

(1961) 09 AP CK 0026

In the Andhra Pradesh High Court

Case No : Civil Miscellaneous Petition No. 5436 of 1961

Maduri Motors

APPELLANT

Vs

The State of Andhra Pradesh

RESPONDENT

Date of Decision : 05-09-1961

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (1962) 13 STC 673

Hon'ble Judges : P. Chandra Reddy, C.J.;Narasimham, J

Bench : Division Bench

Advocate : R.V. Rama Rao, for R. Bhaskara Rao, for the Appellant; The Third Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

C.J. Narasimham, J.—This is an application for the review of an order dated 5th January, 1960, passed by the Bench in T. R. C. No. 46 of 1959 confirming the order of the Sales Tax Appellate Tribunal made in Tribunal Appeal No. 443 of 1957 and dismissing the revision.

2. The petitioner herein, Maduri Motors, Secunderabad, was a dealer in motor trucks and chassis as the authorised agent of M/s. Tata Engineering Works, Jamshedpur, for the year of assessment 1955-56. He claimed a deduction of Rs. 29,565-3-3 from the gross turnover under Rule 8(i)(g) of the Hyderabad General Sales Tax Rules, 1950, as transport charges for the trucks and chassis sold at Secunderabad. The said claim for deduction was not conceded by the Sales Tax Authorities. The Sales Tax Appellate Tribunal has, by its order dated 21st December, 1957, rejected the said claim for deduction. The petitioner-dealer preferred a revision to this Court. By an order dated 5th January, 1960, this Bench did not accede to the contention of the petitioner-dealer and confirmed the order of the Sales Tax Appellate Tribunal.

3. The present petition is filed for the review of the said order of this Division

Bench raising a question of law whether the Sales Tax Appellate Tribunal that heard the appeal T. A. No. 443 of 1957 and decided it on 21st December, 1957, was validly constituted under law.

4. The petitioner seeks to say as fresh facts that the Chairman of the Sales Tax Appellate Tribunal had retired on 9th December, 1957, that his successor had taken charge on 31st December, 1957, that as such the office of the Chairman was vacant during the intervening period, that only two members of the Tribunal functioned during the said period, that there was no order of the Chairman u/s 3(3)(a)(ii) of the Andhra Pradesh General Sales Tax Act, 1957, hereinafter to be referred to as the Act, and that therefore the decision of the case by the Tribunal in such circumstances was not by a properly constituted Tribunal under the Act and as such was a nullity. It is on that ground that the order of this Division Bench is sought to be reviewed.

5. The learned Government Pleader has opposed the application contending inter alia that u/s 22(7)(a) of the Act the constitution of the Tribunal is not one of the grounds on which a review lies, that such a ground was not taken when the revision case was heard by this Bench, that this is a matter, which, if true, was within the knowledge of the petitioner who was represented by counsel at every stage, that a belated plea in this regard is attributable to his own negligence and that further the review petition itself is barred by time. He has cited a decision of the Supreme Court in Chandaji Kubaji & Co. v. The State of Andhra Pradesh [1960] 11 S.T.C. 451 which ruled that "the appellant was not entitled to ask for review... by reason of his own deliberate negligence and intentional withholding of evidence.

6. At the outset, we have to notice that the provisions of the Act are definitive of the limits within which a review is permitted. It is obviously so for the reason that a review is not ordinarily permissible under inherent powers. Vide Anantharaju Shetty Vs. Appu Hegade, and Fernandez v. Ranganayakulu Chetty AIR 1953 Mad. 236.

7. Sri Rama Rao has contended that the constitution of the Tribunal directly cuts at the root of the order pronounced by it and that we could take notice of the fact that only two members comprised the Tribunal which heard and disposed of the Tribunal Appeal No. 443 of 1957 preferred by the petitioner. We have to say that from the fact that two members had heard and disposed of the appeal, it does not necessarily follow that they did not comprise a properly constituted Tribunal.

8. Section 3 of the Act, in so far as it is relevant, is in these terms :

3. (i) The State Government shall appoint an Appellate Tribunal consisting of a Chairman and two other members to exercise the functions conferred on the Appellate Tribunal by or under this Act.

(2) Any vacancy in the membership of the Appellate Tribunal shall be filled up by

the State Government.

(3) (a) The functions of the Appellate Tribunal may be exercised-

(i) by a Bench consisting of all the members of the Appellate Tribunal, or

(ii) by a Bench consisting of two members constituted by the Chairman, or

(iii) by a Bench consisting of the Chairman and another member as constituted by the Chairman, or

(iv) by a single member of the Appellate Tribunal constituted by the Chairman in cases where the turnover does not exceed Rs. 20,000.

9. The petitioner now avers that the Bench, which heard the appeal, was not constituted Under-section 3(3) (a) (ii) of the Act. This allegation cannot be accepted as a proved fact. There is ordinarily a presumption that judicial acts have been regularly performed. Nothing contrary has been shown by the petitioner. We would, therefore, hold that the Sales Tax Appellate Tribunal, which heard the petitioner's appeal, was constituted in accordance with law and in the absence of anything apparent on the face of the record.

10. Sri Rama Rao has relied on Kama Umi Isa Ammal v. Rama Kudumban and Ors. AIR 1953 Mad. 129 in support of his plea with regard to the constitution of the Tribunal. That was a case of the constitution of the Tribunal under the Madras Act XXVI of 1948 which inter alia provided that:

Each Tribunal shall consist of three members ; one of them shall be a District Judge or an officer eligible to be appointed as a District Judge, another shall be a Subordinate Judge or an officer eligible to be appointed as a Subordinate Judge and the third shall be a Revenue Divisional Officer or an Officer eligible to be appointed as a Revenue Divisional Officer." [Section 8(2)].

Purporting to act in exercise of the powers conferred on the Government u/s 7 to make rules to carry out the purposes of the Act, the Government made a rule (among other rules) that "not less than two members shall be necessary to constitute a sitting of a Tribunal.

11. It was contended on behalf of the petitioner in that case that the above rule, in so far as it purported to authorise two members of a Tribunal to sit and dispose of matters arising for the decision of the Tribunal, was invalid as being ultra vires the provisions of the Act. The Division Bench held that the contention had to prevail.

12. The said decision renders little assistance to the contention of Sri Rama Rao as Section 3(3) (a) of the Andhra Pradesh General Sales Tax Act, 1957, specifically provides that the functions of the Appellate Tribunal may be exercised by a Bench consisting of two members.

13. We now read the express provision for review under the Act, Section 22(7) (a), which provides that

The High Court may, on the application of the dealer or the prescribed authority review any order passed by it under Sub-section (4) on the basis of facts which were not before it when it passed the order.

14. u/s I2-A (6) (a) of the Madras General Sales Tax Act, 1939, the Appellate Tribunal had been conferred a power of review in similar terms.

15. Construing the true meaning of the clause "on the basis of facts which were not before it when it passed the order," the Supreme Court in the aforecited case observed that (at page 455) :

It is, we think, doing great violence to language to say that an intentional or deliberate withholding or suppression of evidence in support of a plea or contention or a basic fact urged before the Tribunal, is comprehended within the expression "facts which were not before it (Tribunal) when it passed the order." To so construe the section is to put a premium on deliberate negligence and fraud and amounts to allowing a party to profit from its own wrong. We do not think that such a construction follows from the language used, which is more consistent with the view that the provision in Section I2-A (6) (a) permits a review when through some oversight, mistake or error, the necessary facts, basic or evidentiary, were not present before the Court when it passed the order sought to be reviewed. It is entirely wrong to think that a sub-section permits a party to play hide and seek with a judicial tribunal ; that is to say to raise a fact in issue or evidentiary fact as a plea in support of a claim and at the same time deliberately withhold the evidence in support thereof. Such a situation cannot be said to be one within the meaning of the expression "facts not present before the Tribunal.

16. The petitioner was represented before the Tribunal by a firm of Chartered Accountants. The revision was conducted before this Court by a Senior Advocate of this Court, Sri K. Ranganathachari. We are unable to accede to the contention of Sri Rama Rao that the matter of constitution of the Appellate Tribunal was not truly known at the material stages and for the first time came to be discovered by Sri Bhaskara Rao, the counsel who presented the review application on 22nd May, 1961. Sri Bhaskara Rao retired as a Judicial Officer. It transpired that when he was in service he had assumed charge of the office of the Chairman of the Sales Tax Appellate Tribunal on 1st January, 1958.

17. We are inclined to take the view that the plea as to the constitution of the Tribunal, if true, was deliberately withheld by the petitioner who was duly represented at all material stages and that he is not entitled to ask for a review by reason of his own act of intentional withholding tantamounting to deliberate negligence.

18. We are further inclined to accept the contention of the learned Government Pleader that the statutory provision referred to supra definitive of the limits of review may not admit of the question of constitution of the Sales Tax Appellate Tribunal in a review petition.

19. In the view that we have taken, any interference in review would not accord with the express provision of the statute and would not further the ends of justice.

20. We have to say further that the application is also out of time as having been filed more than a year after the date of the pronouncement of the order of this Division Bench. We are unable to accede to the submission of Sri Rama Rao that the period of a year prescribed under Rule 42 of the Andhra Pradesh General Sales Tax Rules is reckonable only from the date of communication of this Court's order to the petitioner and that in fact no such order has been communicated. There is no saving of this petition from the bar of limitation rule for the twofold reason that the order of this Court was pronounced in Court in the presence of the learned counsel for the petitioner and that it is not the practice of this Court to communicate its order to the party.

21. Order 20, Rule 1, of the CPC provides that:

The Court, after the case has been heard, shall pronounce judgment in open Court, either at once or on some future day, of which due notice shall be given to the parties or their pleaders.

22. As we have indicated, the judgment of this Court was pronounced, after the case was heard, in open Court and that would constitute communication to the petitioner through his pleader within the meaning of Rule 42 referred to supra. This petition is, therefore, barred by time having been filed more than a year after the pronouncement of the order by the Division Bench of this Court.

23. Sri Rama Rao has argued that in any event this Court has jurisdiction to interfere under Article 227 of the Constitution. For the reasons set out supra, we do not consider that this is a case which could be brought within the purview of that article.

24. After this case was reserved for judgment and the judgment was prepared, the learned counsel for the petitioner has sought to place before us particulars of filing the present review petition which, he stated, he could not submit when the case was heard. The further particulars sought to be placed are these as stated by the learned counsel:

Originally the review was filed on 3rd August, 1960, and was numbered as S. R. No. 25800 of 1960. The same was returned sometime in September, 1960. As the papers were lost, they were not re-presented. A petition for substitution of the said papers, as also a petition to condone the delay in re-presentation, were ordered on 23rd May, 1961, and the review petition was admitted after notice to Government Pleader on 31st May, 1961.

25. The point sought to be made out on those averments is that the review petition was filed in time. But the snag here is that Sri Rama Rao, the learned counsel for the petitioner, has conceded that the petition for substitution of the record and for condonation of the delay in presentation were ordered without

notice to the learned Government Pleader on the representation that the delay was in re-presentation of the papers. Re-presentation presupposes the presentation of the same petition which was re-presented. However, we do not now propose to go into the question of the propriety or otherwise of that order passed without notice to the other party.

26. Assuming that the petition was filed in time, still the petition for review is not maintainable on the grounds urged therein. Hence this will not help the petitioner.

27. In the result the petition is dismissed with costs.