**DELHI HIGH COURT**

Sunanda Rani

Vs.

The Union of India (Delhi)

C.W. No. 1331 of 1971

(Mr. S. Rangarajan, J.)

12.8.1974

**JUDGMENT**

**S. Rangarajan, J.**

1. The facts leading to this petition, which has been filed under Articles 226 and 227 of the Constitution may be briefly stated. The petitioner is a partner of the firm known as M/s. Auto & Metal Engineers having its factory on industrial plot No. 4 and parts of plots No. 3 and 5, Nh 5, Faridabad and its office on a part of plot No.P/37-C, Faridabad. The firm is also registered under the Partnership Act. The two partners, namely, Smt. Sunanda Rani Jain and Smt. Karuna Jain are the wives of V. K. Jain and S.K. Jain, respectively. On 24th April, 1971 three, raiding parties consisting of Income Tax authorities conducted raid on the residential-cum-office premises of the petitioner, the factory premises of M/s. Auto and Metal Engineers and the residential premises of Mr. and Mrs. S.K. Jain at Faridabad. In connection with the said raids three other Writ Petitions have been filed and heard along with this petition.

2. On 28th October, 1971, a notice was received by the petitioner from the Commissioner of Income Tax, Haryana & Himachal Pradesh, Delhi III, New Delhi informing her that it had been proposed to transfer this case from the Income Tax Officer, Faridabad to the Income Tax Officer, District III (9), New Delhi on account of administrative convenience and that if they had any objection it may be sent to reach on or before 8th November, 1971.

A reply was sent objecting to the transfer; the assessed was further informed that the assessed should appear before the Commissioner on the 17th November 1971. Sri V.K. Jain, General Manager of the petitioner's firm. appeared along with the counsel and reiterated the objections sent earlier. By order dated 24th November, 1971 the Commissioner transferred the petitioner's case from the Income Tax Officer, Faridabad, not to the Income Tax Officer, District III (9). New Delhi, as originally stated, but to the Income Tax Officer, District II (5), New Delhi in exercise of the powers conferred under section 127(1) of the Income Tax Act, 1961.

The circumstances under which the transfer was effected are stated in the affidavit filed by Sri R. L. Malhotra, the then Commissioner of Income Tax. The case was not transferred to the Income Tax Officer, District III(9), New Delhi because after the show cause notice was issued he had ceased to hold jurisdiction over District III (9) ; instead a new range was assigned to him which included several Income Tax Officers, including Income Tax Officer, District II (5). The transfer was made because it was his intention to transfer the case of the petitioner from the Income Tax Officer, Faridabad to any one of the other I.T.Os in his jurisdiction having his office located in Delhi itself.

3. The said transfer has been impugned on the following main grounds:

1. There has been no compliance with the provisions of section 127(1) of the Income Tax Act since no reason has been mentioned in the order of transfer. The order of transfer was not passed in accordance with the show cause notice given to the petitioner.

2. The order violated section 124 of the Income Tax Act which fixes the territorial jurisdiction in respect of the petitioner's case.

3. The order of transfer was made *mala fide* to harass the petitioner pursuant to the above searches Points (1) & (2) :

4. It would be necessary to read section 127(1) of Act XI III of 1961;

"Power to transfer cases.-(1) The Commissioner may, after giving the assessed a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, transfer any case from any Income-tax Officer or Income-tax Officers subordinate to him to any other Income-tax Officer or Income-tax Officers also subordinate to rim and the

Board may similarly transfer any case from any Income-tax Officer or Income-tax Officers to any other Income-tax Officer or Income-tax Officers :

Provided that nothing in this sub-section shall be deemed to require any such opportunity to be given where the transfer is from any Income-tax officer or Income-tax Officers to any other Income-tax Officer or Income-tax Officers and the offices of all such Income tax Officers are situated in the same city, locality or place :

Provided further that where any case has been transferred from any Income-tax Officer or Income-tax Officers to two or more Income-tax Officers, the Income-tax Officers to whom the case is so transferred shall have concurrent jurisdiction over the case and shall perform such functions in relation to the said case as the Board or the Commissioner (or any Inspecting Assistant Commissioner authorized by the Commissioner in this behalf) may by general or special order in writing, specify, for the distribution and allocation of the work to be performed."

5. Prior to this section being placed on the statute book the Supreme Court had occasion to consider the corresponding provision under the previous Act. According to section 5(7A) of the previous Act of 1922, the Commissioner of Income Tax may transfer any case from one Income Tax Officer subordinate to him to another. The Central Board of Revenue may transfer any case from any one Income- tax Officer to another. It was held by N.H. Bhagwati, J. in *Pannalal Binjraj v. Union of India,* [1] that section 17-A did not violate either Article 14 or Article 19(l)(g) of the Constitution merely because the powers may be abused and that if there is any abuse of power the same could be remedied by appropriate action. Under the Act of 1922, according to section 64(1) and (2), the place of assessment shall be the place where the assessed carriers on business, possession or vocation; where it is done in more places, than one he is assessed by the Income Tax Officer of the area in which the principal place of his business, profession vocation is situate. In all other cases the assessed -hall be assessed by the Income Tax Officer of the area in .which he resides. Though this must be regarded as a legal right as laid down by the Supreme Court in *Bidi Supply Co. v. Union of India,* [2] this right is hedged in by reasonable restrictions that it has. to yield to exigencies .of tax collection. The infringement of such a right by an order of transfer under section 5(7A) was not a -material infringement; it was only a deviation of a minor characur from

the general standard and did not necessarily involve a denial of equal rights. The rest of the procedure to be adopted was the same as in cases where there was no transfer. No particular assessed could be said to be discriminated against with reference to other similarly situated.

Bhagwati, J., further pointed out that though section 5(7A) was not discriminatory itself and is only a provision for administrative convenience the power of transfer thus given to the Commissioners of Income Tax and to the Central Board of Revenue must be exercised in a manner which is not discriminatory. His I order ship also observed (at page 580 of the said judgment) that "in order to assess the tax payable by an assessed more conveniently and efficiently it may be necessary to have him assessed by an Income Tax Officer of an area other than the one in which he resides or carries on his business" though prima facie it would appear that the assessed would be entitled under the provisions of section 61(l)(2) to be assessed by an I.T.O. of a particular area where he resides or carries on business. After referring to some other decided cases as well as clause (3) of section 64 which gives the determination as to the place of assessment to the Commissioner or the Central Board of Revenue, it was observed, that there was clear indication that place of assessment was "more one of administrative convenience than of jurisdiction". With reference to the power of transfer itself Bhagwati, J.- observed as follows :

".....power is given by section 5(7A) to the Commissioner of Income Tax to transfer any case from one 1.T.O. subordinate to him to another and to the Central Board of Revenue to transfer any case from any one 1.T.O. to another. This is the administrative machinery which is set up for assessing the incomes of the assesseds which are chargeable to income tax. There is, therefore, considerable force in the contention which has been urged on behalf of the State that section 5(7A) is a provision for administrative convenience. "

6. The reasons for section 127(1) requiring a show cause notice to be given to the assessed before the transfer of his case from one 1.T.O. to another and for recording reasons as required by section 127(1) of the Act of 1961 subsequent to the above decision have been indicated by Gajendragadkar, C J., speaking for the Supreme Court, in *Kashiram Aggarwalla v. Union of India,* [3] After referring to *Pannalal Binjraj v. Union of India*, the learned Chief Justice pointed out that though it upheld the validity of section 5(7A) and observed

that it would be better if an opportunity is given to the assessed in cases where the power conferred by section 5(7A) is intended to be exercised because he would then be able to mention his objections to the intended transfer. It is in that connection that the Supreme Court further expressed its opinion that if the reasons for making the transfer " are reduced, however briefly, to writing, it will help the. Assessed in appreciating the circumstances which make it necessary or desirable to order such a transfer ". in Kashiram Aggarwalla the validity of an order of transfer from one I.T.O. to another both in the city of Calcutta fell for decision. There had been no opportunity given as required by section 127; nor reasons were recorded. The learned C. J., held the recording of reasons prescribed by section 127(1) would be appropriate where a transfer is being made otherwise than in the manner prescribed by the proviso, that is, outside the same city, locality or place. It is also printed out that this order of transfer was manifestly one passed for convenience of the Department and no possible prejudice could be involved in such a transfer.

7. Sri D.D. Verma, learned counsel for the petitioner, has relied upon Kashiram Aggarwalla for the purpose of contending that only cases of transfers from one I.T.O. to another within the same city or locality are covered by administrative convenience where no possible prejudice is involved to the assessed and that cases of transfer from outside the city or locality, as in the present case from Faridabad to Delhi, cannot be supported on the ground of administrative convenience at all because of the prejudice which is bound t'3 be caused to the assesses by their having to leave their city or locality to attend the hearings before another I.T.O. outside the city or locality.

8. I am afraid that the above said decision does not support in any way the contention on behalf of the petitioner. The learned Chief Justice was at pains to point out that in the case of transfers within the same city or locality 'no notice at all need issue to the assessed before making any such transfers because the same could be presumed to be on the ground of administrative convenience and hence it was unnecessary to record the reasons of transfer either. What logically follows from this discussion seems to be that in the case of transfers made outside the city or locality administrative convenience cannot be presumed and the same must be expressly stated in the case of such transfers. In other words, the distinction consists in the reason for the transfer, namely, administrative convenience, being presumed in the case of transfer within the

same city or locality but the said reason, namely, administrative convenience, being required to be stated as a reason for the transfer when it happens to be outside the city or locality, without being presumed.

9. There is also yet another aspect which bears on the present discussion. The old section 64 (sub-clauses (1) and (2)) of the Act of 1922 is no longer therein the Act of 1961. Unlike the Act of 1922 which referred to the "place of assessment" the Act of 1961 refers .to the jurisdiction of the Income Tax Officer.

It may be truer to say that the Act of 1961 does not proceed on the basis of any right of the assessed to be assessed by the I.T.O. of a place where he either resides or carries on business. The use of the word "jurisdiction" also implies that assessment by an Income Tax Officer in a case where he does not have the territorial jurisdiction to deal with the case would not be invalid for such an objection may be deemed to have been waived on failure to object at the .proper time (*Raja Bahadur Kamakhya Narain Singh v. Union of India,*) [4] It may also be noticed that the Income Tax Officers derive their jurisdiction to deal with the cases not only on the basis of the areas where they are to function but also in respect of persons or classes of persons or of such incomes or classes of incomes as the Commissioner may direct (section 124(1) of the Act of 1961). Besides, when a question arises as to whether the Income Tax Officer has Jurisdiction or not it has to be decided by the Commissioner (section 124(4)). There have been limits also placed in the matter of an assessed questioning the jurisdiction of an Income Tax Officer (section 124(6)). When the assessed questions the jurisdiction of the Income Tax Officer he may refer the matter for determination by the Commissioner (section 124(6)). When the Commissioner makes a transfer of one case from one I.T.O. to another it cannot be assailed on the ground of want of jurisdiction. It can, however, be assailed only on the ground of possible prejudice to the assessed. It is for this reason that therein a requirement in sec ion 127(1) of the Act of 1961 for the show cause notice to be given to the assessed and reasons to be recorded.

10. I can find no substance in the contention of Sri D. D. Verma, that in the case of a transfer outside the city or locality administrative convenience cannot support such a transfer. I find considerable force in the submission of Sri B.N.Kirpal, learned counsel for the Union of India that except a case where an assessed wants a certain transfer of his case for his own convenience (there

will be no difficulty in such a case where the transfer is allowed as per his request) it is not possible to conceive of any instance where a case can be transferred from one Income Tax Officer to another except on the ground of administrative convenience. Sri. D, D. Verma was unable to suggest any conceivable situation where such a transfer could be made by a Commissioner except on the ground of administrative convenience. In other words, if the transfer could not be justified on the ground of administrative convenience it might even amount to a case of mere harassment of the assessed. It seems to me, therefore, that the only distinction between the proviso to section 127(1) and cases falling outside the proviso is that in the former administrative convenience can be presumed without its being stated where as in the latter it cannot be presumed but has to be expressly stated in writing.

11. The next aspect for consideration, on this branch of the argument, is whether the final order of transfer, which does not mention the reason for the transfer, is b id. Having given this matter my earnest consideration it seems to me that this is not a case where the order of-transfer can be said to be had on the ground of the reason not being recorded. The impugned order of transfer (copy of which is Annexure 'D' to the petition) has to be read only along with the show cause notice (copy of which is Annexure 'B' to the petition), which clearly stated to the assessed that the proposed transfer was on the ground of administrative convenience. All the contentions of the assessed concerning the prejudice the assessed said it would suffer, by reason of the said transfer, have been borne in mind by the Commissioner as he himself has set out in his affidavit of return when he finally passed the impugned order of transfer on 24th November, 1971.

12. *Inpadfield v. Minister of Agriculture. Fisheries and Food,* [5] the House of Lords rejected the argument that the minister's decision would not have been open to question if he had not given reasons. Lord Upjohn went to the extent of saying that if the circumstances warranted a court may beat liberty to come to a conclusion that it had no good reasons for reaching that conclusion and order aprerogative writ to issue accordingly. Despite Lord Denning's suggestion in *Breen v. Amalgamated Engineering Union,* [6] that where there is a writ to be heard, there is a right also to reasons for decision. It seems, on the state of the decisions in England, it is not yet possible to say that the giving of reasons has become a requirement of natural justice or fairness. Lord Denning had himself

pointed out earlier in *R. v. Gaming Board,* [7] that when the question in issue. was the Board's opinion of the applicant's capability the Board's expression of its Opinion would be an end of the matter and that no further explanation could be required of the Board.

13. In the present case the statute itself having required an opportunity to be given before a transfer is made under section 127(1) and after recording reasons in support of, it is needless in the present case to go into the wider question as to whether the giving of reasons has become a requirement of administrative law. The question, however, which arises is about the quality of the reason given and the manner in which it has been recorded. It was pointed out by Megaw, J, in Re Poser and Mill's Arbitration, (1963) All England Reporter 612 as follows :

"Parliament having provided that reasons shall be given, in my view that must clearly be read as meaning that proper, adequate reasons must be given ; the reasons that are set out, whether they are right or wrong, Must be reasons which not only will be intelligible, but can also reasonably be said to deal with the substantial points that have been raised... I am (not) saying that any minor or trivial error, or failure to give reasons in relation to every particular point that has been raised at the hearing would be sufficient to invoke the jurisdiction of the court...There must be something wrong and inadequate in the reasons that are given in order to enable the jurisdiction of this court to be invoked."

Edmund Davies, L.J. observed in *Metropolitan Properties Co, (F.G.C.) Ltd. v. Lannon,* [8] that the rent assessment committee, which fixed as fair rent an amount below that put forward by experts called at the hearing and below what was offered by the tenant, had failed, in their reasons, to say why they had not accepted any of the evidence given as to what the rent should be and that the reasons "went but a little way towards explaining their departure in a downward direction from the figures preferred on all sides". It was nonetheless held in that case that defects were not such as to require the decision to be nullified. Danckwerts, L.J. observed that while the decision could be criticized for lack of clarity '-there is force in the contention that the committee is not a formal body and is not wholly Composed of lawyers....it is not right to require a too high standard of the committee in this respect It is possible, in my opinion, to appreciate from the decision of the committee the matters which affected their conclusions".

14. It does not seem to me in the present case that the Commissioner's omission to state, once again, in the final order that i.e. issued, that the transfer was on the ground of administrative convenience, would be a matter of any significance or any defect which is fatal. He would have had to repeat in the final order (though this might have been with better advantage to avoid such a criticism) what had been stated earlier in the show cause notice that the transfer was made owing to administrative convenience.

15. All that section 127(1) requires is that the assessed should be given reasonable opportunity of being heard wherever possible and that the transfer should be made after recording reasons. In this case the reason for the transfer was mentioned to the assessed even in the show cause notice, that is, even before hearing the assesses; after hearing the objections the transfer was made. Mere omission to record in the final order of transfer the reason for the transfer being administrative convenience would not, therefore, vitiate the order of transfer. There has been in this case no failure to comply with the conditions prescribed under section 127(1) as preconditions for the transfer.

Point(3):

There is still lesser force in contention that the transfer was *mala fide* to harass the petitioner. There is no substance in the allegations of mollified against the Income Tax officials in the matter of search and seizure This has been discussed in the writ petitions filed against it). The searches and seizures thus not being malafide there was nothing improper in the Commissioner transferring the case of the petitioner from Faridabad to Delhi where the authorized officer in respect of the seizures was so that those documents could be available to the Income Tax Officer dealing with the petitioner's assessment or even for the purpose of enabling the authorized officer to ask for any extension of period of time in respect of the seized documents in his possession. Even apart from these two considerations the transfer in this case could be supported on the ground of administrative convenience. It has not been shown how the transfer was made *mala fide* or for any collateral purpose. After all the distance between Faridabad and Delhi is not much and I am un able to find anything sufficient to vitiate the order of transfer.

16. In the circumstances the Writ Petition fails and is dismissed but without any order as to costs.

Petition Dismissed.