PETITIONER:
TATA ENGINEERING AND LOCOMOTIVE COMPANYLTD.

Vs.

RESPONDENT:
ASSISTANT COMMISSIONER OF COMMERCIAL TAXES& ANR.

DATE OF JUDGMENT:
24/02/1967

BENCH:
HIDAYATULLAH, M.
BENCH:
HIDAYATULLAH, M.
SHELAT, J.M.
MITTER, G.K.

CITATION:
1967 AIR 1401 1967 SCR (2) 751
CITATOR INFO :
F 1977 SC 854 (13)

ACT:
Constitution of India, Art. 226-Principles for exercise of High Court's power under-Existence of alternative remedies when not a bar.

HEADNOTE:
The appellant company manufactured trucks, bus chasis etc. in Bihar State. Some of the goods so manufactured were sent to the stockyards maintained by the company in various States outside Bihar. The goods in the said stockyards, according to the company, had not been appropriated to any contract and remained the property of the company. Therefore. in proceedings for the assessment of Sales Tax before the Assistant Commissioner of Commercial Taxes, Jamshedpur the company contended that the sales effected from these stockyards were taxable neither under the Bihar Sales Tax Act,, nor under the Central Sales Tax Act. The contention was rejected by the Assistant Commissioner who demanded Rs. 1,73,84,273 as tax. The company thereupon filed a petition under Art. 226 of the Constitution questioning the jurisdiction of the Taxing Authority. The High Court refused to give relief because ,adequate alternative remedies under the taxing statute were available and had not been exhausted and dismissed the petition in limine. By special leave the company appealed.
HELD : The jurisdiction of the High Court under Art. 226 of the Constitution cannot be a substitute for the ordinary remedies at law. Nor is its exercise desirable if facts have to be found on evidence. But there are exceptions. One such exception is when action is being taken under an invalid law or arbitrarily without the sanction of law. In such a case the High Court may interfere to avoid hardship to a party. which will be unavoidable if the quick and more efficacious remedy envisaged by the article were not allowed to be invoked. As the appeals required payment of tax at least in part the High Court ought to have taken jurisdiction in this case at least to issue a rule nisi to see what the Assistant Commissioner had to say. [755 E-G, 756 C-D]

Thansingh v. Supdt. of Taxes [1964] 6 S.C.R. 654 and Himmatlal V. State of M.P. [1954] S.C.R. 1122, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1604 of 1966.

Appeal by special leave from the judgment and order dated April 20, 1966 of the Patna High Court in C.W.J.C. No. 252 of 1966.

N. A. Palkhiwala, S. P. Mehta, Ravinder Narain and O. C. Mathur, for the appellant.

Niren De, Addl. Solicitor-General and U. P. Singh, for the respondents.

75

752

The Judgment of the Court was delivered by

Hidayatullah, J. The appellant is a public limited Company which manufactures the well-known Tata Mercedes-Benz trucks, bus chassis, their spare parts and other accessories at Jamshedpur in the State of Bihar and they are sold to the Government of India, the State Governments, State Transport Corporations and others. In the course of its business the appellant Company sells its products, particularly the trucks and bus chassis, to dealers in various parts of India and the dealers resell them to consumers, all over INdia. According to the appellant Company, its sales in the Indian market are of three kinds

(a) Sales inside Bihar State;

(b) Sales in the course of inter-State trade and commerce; and

(c) Sales effected from their stockyards located in States other than Bihar.

The present appeal concerns sales in the last category and the question arises in the following circumstances.

The appellant Company filed returns for the quarter ending on June 30, 1965, under the Bihar Sales Tax Act and the Central Sales Tax Act respectively, including in the former sales to consumers in Bihar State and in the latter sales in the course of interState trade or commerce, and paid full tax due on such sales. The appellant Company did not include sales from the stockyards, in any of its returns.

On November 12, 1965 the Assistant Commissioner of Commercial Taxes, Jamshedpur sent a notice (No. 11284) informing the appellant Company that the returns appeared to be incorrect as all sales were not included and directed the appellant Company to include all its sales in revised returns and all returns to be filed in future. The appellant Company demurred that sales from their stockyards in other States were neither sales in the State of Bihar, nor sales in the course of inter-State trade or commerce and were thus not taxable in Bihar. This plea was not accepted and revised returns for the quarters ending on June 30 and September 30, 1965 were ordered to be filed. The appellant Company filed amended returns under protest and without prejudice to its contentions. At the same time the appellant Company disclosed, the entire procedure of sales ex-stockyards and relied upon s. 4(2) of the Central Sales Tax Act to exclude such sales. The appellant Company also inquired whether these sales were to be treated as sales in Bihar for the purposes of the Bihar Sales Tax Act or as sales in the course of inter-State trade and commerce for purposes of the Central

753.
Sales Tax Act, but no reply was given. The appellant Company further asked for an opportunity to produce declarations from its customers, who are also registered dealers, with a view to claiming a rebate, but this opportunity was denied. The appellant Company objected to the assessment for a period of six months under a tax legislation, which it claimed, was intended to operated yearly but to no effect. According to the revised returns filed under compulsion, the break-up of the sales was as follows : The total gross turnover was Rs. 33,99,23,595. The appellant Company claimed to deduct (a) sales from stockyards at extra State points (Rs. 15,09,24,204); (b) sales. in the course of export- out of India (Rs. 34,83,671); and (c) sales effected in Bihar on which Bihar Sales Tax was payable (Rs. 3,64,79,209). The balance Rs. 14,90,36,510, according to the appellant Company, consisted of sales (Rs. 14,33,02,855) to registered dealers taxable at 2% and sales of the balance to unregistered dealers taxable at 10%. The tax for the period April 1, 1965 to September 30, 1965 was computed at Rs. 34,05,028. The appellant Company stated to have paid against it Rs. 34,45,699 as tax in the Government Treasury and denied any further liability. The Assistant Commissioner after turning down the requests for adjournments proceeded to assess the appellant Company. The gross turnover for the two quarters was taken to be Rs. 35,13,60,725. The difference (Rs. 1,14,37,129) arose because tax in other States was also added to the sale prices. Deducting the sales, made in Bihar State(Rs.3,64,79,209) and the sales in the course of export (Rs. 34,83,671) the balance (Rs. 31,13,97,844) was held taxable at different rates. Rs. 12,94,81,387 for which C and D forms were produced from, registered dealers were taxed at 2% and the balance (Rs. 16,23,61,334 plus local taxes Rs. 1,14,37,129 above mentioned) at 10%. The total tax was computed to be Rs 2,07,81,273 from which deducting the tax already paid, a demand for the sum of Rs. 1,73,84,273 was made. The order of assessment was passed on March 1, 1966 and the amount of' arrears of tax was made payable on or before March 15, 1966. The appellant Company asked for time to make the payment and it was extended to March 21, 1966.
The appellant Company filed a petition under Art. 226 of the Constitution of India in the Patna High Court for directions or orders or writs, including a writ in nature of certiorari calling for the records and quashing the order of the Assistant Commissioner. By the petition the jurisdiction of the Assistant Commissioner to make the assessment and the demand of, tax in respect of stockyard sales were questioned. of the grounds. urged, the following were questions of jurisdiction
754

" (a) The assessment on the Petitioner for two quarters is illegal as the Central Sales Tax is a yearly tax.
(b) Respondent No. 1 erred in assuming jurisdiction to tax the outside sales by wrong interpretation of evidence,, contrary to the overwhelming evidence on record.
(c)
(d)
(e) Respondent No. 1 failed to appreciate that in law sale took place only at the stockyard where the vehicle was appropriated to a particular contract and that

the sale did not occasion inter-State movement of the vehicle.

(f) Respondent No. 1 has relied on section 84 of the Contract Act even though the same was repealed in 1930 and thereby erred in applying a wrong provision of law.

(g)

The petition came up for hearing before Narasimham C.J. and Ahmad J. on April 20, 1966 and was dismissed at the threshhold. The order of the High Court was :

"The petitioner has not exhausted the internal remedies provided in the Sales Tax Act by way of appeal, revision or reference and statement of a case to this Court.

We are not satisfied that this is a fit case for this Court to exercise its extraordinary jurisdiction at this stage. The petition is dismissed summarily.

Sd/- R. L. Narasimham Sd/- Anwar Ahmed".

A request for certificate to appeal to this Court was then made. The High Court pointed out that an appeal against the order of assessment was _possible on payment of 20% of the assessed tax. As this came to Rs. 40,00,000 and odd only and Rs. 33,97,000 had already been paid, the High Court held that the Company ought to appeal first since the payment of the balance (Rs. 6,00,000) was well within the capacity of the appellant Company and was not so onerous as to merit interference by way of extraordinary powers of the High Court. The application for certificate was accordingly dismissed. The appellant Company,

755

however, obtained special leave from this Court and this appeal was filed.

The learned Additional Solicitor General, who appeared for the Assistant Commissioner, raised a preliminary objection that the appellant Company could not be heard as it had not exhausted the remedies available under the taxing statutes which gave right of appeal and revision and finally for invoking the advisory jurisdiction of the High Court. He also relied upon Thansingh v. Supdt. of Taxes(1) in support of the order of the High Court.

The preliminary objection really does no more than try to check in advance the points which the appellant Company is seeking to raise in this appeal. Whether one looks at the matter from the point of view of the appeal proper or from the point of view of the preliminary objection raised before us, the question is the same, namely, whether the High Court ought in this case to have exercised jurisdiction and if it took jurisdiction whether any settled principle governing Art. 226 would have been departed from.

The power and jurisdiction of the High Court under Art. 226 of the Cnstitution has been the subject of exposition from this Court. That it is extraordinary and to be used sparingly goes without saying. In spite of the very wide terms in which this jurisdiction is conferred, the, High Courts have rightly recognised certain limitations on this power. The jurisdiction is not appellate and it is obvious that it cannot be a substitute for the ordinary remedies at law. Nor is its exercise desirable if facts have to be found on evidence. The High Court, therefore, leaves the party aggrieved to take recourse to the remedies available under the ordinary law if they are equally efficacious and declines to assume jurisdiction to enable such remedies to be by-passed. To these there are certain exceptions. One

such exception is where action is being taken under an invalid law or arbitrarily without the sanction of law. In such a case, the High Court may interfere to avoid hardship to a party which will be unavoidable if the quick and more efficacious remedy envisaged by article 226 were not allowed to be invoked. In our judgment the present is example of the exceptional situation above contemplated just as Himmatlal v. State of M.P.(1) was another instance which came before this Court.

The power and jurisdiction of the Assistant Commissioner, Jamshedpur, were exercisable in respect of sales to consumers in Bihar State and to transactions of sales in the course of interState trade and commerce. They could not be utilised to tax sales outside the State of Bihar. The appellant Company claimed

(1) [1964] S. C. R. 654.

(2) (1954) S. C. R. 11.22

7 56

exemption in respect of sales effected from their stock-yards in the various States, no doubt fed from Bihar but run by the Company locally. The Company asserted that the goods in the stockyards were. still those of the appellant Company and neither the property in them had passed to any one nor had they been appropriated to a contract of sale. The question was whether in law such sales could be regarded as in the course of inter-state trade or commerce or outside sales, subject of course to the claim of the Company being found on record to be good. There is nothing to show that any further evidence beyond documents produced to illustrate sample sales was necessary. Nor did the learned Additional Solicitor General suggest that this was going to be an issue of fact rather than of law. It would certainly have avoided circuity of action and proved altogether more satisfactory, if the High Court had considered whether the sample transac-tion as illustrated by the documents, disclosed a transaction of sale outside the State of Bihar and not in the course of inter-State trade or commerce. On that depended the payment of tax of the order of Rs. 1,73,00,000 and odd for two quarters alone. We are clearly of opinion that the High Court ought to have taken jurisdiction in this case at least to issue a rule nisi to see what the Assistant Commissioner had to say. The High Court could always decline to decide the case if disputed questions of fact requiring finding.thereon arose, but so far as we can see, no such question was likely to arise.

We accordingly set aside the order of the High Court and remit the case for further consideration after issuing a rule nisi so that the Assistant Commissioner may file a return to the claim put forward by the appellant Company. The appeal will be allowed but we make no order about costs.

G.C. Appeal allowed

757