
(1994) 02 PAT CK 0016

In the Patna High Court

Case No : Criminal Writ Jurisdiction Case No. 63 of 1994

Ashok Kumar Singh

APPELLANT

Vs

The State of Bihar and 2 Ors.

RESPONDENT

Date of Decision : 08-02-1994

Acts Referred:

Citation : (1994) 02 PAT CK 0016

Final Decision : Allowed

Judgement

G.C. Bharuka, J.—These writ applications have been filed by the Petitioners for issuance of a writ of habeas corpus commanding upon the Respondents District Certificate Officer, Patna (in short D.C.O.) to release them by quashing their orders of arrest and detention, which have been passed under purported exercise of the powers contained under the provisions of Bihar and Orissa Public Demands Recovery Act, 1914 (hereinafter referred to as "the Act" only).

2. The Petitioners in these writ applications are owners of public carrier Truck bearing registration Nos. BIA 8898 and BIA 9298 respectively. The District Transport Officer sent requisitions dated 28-10-92 (Annexure 3) to the Respondent District Certificate Officer, for filing certificates against the Petitioners as per the provisions of Sections 5 and 6 of the Act for the realisation of the alleged arrears of tax amounting to Rs. 45,854/63 against each of the Petitioner for the period 1-10-89 to 30-9-92. The Respondent D.C.O., on receipt of the said requisition, registered two certificate cases against each of the Petitioners, ordersheet whereof have been filed as Annexure-4 which are identical in both the cases.

3. From the order-sheet it appears that after the receipt of the said requisition, the Certificate Officer by stamped stereo-type order dated 27-1-93 directed for issuance of notice and attachment order u/s 7/14 of the Act against the judgment debtors requiring compliance by 27-2-93. But strangely much before the date so fixed, on 5-2-1993 the Respondent D.C.O. passed Anr. order directing issuance of warrant of arrest against the Petitioners just in view of the

request made by the District Transport Officer to the said effect. Pursuant to these orders, the Petitioners were arrested by the police and produced before the D.C.O. on 3-12-93 and 4-12-93 respectively. The D.C.O. thereupon remanded them to civil jail on the ground that they were not ready to immediately pay the alleged dues. He ordered for their detention till they pay off the certificated dues. The detentions have been continued by subsequent orders dated 6-12-93 and 20/23-12-93 on the ground that they have failed to pay the amount alleged to be due against them. The Petitioners have challenged the validity of these detentions.

4. The validity of the impugned detentions in civil jail has to be adjudged keeping in view the provisions of the Act and the fundamental right guaranteed under Article 21 of the Constitution of India. Therefore, I would first like to refer to the relevant provisions of the Act and the Rules framed thereunder. The Act intends to make provisions for the recovery of public demand as defined u/s 3(6) of the Act in the State of Bihar. Section 3(3) of the Act defines the Certificate officer in the following terms:

3. Definitions.--In this Act, unless there is anything repugnant in the subject or context:

(1)

(2)

(3) "Certificate Officer" means a Collector, a Sub-Divisional Officer and any officer appointed by a Collector, with the sanction of the Commissioner, to perform the functions of a Certificate Officer.

Part II of the Act provides for filing, service and effect of certificates and hearing of objections thereto. Sections 4, 5, and 6 provides for signing of certificate by the Certificate Officer on the basis of requisition made in this behalf, whereupon a Certificate case is instituted. Thereafter, as provided u/s 7 of the Act, the Certificate Officer is required to serve a notice upon the Certificate Debtor intimating him about the filing of the Certificate and inviting his objections to the process of realisation of the certificate dues. Section 9 of the Act entitles the Certificate Debtor to file his objection denying the liability which has to be heard and disposed of in the manner provided u/s 10 of the Act.

5. Part III of the Act provides for execution of the Certificate. Sections 14 and 15 and Rule 53 as contained in Schedule II of the Act are material for the present case and the same are being quoted hereunder:

14. When certificate may be executed. -- No step in execution of a certificate shall be taken until the period of 30 days has elapsed since the date of the service of the notice required by Sections 7 and 11 or, when a petition has been duly filed u/s 9, until such petition has been heard and determined;

Provided that, if the Certificate, Officer in whose office a certificate is filed is

satisfied that the Certificate Debtor is likely to conceal, remove or dispose of the whole or any part of such of his movable property as is liable to attachment under this Act, and that the realisation of the certificate would in consequence be delayed or obstructed, he may at any time direct for reasons to be recorded in writing, an attachment of the whole or any part of such movable property.

15. Mode of execution. -- Subject to such conditions and limitations as may be prescribed, a Certificate Officer may order execution of a certificate

(a) by attachment, and sale, if necessary, or any property, or in the case of immovable property, by sale without previous attachment, or

(b) by arresting the Certificate-Debtor and detaining him in civil prison, or

(c) by both of the methods mentioned in Clause (a) and (b).

Explanation to Clause (c) -- The Certificate Officer may, in his discretion, refuse execution at the same time against the person and property of the Certificate Debtor.

Rule 53. Discretionary power to permit Certificate-Debtor to show cause against detention in prison. --(1) The Certificate Officer may, before issuing a warrant for the arrest of the Certificate-Debtor, issue a notice calling upon him to appear before the Certificate Officer, on a day to be specified in the notice, and show cause why he should not be committed to civil prison.

(2) Where appearance is not made in obedience to the notice, the Certificate Officer may issue a warrant for the arrest of the Certificate-Debtor.

6. From the above referred provisions, it is quite clear that no step by way of arrest and detention of the Certificate-Debtor can be taken until the expiry of 30 days from the date of service of notice required u/s 7 and, in case, objection is filed u/s 9. until such petition has been heard and determined. It is also clear that even if the aforesaid conditions are satisfied, steps, in normal course, for issuance of warrant of arrest, should be taken only after hearing the Certificate Debtor in this regard as provided under Rule 53 referred to above.

7. In the present case, admittedly no notice u/s 7 of the Act was ever served upon either of the Petitioners inviting their objections to their alleged liabilities to pay tax in respect of the vehicles owned by them. Still the Certificate Officer in flagrant violation of the statutory provisions and in complete disregard of the fundamental right guaranteed under Article 21 of the Constitution, passed orders for issuance of warrant of arrest against the Petitioners and lodged them in jail where they are languishing for more than 60 days to coerce them to make payment as requisitioned by the District Transport Officer without allowing them to repudiate or contest the said demands.

8. Article 21 of the Constitution of India, in clear terms, declare that "no person shall be deprived of his life or personal liberty except according to procedure established by law."

9. Keeping in view the aforesaid provision of the Act and the rules framed thereunder and the fundamental rights guaranteed under the Constitution, it needs no elaboration to hold that the impugned detention of the Petitioners in civil jail is contrary to the procedure laid down under the Act and is thus illegal and mala fide.

10. From the discussion as above, it is quite clear that the two Petitioners before us have been the victim of arbitrariness and mala fide perpetuated by the District Certificate Officers who are drawn from the executive wing of the State at the instance of the Collector. The facts of the case are eloquent to demonstrate that the personal right of these Petitioners have been violated with impunity.

11. The learned Government Advocate appearing on behalf of the Respondent Certificate Officer was also present in person in Court. He could not justify the impugned detention of the Petitioners with reference to any existing law. In the case of Rudul Sah Vs. State of Bihar and Another, , Sebastian M. Hongray v. Union of India AIR 1984 S.C. 1026 and Bhim Singh, MLA Vs. State of Jammu & Kashmir and Others, , it has been held by the apex Court that in case of illegal detention, the Court, in order to prevent violation of the right guaranteed under Article 21 of the Constitution, will be well within its jurisdiction to award exemplary costs, to mitigate the suffering of the aggrieved persons. In Rudul Sah case (supra), it has been held that:

Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders of release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation.

12. Keeping in view the facts and law as discussed above, both the writ applications are allowed with a direction to the Respondents to immediately release the Petitioners from civil jail. Anyhow it will be open for the Certificate Officer to continue with the execution of the certificate cases in accordance with law. But keeping in view the gross illegalities committed in the present cases by way of detention of the Petitioners in violation of legal provisions, I award a cost of Rs. 5000/- (Rupees five thousand) in each case to be paid by the State of Bihar through the Collector, Patna, by way of crossed Bank Drafts drawn in favour of these Petitioners within a week from today.

Dharmpal Singh, J.

13. I agree.