
(1990) 03 MAD CK 0046

In the Madras High Court

Case No : Writ Petitions No's. 12977, 12978 and 13161 of 1987

Rugmini Ram Raghav Spinners (P) Ltd. and others

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 31-03-1990

Acts Referred:

Income Tax Act, 1961 — Section 131, 131(1), 132, 132(1), 142

Citation : (1990) 87 CTR 35 : (1992) 196 ITR 674

Hon'ble Judges : T. Somasundaram, J; S. Nainar Sundaram, J

Bench : Division Bench

Advocate : R. Thiagarajan, for the Appellant; Mrs. Nalini Chidambaram, for the Respondent

Judgement

Nainar Sundaram, J.—The prayers in the writ petitions are similar. To understand what exactly the petitioners want, it is sufficient if we

extract one of the prayers, which is as follows :

For the reasons stated in the accompanying affidavit, the petitioner prays that this honourable court may be pleased to issue a writ of prohibition

or another appropriate writ or order or direction in the nature of writ prohibiting the respondent from proceeding further in any manner against the

petitioner pursuant to the searches made on November 20, 1987, and November 27, 1987, of the premises of the petitioner and pass such further

or other orders as this honourable court may deem fit and proper.

2. The searches referred to in the prayers in the writ petitions are u/s 132(1)(b) and (c) of the Income Tax Act, 1961 (hereinafter referred to as

the Act"). The impeachment of the searches is on the ground that the ingredients under those provisions or, in other words, the conditions

precedent for searches to be made under those provisions were not present in

the instant cases. There is no need to go into the facts of the cases in detail, since the scope of the submissions put forth on behalf of the petitioners by their learned counsel, Mr. R. Thiagarajan, impeaching the searches, is confined to specific aspects built on the provisions of section 132(1) (b) and (c) of the Act. The relevant portion of section 132(1) of the Act may be extracted as follows :

132. Search and seizure. - (1) Where the Director-General or Director or the Chief Commissioner or Commissioner or any such Deputy Director or Deputy Commissioner as may be empowered in this behalf by the Board, in consequence of information in his possession, has reason to believe that -

(a) any person to whom a summons under sub-section (1) of section 37 of the Indian Income Tax Act, 1922 (11 of 1922), or under sub-section

(1) of section 131 of this Act, or a notice under sub-section (4) of section 22 of the Indian Income Tax Act, 1922, or under sub-section (1) of

section 142 of this Act was issued to produce, or cause to be produced, any books of accounts or other documents has omitted or failed to

produce, or cause to be produced, such books of account or other documents as required by such summons or notice, or

(b) any person to whom a summons or notice as aforesaid has been might or might be issued will not, or would not, produce or cause to be

produced, any books of account or other documents which will be useful for, or relevant to, any proceeding under the Indian Income Tax Act,

1922 (11 of 1922) or under this Act, or

(c) any person is in possession of any money, bullion, jewellery or other valuable article or thing and such money, bullion, jewellery or other valuable

article or thing represents either wholly or partly income or property which has not been, or would not be, disclosed for the purposes of the Indian

Income Tax Act, (11 of 1922), or this Act (hereinafter in this section referred to as the undisclosed income or property.),

then, -

(A) The Director General or Director or the Chief Commissioner or Commissioner, as the case may be, may authorise any Deputy Director,

Deputy Commissioner, Assistant Director, Assistant Commissioner (or Income Tax Officer), or

(B) Such Deputy Director or Deputy Commissioner, as the case may be, may authorise any Assistant Director, Assistant Commissioner (or

Income Tax Officer),

(the officer so authorised in all cases being hereinafter referred to as the authorised officer) to -

(i) enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such books of account, other documents,

money, bullion, jewellery or other valuable article or thing are kept;

(ii) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (i) where the

keys thereof are not available;

(ia) search any person who has got out of, or is about to get into, or is in, the building, place, vessel, vehicle or aircraft, if the authorised officer has

reason to suspect that such person has secreted about his person any such books of account, other documents, money, bullion, jewellery or other

valuable article or things :

(iii) seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing found as a result of such search;

(iv) place marks of identification on any books of account or other documents or make or cause to be made extracts or copies therefrom;

(v) make a note or an inventory of any such money, bullion, jewellery or other valuable article or thing :

3. Before there could be invocation of the power of search and seizure contemplated u/s 132(1) (b) and (c), there has got to be, in the possession

of either the Director-General or Director or the Chief Commissioner or Commissioner or any such Deputy Director or Deputy Commissioner as

may be empowered in this behalf by the Board "the information". The information should have given him reason to believe - for purposes of clause

(b) - that any person to whom a summons or notice has been or might be issued, as contemplated under clause (a), will not or would not produce

or cause to be produced any books of account or other documents, which will be useful for or relevant to, any proceeding under the Indian

Income Tax Act, 1922 (11 of 1922), or under the Act - for the purpose of clause (c) that any person is in possession of any money, bullion,

jewellery or other valuable article or thing and such money, bullion, jewellery or

other valuable article or thing represents either wholly partly

income or property which has not been or would not be disclosed for the purposes for the purposes of the Indian Income Tax Act, 1922 (11 of

1922) or the Act, which property would be referred to as the undisclosed income or property.

4. The scope, import and implication of section 132(1) of the Act are no longer res integral. In *The Barium Chemicals Ltd. and Another Vs. The*

Company Law Board and Others, , the import and implication of the set of expressions "'if, in the opinion of the Central Government'", occurring in

section 237 of the Companies Act, 1956, came up for consideration, and Hidayatullah J., as he then was, observed (at pages 661 and 662 of 36

Comp Cas) :

No doubt the formation of opinion is subjective but the existence of circumstances relevant to the inference as the sine qua non for action must be

demonstrable. If the action is questioned on the ground that no circumstances leading to an inference of the kind contemplated by the section

exists, the action might be exposed to interference unless the existence of the circumstances is made out. As my brother Shelat has put it

trenchantly :.....

5. Since the existence of "circumstances" is a condition fundamental to the making of an opinion, the existence of the circumstances, if questioned,

has to be proved at least prima facie. It is not sufficient to assert that the circumstances exist and give no clue to what they are because the

circumstances must be such as to lead to conclusions of certain definiteness.

6. In the same decision, Shelat J., observed as follows (at page 688 of 36 Comp Cas) :

Therefore, the words, "reason to believe" or "in the opinion of" do not always lead to the construction that the process of entertaining "reason to

believe" or "the opinion" is an altogether subjective process not lending itself even to a limited scrutiny by the court that such "a reason to believe"

or "opinion" was not formed on relevant facts or within the limits or as Lord Radcliffe and Lord Reid called the restraints of the stature as an

alternative safeguard to rules of natural justice where the function is administrative.

7. In *S. Narayanappa and Others Vs. Commissioner of Income Tax, Bangalore*, ,

the Supreme Court, while dealing with the set of expressions

reason to believe"" occurring in section 34 of the Indian Income Tax Act, 1922 (11 of 1922), observed as follows (at page 221) :

But the legal position is that if there are in fact some reasonable grounds for the Income Tax Officer to believe that there had been any non-

disclosure and as regards any fact, which could have a material bearing on the question of underassessment, that would be sufficient to give

jurisdiction to the Income Tax Officer to issue the notice u/s 34. Whether these grounds are adequate or not is not a matter for the court to

investigate. In other words, the sufficiency of the grounds which induced the Income Tax Officer to act is not a justiciable issue. It is of course open

for the assessee to contend that the Income Tax Officer did not hold the belief that there had been such non-disclosure. In other words, the

existence of the belief can be challenged by the assessee but not the sufficiency of the reason for the belief. Again the expression "reason to

believe" in section 34 of the Income Tax Act does not mean a purely subjective satisfaction on the part of the Income Tax Officer. The belief must

be held in good faith; it cannot be merely a pretence. To put it differently, it is open to the court to examine the question whether the reasons for the

belief have a rational connection or a relevant bearing to the formation of the belief and are not extraneous or irrelevant to the purpose of the

section. To this limited extent, the action of the Income Tax Officer in starting proceedings u/s 34 of the Act is open to challenge in a court of law.

8. In Ramjubhai Kalidas Vs. I.G. Desai Income Tax Officer and Others, , a Bench of the High Court of Gujarat had occasion to refer to section

132 of the Act, and the relevant observations run as follows (at page 728) :

It is apparent that search and seizure can be effected by an officer under sub-section (1) (c) (iii) only if he is authorised to do so by the Director of

Inspection or the Commissioner, and the Director of Inspection or the Commissioner can authorise search and seizure only if he has in

consequence of information in his possession reason to believe that any person is in possession of money, bullion, jewellery or other valuable article

or thing which represents undisclosed income or property. The condition precedent to the exercise of the power to issue an authorisation for

search and seizure is that the Director of Inspection or the Commissioner must

have the requisite reason to believe in consequence of information in his possession. The power to authorise search and seizure is hedged in by the requirement of this condition precedent and it is only if this condition is fulfilled that the power can be exercised. Of course, it is for the Director of Inspection or the Commissioner to be satisfied that there is reason to believe and the court cannot sit in appeal over the decision of the Director of Inspection or the Commissioner regarding the existence of the reason of believe nor can the court examine the adequacy of the grounds on which the reason to believe entertained by such officer is based. But there is a limited area within which the reason to believe entertained by the Director of Inspection or the Commissioner can be scrutinised by the court. This area now stands clearly demarcated by several decision of the Supreme Court and its extent and limit are no longer open to doubt or controversy.

9. In Commissioner of Income Tax and Others Vs. Ramesh Chander and Others, a Bench of the High Court of Punjab and Haryana adverted to

the above pronouncement and observed (headnote) :

If the Director of Inspection or the Commissioner is satisfied there is "reason to believe" that a person is in possession of money, etc., which is undisclosed for the purposes of the Income Tax Act, and the said belief is based on the information in his possession which information has got nexus with two questions, that is, regarding the possession of money, etc., and that the said money, etc., relates to undisclosed income, the court cannot sit in appeal over the decision of the Director of Inspection or the Commissioner regarding the adequacy of the grounds on which the "reason to believe" entertained by such officer is based. The scrutiny by the court is limited.

10. These pronouncements have exhaustively settle the guidelines with reference to the scrutiny by the court to examine the legal property or

otherwise of the issuance of search warrants u/s 132(1) of the Act. However, Mr. R. Thiagarajan, learned counsel for the petitioners, would

submit that, in the present cases, there had been no satisfaction of the conditions precedent for ordering searches and hence this court must strike

down the proceedings relating to the searches and inhibit further processing being prosecuted pursuant thereto. Learned counsel for the petitioners

was initially insisting that the records relating to the formation of opinion before

the searches were ordered must be disclosed to him. Later learned counsel for the petitioners did not pursue this line of thinking and submitted that if this court peruses the records for the purpose of finding out whether there has been the requisite information before the authority or authorities who ordered the searches and which information led them to believe in good faith for ordering the searches as per section 131(1)(b) and (c) of the Act and if this court forms the opinion that the grounds on which the reason to believe is founded are relevant to the subject-matter of the searches and are not extraneous to the scope and purpose of the Act, that would suffice the purpose. This obliged us to call upon learned counsel appearing for the respondents to place before us the relevant records. We have carefully perused them. Our perusal of the records leaves no room for doubt in our mind that there were materials in the shape of information before the second respondent in respect of the search warrants issued for the searches conducted on November 20, 1987, and there were materials before the third respondent in respect of the searches conducted on November 27, 1987, and they could legitimately form the basis for the belief which was the foundation for taking action under clauses (b) and (c) of section 132(1) of the Act. Our scrutiny of the records produced before us was done keeping in mind the principles set down by the pronouncements and which we have recapitulated as above. There had been recording of the reasons. The materials taken note of are relevant to the subject-matter of the enquiry and they cannot be characterised as extraneous to the scope and purpose of the Act. Equally so, we cannot say that the formation of the belief was a pretence or is such that no rational human being could consider the materials available as relevantly forming the foundation for such belief. It is well-settled that the adequacy or sufficiency of the materials cannot be the subjects-matter of scrutiny by this court. We are satisfied that there was relevant information in the possession of the authority or authorities who issued the search warrants and that that information had led to a reasonable belief that the contingencies contemplated under clauses (b) and (c) of section 132(1) of the Act are likely to happen.

11. Mr. R. Thiagarajan, learned counsel for the petitioners, would submit that, in the instant cases, there were searches conducted on two dates -

one on November 20, 1987, and the other on November 27, 1987, and for the first search on November 20, 1987, the second respondent is

stated to have formed the opinion on the basis of the information in his possession; and for the search conducted on November 27, 1987, learned

counsel for the petitioners states that the third respondent, who issued the search warrants, could not be stated to have had in his possessions the

requisite information which gave him reason to believe that any one of the contingencies set down in clauses (b) and (c) of section 132(1) of the

Act would happen. We concentrated once again on the records produced, taking note of this submission of learned counsel for the petitioners. We

find that the third respondent himself was a party to the minutes which preceded the issuance of warrants for searches conducted on November

20, 1987, and even for the search conducted subsequently on November 27, 1987, he has formed his opinion on the information and materials

available in his possession before such searches were ordered. What the third respondent did was only a follow-up action and even that did not

lack satisfaction of the provision.

12. Next, Mr. R. Thiagarajan, learned counsel for the petitioners, would say that the counter-affidavit filed on behalf on the respondents was only

by the fourth respondent and the authorities who issued the search warrants for the searches conducted on November 20, 1987, and November

27, 1987, namely, respondents Nos. 2 and 3 have not filed any counter affidavit vouchsafing the position that they did satisfy the ingredients or the

conditions precedent before issuing the search warrants as per section 132(1) of the Act. When we see the records of the case and they do bear

out that the said authorities were, in fact, in possession of the information, and their formation of such opinion could not be said to be lacking in

good faith and it was not a pretence and the materials taken note of by them could not be characterised as irrelevant or extraneous to the purpose

of the Act, the mere non-subscribing to a counter-affidavit by the said authorities shall not be put against the very validity of the searches. Here

again, we must note that even for the first of the searches, there are minutes by the fourth respondent and it is not as if that any of these

respondents were completely unaware of and oblivious to what exactly transpired in the cases. They were very much associated with the

processes at every stage.

13. Learned counsel for the petitioners also contended that his clients are all assessees to Income Tax and wealth-tax and all their properties are

being declared and this is not a case where there should have been a resorting to the process u/s 132(1) of the Act and this court must characterize

the steps taken as tainted with malice. The mere fact that the person concerned are assessees and that their properties have been already declared

- assuming that to do the correct position - we do not think, should be taken note of for the purpose of frowning upon the process resorted to, if

otherwise there existed a justification for resorting to the process.

14. Lastly, Mr. R. Thiagarajan, learned counsel for the petitioners, would contend that, in the present cases, allegations have been specifically

made by the petitioners that the warrants were filled up only at the places of search, without even scoring out the irrelevant printed matters, and

that shows that there is no application of mind at all before the search warrants were issued. These allegations, it is stated, have not been

specifically rebutted in the counter-affidavit. Despite the lac of a counter-affidavit on this aspect, the records produced before us show that only the

relevant portions applicable to the facts of the cases have been maintained in the search warrants and we cannot act upon the bare assertion of the

petitioners that the search warrants were filled up only at the place of searches. We are not prepared to count this factor, assuming that is was

there, as militating against the very process of search under the provisions. The above being our opinion, formed on the perusal of the records, and

having repelled the submissions put forth by learned counsel for the petitioners, we are obliged to dismiss the writ petitions and accordingly we

dismiss them. We make no order as to costs.