
Kartick Chandra Jana and Others Vs State of West Bengal and Others

C.R. No. 388 (W) of 1971

Court: Calcutta High Court

Date of Decision: Sept. 9, 1973

Acts Referred:

Central Excises and Salt Act, 1944 " Section 35(2)#Civil Procedure Code, 1908 (CPC) " Section 19, 20, 21, 34, 36

Citation: 78 CWN 271

Hon'ble Judges: Debiprosad Pal, J

Bench: Single Bench

Advocate: Bidyut Kumar Banerjee, for the Appellant;Nirmal Kumar Ganguly, for the Respondent

Judgement

Debiprosad Pal, J.

The petitioners are stated to be cloth Merchants and carrying on business under the trade name of ""Nandalaya"". They

are registered dealers under the Bengal Finance (Sales Tax) Act of 1941 (hereinafter referred to as the Act). It appears that the Commercial Tax

Officer, Midnapur filed a Certificate against the petitioners for realisation of a sum of Rs. 2287.81 being the liability under the Act for the period

ending 31st Chaitra. 1363 B.S. The petitioners preferred an objection under the Public Demands Recovery Act contending inter alia that no

proper notice was served upon the petitioners and hence the assessment was illegal and the Certificate was liable to be cancelled on that ground.

The objection did not prevail with the Certificate Officer and on appeal, the Additional Collector, Midnapore confirmed the decision of the

Certificate Officer holding inter alia that it is beyond the jurisdiction of the Certificate Officer to pronounce a judgment as to whether there has been

any procedural defect in the assessment of sales tax. The petitioners thereafter served a notice dated 18th March. 1963 u/s 80 of the Code of

Civil Procedure. It was alleged in the said notice that the assessment for the relevant year was illegal and void and consequently the certificate was

illegal. After expiry of the statutory period a suit was instituted in the Court of the Second Munsif, Midnapore, against the State of West Bengal,

being other Suit No. 127 of 1963. In the said suit, one of the contentions raised was that the assessment was illegal as no notice was ever served

upon the petitioners and the petitioners were not given any opportunity to defend their case at the time of assessment made by the Commercial Tax

Officer. The State of West Bengal, being the defendant in the said suit, in spite of due service of the notice, did not file any written statement and

did not contest the said suit. The learned Munsif, Midnapore, in these circumstances decreed the suit exparte holding inter alia that the statement

regarding the non-service of the notice has not been challenged and in the absence of any evidence to the contrary the assessment must be held to

be without notice and illegal. The certificate issued on the basis of such assessment was also held to be illegal and was therefore cancelled. The

state of West Bengal thereafter made an application for setting aside the exparte decree. The said application being Misc. Judicial Case No. 32 of

64 was also dismissed on contest as no sufficient reasons were shown by the State of West Bengal for non-filing of the written statement in the

course of seven months. The State of West Bengal thereafter did not go higher up against the said order. Although the said certificate was

cancelled by the judgment and decree in the other Suit No. 127 of 1963, another certificate dated 28th December, 1964 being Certificate No. 12-

S.T. of 1964-65 for the like amount being the sales tax payable for the same period was again filed. The petitioners filed an objection under the

Public Demands Recovery Act contending inter alia that in a suit filed u/s 34 of the said Act, the Learned Munsif had cancelled the earlier

certificate for the same amount and for the same period upon a finding that the assessment was illegal. The Certificate Officer by his order dated

31st May, 1965, set aside the demand holding inter alia that in view of the finding of the Civil Court a fresh certificate for the same demand does

not lie. On an appeal the Additional District Magistrate, Midnapur, restored the certificate and set aside the order of the Certificate Officer.

According to him the Civil Court cancelled the Certificate only and not the assessment of the sales tax which could have been annulled only by

appellate authority u/s 20 of the Act. On a revision against the said order, the Commissioner, Burdwan Division by his order dated 18.12.1965 set

aside the appellate order of the Additional District Magistrate and upheld the order of the Certificate Officer. The State of West Bengal thereafter

moved in revision the Board of Revenue. The Additional Member, Board of Revenue, by his order dated 9.7.1970 uphold the order of the

Additional District Magistrate and restored the Certificate thereby setting aside the order of the Commissioner, Burdwan Division. According to

him the declaration made by the Civil Court that the assessment was illegal was to be taken only as an obiter dictum and not binding on the

authority under the Act or the Public Demands Recovery Act. The fact that an earlier certificate was set, aside on the ground of its invalidity does

not prohibit the filing of a fresh certificate on the basis of another requisition against a party legally liable for the certificated demand. Aggrieved by

the said order of the Additional Member, Board of Revenue, the petitioners moved this court and obtained a rule nisi.

2. The main question which arises for Consideration is whether in a suit instituted by the petitioners in the Civil Court challenging the legality of the

certificate, the Civil Court is excluded from deciding the question as to whether the assessment is illegal on the ground that no notice was served

upon the petitioners. The determination of this question depends to a large extent on the relevant provisions of the Act under consideration. The

Act has provided a detailed and a complete machinery for preferring an appeal and revision against an assessment made under the Act. The

question of law arising out of the Board's order which has been made the final revisional authority under the Act may be referred to the High Court

for its decision. Section 19 expressly precludes the Civil Courts from calling into question any assessment made and any order passed under the

Act except in the manner laid down u/s 21 of the Act by way of reference on questions of law arising out of the Board's order. In the context of

this specific provision of the Act one has to consider the extent of the ouster of the jurisdiction of the Civil Court by the statutory tribunal

constituted under the Act. A comparison with the other statutory provisions may not be of much assistance in the solution of the problems except

in the ascertainment of the general principles underlying such provisions.

3. Statutory provisions which seek to limit the ordinary jurisdiction of the Court have a long history. u/s 9 of the CPC ""The Courts have jurisdiction

to try all suits of civil nature excepting suits for which their cognizance is either expressly or impliedly barred"". Statutes often seek to exclude the

jurisdiction of the civil court to review administrative action taking place under them by using various formulae for the purpose. A statute may make

the orders made under it as final. For example, Section 35(2) of the Central Excises and Salt Act, 1944 provides that ""every order-passed in

appeal under the section shall, subject to the power of revision conferred by Section 36, be final"". A variant of this provision is to be found in

Section 19 of the Act which lays down that save as is provided in Section 21 of the Act, no assessment made and no order passed under the Act

or the rules made there under shall be called into question in any civil court. The question as to the extent to which such formulae exclude the

jurisdiction of the civil court has posed problems which are not always easy of solution. The law on the subject is at the formative stage of

development and many of its dark corners remain to be significantly illumined. The trend of judicial decisions illustrates the attempt made to strike a

balance between the ordinary right of a citizen to have recourse to Courts of law for the determination of his rights and the legislative intention to

exclude the jurisdiction of the civil court to entertain a challenge on the functions assigned to and the decisions reached by various statutory

authorities which have grown as a result of the expansion of the activities of the State in varied spheres of social and economic life.

4. The main principle has been stated by Willes, J. in (10) Wolverhampton New Water Works Co. v. Hawkesford (1859) 6 C.B. (N.S.) 336.

The principle is where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for

enforcing it, the party must adopt the form of the remedy provided by the Statute. This principle has been accepted by the House of Lords in (4) v.

London Express Newspaper Ltd- (1919) A.C. 368. In the case of (7) Secretary of State v. Mask (67 IA 222) it has been laid down by the

Judicial Committee that the exclusion of the jurisdiction of the Civil Court is not to be readily inferred but that such exclusion must either be

explicitly expressed or clearly implied. Lord Thankerton who delivered the opinion of the Board, however, proceeded to add that ""it is also well

settled that even if the jurisdiction is so excluded, the Civil Courts have jurisdiction to examine into cases where the provisions of the Act have not

been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure"". These observations

have been accepted by the Supreme Court in the cases of (3) Firm and Illuri Subbayya Chetty and Sons Vs. The State of Andhra Pradesh, ; (sic)

State of Kerala Vs. Ramaswami Iyer and Sons, ; (2) Dhulabhai and Others Vs. The State of Madhya Pradesh and Another, . In the case of Firm

of Illuri Subbayya Chetty and Sons y. The State of Andhra (vide supra) the Supreme Court explained that the above observations of the Judicial

Committee, though made in somewhat wide terms do not justify the assumption that if a decision has been made by the taxing authority under the

provisions of the relevant taxing statute, its validity can be challenged by a suit on the ground that it is incorrect on the merit and as such it can be

claimed that the provisions of the said statute have not been complied with. Non-compliance with the provisions of the statute to which reference

has been made by the Privy Council must mean non-compliance with such fundamental provisions of the statute as would make the entire

proceeding before the appropriate authority illegal and without jurisdiction. Similarly, if an appropriate authority has acted in violation of the

fundamental principles of judicial procedure, that may also tend to make the proceeding illegal and void and this infirmity may affect the validity of

the order passed by the authority in question, it is only in those cases where the defect of the procedure is so fundamental that it goes to the very

root of the order and makes it invalid in law and void that the Civil Court can exercise its jurisdiction notwithstanding a provision to the contrary

contained in the Statute. It is well settled that where a Tribunal acts without jurisdiction, its decision is a nullity. The principle is stated in (5) Reg v.

Governor of Brixton Prison Ex parte Armah (1968 A.C. 192) that if a Tribunal has jurisdiction to go right, it has jurisdiction to go wrong. The

correctness of the principle cannot be doubted so long as the expression "jurisdiction" is used in its narrow original sense of the Tribunal being

entitled to enter on the enquiry in question but there may be many cases where, although the Tribunal had jurisdiction to enter on the enquiry, it has

done or failed to do something in the course of the enquiry which is of such a nature that its decision is a nullity. It may have given its decision in

bad faith. It may have made its decision which it had no power to make. It may have failed in the course of enquiry to comply with the

requirements of natural justice. It may have refused to take into account something which it was required to take into account. It may have based

its decision on some matter which under the statutory provisions, it had no right to take into account. In all these cases, the categories of which have

not been exhaustively enumerated, the tribunal acts without jurisdiction if the word "jurisdiction" is used in a wide sense and its decision is a nullity

(1) *Anisminic Limited v. Foreign Compensation Commission* (1969) 2 W.L.R. 163 (H.L.) Thus, "stretching the concept of jurisdictional errors has

been the principal technique by which the Courts have extended their control over statutory authorities and tribunals, as for example, by holding

that action which is wrongly motivated or unreasonable or inconsistent with natural justice is ultra vires and void." (H.W.R. Wade in *Constitutional*

Administrative Aspects of the Anisminic's case (1960) 85 LQR 198 at p. 209 to 210.

5. In the light of the principles discussed, one has to consider the question raised in the present case regarding the competence of the civil court to

declare the assessment to be illegal. In the suit filed in the present case before the Civil Court, the certificate was challenged on the plea that the

assessment is illegal and invalid as it was made without any notice upon the petitioners. The Civil Court accepted that contention in the absence of

any evidence adduced on behalf of the respondents to the contrary. I am, therefore, to proceed in this case on the footing that the assessment has

been made without any notice served upon the petitioners. The assessment without a notice to the petitioners is in gross violation of the

fundamental principles of judicial procedure. An order of assessment being a quasi-judicial order, there could be no decision within the meaning of

the statute if there is anything done contrary to the essence of justice (8) *Spackman v. Plamstead District Board of Works* (1885) (10) A.C. 229

H.L. An assessment without a notice to the petitioners being in gross violation of the principle of natural justice of audi alteram partem renders such

an order void. Since the decision in (11) *Wood v. Wood* (1874) L.R. D Exch. 190, this principle has never been doubted and has received a lucid

and forceful exposition in the case of (6) *Ridge v. Baldwin* (1964 A.C. 40). If an assessment is made under the Act without a notice upon the

petitioner, the irregularity or the illegality committed in observing ""the fundamental principles of judicial procedure is so patent and loudly obtrusive

that it leaves on the decision an indelible stamp of infirmity which ex facie renders the assessment void and illegal. In my view, the Civil Court's

jurisdiction to decide whether the assessment in question was illegal because of non-compliance with the fundamental principles of judicial

procedure, is not excluded by Section 19 of the Act and the finding arrived at by the Civil Court that the assessment was illegal because of the

infirmity referred to above was not without jurisdiction. The view of the Additional Member, Board of Revenue, that in view of Section 21 of the

Act no assessment can be called into question in any Civil Court or that the declaration by the Civil Court that the assessment was illegal was an

obiter is patently erroneous in law.

6. If the finding of the Civil Court on the legality of the assessment is not without jurisdiction, it is not open for the respondents to file another

certificate for the same demand for the same year. In such a proceeding challenging the certificate it is open to the petitioners to contend that the

finding of the Civil Court on the legality of the assessment cannot be varied or affected. It is well settled that in the absence of fraud or irregularity,

a decree obtained ex parte is binding for all purposes as a contested decree. Before the Civil Court the question as to whether the assessment is

illegal because of non-service of the notice was directly and specifically in issue. Before the Certificate Officer, in the second certificate for the

same demand such question is also a material one to be decided. The principle of res judicata will apply particularly when a Certificate officer u/s

57 of the Public Demands Recovery Act is deemed to be a court. For the reasons stated above, in view of the finding of the Civil Court that the

assessment is illegal, the amount of the present certificate under the Public Demands Act is illegal and invalid. The order made by the Additional

Member, Board of Revenue dated 9-7-70 being annexure ""L"" is quashed as also the certificate being No. 12- S.T. of 1964-65 dated 28th

December, 1964 are quashed by a writ of Certiorari. There will be a writ in the nature of mandamus commanding the respondents to forbear from

giving any effect to the said order of the Additional Member, Board of Revenue and the said certificate. The Rule is made absolute to the extent

indicated above. There will be no order as to costs.