

(2002) 10 DEL CK 0040

In the Delhi High Court

Case No : CW No's. 4961, 5051, 5196 and 5224 of 2001

M.C.D.

APPELLANT

Vs

Ram Kishan Khandelwal and Others

RESPONDENT

Date of Decision : 21-10-2002

Acts Referred:

Delhi Municipal Corporation Act, 1957 — Section 126(2), 126(3), 126(4), 138
New Delhi Municipal Council Act, 1994 — Section 72(2)

Citation : (2002) 101 DLT 169

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : Amita Gupta, for the Appellant; B.B. Jain, for the Respondent

Judgement

Sanjay Kishan Kaul, J.—The meaning and effect of the word "made" in Section 126(4) of the Delhi Municipal Corporation Act, 1957 has given rise to these four petitions.

2. All the writ petitions relate to the same property owned respondents 1 to 3 being property No.B-100, Malviya Nagar, New Delhi and retable value has been fixed at different values w.e.f. 1.4.95, 1.4.96, 1.4.97 and 12.6.98 respectively.

3. The factual matrix is very brief. The assessment order was passed on 15.3.1999 which was diarised in the dispatch register on 31.3.1999 and was posted on 6.4.99. The question which arose for consideration before the appellate authority was whether the said order could be said to be "made" on or before 31.3.1999 in view of the provisions of section 126(4) of the said Act. Section 126(4) of said Act is quoted as under:-

126. Amendment of assessment list.-

(4) No amendment under sub-section(1) shall be made in the assessment list in relation to-

(a) any year prior to the year commencing on the 1st day of April, 1988, after

the 31st day of March, 1991;

(b) the year commencing on the 1st day of April, 1988, or any other year thereafter, after the expiry of three years from the end of the year in which the notice is given under sub-section (2) or sub-section(3), as the case may be;

4. Learned counsel for the petitioner has assailed the findings of the appellate authority to the effect that since the order was not received by the assessed before 31.3.1999, the order date 15.3.1999 was time-barred. It may be also noted that subsequently the rectified order was passed on 5.5.2000 but since the same was a rectification of the order dated 15.3.1999, the same had to relate back to the said order.

5. Learned counsel for the petitioner has referred to the judgment of the Supreme Court in Kumar Jagdish Chandra Sinha (dead) Through LR's. etc. Vs. Commissioner of Income Tax, West Bengal, to contend that if the return is in the course of transmission before the expiry of the relevant period it is not necessary that it should also be received by the assessed within the said period.

6. The expression "made" was considered in Pancham v. Jhinguri and Anr., 1882 all 278 where it was held that the said term does not mean presented but means and includes hearing and determination of the application for review of the judgment. It was held In Re Manning 1885 Ch.D. 480 that the order of the court is "made" on the date it is pronounced and not on the date it is drawn up.

7. Learned counsel for the respondents 1 to 3, on the hand contend that the expression "made" was interpreted in A C Arumudham and others v. Manager, Jawahar Mills Ltd. AIR 1956 Mad 79. The said expression was interpreted in the context of Payment of Wages Act and it was held that the term "made" has to be liberally construed as the date on which the order is communicated to the concerned party and the date when it reaches them. It may, however, be noted that while interpreting provisions of the said Act it was observed that the purpose of the Act is to provide that employed people should be paid their wages in particular form and at particular intervals and without any authorised deduction.

8. Learned counsel for the respondents 1 to 3 have also sought to rely on bye-law 9 of the Assessment list bye laws, 1959 dealing with the amendment to assessment list where it is stated that the assessment list shall be finally amended in accordance with the decision "given". The contention thus raised was that section 126(4) has to be given effect to in the context of the amendment to the assessment list under bye-law 9(3) which uses the word expression "given". It was thus contended that the word "given" and "made" both have the same meaning and reliance has been placed on the judgment of the Supreme Court in K. Narasimhiah Vs. H.C. Singri Gowda, where it was held that giving is complete when it is tendered to the person concerned. Bye law 9(3) is as under :-

9(3) The assessment list shall be finally amended in accordance with the

decisions given by the Commissioner or by an officer referred to in Clause (2), on the investigation and disposal of the objections, if any.

9. I have considered the submissions advanced by learned counsel for the parties. The expression "given" in Section 72(2) of the NDMC Act came up for interpretation in CW 3368/2001 Raman K Sawhney v. Chairperson, NDMC and others decided on 7th October, 2002. In the said judgment the observations of the Supreme Court in Municipal Corporation of Delhi Vs. M/s. Trigon Investment and Trading Private Limited and another, in the context of Section 126(1) & (2) of the Act were considered. In the subsequent judgment of the Supreme Court in K. Bhaskaran Vs. Sankaran Vaidhyan Balan and Another, the expression "giving" and "receipt" in the context of the Negotiable Instruments Act were held to have different connotations. The Supreme Court observed as under:-

"18. On the part of the payee he has to make a demand by "giving a notice" in writing. If that was the only requirement to complete the offence on the failure of the drawer to pay the cheque amount within 15 days from the date of such "giving", the travails of the prosecution would have been very much lessened. But the legislature says that failure on the part of the drawer to pay the amount should be within 15 days "of the receipt" of the said notice. It is, Therefore, clear that "giving notice" in the context is not the same as receipt of notice. Giving is a process of which receipt is the accomplishment. It is for the payee to perform the former process by sending the notice to the drawer in the correct address.

19. In Black's Law Dictionary "giving of notice" is distinguished from "receiving of the notice". (vide page 621) "A person notifies or gives notice to another by taking such steps as may be reasonably required to inform the other in the ordinary course, whether or not such other actually comes to know of it." A person "receives" a notice when it is duly delivered too him or at the place of his business.

20. If a strict interpretation is given that the drawer should have actually received the notice for the period of 15 days to start running no matter that the payee sent the notice in the correct address, a trickster cheque drawer would get the legal consequences of Section 138 of the Act. It must be borne in mind that Court should not adopt an interpretation which helps a dishonest evader and clips and honest payee as that would defeat the very legislative measure.

21. In Maxwell's "Interpretation of Statutes," the learned author has emphasized that "provisions relating to giving of notice often receive liberal interpretation." (vide page 99 of the 12th Edn.). The context envisaged in Section 138 of the Act invites a liberal interpretation for the person who has the statutory obligation to give notice because he is presumed to be the loser in the transaction and it is for his interest the very provision is made by the legislature. The words in Clause (b) of the proviso the Section 138 of the Act show that payee has the statutory obligation to "make a demand" by giving notice. The thrust in the clause is on the need to "make a demand". It is only the mode for

making such demand which the legislature has prescribed. A payee can send the notice for doing his part for giving the notice. Once it is dispatched his part is over and the next depends on what the sendee does.

22. It is settled that a notice refused to be accepted by the addressee can be presumed to have been served on him, (vide Harcharan Singh Vs. Smt. Shivrani and Others, and Jagdish Singh Vs. Natthu Singh,

23. Here the notice is returned as unclaimed and not as refused. Will there be any significant different between the two so far as the presumption of service is concerned? In this connection a reference to Section 27 of the General Clauses Act will be useful. The section reads thus:

"27. Meaning of service by post.- Where any Central Act or Regulation made after the commencement of this Act authorises or requires any document to be served by post, whether the expression "serve" or "send" or any other expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

24. No doubt Section 138 of the Act does not require that the notice should be given only by "post". Nonetheless the principles incorporated in Section 27 (quoted above) can profitably be imported in a case where the sender has dispatched the notice by post with the correct address written on it. Then it can be deemed to have been served on the sendee unless he proves that it was not really served and that he was not responsible for such non-service. Any other interpretation can lead to a very tenuous position as the drawer of the cheque who is liable to pay the amount would resort to the strategy of subterfuge by successful avoiding the notice."

10. It was held that giving is complete when the same is dispatched though the time period for filing of the objections would start once the notice was received. In view of the said judgment I am unable to agree with the contention of the learned counsel for the respondents 1 to 3 that "giving" would imply "receipt" of the said notice.

11. The observations made by the Madras High Court in Aroo's case (supra) is in the context of Payment of Wages Act where the expression "made" had to be liberally construed. This is not the position in the present case. What is required u/s 126(4) is that the order should be made which would require the order to be finally passed. As observed above, the order of the court is made on the date it is pronounced and not when it is drawn up. it will be relevant to note that in Heatley v. Newton 19 cd 326 it was held that the order by a Chancery Judge is made not when it is pronounced but when it is signed or otherwise perfected. In the present case the order is signed and has been perfected before the relevant cut-off date of 31.3.1999. Nothing more was required to be done other than to

communicate the order. The factum of communication of the order at a later date would not mean that the order was "made" after the cut-off date.

12. The ratio of Kumar Jagdish's case (supra) would also apply to the present case in view of the fact that it has been held that if the return is in the course of transmission before the expiry of the relevant period, it is not necessary that the same should be received by the assessed. In the present case the order was set through the process of dispatch and was diarised on 31.3.1999. Even in the judgment In Re Manning's case (supra) the word "made" has been held to be the date on which the order is pronounced. Admittedly the order was signed and finalised prior to the cut-off date and was sent to the dispatch department for being communicated to the assessed.

13. This aspect is also to be understood in context of the fact that even in the dispatch register the order has been diarised on 31.3.1999. It is only the actual dispatch and receipt which has taken thereafter. In my considered view any other view would result in anomalous situation. For example if an officer of the MCD colludes with the assessed and does not dispatch the order can it imply that the liability of the assessed to pay the tax ceases? In my considered view the answer to this question would be in the negative. It is not that the right of the assessed to challenge the order has been foreclosed. For computation of the period of limitation and for taking necessary action against the order it is the receipt of the order which would become relevant. However, this does not mean that the order has not been made before the cut-off date when admittedly the order has been finally passed and signed before the said date. 14. In view of the aforesaid position I am of the considered view that the order of the appellate authority cannot be sustained and is hereby set aside. The order has been passed only on the issue of the notice being delivered in time but the claim of the respondents 1 to 3 in respect of the actual assessment has not been dealt with. In view thereof I consider it appropriate to remand the matter back to the appellate authority to determine the same in accordance with law on the merits of the assessment order.

15. The petitioner shall appear before the Appellate Authority on 11.11.2002 for further proceedings.

16. Writ petitions stand disposed of in the aforesaid terms leaving the parties to bear their own costs.