

## Birendra Kumar Vs The State of Bihar and Others

**Court:** Patna High Court

**Date of Decision:** Dec. 11, 2006

**Acts Referred:** Bihar Finance Act, 1981 " Section 17(5)

**Citation:** (2007) 1 PLJR 445

**Hon'ble Judges:** Rekha Kumari, J; Aftab Alam, J

**Bench:** Division Bench

**Advocate:** Jyoti Saran, Chiranjiva Ranjan, for the Appellant; P.K. Shahi and Purnendu Singh For the State, for the Respondent

**Final Decision:** Allowed

### Judgement

@JUDGMENTTAG-ORDER

1. Heard Mr. Jyoti Saran, counsel for the petitioner and the Advocate General appearing on behalf of the State and the officers of the Revenue.

This case arises from the controversy relating to the registration as "dealer" of an establishment running under the name of Shankar Tea Store and

its liability to pay sales tax for the past several years. The proceeding before the Revenue authorities went through some unpleasant and ugly turns;

the establishment was subjected to raids and searches and in retaliation the people concerned with it lodged criminal cases against the Revenue

officers. But in this order we propose to deal only with the core issues and the directions that we consider appropriate to give in the matter.

2. The establishment under the name of Shankar Tea Store has been engaged in the retail sale of tea and several other edible items and misc.

provision. The business under that name has been in existence for a long time. It was admittedly not registered as a dealer under the Bihar Finance

Act. Pursuant to some raids and seizures at the store the revenue issued two notices, dated 16.8.2005. The notices were directed to Shankar Tea

Store without naming the person or people behind it. One of the two notices was u/s 28(1) of the Value Added Tax Act and proposed to assess

the liability of the concern for payment of VAT for the period 1.4.2005 to 8.7.2005. The other notice of the same date was issued u/s 17(5) of the

previous enactment, namely, the Bihar Finance Act, 1981 and it proposed to make the best judgment assessment of the concern for the period

16.8.1997 to 31.3.2005 (the date with effect from which the Bihar Finance Act was repealed by the succeeding VAT Act).

3. According to the petitioner (who is one of the sons of Radhe Shyam Prasad) the business under the trade name, "Shankar Tea Store" was

carried on by his father Radhe Shyam Pd. as its sole proprietor. He died on 22.6.2005, that is, about two months before the issuance of the

notices. After his death, on the basis of a family arrangement the business came under the sole proprietorship of the present petitioner who made

an application on 20.7.2005 for having himself registered as a dealer under the VAT Act. He was granted provisional registration on 21.7.2005

and was also assigned a certain Tin number subject to an enquiry and a final order to be passed in the matter.

4. On behalf of the petitioner great emphasis is laid on the fact that the business under the name and style of Shankar Tea Store was the

proprietary business of Radhe Shyam Prasad. That being the position, after the death of the proprietor on 22.6.2005 (while he was still

unregistered as a dealer under any enactment) the concern could not be assessed for payment of sales tax under any provisions of the Bihar

Finance Act, 1981 or the succeeding VAT Act. The notice was, therefore, ab initio bad and illegal.

5. As regards the other notice issued u/s 28(1) of the Act, it is contended that it was contrary to the Revenue's own record inasmuch as the

petitioner had been granted registration, albeit provisionally, on 21.7.2005. No proceeding against the concern could, therefore, be held as a

dealer evading registration.

6. From the records, however, it appears that the Assistant Commissioner, Sales Tax, Chapra Circle proceeded on the basis of the impugned

notices, dated 16.8.2005 and passed final orders on 16.9.2005. In the proceeding arising from the notice u/s 17(5) of the Bihar Finance Act, the

Assistant Commissioner rejected the petitioner's case that Shankar Tea Store was the proprietary concern of his deceased father Radhe Shyam

Prasad. He found and held that it was a concern set-up and run by a Hindu Undivided Family and hence, amenable to assessment under the

provisions of Section 37 of the Bihar Finance Act. On the basis of this finding he proceeded to make the best judgment assessment of the

concern's liability for payment of sales tax. In this regard he relied upon a statement made in the criminal complaint filed by one Bijay Kumar

(another son of Radhe Shyam Prasad and a full brother of the present petitioner) against the Assistant Commissioner, Sales Tax in the Court of the

C.J.M., Saran at Chapra. In para 2 of the complaint it was stated that the accused alongwith a number of his associates came to the shop and took

away, besides the books of account etc.-, Rs. 11,000/- being the sales proceeds on gun point. For the purpose of best judgment assessment this

statement was taken to mean that the amount of Rs. 11,000/- was the profit for the half day on which the raid was made at the shop. Building upon

this the Assistant Commissioner calculated the annual profit for the year, 2005 and projected the figure eight years back to 1997 allowing a drop

@ 20% annually.

7. Without anything else we find both the finding that the business under the name of Shankar Tea Store was a HUF concern and the manner of

calculation of its profit and the resultant tax liability wholly untenable. We are also not satisfied with the way in which the proceeding took place on

the basis of the other notice of the same date issued u/s 28(1) of the VAT Act. We accordingly set aside the orders, dated 16.9.2005 (Annexures

18 and 19 to the supplementary affidavit filed on behalf of the petitioner) and the consequential demand orders. We further set aside the orders,

dated 17/24.8.2005 cancelling the provisional registration of the petitioner as a dealer.

8. The entire matter is remitted to the Assistant Commissioner, Sales Tax, Saran Circle, Chapra. Proceeding on the basis of the two notices, dated

16.8.2005 the Assistant Commissioner shall first decide the issue with regard to the nature and character of the business under the trade name of

Shankar Tea Store before the death of Radhe Shyam Prasad on 22.6.2005. That is to say, whether the business was a proprietary concern of

Radhe Shyam Prasad till his death or whether it was a partnership among Radhe Shyam Prasad, his spouse and children and any others or whether

it was a HUF concern. Both the petitioner and the revenue shall be entitled to produce the materials in support of their respective cases. Once this

issue is finally decided, the Assistant Commissioner shall proceed in the matter in light of his finding and in accordance with law.

9. It may, here be noted that any finding on that issue shall also have a bearing on the petitioner's provisional registration as a dealer on 20.7.2005.

On this issue we wish to make it clear that though the order of cancellation of dealership is set aside, the court leaves the enquiry in the matter

expressly open and the authorities shall be at liberty to pass final order on the question of registration of the business as a proprietary concern of

the present petitioner in light of the finding on the primary issue with regard to the nature and character of the business during the lifetime of Radhe

Shyam Prasad.

10. We also make it clear that on any of the issues between the parties, this court is not expressing any opinion and the Assistant Commissioner

shall arrive at his findings independently and in light of the materials brought before him.

11. In order to facilitate an early disposal of the matter the petitioner is directed to appear before the Assistant Commissioner alongwith a certified

copy of this order within six weeks from today. This court would also like to give a stern warning to the petitioner to conduct the proceedings

before the revenue authorities in a peaceful and cooperative manner and to refrain from abusing the process of the criminal courts. In the result, this

writ petition is allowed subject to the observations and directions made above.