

(1957) 04 CAL CK 0022

In the Calcutta High Court

Case No : Civil Revision Case No's. 3310 and 3311 of 1954

Mohanlal Chandra

APPELLANT

Vs

Commr. of Commercial Taxes and Others

RESPONDENT

Date of Decision : 04-04-1957

Acts Referred:

Bengal Finance (Sales Tax) Act, 1941 — Section 11, 11(2)

Bengal Finance (Sales Tax) Rules, 1941 — Rule 49

Constitution of India, 1950 — Article 226

Citation : AIR 1958 Cal 171 : 61 CWN 763

Hon'ble Judges : Bose, J

Bench : Single Bench

Advocate : Chandra Nath Mukherjee, for the Appellant; Anil Kumar Das Gupta and Samarendra Chandra Bose, for the Respondent

Judgement

Bose, J.—This is an application under Article 226 of the Constitution for appropriate Writs quashing an assessment order of a Commercial Tax Officer in respect of certain sales tax relating to the business of the petitioner, and directing the opposite parties to forbear from giving effect to the order of assessment and notice of demand in respect of the tax assessed or to take further proceeding in a Certificate case pending for realisation of the amount assessed.

2. The case of the petitioner is that on or about 16th January 1950 the petitioner who was a medical student along with his two minor brothers started a partnership business for dealing in medicines and chemical goods under the name & style of Paran Chunder Chunder & Co. at room no. a 14 Bagree market at premises No. 71/1, Canning Street, Calcutta. The said firm was however not registered under the provisions of the Indian Partnership Act. On February 17, 1950, the partnership concerned applied for grant of a registration certificate and on the 9th August, 1950 a registration certificate was granted in terms of the Bengal Finance (Sales Tax) Act, 1941 and the partnership firm was directed to furnish quarterly returns in Form No. 3 as prescribed by the Sales Tax Rules

framed under the said Act. On the 28th August 1950, the said partnership firm made an application for allowing it to furnish annual return in place of quarterly returns but this prayer was not granted by the then Commercial Tax Officer. Accordingly, the firm continued to submit quarterly returns. The particulars of the returns submitted in respect of the Bengali years 1357 and of 1358 B. S. and of the assessment made in respect of such years are set out in paragraph 4 of the petition. On 25th August 1952, the petitioner as senior partner of the said partnership concern, filed the return of the sales tax payable for the Quarter ending 30th Ashar 1359 B. S. showing the gross turnover for the said period to be Rs. 18,650/15/- and the taxable turnover to be Rs. 425/5/- and paid the sum of Rs. 19/15/- as the tax which according to the calculation of the petitioner was payable on the taxable turnover in respect of the said period. The return for the second quarter "f the year 1359 B. S. ending 30th Aswin was filed on the 17th November 1952 showing the gross turnover to be Rs. 17,132/10 and the taxable turnover to be Rs. 423/6/- and the tax amounting to Rs. 19/13/6 was duly paid by the said firm. The return for the 3rd quarter of the year 1359 B. S. ending with the last day of Pous and of the 4th quarter ending 30th Chaitra 1359 B. S. were also filed showing a gross turnover of Rs. 15,988/14/- and Rs. 25,700/11/-, respectively the taxable turnover for the said periods being Rs. 588/2/- and Rs. 639/14/-, respectively, and it is alleged that the amount of sales tax due on those returns were also duly paid. On 28th August 1953, the partnership firm also filed returns for the first quarter of the year 1360 B. S. showing a gross turnover of Rs. 27,974/1/- and the taxable turnover of Rs. 636/12/- and the estimated amount of tax was paid in respect of this period. It appears that on 11th of September 1953 the respondent No. 2, the Commercial Tax Officer, visited the place of business of the partnership concern accompanied by a police force and it is alleged that he seized and took away without the petitioner's consent all cash memos, purchase vouchers, stock register, jameda books, khatians, daily jama kharach books, sales tax register and other books for the years 1359 and 1360 B. S. It is further alleged that the respondent No. 2 forced the petitioner and his brother Hira Mohan Chunder to sign certain papers written up by the said respondent No. 2 without allowing the petitioner and his brother to go through the same. On or about the 8th October 1953 the petitioner firm received a notice dated the 17th September 1953 under Sections 11 and 14 (1) of the Bengal Finance (Sales Tax) Act, 3941, calling upon the said firm to produce books of accounts etc., of the firm for the four quarters ending on the last day of Chaitra 1359 B. S. on the 12th October 1953 at the office of the Commercial Tax Officer. The case of the petitioner is that as he fell ill on October 12, an adjournment was asked for by the petitioner's lawyer and on the 13th October 1953 the petitioner filed an affidavit in which it was stated that all the books of the business had been seized and removed on 11th September 1953 by reason whereof the petitioner's firm was unable to produce any of the books before the competent authority. On the same day, i. e., 13th October 1953 a letter was written by the office of the Commercial Tax Officer informing the petitioner that the case had been adjourned till the 30th October 1953 but as the

petitioner again fell ill on that day he wrote a letter enclosing a medical certificate and asking for further adjournment of the case. It is alleged that the petitioner did not receive any other intimation thereafter regarding the date of hearing of the above case but on or about the 29th of January 1954 the petitioner received a copy of a notice of assessment u/s 17 of the Bengal Finance (Sales Tax) Act in Form No. 7 by post at the petitioner's residence at 10 Pudda-pukur East Lane, Kidderpore. From the said notice the petitioner came to learn for the first time that the Commercial Tax Officer had purported to act u/s 11 of the said Act and the taxable turnover for the 4 quarters ending on the last day of Chaitra 1359 B. S. had been assessed at Rs. 25,0000/- and the sales tax was assessed at Rs. 11,718/12/-. The petitioner made further enquiries in the matter and as a result thereof came to know that the assessment case of the petitioner had been disposed of on the 30th November 1953. On 11th February 1954 the petitioner applied for obtaining a copy of the said order of assessment dated the 30th November 1953 but the said application for copy was rejected on the 26th May 1954. It is alleged that no notice of assessment of folios or of the requisite stamp in respect of the said application for copy was ever hung up in the notice board and the petitioner for the first time came to know of the rejection of the application on the 1st June 1954 on enquiry made from a clerk of the office of the Commercial Tax Officer. Thereafter on 4th June 1954 he wrote to the Commissioner of Commercial Taxes, for making an enquiry into the matter and for giving direction for supplying the copy asked for. On 16th June 1954 the petitioner received a reply to the said letter from the Commissioner's office intimating that the application for certified copy had been rejected for failure on the part of the petitioner to supply the requisite folios and the Court-fee stamp within the prescribed time limit but the petitioner was asked to make a fresh application for certified copies, if such certified copies were required by the petitioner. On 19th June 1954 the petitioner made a fresh application for copy of the said order and the same was made ready for delivery on 5th August 1954. in the meantime on 23rd June 1954, the petitioner had written another letter to the Commissioner requesting that the period which had elapsed in the meantime might be taken into consideration by the Commissioner while giving delivery of the certified copy but no reply was given by the Commissioner to this letter. In the meantime a certificate case was started against the petitioner for realisation of a sum of Rs. 11621/6/6 ps. and notice u/s 7 of the Public Demands Recovery Act was served upon the petitioner. The petitioner thereafter moved this Court under Article 226 of the Constitution on the 7th of September 1954 and a Rule Nisi was issued by Sinha J. on that date and certain orders for interim injunction were also made on that date but the Issue of the Rule was however limited to grounds Nos. 1, 3 and 6 as set out in paragraph 24 of the petition.

3. In the affidavit in opposition which has been affirmed by Respondent No. 2 being the Commercial Tax Officer, it is stated that on 11th September 1953 the deponent along with certain other persons visited the petitioner's shop at premises No. 71 Canning Street and there he met the petitioner. On being asked

to produce the books of accounts, registration certificate, the declaration form and other relevant papers relating to the business the petitioner stated that the books of accounts, and the relevant papers were not kept at the shop but all such books and papers were at the residence of the petitioner or of his accountant, but one cash memo book written upto 25th August 1953 was found in the shop and this was signed by the deponent in the presence of the petitioner. A stock book which was also found in the shop was also signed by the deponent and a jama-kharach book which was found in the shop but which, according to the petitioner belonged to one Amarendra Mohan Chandra, Commission Agent, was seized by the deponent in the presence of the petitioner as the said book did not bear any names. A seizure list in respect of the said Jama-kharach book was prepared and a copy of the list was handed- over to the petitioner. A copy of this seizure list is annexed to this affidavit in opposition and it appears therefrom that the petitioner also signed the said list. It is further stated in the affidavit that except this jama-kharach book no other books or documents were seized by the deponent. A report of the visit of the deponent to the petitioner's shop was prepared by the deponent in the presence of the petitioner and the petitioner also signed such report after carefully going through its context. A copy of the report is annexed to this affidavit and marked B. It is further stated that the seizure was effected in terms of Section 14 (3) of the Bengal Sales Tax Act. Later on the petitioner was asked to produce the books of account of the business and to explain the entries in the jamakharach Book which had been seized by the deponent but the petitioner failed to explain the entries in the jamakharach book and also failed to produce the books of account and relevant papers relating to the business. A notice in Form No. 6 under Sections 11 and 14 (1) of the Act for the production of books of accounts and other papers was issued on the 6th of August 1953 fixing the 12th of October 1953 as the date of hearing but this notice was received back in the office of the deponent, with the postal mark "shop closed left". The same was re-issued by the process-server on the 18th September 1953 fixing 12th of October 1953 as the date of hearing and this notice was duly served on the 8th October 1953. When the matter came up for hearing on the 12th October 1953 the authorised pleader of the petitioner asked for further time whereupon the case was adjourned till 30th October 1953. But on the 30th October 1953 the petitioner wrote a letter asking for further adjournment of the case on the ground of illness of the petitioner and the case was thereupon adjourned till 28th November 1953 and intimation was sent; about this adjourned date by Memo No. 94, dated the 9th of November 1953. It is alleged that a copy of this memo was also affixed at the dealer's place of business but as the petitioner or anybody on his behalf did not appear on the 28th of November 1953 the deponent made an assessment according to the best of his judgment u/s 11 of the Act on the 30th of November 1953 and a notice of demand in Form No. 7 was issued on the 4th, December 1953 calling upon the petitioner's firm to pay the sum of Rs. 11621/6/6 ps. as the assessed tax.

4. The learned Advocate for the petitioner has challenged the order of assessment dated the 30th of November 1953 on various grounds. It is, in the first place, contended by the learned Advocate that the assessment order is bad inasmuch as the Commercial Tax Officer has consolidated the different returns which were filed in respect of the four quarters ending with the last date of Chaitra 1359 B. S. and had made a consolidated assessment in respect of these returns. It is argued that what the Commercial Tax Officer should have done was to make assessment in respect of the quarterly returns separately. The attention of the Court was drawn to the definition of "turnover" as given in S 2 (I) and sb. 4. 5 (1) and 5 (2), 10 and 11 of the Act. The definition of "turnover" as given in the Act is as follows :

"2 (i) "Turnover" used in relation to any period means the aggregate of the sale-prices or parts of sale-prices receivable, or if a dealer so elects actually received by the dealer during such period after deducting the amount, if any, refunded by the dealer in respect of any goods returned by the purchaser within such period."

The expression "taxable turnover" is defined in S. 5 (2) as follows:

"In this Act the expression "taxable turnover" means that part of a dealer's gross turnover during any period which remains after deducting there from-

(a) his turnover during that period on-

* * * * *".

Section 10 provides as follows:

"10 (1) Tax payable under this Act shall be paid in the manner hereinafter provided at such intervals as may be prescribed.

(2) Such dealers as may be required so to do by the Commissioner by notice served in the prescribed manner and every registered dealer shall furnish such returns by such dates and to such authority as may be prescribed".

Section 11 provides as follows:

"11 (1) If no returns are furnished by a registered dealer in respect of any period by the prescribed date, or if the Commissioner is not satisfied that the returns furnished are correct and complete, the Commissioner shall, within (eighteen months) after the expiry of such, period, proceed in such manner as may be prescribed to assess to the best of his judgment the amount of the tax due from the dealer (and in making such assessment shall give the dealer a reasonable opportunity of, being heard).....

(2) If upon Information which has come into his possession, the Commissioner is satisfied that any dealer (who has been liable to pay tax under this Act in respect of any period but has failed to get himself registered, the Commissioner, shall) proceed in such manner as may be prescribed to assess to the best, of his judgment the amount of tax due from the dealer in respect of such period and all

subsequent periods (and in making such assessment shall give the dealer a reasonable opportunity of being heard)"

5. The learned Advocate has argued with reference to the provisions of the sections which I have set out above, that what the Act contemplates is separate assessment in respect of each of the returns which are directed to be filed by the tax authorities, and assessment for an entire period on the basis of such separate returns is illegal and without jurisdiction. The learned Counsel has laid stress on the expression "during the year" and "within such period" and similar expressions as are to be found in the sections quoted above.

6. Mr. Das Gupta has, on the other hand, drawn the attention of the Court to Rule 49 of the Rules the relevant portion whereof may be set out hereunder:

"49. When it appears to an Assessing authority to be necessary to make an assessment under 6. 11 in respect of a dealer he shall serve a notice in Form No. VI upon him--

(a) calling upon him to produce his books of accounts and other documents which such authority wishes to examine together with any objection which the dealer may wish to prefer and any evidence which he may wish to produce in support thereof; and

(b) stating the period or the return-period or periods in respect of which assessment is proposed, and he shall fix a date ordinarily not less than twenty days after the date of issue of the notice, for producing such accounts and documents and for considering any objection which the dealer may prefer."

The notice in Form No. VI which was issued to the petitioner's firm in the present case is annexed to the petition and is marked "A". It is clear from that notice that intimation was given to the partnership concern of the petitioner that the Commercial Tax Officer was not satisfied that the returns which had been filed in respect of four quarters ending with the last day of Chaitra 1359 B S as being correct and complete, and accordingly the said firm was directed to produce all documents in support of the evidence and to adduce any other evidence which the said firm might have in their possession in support of the returns which had been filed in the office of the Commercial Tax Officer. It is thus clear from Rule 49 and from the prescribed form of the notice which is to be given for production of books and other evidence which an assessee might have in possession, that consolidated assessment in respect of different periods for which separate returns are filed, is not a thing which is not contemplated by the provisions of the Sales Tax Act. It is moreover seen from the notice which was actually served upon the petitioner that he was made aware of the fact that the Commercial Tax Officer proposed to make assessment in respect of the returns which had been filed ending with the last day of Chaitra 1359 B.S. It does not therefore, appear that the petitioner or his firm suffered any prejudice owing to absence of any intimation about the period in respect of which the assessment would be made. There is nothing in the Act to suggest that the Commercial Tax

Officer is bound to make separate assessment in respect of the separate quarterly returns which are filed in respect of a particular year. On the other hand, the expressions "for such period" and "all subsequent periods" in Section 11 (2) of the Act seem to suggest that there is nothing wrong in the Commercial tax Officer making assessment in respect of the different periods at the same time.

7. The next point which has been argued by the learned Advocate for the petitioner is that a perusal of the order of assessment which is annexed to the petition and marked Ex. C makes it clear that the Commercial Tax Officer had made the best judgment assessment u/s 11 of the Act without having any materials before him to support such assessment, it is pointed out that the assessment made by him to the effect that the gross turnover of the assessee was Rupees five lacs for the relevant year and the taxable turnover was Rupees two lacs fifty thousand on no reliable material for its basis. The report of the Commercial Tax Officer (Central Section) on which the Commercial Tax Officer, Canning Street, has purported to base his assessment has reference to returns filed in respect of the 3rd and 4th quarters only. So even if it can be said that there were some materials in respect of the returns of the 3rd and 4th quarters it was clear that there was total absence of materials so far as the assessment in respect of the 1st and 2nd quarters was concerned. It is also pointed out by Mr. Mukherjee that the earlier returns which had been filed in this respect of the years 1357 and 1358 showed clearly that the gross turnover and the taxable turnover were much less than what was found to be the gross turnover and the taxable turnover for the year 1359 B.S. and accordingly the best judgment assessment cannot be characterised as anything else but arbitrary assessment. Reliance has been placed on the decision of the Privy Council reported in AIR 1937 133 (Privy Council). The Judicial Committee in construing similar provisions for best judgment assessment as embodied in Section 23 (4) of the Indian Income Tax Act made the following observation at pages 114-115.

"The officer is to make an assessment to the best of his judgment against a person who is in default as regards supplying information. He must not act dishonestly, or vindictively or capriciously, because he must exercise judgment in the matter. He must make what he honestly believes to be a fair estimate of the proper figure of assessment, and for this purpose he must, their Lordships think, be able to take into consideration local knowledge and repute in regard to the assessee's circumstances, and his own knowledge of previous returns by and assessments of the assessee and all other matters which he thinks will assist him in arriving at a fair and proper estimate; and though there must necessarily be guess-work in the matter, it must be honest guess-work."

Mr. Mukherjee has also referred to the case of Dhakeswari Cotton Mills Ltd. Vs. Commissioner of Income Tax, West Bengal, (B). to show that the Commercial Tax Officer, Canning Street, had violated the fundamental rules of justice in relying on the report of Commercial Tax Officer (Central Section) without giving the

petitioner an opportunity to contradict or rebut the materials which had been furnished to the Taxing Officer by the said report of the Commercial Tax Officer. Mr. Mukherjee has also referred to the decision in the case of *Naravan Chandra Baidya v. The Commr. of Income Tax*. (1951) 2 ITR 237 (C), which followed the principle as laid down by the Judicial Committee in the case reported in AIR 1937 133 (Privy Council) . The attention of the Court has also been drawn to a decision of this Court in the case of *Jagadish Prosad Pannalal Vs. Member, Board of Revenue*, , which was a sales tax case. In this case a firm of registered dealers having failed to file returns in accordance with Section 10 of the Bengal Finance Sales Tax Act were directed by the Taxing Officer by a notice to attend and file accounts and documents and were also informed that in the case of their failure assessment would be made u/s 11 of the Act. The dealers took repeated adjournments and they also ultimately took the plea that their books of accounts were looted and destroyed during the communal disturbances and upon that the Assist. Commissioner of Commercial Taxes assessed the dealers to the best of his Judgment. Against that order an appeal was preferred to the Commissioner and again in the Board of Revenue and the main ground was that the taxable turnover was held to be too high. This contention however failed and the dealers thereupon filed a petition before the Board of Revenue u/s 21 (1) of the Act asking the Board to refer to the High Court whether the assessment by the Assistant Commissioner and the Commissioner was made to the best of their respective judgment. After the matter came up before the High Court the High Court held that the assessee did not in any way help the tax authorities to arrive at a correct figure by producing the account books or otherwise though they were given full opportunity to present their case before them and the High Court also came to the conclusion that it could not be said that the authorities did not apply their mind or try their best to come to a correct conclusion nor could it be said that the authorities made the assessment order dishonestly or vindictively or capriciously. Banerjee J. who delivered the judgment of the Division Bench quoted the relevant observation of the Judicial Committee to which I have made reference, and found on the facts before him that no fault could be found with the best judgment assessment that had been made by the taxing officers concerned A portion of the assessment order is quoted at p. 247 of the report (Cal WN): (at p. 156 of AIR) and it appears therefrom that the taxing officer took into consideration the previous assessment which had been made by him and also the nature and the volume of the business of the concern and upon these materials he had made the best judgment assessment.

8. In the case before me it is clear from the facts that I have stated before, that the first notice in Form No. VI calling upon the petitioner's firm to produce the books of accounts and adduce any other evidence that the firm had in its possession was issued on the 6th of August. 1953. As this notice was not properly served a fresh notice fixing the 12th of October, 1953 as the date of hearing was issued. On that day the petitioner's firm had asked for adjournment of the case and the said adjournment was readily granted. When the matter was

again about to be taken up on the 30th October, 1953 a letter was received from the petitioner asking for further adjournment of the case. Accordingly another adjournment was granted and the 28th of November, 1953 was fixed as the next date of hearing. Intimation about fixing of this hearing date was also sent to the petitioner. The petitioner however failed to turn up on the 28th of November, 1953 and no further request was made for adjourning the hearing on the 28th of November, 1953 although it appears that an adjournment was asked for in respect of the assessment of a different period. In the circumstances, the taxing authorities felt that the petitioner was not entitled to any further indulgence & on that basis the Commercial Tax Officer proceeded to make the best judgment assessment two days thereafter, i.e., on the 30th of November, 1953. As I have pointed out already the petitioner had asked for adjournment of the other assessment case on the 28th of November, 1953 which was however refused and yet the petitioner did not take any steps to be present at the hearing of that assessment case or to take part in the hearing of that case. This makes it abundantly clear that the petitioner was not at all serious about nor had he any genuine intention of assisting the taxing authorities in making proper assessment of the tax due in respect of the business of the petitioner's firm. If the petitioner had in fact attended the hearing which was fixed for the 28th of November, 1953 in respect of the assessment case which is the subject matter of the present proceeding the taxing officer might have given the petitioner opportunity to contradict the materials which were furnished by the report submitted by the Commercial Tax Officer. So it does not lie in the mouth of the petitioner now to make a grievance of the fact that he has been denied all opportunity of correcting or contra dicting matters in the report which were prejudicial to his interest. It is clear from the assessment order itself that the petitioner was directed to appear before the Commercial Tax Officer on the 28th of November, 1953 with certain documents but the petitioner did not agree to do so. Moreover it is to be noted that the taxing officer has stated in the assessment order that for making the best judgment assessment u/s 11 of the Act he had before him the materials which were contained in the report. Also he had taken into consideration the normal business of the assessee and it is just possible that the report of the Commercial Tax Officer although It might have relation to the 3rd and 4th quarters of the year 1359 B.S. had furnished some clue to the taxing officer with regard to the taxable turnover in respect of the first and second quarters of 1359 B.S. Therefore it cannot be said that the taxing officer had no materials whatsoever before him to support the best judgment assessment that he had made. Whether the materials that he had before him were sufficient or not cannot be determined by this Court in an application under Article 226 of the Constitution. It has been repeatedly pointed out that in exercising Jurisdiction under Article 226 of the Constitution the Court does not function as a Court of appeal. There is no error of law apparent on the face of the record which can justify this Court in interfering by a Writ of Certiorari under Article 226 of the Constitution. Reference may be made to a decision of the Supreme Court in the case of Veerappa Pillai Vs. Raman and Raman Ltd. and Others, . It was pointed

out by the Supreme Court that the Writs as are referred to under Article 226 of the Constitution are obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction or in excess of it or in violation of the principles of natural justice or refuse to exercise jurisdiction vested in them or there is an error apparent on the face of the record and such act, omission, error or excess has resulted in manifest injustice. However extensive the jurisdiction may be, it is not so wide or large as to enable the High Court to convert itself into a Court of appeal and examine for itself the correctness of the decision impugned and decide what is the proper view to be taken or the orders to be made.

9. It is thus clear that the petitioner has not made out any ground for interference with the assessment order dated the 30th November, 1953. This contention of Mr. Mukherjee cannot be given effect to.

10. The next point that has been argued by Mr. Mukherjee is that as no notice of the last date of hearing which was fixed for the 28th of November, 1953 had been given to the petitioner, and the assessment was made ex parte, it must be held that the principles of natural justice were not observed in this case, and so the order of assessment is bad. It is pointed out with reference to annexure C to the counter-affidavit which is memorandum No. 94 dated the 9th of November 1953 that although it appears from the said annexure itself that the notice purported to have been given by this memorandum was served upon the assessee by affixation, there was no date given in paragraph 18 of the counter-affidavit which deals with this question of notice as to the date on which such affixation was made. It is further pointed out that no peon's return has been annexed to the affidavit nor has any process server come forward to support the case of service of this notice as made in the affidavit in opposition. The attention of the Court was also drawn to Rule 84 of the Sales Tax Rules to show under what circumstances service by affixation at the dealer's place of business can be resorted to it is to be noted however that in paragraph 18 of the affidavit-in opposition it is stated that by this Memorandum No. 94 dated the 9th November 1953 that intimation was given to the petitioner's firm about the last date of the hearing and a copy of this memorandum was also affixed at the dealer's place of business. At the hearing the order-sheet of the Commercial Tax Officer has been produced and it appears therefrom that on the 30th of October 1953 the Commercial Tax Officer had passed an order adjourning the case till the 28th of November 1953. I have pointed out already that by a letter dated the 30th Of October 1953 the petitioner had asked for an adjournment of the case. It is curious that although he had written a letter asking for an adjournment he did not manifest any eagerness at any time to make any enquiry as to the fact whether any adjournment had been granted by the Tax Officer or not and if so far how long. It is clear that the Commercial Tax Officer was under no obligation to send any reply to the request for adjournment which was made by the petitioner's letter of the 30th October 1953. It was the duty of the assessee or the dealer to make enquiry from the office of the Tax Officer and find out for

himself as to which was the date upto which the hearing of the case had been adjourned. The statutory notice which is required to be given under the Act and in terms of the Sales Tax Rules in Form No. VI had been duly served on or about the 8th of October 1953. There can therefore be no question of serving any fresh notice in Form No. VI upon the petitioner's firm. No obligation is imposed upon the Commercial Tax Officer either under the provisions of the Act or the Rules to write letters to the assessee or the dealer, intimating the dates of adjournment in respect of a particular assessment case. An entry from the process-server's book has also been produced before this Court at the hearing and it appears from this entry that the memorandum No 94 dated the 9th November, 1953 was despatched for service from the office of the Commercial Tax Department on the 9th November, 1953. So it can be presumed from the records which are available to the Court that the official acts had been regularly performed. In the case reported in *The Commissioner of Income Tax Vs. S.M. Perianna Pillai, (P)*, it was observed as follows :

"So far as the express terms of the Income Tax Act go, there is no provision either for the manner in which an application for an adjournment should be made or for the manner in which it should be replied to. it cannot therefore be said that any reply sent is a "notice or requisition under the Act" in the sense that the notice prescribed by Section 23 (2) is "a notice under the Act" i.e., such as the Act requires to be served upon an assessee. Accordingly, no statutory obligation lay upon the Income Tax Officer to issue any reply. He could have proceeded -- it is not denied -- to dispose of the case on the 4th October u/s 23 (4). If he decided to put off disposing of it until the 12th it was open to him to do so but, even so, I cannot discover that the assessee had any legal right to a communication appraising him of the fact, it is not the practice, much less a rule of procedure, even in a court of justice that an adjournment date is so intimated to an absent party no doubt if a party chooses to apply, in person or by representative, at the Court or office he can learn what orders have been passed. But he cannot insist upon a telegram or a letter by post, any more than he can insist upon a letter by special messenger. Accordingly I think that the post card sent to the assessee in this case was not dictated by the terms of the statute but was merely an act of consideration and supererogation the omission of which would have entailed no legal consequences".

11. In the circumstances I have no doubt that the assessment order cannot be challenged on the ground that it is bad inasmuch as there had been violation of the principles of natural justice and the petitioner had not been afforded reasonable opportunity of being present at the hearing of the case and participating in the assessment proceedings.

12. A further point was sought to be raised by Mr. Mukherjee on behalf of the petitioner to the effect that the taxing officer in making the order of assessment had acted mala fide and it) was sought to be argued that the reason for acting arbitrarily and mala fide against the petitioner was that he had made allegations

against the Commercial Tax Officer to the effect that the latter had wrongfully seized and taken away all the books and documents relating to the business of the petitioner's firm, It may be pointed out that this Rule was not Issued on any such ground and therefore the petitioner cannot be allowed to raise any such point at the time of hearing of this application. So this aspect of the matter need not be considered any further.

13. Mr. Mukherjee also made a point that it is because of the conduct of the Officer of the Sales Tax Department that the petitioner was prevented from filing an appeal u/s 20 of the Act within the time prescribed by that section. This fact is however disputed by the opposite parties and also the fact relating to the supply of certified copies set out in paragraph 20 of the counter-affidavit. I do not think that it is necessary for the purpose of disposing of this matter to decide as to which version of the case is correct, it is quite possible that as Section 20 requires that before filing an appeal the whole amount of the assessed tax has to be deposited the petitioner in order to evade such deposit of the amount of the tax as a condition precedent to the filing of the appeal has set up the case, that it is owing to the wrongful conduct of the Officers of the Sales Tax Department that his appeal became time barred. But as I have pointed out already it is not necessary to come to a final conclusion on this point and I do not express any opinion on this point raised by Mr. Mukherjee. For the reasons given above this petition must fail.

14. The Rule is accordingly discharged. There will be no order as to costs.

15. Revision No. 3311 of 1954--It has been agreed that the judgment delivered in Civil Revision Case No. 3310 of 1954 will govern this case. Accordingly, this Rule also is discharged. There will be no order as to costs.

16. The operation of the order is stayed for four weeks from date.