AIR 1964 All 534

Allahabad High Court

Case No: Special Appeal No. 452 of 1960

Babu Ram, Ashok Kumar and Another		APPELLANT
	Vs	
Antarim Zila Parishad		RESPONDENT

Date of Decision: Feb. 3, 1964

Acts Referred:
Civil Procedure Code, 1908 (CPC) â€" Section 107#Constitution of India, 1950 â€" Article 226#Uttar Pradesh District Boards Act, 1922 â€" Section 129

Citation: AIR 1964 All 534

Hon'ble Judges: M.C. Desai, C.J; S.N. Dwivedi, J; J.N. Takru, J

Bench: Full Bench

Advocate: A.B. Saran and Gopal Behari, for the Appellant; P.L. Gupta, for the Respondent

Final Decision: Dismissed

Judgement

Desai, C.J.
I agree with brother Dwivedi that Mr. Justice Jagdish Sahai rightly exercised the discretion of nor granting relief to the

appellant in exercise of his extraordinary jurisdiction on the ground that an alternative adequate remedy was open to it and it had failed to avail itself

of it.

2. Rule 6 of Ch. XXII of Rules of Court prima facie appears to be ultra vires the Court, but the matter was not discussed at the Bar and I do not

give any definite opinion.

3. I do not agree with the contention of Sri Gopal Behari that Jagdish Sahai, J. ought not to have dismissed the petition summarily when it raised

some questions of importance. Even when a statute expressly grants a power to dismiss an application summarily it does not take it away when the

application raises important questions it law Even an important question can be decided correctly and if the High Court finds that important

questions that arose before an inferior Tribunal were decided by it correctly it is not compelled to entertain the petition for certiorari or mandamus

against the inferior Court and to give notice of it. No useful purpose will be served by its entertaining the petition and giving notice of it. If Jagdish

Sahai, I heard the applicants counsel in full it became irrelevant whether the questions raised by him were important or not; there was nothing to

prevent his deciding them there and then.

4. Whether the alternative remedy open to the appellant was inadequate because of certain onerous conditions attached to its being availed of

raised the question of fact whether the conditions were onerous or not. Attachment of any condition to the exercise of the alternative remedy did

not as a matter of law render it inadequate. No facts were alleged by the appellant in its petition proving that the conditions in its case were so

onerous as to make the remedy practically not available.

5. I agree that the appeal be dismissed with costs.

J.N. Takru, J.

6. I agree with My Lord the Chief Justice and brother Dwivedi, that this appeal should be dismissed with costs.

Dwivedi, J.

7. The Tax Officer of the Antarim Zila Parishad, Muzaffarnagar, levied a sum of Rs. 2,000/- as tax on circumstance and property on the appellant

for the assessment year 1959-60. The tax was levied under the provisions of the U. P. District Boards Act, 1922 (hereinbelow called the Act).

The appellant moved a petition under Article 226 of the Constitution against the levy. Our brother, Jagdish Sahai, before whom the petition was

moved, dismissed it summarily. He is of opinion that as the appellant had an adequate alternative remedy of appeal u/s 128 of the Act from the

levy, the Court should not intercede.

8. We are called upon to decide only one question in this appeal. That question is; should we upset the exercise of discretion by our brother?

9. A Court of appeal would not interfere with the exercise of discretion by the Court below, if the discretion has been exercised in good faith-after

giving due weight to relevant matters and without being swayed by irrelevant matters. It two views are possible on the question, then also the Court

of appeal would not interfere, even though it may exercise discretion differently, were the case to come initially before it. The exercise of discretion

should manifestly be wrong.

10. The appellant has not urged that the discretion has been exercised mala fide or on irrelevant considerations We have only to decide whether it

has been exercised without regard to relevant matters The impugned levy has been made u/s 114 of the Act read with a rule made by the

Government which fixes the tax ceiling at Rs. 2,000/- Section 114 provides that the tax may be imposed on any person "residing or carrying on

business in the rural area" provided that such person has so resided or carried on business for at least six months in the assessment year. Section

128 provides for an appeal from the assessment to the District Magistrate. Section 129 provides, inter alia, that no appeal "shall be heard and

determined unless the amount claimed From the appellant has been deposited by him in the office of the Board."

11. The appellant contended before the learned Judge that the appeal u/s 128 was not an adequate alternative remedy as the terms of Section 129

made it onerous The contention was found to be evidently frivolous The learned Judge said:

I enquired from the learned counsel as to why no appeal has been filed and he answered by saying that was because the petitioner did not want to

deposit the sum of Rs. 2,000, which is the amount of tax assessed on him.

He went on to say:

It has not been stated in the affidavit that the petitioner is a particularly poor man, that he has no property and that he is a pauper. From the order

of the assessing officer it appears that the petitioner crushed 2250 maunds of cane per day. His gross income according to the assessing officer is

Rs. 1,14,840/- His net income has been estimated to be Rs. 98,000/- The petitioner crushed 270000 maunds of cane the cost of which was Rs.

4,05,000/-. His total investment in this business was Rs. 5,06,250/-. Annexure "B" which is the application of the petitioner himself to the Antarim

Zila Parishad clearly states that the profit of the petitioner was Rs. 25,000/-. There is no averment in the petition or in the affidavit that the

petitioner is Indebted or he has no property I find it difficult to believe that the petitioner could not deposit the sum of Rs. 2000/- In fact the

petitioner has not even said that he is not in a position to pay; all that he has said in paragraph 13 of the affidavit is that it would be difficult for him

to pay.

12. Sri Gopal Behari, learned counsel for the appellant, has said not a word against these passages in the learned Judges" order. They are in my

opinion fully warranted by the facts on record. I would, however, venture, with respect to the learned Judge to refer to a matter in support of his

opinion tinder Section 129 the deposit of tax is the condition precedent not for filing an appeal but for hearing and deciding it. Paragraph 13 if the

appellant"s affidavit merely states that it would be difficult for appellant to deposit the tax before filing the appeal. Thus the only relevant averment

that the appellant could not deposit the tax before the hearing of the appeal is wanting in the affidavit.

13. Whether the remedy of appeal is onerous or not is not to be determined in abstract. It is a relative matter. The remedy may be onerous in one

case and not in the other. The quantum of the assessment, the time when the tax is to be paid for obtaining a rehearing in appeal, and the financial

condition of an assessee should ail he considered in deciding about the onerousness of the remedy judged by these criteria the remedy was in my

judgment not onerous in the present case The amount of tax is not very large. The time of the tax-deposit is not the filing but the hearing of the

appeal. The financial condition of the appellant is not proved to be tight. He could easily deposit the tax on or before the hearing of the appeal.

14. Sri Gopal Behari has pressed on us the argument that as the case raises questions of some importance, the learned Judge should not have

dismissed the petition summarily. He has relied on certain cases in support of his argument. Buddhu Vs. Municipal Board and Others, Budh

Prakash Jai Prakash and Another Vs. The Sales Tax Officer and Others, The State of Bombay and Another Vs. The United Motors (India) Ltd.

and Others, Himmatlal Harilal Mehta Vs. The State of Madhya Pradesh and Others, Lala Raj Kishore and Others Vs. District Board of

Seharanpur and Others, ; Bimal Prasad v. District Board of Saharanpur 1954 All LI 582; Raghbir Singh Vs. Municipal Board of Hardwar Union,

Hardwar and Another, and State of U. P. v. Mohammad Noob AIR 1958 SC 86. These questions are:

1. Section 124 of the Act violates Article 14 of the Constitution.

2. The levy is in excess of the maximum prescribed by Article 286 of the Constitution.

3. The Act expired on December 31, 1959.

4. The Antarim Zila Parishad, being a new body cannot levy the tax.

5. The appellant did not carry on business for more than six months in the assessment year.

6. The appellant is liable to pay the tax on circumstance and property to the Municipal Board of Muzaffarnagar wherein the business office of the

appellant is located. There cannot be double taxation.

7. As there were no members of a circle, the tax could not be assessed.

15. These points were not brought to the notice of the learned Judge. Indeed three of them, namely 3, 4 and 7, are not even mentioned in the

petition. They also do not figure in the memorandum of appeal. Again, only the fifth point was the basis of his objection before the Taxing Officer.

In these circumstances how can one say that the learned Judge did not give due weight to these three points in shaping his discretion?

16. The remaining four points are no doubt mentioned in the petition. The petition, however, does not allege that any person or property has been

exempted from the tax u/s 124 by the Antarim Zila Parishad or the State Government. In the absence of such an allegation the appellant had no

locus standi to question the constitutionality of that provision. The question is moot, and is, to my mind, raised with the ulterior object of short-

circuiting the alternative remedy. Such a thing would never help the appellant achieve his object.

17. There is already a Full Bench decision of this Court which would have given complete guidance to the appellate authority in determining the

second point District Board of Farrukhabad Vs. Prag Dutt and Others, . This point could, therefore, be easily decided by him. The appellant

cannot, therefore, bypass the remedy of appeal through the aid of this point.

18. I do not think that it is necessary to discuss every point separately. I have carefully considered each one of them, and have come to the certain

conclusion that none of them presented a question of any difficulty. Each one of them could be easily decided by the appellate authority. The facts

relating to them are neither voluminous nor entangled. The law governing them is also not complicated. The whole case is pretty plain and simple,

and the appellate authority could understand it as well as decide it.

19. I cannot accordingly pursuade myself to believe that a reasonable man would unhesitatingly think that the learned Judge should have admitted

the petition Nor can it be said that he has overlooked any such matter as could have tilted his discretion in favour of admitting the petition.

20. 1 shall now advert to the cases cited by Sri Gopal Bihari. Firstly, in none of those cases was the Court called upon to overturn the discretion of

the Court below. Secondly, in the first four cases difficult questions of constitutional law were involved, and those questions could not be decided

by the statutory authorities. It is, however, instructive to quote the remark of Bind Basni Prasad, J. in Buddhu Vs. Municipal Board and Others, .

At p. 510 of the report (All LJ): (at p. 757 of AIR) he said:

I am not prepared to go to the extent of laying down as an inflexible rule that in every case in which a fundamental right is involved a decision

should be given by the Court on merits on an application under Article 226. There may be cases in which the existence of an alternative remedy

may be ground for the rejection of the application."

21. Chintaman Rao Vs. The State of Madhya Pradesh, . (Also See Himmatlal Harilal Mehta Vs. The State of Madhya Pradesh and Others, is

distinguishable from the present case for another reason. There, unlike here, the amount of tax was to be deposited at the time of filing the appeal.

22. Lala Raj Kishore and Others Vs. District Board of Seharanpur and Others, is also distinguishable. Firstly, it was held there that in the appeal

the validity of a bye-law could not be impugned; secondly, about 200 criminal prosecutions were pending for failure to pay the licence fee which

was challenged in the petition.

23. In Raghbir Singh Vs. Municipal Board of Hardwar Union, Hardwar and Another, the alternative remedy was not that of an appeal but of a suit

for injunction for restraining the Municipal Board from recovering the illegal levy of toll. A large number of persons had filed petitions. In the case

of appeal the legislature had declared its preference for the remedy, and the Court, as the coordinate branch of the Government, would ordinarily

give due weight to its preference. The Court feels no such inhibition in relation to the general remedy of suit.

24. In Bimal Prasad''s case 1954 All LJ 582 : was urged for the respondent that the petitioner had an alternative remedy of appeal u/s 129 of the

Act. In repelling the argument, the learned Judges, inter alia, said:

Section 129(b), however, provides that before such an appeal could be "filed"""" (emphasis mine) ""the person assessed to circumstance and

property tax must deposit the tax. A similar clause in the Sales Tax Act was not considered by the Supreme Court to give a person an adequate

and equally efficacious remedy.....

25. In the C. P. Sales Tax Act the deposit was to be made at the time of filing the appeal; u/s 129 the deposit is to be made at the time of hearing

the appeal it is difficult to define how the learned Judges would have exercised discretion if counsel for the respondents had pointed out this

material difference The case is, therefore, no good guide on the question before us.

26. I shall now refer to three cases which go against the appellant and were not cited at the Bar. In Firm Har Prasad Sheodutt Rai Vs. Sales Tax

Officer, Bulandshahr, a Division Bench of the Court overruled a similar argument in relation to an appeal under the Sales Tax Act. The Bench said:

We do not think that simply because sales-tax would have to be deposited by the petitioner, it can be a conclusive ground by itself to show that

no adequate remedy is provided by the statute while providing a right of appeal.

After taking into consideration, among others, the quantum of the tax and the financial condition of the petitioner the Bench was satisfied that the

statutory remedy of appeal was an adequate alternative remedy, and dismissed the petition in limine.

27. In Gopikishen Agrawal and Another Vs. Collector of Customs, Visakhapatnam, a learned Judge dismissed the petition, inter alia, on the

ground that the petitioner had an adequate, alternative remedy of appeal. On appeal from his decision, it was urged that as the whole duty was to

be paid to the Customs Collector at the time of filing the appeal, the appeal was not an alternative remedy. Repelling the argument the learned

Judges said:

We do not think that the requirement as to the deposit of the amount demanded would be so onerous as to deprive the party affected of the right

of appeal or revision.

28. Taxing statutes provide a complete machinery for assessment of tax and for remedy against the assessment, and normally the party aggrieved

should exhaust that remedy before invoking the aid of the Court, as observed by Shah, J:

In our view the petition filed by the appellant should not have been entertained. The Income Tax Act provides a complete machinery for

assessment of tax and imposition of penalty and for obtaining relief in respect of any improper orders passed by the Income Tax authorities and the

appellant could not be permitted to abandon resort to that machinery and to invoke the jurisdiction of the High Court under Article 226 of the

Constitution when he had an adequate remedy open to him by an appeal to the Tribunal."" C.A. Abraham, Uppoottil, Kottayam Vs. The Income

Tax Officer, Kottayam and Another, .

29. Learned counsel for the respondent has tried to fortify the discretion of the learned Judge by Rule 6 of Ch. XXII of the Rules of the Court.

That rule has been framed by the Court under Article 225 of the Constitution. Article 226 confers on the Court a discretionary power. In moulding

its discretion it may have regard to various circumstances including the existence of an adequate alternative remedy The existence of an alternative

remedy does not oust the power of the Court to act under Article 226; it is a circumstance which would weigh with the Court in deciding whether

it should exercise the power or not. Rule 6 is phrased in inexorable language, and constrains the Court to dismiss a petition in limine and at all

events, if the petitioner has got an alternative remedy. The rule curtails the discretion of the Court, and is in my judgment ultra vires. Shivdev Singh

Vs. The State of Punjab, .

30. The appeal is liable to be dismissed for another reason During pendency of the appeal the Antarim Zila Parishad has rolled into the limbo of

oblivion, and the Zila Parishad constituted under the Kshettra Samitis and Zila Parishads Act. 1961 has stepped into its place. The appellant has no

taken steps to bring on record the Zila Parishad, Muzaffarnagar in place of the Antarim Zila Parishad. No writ, order or direction can be issued to

an extinct body.

31. For the reasons already stated I dismiss the appeal with costs.