**National Motors and anr. Vs. the Joint Excise and Taxation Commissioner**

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**Court** : Punjab and Haryana

**Decided On :** Apr-27-1965

**Reported in** : [1965]16STC590(P& H)

**Judge** : Inder Dev Dua and; R.S. Narula, JJ.

**Appeal No.** : Civil Writ No. 2399 of 1964

**Appellant** : National Motors and anr.

**Respondent** : The Joint Excise and Taxation Commissioner

**Advocate for Def.** : D.S. Nehra, Adv. for;Adv.-General

**Advocate for Pet/Ap.** : Bhagirath Dass and; B.K. Jhingan, Advs.

**Disposition** : Petition dismissed

**Judgement** :

ORDER

Inder Dev Dua and R.S. Narula, JJ.

1. These two writ petitions (Civil Writs No. 2399 of 1964 and No. 2396 of 1964) raise identical questions and are, therefore, being disposed of by one order. As a matter of fact arguments have been addressed only in Civil Writ No. 2399 of 1964, which was admitted on 10th of November, 1964, to a Division Bench, and Civil Writ No. 2396 of 1964, also admitted on the same day, was ordered to be heard along with the former.

2. 'National Motors', which is the petitioner in both these cases, is, according to the writ petitions, a partnership concern with its head-office at Mukat House, The Mall, Amritsar, having two branches, one at Jullundur and the other at Patiala. This firm was registered as a 'dealer' under the Punjab General Sales Tax Act, 1948 (Punjab Act No. 46 of 1948), hereinafter to be referred to as the Act. The liability of this firm to pay tax started with effect from 5th August, 1959. The returns required to be filed by this firm were quarterly returns and for the year 1959-60, three quarterly returns were filed. A sum of Rs. 1,18,283-20P. was also paid in accordance with those returns. The assessment, according to the averments in the writ petitions, was finalised on 10th April, 1962, by the Assessing Authority, Amritsar, determining a sum of Rs. 1,38,287-84P. to be the tax. The balance was also duly paid off.

3. For the year 1961-62, no returns were filed, with the result that a notice in Form S.T. XIV was issued on 3rd September, 1963, requiring the petitioner to explain the

failure to file the quarterly returns. On 25th October, 1963, four quarterly returns ending respectively on 30th June, 1961, 30th September, 1961, 31st December, 1961, and 31st March, 1962, were filed and by an order dated nth November, 1963, the Assessing Authority assessed the petitioner to a sales tax amounting to Rs. 1,14,055-40P. and a penalty of Rs. 5,000 under Section 10(6) of the Act for not filing the returns in time and also for not paying the tax in accordance with law at the time due. This amount, according to the writ petition, was paid. Against the order imposing the penalty of Rs. 5,000, however, the petitioner went up in revision under Section 21(1) of the Act on 28th December, 1963, before the Excise and Taxation Commissioner, Punjab, at Patiala. In 1960, however, the question of the formation of the firm Messrs National Motors and the manner in which the agency for the sale of Fiat cars and Fargo trucks was obtained by them figured prominently in the memorandum submitted by Shri Prabodh Chandra to the Congress High Command and those allegations were repeated in the charges which formed the subject of enquiry by Shri S.R. Das in terms of the notification issued by the Home Ministry, Government of India, on 1st November, 1963. The report relating to Messrs National Motors is contained in Chapter 11 of the Report of the Das Commission, which was published on nth June, 1964. The findings, as reproduced in the writ petition, are as under--

That S. Surinder Singh Kairon has taken the fullest advantage of his position as the son of the Chief Minister and has freely exploited the influence and power of his father in securing the agency of the Premier Automobiles Limited for National Motors and in developing its business and increasing its sales in diverse ways and in delaying the filing of the sales tax return or making of the voluntary deposits without any effective step being taken against him and in getting away with a paltry penalty wholly inadequate to his lapses.

4. On 6th July, 1964, the District Excise and Taxation Officer, Amritsar, moved the Excise and Taxation Commissioner, Punjab, for enhancing the penalty which had been imposed originally by the Assessing Authority by his order dated nth November, 1963, after referring to the Report of the Das Commission. On 19th August, 1964, a memorandum was sent by the respondent (the Joint Excise and Taxation Commissioner, Patiala) under Section 21(1) of the Act for the purposes of satisfying himself as to the legality and propriety of the proceedings for the year 1961-62, vide orders of the Assessing Authority, dated nth November, 1963. It was mentioned in that memorandum that the legality and propriety of these proceedings including imposition of penalty for the assessment year 1961-62 will also be considered and that an opportunity was being granted for hearing in respect of the petitioner's rights. The date fixed for the said notice was 31st August, 1964, but it was adjourned to 29th September, 1964, because the assessment file was not available in the respondent's office, On 29th September, 1964, the petitioner filed a written statement pleading that even the original order imposing penalty under Section 10(6) was illegal, because no opportunity had been granted prior to the imposition of the penalty by the Assessing Authority on nth November, 1963, and that the notice in question was the outcome of political vendetta arising out of the findings of the Das Commission. The petitioner at that time was not aware that the District Excise and Taxation Officer had moved the Excise and Taxation Commissioner on 6th July, 1964, for enhancing the penalty.

5. The revision petition filed by the petitioner against the penalty (Revision Petition No. 667 of 10,63-64) as also the proceedings in pursuance of the above notice were heard together on 29th September, 1964, and decision given on 2nd October, 1964,

whereby the penalty was enhanced from Rs. 5,000 to Rs. 1,14,055-40P. It is this order which is challenged in the present writ proceedings. In the application it is averred that the Assessing Authority did not give any opportunity of showing cause why the penalty under Section 10(6) be not imposed prior to its imposition. While making the assessment the Assessing Authority also imposed the penalty without adverting to this aspect and, perhaps, labouring under the impression that the petitioner was conscious of the fact that the assessee had not filed the returns and had also not deposited the amount in accordance with Section 10(4) of the Act. This, according to the averments, is not enough under Section 10(6) of the Act. Under Section 21 of the Act, a period of 180 days is prescribed for making an application for revision. In the present case, the District Excise and Taxation Officer had moved the application on 6th July, 1964, which was clearly beyond 180 days from nth November, 1963, the date of the order. The respondent could not take any action on this application. The Das Commission Report appeared on nth June, 1964, and it was thereafter that the District Excise and Taxation Officer moved the Excise and Taxation Commissioner for taking steps to enhance the penalty. The findings contained in the Report of the Das Commission are wholly irrelevant and inadmissible and could not form the basis of a notice under Section 21(1). The petitioner has been singled out for imposing such a heavy penalty, the amount of which has wiped off the entire profits of the undertaking and, in addition, has taken away its capital assets. The enhancement of the penalty to twenty times the original imposition is unparalleled, according to the averments. The Assessing Authority had on nth November, 1963, exercised a proper discretion and the reasons for interfering with it are not sustainable, because they are mala fide and are inspired by the political atmosphere created against the petitioner. There has been a systematic propaganda against Shri Pratap Singh Kairon, ex-Chief Minister of Punjab, as well as his sons, their associates, their relatives and all the partners. The findings of the Das Commission that Shri Surinder Singh Kairon was at least a partner in National Motors have been instrumental not only in the notice under Section 21(1) having been issued but also in enhancing the penalty in question. The Das Commission has also observed that Shri Surinder Singh Kairon had developed the business in delaying the filing of sales tax returns and in getting away with a paltry penalty, wholly inadequate to his lapses. This, so proceeds the grievance, is the background for the imposition of the enhanced penalty. While enhancing the penalty, the Joint Excise and Taxation Commissioner has not come to the conclusion that the Assessing Authority was moved by any extraneous consideration in imposing the penalty, with the result that the interference was not called for. On the facts and circumstances of this case, it is averred, victimisation is quite clear and the petitioner has been made a scapegoat of political propaganda let loose in recent months by those who disagreed with the ex-Chief Minister. Shri Daljit Singh, the previous Excise and Taxation Commissioner had sworn an affidavit before the Das Commission that there were about 1,500 cases in Amritsar, which were pending, and that the petitioner's case could not be dealt with earlier. In view of this affidavit, so proceeds the writ petition, it was no fault of the petitioner and to impose a heavy penalty for not filing the returns in time is not justified. The respondent has, according to the allegation, abused his power. The notice issued by the respondent though described as suo motu action, in fact, was issued on the application of the District Excise and Taxation Officer and, therefore, barred by time.

6. This petition came up for hearing before a Bench of this Court on 10th November, 1964, and was admitted to a Division Bench for hearing at a very early date; stay was refused.

7. In the return, it has been asserted that for the year 1959-60' neither the returns in question were filed nor was the tax paid by the petitioner within the prescribed period permissible under the law. It has been denied that the District Excise and Taxation Officer,

8. Amritsar, filed any regular revision petition: he had merely brought the alleged impropriety involved in the order, dated nth November, 1963, of the Assessing Authority to the notice of the Excise and Taxation Commissioner requesting for suo motu action, with the result that no question of limitation arose in the case. It has also been asserted that on 2nd October, 1964, a reasonable and sufficient opportunity had been given to the petitioner by the Assessing Authority before the imposition of penalty. The allegation of mala fides has been emphatically denied. The petitioner, according to the express averments in the return, had deliberately ignored the provisions of law and did not file the quarterly returns nor was voluntary deposit of tax made by due dates.

9. Before us, to begin with, a request was made to adjourn this case, because in the meanwhile the petitioner had gone up on revision against the impugned order and it was suggested that we should await the decision of the revision. We, however, expressed the view that in case a revision had been filed in accordance with the Sales Tax Act, it would then be open to the petitioner to withdraw these petitions. The counsel, however, did not feel inclined to withdraw the petitions and instead desired to address arguments on merits, because, according to him, the writ petitions possessed merit and were likely to succeed.

10. The learned Counsel addressed us in support of the challenge to the impugned order in a very forceful manner on four points. In the first instance, according to him, the period of limitation for revision under Section 21 having expired, it was not open to the respondent to enhance the penalty on revision initiated on the basis of the letter of the District Excise and Taxation Officer. In this connection, reference was made to Rules 57 to 62 of the Punjab General Sales Tax Rules on the subject of appeals and revisions. Rules 58 and 59 provide for the manner for preferring appeals and vide Rule 62, these rules mutatis mutandis apply to revisions. The next challenge was based on the submission that Das Commission's report could not be looked at in this case for the purpose of enhancing the penalty. The third point emphasised the submission that each year is to be treated separately for the purpose of assessment and penalty and, therefore, the petitioner's conduct during the period of other years is really irrelevant and it is materially irregular to take this into account for determining the amount of penalty in a different year. Lastly, it was urged with vehemence that no opportunity had been given to the petitioner in the matter of imposition of penalty and Section 10(6) was not complied with. The learned counsel cited Shri Ram Krishna Dalmia v. Shri Justice Tendolkar A.I.R. 1958 S.C. 538.

11. As against these contentions, the respondent's learned Advocate pointed out that the letter of the District Excise and Taxation Officer could by no means be treated as a revision; it was merely intended to draw the attention of the Excise and Taxation Commissioner to the perversity of the order imposing wholly inadequate amount of fine, in a glaring case of deliberate violation of tax provisions by an influential party, for which there was not, and could not be, even a pretext of justification. In answer to the pointed question as to why no action had been taken earlier by the responsible officers in the taxation department for these glaring and deliberate omissions, the learned Counsel replied that realising that the then Chief Minister was the father of

the persons in default, the officers could not muster courage to take any drastic action. Comparatively nominal fine was imposed to keep up appearances and drastic action was ultimately initiated only when the officers felt that the influence of the then Chief Minister was on the decline and had started waning and there was relatively lesser risk to these officers' tenure of service. The counsel also threw a veiled suggestion that the possibility of the notice having been inspired at that psychological moment by the petitioner himself or by the then Chief Minister could also not be ruled out. On the question whether Rs. 5,000 constituted an adequate amount of penalty, according to the respondent, every evasion and even illegitimate delay in payment of taxes due deprives a welfare State of its life-blood, which may necessitate increased burden on honest tax-paying citizen, and if this evasion or delay proceeds from a quarter close to those, whose duty it is to administer the State and enforce assessment and collection of revenue with a high sense of impartiality and integrity, then this lapse must be considered to be most serious, in that, it would have a tendency to contaminate the purity of the practical source of administration. In so far as Das Commission's report is concerned, according to the counsel, it was taken into account as pointing out the inadequacy of the penalty and in actual fact the officer enhancing the penalty himself came to his own conclusion on the merits. Merely because the two conclusions tally would not vitiate the learned Commissioner's order. The general conduct of the assessee can, according to the counsel, be legitimately taken into account and it may be erroneous and improper to consider it as irrelevant. The petitioner's conduct for the present purpose cannot legitimately and lawfully be divided as if into yearly conduct rigidly separated from each other year. Notice on the question of imposing penalty was, according to Shri Nehra, clearly given by the learned Commissioner. Above all, it was urged that a revision having, since the filing of the writ petitions, been preferred by the petitioners, this Court in its discretion should not go into the merits of the grievances on writ side. The counsel cited Khem Chand Vijay Kumar v. J.S. Malhotra A.I.R. 1963 Punj. 383, where it was observed that in the absence of serious and self-evident error of law manifestly apparent on the record showing patent illegality, the assessee should not on unsubstantial grounds be permitted to by-pass and ignore proper procedure under the statute for redress of grievances.

12. In our view, it is the settled practice of this Court supported by various decisions of the Supreme Court that there should be exceptional circumstances to warrant the exercise of the jurisdiction of this Court under Article 226 of the Constitution. It is not the object of this article to convert the High Court into an original or appellate or revisional Assessing Authority, whenever an assessee may feel inclined to attack an order of imposition of penalty on account of his default. There must be, as a general rule, something going to the root of the jurisdiction of the Sales Tax Authority when passing the impugned order or something showing that the assessee would be subjected to grave and palpable injustice if obliged to seek relief from the hierarchy as provided by the usual statutory machinery. The Legislature has in its wisdom provided the machinery for aggrieved parties to ventilate their grievances and secure relief. It would be a healthy practice not to encourage the assessees at their mere option to rush to this Court on the slightest pretext when specific machinery exists elsewhere for relief.

13. We would, therefore, without expressing any considered opinion on the points urged decline to go into the controversy on writ side. We are not unmindful of the fact that these writ petitions were initially admitted to a Division Bench. But the points raised are not such as can or should appropriately be determined on writ side and

more so when since the admission of the writ petitions, the petitioner has deliberately and voluntarily preferred a revision in accordance with law. It would not be a sound exercise of discretion to go into the points under Article 226 of the Constitution.

14. There is one aspect which remains to be noticed. I am in full agreement with the petitioner's counsel that no citizen in this Republic, however objectionable or blameworthy his conduct may be reputed to be according to the accepted social or moral standard, can be treated prejudicially, for that reason alone, unless, of course, the law so provides. The equal protection of laws and equality before law is a golden thread which generally runs throughout the entire fabric of our set-up. State and its Tribunals must, therefore, proceed strictly in accordance with law in discharging their duties and functions, uninfluenced by any irrelevant or collateral consideration. In matters requiring calm, balanced, judicial approach, the scales must be held even; neither prejudice nor sympathy, the two off-the-record witnesses have any place in such proceedings which are guided by law alone. The judicial gaze or vision has to be steadfast seeing everything relevant, unobstructed by the haze of fear of favour. I have not the least doubt that the present controversy would be determined by the departmental Tribunal on a consideration of all the attending circumstances properly and impartially weighing the petitioner's explanation for omitting to submit the returns and to deposit the amount of tax due to the State in accordance with law, keeping in view the long range objective of taxing statutes and the recognised urgency of effectively checking their breaches and evasions. The distinction must also be drawn between an innocent excusable omission and a deliberate, planned and gainful breach of obligation, inspired by an air or attitude of superiority over the law, treating it with disrespect or scorn. In this context, it is also relevant to observe that administrative officers and civil servants in this Republic are assumed to be men of conscience and intellectual discipline, capable of discharging their duties fairly on the basis of relevant considerations uninfluenced by any personal or collateral factor of fear or favour, which conflicts with the impartiality of their solemn official duty or cuts across the rule of law. They cannot under the Republican law and traditions be hired and fired at the arbitrary whim or caprice of any authority, there being no 'boss' to dismiss them in a fit of temper, and their security of tenure being reasonably guaranteed by law. For such an officer to allow his official conduct to be influenced and diverted from the right path by collateral considerations would, at the lowest, reflect an infirmity of character, unworthy of the honoured and responsible place given to the administrative services in our set-up, and a lamentable misunderstanding of his constitutional obligation to the State and the people. It must be pointed out that it is on the impartial objectivity and aloofness of the administrator from personal power-politics, that the success of our constitutional setup, and consequently of our national progress, largely depends. Infirmity like the above displayed by the services is thus likely to have far-reaching reaction on the entire set-up affecting even the citizens' confidence in the integrity of the administration, and patriotism of the administrator. An infirm conduct of a responsible and experienced administrator can, however, constitute little justification by itself for the law not taking its course, if otherwise the dictates of impartial justice so warrant, of course, subject to considerations of resultant prejudice caused thereby to an innocent citizen.

15. In the final result, these petitions fail and are dismissed with costs.

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