

(1941) 04 MAD CK 0017
In the Madras High Court

Bayyana Veeraraghava Rao and Others	APPELLANT
Vs	
The Debt Conciliation Board and Another	RESPONDENT

Date of Decision : 03-04-1941

Acts Referred:

Madras Debt Conciliation Act, 1936 — Section 10(2)

Citation : AIR 1941 Mad 873 : (1941) 2 MLJ 366

Hon'ble Judges : Alfred Henry Lionel Leach, C.J; Somayya, J

Bench : Full Bench

Judgement

Alfred Henry Lionel Leach, C.J.—I am in entire agreement with the judgment which my learned brother is about to deliver. If administered

in accordance with its spirit the Debt Conciliation Act should, in spite of its defects, prove beneficial, but my experience, gained from the hearing of

petitions for the quashing of orders of Debt Conciliation Boards, convinces me that the Act has not been administered by some Boards in the way

it ought to be administered. I have noticed a tendency to use the powers conferred by Section 10(2) of the Act arbitrarily and at times there has

been flagrant misuse of the section. When a debtor applies to the Board for settlement of his debts, he has to embody in his application detailed

information. One requirement is that he shall state the amount and particulars of all claims against him, together with the names and residences of his

creditors so far as they are known to him or can by the exercise of reasonable care and diligence be ascertained by him. The particulars required

are set out in Section 6. Section 10(1) says that if, after examining the debtor, it is in the opinion of the Board desirable to effect a settlement

between him and his creditors, a notice shall be issued calling upon every creditor to submit a statement of the debts owed to him by the debtor.

Sub-section (2) of that section states that, subject to the provisions of Sub-section (3), every debt of which a statement is not submitted to the

Board in compliance with the provisions of Sub-section (1) shall be deemed for all purposes and all occasions to have been duly discharged. Sub-

section (3) gives the Board power to recall such an order under certain circumstances.

2. Recalcitrant creditors are not deserving of sympathy, but it is difficult to see why a Debt Conciliation Board should be given the power to cancel

a debt which the debtor himself admits to be due simply because the creditor has not filed a statement confirming the particulars set out in the

debtor's application. I can well understand that when a creditor fails to file a statement u/s 10(1) he should be precluded from disputing; the

debtor's figures, but there can be no justification for depriving him of what the debtor has acknowledged to be due to him. But assuming that there

is justification for Sub-section (2) the power of cancellation conferred by it has been used without the slightest justification. For instance, some

Boards have passed orders cancelling debts for failure to comply with the provisions of Section 11, but whatever happens to be the nature of the

failure to comply with Section 11 the Board has no power to act u/s 10 (2). The cause for the maladministration of the Act in some cases may be

that the members of the tribunals concerned have not the time to devote to the proper investigation of claims. The arbitrary nature of some of the

orders which I have seen would suggest this. But if the legislative authority enacts a statute of this nature, it should make certain that there is proper

machinery for working it. If there is not the proper machinery grave injustice is bound to follow.

3. The present case is an example of gross maladministration of the Act. The disregard of the principles of elementary justice which has taken place

here is to be gathered from the details which my learned brother gives. From beginning to end there has been no attempt made to investigate the

grave charges of fraud which have been brought against the debtor in the course of the proceedings. It would be difficult to imagine a more

regrettable disregard of duty on the part of a tribunal possessing wide statutory powers than we have here, and there is no other course open to the

Court but to quash the orders of the Board with costs against all the respondents; advocates fee Rs. 200.

Somayya, J.

4. This is an application for the issue of a writ of certiorari calling for the records in Application No. 61 of 1939 on the file of the Debt Conciliation

Board, Bezwada and quashing all the proceedings therein including the orders passed on 31st October, 1940. The first respondent is the Debt

Conciliation Board and the second respondent is the debtor, Kasi Viswanadham of Bezwada.

5. In his petition to the Board, the second respondent disclosed debts to the extent of Rs. 70,000, outstandings of the value of Rs. 35,000,

immovable properties including houses at Bezwada Valued at Rs. 23,450 and movables worth Rs. 690. He gave a list of the creditors to whom

the debts were alleged to be due and requested a settlement of the debts under the Act.

6. The application was taken on the file and found to be in order. The Board then directed issue of notice for 20th November, 1939 u/s 8(1) of the

Act. Objections were filed by various creditors on that day. In particular creditors Nos. 3, 46, 52 and 53 raised two objections:

(1) that the petitioner was not a debtor as defined by Act, and

(2) that he included several false debts in his petition in order to defraud the real creditors.

7. The Board adjourned the matter to the 30th of that month as some of the parties represented that they wanted to effect a settlement. On the

30th, creditors Nos. 52 and 53 filed further statements in which they elaborated their previous objections. In particular they pointed out that the

debts alleged to be owing to creditors Nos. 78, 80, 84, 85, 90, 91 and 94 were fictitious debts and that the creditors were the debtors kith

and kin. On the statement filed by creditor No. 52 the Board passed the order:

Notice to debtor. Hearing 14th December. Sd. N. S.M. 30-11.

8. This is followed by another order dated 1st December, 1939 in these terms:

This is a reply to Section 8 notice. Section 10(1) notices have been ordered to be issued. File with papers. Sd. N.S.M. 1st December, 1939.

9. On 30th November, 1939 we find another order passed on the debtor's petition in which after stating that the debtor was examined and that

some creditors were served and some not, the Board straightaway directed notices u/s 10(1) to issue for 20th February, 1940. In the meantime

creditor No. 81 filed a statement on 16th February, 1940 in the form prescribed by Section 10(1) in which he stated that the petition was not

maintainable as the petitioner was not a debtor as contemplated by the Act. In paragraph 4 it was pointed out that creditors Nos. 84 and

85 are the mother and wife of the petitioner, that the creditor representing items 90 and 91 is his uncle, that creditor No. 94 is his brother-in-law,

that the debt alleged to be due to the brother-in-law amounted to over a third of the total liability and that the brother-in-law was not in a position

to advance such a large sum. Then it was stated:

It is all bogus and it is to be deleted out of the list of creditors; and also the debts of the creditors Nos. 84, 85, 90 and 91 are bogus and they are

also to be deleted.

10. In paragraph 5 it was pointed out that the debtor secreted valuable properties and that if a true account of the assets and liabilities of the

debtor was taken it would be clear that the petition was a false and vexatious one. No enquiry was made regarding the truth of the various

allegations made in this statement. On 13th March, 1940 the Board passed the order:

32 of the creditors have transferred their dues in favour of Rallapalli Subramanyam...The debtor wants time to settle the dues in respect of others.

Adjourned to 20th March, 1940.

11. On 11th April, 1940, the debtor and about fifty creditors filed a petition requesting permission to sell the debtor's property and to settle the

debts of all creditors. The order on that is:

Permission granted to do the needful. Notice will issue to the absent creditors.

12. As regards some creditors who had not filed their statements within time, their debts were directed to be discharged u/s 10 (2) of the Act. On

21st May, 1940 the proceedings of the Board show that creditor No. 1 filed a counter-affidavit, objecting to the proposal of 11th April and

notices were directed to issue u/s 21 of the Act to the creditors. This notice was apparently to hear objections, if any, to the proposal of 11th

April, 1940 to sell or assign some properties for payment of the debts. On 7th June, 1940 creditor No. 20 filed a statement that the petitioner was

not a debtor under the Act and that an inquiry should be held to see if some of the debts were not fictitious ones. It was urged that fifty per cent. of

the creditors who were alleged to have agreed to the proposal of 11th April, 1940 must represent genuine creditors. It was said that the Board

had not up to that date passed final orders on the various miscellaneous and the interlocutory petitions pending before it and that it was premature

to consider at that stage the legality or otherwise of the proposal of 11th April, 1940. It was also stated that the proposed sale price was out of all

proportion to the value of the properties, that the amount was not arrived at bona fide and that if the properties were sold in public auction there

was every likelihood of the properties realising a much higher price. Then this statement winds up by pointing out that five questions had to be

decided by the Board before they could proceed further and they are stated thus:

(1) The maintainability of the petition itself on the ground that the petitioner was not a land-holder or a debtor as contemplated by the Act;

(2) The sieving out of real and false debts;

(3) The correctness of fifty per cent. of the creditors (i.e., real creditors) ;

(4) The transfer or assignment of some debts in favour of two persons ;

(5) The omission of some real creditors and the inclusion of some false creditors.

13. The order passed on the same day is:

Counter filed by creditor No. 20 impeaching the genuineness of the debtor in filing the petition. This ought to have been done long ago. Put up on

10th June, 1940 at the next hearing day.

14. It is curious that the Board should have said this seeing that a number of other creditors had said the same thing on 20th and 30th November, 1939.

15. On the debtor's application we find the following order on 5th July, 1940:

For passing orders on the several petitions in the case, the case is adjourned to 12th July, 1940.

16. On 12th July, 1940 a number of creditors filed a joint petition again pointing out that the petitioner was not a "debtor" under the Act. This

petition contains an elaborate statement regarding each of the three items of properties put forward by the debtor as enabling him to file a petition

under the Act. These are items 5, 10 and 11. As regards item 11 it was pointed out that the debtor had only a leasehold interest and that under the

Act a lessee is not a "debtor"; the lease itself was attacked as a bogus one. As

regards item 10 it was pointed out that the land, though purchased in the names of the father and uncle of the debtor, had been recognised as belonging to a deity under a registered partition deed dated 25th March, 1934 and a public copy of it was also filed to support the statement. As regards item 5 it was pointed out that it was a house site in the Bezwada Municipality and that the tax upon it was being levied and collected by the Municipality. On 20th July, 1940 after stating that a number of creditors filed a petition objecting to the filing of the application by the debtor, the Board ordered notice to the debtor for 30th July, 1940. On that day some more creditors filed counter affidavits and the matter was adjourned from time to time for want of quorum as the Chairman of the Board was otherwise engaged. The debtor filed on 28th August, 1940 what may be called his reply to the objections of the creditors. After several adjournments the Board passed on 16th October, 1940 this order:

Creditors Nos. 1 and 82 a Marwadi present and they accept to take item 3 of the property if sold and proceeds paid to them. As the Sub-Collector has not joined the case is adjourned to 31st October, 1940.

17. On 31st October, 1940 the proceedings were closed by the following order:

Debtor-creditors present. The debts of creditors 2, 5, 10, 14, 18, 32, 43, 53, 61, 63, 72, 64 and 76 are ordered to be discharged u/s 10 (2) for failure to file claims. Orders are passed dismissing objection petitions to the legality of the petitions at this stage. Settlement arrived a between 55 creditors. Agreement will be drawn up accordingly. The remainder will be excluded from the agreement and a certificate u/s 18 (1) granted.

18. This is the history of the proceedings.

19. It will be observed that at no stage was the objection regarding the maintainability of the petition on the ground that the petitioner was not a debtor"" under the Act inquired into or decided by the Board. The only order we find is the one just set out that orders were passed dismissing the objection petitions raising the legality of the petition at that stage. Evidently, the Board meant that the objections ought to have been filed much earlier and that they could not be considered at that stage.

20. This is an extraordinary position for the Board to take. Again and again the creditors filed counter affidavits and objection petitions drawing the

attention of the Board to the fact that the petitioner was not a "debtor", that certain creditors to whom debts were not really owing had been

included, that one of them, the brother-in-law of the petitioner, was shown as a creditor for nearly a third of the total indebtedness and that the

petitioner's wife, mother and uncle were shown as creditors. We are unable to find any order of the Board dealing with these objections on the

merits. It is contended that on 30th November, 1939 the objection as to the maintainability of the petition on the ground that the petitioner was not

a "debtor" under the Act was considered and decided. The order passed on that date is:

Debtor present and examined * * * * Issue Section 10 (1) notices.

21. There is nothing to indicate that any inquiry was made whether the petitioner was a debtor under the Act and we cannot take this order as

implying a rejection of the objection that the petitioner was not a debtor. If really the objection was considered and disposed of by the Board on

30th November, 1939, as Mr. Satyanarayana Rao, the learned advocate for the respondent contends, it is curious that when later on objection

petitions were filed by the creditors raising this very question, they were not disposed of on the ground that the matter had already been decided on

30th November, 1939. Several of the creditors had not been even served by that time and some of them took the objection later on after service

of notice on them. It is therefore impossible to accede to the contention that the expression "debtor examined * * * Issue notice u/s 10 (1)" is an

implied adjudication that the petitioner was a debtor under the Act.

22. It is further admitted that no schedule of creditors was ever drawn up as required u/s 12 (1) of the Act. This is a very important matter and the

omission is a very serious one. This matter was again and again brought to the notice of the Board in the various objection petitions. It is

incomprehensible how, in spite of these objections being repeatedly brought to its notice, the Board failed to adjudicate upon them and to prepare

a schedule of creditors. Prima facie there are very strong grounds for closely scrutinising the claims of the wife, mother, uncle and brother-in-law of

the debtor. The debts alleged to be due to these creditors come to over Rs. 32,000. The total indebtedness was Rs. 65,000 and odd and so the

debts alleged to be due to the mother, wife, uncle and brother-in-law came to

nearly a half and the attack that these were not real creditors was a very serious one which the Board was bound to inquire into and give a decision thereon. The Board failed to do its duty.

23. In a case where the jurisdiction of the Board to entertain the petition is challenged on the ground that the petitioner was not a "debtor" under the Act, it was the obvious duty of the Board to inquire into the objection and give its finding. Without a finding on that question the Board would have no jurisdiction to proceed further. Then, one of the most important duties laid upon the Board is the preparation of the schedule of assets and liabilities. Here again, the Board has lamentably failed to do its duty. The Board never inquired into the genuineness of the debts which were challenged as false debts and there is no indication anywhere that the Board inquired into the allegation of the creditors that the debtor had secreted valuable moveables. It is impossible to sustain the order of the Board when even a schedule of the assets and liabilities was not prepared.

24. This is a case of gross dereliction of duty on the part of the Board. At every stage we find utter indifference to the provisions of the Act even though the attention of the Board was drawn repeatedly to them. If the allegations of the creditors are true, then this is a case in which gross fraud has been perpetrated on the real creditors. Section 9 (c) provides that if the application included a claim which in the opinion of the Board is collusive and intended to defeat a creditor, the application should be dismissed. Therefore when it was repeatedly urged by the creditors that the petitioner included various false debts with a view to defraud the real creditors, it was the duty of the Board to inquire into the matter and pass orders u/s 9 (c). Nothing was done. Then again, the creditors alleged that in the scheme of 11th April, 1940, valuable properties were proposed to be assigned at a very low value. This has not received the attention of the Board. Throughout, there has not been one occasion on which the objections of the creditors were inquired into on their merits.

25. As the preamble shows, the Act is intended for relief of agriculturists; and in practice the Act is grossly abused by a trader as in this case, trying to use the provisions of the Act and the Board, to defraud his genuine creditors by including fictitious debts, by suppressing assets and by assignments of the bulk of the property to his nominees at an inadequate price.

26. It is impossible in these circumstances to maintain the order of the Board. We, therefore, issue a writ as prayed for and quash all the proceedings in D.C.B. No. 61 of 1939 on the file of the Bezwada Debt Conciliation Board including the orders u/s 10 (2), 14 and 18 of the Act, I agree to the order passed by the learned Chief Justice as regards costs.