
(1986) 03 MAD CK 0043
In the Madras High Court

R. Abdul Azeez

APPELLANT

Vs

The State of Tamil Nadu and Another

RESPONDENT

Date of Decision : 21-03-1986

Acts Referred:

Citation : (1987) 1 MLJ 472

Hon'ble Judges : T. Sathiadev, J

Bench : Division Bench

Judgement

T. Sathiadev, J.—At the time of filing this writ petition, petitioner was an Assistant Commissioner of Commercial Taxes, Dharmapuri. He stated as follows: On 29.4.1977, the Board of Revenue/second respondent framed a charge under Rule 17(b) of Tamil Nadu Civil Service (C.C.A.) Rules, claiming therein that when he was J.C.T.O., Salem Town (North), he has failed to give a specific finding as to wilful non-disclosure of turnover while levying oenalty u/s 12(3) of Tamil Nadu Act 1 of 1959. In respect of the assessment of Hotel Vinayaga for the year 1973-74, and which resulted in the Appellate Authority setting aside the penalty, and thereby he had caused a loss of revenue of Rs. 14,970 to the State. After his representations were filed and after following due procedure, second respondent by order dated 5.12.1977 awarded the punishment of stoppage of increment for one year with cumulative effect. He preferred an appeal and Government by C.O.Ms. No. 1661, C.T. and R. Department, dated 22.10,1979 dismissed it, with the modification that the stoppage of increment will not affect his pension. Aggrieved as against the said order, this writ petition is preferred claiming that his quasi-judicial function cannot be the subject-matter of a disciplinary action, and when his order was subject to appeal and revision, so long as the order passed by him is not reckless, mala fide or, an utter lack of jurisdiction, he is conferred with immunity u/s 49 of the Act, and no previous sanction having been obtained as provided therein, the entire proceeding is void. When Appellate Authority had dealt with the matter, nothing precluded him from remitting the matter for passing fresh orders in the event of non-compliance with the provisions of the Act and himself having stated already in the order that there

has been suppression of sales and penalty is to be imposed, the absence of the words "wilful non-disclosure" would not make the order passed by him either illegal or improper, and therefore, there has been a total misconception entertained by both the Authorities that failure to use the words "wilful non-disclosure" was the main cause for loss of revenue to the State.

2. On behalf sic respondents, it is claimed that u/s 12(3) of the Act, there should be a specific and clear finding by the Assessing Authority that there was wilful non-disclosure of turnover for imposing penalty. It was because of a lapse on his part in not using the relevant expressions, it had resulted in the cancellation of penalty, and as a public servant, himself having not discharged his statutory obligation properly and caused loss to the State, action could be taken under the C.C.A. Rules.

3. Mr. Ganapathy, Learned Counsel for petitioner, would first submit, that it is necessary to note that in passing the order of assessment dated 31.12.1974, he had stated "Recovery of four quarter size note books (A, B, C and D) and four bundles of slips (A, B, C and D) revealed certain purchase and sale suppressions for the year 1973-74 relating to Hotel Vinayaka". It is because of this finding, he levied penalty at 1? times the tax due, which amounts to Rs. 14,970. He therefore, submits that in the light of later decisions of this Court in T.C. No. 145 of 1972 and T.C. No. 1187 of 1979, for the purpose of sustaining the levy of penalty, it is not necessary that the officer imposing the penalty must mechanically reproduce the expression "not wilfully disclosed". In T.C. No. 1187 of 1979 it was held that, if the discussion of the order of the Assessing Authority clearly shows that he had applied his mind to the question as to whether the non-disclosure was wilful or otherwise, and had come to the conclusion that it was wilful, the omission to" use the said expression in the ultimate portion of the order, while imposing penalty, will not in any way invalidate or vitiate his order. In T.C. No. 145 of 1972 also it was held that an order cannot be set aside solely on the ground that a finding about wilful non-disclosure had not been given.

4. It is not as if in the above two decisions, any revised view had been taken, than what was obtaining earlier. As the Division Bench had stated in T.C. No. 1187 of 1979, this expression has been the subject-matter of consideration by this Court in earlier decisions. In the earlier decisions, it was always pointed out that there is a difference between wilful non-disclosure and a non-disclosure simpliciter. The mere omission, accidental or by oversight, would not lead to non-imposition of penalty. The non-disclosure must be one of the nature of deliberate, wanton, wilful withholding of the required "information. In the absence of this vital element, the imposition of penalty u/s 12(3) would not arise. Appellate Authority relied upon Oveekee Textiles v. D.C.T.O., Tiruchengode (1971) 27 S.T.C.439 and Ramakutty Nadar v. State of Madras (1972) 31 S.T.C. 44, which were binding upon him. Even the proposition which was laid down in T.C. No. 1187 of 1979, is not satisfied in the assessment order passed by the petitioner. He has only stated that there was suppression, but there is no

discussion in the latter portion of the order, while imposing penalty. Except for one sentence which concludes by stating that penalty is being levied at 1? times, he had not given any reasons for the conclusion arrived at which would. enable an Appellate Authority to discern as to what had passed in his mind or how he had applied his mind and decided about the non-disclosure, as wilful or wanton. In the absence of any discussion in the assessment order, even this decision could be of no assistance to him.

5. The other point taken is that, the opinion of Service Commission dated 28.8.1978 had not been communicated to him. Here again, in view of the decision, in Chief Engineer (Highways and Rural Works) v. Chengalvarayan (1980) 2 M.L.J. 250, a Division Bench of this Court having taken the view that non-service of the recommendations of the Commission would not vitiate the order in the Disciplinary Proceedings, the impugned order is valid.

6. The next point taken is rather interesting. By reference to Sections 49 and 50 of Act 1 of 1959, it is claimed that no suit, civil or criminal, or other proceedings, could be instituted as against him, when he was discharging functions or exercising powers under the Act, and there being no sanction obtained from the Government before initiation of disciplinary proceedings by Board of Revenue, the entire proceeding is illegal and vitiated. In support of this claim, no decision was placed to construe that the expression "other proceedings" in Section 49(b) would also include disciplinary proceedings. These two sections pertain to any action which may be taken by citizens as against personnel in the Department, who are enjoined to discharge functions under the Act. It is inconceivable to hold that the expression other proceedings could relate to any action being taken by the Appointing Authority against personnel who are subordinate to them in the Department. The purport and intent of these sections, does not take within its fold any action taken by the State, as against the personnel in the Department. Hence, this point also fails.

7. Yet another point taken by Mr. Ganapathy is that, when assessment order is passed, it being a quasi-judicial function, no disciplinary action could be taken the said order being set aside by an Appellate Authority, who could have remanded the matter for proper and fresh disposal. This is ah instance in which, while imposing penalty u/s 12(3), it was expected of a quasi-judicial authority to apply its mind about wilful non-disclosure and express in the order that such a wilful or wanton non-disclosure had occasioned loss and also use the expression wilful non-disclosure", so that there will be no room for ambiguity, or by the assessee later on avoiding the liability, by taking the matter on appeal. As pointed out by the Division Bench in the later decision even if the said expression is not used, at least there must be the required discussion in the order to decipher about the application of mind on wilful non-disclosure and a finding to this effect. There being a total absence of discussion on "this aspect, except to use the expression "suppression* in the earlier part of the order, which would mean that there has been withholding of information. Whether that suppression

was due to wilfully, wantonly or motivatedly keeping back required particulars or not, had to be stated, while imposing the penalty." This has not been done.

8. On a plea raised that no disciplinary proceedings could be instituted as against the Commissioner, Hindu Religious & Charitable Endowment Board, who is a Corporation sole for his quasi-judicial functions, it was held in *Govinda Menon Vs. Union of India (UOI)*, , that Government would be entitled to institute disciplinary proceedings if there has been prima facie material showing reckless omission or misconduct on the part of a Government-servant in the discharge of his quasi-judicial functions. It was a case in which the appellant was proceeded against as he had acted in utter disregard of the provisions of the Act and the Rules. It was the manner in which he discharged his quasi-judicial functions that were brought up in the disciplinary proceedings. Hence, even though his order of sanction could be questioned in an appeal or a revision under the Act, the Government was not precluded from taking disciplinary action, if. there was proof of reckless action in the discharge of his duties or that there was failure to set honestly or in good faith or that there was omission to observe the prescribed conditions which are essential in the exercise of statutory power. This decision clearly shows that, if there is omission to comply with statutory requirements, merely because omission occasions in a quasi-judicial order, the concerned authority cannot avoid disciplinary proceedings. Hence, this point fails.

9. A Division Bench of this Court in *Ramakutty Nadar v. State of Madras (1972) 31 S.T.C. 44*, had taken the view that a specific finding that there has been a wilful non-disclosure of the assessable turnover in the order of assessment is essential in order to justify the imposition of a penalty u/s 16 of the Tamil Nadu General Sales Tax Act.

10. In *Somasundaram, R.S. v. The Thanjavur District Co-operative Supply Market Society Ltd. (1983) 96 L.W. 562*, dealing with a case arising under T.N. Act 53 of 1961 it was held that reference in a general manner to the illegalities would not be sufficient and that there should be a specific finding about wilful and deliberate acts of negligence, and that, any finding of negligence or callousness would not be sufficient.

11. Another Division Bench of this Court in *Deputy Comar. of Comml. Taxes v. Adam & Co. (1979) 43 S.T.C. 508*, arising under Sales Tax Act took the same view as in *Ramakutty Nadar v. State of Madras (1972) 31 S.T.C 44*. Therefore, due to omission to comply with the requirements of the Act, loss having occasioned the disciplinary action taken cannot be held as illegal.

12. For the reasons above stated, this writ petition is dismissed with costs.