
(1988) 03 PAT CK 0026
In the Patna High Court
Case No : Tax Case No. 10 of 1987

Vaishali Flour Mills

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 25-03-1988

Acts Referred:

Constitution of India, 1950 — Article 14
Land Acquisition Act, 1894 — Section 18
Limitation Act, 1963 — Section 5

Citation : (1988) PLJR 430 : (1988) 70 STC 143

Hon'ble Judges : S.B. Sanyal, J

Bench : Single Bench

Advocate : Pawan Kumar Rajgarhia, for the Appellant;

Judgement

S.B. Sanyal, J.—The matter has come up before me for consideration of the stamp report, that the instant case is barred by limitation having been filed beyond forty-five days of the passing of the order refusing to make a reference to the High Court.

2. Mr. Pawan Kumar Rajgarhia, learned counsel, assailed the report and submitted that the instant application having been filed within forty-five days of the communication of the order refusing to refer the matter to the High Court, it is within time. According to the learned counsel, under regulation 32 of the Bihar Commercial Taxes Regulation, 1979, it is incumbent upon the Tribunal to communicate its order after the judgment is signed.

3. The moot question, therefore, is whether under the Bihar Finance Act, 1981, the limitation runs from the date of making of the order or from the date of communication of the order to the applicant. This point came to be considered by this Court in the case of Doma Sao Kishun Lal Vs. State of Bihar, , where their Lordships were considering a similar provision contained in Section 21 of the Bihar Sales Tax Act, 1944. Section 21 of the Bihar Sales Tax Act, 1944 required the assessee to make an application within sixty days from the date of passing of

any order by the Board of Revenue, for the purpose of making a reference to the High Court by the Board. The application, however, was not made within the time provided for the making of the order but within time after excluding the period taken for obtaining certified copy as envisaged under the Indian Limitation Act. The court held it barred by time, there being no provision in the Sales Tax Act for excluding the time requisite for obtaining copies unlike Section 67A of the Income Tax Act which provides that in computing period of limitation the time requisite for obtaining copy of the order shall be excluded. Section 66(7A) of the Income Tax Act also states applicability of Section 5 of the Indian Limitation Act. There being no corresponding provision in the Sales Tax Act of 1944, their Lordships rejected the prayer for condonation following the principle "in a taxing Act one has only to look at what is clearly said and there is no rule for any intendment. It is not open to the court to entertain any argument that hardship will be caused since there is no provision in the Act for excluding the time requisite for obtaining copies from the period prescribed. It is not possible to extend the period prescribed in Section 21 for any equitable reason". After having so held the reference made by the Board of Revenue, on an application made by the assessee beyond sixty days was held to be incompetent.

4. It may, however, be noticed that the Rules did not provide for communication of the order to assessee by the Board of Revenue. This position obtained even u/s 25 of the Bihar Sales Tax Act, 1947 and the Rules made thereunder except that the period of limitation u/s 25 of the Bihar Sales Tax Act, 1947, was extended to ninety days. My attention was drawn to a case nearer to the instant case reported in [1953] 4 STC 252 (Pat) (State of Bihar v. Telu Ram Jain}. The same Bench, while considering the provision of Section 25(1) of the Bihar Sales Tax Act, 1947, observed :

Within ninety days from the passing by the Board of Revenue of any order under Sub-section (4) of Section 24 in Section 25(1) of the Bihar Sales Tax Act, 1947, should be construed to mean within ninety days from the date when the order of the Board was actually passed and not within ninety days from the date when the order was actually communicated to the assessee.

In that case the Board of Revenue reserved the judgment on the date the case was heard and it pronounced the judgment on 5th March, 1950 dismissing the revision application and on 3rd June, 1950, a post card was sent to the assessee from the office of the Board of Revenue intimating to the assessee that the application had been dismissed which post card was received by assessee on the 6th June, 1950. It was urged on behalf of the assessee in the said case that ninety days should be computed not from the date of making of the order, i.e., 5th March, 1950, but from 6th June, 1950 when the order was actually communicated to the assessee, since admittedly the judgment was not pronounced in presence of the parties in open court nor notice was given by the Board of Revenue as regards the date on which the judgment was to be pronounced and, therefore, terminus a quo for the period of limitation should

commence on 6th June, 1950, when the assessee was actually appraised of the order of the Board of Revenue.

5. Two lines of authorities were brought to the notice of the Bench : (1) The starting point of limitation will be the date on which the officer concerned pronounced his decision if he had given the parties sufficient notice of the date on which the decision will be pronounced to enable them, if they choose, to be present and hear his decision; otherwise the starting point of limitation would be the date when the decision was actually communicated to the parties. (2) The other line of authorities brought to the notice of the court was that even no time for passing the order is fixed and the order is passed in absence of the assessee the time for limitation would be counted from the date of the making of the order even though it causes great hardship to the parties in certain cases. A reference was made to an earlier Patna Division Bench decision in the case of Firm of Mohan Lal Hardeo Das v. Commissioner of Income Tax, Bihar and Orissa ILR (1930) Pat 172 where Fazl Ali, J., held "our concern (court's concern) is not to lay down what should be the law, but to interpret the law as it stands. In doing so, I have to say that I do not find anything in the language of the section to enable us to hold that the expression passing of the order should be interpreted as the communication of the order to the party". Telu Ram's case [1953] 4 STC 252 (Pat) preferred to follow the second line of authorities that being the consistent Patna view.

6. Learned counsel for the assessee has drawn my attention to the case of O.A.O.A.M. Muthiah Chettiar Vs. The Comr. of Income Tax, , where Chief Justice Rajamannar, relying on a catena of decisions of the Madras High Court, held that the date of the order does not mean the date when the officer passed the order but the date when such order was either communicated to the party or the date when it was pronounced or published in such a manner that the party must be deemed to have had notice of it on the date of such pronouncement or publication. Learned counsel also referred to the case of Govindji v. Commissioner of Sales Tax [1955] 6 STC 183, where a Division Bench of the Madhya Pradesh High Court interpreted the expression "passing of an order" in Section 23(1) of the Central Provinces and Berar Sales Tax Act to mean, an order passed in the presence of the parties or is passed on the date on which due notice is given to the parties or where no such date is fixed on the date the party receives a copy of the order. It also observed that there is nothing in the Sales Tax Act which prevented the Board or other authorities under the Act from giving the assessee sufficient notice of the day on which it would pass its decision to enable him, if he chooses to be present, to hear it; and if that is done, limitation would run from that day if the decision is announced on that day that is the date of communication though the assessee may not care to receive.

7. I find considerable difficulty to follow the earlier Division Bench decision of this Court expressing mere sympathy for the assessee and the court's helplessness in regard to running of limitation even though the party affected neither had

actual nor constructive knowledge of the order, for the reason, "court cannot legislate and a taxing statute has to be strictly construed".

8. The legal jurisprudence has taken a great stride and the principles engrafted under article 14 of the Constitution have attained great dimension with the passage of time. An unreasonable statute which seeks to take away a remedy provided under the statute arbitrarily would be struck down as being violative of Article 14 of the Constitution of India. The fundamental principle of law which pervades the entire judicial spectrum is justice and fairplay. I am reminded of the observation of Justice Keating in *Boon v. Howard* (1874) LR 9 CP 277, "If the words are susceptible of a reasonable and also of an unreasonable construction, the former construction must prevail". This according to me is irrespective of the nature of the statute. This is an essential canon of construction of statute. It follows, therefore, if a person is given a right to resort to a remedy to get rid of an adverse order within a prescribed time, limitation shall not be computed from a date earlier than that on which the party aggrieved actually knew of it or had an opportunity of knowing the order and, therefore, presumed to have had knowledge of the order.

9. In the case of *Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another*, the Supreme Court was called upon to interpret the expression "the date of the award" used in proviso (b) to Section 18(2) of the Land Acquisition Act. Proviso to Section 18 of the Act read as hereunder :

Provided that every such application shall be made-

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector u/s 12, Sub-section (2) or within six months from the date of the Collector's award, whichever period shall first expire.

10. The court held; apart from the law of contract requiring the Collector to make an offer on behalf of the Government to the owner of the property by communicating the award to the landholder, the salutary principle of fairplay and natural justice require, "where the rights of a person are affected by any order and limitation is prescribed for the enforcement of the remedy by the person aggrieved against the said order, "the making of the order in the proviso" must mean the date when the award is either communicated to the party or is known by him either actually or constructively. It would be unreasonable to construe the words "from the date of the Collector's award" used in the proviso to Section 18 in a literal or mechanical way".

11. In the case of *Madan Lal Vs. State of U.P. and Others*, while construing an order made u/s 11 of the Forest Act qua the provision of limitation for filing an appeal u/s 17 of the said Act, the court observed if the aggrieved party came to

know of the order after the expiry of the time prescribed for presenting an appeal from the order, can the remedy be lost for no fault of his it would be absurd to think so. It is a fundamental principle of justice that a party, whose rights are affected by an order, must have notice of it. This principle is embodied in Order 20, Rule 1 of the CPC though the Forest Settlement Officer, adjudicating the claim under the Act, is not a court yet the principle of fairplay is applicable to all Tribunals performing judicial or quasi-judicial functions.

12. In the case of the *The Trustees of Port of Bombay Vs. The Premier Automobiles Ltd. and Another*, while construing Section 87 of the Bombay Port Trust Act their Lordships observed :

The starting point of limitation is the accrual of the cause of action. Two components of the "cause" are important. The date when the plaintiff came to know or ought to know with reasonable diligence that the goods had been landed from the vessel into the port.

The case of *Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another*, was also noticed in this case in the context of cause of action (paragraph 45A).

13. In the case of *State of Punjab Vs. Khemi Ram*, , the Supreme Court while referring to *Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another*, and the case of *Bachhittar Singh Vs. The State of Punjab*, , a case of disciplinary action taken against the Government servant, it was said that an order is not said to have come into effect until it was communicated as until then, it can be reconsidered and modified and, therefore, has till then a provisional character.

14. In the case of *State of Punjab Vs. Mst. Qaisar Jehan Begum and Another*, , *Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another*, was further expounded by observing "knowledge of the award does not mean a mere knowledge of the fact that an award has been made. The knowledge must relate to the essential contents of the award. These contents may be known either actually or constructively. When a party is present in court either personally or through his representative when the award is made by the Collector, it must be presumed that he knows the contents of the award. If the award is communicated to a party u/s 12(2) of the Act, the party must be obviously fixed with knowledge of the contents of the award whether he reads it or not".

Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another, and *Madan Lal Vs. State of U.P. and Others*, cases were also referred to in the case of *Karam Chand Thapar and Bros. (Coal Sales) Limited Vs. State of Uttar Pradesh and Another*, which was a case under the Central Sales Tax Act. It was held in the said case that the limitation for an appeal from the order did not begin to run before the communication of the order. The provisions of Section 9 of the U. P. Act make that clear.

15. From the aforesaid discussion of the Supreme Court cases it is now clearly established that be it a case under the taxing statute or any other statute the fundamental principle of justice requires that the party whose rights are affected must have knowledge of it or had have an opportunity of knowing the order in short, actual or constructive communication of the contents of the order, more so, if the person is given a right to resort to a remedy to get rid of an adverse order within a prescribed time. This is the only reasonable construction.

16. In the instant case the petitioner had neither constructive nor actual knowledge of the date of the order. Regulation 31 of the Bihar Commercial Taxes Tribunal Regulation, 1979, lays down the signing and sealing of the judgment and regulation 32 requires communication of a copy of the signed judgment to be communicated to the applicant or to the opposite party under the seal of the court and signature of the Secretary. This provision was not available prior to the making of the regulation if, therefore, the judgment was not delivered on a date fixed with prior intimation to the parties concerned or on the adjourned date with due notice to the party, the limitation of forty-five days would run from the date of the receipt of the communication with a copy of the judgment to the concerned person under the seal of the court and signature of the Secretary of the Tribunal and not from the date when the order was dictated by the Tribunal.

It will, however, be a fair practice for the Tribunal to fix a date of judgment on conclusion of the argument and then to deliver the judgment on the said date or on a date adjourned to the knowledge of the concerned party with a right of perusal of the judgment by the parties or by his counsel. The Tribunal will be well-advised to follow the practice of a daily cause list to be displayed on its notice-board where the cases for judgment should be listed under the heading "judgment" on the date earlier fixed or on the adjourned date.

17. For these reasons, I am unable to accept the report of the Stamp Reporter. The tax case will be deemed to have been filed in time.