(1995) 06 KAR CK 0035

In the Karnataka High Court

Case No : Writ Petition No. 39408 of 1993

A.B. Vorkady — APPELLANT

Vs

Union Bank of India and Another — RESPONDENT

Date of Decision : 13-06-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 60, 60 (1) (I)
General Clauses Act, 1897 — Section 3 (31)

Citation : AIR 1996 Kar 79 : (1996) 73 FLR 960 : (1995) ILR (Kar) 2532 : (1995) 3 KarLJ 383

Hon'ble Judges : Tirath S. Thakur, J

Bench : Single Bench

Advocate : P.S. Rajagopal, for the Appellant;

Judgement

1. A suit for recovery of a sum of Rs. 75,000/- was filed by the second respondent against the petitioner herein in the Court of the Principal Civil Judge, Mangalore. This suit was decreed for a sum of Rs. 86,475/-with interest at the rate of 10% p.a. by the judgment and decree of the trial Court dated 13-8-1992. Admittedly, no appeal has been filed against the judgment and decree aforesaid which has become final.

2. Execution proceedings, thereafter appear to have been filed by the decree-holder which were later transferred to the City Civil Judge''s Court, Bangalore. The transferee Court issued an order of attachment on 10-6-1993 attaching 1/3rd of the salary payable to the petitioner exceeding Rs. 400/-. In obedience to the said direction, the first respondent-Bank started making deductions from July, 1993 onwards and has kept the amount so deducted in a suspense account.

3. Aggrieved by the deductions made by the first respondent-Bank, the petitioner has filed the present writ petition for a writ of prohibition restraining the former from making any recoveries and for a writ of mandamus directing the Bank to reimburse to the petitioner the amounts deducted,

4. I have heard the learned Counsel appearing for the parties.

5. On behalf of the petitioner it was urged that the petitioner having been placed under suspension with effect from 8-7-1993 he was receiving only the suspension allowance and not the regular salary. It was contended that in terms of Section 60, sub-section (1)(1), C.P.C. subsistence allowance payable to the petitioner was not liable to be attached, making the deduction in question illegal.

6. Alternatively, it was urged that the executing Court had only directed the deductions to be made from out of the salary payable to the petitioner, but since, the petitioner was not receiving salary and what was being paid was only subsistence allowance, the deductions made by the Bank were wholly unauthorised and in excess of the directions issued to it by the executing Court.

7. Learned Counsel appearing on the other side, however, submitted that the provisions of Section 60(1)(1) had no application to the petitioner''s case as he was neither a Government servant nor a servant employed in a railway company or a local authority. It was urged that the petitioner had been placed under suspension on 8-7-1993 and had started receiving 100% emoluments payable and due to him after the lapse of one year i.e., with effect from 8-7-1994. It was argued that what was being received by the petitioner was the full salary due to him and not subsistence allowance as envisaged by Section 60(1)(1), so as to attract the said provisions.

8. The provisions of Section 60(1)(1) read thus:

"60(1) The following property is liable to attachment and sale in execution of other buildings, goods, money, banknotes, cheques, bills of exchange, hundies, promissory notes, Government securities, bonds or other securities for money, debts shares in a corporation and, save as hereunder mentioned, all other saleable property, movable or immovable, belonging to the judgment-debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf;

Provided that the following particulars shall'' not be liable to such attachment or sale, namely:--

(1) any allowance forming part of the emoluments of any servant of the Government or of any servant of a railway company or local authority which the (appropriate Government) may by notification in the Official Gazette declare to be exempt from attachment, and any subsistence grant or allowance made to any such servant while Under suspension.

9. A plain reading of the above provision shows that in order that an allowance forming part of the emoluments be exempt from attachment two conditions must be satisfied, viz.,

(i) Allowance must be payable to a Government servant or servant of a railway company or a local authority; and

(ii) the said allowance must be exempted from attachment by the appropriate Government by issue of appropriate notification in the Official Gazette, or must be a subsistence grant or allowance to any such servant.

10. The petitioner is admittedly working as a Senior Spl. Assistant in the respondent-Bank. He is, therefore, neither a Government servant nor a servant employed by the Railway company. Learned Counsel for the petitioner urged that the petitioner can be deemed to be an employee of Government as the respondent-Bank is wholly owned by the Government of India. Alternatively, he urged that he may be treated to be the employee of a local authority. I find no substance in either of these two submissions. The very fact that the respondent-Bank is owned and controlled by the Government of India does not make the petitioner a Government Employee nor is it possible to treat the respondent-Bank as a local authority. The term ''local authority'' has been defined under Sec. 3(31) of the General Clauses Act thus:

"Section 3(31):-- "Local Authority".-

"Local authority" shall mean a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal ''or local fund;"

11. Now it is fairly well settled that local bodies are subordinate branches of Government activity. They are political sub-divisions and agencies which exercise a part of State functions. Power of taxation is, therefore, a necessary adjunct of their powers. The characteristic features and the distinctive attributes of "local authorities" are that they, like Municipal Committees, District Boards or Bodies of Port Commissioners, must have a separate legal existence as corporate bodies and must not be mere Governmental agencies. They must be legally independent entities functioning in a defined area, enjoying a certain degree of autonomy with freedom to decide for themselves questions of policy affecting the area administered by them. Next, they must be entrusted by statute with which Governmental functions and duties as are usually entrusted to municipal bodies, such as health, education, planning, development, welfare, etc. Broadly, they may be entrusted with the performance of civic duties and functions which would otherwise be Governmental duties and functions. Finally, they must have the power to raise funds for furtherance of their activities and fulfilment of their projects by levying taxes, rates, charges or fee etc. The respondent-Bank does not satisfy these attributes and cannot therefore be treated to be a local authority within the meaning of Sec. 3(31) of the General Clauses Act or Sec. 60(i)(e) of the C.P.C.

12. Equally untenable is the other argument advanced on behalf of the petitioner. The essential facts stated by respondents at the Bar have not been disputed, viz., that the petitioner was placed under suspension on 8-7-1994 and continues to be so till date. It is also not disputed that with effect from 8-7-1994 when he

completed one year of suspension period he has been receiving 100% emoluments otherwise due and payable to him. In other words, what the petitioner is receiving now is the salary or the total amounts due and not what may be termed as a subsistence allowance. The very fact that he is under suspension and what is being paid is being styled as ''subsistence allowance'' does not in my opinion change the character of the payment. It is in fact a misnomer to call the amount received by the petitioner as ''subsistence allowance'', which generally implied a payment made to an employee under suspension to provide some sustenance to him lest he is forced to starvation pending the conduct of the departmental enquiry against him. If in a case like the present the employee is being paid the total amount payable to him on account of salary, it would be unrealistic to term the payment as one protected by Section 60(1)(I) of the C.P.C. simply because the amount is being styled as subsistence allowance and not salary. That being so, the respondent was justified in making the de'' deductions from out of the emoluments being paid to the petitioner by it.

13. That apart, the petitioner''s conduct does not appear to be bona fide. Having suffered a decree which has become final, he has been avoiding the payment of the decretal amount, on some pretext or the other. On the previous date of hearing the learned Counsel for the petitioner had sought time to find out whether the petitioner was prepared to make some payment of the amount decreed. No payment was however made or offered by the petitioner to show his bona fides. He has on the other hand taken shelter under a purely technical plea in a bid to perpetuate the woes of the decree holder. The extraordinary writ jurisdiction of this Court, I am afraid cannot be involved in such circumstances.

14. In the result the writ petition fails and is dismissed with costs assessed to Rs. 1,000/-.

15. Petition dismissed.

