
(1972) 10 OHC CK 0012

In the Orissa High Court

Case No : Original Jurisdiction Case No. 406 of 1971

Orissa Stores

APPELLANT

Vs

Assistant Sales Tax Officer and Another

RESPONDENT

Date of Decision : 09-10-1972

Acts Referred:

Orissa Sales Tax Act, 1947 — Section 12(8)

Citation : (1973) 31 STC 516

Hon'ble Judges : R.N. Misra, J;B.K. Ray, J

Bench : Division Bench

Advocate : Ranjit Mohanty, for the Appellant; Standing Counsel (Sales Tax), for the Respondent

Final Decision : Allowed

Judgement

R.N. Misra, J.—The petitioner, a dealer in garments from 1958 came to be registered under the Orissa Sales Tax Act (hereinafter referred to as the "Act") from 1960 and was assigned Registration Number R.L. 736. His returns up to 1966 made under the Act were accepted. It is alleged that on 5th December, 1969, when an Assistant Sales Tax Officer accompanied by the Inspector of Vigilance visited the shop in the absence of the proprietor there was an unhappy incident as a result whereof, the Assistant Sales Tax Officer bore grudge against the petitioner. On 6th December, 1969, a notice for production of accounts for the year 1969-70 was issued and on the 13th December, 1969, the following order was made :

Please take notice that a sum of Rs. 5,000 has been determined as security payable by you under the Orissa Sales Tax Act, 1947, in view of the fact that no security was paid by you while registration certificate was granted. You are required to pay the above demand of security in the manner prescribed under Rule 7-A within 60 days from the date of receipt of this notice failing which the registration certificate granted to you shall be rejected.

The petitioner carried a revision before the Commissioner of Sales Tax, opposite party No. 2, but that application was dismissed by order dated 12th April, 1971. In this writ application, the petitioner seeks to quash the demand for security as sustained by the Commissioner in revision.

2. Several allegations regarding mala fides and bias raised against the particular Assistant Sales Tax Officer have been refuted by the said officer in a counter-affidavit. Some such allegations are usual in a writ petition of this type and, therefore, counsel during hearing did not advance serious arguments on this aspect of the matter. We also think it appropriate to deal with the matter on the question of law raised before us and not to probe into the allegations of want of bona fides on the part of the officer in raising the demand for security particularly because, the said demand has now been upheld in revision by the Commissioner against whom allegations of mala fides or bias have not been made.

3. We have already extracted the entire order demanding security. The Commissioner while rejecting the revision application of the petitioner, gave the following reasons :

(a) A proceeding u/s 12(8) of the Act has been taken against the dealer for the years 1967-68 and 1968-69.

(b) The Assistant Sales Tax Officer, while visiting the shop on 5th December, 1969, demanded inspection of the books of account, but was told that the books were with the proprietor and he was away from the place. Upon verification, the Taxing Officer found certain papers and recorded a statement of the salesman wherein that fact was mentioned, but the salesman refused to own the statement by affixing his signature thereto.

(c) From the year 1966-67, the demands appear to have been raised against the petitioner. Apart from these, it was stated that the petitioner did not own property within the State and had not offered security at the time of registration and the annual tax liability of the petitioner was gradually rising.

Along with the counter-affidavit, the order sheet of the proceeding, which ultimately led to the demand for security has been furnished. A part of the notings made by the officer-in-charge of registration of dealers runs thus :

On perusal of the registration record, it is found that the dealer was granted R.C. u/s 9 of the O.S.T. Act, 1947, on 25th April, 1960, when no security was demanded. But every dealer is to pay reasonable security as required u/s 9(3a) of the O.S.T. Act, read with Rule 7(l)(a) of the same Act. The dealer's admitted tax has gone up to Rs. 3,112.89 during 1968-69 and the same would be Rs. 3,500 for 1969-70 approximately as revealed from the returns furnished for the quarter ending June, 1969 and September, 1969. The assessments of the dealer for the years 1967-68 and 1968-69 have not been completed and u/s 12(8) proceeding has been started for the year 1966-67. There are fraud reports

against the dealer for each year as seen from the assessment record from which it is evident that the dealer is a fraudulent, one. It may so happen that after he being assessed he may close down the shop in order to evade the demand as well as admitted tax.

4. The relevant provisions in the Act and the Rules may now be indicated. Section 9(3a) of the Act provides :

The registering authority may, from time to time, for good and sufficient reasons, demand from a registered dealer or from a dealer who has applied for registration under this Act reasonable security to be paid in the prescribed manner for the proper payment of tax payable by him under this Act and if the security so demanded is not paid within sixty days of the date of communication of the order demanding security, the said authority may, notwithstanding anything contained in this Act-

(i) if the defaulter happens to be a registered dealer, cancel the certificate of registration granted to him; or

(ii) if the defaulter is a dealer who has applied for registration, refuse to grant him a certificate of registration :

Provided that no such cancellation or refusal shall be made unless the dealer has been given a reasonable opportunity of being heard.

Rule 7-A of the Rules made under the Act deals with payment of security by registered dealers and provides :

(1) The Sales Tax Officer or the Assistant Sales Tax Officer, as the case may be, for good and sufficient reasons to be recorded, require a registered dealer in writing to pay by a specified date, a reasonable security, which in his opinion, will be equivalent to the tax estimated by him as being payable by the dealer for one year.

The provisions in the Act and the rule read together clearly indicate that security can be demanded only for "good and sufficient reasons" and the demand of security must be "reasonable" and in terms of the rule, the security should be equivalent to the estimated tax for a year in order that it may be reasonable.

As a general proposition of law, the grant of a power which is without limit and which might be used arbitrarily is void : see *Dwarka Prasad Laxmi Narain Vs. The State of Uttar Pradesh and Others*, . But u/s 9(3a) has got two limitations expressly mentioned therein. The demand of security can be only for good and sufficient reasons and it is not what is good or sufficient reason in the authority's opinion, but has to be objectively indicated and satisfied. In other words, the reason must be good or sufficient objectively and the matter must be justiciable. The order must indicate good and sufficient reasons and if disputed, the good and sufficient reasons have to be objectively supported. Again, the quantum of security has to be reasonable and the rule provides the guideline which makes

the demand reasonable. If the security is arbitrary or unconnected with the reasons which have impelled the Taxing Officer to demand security or is disproportionately large, the demand of security would turn out to be bad.

5. The order of security proceeded on the hypothesis that every registered dealer has to furnish security which is not a fact. u/s 9(3a) of the Act does not require every registered dealer to furnish security. Only those dealers, who according to the registering authority for good and sufficient reasons must be made to furnish security, become liable. The registering authority has indicated in this case that the demand of tax may go up to Rs. 3,500. Even if all other conditions were satisfied, reasonable security in terms of the rule should have been only Rs. 3,500 and there can be no basis for demanding security to the tune of Rs. 5,000. The learned standing counsel contended that the quantum of tax payable by the petitioner was on the increase year after year and, therefore, a higher demand of security was warranted. We do not accept such a contention because, the rule does not, nor does it intend to, provide the possibility of increase in the tax liability in future. It takes into account the estimated tax liability for the year. There is a clear indication in the note of the officer-in-charge of registration that the estimated tax demand of the petitioner would be Rs. 3,500. Therefore, even if there were good and sufficient reasons, the demand of security of Rs. 5,000 cannot be said to be reasonable in the background of the provisions in the Act and the Rules. Again, the Act provides that from time to time such demand can be made. It necessarily contemplates change in the situation from time to time and, therefore, vests power in the registering authority to make demands from time to time.

6. A demand for security under the Bengal Finance (Sales Tax) Act, 1941, came up for consideration in the case of *Durga Prosad Khaitan v. Commercial Tax Officer and Ors.* [1957] 8 S.T.C. 105. before the Calcutta High Court. Sinha, J., as his Lordship then was, examined the question at length and stated:

As u/s 7(4a) [corresponding to u/s 9(3a) of the Orissa Act] has been enacted, there are two limitations expressly mentioned therein. First of all, the Commissioner can only demand security "for good or sufficient reasons". It is not what is good or sufficient reason in his opinion. That is to say, it is not subjective but objective. In other words, the reason must be good or sufficient objectively and the matter is justiciable. I think that the Legislature would have done well to have provided that the reasons should be recorded in writing, in line with many other enactments of this description. However, if challenged he has to disclose the reasons which will be examined by the court. The second limitation is that it must be "reasonable security". This again means that if there is a good or sufficient reason, then the security demanded must be compatible with the reason. If the security is arbitrary, or unconnected with the reason which has impelled the Commissioner to demand security or disproportionately large, then it will be bad.

In another portion of the judgment, his Lordship dealt with the requirements of

the rule of natural justice of a hearing before any demand could be raised. This decision of the Calcutta High Court came up for consideration before their Lordships of the Supreme Court in the case of Nand Lal Raj Kishan Vs. Commissioner of Sales Tax, Delhi and Another, and their Lordships in terms approved the decision to be laying down the law correctly. Their Lordships said :

...We approve of the view expressed therein that the power to levy a tax includes the power to impose reasonable safeguards in collecting it and demanding security for the proper payment of the tax payable under the Act is neither an arbitrary nor an unreasonable restriction.

Dealing with the question that there is no provision for a hearing, their Lordships stated :

As to the last contention that the u/s does not provide for any enquiry or any opportunity being given to the person against whom the order is proposed to be passed of being heard, this point was taken before the Chief Commissioner and the Chief Commissioner rightly pointed out that the principles of natural justice would apply and the person to whose prejudice the order is to be made must be given an opportunity to say whatever he has to say in his defence...

The true effect of the last observation is that the dealer must be given an opportunity to participate in the enquiry leading to the making of the demand for security. In the Orissa Act, the opportunity to be heard is statutorily provided only before the direction for cancellation of the certificate of registration, which is an eventuality following default in satisfying the demand of security within the appointed time. No provision is made for giving an opportunity to the dealer prior to making of the demand for security. In view of the requirements of the statute and the rule, an enquiry is envisaged and in that enquiry leading to the making of the demand for security, the dealer is certainly entitled to participate and of being heard. That was the view expressed by their Lordships of the Supreme Court which, in our opinion, is not only appropriate but is just and fair. The consequence of non-satisfaction of demand is somewhat, serious. In making up the demand, the statute requires good and sufficient reasons to be indicated and the quantum of security has to be reasonable. If the requirement of the law is that these are all objective, the enquiry turns out to be quasi judicial in nature. A duty is cast on the registering authority to come to a conclusion after application of mind and if such an enquiry is really contemplated, we see no reason why the dealer, who has a vital interest in the matter and who, if an improper order is made, is bound to feel aggrieved, shall be kept out of such enquiry.

7. In the making of the present order, these requirements have not at all been fulfilled. On the other hand, the registering authority has taken irrelevant facts into consideration and has raised a demand which is not in accordance with law. The matter has proceeded on the basis that every registered dealer has an obligation to furnish security. The demand of security has been sought to be justified on the basis of demand for additional tax raised u/s 12(8) of the Act. In

appeal such demands of tax have already been vacated. In the circumstances, we are satisfied that the demand for security raised in this case must be struck down as being contrary to law. We, however, make it clear that it is open to the registering authority to demand security in terms of the Act, provided before raising the demand, the petitioner is given reasonable opportunity of being heard and\\a demand is made in accordance with law.

8. The writ application succeeds with costs. Hearing fee is assessed at rupees one hundred.

B.K. Ray, J.

9. I agree.