(1968) 03 CAL CK 0004

In the Calcutta High Court

Case No : Civil Rule No. 676 (W) of 1964

Pratabmal Rameswar APPELLANT

Vs

Administrator, Bally Municipality RESPONDENT

Date of Decision : 25-03-1968

Acts Referred:

- Bengal Municipal Act, 1932 — Section 128(1), 148, 149, 149(2), 20
- Bengal Municipal Rules, 1932 — Rule 10, 8, 9
- Companies Act, 1956 — Section 111(3)
- Constitution of India, 1950 — Article 136
- Minimum Wages Act, 1948 — Section 20

Citation : (1968) 2 ILR (Cal) 591

Hon'ble Judges : A.K. Sinha, J

Bench : Single Bench

Advocate : Nani Coomar Chakraborty and Chittatosh Mookerjee, for the Appellant;Anil Kumar Sen and Madhusudan Banerjee for Opposite Party No. 1 and N.C. Chakravarty and N.G. Das for Opposite Parties Nos. 2 and 3, for the Respondent

Judgement

A.K. Sinha, J.—The Petitioner, in the instant writ petition prays for cancelling, rescinding and withdrawing the assessment made with effect from first quarter 1964-65 in respect of the holding No. 5 Dharmatolla Road, Ward No. III of Bally Municipality under an assessment order made by the Administrator, Bally Municipality, the Respondent No. 1.

2. Although the Administrator by his said order reduced the valuation and consequential assessment of tax, and the difference between old and new valuation was small in respect of the said holding, the Petitioner remained unsatisfied and had since been persistently pursuing its remedy in the writ jurisdiction of this Court on the plea that the valuation and assessment even after reduction were arbitrary, illegal and made without compliance with the mandatory requirements of the relevant provisions of the Bengal Municipal Act, 1932 (hereinafter referred to as the ''said Act'').

3. Before I set out the points urged on behalf of the Petitioner I indicate briefly the facts which are as follows:

4. The Petitioner, which is a partnership firm registered under the Indian Partnership Act, is the owner of the holding No. 5 Dharmatolla Road (South), Ward No. III, within Bally Municipality and several other holdings on which it has established a jute mill named ''Sree Mahadeo Jute Mill''. The Petitioner has constructed a residential structure on holding No. 6 Dharmatolla Road and the rooms in the said buildings have been let out on monthly rent to the workers employed in the said jute mill and the total monthly rent received from them amounts to Rs. 356-5-6. It is also stated that the rents of the different rooms have been fixed according to prevailing market rate and they represent reasonable amounts which a willing tenant would pay to the, willing landlord uninfluenced by any extraneous circumstances.

5. On September 25, 1962, the Petitioner moved this Court in writ jurisdiction challenging the assessment and demand for water rates made by the Bally Municipality in pursuance of the purported resolution dated January 22, 1962, and thereupon a Rule being Civil Rule No. 627(W) of 1962, which was issued by this Court, was ultimately discharged on the agreement of the Municipality to reduce the water rates to 3% with the improvement of the financial position of the Municipality. In the meantime, in course of preparation of new valuation list, the annual value of the said holding No. 5 Dharmatolla Road, it is alleged, was arbitrarily and illegally increased by the Bally Municipality and estimated at Rs. 10,800. The Petitioner being dissatisfied with such valuation and assessment filed an application before the Municipality for review of the said assessment stating, inter alia, that they were illegal, arbitrary and excessive. On April 8, 1964, the Administrator, Bally Municipality, purporting to act as the Review Committee heard the application in respect of the holding No. 5 Dharmatolla Road. On the day of the hearing, it is stated, one Apurba Bhattacharjee, who was representing the Petitioner, found that the assessment was made u/s 128(1) of the said Act and the percentage of tax on the annual value was determined at 8 1/2%. He also found from the records that there was no valid report of the assessor under Rule 10 of the rules framed u/s 215(a) & (b) of the said Act on which the rental value of the disputed holding was assessed at Rs. 20 per room and that actual assessment was not accompanied by any note of the assessor showing and explaining how he arrived at the said calculation of the rental value.

6. It is alleged that the said representative produced before the Administrator at the hearing counterfoils of rent receipts and submitted that the Petitioner was getting Rs. 365-5-6 per month as gross total rent from the tenants and a sum of Rs. 100 was being spent approximately, per month as cost of collection and repairs of the structure. He also submitted that the annual value should be calculated Oh the basis of the gross annual rent actually realised from the said holding and riot on the annual rental at which holding might be reasonably expected to let. There was no comparison with similar property in the vicinity

and ho note was kept by the assessor and that there was no compliance with Rules 8, 9 and 10 of the rules framed u/s 215(a) & (b) of the said Act.

7. Thereafter the Petitioner received a notice of demand dated April 11, 1964, along with tax bill for the first quarter 1964-65 in respect of the said holding No. 5 Dharmatolla Road from which the Petitioner for the first time learnt that annual value of the said holding was assessed at Rs. 9,800 by the Administrator on review with effect from the first quarter 1964-65. The Petitioner then entered into correspondence with the Administrator in course of which he was requested to give a hearing again as the rental estimated was unreasonable and excessive, but the Administrator did not accede to the Petitioner''s request.

8. On such refusal by the Administrator, the Petitioner moved the present writ petition in this Court. Quite a large number of grounds were taken in the petition, but Mr. Chittatosh Mukherjee, learned Advocate appearing on behalf of the Petitioner, urged the following points:

(a). The annual value of the said holding No. 5 Dharmatolla Road was not made in accordance with the provisions of Section 128(1) of the said Act, inasmuch as such valuation was neither based on gross annual rental actually received from the tenant in respect of the holding nor on the annual rental at which holding may reasonably be expected, to let which cannot exceed in any event the standard rent of the holding and the rental of Rs. 20 per month was arbitrary illegal and excessive.

(b) The valuation and assessment of the holding was made without complying with the provisions of Rules 8 and 10 of the rules framed u/s 215(a) & (b) of the Bengal Municipal Act.

(c) The order of the Administrator reducing the annual value to the extent of Rs. 500 was still arbitrary, illegal and invalid as he failed to give any reasons in support of such order and thus failed to dispose of the Petitioner''s application for review in accordance with the provisions of the said Act.

9. Before I deal with the points raised I would record that the parties proceeded on the footing that the Administrator was competent to act as Review Committee under the law.

10. I will now take up the last point first. Mr. Mukherjee contended that the Review Committee acts as a Tribunal exercising quasi-judicial powers and, as such, the Administrator who exercised the powers and duties of the Review Committee in the instant case was bound to give his reasons in support of the order. His argument is that the Petitioner as an Assessee has a right to know the basis on which and the manner in which valuation and assessment have been made and such a right which is a right to property would be seriously affected if reasons are not given by the Tribunal and its further remedy either by way of a writ or right of appeal under the Constitution would be totally ineffective.

11. For the purpose of the present case it is not necessary to look into and

examine in details the various sections under chap. V of the said Act which deal with the valuation and assessment of holdings or to ascertain the scope, nature and extent or effect of the powers and duties conferred by the Act either upon the Commissioner or assessor, because it is not disputed before me that the Review Committee is required to act as Tribunal exercising some judicial or quasi-judicial powers in dealing with the application for review that may be filed by the aggrieved Assessee in accordance with the relevant provisions of the said Act. Even so, I set out below Section 149 which contains powers and duties to be exercised by the Review Committee in dealing with applications for review.

(1) Every application presented u/s 148 shall be heard and determined by a committee consisting of the Chairman and not less than two and not more than four Commissioners appointed by the Commissioners at a meeting.

Provided that in the case of a municipality which is divided into wards u/s 20, no Commissioner of the ward from which the application is made shall take part in the hearing or determination of such application.

(2) The committee shall give notice to the applicant of the time and place at which his application will be heard and after taking such evidence and making such enquiry as it may deem necessary, in the presence of the objector or his agent if he appears, pass such orders as it thinks fit in respect of the application.

(3) The quorum shall be fixed by the Commissioners at a meeting.

12. It is by now well-settled that the powers and duties to act judicially may be conferred upon particular body of persons or authority by the express provision of the Statute or it may be inferred from the provisions of the Statute keeping in mind the nature of rights affected, the manner of disposal provided and the objective test to be adopted and the result of the decision on the person affected. Applying the above test it appears to be clear from the provision of Sub-section (2) of Section 149 that the Review Committee is under a duty to act as a Tribunal exercising quasi-judicial powers in dealing with and disposing of applications for review.

13. That being the position, it was contended that the Administrator failed to act quasi-judicially and the order as made by him could not be sustained as valid order as no reasons had been given. The order by the Administrator in the instant case must be, therefore, struck down as invalid. Mr. Mukherjee relied in support of his contention on a decision in Harinagar Sugar Mills v. Shyamsundar (1961) 2 S.C.A. 384 : AIR 1961 S.C. 1668. In that case Shah, J. speaking for the majority, while dealing with a decision of the Central Government as an Appellate authority over the resolution passed by the Directors of the company to register the shares, observed, inter alia, as follows:

If the Central Government acts as Tribunal exercising judicial powers and the exercise of that power is subject to the jurisdiction of the Supreme Court under Article 136 of the Constitution the power of the Supreme Court cannot be effectively exercised if reasons are not given by the Central Government in support of its order and in the absence of anything to show that the Central Government exercising its restricted power in hearing an appeal u/s 111(3) and passed the orders under appeal in the light of the restrictions imposed by Article 47(B) of the Articles of Association and in the interest of the company, we are unable to decide whether the Central Government did not transgress the limits of their power--A.I.R. 1961 S.C. 1673.

14. The above case, it was submitted, is an authority for the proposition that the Tribunal, while acting judicially or quasi-judicially, is bound to give reasons in support of its decision or order.

15. Mr. Anil Kumar Sen, learned Advocate appearing on behalf of Respondent No. 1, however, relied on a decision of the Supreme Court in Syed Yakoob Vs. K.S. Radhakrishnan and Others, and contended that failure of the Tribunal to give reasons in support of his decision would not by itself constitute such an error in its decision as to justify interference by this Court in the writ jurisdiction. Mr. Sen also relied on a Bench decision of this Court in Md. S. Barry v. income tax Officer 69 C.W.N. 984 (990). B.C. Mitter, J. who delivered the judgment observed as follows:

Banerjee, J. was entirely right in rejecting the Appellant''s contention that the failure to indicate the reason for applying the maximum rate of tax was such an error apparent on the face of the records as to justify an order quashing it so, he relied upon, amongst other authorities, a passage in Halsbury, 3rd Edition, Volume II, Article 118, which is as follows:

Whereupon the facts of the proceedings themselves it appears that the determination of the inferior Tribunal is wrong in law certiorari to quash will be granted. The Tribunal is not (unless required by statute) obliged to set out in its adjudication the reasons which led it to its decision, but if it does state them, the superior Court will consider the question, whether they are right in law and if they are wrong in law, will quash the decision.

This passage sets out in brief the circumstances in which the findings or the decision of a Tribunal can be quashed by a writ of certiorari.

16. Mr. Sen also argued that the decision in Harinagar Sugar Mill''s case Supra was really an exception to the general rule. In that case no reasons were given at any stage showing the ground on which the directors of the company by a. resolution declined to register transfer of shares and, therefore, the Central Government who acted as an Appellate authority failed to act judicially by not giving any reason for its order, with the result that the appeal before the Supreme Court could not be effectively decided. It is not the case of the Petitioner that the valuation was arrived at without any basis. It was based on certain rate of rent which is alleged to be excessive and such rate which might or might not be excessive was accepted by the Administrator in estimating the annual value. The Administrator, however, reduced the annual value to the extent

of Rs. 500 as there was no addition and alteration since the old valuation and thus it could not be said that there was no reason at all. Therefore, it was contended, the case under consideration is clearly distinguish able from the Harinagar Sugar Mills'' case Supra.

17. The view taken by the Supreme Court in the above decisions and followed by this Court, it appears, finds support in another comparatively recent decision of the Supreme Court in Madhya Pradesh Industries Ltd. Vs. Union of India and Others (UOI), . In that case Bachawat, J. expressing the majority view observed as follows:

Mr. Pathak contended that the effect of Article 136 of the Constitution is that every order appealable under that Article must be a speaking order and the omission to give reasons for the decision is of itself a sufficient ground for quashing it. We are unable to accept this broad contention. For the purposes of an appeal under Article 136 of the Constitution, orders of Courts and Tribunals stand on the same footing. An order of Court dismissing a revision application often gives no reasons, but this is not a sufficient ground for quashing it. Likewise, an order of an administrative Tribunal rejecting a revision application cannot be pronounced to be invalid on the sole ground that it does, not give reasons, for the rejection.

18. In this decision Harinagar Sugar Mill''s case Supra was referred to but distinguished on the facts peculiar to that case. His Lordship Bachawat, J. observed as follows:

In support of his contention Mr. Pathak relied upon the following observations of Shah, J. in Harinagar Sugar Mills Ltd. Vs. Shyam Sundar Jhunjhunwala and Others, :

If the Central Government acts as a Tribunal exercising judicial powers and the exercise of that power is subject to, the jurisdiction of this Court under Article 136 of the Constitution, we fail to see how the power of this Court can be effectively exercised if reasons are not given by the Central Government in support of its order.

In that case it appears that the Central Government acting as an. Appellate Tribunal u/s 111(3) of the Companies Act, 1956, had without giving any reasons for its order, set aside a resolution of the Directors of a company refusing to register certain transfers of shares. There was nothing on the record; to show that the Central Government was satisfied that the action of the Directors in refusing to register the shares was arbitrary and untenable and moreover, on the materials on record it was not possible to decide whether or not the Central Government transgressed the limits of its restricted power u/s 111(3). The Central Government reversed the decision appealed from without giving any reasons nor did the records disclose any apparent ground on the reversal. In this context, Shah, J. made the observations quoted above and held that there was no proper trial of the appeals, and the appellate order should be quashed.

Hidyatullah, J. at p. 370 of the report (S.C.R. 1684 A.I.R.) pointed out that there was no reason for the reversal and the omission to give reasons led to the only inference that there was none to give. There is a vital difference between the order of reversal by the Appellate authority in that case for no reason whatsoever and the order of affirmance by the revising authority in the present case. Haying stated that there was no valid ground for interference, the revising authority was not bound to give fuller reasons. It is impossible to say that the impugned order was arbitrary, or that there was, no proper trial of the revision application.

19. I respectfully follow the above two decisions of the Supreme Court and the Bench decision of this Court. It is true that it is desirable that the order of the Tribunal should be reasoned order, but failure to give reasons by itself does not constitute such an error, as, has been observed by the Supreme Court in Sayed Mohammad Yakub''s case Supra as to justify interference by issue of a writ of certiorari. The last point, therefore, in my opinion is without any substance.

20. I will now consider the first point raised by the Petitioner. The Petitioner''s grievance is that there was no compliance with the Section 128(1) of the Act in estimating the new valuation and consequential assessment thereon. Whether or not the rate of rent which was taken into consideration was excessive or illegal, is really a question of fact which was decided by the Administrator. The allegations that the Petitioner receives a total sum of Rs. 356 as rents are denied in para. 4 of the affidafit-in-opposition of Respondents and rate of Rs. 20 per month is stated to be fair and reasonable rent in para. 7 of the same affidavit. Since this Court is not sitting as an Appellate authority over the decision of the Administrator, it will not launch an enquiry into the quantum of actual rent realised by the Petitioner or the gross annual rental at which the holding may reasonably be expected to let; more so where no materials have been placed before this Court to show that, in fact, there has been a complete non-compliance with Section 128(1) of the Act. The matters contemplated under the said provision for the purpose of annual value of the holding are exclusively within jurisdiction of the Review Committee. This view is also supported by the two decisions of the Supreme Court in W. Narayan Chetty v. income tax Officer, Nellore AIR 1959 S.C. 231 and Shivram Poddar Vs. Income Tax Officer, Central Circle II, Calcutta, and Another, and the said Bench decision of this Court. Mr. Mukherjee, however, relied on a decision of the Supreme Court in Corporation of Calcutta v. Padma Devi AIR 1962 S.C. 150 and contended that in any event in estimating the annual value, gross rental could not exceed the standard rent. He also relied on another decision in Kalipada Dawn and Others Vs. Commissioners of the Vishnupur Municipality and Others, to show that non-compliance with the provisions of Section 128(1) was fatal. I am afraid, these cases are of no assistance to the Petitioner because while the broad propositions of law laid down therein are not disputed the basic facts necessary for the application of the law in this case are. Reliance was also placed upon another Bench decision of this Court in The Corporation of Calcutta Vs. Royal Calcutta Golf Club, . In this case the

question was whether a suit would lie in Civil Court for a declaration that an assessment or valuation made under the said Act was illegal and ultra vires. In answering such question the learned Chief Justice (as he then was) observed, inter alia, as follows:

So far as the Bengal Municipal Act is concerned, there is only one review from the assessment, namely, to the Review Committee. There it stops. The Review Committee does not consist of people cognisant with the law, and there is no provision for reference to the Courts on any point of law that may arise. Under such circumstances, if the Court finds that the Tribunal constituted under the Act has not acted in accordance with the terms of the Statute or the rules trained thereunder or that it has proceeded in violation of the rules of natural justice, then in that case it has ample jurisdiction to entertain a suit and the decision of the Privy Council in Mask''s case would authorise the institution of a suit. This naturally brings us to the main point on the merits'', namely, as to whether the assessment and valuation made by Mr. Bose was made in accordance with the provisions of the Statute and also in accordance with the rules of natural justice.

21. This case again was decided on a finding of fact that there was non-compaince with provision of 128(1) & (2) of the said Act. This decision, therefore, in my view, is of little help to the Petitioner. Mr. Sen, however, cited before me two decisions of the Supreme Court-- Kamala Mills Ltd. Vs. State of Bombay, and K.S. Venkataraman and Co. Vs. State of Madras, and contended that Assessment, even if illegally and erroneously made, cannot be questioned by a suit in Civil Court. But there is yet another decision of the Supreme Court in The Pabbojan Tea Co. Ltd., etc. Vs. The Deputy Commissioner, Lakhimpur, etc., . While dealing with similar question, Supreme Court held that a suit would lie in a Civil Court for setting aside the decision given by Authority u/s 20 of the Minimum Wages Act, 1948, and the case of Kamala Mills Ltd. Vs. State of Bombay, was distinguished. Be that as it may, I do not feel inclined to enter into these questions as, in my view, they are neither necessary nor relevant for a decision of the present case.

22. For the reasons, however, already given, I cannot accept the contention made in support of the first point.

23. The next point is that there was no compliance with Rules 8 and 10 of the rules framed u/s 215(a) & (b) of the Act. This again I find is disputed. In the affidavit-in-opposition on behalf of the Respondent No. 1 in para. 6 these allegations have been denied and it has been asserted that the valuation and the assessment have been done in accordance with law. There is no affidavit-in-reply of the Petitioner, against this denial. Moreover, I find that no such point was even taken in the ground of objection for review before the Administrator who, therefore, could not go into the question at all. The Petitioner, however, for the first time alleged in the writ petition that its representative took this ground at the time of hearing, but this also is not admitted by the Respondent. On these disputed facts it is not possible for this Court to go into the question to see if

there was non-compliance with the rules complained of. Mr. Mukherjee in support of his contention, however, relied on a Bench decision of this Court reported in (1963) C.L.J. 10 in which it was held that omission to comply with Rule 10 of the rules framed u/s 215(a) & (b) of the Act was fatal. Mr. Sen, however, pointed out that decision was given in an appeal arising out of a suit and it was established by evidence that in fact there was non-compliance with Rule 10, but such a fact was not established at all in the present case. Mr. Mukherjee also cited the case K. Daw v. Vishnupur Municipality Supra, but in this case also the Court proceeded on a footing that there was in fact non-compliance with the Rules.

24. Mr. Sen, however, disputed the correctness of the proposition laid down in these two decisions and relied on another decision of this Court by Banerjee, J. in Panpati Sonarani v. Municipal Commissioner of Siliguri Municipality ILR (1960) Cal. 401. He contended that non-compliance with Rule 10 was not fatal, but it was at best a case of mere irregularity and did not affect the merits of the case. Therefore, such irregularity would be saved u/s 92(1)(c) of the said Act. It is not necessary for me to express any opinion on this point in the present case, because I find no materials were placed before me to show that in fact there was such non-compliance. In such circumstances no effective adjudication of the question in controversy, in my view, can be made in writ jurisdiction of this Court. The second point, therefore, is equally without any substance.

25. The result is all the points raised by the Petitioner fail. The Rule is discharged and interim orders are vacated, but there will be no order as to costs.

