

(1962) 04 MP CK 0021

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 338 of 1961

Seth Pamandas Sindhi

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 10-04-1962

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1962) JLJ 800 : (1962) 7 MPLJ 1037 : (1962) MPLJ 1037 : (1963) 14 STC 74

Hon'ble Judges : P.V. Dixit, C.J.;K.L. Pandey, J

Bench : Division Bench

Advocate : A.P. Sen, for the Appellant; H.L. Khaskalam, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

P.V. Dixit, C.J.

This is an application under Article 226 of the Constitution for the issue of a writ of certiorari for quashing a best judgment assessment made by the Assistant Commissioner, Sales Tax, Bilaspur, u/s 18(6) of the Madhya Pradesh General Sales Tax Act, 1958, assessing the petitioner to sales tax of the amount of Rs. 1,00,363-10-0 and imposing on him a penalty of Rs. 20,000.

The material facts are that during the period from 1st March, 1958, to 30th August, 1960, the petitioner had taken several contracts for the supply of ballast to the South Eastern Railways. According to the applicant, his principal place of business was Raigarh. This statement has been denied by the opponents, who say that the petitioner's principal place of business at all relevant times was Bilaspur. The applicant did not get himself registered as a dealer either under the Central Provinces and Berar Sales Tax Act, 1947, or the M. P. General Sales Tax Act, 1958. When it came to the notice of the Sales Tax Officer, Raigarh, that the petitioner had carried on business of supplying ballast to the railway

administration without registration as required by Section 8 of the Act of 1947, he initiated proceedings u/s 11(5) of that Act which provided for best judgment assessment on a dealer liable to pay tax under the Act in respect of any period and who had failed to apply for registration. The Sales Tax Officer, Raigarh, assessed the petitioner to a tax of Rs. 8,163-7-9 for the period from 1st March, 1958, to 30th June, 1958, and imposed on him a penalty of Rs. 2,000. Subsequently, the Sales Tax Authorities learnt that the petitioner was carrying on business at Raipur and Bilaspur also. On investigation they learnt that the petitioner's principal place of business of supplying ballast to the railway administration was Bilaspur. Thereupon the Assistant Commissioner, Sales Tax, Bilaspur, issued a notice to the petitioner u/s 18(6) of the M. P. General Sales Tax Act, 1958, in form XVI for best judgment assessment and calling upon him to appear and to produce books of accounts and documents stated in the Schedule to the notice in respect of the period from 1st March, 1958, to 30th August, 1960. The notice also directed the applicant to show cause why a penalty should not be levied against him. It was stated in the notice :-

You being a dealer liable to pay the tax under the Madhya Pradesh General Sales Tax Act, 1958, in respect of the period from 1st March, 1958, to 30th August, 1960, have failed to apply for registration and thereby rendered yourself liable to be assessed to the best of judgment and having wilfully failed to apply for registration, have made yourself liable to penalty u/s 18(6).

In response to this notice, the petitioner appeared before the Assistant Commissioner in the beginning sometimes through a counsel and sometimes through a representative. Later on he failed to put in any appearance. He did not produce any account books or documents which he was asked to produce by the notice u/s 18(6). The Assistant Commissioner collected information about the extent and value of the ballast supplied by the applicant to the railway administration from the railway authorities. The applicant was made aware of this information and was also asked to reconcile the statement of turnover given by him with the information secured from the railway authorities. He made no effort in that direction. Ultimately the Assistant Commissioner determined the petitioner's total turnover for the period from Ist March, 1958, to 30th August, 1960, at Rs. 28,000,00 and assessed him to a tax of Rs. 1,00,363. A penalty of Rs. 20,000 for failure to get registered was also imposed on the applicant.

The applicant assails the assessment made by the Assistant Commissioner, Bilaspur, on the grounds (i) that the Sales Tax Officer, Raigarh, having already assessed him u/s 11(5) of the C. P. and Berar Sales Tax Act, 1947, and having imposed a penalty of Rs. 2,000 for failure to get registered for the period from Ist March, 1958, to 30th June, 1958, the Assistant Commissioner, Sales Tax, Bilaspur, had no jurisdiction to initiate proceedings u/s 18(6) of the Act of 1958 in respect of the period from Ist March, 1958, to 30th August, 1960, and that in any case he could not make a fresh assessment for the period from Ist March, 1958, to 30th June, 1958, in respect of which he had already been assessed by

the Sales Tax Officer, Raigarh ; (ii) that the contracts taken by him were not contracts for sale or supply of goods but were "contracts of work "; that the supply of ballast was not a sale to the railway administration under the terms and conditions of the various contracts ; (iii) that the Assistant Commissioner had wrongly included in the turnover the receipts of the S.P. Consolidated Engineering Co. (P.) Ltd., which was altogether a different legal entity ; and (iv) that the best judgment assessment made by the Assistant Commissioner was not based on any information or material and that the Assistant Commissioner did not disclose to him the material obtained by him from the railway authorities and did not give the petitioner any opportunity to rebut that material and thus in making the assessment the Assistant Commissioner acted contrary to the principles of natural justice.

All these allegations have been denied by the opponents in the return filed on their behalf. It has been averred in the return that the petitioner's contracts with the railway authorities were for the sale and supply of ballast and were not any "contracts of work"; that the applicant's principal place of business being Bilaspur, the Sales Tax Officer, Raigarh, was not the appropriate Sales Tax Officer under the M. P. General Sales Tax Rules, 1959, to make an assessment against the petitioner ; that the Assistant Commissioner, Sales Tax, Bilaspur, was the appropriate assessing authority for assessing the petitioner in respect of his turnover for the period from 1st March, 1958, to 30th August, 1960, for all places of his business in the State; that the Assistant Commissioner, Sales Tax, had validly initiated proceedings u/s 18(6) in exercise of the powers delegated to him by the Sales Tax Commissioner ; that the turnover of the S.P. Consolidated Engineering Co., (P.) Ltd., was not included in the petitioner's turnover; that the best judgment assessment was made on material collected from the railway authorities ; and that the petitioner was informed of this material and was also given an opportunity to rebut and explain it but that the petitioner failed to avail himself of that opportunity.

Having heard learned counsel for the parties, we have reached the conclusion that this petition must be dismissed. In regard to the objection about the power and jurisdiction of the Assistant Commissioner to make an assessment u/s 18(6) in respect of the period from 1st March, 1958, to 30th August, 1960, the argument of Shri Sen, learned counsel for the petitioner, was on these lines: that the applicant's principal place of business was Raigarh and, therefore, the appropriate assessing authority was the Sales Tax Officer, Raigarh, who alone could make the assessment for the period from 1st March, 1958, to 30th June, 1958, or for any subsequent period; that the Sales Tax Officer, Raigarh, having assessed the petitioner for the period from 1st March, 1958, to 30th June, 1958, and having imposed a penalty of Rs. 2,000 on him for his failure to get registered for the period and the petitioner having paid the amount of penalty, the applicant became a registered dealer by virtue of Section 8(5) of the Act of 1947 and consequently the applicant could not be treated as a dealer who had failed to get himself registered in respect of any subsequent period and

proceeded against as such u/s 18(6); and that the assessment made u/s 18(6) by the Assistant Commissioner, Bilaspur, was altogether without jurisdiction. There is no substance in this contention. It is true that Section 8(5) of the C. P. and Berar Sales Tax Act, 1947, provided that on the conviction of a dealer for carrying on business as a dealer without getting himself registered, the Commissioner should register and grant him a certificate of registration and that certificate shall take effect as if it had been made under Sub-section (3) of Section 8 on the dealer's application. It cannot also be disputed that Section 18(6) of the Act of 1958 deals with the assessment on a dealer who is liable to pay tax in respect of any period but who has failed to apply for registration. It says-

If upon information which has come into his possession, the Commissioner is satisfied that any dealer, who has been liable to pay tax in respect of any period, has failed to apply for registration the Commissioner shall, at any time within six calendar years from the expiry of the whole of such period, after giving the dealer a reasonable opportunity of being heard, proceed in such manner, as may be prescribed, to assess to the best of his judgment the amount of tax due from the dealer in respect of the whole of such period and all subsequent periods; and the Commissioner may, if he is satisfied that the dealer has wilfully failed to apply for registration, direct that the dealer shall pay by way of penalty in addition to the amount of tax so assessed, a sum not exceeding one and a half times that amount.

Section 18(6) cannot, therefore, be invoked in the case of a registered dealer by fiction u/s 8(5) of the Act of 1947 or under the somewhat analogous provision in Section 15(8) of the Act of 1958. u/s 8(5) of the Act of 1947 or Section 15(8) of the Act of 1958, once a penalty has been imposed on the dealer for failure to get himself registered then the dealer has to be treated as a registered dealer. This is clear from those provisions as also from the decisions in *Hirji Govindji v. Commissioner of Sales Tax* ILR 1955 Nag. 691 and *Dauram v. State of M.P.* 1962 M.P.L.J. 346. But the fundamental requirement for the fictional treatment of a dealer as a registered dealer is that the conviction or imposition of penalty on a dealer for failure to apply for registration must be by the competent authority. The point is too plain for argument or for any controversy.

The fallacy in the argument of the learned counsel for the petitioner lies in assuming that the petitioner's principal place of business was Raigarh and the Sales Tax Officer, Raigarh, had jurisdiction to make assessment for the period from 1st March, 1958, to 30th June, 1958, and to impose the penalty that he did for non-registration. The petitioner has no doubt stated that his principal place of business is Raigarh. But it is abundantly clear from annexures A and B to the return of the opponents that his principal place of business was admittedly Bilaspur. On 18th August, 1958, an application (annexure A) was filed on behalf of the petitioner before the Sales Tax Officer, Raigarh, objecting to the proceedings taken before that officer. In that application it was stated-

The principal place of establishment of the petitioner in Madhya Pradesh is situated at Bilaspur and even if it be held that the petitioner is liable for registration under the M.P. Sales Tax Act, the petitioner has to submit that the Sales Tax Officer, Bilaspur, has charge over the petitioner.

So also annexure B, which is a copy of a special power of attorney executed by the petitioner in favour of one Parshotamdas, the applicant described himself as "Pamandas, s/o Seth Hirdoomal, Railway Contractor, holding Head Office, situated at Near Co-operative Bank, Bilaspur". The petitioner's averment in the application that his principal place of business was at Raigarh is thus untrue and belied by the statements made by himself in the annexures referred to above. It must, therefore, be taken that the petitioner's principal place of business was Bilaspur. It is not disputed that the applicant's business of supplying ballast to the railway administration was also carried on at Raigarh and Raipur. Now, Rule 2 (1)(b) defines "appropriate Sales Tax Officer thus-

appropriate Sales Tax Officer" in relation to any particular dealer means the Sales Tax Officer of the circle in which the dealer's place of business is situated, or, if a dealer has more than one place of business in the State, the Sales Tax Officer of the circle in which his head office or principal place of business is situated.

This rule makes it clear that the Sales Tax Officer who was competent to make any assessment on the petitioner was the Sales Tax Officer of Bilaspur where the principal place of the petitioner's business was situated and not the Sales Tax Officer, Raigarh. The Sales Tax Officer, Raigarh, had no jurisdiction to make any assessment on the petitioner in respect of any period. That being so, the assessment made by him for the period from 1st March, 1958, to 30th June, 1958, and the penalty imposed by him on the applicant for non-registration were clearly without jurisdiction and null and void. The fact that a revision petition filed by the petitioner challenging the validity of the assessment made by the Sales Tax Officer, Raigarh, is still pending before the Commissioner of Sales Tax does not preclude us from treating the assessment made by the Sales Tax Officer, Raigarh, and the penalty imposed by him for non-registration as null and void and having no legal effect. No authority is needed for the elementary proposition that if an authority has not the power and jurisdiction to deal with a matter, then it cannot by illegal assumption of jurisdiction deprive the competent authority of the power and jurisdiction in regard to that matter. If the imposition of the penalty by the Sales Tax Officer, Raigarh, is treated as a nullity, as it must be, then Section 8(5) of the Act of 1947 cannot come into play so as to give to the petitioner the fictional status of a registered dealer. Thus when the proceedings u/s 18(6) were commenced against the petitioner, he was an unregistered dealer against whom no assessment had been made for any period beginning from the 1st March, 1958. That being so, Section 18(6) was rightly resorted to by the Assistant Commissioner, Bilaspur, who was the appropriate Assistant Commissioner to make an assessment u/s 18(6) in respect of a dealer

whose turnover exceeded Rs. 15 lakhs. The pecuniary jurisdiction of the Assistant Commissioner was fixed by an order made by the Sales Tax Commissioner in exercise of the powers conferred on him by Section 30 of the Act of 1958 read with Rule 68 of the M. P. General Sales Tax Rules, 1959, and the petitioner's turnover clearly exceeded Rs. 15 lakhs. The contention that the prior satisfaction of the Commissioner u/s 18(6) read with Rule 68 was a condition precedent to the initiation of proceedings u/s 18 and as the Commissioner himself had not discharged the duty of being satisfied, the notice issued to the petitioner u/s 18(6) by the Assistant Commissioner was invalid, must be rejected in view of the recent decision of this Court in *Daluram Pannalal Modi v. Assistant Commissioner of Sales Tax* M.P. No. 114 of 1961, decided on 5th April, 1962; since reported at [1962] 13 S.T.C. 759. On the reasoning given in *Daluram Pannalal's* case M.P. No. 114 of 1961, decided on 5th April, 1962; since reported at [1962] 13 S.T.C. 759, it must be held that the notice u/s 18(6) read with Rule 33 issued by the Assistant Commissioner, who is a person appointed u/s 3 to assist the Commissioner and to whom all powers u/s 18(6) have been delegated by the Commissioner in conformity with Section 30 read with Rule 68, on information received by him and after satisfying himself as required by Section 18(6) is not bad or beyond the jurisdiction of the Assistant Commissioner. The petitioner's objection that no assessment u/s 18(6) could at all be made against him and that the Assistant Commissioner had no jurisdiction to make any assessment under that provision must, therefore, be rejected.

Equally unsubstantial is the contention of the petitioner that the supply of ballast by him to the railway administration did not constitute any sale of the material but was only a "contract of work". Quite apart from the fact that the applicant though directed by the Assistant Commissioner, Sales Tax, to produce books of account and documents to support his case failed to do so, annexures Nos. 1, 2 and 7 to the petition and annexure C to the return themselves show that the transactions of the supply of ballast by the applicant to the railway administration were transactions of sale. It is abundantly clear from those documents that the Collectors of various districts gave leases of quarries to the petitioner in their districts for quarrying stones and sand; and the material was then extracted by the applicant and sold in the form of ballast to the railway authorities at the contracted rates. It is not as if the execution of any work was entrusted to the applicant and in that execution the applicant used the ballast. There is here an agreement to sell the material, namely, ballast as such. That being so, the supply of ballast cannot but be regarded as sale transaction. The Supreme Court has pointed out in *The State of Madras Vs. Gannon Dunkerley and Co., (Madras) Ltd., and Banarsi Das v. State of M.P.* AIR 1958 909, that even in a works contract or in a contract where materials worked by one into the property of another become part of that property, there can be an agreement to sell materials as such, and if there is such an express or implied agreement, then the materials can be treated as sold separately and assessed to sales tax.

In regard to the turnover of the S.P. Consolidated Engineering Co., Ltd., it has

been averred by the opponents that it has not been included in the estimated turnover of the petitioner. No material whatsoever has been placed before us to suggest that this averment made on behalf of the opponents is incorrect. The petitioner's next objection that he was not apprised of the material secured by the Assistant Commissioner from the railway authorities and was not given any opportunity to rebut it is altogether futile. The various orders passed by the Assistant Commissioner (pp. 24 to 30-Paper Book) in the proceedings show that the best judgment assessment made by the Assistant Commissioner was after giving to the applicant all opportunity to rebut the material on which the Assistant Commissioner intended to act and after giving a fair hearing. The orders recorded by the Assistant Commissioner reveal that in response to the notice issued to the applicant u/s 18(6), the applicant appeared before the Assistant Commissioner on 23rd November, 1960, through a counsel who asked for an adjournment which was granted. On the next day, that is, 24th November, 1960, the counsel asked for the stay of proceedings on the ground that the Sales Tax Commissioner had passed a stay order in the revision petition filed by the petitioner against the assessment order made by the Sales Tax Officer, Raigarh. A copy of the Commissioner's order was not, however, produced by the petitioner. The petitioner's prayer for stay of proceedings was, therefore, rightly rejected by the Assistant Commissioner. On 20th and 22nd of December, 1960, the petitioner's agent Bhagwandas submitted the consolidated statement of the return ; the statement of Bhagwandas was recorded but no account books or any documents were produced. Indeed in the statement which the agent gave it was deposed by him that no regular account books were maintained by the petitioner and there were no vouchers to support the statement of turnover filed by him. On 20th January, 1961, the petitioner's counsel was shown the statement received from the railway authorities about the value of ballast supplied by the applicant and he was asked to explain the wide variation between that statement and the statement filed on behalf of the dealer. The petitioner's counsel wanted time for checking up the details of the statement. To enable him to do so, the Sales Tax Officer was directed to depute his Inquiring Inspector to be present on 8th February, 1961, with all relevant papers. The petitioner was again asked to come on that date with his account books. On 8th February, 1961, the Inspector was present with all the papers but the applicant's counsel expressed his inability to say anything with regard to the material secured by the Assistant Commissioner in the absence of vouchers, agreements etc. For his own satisfaction, the Assistant Commissioner, however, directed the Inquiring Inspector and the Sales Tax Officer, Raipur, to verify the information secured by him about the petitioner's return from the record of the District Engineer, Bhilai. On 17th February, 1961, no reply from the Sales Tax Officer, Raipur, was received and, therefore, the case was adjourned. On this date, the Assistant Commissioner recorded an order saying inter alia that the next date will be fixed in due course and intimation would be given to the petitioner on receipt of a reply from the Sales Tax Officer, Raipur. The reply was received on 15th March, 1961. Thereupon the case was fixed for 17th June, 1961, and the intimation of

the same was given to the applicant. The notice intimating the date to the applicant was received unserved. A fresh notice fixing 7th July, 1961, as the date of hearing was then issued and the Sales Tax Officer gave the direction that it should be affixed at the place of business of the applicant. On 7th July, 1961, another counsel appeared for the petitioner and asked for an adjournment. This request for adjournment was granted. On the subsequent, dates of hearing, namely, 20th July, 1961, and 18th August, 1961, none was present on behalf of the petitioner. It is thus plain that the applicant was given every possible opportunity to meet the material that was in the possession of the Assistant Commissioner. But he failed to avail himself of that opportunity and the best judgment assessment was based on information secured by the Assistant Commissioner from the railway authorities about the extent and value of ballast supplied by the petitioner to the railway administration. The grievance that the Assistant Commissioner made the assessment without waiting for the report of the Sales Tax Officer, Raipur, is baseless. The report was actually received on 15th March, 1961, and it was after the receipt of this report that a fresh date was fixed and intimation of the same was given to the applicant who then first asked for an adjournment and then absented. The order of assessment was passed on 18th August, 1961. Thereafter at about 4-30 p.m. on the same day an application signed by a representative of the petitioner was received by the Assistant Commissioner saying that the petitioner's counsel was out of station and could not appear and that he himself was present and wanted to file an application but that he was not allowed to appear. The Assistant Commissioner rightly took no notice of this complaint. Again, the submission which the representative wanted to make was no other than that the petitioner having been assessed by the Sales Tax Officer, Raigarh, the Assistant Commissioner had no jurisdiction to assess him. This is evident from annexure 10 to the petition. That objection, as already pointed out by us, is devoid of any merit. In these circumstances, there is no foundation whatsoever for the contention that the assessment made by the Assistant Commissioner was capricious and without exercise of any judgment in the matter or that it was made contrary to the principles of natural justice of giving a fair hearing to the petitioner.

For the foregoing reasons, our conclusion is that this petition must be and is dismissed with costs. Counsel's fee is fixed at Rs. 200. The outstanding amount of security deposit, if any, after deduction of costs shall be refunded to the petitioner.