

Tilak Raj Vs. State of J. and K. and ors.

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Court : Jammu and Kashmir

Decided On : Jun-12-1981

Reported in : [1982]49STC220(NULL)

Judge : I.K. Kotwal, J.

Appeal No. : Writ Petition No. 302 of 1981

Appellant : Tilak Raj

Respondent : State of J. and K. and ors.

Advocate for Def. : S. Dutt, Adv. for respondents 2 and 3

Advocate for Pet/Ap. : J.M. Gupta and; M.M. Gupta, Advs.

Disposition : Petition dismissed

Judgement :

I.K. Kotwal, J.

1. The petitioner, who is an assessee and registered with Sales Tax Circle B, Jammu, has challenged the order of the second respondent, namely, Commissioner, Sales Tax, dated 10th February, 1981, transferring his case to one Mr. T. P. Singh, the then Excise and Taxation Officer, Jammu. According to him, the Commissioner had no power to transfer his case without issuing to him a prior

notice of his intention to do so, and without hearing him on the point. He has also assailed the order on the ground that it is not a speaking one, in addition to the ground that even if he could have passed any such order of transfer he could have transferred the petitioner's case for a particular year only. Since the order is omnibus in nature and does not specifically speak as to for which year the case has been transferred, it is clearly in contravention of Section 13(1) of the Jammu and Kashmir General Sales Tax Act, hereinafter to be referred to as the Act, and requires to be set aside. In the same strain he has also challenged the constitutional validity of Section 13(1) of the Act, and in support of his contention relied upon two Supreme Court decisions, namely, *Bidi Supply Co. v. Union of India* : [1956]29ITR717(SC) and *Pannalal Binjraj v. Union of India* : [1957]31ITR565(SC) .

2. Notice was issued to the respondents to show cause as to why the petition be not admitted. The State has not chosen to come forward and oppose the admission. But, respondents 2 and 3 have vehemently opposed it and filed their objections in writing as well.

3. I have heard the learned counsel for the parties at length.

4. Section 13(1) of the Act which empowers the Commissioner to transfer a case pending before any authority under his control, reads as under :

(1) The Commissioner may withdraw any case pending at any stage before any authority under his control and by a written order refer it for disposal to any other authority of the same rank and the authority to whom a case has been so referred shall have the same powers to deal with it as if it were a case within his jurisdiction.

5. The explanation appended to this section defining the word 'case' occurring in it reads as under :

Explanation.-In this section the word 'case' in relation to any person, whose name is specified in any order means all proceedings under this Act in respect of any year, which may be pending on the date of such order or which may be completed

on or before such date and includes also all proceedings under this Act which may be commenced after the date of such order in respect of any year.' Section 13(1) does not require a notice or a hearing being given to an assessee before transferring his case to any other authority. An order of transfer contemplated by Section 13(1) is purely administrative in character and does not entail any civil consequences. There is no provision in the Act which creates a right in an assessee to be assessed by a particular authority, which may be said to have been taken away by not giving him a prior notice or an opportunity of being heard before making an order for transfer of his case. Mr. Gupta, the learned counsel for the petitioner, however, relies upon Rule 3(b) of the Rules made under the Act. . But this rule merely defines the jurisdiction of the Assessing Authority and does not say further that an assessee shall have a right to be assessed by him alone. It is, therefore, impossible to read in

6. Section 13(1) a right in the assessee to have a notice of the intended order, or a right of hearing in opposition thereto, either on the plain language of the section, or even by implication on the ground of the principles of natural justice. The principles of natural justice as held by their Lordships of the Supreme Court in *Gullapalli Nageswara Rao v. Andhra Pradesh State Road Transport Corporation* : AIR 1959 SC308 :

The rules of natural justice vary with the varying constitutions 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 have been contravened should be decided not by any pre-conceived notions, but in the light of the statutory rules and provisions.

7. These observations make it abundantly clear that a party does not have a right to be heard in each and every case on the principles of natural justice.

8. The decisions relied upon by Mr. Gupta in support of his contentions do not support him at all. In the first mentioned case, namely, *Bidi Supply Co. v. Union of India* : [1956]29ITR717(SC) , for instance, the question as to whether or not Section 6(7A) of the Income-tax Act, as amended by Act No. 40 of 1940, was violative of Article 14 of the Constitution, inasmuch as it gave unbridled powers of

transfer to the Commissioner of Income-tax and the Central Board of Revenue, even though raised, was never decided. The writ was issued merely on the ground that the order of transfer did not specify the year for which the case was transferred to a different authority. Section 5(7A) of the Income-tax Act is in pari materia with Section 13(1) of the Act. It is true that the court did make some observations pointing out to the propriety of giving a prior notice to the assessee, nevertheless it did not hold that the section in its present form was constitutionally invalid. At that time the law as it stood defined a case to mean a case for a particular year only. In the present case the definition of the word 'case' has been much widened by the explanation appended to Section 13(1) of the Act, which includes a case which may arise in future as well. The ratio of this Judgment, therefore, cannot apply to the present case.

9. Pursuant to this Judgment the Parliament added an explanation to Section 5(7A) of the Income-tax Act, 1922, enlarging the definition of the word 'case' occurring in it. This explanation reads as under:

Explanation.-In this Sub-section 'case' in relation to any person whose name is specified in the order of transfer means all proceedings under this Act in respect of any year which may be pending on the date of the transfer and includes all proceedings under this Act which may be commenced after the date of the transfer in respect of any year.

10. This explanation, as appears from its plain language, is in pari materia with the explanation added to Section 13(1) of the Act. A contention was raised on behalf of the assessee in the other case, viz., *Pannalal 'Binjraj v. Union of India* : [1957]31ITR565(SC) , that the explanation did not bring any substantial change in the nature of Section 5(7A) of the Income-tax Act, 1922, and that its constitutional validity was still open to challenge, as it gave unfettered powers to the authorities mentioned therein to order transfer of cases, without laying down any guidelines therefor. This contention was negatived by their Lordships, as, in their opinion, Section 5(7A) was only enacted for administrative convenience and in the absence of any right to prior notice or prior hearing guaranteed to the assessee under the provisions of the Income-tax Act itself, it could not be said that Section 5(7A)

suffered from any vice of unconstitutionality. They, therefore, upheld its constitutional validity, but at the same time made certain observations, purely advisory in character, that the legislature would have been better advised, had it conferred a right on the assessee of being heard prior to passing any order of transfer under Section 5(7A), as that would help the court in judging the bona fides of the order. It was pursuant to these observations that such a provision was kept in the Indian Income-tax Act of 1961.

11. It is thus obvious that Section 13(1) of the Act cannot be said to be violative of Article 14 of the Constitution, even though it may be only appropriate to observe that the legislature would be well-advised in case a provision corresponding to Section 127 of the Indian Income-tax Act, 1961, is added to the Jammu and Kashmir General Sales Tax Act. But unless such a provision is there, no fault can be found with the order impugned in the writ petition.

12. It is true that Mr. T.P. Singh did not have the power of an Assessing Authority on the date the impugned order came to be passed, but this defect was removed and SRO No. 167 was issued by the Government conferring such powers on all the Excise and Taxation Officers of the sales tax department. The SRO reads as under :

SRO-167.-In exercise of the powers conferred by Section 3 read with Clause (b) of Section 2 of the Jammu and Kashmir General Sales Tax Act, 1992 (Act No. XX of 1962), the Government hereby appoint the Excise and Taxation Officers of the Sales Tax Department to exercise the powers and perform the functions of Assessing Authorities and assist the Commissioner for carrying out purposes of the said Act.

By order of the Government of Jammu and Kashmir.

13. It was then argued, though much faintly, that the impugned order was actuated by malice. No foundation for malice has been laid in the petition, and it appears, that this plea has been taken for the sake of plea only.

14. Section 13(1) of the Act does not enjoin upon the transferring authority to record reasons for transferring a case. It is, therefore, inconsequential whether the order of transfer is a speaking or a non-speaking one.

15. In the result, the petition is dismissed in limine.

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