

(2002) 11 PAT CK 0071

Patna High Court

Case No: C.W.J.C. No. 11155 of 2002

Shakti Steel Pipes and Another

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision: Nov. 18, 2002

Citation: (2003) 1 PLJR 658

Hon'ble Judges: Rajendra Pd., J; R.S. Garg, J

Bench: Division Bench

Advocate: Navaniti Pd. Singh and Vikash Jain, for the Appellant; R.K. Dutta, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

1. The parties are finally heard.
2. The Petitioners are aggrieved by the order of the Assistant Commissioner, Commercial Taxes, Hajipur, passed on 6.9.2002 directing that unless the clarification/directions are received from the Commissioner, Commercial Taxes he would not countersign the statutory form "Cha" nor would issue the same in favour of the Petitioners.
3. It appears that by order dated 6.2.2002 the sales tax exemption earlier granted under the Industrial policy in favour of the Petitioner was cancelled by the Joint Commissioner, Commercial Taxes on recommendation of the Assistant Commissioner, Commercial Taxes. The Petitioner being aggrieved by the said order took up the matter in revision case No. CC(S) No. 320/2001-02 to the Commissioner, Commercial Taxes, along with it an application for ad interim stay was also made. Vide order dated 27.8.2002 the Commissioner, Commercial Taxes granted the interim order in favour of the Petitioners. It observed that the order passed by the Joint Commissioner, Commercial Taxes, on 6.2.2002 shall remain suspended. Thereafter the Petitioners made certain application for issuance of forms but the

Assistant Commissioner, Commercial Taxes, refused to issue the form. The Petitioners thereafter came to this Court and this Court issued direction to the Assistant Commissioner for taking steps in accordance with law. This Court interfered in the matter and directed that the road permits be issued in favour of the Petitioners. The Petitioners also made an application for issuance of form "Cha" on the foundation that as order of cancellation has already been stayed the parties are relegated to their original position and the Petitioners are entitled to the facility of form "Cha". The Assistant Commissioner, Commercial Taxes, by the impugned order passed on 6.9.2002 has again rejected the application inter alia observing that as he has already sought certain clarification/direction from the Commissioner he would stay the proceeding and would not do anything further. The Petitioners are again aggrieved by the order dated 6.9.2002.

4. From the order dated 6.9.2002 it would simply appear that the Assistant Commissioner, Commercial Taxes, is obsessed with his authority and is not ready and willing to observe the orders passed by his superior authorities. The law on the question of effect of an order of stay is absolutely clear. If an order of stay is granted in favour of somebody then the parties are relegated to their original position and would be entitled to other benefits which they were deriving on the date when the final order was passed against their interest. It is only the period between the final order by subordinate authority and the interim order by the appellate authority, the Petitioners in absence of a stay order would not be entitled to any benefit. But the moment an interim order is granted in favour of the party then the clog on the right of a particular party to get the benefit would again be removed.

5. From the counter affidavit filed by the Assistant Commissioner, Commercial Taxes, it appears that on 27.2.2002 as contained in Annexure B to the counter affidavit, he made some reference to the Commissioner, Commercial Taxes and sought for some clarification. Assuming the Commissioner, Commercial Taxes, was to send some reply to the Assistant Commissioner and he had not done so then too it cannot be assumed that the interim order passed in quasi judicial proceedings would not bind any subordinate authority and the subordinate authority would be entitled to ignore the quasi judicial order on a defence that the administrative instruction had not been received by him. It would be highhandedness to say that in absence of administrative order he would not observe a judicial or quasi judicial order.

6. In the present case, in the opinion of this Court, the Assistant Commissioner, Commercial Taxes, had no business to stay that he would not pass any order in relation to issuance of form "Cha". The moment appellate court stayed the order of cancellation, instead of taking an exception to the interim order passed by the appellate court the subordinate court should have accepted the order in its true spirit. The order dated 6.9.2002 passed by the Assistant Commissioner, Commercial Taxes, simply reflects arrogance and obsession. Let us issue a reminder to him that

in the hierarchy of the judicial system every subordinate officer/court is bound by the orders of the superior authorities and courts and even if the order passed by the appellate forum is not palatable to the subordinate forum that too he has to observe the order.

7. The order dated 6.9.2002 is hereby quashed. The concerned Assistant Commissioner, Commercial Taxes, is hereby directed to issue form "Cha" in accordance with law within a period of three days of submission of a copy of this order. Let us further remind that if he does not observe the true spirit of this order then he may expose himself to a serious risk.

8. The petition is allowed.