

CASE NO.:
Appeal (civil) 1055 of 2003

PETITIONER:
Narayan Mishra

RESPONDENT:
Pramod Kumar Gupta & Ors.

DATE OF JUDGMENT: 06/02/2003

BENCH:
N Santosh Hegde & B P Singh.

JUDGMENT:

J U D G M E N T

(Arising out of SLP No.4794 of 2002)

SANTOSH HEGDE, J.

Heard learned counsel.

Leave granted

The appellant in this appeal was at the relevant point of time a member of the Madhya Pradesh Civil Service posted as a Commercial Tax Officer. On the ground that there was an evasion of commercial tax, he made an attachment order of certain perishable goods belonging to the respondent-firm consequent to which the property worth about Rs.2.92 lakhs belonging to the respondent was attached and kept in Central Warehousing Corporation, Sheopurkalan. The respondent preferred a revision petition against the said order which was allowed in favour of the respondent directing the release of the goods. But according to the respondent, despite the said order in revision, the goods in question were not released, therefore, the respondent was compelled to file a writ petition before the High Court of Madhya Pradesh, Gwalior Bench. The learned Single Judge who heard the said writ petition, issued an interim direction on 11.10.1996 directing release of the goods. Pursuant to the said direction of the learned Single Judge, the goods were released on 18.10.1996 but the learned Single Judge during the final disposal of the writ petition, took a serious view of the matter and came to the conclusion that the proceedings against the respondent were initiated without following the process of law. He also held the appellant before us responsible for the loss caused to the respondent, hence, while allowing the petition imposed a cost of Rs.5,000/- payable by the appellant. He further directed the State Government to initiate proceedings according to law, against the appellant herein for his biased act.

Being aggrieved by the said directions of the learned Single Judge, the appellant preferred a Letters Patent Appeal before the Division Bench of the said High Court. The Division Bench after hearing the parties concurred with the direction given by the learned Single Judge. However, it observed that the authorities should proceed untrammelled by the observations made by the learned Single Judge in the proceedings which will be initiated against the appellant. It is against this order of the High Court that the appellant is in appeal before us.

Initially on a misconception of the provisions of Section 48 of the Madhya Pradesh General Sales Tax Act, 1958 (the Act) an argument was sought to be advanced before us claiming protection under the said Section on the ground that the appellant's decision was protected under that provision of law. We do not think that the appellant can claim any such protection on the facts of this case because the said protection is available to a civil servant only when he acts bona fide and in good faith. In the present case, the finding of the two courts below is to the contrary and for reasons recorded therein. Therefore, realising the futility of this legal argument, learned counsel appearing for the appellant then contended that the Officer concerned at the relevant point of time was a young civil servant, and by the direction given to the Government by the courts, his career is likely to be affected, and the alleged act of the appellant since being remedied, he requested us to take a lenient view of the matter.

From the tenor of the arguments addressed on behalf of the appellant, though belatedly, we are satisfied that the appellant has realised the gravity of his act as also the consequences of the same, therefore, we think the ends of justice would be met if the order of the court below is confined to the costs awarded in favour of the respondent, and without any further direction. Therefore, taking into consideration the facts and circumstances of this case, we are of the opinion that the direction issued to the Government by the learned Single judge as affirmed by the Division Bench to initiate proceedings against the appellant in accordance with law, be set aside, confirming, however, the costs awarded to the respondent.

With the above modifications, this appeal is disposed of.