(1989) 10 KL CK 0045

In the High Court Of Kerala

Case No : O.P. No. 4589 of 1989-U

Srikant Spices APPELLANT

Vs

Assistant Commissioner (Assessment) RESPONDENT

Date of Decision : 17-10-1989

Acts Referred:

Citation : (1989) 10 KL CK 0045

Hon'ble Judges : K. Sukumaran, J

Bench : Single Bench

Advocate : K.N. Sivasankaran and V.V. Asokan, for the Appellant; K.G. Anil Babu, Government Pleader, for the Respondent

Judgement

Sukumaran, J.—To deal in spices was the Petitioner''s desire, a legitimate desire. It applied to the sales tax authorities for registration a statutory requirement. Mere application is not sufficient to attract authoritative attention; that is the general experience. The tax authorities wanted a certificate that the partners were residents of Cochin. That certificate was produced. The shop was inspected on 17th July 1987. Even thereafter, there was no progress. On 27th May 1988, the Petitioner reminded the authorities about the pendency of the application and a need for immediate registration. Three months passed by. The tax office was unmoved. A reminder was sent on 3rd August 1988. The same stalemate continued. Yet Anr. reminder was sent on 5th December 1988. The Petitioner then came to this Court for a simple relief of a disposal of his long pending Application. That limited relief was given by this Court by the judgment, dated 3rd February 1989.

2. According to the Petitioner, an exorbitant rent for an unduly long time without any business being transacted, compelled them to shift to a new place of business. The second inspection, however, came only on 7th April 1989. Obviously nothing was visible in the premises indicated in the original application. That gave a good cause for the taxing officials to reject the application. It was pointed out in the notice sent on 21st April 1989. The

Petitioner replied soon thereafter on 27th April 1989. The proceedings thereon came under Ext. P-9, dated 6th May 1989.

3. Various factual aspects are put forward to contend that the refusal of registration is mala fide.

4. I am disinclined to interfere with the impugned order. This is for the reason that an efficacious remedy is available to the Petitioner.

5. Two other circumstances also contribute to that conclusion: One, the admitted shift of the premises as indicated in the original application; two, the expiry of a fairly long period after the submission of the application for registration.

6. In a sense, in view of the altered situations in points of space and time, it would be better for the Petitioner to start afresh by making an application for registration in the premises which it has now pitched upon. If such an application is made, I direct that it shall be disposed of within a period of three months from the date of the application. If the Petitioner is an honest Assessee, it will give substantive relief, though not in the fullest measure as desired by the Petitioner. If the Petitioner is a spurious firm, the taxing authorities would have time enough to garble the claims of the Petitioner and declare the ineligibility for the registration.

7. This Court had time and again indicated the responsibility of the taxing Department to deal with applications of registration promptly and properly. Distressing delay is discernible in the disposal of dealership registrations. The trader could rightly complain that this is not a mere administrative delay. Quite often, cases force an inference of a corrupt motive. Not all the taxing officers are cheering cherubs. The delay in attending to the application for registration was indeed condemnable. That, however, is a past matter. The Petitioner contributed to the confusion by the inaction on its own part-inaction in moving this Court for over a period of nearly two years. The intervening developments including the surrender of the old premises and shift to the new one, had brought on it somewhat inescapable difficulties. That does not, however, mean that the tax officials could adopt an attitude of idle indifference towards a trader''s urgent application. It is time that the State and its officials realise in full measure that to carry on a trade is a citizen''s Fundamental Right. Restrictions are permissible under our Constitutional set up only when they are sanctioned by law and are adjudged as reasonable. A requirement of registration is a restriction on an otherwise unfettered freedom of trade. No doubt, the commodity in which the Petitioner wanted to trade had very many attractions, both for the honest dealers and for the dishonest dodgers. Trade in spices is a noted activity of the Kerala coast, even from the dawn of recorded history. Thrifty merchants stored their fragrant cardamom and berries of ''black gold'', in godowns close to their homes. The shops were small even when business was big. Historic connections made new generations from the same trading houses, splitting or combining, to form new trading groups. These are all facets of this trade and business which the

taxing officials have necessarily to bear in mind, apart from the sections and rules contained in their familiar book.

8. The State is naturally interested in securing the entirety from the slice of spices tax. The existence of a cunning group, and a conniving officialdom, which together could subvert the tax administration and add discomfort to the honest traders cannot also be ignored. The chaff has therefore to be separated from the grain. To the taxing officials this may cause some strain. Yet this is inescapable. A balancing of a trader''s necessity and the State''s financial security, has to be attempted, to facilitate free trade and to conserve tax. One is the citizen''s right and the other is the State''s concern. Both are indispensable for public welfare.

9. The correct questions could be posed and satisfactory replies could be expected from a person plunging into the waters of trade. The tax officials, however, cannot by mala fide adventures, or harassing delays, seek to push him into deeper waters, so as to totally drown his desires.

10. The Board of Revenue and the State, could have usefully given effective guidelines for aiding the tax officials. Such intellectual exercises, however, appear to be scanty in these days. As to what should be effectively done, is a matter for the State to seriously consider. Undue drift can be counter productive from the point of view of the State. The Constitutional court would not brook either corruption or arrogance or unjust harassment against a honest citizen. A mere mechanical compliance with the rules may not be sufficient to earn registration. The operation of ''over night'' traders is a feature noticed in tax problems all over the World. Some have been noticed in Kunhammed Kutty Haji v. Union of India 1989 KLT 639 KLT 639, affirmed by the Division Bench. The antecedents of an applicant, his general reputation, his real involvement in trading activities, the equipment and facilities at his command may all have to be properly reckoned. At the same time, bona fide new entrants cannot be barred from entering the trade fair, by motivated reasons or manipulated materials.

11. It is to be hoped that the tax officials will modulate their function and action in respect of the future application, in the light of the observations contained above.

The writ petition is disposed of with these observations and directions.

