

(1978) 08 CAL CK 0027

Calcutta High Court

Case No: Civil Rule No. 13593 (W) of 1975

Paharpur Cooling Towers (Pvt.)
Ltd. and Another

APPELLANT

Vs

Additional Commissioner of
Commercial Taxes and Others

RESPONDENT

Date of Decision: Aug. 25, 1978

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (1978) 42 STC 398

Hon'ble Judges: S. Mukharji, J

Bench: Single Bench

Advocate: Gopal Chandra Chakraborty and Narayan Chandra Bhattacharya, for the Appellant; Samarendra Nath Dutta, for the Respondent

Final Decision: Dismissed

Judgement

S. Mukharji, J.

In this application under Article 226 of the Constitution the petitioners challenge the order passed by the Additional Commissioner of Commercial Taxes, which is annexure E to the present petition. By the impugned order the Additional Commissioner had directed the dealer to deposit a security of Rs. 50,000. The order is set out in pages 46 to 52 of the annexure to the present petition. The order proceeds on the basis that on perusal of a report dated 21st February, 1975, of the Commercial Tax Officer, Alipore Charge, a prima facie case was found that the dealer in question had mala fide used declaration forms which he had received from the Commercial Tax Officer concerned. The order, further, states as follows :

It also transpired that for one particular transaction made, the dealer issued two declaration forms, Nos. C 695557 dated 3rd February, 1969 and C 004180 dated 22nd April, 1969. It, further, transpired that M/s. East India Sales & Service

Corporation, 1, Bona fide Lane, Calcutta-1, issued one declaration form to the dealer, M/s. Paharpur Cooling Towers (P.) Ltd., against purchase of goods as per Bill No. WS/27 dated 21st June, 1969, for Rs. 4,830 but the said declaration form was found in the wrongful custody of M/s. S.N. Steel Corporation of 115, Cotton Street, Calcutta-7. The dealer was, therefore, directed to show cause as to why security of Rs. 50,000 should not be demanded from him u/s 7(4a)(ii) of the Bengal Finance (Sales Tax) Act, 1941, for proper use and safe custody of declaration forms.

2. Thereafter, the Additional Commissioner states that show cause notice was issued and the representative of the dealer had appeared and showed cause and the cause shown by the dealer has been discussed in detail and set out in detail. But according to the Additional Commissioner the declaration forms should have been in the custody of Steel Trading Corporation and M/s. Paharpur Cooling Towers (Pvt.) Ltd. respectively to whom such forms were issued by the purchasing dealers. The Additional Commissioner is of the view that the dealer had failed to explain as to how such declaration forms could be in the possession of third parties. The story of the dealer that such third parties were the agents of the dealer was not accepted by the Commissioner for reasons mentioned in the main order which in detail dealt with the matter. Thereupon the Additional Commissioner proceeds to state as follows :

Viewing the entire matter from its proper perspective and also taking into consideration all other relevant factors, I am of the opinion that it is a fit case for demand of security u/s 7(4a)(ii) of the Bengal Finance (Sales Tax) Act, 1941, in the context of what has been stated earlier. I am also of the opinion that it would be fair and reasonable to demand a security of Rs. 50,000 in the instant case u/s 7(4a)(ii) of the Bengal Finance (Sales Tax) Act, 1941.

3. The propriety of this order is challenged in this application. The Commissioner may u/s 7(4a)(ii) of the Act for good or sufficient reasons to be recorded in writing demand from any registered dealer or any undertaking supplying electrical energy to the public under a licence or sanction granted or deemed to have been granted under the Indian Electricity Act, 1910 (9 of 1910), reasonable security for the proper use and safe custody of the forms referred to in the proviso to Clause (bb) of Sub-section (1) of Section 5 or in the proviso to Clause (a) of Sub-section (2) of that section, whether obtained from the prescribed authority or furnished by the registered dealer or an undertaking to whom the goods have been sold. It was urged that in this case there was no good or sufficient reason. Therefore, the condition precedent for the exercise of the power had not been fulfilled. I am unable to accept this contention. Sufficiency of the reasons given in the impugned order is not open to the scrutiny of the court in an application under Article 226 of the Constitution. If there are prima facie relevant reasons, relevant in the sense that the reasons have nexus to the order made and the purpose of the section, then the sufficiency of the reasons cannot be gone into in this application. Prima facie the

reasons appear to be relevant and not insufficient as in the sense that no reasonable man could have come to the conclusion as the Additional Commissioner did. If that is the position, then, in my opinion, the condition precedent was fulfilled in this case.

4. It was, secondly, contended that under Rule 71 of the relevant Rules the Commissioner had not delegated these functions or could not delegate all these functions for imposing penalty in the circumstances mentioned to the Commercial Tax Officer. u/s 3A, the Additional Commissioner in view of the relevant notification, exercise the powers of the Commissioner. The impugned order was passed by the Additional Commissioner. It is true that he has perused the report of the Commercial Tax Officer but from this it could not be said that the order was the order of the Commercial Tax Officer. It is only to be expected that the Additional Commissioner or the Commissioner would act on a perusal of the report. So long as reasonable opportunity is given to the party concerned, to show cause, in my opinion, there is no impropriety for the Additional Commissioner to act in the manner he did.

5. It was, lastly, contended that the security required was wholly unreasonable. It is submitted that the two forms on the basis of which the impugned order had been passed were all obsolete and as the said forms were no longer in use and, furthermore, the allegation involved avoidance of tax of about Rs. 330. Therefore, it was not proper to demand security of Rs. 50,000. Reasonableness of the security for declaration forms imposed has to be judged not solely on the basis of the tax evaded by the dealer or on the basis of which the authorities concerned purported to act but on the basis of the taxable turnover of the business of the dealer concerned. After all the security is for the future proper use of the declaration forms. The total business carried on by the dealer is certainly a relevant factor to consider the reasonableness of the security demanded. This principle, in my opinion, is well-settled by the decision of the Supreme Court in the case of Nand Lal Raj Kishan v. Commissioner of Sales Tax, Delhi [1961] 12 S.T.C. 324 at 328 (S.C.) and the relevant observations are at page 328.

6. In the aforesaid view of the matter, I am unable to sustain the challenge made to the impugned order. The application, therefore, fails and it is accordingly dismissed. The rule nisi is discharged. Interim order, if any, is vacated. There will, however, be no order as to costs.