

(1995) 08 PAT CK 0011

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 4071 of 1995

Rakesh Kumar

APPELLANT

Vs

The State of Bihar and others

RESPONDENT

Date of Decision : 18-08-1995

Acts Referred:

Citation : (1995) 08 PAT CK 0011

Hon'ble Judges : G.B. Patnaik, C.J.; I.P. Singh, J

Bench : Division Bench

Advocate : L.N. Rastogi, J.N. Sahay and Sandeep Kumar in 4071, 4419, 4420, 4421, 4422 and 4973, Pawan Kumar and Raj Kishore Prasad in 4328, 4691, 4692, 4693 and 4694, S.D. Sanjay and Alok Kr. Agrawal in 4473, 4549 and 5032, for the Appellant; Rameshwar Prasad and O.P. Agrawal, for the Respondent

Final Decision : Allowed

Judgement

G.B. Patnaik, C.J.—In all these fourteen cases a common question of law arises with regard to the interpretation of sub-section (4) of Section 46 of the Bihar Finance Act, 1981 (hereinafter referred to as "the Act") and as such they were heard together and are being disposed of by this common Judgment. The question that arises for consideration is whether under sub-section (4) of Section 46 of the Act the Commissioner would be justified in not invoking his suo motu jurisdiction on being satisfied as to the illegality or impropriety of order passed by a Sub-ordinate Officer merely because his jurisdiction was invoked by an assessee. The aforesaid question arises under the following circumstances which is briefly narrated.

2. The assesses, in respect of their sale transaction for different assessment years, had submitted the returns which had been accepted and the assesses paid taxes in accordance with returns. There was some dispute as to the liability of the assesses to pay tax on the turnover of purchase and sales in respect of medicine. The Assessing Officer on an erroneous view of law enhanced the taxable turnover of the asses-sees and raised additional demand for different

assessment years. The assessee then invoked the suo motu jurisdiction of the Commissioner under sub-section (4) of Section 46 of the Act on the ground that the authorities had inherent lack of jurisdiction to enhance the taxable turnover and that too without even affording an opportunity of hearing and without noticing the assessee. The Commissioner had entertained the revision applications and also had heard the matter on several dates but all of a sudden refused to entertain the matter by a memo dated 5.6.95 on the ground that the Commercial Taxes Tribunal having held that after amendment of Section 46 (4) with effect from 3.5.89 the assessee has no right to apply for revision, the Commissioner cannot exercise power of revision on an application filed by the assessee. This order of the Commissioner is being assailed in all these applications. The main basis of the petitioners' case is that the suo motu power conferred upon the Commissioner under sub-section (4) of Section 46 of the Act can be exercised by the Commissioner for examining the legality or propriety of an order passed in any proceeding by a subordinate authority. Even though an assessee may not have a right of a revision but when he brings forthwith materials before the Commissioner, the Commissioner's power to exercise his suo motu jurisdiction is not in any way fettered merely because the assessee has brought forth the materials before the Commissioner. The Commissioner having entertained the applications and having heard the matter on several dates erroneously refused to proceed further on a finding that he has no jurisdiction to exercise suo motu power since it is the assessee who has brought the matter before him and according to the learned counsel for the petitioner this tantamount to refusal to exercise suo motu power available in law by a statutory authority.

3. Learned Advocate General appearing for the State on the other hand contended that the legislative history, if looked into, the conclusion would be irresistible that the legislature excluded a right of revision to an assessee and, therefore, the Commissioner rightly refused to entertain the matter and according to him this case is fully covered by the decision of the Supreme Court in the case of State of Andhra Pradesh Vs. M/s. T.G. Lakshmaiah Setty and Sons, . According to learned Advocate General In the aforesaid Supreme Court case their Lordships were examining a pari materia provision of A.P. General Sales Tax Act and having interpreted the same, the said interpretation would also squarely apply while interpreting Section 46 (4) of the Bihar Finance Act.

4. In view of the rival contentions of the parties the question that arises for our consideration is whether under sub-section (4) of Section 46 of the Act the Commissioner would be debarred from exercising his suo motu jurisdiction when an assessee puts forth certain materials before the Commissioner. In other words an interpretation of Section 46 (4) of the Act will determine the issue. Section 46 (4) of the Act as it was at the relevant point of time may be extracted hereinbelow in extenso for better appreciation :

The Commissioner may, on his own motion call for and examine the records of

any proceeding in which any order has been passed by any other authority appointed u/s 9, for the purpose of satisfying himself as to the legality or propriety of such order and may after examining the record and making or causing to be made such enquiry as he may deem necessary, pass such order as he thinks proper.

It would be necessary for us to trace the legislative history of Section 46 (4) of the Act since the argument of the learned Advocate-General is based squarely on the same. Sub-section (4) of Section 46 prior to its substitution by Section 10 (2) of the Bihar Finance Act, 1984 was as follows :

The Commissioner may, at any time but before the expiry of four years from the date of the order, either on his motion or on application, call for and examine the record of any proceeding in which any order has been passed by any other authority appointed u/s 9, for the purpose of satisfying himself as to the legality or propriety of such order and may, after examining the record and making or causing to be made such enquiry as he may deem to be necessary, pass any order which he thinks proper:

Provided that where an application is filed seeking revision of any order, such an application shall be entertained only if made within ninety days of the date of communication of the order sought to be revised.

By Section 10 (2) of the Bihar Finance Act, 1984 the aforesaid provision was substituted as thus :

(4) (a). The Commissioner may, on his own motion call for and examine the records of any proceeding in which any order has been passed by any other authority appointed u/s 9, for the purpose of satisfying himself as to the legality or propriety of such order and may after examining the record and making or causing to be made such enquiry as he may deem necessary, pass such order as he thinks proper.

(b) The Commissioner may also revise any order passed by any authority appointed u/s 9 on application seeking revision of such order :

Provided that where an application is filed seeking revision of any order, such an application shall be entertained only if made within ninety days of the date of communication of the order sought to be revised:

Provided further that where the Commissioner is satisfied that the applicant had sufficient cause for not applying within time, he may condone the delay.

By Bihar Finance Amendment Act, 1989 clause (b) of sub-section (4) of Section 46, however, stood deleted.

5. We will now have to examine the correctness of the rival contentions in the aforesaid background. The petitioner's contention is that sub-section (4) (a) of Section 46 of the Act should be interpreted by giving a plain grammatical meaning, as the language employed, is the determining factor of the intention of

the legislature. According to the petitioner's counsel since there is no ambiguity in giving a literal meaning to sub-section (4) of Section 45 of the Act, it would not be necessary for the Court to try to find out any hidden intention behind the same and, therefore no extrinsic aid can be taken from the legislative history. Learned Advocate General on the other hand contended that the legislation in a modern State is actuated with some policy to curb some public evil or to effectuate some public benefit. The legislation is primarily directed to the problems before the legislature based on information derived from past and present experience, judged from the afore stand point deletion of clause (b) from sub-section (4) of Section 46 of by Bihar Finance Amendment Act, 1989 has a vital bearing in interpreting subsection (4) (a) of Section 46 of the Act. He consequently urged that the Commissioner will not be entitled to invoke his suo motu jurisdiction on being moved by an assessee. According to him though such power had been conferred under clause (b) of sub-section (4) of Section 46, but the same was deleted for a particular purpose and, therefore, that purpose cannot be frustrated by giving a wider interpretation to sub-section (4) of Section 46 of the Act. It is now true that clause (b) has been deleted by Bihar Finance Amendment Act, 1989 but what was the object for which the said clause was deleted is not available. Even when the bill was introduced in the legislative assembly, nothing appears to have been noted on the object and reason for such deletion.

6. It is a cardinal principle of rule of construction of statute that if the words of a statute are clear, plain, or unambiguous, i.e., they are reasonably susceptible to only one meaning, the courts are bound to give effect to that meaning irrespective of consequences. Tindal, C.J. in *Sussex Peerage case* [(1844) 11 CL & F 85, p. 143 has said:

If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves do alone in such cases best declare the intent of the lawgiver.

AIR 1939 47 (Privy Council) speaking for the Privy Council said.

When the meaning of the words is plain, it is not the duty of courts to busy themselves with supposed intentions.

Justice S.R. Das in *Rananjaya Singh Vs. Baijnath Singh and Others*, had observed that the spirit of the law may well be an elusive and unsafe guide and the supposed spirit can certainly not be given effect to in opposition to the plain language of the sections of the Act. This rule applies to fiscal and penal statute as well.

7. Bearing in mind the aforesaid principles of construction of statute let us now examine some of the authorities cited at the Bar and try to arrive at the correct meaning of sub-section (4) (a) of Section 46 of the Act. In 31 S.T.C. page 434 in the case of *Board of Revenue v. Raj Brothers Agencies* their Lordships of the

Supreme Court had considered the true scope of Section 34 of the Madras General Sales Tax Act. 1959. The said provision conferred a suo motu power on the Board of Revenue to call for and examine an order passed or proceeding recorded by the appropriate authorities under some of the provisions of the Act. The aforesaid provision is in pari materia with sub-section (4) (a) of Section 46 of the Bihar Finance Act with which we are concerned. Upon the contention advanced by the State that an assessee had no right to invoke the jurisdiction of the power, the Supreme Court held that the power is conferred on the Board to remedy any injustice and it is open to an assessee or the revenue to bring to the notice of the Board any error made by the subordinate authority and it is up to the Board to consider whether the case is a fit case for its revisional jurisdiction. It may be noted that the aforesaid decision has been rendered by three learned Judges of the Apex Court In the case of Bombay Ammonia Pvt. Ltd. v. State of Tamil Nadu, 37 S.T.C. page 517 their Lordships of the Supreme Court considered the suo motu power of revision of the Deputy Commissioner u/s 32 of the Tamil Nadu General Sales Tax Act 1959 and it was observed that the suo motu power conferred on the Deputy Commissioner u/s 32 in regard to the order or proceeding specified therein was quite wide and he could, subject to the conditions laid down in sub-sections (2) and (3), exercise the same even at the instance of an assessee who had not filed an appeal against the order for the purpose of rectifying any illegality or impropriety therein. This decision of the Supreme Court has also been rendered by three Hon''ble Judges of the Court. The Full Bench of the Madras High Court, considered the para-meter of suo motu power of revision u/s 32 of the Madras General Sales Tax Act. 1959 in the case of Arunachalam Pillai & Sons v. State of Tamil Nadu, 45 S.T.C. page 109 and observed that there is nothing in law preventing an assessee from drawing the attention of the Deputy Commissioner to any defect present in the order of the authorities specified u/s 32 of the Act and any party aggrieved could move the Deputy Commissioner to exercise the suo motu power of revision. The Kerala High Court considered the provision of Section 35 of the Kerala General Sales Tax Act, 1963 which conferred suo motu power on the Deputy Commissioner in the case of Deputy Commr. of Sales Tax v. Balachandran, 69 S.T.C. page 165. The Court held :

On a fair interpretation of Sections 35 and 36 of the Kerala Act, in the light of the various decisions mentioned above, we are of the view that the power of revision is conferred on the Deputy Commissioner to remedy injustice. The power is couched in very wide terms. The purpose for which the power of such amplitude is given is to safeguard the interest of the Revenue and also that of the assessee. It is open to the assessee or to the Revenue to bring it to the notice of " the Authority (Deputy Commissioner) any error made by a subordinate authority and it is for the Deputy Commissioner to consider whether the case is a fit one, in exercise of the revisional jurisdiction. Since the power of revision can be exercised to set right the error or illegality of a subordinate authority and it could be exercised for or against the assessee, such power can be exercised, even if

the assessee has not filed an appeal against the order, for the purpose of setting right the improper or the illegal order. It is true that the language of Section 35 literally states, that the power has to be exercised suo motu. When circumstances warranting the exercise of the power come to the notice of the concerned authority, the mere fact that the circumstances for the exercise of that power are shown to exist, by the assessee in a particular case, cannot be a factor or reason for the non-exercise or refusal to exercise the said power.

8. All these aforesaid cases fully support the contentions of the petitioner's counsel that under sub-section (4) of Section 46 the Commissioner cannot decline to invoke his suo motu jurisdiction merely because the assessee has brought to his knowledge the illegalities or irregularities committed by a subordinate authority in course of assessment proceeding. But the Sales Tax Tribunal had passed an order relying upon which the Commissioner refused to entertain the matter and the Tribunal had relied upon the decision of the Supreme Court in the case of State of Andhra Pradesh Vs. M/s. T.G. Lakshmaiah Setty and Sons, and the said decision is the sheet anchor of the argument advanced by the learned Advocate-General. In the aforesaid case their Lordships of the Supreme Court, no doubt, had held that u/s 20 of the A.P General Sales Tax Act the assessee cannot invoke the suo motu power of the authority. Their Lordships had held that assessee has only to pursue the remedies provided under the Act and he has no right to make an application u/s 20 of the Act seeking revision of the orders of assessments made under the Act by the original authority. In the aforesaid judgment the two earlier decisions of the Supreme Court of three learned Judges Bench case had not been brought to the notice of their Lordships. Then again their Lordships have been possibly persuaded to take this view because of the amendment brought into by Act 18 of 1985 by which amendment after the expression "including sub-section (2) of this section", the expression was added to the effect (and if such order or proceeding recorded is prejudicial to the interest of the revenue). It is one thing to hold that an assessee has no right of revision under the relevant provision and it is another thing to hold that an assessee may put forth materials before the authority, who has the power to exercise suo motu jurisdiction and that authority is to decide as to whether he would invoke jurisdiction or not depending upon the facts and circumstances of the case. In our considered opinion in view of the wide language used in sub-section (1)(a) of Section 46, though an assessee has no right of filing an application for revision but if he puts forth appropriate materials before the concerned authority and the concerned authority thinks that he can exercise the suo motu power then there is no fetter in that power merely because the materials have been put forth by an assessee. The legislative changes which we have already noticed merely indicate that under the Bihar Finance Act, 1981 the Commissioner would call for and examine the records of any proceeding either on his own motion or on an application being filed, but when he calls for and examines the record on his motion, he can do so within four years from the date of order, but when an application is filed, he can do only

if the application is made within ninety days from the date of communication of the order. By the Amendment Act, 1984 sub-section (4) was substituted by two clauses, namely, (a) and (b). Clause (a) conferred the power on the Commissioner to call for and examine the record on his own motion and clause (b) conferred the power of revision on an application being filed for the purpose. The proviso to clause (b) stipulated the period of ninety days under which the application could be filed and the second proviso conferred power on the Commissioner to condone the delay in making the application if sufficient cause is shown. By Amendment Act, 1989 clause (b) of sub-section (4) of Section 46 stood deleted and as such there is no right of an assessee to move the Commissioner to revise an order passed u/s 9 of the Act. Negation of that right of an assessee which was there in Bihar Finance Act, 1984 does not tantamount to in any way restrict the suo motu power of the Commissioner under sub-section (4) (a) and that power could be exercised by the Commissioner where he him self has on his own motion called for and examined the records of any proceeding or certain irregularities and illegalities in respect of an order passed in a proceeding are brought to his notice by an assessee Ultimately the Commissioner may refuse to exercise his jurisdiction under sub-section (4) (a) on the ground that the assessee had not exhausted the remedy by way of an appeal under the statute or on any such germane ground which is an altogether different matter. But to hold that, the Commissioner is debarred from exercising his suo motu power solely on the ground that the information brought to the notice at the instance of an assessee would be contrary to the wide language used in sub-section (4) (a) of the Act, and, would be contrary to the normal principle of construction of statute which we have already discussed

9. In view of the decision of the Supreme Court in the case of State of A.P. v. M/s T.G. Lakshmaiah Setty & Sons (supra) initially we had some hesitation to hold that the suo motu power could be invoked even by the assessee. But on examining the said decision and on finding that the aforesaid decision has not taken notice of the two earlier decisions of the Supreme Court of three learned Judges, namely, 31 S.T.C. page 435 and 37 S.T.C page 517 as well as the amendment which was brought to Section 20 of the Andhra Pradesh General Sales Tax Act, 1957 and following the law of precedence, namely the earlier larger Bench decision has to be followed we have no hesitation to hold that the suo motu power can be invoked by the Commissioner even if the irregularities and illegalities are brought to its notice by the assessee. But we hasten to add. that it would be fully open for the Commissioner to ultimately refuse to invoke his jurisdiction either on the ground that the assessee had not taken recourse to remedies of appeal, second appeal and revision available to him under the statute or for any other germane consideration. If any authority is needed for the principle that earlier larger Bench decision must be followed in preference to latter smaller Bench decision of the Supreme Court particularly when the larger Bench decision having not been noticed, we may notice two decisions, namely, Mattulal Vs. Radhe Lal, and The State of U.P. Vs. Ram Chandra Trivedi, . In the

aforesaid premises impugned order of the Commissioner, in our opinion, tantamounts to failure on his part to exercise jurisdiction vested in law and, accordingly we quash the same and call upon the Commissioner to decide the proceeding on merits after giving opportunity to the parties concerned bearing in mind the law laid down by us in the judgment. We are told at the Bar that in several such cases the Commissioner called for the records of the proceeding on being satisfied with the materials produced by the assessee, had passed similar orders refusing on the ground that his suo motu power could not be invoked by the assessee. In all such cases if the assessee approaches the Commissioner then he would do well in recalling its earlier order and dispose of the matter in the light of the observation made by us in the judgment. We are issuing this direction since the assessee would be otherwise required to approach this Court and there would be unnecessary delay in getting the orders from this Court. These applications are, accordingly, allowed with the aforesaid directions and observations. The petitioners in each writ application are called upon to appear before the Commissioner on 4.9.1995, on which date the Commissioner should fix the date of hearing and thereafter proceed in accordance with law.

I.P. Singh, J.

10. I agree.