
(1996) 10 PAT CK 0034
In the Patna High Court
Case No : C.W.J.C. No. 8147 of 1995

Amar Jyoti Press and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 17-10-1996

Acts Referred:

Citation : (1996) 10 PAT CK 0034

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—The petitioners by this writ application prayed for writ of certiorari for quashing the order dated 16th September, 1995 passed by the respondent No. 3 the Certificate Officer, Patna City on Certificate Case No. 360 of 1989-90. The petitioners also prayed for quashing of the certificate signed by the respondent No. 3 u/s 5 of the Bihar and Orissa Public Demand Recovery Act on the basis of requisition submitted by the certificate holder. A prayer has also been made for quashing the notice issued by the Certificate Officer whereby the petitioners were called upon to pay the entire amount of Rs. 16, 36, 865.82 on or before 27th September, 1995 failing which Distress Warrant and warrant of arrest were to be issued simultaneously.

2. In the instant case, there was no dispute with regard to the fact the petitioners availed financial assistance from the respondent No. 4 State Bank of India, Patna City Branch, Patna and on default, a certificate proceeding was initiated. It appears that the petitioners moved this Court earlier by filing C.W. J.C. No 2321/93 for quashing the order dated 9.2.1993 passed by the Certificate Officer whereby the petitioners were directed to pay Rs. 60, 000/-every month by way of instalment towards the satisfaction of the certificate dues. The said order was challenged on the ground that the petitioners were not given opportunity of hearing on the objection filed by them. The said writ application was disposed of by judgment and order dated 8.3.1994. By the said order, this Court directed the respondent No. 3 to decide the objection raised by the petitioners in their application denying their liability to pay the claim amount of

money by resort to processes under the Act. A copy of the said order passed by this Court is Annexure-5 to this writ application. It further appears that in compliance of the direction of this Court aforesaid the Certificate Officer, took up the objection filed by the petitioners u/s 9 of the Bihar and Orissa Public Recovery (hereinafter to be referred to as the "said Act") and disposed of the same by the impugned order. A copy of the said order is Annexure-1 to the writ application. The petitioners have challenged the said order on various grounds which have been stated in the writ application:

3. A counter affidavit was filed on behalf of respondent Bank stating inter alia that from the allegations made in the writ application, it would appear that serious disputed questions of fact are involved and the same may not be decided properly in a writ case. Strong objection has been taken that the impugned order dated 16th September, 1995 was passed by the Certificate Officer u/s 10 of the said Act and the petitioners having filed the instant writ application without exhausting appeal or revision against the said order, the writ application is prematured and the same is liable to be dismissed in limine. It was further stated that the petitioners are litigating the matter merely to delay the realisation of the huge amount to the tune of Rs. 16, 36, 865.82 which is public money.

4. Mr. Tara Kant Jha, learned Senior Counsel appearing on behalf of petitioners submitted that the impugned order passed by the Certificate Officer is illegal and contrary to the evidence available on the record. The learned Counsel submitted that the amount under the cash credit account could not be recovered under the said Act. The learned Counsel submitted that the impugned order was passed for putting the petitioners in civil prison in exercise of power under Rule 53 of the said Act which is ultra vires and unconstitutional jeopardising the constitutional right of the petitioners to acquire, hold or dispose of the property. The learned Counsel further submitted that even if there is a statutory remedy that is not a bar in invoking the writ jurisdiction under Article 226 and 227 of the Constitution of India. The learned Counsel further submitted that when alternative remedy is not effective, the High Court is fully competent to interfere in exercise of writ jurisdiction.

5. In this connection, the learned Counsel heavily relied upon the decisions of the Supreme Court in *Hoosein Kasam Dada (India) Ltd. Vs. The State of Madhya Pradesh and Others*, *Himmatlal Harilal Mehta Vs. The State of Madhya Pradesh and Others*, and *Collector of Customs and Excise, Cochin and Others Vs. A.S. Bava*, .

6. In *H.K. Dada (Supra)*, the question involved before the Apex Court was whether by amendment, a substantive right of appeal can be taken away from the Act. Under the C.P. and Bevar Sales Tax Act 1947, there was a provision of appeal but the amendment of Section 32 placed a substantial restriction on the assessee's right of appeal as the amended section requires the payment of the entire assessed amount as a condition precedent to the admission of the appeal. In that context the Apex Court held that the imposition of such a restriction by

amendment of the section cannot affect the assessee's right of appeal from a decision in proceedings which commenced prior to such amendment and which right of appeal was free from such restriction under the section as it stood at the time of commencement of the proceedings.

7. I do not find anything in the said judgment which actually helps Mr. Jha, learned Counsel for the petitioners, for the proposition that alternative remedy by way of appeal is not a bar for invoking the writ jurisdiction.

8. In *Himmatlal v. State of M.P.* (supra), the question for consideration before the Apex Court was as to whether when explanation II to Section 2(g) of the C.P. and Bevar Sales Tax Act 1947 having been declared ultra vires, any imposition of sales tax on the appellant in M.P. was without the authority of law and that being so, a threat by the State of using coercive machinery of the impugned Act to realise it from the assess is sufficient infringement of the fundamental right and, therefore, the Apex Court held that the petitioner was entitled to relief under Article 226 of the Constitution of India.

9. This decision also does not help the petitioners in-as-much as admittedly the petitioners took loan from the respondent Bank and on their failure to pay the loan amount together with interest, a certificate proceeding was initiated and a final order has been passed u/s 10 of the said Act which order is appellable under the Act. There is no question of infringement of fundamental right nor there is a question that any of the provisions of the said Act declared ultra vires.

10. In *Collector of Customs, Cochin* (supra) the fact of the case was equally distinguishable. In that case the writ petitioner challenged the demand made by the Assistant Collector of Customs for payment of duty under the Central Excise and Salt Act 1944. In the peculiar circumstances, of the case, the Apex Court held that existence of remedy by way of revision u/s 36 of the said Act did not bar the jurisdiction of the High Court.

11. On the contrary, in *Asst. Collector. G.E. Chandan Nagar v. Dunlop India Ltd.* 1985 S.C. 330, while considering the question as to when the statutory alternative remedy can be ignored and the aggrieved party can invoke the jurisdiction of the High Court under Article 226 of the Constitution of India, the Apex Court held as under:

Para-3: In *Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others*, A.P. Sen, E.S. Venkatarmiah and R.B. Misra, JJ. held that where the statute itself provided the petitioners with an affections alternative remedy by way of an appeal to the prescribed Authority, a second appeal to the Tribunal and thereafter to have the case stated to the High Court, it was not for the High Court to exercise its extraordinary jurisdiction under Act. 226 of the Constitution ignoring as it were, the complete statutory machinery that it has become necessary, even now, for us to repeat this admonition is indeed a matter of tragic concern to us. Article 226 is not meant to short circuit or circumstance statutory procedures. It is only where the statutory remedies are entirely ill-suited to meet

the demands of extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to by-pass the alternative remedy provided by the statute. Surely matters involving the revenue where statutory remedy are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitioners under Article 226 of the Constitution are filed solely for the purpose of obtaining interim order and thereafter problem the proceedings by one device or the other. The practice certainly needs to be strongly discouraged.

12. In *Sawar Mal Choudhary and Others Vs. State Bank of India and Others*, a writ application was filed challenging the final order passed under the Act, namely Public Demand Recovery Act. A primary objection was forcefully and vehemently raised on behalf of respondents that the Act itself provides effective remedy by way of statutory appeal, revision and even review in unequivocal terms. Therefore, the questions based on facts can only be determined aptly in the aforesaid forum provided by the Legislature. A Division Bench of this Court, after considering the relevant provisions of the Act and the law laid down by the various Courts held that when the statutory remedy is available, writ jurisdiction cannot be invoke. The Court further rejected the contention of the writ petitioner that since deposit of 40 per cent is the condition precedent to entertain the appeal or revision, it cannot be said that the remedy is efficacious. The Court held as under:

Para~33: Faced with the uphill the task of by passing the numerous statutory remedies aforesaid, the learned Counsel for the petitioners attempted to clutch at a straw for contending that these were either ineffective or illusory. The submission was sought to be rested first on the second proviso to Sub-section (1) of Section 60 (inserted by the Amending Act of 1974) which provides that the appellant must pay 40 per cent of the amount due or such amount as the appellant admits to be due from him which is greater as a condition for preferring the appeal. Reference was also made to analogous provisions for revision in the first proviso to Section 62 which requires a deposit of 40 per cent of the certificate dues before the entertainment of the revision petition. On the basis of the aforesaid provisions, learned Counsel for the petitioners took the somewhat tall that in fact there was no worth while remedy by way of appeal or revision if it is hedged in by the conditions of deposit.

Para-34: The stand taken on behalf for the petitioners has only to be noticed and rejected. It may perhaps be first highlighted that u/s 62 providing fore a revision what is required is not double deposit and the second proviso thereto makes it clear that no certificate debtor shall be called upon to do so if he has already deposited this amount at an earlier stage. It would follow therefrom that where the certificate debator has once made the deposit at the appellate stage, there is

no further impediment in his way of the same nature for preferring a revision. This apart, it seems to be well settled by precedent that merely providing for a condition for deposit for regularizing the right of appeal or revision in no way renders it either illusory, ineffective or something which can be ignored or by passed. It is unnecessary to elaborate this aspect on principal because, to my mind, it appears to be covered by binding authority...

Para-35: In the light of the aforesaid authoritative enunciations the submission on behalf of the petitioners must be rejected and it has to be held that the right of appeal and revision conferred by Sections 60 and 62 of the Act are adequate the effective statutory remedies provided by the legislature.

13. Having regard to the law laid down by the Apex Court and also by various High Courts, I am of the opinion that the remedy by way of appeal is available to the petitioners and, therefore, this Court should not exercise its jurisdiction under Articles 226 and 227 of the Constitution of India. Besides the above, from the affidavit and the counter affidavit supported by series of Annexures and other document it appears that serious disputed questions of fact are involved which cannot be gone into by this Court.

14. For the reasons aforesaid, I am of the firm view that this writ application is not maintainable and is fit to be dismissed. Since the petitioners invoked the jurisdiction of this Court challenging the impugned order which was passed on 16th September 1995 and this Court in terms of order dated 29th September 1995 stayed the operation of the said order, in the event the petitioners prefer appeal against the said order, then the appellate court shall condone the delay in filing the appeal.

15. In the result, this writ application is dismissed. However, there shall be no order as to costs.