

# ALLAHABAD HIGH COURT

Khurjawala Buckles Manufacturing Co.

Vs.

Commissioner, Sales Tax

Civil Misc. Writ No. 1633 of 1964  
(M.C. Desai, C.J. and R.S. Pathak, J.)

27.07.1964

## JUDGMENT

**Desai, C.J.**

1. This is a petition for certiorari for the quashing of two assessment orders passed by an Assistant Sales Tax Officer, Aligarh, under the U.P. Sales Tax Act, one for the assessment year 1960-61 and the other for the assessment year 1961-92 and two more assessment orders passed by the same officer but under the Central Sales Tax Act, one for the assessment year 1960-61 and the other for the assessment year 1961-62, and mandamus directing the Sales Tax Officer and the Commissioner of Sales Tax, U.P. not to recover from the petitioner the amounts of the sales tax imposed under the impugned assessment orders. The petition came up for hearing before our brother Manchanda before whom there arose the question whether one petition for certiorari for the quashing of district assessment orders passed for two years and distinct assessment orders passed under two Acts was maintainable or not. It may be mentioned that the court-fee payable on a petition for certiorari is Rs. 50/- and that the court-fee paid on the petition by the petitioner is Rs. 50/-; it has not paid court-fee of Rs. 200/- as it would have paid if it had filed separate petitions for certiorari for the quashing of each of the assessment orders. Our learned brother considering the matter to be of importance has referred the following question to a Bench for its decision :-

"Whether more than one assessment order can be challenged by means of a single writ petition under Article 220 of the Constitution; and in the circumstances of this case whether in respect of the Sales Tax assessments for the year 1960-61 and 1961-62 a single writ petition can be filed in respect of the assessments both under the U.P. Sales Tax and under the Central Sales Tax Act where the points of challenge are the same ?"

2. When certiorari is sought for the quashing of two or more assessment orders the following are the possible combinations. - (1) the assessment orders may relate to the same assessee and the same taxing statute but relate to different assessment years (2) they relate to the same taxing statute and the same assessment year but relate to two or more assessees (3) they relate to the same assessee and the same assessment year but relate to two or more taxing statutes, (4) they relate to the same assessee, the same taxing statute and the same assessment year but are passed by different authorities, for example an assessing authority, an appellate authority and a revisional authority and (5) a combination of any two or more of the above. The question framed by our learned brother is wide enough to cover any of the abovementioned combinations but we must answer it only with regard to the facts of this petition. We, therefore, proceed to decide whether one petition can be filed for the quashing of two assessment orders passed against an assessee under one taxing statute by one authority but in respect of two assessment years and two assessment orders passed against the same assessee and by the same authority and in respect of the same two assessment years but under another taxing statute. We are not concerned with any other combination in this case.

3. This Court has framed rules to govern the proceeding in a petition under Article 226 of the Constitution, vide Chapter XXII of Rules of Court, 1952, but they do not contain any rule regarding filing of one petition against two or more orders. Sri Hari Swarup contended that the provisions of the Code of Civil Procedure apply to a proceeding under Article 226 of the Constitution and that order 2 Rule 3 of the Code permits the joinder of reliefs such as in the present petition. In the alternative he contended that even if the Code is not applicable the analogy of Order 2 Rule 3 of it should be applied by this Court in its discretion and it should entertain the petition.

4. Order 2 Rule 3 is to the effect that a plain, tiff may unite in the same suit several causes of action against the same defendant or the same defendants jointly and that where causes of action are united the jurisdiction of the Court as regards the suit shall depend on the amount or value of the aggregate subject-matters. There is Rule 6 in Order 2 laying down that when it appears to the Court that any causes of action joined in one suit cannot be conveniently tried or disposed of together, it may order separate trials. The first question is whether; the Code of Civil Procedure governs a proceeding under Article 226 of the Constitution or not and our answer is "no." No statutory authority other than Section 141 of the Code of Civil Procedure was cited in support of

the contention that the Code applies. What is laid down in Section 141 is that the procedure laid down in the Code in regard to suits is to be followed, so far as it can be, in all proceedings in any Court of civil jurisdiction. A High Court when exercising jurisdiction under Article 226 of the Constitution cannot be said to be a Court of civil jurisdiction. There is considerable conflict about the nature of the jurisdiction conferred upon a High Court under Article 228; some High Courts take the view that it is civil jurisdiction, some take it to be civil or criminal according to the nature of the jurisdiction exercised by the inferior Court or tribunal or authority passing the impugned order and others take the view that it is neither civil nor criminal. It has been held by the Supreme Court that it is not ordinary jurisdiction and is extraordinary jurisdiction; this observation may mean that it is neither civil nor criminal. Ordinary jurisdiction is capable of being divided into civil and criminal jurisdiction but not extraordinary jurisdiction.

5. Under Article 133 of the Constitution an appeal lies from a judgment or order passed by a High Court in a "civil proceeding" on a certain certificate given by it. High Courts have given certificates in respect of orders passed by them on petitions under Article 226 of the Constitution and such appeals have been entertained by the Supreme Court. This may mean that the High Courts which granted the certificates have held that the proceedings under Article 226 are civil proceedings but it cannot be said that the Supreme Court has held so merely because it has entertained the appeals on the certificates granted by them. The question whether such a proceeding is a civil proceeding or not has not been raised before the Supreme Court in any such appeal, merely by entertaining and allowing the appeals it cannot be said to have declared that it is a civil proceeding. A High Court may be said to be a Court of civil jurisdiction when trying a suit in exercise of original jurisdiction or hearing an appeal or revision under the provisions of the Code but we do not think that it can be said to be a Court of civil jurisdiction when exercising jurisdiction under Article 226 of the Constitution. One of us has said in *State of U.P. v. Mukhtar Singh*<sup>1</sup> that a proceeding under Article 226 is not a civil proceeding and he is not persuaded that the view taken by him is incorrect. Further it appears to us that the intention behind Section 141 was to apply in proceedings other than those in suits the provisions applicable in suits. Certain provisions in the Code are applicable only in suits pending in Courts of civil jurisdiction and Section 141 was enacted to make them applicable in other proceedings also pending in Courts of civil jurisdiction so far as they can be applicable. The object was not to make its provisions applicable in Courts other than

those governed by the Code, for this there exist provisions in the special and local Act. There is no provision in the Code making its provisions applicable to a High Court exercising jurisdiction under Article 226. Not only is there no Division of a proceeding under Article 226 into suits and other proceedings but also no provision of the Code applies to any proceeding under Article 226. Therefore, it cannot be argued that by virtue of Section 14 the provisions in the Code relating to suits will apply in proceedings under Article 226.

6. This Court when making rules governing the procedure in petitions under Article 226 has refrained from making the provisions of the Code applicable. Certain rules made by it such as rules 8 and 9 of the Chapter XXII show that the provisions of the Code were not intended to be applicable; otherwise they would not have been made at all. It is true that this Court has made very few rules and has not made rules governing so many situations that are likely to arise when exercising jurisdiction under Article 226 but it does not follow that the provisions of the Code were intended to be applicable. The Court has not made rules governing all situations because it has left the matter at the discretion of the Judges. It was pointed out to us that the provisions of the Code have been applied by this Court in matters concerning substitution and review but that is not on the ground that these matters are governed by the provisions in the Code. This Court has applied the analogy or the principle of the provisions relating to substitution and review contained in the Code in exercise of its discretion.

In *Uma Shankar v. Divisional Superintendent Northern Railway, Lucknow* <sup>2</sup> V.D. Bharagava and R.A. Misra, JJ. held that Order 1 of the Code does not apply to a proceeding under Article 228. Rajgopala Ayyangar, J. laid down in *Muhammad Ibrahim v. Deputy Commercial Tax Officer, Pudukottai*<sup>3</sup> that neither the provisions of Order 1 nor the principle behind them can be applied in a petition for a writ. In *State of U.P. v. Dr. Vijay Anand Maharaj* <sup>4</sup> the Supreme Court declined to go into the question whether an order made under Article 226 can be reviewed under Order 47, C.P.C. or not.

7. There are a number of decisions laying down that one petition impugning several orders is not maintainable; vide AIR 1980 Allahabad 366 (supra), *Revenue Patwaris Union v. State of Punjab*, <sup>5</sup> *Inder Singh v. State of Rajasthan*, AIR 1954 Rajasthan 185 and AIR 1953 Madras 626 (supra). In *Calcutta Discount Co. Ltd. v. Income Tax Officer*, AIR 1961 Supreme Court 372, one petition was filed to impugn three notices issued under Section 31 of the Income-Tax Act in respect of three years' assessment orders and was entertained. It was granted by a single Judge but rejected by a Bench.

The Supreme Court on appeal restored the order of single Judge issuing prohibition but without deciding that a single petition was maintainable. It was not argued before it that one petition was not maintainable and so it did not decide this matter. The Division Bench of the High Court had dismissed the petition but not on the ground that it was not maintainable. It has not been argued before it also that it was not. Hence this decision of the Supreme Court does not help the petitioner. In *Chandra Bhan v. State of Orissa*,<sup>6</sup> decided by the Supreme Court on 5-4-1963 (SC) the Supreme Court did not decide whether one petition impugning two or more assessment orders could validly be filed or not; all that it decided was that when one petition was filed one appeal arose out of the order and not two or more appeals.

8. Not only is Rule 3 of Order 2 C.P.C. not applicable in a proceeding under Article 223 but its analogy or principle also should not be applied in it. A fixed court fee of Rs. 51/- is payable on a petition regardless of the number of the orders to be quashed and regardless of the number of the petitioners and the opposite parties. If in this case separate petitions were insisted upon, the State would have recovered in the form of court-fee Rs. 200/- whereas the petitioner has paid only Rs. 50/-. Allowing one petition to be filed for impugning several distinct orders (e.g. orders passed against different assesseees or in respect of different assessment years or (under different taxing statutes) would result in a loss of revenue to the State and there is no reason why we should permit this. We may go even further and say that we have not been given the power to permit loss to the State revenue and if this is correct, it follows that we have not the power to permit one petition for impugning several distinct orders. The number of suits in which benefit can be taken of the provisions of Order 2 Rule 3 is very small but the number of petitions under Article 226 in which its benefit can be taken will be very large. In a petition under Article 226 the opposite party generally is the State Government and if a petitioner or petitioners were allowed the benefit of Order 2 Rule 3 all kinds of different orders under different Acts having no connection whatever with one another would be liable to be joined in one petition causing confusion and embarrassment and this cannot be permitted. Then the principle that one proceeding may be instituted combining a number of cases in which common questions of law or fact arise is not of universal application. Nobody yet has thought of filing one appeal against several orders or of filing one revision application against several appellate orders, on the ground that common questions of fact or law arise. If there are two proceedings and, therefore, two orders Courts have always insisted upon two appeals and two revision applications regardless of whether they are by the same

appellant or applicant or against the same respondent or opposite party or not. There is no reason why one writ petition should be entertained simply on the ground that common questions of law or fact arise or that they are by or against the same person. We are not prepared to lay down that the practice of uniting in one petition several causes of action against the same opposite party is reasonable merely because it is permitted by Order 2 Rule 3 and, therefore, must be permitted as a rule of justice, equity and good conscience in a proceeding under Article 228. One safeguard against the abuse of the practice, namely that contained in Section 17 of the Court-Fees Act is not available in a petition under Article 228 and that itself is a sufficient reason for not allowing it.

9. Our answer to the question is that one writ petition for the quashing of two assessment orders pertaining to two assessment years or one petition for the quashing of two assessment orders under two different taxing statutes, even though the assessee is the same and the assessing authority is the same, cannot be entertained. List the case before the learned Judge with this answer.

Question answered.

Cases Referred.

1. AIR 1957 All 505
2. AIR 1960 All 366
3. AIR 1956 Mad 628
4. 1992 All 819
5. AIR 1982 Pun 55
6. Civil Mis. Petn. No. 1398 of 1962