Supreme Court of India
State Of Bihar vs Oriental Coal Co. Ltd on 6 October, 1971
Equivalent citations: 1972 AIR 378, 1972 SCR (1) 982
Author: K Hegde
Bench: Hegde, K.S.

PETITIONER:
STATE OF BIHAR

Vs.

RESPONDENT:
ORIENTAL COAL CO. LTD.

DATE OF JUDGMENT06/10/1971

BENCH:
HEGDE, K.S.
BENCH:
HEGDE, K.S.
GROVER, A.N.

CITATION:
1972 AIR 378 1972 SCR (1) 982

ACT:
Civil Court-Jurisdiction-Assessment of sales tax-Assessee's place of business outside State-Payment of sales tax outside State-Assessment set aside by appellate authority-Suit, for refund-Filed outside State-if cause of action or part of cause of action arose outside State.

HEADNOTE:
The registered office of the respondent company was at Calcutta. The respondent company was a registered dealer under the Bihar Sales Tax Act, 1947. it issued cheques to the appellant-State for the amounts due towards sales tax for the years 1950-51, 1951-52 and 1952-53 on a Calcutta Bank and the cheques were encashed there. After paying the tax it appealed and the appellate authority heard the appeals at Calcutta and set aside the orders of assessment. Thereafter, the respondent filed an application the Superintendent of Sales Tax, Dhanbad, in Bihar, for refund of the tax paid by it. Since the request was not complied with, a suit was failed on the original side of the High Court of Calcutta. The respondent urged that a part of the cause of action arose at Calcutta, because, (1) the payments were made at Calcutta under a bona fide mistake of law that it was liable to pay sales tax; (2) its appeals were heard in Calcutta and the orders of the appellate authority were

also received ,it Calcutta; and (3) its registered office was situate in Calcutta and it was ?tic duty of the debtor to find the creditor.

The trial Judge held that the High Court at Calcutta had jurisdiction but on merits came to the conclusion that the respondent was not entitled to any relief. The Division Bench, on appeal, held that the respondent was entitled to the refund.

Allowing the, appeal to this Court,

HELD : (1) In view of Sales-tax Continuance Order, 1950 made by the President in exercise of his powers under the proviso to Art. 286(2) of the Constitution as the article then stood and s. 2 of the Sales Tax Laws Validation Act, 1956, the assessments for the periods from April 1, 1950 to March 31, 1951 and from April 1, 1951 to March 31, 1953 respectively were valid. Therefore the payments were not made under a bona fide mistake of law. 1987 C-H, 988 A-DI

Sundaramier v. State of A.P. [1958] 1 S.C.R, 422, followed.

(2) But the appellate authority had held that the assessments were not valid. 'This order of the appellate authority is not affected by s. 2 of the Sales Tax Laws Validation Act, because that section only validates assessments already made,, 'notwithstanding any judgment, decree or order a court, but not, 'notwithstanding an order made by an authority under the Sales Tax Act'. The validity of the order made by the appellate authority could not also be questioned by the appellant in a civil court in view of s. 23 of the Bihar Sales Tax Act. Therefore, as that assessment,,, made were set aside by the appellate authority, the respondent was entitled to the refund. [988 D-H]

983

(3) But the High Court at Calcutta had no jurisdiction. The fact that the plaintiff based his claim on three alternative grounds, for one of which alone (which however was not a tenable plea) a part of the cause of action can at best be said to have arisen in Calcutta, but not for others, cannot confer jurisdiction on the Calcutta High Court to try the suit on basis of grounds in respect of which no part of the cause of action arose in Calcutta. The cause of action within the contemplation of law is that which relates to a tenable plea. [990 D]

(a) Since it could not be said that the payments were made under any mistaken impression of the, law, the fact that the cheques issued by the respondent were encashed at Calcutta did not afford any cause of action for filing the suit in Calcutta. [989 C]

(b) (i) Assuming that the encashment of the cheques in Calcutta gave rise to a cause of action at Calcutta for a claim based on the ground that the payments were made on mistaken impression of law, that circumstance could not be said to give rise to a cause of action for the suit on the ground that the respondent was entitled to the refund of the

amounts paid because of the order of the appellate authority. [989 D]
(ii) In view of the Bihar Sales Tax Rules, 1949, an application for refund could have been made only to the Commissioner whose office was situate in Bihar. The refund could have been made only in accordance with those rules, and as per the rules, the amount could be refunded to a dealer only through one of the State-Government treasuries. Hence, the entire cause of action in respect of the claim for refund on the basis of the appellate authority's order arose only within the State of Bihar, and no part of that cause of action arose outside Bihar. [990 A-C]
(c) For the same reasons no part of the, cause of action for claiming the amount on the basis of the doctrine that the debtor must seek his creditor could be said to have arisen outside Bihar.. [990 C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 307 of 1970. Appeal from the judgment and decree dated March 10, 1964 of the Calcutta High Court in Appeal from Original Decree No. 136 of 1960.

D. P. Singh, V. J. Francis, S. C. Agrawal and Naravana Nettar, for the appellant.

S. T. Desai, Bhuvanesh Kumari, J. B. Dadachanji, 0. C. Mathur and Ravinder Narain, for the respondent. The Judgment of the Court was delivered by Hegde, J. The , respondent original plaintiff (which will hereinafter be referred to as the plaintiff) is a company having its registered office at Calcutta. It was a registered dealer under the Bihar Sales Tax Act, 1947 (in brief the Act). On or about December 14, 1953, the plaintiff issued a cheque to the defendant-appellant for a sum of Rs. 10,000/- drawn on the Oriental Bank of Commerce Ltd., Calcutta towards the sales tax due from it for the years 1950-51, 1951-52 and 1952-53. That cheque was sent to Calcutta for encashment and encashed at that place. On September 25, 1954, the Assistant Superintendent of Sales-tax passed assessment orders in respect of the years mentioned earlier. According to those orders, the plaintiff was liable to pay sales tax amounting to Rs. 2803/2/- in respect of the year 1950-51; Rs. 3670/5/- for the year 1951-52; Rs. 4623/6/- for the year 1952-53, thus a total of Rs. 11,096/13/-. As seen earlier, it had already paid a sum of Rs. 10,000/- earlier. On July 23, 1955, it paid the balance of Rs. 1096/13/-; this again by a cheque on the bank mentioned earlier. This was also encashed at Calcutta.

Aggrieved by the assessment orders made by the assessing authority, the plaintiff went up in appeal to the Assistant Commissioner of Sales Tax, Chhotanagpur Division, Bihar. Those appeals were heard by the appellate authority at Calcutta. The appellate authority by its order of September 24, 1955 allowed the appeals and set aside the orders of assessment. Before that order was made, this Court had ruled in The Bengal Immunity Co. Ltd. v. The State of Bihar and ors. (1) that until Parliament by law made in exercise of the powers vested in it by clause (2) of Art. 286 provides otherwise, no State can impose or authorise the imposition of any tax on sales or purchases of goods

when such sales or purchases take place in the course of inter- State trade or commerce. on the basis of that conclusion this Court held that the charging section of the Act read with the relevant definitions cannot operate to tax inter- State sales or purchases and as the Parliament has not otherwise provided, the Act, in so far as it purports to tax sales or purchases that take place in the course of inter- State trade or commerce, is unconstitutional, illegal and void. Evidently that decision was brought to the notice of the appellate authority at the hearing of the appeals and that authority purported to act on the basis of that decision. The appeals in question were allowed with these observations :

> "These three appeals are directed against assessment orders for the years 1950-51, 1951- 52 and 1952-53.

The only point pressed before me is that since this is a case of non-resident dealers, there should have been no assessment. The lower Court records show that the, workshop of the plaintiff is situate in Barakar which is outside Bihar. From here he supplies goods to collieries in Bihar. In other words, he is a non-resident (1) [1955] 2 S.C.R. 603.

.lm15 dealer and so, according to the latest decision of Supreme- Court, he cannot be assessed to pay any tax in Bihar. These appeals are accordingly allowed in full."

> Sd/- M. Ahmad, 24-9-1955 Assistant Commissioner of Sales Tax."

It is rather difficult to understand, this order. But before the High Court Counsel for both the parties agreed that the decision referred to in the order is the decision in the Bengal Immunity's case(1).

On October 12, 1955, the plaintiff filed an application before the Superintendent of Sales Tax, Dhanbad for refund of the tax paid by him. This claim was made on the basis of the appellate order. On January 30, 1956, Sales Tax Laws Validation Ordinance (No. 3 of 1956) was issued which was followed up by Sales Tax Laws Validation Act, 1956. The scope of this Act was considered by this Court in M. P. V. Sundararamier & Co. v. The State of Andhra Pradesh and Anr. (2). , Therein this Court by majority held that the Sales Tax Laws Validation Act, 1956 is in-substance one lifting the ban on taxation of inter-State sales and is within the authority conferred on Parliament under Art. 286(2) and further that under that provision it was competent to Parliament to enact a law with retrospective operation.. Therein this Court further held that S. 2 of the Sales Tax Laws Validation Act validates not only levies already collected but also authorised the imposition of tax on sales falling within the explanation which had taken place, within the period specified in s. 2. It was also. held that the Act was not a temporary one though its operation is limited to sales taking place within a specified period. Evidently because of the Sales-tax Laws Validation Ordinance and the Sales Tax Laws Validation Act, the Superintendent of Sales Tax, Dhanbad did not comply with the demands made by the plaintiff Thereafter the plaintiff issued to the defendant a notice on June 7, 1958 calling upon the defendant to refund the amount paid by it With interest. The defendant ignored that demand. Then the plaintiff filed a suit on the original side of the Calcutta High Court claiming a sum of Rs. 13,176/69 P. with interest and costs. In the plaint the plaintiff put forward three different grounds as affording him a cause of action to institute the suit on the original side of the High Court.

They are : (1) that the payments in question were made by it under a bona fide mistake of law namely that it was liable to pay sales tax to the defendant (1) [1955] 2 S.C.R. 603 (2) [1958] S.C.R. 1422. L119SuPCI/72 during the periods in question; hence it his a right to get back that amount and as the cheques in question were encashed at Calcutta, a part of the cause of action arose in Calcutta. (2) its appeals to the Assistant Commissioner of Sales Tax were heard in Calcutta and the order of the appellate authority was received at Calcutta, therefore, a part of the cause of action on that basis also arose in Calcutta and (3) its Registered Office is situate in Calcutta. It is the duty of the debtor to find out the creditor and pay the debt. Hence it was. open to the plaintiff to sue, the defendant in Calcutta. The defendant resisted the plaintiffs claim. It contended (1) that in view of s. 2 of the Sales Tax Laws Validation Act, the impugned levy and collection must be considered as valid, therefore no question of reimbursement arose and (2) the Calcutta High Court had no jurisdiction to entertain the suit as no part of the cause of action arose in Calcutta. The suit was heard by Ray J. (at present a judge of this Court) on the original side-of the High Court. The learned judge came to the, conclusion that a part of the cause of action for the suit did arise in Calcutta for two reasons viz. (1) the cheques issued by the plaintiff were encashed at Calcutta and (2) under the, circumstances of the case the State of Bihar must be held to be the debtor and the plaintiff its creditor; hence it was the duty of the debtor to find out its creditor and pay the debt to the creditor at Calcutta. But on merits, the learned single judge held against the plaintiff., He came to the conclusion that in view of s. 21 of the. Sales Tax Laws Validation Act, the levy and collection must be held to be valid despite the' order of the appellate authority.

Aggrieved, by that decision the plaintiff took up the matter in appeal to a Division Bench of the Calcutta High Court and the appeal was heard by a Division Bench consisting of Bachawat J. (who later became a judge of this Court) and Arun K. Mukherjee J. The learned judges of the Division Bench allowed the appeal in full. On the question whether an part of cause of action arose in Calcutta, differing from the view taken by Ray J. they held that the doctrine that the debtor must find out his creditor and pay the debt did not apply to the facts of this case because of 'the rules trained under the Act under which the refund claimed CA only be made inside Bihar. But all the same the learned judges came to the conclusion that as the cheques I issued by the PI '*'were encashed at Calcutta, part of cause of action must be held to have arisen in Calcutta; therefore,, the Calcutta 'High Court had jurisdiction to entertain the suit. On merits the learned judges came to the conclusion that whatever might 'be the effect of the provisions of the Sales Tax Laws Validation Act, in, view of the appellate authority's order allowing the appeals of the plaintiff, whether that order was right or wrong, the defendant was bound to refund that amount. According to the Division Bench the order of the appellate authority became final as it had not been appealed against nor altered in any manner. It held that the provisions, of the Sales Tax Laws Validation Act did not override the decision of the appellate authority.

Let us first take up the question of the validity of the assessments as original made. This question has to be examined under two different heads namely the validity of the assessment .for the period from April 1, 1950 to March 31, 1951 and the validity of the assessments for the remaining two years. So far .as the assessment for the first period is concerned, the same was not touched by the Sales Tax Laws Validation Act. Section of that Act which validates the assessment already made reads "Notwithstanding any judgment,. decree or order of any Court,' no law of a State imposing, or

authorising the imposition of a tax on the sale or purchase of any goods where such sale or purchase took place in the course of. inter-State trade or commerce during the period between the 1st day of April 1 951 and the 6th day of September 1955 shall be-deemed to be invalid or ever to have been invalid merely by reason of the fact that such sale or purchase took place in the course of inter- State trade or commerce; and all such taxes levied or collected or purporting to have been levied or collected during the aforesaid period shall be deemed always to. have be validly levied or collected in accordance with law"

it is clear that this provision only deals with taxes levied or collected or purporting to have been, levied or collected during the period commencing April 1, 1951 till September 6, 19 Hence this sect-ion does not take in the assessment for the year 1950-51. The question of the validity of that assessment-has, to be separately considered without reference to the Sales Tax, Laws Validation Act. 'It is seen that the levy and collection of tax relating to that period is governed by the Sales Tax Continuance Order 1950 made by the President in exercise of his powers under the provision to cl...(2) of Art...286 of the Constitution of India as that Article stood,then. In view of that order, it cannot be said that the assessment made for-the year,1950- 51' is. violative of Art. 286 ' The validity of 'the above referred order has not been challenged before us. Hence our conclusion is that the assessment in respect of the year 1950-51 was validly made.

Now coming to the validity of the assessments made for the second period, the same is fully covered by the Validating provisions contained in S. 2 of the Sales Tax Laws Validation Act. This section has been given retorspective effect as from April 1, 1951. Therefore we have to proceed on the basis of the fiction that the provisions of the Act relating to levy of tax on inter-State sales have all along been valid provisions. This position is made clear 'by the decision of this Court in Sundararamier's(1) case. From the above discussion it follows that if the assessments made by the assessing authority are examined solely on the basis of law, there is no ground for coming to the conclusion that those assessments are invalid assessments. If they are not invalid assessments then the plaintiffs case that he made the payments in question under a bona fide mistake of law is clearly unsustainable. In law, as interpreted by us, he was bound to make those payments. But the complicating factor is the order of the 'appellate authority. The appellate authority had come to the conclusion that the impugned assessments were not validly made. It is that order that gave the plaintiff right to claim back the amounts paid by it though that order was partly erroneous even when it was made and it became wholly erroneous when the Parliament validated the law with retrospective effect. But, that did not take away the effect of the order. It was an order made by a competent authority, which authority, to repeat the often quoted saying had the right to decide the case before it rightly or wrongly.

Section 2 of the Sales Tax Laws Validation Act, does not take in any order made by any of the authorities under the Sales Tax Act. It merely refers to judgments, decrees or orders of any court. The orders of the appellate authority cannot be considered either as judgments or decrees or orders of the Court. In this view, it is not necessary 'to examine the scope of the remaining part of that section. From what has been stated above, it follows that as the assessments made were set aside by the appellate authority, the plaintiff was entitled to the refund of the amounts paid by him. The validity of the order made by the appellate authority cannot be called into question in a civil court in

view of S. 23 of the Act. It:says "Save as is provided in section 25, no assessment made, and no order passed under this Act or the rules made thereunder by the Commissioner or any person. appointed under section 3 to assist him shall be called (1) (1958) S.C.R. 1422.

into question in any Court, and save as is provided in section 24, no appeal or application for revision or review shall lie against any such assessment or order."

In- view of that section, the State could not have challenged the validity of the order made by the appellate authority before the High Court.

This takes us to the question whether the High Court of Calcutta had territorial jurisdiction to entertain the plaintiff's suit. We have earlier come to the conclusion that under law, the assessments made by the assessing authority are valid assessments and therefore it cannot be said that the payments made by the plaintiff were made under any mistaken impression of the law. Hence in our opinion the fact that the cheques issued by the plaintiff were encashed in Calcutta could not have afforded any cause of action for filing the suit in the Calcutta High Court. Assuming but not deciding that the fact of encashment of cheques in Calcutta gave rise to a cause of action at Calcutta for a claim based on the ground that the payments were made on a mistaken impression of law but that circumstance cannot be said to give rise to a cause of action for the suit on the ground that the plaintiff is entitled to the refund of the amounts paid because of the appellate authority order. In our judgment the High Court failed to keep apart the two questions namely the claim for the return of the amount paid on the basis that it was paid under a mistaken impression of the law and the claim made in pursuance of the order of the appellate authority. The payments made by the plaintiff by cheques have nothing to do with the appellate authority's order. They have not been made on the basis of that order. They were made on the, basis of the original assessments. The only ground on which the High Court has come to the conclusion that the plaintiff is entitled to claim refund of the amount paid is because of the fact that the appellate authority had decided the appeals in its favour.

Now, let us take up the question whether any part of the cause of action for the suit arose outside Bihar in consequence of the order of the appellate authority. As per rule 40 of the Bihar Sales Tax Rules, 1949 made in pursuance of the rule making power conferred under the Act, all applications from a dealer for refund of the excess tax paid have to be made to the Commissioner in form XIII. Rule 41 provides that when the Commissioner is satisfied that refund is due, he shall record an order sanctioning the refund. Rule 42 provides that when an order for refund has been passed under rule 41, the Commissioner shall, if the dealer desires payment in cash issue the refund payment order in form XIV and shall make it over to the dealer for encashment at the government treasury, a copy of the refund order shall also be forwarded to the Treasury Officer concerned. Rule 43 says that if the dealer desires payment by adjustment against any amount payable to him, the Commissioner shall issue a refund adjustment order in form XV accompanied by a challan for adjustment. In view of these rules an application for refund could have been made only before the Commissioner whose office is situate in Bihar and the refund could have been made only in accordance with the rules. As per the rules the amount to be refunded can be paid to a dealer only through one of the government treasuries. Hence the entire cause of action in respect of the claim for refund on the basis of the appellate authority's order arose only within the State of Bihar and no part of that cause of action

arose outside Bihar. For the same reasons no part of the cause of action for claiming the amount in question on the basis of the doctrine that the debtor must seek his creditor and pay the debt due could have arisen outside Bihar, in view of the rules referred to earlier. The fact that the plaintiff based his claim on three alternative grounds, for one of which alone a part of the cause of action can at best be said to have arisen in Calcutta but not for others, cannot confer jurisdiction on the Calcutta High Court to try the suit on the basis of grounds in respect of which no part of the cause of action arose in Calcutta. The cause of action, within the contemplation of law is that which relates to a tenable plea.

For the reasons mentioned above we are unable to agree with the High Court that any part of the cause of action for the suit arose in Calcutta. Hence we set aside the judgment of the Division Bench of the Calcutta High Court and restore that of the single judge but not on the ground that found favour with the learned judge.

In the result the plaintiff's suit stands dismissed but in the circumstances of the case we direct the parties to bear their own costs both in this Court as well as before the first appellate court. The order of the trial court as regards costs stands.

V.P.S. Appeal allowed.