

(1961) 02 OHC CK 0004

In the Orissa High Court

Case No : Original Jurisdiction Case No. 106 of 1960

Orient Weaving Mills Ltd.

APPELLANT

Vs

Superintendent Central Excise and Others

RESPONDENT

Date of Decision : 01-02-1961

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1961 Ori 186

Hon'ble Judges : R.L. Narasimham, C.J;S. Barman, J

Bench : Division Bench

Advocate : Sankardas Banerji, for the Appellant; Government Advocate, B. Mohapatra, Advocate-General and R.K. Mohapatra, for the Respondent

Final Decision : Dismissed

Judgement

Narasimham, C.J.—This is an application under Article 226 of the Constitution against (1) the Superintendent of Central Excise, Cuttack (2) the Assistant Collector of Central Excise, Puri and (3) the President of the Board of Directors of Madhunagar, Power-loom Weavers" Co-operative Society Ltd. The main prayer in this application is for a declaration that Notification No. 74 of 1959 dated the 31st July 1959 issued by the Government of India in the Ministry Of Finance (Department of Revenue) in pursuance of Sub-rule (1) of Rule 8 of the Central Excises Rules 1944 was ultra vires and for a direction on the two officials of Central Excise Department, namely opposite parties 1 and 2 not to carry it into effect.

2. The Central Excises and Salt Act of 1944 is a pre-Constitution Act by which the Central Legislature consolidated and amended the law relating to Central duties of Excise and Salt, The goods on which Central Excise duty was payable were described in the First Schedule to that Act and they were defined as "excisable goods". Section 3 of the Act was the charging Section which authorised the levy and collection of Excise duty on the goods specified in the First Schedule at the rates mentioned therein.

Section 37 conferred the power to make rules on the Central Government and Clause (xvii) of Sub-section (2) of Section 37 expressly stated that the rule-making power included the power "to exempt any goods from the whole or any part of the duty imposed by the Act". Rule 8 of the Central Excises Rules, 1944 dealt with the power to authorise exemption from duty in special cases. Sub-rule (1) of that Rule is as follows:

8 (i) The Central Government may from time to time by notification in the official Gazette exempt (subject to such conditions as may be specified in the notification) any excisable goods from the whole or any part of the duty leviable on such goods".

Purporting to act in exercise of the power conferred by this sub-rule the Central Government in the aforesaid notification exempted cotton fabrics produced on power looms owned by any co-operative society or by or allotted to the members of such society, from payment of the entire duty leviable thereon, subject to certain conditions which are however not material. The petitioner is a private Company which is running a weaving mill at Naya-bazar Cuttack Town.

According to the petitioner exemption from payment of Excise duty on cotton fabrics manufactured by co-operative societies (opp. party No. 3) gave the co-operative societies an unfair advantage over other organisations engaged in manufacturing cotton fabrics and thereby adversely affected them. The Notification was therefore challenged as void on two main grounds:

(i) It contravened Article 14 of the Constitution inasmuch as discrimination in favour of cotton fabrics produced by co-operative societies, was not reasonable.

(ii) In any case, the power to exempt certain goods from payment of Excise duty conferred by Clause (xvii) of Sub-section (2) of Section 37 of the Excise Act reiterated in Sub-rule (1) of Rule 8 of the Excise Rules cannot be exercised for the purpose of exempting the goods of a particular type of manufacturer, but can be exercised only in respect of any of the goods specified in the First Schedule to the Act --irrespective of the persons who produced them. In other words what is contemplated by the Act and the Rules is exemption of the particular class of goods only and not the manufacturer who produces them.

3. Mr. B. Mohapatra raised a preliminary objection to the maintainability of the writ application which, in my opinion, is very sound. He rightly pointed out that though the notification was issued by the Central Government that Government was not made a party in this writ application. On the other hand the parties impleaded are two subordinate officials of the Central Excise Department namely the Superintendent of Central Excise, Cuttack and the Assistant Collector of Puri (Excise) who have absolutely no discretion in the matter and who are bound to carry out the instructions issued in the aforesaid notification by their master, namely the Central Government.

Mr. Mohapatra, therefore urged that a writ of this type cannot lie against

subordinate officials who are bound to obey the statutory directions given by their master and that the application must fail on the preliminary ground of omission to implead the necessary party.

4. It is well settled that an order of mandamus will not be granted "against one, who is an inferior or ministerial officer bound to obey the order of a competent authority, to compel him to do something which is a part of his duty in that capacity" -- see Halsbury, Third Edition, Volume 11 page 100 (paragraph 186). There can also be no doubt that so far as enforcing the aforesaid notification is concerned the subordinate officials of the Excise Department are acting as "ministerial officers".

5. As to what is a "ministerial act", the following extracts of the meaning given to that expression in the Oxford Dictionary may be quoted:

"Pertaining to or entrusted with, the execution of law, or of the commands of a superior, pertaining to or possessing delegated executive authority.

Concerned as a subordinate agent or as an instrument or means; subsidiary; as instrumental".

In Corpus Juris Secundum, Vol. 38, at page 807 "ministerial act" has been defined as follows;

"The term "ministerial act" has been defined as meaning one which a person performs in a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to or exercise of his own judgment on the propriety of the acts being done. What is said to be the legal definition of a ministerial act is an act that is mandatory on an officer, under given circumstances and calls for the exercise of no judgment or discretion on the part of such officer. It is well recognised that where the law prescribes and defines the duty to be performed with such precision and certainty as to leave nothing to the exercise of discretion or judgment, the act is ministerial."

Subordinate officials have no discretion in the matter. They are bound to obey the directions contained in the aforesaid notification and to refrain from collecting excise duty from co-operative societies subject to the conditions mentioned in the notification. No writ can obviously issue against them even if we accept the contention raised by Mr. Sankardas Banerji regarding the invalidity of the notification,

6. Mr. Banerjee thereupon relied on some observations in A. Thangal Kunju Musaliar Vs. M. Venkitachalam Potti and Another, in support of his contention that a writ may lie under such circumstances even against the local subordinate officials of the Central Excise Department. But that case is clearly distinguishable as will be seen from para, 28 of the judgment of the Supreme Court. There it was pointed out that the authorised officials appointed u/s 6 of the Travancore (Taxation on Income) Investigation Commission Act though appointed by the Indian Income Tax Investigation Commission having its office at New Delhi, had

considerable discretionary powers in the performance of his duties while working under the supervision and general control of the Commission. I may quote the following passage From the judgment (at page 254, para, 28) :

"He is no doubt under the general control and supervision of the Commission, but he performs the various functions assigned to him on his own initiative and in the exercise of his discretion. If therefore he does anything in the discharge of his functions as an authorised official which is not authorised by law or is violative of the fundamental rights, he would be amenable to the jurisdiction of the High Court under Article 226".

The aforesaid passage is sufficient authority to show that where the local official has no discretion and is bound to enforce the order of his superior who is outside the jurisdiction of "the High Court, no writ will lie against the local officials.

7. Mr. Banerji then cited A Aluminium Corporation of India Ltd. Vs. Regional Provident Fund Commissioner and Others, where it was held that an order purporting to have been made by the Regional Provident Fund Commissioner, West Bengal, u/s 19A of the Employees Provident Fund Act 1952 was subject to the writ jurisdiction of the Calcutta High Court, notwithstanding the fact that the said order was passed by him in pursuance of a decision arrived at by the Central Government.

But that case also is distinguishable. There the impugned order was passed by the local officials in purported exercise of the statutory power conferred on him by Section 19-A of the Employees Provident Funds Act 1952. Merely because in exercise of such discretion he followed the directive given to him by the Central Government his action did not become a "ministerial act". The learned Judge therefore, held, following the aforesaid decision of the Supreme Court, that the Calcutta High Court had jurisdiction. In the instant case however Mr. Banerji could not say how there was any scope for the existence of discretionary power by the two subordinate officials of the Central Excise Department in enforcing the aforesaid notification.

8. I must therefore uphold the preliminary, objection raised by Mr. B. Mohapatra and Hold that the application is not maintainable due to the omission to implead the author of the notification, namely the Central Government. The further question as to whether this Court has jurisdiction to issue a writ of this type against this Central Government does not arise for consideration at this stage.

9. The application is therefore, dismissed with costs. Hearing fee Rs. 100/- (Rupees one hundred only).

Barman, J.

10. I agree.