
(2003) 01 PAT CK 0105
In the Patna High Court
Case No : C.W.J.C. No. 6721 of 2002

Babul Smokeless Fuel Industries (P) Ltd.	APPELLANT
Vs	
State of Bihar and Others	RESPONDENT

Date of Decision : 14-01-2003

Acts Referred:

Citation : (2003) 01 PAT CK 0105

Final Decision : Allowed

Judgement

P.K. Deb, J.—These batch cases have been taken up to hear on preliminary jurisdictional issue regarding the validity of the appointment of Respondent Certificate Officer.

2. The admitted case is that Mr. O.P. Singh being the Law Officer of Bihar State Credit and Investment Corporation (herein-after to be referred to as "BICICO") has been appointed as per Section 3(3) of the Bihar and Orissa Public Demand Recovery Act, 1914 (hereinafter to be referred to as the "Act") as the Certificate Officer for the purpose of recovery of dues payable to BICICO which dues are deemed to be the Public Demand as per the admitted provision of Section 3(6) readwith Schedule-I Entry 15(iii) of the Act.

3. Challenge of the appointment of the Certificate Officer is primarily on two grounds: (i) the expression "any officer" as per provision of Section 3(3) of the Act only refer to an Officer of the State Government, if not that of the Collector alone and the said expression has to be read "ejusdem generis" and take context and colour from the words "Collector, Sub-Divisional Officer" preceding the general word "any officer" in the said Section. In any case when drastic powers including that of "attachment and arrest" have been vested in a Certificate Officer by the Act of 1914, then such powers can never be vested to a person other than a Government servant, (ii) the person appointed as Certificate Officer must inspire confidence and be free from likelihood of being biased on the principle of "justice should not only be done but also should be shown to be done." Any Officer of the BICICO cannot be appointed as a Certificate Officer in

the teeth of such principle i.e. a person cannot be judge of his own case.

4. I shall take up the matter one by one as per the submissions made by learned Counsel for both the parties. For consideration of the first point the definition of the Certificate Officer as arisen u/s 3(3) of the Act, 1914 may be reiterated as follows:

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

It is an admitted position that the Respondent Certificate Officer Mr. O.P. Singh is neither a Collector nor a Sub-Divisional Officer. In that case, he must come within the expression of "any officer" as provided under the above definition of Certificate Officer and this is the moot question which has been challenged from the side of the Petitioners in these batch cases. It is also an admitted position that Mr. O.P. Singh is a legal executive under the employment of BICICO which happens to be the Certificate Holder. It is also an admitted fact that BICICO is a Company incorporated under the Companies Act, 1956. The majority of its shares are held by the Bihar Government. It is a Financial institution of a commercial nature sponsored by the Bihar Government. But it has not a separate entity as a Company and not a department of the Bihar Government. Its entity is totally separate and distinct from the Government of Bihar.

5. Mr. O.P. Singh is basically a Government employee but he had been deputed to the Company by the Bihar Government and he has been appointed as a Certificate Officer while he was serving as an employee of BICICO, a Company incorporated for the purpose of carrying on commercial activities. In that way, when Mr. O.P. Singh had been appointed as a Certificate Officer he cannot be construed to be a Government Officer rather he can be construed to be a Law executive employed in the BICICO only. Now, in such an admitted position it must be decided whether the Respondent Certificate Officer comes within the purview of the meaning of expression "any officer" as defined in Section 3(3) of the Act, 1914.

6. It is the submission on the part of the learned Counsel appearing on behalf of the Petitioners in the batch cases that in no way the Respondent Certificate Officer comes within the purview of "any officer" as per Section 3(3) of the Act, 1914. According to the Petitioners, the expression "any officer" means an Officer of the State Government which is directly appointed by the State Government and is a holder of a civil post under the State, an Officer entrusted with sovereign functions and the Officer must be under the Administrative and Disciplinary control of the State Government and no other public servant can be construed to be "any officer" as per the expression u/s 3(3) of the Act, 1914. According to the Petitioners, this is only conclusion possible if the provisions of Section 3(3) of the Act, 1914, is interpreted in a fair, reasonable and legal manner and on application of the rule of "ejusdem generis."

7. On the other hand, it is the submission by the learned Counsel for the BICICO that as per ordinary meaning of an Officer as per dictionary and law of lexicon he must be a person holding an office and a person vested with the authority of an office and that the expression "any officer" within the provision of Section 3(3) of the Act, 1914, must have a broad based sense and it should not be a narrow genus to be gauged from the other provisions of the Act, 1914. It is also the submission that the Act, 1914 is a special Act/Statute under which the office of the Certificate Officer has been created and it is in the form of Special Tribunal or court vested with the power and authority of recovery of Public Demand. Whenever, there is any dispute regarding any amount to be the Public Demand or not, then and there the function and jurisdiction of the Certificate Officer ceases. Moreover, it is submitted that if the provision of Section 3(6) are read with Clauses of Schedule-I of the Act, 1914, then it would reveal that not only the Government dues but the dues of the local bodies, Banks, Corporations, Board etc. where agreement exists for recovery under the Act, 1914, fall within the definition of Public Demand and in that way there can not be any question of jurisdiction of an Officer of a Government Company appointed as a Certificate Officer with due permission from the Commissioner by the Collector. It has also been submitted that the provision of Sections 4 to 7, 9, 10, 46, 47, 57 to 59 and 66 of the Act, 1914, reveal that the Certificate Officer is a court performing the judicial functions, namely, execution of Certificates treated to be Decree and when it functions as a court then the question of a Certificate Officer being under the Administrative or Disciplinary control of the Government is of no avail more so when the Act provides appeal, revision etc. against the orders being passed by the Certificate Officer. It is also the submission that when a limited jurisdiction is there of the Certificate Officer regarding recovery of the dues which comes within the pur-view of the Act and he has no authority to decide regarding the Certificate construed of Public Demand or not, then such Officer holding as a court can be appointed any-one having an office of a Public servant. In the light of the submissions of both the parties, now the matter requires to be adjudicated.

8. The crux of dispute remains on the interpretation of the expression "any officer" as provided u/s 3(3) of the "Act, 1914. According to the writ Petitioners, the principle of "ejusdem generis" very much apply in the present case and such rule of Construction postulates that whereby by an enactment specific words were there creating particular class or a particular person, then the meaning of general words or expression following) such specific words in the enactment must be held to be restricted to the same sense. For construction of interpretation of such expression of any officer" other provisions of the Act are required to be considered. The preceding expression of Officer under the said Section is Collector or Sub-Divisional Officer and if the same is read alongwith Section 16 of the Act, 1914, then it can be found that such officer who is to be appointed as a Certificate Officer must be exercising jurisdiction in the district where the cause of action has arisen. Thus, for the purpose of jurisdiction of the Certificate Officers there are restricted senses, such as, such Officers must be

exercising jurisdiction within the district where the cause of action has arisen and that is why the Collector and the Sub-Divisional Officer were the preceding expressions of Officers qualifying for the purpose of Certificate Officer. In that way, an Officer of the Corporation cannot be construed to be an Officer having the qualification to be appointed as a Certificate Officer. Then it is submitted that the Officers who are to be appointed as Certificate Officers u/s 3(3) of the Act, 1914, must be holding a civil post under the Government so that their functions and duties may be subjected to the Administrative and Disciplinary control of the State Government. In this sense it is submitted that as the Certificate Officers are performing the sovereign functions of the State and although not a court in the strict sense of the term but the provisions of the Act definitely denotes that the Certificate Officers' functions are like that of judicial functions as per the administration of justice and when such sovereign functions are to be performed by an Officer then such Officers must be subjected to the Administrative and Disciplinary control of the State. Such sovereign powers as exercised by the Certificate Officers may be found from the following provisions of Act such as Section 12 by which the certificate is to be executed just like execution of decree, Section 15 attachment/arrest in execution of the decrees, Section 38-powers of arrest and detention. Similarly, the judicial power of the Certificate Officers can be found from the following Sections, such as, Sections 6 and 10 of the Act which require judicial application of mind at the stage of issuing of certificate and deciding objection, Section 12-power to execute decrees, Section 15-power to attach, Sections 21 and 22 to decide claims and objections against execution sale, Section 38-production of arrested person before the Certificate Officer like that of the Judicial Magistrate under the Code of Criminal Procedure, Section 66 Certificate Officers are deemed to be courts and Section 57-providing protection of the Certificate Officers under the Judicial Officers Protection Act, 1850. Thus, it is submitted that when such honourous (sic) duties of both judicial and administrative acts with extreme powers have been conferred on the Certificate Officer then and when he being protected from being prosecuted etc. then such Officer must be under the Administrative and Disciplinary control of the State and in that way the expression "any officer" arising Section 3(3) of the Act, 1914, cannot be any officer of any Corporation or Company rather he must be a Government Officer and a public servant.

9. On the other hand, it has been submitted by the learned Counsel for the Corporation that when the Certificate Officers function as a court and although not a court in its strict sense then the question of Disciplinary and Administrative control does not arise at all. I am not convinced with such submission because when a Judicial Officer or a court functions then the Presiding Officer of that court or the Judicial Officer is definitely under the Disciplinary and Administrative control of the State, may be via High Court in case of Judicial Officers of different States but there must have been a Disciplinary and Administrative control over that Presiding Officer of the court by the State. In that way, by following the principles of "ejusdem generis" definitely the Certificate Officer should be an

Officer of the State Government. Such decisions as mentioned above make it support from the decision of the Privy Council as reported in 19 Indian Cases, 765 (In the matter of Sir Stuart Samuel). In that decision the expression any other person or person whatsoever was construed to be following the principle of "ejusdem generis" to be the Officer holder under the British Crown. It was specifically held that any other person would mean any one who held an office of the British Government for a similar kind and to those enumerated. The expression "any other Officer" arising in Section 3(3) of the Act, 1914, stands on better footing in following that principle of "ejusdem generis" as here the word Officer has been mentioned in place of any other person or persons whatsoever. The Apex Court has also taken the same view in the case of Krishna Bus Service Pvt. Ltd. Vs. State of Haryana and Others, and also in the case of Ishwar Singh Bagga and Others Vs. State of Rajasthan, . In Bagga's case the word "any other person" was construed to be an Officer of the Government and persons connected with the affairs of the State Government who would under the Administrative and Disciplinary control of the State Government directly and has turned down of coming of an employee of the statutory Corporation under the expression "any other person."

10. In a recent decision of the Delhi High Court in Rajiv Anand v. Union of India as reported in AIR 1998 Delhi, 259 the provisions coming under the State Financial Corporation Act u/s 32(g) has been struck down regarding appointment of a Managing Director for the purpose of exercising authorities under the Act. Such appointment was only for the purpose of requisition but that provisions has also been struck down. The same principle has again been reiterated by the Apex Court in the case of Assistant Director of Inspection Investigation Vs. Kum. A.B. Shanthi, The principles enunciated in the case of Krishna Bus Service and Ishwar Singh Bagga have been affirmed in this decision and it has been held that the Officers of the Corporation having financial interest involved cannot be entrusted with the duties of the enforcement of the Act and its provisions against the Citizens. The said principle is very much applicable in the present case. BICICO has got financial interest in promulgating the provisions of the Act, 1914, and in that case an employee of BICICO cannot be entrusted with such sovereign powers as enumerated under the Act, 1914. The submission that Managing Director or the Law Officer of the BICICO being high official cannot be expected to act arbitrarily or with bias can have no place in the circumstances or on consideration of the different provisions of the Act itself. The theory of senior officials having no apprehension of acting arbitrarily or with bias have been exploded by the Apex Court in the case of State Transport Corporation v. G.T.C. and Ors. as reported in 1991 Suppl (1) S.C.C. 600.

11. Then the question comes in whether the employee of the Corporation i.e. the BICICO can be construed to be a Government Officer or not when the BICICO being a company having maximum shares with the Government and the Officers are on deputation from the State Government, then according to the learned Counsel for the BICICO, those Officers are at par with the State Government

officials for the purpose of appointment as a Certificate Officer. The company has got a distinct and separate identity even if the Government holds maximum shares on it. When the company has got its separate corporate and distinct identity than that of the Government, who might be the sole share holder in the company then also the Officers or employee of that company or the Corporation cannot be held to be a Government employee. In this respect reference may be made of *Electronic Corporation of India v. Secretary, Revenue Department*, as reported in (1994) 4 S.C.C. 458. Moreover, it appears that the BICICO itself has taken the stand that the BICICO cannot be equated as per the State Government (Bihar) as no sovereign powers vested on it and such stand was taken by the BICICO itself in the case of *Anupam Food Pvt. Ltd. v. State of Bihar and Ors.* in a writ petition before the Jharkhand High Court as is appearing from the unreported judgment of the Jharkhand High Court in WP (C) No. 1777/2002. So, the BICICO can not take vacillating stand at different point of time. In that way, on the principle of "ejusdem generis" I have no other alternative but to hold that any Officer or employee of the BICICO can in no case be appointed as a Certificate Officer as per provisions of Section 3(3) of the Act, 1914 and, as such, the appointment of Respondent No. 4 and his action as a Certificate Officer is without jurisdiction and hence a nullity

12. The case laws submitted from the side of the Respondent BICICO have got no much relevance on the point in issue. *Tirbeni Prasad Rungta Vs. State of Bihar and Others*, practically supports the stand of the Petitioners to the effect that the Certificate Officer exercises such jurisdiction and his acts are more acquainted with the judicial acts rather than administrative and executive powers and in that way when the Certificate Officers are protected under the Judicial Officers' Protection Act then in that case there must have been a control over those Officers under the State Government both Disciplinary and Administratively. Similarly *Managing Director, Uttar Pradesh Warehousing Corporation and Another Vs. Vijay Narayan Vajpayee*, has got no much relevance as the question there was for the purposes of fundamental rights under Chapter-III of the Constitution. The points involved had been more elaborately considered in *Ishwar Singh Bagga's* case regarding the status of the employees of the Corporation. 1979 S.C 65 deals with entirely different question. The Apex Court held that the broad genus had been wrongly curtailed by the High Court. Here in the present case "any other officer" u/s 3(3) of the Act, 1914 comes after the expression Collector and Sub-Divisional Officer and definitely the word Officer should take context and colour of the preceding Officer of the Officers. *S.R. Bommai and others Vs. Union of India and others etc. etc.*, and 1990 S.C 993, have got no relevance in the present case. Similarly *Sultana Begum Vs. Prem Chand Jain*, has also got no application in the present case as the same deals with avoiding with infliction of conflicts. Here, the question of conflict is not there. The appointment of Officer of the BICICO can only be avoided by cancelling the appointment. But that does not take away the power and jurisdiction of the BICICO to submit certificate before the fairly constituted Certificate Officer under the provisions of the Act itself.

13. Next question comes of bias. Practically, here the question of personal bias is not there. Whether the officers of the. BICICO shall have personal bias or not is not the matter in dispute. But it is a matter of bias on principle. The law requires that a court or an Officer functioning as a court must act in such a way that there may not be any apprehension in the mind of a party involved that he may not get justice in the hands of that court or the Presiding Officer of that court. In the present case the Certificate holder by the, very nature of his relationship as an employer and employee, the Certificate Officer definitely can not act with complete disinterestedness. At least this much can be said that public perception would be there to the effect that they would not get justice in the hand of an Officer of the Certificate holder itself acting as a Certificate Officer. This is based on the principle of justice should not only be done but should also be shown to be done. From some of the cases it could be found that there is allegation of some of the writ Petitioners at some point of time that the Certificate Officer acted beyond his jurisdiction due to bias being an employee/ Officer of the BICICO. Thus, on both the points of "ejusdem generis" and on principle of bias I hold that the Respondent No. 4 i.e. employee/Officer of BICICO can not be appointed as Certificate Officer as per definition of Section 3(3) of the Act, 1984 (sic-1914 ?) and if so appointed, then the same is without jurisdiction and any action taken by such Certificate Officer under the P.D.R. Act shall be construed to be a nullity in the eye of law.

14. On the preliminary issue itself all the writ petitions are hereby allowed and the whole of the proceedings of Certificate Case Nos. BICICO/144 of 2002, 58/2002, 98/2002, 95/2002, 92/2002, 1/94, 15/2002, 9/2002, PDR-3/ BICICO/94, 60/2002, PDR/ BICICO/142 of 2002, 2/94, 138/2002, 91/ 2002, 118/2002, 3/94 of the corresponding writ petitions respectively are hereby quashed. As the fate of the writ Petitioners could be decided on this issue of jurisdiction alone, other points raised challenging the Certificate cases are left undecided.