

Court No. - 39

Case :- WRIT TAX No. - 520 of 2024

Petitioner :- Hotel President Through Its Partner / Proprietor And Another

Respondent :- State Of Up And 2 Others

Counsel for Petitioner :- Prabhakar Awasthi, Surya Bhan Singh

Counsel for Respondent :- C.S.C., Vibhu Rai

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Donadi Ramesh, J.

1. Heard Sri Prabhakar Awasthi, learned counsel for the petitioner and Sri Vibhu Rai, learned counsel for the respondent nos. 2 and 3.

2. Upon hearing learned counsel for the parties and perusal of record, this much remains undisputed that the impugned assessment order dated 21.03.2024 is *ex parte* and that it has revised and substantially enhanced the assessment of the petitioner's house property. Therefore, it is to be ascertained if opportunity of hearing was granted to the petitioner. Here, facts are apparent on the face of record. The impugned order dated 21.03.2024 was preceded by notice dated 14.03.2024, fixing the date 16.03.2024. Such notice was served on the petitioner through its employee on 15.03.2024. On 16.03.2024, the petitioner appeared before the Tax Superintendent (through counsel) and sought adjournment for 20 days. That application was received by the Zonal Officer, Zone - 3, Nagar Nigam, Gorakhpur.

3. The impugned order recites that adjournment was sought. The next date fixed in the proceeding was 18.03.2024. In that regard, in paragraph no.22 of the writ petition it has been asserted that no hearing took place on 18.03.2024. On the contrary, the order records that the petitioner did not appear on 18.03.2024.

4. In the context of house tax assessment, we find it difficult to

believe that there existed such grave urgency that the respondent authority proceeded in absolute haste in first fixing the date for hearing with one day notice with practically no time given to the petitioner to respond inasmuch as notice dated 14.03.2024 was served on the petitioner employee on 15.03.2024 whereas the date for hearing was fixed for 16.03.2024. Seen in that light, the petitioner's application seeking adjournment for 20 days was not unreasonable or such as may have merited to be rejected.

5. While that application is not seen to have been rejected, at the same time, practically the adjournment sought has been declined inasmuch as on the own showing of the respondent authority, the next date fixed in the matter was 18.03.2024.

6. Once opportunity of hearing is mandated by the law, it reassures the noticee that he would deal with fairly and in accordance with law. Issuance of notice is not an empty formality to be completed only to protect the record from a technical vice of violation of rules of natural justice. Issuance of notice and giving opportunity to respond to the notice is a real safeguard against arbitrary and capricious exercise of power by quasi judicial authorities. It runs parallel to the obligation of the quasi judicial authorities to confront the noticee with adverse material and therefore the likely reasoning that he has to meet for which such notice has been issued. Therefore, it was incumbent on the respondent authority to have issued a proper notice to the petitioner disclosing all adverse material/facts that were sought to be relied against it. Thereupon sufficient time should have been granted to the petitioner to articulate and submit its reply thereto. Only when such notice and its reply were complete, effective hearing may have arisen by giving due notice/time to the petitioner to participate in the same.

7. In the present facts, by practising undue haste that essential

requirement of law that ensures fairness in the proceedings and also allows this Court to test the correctness of the decision making process that may be put to question, has been violated.

8. Accordingly, no useful purpose would be served in keeping the present writ petition pending or counter affidavit at this stage.

9. Present writ petition is **disposed of** with the following direction :

(i) The impugned order dated 21.03.2024 is set aside. The matter is remitted to the respondent no.3.

(ii) If the respondent is to proceed against the petitioner with the assessment proceedings, respondent no.2 shall first issue a proper notice (proposing to make an assessment) to the petitioner within a period of three weeks. Once such notice is served on the petitioner, the petitioner may be given two weeks time therefrom to file its written reply supported by personal affidavit of the petitioner.

(iii) Upon such reply being furnished, proper date for hearing may be fixed by respondent no.2 with 15 days advance notice to the petitioner. The petitioner undertakes to appear on the said date either in person or through counsel or both.

(iv) Upon conclusion of such hearing, appropriate reasoned order may be passed and may also be communicated to the petitioner within a period of 15 days.

Order Date :- 4.4.2024

Abhilash

(Donadi Ramesh, J.) (S. D. Singh, J.)