Kr. Jyoti Sarup vs Board Of Revenue, Uttar Pradesh, ... on 9 September, 1952

Equivalent citations: AIR1953ALL25, AIR 1953 ALLAHABAD 25

JUDGMENT

Mukerji, J.

1. These two applications are connected in the sense that the points for determination in both the applications are identical. Consequently I think it proper to dispose of both the applications by means of this common judgment. Both the applications are under Article 226 of the Constitution of India and the prayers, which have been put in the alternative, are the same in both the applications.

2. The applicants in both the cases pray for the issue of a writ of mandamus as against opposite party No. 2 i. e. the Collector of Pilibhit, directing him to issue suitable "forms" to the applicants for submitting their returns under the U. P. Agricultural Income-tax Act (Act 3 of 1949) as provided by Section 6(2)(a) of the Act for the assessment year, 1951-1952.

3. The applicants further pray that a writ of mandamus be issued directing opposite party No. 1 namely the Board of Revenue, Uttar Pradesh, to decide the respective applications of the applicants in accordance with law.

4. As I stated earlier, the prayers are in the alternative. There is farther prayer, in the alter-native, praying for a writ of certiorari by calling for the record of the case and quashing the order complained of, an order which was passed by opposite party No. 1, namely the Board of Revenue. There is a sort of a general prayer, and that too in the alternative, namely, that this Court may issue such other writ or direction as it may deem fit and necessary.

5. The facts which have given rise to these two applications very briefly put are these. Both the applicants were liable to pay agricultural income-tax under the provisions of the U. P. Agricultural Income-tax Act (Act 3 of 1949). The periods for which the applicants were assessed to tax earlier were 1948-49 and 1949-50.

6. By Section 5 of the Act provision has been made for the determination of agricultural income. Section 6 of the Act makes provision for the computation of agricultural income and this section provides for the computation of agricultural income in two alternative ways. There is an "option" given to the assessee to compute his income according to either of those two methods. Both the applicants who were assessees in two different assessment cases, chose in the first year one of the two alternatives. They chose the alternative provided by Section 6 (2) (b) in the first year. In the subsequent year, the assessees found that they had made a bad choice and they therefore wanted to

submit their returns according to the method prescribed by Section 6 (2) (a) of the Act. Although an assessee under Section 6 of the Act has an option, there is a proviso added to that section namely the first proviso to the section which is in the following words :

> "Provided that an assessee who has once exercised an option shall not be entitled to vary the method of computation except with the permission of the Board of Revenue."

The assessees consequently made their respective applications to the Board of Revenue for permission to make a change in the method of computation of their income. On receipt of the applications of the two assessees, the office of the Board of Revenue, presumably, under the rules of business framed by the Board, dealt with these applications inasmuch as an individual who subscribed himself as an Agricultural Income-tax Clerk put up a note to the Deputy Secretary along with the entire record of the respective assessment cases, which contained the respective applications of the two applicants to the Board of Revenue for granting them the necessary permission to change the method of computation. In this note it was pointed out that the assessees had originally 'opted' the method of computation of their agricultural income under Section 6(2) (b) and their income was computed under Section 6 (2) (b) for the last three years. It was further pointed out that under Rule 7 of the Agricultural Income-tax Rules, the Board had a discretionary power of allowing or rejecting the applications for a change in the method of computation. The note further stated that computation under Section 6 (2) (a) is "easier and non-controversial," but the note pointed out that in some cases the change of the method of computation from Section 6 (2) (b) to Section 6 (2) (a) was detrimental to the revenues of the State inasmuch as it gave the assessee an advantage. The writer of the note drew the attention of the Deputy Secretary to the fact that the change of option is "not generally allowed in those cases in which the interest of Government is affected." The note further said that if the change in the particular cases was allowed "Government would be at a great disadvantage."

7. The aforementioned note also pointed out that the assessees had made a similar request last year and that their applications had been rejected on the ground mentioned earlier, namely on the ground that the change over was going to adversely affect the amount of the tax that was likely to come to the State Treasury.

8. The synopsis which I have given of the "note" (to use a common expression) was scrutinized by the Deputy Secretary and he himself made a further note in the following words :

> "S. M. The two cases noted upon in the office note do not deserve any consideration for change of option from 6 (2) (b) to 6 (2) (a) for the reasons given in the above note from page 9 ante. The applications merit rejection.
>
> Sd/- Jagram Singh."

9. The matter, after these two "nothings", was put before Mr. B. V. Bhadkamkar who was the then Senior Member of the Board of Revenue and who according to the rules of business, prescribed by

the Board under the provisions of Section 7 (1), Land Revenue Act (Act 3 of 1901), was the competent authority to deal with the matter. Mr. Bhadkamkar, the Senior Member merely signed under the recommendation of his Deputy Secretary.

10. There is one other fact which need be stated and that is that subsequent to the disposal of the matter by Mr. Bhadkamkar, winch was done on 26-5-1951, each of the applicants made an application on 3-8-1951, for issuing appropriate forms to each of them under Section 6 (2) (a) of the Act for submitting their returns for the year 1951-52. These applications were dealt with in the same manner in which the aforementioned applications were dealt with, namely there was a note by the office and the applications were ultimately rejected with the result that neither of the two applicants was supplied the appropriate forms for making their returns in consonance with the provisions of Section 6 (2) (a), Agricultural Income-tax Act.

11. The applicants having failed to gain their objective by means of the two applications mentioned above by me have come up to this Court to seek their remedy against the Board of Revenue as also the Collector of Pilibhit by means of these two applications under Article 226 of the Constitution.

12. Mr. Gopal Swarup Pathak, the learned counsel for the applicants, has argued these applications at length and with his usual vigour and ability.

13. Mr. Pathak has raised three main points : (i) That the proviso, which I have already quoted in the earlier portion of this judgment, applies only during the course of proceedings before the Assessing officer in a particular year of assessment and that it has no application to a case like the present where the option is being exercised not during the course of any particular year of assessment, but is being exercised in relation to a completely new year of assessment. In support of his contention, Mr. Pathak relied on the provisions of the Indian Income-tax Act as also the Sales Tax Act and his argument, in substance, was that, if what be was submitting was not correct, the language of the proviso would have been different.

14. I have given my very careful consideration to this argument and I have considered the language of the two Acts referred to above, but I do not agree with Mr. Pathak's contention. In my judgment, the language of the first proviso to Section 6 (1) is so clear that it is unnecessary, even if it were permissible, to take the assistance of other statutes to interpret this proviso. In my judgment, this proviso means that once and only once during the course of an assessee's, if I may use the word "assessable life", can he, unfettered, exercise the option given to him under Section 6 (1) of the. Act and that if once, and the words of the Statute so put it, he has exercised his option, ho cannot, without the permission of the Board, take the other alternative.

15. Learned counsel for the applicants argued that in giving the meaning which I have given to the section, I would be importing some kind of a rule of res judicata into my decision. I, however, think that this is not the correct way of looking at the matter for there is no question of any rule of res judicata coming into the picture but the question is of the interpretation of the words of the proviso, set out earlier in this judgment.

16. The next point which Mr. Patkak argued was that the discretion--and I must here state that he conceded that it was a matter of discretion--which the Board of Revenue had, was not judicially exercised as it should have been. It was argued that the decision arrived at by the Senior Member of the Board was not his decision and, in any event, ho had not applied his mind to the entire circumstances of the matter and that he had been swayed by irrelevant considerations, namely the consideration of loss which was likely to accrue to the revenues of the State by permitting a change over to the applicants.

17. Mr. Pathak further contended that the consideration of a loss to the revenues was so thoroughly irrelevant to the matter in issue that by taking this into account the decision of the Board of Revenue, if there was a decision, was vitiated and should be so treated, because according to him it was arbitrary.

18. Lastly it was contended that the reasons set out in the application for 'permission' to change their mode of computation were not considered by the Board of Revenue. A summary of the reasons which were set out in the application referred to above have been given in para. 5 of the respective affidavits accompanying these two writ applications.

19. I shall first consider the last argument, because this argument, in my judgment, can be disposed of comparatively shortly. In order to be able to appreciate the strength or weakness of this submission it is necessary to bear in mind the fact that the Senior Member of the Board of Revenue, who exercised the discretion under the proviso, had before him the entire record of the case and further he had before him the two 'notes', the one by the 'clerk concerned' and the other by the Deputy Secretary. I may here mention that in his note the clerk concerned pointedly drew attention to the fact that the record, on which his note was appended, contained the two applications of the assessees and they were marked as serials 17 and 18, respectively; further, in para. 2 of the note, the clerk concerned fairly set out one of the chief grounds on which the change of option was claimed, namely that the computation under Section 6 (2) (a) was easier and non-controversial. In Para. 6 of the counter-affidavit, it has been averred that the Senior Member, Board of Revenue, who was in charge of Agricultural Income-tax work gave full consideration to the merits of the case. It has been pointed out that the matter of "the option" by the applicants had been considered by the Senior Member, Board of Revenue, once before also in respect of the assessment for the year 1950-51. There is, therefore, before me material for hold-ling that the Senior Member, Board of Revenue, gave due consideration to the reasons on which the applicants wanted a change in their method of computation. In my view, therefore, apart from the presumption which a Court can legitimately make that a responsible officer on whom a statute has conferred the privilege of exercising a discretion, has not acted capriciously, there is in this case good evidence for holding that he has not so acted.

20. Mr. Pathak next contended that the Senior Member, Board of Revenue took into account the question of the loss of revenue, a consideration which was foreign to the scheme of the Act, and by considering such a matter his decision was vitiated. In my judgment, the question of loss of revenue was not at all foreign to the scheme of the Act. The entire object of the U. P. Agricultural Income-tax Act was to provide for the imposition of a tax, a source of revenue, on agricultural income. The

preamble to the Act says "whereas it is expedient to impose a tax on agricultural income in the United Provinces." By the various sections of the Act provision has been made for recovering 'tax' on agricultural income and the Legislature has, therefore, kept to the main purpose of the Act, and made provision in the Act so that a person liable to pay tax may not escape his liability. I am, therefore, of opinion that a consideration of loss in the revenue, which can justly be collected by the imposition of a tax, is not an irrelevant consideration.

21. Mr. Pathak further contended that whenever a Statute gives a 'discretion' to someone then that discretion has to be exercised judicially, that, if the Court finds that the discretion has not been judicially exercised but has been exercised arbitrarily or capriciously, then the High Court wilt interfere by means of a proper writ and for the support of his contention Mr. Pathak relied on a House of Lord's decision in Sharp v. Wakefield, reported in (1891) A. C. 173. That decision was under the Licensing Acts of 1828, 1872 and 1874 under which "the Licensing Justices" were given a discretion to refuse the renewal of licenses for the sale of intoxicating liquors. In my judgment, this case is not entirely appropriate as an authority for the case I have before me. Be that as it may, speaking for myself, I have not much difficulty in accepting the proposition of law as such, enunciated by Mr. Pathak.

22. The next point, which was attempted to be made, was that the Senior Member, Board of Revenue, had misdirected himself completely by considering the question of the loss of revenue and, therefore, it was contended that his decision was bad. Reliance has been placed on the case of Commissioner of Inland Revenue v. G. Angus & Co., reported in (1889) 23 Q. B. D. 579. That case was a case where a certain person attempted to avoid the payment of stamp duty on a certain conveyance at a certain rate by a legal means and in connection with that matter Lord Esher M. R. at p. 593 said this :

> "The subject may have the good fortune to escape the stamp duty, if he can get a conveyance of property sold to him without the execution of any instrument. But it is said that if the appeal be decided against the Commissioners, purchasers will rest satisfied with an agreement of which specific performance would be decreed and will not go on to execute a conveyance, and so the Grown will lose the stamp duty, and it is rather suggested that this would be cheating the Crown and committing a fraud. The Crown, however, must make out its right to the duty and if there be a moans of evading the stamp duty, so much the better for those who can evade it. It is not fraud upon the Crown, it is a thing which they are perfectly entitled to do."

On the observations quoted above of Lord Esher, it was argued that the evasion of revenue was a matter which should not have been considered at all. As I read the observations of Lord Esher I do not think the Noble Lord ever meant to lay down, or actually laid down, anything like what was being contended. What was laid down in that case was that, if a subject can evade payment legally, then it cannot be termed as fraudulent conduct, nor can it be said that he is cheating the State of its just revenues. The burden is on the State to prove that it is entitled to a certain revenue before it can recover it and, if the subject can, without infringing the law, escape liability, then the subject certainly can do so and it would be no ground for Courts to order recovery of any revenue on the

ground that, if the recovery was not ordered, then it would amount to the State being deprived of that revenue. No such position arises in the present case.

23. Mr. Pathak relied again on a decision in the case of Rex v. London County Council, reported in (1918) L. K. B. 68. That was a case where the London County Council by virtue of a bye-law, which conferred a discretion, passed a general resolution to withhold permission in all cases to people applying for permission to sell articles in Parks and such other places. Avory J. at p. 74 of the aforementioned decision said this :

> "In exercising their functions justices cannot pass a general resolution to refuse certificates; that is not a judicial exercise of their discretion. Similarly, in the present case there has not been a judicial exercise of the discretion which is vested in the County Council. The analogy seems to be complete."

Avory J. by analogy applied the rule of law laid down in the cases where certain discretion was vested in "justices" or similar authorities in the matter of granting or withholding licenses, to the case before him because, according to him, the analogy between the two types of cases was complete. If I may respectfully say, Avory J. was right in the view that he took of the analogous nature of the two matters. The case before us, in my judgment, does not attract the rule of law laid down either in the licensing cases or in the case decided by Avory J., and to borrow his language partially, I would say, that in the present case the analogy seems to me to be absolutely incomplete.

24. Lastly, Mr. Pathak contended that the very wide and arbitrary power given to the Board of Revenue under Section 6, first proviso, was constitutionally a bad provision of law inasmuch as it vested in the Board of Revenue such absolute and unfettered discretion: it could be used as a means of discrimination; what Mr. Pathak said, was that the power to discriminate, has been given by this provision and thus his submission was that Article 14 of the Constitution was infringed. Alternatively, he contended that it was, in any event, placing an unreasonable restriction on the subject in contravention of Article 19(f), Constitution of India. I have given this argument careful consideration and, in my judgment, there is no substance in either of these two contentions. In my view no question of the infringement of Article 19(f) arises in the case.

25. In regard to the infringement of Article 14 of the Constitution, namely, in regard to the proviso to Section 6, Agricultural Income Tax Act giving the power to the Board of Revenue to discriminate, reliance was placed on two decisions of this Court, reported in Karamchand v. Dr. Vijay Anand, 1952 ALL. 1. J. 274 and Mannu Lal v. Chakradhar Hans, 1952 ALL. 1. j. 278 respectively. Both these cases were under the U. P. (Temporary) Control of Kent and Eviction Act and in the first of those cases the question was whether the "unregulated"

discretion given to District Magistrates to grant or not to grant permission under Section 3 of the Act infringed the provisions of Article 14 of the Constitution. A Bench of this Court of which one of us was a member held :

> "If the discretion to grant licenses can be without any regulating principles embodied in the statute, there is no reason why the discretion to grant permission to a landlord to sue his tenant for ejectment should be hedged in by statutory rigid rules. We hold that it does not infringe Article 14 of the Constitution."

26. As I stated at the commencement of this judgment one of the prayers was for the issue of a writ of mandamus directing the opposite party No. 2 to issue suitable forms for submitting his returns in accordance with Section 6 (2) (a), Agricultural Income-tax Act and, in the alternative, a writ of mandamus was prayed for directing opposite party No. 1 to decide the applications of the two applicants before us according to law and these were the two prayers in respect of which the main arguments in the case were made by the learned counsel, appearing for the applicant. The duty of the opposite party No. 1, the Board of Revenue, U. P., which was sought to be enforced was, the duty cast on him by the first proviso to Section 1 of the Act. The duty which was sought to be enforced as against opposite party No. 2, namely, the Collector of Pilibhit, was the duty cast on him to supply the applicants the requisite "forms" so that he could make his returns according to the option which he chose to exercise under the provisions of Section 6. The duty which was sought to be enforced as against opposite party No. 2 could arise only when the opposite party No. 1, had performed his duty. As I have already stated in the earlier portion of my judgment, opposite party No. 1 had already exercised his discretion in the matter and had already decided to withhold permission to the applicants to change their option. The question, therefore, for determination at this stage is whether an application for a writ of mandamus was the appropriate remedy. In my judgment, the applicants are not, under the circumstances of this case, entitled to such a writ. In my judgment, the correct rule is that mandamus will not lie where the duty is clearly discretionary and the party upon whom the duty rests has exercised his discretion reasonably and within his jurisdiction, that is, upon facts sufficient to support his action.

27. It may be that while an officer may, in certain extra-ordinary circumstances, be compelled by mandamus to exercise his discretion one way or the other and not just simply refuse to act at all, yet after he has honestly and reasonably exercised his discretion, mandamus will not lie where the act is truly discretionary, to control that discretion, as to the particular manner of performance, even though the discretion be erroneously exercised for there is no method of review or correction provided by law to control such a discretion. The writ of mandamus can never be used as a substitute for appeal or what has been called in America a "writ of error". I have held in the earlier portion of this judgment that the Senior Member, Board of Revenue, had exercised his discretion honestly and on a full consideration of the materials before him. In my judgment, therefore, there is no scope for this Court to interfere by means of any of the writs asked for by the applicants.

28. In the result I would dismiss these applications with costs.

Bind Basni Prasad, J.

29-30. I agree with the conclusion arrived at by my learned brother and desire to add the following :

The facts have been set out in the judgment of my learned brother and need not be reiterated. The first contention on behalf of the petitioners is that on a true interpretation of Section 6 (1), U. P. Agricultural Income Tax Act 1948, an assossee is at full liberty to choose any method of computation of his agricultural income in any year, but if in the course of a particular year he has chosen one method, he cannot vary it and choose another in that particular year. To interpret Section 6 (1) in this manner would be doing violence to its language. Sub-section (1) of Section 6 provides as follows;

"The agricultural income mentioned in Sub-clauses (i), (ii) and (iii) of Clause (b) of Sub-section (1) of Section 2 shall, at the option of the assesses, be computed in accordance with Clause (a) or Clause (b) of Sub-section (2):

Provided that an assessee who has once exercised his option shall not be entitled to vary the method of computation except with the permission of the Board of Revenue."

31. The substantive part of Sub-section (1) no doubt gives an unfettered right to an assessee to choose any method of computation. But this right is cut short to a great extent by the proviso. The word "once" occurring in the proviso is unqualified. There is not the slightest indication in the proviso that the restriction placed by it upon the variation in the method of computation relates only to any one year and that the assessee is at full liberty to vary the method of computation every year. To interpret the proviso in this manner would be tantamount to the insertion of the words "in any year" after the word "computation". I can see no warrant for this. On the other hand, there is intrinsic evidence in the Act itself to indicate that there can be no question of the variation of the method of computation in the course of any one year. Section 15 provides for the return of income. Every assessee has to furnish a return by a prescribed date and once he has furnished the return, he can, under Sub-section (4) of Section 15, only correct the mistakes or fill in the omissions in the return and for that purpose submit a revised return; but he has been given no right to vary the method of computation. If the intention was to confer any such right, there would have been explicit mention of this in Sub-section (4). My interpretation of Section 6 (1) is that if after the commencement of the U. P. Agricultural Income Tax Act, an assessee has once selected one method of computation of agricultural income, he cannot vary it subsequently in any year without the permission of the Board of Revenue. The proviso is not limited in its application to variation of such method in the course of a year.

32. The next contention is that in considering the question whether or not to grant the permission under the proviso to Section 6 (1), the Board of Revenue acts judicially. I am unable to agree with this. The Board acts in its executive capacity. The usual procedure of judicial authorities is not prescribed for the Board when dealing with such a matter.

33. The third point urged is that the Board did not apply its mind in considering the application of the petitioners in the two cases. It acted mechanically and its order was conveyed in cycle-styled form. In this connection, reliance is placed upon the fact that Sri B. V. Bhadkamkar, the senior

member of the Board of Revenue, merely signed below the office note, writing nothing to indicate his own mind. I see no force in this argument. It is a well-known convention and a well-recognized practice in Government offices that where an officer agrees with an office note, he merely initials and that is enough to indicate his assent to the office suggestion. The whole file including the applications of the petitioners and not only the office note was put up before Sri Bhadkamkar. It must be presumed that on a consideration of all this material, he assented to the office suggestion to reject the two applications. It is not unusual to convey orders in printed or cyclostyled forms, specially when the order relates to a matter which frequently comes up before an authority. This saves time and work in the office. Prom the fact that the disputed order is on a cyclostyled form, it does not follow necessarily that the mind was not applied in passing that order, specially when in the counter-affidavit it is stated that Sri Bhadkamkar gave full consideration to the merits of the case.

34. Fourthly, it is argued that the Board of Revenue did not act bona fide inasmuch as it took into consideration the effect of the change upon the revenues of the State and did not consider the point of view of the applicants. As already stated, the petitioners' application for the change of method of computation was before the senior member of the Board of Revenue and it must be taken that he considered their view point. If the Board of Revenue took into consideration the effect of the change of option upon the revenues of the State it cannot be said that it was an irrelevant factor. As the very name of the authority indicates, the Board of Revenue in its administrative capacity has to take into consideration the effect of the permission it may grant under the proviso of Section 6 (1) upon the revenues of the State. The object of the Act is to raise revenues for the State by imposing a tax on agricultural income. If the Board acted in the above manner it acted within the spirit of the Act. The above factor was not foreign to the matter before the Board. Apart from the authorities referred to by my learned brother in his judgment, Sri Gopal Swarup Pathak relied also upon Mahadeo Prasad v. The Government United Provinces, 1948 ALL. L. J. 543, in which it was held that where wide discretion is given to a statutory authority it must be exercised bona fide and reasonably and within the compass of the Act. The Board in the present case did not contravene these principles, nor can it be said that it acted arbitrarily or capriciously. It took the decision after due considerations of the facts. [35] The contention that the proviso to Section 6 (1) infringes the equality clause contained in Article 14 of the Constitution has no force. To accept this argument would mean that no discretion can be allowed to an authority. Nor do I see any force in the contention that Article 19(1)(f) which provides that all citizens shall have the right to acquire, hold and dispose of property has been violated in the present case. The tax has been imposed according to law and the proviso to Section 6 (1) is a proviso for the purpose of the collection of the tax. It is not a novel proviso. Provisions like this occur in other statutes imposing tax.

36. For the reasons given above, I would also dismiss the two applications.