

(1963) 07 AHC CK 0014

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 1136 of 1963

Sonpal Girraj Kishore

APPELLANT

Vs

Sales Tax Officer and Another

RESPONDENT

Date of Decision : 19-07-1963

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1964) 15 STC 50

Hon'ble Judges : S.C. Manchanda, J

Bench : Single Bench

Advocate : Hari Sarup, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

S.C. Manchanda, J.—This is a writ petition under Article 226 of the Constitution directed against the Order of the Sales Tax Officer, Hathras, dated the 18th January, 1960, whereby he held that the application filed by the petitioner u/s 30 of the U. P. Sales Tax Act (hereinafter referred to as the Act) for setting aside an ex parte assessment made u/s 7, Sub-clause (iii), of the Act could not be entertained as the condition precedent for hearing of such an application was that "tax admitted to be due" was first to be paid and the plea of the petitioner that no tax was due was fantastic. The application on merits was also disposed of without giving the petitioner an opportunity of being heard or showing cause that he was prevented by sufficient cause from appearing on the date fixed.

2. An ex parte assessment order was passed on the 27th November, 1962, and the petitioner was assessed to a tax of Rs. 4,500 for the assessment year 1960-61. The petitioner had not filed any return or admitted any tax liability, as according to him, he was neither a dealer nor had any turnover on which tax could be imposed under the U.P. Sales Tax Act. The petitioner filed an application u/s 30 of the Act, on the 10th of January, 1963, for setting aside the assessment order and for reopening the assessment proceedings. In that application it was stated that the applicant did not admit any liability for tax against him and not

also gave reasons for the same. As the petitioner did not admit that any amount of tax was due against him, no payment was made by the petitioner at the time of filing the application u/s 30. The Sales Tax Officer by his order dated the 18th of January, 1963, refused to entertain the petitioner's application u/s 30 of the Act on the ground that the petitioner had not paid the tax admitted by him nor as determined by the assessment order. He considered the plea of the petitioner that he was not liable to pay tax to be fantastic. He also proceeded to dispose of the application on its merits without giving the applicant an opportunity of being heard. This writ petition is directed against the Order of the Sales Tax Officer dated the 18th January, 1963.

3. A preliminary objection was taken that an alternative remedy against the Order passed u/s 30 by way of appeal u/s 9 was available and, therefore, the writ petition should not be entertained. It has been laid down by the Supreme Court in *A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhvani and Another*, ,

that the rule that the party who applies for the issue of a high prerogative writ, should before he approaches the Court, have exhausted other remedies open to him under the law is not one which bars the jurisdiction of the High Court to entertain the petition or to deal with it but is rather a rule which courts have laid down for the exercise of their discretion.

The wide proposition that the existence of an alternative remedy is a bar to the entertainment of the petition under Article 226 of the Constitution unless (1) there was a complete lack of jurisdiction in the officer or the authority to take the action impugned or (2) where the Order prejudicial to the writ petitioner has been passed in violation of the principles of natural justice and could therefore be treated as void and nonest and that in all other cases Courts should not entertain petition under Article 226 or in any event not grant any relief to such petitioners cannot be accepted. The two exceptions to the normal rule as to the effect of the existence of an adequate alternative remedy are by no means exhaustive and even beyond them a discretion vests in the High Court to entertain the petition and grant the petitioner relief notwithstanding the existence of an alternative remedy.

4. The present case falls clearly within the two accepted exceptions as the Order on merits disposing of the application u/s 30 of the Act was passed without affording an opportunity to the applicant to substantiate his grounds. It is no doubt true that Section 30 of the Act as such does not require an opportunity to be given but where an objective determination has to be made by the Sales Tax Officer or any other authority as to the truth of the allegations made in an application and the proceedings are judicial or quasi-judicial then it is manifest that no order can be passed prejudicial to the applicant without giving him a right of hearing. In *The Board of Revenue, U.P. and Others Vs. Vidyawati and Another*, , where the controlling revenue authority was a quasi judicial tribunal and from the very nature of the duty to be performed it was obligatory for such

authority to decide the reference under the Stamp Act judicially and for the determination of such a question the Legislature intended that the party to be affected by the decision of the Board of Revenue should be given a hearing: it was held by the Supreme Court that principles of natural justice stood violated when such party was not given a hearing.

5. The proceedings before the Sales Tax Officer, like the Income Tax Officer, are of a quasi-judicial nature and that such proceedings must be conducted according to the rules of natural justice, equity and good conscience is what has been laid down by almost all the High Courts. See (1937) 5 ITR 464 , DINSHAW DARABSHAW SHROFF Vs. COMMISSIONER OF Income Tax, CENTRAL., (1944) 12 ITR 393 and (1944) 12 ITR 458 . The Supreme Court in Dhakeshivari Cotton Mills Ltd. v. Commissioner of Income Tax [1954] 26 ITR 775, also observed that the Income Tax Officer though he may not be a Court and it may be open to him to consider evidence and draw inferences which cannot be justified by or admissible under the Indian Evidence Act, nevertheless he must act according to the principles of justice, equity and good conscience.

6. Even in cases where there are not two parties, apart from the authority, and the contest is between the authority proposing to do the act and the subject opposing the act, the final determination by the authority will nevertheless be a quasi-judicial act provided the authority is required by statute to act judicially : See Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others, . There being a clear violation of the principles of natural justice in the present case, the existence of an alternative remedy cannot be a bar to the exercise of the writ jurisdiction by this Court. The preliminary objection is accordingly overruled.

7. The Sales Tax Officer also committed a patent error of law in refusing to entertain the application, u/s 30 of the Act, on the ground that the condition precedent for the entertainment of such an application was that the tax admitted should have first been deposited. As to what is "amount of tax admitted to be due" is a matter which the Legislature has left to the good sense of the assessee. If a return has been filed then, undoubtedly, the tax liability as per the return would be the admitted tax, but where no return has been filed and the very liability to tax is denied it becomes difficult, if not impossible, to hold that the admitted tax would be something which the Assessing Officer may have determined in the course of assessment proceedings or which such officer may consider to be the admitted tax.

8. For the reasons given above a writ in the nature of certiorari will issue quashing the Order of the Sales Tax Officer dated the 18th January, 1963, u/s 30 of the Act and he is directed to dispose of the application de novo, in accordance with law.

9. The writ petition is allowed. In the circumstances of the case parties are left to bear their own costs.