AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV No. 207 of 2008

M/s. Orissa Oil Industries Ltd.	....	***Petitioner***
		Mr. Sidhartha Ray, Advocate

-versus-

State of Odisha, represented by the Commissioner of Sales Tax, Odisha, Cuttack	....	***Opposite Party***
		Mr. S.S. Padhy, Addl. Standing Counsel

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAIK

Order No. **ORDER**
02.05.2022

Dr. S. Muralidhar, CJ.

04. 1. This revision petition arises from an order dated 17th December, 1996 of the Odisha Sales Tax Tribunal, Cuttack Bench, Cuttack (Tribunal) in S.A. No.1727 of 1990-91 dismissing the Petitioner-Assessee's appeal against an order dated 24th November, 1990 of the Assistant Commissioner of Sales Tax (ACST), Sambalpur in AA 672 of 1987-88 confirming the assessment made under Section 12(8) of the Orissa Sales Tax Act, 1947 (OST Act) by the Sales Tax Officer, Sambalpur I Circle, Sambalpur for the year 1984-85.

2. By an order dated 6th March, 1998 the Tribunal has, in an application, filed under Section 24(1) of the OST Act referred to

three questions for consideration by this Court of which the following question is taken up first for hearing:

> "Whether on the facts and in the circumstances of the case, the proceeding in Second Appeal is not vitiated on account of association and/or order being passed by Accounts Members-I who earlier had passed an order in the self same case in Revision."

3. The background facts are that the Petitioner (dealer) carries on business in manufacturing and selling refined oil. The assessment of the dealer for the year in question was completed under Section 12(4) of the OST Act. The STO found the dealer had erroneously included sale of refined oil under the exempted sale on the assumption that the tax at the first point of sale has been paid on groundnut oil and niger oil purchased within the State of Odisha out of which refined oil had been manufactured. The STO accordingly, concluded that there was an under-assessment of tax on the sale of refined oil. Pursuant thereto, the assessment of the dealer was reopened.

4. Aggrieved by the order of reassessment, the Petitioner (dealer) filed an appeal before the ACST, who confirmed the re-assessment order. The further second appeal to the Tribunal was also dismissed.

5. During pendency of the second appeal, the dealer had filed an application for staying the realization of the demanded amount. Sri B.D. Pattnaik, the then Addl. Commissioner of Sales Tax, Odisha

while disposing of the said petition stayed the realization of the demanded dues till final disposal of the second appeal. When the Tribunal finally disposed of the said second appeal, Sri B.D. Pattnaik had by that time become the Accounts Member of the Tribunal. He sat on the Bench which decided the dealer's aforementioned S.A. No.1727 of 1990-91. The order dated 17th December, 1996 passed by the Tribunal rejecting the dealer's appeal shows the coram as including Sri B.D. Pattnaik as Accounts Member-I in a three Judge Bench, which included its Chairman and Judicial Member.

6. This Court has heard the submissions of Mr. Sidhartha Ray, learned counsel for the Petitioner and Sri S.S. Padhy, learned Addl. Standing Counsel for the Department.

7. It was argued by Sri Padhy that the order passed earlier by Sri Pattanaik was in a stay application whereas the final order was in the appeal itself. Therefore, according to him, the plea of bias is not well-founded.

8. The issue is about likelihood of bias and not actual bias. As explained in ***J. Mohapatra & Company v. State of Odisha AIR 1984 SC 1572***, the governing rule as explained in ***A.K. Kraipak v. Union of India 1970(1) SCR 457*** is that no man should be a judge in his own cause. The only exception is the "doctrine of necessity" which does not exist in the present case. Sri B.D. Pattnaik being part of a three-member Bench of the tribunal could easily have

recused citing the reason that the interlocutory application in the same case had in fact been decided by him as Additional Commissioner of Sales Tax. In ***J. Mohapatra and Co. (supra)***, the Supreme Court explained as under:

> "10..... Nemo judex in causa sua, that is, no man shall be a judge in his own cause, is a principle firmly established in law. Justice should not only be done but should manifestly be seen to be done. It is on this principle that the proceedings in courts of law are open to the public except in those cases where for special reason the law requires or authorizes a hearing in camera. Justice can never be seen to be done if a man acts as a judge in his own cause or is himself interested in its outcome. This principle applies not only to judicial proceedings but also to quasi-judicial and administrative proceedings. The position in law has been succinctly stated in Halsbury's Laws of England, Fourth Edition, Volume I, Para 68, as follows:
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> "Disqualification for financial interest-There is a presumption that any direct financial interest, however small, in the matter in dispute disqualifies a person from adjudicating. Membership of a company, association or other organization which is financially interested may operate as a bar to adjudicating, as may a bare liability to costs where the decision itself will involve no pecuniary loss."

9. On the above short ground, the impugned order dated 17th December, 1996 passed by the Tribunal in S.A. No.1727 of 1990-91 is hereby set aside. The question framed is answered in favour of the Assessee-Dealer (Petitioner) in the affirmative by holding that the proceedings in the second appeal stood vitiated on account

of the Accounts Member-I, who had earlier passed an order in the same case at the interlocutory stage being a member of the Tribunal.

10. SA No.1727 of 1990-91 is restored to the file of the Tribunal for being proceeded with, in accordance with law. The matter now be listed before the Tribunal on 6th June, 2022 on which date the Petitioner will appear along with a downloaded copy of this order. The certified copy of this order be sent to the Tribunal forthwith.

11. The revision petition is disposed of in the above terms.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S.K. Jena/Secy.