

(5) Consequently, I dismiss this revision petition. The learned Ex-Officio Additional Sessions Judge, Rohtak, will now proceed to decide the case on merits.

N. K. S.

CIVIL MISCELLANEOUS.

Before Bal Raj Tuli, J.

JAY KAY MOTORS,—*Petitioner.*

versus

THE ASSESSING AUTHORITY, Chandigarh ETC.,—*Respondents.*

Civil Writ No. 4877 of 1971

May 22, 1972.

Punjab General Sales Tax Act (XLVI of 1948)—Section 9—Security from a person for grant of registration certificate—Whether should be in proportion to the payment of tax—Demand of excessive and prohibitory cash security—Whether proper exercise of discretion under section 9—Past conduct of the person—Whether justifies imposition of arbitrary restrictions.

Held, that the amount that can be demanded as security under section 9 of the Punjab General Sales-tax Act, 1948, from a person as a condition precedent for the grant of a registration certificate under section 7 of the Act must have relation to the amount of the tax for which he may be or become liable under the Act. The amount must depend on the nature of the business, its turnover and the amount of tax payable thereon by him. The past conduct of the person should not be the sole ground for imposing arbitrary and unreasonable restrictions making it well nigh impossible or extremely difficult for him to carry on business like an ordinary citizen. If a demand for payment of a cash security is excessive and out of all proportion and disables him from carrying on his business, it does not remain a regulatory and enabling restriction but becomes prohibitory and disabling and cannot be said to be a proper exercise of discretion under section 9 of the Act. The powers of the Assessing Authority are quite wide and as soon as it is found that the volume of business of such a person has increased, the amount of security can also be increased and it only requires vigilance on the part of the Assessing Authority. (Para 3).

Petition under Articles 226 and 227 of the Constitution of India praying that an appropriate writ, order or direction be issued quashing the order's

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dated 5th August, 1971 14th September, 1971, 30th November, 1971 and further praying that the respondents be directed to grant the Certificates of Registration under the Punjab General Sales Tax Act, 1948 and also under the Central Sales Tax Act, 1956 as applicable to the Union Territory of Chandigarh in accordance with the provisions of the Act.

Bhagirath Dass, Advocate with B. K. Jhingan, S. K. Hirajee, Advocates, for the petitioners.

Anand Swaroop, Sr. Advocate, with I. S. Balhra, Advocates, for the respondents.

JUDGMENT

TULI, J.—The petitioner is a partnership firm consisting of Shrimati Brahm Lata Jain and her two sons, Shri Surinder Kumar Jain and Shri Arun Kumar Jain. Shri Arun Kumar Jain is minor and has been admitted to the benefits of the partnership. This firm carries on the business of purchase and sale of spare parts of automobiles, scooters, etc. It applied for a registration certificate under section 7 of the Punjab General Sales Tax Act, 1948 (hereinafter referred to as the Act) and the Central Sales Tax Act to the Assessing Authority on May 4, 1971. By order, dated June 10, 1971, respondent 1 directed the petitioner-firm to deposit a cash security of Rs. 2,50,000.00 as a condition precedent to the granting of the license. Against that order, the petitioner filed an appeal before the Deputy Excise and Taxation Commissioner, respondent 2, who accepted the appeal and remanded the case to the Assessing Authority for a fresh decision after affording an opportunity of hearing to the petitioner firm. After remand, the Assessing Authority passed an order, dated August 5, 1971, directing Shri Surinder Kumar Jain, partner of the firm to furnish a cash security of Rs. 2,50,000.00 in any of the forms provided in sub-rules (a), (b) and (c) of rule 4-A of the Punjab General Sales Tax Rules, 1949, within ten days for grant of registration certificate. Against that order, the petitioner-firm filed an appeal which was dismissed by the Deputy Excise and Taxation Commissioner by order, dated September 14, 1971. The petitioner filed a second appeal before the Sales Tax Tribunal which was decided on November 30, 1971, and the amount of security deposit was reduced from 2,50,000.00 to Rs. 50,000.00, which was directed to be deposited in cash. The petitioner has challenged the orders of respondents 1 to 3 by means of this petition to which a written statement has been filed by the said respondents.

(2) The principal point argued by the learned counsel for the petitioner is that under section 9 of the Act a reasonable security has to be demanded from a dealer as a condition of the issue of a registration certificate. This section reads as under:—

“9. *Security from certain class of dealers.*—The Commissioner or any Officer authorised by him in writing in this behalf, if it appears to him to be necessary so to do for the proper realisation of the tax levied under this Act, may impose, for reasons to be recorded in writing, as a condition of the issue of a registration certificate to a dealer or of the continuance in effect of such a certificate issued to any dealer, a requirement that the dealer shall give security up to an amount and in the manner approved by the Commissioner for the payment of the tax for which he may be or become liable under this Act.”

This section is word for word the same as section 8-A of the Bengal Finance (Sales Tax) Act, 1941, the constitutional validity of which was challenged before their Lordships of the Supreme Court in *Nand Lal Raj Kishan v. Commissioner of Sales Tax, Delhi and another* (1). It was held that the section was constitutionally valid and while dealing with the contention that there is no limit to the amount which can be demanded as security, their Lordships observed as under:—

“As to the contention that there is no limit to the amount which can be demanded as security, it is only necessary to point out that the amount that can be demanded as security must have relation to the payment of the tax for which the person concerned may be or become liable under the Act. The amount must depend on the nature of the business, its turnover and the amount of tax payable thereon by the person concerned. Furthermore, the order of the Commissioner under section 8-A is subject to revision by the Chief Commissioner and if an arbitrary or unreasonable amount is demanded, the order of the Commissioner will be subject to scrutiny by the Chief Commissioner. We do not think that even in the matter of the amount of security the power of the Commissioner is unlimited or unrestricted.”

(1) (1961) 12 S.T.C. 324.

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On the basis of these observations, the learned counsel for the petitioner has submitted that the capital of the firm is Rs. 16,000.00 and for the period from May 4, 1971, to September 30, 1971, the gross turnover of the petitioner-firm was Rs. 29,595.23 as found by the Assessing Authority in its order of assessment, dated April 22, 1972. On that turnover, after deducting the sales to registered dealers, the tax assessed was Rs. 2,173.00. The learned counsel, therefore, submits that the demand for a cash security deposit of Rs. 50,000.00 is out of all proportions to the business being done by the petitioner-firm and it amounts to a denial of the right to carry on business under Article 19 of the Constitution of India. Under that Article a reasonable restriction can be placed, but not such a restriction which makes it impossible for a person to carry on any business. The firm was established only on May 4, 1971, and to demand a cash security of Rs. 50,000.00 is to cripple its finances and to force it to close its doors. With a capital of Rs. 16,000.00 it is impossible for the petitioner-firm to deposit a cash security of Rs. 50,000.00. The order of the Sales Tax Tribunal is, therefore, termed as unreasonable and arbitrary.

(3) In answer to the submissions made by the learned counsel for the petitioner it has been stressed on behalf of the respondents that the partners of the firm are the wife and sons of Shri J. K. Jain, who was one of the Directors of M/s. New India Motors Pvt. Ltd., which defaulted in the payment of sales tax to the Chandigarh Administration to the tune of about Rs. 20 lacs, although the amount was realised by it from the customers. The Chandigarh Administration is facing great difficulty in realising that amount from the movable and immovable properties of the Company which has since gone into liquidation. The following reasons are stated in para 12 of the return justifying the order passed by the Sales Tax Tribunal:—

“(a) It is true that the returns filed by the assessee for the months of May to October, 1971, do not show large taxable turnover. But experience has shown that the turnover of dealer after registration takes a leap and having regard to the nature of the business of this firm it was considered very likely that the turnover of this firm would rapidly increase after registration. As regards the firm in which the security is admitted it has been left to the discretion of the Assessing Authority. Having regard to the antecedents of the real owner of this firm the Assessing

Authority thought fit to demand cash security. There was no reason for the Tribunal to interfere with the decision of the Assessing Authority in this respect.

- (b) Rs. 16,000.00 is only the initial investment shown in the books of the firm, but the supplementary investment in the form of loans, etc., on the date of the order of respondent No. 1 was Rs. 42,986.00 and having regard to the fact that the huge amount of money realised from customers in the shape of sales tax has been withheld by Shri J. K. Jain in New India Motors Pvt. Ltd., the department is justified in believing that money will be ploughed back in the present firm in various dubious ways.
- (c) The duty has been laid upon the Assessing Authority under rule 5 of the Punjab General Sales Tax Rules, 1949, to make necessary enquiries in order to satisfy himself that the applicant is a *bona fide* dealer and has correctly given the requisite information. To judge the *bona fide* of the dealer it is necessary to probe the source of its capital.
- (d) It is wrong to say that the present petitioner has nothing to do with M/s. New India Motors Pvt. Ltd., Chandigarh. There is material before the Assessing Authority to justify the conclusion that the father of Shri S. K. Jain, who was one of the active Directors running the business M/s. New India Motor Pvt. Ltd., Chandigarh, is the real owner of the present firm also. Shri J. K. Jain was made *superdar* of the attached property of M/s. New India Motors Pvt. Ltd., Chandigarh and was allowed to sell the spare parts and deposit the sale proceeds in the Government Treasury by the Commissioner, Chandigarh,—*vide* order, dated 5th April, 1971. Shri J. K. Jain sold all the spare parts amounting to Rs. 20,362.06 to M/s. Jay Kay Motors S.C.O. No. 16-17, Sector 28-C, Chandigarh, at 5 per cent to 30 per cent discount of the books value of the spare parts. And that the present business is going to be run with the help of the money of which Government have been defrauded by M/s. New India Motors Pvt. Ltd., Chandigarh, and that Shri J. K. Jain may again

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use similar tactics to deprive the Sales Tax Department of its legitimate dues.

- (e) The basis of the demand of the sum of Rs. 2,50,000.00 as cash security has been disclosed in the report of the Assessing Authority, dated 9th November, 1971, annexure 'D' to the petition. The dealer was given the option to deposit the amount of security in the form of Post Officer Savings Bank and pledge the pass book to the Commissioner or in the form of Bank Guarantee in which case he would have got interest on the amount deposited.
- (f) The demand of security depends mainly upon the nature of business and possible turnover. In this case the nature of business and possible turnover of the assessee firm justified the demand of security made in the impugned order.
- (g) Filing of returns at short period is not a sufficient safeguard for realisation of tax due to the Department. This has been amply demonstrated in the case of M/s. New India Motors Pvt. Ltd., Chandigarh. That concern effected sales and realised sales tax from the customers, but claimed deductions in respect of those sales as exempted from sales tax and did not deposit the tax. Then they filed a writ petition and obtained a stay order from Delhi High Court. And thus for three years they went on collecting tax from the customers, but not paying it to the Government. In the end when the stay orders were vacated the firm had no assets from which large amount of tax it had accumulated against them, could be realised. And now the Company has gone under liquidation."

It is further submitted by the learned counsel for the respondents that the reasons given above cannot be said to be extraneous or arbitrary, the facts speak for themselves and the apprehension of the respondents is more than justified in view of the past conduct of Shri J. K. Jain, who, in fact, is the real force, financial and working behind the facade of the firm. Shrimati Brahm Lata Jain has no experience of business and has never done it. Shri Arun Kumar Jain is a minor and the work of the firm is stated to be conducted by Shri Surinder Kumar Jain, who worked for five years in M/s. New India Motors Pvt. Ltd., before its liquidation. It cannot be

said that there is no force in the submissions made by the learned counsel for the respondents or that the considerations set out above are extraneous but still the amount of security demanded from the petitioner-firm must have a reasonable relation with its business because it is open to the respondents to increase the amount of security at any time after issuing notice to the petitioner-firm. The Sales Tax Tribunal has stated in its order that the assesment should be made on quarterly basis, that the security would be operative initially for a period of one year only which would be reviewed by the Assessing Authority and that the Department should be very vigilant about tax assessment and recovery in view of their misgivings about the basis of partnership. In my opinion, it would have been far better if a cash security of an amount commensurate with the volume of business of the petitioner-firm had been fixed and the balance of the security amount had been allowed to be furnished in the form allowed under rule 4-A(d) of the Rules, that is, by accepting a personal bond and sureties of other solvent dealers.

The learned counsel for the petitioner has offered to deposit a security of Rs. 10,000.00 in the form of bank guarantee and a further security of Rs. 1 lac by filing a personal bond and the securities of two registered dealers carrying on business in Chandigarh whose names he mentioned as M/s. Ram Chandra and Sons and M/s. Baij Nath Ashrafi Lal. The demand of cash security of Rs. 50,000.00 appears to me to be very excessive and out of all proportions with the taxable turnover of the petitioner-firm which has been disclosed by the first year's working. It may be noticed here that in the case of *Nand Lal Raj Kishan* (supra), a cash security of Rs. 5,000.00 was demanded on the following grounds:—

“In view of the reputation that the dealer enjoys in the market, namely, that he being a commission agent has been engaged in the business of selling goods to other commission agents, all sales being effected to unscrupulous registered dealers, frequent changes in the name and place of business without giving specific details, late submission of information regarding the changes in the name and place of business, non-submission of returns for the year 1956-57 within the prescribed time, it appears necessary to demand security under section 8-A of the Bengal Finance (Sales Tax) Act, 1941, as in force in Delhi.”

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It cannot be said that the respondents are not justified to infer that the petitioner-firm is really owned by Shri J. K. Jain, who, with other Directors of M/s. New India Motors Pvt. Ltd., is responsible for the loss of Rs. 20 lacs to the Union Territory Administration on account of sales tax, but his past conduct cannot be the sole ground for imposing arbitrary and unreasonably harsh restrictions on the members of his family thus making it well-nigh impossible or extremely difficult for them to carry on any business like other ordinary citizens. In this case, I have come to the conclusion that the demand of a cash security of Rs. 50,000.00 from the petitioner will disable it from carrying on its business and this restriction is not regulatory and enabling but prohibitory and disabling and cannot be said to be a proper exercise of discretion under section 9 of the Act. Too much importance has been attached to the past conduct of Shri J. K. Jain as one of the Directors of M/s. New India Motors Pvt. Ltd. (now in liquidation), which has unduly affected the decisions of the respondents and the matter has not been viewed in the proper perspective. The powers of the Assessing Authority are quite wide and as soon as it is found that the volume of business of the petitioner-firm has increased, the amount of security can also be increased. It will only require vigilance on the part of the Assessing Authority. That Shri J. K. Jain and other Directors of M/s. New India Motors Pvt. Ltd., were able to dodge the Assessing Authority does not speak well of the departmental officers. If they had been vigilant, the amount would not have swelled so high. I am, therefore, of the opinion that the order of the Sales Tax Tribunal needs modification in the light of the observations made above, that is, it should fix the amount of security to be deposited by the petitioner-firm and split it up into two parts, one part to be deposited in one of the manners prescribes in sub-rules (a), (b) and (c) of rule 4-A and the remaining amount to be furnished in the manner provided in sub-rule (d) of rule 4-A of the Rules.

(4) For the reasons given above, I accept this writ petition and quash the impugned orders. The Sales Tax Tribunal, Chandigarh, is directed to redecide the matter in the light of the observations made above after hearing the petitioner. In the circumstances of the case, I make no order as to costs.

B. S. G.