

Seth Sheo Prasad (Decd., By His Legal Representatives)

v.

State of Uttar Pradesh and Others

(Supreme Court Of India)

HON'BLE JUSTICE J. C. SHAH HON'BLE JUSTICE VAIDYNATHIER
RAMASWAMI HON'BLE JUSTICE V. BHARGAVA

Civil Appeal No. 593 of 1967 | 05-12-1967

SHAH, J.

1. A firm styled "Lallamal Hardeo Das Cotton Spinning Mills Company", hereinafter called the "firm", commenced at Hathras the business of manufacturing cotton yarn in a factory owned by it. In 1944 a partner of the firm filed a suit in the Court of the Civil Judge, Agra, for dissolution of the partnership and for accounts. During the pendency of the suit, the court appointed a receiver of the business of the firm. On July 21, 1949, the Government of U.P. passed an order purporting to exercise power under section 3(f) of the U.P. Industrial Disputes Act, 1949, appointing the appellant, Seth Sheo Prasad, "authorised controller" of the undertaking of the firm and directing him to take over possession of the factory to the exclusion of the partners, the receiver and the managers and to run the undertaking subject to the general supervision of the District Magistrate of Aligarh. The Union of India passed an order in supersession of the order of the Government of U.P. purporting to exercise the power under section 3(4) of the Essential Supplies (Temporary Powers) Act, 1946, appointing the appellant "authorised controller", and directed him to run the factory on the same terms and remuneration as ordered by the Government of U.P.

2. The appellant conducted the undertaking between July, 1949, and February, 1953, and the goods manufactured in the factory were sold by him as "authorised controller". In a petition under Article 32 of the Constitution filed in this court, the orders passed by the Government of U.P. and by the Central Government appointing the appellant "authorised controller" and empowering him to manage the undertaking of the factory were "quashed as illegal and ultra vires". The Sales Tax Officer assessed the firm as a registered dealer for

payment of sales tax under the U.P. Sales Tax Act, 1948, for the assessment years 1949-50 to 1953-54 in respect of the turnover from sale of yarn produced by the factory, and a sum exceeding Rs. 2 lakhs was assessed as tax. Only a small amount out of the tax assessed was recovered and for the balance the Sales Tax Officer started proceedings for recovery against nine out of the sixteen partners of the firm. Those partners filed petitions in the High Court of Allahabad challenging the right of the Sales Tax Officer to recover the tax, and the High Court quashed the proceedings for recovery of sales tax from the applicants. The Sales Tax Officer thereafter by notice dated April 2, 1959, called upon the appellant to pay Rs. 1, 01, 487.16 paise as sales tax due by the firm. The appellant then moved a petition in the High Court of Allahabad for an order quashing the notice dated April 2, 1959, and the recovery proceeding. It was the case of the appellant that in selling the products of the factory, he was acting as authorised controller under the orders first of the State Government and thereafter of the Central Government and not on his own behalf and that the proceeding against him for recovery of tax assessed against the firm was illegal. A Single Judge of the High Court rejected the application and the order was confirmed in appeal.

3. The appellant sold goods produced in the factory as "authorised controller", appointed to run the undertaking of the firm. The Sales Tax Officer did not assess the appellant in his capacity as authorised controller. The proceedings for assessment were taken against the firm and the Sales Tax Officer sought to recover the tax assessed against the firm from the appellant. The High Court distinguished the earlier judgments relating to the liability of the partners of the firm to pay tax assessed against the firm on the ground that the "appellant being instrumental in selling the goods could be properly rendered liable to pay the tax unpaid". We do not propose to consider at this stage whether in the circumstances of the case any distinction existed between the liability of the appellant and of the other partners who were absolved by orders of the court to pay tax assessed against the firm. It may be recalled that a suit initially a court receiver was appointed and then the appellant was appointed "authorised controller" to administer the undertaking of the firm. The High Court did not consider whether during the relevant years of assessment there existed any taxable entity which could be then the appellant was assessed to tax they assumed that because the appellant was at one time a partner, and he had entered into the transactions of sale as "authorised controller", liability to pay tax assessed against the firm could be enforced against him. The assumption is unwarranted. The appellant has not been assessed to pay tax as an authorised

controller, and therefore the circumstance that the turnover which was assessed to tax included the price of goods sold by the appellant as authorised controller was irrelevant. The only circumstance that could be taken into account in enforcing the liability by the orders of assessment was that the appellant was at one time a partner of the firm. But before liability on that account can be enforced, it was necessary to decide whether during the relevant years of assessment the partnership agreement was in force and that the appellant was in those years a partner of a subsisting firm. That the High Court has failed to do. We are unable, therefore, to maintain the order of the High Court.

4. The appeal is allowed. The order passed by the High Court is set aside. The case is remanded to the High Court for deciding the petition of the appellant according to law and in the light of the observations made in this judgment. There will be no order as to costs in this appeal. Costs before the Single Judge and the Division Bench will be costs in the petition.

5. Appeal allowed. Case remanded.