

Gangadhar Baijnath And Ors. vs Income-Tax Investigation Commission ... on 14 April, 1955

Equivalent citations: AIR1955ALL515, [1955]28ITR211(ALL), AIR 1955 ALLAHABAD 515

Author: V. Bhargava

Bench: V. Bhargava

JUDGMENT

V. Bhargava, J.

1. This petition under Article 226 of the Constitution has been filed by the firm Gangadhar Baijnath and its three partners, Rameshwar Prasad Bagla, Harishankar Bagla and Satyanarain Bagla. The petition relates to proceedings being taken against the firm under the provisions of the Taxation on Income (Investigation Commission) Act,

2. It has been stated on behalf of the petitioners that one Sri V. P. Gupta was appointed as the Authorised Official by the Income-tax Investigation Commission to discharge the functions of such officer under the said Act No. XXX of 1947, and on 29-6-1950 the petitioners received a notice from Sri V. P. Gupta, Authorised Official, to furnish certain information appearing in the petitioners' books of accounts, which were specified in that notice.

Thereafter the Authorised Official carried on his investigation for more than a year and a half, during which time he sent a number of requisitions to the petitioners calling for account books, statements and other information. While this investigation was still going on, the petitioners were informed by a letter of the Authorised Official, dated 22-10-1951 that the matter was likely to be heard by the Income-tax Investigation Commission sometime early in December, 1951.

Later the definite date of hearing was communicated to the petitioners as 18-12-1951. On 11-12-1951 the petitioners received a copy of the report of the Authorised Official, which had been submitted by him to the Income-tax Investigation Commission. The petitioners appeared through a counsel before the Commission on 18-12-1951 at New Delhi, when their request for adjournment had been refused.

The case was heard for several days and the proceedings were protracted. Since considerable time was being taken in the case, the petitioners thought that it would be advisable to conclude the proceedings by requesting the Commission to arrive at a settlement and fix the quantum of evaded

income at Rs. 16 lacs. This offer WAS not accepted by the Commission and, on the other hand, a demand was made that the petitioners should disclose the details of the income covered by their proposal for settlement.

This disclosure was to be made by 17-3-1952. Later, the time granted was curtailed to 10-3-1952. The next hearing of the case commenced, however, on 17-3-1952 and, during this hearing, one of the partners, Harishanker Bagla, who has filed the affidavit in support of this petition, was examined in connection with the detailed disclosure referred to above. The next hearing took place on 7-4-1952 at Kanpur.

Further hearings continued in May 1952 and ultimately the Investigation Commission submitted its report to the Government, this report being dated 23-5-1952. On the basis of this report, the Government of India, Ministry of Finance (Revenue Division) issued an order dated 7-6-1952 under Section 8(2) of the Taxation on Income (Investigation Commission) Act, No. XXX of 1947, directing reassessment of the petitioners' firm and its partners on the escaped income the figures of which have been detailed in that order.

It was also directed that penalty proceedings under Section 28 of the Income-tax Act, and Section 16 of the Excess Profits Tax Act be taken against the petitioners. Thereafter Sri Satnam Singh Hitkari Income-tax Officer, District II(i), Kanpur, issued notices dated 21-7-1952 to the petitioners under Section 34 of the Income-tax Act. These notices were received by the petitioners on 4-8-1952. Similar notices were also issued under Section 15 of the Excess Profits Tax Act.

These notices under Section 34 of the Income-tax Act related to the assessment years ending on 31-3-1944, 31-3-1945, 31-3-1946, 31-3-1947 and 31-3-1948. The notices under the Excess Profits Tax Act related to the five chargeable accounting periods, the first one of which began on 30-9-1941 and the last one of which ended on 31-3-1946. After the service of those notices, the petitioners moved this petition in this Court on 25-8-1952 and an ad interim order was passed restraining the Income-tax Officer from continuing the proceedings initiated in pursuance of the Government Order dated 7-6-1952.

The opposite parties impleaded in this petition are the Income-tax Investigation Commission, New Delhi; the Government of India, Ministry of Finance (Revenue Division), New Delhi; the Central Board of Revenue, New Delhi, and the Income-tax Officer, District II(i), the Mall, Kanpur. In the petition, the prayer is for the issue of three writs. The first is a writ in the nature of mandamus to opposite party No. 2, the Government of India, directing it to withdraw its order dated 7-6-1952.

The second is a writ in the nature of prohibition to the Income-tax Officer, opposite party No. 4, prohibiting him from continuing further proceedings initiated in pursuance of that Government order dated 7-6-1952. The third is a writ in the nature of certiorari to the Income-tax Investigation Commission, opposite party No. 1, and to the Income-tax Officer, opposite party No. 4, calling for the record of the case and quashing proceedings of the Income-tax Investigation Commission and of the Income-tax Officer, which had been initiated in pursuance of the Government order dated 7-6-1952.

3. A counter-affidavit was filed on behalf of the opposite parties by Sri V. P. Gupta, who was the Authorised Official, as mentioned above. A rejoinder affidavit has been filed on behalf of the petitioners. It does not appear to be necessary to go into the facts, given in the counter and the rejoinder affidavits, for the purpose of deciding this writ petition, as the facts, on which we intend to rely, are not controverted in the counter-affidavit.

4. When the petition came up for hearing, a preliminary objection was raised by Sri Jagdish Swamp, learned counsel for the opposite parties, that this Court was not competent to issue writs against opposite parties Nos. 1, 2 and 3.

This objection was raised on the basis of the principles laid down by the Supreme Court in --'Election Commission, India v. Saka Venkata Rao', AIR 1953 SC 210 (A), -- 'K. S. Abdul Rashid v. Income-tax Investigation Commission', AIR 1954 SC 207 (B) and the opinion delivered by a five Judge Bench of this Court at Lucknow in -- 'Azmat Ullah v. Custodian, Evacuee Property, U.P. Lucknow', AIR 1955 All 435 (FB) (C).

It appears to us that this objection raised by the learned counsel for the opposite parties must succeed. We may also in this connection refer to a decision of a Division Bench of this Court in -- 'Ram Kirpal v. Union of India', AIR 1955 All 468 (D), in which judgment was delivered on 12-4-1955. The principles laid down in these cases clearly support the preliminary objection of learned counsel for the opposite parties.

It is not within the jurisdiction of this Court to issue a writ of certiorari against the Income-tax Investigation Commission, which is situated at New Delhi, and to quash its findings in the case of the petitioners. Similarly, it is not within the jurisdiction of this Court to issue any writ to the Government of India, Ministry of Finance (Revenue Division), New Delhi, in respect of its order dated 7-6-1952.

Mr. Pathak, learned counsel for the petitioners, in view of this position, argued this case before us only with respect to the prayers for the issue of writs against opposite party No. 4. The Income-tax Officer, Kanpur, before whom the proceedings are at present pending and who issued notices under Section 34 of the Income-tax Act to the petitioners in pursuance of the order of the Government of India dated 7-6-1952. All these notices were issued by opposite party No. 4 on 21-7-1952.

5. In this case, it has not been clearly stated in the petition or in the affidavit, filed in support of the petition, that the proceedings, which were initiated by opposite party No. 4 against the petitioners by issue of the notices dated 21-7-1952, were in pursuance of the directions given by the Government of India under Sub-section (2) of Section 8 of the Taxation on Income (Investigation Commission) Act.

Mr. Pathak, learned counsel for the petitioners, when arguing the case, however, urged that these notices had been issued in pursuance of the directions of the Government of India elated 7-6-1952 so that the proceedings, pending before opposite party No. 4, were proceedings, which would be governed by the various sub-sections of Section 8 of the Taxation on Income (Investigation

Commission) Act.

We put a question to Mr. Jagdish Swarup, learned counsel for the opposite parties, whether the case of the opposite parties was that those notices, which had been issued by opposite party No. 4, were in pursuance of the Central Government direction dated 7-6-1952, or their case was that those notices were not issued in pursuance of that direction but were issued for purposes of initiating independent proceedings under Section 34, which opposite party No. 4 was competent to do in exercise of his jurisdiction.

Mr. Jagdish Swarup accepted the contention of Mr. Pathak that those notices were all issued in order to initiate proceedings under Section 34 in pursuance of the directions of the Central Government dated 7-6-1952, which directions were given under Section 8(2) of the Taxation on Income (Investigation Commission) Act. Since learned counsel for both the parties were agreed on this point, it is not necessary for us to go into the question whether these proceedings before opposite party No. 4 should be held to be proceedings initiated by him independently of the provisions of the Taxation on Income (Investigation Commission) Act and in exercise of his own powers under Section 34 of the Income-tax Act.

At one stage Mr. Jagdish Swarup did contend that he may be allowed to argue the case on the alternative basis that those notices had really initiated independent proceedings taken by the Income-tax Officer under Section 34 of the Income-tax Act, and had no connection with the proceedings under the Taxation on Income (Investigation Commission) Act, but we could not grant this permission, because the question as to the nature of the proceedings initiated is a question of fact and on such a question no party can be allowed to put forward alternative cases.

If, as admitted on behalf of the opposite parties, these notices were issued in compliance with the directions given by the Central Government by its order dated 7-6-1952, it is quite clear that these notices could not have been issued by the Income-tax Officer in exercise of his own mind to arrive at a finding whether circumstances existed, which would justify exercise of his powers under Section 34 of the Income-tax Act on his own initiative. 1 If an act is done under a direction of another person, the possibility that it was done on the basis of exercise of independent discretion is clearly ex-

cluded. Since the opposite parties have taken up the case that the Income-tax Officer was acting under the directions of the Government of India, it is not possible to contend that these proceedings can also be treated as independent proceedings under Section 34 of the Income-tax Act initiated by the Income-tax Officer after exercise of his own independent discretion, belief or knowledge.

For purposes of dealing with this petition, therefore, we have treated these notices as initiation of proceedings under Section 8 of the Taxation on Income (Investigation Commission) Act by the Income-tax Officer in pursuance of the directions of the Central Government given under Sub-section (2) of Section 8 of that Act.

6. When considering the validity of these proceedings pending before the Income-tax Officer, Kanpur, we have to take notice of the fact that these proceedings had been initiated after findings by the Investigation Commission had been recorded and its report submitted to the Government in accordance with the provisions of Sub-section (1) of Section 8 of the Taxation on Income (Investigation Commission) Act.

Those findings and the report of the Commission cannot be quashed by us by issue of a writ of certiorari, as the Investigation Commission is beyond our jurisdiction, so that, for purposes of dealing with this petition, we have to treat those findings and the report as valid. Further, the order passed by the Central Government under Section 8(2), dated 7-6-1952 must also be treated by us as a valid order, because we cannot, by issue of a writ, quash that order, nor can we treat that order as wholly void and ignore it altogether.

On the basis of these two circumstances, it was contended by learned counsel for the opposite parties that this Court can have no jurisdiction to issue writs to opposite party No. 4, the Income-tax Officer, Kanpur, as he is merely exercising jurisdiction in compliance with a valid order passed by the Central Government. It appears to us that this contention can succeed only to a partial extent.

If it became necessary for us to issue a writ to the Income-tax Officer, Kanpur, on the ground that the proceedings, which had been taken earlier by other persons or bodies so as to invoke his jurisdiction, were void, it may not be possible for us to issue a writ to the Income-tax Officer also, because no such writ can be issued unless previous void orders are quashed.

The position, however, is different. Even if it be held that the Income-tax Officer is exercising jurisdiction, which has been conferred upon him by means of valid prior proceedings, the prayer is to restrain the Officer from exercising jurisdiction on the ground that the subsequent proceedings, which are going to be taken by him, would offend against Article 14 of the Constitution and would bring about unequal protection of the laws or inequality before the law.

Mr. Pathak has drawn our attention to the provisions of Sub-sections (4), (5), (6) and (7) of Section 8 of the Taxation on Income (Investigation Commission) Act. Under these sub-sections, when the Income-tax Officer deals with these proceedings, he is bound to accept the findings already recorded by the Commission as final and is not competent to give his own findings on the disputed points concluded by those findings of the Commission. Further, the right of appeal against the order of the Income-tax Officer, based on those findings, does not exist and the only right, that remains to the assessee, is to ask for a reference to the High Court on a question of law arising out of the order of the Income-tax Officer during the proceedings before the Income-tax Officer.

Further, the findings that would be used against the assessee are findings arrived at by the Commission on application of a procedure, which considerably limited the rights of the assessee to put forward his case before the Commission. The procedure, that would thus be applied by the Income-tax Officer in these proceedings, is markedly different from the procedure that the Income-tax Officer is bound to apply, if proceedings had been taken against the petitioners by him under the provisions of Section 34 of the Income-tax Act, without reference to the provisions of the

Taxation on Income (Investigation Commission) Act.

In the proceedings before the Income-tax Officer, therefore, the rights available to the petitioners are seriously curtailed and restricted rights as compared to the rights, which would have been available to the petitioners, if they had been dealt with under Section 34 of the Income-tax Act without applying the provisions of the Taxation on Income (Investigation Commission) Act.

We have also to take notice of the circumstance that, while proceedings against the petitioners are being taken under Section 8 of the Taxation on Income. (Investigation Commission) Act, it is still open to the Income-tax Officer to take proceedings against the petitioners under Section 34 of the Income-tax Act, as amended by the Income-tax Amendment Act, No. XXXIII of 1954.

The petitioners are, therefore, in a position where they can ask the question, which was posed by their Lordships of the Supreme Court in --'Shree Meenakshi Mills Ltd., Madurai v. A.V. Visvanatha Sastri', (S) AIR 1955 SC 13 (E), in the following words:

"Why are we now being dealt with by the discriminatory and drastic procedure of Act XXX of 1947 when those similarly situated as ourselves can be dealt with by the Income-tax Officer under the amended provisions of Section 34 of the Act.

Even if we once bore a distinctive label, that" distinction no longer subsists and the label now borne by us is the same as is borne by persons who can be dealt with under Section 34 of the Act as amended, in other words, there is nothing uncommon either in properties or in characteristics between us and those evaders of income-tax who are to be discovered by the Income-tax Officer under the provisions of amended Section 34."

This question in this very form arises in the present case, because under the amended Section 34 of the Income-tax Act the power of initiating proceedings can be exercised up to the 31st day of March 1956. On the facts, which have been brought out by the petitioners and not disputed by the opposite parties, the petitioners are clearly persons who would fall within the ambit of the amended Section 34 of the Income-tax Act and it is still open to the authorities to take proceedings against them under that provision of law.

Other persons, situated like the petitioners, can also be dealt with under the amended Section 34 of the Income-tax Act. Those persons and the petitioners, being situated in exactly similar circumstances, are capable of being dealt with under two different provisions of law, viz., Section 34 of the Income-tax Act and Section 8 of the Taxation on Income (Investigation Commission) Act by the same Income-tax Officer.

Consequently the principle laid down by their Lordships of the Supreme Court in the case of --'Shree Meenakshi Mills Ltd. (E)', cited above, is fully applicable to the case before us. The difference that in that case the proceedings were still before the Investigation Commission and in the present case the proceedings are before the Income-tax Officer, is not at all material.

The proceedings before the Investigation Commission were held to be void on the ground that further proceedings, which would be taken, would violate the fundamental right of equality under Article 14 of the Constitution. In the case before us also the further proceedings that are going to be taken by the Income-tax Officer, if he complies with the law under which he is acting, would result in bringing about inequality and thus create a breach of Article 14 of the Constitution.

7. Consequently this is a fit case where an appropriate writ should be issued to the Income-tax Officer, Kanpur, prohibiting him from proceeding further with the cases initiated on the basis of the notices dated 21-7-1952 against the petitioners and we order accordingly.

8. On behalf of the petitioners it was requested that costs should be ordered in their favour, as they have succeeded in this petition. Learned counsel for the opposite parties urged that costs should be awarded against opposite party No. 4 only as a writ is being issued to him, and should not be awarded against the other opposite parties Nos. 1, 2 and 3.

In this case, we find that opposite party No. 4, the Income-tax Officer, Kanpur, is purporting to exercise jurisdiction, which has to be prohibited, on the basis of the proceedings initiated at the instance of opposite party No. 2, the Government of India, by making a reference to the Investigation Commission under Section 5. The prime mover of these proceedings was opposite party No. 2.

It is true that opposite party No. 2 being, beyond our jurisdiction, we cannot issue a writ directed to that party, but it does not mean that costs cannot be awarded against that party, when that party is given an opportunity to appear and represent its case before us. There may be a case where a person, residing outside the jurisdiction of this Court, may institute a suit in a Court within the jurisdiction of this Court.

In such a case, if a writ of certiorari or of prohibition is issued against that Court, the liability for the costs incurred by the petitioner would fall not on the Court but on the person, who initiated those proceedings, even though he may be residing outside the jurisdiction of the Court. On that principle the costs should be payable by the opposite party No. 2 and We direct that the petitioners shall be entitled to their costs from opposite party No. 2, which we assess at Rs. 500/-.