

(1961) 03 CAL CK 0003
In the Calcutta High Court
Case No : Civil Rule No. 3286 of 1960

AJIT KUMAR GANGULI

APPELLANT

Vs

UNION OF INDIA

RESPONDENT

Date of Decision : 18-03-1961

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 99
Criminal Procedure Code, 1898 (CrPC) — Section 537
Income Tax Act, 1961 — Section 28(1)(b)
Public Demands Recovery Act — Section 4

Citation : (1962) 46 ITR 104

Hon'ble Judges : Sisir Kumar Sen, J; N.K. Sen, J

Bench : Full Bench

Judgement

SISIR KUMAR SEN J. - This revisional application under article 227 of the Constitution is directed against an order passed in revision by the Board of Revenue, West Bengal, reviving Certificate Case No. 300 I.T. of 1948-49 against Messrs. H. and A.K. Ganguli, represented by the petitioner, Ajit Kumar Ganguli and his partners.

The petitioner, Ajit Kumar Ganguli, was a partner of the firm styled "Messrs. H. and A.K. Ganguli" which had its office at 17/19 R.G. Kar Road, Calcutta. According to the petitioner, the said partnership firm discontinued business with effect from 8th August, 1942, the assets and liabilities of the firm, with the right to use the firm name "Messrs. H. and A.K. Ganguli" in respect of existing tenders and contracts being taken over by M/s. Ganguli and Sons Ltd., having its office at No. 17, R.G. Kar Road. On 23rd March, 1948, the Income Tax Officer District I(2), Calcutta, assessed the income of the firm "Messrs. H. and A.K. Ganguli" for the assessment year 1943-44 Rs. 1,62,000 and by a notice u/s 29 of the Income Tax Act, dated 5th April, 1948, demanded Rs. 83,111-15-0 on account of Income Tax and surcharge and super-tax and surcharge for the said year, the demand being payable by 30th April, 1948. Further, the Income Tax Officer by an order dated 30th June, 1948, imposed u/s 28(1)(b) of the Income Tax Act a penalty of

Rs. 81,527-10-0 on the firm, and served a notice of demand u/s 29 of the Act, dated 9th July, 1948, making the amount payable by 25th July, 1948. Neither of the two amounts demanded having been paid, the Income Tax Officer on February 4, 1949, signed and forwarded a certificate u/s 46(2) of the Income Tax Act to the Collector, 24-Parganas, and Certificate Case No. 300 I.T. of 1948-49 was started thereon, for recovery of the sum of Rs. 1,64,639-9-0, representing the sum of the two demands; the certificate u/s 4 of the Public Demands Recovery Act being filed on 10th February, 1949, and notice u/s 7 of the Act being issued on the same date.

The petitioner in the meantime appealed against the assessment of tax and imposition of penalty on the defunct firm, Messrs. H. and A.K. Ganguli, but the appeal was dismissed by an order dated 30th May, 1949. The petitioner filed a second appeal before the Income Tax Appellate Tribunal, Calcutta, and the Tribunal by its order dated 28th February, 1950, modified the order of the Income Tax Officer determining the income of the firm at Rs. 1,13,750 and reducing the demand on account of Income Tax with surcharge and super-tax with surcharge of Rs. 51,666-11-0 and the penalty to Rs. 50,100. The partners of the defunct paid Rs. 10,000 towards the tax demand on 29th March, 1950, to the Income Tax Office. Thereafter, a fresh notice of demand u/s 29 of the Income Tax Act dated 28th April, 1950, was issued on the defunct firm, requiring payment of Rs. 41,666-11-0 on account of the tax (Rs. 51,666-11-0 less Rs. 10,000 paid) by 15th May, 1950. No further amount being paid into the Income Tax Office the Income Tax Officer, District I(2), Calcutta, wrote a letter dated 12th April, 1951, to the Certificate Officer, 24-Parganas, informing him that the demand had been reduced to Rs. 51,666-11-0 on account of the tax and surcharge, and Rs. 50,100 on account of penalty, and that the certificate filed on 10th February, 1949, might be corrected accordingly, and the certificate case proceeded with. It was also intimated that Rs. 10,000 out of the reduced demand had been paid into the Income Tax Office. The certificate filed on 10th February, 1949, was amended accordingly, and steps for realisation of the amount were taken : the certificate case had remained stayed till then, awaiting the result of the appeals by the petitioner or his firm. After resumption of proceedings in the certificate case, the petitioner with his partners paid a total sum of Rs. 54,500 into the certificate court, in some instalments, so that the amount paid comes to Rs. 64,500 and a balance of Rs. 37,266-II-0 remained due. The petitioner tried to obtain remission of that amount by applying the Central Board of Revenue. Being unsuccessful, the petitioner filed an objection before the Certificate Officer on 17th July, 1957, contending that the certificate filed against the defunct firm was liable to be cancelled on four grounds, viz., (1) defect in the form of the certificate, (2) defect in the notice u/s 7 of the Public Demands Recovery Act, (3) failure to issue a fresh certificate u/s 46(2) of the Income Tax Act after modification of the original demands by the Appellate Tribunal, and failure to file a fresh certificate u/s 4 of the Public Demands Recovery Act (the Certificate Officer erroneously summarised this ground as demand notice being in respect of

different amounts), and (4) making of assessment on a discontinued unregistered firm in the firm name and not in the names of the partners. The Certificate Officer, 24-Parganas, heard the objections on the same date, and allowed only one objection, viz., that relating to the defect in the form of the notice; he held that notice as issued under a facsimile rubber-stamp signature of the Certificate Officer was bad, and directed that a fresh notice u/s 7 be issued under the signature of the Certificate Officer. The other objections were overruled. An appeal was preferred before the Divisional Commissioner against the order of the Certificate Officer. The learned Divisional Commissioner while hearing the appeal for admission on 21st August, 1957, overruled the objection relating to the failure to issue a fresh certificate u/s 46(2) of the Income Tax Act and to file a fresh certificate u/s 4 of the Public Demands Recovery Act, by referring to the decision in Ladhuram Taparias case; that when the amount of demand was reduced by the appellate authority, these were not necessary. He also overruled the objection relating to the assessment having been made on a discontinued unregistered firm, holding that the certificate court could not go behind the decision of the Income Tax authorities, and that there was no allegation that the Certificate Officer was proceeding against the personal property of any of the partners. The learned Divisional Commissioner by his order dated 21st August, 1957, admitted the appeal only on the ground of defect in the form of the certificate filed u/s 4 of the Public Demands Recovery Act, the defect being that the tax demand and the penalty were not separately shown in the certificate.

The Divisional Commissioner heard the appeal ex parte on the 14th October, 1957, none having appeared on behalf of the Income Tax department. He pointed out that in the certificate originally filed, the total amount of the demand, Rs. 1,64,639-9-0, was mentioned against the heading "Amount of public demand..... and period for which such demand is due" (henceforward called the second heading); and against the heading "Further particulars of the public demand for which the certificate is signed" (henceforward called the fourth heading), it was only noted "I. Tax for 43-44", and that the tax demand and the penalty were not separately noted; and the description "penalty" not mentioned at all; and similarly, in the amended certificate, the reduced total demand of Rs. 1,01,766-11-0 was shown in lump, with a note "vide Income Tax Officers letter dated April 12, 1951", but still the amount of the tax demand and the penalty were not separately specified. The learned Divisional Commissioner held, relying on the decision of Abanindra Kumar Maity v. A.K. Biswas, that in view of the non-mention of particulars, the certificate was void ab initio; and he cancelled the certificate.

The Income Tax department (strictly, the Union of India represented by the Commissioner of income tax) then filed a revisional petition u/s 53 of the Public Demands Recovery Act before the Board of Revenue. The Member, Board of Revenue, referred to the unreported division bench decision of Union of India v. Jiwanmull Bhutoria and observed that if the public demand was sufficiently

identified the omission to mention some particulars would not vitiate the certificate proceedings; and that in the present case the certificate debtor could identify the public demand quite clearly and, therefore, the lack of some particulars in the certificate was reason for cancelling the certificate. The learned member also dealt with point regarding filing of a fresh certificate after the service of a fresh notice of demand, observing that in view of the decision in *Ladhuram Taparias* case, the service of a fresh notice of demand was not necessary when the demand was reduced in appeal, and that, therefore, the fresh notice of demand for the reduced amount of the demand should be taken as non-existent and would not make any difference. Accordingly, the learned Member allowed the revision petition and directed that the certificate case do proceed.

The petitioner, Ajit Kumar Ganguli, has obtained this rule under article 227 of the Constitution against the aforesaid order of the Board of Revenue. Mr. H.P. Mukherjee, appearing on behalf of the petitioner, has urged before us that the unreported decision on which the learned Member of the Board of Revenue relied, viz., *Union of India v. Jiwanmull Bhutoria*, must be deemed to have been superseded by a still more recent decision of this court, viz., *Satish Chandra Bhowmick v. Union of India*, where a division bench of this court doubted the correctness of the decision of the decision in *Union of India v. Jiwanmull Bhutoria* and reaffirmed the statement of law made in the decision of *Abanindra Kumar Maity v. A.K. Biswas*. He has, therefore, urged that the certificate field against the unregistered firm of which the petitioner was a partner must be cancelled on the ground that it did not mention the particulars required to be mentioned in the form. The position of law on the point has, therefore, to be examined.

There are two decisions of the Privy Council on the point. The first one is *Bajinath Sahai v. Ramgut Singh*, a decision made in 1896, with reference to the corresponding provisions of an earlier Act, the Public Demands Recovery Act of 1880 (Bengal Act VII of 1880). An estate belonging to the respondents was sold under the certificate procedure for arrears of road cess; the respondents having failed to have the sale set aside by proceedings under the Act of 1880, filed a suit in the civil court and succeeded. The Privy Council pointed out that no certificate u/s 7 of the Act of 1880 (corresponding to the certificate u/s 4 of the Act of 1913) appeared to have been filed at all, and held that there was no foundation for a sale under the certificate procedure in the circumstances. The following extract from page 54 contains the recital of the relevant law : "It is unnecessary for their Lordships to point out the necessity there is when a power is given to a public officer to sell the property of any of Her Majestys subjects that the forms required by the Act, which are matters of substance, should be complied with, and that if the certificate is to have the extraordinary effect of a decree against the persons named in it as debtors, and to have the effect of binding their Immovable property, at least it should be in a form such as provided by the Act, which enables any person who reads it to see who the judgment-creditor is, what is the sum for which the judgement is given, and that

those particulars should be certified by the proper officer appointed by the Act for the purpose.

If no such certificate is given, then the whole basis for the proceeding is gone."

It is quite clear that if there is no certificate signed at all under the provisions of the Public Demands Recovery Act, the entire certificate proceeding is without jurisdiction. The existence of such a certificate is absolutely necessary for the validity of the proceedings, but the observations of the Judicial Committee in the above case cannot in our opinion be interpreted to mean that if there is the slightest deviation from the prescribed form, or the slightest error or omission in filling up the form, the proceedings become without jurisdiction. It is undoubtedly necessary that the certificate should be duly signed by the authorised officer, and should show the name of the creditor (and the debtor) and the amount due under the certificate, but there appears to be no justification for reading more into the above decision.

This position follows from the next decision of the Judicial Committee, viz., *Doorga Prosad Chamaria v. Secretary of State*, decided in 1945 under the Publication Demands Recovery Act 1913 (Bengal Act III of 1913). From the statement of facts, it appears that in the certificate field in that case, only the total amount of the demand was mentioned in column 4 of the certificate in form I, and the particulars mentioned in column 5 were "income tax and penalty". The period of the Income Tax demand was not mentioned; neither were the tax demand and penalty shown separately. After an objection u/s 9 of Bengal Act III of 1913 had been disposed of, the debtor filed a suit for the declaration that the certificate was void, and for other reliefs. The Judicial Committee, in dealing with the objections as to the validity of the certificate, held that it was immaterial that the certificate creditor had been described as "The Secretary of State of India on behalf of the Income Tax Officer, Howrah", instead of the correct "The Secretary of State for India" only; and that the period for which the demand was due was not noted in column 4, although the heading requires the period to be noted; it being observed the Income Tax becomes due when demand is made u/s 29 and section 45, but the demand is not due for any particular period.

In *Abanindra Kumar Maity v. A.K. Biswas* decided in 1954, a division bench if this court held a certificate to be invalid because (1) the certificate creditor was described as the Government of West Bengal, instead of Union of India, the demand being in respect of arrears of Income Tax; (2) the period for which the demand was due was not mentioned; and (3) against the heading for further particulars, it was not noted that the assessment was for undisclosed income of 1946-47; and it also held another certificate to be invalid because the demand included penalty imposed by the Income Tax Officer and the reason for the imposition of the penalty was not noted against the heading "further particulars".

In the light of the decision of the Judicial Committee in *Doorga Prosad Chamaria v. Secretary of State*, it is difficult to agree that a certificate in respect of arrears

of Income Tax becomes invalid if the period is not stated in the certificate; and as regards the description that a demand is in respect of tax assessed on undisclosed income for a particular period, and still more, as regards reasons for the imposition of the penalty it is difficult to say how these things can be required to be furnished under the heading "further particulars". No such things were required in the above case dealt with by the Judicial Committee, and this court can hardly require that a certificate u/s 4 of the Bengal Act III 1913 should incorporate the matters required in a summary judgment.

This is more or less what was pointed out in the next decision of this court, the unreported case, *Union of India v. Jiwanmull Bhutoria*. The division bench in deciding the case drew attention to *Doorga Prosad Chamarias* case, and held that it was not necessary to mention the period or the date of the demand u/s 29 or section 45 of the Income Tax Act, and that it was not necessary to mention against the heading "further particulars" that the assessment is in respect of a concealed or undisclosed income. This division bench did not consider a reference to a full bench necessary, though their view of the law was different from that of the division bench decided the case, *Abanindra Kumar Maity v. A.K. Biswas*, because the latter bench had failed to take into consideration the second decision of the Judicial Committee in *Doorga Prosad Chamarias* case which is binding on this court. This reported decision laid down the test that the debt due must be sufficiently identified in the certificate, and if the public demand be sufficiently identified it is not necessary to give any further particulars.

Next we come to the decision in *Satish Chandra Bhowmick v. Union of India* relied upon by Mr. H.P. Mukherji. It reverts back to the statement of law in *Abanindra Kumar Maity v. A.K. Biswas* and disagrees with the unreported decision cited above. It is queer that the Calcutta Weekly Notes should think fit to report two cases taking one line, and not the case taking a contrary line : it is certainly desirable that different views on the same question should be reported, so that one point of view may not become lost in course of time, and so that the correct position may ultimately be thrashed out by a full bench or otherwise. Be that as it may in *Satish Chandra Bhowmicks* case their Lordships relied on their reading of the law recited in the earlier Privy Council case, *Bajinath Sahai v. Ramgut Singh*, and in respect of the later decision in *Doorga Prosad Chamaria v. Secretary of State*, expressed their view in the following terms (page 333) : "It is true that the decisions of the Privy Council are entitled to great respect, but when an earlier Privy Council decision lays down the law and legal principles by giving good reasons therefore and another Privy Council decision expresses a contrary view without adverting to the earlier decision at all, and without giving much reasons for its dictum, then we prefer to follow the earlier one that has given reason."

With due respect, this was not in our opinion a correct approach. In the case with which the first decision of the Privy Council was concerned, there was no certificate signed and filed at all; so naturally, the proceeding was held to be

without foundation. There is absolute want of jurisdiction in proceeding with a certificate case without a certificate being signed and filed in terms of the relevant provisions of the Public Demands Recovery Act. Even in that case, the test laid down by the Privy Council was that there should be a certificate signed by an authorised officer in a form such as prescribed by the Act, which enables any person who reads it to see who the certificate creditor is and what is the sum due under the certificate. This test with the test recited in the unreported decision of this court, viz., that the public demand should be sufficiently identified in the certificate, and of course that the names of the creditor and the debtor should appear therein. The later decision of the Privy Council dealt with a case in which there was a certificate signed and filed by an authorised officer in a prescribed form, and their Lordships had only to deal with the question of sufficiency of the particulars entered in the form. The two decisions are complementary and not contrary at all.

In *Satish Chandra Bhowmick v. Union of India*, it was held that for the validity of the certificate proceedings, the necessity is not merely that the certificate is intelligible and the procedure adopted is one of substantial compliance with law, but the necessity is strict adherence to every requirement of the Act, which is a minimum guarantee that the legislature has prescribed in a summary procedure. It is a matter of regret that the division bench should have decided the case on a view of law contrary to that of the unreported decision of another division bench and not referred the matter to a full bench. We would certainly have referred to a full bench the question involved, viz., whether substantial compliance with the prescribed form of certificate, so that the public demand can be identified, is sufficient for the validity of certificate proceedings, and whether "further particulars" include such things as the description of a tax demand as assessment on concealed or undisclosed income, and reasons for imposing a penalty when the demand includes it. But we are saved from the necessity of doing so on account of an Act that has into force in the meantime, viz., the Bengal Public Demands Recovery (Validation of Certificates and Notices) Act, 1961 (W. B Act XI of 1961) published in the Calcutta Gazette on April 28, 1961. The Act is as follows :

"Whereas it is expedient to validate certain certificates filed and notices served under the Bengal Public Demands Recovery Act, 1913.

It is hereby enacted, on the Twelfth year of the Republic of India, by the legislature of West Bengal as follows :

1. This Act may be called the Bengal Public Demands Recovery (Validation of Certificates and Notices) Act, 1961.
2. Notwithstanding any decision of any court and notwithstanding anything to the contrary contained in the Public Demands Recovery Act, 1913 (hereinafter referred to as the said Act) or in the rules made or forms prescribed thereunder, no certificate filed u/s 4 or section 6 of the said Act and no notice issued shall be

called in question merely on the ground of any defect, error or irregularity in the form thereof."

The defects or irregularities in the certificates filed in the present case have already been mentioned : they are (a) omission to specify the tax demand and demand for penalty separately, and (a) mentioning only "income tax for 43-44" against the fourth heading, without specifying that the demand comprises Income Tax and penalty. Mr. Mukherjee has also referred to the omission to mention the period against the second heading; but the period is noted in any case against the fourth heading. Mr. Mukherjee has not seriously urged that the reasons for the imposition of the penalty also required to be shown against the fourth heading; in our opinion, such reasons are definitely uncalled for in the prescribed form for a certificate; but even if required, the omission to state the reasons would only be a defect. None of the defects or irregularities prevented the certificate debtors from understanding the nature of the public demand mentioned in the certificate. The assessment of Income Tax and super-tax on the income of the discontinued firm for the assessment year 1943-44 and the imposition of penalty u/s 28(1)(b) of the Income Tax Act had been done in the presence of the petitioner or his representative; notices of both demands u/s 29 of the Income Tax Act had duly been served; the petitioner filed an appeal and a second appeal from the order of assessment of tax and imposition of penalty; and in pressing his application for cancelling the certificate it was urged that the tax demand for Rs. 83,111-15-0 and penalty of Rs. 81,527-10-0 had been lumped together in the certificate and that this was a fatal defect. It is clear therefore that the petitioner fully understood what was the public demand mentioned in the certificate, even though the items making up total demand were not separately specified therein and the demand was loosely described or misdescribed as "income tax for 43-44" instead of "income tax for 1943-44 and penalty u/s 28(1)(b)."

We find that the certificate could be understood by the petitioner in spite of the defects it contained, and the petitioner was not prejudiced in any way on account of the defects, and therefore, in view of the declaratory law contained in West Bengal Act XI of 1961, we hold that the certificate filed in the case cannot be held to be invalid.

Mr. H.P. Mukherjee has challenged the validity of West Bengal Act XI of 1961, on the ground that the assent of the President of India was not obtained, as required under article 254(2) of the Constitution.

Article 254(2) is as follows :

"Where a law made by the Legislature of a State specified in Part A or Part B of the First Schedule with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the

consideration of the President and has received his assent, prevail in that State."

There is a proviso to the clause which it is not necessary to quote for the purpose of this case.

Mr. Mukherjee has urged that the Public Demands Recovery Act, 1913, though a Bengal Act (Bengal Act III of 1913) was made with the previous sanction of the Governor-General u/s 5 of the Indian Councils Act, 1892, and that when the Act was amended in 1955 by West Bengal Act XV of 1955, the assent of the President was obtained; that the Act relates to recovery of public demands, which comes under item 43 of List III (Concurrent List) or Seventh Schedule of the Constitution, and that, therefore, the previous assent of the President was required for West Bengal Act XI of 1961 too, and without such assent the Act is bad.

Now item 43 of the Concurrent List refers to "recovery in a State of claims in respect of taxes and other public demands, including arrears of land revenue and sums recoverable as such arrears, arising outside the State." The Public Demands Recovery Act, 1913, does not by its own force apply to the recovery of public demands arising outside the State of Bengal, now West Bengal, but by virtue of provisions in certain Central Acts, public demands arising outside the State may become recoverable under the procedure laid down in the Public Demands Recovery Act. For example, u/s 46(2) of the Income Tax Act, arrears of Income Tax may be recoverable as arrears of land revenue, and item 3 of Schedule I of the Public Demands Recovery Act makes such arrears recoverable under the procedure laid down in the Act; the income assessed in respect of an individual or firm may arise outside the State, and, if so, the taxes assessed on such income would include demand arising outside the State. But the legislation which makes the public demand arising outside the State recoverable within the State by the certificate procedure is the Central Act, e.g., section 46(2) of the Income Tax Act. The Public Demands Recovery Act, 1913, is primarily a piece of legislation laying down the procedure for collection of public demands arising within the State of Bengal (now West Bengal); the fact that it may in conjunction with certain Central Acts be used for recovery of public demands arising outside the State does not make it a piece of legislation falling within item 43 of the Concurrent List. In this connection, we may recall the dictum of the Judicial Committee in the case of *Profulla Kumar Mukherjee v. Bank of Commerce*, that with reference to the pith and substance of a statute, it has to be decided to what list it appertains. Accordingly, it must be held that for an amendment of Bengal Act III of 1913, the assent of the President is not normally required. Such assent may be required when some demand recoverable under the general law, e.g., the Civil Procedure Code, is sought to be made recoverable under the special procedure of Bengal Act III of 1913. Thus by West Bengal Act XV of 1955, any money awarded as costs by the High Court of Calcutta in proceedings under article 226 of the Constitution relating to matters arising outside its ordinary original civil jurisdiction, was included as item 15 of Schedule I of Bengal Act III

of 1913. Since the operation of the CPC in respect of the recovery of such costs was sought to be excluded or modified, the assent of the President had to be obtained. That does not mean that in every case of amendment of Bengal Act III of 1913, the assent of the President must be obtained. It is interesting to note that the identical view was taken by Sinha J. in the case of *Sriram Jhabarmull v. S. C. Das Gupta*, wherein he observed as follows :

"The contention that the Bengal Public Demands Recovery Act authorises the realisation of a tax which might have arisen outside the State when the State cannot legislate on such a subject, since it falls under heading 43 of the 3rd list (Concurrent List) of the Seventh Schedule, and no assent of the President has been taken, has no force because the Bengal Act does not apply of its own force, but by reason of Central Acts, (here Excess Profits Tax Act and the Income Tax Act) in respect of which no question arises of assent."

If the Bengal Public Demands Recovery Act is not such an Act as would require the assent of the President at the time of its enactment (provided it was enacted after 26th January, 1950) far less would any amendment of the Act which does not affect the operation of any other Central Act require the assent of the President. The sanction of the Governor-General which had to be obtained u/s 5 of the Indian Councils Act, 1892, is nothing analogous to the assent of the President under article 254(2) of the Constitution.

Mr. Mukherjee fell back on the argument that the words "arising outside the State" in item 43 of the Concurrent List qualify only the phrase "sums recoverable as such arrears" occurring immediately before the words. But there is a comma after the phrase "sums recoverable as such arrears". This shows that the words "arising outside the State" qualify the whole subject-matter of the item, viz., "claims in respect of taxes and other public demands". Mr. Balai Lal Pal, appearing on behalf of the Income Tax department, has cited a decision of the Travancore-Cochin High Court in this connection, viz., *Krishna Rao v. Municipal Sales Tax Officer*, in support of the proposition that item 43 of List III relates only to claims which arise outside the State, i.e., do not arise within the State. But this appears to be clear by reading the item itself.

Further, West Bengal Act XI of 1961 does not purport to amend the Public Demands Recovery Act (Bengal Act III of 1913). It only declares that certificates filed and notices served under Bengal Act III of 1913 shall not be deemed to be invalid only because of defects, errors or irregularities in the form thereof. The insistence in some of the courts decisions on the necessity of the strictest compliance with the forms, by referring to section 38 and rule 84 of the Act, appears really to have gone against the terms of rule 84 itself. Rule 84 provides that the forms set forth in the appendix shall be used, "with such variations as circumstances may require." Hence Certificate Officers have the power to make necessary variations in the forms, without of course sacrificing the essential requirements, i.e., without adversely affecting the conveying of the necessary information to any one who reads the certificate of the notice. What appears to

have been required all along was substantial compliance with the forms and procedure. The declaratory Act only seeks to make this position clear, for the position was getting obscured because of the decisions of this court. Mr. Mukherjee has referred to a note which was added by the Board of Revenue below rule 84 after the decision in *Abanindra Kumar Maity v. A.K. Biswas*, drawing the attention of Certificate Officers to what the High Court considered essential, and he has added that this note takes away the discretion of Certificate Officers to make variations in the prescribed forms. But the note is not a rule having the statutory force u/s 38 of the Act; it is merely an executive instruction to Certificate Officers. Statutory rules may not contain reference to decisions which may presently be overruled, and the note is only a note or annotation and not part of the rules. Moreover, the part of rule 84 giving the power of making suitable variations in the forms was not deleted. That power has always been there, and now the West Bengal Act XI of 1961 makes it clear that certificates or notices cannot be challenged merely because of differences or defects in the forms used. This declaratory Act in a sense reminds the courts of the principle contained in section 99 of the Civil Procedure Code, that any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the court, shall not be the ground for reversing or modifying a decree. Section 537 of the Criminal Procedure Code also contains the same principle.

In any case, therefore, we hold that West Bengal Act XI of 1961 cannot be challenged because of any omission to obtain the assent of the President. The Act is a valid one, and may be resorted to for saving certificates and notices in all pending certificate proceedings. We find that the certificate originally filed as the basis of Certificate Case No. 300 I.T./1948-49 and the amended certificate noting the reduced demand are not rendered invalid because of some defects contained in them, and that the certificate proceedings are not liable to be quashed.

Mr. H.P. Mukherjee has next urged two further grounds, which were summarily overruled by the Divisional Commissioner when admitting the appeal filed before him. The first of these grounds relates to the assessment of a discontinued unregistered firm. Section 44 of the Income Tax Act in its present form provides (sub-section (1)) that where any business carried on by a firm or other association of persons has been discontinued, or where a firm or other association of persons is dissolved, the Income Tax Officer shall make an assessment of the total income of such firm or other association of persons as such as if no such discontinuance or dissolution has taken place; sub-section (3) provides that every person who was at the time of such discontinuance or dissolution a partner of the firm or a member of the association, shall be jointly and severally liable for the amount of tax or penalty payable. Before the amendment of section 44 in 1958, it was in different terms and the provisions as they then stood were interpreted by Sinha J. in *Manindra Lal Goswami v. R.N. Bose* as follows :

"There is nothing in section 44 which authorises assessment of a firm as such, after its discontinuance or dissolution,... it is the partners of the firm who are to be assessed, and not the firm, although the tax due would be calculated as if there was no discontinuance."

This decision was affirmed by a division bench of this court in appeal : vide R.N. Bose v. Manindra Lal Goswami.

It appears that in the present case, though the assessment was made on the income of the discontinued firm styled "Messrs. H. and A.K. Ganguli" for the year 1943-44 in 1948, the assessment was made on the firm as such, and not on the persons who were partners at the time of the discontinuance of the business of the firm. Though this might be an irregularity, it could have no adverse effect, for the result would be the same, i.e., the partners of the firm at the time of discontinuance of the business of the firm would be jointly and severally liable for the tax and penalty assessed. This is not a defect affecting jurisdiction of the assessment. Moreover, it is not in our opinion an objection which can be taken to the validity of the certificate. The certificate may be challenged on the grounds specified in section 37 of Bengal Act III of 1913, i.e., questions relating to the making, execution, discharge or satisfaction of a certificate filed under the Act may be raised. Questions as to proper making of a certificate, i.e., whether it is substantially in the prescribed form and gives sufficient information to the debtor, can be raised, but not the correctness of the amount and the name of the party liable, which have been certified by the Income Tax Officer u/s 46(2) of the Income Tax Act. The proper forum for challenging the validity of the assessment is the Appellate Assistant Commissioner, or the Appellate Tribunal, or the High Court on a writ petition against tax assessment proceedings of the Income Tax authorities.

The second of the two further grounds urged by Mr. H.P. Mukherjee relates to the failure of the Income Tax Officer to sign and forward to the Collector a fresh certificate u/s 46(2) of the Income Tax Act when the tax demand and penalty were both reduced by the order of the Appellate Tribunal dated 28th February, 1950. Both the Divisional Commissioner (in his order at the time of admitting the appeal) and the Member, Board of Revenue, overruled the objection by referring to the decision of Ladhuram Taparia v. D.K. Ghosh, in which it was held that when a proper notice of demand has already been given in respect of the tax determined by the assessment order, it is not necessary that a second notice of demand u/s 29 of the Income Tax Act should be served on the assessee when the demand is reduced by an Appellate authority. In Ladhurams case, the certificate case started on the basis that the original assessment was kept pending; after the reduction of the amount of demand by the order of the Appellate Tribunal, there was no service of fresh notice u/s 29, but there was service of notice u/s 56(5A) calling upon the assessee to pay up the reduced amount, and on failure of the assessee to pay, the certificate proceeding was continued. It was held that there was nothing irregular in the above proceedings,

and the certificate proceedings might continue.

Mr. Mukherjee has sought to distinguish the present case by pointing out that in this case, the Income Tax Officer issued a fresh demand notice u/s 29 for Rs. 41,666-11-0 on 28th April, 1950, after the decision of the Appellate Tribunal. He has urged that the issue of this fresh demand notice u/s 29 nullified the earlier demand notice u/s 29; and that since no fresh certificate u/s 46(2) of the Income Tax Act was sent when the amount became an arrear, and no fresh certificate was filed, the proceedings for realisation of the demand could not proceed. It is argued that the Certificate Case No. 300 I.T. of 1948-49 started on the basis of the original certificate u/s 46(2) stood automatically quashed when the fresh demand notice u/s 29 was served.

The learned Member of the Board of Revenue met this objection by observing that since no fresh demand notice u/s 29 needed to be served, the notice should be treated as non-existent, i.e., it should be ignored. Mr. Pal has also urged the same thing before us.

It is to be observed that it does not appear that any fresh notice of demand u/s 29 was served in respect of the modified demand for penalty, Rs. 50,100; it is nowhere alleged that such a fresh demand notice in respect of the penalty was served. This indicates that the Income Tax Officer realised, after issue of one fresh notice of demand, that such a fresh notice of demand u/s 29 was not called for. He waited till 12th April, 1951, to allow the assessee an opportunity to pay up amicably, and thus sent a letter to the Certificate Officer for amendment of the Certificate showing the reduced demand and for proceeding with the Certificate case. The Income Tax Officer could just as well have issued a fresh certificate u/s 46(2) at that time, at least in respect of the tax demand for which a fresh demand notice u/s 29 had been given. Instead of doing that, he requested amendment of the existing certificate and active continuance of the certificate case. The Certificate Case No. 300 I.T. of 1948-49 was never dropped and we are unable to accept the contention that it stood automatically quashed or cancelled at any stage.

In connection with this point, we may refer to section 45 of the Income Tax Act. It provides that any amount specified as payable in a notice of demand u/s 23A(3), or section 29, or an order u/s 31 or section 33, shall be paid within the time mentioned in the notice or order; or if a date is not mentioned, then by the 1st day of the second month following the date of the service of the notice or order, and that any assessee failing so to pay shall be deemed to be in default; provided that the Income Tax Officer may in his discretion treat the assessee as not being in default so long as such appeal is not disposed of. Accordingly, the Income Tax Officer may in his discretion issue the certificate u/s 46(2) after serving the notice of demand in respect of his own assessment, and if he does so, he treats the assessee to be in default; or he may await the result of the appeal by the assessee, and issue fresh notices of demand after the disposal of the appeal by the Appellate Assistant Commissioner and by the Income Tax

Appellate Tribunal, and issue the certificate u/s 46(2) only after the order of the Appellate Tribunal, in which case he has treated the assessee as being not in default till the disposal of the appeals and the issue of the notice of demand on the basis of the order of the Appellate Tribunal. In the case of Metropolitan Structural Works Ltd. v. Union of India, the second course mentioned above was followed; and it was held that the successive demand notices were legal, and limitation would run from the last demand notice. But, in the present case, the Income Tax Officer did not treat the assessee as not in default pending the disposal of the appeals; he treated the assessee as in default as soon as the assessee failed to pay in accordance with the original demand notices, and issued the certificate u/s 46(2) of the Act, on the basis of which the certificate u/s 4 of Bengal Act III of 1913 was drawn up and filed, and Certificate Case No. 300 I.T. of 1948-49 commenced. That case was never dropped, although it may have been virtually stayed pending the disposal of the appeals by the assessee. In the circumstances, the demand notice u/s 29 issued on 28th April, 1950, must be treated as without any significance, or in the alternative treated as a notice to pay u/s 46(5A) of the Income Tax Act. Therefore, the certificate filed on the basis of the certificate u/s 46(2) of the Income Tax Act dated 4th February, 1949, and subsequently amended, cannot be deemed to have been automatically cancelled.

Mr. Pal has urged that even if the learned member of the Board of Revenue had taken an erroneous view on this last question, we could not have interfered under article 227 of the Constitution. The scope of article 227 was considered by the Supreme Court in the case of Nagendra Nath Bora v. Commissioner of Hills Division. Their Lordships laid down that under article 226 the power of interference might extend to quashing an impugned order on the ground of a mistake apparent on the face of the record; but under article 227, the power of interference of the High Court is more limited; it may only see that the Tribunal functions within the limits of its authority. The Supreme Court approved of a special bench decision of this court, viz., Dalmia Jain Airways Ltd. v. Sukumar Mukherjee where it was held as follows :

"Though under article 227 the High Court has a right to interfere with decisions of courts and Tribunals under its power of superintendence, that power must be exercised very sparingly and only in appropriate cases. The High Courts power of superintendence is a power to keep subordinate courts within the bounds of their authority, to see that they do what their duty requires and that they do it in a legal manner; thus when the decision of an authority under the Payment of Wages Act could be objected to only as an error of law, but was not unjust or harsh, it could not be interfered with under article 227."

In other words, this court may interfere under article 227 of the Constitution when the subordinate court or Tribunal has acted without jurisdiction or has committed some manifest injustice but not when it has decided a point of law wrongly. In the present case, the learned Member of the Board of Revenue was clearly acting within the limits of his authority, and the order passed by him

cannot be regarded as unjust in any way. Therefore, we must accept the contention of Mr. Pal that even if the decision of the learned Member on the last point were erroneous in law (which in our opinion it was not), we could not interfere. Mr. Mukherjee has referred to the fact that the petitioner with his partners has already paid Rs. 64,500 against the modified demand of Rs. 51,666-10-0 on account of Income Tax and super-tax with surcharges and Rs. 50,100 as penalty, out of the income finally determined as Rs. 1,13,750, and that the balance of Rs. 37,266-11-0 due might well have been remitted by the Central Board of Revenue. But even if it is assumed that the Central Board of Revenue has been unkind, it cannot in any case be held that the order of the learned Member, Board of Revenue, has resulted in an injustice; he dealt with the matter in a legal manner within the limits of his authority.

In the circumstances, the rule is discharged but no order is made as to costs.

N.K. SEN J. - I agree. The arguments of Mr. Hari Prasanna Mukherjee on behalf of the petitioner in this rule have been sufficiently dealt within the judgment of my learned brother and with the reasons given therein I respectfully agree. As repetition is unnecessary, I do not propose to add anything beyond this general expression of concurrence with the said reasons and a few observations which I shall presently make.

Mr. Balai Lal Pal, the learned advocate for the opposite party, urged that the present application for the revision by the petitioner against the order of the Board of Revenue does not come within the scope of article 227 of the Constitution of India so that this court should not interfere in this matter. In support of his argument, Mr. Pal cited before as the decision of the Supreme Court in the case of Nagendra Nath Bora v. Commissioner of Hills Division. Mr. Pal drew our attention to the passage wherein the Supreme Court approved the decision of the special division bench of this court in the case of Dalmia Jain Airways Ltd., v. Sukumar Mukherjee in holding that the power of superintendence conferred under article 227 of the Constitution of India is to be exercised most sparingly and only in the appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors. In the instant case, the contention of the petitioner was that the Board of Revenue failed to exercise the authority vested in it in overruling the contention taken before the Board by the petitioner. On an examination of the materials placed before us which have been fully set out in the judgment of my Lord, it is found that in the present case that the Board of Revenue has kept itself within the bounds of the authority vested in it and therefore it is not an appropriate case where the provisions of article 227 of the Constitution can be invoked. There can, however, be no question and Mr. Pal has not contended that this court cannot exercise its jurisdiction under article 227 of the Constitution of India in appropriate cases and, therefore, revisional petitions made before this court should not be thrown out without an examination of the materials produced in support of the contentions raised in the petition. In just and fit cases, this

court will certainly interfere if it is found that the subordinate courts had not acted within their authority under the power of superintendence given to this court under article 227 of the Constitution.

Mr. Mukherjee took a point that both the orders of assessment and penalty were made in 1948 and at that time the assessee, the unregistered firm, was already non-existent, having been dissolved with effect from August 8, 1942. Mr. Mukherjee drew our attention to section 44 of the Income Tax Act and submitted that the persons who were partners of the said dissolved firm were jointly and severally liable to assessment under Chapter IV and for the amount of tax payable and all the provisions of Chapter IV shall, so far as it may, apply to any such assessment.

In this connection, Mr. Mukherjee relied on the decision in the case of Manindra Lal Goswami v. R.N. Bose. In that case Sinha J. held that there is nothing in section 44 which authorises assessment of a firm as such after its discontinuance or dissolution. This does not, however, mean that its liability is gone. The liability itself which continues is specifically set out in the section. It was pointed out by Mr. Mukherjee that in paragraphs 4 to 6 of the affidavit in opposition made on behalf of the opposite party in this rule, the statement that the firm has been dissolved has not been denied specifically. Mr. Mukherjee also produced before us a certified copy of the order of the Income Tax Officer wherein such dissolution had been recorded before him. In these circumstances, Mr. Mukherjee contended that the whole order of assessment and penalty on the dissolved firm of Messrs. H. and A.K. Ganguli was irregularly made. Although it is a fact which remains undeniable that a large amount of money of over Rs. 64,000 had already been paid on behalf of the said assessee, i.e., the dissolved firm, by its then partners, it appears that no objection at any stage was taken against the irregularity complained of by Mr. Mukherjee in passing the assessment and penalty orders by the Income Tax Officer before the appellate authority. The only contention that had been made before the appellate authority on behalf of the assessee centered round the quantum of tax penalty. In the above circumstances, I am of the opinion that there is not much substance in this point made in the submission of Mr. Mukherjee and it was not tenable before the Certificate Officer at that stage.

Mr. Mukherjee further drew our attention to the "Note" inserted to the rule 84 framed under the authorities u/s 38 and the following sections of Part V of the Bengal Public Demands Recovery Act and contended that the said note having been incorporated in the statute the defect in the certificate by omission to mention correctly in the certificate other particulars, namely, the period for which the demand is due and the reasons for the imposition of the penalty, renders the certificate invalid. I am unable to hold that the principles of law as decided in the case of Abanindra Kumar Maity v. A.K. Biswas have been incorporated in the Statutory Rule No. 84 framed under the authority of the Act by the note. The note added to Rule No. 84 has only given interpretation made thereof by the

decision in the case of Abanindra Kumar Maity v. A.K. Biswas and the said "Note" to the rule has no more sanctity than the said decision itself and in my view no statutory force has been given to the note by its incorporation in the statutory rules.

Rule discharged.