(1956) 12 MP CK 0056

In the Madhya Pradesh High Court

Case No : Civil Miscellaneous Cases No. 4 and 5 of 1955

Khemchand Rajmal — APPELLANT

Vs

State — RESPONDENT

Date of Decision : 14-12-1956

Acts Referred:
Madhya Bharat Sales Tax Act, 1950 — Section 8(2)

Citation : (1957) JLJ 38

Hon'ble Judges : Samvatsar, J;Nevaskar, J

Bench : Division Bench

Advocate : Jindal, for the Appellant;

Final Decision : Dismissed

Judgement

Samvatsar, J.—These are two petitions under Article 226 of the Constitution of India filed by the same petitioner, Messrs, Khemchand Rajmal of Indore. Civil Misc. Case No. 4 of 1955 is filed for a writ of certiorari to quash the order of the Sales Tax Officer Shri V.K. Kolhe, assessing the petitioner to sales tax for the assessment year 1952-1953. Civil Misc. Case No, 5 of 1955 is directed against the order of the same officer assessing the petitioner to sales tax for the year 1953-1954. As both these petitions involve same points for determination and are based on almost identical facts, they are being dealt with together.

2. The petitioner Messrs. Khemchand Rajmal is a dealer in cloth and has his establishment in Sitalamata Bazar at Indore. Proceedings were initiated against him for assessment of sales-tax for the years 1951-1952, 1952-1953 and 1953-1954 before the Sales Tax Officer Shri Pancholia. Shri Pancholia had fixed these cases for hearing on 21-6-1954. On that day before the proceedings commenced, some unpleasant incident occurred as a result of which the hearing was not commenced and was adjourned to 28-6-1954. On that date the petitioner did not appear but submitted an application to the Sales Tax Officer intimating to him that he did not want his cases to be heard by Shri Pancholia and was approaching the Commissioner Sales Tax for transferring them to some

other Sales Tax Officer.

3. On 22-7-1954 the petitioner applied to the Commissioner Sales Tax for transferring his cases to some other Sales-tax Officer for all purposes and under all circumstances and for staying all further proceedinge before Shri Pancholia. The Commissioner Sales Tax allowed the application by his order dated 11-10-1954 and transferred the case of the petitioner pertaining to sales-tax proceedings to Shri Kolhe, another Sales Tax Officer at Indore.

4. During the interval, Shri Pancholia had completed the assessment for the year 1951-52 and had passed a final order in the matter on 5-8-1954. It is stated that the petitioner had filed an appeal against that order and that appeal is pending before the appellate authority.

5. On the transfer of the file to him, Shri Kolhe issued notice to the petitioner to appear with his account-books for the final assessment for the years 1952-53 and 53-54. The petitioner by his application dated 1-11-1954 requested Shri Kolhe to re-upon the order of assessment for the year 1951-52 and to deal with that case first before taking up the work of final assessment for the years 1952-53 and 1953-54, Shri Kolhe expressed his inability to accede to the request of the petitioner and the petitioner thereupon again approached the Commissioner Sales Tax to give retrospective effect to his order for transfer and to direct Shri Kolhe to re-open the assessment for the year 1951-52. The request of the petitioner was not granted.

6. Shri Kolhe again asked the petitioner to appear before him with his account-books in order to enable him to complete the final assessment for the years 1952-53 and 1953-54, but the petitioner did not comply with his orders. Shri Kolhe thereupon proceeded to make a best judgment of assessment and by his orders dated 10-1-1955 and 11-1-1955 determined the petitioner''s taxable turn-over for the year 1952-1953 at Rs. 44,000/- and for the year 1953-54 at Rs. 52,000/- respectively. He consequently fixed the tax liability of the petitioner for these respective years at Rs. 2406-4-6 and Rs. 2875/-. Shri Kolhe also issued a notice of demand and called upon the petitioner to deposit the amount of tax due from him pursuant to his aforesaid orders.

7. The petitioner did not comply with the notice of demand but at this stage took a somersault and contended that the assessment by Shri Kolhe was without jurisdiction. As Shri Kolhe refused to listen and to drop the demand for arrears of tax, he filed the present petitions under Article 226 of the Constitution of India for a writ of certiorari to quash the assessment made by Shri Kolhe for the years 1952-53 and 1953-54 respectively.

8. The main contentions raised by the petitioner in the petitions are as follows:

(1) that the Commissioner Sales Tax, has in exercise of his powers under Rule 3 (2) of the Sales Tax Rules, 1950, determined the jurisdiction of the Sales Tax Officers at Indore, according to Which Shri Pancholia alone was empowered to

make assessment in petitioner''s case and that Shri Kolhe had neither any jurisdiction nor authority to do it;

(2) that the petitioner had applied to the Commissioner Sales Tax, for transferring his pending case relating to the assessment for the year 1951-52 only; that the Commissioner transferred all the pending cases as also cases relating to future assessment of the petitioner to Shri Kolhe, which was illegal and contrary to law; Shri Kolhe did not, and could not, therefore acquire jurisdiction to assess the petitioner for the years 1952-53 and 1953-54; that therefore the assessment orders passed by Shri Kolhe were without jurisdiction and not binding on the petitioner;

(3) that the pecuniary jurisdiction fixed on the basis of the taxable turn-over is to be determined with reference to and on the basis of the return filed by the assessee; that Shri Kolhe could not be held to have acquired jurisdiction to assess the petitioner even on the basis of his pecuniary jurisdiction and the assessment made is devoid of any force even for this reason.

9. The petitioner has impleaded the Chief Secretary to the Government of Madhya Bharat, the Commissioner Sales Tax and the Sales Tax Officer Shri Kolhe, as opponents in this case. All the opponents opposed the petitions. The opponent No. 2, the Commissioner Sales Tax and the Sales Tax Officer Shri Kolhe, raised their contentions by filing separate returns.

10. In the return filed by the Commissioner, it is contended:--

(1) that on 22-7-1954 the petitioner applied under Rule 46 of the Madhya Bharat Sales Tax Rules, 1950, for transfer of his assessment case from the jurisdiction of Shri Pancholia, the Assessing Authority Indore, on the ground that he was personally prejudiced against the petitioner; that on considering the allegations and the merits of the case and for the ends of justice the petitioner''s assessment case was transferred to the jurisdiction of Shri Kolhe, Sales Tax Officer, Indore;

(2) that under Rule 46 of the Madhya Bharat Sales Tax Rules, 1950, the Commissioner had power to transfer any case or class of cases pending before any Sales Tax Officer to another Sales Tax Officer and in exercise of that power, he had issued the order dated 11-10-1954;

(3) that on 15-11-1954 the petitioner applied through his Sales Tax Practitioner, accepting transfer of his case from the jurisdiction of Shri Pancholia to the jurisdiction of Shri Kolhe and requested the Commissioner to give retrospective effect to his order by directing Shri Kolhe to re-open the assessment order for the year 1951-52; that the application dated 15-11-.954 clearly showed that the petitioner accepted and had knowledge of his assessment cases having been transferred to the jurisdiction of Shri Kolhe.

11. Shri Kolhe, in his return submitted--

(1) that when Shri Pancholia was dealing with the assessment of the petitioner for the year 1951-52, the petitioner abstained from appearing before him and by his application dated 28-6-1954, expressed his inability to appear before him on personal grounds and asked Shri Pancholia not to proceed with the assessment of any of the years 1951-52, 1952-53 or 1953-54 as he had applied to the Commissioner Sales Tax for transfer of his file from the jurisdiction of Shri Pancholia to the jurisdiction of some other Sales Tax Officer ;

(2) that the petitioner also applied to the Commissioner Sales Tax for transfer of his case from the jurisdiction of Shir Pancholia for all purposes and under all circumstances and repeatedly pressed the Commissioner with reminders to expedite action in his case; that the Commissioner, on consideration of that application and in exercise of the powers under Rule 46, transferred the petitioner''s case from the jurisdiction of Shir Pancholia and ordered the entire assessment proceedings in respect of the petitioner to be dealt with by him (opponent No. 3);

(3) that when the file of the petitioner''s assessment was transferred to him, he issued a notice u/s 8 (2) of the Madhya Bharat Sales Tax Act to the petitioner for his assessment for the years 1952-53 and 1953-54; that the petitioner did not appear on the dates fixed therein and without challenging his jurisdiction, requested him for adjournment of the proceedings; that the petitioner submitted to his jurisdiction and by the applications dated 1-11-1954 and 28-12-1954 asked him to re-open the assessment for the year 1951-52 before taking in hand the assessment case for the years 1952-53 and 1953-54;

(4) that in spite of repeated opportunities the petitioner failed to appear in compliance with the notice and he (opponent No. 3) had to proceed to assess the petitioner u/s 8 (4) (a) under the Sales Tax Act and to issue a demand notice for payment of the tax; that he also served a notice on the petitioner u/s 14 (1) (d) and 14 (1) (e) and it was at this stage and in reply to the notice that the petitioner objected to the jurisdiction of opponent No. 3 to deal with the petitioner''s assessment case.

12. The opponent No. 3 contended that the petition was not maintainable on the following among other grounds:--

(i) that the Commissioner had on motion of the petitioner himself and in exercise of the powers vested under Rule 46 of the Madhya Bharat Sales Tax Rules, transferred the petitioner''s assessment case from the jurisdiction of Shir Pancholia to his own jurisdiction and he was therefore empowered to assess the petitioner;

(ii) that the petitioner never challenged the jurisdiction of opponent No. 3 while be applied for postponement of his case and the subsequent objection is an afterthought and mala fide;

(iii) that the opponent No. 3 had jurisdiction and authority in law to assess the petitioner and his contention to the contrary is unfounded;

(iv) that the petitioner by his application dated 28-6-1954 himself asked Shir Pancholia not to proceed with his case for any year as he had made an application for transfer of his file from Shir Pancholia''s jurisdiction; that the petitioner is now estopped from challenging the jurisdiction of the opponent No. 3;

(v) that the petitioner had filed a writ-petition to circumvent the general provisions of the Sales Tax Act and has not followed the procedure laid down under that Act; that he had an alternative and equally effective remedy of appeal and revision under the Sales Tax Act where these objections could have been agitated;

(vi) that even on merits the transfer of the case from the jurisdiction of Shir Pancholia was justified as the petitioner was personally aggrieved against him;

(vii) that the opponent No. 3 had the jurisdiction in law in respect of the petitioner''s case without reference to the year of assessment; that during the course of the proceedings for assessment it was found that the petitioner had suppressed the real taxable turn-over for the years 1952-53 and 1953-54; that as per the best judgment the taxable turn-over for the year 1952-53 was determined at Rs. 44,000 and for the year 1953-54 at Rs. 52,000 which was within the jurisdiction of the opponent No. 3 under the Commissioner''s order No. 30436 dated 7-9-1954 issued under Rule 3 (2) of the Sales Tax Rules.

The opponents therefore submitted that the petition was not maintainable and should be dismissed.

13. Before proceeding further, it is necessary to state that the petitioner in this case has not challenged the vires of any of the provisions of the Madhya Bharat Sales Tax Act or the Madhya Bharat Sales Tax Rules framed in exercise of the powers conferred on the Government under that Act. The validity of the order of assessment alone is challenged and that too on the ground that the Commissioner Sales Tax had, in passing the order transferring the petitioner''s case, exercised powers not vested in him in law. It was contended that by such a transfer order the Commissioner could not invest the opponent No. 3 with jurisdiction to make the assessment in petitioner''s case.

14. Under the provisions of the Sales Tax Act, assessment of sales-tax is to be made by the Assessing Authority, which means a person authorised by the Government to make assessment.

Section 24 of the Madhya Bharat Sales Tax Act empowers the Government to make rules to carry out the purposes of the Act and in particular and without prejudice to the generality of the powers, the Government is authorised by the rules to provide for the appointments, duties and the powers of the officers appointed for the purpose of enforcement of the provisions of the Act. In exercise of the powers conferred by Section 24, the Government of Madhya

Bharat has framed rules known as the Madhya Bharat Sales Tax Rules, 1950.

By Rule 3 (1) power is conferred on the Government to create a range of the Deputy Commissioners or Judge Appeals, and fix the limits of a Circle and appoint officers to the Range and Circle, as the case maybe. By Rule 3 (2) it is further provided that where there are more Sales Tax Officers than one in a Circle, the Commissioner Sales Tax shall determine their respective jurisdiction within that Circle.

Rule 5 (a) then provides that the Sales Tax Officer shall be the Assessing Authority in respect of dealers carrying on business within the limits of a Circle.

Rule 46 which empowers the Commissioner to transfer a case pending before one Sales Tax Officer to another, is then as follows:--

46. The Commissioner may transfer any case or class of cases pending before any Sales Tax Officer to another Sales Tax Officer.

The Government has exercised the power vested by Rule 3 (1) and has by notification published in the Government Gazette, fixed the limits of Circles. This notification shows that one of these Circles is the District of Indore.

15. In Indore District there are several Sales-tax Officers and therefore the Commissioner Sales Tax has exercised the authority vested in him under Rule 3 (2) and specified the jurisdiction of these various Sales Tax Officers. According to this, Shir Pancholia has been invested with power to make assessment in respect of all assessees in Sitalamata Bazar and certain other localities of Indore, in cases where the taxable turn-over does not exceed Rs. 25,000/-. Shri Kolhe is specifically empowered to deal with cases in which taxable turn-over exceeds Rs. 25,000/- and for assessing which Shir Pancholia has no jurisdiction.

16. It is in the light of these provisions that I shall now deal with the petitioner''s contention that the assessment made by Shir Kolhe is without jurisdiction and that the order of the Commissioner Sales Tax, transferring the case of the petitioner is illegal and of no effect.

17. The impugned order of transfer passed by the Commissioner on 11-10-1954 is as follows:--

IN exercise of my powers under Rule 46 of the Madhya Bharat Sales Tax Rules, I remove the case relating to the Sales Tax Assessment of Messrs. Khemchand Rajmal, from the jurisdiction of Shir Pancholia and transfer it to the jurisdiction of Shir Kolhe. All the proceedings relating to Sales Tax Assessment of the said assessee will in future be dealt with by Shir Kolhe.

18. Shir Jindal, Counsel for the petitioner, has put forward a twofold argument in support of his contention that the order of the Commissioner transferring the case of the petitioner from the jurisdiction of Shir Pancholia to that of Shir Kolhe is invalid. He contended:

(i) that the petitioner had applied to the Commissioner for transferring his pending case viz., the case of the assessment for the year 1951-52 and that the order passed on his application really transferred that case alone from the jurisdiction of Shir Pancholia; that the transfer order was not intended to be operative with respect to cases which were not pending before Shri Pancholia; and

(ii) that the Commissioner has passed a general and omnibus order transferring all future cases of the assessee to Shri Kolhe; that this was not permitted by Rule 46 under which the Commissioner had purported to act; that such a general and omnibus order could not be passed under Rule 46; that Rule 46 only empowered the Commissioner to transfer a specific or particular pending case from one Sales Tax Officer to another but did not invest him with power to make a general and omnibus order transferring the case of the assessee from the jurisdiction of one Sales Tax Officer to that of another.

I shall examine these contentions in their serial order.

19. It is admitted by the petitioner that Shir Pancholia had fixed the assessment case for the year 1051-52 for hearing on 21-6-1954 and that on that date there was an unpleasant incident which created apprehensions in the mind of the petitioner that Shri Pancholia was biased against him. On 28-6-1954 the petitioner himself wrote a letter to Shir Pancholia and thereby requested him not to take up his cases as he was applying to the Commissioner to transfer his file to some other Sales Tax Officer. On 22-7-1954 he submitted an application to the Commissioner in which after narrating the incident that took place on 21-6-1954, he requested him to transfer his case to another Sales Tax Officer under Rule 46 of the Madhya Bharat Sales Tax Rules, 1950, for all purposes and under all circumstances and to order stay of all further proceedings before Shri Pancholia until final orders were passed regarding the transfer.

20. The circumstances under which the transfer application was made by the petitioner clearly indicate that the petitioner felt that Shir Pancholia was prejudiced against him and that he did not expect that Shri Pancholia would be just in the matter of his assessment. His request for transfer of his case for all purposes and under all circumstances and for staying further proceeding before Shri Panoholia further shows that he did not want to have his present or future cases to be dealt with by Shri Pancholia.

21. After the transfer order was passed by the Commissioner, the petitioner was asked by Shri Kolhe to appear before him for the purpose of assessment for the years 1952-53 and 1953-54. In reply the petitioner by his letter dated 1-11-1954 requested Shri Kolhe to re-open the assessment order for the year 1951-52 and to take up the assessment for 1952-53 and 1953-54 later on. On 28th December, 1954, the petitioner again wrote a letter to Shir Kolhe stating therein that he had approached the Commissioner Sales Tax, with a request to give retrospective effect to his order for transfer of the cases and that the

proceedings for assessment for the years 1952.53 and 1953-54 be stayed until the pending issue regarding 1951-52 assessment is finally decided by him. During the interval the petitioner had applied to the Commissioner Sales Tax to give retrospectixe effect to his order dated 11-10-1954 so as to enable Shir Kolhe to set aside the assessment order for the year 1951-52 which bad been passed by Shir Pancholia in a manner prejudicial to him; but his prayer in that behalf was not accepted.

22. All this correspondence and applications disclose that the petitioner himself believed, even after the transfer order dated 11-10-1954 was passed by the Commissioner, that the latter had transferred the whole of his case to Shir Kolhe. The petitioner not only raised no objection to the jurisdiction of Shir Kolhe to assess him for the year 1952-53 but wanted Shir Pancholia''s order for assessment for the year 1951-52 to be re-opened and the case for that year also to be dealt with by Shir Kolhe on its own merits. The petitioner was aware of the fact that his case relating to the assessment of sales-tax was transferred to the jurisdiction of Shri Kolhe and was permanently removed from the jurisdiction of Shir Pancholia and that he had no objection to this course being adopted.

23. It cannot be disputed, and was not in fact disputed, that the transfer of the case was effected by the Commissioner on the application of the petitioner and to avoid prejudice being caused to him by leaving his cases to be dealt with by an Officer who was considered to be prejudiced against him.

24. In view of the circumstances discussed above, it cannot be held that the order passed by the Commissioner on 11-10-1954 related only to the assessment for the year 1951-52 and was not intended to be a transfer of the assessee''s case generally from the jurisdiction of Shri Pancholia to that of Shri Kolhe.

25. The next point taken up by Shri Jindal relates to the construction of Rule 46 of the Madhya Bharat Sales Tax Rules, 1950. The learned Counsel urged that the provisions of this rule could be invoked to transfer cases pending before a Sales Tax Officer. He submitted that the ease or cases to be transferred must be those having specific numbers and a general and omnibus order transferring all the present and future cases of the assessee is not an order covered by this rule. In support of his contention the learned Counsel referred to the decision of the Supreme Court in Bidi Supply Co. Vs. The Union of India (UOI) and Others,

26. The Supreme Court case was a case decided under the Indian income tax Act. The assessee in that case was manufacturer and seller of Bidls and had its principal place of business at Calcutta where books of accounts were kept and where it had its banking account also. From the very inception of the business of the assessee it was assessed by the income tax Officer, District III, Calcutta. All of a sudden and without notice to the assessee, the Central Board of Revenue purporting to exercise powers u/s 5 (7-A) of the income tax Act, transferred its cases to the income tax Officer, Special Circle, Ranchi. Thereafter the income tax

Officer, Special Circle, Ranchi called upon the assessee to submit returns for the assessment year 1955-56. The assessee challenged the validity of this order of the Central Board of Revenue by a petition to the Supreme Court under Article 32 of the Constitution of India. It was contended on its behalf that sub-section (7-A) of section 5 of the Indian income tax Act and the order passed by the Central Board of Revenue under that provision of law were unconstitutional in that they infringed the fundamental right guaranteed to the petitioner under Article 14, Article 19 (1) (g) and Article 31 of the Constitution. Both these contentions prevailed. S.R. Das, C.J. with whom the other learned Judges agreed, examined the provisions of section 64 and the provisions of section 5 (7-A) of the Indian income tax Act and held that section 64 conferred a right on the assessee to be assessed by the income tax Officer of the area within which his principal place of business was situate or wherein he resided. It gave the assessee a valuable right and entitled him to tell the taxing authority that he shall not be called to attend at different places and upset his business. The learned Chief Justice further held that in order to deprive a particular assessee of the benefit of section 64, there must be a valid order u/s 5 (7-A).

27. His Lordship then examined the language of sub-section 7-A of section 5 and held that the transfer of a case under this sub-section was intended to refer to transfer of a particular case actually pending before the income tax Officer of one place to the income tax Officer of another place and that a general and omnibus order of transfer is not contemplated by this sub-section.

28. It was found in the aforesaid Supreme Court case that the order of transfer was passed without notice to the assessee and had considerably prejudiced it by requiring it to appear at a distant place and suffer all the inconvenience and expense on that account. In the present case the order of transfer has been made on a request made by the assessee and is intended for his benefit. The petitioner is also not likely to be subjected to any particular hardship or inconvenience on account of the transfer of his case as by this transfer he is not required to appear at any distant place, the transfer being from the jurisdiction of one Sales Tax Officer at Indore to that of another at the same place.

29. Under the Indian income tax Act a right is conferred on an assessee by section 64 of that Act to be assessed by the income tax Officer of the area within which his principal place of business is situated or wherein he resides. There is no provision corresponding to section 64 of the Indian income tax Act in the Madhya Bharat Sales Tax Act and a mere transfer of the case from one Sales Tax Officer to another would not by itself constitute a violation of any of the rights conferred on the assessee under the provisions of the Sales Tax Act.

30. Rule 46 of the Sales Tax Rules empowers the Commissioner to transfer any case or class of cases pending before one Sales Tax Officer to another Sales Tax Officer. The power to transfer is not confined to any particular case but can he exercised generally with respect to a class of cases which may then be pending before a Sales Tax Officer. The proceedings relating to the assessment of the

petitioner for the years 1951-52, 1952-53 and 1953-54 were pending before Shir Pancholia when the application for transfer was made by the petitioner on 22-7-1954. The assessment for the year 1951-52 was closed and a final order of assessment was passed by Shir Pancholia in regard to it but the proceedings for the subsequent years were then pending and could without any valid objection be transferred from the jurisdiction of Shir Pancholia to that of Shir Kolhe.

31. But the order of the Commissioner is not confined to pending proceedings only and is undoubtedly a general order transferring the file of the assessment of the petitioner from the jurisdiction of Shir Pancholia to that of Shri Kolhe without any reference to the cases then pending.

32. The contention of the opponents is that the Commissioner had authority under Rule 46 of the Sales Tax Rules to effect a general transfer as he has done in the present case. I do not think that this contention is well founded. Powers under Rule 46 could be exercised by the Commissioner only to transfer cases pending before one Sales Tax Officer to another and the order must therefore refer to either specific cases or class of cases and the cases must in any event be pending. The validity of the general order passed by the Commissioner cannot therefore be supported by reference to Rule 46.

33. The opponents however have contended that even apart from the transfer order, it was Shir Kolhe alone who was possessed of the jurisdiction to assess the petitioner for the particular years, i.e. 1952-53 and 1933-54. The contention is based on the ground that the Commissioner Sales Tax, while exercising powers under Rule 3 (2) had determined the pecuniary limits of the jurisdiction of Shir Pancholia in his order dated 15th June, 1954. The order states that all cases within the jurisdiction of Shir Pancholia in which the taxable turn-over of the assessee exceeds Rs. 25,000 shall, for the purposes of assessment, be dealt with by Shri Kolhe. It is contended on behalf of the opponents that the taxable turn-over of the petitioner was Rs. 44,000 for the year 1952-53 and Rs. 52,00 for the year 1953-54 and as in each of these years, the taxable turn-over was found to be more than Rs. 25,000, Shri Kolhe bad jurisdiction to complete the final assessment.

34. The petitioner has, in a very vague form, contended in the petition that the pecuniary limits of the jurisdiction must be deemed to have reference to the taxable turn-over disclosed in the return. It is difficult to accept this contention as the language of the order of the Commissioner determining the jurisdiction of the various Sales Tax Officers is clear. The Commissioner has by his order under Rule 3 (2), invested Shir Kolhe with jurisdiction to make the assessment in cases where the assessee''s taxable-turn over for the assessment year exceeds Rs. 25,000/-. It is also not possible to uphold the contention raised by the petitioner for the reason that to do so would render the jurisdiction of the Sales Tax officer dependent on the sweet will of the assessee. The assessee cannot by submitting a wrong return, confer jurisdiction on an officer who does not possess it or deprive an officer of jurisdiction which is vested in him under orders of the

Commissioner. I am therefore of opinion that Shir Kolhe had jurisdiction even apart from the transfer order dated 11-10-1954, to proceed with the assessment of the petitioner for the years 1932-53 and 1953-54 and the assessment made by him cannot be held to be without jurisdiction by reason of any defect that may be there in the order transferring the cases to Shir Kolhe.

35. The petitioner''s conduct also disentitles him to any relief in these proceedings. The petitioner picked up a quarrel with Shir Pancholia on 21-6-1954 and thereafter refused to appear before him. He himself moved the Commissioner Sales Tax; for transfer of his case for all purposes and under all circumstances and to stay further proceedings before Shir Pancholia until orders were passed on the transfer application. The transfer was thus effected on his own representation and to suit his own convenience. The petitioner took the benefit of this order. He approached Shir Kolhe, the Sales Tax Officer, to whom the assessment case of the petitioner was transferred and requested him to reopen the assessment for the year 1951-52 and then finalize the assessment for the years 1952-53 and 195-54. He also approached the Commissioner Sales Tax, with a request that the order of transfer should be given retrospective effect so as to enable Shir Kolhe to reopen Shir Pancholia''s order of assessment for the year 1951-52. It was only when he did not succeed in his efforts and when Shir Kolhe passed his orders relating to the assessment for the years 1952-53 and 1953-54 and called upon him to pay the amount of tax, that the petitioner turned round and raised the contention that Shir Kolhe had no jurisdiction to pass the assessment orders and that it was really Shir Pancholia who had jurisdiction to do so. To start with, the petitioner took advantage of the order of transfer to the fullest extent but later on turned round to say that Shir Kolhe had no jurisdiction to make the assessment. The petitioner''s application challenging the validity of the order of assessment passed by Shir Kolhe does not appear to have been made in good faith and indicates his mala fides. In this view of the matter, I am of the opinion that the petitioner is not entitled to any relief in exercise of the discretionary power vested in this Court by Article 2?6 of the Constitution.

36. As the petitions fail on merits, is is not necessary for me to consider the further contentions raised by the opponents, namely, that the petitioner had an equally efficacious alternative remedy and that there should be no interference by this Court for that reason.

37. The result is that the petitions fail and are hereby dismissed with costs. Advocate''s fees shall be taxed as Rs. 100/-.

Nevaskar J.

38. I agree.

