

the Gram Panchayat seeking enforcement of prohibition, the message does not seem to have gone home to those it should have naturally gone. This has resulted in spate of petitions filed in this Court every year at the eve of auction of liquor vend which is resulting into complete harassment to the Gram Panchayats as well as to those who may have made successful bid at the auction. We wish and sincerely hope that henceforth the authorities would apply their mind in a more serious manner and would not be swayed by any other consideration but for the one in which the matter has to be dealt with lest a time comes that we are constrained to pass orders for paying damages by those who deal with the matters.

(18) For the reasons aforesaid, all the petitions are allowed. As referred to above, petition No. 3841 of 1992 was allowed after hearing arguments on April 23, 1992 itself and judgment with regard to the said case shall be considered operative from that date. The orders passed in various cases rejecting the resolutions of the Gram Panchayat are quashed. The action of the respondents in auctioning the liquor vend in the cases where auction has already taken place is held to be illegal and, thus, set aside. There shall, however, be no order as to costs.

J.S.T.

Before : A. L. Bahri & V. K. Bali, JJ.

MUBARIK PUR STONE CRUSHERS UNION,—*Petitioner.*

versus

THE STATE OF HARYANA AND OTHERS,—*Respondents.*

Civil Writ Petition No. 3443 of 1992

May 12, 1992

Constitution of India, 1950—Art. 226—Haryana General Sales Tax Act (XX of 1973)—S. 51—Penalty—Petitioner is a union of stone Crushers—Purchasing stone, bajri etc. from Punjab at the rate of Rs. 66 per truck—Such material brought to crushers in trucks—At Haryana border made to pay Rs. Twenty per truck as penalty—Such action of respondents in imposing penalty without following provisions of the Act invalid—Receipt cannot be treated as order passed under section 51(2) of the Act—Without an order no appeal could be filed by the petitioners.

Held, that as per facts of the present case Rs. 20 per truck were charged at the check post. Under section 51 of the Act. However,

this receipt cannot be treated as order passed under section 51(2) of the Act. The aforesaid provision provides for affording reasonable opportunity of being heard before imposing the penalty mentioned in sub-section (1) of section 51 which further provides for making an order about the contravention or failure of the provisions of the Act. The assessing authority at the check-post did not pass any such order specifying contravention of the provisions of the Act by the petitioner or non-compliance. An order to be passed imposing penalty is a quasi judicial order and was required to be supported by the reasons. It is only then that the aggrieved person could challenge the same in appeal. Non-filing of the appeal by the petitioner in the circumstances stated above cannot be treated as a bar for entertaining of the writ petition in the fact of the present case. For the reasons recorded above, this writ petition is allowed with costs.

(Para 7 & 10)

Petition under Artcles 226/227 of the Constitution of India praying that :—

- (i) *that the records of the case may kindly be called for ;*
- (ii) *that after a perusal of the record and hearing upon the counsel, this Hon'ble Court may kindly be pleased to grant the following reliefs :—*
 - (a) *issue an appropriate writ or order restraining the Respondents from imposing penalty on the trucks attached with the petitioner-Union, and to take further action in pursuance thereof ;*
 - (b) *Direct the respondents not to stop the trucks of the petitioner on production of relevant documents;*
- (iii) *that any other writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case may kindly be issued ;*
- (iv) *that any other relief to which the petitioner may be found entitled in the facts and circumstances of the case may kindly be granted ;*
- (v) *that the requirement of serving the advance notices of this petition on the respondents herein may kindly be dispensed with in view of the urgency of the matter ;*
- (vi) *that the requirement of filing the certified copies of annexures may kindly be dispensed with in view of the urgency of the matter ;*
- (vii) *that the costs of the petition may kindly be awarded in favour of the petitioner and against the respondents herein as it has been put to avoidable expense at their hands ;:*

(viii) *it is further prayed that during the pendency of the writ petition in this Hon'ble Court, the imposition of penalty on the trucks of the Union may kindly be stayed; while crossing the check barrier and not to stop the trucks on production of relevant documents.*

Deepak Sibal, Advocate, *for the Petitioner.*

D. R. Trikha, D.A.G., Haryana, *for the Respondent.*

JUDGMENT

(1) *Vide* this order two writ petitions are being disposed of as the facts and question of law are common. Facts are taken from the file of C.W.P. No. 3443 of 1992.

(2) The petitioner is a Union of Stone Crushers known as the Mubarikpur Stone Crushers Union. In the other writ petition the petitioners are 11 in number. All these petitioners are doing the business of stone crushing. The members of the Union buy stone, *gatka* and *bajri* from the quarries falling in the State of Punjab from the quarry-contractors. The petitioners are registered under the Haryana General Sales-tax Act with the Excise and Taxation Officers. Such material is brought to the crushers in the trucks owned or hired by such firms. The quarry-contractor charges Rs. 66 per truck as the price of 200 cubic feet and 10 per cent Central Sales-tax thereon, i.e. the amount of Rs. 66 includes Central Sales-tax. One of the bills has been produced as Annexure P. 1. At the Ghaggar river-bed labour is engaged to load the trucks, and loading charges of Rs. 35 to Rs. 40 per truck of 200 cft. are paid. When the trucks reach Haryana Border, they are stopped and they are made to pay Rs. 20 per truck by Respondent No. 2, the Officer Incharge, Sales-tax Check Barrier, Ramgarh in spite of the fact that necessary bill of purchase of stone etc. at the rate of Rs. 66 per truck along with sales-tax Form-38 are shown. A receipt for Rs. 20 is issued in Form ST-29 purporting to charge the amount as penalty under section 51 of the Haryana General Sales-tax Act (hereinafter to be referred to as 'the Act'). One of such receipts has been produced as Annexure P. 2. In this manner members of the Union are made to part with approximately Rs. 3,000 in one day. Several enquiries were made from respondent No. 2, regarding charging of Rs. 20 per truck but no satisfactory reply was furnished. Earlier Rs. 10 per truck per trip used to be charged which action was challenged by M/s Bharat Stone Crusher, Zirakpur, before the Joint Excise and Taxation Commissioner (Appeals). *Vide* order dated November 12, 1987 (Annexure P. 3) the charging of Rs. 10 per

truck per trip was quashed. In these writ petitions challenge is to the imposition of such penalty at the rate of Rs. 20 per truck per trip by respondent No. 2 without following the provisions of the Act.

(3) On notice of motion having been issued, reply has been filed by Respondent No. 2. The preliminary objection has been raised during arguments that alternative remedy of filing an appeal is available to the petitioners and this Court should not interfere in the exercise of jurisdiction under Article 226 of the Constitution. On merits it was stated that the excavation of stone etc. by the mining contractor was under the provisions of Punjab Minor Mineral Concession Rules, 1964 and such rights were auctioned. Copy of one of the auction-tenders was produced as Annexure R. 1. It was denied that the petitioners were stone-crushers or they ever challenged the charging of Rs. 20 per truck which levy was stated to be valid. The enquiry made by respondent No. 2 revealed that labour charges from Rs. 30 to Rs. 50 were not included in the bills and the bills produced like Annexure P. 2 were not genuine. The penalty was paid voluntarily. No detailed speaking orders were passed. It was admitted that in M/s. Bharat Stone Crusher, Zirakpur, case order was passed which was described as order *in personam* and not *in rem*.

(4) After hearing counsel for the parties, we are of the firm opinion that levy of Rs. 20 per truck per trip from the petitioners was not in accordance with the provisions of the Act which is liable to be quashed.

(5) Shri D. R. Trikha, D.A.G., Haryana, has raised a preliminary objection regarding maintainability of the writ petition. The contention is that the levy of the tax by the Assessing Authority could be challenged in an appeal under section 39 of the Act. This contention is refuted by Shri Deepak Sibal, Advocate, appearing on behalf of the petitioner alleging that since no order was passed by the Assessing Authority supported by reasons appeal could not be preferred.

(6) We have given due consideration to the arguments of the counsel for the parties and we find that preliminary objection raised has no substance. Section 51 (1) & (2) and Section 39 (1) of the Act read as under :—

“51—Other offences :— (1) Whosoever contravenes or fails to comply with, any of the provision of this Act or the rules made thereunder or any order or direction made or given

thereunder, shall, if no other penalty is provided under this Act for such contravention or failure, be liable to imposition of a penalty, nor exceeding two thousand rupees, and where such contravention or failure is a continuing one, to a daily penalty not exceeding fifty rupees during the period of the continuance of the contravention or failure.

- (2) An officer-in-charge of a check post or barrier or any other officer not below the rank of an Assistant Excise and Taxation Officer appointed under sub-section (1) of section 3 or such other officer as the State Government may, by notification, appoint, may, after affording to the person concerned a reasonable opportunity of being heard, impose the penalty mentioned in sub-section (1) :

Provided that the officer-in-charge of a check post or a barrier shall exercise such powers only at such check-post or barrier."

"39. Appeal :— (1) An appeal from every original order, including an order under section 40, passed under this Act or the rules made thereunder shall lie :—

- (a) if the order is made by an assessing authority officer in-charge of a check-post or barrier or an officer below the rank of a Deputy Excise and Taxation Commissioner, to the Deputy Excise and Taxation Commissioner or such other officer as the State Government may, by notification appoint ;
- (b) if the order is made by the Deputy Excise and Taxation Commissioner to the Commissioner or such other officer as the State Government, may, by notification appoint ;
- (c) if the order is made by the Commissioner, to the Tribunal."

(7) As per facts of the present case Rs. 20 per truck were charged at the check post. Under Section 51 of the Act as is apparent from Annexure P. 2. However, this receipt cannot be treated as order passed under section 51 (2) of the Act. The aforesaid provision provides for affording reasonable opportunity of being heard before imposing the penalty mentioned in sub-section (1) of Section 51 which further provides for making an order about the contravention or

failure of the provisions of the Act. The assessing authority at the check-post did not pass any such order specifying contravention of the provisions of the Act by the petitioner or non-compliance. An order to be passed imposing penalty is a *quasi* judicial order and was required to be supported by reasons. It is only then that the aggrieved person could challenge the same in appeal. As admitted in the written statement filed by the respondents no such order was passed by the assessing authority at the check-post before collecting the amount of penalty. Rule 55 (3) framed under the Act provides for filing of certified copy or attested copy of the order along with the appeal. Obviously appeal in the present case could not be filed for want of order or its copy and remedy of appeal in the facts of the present case is not considered efficacious remedy. Non-filing of the appeal by the petitioner in the circumstances stated above cannot be treated as a bar for entertaining of the writ petition in the facts of the present case.

(8) As briefly discussed above, penalty in the present case has been charged from the petitioner without any order imposing such penalty supported by any reasons. Annexure P. 3 is the copy of the order of the Joint Excise and Taxation Commissioner (Appeals) dealing with similar matter of charging penalty at the check-post under section 51 of the Act in the case of *M/s. Bharat Stone Crusher, Zirakpur (Ambala) v. The Officer Incharge, Sales Tax Check Barrier, Panchkula*. Operative part of the order is reproduced below :—

“After hearing both sides, I find that no doubt, the officer imposing penalty has taken pains to study and analyse the trade but the penalty imposed on the truck of the purchaser cannot be sustained. If the officer has held that the selling dealer issued sale bill at lesser value he should proceed against that dealer who is registered under the Haryana General Sales Tax and not against the casual truck of the purchaser. There is no fault of the purchaser and he has submitted the declaration in Form ST-38 according to the sale bill issued by the selling dealer. The penalty is, therefore, quashed.”

(9) In spite of the fact that order Annexure P. 3 was passed on on November 12, 1987, the authorities under the Act have failed to implement the same. Rather the directions appear to have been flagrantly abused in continuing the practice of collecting money at the check-post in the form of penalty under section 51 of the Act without passing any *quasi* judicial order as contemplated.

(10) For the reasons recorded above, this writ petition is allowed with costs. The levy of penalty like Rs. 20 per truck per trip at the check-post in the case of the petitioners is quashed with the directions to the respondents to refund the amount of such like penalties charged from the petitioners on their moving an application giving details thereof within a period of 3 months from filing of the application for refund. The costs are assessed at Rs. 2,000, in each of the case.

J.S.T.

Before Jawahar Lal Gupta, J.

JALANDHAR IMPROVEMENT TRUST,—*Petitioner.*

versus

THE PRESIDENT LAND ACQUISITION TRIBUNAL,
JALANDHAR AND OTHERS,—*Respondents.*

Civil Writ Petition No. 9407 of 1991.

May 8, 1992.

Constitution of India, 1950—Art. 226—Joint Writ Petition—Maintainability—Separate awards by Land Acquisition Tribunal—Application for benefit under Section 30 of Land Acquisition Act moved by claimants in each case—Disposed of by separate orders—Petitioner filing one joint writ against all claimants—Not competent—Separate cause of action arises in each case.

Punjab Town Improvement (Act IV of 1922)—Acquisition under Act—Tribunal while granting benefits of interest and sclatium under Land Acquisition (Amendment) Act 1984 by mistake overlooked granting of benefit of Section 30 of Land Acquisition Act—Mistake rectified—Would not amount to review.

Punjab Town Improvement (Act IV of 1922)—Plea that provisions of Land Acquisition (Amendment) Act not applicable to acquisition under Punjab Town Improvement Act—Not tenable.

Held, that there were separate awards by the Tribunal. In each case an application was moved by the claimant/s. These applications have been disposed of by separate orders. The petitioner has filed only one petition challenging all the orders. Most of the orders have not even been produced. The petitioner has a separate cause of action in every case. In this situation, a joint petition against all the claimant/s in whose favour separate orders have been passed is clearly not competent.

(Para 8)