(1951) 11 OHC CK 0007

In the Orissa High Court

Case No : M.J.C. No. 125 of 1951

Ramkrishna Pradhan APPELLANT

Vs

State of Orissa and Others RESPONDENT

Date of Decision : 29-11-1951

Acts Referred:

Bihar and Orissa Public Demands Recovery Act, 1914 — Section 10, 60, 62, 64
Constitution of India, 1950 — Article 226, 227

Citation : AIR 1952 Ori 231

Hon'ble Judges : Jagannadhadas, C.J;Narasimham, J

Bench : Division Bench

Advocate : P. Misra and S.C. Das, for the Appellant; B. Mohapatra, for the Respondent

Final Decision : Dismissed

Judgement

Narasimham, J.—This is a petition under Articles 226 and 227 of the Constitution against an order of the Revenue Commissioner (now Member, Board of Revenue) in Certificate Revision Case No. 37 of 1951-52. The material facts are as follows.

2. The applicant is a contractor of the public Works. Department engaged in the business of construction of buildings, repairs of roads, and other works. The Sales Tax Officer of the 6overnment of Orissa issued a requisition to the Certificate Officer of Cuttack in September, 1949, for the realisation of a sum of Rs. 406/3/- from the applicant as arrear sales tax due for the quarters ending on 31-12-47 and 31-3-48. The Certificate Officer on receipt of that requisition started Certificate Case No. 404-M of 1949-50 and issued the usual notice u/s 7 of the Bihar & Orissa Public Demands Recovery Act, 1914 (Act IV of 1914). The applicant thereupon filed an objection u/s 9 of that Act denying his liability to pay the said sum either in whole or in part. The Certificate Officer by an order dated 13-1-50 rejected the applicant''s petition. Thereupon the applicant filed an appeal to the Collector which was registered as Certificate Appeal No. 134 of 1950-51.

3. While the said certificate appeal was pending the Sales Tax Officer issued another requisition for the recovery of a sum of Rs. 2,898/11/- from the applicant as arrear sales tax for the two quarters from 30-6-48 to 31-12-49. The Certificate Officer started another case No. 808-M of 1950-51 on the basis of this requisition and issued the usual notice u/s 7 of the B & O Public Demands Recovery Act, 1914. In respect of this certificate case also the applicant filed a petition u/s 9 of that Act denying his liability to pay either the whole, or in any case, a portion of the sum. The Certificate Officer rejected this petition also by an order dated 23-3-51. Thereupon the applicant preferred an appeal (Certificate Appeal No. 1 of 1951-52) against the order before the Collector. The two certificate appeals were heard analogously by the Additional Collector on 30-5-51 and they were both dismissed, The applicant then filed a revision (No. 7 of 1951-52) before the Revenue Commissioner which was also rejected mainly on the ground that the Certificate Officer exercised his discretion properly in accepting the assessment of sales tax made by the Sales Tax Officer as sufficient for deciding the liability of the applicant and that consequently there was no refusal on his part to exercise his Jurisdiction u/s 10 of the B & O Public Demands Recovery Act as alleged by the applicant in his revision petition before him.

4. To appreciate the points raised by Mr. P. Misra on behalf of the applicant it is necessary to briefly describe the relevant provisions of the B & O Public Demands Recovery Act, 1914 (Act IV of 1914) and the Orissa Sales Tax Act, 1947 (Act XIV of 1947). Under the former Act a requisition may be made u/s 5 by a competent authority to the Certificate Officer for the realisation of a public demand. It is undisputed that the unpaid sales tax is a public demand (see para 3 of Schedule I of B & O Act IV of 1914 read with Sub-section (5) of Section 13 of the Orissa Sales Tax Act, 1947). When on receipt at such a requisition a notice is served on a certificate debtor u/s 7 he may u/s 9 file a petition "denying his liability, in whole or in part". The Certificate Officer then acting u/s 10 is required to determine "whether the certificate debtor is liable for the whole or any part of the amount for which the certificate was signed"; and may set aside, modify or vary the certificate accordingly". The order passed by the Certificate Officer u/s 10 is appealable to the Collector u/s 60 and revisable by the Board of Revenue u/s 62 of the Act. Section 64 of the Act may, however, be quoted in full as it has some importance.

"Savings of other Acts. -- The powers given by this Act shall be deemed to be in addition to and not in derogation from, any powers conferred by any other Act now in force for the recovery of any due, debt or demand to which tile provisions of this Act are applicable."

Section 66 says that a Certificate Officer shall be deemed to be a "Court".

5. The Orissa Sales Tax Act was passed thirty three years after the passing of the B & O Public Demands Recovery Act and it has provided a complete machinery for the assessment and collection of the sales tax and also for the investigation

of those matters upon which the jurisdiction of the Sales Tax Officer to make the assessment depends. Section 12 deals with the mode of assessment. Section 13 deals with the recovery of tax and penalty. Clause (c) of Sub-section (4) of that section says that after making an assessment the Collector shall issue a notice to the dealer for payment of the tax assessed. Section 20 confers jurisdiction on the Sales Tax Officer to determine all matters which are incidental to the assessment such as whether the assessce is a ''dealer'' within the meaning of the Act or whether a particular transaction is a ''sale'' or ''contract''. Section 22 expressly bars the jurisdiction of any Court to question an assessment made or an order passed under that Act. Section 23, however, provides for an appeal and also for a revision petition to the prescribed authority and Section 24 empowers the High Court to direct the statement of a case where a question of law is involved. The petitioner did not avail himself of the remedies provided in those sections and his explanation is that he was unaware of the assessments until the receipt of the notices from the Certificate Officer.

6. The applicant''s main contentions are :

(i) that he is not a "dealer" in respect of the materials supplied to him by the P. W. D. for the purpose of executing his contract and consequently he was not liable to pay any sales tax in respect of the price of the said materials; and

(ii) in any case, the entire proceeding before the Sales Tax Officer was void inasmuch as the preliminary notices for the making of assessment u/s 12 and the subsequent notice of demand on him after the making of assessment u/s 13 were not served on him.

7. As regards the first contention, this Court has to consider whether in an application against the order of the Revenue Commissioner while exercising his powers of revision under the Public Demands Recovery Act, this Court can examine the correctness or legality of the assessment made by the Sales Tax Officer. The orders, under challenge, are the orders of the Certificate authorities and not those of the Sale Tax Officer. The Revenue Commissioner''s powers are circumscribed by the P.D.R. Act and the relevant provisions of the Sales Tax Act and if he has no jurisdiction to examine the questions raised by the said contention, his order cannot be challenged in a petition under Article 226 or 227 of the Constitution. In this respect, the Revenue Commissioner''s powers are the same as those of the Certificate Officer and if by virtue of Section 22 of the Sales Tax Act the Certificate Officer has no jurisdiction to enter into an investigation as regards the correctness or legality of the assessment made by the Sales Tax Officer it is obvious that his appellate authority (the Collector) or Revising authority (Revenue Commissioner) have also no such jurisdiction. Section 22 of the Sales Tax Act read with Section 20 of that Act is a complete bar to the applicant raising any question as regards the legality or correctness of the assessment made by the Sales Tax Officer. By virtue of Section 66 of the P.D.R. Act, the Certificate Officer is undoubtedly a "Court" as contemplated in Section 22 of the Sales Tax Act. There can be no question of any conflict between the B &

O Public Demands Recovery Act on the one hand and the Orissa Sales Tax Act on the other. Both are Acts of the Provincial (now State) Legislature and the Sales Tax Act being a later special enactment must necessarily prevail even if there is any inconsistency between the two Acts. But I find no inconsistency at all in view of Section 64, of the B & O Public Demands Recovery Act which expressly says that powers given under that Act shall be deemed to be in addition to, and not in derogation from, any powers conferred by any other Act for the recovery of a public demand. Therefore the power conferred on a Certificate Officer by Section 10 of the B & O Public Demands Recovery Act to determine whether the applicant certificate debtor is liable for the whole or any part of the amount for which the certificate was signed must be deemed to be controlled by Section 22 of the Sales Tax Act and he has no jurisdiction whatsoever to consider the legality or correctness of the assessment.

8. Mr. Misra, however, contended that the bar of Section 22 of the Sales Tax Act would come into operation only when a valid assessment was made under that Act and where the assessment was made without issuing the notices required by Sections 32 and 13 of that Act there was no valid assessment at all. The correctness of this argument is undoubtedly beyond question. But the applicant is precluded from raising this contention by his own pleadings in the certificate case. In his objection petition u/s 9 he doubtless stated in a general way that the Sales Tax Officer was not "authorised or entitled to impose any tax on him" and that the certificate was illegal. But it was not clearly pointed out how the assessment purported to have been made by the Sales Tax Officer was not an assessment under the Orissa Sales Tax Act. While giving evidence before the Certificate Officer the applicant admitted that he received notice from the, Sales Tax Department asking him to furnish details of the contracts executed by him and the total amounts involved in the sale. This statement seems to be a clear admission that the notices required by Sections 12 and 13 of the Sales Tax Act prior to the making of assessment were properly served on the applicant. He did not say that after the assessment was made he was not informed about such assessment. Consequently the question of non-compliance with the provisions of Clause (c) of Sub-section (4) of Section 13 of the Sales Tax Act and the effect of such non-compliance on the legality of the assessment do not arise for consideration at all on the applicant''s own evidence. There was therefore no material before the Certificate Officer for him to hold that the two assessments were not made "under the Sales Tax Act" so as to remove the bar imposed by Section 22 on his jurisdiction.

9. It was next contended that the very foundation for the exercise of jurisdiction by the Sales Tax Officer under the Sales Tax Act rested on the applicant being a ''dealer'' and there being a ''sale'' as defined in Clauses (c) and (g) of Section 2 of the Sales Tax Act and that the certificate Court had therefore jurisdiction, to investigate whether on the materials available before the Sales Tax Officer the applicant was a ''dealer1 and whether there was a ''sale''. This argument might have had some force if the Sales Tax Act had contained no provision empowering

the Sales Tax Officer to decide for the purpose of making assessment whether a person was a ''dealer'' and whether a transaction was a ''sale''. But as already pointed out, Section 20 expressly confers jurisdiction on the Sales Tax Officer to decide these two questions. In such a case the finality given to the decision of the Sales Tax Officer (subject of course to appeal, revision etc. provided in the Sales Tax Act itself) would apply not only to the assessment actually made by him but also to the decisions on the preliminary questions such as whether the applicant was a ''dealer'' and the transaction was a ''sale'' on which his further exercise of jurisdiction of making the assessment depends. This has been clearly emphasised in Section 22 which applies not only to ''assessments'' made under the Act but also to the ''orders'' passed thereunder. Apart from the terms of Section 22, the following principles laid down by Lord Esher in THE QUEEN v. THE COMMISSIONER FOR SPECIAL PURPOSES OF THE INCOME TAX'' (1888) 21 Q.B.D. 313 and followed in a recent decision of the Supreme Court reported in Rai Brij Raj Krishna and Another Vs. S.K. Shaw and Brothers, are quite apt in this case.

"When an inferior Court or tribunal or body, which has to exercise the power of deciding facts, is first established by Act of Parliament, the Legislature has to consider what powers it will give that tribunal or body. It may in effect say that, if a certain state of facts exists and is known to such tribunal or body before it proceeds to do certain, things, it shall have jurisdiction to do such things, but not otherwise. There it is not for them conclusively to decide whether that state of facts exists and if they exercise the jurisdiction without its existence, what they do may be questioned, and it will be held that they have acted without jurisdiction. But there is another state of things which may exist. The Legislature may intrust the tribunal or body with a jurisdiction, which includes the jurisdiction to determine whether the preliminary state of facts exists as well as the jurisdiction, on finding that it does exist, to proceed further or do something more. When the Legislature are establishing such a tribunal or body with limited jurisdiction, they also have to consider, whatever jurisdiction they give them, whether there shall be any appeal from their decision, for otherwise there will be none. In the second of the two cases I have mentioned it is an erroneous application of the formula to say that the tribunal cannot give themselves jurisdiction by wrongly deciding certain facts to exist, because the legislature give them jurisdiction to determine all the facts, including the existence of the preliminary facts on which the further exercise of their jurisdiction depends; and if they were given jurisdiction so to decide, without any appeal being given, there is no appeal from such exercise of their jurisdiction."

The Legislature conferred jurisdiction on the Sales Tax Officer u/s 20 of the Sales Tax Act to decide rightly or wrongly the preliminary facts on the basis of which he could make a proper assessment. His decision both on such preliminary facts and on the final assessment o? sale tax is expressly made final subject of course to the remedies provided in that Act itself for appeal, revision and review. No Court in any other proceeding can question his decision.

10. I am therefore satisfied that the certificate authorities acted properly in refusing to enter into the question about the legality or correctness of the assessment and in disallowing the petition of the applicant u/s 9 of B & O Public Demands Recovery Act, 1914.

11. The petition is rejected with costs. Hearing fee is assessed at two gold mohurs.

Jagawnadhadas, C.J.

12. I agree entirely.

13. Section 20 of the Sales Tax Act expressly gives the power to the Collector to decide whether or not a person is a dealer for the purposes of the Act. Section 22 bars the jurisdiction of the Court in respect of an order of the Collector deciding that a particular person is a dealer within the meaning of the Act & levying assessment on him. It is clear therefore that neither the certificate officer nor this Court has any power to go into that question both on account of the statutory provisions as also on the eft-quoted principle laid down in (1888) 21 Q.B.D. 313 referred to in my learned brother''s judgment.

14. Our attention has been drawn to some clauses in the printed contract between the petitioner and the Government relating to the work and it is possible that the petitioner may have a real grievance as to the correctness of the decision of the Sales Tax Officer that he is a dealer But his remedy was only that provided in the Act and no other. The Privy Council has pointed out in AIR 1940 105 (Privy Council) that "where a statute creates a liability not existing at common law and gives also a particular remedy for enforcing it with respect to that class, it has always been held that the party must adopt the form of remedy given by the statute". Liability to sales tax is a statutory liability and the petitioner should have availed himself of the provisions of the Sales Tax Act itself to obtain redress.

15. Sections 43 and 44 of the Bihar & Orissa Public Demands Recovery Act have been relied upon before us, as though they give an independent right of suit. I confess I have been unable to follow the argument. The Sales Tax Act is a special Act dealing with a particular kind of public demand. We have been shown no authority for thinking that the said provisions of the statute which provide the machinery for recovery of public demands in general has the effect of giving the party against whom the demand is made an independent right of suit to deny liability on grounds or in a manner different from what are provided in the substantive law relating to that particular public demand.

