

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 633 of 2011

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M/s Yamaha Motors India Private Limited through its representative Varun Kumar Jha, S/o late Jainath Jha, Maurya Vihar Colony, Near Transport Nagar, PO – Bahadurpur Housing Colony, PS – Agamkuan, District - Patna

... .. Petitioner/s

Versus

1 The State of Bihar
2 The Secretary, Finance Department, Bihar, Patna
3 The Commissioner of Commercial Taxes, Bihar, Patna
4 The Deputy Commissioner of Commercial Taxes, Patliputra Circle, Patna
5 The Joint Commissioner of Commercial Taxes, Central Division, Patna

... .. Respondent/s

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For the Petitioner/s : Ms Manju Jha, Advocate

For the Respondent/s : M/s Sriram Krishna, Akash Chaturvedi, ACs to SC XI

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CORAM: HONOURABLE MR JUSTICE CHAKRADHARI SHARAN SINGH
and
HONOURABLE MR JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 25-11-2021

Heard Ms Manju Jha, learned counsel for the petitioner and Mr Sriram Krishna, AC to SC 11 for the State of Bihar.

2 The facts of the case are admitted. The petitioner is a Private Limited Company engaged in manufacturing of two wheelers and is registered under the Bihar Finance Act having Registration No BR 3229 (R) and under Bihar Entry Tax Act, 1993 having Registration No PR 170.

3 This writ application has been filed seeking direction to the Respondent-State of Bihar for payment of interest on excess amount of commercial tax collected tax for the assessment year, 1996 – 97 and 1997 – 98, which has been refunded by the Department. The petitioner is claiming statutory interest on belated refund of the excess amount of tax collected by the



Department, for the said period by invoking Section 43 of the Bihar Finance Act, 1981. Section 43 of the Act reads as under:

“43. Interest.- Any amount refundable under the provisions of this part, if not refunded within six months from the date of receipt of an application in that behalf from the dealer or person concerned shall carry interest at the rate of nine per centum with effect from the date of expiry of the period specified above.”

4 It is evident from the pleadings on record and the orders passed by the authorities on the petitioner’s application for refund of the excess amount that initially an application was made for refund on 25.04.2008 which was found to be defective. The petitioner was asked to remove the defects which were of fundamental nature. The petitioner, however, did not remove the defects despite subsequent orders passed by the Deputy Commissioner of Commercial Taxes, Patliputra Circle, Patna.

5 It is the specific case of the State of Bihar that the petitioner subsequently filed a fresh application on 18.03.2010 which has been brought on record by way of Annexure A to the counter affidavit. The last paragraph of the said application in Form A – VIII reads thus:

“I Varun Kumar Jha the petitioner named in the above petition, do hereby declare that what is stated herein is true to the best of my knowledge and belief and that no application for refund of the above amount has been made by me on my behalf before this date.”



6 An order directing for refund of the amount was passed on 26.03.2010 on the said application dated 18.03.2010. Admittedly, the refund has been made to the petitioner by the District Treasury Officer, Patna on 31.03.2010.

7 Learned counsel appearing on behalf of the petitioner has, however, submitted that the petitioner had removed the defects in the application filed on 25.04.2008 subsequently and, therefore, the date of application of refund should be treated to be 25.04.2008 instead of 31.03.2010 for the purpose of determination of petitioner's right to receive interest by operation of Section 43 of the Act.

8 Per contra, learned counsel appearing on behalf of the State of Bihar has submitted that the petitioner had in fact filed a fresh application for refund of the amount on 18.03.2010. He has submitted that final order for refund of the amount has been passed on the said application and the amount has been refunded to the petitioner within time and, therefore, Section 43 of the Act shall have no application for the petitioner to claim interest on belated refund of the amount.

9 The dispute, which arises in this application, is as to which date should be treated to be date of application for refund, made by the petitioner.



10 This is not in dispute that the petitioner's initial application dated 25.04.2008 was too defective to be processed and no order for refund could be passed thereon. The order sheet, maintained by the office of the Deputy Commissioner of Commercial Taxes, indicates that the petitioner was repeatedly asked to remove the defects.

11 The Court is not required to go into the dispute as to whether the petitioner finally removed the defects or not for the reason that it is evident on reading of Annexure A to the counter affidavit that petitioner itself had made a declaration to the effect that no application for refund of the above amount had been made by it or on its behalf before the said date, i e, 13.03.2020. This declaration appears to be in the light of the fact that earlier application, filed by the petitioner, was found to be defective by the Authority. Further, there is a statement in paragraph 4 of the supplementary affidavit, filed on behalf of the petitioner, that a fresh application was filed on 18.03.2010.

12 The undisputed facts are that the initial application for refund dated 25.04.2008 was defective. In the instant proceeding, however, submission is made on behalf of the petitioner that the petitioner had removed the defects in the application filed on 25.04.2008 and, therefore, the said application



should be treated as the application for the purposes of refund to the excess amount of tax collected by the Department and, therefore, the petitioner has invoked the jurisdiction of this Court under Article 226 of the Constitution of India claiming interest under Section 43 of the Bihar Finance Act, 1981, which already has been quoted hereinabove.

13 Application made afresh by the petitioner on 18.03.2010 was containing a declaration by the petitioner that no application for refund of the amount had been made by him before the application dated 18.03.2010. The petitioner's conduct in giving the said declaration in the fresh application dated 18.03.2010 shows that the petitioner had accepted the fact that earlier application was defective and the consequent rejection of his application, filed nearly two years earlier. The further undisputed factual development is that the order for refund was issued by the appropriate authority within 8 days, i e, on 26.03.2010. The refund was also made to the petitioner by the Treasury Officer, Patna within two weeks from making of the fresh application. The amount of excess tax collected by the Department had already been refunded to the petitioner. The petitioner had accepted the same without demur. Having done so, he has filed this writ petition claiming interest by invoking Section



43 of the Bihar Finance Act, 1981 by contending that the order passed on his application dated 25.04.2008 was belated and liable to carry interest under Section 43 of the Act.

14 As noted above, the petitioner had come to terms with rejection of his earlier application dated 25.04.2008 as being defective by filing application afresh on 18.03.2010. The petitioner, thereafter, proceeded to enjoy the benefit of refund under his fresh application dated 18.03.2010 without demur. Having done so, the petitioner cannot be permitted to turn around and contend that refund was belated in view of his earlier defective application dated 25.04.2008. Petitioner cannot be permitted to approbate and reprobate at the same time. Clearly, the petitioner was estopped from placing reliance on the earlier defective application dated 25.04.2008 for the purposes of claiming interest under Section 43 of the Bihar Finance Act, 1981. In this connection, this Court would consider it appropriate to refer to and rely upon a decision of the Apex Court in the case of D Sarojakumari -Versus- R Helen Thilakom and Others, (2017) 9 Supreme Court Cases 478. It would be useful to reproduce relevant extract of the judgment, as follows:

“4. The main ground urged on behalf of the appellant is that Respondent 1 having taken part in the selection process could not be permitted to challenge the same



after she was unsuccessful in getting selected. The law is well settled that once a person takes part in the process of selection and is not found fit for appointment, the said person is estopped from challenging the process of selection.

5. In G Sarana v University of Lucknow, the petitioner after appearing in the interview for the post of Professor and having not been selected pleaded that the experts were biased. This Court did not permit the petitioner to raise this issue and held as follows: (SCC p 591, para 15)

“15. We do not, however, consider it necessary in the present case to go into the question of the reasonableness of bias or real likelihood of bias as despite the fact that the appellant knew all the relevant facts, he did not before appearing for the interview or at the time of the interview raise even his little finger against the constitution of the Selection Committee. He seems to have voluntarily appeared before the committee and taken a chance of having a favourable recommendation from it. Having done so, it is not now open to him to turn round and question the constitution of the committee.”

6. In Madan Lal v State of J & K, the petitioner laid challenge to the manner and method of conducting viva voce test after they had appeared in the same and were unsuccessful. This Court held as follows: (SCC p 493, para 9)

“9. ... Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled



that if a candidate takes a calculated chance and appears at the interview, they, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted.”

7. In Manish Kumar Shahi v State of Bihar, this Court held as follows: (SCC p 584, para 16)

“16. ... Surely, if the petitioner’s name had appeared in the merit list, he would not have even dreamed of challenging the selection. The petitioner invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the petitioner clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition.”

8. In Ramesh Chandra Shah v Anil Joshi the petitioners took part in the process of selection made under the general rules. Having appeared in the interview and not being successful they challenged the method of recruitment itself. They were not permitted to raise such an objection. This Court held as follows: (SCC p 320, para 24)

“24. In view of the propositions laid down in the abovenoted judgments, it must be held that by having taken part in the process of selection with full knowledge that the recruitment was being made under the General Rules, the respondents had waived their right to question the advertisement of methodology adopted by the Board for making selection and the learned Single Judge and the Division Bench of the High



Court committed grave error by entertaining the grievance made by the respondents.”

9. The same view has been taken in Madras Institute of Development Studies v K Sivasuybramaniyan.

10. The Kerala High Court did not note the abovementioned judgments and ignored the well-settled position of law in rejecting the specific plea raised by the appellant herein that the appellant could not raise the issue that no direct recruitment should have been conducted once she had applied for and taken part in the selection process by direct recruitment.

11. As far as the present case is concerned, an advertisement was issued by Respondent 6 inviting applications for the post of Music Teacher in Samuel LMS High School. Respondent 1 did not raise any objection at that stage that the post could not be filled in by direct recruitment and she should be considered for promotion. Not only that, she in fact, applied for the post and took part in the selection process. After having taken part in the selection process and being found lower in merit to the appellant, she cannot at this stage be permitted to turn around and claim that the post could not be filled in by direct recruitment. The reasoning of the learned Single Judge in rejecting the objection is not in consonance with the law laid down by this Court. In view of this, we need not go into the other issues raised.

12. We, therefore, allow these appeals and set aside the order dated 25-7-2003 of the learned Single Judge and dismiss the writ petition OP No 36563 of 2002 as being not maintainable.”



15 In such view of the matter, in our opinion, the petitioner has not been able to make out a case for direction to the respondents to pay interest under Section 43 of the Act, the date of application being 18.03.2010. In our view, the petitioner cannot legally claim interest on the amount of the refund which was, admittedly, refunded on 30.03.2010.

16 For the aforesaid reasons, we do not find any merit in this application which is, accordingly, dismissed.

17 There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
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