
(1959) 10 AP CK 0006

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 1202, 1210 and 1214 of 1957

Sree Saibaba and Co.

APPELLANT

Vs

Commercial Tax Officer

RESPONDENT

Date of Decision : 17-10-1959

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1960) 11 STC 804

Hon'ble Judges : Bhimasankaram, J

Bench : Single Bench

Advocate : C. Mallikarjuna Rao, for the Appellant; The Third Government Pleader, for the Respondent

Judgement

Bhimasankaram, J.—The petitioner is the same in all these three writ petitions and each of them relates to different accounting year. He is a dealer in fruits and raises objections to the levy of sales tax on the commodities similar to those dealt with by me in my judgment in W.P. No. 996 of 1957 Since reported as *Jai Dayal v. Deputy Commercial Tax Officer, Osmanganj* [1960] 11 S.T.C. 782 as regards the imposition of tax on cereals and pulses. There is, however, one point raised by him which it seems to me the petitioner is entitled to succeed in all these petitions. A notice was served on the petitioner whereby he was informed that his case relating to these years was posted for enquiry to 29th November, 1957, at 11 A.M., but the assessment orders now in question were all passed on the 28th a day earlier. Although according to the affidavit of the Commercial Tax Officer, the notice mentioned 28th November, 1957, as the date of the enquiry, it has been conceded by the learned Government Pleader after examining the notice produced by the petitioner, that the date mentioned therein is 29th and not 28th. The assessment orders passed without notice to the petitioner and without an opportunity to the petitioner to present his case are clearly invalid. It is, however, urged on behalf of the Government that interference under Article 226 of the Constitution would not be justified because the petitioner could have pursued other remedies open to him under the Act. The petitioner however relies

on *R. v. Wands* [1942] 1 All 56. In that case, their Lordships were dealing with an application for an order of certiorari to quash a conviction. The applicant was charged before the justices with misrepresentations made on certain tickets as to the weight of articles of food. The tickets were not produced at the hearing and the justices retired to consider whether their non-production was sufficiently explained. On returning into court, they at once convicted the applicant on one of the summonses, without giving him an opportunity of answering the charge. It was contended on behalf of the Magistrate that it could not be said that they had no jurisdiction to pass the order and that in any case there was an alternative remedy by way of appeal to quarter sessions. It was held by the court however that "there had been a denial of natural justice" and the applicant was entitled to an order of certiorari even though another remedy was available to him. Viscount Caldecote, L.C.J., observed as follows:

Then it is said that the applicant has not this remedy open to him, because he had another remedy which I have mentioned.... To ask this Court to consider as a question of law whether the justices were right in convicting a man without hearing his evidence is so extravagant a statement as not to merit, in my judgment, a moment's consideration. As to the right of appeal to quarter sessions, it may be that the applicant could have had his remedy if he had pursued that course, but I am not aware of any reason why, in such circumstances as these, if the applicant prefers to ask for an order of certiorari to quash the conviction obtained in the manner I have described the court should be debarred from making an order.

2. Humphreys, J., who agreed with the Chief Justice made the following observations :-

I entirely agree with the description by Viscount Caldecott, L.C.J., of the proceedings of the justices in this case as being a denial of justice to the accused person, who was prevented from taking any part in any discussion, if there was any, as to the rights or wrongs of the matter and was never heard or called upon in his own defence. That being so, the only other question is whether or not there is some other remedy which, is equally convenient, because there is no doubt ample authority for saying that this Court will not grant orders of certiorari or mandamus where there is some other course equally open to the applicant.... I take the view that this was not a case which was ever intended to be the subject of appeal to quarter sessions either. Quarter sessions, it is true, may hear appeals on questions of law, but primarily quarter sessions exist in their appellate jurisdiction for the purpose of dealing with disputed questions of fact. The appellant in this case would have gone to quarter sessions and said: "I appeal against my conviction. I do not know why I was convicted. I cannot tell you what it was that actuated the justices. I cannot say that any wrong evidence was heard, because no evidence was given on the subject and my real complaint is that I do not know any of these things. My complaint is that I was never heard".... I think that the appellant is perfectly entitled to come to this Court and

say, upon precedent and authority: "I was convicted as the result of a denial of justice and I ask for justice, which can be done only by the quashing of that order."

3. I think the order passed against a person without an opportunity being given to him to attend the hearing must be held to be void on the ground of denial of natural justice and may well be quashed by this Court by the issue of a writ of certiorari in spite of the fact that other remedies are available.

4. The assessment orders in these writ petitions will be quashed. The order relating to penalty imposed in consequence of non-payment must also be held to be illegal and without jurisdiction.

5. In this view, I do not propose to discuss the other points raised in these writ petitions. The petitioner will get his costs in these petitions. Advocate's fee in each of them will be Rs. 100.