(1972) 02 CAL CK 0012

In the Calcutta High Court

Case No : Matter No. 378 of 1970

New Central Jute Mills Co. Ltd. APPELLANT

Vs

Dwijendralal Brahmachari and Others RESPONDENT

Date of Decision : 02-02-1972

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 30
Income Tax Act, 1961 — Section 131

Citation : (1973) 90 ITR 467

Hon'ble Judges : Sabyasachi Mukharji, J

Bench : Single Bench

Judgement

Sabyasachi Mukharji, J.—The petitioner, New Central Jute Mills Ltd., challenges in this petition under Article 226 of the Constitution the summons dated 6th June, 1969, issued by the Income Tax Officer u/s 131 of the Income Tax Act, 1961. In order to appreciate the controversy it will be necessary to set out certain facts. On the 11th April, 1963, an order was passed u/s 237(b)(i)/(ii) of the Companies Act, 1956, appointing an inspector to investigate the affairs of the petitioner-company. On the 12th June, 1964, another order was passed u/s 237(b)(i)/(ii) of the Companies Act, 1956, appointing another inspector along with the previous inspector to investigate the affairs of the petitioner-company. On the 30th June, 1964, another order was passed u/s 237(b)(i)/(iii) of the Companies Act appointing another inspector in place of the earlier inspector and extending the time for investigation. On the 20th July, 1964, inspectors appointed u/s 237(b)(i)/(ii) seized a large number of books, documents and papers pursuant to the warrants obtained by them from the Magistrates u/s 240A of the Companies Act, 1956. On 21st July, 1964, an application was made under Article 226 of the Constitution by the petitioner challenging the appointments of the said inspectors. A rule nisi was issued and an interim order was made. The said matter was Matter No. 272 of 1964 of this hon''ble court. Oil the 23rd July, 1964, another order was passed in the said Matter No. 272 of 1964, whereby the interim order issued on 21st July, 1964, was varied. By the aforesaid order the inspectors were allowed to continue with the search and seizure for four days and thereafter to keep all the seized books, papers and documents with the Registrar of Companies, West Bengal. It was further directed that if the petitioner-company required the documents, books or papers, they would be at liberty to take back the same in the manner provided for in the said order. On the 31st March, 1965, assessment of the petitioner-company for the assessment year 1960-61 was made u/s 23(3) of the Indian Income Tax Act, 1922. Then, on the 1st April, 1965. the Matter No. 272 of 1964 was heard and hearing was concluded before the learned judge taking the said matter. On the 3rd June, 1965, ''another application under Article 226 of the Constitution was moved by the petitioner-company challenging the search and seizure made by the said inspectors and a Civil Rule 581(w) of 1965 was issued by this court. On the 4th August, 1965, judgment was delivered in Matter No. 272 of 1964. By the aforesaid judgment the rule obtained by the petitioner-company in the aforesaid matter was discharged. On 29th September, 1965, the peti tioner preferred an appeal against the said judgment dated 4th August, 1965, and there was an interim order by the court of appeal directing [1966] 36 Comp. Cas. 512 (Cal.). maintenance of the status quo. On 30th March. 1966, assessment of the petitioner-company for the assessment year 1961-62 was completed u/s 23(3) of the Indian Income Tax Act, 1922. In 1967 assessment of the petitioner-company for the assessment year 1962-63 was made u/s 143(3) of the Income Tax Act, 1961. On the 5th March, 1968, judgment was delivered in Civil Rule No. 581(w) of 1965, whereby the warrants issued by the Magistrates authorising the inspectors to conduct the search were quashed. It was further provided in the order that it would suffer such modifications as might be necessary after the appeal in Matter No. 272 of 1964 was disposed of. On the 29th March, 1968, the petitioner''s assessment for the assessment year 1963-64 was completed u/s 143(3) of the Income Tax Act, 1961. On the 7th March 1969, the appeal preferred by the petitioner-company in the said Matter No. 272 of 1964 was allowed by the court of appeal of this court and stay of the operation of the order was granted at the instance of the respondents. On the 25th March, 1969, assessment for the assessment year 1964-65 was made on the petitioner-company u/s 143(3) of the Income Tax Act, 1961. Between 18th April, 1969, and 30th April, 1969, from time to time stay granted by the court of appeal from the Matter No. 272 of 1964 was extended at the instance of the Government. On the 3rd May, 1969, a notice was issued u/s 19(2) of the Foreign Exchange Regulation Act, 1947, and served on the Registrar of Companies by the Assistant Director of Enforcement. On the 7th May, 1969, stay was granted in appeal from the said Matter No. 272 of 1964 which was further extended at the instance of the Government. On the 31st May, 1969, another notice u/s 19(2) of the Foreign Exchange Regulation Act, 1947, was served on the Registrar of Companies by the Assistant Director, Enforcement Directorate. On June 3, 1969, a letter was sent from the Registrar of Companies to the Assistant Director, Enforcement Directorate, stating that he could not part with the seized documents as the same were held by him pursuant to orders of this hon''ble court. On the 5th

June, 1969, a letter from the Assistant Director, Enforcement Directorate, to the Registrar of Companies, was sent requiring him to comply with the notice u/s 19(2) of the Foreign Exchange Regulation Act, 1947. On the 5th Jane, 1969, summons was issued u/s 131 of the Income Tax Act. 1961, by the Income Tax Officer on the Registrar of Companies requiring him to produce all the seized documents. It is the validity and the propriety of this summons which are under challenge in this application under Article 226 of the Constitution.

2. Counsel for the petitioner contended firstly, that prior to the 5th June, 1969, all assessments for the assessment years 1964-65 had been completed. The books, documents and papers which had been seized were all relating to periods prior to July, 1964, and, therefore, the said books, documents and papers which had been directed to be produced pursuant to the said summons could not be relevant for any pending assessment. The books, papers and documents, it was contended, could be only relevant for the purpose of assessments for the years preceding the date of seizure and it was further contended that as all assessments for the period prior to the date of seizure had been completed before the impugned summons had been issued, there was no necessity for the Income Tax Officer to look to the said documents for the purposes of the Income Tax Act. It was contended that power u/s 131 of the Income Tax Act, 1961, was only intended to be used for the purposes of the Act and it was submitted that the purposes of the Act were the assessments to be made. The said books, documents and papers could not be relevant for the purposes of the Act. Therefore, the Income Tax Officer had acted without jurisdiction in issuing the said summons. It was urged that the Income Tax Officer had utilized his power u/s 131 of the Act not for purposes of the Income Tax Act, 1961, but for ulterior purposes, namely, to facilitate the investigation by the Company Law Board, which had been prevented by the orders of this court. It was urged that the respondents were doing indirectly what they could not do directly. In those circumstances it was submitted that it was male fide exercise of the power. It was next urged that in any event the respondent, Income Tax Officer, had no knowledge and could not have any knowledge about the contents of the said books, papers and documents and without that knowledge he could not determine the relevancy or otherwise of the said books, documents and papers to the Income Tax proceedings. The very order itself, it was suggested, indicated that the Income Tax Officer had not applied his mind. Counsel for the petitioner contended that it was an omnibus order to produce all papers and documents indicating non-application of mind by the Income Tax Officer. Counsel for the petitioner further urged that in order to apply Section 131 of the Income Tax Act, 1961, there should be valid application of mind by the Income Tax Officer on the question whether the documents required to be produced were such which would be relevant for any of the purposes of the Act. It was submitted that there had been no such application of mind. It was also urged on this aspect that the older was vague and as such a vague order should not have been made. It was submitted that in any event the books, papers and documents were in the

custody of the court pursuant to the directions of the court. So the order that was made on the Registrar of Companies was not a proper and valid one without leave being obtained from this court. In order to appreciate this contention it would be necessary to set out the impugned summons:

"To The Registrar of Companies, West Bengal, " Narayani Buildings " Brabourne Road, Calcutta.

Whereas your attendance is required in connection with the proceedings under the Income Tax Act in the case of Messrs. New Central Jute Mills Co., 11, Clive Row, Calcutta, you are hereby required personally to attend my office at 18, Rabindra Sarani, Calcutta-1, on the 6th day of June, 1969, at 11 a.m. there to give evidence and/or to produce either personally or through an authorised representative the books of account or other documents specified overleaf, and not to depart until you receive my permission to do so. Without prejudice to the provisions of any other law for the time being in force if you intentionally omit to so attend to give evidence or produce the books of account or documents, a fine up to Rs. 500 may be imposed upon you u/s 131(2) of the Income Tax Act, 1961.

(Sd.) IIIegible, income tax Officer, CC. XX. Cal.

Books of account or documents to be produced.

1. Books of accounts, documents and other papers of Messrs. New Central Jute Mills Co. Ltd., of 11, Clive Row, Calcutta, in your custody."

3. In this application there are several respondents, namely, the Income Tax Officer, Union of India and the Registrar of Companies, West Bengal. The allegation of the petitioner in the petition is that the Income Tax Officer has acted at the instance of the Union of India to facilitate the said investigation by the Company Law Board.

4. Shri Dwijendra Nath Brahmachari, who was the Income Tax Officer at the relevant time and who had issued the said summons u/s 131 of the Income Tax Act, 1961, has affirmed the affidavit-in-opposition on behalf of the respondents. In his affidavit the said deponent has denied that he had issued the said summons for any mala fide purpose. He has further stated that at the relevant time of the issue of summons the assessments from 1965 onwards were pending. Furthermore, assessments from 1960-61 to 1964*65 had been made but appeals in respect thereof were pending. He has further stated that there were allegations against the petitioner-company regarding concealment of huge income arising out of export business and that such concealed income was held in secret foreign exchange outside India. He has denied that the said summons was issued for the purpose of facilitating investigation by the Company Law Board or under the Companies Act, 1956. He has stated that the said documents, books and papers were relevant for the purpose of the Income Tax Act.

5. I am unable to accept the contention urged on behalf of the petitioner that

simply because the assessments prior to 1964-65 had been completed, resort to Section 131 of the Income Tax Act would be not for the purpose of the Act. The purpose of the Income Tax Act is not only to make the assessments; to make investigations to find out whether reassess ment was necessary and proceedings for reassessment should be initiated or not is also within the purpose of the Act. The income tax Officer has stated that there were allegations against the petitioner regarding the concealment of huge income arising out of export business and if to investigate regarding the completed assessments and for the purpose of future assessments, the documents, books and papers were required by the Income Tax Officer as was suggested by him in his affidavit, in my opinion it cannot be characterised that the same was not for the purpose of the Act. The purpose of the Act is not only to make assessment but all proceedings incidental thereto including the proceeding for investigation relating to reopening of the assessments. Therefore, the contention that, as the assessments prior to the date of the seizure of the books had all been completed and the books, papers and documents could not be at all relevant for the purpose of the Act as urged by counsel for the petitioner cannot in my opinion be accepted. It was next contended by counsel for the petitioner that there were allegations of mala fide, in the sense that the Income Tax Officer had used the power for ulterior purpose which had not been denied. It was urged that in the petition it had been alleged that the summons had been issued to facilitate the investigation by the Com pany Law Board. It was submitted that the said allegation had not been denied specifically by the Income Tax Officer, nor has he stated that he was making the affidavit on behalf of the Registrar of Companies, West Bengal, or the Union of India. In this connection counsel for the petitioner drew my attention to the case of State of Punjab Vs. Ramjilal and Others, for the proposition that in respect of an allegation against the Government it was suffi cient to set out the facts from which mala fide could be inferred. It was not necessary to give further particulars of mala fide conduct ol the respondent.

6. It may be that in certain cases mala fide could be inferred from certain allegations of facts. But, here, when the Income Tax Officer who had issued the impugned summons had himself denied the allegation of mala fide and had stated that it was for the purpose of facilitating investigation under the Income Tax Act, then in my opinion it would be incorrect to accept in absence of other averments that mala fide of the respondents bad been established. It is very often quite natural that the information regarding the particular assessee is received because of investigation by some other department in connection with some other act. If on receiving that information a particular Government department requiring investigation for its own purpose take steps under the provisions of law, then simply because that particular department has been moved by the information received from the other department does not establish in my opinion mala fide conduct. It would have been mala fide if it was established that the summons had been issued by the Income Tax Officer not for the purpose of the Income Tax Act but solely for the purpose of investigation by

the Company Law Board or for investigation under the Foreign Exchange Regulation Act, 1947. That fact in my opinion has not been clearly established. The facts of the aforesaid decision of the Supreme Court in my opinion were significantly different.

7. Real controversy, however, centres round the question whether there has been application of mind by the Income Tax Officer. Section 131 of the Income Tax Act, 1961, provides as follows :

"131. (1) The Income Tax Officer, Appellate Assistant Commissioner Inspecting Assistant Commissioner and Commissioner shall, for the purposes of this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (V of 1908), when trying a suit in respect of the following matters, namely:

(a) discovery and inspection;

(b) enforcing the attendance of any person, including any officer of a banking company and examining him on oath;

(c) compelling the production of books of account and other documents; and

(d) issuing commissions.

(2) Without prejudice to the provisions of any other law for the time being in force, where a person to whom a summons is issued either to attend to give evidence or produce books of accounts or other documents at a certain place and time, intentionally omits to attend or produce the books of account or documents at the place or time, the Income Tax authority may impose upon him such fine not exceeding five hundred rupees as it thinks fit, and the fine so levied may be recovered in the manner provided in Chapter XVII-D.

(3) Subject to any rules made in this behalf any authority referred to in Sub-section (1) may impound and retain in its custody for such period as it thinks fit any books of account or other documents produced before it in any proceeding under this Act:

Provided that an Income Tax Officer shall not--

(a) impound any books of account or other documents without recording his reasons for so doing, or

(b) retain in his custody any such books or documents for a period exceeding fifteen days (exclusive of holidays) without obtaining the approval of the Commissioner therefor.

Section 131 empowers the officers mentioned in the section to act for the purposes of the Act. So the first condition is that the officers must be acting for the purposes of the Act. While so acting the officers concerned have been given under the section the same powers as a court under the CPC when trying suits in respect of, inter alia, discovery, production and inspection of documents. It was next urged that unless the said documents were relevant, they could not be directed to be produced. On this aspect it was argued that the very amplitude of the order whereby all documents and papers had been directed to be produced indicated that the Income Tax Officer had not applied his mind as to the relevancy of the documents as, indeed, he could not do from the circumstances of the case. The Income Tax Officer has not stated that he had any idea about the contents of the documents directed to be produced by his summons dated 5th June, 1969. The question, therefore, is can an officer direct production of certain documents, about the contents of which he has no knowledge and about the nature of the contents also he has no knowledge, u/s 131 of the Income Tax Act, 1961. In this connection counsel for the petitioner drew my attention to a decision of the Supreme Court in the case of The Barium Chemicals Ltd. and Another Vs. Sh. A.J. Rana and Others, (Civil Appeals Nos. 1452 and 1453 of 1971, judgment delivered on the 7th December, 1971). There a notice u/s 19(2) of the Foreign Exchange Regulation Act, 1947, was challenged. By the said notice certain documents and papers which were seized and were in the custody of the Registrar, Supreme Court, were directed to be produced for the purpose of the Foreign Exchange Regulation Act. One of the items directed to be produced was " all other books, papers and other documents relating to Shri P.N. Balasubramanian, Transworld Trades, and the Barium Chemicals Ltd. in the possession of the Registrar of the Supreme Court of India, under an order dated 6th May, 1966, passed by the hon''ble Supreme Court of India in Civil Appeal No. 381 of l966(The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others, ."

8. The Supreme Court held that such an order could not be passed because the order could only be passed if it was considered that the documents were necessary for the purpose of the Act, The Supreme Court further observed that there must be some nexus between the documents sought to be obtained and the purpose of the Act. It was further observed by the Supreme Court that where an omnibus order was made in respect of all documents relating to the appellants, which were in the custody of the Registrar under the orders of that court, including some of the documents which had not even the remotest bearing on the matters covered by the Act, it went to show that there was no due application of the mind by the authority concerned. It was necessary that the element of due care and attention which was an essential ingredient in the expression " considers it necessary " u/s 19(2) of the Foreign Exchange Regulation Act must be exercised and unless there was consideration of the fact whether the said documents were relevant or not, it could not be said that there was any application of mind by the officer concerned. Counsel for the respondents submitted that the provisions of Section 19(2) of the Foreign Exchange Regulation Act, 1947, were different from the provisions of Section 131 of the Income Tax Act, 1961. Section 19 of the Foreign Exchange Regulation Act, 1947, provides as follows :

" 19. Power to call for information.--(1) The Central Government may, at any time by notification in the Official Gazette, direct owners, subject to such exceptions, if any, as may be specified in the notification, of such foreign exchange or foreign securities as may be so specified, to make a return thereof to the Reserve Bank within such period, and giving such particulars, as may be so specified.

(2) Where for the purposes of this Act the Central Government or the Reserve Bank considers it necessary or expedient to obtain and examine any information, book or other document in the possession of any person or which in the opinion of the Central Government or the Reserve Bank it is possible for such person to obtain and furnish, the Central Government or, as the case may be, the Reserve Bank may, by order in writing, require any such person (whose name shall be specified in the order) to furnish, or to obtain and furnish, to the Central Government or the Reserve Bank or any person specified in the order with such information, book or other document. "

9. It is true that the language of the two sections is different but under both the sections it is necessary to apply the mind to determine the question Of relevancy of the documents. u/s 131 of the Income Tax Act, 1961, the officers mentioned therein have no larger power than a civil court trying a suit, under the Code of Civil Procedue, and the powers to direct production, discovery and inspection of documents are controlled by Section 30 of the CPC and Order 11 of the Code. But the civil court cannot direct production of any document unless it considers that the said documents are relevant. In this case it is difficult to accept the position that the Income Tax Officer considered the said documents to be relevant for two reasons. Firstly, admittedly, the Income Tax Officer did not have and could not have any knowledge about the contents of the documents. Secondly, the omnibus nature of the order passed also indicated non-application of the mind. Counsel for the petitioner in this connection drew my attention to a decision of T.K. Basu J. in the case of Dwarkadas Shah Brothers Private Ltd. v. Income Tax Officer, "F" Ward, Companies District, III, Matter No. 60 of 1967. The facts of that case were slightly different because there a third party was directed to produce .the documents. In such cases unless the documents are identified there might be difficulty in complying with the order. Here, in view of the fact that the documents had been seized before the issue of the summons it may be considered from one point of view that the documents have been identified. But, it appears for the reasons mentioned hereinbefore that the documents had been directed to be produced without consideration of the relevancy of the documents. Therefore, in view of the judgment of the Supreme Court in the case of Barium Chemicals Ltd. v. A.J. Rana, in this case I must accept the petitioner''s contention that there has been no application of mind by the Income Tax Officer and, as such, the impugned summons was beyond the power u/s 131 of the Income Tax Act, 1961.

10. Counsel for the petitioner, as mentioned hereinbefore, urged that as the documents were in the custody of the court, the order was not in proper form. In

my opinion this objection is not of much substance. The order in substance means the same thing as the order that the Supreme Court had to consider. If I was able to accept the position that there had been an order in conformity with Section 131 of the Income Tax Act, 1961, I would not have quashed the order on this ground.

11. But, for the reasons mentioned hereinbefore, this application must succeed and the summons dated 5th June, 1969, mentioned in the petition u/s 131 of the Income Tax Act, 1961, is hereby quashed and set aside. The respondents are restrained from giving effect to the said summons. This order, however, will not prevent the respondents from taking any fresh steps for discovery and inspection of documents in compliance with Section 131 of the Income Tax Act, 1961, in respect of the said documents. The rule is made absolute to the extent indicated above. The documents will be handed over to the petitioner-company subject to any order of the court in any other pending matters.

12. There will be no order as to costs. There will be stay of operation of this order for a period of eight weeks from date.