(2006) 01 PAT CK 0087

In the Patna High Court

Case No : CWJC No. 10268 of 2005

M/s Bibhuti Singh — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

Date of Decision : 20-01-2006

Acts Referred:
Bihar Finance Act, 1981 — Section 17(5)

Citation : (2006) 4 PLJR 87

Hon'ble Judges : J.N. Bhatt, C.J;R.N. Prasad, J

Bench : Division Bench

Advocate : S.D. Sanjay, for the Appellant; R.K. Datta, for the Respondent

Judgement

1. Leave is granted to amend the relief portion of the writ petition. Upon request, the matter is taken up for final hearing today itself, in view of peculiar facts and circumstances obtainable in the case on hand.

2. It appears that the petitioner is manufacturer and dealer of bricks. In a proceeding u/s 17(5) of the Bihar Finance Act, 1981, he could not remain present. The assessment pertains to the years 1981-82 and 1982-83. For his absence, the proceeding concluded ex parte on 30.10.1986, which order was questioned in revision unsuccessfully. Thereafter, he remained unsuccessful in the departmental challenge. Finally, the Commercial Taxes Tribunal, Bihar, Patna, passed order on 14.9.2004, dismissing the revision against the order of Commissioner of Commercial Taxes, Bihar, Patna, and, therefore, this writ petition.

3. No doubt, ordinarily, a person, who is indolent, should not be encouraged and cannot be helped, but looking into the peculiar facts and circumstances of the case that a small manufacturer of bricks, in a proceeding, wherein he is called upon to pay taxes more than Rs. 8,000/-, has lost opportunity of being heard, with. payment of reasonable amount of cost, for the reasons observed, he be given an opportunity of hearing in the proceeding initiated against him.

4. We are of the opinion that let the petitioner have the benefit of the doctrine of "audi alteram partem" and for his indolence in not remaining present at the time of hearing for more than once, a cost of Rs. 2500/- be paid by him before the Registrar General of this Court for the Legal Aid and get an opportunity of hearing. The cost shall be paid within a period of two weeks.

5. We, therefore, quash and set aside the order of the Commissioner of Commercial Taxes against him, which finally culminated into the impugned order of the Tribunal, and direct the petitioner to remain present on 20th February, 2006 in the office of the Assistant Commissioner of Commercial Taxes, Teghra Circle, Begusarai, (respondent No. 3), for hearing, subject to convenience of the officer. In case the case is inconvenient to the officer, he may give suitable date to the petitioner. The petitioner has given an undertaking orally that he or his advocate shall remain present before the said officer. A copy of the order shall be furnished to the learned counsel for the petitioner. An information should also be sent to the concerned officer (respondent No. 3).