

(1959) 08 OHC CK 0008
In the Orissa High Court
Case No : O.J.C. No. 117 of 1958

Ramanujadas Balakishandas

APPELLANT

Vs

The State of Orissa and Others

RESPONDENT

Date of Decision : 03-08-1959

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1959) 25 CLT 470 : (1959) 10 STC 456

Hon'ble Judges : R.L. Narasimham, C.J;G.C. Das, J

Bench : Division Bench

Advocate : Ranjit Mohantyand S.C. Ghosh, for the Appellant; The Advocate-General and G.K. Misra, for the Respondent

Final Decision : Allowed

Judgement

R.L. Narasimham, C.J.—This is a petition under Article 226 of the Constitution by an assessee to sales tax against the order of the Member, Sales Tax Tribunal, dated 22nd April, 1958, dismissing his appeal for default.

2. The petitioner was assessed to sales tax by the Sales Tax Officer, Patna Circle. His appeal against that assessment was dismissed by the Assistant Collector of Sales Tax, Sambalpur, on 20th May, 1954. Then he filed second appeals before the Member, Sales Tax Tribunal, and they were registered as Appeals Nos. 1083 and 1084 of 1957. Notice for the hearing of the appeals was served on the petitioner in accordance with Form No. XXV (prescribed under Rule 58 of the Orissa Sales Tax Rules, 1947). The material portion of the notice is as follows:-

The above-noted appeal before the Tribunal against the order dated 20th May, 1954, of the A.C.S.T. Sambalpur in Case No. AA-657 of 1952 stands posted for hearing on 22nd April, 1958, at 10 A.M. in the Office of the Tribunal, at Cuttack Secretariat premises.

Please take notice that if you do not appear on the above date or by any other day to which the hearing may be adjourned either in person or by authorised

agent, with relevant records, documents, etc. on which you rely in support of/to oppose/the appeal, it will be disposed of on merits ex parte.

The question of law for consideration is whether when the Tribunal expressly informed the petitioner that even if he failed to appear on the date or dates fixed the appeal would be "disposed of on merits ex parte " it is open to the Tribunal to dismiss the appeal for default on 22nd April, 1958.

3. On behalf of the petitioner it was urged that in view of the language of the notice he was mislead into thinking that even if he failed to appear on the date fixed the Tribunal would go through the judgments of the lower Courts and come to its own conclusions on the merits of the case. The action of the Tribunal in dismissing his appeals for default proved highly prejudicial to the petitioner.

4. Mr. Misra on behalf of the Sales Tax Department drew our attention to Rules 58 and 60 of the Orissa Sales Tax Rules, 1947, which are as follows :-

58. Notice of hearing.-After an appeal or application for reference has been admitted, a notice of the date fixed for hearing in Form XXV shall be delivered or sent by registered post with acknowledgment due to the appellant or applicant and to the respondent or opponent or their agents. The notice shall also state that if they do not appear before the Tribunal either in person or through an agent on the date specified in the notice, or on any subsequent date to which the hearing may be adjourned, the Tribunal shall hear and decide the appeal or application ex parte:-

* * * *

60. Hearing in the absence of parties.-(1) If, on the date fixed for hearing or on any other date to which the hearing may be adjourned the appellant or applicant does not appear either in person or by an agent when the appeal or application for reference is called for hearing the Tribunal may dismiss the appeal or application or may decide it on merits, after hearing the respondent or opponent or his agent, if present.

(2) If on the date fixed for hearing or on any other date to which the hearing may be adjourned, the respondent or opponent does not appear either in person or by his agent when the appeal or application for reference is called for hearing, the Tribunal may decide the same on merits, after hearing the appellant or applicant or his agent if present.

5. It will be seen that though Rule 58 says that in the notice to served on the appellant (Form XXV) he should be told that the Tribunal would hear and decide the appeal ex parte, yet in Rule 60 the Tribunal is given the option of either dismissing the appeal or of "deciding" it on merits if the appellant fails to appear on the date fixed for hearing. Presumably Rule 58 has not been drafted so as to conform to Rule 60. Any decision, even ex parte, requires careful consideration of the judgments of the lower Courts and the giving of reasons. Mere dismissal for default on account of the absence of the parties may not amount to a

"decision". It would have been much better if Rule 58 had been drafted in conformity with Rule 60 and it had been clearly stated that if the appellant fails to appear on the date fixed for hearing the Tribunal may, at its discretion, either dismiss the appeal for default or decide the appeal on merits ex parte. This however is a matter for the rule-making authority to consider.

6. Mr. R. Mohanty also raised a question about the vires of Rules 58 and 60 of the aforesaid Rules and urged that they were beyond the rule-making power conferred by the Act. We express no opinion on this question as it is unnecessary for the purpose of this case.

7. The petitioner can reasonably contend that when, in the notice in Form XXV, he was informed that even if he failed to appear the appeals would be disposed of on merits ex parte he was misled into thinking that in any case the Tribunal would consider the judgments of the two lower authorities and give reasons for its decision. He could not possibly anticipate that the appeals would be dismissed for default. Hence the petitioner appears to have been prejudiced by the order passed by the Tribunal. But there is no invalidity or defect in the notice which has been issued in Form XXV which is in conformity with Rule 58. The application must be allowed on the simple point that once the Tribunal informs a party that his appeal will be disposed of on merits even if he fails to appear, it cannot dismiss the appeal for default, thereby causing him serious prejudice.

8. The application is therefore allowed, the order of the Sales Tax Tribunal dated 22nd April, 1958, is set aside and he is directed to restore the appeals to his file and dispose of the same according to law. There will be no order for costs.

DAS, J.

9. I agree.