(1959) 03 CAL CK 0003

In the Calcutta High Court

Case No : Matter No.189 of 1958

Saha Stores APPELLANT

Vs

Commercial Tax Officer and Another RESPONDENT

Date of Decision : 06-03-1959

Acts Referred:

Bengal Finance (Sales Tax) Act, 1941 — Section 7(4a)(ii)

Citation : (1959) 10 STC 311

Hon'ble Judges : Sinha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

The facts of this case are shortly as follows :-

1. On or about 13th September, 1948, the petitioner was registered as a dealer within the meaning of the Bengal Finance (Sales Tax) Act, 1941, hereinafter referred to as the "Act". Since then, sometime in March, 1955, the authorities refused to issue further declaration forms to the petitioner and the petitioner took out a Rule from this Court being C.A. No. 2961 of 1955. On the 17th July, 1956, the petitioner intimated to the Court that he was not going on with the application and the rule was discharged. Between the 2nd and 14th August, 1956, the petitioner was called upon to deposit as security a sum of Rs. 2,000 in exercise of powers conferred upon the Commissioner u/s 7 (4a) (ii) of the said Act as reasonable security for the proper custody and use of the declaration forms. Thereupon 20 declaration forms were issued. In December, 1956, further security of Rs. 8,000 was demanded which the petitioner furnished between the 7th March, 1957, and 31st July, 1957. Thereupon, further forms were issued. It is said that sometime in August, 1957, an Inspector, Central Section, made enquiries and found that the petitioner was not carrying on business at his registered address. On the 6th, 7th and 15th February, 1958, further inspection was made. On the 6th and 15th his registered place of business at 31, Russa Road, Southern Market, Calcutta, was found under lock and key. On the 7th

although the shop room was open, no stock was found there. The dealer himself reported to the Inspector that he had practically stopped his business. On the 12th of April, 1958, the Commercial Tax Officer, Central Section, issued notice u/s 14 of the said Act upon the dealer directing the production of books of account for the year 1364 B.S. The dealer did not comply but prayed for time to write up his books. On the 12th of April, 1958, an Inspector was deputed to make local enquiry. The Inspector reported that the dealer was not carrying on any business at the registered address and no books were found. On the 16th of April, 1958, the Commercial Tax Officer, Central Section, issued a show cause notice on the petitioner returnable on 28th of April, 1958, as to why the petitioner''s registration certificate should not be cancelled as it transpired from local enquiry that he was not carrying on any business from the registered address. On the same day the petitioner showed cause. He stated that he had temporarily stopped the retail business but. he was carrying on his main business. Meanwhile, the petitioner in spite of repeated notices was not producing his account books for the year 1364 B. S. He produced it only on the 2nd June, 1958. It was found upon a scrutiny of the books that he had really stopped business and had made some suspicious entries. There were certain advances shown in the books as having been made by Messrs K. B. R. & Co. The authorities contacted Messrs K. B. R. & Co., but they denied having made any advance. At the hearing of this application Mr. Chatterjee appearing on behalf of the petitioner stated that if the challans which were in the custody of the respondents were produced he could show the payments. It seemed to me rather strange that challans should show the payments and I distinctly asked him as to whether his client could produce any document at all to show payment of the money. He confessed that apart from the challans and the entries in the books, nothing could be shown. I postponed the matter for sometime to have the challans produced in Court. None of them contained any endorsement as to payment of money. On the 2nd July, 1958, the Commercial Tax Officer, Central Section, passed an order cancelling the registration, in exercise of the powers conferred by Section 7 (6) (a) of the Act. This application was taken out on the 17th September, 1958, complaining against the order of cancellation. The relevant provision of Section 7 runs as follows :-

7(1) No dealer shall, while being liable to pay tax u/s 4 of this Act carry on business as a dealer unless he has been registered and possesses a registration certificate.

(6) When -- (a) any business in respect of which a certificate has been granted to a dealer on an application made has been discontinued

(b) ...

the Commissioner shall cancel the registration.

2. It is in exercise of this power that the Commercial Tax Officer cancelled the petitioner''s registration on the ground that he was not carrying on any business

at the registered address. Mr. Chatterjee appearing on behalf of the petitioner has taken a point that the Commercial Tax Officer had no jurisdiction to cancel the certificate of registration. But it appears that he has been duly empowered by the Commissioner to do so. Mr. Mukherjee following Mr. Chatterjee has advanced the following arguments. He points out that u/s 7 of the Act a dealer who is liable to pay taxes u/s 4 of the Act cannot carry on any business unless he has been registered and possesses a registration certificate. Every dealer whose gross turnover exceeds the taxable quantum is liable to pay taxes. Therefore, a dealer whose gross turnover exceeds the taxable quantum must get himself registered in order to do business. Sub-section (2) of Section 7 lays down that every dealer required by Sub-section (1) to be registered under the Act shall make an application in such behalf in the prescribed manner to the prescribed authority. Under Sub-section (3) if the said authority is satisfied that an application for registration is in order, he shall in accordance with such rules as may be prescribed, register the applicant and grant him a certificate of registration in the prescribed form. The prescribed forms for application are Forms IA and IB annexed to the rules. They show that the petitioner has to disclose his place of business. If it is a firm, the name of the firm as also the place of business must be disclosed. The certificates of registration are in Forms IIA and IIB. It has to state the name of the dealer, the description of his firm and the place of business together with various other particulars. Mr. Mukherjee has argued that u/s 7 when a dealer applies for registration, the authorities are bound to register him provided the application is made in the prescribed manner and is in order. That this is so cannot be disputed. He then argues that Sub-section (6) (a) of Section 7 of the Act empowers the Commissioner to cancel the registration in respect of any business which has been discontinued, but according to him that can only be done at the request of a dealer himself and not at the instance of the Commissioner. He argues that where it is stated in the Act and the Rules that the Commissioner "shall" do something then it can only be done at the request of the dealer. But where as in Sub-section (4)(a) of Section 7 of the Act it is stated that the Commissioner "may" do something, then it is for the Commissioner at his own option to take action. I find no justification for this interpretation of the Act and the Rules. On the contrary the word "shall" denotes a compulsion. Just as the Commissioner is compelled to register a dealer if he makes a proper application in conformity with the rules, he is also under a compulsion to cancel the registration if any business, in respect of which a certificate has been granted to a dealer on an application made, has been discontinued. Whether such business has been discontinued or not is a question of fact. The duty to find out whether a business has been discontinued or not is an administrative act. Although it is not laid down in the Act and the Rules it would be necessary to give an opportunity to the dealer to show cause if it is intended to act under the provisions of Sub-section (6) (a) of Section 7, because it might affect the fundamental rights of the dealer to carry on business. This however has been done in this case and not only has his answer thereto been considered, but every attempt was made to check or verify the facts by actual local inspection. In the order of cancellation, all the facts are set out. It appears that on repeated local inspection the petitioner''s registered place of business was either found to be closed or it was found that he was not carrying on business therein and indeed on some occasions it was found that somebody else was utilising the shop. The Superintendent of the Market informed the Inspector that the petitioner was not carrying on business at his shop and he himself from time to time stated that he had practically stopped his business. Whether he was carrying on business elsewhere or not is not the point to be considered. The registered dealer must carry on business at the place which he has declared to be his place of business in his application for registration and in respect of which a certificate of registration has been issued to him. The moment he ceases to do so, the certificate must be cancelled. Mr. Mukherjee also tried to make a second line of argument. He argued that the authorities were not issuing declaration forms to the petitioner although he had put in security. He argued that the petitioner could not carry on business if no forms were issued. So far as the declaration forms are concerned that is a different matter altogether and forms no part of this application. As I have stated above the petitioner took out a rule regarding the declaration forms but this he abandoned. It is not possible for me to go into the question of declaration forms in this application. If his grievance is that in spite of furnishing security he is not being given declaration forms to which he is entitled, then he can take proper proceedings. The only question I am concerned with in this application is as to whether, the petitioner having ceased to do business at his registered address the certificate of registration connected with that address was rightly cancelled or not. In my opinion there can be no doubt on the facts and circumstances of this case that the petitioner had ceased to carry on business at his registered address and that his certificate of registration was rightly cancelled. It may also be mentioned here that the petitioner took no steps to exercise his legal remedies under the Act to challenge the order of cancellation. He had a right of revision u/s 20(3) of the Act. He never pursued that course. From the order of the Commissioner there lay a further revision to the Board of Revenue. This remedy also was left alone. The petitioner must therefore be taken to have neglected to pursue his alternative legal remedies. For these reasons I find no ground for interfering in this case and this application must fail. Mr. Mukherjee has pointed out that under the Act even when a dealer has been convicted or has paid composition money u/s 23 the Commissioner is bound to register a dealer and give him a certificate of registration. That may be so and if the petitioner again carries on business in fact at any address, he can apply again to be registered provided he is entitled to do so u/s 7(1) of the Act read with Section 4. The order of cancellation will not operate as a bar. That however has nothing to do with the subject-matter of this application. The rule is discharged. Interim orders, if any, are vacated. There will be no orders as to costs.

