

(1960) 07 KL CK 0002
In the High Court Of Kerala
Case No : O. P. No"s. 311 etc. of 1960

Kunjahammad Haji Petitioner

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 07-07-1960

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1960) KLJ 1019

Hon'ble Judges : M. A. Ansari, C.J;M. Madhavan Nair, J

Bench : Division Bench

Advocate : V. R. Krishna Iyer and R. Krishnaswamy, for the Appellant;

Final Decision : Dismissed

Judgement

Ansari, C.J.—This batch of 15 writ petitions, invokes the jurisdiction of this Court under Article 226. The writ petitioners had been called upon to furnish returns of their agricultural incomes under the Agricultural income tax Act, No. XXII of 1950, hereinafter referred to as the Act; and in all the cases, the assessing Officer had again issued notices u/s 18(2). That section provides that, if the Agricultural income tax Officer is satisfied that the returns u/s 17 are correct, he can assess in writing the total agricultural income of the assessee and determine the sum payable by him on the basis of the returns. Sub-section (2) authorises him, on his not being satisfied, to serve on the person making the returns, a notice requiring him, on the date specified therein either to attend the office of the Officer, or to produce or to cause to be produced, any evidence on which such person may rely in support of the returns. The next authorisation to the assessing Officer, is u/s 18(3), that reads as follows: On the day specified in the notice under sub-section (2), or as soon as afterwards, as the case may be, the Agricultural income tax Officer, after considering such evidence as such person may produce and such other evidence as that Officer may require on the specified points, assess the total agricultural income of the assessee and determine the sum payable by him on the basis of such assessment.

Sub-section (4) of Section 18 provides for cases where the assessee had made no returns, and therein the Officer is required to make the assessment to the best of his -judgment, Section 31 of the Act provides for appeals against the assessments to the Assistant Commissioner, but excludes such a right in respect of assessments u/s 18(4). Further rights of appeal are given by Section 32 to the Appellate Tribunal within sixty days of the dates, on which the orders of Assistant Commissioner are communicated to the assessees. 2. The complaint, common to all the writ petitions now before us, is that the petitioners, on their evidence in support of their returns being found not satisfactory, have been assessed on grounds, which they had not been given fair opportunity to meet. The learned advocate of the petitioners has relied on a number of decisions to show that the assessing Officer is bound to afford the assessee an opportunity of showing cause against the case, on which he proposes to assess, after having rejected the materials furnished by the assessee in support of his returns. The proposition of the assessing authorities in this country; being bound to proceed in a judicial manner and come to a judicial conclusion upon ascertained facts, is well-settled by *Dhakeswari Cotton Mills Ltd. Vs. Commissioner of Income Tax, West Bengal*, and *Omar Salay Mohamed Sait Vs. Commissioner of Income Tax, Madras*, . In the latter case, it has been held that the judgment of the income tax authority must not be on surmises and conjectures, and the assessee must have fair opportunity for meeting the case, on which he is being assessed; and a recent illustration of the same rule is to be found in *Dayaram Surajmall Vs. Commissioner of Income Tax, Hyderabad and Andhra*, . The petitioners have, therefore, a good case when they complain that the rule of natural justice of being given the opportunity to show cause against the case, has not been observed in assessing them, and their complaints of not knowing the basis, on which they had been assessed, are not challenged. It follows that the petitions should be allowed unless there be other grounds for dismissing them.

3. On behalf of the taxing authorities, it is argued that the petitioners have adequate alternative remedies of appeals, where they can urge their complaints, and the jurisdiction under Article 226 should not be exercised in their favour. The legal position is well-settled that the presence of adequate statutory relief, bars the exercise of jurisdiction under Article 226; but it is equally well-settled that persons complaining of rules of natural justice having been violated in proceedings that they seek to vacate, should not be denied the benefit of the Article even though they have other adequate statutory remedy, which they can seek. In *Sarada Thampatty v Secretary to Government* 1960 KLT 632 : 1960 K.L.J. 915 one of us has held the general rule to be subject to the aforesaid exception, and the learned Government Pleader has not drawn our attention to any case to the contrary. We would, therefore, hesitate in dismissing the writ petitions, where the complaint is of infraction of the principles of natural justice by authorities exercising quasi-judicial powers on the ground of the party complaining being entitled to the statutory right of appeal. But the party complaining must not invoke the extraordinary jurisdiction of this Court, and at

the same time exercise his statutory right of appeal; for, where such a right of appeal has been availed of, the appellate authority becomes vested with the legal jurisdiction of adjudicating on the complaint, and the authority should not, by our issuing certiorari, be divested of its jurisdiction of adjudication on the order, which becomes the subject-matter of appeal before it. Nor there is, in such cases, overriding equity in favour of the petitioner. It is equally clear that the position of such persons is not improved by their appeals having been dismissed. The orders of the assessing Officer then become merged in the orders of the appellate authority, and that cannot be vacated without following the usual procedure for granting certiorari. That procedure requires that the person, whose order is being challenged, must be impleaded in order to permit his showing grounds against vacating his order; and admittedly none of the appellate authorities been impleaded to these petitions. In these circumstances, the appellate orders, without having the appellate authority and the record before us, should not be interfered with; and in such cases, the petitioners should pursue their statutory reliefs to their logical conclusions.

4. We would, therefore, divide these writ petitions into two groups i.e., those in which the petitioners have not invoked the appellate powers u/s 31 of the Act, and those in which they have done so. Where the appellate power has been invoked and the appeals are pending adjudication, or have been decided, we feel that the petitioner should not be given the benefit of the Article, and should be made to pursue their statutory remedy. After all, our jurisdiction under Article 226 is not concurrent, and the petitioners having appealed, must not get the benefit of the Article until the final stages of the relief under the Act are reached.

5. It follows that Writ Petitions 376, 378, 388 and 602, in which the learned Advocate of the petitioners admits appeals by the petitioners to be pending, are dismissed. Petitions 311, 464 and 465 require no different treatment, because we have not the appellate records before us, nor the appellate authority been impleaded in them. Therefore, the appeals having been dismissed, cannot improve the situation, and the writ petitioners should press their statutory reliefs. These petitions are also dismissed.

6. The writ petitioners in O. P. Nos. 421, 427, 466, 467, 477, 478 and 601 have not taken advantage of their right to appeal under the statute, and we have already said that they cannot be compelled to do so, their case being one of violation of principles of natural justice. Having gone through the records, we feel that the assessing authorities have not complied with the rule of conduct laid down by the Supreme Court for taxing authorities when proceeding on materials not furnished by the assesseees. The consequence is that these assessment orders are bad and must be vacated. The assessing authorities must proceed to re-assess these writ petitioners, after affording them opportunity of meeting the case, on which the assessments are to be made. These petitions are, therefore, allowed, but without costs and the authorities are directed to make the assessments according to law and rules of justice. In O. P. No. 604 the common

ground is that after sending several notices, the assessee had not appeared. He, therefore, cannot complain that he was not given any opportunity to meet the case; and his writ petition is, therefore, dismissed.

Having regard to the circumstances of the case, all the parties will bear their costs.