

Kashiram Agarwala

Vs

Union of India and Others

Civil Appeal No. 22 of 1964 and Civil Appeal No. 261 of 1964

(CJI P. B. Gajendragadkar, K. N. Wanchoo, M. Hidayatullah, J. R. Kudholkr, Raghubar Dayal JJ)

06.10.1964

JUDGMENT

GAJENDRAGADKAR, C.J.

These two appeals arise out of two writ petitions filed by the appellant, Kashiram Agarwala, in the Punjab High Court, Circuit Bench, at Delhi challenging the validity of two orders passed by the Central Board of Revenue (hereinafter called 'the Board') under s. 127(1) of the Income-Tax Act, 1961 (43 of 1961) (hereinafter called 'the Act'). These two orders have been passed on the 18th January, 1963, and they have directed that the income-tax proceedings then pending against the appellant should be transferred from the Income-Tax Officers 'D' Ward District IV(I), and 'F' Ward District IV(2), Calcutta, respectively to the Income-Tax Officer 'E' Ward Companies District III, Calcutta. The petitioner alleged that these two orders were invalid, because before exercising its power under section 127(1), the Board had failed to comply with a mandatory requirement prescribed by the said provision. These petitions were dismissed summarily by the High Court, and it is against these orders of summary rejection that the appellant has come to this court by special leave.

Section 127(1) of the Act reads thus :

"The Commissioner may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, after recording his reasons for doing so, transfer any case from one Income Tax Officer subordinate to him to another also subordinate to him, and the Board may similarly transfer any case from one Income-tax Officer to another :

Provided that nothing in this sub-section shall be deemed to require any such opportunity to be given where the transfer is from one Income-tax Officer to another whose offices are situate in the same city, locality or place."

Sub-section (2) lays down that the transfer which is authorised to be made by sub-section (1), can be made at any stage of the proceedings, and shall not render necessary the re-issue of any notice already issued by the Income-tax Officer from whom the case is transferred. There is an Explanation to s. 127 which it is unnecessary to mention.

It is common ground that the impugned orders do not record any reasons why the Board thought it necessary to transfer the cases pending against the appellant from one Income-tax Officer to the

other; and the argument is that s.127(1) imposes an obligation on the authority exercising its power under the said section to record its reasons for directing the transfer of a from one Income-tax Officer to another. It will be noticed that section 127(1) requires that where the power conferred by it is intended to be exercised, an opportunity should be given to the assessee wherever it is possible to do so, and reasons have to be recorded for making the order of transfer. The requirement that opportunity should be given, cannot be said to be obligatory, because it has been left to the discretion of the authority to consider whether it is possible to give such an opportunity to the assessee. It is, of course, true that in coming to the conclusion that it is not possible to give the required opportunity to the assessee, the authority must act reasonably and bona fide; but if the authority comes to the conclusion that it is not possible to give a reasonable opportunity to the assessee, that can be dispensed with. That, however, is not so with regard to the requirement that reasons must be recorded for making the transfer. So far as section 127(1) is concerned, there is no dispute about this position.

The question which calls for our decision in the present appeals is : What is the effect of the proviso to section 127(1) ? The proviso lays down that nothing in sub-section (1) shall be deemed to require any such opportunity to be given in a case like the present. It is plain that the transfer in the present case is from one Income-tax Officer to another whose offices are situate in the same locality; and so, the point to consider is, what is the effect of this proviso ? It is urged by Mr. Jain that the effect of the proviso is that the requirement as to the giving of a reasonable opportunity alone is dispensed with in respect of cases falling under the proviso, but not the requirement as to the recording of reasons. If the words used in the proviso are literally construed, it may have to be conceded that there is some force in this contention.

But on the other hand, the provision that nothing in sub-section (1) shall be deemed to require any opportunity to be given, is worded in an emphatic form; and that fact has to be born in mind in considering the effect of the proviso. Besides, it would not be unreasonable to assume that the recording of reasons prescribed by s. 127(1) would be appropriate where a transfer is being made otherwise than in the manner prescribed by the proviso. In such a case, normally, the assessee has to be given a reasonable opportunity to be heard; and the natural corollary of this requirement is that his objections to transfer should be considered and reasons given why the transfer is made despite the objection of the assessee. In other words, the requirement as to the recording of reasons flow as a natural consequence and corollary of the requirement that a reasonable opportunity should be given to the assessee. If, however, a reasonable opportunity is not given to the assessee on the ground that it is not possible to do so, s. 127(1) requires that the transfer being of a category where a reasonable opportunity should be given to the assessee, the authority should record it reasons for making transfer, even though no opportunity was in fact given to the assessee. If that be the true position, it is not easy to understand why the proviso should be so construed as to require reasons to be given for the transfer, even though no opportunity to the assessee is required to be given. That is one aspect of the matter which has to be borne in mind in determining the true scope and effect of the proviso.

There is another consideration which is also relevant. Section 124 of the Act deals with the jurisdiction of Income-tax Officers. S. 124(3) provides that within the limits of the area assigned to him, the Income-tax Officer shall have jurisdiction -

- (a) in respect of any person carrying on a business or profession, if the place at which he carries on his business or profession is situate within the area, or where his business or profession is carried on in more places than one, if the principal place of

his business or profession is situated within the area, and

(b) in respect of any other person residing within the area.

This provision clearly indicates that where a transfer is made under the proviso to s. 127(1) from one Income-tax Officer to another in the same locality, it merely means that instead of one Income-tax Officer who is competent to deal with the case, another Income-tax Officer has been asked to deal with it. Such an order is purely in the nature of an administrative order passed for considerations of convenience of the department and no possible prejudice can be involved in such a transfer. Where, as in the present proceedings, assessment cases pending against the appellant before an officer in one ward are transferred to an officer in another ward in the same place, there is hardly any occasion for mentioning any reasons as such, because such transfers are invariably made on grounds of administrative convenience, and that shows that on principle in such cases neither can the notice be said to be necessary, nor would it be necessary to record any reasons for the transfer. The provisions contained in s. 124(3) of the Act deal with the same topic which was the subject-matter of section 64(1) and (2) of the earlier Income-tax Act, 1922 (No. 11 of 1922). There is, however, this difference between these two provisions that whereas s. 124 fixes jurisdiction, territorial or otherwise, of the Income-tax Officers, section 64 fixed the where an assessee was to be assessed.

In this connection, it is also necessary to take into account the background of the provision contained in s. 127. In *Pannalal Binjraj v. Union of India* ([1957] S.C.R. 233) the validity of section 5(7A) of the earlier Act of 1922 was challenged before this court. The said section had provided that the Commissioner of Income-tax may transfer any case from one Income-tax Officer subordinate to him to another, and the Central Board of Revenue may transfer any case from any one Income-tax Officer to another. Such transfer may be made at any stage of the proceedings, and shall not render necessary the re-issue of any notice already issued by the Income-tax Officer from whom the case is transferred. The argument which was urged before this court in challenging the validity of this provision was that it infringed the citizens fundamental rights conferred by Articles 14 and 19(1)(g) of the Constitution. In support of this argument, reliance was placed on the fact that section 64(1) and (2) conferred a right on the assessee to have his tax matter adjudicated upon by the respective officers mentioned in the said provisions; and since section 5(7A) authorised the transfer of the assessee's case from one Income-tax Officer to another, that involved infringement of his fundamental rights guaranteed by articles 14 and 19(1)(g) read with section 64(1) and (2). It is necessary to emphasize that s. 5(7A) authorised transfer of income-tax cases from one officer to another not necessarily within the same place. In other words the transfer authorised by section 5(7A) would take the case from the jurisdiction of an officer entitled to try it under section 64(1) & (2) to another officer who may not have jurisdiction to try the case under the said provision. That, indeed, was the basis on which the validity of section 5(7A) was challenged. This court, however, repelled the plea raised against the validity of the said section on the ground that the right conferred on the assessee by section 64(1) & (2) was not an absolute right and must be subject to the primary object of the Act itself, namely the assessment and collection of the income-tax; and it was also held that where the exigencies of tax collection so required, the Commissioner of Income-tax or the Central Board of Revenue had the power to transfer his care under section 5(7A) to some other officer outside the area where the assessee resided or carried on business. That is how section 5(7A) was sustained.

Even so, this Court observed in the case of *Pannalal Binjraj* ([1957] S.C.R. 233) that it would be better if an opportunity is given to the assessee in cases where the powers conferred by section

5(7A) were intended to be exercised, because he would then be able to mention his objections to the intended transfer. It is in that connection that this court further expressed its opinion that if the reasons for making the transfer "are reduced, however briefly, to writing, it will help the assessee in appreciating the circumstances which make it necessary or desirable to order such a transfer." It is obviously in pursuance of these observations that the legislature has made the relevant provisions in s. 127(1) of the Act. If this background is borne in mind, it would be clear that the propriety of giving an opportunity to an assessee and the desirability of recording reasons which this court emphasised, had reference to cases where transfers were intended to be made from an Income-tax Officer in one place to the Income-tax Officer in another place; and they obviously had no reference to transfers like the present where instead of one officer dealing with the case, another officer in the same place is asked to deal with it.

It is in the light of these considerations that we have to construe the proviso to s. 127(1). As we have already indicated, the construction for which Mr. Jain contends is a reasonably possible construction. In fact if the words used in the proviso are literally read, Mr. Jain would be justified in contending that the requirement that reasons must be recorded applies even to cases falling under it. On the other hand, if the obvious object of the proviso is taken into account and the relevant previous background is borne in mind, it would also seem reasonable to hold that in regard to cases falling under the proviso, an opportunity need be given to the assessee, and the consequential need to record reasons for the transfer is also unnecessary, and this view is plainly consistent with the scheme of the provision and the true intent of its requirements. We would accordingly hold that the impugned orders cannot be challenged on the ground that the Board has not recorded reasons in directing the transfer of the cases pending against the assessee from one Income-tax Officer to another in the same locality.

The result is, the appeals fail and are dismissed. There would be no order as to Costs.

Appeals dismissed.

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