

(1983) 07 KL CK 0018
In the High Court Of Kerala
Case No : O.P. No. 4389 of 1981-G

P.K. Sankaran

APPELLANT

Vs

Sales Tax Officer

RESPONDENT

Date of Decision : 13-07-1983

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1983) 2 ILR (Ker) 701 : (1983) 54 STC 312

Hon'ble Judges : K.S. Paripoornan, J

Bench : Single Bench

Advocate : M. Unnikrishna Menon, for the Appellant; Government Pleader, for the Respondent

Judgement

K.S. Paripoornan, J.—The petitioner is an assessee borne under the files of the respondent. For the assessment years 1964-65 and 1965-66 he was assessed to sales tax by the respondent on 16th February, 1967 and 15th February, 1967, respectively. In the appeal filed by the assessee (petitioner) as per the orders passed in STA Nos. 450 and 451 dated 6th March, 1968, the Appellate Assistant Commissioner, Trichur, set aside the assessments and remanded the matter for fresh disposal with certain directions. The petitioner was not keeping good health at that time. It is averred in the original petition that after a period of 13 years by notices evidenced by exhibits P1 and P2 dated 15th July, 1981, the respondent directed the petitioner to file objections against the proposal made in exhibits P1 and P2, assessing the petitioner to the best judgment of the assessing authority. The petitioner filed his objections exhibit P3 dated 25th July, 1981, stating that the business was abandoned long ago and that the accounts and books and other documents may not be available and that the notices exhibits P1 and P2 issued to the petitioner nearly 13 years after the order of remit by the Appellate Assistant Commissioner is totally unjustified and illegal. Notwithstanding the objections, the respondent assessed the petitioner to sales tax for the years 1964-65 and 1965-66 by order dated 28th July, 1981, evidenced by exhibits P4 and P5 in these proceedings.

2. The main ground on which exhibits P4 and P5 are attacked is that there is unreasonable delay in passing the revised assessment orders evidenced by exhibits P4 and P5. According to the petitioner the fresh notices of the assessing authority as also the revised assessments have been passed after an inordinate delay of 13 years and so exhibits P4 and P5 orders on the face of it are illegal and improper.

3. The counsel for the revenue, Mr. Hassan, contended that once the order of assessment is set aside by the appellate authority and remitted back, the entire proceedings are pending. There is no provision in the Act which mandates the Sales Tax Officer to pass revised assessment within a particular time. In so far as there is no provision fixing a time-limit within which the assessment is to be completed, it was contended, that the proceedings taken for assessing the petitioner herein in accordance with the order of remit of the Appellate Assistant Commissioner is justified.

4. It is true that under the Kerala General Sales Tax Act or the Rules, no time-limit is fixed for completing the assessment. But all the same, when the statute does not contain any provision prescribing the time, for completing the assessment, can the authority who has to make the assessment simply fold his hands and initiate action for the completion of the proceedings after "any number of years"? That is the question that falls for consideration in this case.

5. It is true that under the Kerala General Sales Tax Act, there is no provision prescribing the time within which an assessment should be completed. In the absence of express provision, will it be possible to infer or imply a time-limit ? Is the exercise of the power after an unreasonable period of time, contemplated or countenanced by law ? In Deputy Commissioner of Agrl. Income Tax and Sales Tax Vs. P.S.B. Paul Pandian, the question arose before this Court regarding the time within which proceedings u/s 34 of the Agricultural Income Tax Act can be initiated. It will be interesting to note that u/s 34 of the Act the Commissioner of Agricultural Income Tax can take suo motu revision in exercise of the powers conferred on him but no time-limit is fixed for the exercise of such power. In the above case, the assessments under the Agricultural Income Tax Act for the years 1967-68, 1968-69 and 1969-70 were completed on 2nd November, 1967, 20th November, 1968 and 1st March, 1974. Suo motu revision proceedings were initiated by the Deputy Commissioner on 31st August, 1978. The question arose whether the initiation of suo motu revisional proceedings for the years 1967-68 after 11 years and for 1968-69 after 10 years, can be said to be justified and reasonable, or that the order passed after such an unreasonable period is bad in law. The assessment for the year 1969-70 was completed on 1st March, 1974 and its reopening as per order dated 31st August, 1978, was held to be within reasonable time. Regarding the assessments for the years 1967-68 and 1968-69, holding that the Deputy Commissioner cannot initiate suo motu proceedings u/s 34 of the Act, as he purported to do on 31st August, 1978, their Lordships Sri V. Balakrishna Eradi, C.J. and Sri K. Bhaskaran, J., held :

...To us it appears to be a sound principle that even though Section 34 of the Act in terms does not prescribe a time limit within which the power under that section has to be exercised, in order to avoid prejudice and hardship to the assessee it should be exercised within a reasonable time once the assessment becomes final, lest it be as Democles' sword hanging over the head of the assessee for all times. We have not been shown anything to justify the inordinate delay between the completion of assessment "for the years 1967-68 and 1968-69 on November 2, 1967 and November 20, 1968, respectively, on the one hand and its reopening on August 31, 1978, on the other, the delay being about 11 years in one case and about 10 years in the other..

Their Lordships referred to with approval the decision reported in *Bhavani Tea & Produce Co. v. Commissioner of Agricultural Income Tax* [1972] 2 Tax LR 2413, wherein it was held that initiation of proceedings u/s 34 of the Act, nine years after the assessments have become final was not certainly a reasonable period within which that jurisdiction could be invoked.

6. More recently the question arose with regard to levy of penalty u/s 41(1) of the Agricultural Income Tax Act after a period of 16 years. It should be noticed that there is no time-limit within which penalty could be imposed by the assessing authority. In the decision reported in *Krishna Bhatta v. Agricultural Income Tax Officer*, the court after referring to the decision of the Division Bench reported in *Deputy Commissioner of Agrl. Income Tax and Sales Tax Vs. P.S.B. Paul Pandian*, -ITR No. 96 of 1979) held at page 144 to the following effect:

The question is not one of limitation as has been said by many courts but is one of propriety of exercising of power beyond a reasonable time as pointed out by this Court in the decision we have just now adverted to. Proceedings enforceable against a party should not continue to be so enforceable for all time. In a case where there may be sufficient reason for the delay such as attempts by the party to protract and the authority has been vigilant all through the mere lapse of a number of years may not be very material. That is why it would not be possible to lay down any rule as to the number of years within which proceedings should be taken at the risk of loss of the right to take such proceedings. That would depend upon circumstances which resulted in the delay. At the same time it cannot be said that irrespective of the conduct of the authority seeking to enforce or exercise its powers if the statute does not lay down a time-limit within which such exercise should be made it can be exercised at any time.

At page 146 their Lordships again observed :

It appears to us, as observed by the Division Bench in the unreported decision to which we have adverted, that if it could be found on the facts and circumstances of the case that there is unreasonable delay in taking proceedings for imposition of penalty, such proceedings could be said to be bad in law. The long delay by itself may prima facie be unreasonable but if, in such a case, there is an explanation for the delay that explanation may have to be considered. But if

there be no explanation at all and the authority acts under the impression that in the absence of a period of limitation in the Act it is open to it to exercise its power after any number of years that would be an unsustainable approach. If in such a case the court finds that such exercise has been beyond unreasonable time and there is no scope for an examination of the explanation for, there is none the action which may be found to be bad, we are indicating that perhaps had there been an explanation for the delay and the explanation called for appreciation of the facts and circumstances of the case this Court under Article 226 of the Constitution might not be the appropriate body to consider it.

7. No counter-affidavit has been filed in this case. Various averments have been made in the original petition alleging that there is unreasonable delay in completing the assessment. " The learned Government Pleader, Mr. Hassan, brought to my notice that after the order of remit by the Appellate Assistant Commissioner, by order dated 6th March, 1968, a notice was sent to the petitioner by the assessing authority on 20th April, 1973 and another notice was sent on 26th June, 1973. The assessee-petitioner did not respond. So a fresh notice was sent on 9th June, 1981, followed by exhibits P1 and P2 notices dated 15th July, 1981. For one thing, the notices dated 20th April 1973 and 26th June, 1973, have been signed by a person other than the assessee and the moot question is as to whether the assessee received the said notices at all. Even the notices dated 20th April, 1973 and 26th June, 1973, are far beyond the period of five years after the order of remit was passed by the Appellate Assistant Commissioner on 6th March, 1968. The next notice alleged to have been sent to the petitioner on 9th June, 1981, was nearly 8 years after the notice alleged to have been sent in 1973 and more than 13 years after the order of remit passed by the Appellate Assistant Commissioner. The question is whether exhibits P1 and P2 notices dated 15th July, 1981, sent to the petitioner more than 13 years after the order of remit by the Appellate Assistant Commissioner and exhibits P4 and P5 assessment orders dated 28th July, 1981, are valid or proper in law in the light of the ratio of the decisions of this Court referred to above. The core of the matter is, whether proceedings for passing a revised assessment order, after the remit by an appellate or revisional authority, can be initiated or continued after any length of time or is there a time-limit to act ? Can the exercise of power to pass revised assessment order, be trammelled in any way ?

8. The principles laid down by this Court in the decisions reported in Deputy Commissioner of Agrl. Income Tax and Sales Tax Vs. P.S.B. Paul Pandian, and Krishna Bhatta's case establish that the assessing authority should act "reasonably" and should avoid hardship and prejudice to the assessee, in the matter of assessment. If it is not so done, it is a case of "improper" or unreasonable exercise of power. That may, even said to be, an "abuse of power". It is for the authority concerned to afford proper and valid explanation for the delay in the matter. It is trite law that statutory powers must be exercised, bona fide, reasonably, without negligence and for the purpose for which they were conferred. Halsbury's laws of England (Simonds Edition) (Third Edition), Vol. 30,

para 1327-page 688. I may also add that the authority should act with due care and caution. In *Vernon v. Vestry of St. James* (1880) 16 Ch D 449 , V. C, observed at page 459:

But great as the powers of vestries under the Act are, they are not absolute and the vestries are, like other public bodies, liable to be controlled by this court if they proceed to exercise their powers in an unreasonable manner whether they are induced to do so by improper motive or by error of judgment.

In *Mayor of Westminster Corporation v. London and "North-Western Railway Company* [1905] AC 426 Lord Macnaghten said :

It is well-settled that a public body invested with statutory powers such as those conferred upon the corporation must take care not to exceed or abuse its powers. It must keep within the limits of the authority committed to it. It must act in good faith. And it must act reasonably. The last proposition is involved in the second, if not, in the first.

In *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* [1947] 2 All ER 680 (CA) Lord Green, M.R., said :

Bad faith, dishonesty-those, of course, stand by themselves-unreasonableness, attention given to extraneous circumstances, disregard of public policy and things like that have all been referred to as being matters which are relevant for consideration. In the present case we have heard a great deal about the meaning of the word "unreasonable". It is true the discretion must be exercised reasonably. What does that mean? Lawyers familiar with the phraseology commonly used in relation to the exercise of statutory discretions often use the word "unreasonable" in a rather comprehensive sense. It is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant, to the matter that he has to consider. If he does not obey those rules, he may truly be said and often is said, to be acting "unreasonably". Similarly, you may have something so absurd that no sensible person could even dream that it lay within the powers of the authority.

In *Secretary of State v. Tameside* [1976] 3 All ER 665 (CA), Lord Denning, M.R., observed :

To my mind, if a statute gives a Minister power to take drastic action if he is satisfied that a local authority have acted or are proposing to act improperly or unreasonably, then the Minister should obey all the elementary rules of fairness before he finds that the local authority are guilty or before he takes drastic action overruling them. He should give the party affected notice of the charge of impropriety or unreasonableness and a fair opportunity of dealing with it. I am glad to see that the Secretary of State did so in this case. He had before him the

written proposals of the new council and he met their leaders. In addition, however, the Minister must direct himself properly in law. He must call his own attention to the matters he is bound to consider. He must exclude from his consideration matters which are irrelevant to that which has to consider. And the decision to which he comes must be one which is reasonable in this sense, that it is, or can be, supported with good reasons or at any rate be a decision which a reasonable person might reasonably reach. Such is, I think, plain from *Padfield v. Minister of Agriculture, Fisheries and Food* which is a landmark in our administrative law and which we had in mind in *Secretary of State for Employment v. Associated Society of Locomotive Engineers and Firemen (No. 2)* [1972] 2 All ER 949. So much for the requirements if the Minister is to be "satisfied".

This decision was affirmed by the House of Lords-[1976] 3 All ER 679 (HL). The observations of Lord Greene, M.R., in *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* [1947] 2 All ER 680 (CA) were quoted with approval by the Court of Appeal and by the House of Lords in *Tameside case* [1976] 3 All ER 679 (HL). It is fairly evident from the above, that this Court can interfere if the action of the public authority is "unreasonable" or if the statutory powers are not exercised in a "reasonable manner". Viewed in the above background, it has to be said that in this case no explanation at all has been offered for the delay in the matter. The delay, *prima facie*, is unreasonable and the assessee has himself said in his objections that it is not possible for him to produce the documents and accounts at this distance of time after lapse of nearly 13 years. That certainly voices the prejudice and hardship that have resulted to him. So I am of opinion that there is inordinate and unreasonable delay on the part of the assessing authority to complete the assessments, exhibits P1 and P2. In this case, it cannot be said that the assessing authority has acted *bonafide* either.

9. Rule 32(21) of the Kerala General Sales Tax Rules, 1963, provides as follows :

32. (21) Accounts maintained by dealers together with all vouchers, bills, declarations, way bills and delivery notes relating to stocks, deliveries, purchases, output and sales shall be preserved by them for a period of four years after the close of the year to which they relate and shall be kept at the place of business mentioned in the certificate or registration.

By exhibits P1 and P2 notices as also the earlier notices which, according to the Government Pleader, were sent on 20th April, 1973, 26th June, 1973 and 9th June, 1981, calling for accounts of the dealer, themselves were after a period of four years after the order of remit of the Appellate Assistant Commissioner. *Prima facie*, under Rule 32, Clause (21), a dealer was bound to keep the accounts only for a period of four years after the close of the year to which they relate. If that be so, for the two years in question, namely, 1964-65 and 1965-66, the dealer should have preserved the accounts only till 31st March, 1970 and not beyond that. It is true that by filing a return or by the issue of a notice by the assessing authority the assessment proceedings are initiated or

started and till the assessment is effected the assessment proceedings are pending. It is further true that when an assessee takes up the matter in appeal and the appellate authority remits the matter for a de novo consideration, the assessment proceedings are not at an end but they should be deemed to be pending. If Rule 32(21) is construed strictly and to a logical extent, it would appear that even in a case where the assessee had carried the matter by way of appeal and the appellate authority has remitted the matter for a fresh consideration, if by the time the officer initiates proceedings for passing revised assessments, the period of four years mentioned in the rule is over, there is no duty cast on the assessee to produce the accounts and the various documents. That may involve hardship and injustice to the revenue. After all, the account books and other documents mentioned in Rule 32(21) are produced by the assessee only to substantiate his returns. They are self-serving documents. It is to the assessee's advantage that he preserves such account books and documents. Be that as it may, the legislature has mandated that such account books and documents need be preserved only for a period of four years. That should be for a purpose. It is a pointer to state that the period prescribed therein is the (normal) period which will be required to complete the assessments. Taking a broad and practical view of the matter, it could be said that it is at the motion of the assessee's appeals are taken and the order of remit is made for his benefit by the appellate authority, then he should preserve the accounts and other documents for a reasonable time after the order of remit. But since Rule 32(21) mandates, the preservation of the documents and the accounts only for a period of four years after the accounting year, can it be assumed in all cases of remit irrespective of the time specified in Rule 32(21) that the assessee is bound to preserve the accounts and documents for ever or for all time ? Rule 32(21) should be construed reasonably and in a business sense. In my opinion the assessee is bound, ordinarily, to preserve the accounts and documents even in cases of remit, only for a reasonable period of time. We get an indication about the reasonable period in Rule 32(21). Bearing in mind that provision, it can be said that in cases of remit by the appellate authority, the assessee will be ordinarily bound to preserve accounts and other documents for a period of four years from such order of the appellate authority to enable a proper and valid assessment being made. Preservation of such accounts and documents are for the benefit of the assessee himself and so he should do so for a reasonable period. If, on the other hand, even after a period of four years from the order of remit and in cases where there is no appeal either by the assessee or by the revenue so as to say that the proceedings are still pending, the assessing authority has not taken effective proceedings for the purpose of effecting revised assessments as in this case, and there is no valid explanation for the delay, I am of the view that the proceedings so initiated or continued after an unreasonable period will be vitiated and bad in law. If proceedings are initiated beyond four years after the order rendered in the appeal or revision, the exercise of power in such cases is prima facie "unreasonable" and improper and it is for the assessing authority to show or demonstrate that there are valid and proper grounds for the

delay so caused and in the absence of cogent and acceptable reasons explaining the delay, the exercise of power will be held to be unreasonable and improper. Long lapse of time has brought about a situation whereby the assessee is not obliged nor will he be in a position to preserve the accounts and other documents mentioned in Rule 32(21). In fact, in this case, he has stated so in exhibit P3. There is no material to contradict or disbelieve it. In the light of the above, I declare that exhibits P4 and P5 assessment orders are unreasonable and unsustainable. Therefore exhibits P4 and P5 orders are quashed. There will be no order as to costs.