
(1971) 02 MAD CK 0035

In the Madras High Court

Case No : Writ Petition No's. 1229 to 1231 of 1966

V.K. Batcha Mohideen

APPELLANT

Vs

Joint Commercial Tax Officer

RESPONDENT

Date of Decision : 15-02-1971

Acts Referred:

Penal Code, 1860 (IPC) — Section 408

Citation : (1971) 28 STC 450

Hon'ble Judges : Ramaprasada Rao, J

Bench : Single Bench

Advocate : P. Chidambaram, for K.K. Venugopal, S. Ramalingam and Nalini Vasudevan, for the Appellant; K. Venkataswami, First Assistant Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Ramaprasada Rao, J.—The petitioner was carrying on business in rice in Gandhi Market, Tiruchirappalli, according to him, till 31st March, 1965. For the year 1961-62, he was finally assessed to sales tax under the Madras, General Sales Tax Act. The original authority fixed a particular taxable turnover; but on appeal it was reduced and even the penalty imposed by the original authority was cancelled. For the year 1962-63, the petitioner submitted his returns in the usual course and towards the said assessment, an enquiry was proposed to be held. In the meantime, however, one Guruswami, who was closely associated with the petitioner's business and who was his employee, was dismissed on a charge of misappropriation, and a criminal complaint preferred by the petitioner against Guruswami ended in his conviction u/s 408, Indian Penal Code. In the criminal case, the petitioner is said to have figured as P.W. 2. As already stated, an enquiry into the accounts and the dealings of the petitioner was fixed for 25th March, 1965. This enquiry was in fact attributable to some material and information which the department secured by then in relation to the assessments for the years 1961-62, 1962-63 and 1963-64. According to the respondent, the

information so secured was relatable to certain slips which the dismissed employee Guruswami surrendered to the department and which was obviously the provocation for the revenue to reopen the assessments for the years 1961-62 and 1962-63 u/s 16 of the Act and for the year 1963-64 u/s 12 of the Act. The enquiry was in connection with such alleged escapement of turnover, based on the material and particulars furnished by Guruswami. That enquiry was originally fixed in March, 1965, and it was later on adjourned to 12th May, 1965. It is common ground that the enquiry was again posted to 24th May, 1965, when Guruswami was present and the record shows that a statement was recorded by the taxing officer on that date in the presence of the petitioner. When the petitioner was confronted to cross-examine Guruswami, he sought for an adjournment on the ground that he could do so only with the assistance of his counsel. It is also stated by the petitioner that even a copy of the statement of Guruswami; recorded by the taxing officer was not given to him. Notwithstanding the fact that Guruswami was not subjected to cross-examination, and negating the request of the petitioner for further adjournment, the revenue gave reassessment notices for the years in question, on the foot that there was turnover which escaped assessment and the petitioner was therefore liable to be penalised and reassessed. The objection filed by the petitioner, which, in particular, set out lack of opportunity afforded to him in the matter of cross-examination of Guruswami, was ignored. In the meantime, the petitioner is said to have approached the Deputy Commissioner of Commercial Taxes with a request that the assessment proceedings proposed by the Joint Commercial Tax Officer, Tiruchi Town I, may be kept in abeyance since no adequate or effective opportunity was given to him to cross-examine the informer Guruswami about the irregularities of the petitioner's accounts and dealings. During the pendency of such, but so-called, revision petitions before the Deputy Commissioner of Commercial Taxes, Tiruchirappalli Division, the Joint Commercial Tax Officer, Tiruchi Town, voluntarily changed his mind and gave a notice to the petitioner as follows:

In respect of your accounts for 1961-62, 1962-63 and 1963-64 in order to cross-examine M. Guruswami the hearing is posted to 21st July, 1965, at 2 p.m. at No. 7, Chinnakadai Theruvu, at Tiruchi at my office. You shall not fail to attend the hearing. If you want, you inform your Advocate also.

2. In view of this, the Deputy Commissioner of Commercial Taxes did not pass final orders on the so-called revision petitions filed before him. On 21st July, 1965, the petitioner and his counsel were present in the office of the Commercial Tax Officer, and waited till 4-00 p.m. to find that Guruswami did not attend the office for being subjected to cross-examination. The petitioner immediately informed by his letter dated 22nd July, 1965, that such was the position and sought for another date for the same purpose. Thereafter nothing transpired for a few months. On 22nd January, 1966, the respondent without referring to the incidents that had happened in July, 1965, gave another notice to the petitioner calling upon him to file his final objections to the proposals made already in May,

1965. The petitioner reiterated his stand and in particular drew the revenue's attention to the fact that in the absence of any opportunity given to him to cross-examine Guruswami, it would not be possible for him to render his objections. He also emphasised that no reliance should be placed upon the material produced by Guruswami unless a proper opportunity to cross-examine him was given. The respondent, however, on 30th March, 1966, passed the impugned order copiously incorporating the material furnished to his office by Guruswami and in fact he would conclude by saying that the anamath records filed by Guruswami did relate to the petitioner's clandestine business and the transactions recorded therein were thus suppressed. He also referred to the previous events that transpired. He would also refer to the date of hearing. He would further refer to 21st July, 1965, as the date fixed for the cross-examination of Guruswami and say that Guruswami was not available, since he was absconding, after he was sentenced in the criminal court for misappropriation u/s 408, Indian Penal Code. In fact, he records that Guruswami was not only absconding, but the police were apprehending him and the chances of his appearance were remote. With this knowledge of events which are indisputable, the taxing officer proceeded to finally assess the petitioner on the basis of the material said to have been made available to him by Guruswami. It is this order which is sought to be impugned in these writ petitions. In fact, there are three orders, one for each of the financial years and there are three writ petitions which are therefore connected.

3. Mr. Chidambaram, learned Counsel for the petitioner, mainly contends that the order impugned has to be struck down, because there is an error apparent in it and there has been violation of the principles of natural justice. Counsel for the revenue would state that the petitioner ought to have taken full advantage of the opportunity afforded to him earlier in July, 1965, and he, not having availed himself of that opportunity, cannot complain of lack of fair play because of the supervening circumstances that happened in the case. He would say that there is no error apparent as, according to him, reliance on the statement of Guruswami and the slips produced by him, in the peculiar circumstances, is justified.

4. I am unable to agree with the revenue. The principles of natural justice have a very wide and extensive field for action. They enfold within their net the activities of the revenue in problems of taxation as well. They are not circumscribed to civil actions,, since their arms can extend even to correct errors committed by taxing authorities in exercise of their statutory powers under the taxation laws of the State. If, therefore, an authority vested with the jurisdiction to reopen an assessment under peculiar and stated circumstances prescribed by a statute were to do so, then such an authority should not theoretically follow the text of the provisions enabling him to reopen but should make it a point to see that the material on which he intends to act and reassess or reopen a closed assessment is based upon data which is acceptable according to judicial conscience. Here is a case, where a dismissed employee who has suffered the rigour of criminal law and who has escaped even the process of law, since he is absconding, is the informer in the action. He gave a statement and ushered in certain slips said to

be incriminating, but relating to the petitioner's business. The petitioner's gravamen of the charge is that such slips recovered from Guruswami have no relation to or bearing on his business. He has been consistently requesting the revenue to give him an opportunity to cross-examine Guruswami so that he could prove that such slips, on the sole reliance of which the impugned order has been passed, did not refer to him, and the dealings thereunder cannot be attributed to him. Whatever may be the position prior to July, 1965, the assessing authority thought it fit to give an effective opportunity to the petitioner by bringing Guruswami and making him available for cross-examination by the petitioner. It was this opportunity which the assessing authority by itself undertook, that was responsible for the Deputy Commissioner of Commercial Taxes to dispose of the so-called revision petitions in the manner he did. The revenue, therefore, at one time was satisfied that there was a lack of full opportunity to the petitioner and it was this realisation that made them give the petitioner another opportunity which would be adequate and effective. No doubt, the events that supervened disclose that Guruswami could not be physically produced, because he was even evading the police, absconding and also evading the process of law. But that by itself is no relevant consideration, while appreciating the contention of the learned Counsel for the petitioner that he had no effective opportunity to prove his innocence. In fact, the opportunity that was sought in this case was to cross-examine the dismissed employee of the petitioner and to establish that the material in the nature of slips produced by him never had any bearing on the business of the petitioner as a dealer and also to impress on the assessing authority that the statement of Guruswami recorded by the authority is wrong and unsustainable. In this view of the matter, the non-availability of Guruswami or the inconvenience in the matter of production of Guruswami physically for the purpose of cross-examination sinks into insignificance, because in the ultimate analysis the petitioner was not given a real opportunity to establish that there was no basis and there could be no basis for the reopening of the closed assessments for the years 1961-62, 1962-63 and 1963-64 either u/s 12 of the Act or u/s 16 thereof.

5. I also agree that there is an error apparent in the order impugned. This is because the impugned order is based upon the statement of Guruswami which has not been tested in a manner known to law. The petitioner's contention that the slips do not bear, the handwriting of any of his employees equally remains without being tested or contradicted by the cross-examination of Guruswami. In this uncertain state of affairs, it would be difficult to assume that there is no error in the order impugned. The very basis of the order is the statement and the slips of Guruswami. Reliance upon them is obviously illegal, besides being unjustified; justice should not only be done but seem to be done. It, therefore, follows that there is an apparent error as well in the order impugned.

6. On the ground that the principles of natural justice have been violated and also on the foot that there are apparent errors in the order impugned, the rule nisi has to be made absolute in each of these three writ petitions. The writ

petitions are accordingly allowed. There will be no order as to costs.

7. The department of course is at liberty to pursue the matter, if they are entitled to do so in law, hereafter, by producing Guruswami or otherwise satisfying the test of reasonableness based on the principles of natural justice.