

(1972) 09 PAT CK 0039

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 886 of 1972

Mehta Ramnath

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 08-09-1972

Acts Referred:

Constitution of India, 1950 — Article 19, 301

Citation : (1973) 6 PLJR 138 : (1973) 30 STC 477

Hon'ble Judges : S. Akbar Husain, J;N.L. Untwalia, J

Bench : Division Bench

Advocate : K.D. Chatterji and Rama Pratap Singh II, for the Appellant;
Nagendra Prasad Singh and Balkrishna Prasad Narayan, for the Respondent

Judgement

N.L. Untwalia, J.—The sole petitioner in this writ application is a citizen of India and carries on business in potato, onion, green vegetables and fruits under the name and style of Messrs. Merita Ramnath at Digha Ghat in the district of Patna. He is a dealer registered under the Bihar Sales Tax Act, 1959 (hereinafter called the Act), as also under the Central Sales Tax Act, 1956. The petitioner sells goods in Bihar as also in the course of inter-State trade and commerce. In exercise of their power conferred u/s 42 of the Act, the State Government, according to the case of the petitioner, have notified all the existing check posts and barriers established u/s 41 of the Act that a dealer is required to produce the duplicate and the original copy of form XXVIII-B before the authorities. After undergoing certain formalities, the consignment is allowed to be transported. In exercise of the power conferred u/s 46 of the Act, the Governor introduced and made Rule 31-C in the Bihar Sales Tax Rules, 1959 (hereinafter called the Rules), by a notification dated the 24th March, 1972, a copy of which is annexure 1 to the writ application. In accordance with the said rule the petitioner was required to make an application to the appropriate sales tax authority for the supply of permits in form XXVIII-B to be used in accordance with Rule 31(1 A) of the Rules.

2. The petitioner's case further is that on the 23rd June, 1972, he applied to the

Additional Superintendent of Commercial Taxes, Urban Circle, Patna (respondent No. 3), for the issue of (two volumes containing form XXVIII-B. Necessary postal orders and a satisfactory account of the forms issued to him in the past were appended to the application. By an order dated the 23rd June, 1972, respondent No. 3 said that under Rule 31-C no permit forms would be supplied to the petitioner unless he filed the return for the month of April, 1972, and paid the admitted tax on the same. Thereupon, the petitioner filed a nil return for the month of April, 1972. Respondent No. 3 by his order passed on the same day observed that as the petitioner had purchased onion from Nasik and sent the same to Siliguri in the month of March, 1972, he was liable to pay purchase tax under the Act on the said transaction, but he had not paid purchase tax for those purchases made in the month of March, 1972. Because the petitioner expressed his inability to pay the tax on the said purchases from Nasik, respondent No. 3 did not supply any permit, that means the volumes containing form XXVIII-B, under Rule 31-C of the Rules. He further directed that the same could be supplied to the petitioner only after he had, deposited the said tax which he termed as "admitted tax". A copy of the order is annexure 2 to the writ application. The petitioner attacks the constitutional validity of Rule 31-C framed by the notification (annexure 1) and asserts that the order of respondent No. 3 contained in annexure 2 is bad and erroneous in law on its face.

3. The further grievance of the petitioner in this very writ application is that though Section 42 of the Act read with Rule 31 of the Rules does not purport to impose any restriction on the inter-State movement of goods, the various Check Post Officers have been allowing the inter-State movement of the goods only after the petitioner is made to furnish permit in terms of Rule 31. The various Check Post Officers have been prohibiting transport of goods pursuant to the transactions which are not even of the nature of sale and purchase and restricting transport pursuant to transactions in the course of inter-State trade and commerce.

4. The prayer made by the petitioner in the writ application is to quash annexure 1 and to declare rules 31 and 31-C(b) of the Rules and Section 42 of the Act as ultra vires.

5. At the time of argument of this writ application, the learned counsel for the petitioner did not attack the constitutional validity of Rule 31 and Section 42 of the Act. He could not do so. In terms, they do not put any restriction on sales in the course of inter-State trade and commerce. Such a restriction was put by Rule 31-B which was made earlier, but this Rule was struck down by the Supreme Court as being violative of Article 301 of the Constitution in the case of *Hans Raj Bagrecha Vs. State of Bihar and Others*, . Learned counsel, however, submitted that the Check Post Officers were enforcing the provisions contained in Section 42 of the Act and Rule 31 of the Rules even in regard to transport in the course of inter-State trade and commerce. This they should not be permitted to do and a writ should issue to them prohibiting them from doing so. During the course of

hearing we indicated that in that regard such a writ cannot be issued in this case. The petitioner should first complain to the higher authorities if his grievance is correct and justified. He should try to obtain some orders from them to show that in their opinion Section 42 of the Act and Rule 31 of the Rules apply to sales and consequent transport of goods in the course of inter-State trade and commerce. Or, the petitioner should give specific instances with details of different check posts, etc., where goods transported in the course of inter-State trade and commerce were not allowed to cross the border without fulfilment of the requirement of Rule 31 of the Rules. Then and then only the grievance of the petitioner in that regard can be examined.

6. The main grievance of the petitioner in this case, however, is with reference to the constitutional validity of Rule 31-C and the propriety and legality of the order of respondent No. 3 contained in annexure 2. Learned counsel submitted the following points : (1) that Rule 31-C is bad because it unreasonably restricts the fundamental right of the petitioner under article 19(1)(g) of the Constitution to carry on trade or business by insisting in that rule that the petitioner shall have to file returns and pay the taxes before any application for issue of permit forms can be entertained; (2) that the direction given by respondent No. 3 to the petitioner to file monthly return for the month of April, 1972, was beyond his power and was not even sanctioned by Section 14 of the Act, as held by a Bench of this court in *Hurdatroj Jute Mills Private Ltd. v. Superintendent of Commercial Taxes* [1972] 30 STC 151; and (3) that respondent No. 3, in the matter of an application under Rule 31-C of the Rules, had no jurisdiction to enquire into the correctness or incorrectness of the return filed and to hold that the taxes payable by the petitioner, in his opinion, had not been paid and hence the forms could not be issued.

7. The impugned portion of Rule 31-C contained in annexure 1 reads as follows :

Notwithstanding anything contained in these rules,-

(a)...

(b) If the applicant for Forms IX, IXC, XXVIII A and XXVIII B has at the time of making the application defaulted in furnishing any return or revised return, together with the receipted chalan "or chalans showing payment of the tax due from him according to such return or revised return, for the furnishing of which the prescribed date or dates, or the extended date or dates, if any, have already expired, the prescribed authority shall withhold the issue of such forms to him until such time as he furnishes :-

(i) such return or revised return, together with such receipted chalan or chalans, and

(ii) any other return or revised return, together with the receipted chalan or chalans showing payment of the tax due according to such return or returns, for the furnishing of which the prescribed date or dates or the extended date or

dates, if any, may have expired after the date of the application.

It will thus be noticed that Clause (b) of the impugned rule does not require the filing of any return or payment of the tax, but it merely provides that if the applicant is a defaulter in furnishing any return or revised return, together with the receipted chalan showing payment of the tax due from him according to such return or revised return, then the prescribed authority should withhold the issue of forms to him until such time as he furnishes the returns and files the chalans. Returns within the prescribed time are to be submitted u/s 14 of the Act read with Rule 10 of the Rules. Chalan showing payment of the admitted tax is to be filed u/s 20 of the Act. The requirement of the impugned rule is merely to see that the applicant has discharged his obligation to file return and to pay the admitted tax. If the time for filing return or revised return together with chalan is extended, then the applicant will not be a defaulter until the expiry of that time. It is, therefore, clear that the prescribed authority under the impugned rule has been commanded not to issue forms to a defaulter. This, by itself, is not an unreasonable restriction. The argument to attack the validity of the impugned rule is not sound and must be rejected.

8. By the impugned order contained in annexure 2, respondent No. 3 did not tell the petitioner that he will have to file monthly returns. That order had been made earlier, and only in accordance with that order respondent No. 3 asked the petitioner to file return for the month of April, 1972. The Bench of this Court, of which my learned brother was a member, has held in the case of Hurdatroj Jute Mills Private Ltd. [1972] 30 STC 151 aforesaid, that the proviso to Section 14(1) of the Bihar Act does not empower the sales tax authorities to vary the prescribed period for which the returns are to be filed. It is particularly so when the dealer is a registered dealer under the Central Sales Tax Act, as was the case in 30 Sales Tax Cases 151 and as is the case of the petitioner also. But the earlier order by which the petitioner was required to file monthly returns has not been challenged in this writ application ; no copy of that has been annexed, nor has any fact been stated to challenge it. In that view of the matter, following that order, if respondent No. 3 asked the petitioner to file return for the month of April, 1972, it is difficult to reverse his order on the ground that his earlier order was without jurisdiction.

9. The third submission made on behalf of the petitioner is well-founded and must be accepted as correct. The petitioner filed, rightly or wrongly, nil return for the month of April, 1972. The admitted tax in respect of that return was, therefore, nil. The requirement of Rule 31-C(b) was fulfilled. The said rule did not permit respondent No. 3 thereafter to reject the return as being incorrect. No investigation or enquiry in respect of the return filed by an applicant is envisaged or authorised at the stage of an application for issue of forms. The latter part of the order contained in annexure 2, therefore, is obviously bad as being unwarranted by the requirement of Rule 31-C of the Rules.

10. For the reasons stated above, this writ application is allowed in part. That

portion of the order of respondent No. 3 contained in annexure 2 is set aside by which he has held that until the petitioner paid purchase tax his application for issue of forms could not be allowed. As in no other respect the requirement of Rule 31-C is said to have been not fulfilled, it must be held that all the legal requirements of the said rule have been fulfilled. Hence, respondent No. 3 is directed to allow the application of the petitioner for issue of permit forms. There will be no order as to costs.

S. Akbar Husain, J.

11. I agree.