

Assistant Transport ... vs Sri Nand Singh on 27 July, 1979

Equivalent citations: 1980 AIR 15, 1980 SCR (1) 131, AIR 1980 SUPREME COURT 15, 1979 ALL. L. J. 1219, (1980) 1 SCR 131 (SC), 1979 UJ (SC) 681, (1979) ELT 510, 1980 (1) SCR 131, (1980) 1 SCWR 1, (1979) ALL WC 608, 1979 (4) SCC 19, (1979) 3 MAHLR 304

Author: N.L. Untwalia

Bench: N.L. Untwalia, A.P. Sen

PETITIONER:

ASSISTANT TRANSPORT COMMISSIONER (ADMINISTRATION), UTTAR PRAD

Vs.

RESPONDENT:

SRI NAND SINGH

DATE OF JUDGMENT 27/07/1979

BENCH:

UNTWALIA, N.L.

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UNTWALIA, N.L.

SEN, A.P. (J)

CITATION:

1980 AIR 15 1980 SCR (1) 131

1979 SCC (4) 19

CITATOR INFO :

RF 1991 SC2141 (10)

ACT:

Limitation-Order passed on October 20-Communicated on
October 29-Starting point of limitation-When commences.

HEADNOTE:

The respondent's application under s. 15 of the U.P. Motor Vehicles Taxation Act for exemption of tax in respect of his motor vehicle was rejected by the Taxation Officer by his letter dated October 20/24, 1964 and this was received by him on October 29, 1964. The limitation for filing an appeal is 30 days.

On the question whether the period of limitation starts from the date of the order or the date of communication of

the order.

Dismissing the appeal,

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HELD: Apart from the reasons given by this Court in Raja Harish Chandra Raj Singh v. The Deputy Land Acquisition Officer & Anr. [1962] 1 SCR 676 that an order must be made known either directly or constructively to the party affected by it to enable him to prefer an appeal, mere writing of an order in the file kept in the office of the Taxation Officer is no order in the eye of law in the sense of affecting the rights of the parties for whom the order is meant. The order must be communicated directly or constructively in the sense of making it known, which may make it possible for the authority to say that the party affected must be deemed to have known the order. Generally speaking the order would be effective only when it comes to his knowledge directly or constructively, otherwise not. [132E-G]

In the instant case the respondent had no means to know the order of the Taxation Officer until he received his letter on the 29th October 1964. That was the date from which the starting point of limitation for preferring an appeal commenced.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2497 of 1969.

From the Judgment and Decree dated 14th October, 1966 of the Allahabad High Court in Special Appeal No. 441/66.

G. N. Dikshit, M. V. Goswami and O. P. Rana for the Appellant.

B. Datta for the Respondent.

The Judgment of the Court was delivered by UNTWALIA, J. This is an appeal by certificate. The Allahabad High Court decided that the date of the communication of the order will be the starting point of limitation for filing an appeal under Section 15 of the U.P. Motor Vehicles Taxation Act. The respondent wanted exemption of tax in respect of his motor vehicle for a certain period. He applied to the Taxation Officer, Kanpur. The order rejecting his prayer was communicated in the letter of Taxation Officer dated October 20/24, 1964 through the Regional Transport Authority, Kanpur. The respondent received that letter on October 29, 1964. His appeal was within 30 days of October 29, 1964 but beyond 30 days of October 24, 1964. If October 24, 1964 could be taken to be the date of the order then obviously the appeal was out of time. If, however, the date of the order in Section 15 of the U.P. Motor Vehicles Taxation Act, in the context, meant the date of the communication of the order, then the appeal was within time. Following the decision of this Court in Raja Harish Chandra Raj Singh v. The Deputy Land Acquisition Officer & Another,(1) the High Court has held in favour of

the respondent hence this appeal.

In our opinion, the judgment of the High Court is right and cannot be interfered with by this Court. Apart from the reasons given by this Court in the earlier judgment to the effect that the order must be made known either directly or constructively to the party affected by the order in order to enable him to prefer an appeal if he so likes, we may give one more reason in our judgment and that is this: It is plain that mere writing an order in the file kept in the office of the Taxation Officer is no order in the eye of law in the sense of affecting the rights of the parties for whom the order is meant. The order must be communicated either directly or constructively in the sense of making it known, which may make it possible for the authority to say that the party affected must be deemed to have known the order. in a given case, the date of putting the order in communication under certain circumstances may be taken to be the date of the communication of the order or the date of the order but ordinarily and generally speaking, the order would be effective against the person affected by it only when it comes to his knowledge either directly or constructively, otherwise not. On the facts stated in the judgment of the High Court, it is clear that the respondent had no means to know about the order of the Taxation Officer rejecting his prayer until and unless he received his letter on October 29, 1964. Within the meaning of Section 15 of the U.P. Motor Vehicles Taxation Act that was the date of the order which gave the starting point for preferring an appeal within 30 days of that date.

For the reasons stated above, we hold that there is no substance in this appeal. It is accordingly dismissed but in the circumstances without costs.

P.B.R.

Appeal dismissed.