

Arun Kumar Vs. State of Bihar

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Court : Patna

Decided On : Apr-25-2000

Judge : Nagendra Rai and D.P.S. Choudhary, JJ.

Acts : Bihar Finance Act, 1981 - Sections 3, 4, 14, 17(5), 20(1), 25(3) and 33; Bihar Sales Tax Rules, 1983 - Rule 3(1), 3(3) and 3(4); Bihar Excise Act - Sections 22

Appeal No. : Civil Writ Jurisdiction Case No. 5288 of 1999

Appellant : Arun Kumar

Respondent : State of Bihar

Advocate for Def. : V.N. Sinha, Govt. Pleader

Advocate for Pet/Ap. : Ram Balak Mahto, Sr. Adv. and Shivanand Pd. Sinha, Adv.

Disposition : Petition allowed

Prior history : Nagendra Rai, J. 1. The petitioner initially filed the present writ application for restraining the respondents from taking any steps towards realisation of sales tax from the petitioner for the period June 3, 1997 to November 17, 1997 on the sale of country liquor, for commanding respondent No. 2 the Commissioner-cum-Special Secretary, Commercial Taxes, Government of Bihar, Patna, to grant consolidated registration to the petitioner in terms of the provisions

contained in Rule 3(4) of the Bi

Judgement :

Nagendra Rai, J.

1. The petitioner initially filed the present writ application for restraining the respondents from taking any steps towards realisation of sales tax from the petitioner for the period June 3, 1997 to November 17, 1997 on the sale of country liquor, for commanding respondent No. 2 the Commissioner-cum-Special Secretary, Commercial Taxes, Government of Bihar, Patna, to grant consolidated registration to the petitioner in terms of the provisions contained in Rule 3(4) of the Bihar Sales Tax Rules, 1983 (hereinafter referred to as 'the Rules') and restraining the respondents from taking any steps including the proceeding under Section 17(5) of the Bihar Finance Act, 1981 for realisation of the sales tax for the aforesaid period.

2. Subsequently, the petitioner also challenged the order dated July 31, 1999 passed by the Commissioner, Commercial Taxes, Government of Bihar, Patna, rejecting the prayer for consolidated registration which has been communicated by the Joint Commissioner, Commercial Taxes, by letter dated August 3, 1999, The copies of the said order and letter have been annexed as annexures B and 18 respectively.

3. The facts necessary for the disposal of the present application are that the petitioner is engaged in the business of wholesale supply of country liquor and its head office is located in Mohalla Balkishunganj, P.S. Alamganj in the district of Patna which falls within the jurisdiction of City West Circle. He is registered under Section 14 of the Bihar Finance Act, 1981 (hereinafter referred to as 'the Act'). The petitioner is also registered under the Central Sales Tax Act.

4. The State Government by notification dated December 26, 1977 had exempted the country liquor for payment of sales tax under the provisions of the Act.

5. The Board of Revenue on June 3, 1995 in exercise of delegated power by the State Government under Section 22 of the Bihar Excise Act invited tender for wholesale supply of country liquor for a period July 1, 1995 to March 31, 1999. The petitioner submitted tenders for Patna and Muzaffarpur zones. On June 23, 1995, both the zones were allotted to the petitioner. There are four warehouses in the Patna zone, namely, Kumhrar, Barh, Bihta and Masurhi and seven in Muzaffarpur zone, namely, Muzaffarpur, Hajipur, Sitamarhi, Bettiah, Bagaha, Sikarpur and Motihari. As the country liquor was exempted from payment of sales tax, the petitioner was not paying the same. On May 21, 1997, the Government of Bihar, issued a notification in the Bihar Gazette and levied sales tax on country liquor at the rate of 25 per cent. A copy of the said notification has been annexed as annexure 4 to the writ application. The said notification was challenged by wholesalers and retail vendors before this Court. The petitioner had also filed a writ application being C.W.J.C. No. 5298 of 1997 before this Court. Initially a stay order was granted by this Court staying the operation of the said notification. Later on the same was modified on November 17, 1997 vide annexure 7 to the extent that the assessment proceeding would continue but the realisation of tax in pursuance of the notification dated May 21, 1997 shall remain stayed.

6. The petitioner was further directed in the said writ application to deposit the total collection of sales tax in Patna treasury and ultimately the said writ application was withdrawn on December 10, 1998.

7. On October 24, 1998, the petitioner filed an application before the Assistant Commissioner of Commercial Taxes, Patna City West and on October 28, 1998 before the Commissioner of Commercial Taxes for grant of consolidated registration in terms of Rule 3(4) of the Rules. The grounds for consolidated registration stated in the said application were that the petitioner's warehouses and sale centres are in two zones and there are 11 warehouses at 11 different places in this State and as such it is not possible for him to get himself registered at every out-let. This apart in the interest of the department that the assessment should be done at one place, namely, Patna, where the entire account is maintained and it would be difficult as well as not feasible to maintain accounts and staff in all 11 places when the entire sale of liquor and figure of sale is also maintained by the

Excise officials and sale of liquor is under direct control of Excise officials, thus there is no reason for any escape of assessment. The number of out-lets are liable to increase or decrease and therefore either fresh registration would have to be applied at all those places or get cancelled as the case may be.

8. The Assistant Commissioner of Commercial Taxes, Patna City West recommended the application of the petitioner for consolidated registration and sent the same to the Joint Commissioner of Commercial Taxes, Patna, vide annexure 11. The Joint Commissioner forwarded the same to the Commissioner. While the said matter was pending and the petitioner has been depositing the sales tax of all 11 places at Patna in terms of the order passed by this Court, the Commercial Taxes authorities of other places like Muzaffarpur, Hajipur, Danapur, Patna South, Barh, Bettiah, Motihari insisted upon the petitioner to deposit the sales tax in their jurisdiction. They have also taken action under Sections 17(5), 25(3) and 20(1) of the Act. The copies of the said notices have been annexed as annexures 14 series to the writ application.

9. After filing of this writ application, the respondent-Commissioner rejected the application under Rule 3(4) of the Rules on July 31, 1999 which was communicated by the Joint Commissioner of Commercial Taxes, Patna, by letter dated August 3, 1999. Thereafter, an amendment petition was filed praying therein to quash the aforesaid order which has been annexed as annexure 18 to the amendment petition. The order which was passed by the Commissioner was not supplied to the petitioner. However, that has been annexed as annexure B to the supplementary counter-affidavit which states the grounds for rejection of the prayer of the petitioner for consolidated registration. Thus, the petitioner has challenged the orders passed by the Commissioner as communicated to him on the ground that the order is arbitrary and does not disclose any reason.

10. The State and its officers have filed counter-affidavit and supplementary counter-affidavit. Their stand is that Rule 3(1) of the Rules provides that every dealer has to file application for registration separately for each place of business in the circle under whose jurisdiction the place of business is located. Rule 3(4) is an exception to the aforesaid rule which empowers the Commissioner to grant

permission for consolidated registration in one circle for more places of business situated in different circles. The absolute discretion is vested in the Commissioner and it is up to his satisfaction to pass an order after the verification of records for each place of business. The petitioner became liable to pay sales tax with effect from May 21, 1997 and he had applied for permission under Rule 3(4) of the Rules and the same has been considered and rejected. Therefore, the general Rule 3(1) of the Rules will apply in the case of the petitioner. The registration certificate issued to the petitioner by the Patna City West Circle is only for the place of business situate at Mohalla Balkishunganj, P.S. Alamganj, Patna City and not for the place of business situated at other places. The difficulty in running a business at several places, cannot be a ground for not taking registration for each place. It is further stated that before granting permission, it is essential to verify the particulars furnished by the petitioner under whose jurisdiction the place of business situates. Such verification has not been finalised as yet. It is further stated that so far the orders passed under Section 17(5) of the Act, the said order is appealable one under Section 45 of the Act.

11. It is stated in the supplementary counter-affidavit that the application of the petitioner for consolidated registration was put up for consideration before the Commissioner, Commercial Taxes by the Joint Commissioner on July 24, 1999. The Joint Commissioner recommended for rejection of the application of the petitioner for consolidated registration on the basis of the reports submitted by the Joint Commissioner, Administration, Muzaffarpur, the Joint Commissioner, Administration, Patna and Danapur Circle. The Commissioner having considered the aforesaid recommendation rejected the same vide order dated July 31, 1999. A copy of the aforesaid recommendation of the Joint Commissioner, Commercial Taxes and the order of the Commissioner, Commercial Taxes rejecting the prayer of the petitioner for consolidated registration have been annexed as annexures A and B to the supplementary counter-affidavit. In spite of rejection of the application of the petitioner for consolidated registration, the petitioner is not making deposit of sales tax in different circles in which he is liable for registration.

12. The learned counsel for the petitioner submitted that the order passed by the respondent-Commissioner, Commercial Taxes, is arbitrary as it does not disclose

any reason. In the alternative, he submitted that even if the reason given by the Joint Commissioner recommending the rejection of the prayer of the petitioner for consolidated registration in his office note to which the Commissioner agreed, is treated as ground for rejection, the same are not relevant ground at all for rejecting the prayer under Rule 3(4) of the Rules.

13. The learned counsel appearing for the State on the other hand submitted that Rule 3(4) of the Rules vests a discretion in the Commissioner of the Commercial Taxes who has to exercise his discretion taking into consideration all relevant material whether consolidated registration is to be granted or not. He called for report from different circles and after considering the reports, rightly came to the conclusion that this was not a fit case where consolidated registration is to be allotted and this Court in exercise of writ jurisdiction cannot substitute a discretion of the Commissioner, Commercial Taxes, which is based on relevant consideration.

14. Before adverting to consider the aforesaid submissions, it is relevant to make reference to the relevant provisions of the Finance Act and the Rules which has important bearing on the question in the controversy.

15. Section 3 of the Act is a charging section and it provides that the sales tax or purchase tax shall be paid by every dealer and Section 4 contains the provisions with regard to levy of purchase tax. Section 14 of the Act provides that no dealer who is liable to pay tax under Section 3 or Section 4 shall sell or purchase goods unless he has been granted and is in possession of a valid registration certificate. Every dealer has to apply for the grant of registration in the prescribed manner to the prescribed authority in terms of the provisions contained in the aforesaid section.

16. In exercise of power under Section 58 of the Act, the Governor of Bihar has framed the Rules, 1983 and Rule 3 contains the provision with regard to registration of dealer. The relevant provision of the said rule in the present case are Sub-rules (1), (3) and (4) which are reproduced below.

'(1) An application for registration under Sub-section (2) of Section 14 shall be made separately in form I in respect of every place of business at which goods are purchased and sold.

(3) An application for registration shall be filed before the Commercial Taxes Officer in-charge of the sub-circle, if the place of business of the dealer is situated within the local limits of a sub-circle, and the Deputy Commissioner/Assistant Commissioner/Commercial Taxes Officer in-charge of the circle in other cases.

(4) (a) Notwithstanding anything contained in Sub-rule (1) or (3), the Commissioner may by an order in writing, direct or permit that a dealer shall be registered in a circle or sub-circle to be specified by the Commissioner in such order, if the dealer has got more places of business than one situated in different circles or sub-circles in Bihar, or if the dealer having no fixed place of business in Bihar sells goods inside the State either direct or through travelling agents or salesman or otherwise, or if the dealer having one or more place or places of business in Bihar sells goods in circles or sub-circles other than those in which such places of business are situated ; and the provision of the Act and these Rules shall apply accordingly.

(b) Where a permission for registration in a specified circle or sub-circle is given to a dealer having places of business in different circles or sub-circles, an additional copy of the registration certificate in form VI shall be issued to the dealer for each such place of business.

(c) The Commissioner may, on a request made in this behalf, give a hearing to the dealer before passing any order under this sub-rule.

(d) Nothing in such order passed in this sub-rule shall be deemed to divest the taxing authorities or Inspectors of the circle or sub-circle in which the dealer sells goods of their powers and functions conferred by or under Section 33 in respect of such a dealer.'

17. According to Sub-rule (1), for every place of business at which goods are purchased and sold, a separate application for registration has to be filed in the

prescribed form and according to Sub-rule (3) that application shall be filed before the Commercial Taxes Officer in-charge of the sub-circle, if the place of business of the dealer is situated within the local limits of sub-circle, and the Deputy Commissioner/Assistant Commissioner/Commercial Taxes Officer in-charge of the circle in other cases. Sub-rule (4) contains the provision with regard to consolidated registration if the dealer has got more places of business than one situated in different circles or sub-circles in Bihar, or if the dealer having no fixed place of business in Bihar sells goods inside the State either direct or through travelling agents or salesman or otherwise, or if the dealer having one or more place or places of business in Bihar sells goods in circles or sub-circles other than those in which such places of business are situated. Sub-rule (4)(d) provides that grant of consolidated registration shall not divest the taxing authorities or Inspectors of the circle of their powers under Section 33 of the Act with regard to circle or sub-circle in which the dealer sells goods, meaning thereby that if the consolidated registration has been allotted and the dealer has been registered in one circle with regard to business situated in different circle or sub-circle, the taxing authorities or Inspectors in the other circle or sub-circle will exercise the power under Section 33 of the Act regarding production, inspection and seizure of accounts, documents and goods and search of premises.

18. Now the question is as to whether the order passed by the Commissioner is valid or not as urged on behalf of the petitioner.

19. There is no absolute discretion vested in public law. The administrative authority has to act within the limits of law. They have to act reasonably and in good faith and upon lawful and relevant grounds in public interest. Their actions should not suffer from unreasonableness. Their actions should be open fair, honest and completely above board.

20. Rule 3(4) of the Rules has vested power in Commissioner to grant consolidated registration in the eventualities mentioned therein. If the dealer has places for business in different circles and sub-circles then he can be granted consolidated registration in one circle or sub-circle instead of getting registered in each and every circle. The purpose of the Rule, according to me, appears to be

two-folds. Firstly to save the dealer from harassment of getting registered in different circles or sub-circles if he has more places of business in different circles or sub-circles and secondly to save the public time and energy of the authorities under the Act in the sense that they may not have to go to same set of papers/documents for passing orders for registration, assessment, etc., for different places.

21. The authorities have to consider the question of grant or refusal of the consolidated registration after taking into consideration the object of the Rules. The authority cannot act arbitrarily and capriciously and reject the prayer at the sweet will as urged on behalf of counsel for the State. No doubt, the discretion is vested in the authority, but as stated this discretion is to exercise on relevant consideration in reasonable manner with a view to see that the object of the Rules is not frustrated. Whether in a particular case, the consolidated registration is to be granted or not, is to be decided by the authority on the basis of facts of each case.

22. At this stage, I would like to clarify that grant of consolidated registration does not mean that the taxing authorities or the Inspectors are divested of their power conferred under Section 33 of the Act which empowers them to direct the dealer to produce accounts, registers or documents or to furnish any information relating to the financial transaction of the dealer, etc. They can still discharge their functions and duties as mentioned in Section 33 of the Act and on the basis of which the action may be taken under the Act as provided therein.

23. The order passed by the Commissioner, Commercial Taxes which has been annexed as annexure B does not disclose any reason for rejecting the application of the petitioner. The stand of the State that the Commissioner has agreed with the recommendation of the Joint Commissioner, Commercial Taxes, and as such it was not necessary to assign any reason. I am unable to agree with the aforesaid submission. The law is well-settled that if an authority is vested to exercise a power then that power is to be exercised by that authority independently after application of its mind to the relevant consideration. This apart when an order is passed by the administrative authority affecting the person it should indicate reason though not elaborately for arriving at conclusion, In the present case, the

Commissioner has not assigned any reason to indicate that he has exercised his own discretion in terms of the rule at arriving at the conclusion and as such the order passed by the Commissioner, in my view, is arbitrary. As I am inclined to allow this application on the first ground itself, it is not necessary to go into the second question.

24. It appears that the best judgment assessments have been made against the petitioner under Section 17(5) of the Act. Admittedly, the petitioner has not been granted consolidated registration and as such for the period he has not been granted consolidated registration the general rule as contained under Rule 3(1) has to be observed and the authorities have to proceed under the Act and take appropriate action in case of nonregistration in different circles or sub-circles. Only on the ground that matter regarding consolidated registration is pending, the assessment proceeding or the other action permissible under the Act cannot be stopped.

25. In the result, the order of the Commissioner, as contained in annexure B and the consequential order as contained in annexure 18 are quashed and the matter is remitted to the Commissioner, Commercial Taxes, respondent No, 2 for consideration of the matter in the light of the observations made above.

D.P.S. Choudhary, J.

26. I agree.

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