Allahabad High Court
P.C. Bhandari And Co. (P.) Ltd. vs Commissioner Of Sales Tax And Ors. on 11 July, 1967
Equivalent citations: 1969 23 STC 324 All
Bench: J Sahai, R Pathak
JUDGMENT

1. This writ petition by M/s. P. C. Bhandari & Co. (P.) Ltd., (hereinafter referred to as the petitioner) has been made under the provisions of Article 226 of the Constitution in the following circumstances :

The petitioner is an assessee both under the U.P. Sales Tax Act (hereinafter referred to as the Act) and under the Central Sales Tax Act (hereinafter referred to as the Central Act) and deals with tents, tent components, cotton, bags and newar etc. Admittedly, the returns for the quarter ending 31st December, 1964, both under the Act and the Central Act were not filed. Purporting to act under Rule 41(3) of the Rules framed under the Act respondent No. 2, the Sales Tax Officer II, Kanpur, assessed the petitioner to a sum of Rs. 24,000 under the Act and to a sum of Rs. 20,000 under the Central Act for the quarter ending 31st December, 1964. The petitioner filed appeals before the Assistant Commissioner (Judicial) Sales Tax, Kanpur, which were dismissed. Admittedly it did not file any revision application before the Judge (Revisions) Sales Tax but made an application to the Judge (Revisions) Sales Tax for the stay of recovery of the tax during the pendency of the appeals before the Assistant Commissioner (Judicial) Sales Tax. The Judge (Revisions) Sales Tax had passed an order on 1st May, 1965, to the effect that if 25 per cent, of the disputed tax was deposited and security for the balance was furnished within a month, then recovery of 75 per cent, shall remain stayed till the disposal of the appeal. After the dismissal of the appeals, respondent No. 2 issued two recovery certificates against the petitioner : one for a sum of Rs. 18,000 (balance under the Act) and the other for a sum of Rs. 15,000 (balance under the Central Act). The petitioner then moved the Commissioner of Sales Tax, U.P., respondent No. 1, on 8th November,. 1965, praying for stay of the realisation of the two sums mentioned above, that is the aggregate amount of Rs. 33,000. The Commissioner of Sales Tax, U.P., passed an order on the same date (8th November, 1965) staying recovery of Rs. 33,000 subject to the petitioner's furnishing security. According to the petitioner it has complied with the order dated 1st May, 1965, as also with the order dated 8th November, 1965. The petitioner received a notice from respondent No. 4, Amin, Sales Tax Collectorate of Kanpur on 9th June, 1967, calling upon it to pay the sum of Rs. 33,000 mentioned above and interest at the rate of 18 per cent. The petitioner moved the Commissioner of Sales Tax, U.P., who passed an order calling for a report from the Sales Tax Officer.

2. It is stated in the petition that before making the best judgment assessment no notice was issued to the petitioner.

3. On the basis of the facts mentioned above Sri Brijlal Gupta has prayed for the issue of a writ of certiorari to quash the orders mentioned above. He has also prayed for the issue of a writ of mandamus commanding the respondents not to take recovery proceedings in pursuance thereof. There is also the usual prayer for the issue of any other writ, order or direction which this Court in the circumstances of the case deems fit and proper to issue.

4. Mr. Brijlal Gupta has made the following four submissions before us in support of this writ petition :-

(1) That entry 54 of List II of the Seventh Schedule only relates to a tax on sale and purchase of goods and not with interest. The provision for interest in the Act is, therefore, ultra vires of the U.P. Legislature.

(2) That the orders of assessment passed by respondent No. 2 on 8th March, 1965, imposing a sum of Rs. 24,000 as sales tax under the Act and a sum of Rs. 20,000 as sales tax under the Central Act for the quarter ending 31st December, 1964, are bad as they violate the principles of natural justice.

(3) That inasmuch as the Code of Civil Procedure provides for interest only at the rate of 6 per cent., the provision in the Act for interest at the rate of 18 per cent, is hit by Article 14 of the Constitution and inasmuch as 18 per cent, interest is usurious it is arbitrary and unconstitutional.

(4) Because in view of the stay order passed by the Judge (Revisions) the petitioner was not a defaulter within the meaning of Section 8(1-A) of the U.P. Act and in any case the subordinate authorities to the Judge (Revisions) Sales Tax were not competent to disregard the stay orders passed by him.

5. Under the law the petitioner admittedly can file revision applications and the Judge (Revisions) can, on a case being made out, give it full relief.

6. Mr. Brijlal Gupta contends that the petitioner did not file revision applications because at the end of the year while making the final assessments, provisional assessments made on 8th March, 1965, would have to be reopened and the amounts paid or made payable under the orders dated 8th March, 1965, would be adjusted while determining the taxes payable for the whole year. The petitioner can, in this manner, get full redress for its alleged grievance and if it has deliberately chosen to adopt that ?course, it must take the logical consequences of its decision and wait till the final assessments for the year in question are made. The existence of this alternative remedy is a good ground for not admitting this petition. The petitioner admittedly has also the alternative remedy of filing revision applications. That is another reason why this petition should not be admitted.

7. We would have disposed of the writ petition on the ground of alternative remedy alone without entering into the merits of the submissions made by Mr. Gupta. Mr. Gupta has, however, contended that inasmuch as he has challenged the vires of certain provisions of the Act and has complained of violation of principles of natural justice, the existence of the alternative remedies should not be construed as a bar to the maintenance of this petition and the merits of his contentions be also considered.

8. We, therefore, proceed to consider the submission of Mr. Brijlal Gupta seriatim.

9. Section 8(1-A) of the Act provides for interest and reads :

If the tax payable under Sub-section (1) remains unpaid for six months after the expiry of the time specified in the notice of assessment and demand, or the commencement of the Uttar Pradesh Bikri Kar (Dwitiya Sanshodhan) Adhiniyam, 1963, whichever is later, then without prejudice to any other liability or penalty which the defaulter may, in consequence of such non-payment, incur under this Act, simple interest at the rate of eighteen per cent, per annum shall run on the amount then remaining due from the date of expiry of the time specified in the said notice, or from the commencement of the said Adhiniyam, as the case may be, and shall be added to the amount of tax and be deemed for all purposes to be part of the tax :

Provided that where as a result of appeal, revision or reference, or of any other order of a competent court or authority, the amount of tax is varied, the interest shall be recalculated accordingly :

Provided further that the interest on the excess amount of tax payable under an order of enhancement shall run from the date of such order if such excess remains unpaid for six months after the order.

10. It is contended that this provision is ultra vires the U.P. Legislature because entry 54 of List II of the Seventh Schedule does not deal with interest. Inasmuch as the matter relating to interest is incidental to the recovery and the collection of the tax, the U.P. Legislature was competent to enact this provision and it would be fully covered by entry 54.

11. It has been contended that even though the petitioner did not file any returns for the quarter ending 31st December, 1964, the Sales Tax Officer was bound on the basis of the principles of natural justice to issue a notice to the petitioner and give it an opportunity of putting its case before proceeding to make the best judgment assessments. Section 7 of the Act requires an assessee to submit a return. That provision so far as is relevant for our purposes reads:

7. (1) Every dealer who is liable to pay tax under this Act shall submit such return or returns of his turnover at such intervals, within such period in such form and verified in such manner, as may be prescribed; but the assessing authority may in its discretion, for reasons to be recorded, extend the date for the submission of the return by any person or class of persons.

(1-A) ...

(2)...

(3) If no return is submitted by the dealer under Sub-section (1) within the period prescribed in that behalf or, if the return submitted by him appears to the assessing authority to be incorrect or incomplete, the assessing authority shall, after making such inquiry as he considers necessary, determine the turnover of the dealer to the best of his judgment and assess the tax on the basis thereof:

Provided that before taking action under this sub-section the dealer shall be given a reasonable opportunity of proving the correctness and completeness of any return submitted by him.

12. Rule 41 of the Rules framed under the Sales Tax Act (hereinafter referred to as the Rules) also deals with the submission of return and assessment and so far as is relevant for our purposes reads :

41. (1) Every dealer who is liable to pay tax under the Act shall, before the last day of July, October, January and April, submit to the Sales Tax Officer a return of his gross turnover for the quarters ending June 30, September 30, December 31 and March 31, respectively in Form IV....

(2) ...

(3) If no return is submitted in respect of any quarter or month, as the case may be, within the period, or if the return is submitted without the treasury chalan or cheque, the Sales Tax Officer shall, after making such enquiry as he considers necessary, determine the turnover to the best of his judgment, provisionally assess the tax payable for the quarter or month as the case may be and serve upon the dealer a notice in Form XI; and the dealer shall pay the sum demanded within the time and in the manner specified in the notice.

(4) [Deleted.] (5) Upon the expiry of the assessment year the Sales Tax Officer shall, after such enquiry as he may deem necessary, determine the turnover of the assessment year and shall assess the tax thereon."

13. It is clear from Section 7 as also from Rule 41 that under the law full opportunity has been given to an assessee to file a return. In fact the law requires him to file such a return. Section 7 and Rule 41 provide that if no return is filed the Sales Tax Officer may make a provisional best judgment assessment and at the end of the year when the turnover of the whole year has been determined any amount of tax which may be payable under the provisional assessment shall be adjusted in the final assessment.

14. That being the legal position we are unable to see how the principles of natural justice can be applied to this case. It is true that from the remotest days of antiquity it has been an accepted legal principle that no one shall be condemned without being heard or without an opportunity of being heard having been given.

15. The legal maxim is audi alteram partem. But we do not see any application of this rule in the instant case because all that the principles of natural justice require is that a person should have an opportunity of being heard before the matter is decided against him.

16. In the present case Section 7 of the Act and Rule 41 clearly gave the petitioner a full opportunity of filing his return and putting his version before the Sales Tax Officer. It is clear from the averments made in the writ petition itself that the petitioner had been filing returns in the past and was fully aware of his right and his duty to file a return. If he did not avail of this opportunity or defaulted in performing this duty, he cannot complain of any breach of principles of natural justice. What the principles of natural justice could give him he has already got in the shape of Section 7 and Rule 41.

17. There is no principle of natural justice that even though a person has a statutory right and a statutory duty to file a return and he does not do so he should still get another opportunity before he is assessed. We are, therefore, of the opinion that there is no contravention of the principles of natural justice in the present case.

18. Principles of natural justice do not require that a person should be heard at every stage of a proceeding (see R.N. Roy v. Commissioner of Customs A.I.R. 1953 S.C. 348 and Brijlal Misra v. Regional Transport Authority, Kanpur Region, Kanpur 1958 A.L.J. 189). In the present case the petitioner had an opportunity of filing a return under Section 7 and Rule 41. He would also have an opportunity when the turnover of the whole assessment year is determined and the final assessment of tax takes place under Sub-rule (5) of Rule 41. In this view of the matter also the petitioner's complaint of breach of principles of natural justice is not justified.

19. We would also like to point out that the rules of natural justice vary with the varying constitution of statutory bodies and the rules prescribed by the Act under which they function; and the question whether or not any rules of natural justice had been contravened, should be decided not under any preconceived notions, but in the light of the statutory rules and provisions (see New Prakash Transport Co. Ltd. v. New Suwarna Transport Co. Ltd. A.I.R. 1957 S.C. 232, Nagendra Nath Bora and Anr. v. Commissioner, of Hills Division and Appeals, Assam, and Ors. A.I.R. 1958 S.C. 398 and Bharat Barrel and Drum Mfg. Co. v. L.K. Bose and Ors. A.I.R. 1967 S.C. 361). In the last case the learned Judges of the Supreme Court relied upon the following observations of Lord Parmoor in Local Government Board v. Arlidge [1915] A.C. 120:-

Where, however, the question of procedure is raised in a hearing, before some tribunal other than a court of law, there is no obligation to adopt the regular forms of judicial procedure. It is sufficient that the case has been heard in a judicial spirit and in accordance with the principles of substantial justice. In determining whether the principles of substantial justice have been complied with in matters of procedure regard must necessarily be had to the nature of the issue to be determined and the constitution of the Tribunal.

20. We have already pointed out that the law gave the petitioner an opportunity of filing returns and required him to do so. The petitioner will again have an opportunity when action is taken under Sub-rule (5) of Rule 41. The scheme of Section 7 is, as the proviso to Sub-section (3) would show, that it is only in the case of an incorrect or incomplete return that the Sales Tax Officer is required to give a reasonable opportunity for proving the correctness and completeness of any return submitted by a dealer. In the case of a dealer who has not filed a return no such opportunity is provided by the law. In fact the Legislature has not deliberately included the case of a defaulter in the proviso to Section 7(3) of the Act because a dealer who does not avail of the opportunity provided by Section 7(1) of the Act and Rule 41 of the Rules and does not file a return is not entitled to a further opportunity and the Sales Tax Officer is required in the absence of the co-operation of the dealer in the assessment proceedings to exercise his best judgment. The absence of a provision that in case of default also the dealer should be heard before assessment is made on him has its roots in rules of public policy, for one who does not do his duty and fails to file a return must be made to suffer an assessment made on the basis of the best judgment of the assessing authority. From this it follows

that the scheme of the Act and the Rules is that notice would be given only to a dealer who has filed an incorrect or incomplete return and not to a person who has filed no return at all. The scheme of the Act and the Rules, therefore, does not permit any notice being sent to a dealer who has defaulted in the filing of his returns and he cannot be heard to say that notwithstanding his default he is still entitled to a notice and an opportunity. There is no principle of natural justice that can be invoked in support of such an unreasonable proposition.

21. We find some support for the view that we are taking from the unreported decision of Desai, C.J., and Asthana, J., in Miscellaneous Case No. 418 of 1959 (Reference under the U.P. Sales Tax Act). Qamruddin, Boot Material Manufacturer v. Commissioner, Sales Tax, U.P. decided on 15th April, 1963 [1963] 14 S.T.C. 534. In that case the learned Judges while dealing with the question of natural justice observed :

No question of violation of principles of natural justice arises because the provision of Sub-section (3) suggests that no notice is required to be given during the proceeding for the best judgment assessment. Further, a best judgment proceeding becomes necessary only on account of the assessee's own default in submitting a return or in submitting a correct and complete return. Principles of natural justice are fully met when before an assessment order is passed the assessee is given an opportunity to submit a complete and correct return and to prove that the return submitted by him is complete and correct. If he fails to avail himself of this opportunity it is his own fault and he cannot now be heard to say that in spite of his failure no best judgment assessment can be made. It is not necessary to give him any further notice. Whatever he could do if he were given a further notice could and should have been done by him at the proper time.

22. Mr. Brijlal Gupta has placed reliance upon the single bench decision of this Court in Maheshwari Devi Jute Mills v. The State of U.P. and Anr. [1966] 17 S.T.C. 106. In this case Satish Chandra, J., held that before determining the turnover to the best of his judgment, it is incumbent upon the Sales Tax Officer to afford the assessee a reasonable opportunity of being heard in the matter. We would like to point out that in Maheshwari Devi Jute Mills case [1966] 17 S.T.C. 106, the returns had been filed by the assessee, but the best judgment assessment was made because the assessee had not deposited the demanded amount of the tax. The view taken by Satish Chandra, J., is in conflict with the view taken by Desai, C.J., and Asthana, J., in the above-mentioned case. Besides, with great respect to Satish Chandra, J., we are unable to subscribe to the view taken by him in Maheshwari Devi Jute Mills [1966] 17 S.T.C. 106. There was no question of application of the principles of natural justice either in the case before him nor it is before us. We find ourselves unable to agree that a provisional assessment cannot be made under Section 7 read with Rule 41. Section 7 of the Act clearly uses the words "such return or returns of his turnover at such intervals, within such period, in such form and verified in such manner, as may be prescribed". Section 7 of the Act, therefore, clearly envisages a rule prescribing more than one return in a year as also a rule prescribing intervals in a year at which a retrun can be filed. Sub-section (2) of Section 7 also speaks of "any retruns submitted". This also contemplates cases of more than one return filed by an assessee in one year. No doubt, Section 3 of the Act provides that the unit of assessment will be one whole year, but there is nothing against a rule which may require that even though there will be a final assessment only once a year, during that year provisional assessment can be periodically made in order to

provide convenience to the assessee as also to the Government. Rule 41 enshrines that rule and Section 7 contemplates such a rule. In our judgment Section 7-A does not deal with normal assessment at all. It deals only with special cases where the State Government may require any dealer to submit a return of his turnover. Whereas Section 7 and Rule 41 contemplate the filing of returns by a dealer in the normal course as a duty enjoined by the Act, the State Government may, in such cases where they have reasons to believe that action should be taken under Section 7-A, require any dealer to submit a return of his turnover of a portion of the assessment year. This provision is analogous to Sections 175 and 176 of the Indian Income-tax Act, 1961, and Section 25 of the Indian Income-tax Act, 1922. Such a provision had to be made in order to cover cases of dissolution of a partnership carrying on the business or of cases where the State Government may have reasons to believe that the assessee would run away to a foreign country and the turnover would escape assessment if immediate action is not taken.

23. For the reasons mentioned above we find no merits in the second submission of Mr. Brijlal Gupta also.

24. The Code of Civil Procedure and the Act operate in two different fields. Whereas the Code of Civil Procedure regulates the procedure to be followed in a civil court, the Act is a taxing statute. Consequently the circumstance that the Code of Civil Procedure provides for interest only at the rate of 6 per cent., and Section 8 of the. Act provides for greater interest, i.e., at the rate of 18 per cent., cannot lead to the conclusion that the latter provision is discriminatory. The two statutes deal with two different things. While judging the validity of Section 8 of the Act, recourse cannot be had to the provisions of the Code of Civil Procedure. The Code of Civil Procedure deals with interest to be added to the amounts decreed against a judgment-debtor. Section 8 of the Act deals with the realisation of interest from defaulters of sales tax. It was also argued that 18 per cent, interest is usurious. In our judgment, considering the market rate of interest paid and realised by businessmen 18 per cent, per annum cannot be said to be usurious. We overrule the submission of the learned counsel that Section 8 of the Act is hit by Article 14 of the Constitution of India.

25. The petitioner was clearly a defaulter when he had not paid the tax demanded. Even assuming that the realisation was stayed, he would still remain a defaulter. The stay order does not operate to wipe out a liability. Its effect is only to suspend the realisation of the amount for some time. In the present case the complaint of the learned counsel that the subordinate authorities of the department have ignored the orders of the Judge (Revisions) Sales Tax is not correct. The Judge (Revisions) Sales Tax had only suspended the realisation of the tax pending the appeal. The last order passed by the Judge (Revisions) Sales Tax is not one of stay. Therefore, even if the effect of the earlier orders was to stay the realisation of tax, those orders stand superseded by the last order passed by the Judge (Revisions) Sales Tax. We find, therefore, no substance in the last submission of the learned counsel also.

26. For the reasons mentioned above the writ petition is dismissed.