

(1976) 08 CAL CK 0012

In the Calcutta High Court

Case No : Appeal from Original Order No. 826 of 1974

The State of West Bengal and Others

APPELLANT

Vs

Oriental Rubber Works

RESPONDENT

Date of Decision : 19-08-1976

Acts Referred:

Bengal Finance (Sales Tax) Act, 1941 — Section 14(3)

Citation : (1977) 39 STC 333

Hon'ble Judges : Manash Nath Roy, J;Anil Kumar Sen, J

Bench : Division Bench

Advocate : Ganendra Narayan Roy, for the Appellant;Sanjoy Bhattacharjee and Amal Baran Chatterjee, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar Sen, J.—This appeal under Clause 15 of the Letters Patent is by the State of West Bengal and the Commercial Tax Officer. The appeal is directed against the judgment and order dated 28th February, 1974, passed by A. K. Mookerji, J., in C. R. No. 1727(W) of 1973 [1974] 34 S.T.C. 30, whereby the learned Judge made absolute the rule which had earlier been issued on a writ petition.

2. The sole respondent in this appeal is admittedly a registered dealer both under the Bengal Finance (Sales Tax) Act, 1941 (hereinafter referred to as the said Act) and the Central Sales Tax Act, 1956. On 4th June, 1973, a number of Inspectors of Commercial Taxes conducted simultaneous searches at the respondent's principal place of business at No. 171A, Mahatma Gandhi Road, Calcutta, as also at the respondent's factory premises at Kantalia, Howrah, in the course of which various accounts, registers and documents were seized. The respondent demanded release of the documents so seized but the Assistant Commissioner of Commercial Taxes refused to release the same. On the other hand, the said authority served a notice dated 11th June, 1973, u/s 14(1) of the said Act directing the respondent to produce all its books of account since the inception of

the business.

3. Being aggrieved by such seizure, retention of documents and omnibus notice u/s 14(1) of the said Act, the respondent moved this court on 5th July, 1973, with a writ petition. In this writ petition, the respondent disputed the validity of the search and seizure, as aforesaid, as also the notice u/s 14(1) and prayed for issue of an appropriate writ for setting aside the notice u/s 14(1) of the said Act and also for return of the documents seized from its custody. The appellants unsuccessfully contested the said writ petition and the learned Judge in the trial court allowed the petition and issued a writ, as prayed for by the respondent. The learned Judge held that recording of reasons as prescribed by Section 14(3) of the said Act is a condition precedent to a valid search and seizure and the appellants having failed to show that any such reason was so recorded, the search and seizure must be held to be not in accordance with law. So far as the notice u/s 14(1) of the said Act is concerned, the learned Judge held that such an omnibus direction to produce all documents since the inception of the business is not contemplated by Section 14(1) of the said Act and, as such, was not validly issued. Feeling aggrieved by this decision of the learned Judge in the trial court, the appellants have preferred the present appeal.

4. Mr. Roy, the learned Advocate for the appellants, in his usual fairness, has not challenged the conclusion of the learned Judge in the trial court to the effect that the notice u/s 14(1) of the said Act had not been issued in accordance with law. He concedes that when the statute permits calling for such accounts, registers and documents as are deemed necessary for a particular purpose under the Act, there could be no legal sanction for an omnibus requisition of all books of account since the inception of the business, as was required in the impugned notice dated 11th June, 1973. Mr. Roy has, however, seriously challenged the correctness of the other conclusion of the learned Judge in the trial court that the search and seizure in the present case had not been made in accordance with law. According to Mr. Roy, the learned Judge in the trial court was not correct in his view that reasons are to be recorded prior to holding of a search or that there can be any precondition to making of a valid search u/s 14(4) of the said Act. Alternatively, Mr. Roy has relied upon the affidavits filed on behalf of the appellants and the documents disclosed therein to support his contention that there had been a search and seizure in the present case all in accordance with law.

5. Mr. Bhattacharjee, the learned Advocate on behalf of the respondent, on the other hand, has contended that the search and seizure had not, in the present case, been held in accordance with law. According to him, the Inspectors of Commercial Taxes held arbitrary searches even without any suspicion that the respondent had been evading or had been attempting to evade payment of any tax under the Act or that, for the purpose of detecting any such evasion, there was any necessity for seizing any accounts, registers and documents. On the other hand, according to Mr. Bhattacharjee, the seizure as made was

indiscriminate. All available accounts, registers and documents of the respondent were seized in such a manner that it is impossible for the respondent to carry on its ordinary business. According to Mr. Bhattacharjee, the learned Judge was right in his conclusion that the authority competent to search and seize has first to arrive at a bona fide suspicion that the dealer who is going to be subjected to search and seizure is evading or attempting to evade payment of taxes for the detection whereof it would be necessary to seize the accounts, registers and documents. He (the authority competent) is also to entertain a belief based on an information that such accounts, registers and documents are kept by the dealer at the places to be searched. Mr. Bhattacharjee has further contended that unless the power to search and seizure be not considered to be subject to that amount of limitation, the same would impose unreasonable restrictions on the citizen's right of carrying on his individual trade and business.

6. In considering these rival contentions, we should first consider and find out the facts and circumstances under which the search was held and the seizure was made. It is not in dispute that such search and seizure was made by a number of Inspectors who conducted simultaneous searches in the two premises. The minutes maintained by Sri D.K. Roy, one of the Inspectors, who conducted the search at the respondent's factory recites that he had been there obviously to search as per orders of one Sri B. Dasgupta, Commercial Tax Officer, Central Section. Reason recorded by him for the seizure that he effected is that the primary factory documents could not be explained without reference to other regular books of account maintained at the head office. There is nothing in this minute to show that the documents so seized do indicate in any manner any evasion of payment of taxes by the dealer or could have any bearing on any such issue. Similarly, the minutes recorded by four of the Inspectors who conducted simultaneous searches at the principal place of business of the respondent at Calcutta do not record any reason as to what led them to search or what was the necessity therefore. As for the reasons for the seizure, it is merely recorded that the partner, Satyanarayan Jalan, who was present at the time of the search had stated that the accountant and the partner who looked after the accounts are out of station and he himself had not the ability either to produce the books of account or to explain such accounts to the Inspectors. On this fact alone, all the books of account, registers and documents were seized without however any reference to what relevance such documents could have to any object of finding out evasion of payment of taxes.

7. Searches being held simultaneously, it would be reasonable to think that both the searches were held under one and same decision and that must have been the decision of the Commercial Tax Officer, Sri B. Dasgupta, as indicated. However, in his affidavit he does not accept the position that the impugned searches were made under his direction or at his instance. He says, on the other hand, that such searches were held by the Inspectors, they themselves being satisfied that there were reasons to suspect that the respondent was evading payment of taxes for the detection whereof it would be necessary to seize the

documents available from the respective places searched by them. In the affidavit filed by the Inspectors, they too, no doubt, subsequently took the same stand. But no contemporaneous document or record has been disclosed by them to support them in such stand. Such a stand, again, is not at all supported by their minutes referred to hereinbefore. Hence, we are not in a position to believe or accept the case made out in the affidavit that the Inspectors themselves, upon their own suspicion and satisfaction, conducted the search and made the seizure. On the other hand, the order of Sri Das gupta which could have thrown appropriate light on the issue is not being disclosed and is being withheld from the court. The said order, again, has not been owned by Sri Dasgupta. Therefore, no document is disclosed by the appellants wherefrom we can find any reason recorded by any authority for the necessity of the search and seizure before they were made. On these facts, we are now to consider how far the search and the seizure impugned in the writ petition can be said to be in accordance with law. The authority and the limit for such search and seizure are to be found in Section 14(3) and (4) of the said Act and we prefer to set out Section 14 hereunder:

14. (1) The Commissioner may, subject to such conditions as may be prescribed, require any dealer-

(a) to produce before him any accounts, registers or documents,

(b) to furnish any information, relating to the stock of goods of, or purchases, sales or deliveries of goods by, the dealer or relating to any other matter, as may be deemed necessary for the purposes of this Act.

(2) (a) All accounts, registers and documents relating to the stocks of goods of, or purchases, sales and deliveries of goods by, any dealer ; and

(b) all goods kept in any place of business of any dealer, shall at all reasonable times be open to inspection by the Commissioner.

(3) If the Commissioner has reason to suspect that any dealer is attempting to evade payment of any tax under this Act, he may, for reasons to be recorded in writing, seize such accounts, registers or documents of the dealer as may be necessary and shall grant a receipt for the same and shall retain the same only for so long as may be necessary for examination thereof or for a prosecution,

(4) For the purposes of Sub-section (2) or Sub-section (3) the Commissioner may enter and search any place of business of any dealer or any other place where the Commissioner has, upon information received, reason to believe that the dealer keeps or is for the time being keeping any accounts, registers or documents of his business.

8. On this provision, Mr. Roy has contended that Sub-section (4) nowhere requires any reason to be recorded for conducting a search and Sub-section (3) does not limit the power of search made in terms of Sub-section (4). We are, however, unable to accept this contention of Mr. Roy. On the provision of Sub-section (4) itself, it is quite apparent that a search under the said provision can

be made only for the purpose of Sub-sections (2) and (3). Therefore, pre-existence of a purpose so specified is a condition precedent to holding of a search. Here, in the present case, we are concerned with Sub-section (3) inasmuch as, admittedly, the search and the seizure was not made for any purpose specified in Sub-section (2). Therefore, before the authority competent to make a search under Sub-section (4) goes to conduct a search, he must necessarily hold a bona fide suspicion that the person whose premises is to be searched is a dealer who is evading or attempting to evade payment of taxes and he must also form an opinion that for the purpose of detection or prevention of such evasion of payment of taxes, it would be necessary to seize material accounts, registers and documents from him. Once he arrives at this mental state, he goes to search the premises where, on his information, he believes the accounts, registers and documents are kept. Such a conclusion, in our opinion, follows from the scheme of the section itself. On the other hand, if we accept the contention of Mr. Roy that Sub-section (3) in no way limits the power of search under Sub-section (4), then we not only ignore the material part of the Sub-section, i. e., the first part thereof, but that would mean conferring arbitrary powers of search in the hands of these officers rendering the provision constitutionally invalid. Mr. Roy may be right in his contention that reasons for the seizure may be arrived at as well in course of the search or as a result of the discoveries made, but the purpose contemplated by Sub-section (3) based on a bona fide suspicion must pre-exist and there must be a conscious application of mind by the authority authorised to search in considering that aspect before he proceeds to make the search. Unless he has a suspicion and unless he satisfies himself about the necessity for the search, he cannot conduct the search. The provision was never meant as an instrument for holding roving enquiries or fishing out evidence irrespective of any suspicion of evasion of payment of any taxes. Arbitrary searches are not considered lawful and are not favoured by courts. Reference may be made to the decisions of the Supreme Court in the cases of *Durga Prasad v. H. R. Gomes, Superintendent (Prevention), Central Excise, Nagpur AIR 1966 S.C. 1209* and *The Commissioner of Commercial Taxes and Others etc. Vs. R.S. Jhaver and Others etc.,* .

9. Applying these tests in the present case, the impugned search must fail as not being in accordance with law. No authorisation for the search has been proved. On the other hand, the order of Sri Dasgupta, which really constitutes the foundation for the search has not been disclosed but has been withheld. A number of Inspectors holding two searches have no doubt said that they, on information, suspected the respondent evading or attempting to evade payment of taxes when they conducted the search. For reasons given, we are unable to believe them when they said that they conjointly arrived at such a suspicion before holding the search. We have already indicated that contemporaneous records go to show that they conducted the search not on their own initiative but at the behest of the Commercial Tax Officer. There is no material before us to show that the said Commercial Tax Officer had any requisite suspicion or was in

any way satisfied as to the necessity for any seizure contemplated by Sub-section (3) before he directed the search. Such being the position, the statutory precondition for a valid search not having been fulfilled, the impugned search must be held to be not in accordance with law.

10. Next, we proceed to consider how far the seizure was lawful. There is no doubt that, in effecting the seizure, authority must record his reasons. Obviously, the reasons must be based on facts with reference to the purpose or object behind it. Seizure under Sub-section (3) can be made only with reference to detection of evidence of evasion of payment of tax payable under the Act. Only such of the accounts, registers and documents as could have any bearing on that aspect and are considered necessary for the said purpose could be seized. This provision does not furnish any legal sanction for indiscriminate seizure. We have already referred to hereinbefore the reasons recorded in the minutes for the seizure. In one case, all the documents were seized, as the same could not be explained except with reference to the books maintained in the head office. In the other, they were so seized only because the accountant or the partner capable of explaining such books of account and registers were not available and the other partner could not explain the books of account and registers. Such reasons obviously have no relevance to the purpose or object of the seizure, as prescribed by Sub-section (3). Mr. Roy, on the other hand, refers to the preamble of the seizure list, which recites as follows :

As we have reasons to suspect that M/s. Oriental Rubber Works of 171A, Mahatma Gandhi Road, Calcutta-7 (RJ/2437A) attempting to evade payment of tax under the Bengal Finance (Sales Tax) Act, 1941, I/we have seized the following accounts and records of the said dealers from Sri Satyanarayan Jalan, partner, u/s 14(3) of the said Act, as these are considered to be necessary for the purpose of taking action under the provisions of the said Act.

and contends that appropriate reasons having been recorded in the seizure list, the seizure must be held to be legal. We are not in a position to accept this contention of Mr. Roy either. The preamble relied on by Mr. Roy merely recites the language of the section but does not record the true reasons. As we have indicated hereinbefore, the Sub-section makes it abundantly clear that the seizure can be made on an objective consideration, viz., relevance of the documents to suspected case of evasion of payment of tax under the Act and the necessity of seizing them for detection or avoidance of such evasion. Furthermore, when the Sub-section further provides that reasons obviously based on such objective considerations are to be recorded, it would be no compliance with the provision to merely quote the language of the Sub-section and then seize the documents. On the other hand, reasons recorded must by itself indicate that they are so recorded based on the objective consideration. They must indicate the nature and relevance of the documents sought to be seized, having regard to the object for the seizure and must also refer to circumstances in which it is considered necessary to seize them. In the absence

of any factual foundation for the reasons given, mere recital of the language of the Sub-section would, in our opinion, defeat the very object of the provision. Reference may be made to the decision of the Supreme Court in the case of *The Collector of Monghyr and Others Vs. Keshav Prasad Goenka and Others*, .

11. Lastly, it is contended by Mr. Roy that even if the search and the seizure had not been made in accordance with law, there can be no mandate for return of the documents seized, as such documents may have their relevance to the enquiry or investigation initiated by the appellants. We are, however, unable to accept such a contention, as the same is based on too broad a proposition. Such an issue was considered by this court and was expressly overruled in the case of *Hindusthan Motor Ltd. v. T. N. Kaul* F.M.A. No. 280 of 1970 (Calcutta High Court). The relevant decisions on the issue were considered by this court in the case of *Kesoram Industries v. S. K. Rattan* (1974) 78 CWN. 121, paras 31 to 33. That being the position and more because the appellants had a statutory obligation under the said Act itself to return those documents, this contention of Mr. Roy cannot prevail. All the points thus raised in support of this appeal fail.

12. The appeal, therefore, fails and is dismissed. The respondent will be entitled to costs. Hearing fee is assessed at five gold mohurs.

Manash Nath Roy, J.

13. I agree.