

Suganmal

Vs

State of Madhya Pradesh and Others

Civil Appeal No. 1073 of 1963

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

04.11.1964

JUDGMENT

RAGHUBAR DAYAL J. –

This appeal by special leave arise out of a petition under article 226 of the Constitution presented by the appellant for the issue of a writ of mandamus against the State of Madhya Bharat and its officers, the Special Tax Commissioner and the Assessing Office, Industrial Tax, to refund a sum of Rs. 62,809-5-2 which had been illegally collected by the Industrial Tax Officer in the years 1943-48 on account of industrial tax. The petition was dismissed by the High court on various grounds.

The facts leading to the petition are these : The appellant is the managing proprietor of Bhandari Iron and Steel Company which had its foundry at Shilnath Camp, Indore, where it carried on the business of mechanical engineers, iron, brass and malleable iron founders and re- rollers in steel. There was in force in the Indore State, the Indore Industrial Tax Act, 1927, for the imposition of industrial tax on cotton mills. Excess profits duty was payable under the Indore Excess Profits Duty Order, 1944. The company did not run any cotton mill. Still, when the company was called upon to submit its returns and to deposit industrial tax wherever its balance-sheet showed profits, it did so. In all, the company paid a sum of Rs. 18,234-5-2 in 1944 in advance on account of industrial tax prior to the tax being provisionally assessed by the Assessing Officer. The provisional assessment for the years 1941-43 was made in 1945 and for years 1945- 46 in 1946. The tax was assessed at Rs. 62,809-5-2. Deducting the amounts of

Thereafter, the appellant approached the various officers of the State Government of Madhya Bharat for the refund of tax amounting to Rs. 1,37,770-14-2, after appropriating Rs. 37,951-7-0 excess profits duty from Rs. 1,75,722-5-2 paid by the company towards the tax and excess profits duty. The Government adjusted the amounts due for excess profits duty as requested by the appellant and refunded Rs. 74,961-9-0 paid subsequent to January 26, 1950 when the constitution came into force. It however refused to admit the claim for refund of the amounts Rs. 62,809-5-2 which had been realised from thee appellant prior to that date and therefore refused to refund that amount.

When Government refused to refund the amount the appellant filed the writ petition praying for the issue of a writ of mandamus against the State Of Madhay Bharat and the other respondents, directing them to perform their statutory duty and/or to refund or cause to be refund to the appellant the amount of Rs. 62,809-5-2 which it was alleged there were entitled in law to receive. The respondents contested the claim and the High Court dismissed the writ petition holding that there was no statutory obligation on the State to refund amount, that the order of the appellate authority did not necessarily imply an order to the state to refund the amounts and that the writ of mandamus

could not be issued for the purpose of refund of the tax wrongly realised as held by the appellate authority as that would amount to ordering the execution of the decisions of the appellate authority. It is this order of the high court against which the appellant has appealed, after obtaining special leave from this court.

Two questions arise for determination in this appeal. The first is whether a petition under article 226 of the Constitution praying solely for the refund of money alleged to have been illegally collected by the State as tax, is maintainable under article 226. The second is whether a writ of mandamus, if a case for its issue is made out, can be issued under article 226 for the refund of taxes collected prior to the coming into force of the constitution, though the final assessment was made subsequent to January 26, 1950, and was later set aside by the appellate authority.

On the first point, we are of opinion that though the High Court has power to pass any appropriate order in the exercise of the powers conferred under article 226 of the Constitution, such a petition solely praying for the issue of a writ of mandamus directing the State to refund the money is not ordinarily maintainable for the simple reason that a claim for such a refund can always be made in a suit against the authority which had illegally collected the money as a tax. We have been referred to cases in which orders had been issued directing the State to refund taxes illegally collected, but all such had been those in which the petitions challenged the validity of the assessment and for consequential relief for the return of the tax illegally collected. We have not been referred to any case in which the courts were moved by a petition under article 226 simply for the purpose of obtaining refund of money due from the State on account of its having made illegal exactions. We do not consider it proper to extend

Reference may be made to the case reported as *Sri Satya Narain Singh v. District Engineer, P.W.D.1*, where the petitioner had made several prayers in his petition under article 226. Some of these were not available at the time the order was passed by the High Court. He therefore confined his prayer for one relief only. It was for commanding the State to allow abatement of rent on account of the exemption of the State-owned roadways buses from liability to pay the tolls. The single judge issued the writ as prayed, but the Division Bench, on Letters Patent appeal, dismissed the petition holding that he was not entitled to the abatement of rent and that he may be entitled to claim abatement of rent or licence fee under the general law but that such a relief could be claimed only in a suit but not in a proceeding under article 226. This court held against the petitioner that no abatement of rent could be claimed as there was no lawful order exempting roadways buses from paying the toll. In view of the petitioner

We may also refer to *Burmah Construction Co. v. State of Orissa 1*, where it was prayed that an appropriate writ directing the State of Orissa to refund the amount of sales tax and penalty realised from the appellant be issued. *Shah J.*, speaking for the court, said :

"The High Court normally does not entertain a petition under article 226 of the Constitution to enforce a civil liability arising out of breach of contract or a tort to pay an amount of money due to the claimant and leaves it to the aggrieved party to agitate the question in a civil suit filed for that purpose. But an order for payment of money may sometimes be made in a petition under article 226 of the Constitution against the State or against an officer of the State to enforce a statutory obligation."

We therefore hold that normally petitions solely praying for the refund of money against the State by a writ of mandamus are not to be entertained. The aggrieved party has the right of going to the

civil court for claiming the amount and it is open to the State to raise all possible defenses to the claim, defences which cannot, in most cases, be appropriately raised and considered in the exercise of writ jurisdiction.

We now proceed to consider the second point about the petitioner's right to the issue of a writ of mandamus for the refund of the money realised as tax prior to the coming into force of the Constitution. We are of opinion that the appellant has not made out any case for the issue of a writ of mandamus for the said purpose.

Recently this court had to consider this matter in some detail in *State of Madhya Pradesh v. Bhailal Bhai 2*, The assessee, in that case, by its writ petition, challenged the validity of the assessments and had prayed as a consequential relief for the refund of the taxes collected from him. This court held that the High Court had power for the purpose of enforcement of fundamental and statutory rights to give consequential relief by ordering repayment of money realised by Government without the authority of law and then indicated the various factors the court had to consider in deciding whether such consequential order be passed or not. We may usefully quote the observations at page 1011 in this connection 1 :

"At the same time we cannot lose sight of the fact that the special remedy provided in article 226 is not intended to supersede completely the modes of obtaining relief by an action in a civil court or to deny defences legitimately open in such actions. It has been made clear more than once that the power to give relief under article 226 is a discretionary power. This is specially true in the case of power to issue writs in the nature of mandamus. Among the several matters which the High Courts rightly take into consideration in the exercise of that discretion is the delay made by the aggrieved party in seeking this special remedy and what excuse there is for it. Another is the nature of the controversy of facts and law that may have to be decided as regards the availability of consequential relief. Thus, where, as in these cases, a person comes to the court for relief under article 226 on the allegation that he has been assessed to tax under a void legislation and having paid it under a mistake is entitled to go

Reference may also be made to *Sohan Lal v. Union of India 2*, wherein it was laid down that proceedings by way of a writ were not appropriate in a case where the decision of the court would amount to a decree declaring a party's title and ordering restoration of possession, that the proper remedy in such a case was by way of a title suit in a civil court and that the alternative remedy of obtaining relief by a writ of mandamus or an order in the nature of mandamus could only be had if the facts were not in dispute and the title to the property in dispute was clear.

Mr. Setalvad, for the appellant, referred us to *Commissioner of Police, Bombay v. Gordhandas Bhamji 1* in support of the contention that a writ of mandamus for the refund of money can be issued if the petitioner's right to refund of money does not arise under any statutory law but arises under any law. In that case a writ of mandamus was prayed for under section 45 of the Specific Relief Act and the court had to construe the expression "under any law for the time being in force" in proviso (b) to section 45. In that connection this court held that the words "any law" were wide enough to embrace all kinds of law. It may be noted that in that particular case the duty sought to be enforced arose under rules framed in the exercise of a power conferred by a statute. We cannot use the construction placed on the words "any law" in proviso (b) to section 45 of the Specific Relief Act for the purpose of issuing a writ of mandamus in the exercise of powers under

article 226 of the Constitution and especially wh

The appellant has not been able to bring his claim for refund within any statute or statutory rule. Rule 8(a) of the Rules provided for a refund of the excess tax realised before the completion of assessment if it is found that the tax payable was less in amount and if the assessee applied for the refund within a month from the date of completion of the final assessment. This rule does not provide that in case the appellate authority sets aside the final assessment, the tax realised is refunded to the assessee on his application within any specified period of time. The High Court is therefore right in saying that the appellant has no right, under any statutory law, to the refund of the tax paid and that no duty is cast on the State to refund the amount it had realised which has been subsequently found to be not in accordance with law. The mere order of the appellate authority that the tax collected was not authorised by any law is not a decision to the effect that the state is to return the amount to the as

Reference is made to section 72 of the Contract Act for the contention that the state is duty bound to return the amount to the appellate. whether the case of the appellant falls under the provisions of that section would be a point for decision in a regular suit and not in the proceedings under article 26. In the circumstances of the case already narrated, there may be such defences, as urged by the state in its reply, open to it to urge against the appellant, one of the main defences being that the claim would be time-barred. It would be a moot point to consider whether the payment of tax made by the appellant can be said to be under a "mistake" within the meaning of that expression under section 72 of the Contract Act.

We are, therefore, of opinion that the High Court rightly refused the writ of mandamus for the recovery of the sum of Rs. 62,809-5-2 alleged to have been raised by the respondent between 1944 and 1948. We need not, therefore, express any opinion on the question as to whether the right to claim refund arose when the amount was realised or when the final assessment of tax was held illegal by the appellate authority.

We therefore, dismiss the appeal and order the parties to bear their own costs.

Appeal dismissed.

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