

R. B. Shreeram Durga Prasad and Fatechand Nursing Das

Vs

Settlement Commission (it and wt) and Another.

Civil Appeal No.528 of 1989

(Sabyasachi Mukharji, S. R. Pandian JJ)

27.01.1989

JUDGMENT

SABYASACHI MUKHARJI J. –

1. Special leave granted.

This is an appeal against the judgment and order of the Settlement Commission dated August 7, 1987. The fact that an appeal under article 136 of the Constitution lies against the order of the Settlement Commission is now beyond the pale of controversy in view of the decision of this court in CIT v. B. N. Bhattachargee [1979] 118 ITR 461. The appellant had applied to the Settlement Commission for settlement of its assessment for the assessment years 1948-49 to 1975- 76 under the Income-tax Act, 1961 (hereinafter referred to as "the Act"). That application had to be proceeded with in accordance with section 245C of the Act which is as follows :

"245C. (1) An assessee may, at any stage of a case relating to him, make an application in such form and in such manner and containing such particulars as may be prescribed to the Settlement Commission to have the case settled and any such application shall be disposed of in the manner hereinafter provided."

Sub-sections (2) and (3) of section 245C of the Act are not relevant for our present purpose.

The application made by the appellant was a composite one for settlement of its assessments for the assessment years 1948-49 to 1975-76. The purpose for the introduction of the Settlement Commission has been explained by this court in the aforesaid decision. This court observed that these are contained in Chapter XIX-A of the Income-tax Act, 1961. The said Chapter was enacted by the Taxation Laws (Amendment) Act, 1975, whose beneficiaries were ordinarily those whose tax liability was astronomical and criminal culpability perilous. As has been observed, this Chapter was introduced with debatable policy, fraught with dubious potentialities in the context of the third world conditions of political peculium and bureaucratic abetment, that composition and collection of public revenue from tycoons is better than prosecution their tax-related crime and litigation for total revenue recovery. The Wanchoo Committee appointed by the Government of India had recommended this step.

It appears that on August 12, 1977, the Commissioner of Income-tax objected to the proposal of the appellant under section 245D(1) of the Act. The Commissioner objected to the settlement for the years 1948-49 to 1959-60, but agreed to the settlement for later years. The Commission, it appears, accordingly made an order on August 24, 1977, rejecting the application for settlement for the years

1948-49 to 1959-60. The appellant, on September 20, 1977, applied to the Commission to recall its earlier order dated August 24, 1977, since the same had been made without furnishing any opportunity of hearing to the appellant. Section 245D(1) provides as follows :

"245D. Procedure on receipt of an application under section 245C. - (1) On receipt of an application under section 245C, the Settlement Commission shall call for a report from the Commissioner and on the basis of the materials contained in such report and having regard to the nature and circumstances of the case or the complexity of the investigation involved therein, the Settlement Commission may, by order, allow the application to be proceeded with or reject the application :

Provided that an application shall not be rejected under this sub- section unless an opportunity has been given to the applicant of being heard :

Provided further that an application shall not be proceeded with under this sub-section if the Commissioner objects to the application being proceeded with on the ground that concealment of particulars of income on the part of the applicant or perpetration of fraud by him for evading any tax or other sum chargeable or imposable under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act, has been established or is likely to be established by any income-tax authority, in relation to the case."

About hearing the applicant prior to the rejection of the application, this court, in the aforesaid decision at page 472 of the report, held that an applicant before the Settlement Commission was entitled to a hearing before his application for composition was rejected. This court observed that section 245D(1) does not negate natural justice and in the absence of an express exclusion of the rule of audi alteram partem, it is fair, and indeed fundamental, that no man be prejudiced by action without opportunity to show to the contrary. Natural justice must be followed. This also is the natural corollary of the decisions of this court in *M. S. Gill v. Chief Election Commissioner* [1978] 1 SCC 405 and *Maneka Gandhi v. Union of India* [1978] 1 SCC 248.

The Finance Act, 1979, however, amended section 245D with effect from 1st April, 1979, and sub-section (1A) was inserted in section 245D which empowered the Settlement Commission to overrule the objection of the Commissioner. Sub-section (1A) of section 245D reads as follows :

"Notwithstanding anything contained in sub-section (1), an application shall not be proceeded with under the sub-section if the Commissioner objects to the application being proceeded with on the ground that concealment of particulars of income on the part of the applicant or perpetration of fraud by him for evading any tax or other sum chargeable or imposable under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act, has been established or is likely to be established by any income-tax authority, in relation to the case :

Provided that where the Settlement Commission is not satisfied with the correctness of the objection raised by the Commissioner, the Settlement Commission may, after giving the Commissioner an opportunity of being heard, by order, allow the application to be proceeded with under sub-section (1) and send a copy of its order to the Commissioner."

Though the Commission is empowered not to accept the objection of the Commissioner, yet the Commissioner's objection is of "lethal potency" as described by Krishna Iyer J. in the aforesaid decision. For the facts of this case, however, it has to be noted that the appellant applied to the Settlement Commission to permit him to contest the objections of the Commissioner on the proviso now inserted as mentioned above. It has to be borne in mind that this was done after the proceedings have proceeded to a certain extent. As mentioned hereinbefore, the appellant had applied to the Settlement Commission as aforesaid on January 22, 1977. On August 12, 1977, the Commissioner has tendered the objections as mentioned hereinbefore. On August 24, 1977, the Settlement Commission made an order rejecting the application for settlement for the assessment years 1948-49 to 1959- 60. This had been done without hearing the appellant. On September 20, 1977, the appellant applied to the Commission to recall its order dated August 24, 1977, since it had been passed without giving an opportunity of hearing to the appellant. That application was pending. In the meantime, as mentioned hereinbefore, on April 1, 1979, the Finance Act, 1979, inserted sub-section (1A) to section 245D which empowered the Settlement Commission to overrule the objections of the Commissioner. On May 29, 1979, the appellant applied to the Settlement Commission to permit him to contest the objections of the Commissioner under the said proviso now inserted. The matter was taken up after a long gap in June, 1987, and it was heard on June 18, 1987, and July 1, 1987. The appellant contended that the order of August 24, 1977, should be recalled and the objections of the Commissioner dealt with in accordance with the amended provisions of section 245D(1A) and it also contended that if the Commissioner's objections were not to be interfered with, then, the entire application should be dismissed. On August 7, 1987, which is the date of the impugned order in this appeal, the Settlement Commission accepted the first part of the contentions and held that the applicant was entitled to a rehearing since its order of August 24, 1977, had been made in violation of the principles of natural justice and also the express provision of section 245D(1), proviso, but rejected the second part of the submission that the application for settlement made any the petitioner would have to be disposed of in accordance with law which prevailed on August 24, 1977. The Commission, however, held that since the Commissioner had objected only to some of the years under settlement, the entire application would (not ?) have to be rejected. It is this order which is under challenge before us.

We are definitely of the opinion that, on the relevant date when the order was passed, that is to say, August 24, 1977, the order was a nullity because it was in violation of the principles of natural justice. See in this connection, the principles enunciated by this court in *State of Orissa v. Dr. (Miss) Binapani Dei* [1967] 2 SCR 625 as also the observations in *Administrative Law* by H. W. R. Wade, 5th Edition, pages 310-311, that the act, in violation of the principles of natural justice or a quasi-judicial act in violation of the principles of natural justice, is void or of no value. In *Ridge v. Baldwin* [1964] AC 40 and *Anisminic Ltd. v. Foreign Compensation Commission* [1969] 2 AC 147, the House of Lords in England has made it clear that breach of natural justice nullifies the order made in breach. If that is so, then the order made in violation of the principles of natural justice was of no value. If that is so, then the application made for the settlement under section 245C was still pending before the Commission when the amendment made to the Finance Act of 1979 came into effect and the said amendment being procedural, it would govern the pending proceedings and the Commission would have the power to overrule the objections of the Commissioner. Dr. V. Gauri Shankar, appearing for the Revenue, did not seriously contest that position. He accepted the position that the law, after the amendment, authorises the Commission to consider and overrule the Commissioner's objection. He also very fairly and, in our opinion, rightly accepted the position that the appellant was entitled to be heard on the Commissioner's objections. It appears to us, therefore, that if that is the position then, in our opinion, the appellant was entitled to be heard on the

objections of the Commissioner. As mentioned hereinbefore, the only short ground which was sought to be canvassed before us was whether, after the amended Act, the order had been rightly set aside and whether the appellant had a right to be heard on the objections of the Commissioner. Mr. Harish Salve, counsel for the appellant, contends that it had a right to be heard. On the other hand, Dr. V. Gauri Shankar, learned counsel for the respondent, submitted that the order proceeded on the assumption that the objections had been heard. He did not, in fairness to him, it must be conceded, contest that in a matter of this nature, the appellant had a right to be heard. Reading the order, it appears to us, that though the appellant had made submissions on the Commissioner's objections, there was no clear opportunity given to the appellant to make submissions on the Commissioner's objections in the sense of demonstrating that the Commissioner was not justified in making the objections and, secondly, that the Commission should not accept or accede to the objections in the facts and circumstances of the present case. We are of the opinion that in view of the facts and circumstances of the case in the context in which these objections had been made, it is necessary, as a concomitant of the fulfillment of natural justice, that the appellant should be heard on the objections made by the Commissioner. It is true that in the relevant orders for the years for which the Commissioner had objected, concealment had been upheld in the appeal before the appropriate authorities. But it may be that in spite of this concealment, it may be possible for the appellant to demonstrate or to submit that in disclosure of concealed income for a spread-over period, settlement of the entire period should be allowed and not bifurcated in the manner sought to be suggested by the Commissioner's objections. This objection the appellant should have an opportunity to make. In exercise of our power of judicial review of the decision of the Settlement Commission, we are concerned with the legality of procedure followed and not with the validity of the order. See the observations of Lord Hailsham in *Chief Constable of the North Wales Police v. Evans* [1982] 1 WLR 1155. Judicial review is concerned not with the decision. but with the decision-making process.

We, therefore, allow the appeal. We set aside the order of August 7, 1987, and remand the matter to the Settlement Commission to hear and dispose of the settlement petition made by appellant dated January 22, 1977, taking into consideration the objections made by the appellant to the Commissioner's objections and after giving the appellant an opportunity of showing reasons and causes why the Commissioner's objections should not be accepted by the Commission. After considering the said objections of the Commissioner as well as the objections to the Commissioner's objections made by the appellant, the Settlement Commission would be free to pass such orders as it considers fit and proper in accordance with the law. Since the matter is pending for a long time, we do hope that the Settlement Commission will dispose of the matter as expeditiously as possible. It is not necessary for us in this appeal to express any opinion on the correctness or otherwise of the Commissioner's objections or on the validity of the appellant's objections to the Commissioner's objections.

The appeal is disposed of accordingly. There will be no order as to costs.

Appeal allowed.

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