

(1986) 03 MAD CK 0032

In the Madras High Court

Case No : Writ Petition No. 6040 of 1979

R. Abdul Aziz

APPELLANT

Vs

State of Tamil Nadu and Another

RESPONDENT

Date of Decision : 21-03-1986

Acts Referred:

Tamil Nadu Civil Services (Classification, Control and Appeal) Rules, 1953 — Rule 17
Tamil Nadu General Sales Tax Act, 1959 — Section 16

Citation : (1987) 1 MLJ 472 : (1987) 67 STC 273

Hon'ble Judges : T. Sathiadev, J

Bench : Single Bench

Advocate : N. Ganapathy, for the Appellant; N.R. Chandran, Additional Government Pleader, for the Respondent

Judgement

Sathiadev, J.—At the time of filing this writ petition, the petitioner was an Assistant Commissioner of Commercial Taxes, Dharmapuri. He

states as follows : On 29th April, 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 penalty u/s 12(3) of Tamil Nadu Act 1 of 1959, in respect of the assessment of Hotel Vinayaka for the year 1973-74,

which resulted in the appellate authority setting aside the penalty, and thereby he had caused a loss of revenue of Rs. 14,970 of the State. After his

representations were filed and after following due procedure, the second respondent by order dated 5th December, 1977, awarded the

punishment of stoppage of increment for one year with cumulative effect. He preferred an appeal and the Government by G.O. Ms. No. 1661

C.T. and R.T. Department dated 22nd October, 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 the 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 of the 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 the petitioner would first submit, that it is necessary to note that in passing the order of assessment dated

31st December, 1974, he had stated "Recovery of four quarter-size note books (ABC and D) and four bundles of slips (ABC 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 1/2

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 (P. M. Perianna Pillai v. Commissioner, Board of Revenue (C.T.) [1980] 46 STC 94, 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 [P. M. Perianna Pillai v. Commissioner, Board of Revenue (C.T.) [1980] 46 STC 94 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 [P. M. Perianna Pillai v. Commissioner, Board of Revenue (C.T.) [1980] 46 STC 94 , 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. The appellate authority relied upon Oveekee Textiles v. Deputy Commercial Tax

Officer, Tiruchengode [1971] 27 STC 439 and Ramakutty Nadar v. State of Madras [1973] 31 STC 44 (Mad.) which were binding upon him.

Even the proposition which was laid down in T.C. No. 1187 of 1979 [P. M. Perianna Pillai v. Commissioner, Board of Revenue (C.T.) [1980] 46

STC 94 is not satisfied in the assessment order passed by the petitioner. He had 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 1/2

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 28th August, 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 MLJ 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 the 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 an assessment order is passed, it being a quasi-judicial function, no disciplinary action

could be taken on the said order being set aside by an appellate authority, who could have remanded the matter for proper and fresh disposal. This

is an 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 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 decisions, 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 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 and Charitable Endowments Board, who is a corporation sole for his quasi-judicial function, it was held in *Govinda Menon Vs. Union of India (UOI)*, that the 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 to 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 act 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* [1973] 31 STC 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. Thanjavur District Co-operative Supply Market Society Ltd.* (1983) 96 LW 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 the 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 Commissioner of Commercial Taxes v. Adam & Co. [1979] 43 STC 508 arising under the

Sales Tax Act took the same view as in Ramakutty Nadar v. State of Madras [1973] 31 STC 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. Counsel fee Rs. 250.

13. Writ petition dismissed.