Supreme Court of India
Shiv Sharker Lal Gupta vs The Commissioner Of Income-Tax ... on 14 March, 1967
Equivalent citations: AIR 1968 SC 295
Bench: K Hegde, T Tatachari
JUDGMENT

1. As a preliminary objection, to the effect that this Court has no jurisdiction to entertain this petition, has been taken on behalf of the respondents and we agree with the same,, it is sufficient if we set out the facts material for the purpose of deciding that question. But before doing so, we shall quote the reliefs prayed for in this petition. They read thus:

"The petitioner, therefore, most respectfully prays;

That this Hon'ble Court be pleased ;

(a) to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, direction, or order under Article 226 of the Constitution of India quashing the said search and seizure and ordering and directing the respondents to forthwith return to the petitioner the remaining files, documents and papers seized and carried away by them during the said search and seizure and the sum of Rs. 1,17,000/- annum from the 9th July, 1966, till pay with interest thereon at 6 per cent per ment;

(b) to issue a writ in the nature of certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India, calling for the records of the case and the order passed by the second respondent under section 132(5) and after going into the question of the legality thereof quash and set aside the said order being the order dated the 6th October 1966, passed by the second respondent under section 132(5) of the Income-Tax Act, 1961, and order the respondents to return the said sum with interest as prayed for in sub-para (a) above ;

(c) to issue a writ in nature of prohibition, or any other appropriate writ direction or order under Art. 226 of the Constitution restraining and prohibiting the respondents, their officers, servants and agents from taking any steps or proceedings on the strength of or making use of the files, documents and other papers and money seized during the said search and seizure effected under the provisions of section 132 of the Income-Tax Act, 1961, and under the warrant of authorisation issued thereunder or, from taking any assessment on the petitioner on the basis of the said files, documents and papers and money; and from recovering any tax out of the monies seized ;

(d) to declare that the third respondent has no jurisdiction to hear the application made by the petitioner under section 132(11) of the Income-Tax Act, 1961, or to pass any order thereon with reference to the impugned order made under section 132(5) of the Act ;

(e) to declare section 132, in particular sub-sections (5) and/or (11) and (12) of the Income-Tax Act, 1961, ultra vires of the Constitution under Articles 14, 19(1)(f) and 31, beyond legislative competence of the Union, in excess of the powers, and being colourable pieces of legislation ;

(f) to issue an interim order and injunction in terms of sub-paragraph (c) above pending the hearing and final disposal of this petition ;

(g) to order the respondents to pay to petitioner the costs of this petition; and

(h) to grant such other reliefs as the nature and circumstances of the case may require."

The material facts are these On July 9 and 11, 1966, the petitioner's house and his business premises were searched by the 2nd respondent to this petition (1st Income-Tax Officer, A-III Ward, Bombay) as per the authorisation issued by the 1st respondent (the Commissioner of Income-tax, Bombay City-II, Bombay), under section 123(1) of the Income-tax Act, 1961. During the searches in question, several documents were seized. In addition, the 2nd respondent seized a sum of Rs. 1,17,000/-. It appears, a portion of the amount seized has been appropriated towards the arrears of income-tax due from the petitioner. The petitioner is challenging the validity of those searches and seizures. It may be noted that the searches and the seizures in question have taken place in the city of Bombay. Respondents 1 and 2 reside in that city. Their offices are situate in that city. Even the petitioner is residing in that city. The authorisation issued by the 1st respondent under section 132(1) was issued in that city, therefore, prima facie, the entire cause of action has arisen in the city of Bombay. That being so, the reliefs prayed for in the petition, whether considered under sub-Article (1) of Article 226 or under Sub-Article (2) of Article 226, prima facie, fall outside the jurisdiction of this Court.

2. It was urged on behalf of the petitioner that to this petition the Central Government is a necessary party, and, therefore, this Court has jurisdiction to entertain this petition. If the Central Government is a necessary party to this petition, then this Court would have jurisdiction to entertain this petition. Therefore, we have to see whether the Central Government is a necessary party to this petition. Undoubtedly, the Central Government is not a necessary party to the reliefs prayed for as against respondents 1 and 2. That much was not disputed before us. But what was said on behalf of the petitioner is that the money seized by the 2nd respondent at any rate that portion of the money, that had been appropriated towards the tax due from the petitioner, has now gone to the Consolidated Fund of India. That Fund is under the control of the Government is a necessary party to this petition. We see no force in this contention, it is only that part of the revenue that has been validity realised, that becomes a part of the Consolidated Fund of India. Any and every sum of money seized by an officer of the Central Government, does not become a part and parcel of the Consolidated Fund of India. If the petitioner's contention, that the searches and seizures in question are invalid, is upheld, then the amount seized cannot be considered as having become a part of the Consolidated Fund of India. We are now dealing with the question whether the impugned searches and seizures are valid in law. For deciding that question, the Central Government is not a necessary party.

3. The next contention taken by Mr. Sharma, learned counsel for the petitioner, is that as in this petition the petitioner is challenging the vires of S. 132(5) of the Income-Tax Act, 1961, the Central Government is a necessary party to such a proceeding. We have now to see whether that contention can be upheld. Our attention has not been drawn to any provision of law prescribing that the Central Government must be made a party to a proceeding in which the validity of a Central Act or any

provision therein is called in question. Mr. Sharma urged that the only authority, which is interested in defending the vires of a Central Act, is the Central Government and, therefore, the Central Government is a necessary party to a proceeding in which the vires of that Act or any provision therein, is challenged. If that be the true position of law, it follows, as a necessary corollary, that to every proceeding, in which the validity of a Central Act or a provision therein, is challenged, the Central Government must be made a party. That would mean, if in a divorce proceeding under the Hindu Marriage Act, the validity of a provision in the Hindu Marriage Act is challenged, then the Central Government must be made a party to that proceeding. But that is not the law, as we understand it. At any rate, that is not the practice adopted in Court. It is prescribed in R. 1 of O. 27A of the Civil Procedure Code that "in any suit in which it appears to the Court that any such question as is referred in clause (1) of Article 132 read with Article 147 of the Constitution, is involved, the Court shall not proceed to determine that question until after notice has been given to the Attorney General for India if the question of law concerns the Central Government and to the Advocate-General of the State if the question of law concerns a State Government ." Rule 2 of that Order provides that "the Court may at any stage of the proceedings order that the Central Government or a State Government shall be added as a defendant in any suit involving any such question as is referred to in clause (1) of Article 132 read with Article 147 of the Constitution if the Attorney General for India or the Advocate-General of the State, as the case may be, whether upon receipt of notice under rule 1, or otherwise, applies for such addition and the Court is satisfied that such addition is necessary or desirable for the satisfactory determination of the question of law involved." These provisions make it clear that the Central Government or the State Government as the case may be, is not a necessary party to a proceeding wherein the vires of any provision of law is challenged. Otherwise, Rules 1 and 2 of Order 27A will have no meaning.

4. In support of his contention that the Central Government is a necessary party to this petition, Mr. Sharma invited our attention to the decision of the Allahabad High Court in Swadeshi Cotton Mills Co. Ltd. v Sales Tax Officer, . In paragraph 31 of the judgment. It is observed, thus- "The petitioner has not impleaded the State of Uttar Pradesh as a party to the writ petition. In the absence of the State, the petitioner cannot be permitted to challenge the validity of the U. P. Taxation Laws Amendment Act, 1963."

These observations, undoubtedly, support the contention of Mr. Sharma. But in support of its conclusion, the Court gave no reason. We do not think that those observations correctly lay down the law. On the other hand, we are in agreement with the view expressed by the Rajasthan High Court in Syed Hussain Ali v. The Durgah Committee, Ajmer, . In paragraph 75 of the judgment, Papna, Ag, C. J., speaking for the Court, observed that- "A contention was also raised by the respondents that as the vires of a Central Act were being challenged, the Union of India should have been impleaded as a party. This argument has no force. The petitioners do not claim any relief against the Central Government. Notices of the petition were served on the Attorney General and the Advocate-General so that if the Union Government or the State Government desired to defend the provisions of the Act, it may do so."

5. The next contention, urged by Mr. Sharma in support of his contention is that as against the decision of the 1st respondent, his client has filed an application under section 132(11) of the

Income-Tax Act, 1961, and that application is pending before the Central Board of Direct Taxes, New Delhi if the Central Board of Direct Taxes gives its decision in that application , the order of the 1st respondent would get merged in that decision; and the decision of the Central Board of Direct Taxes can be challenging in this Court. Hence, this Court has jurisdiction to entertain this petition. In this connection he placed reliance on the decision of the Supreme Court in Collector of Customs v. East India Commercial Co. Ltd. Calcutta, . We are unable to agree with Mr. Sharma that the rule laid down in that case bears on the point under consideration. Therein it was laid down that an order of an inferior authority gets itself merged in the order of the appellate authority, when the appellate authority makes an order. In the instant case, the appellate authority has made no order on the petitioner's appeal. Hence, the question of merger of the lower authority's order does not arise for consideration. Further, according to Mr. Sharma, there is no provision for appeal against the authorisation issued by the Commissioner of Income-Tax or against the searches and seizures effected. That being so, the rule of merger of the order of the lower authority does not apply to the facts of the present case.

6. It was urged on behalf of the petitioner that one of the reliefs asked by him is to declare that the 3rd respondent had no jurisdiction to hear the application filed by him under Section 132(11) to that relief the 3rd respondent is a necessary party, that respondent's office is in Delhi; hence this Court has jurisdiction of the 3rd respondent. By that device, he cannot be permitted to impose jurisdiction on this Court. If the does not want the 3rd respondent to consider his application, it is open to him to with draw it. According to the petitioner, the authorisation issued by the 1st respondent is void and, therefore, the searches made and seizures effected are illegal. For getting relief on that basis, he could have approached the High Court of Bombay or the Supreme Court. There was no necessity for him to go through the formality of filing an appeal. But if he wanted to exhaust the remedies under the Income-Tax Act, then he should have waited for the decision of the 3rd respondent before approaching this Court. That being so, the mere fact, that the petitioner has filed an application before the 3rd respondent under Section 132(11), does not confer jurisdiction on this Court to entertain this petition.

7. Yet one other contention taken by Mr. Sharma was that under Section 132A(4)(a), the Central Government is liable to pay interest on the assets retained under sub-section (5) of section 132, and, therefore, the Central Government is a necessary party to the proceeding. According to Mr. Sharma, Section 132(5) of the Act is ultra vires of the Constitution. He is not claiming any relief under Section 132A. The reliefs claimed by him are dehors that provision. In this petition no interest under section 132(5) us claimed. Hence the mere existence of S. 132(5) does not entitle the petitioner to file this application.

8. For the reasons mentioned above, we are of the opinion that this Court has no jurisdiction to entertain this petition. In that view we have not gone into the merits of the case. This petition is, accordingly, dismissed with costs. Advocate's fee Rs. 250/-.

9. Petition dismissed.