facts as discussed above. All this clearly constitutes misconduct on the part of the Petitioner. This is nothing but wood winking the court. In plain and simple words, it amounts to fraud being played upon the court. No person is permitted to abuse the process of the court, knowing well that the allegations are frivolous and fall short of the requirements of the provisions of the Act.

27. In the instant petition, a full fledged attempt has been made to establish the contemptuous act on the part of the opposite party, who was admittedly not impleaded as Respondent in the main writ petition. It would be in the interest of justice that the Respondent, so unreasonably treated, be indemnified in the costs. The instant petition is misconceived, frivolous and smells of the personal bias of the applicant against the opposite party, which warrant the award of exemplary costs. The petition fails and is dismissed with cost which is quantified to the sum of Rs. 5,000. The applicant is directed to deposit the said costs within six weeks from today.