
(1974) 07 OHC CK 0010
In the Orissa High Court
Case No : O.J.C. No. 3 of 1973

Sarat Kumar Sahoo

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 02-07-1974

Acts Referred:

Orissa Municipal Act, 1950 — Section 131(1), 153, 153(1), 153(2), 157

Citation : (1974) 40 CLT 909

Hon'ble Judges : R.N. Misra, J;K.B. Panda, J

Bench : Division Bench

Advocate : R. Mohanty, for the Appellant; Standing Counsel, P. Palit, J. Patnaik and S.K. Biswal, for the Respondent

Final Decision : Allowed

Judgement

R.N. Misra, J.—The Petitioner has a foreign liquor off vend licence and carries on business within the municipal limits of Talcher. The Municipal Council resolved to levy (sic) as proved u/s 131(1)(kk) of the Orissa Municipal Act (hereinafter referred to as the "Act") on foreign liquor at one per cent. Subsequently the Council resolved to enhance the rate of (sic) to ten per cent. The Municipal Council subsequently resolved to reduce the rate to two per cent. The State Government on 10th of June, 1971, accorded sanction to the rate of ten per cent notwithstanding the fact that the Council had already resolved to reduce it. From January, 1972, the rate was reduced to 5 per cent. Notice of demand was served on the Petitioner whereupon he preferred an appeal challenging the assessment. The District Magistrate (opposite party No. 3) dismissed the appeal by his order dated 4th March, 1972. This writ application is directed against the said order.

2. On behalf of the Municipal Council it was contended before the Collector that the appeal was not maintainable as the assessed tax had not been paid. While over-ruling several objections of the Municipal Council and expressing his views in favour of the Petitioner, the District Magistrate took the view that the appeal was not maintainable. In the concluding portion of his decision, we find:

As regards the points raised by the Advocate for the Respondent" about maintainability, I feel that Section 153 gives power to the District Magistrate to hear appeals on the question of liability to be assessed and the term assessment should not be given 3 narrow meaning as to refer to only taxes such as Holding Tax and Service Tax, etc. Since (sic) is a tax it has to be assessed and the process of calculation and imposition of (sic) is nothing but assessment. As regards this specific reference to Sub-section (2) of Section 153, it is only relevant to certain types of taxes such as Holding, Tax, Service Tax etc. This section should not be construed as to forbid entertainment of appeal against assessment of other taxes such as (sic) u/s 153(1). The appeal petition has one important lacuna as pointed out by the Advocate for the Respondent, i.e., before the assessment is challenged in appeal in this Court, the assessed amount has not been paid as per the provision of Section 157 read with Section 153 of the Orissa Municipal Act. Since this requirement of law has not been complied with as is evident from the records, the appeal petition is dismissed.

Mr. Mohanty for the Petitioner contends that the appeal could not have been dismissed merely on the ground that the assessed tax had not been paid.

3. Sections 153 and 157 of the Act have been referred to by the District Magistrate to support his view. In the original Act, the Proviso to Sub-section (2) of Section 153 was to the following effect:

Provided that no appeal shall lie unless the Appellant has deposited in the Municipal Office the amount claimed from him.

This Proviso, however, is no more a part of the statute. Section 157 provides:

(1) When an objection to an assessment or valuation has been made u/s 153, the tax shall, pending the final determination of the objection, be paid on the revised assessment or valuation.

(2) If, when the objection has been finally determined the revised assessment or valuation is altered, then:

(a) any sum paid in excess shall be refunded or allowed to be set off against any present or future demand of the municipal council under this Act; and

(b) any deficiency shall be deemed to be an arrear of the tax and recoverable as such.

Undoubtedly, Sub-section (1) of Section 157 of the Act clearly states that merely because an appeal has been filed u/s 153 of the Act, there would be no stay of operation of the additional demand and the same would be payable. This provision, however, cannot be construed to be a substitute of the Proviso to Section 153(2) which has since been deleted from the statute book. The purpose of Section 157(1) of the Act is to clarify the position that pendency of an appeal does not suspend the liability to pay the impugned tax. In other words, notwithstanding the pendency of an appeal directed against the assessment, the

impugned revised assessment has to be satisfied and it would be open to the Municipal Council to enforce the demand in accordance with the law notwithstanding pendency of the appeal. In our view, the District Magistrate clearly went wrong in throwing out the appeal as not maintainable because the assessed tax had not been deposited.

4. Counsel for the opposite parties while not seriously disputing this position called upon us to hold that the appeal before the District Magistrate did not lie and, therefore, it would be not appropriate that we direct the appeal to be reheard. We do not think, we should adopt that course. Accordingly this writ application is allowed, the impugned order of the District Magistrate is set aside and he is directed to dispose of the appeal in accordance with law. It is open to the Municipal Council to raise objection regarding maintainability of the appeal. No costs.

K.B. Panda J.

5. I agree.