

(2014) 07 JH CK 0024

In the Jharkhand High Court

Case No : W.P. (T) Nos. 1964, 1967 and 1968 of 2013

Bhagwati Prasad Agarwala

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 31-07-2014

Acts Referred:

Bihar and Orissa Public Demands Recovery Act, 1914 — Section 10, 23, 24, 6, 60
Constitution of India, 1950 — Article 226

Citation : (2014) 4 AJR 442 : (2014) 4 JLJR 88

Hon'ble Judges : R. Banumathi, C.J.; Amitav Kumar Gupta, J

Bench : Division Bench

Advocate : Binod Poddar, Senior Advocate, Darshana Poddar Mishra, Piyush Poddar, Amrita Sinha and Vikas Pandey, Advocate for the Appellant; Ajit Kumar, AAG and Kumar Sundaram, Advocate for the Respondent

Judgement

R. Banumathi, C.J.—These writ petitions are filed inter alia (i) for quashing the demand notices of taxes payable under Jharkhand Sales Tax Act and Central Sales Tax Act for the periods 2001-02 to 2005-06; (ii) for quashing the Certificate Cases initiated on the basis of the requisitions for a Certificate for realization of dues for various periods and (iii) for directing the respondents not to realize the alleged dues and other reliefs.

2. Though the writ petitioners are three different companies, the Directors/ persons in control of all three writ petitioner-companies are one and same and since identical issues are involved, all the three writ petitions were taken up together and shall stand disposed of by this common judgment. For proper appreciation of the contentious points and for convenience, the facts of W.P (T) No. 1967/2013 are referred.

3. The petitioner was served with demand notices under Section 13(4) of the Bihar Finance Act, 1981 for the period from 2001-02 to 2005-06. The case of the petitioner is that after receipt of the demand notices, the petitioner applied for certified copies of the assessment orders and of the entire order sheets to enable

the petitioner to avail its statutory right of filing appeal/revision in accordance with the provisions of the Bihar Finance Act, but the respondents till date have not supplied certified copies of the assessment orders despite filing of the appropriate application for obtaining certified copies of the assessment orders and sending reminders. The petitioner and its Directors received notices dated 14.3.2011 under Section 7 of the Bihar and Orissa Public Demands Recovery Act, 1914 (for short PDR Act) in connection with Certificate Case No. 3/2010-11 initiated on the basis of the requisition for a certificate by the 2nd respondent for realization of the alleged dues of Rs. 1,09,25,649/-. On receipt of the aforesaid notice under Section 7 of the PDR Act, the petitioner filed his objections under Section 9 of the PDR Act on 18.4.2011, inter alia , praying to drop the aforesaid certificate proceedings for the reasons mentioned therein and the certificate proceeding is pending. According to the petitioner, there is liquidation/winding up proceedings pending against the petitioner in the Calcutta High Court in Company Petition No. 314/2007 and vide order dated 2.2.2013, the Calcutta High Court passed the order of winding up. Under these circumstances, the petitioner has filed this writ petition for quashing the demand notices and also the certificate proceeding, which is pending.

4. Learned Senior Counsel, Mr. B. Poddar, contended that the assessment orders were passed and copy of the assessment orders were not supplied and therefore, the notices of demand issued are liable to be quashed. Learned Senior Counsel submitted that even though the petitioner filed application for obtaining certified copies of the assessment orders on 30.8.2007 (Annexure - 3 series), the certified copies of the assessment orders and of the order sheets were not furnished and as per Rule 29 of the Bihar Sales Tax Rules, without the certified copies of the assessment orders, the petitioner could not file appeal and as such, the petitioner has not been able to file appeal for the last seven years. Learned Senior Counsel further contended that the various notices of demand were ante-dated so as to make it appear that the assessment orders were passed within the stipulated time of four years as contemplated under Section 24 of the Bihar Finance Act.

5. Learned Additional Advocate General, Mr. Ajit Kumar, submitted that the demand notices were served upon the petitioner way back in the year 2006-07 or subsequently on relevant dates which were duly received by the petitioner and after lapse of so many years, the plea of the petitioner that he was not provided with the certified copies of the assessment orders cannot stand on any ground since the petitioner could have preferred appeal within 45 days from the date of service of demand notices as provided under the law. It was contended that the petitioner did not comply with the requirements of obtaining certified copies of the order by making application as prescribed under Rule 49 of the Bihar Sales Tax Rules and therefore, the petitioner cannot complain of non-furnishing of certified copy of the assessment orders. Taking us through the various provisions of the PDR Act, learned Additional Advocate General submitted that the said Act is a self-contained one containing mechanism to deal with the redressal of the

grievance and the petitioner, having appeared in the certificate proceedings, cannot by-pass the statutory provisions of the PDR Act by invoking writ jurisdiction.

6. Upon consideration of the submissions, the following points arise for determination in these writ petitions:-

(i) Whether the petitioner is entitled to invoke the writ jurisdiction on the ground that the certified copies of the assessment orders and complete order sheets have not been furnished to the petitioner; and

(ii) Without availing the statutory remedy available under Bihar and Orissa Public Demand Recovery Act, 1914, whether the petitioner can challenge the demand notices and Certificate Proceedings by invoking the writ jurisdiction.

7. Without availing the statutory remedy available under the Bihar Sales Tax Act and the PDR Act, the petitioner has invoked the writ jurisdiction, challenging the demand notices and also Certificate Case No. 3/2010-11 initiated for realization of the dues. For proper appreciation of the contentious points raised, we may usefully refer to the details of the assessment, date of institution, date of proceedings, date of order and date of demand notices and the date of receipt and amount involved and outstanding dues payable by the writ petitioner in W.P(T) No. 1967/2013.

W.P.(T) 1967/2013 Bhagwati Prasad Agarwala Certificate Case No. 3/2010-11 Amount Rs. 1,09,25,649/-

W.P.(T) No. 1967 of 2013

8. By perusal of the averments in the counter-affidavit, date of initiation of the assessment proceedings and various notices of demand served upon the petitioner, it is seen that the petitioner appeared in the assessment proceedings and subsequently did not appear and pursue the matter. In so far as the assessment relating to the financial year 2001-02, the first notice bearing no. 658 dated 4.9.2004 was issued to the petitioner. As per Section 16(1) and 16(5) of the Bihar Finance Act, 1981, the petitioner is required to file its returns within the time prescribed therein. In view of non-filing of returns, an amount of Rs. 7,50,059.99 was levied upon the petitioner under Section 16(8) for non-filing of returns and under Section 16(9) for non-payment of admitted tax. Since the amount was not paid, the Department filed certificate case in compliance of the provisions of Section 27 of the Bihar Finance Act in Certificate Case No. 2/2003. In Certificate Case No. 2/2003, order was passed on 25.11.2004 directing the petitioner to pay the amount of Rs. 7,50,059.99. Challenging the said order dated 25.11.2004 and also the certificate proceedings, the petitioner filed W.P(C) No. 167/2005 and vide order dated 22.12.2008, the writ petition was dismissed by the High Court on the ground that since the petitioner has alternative remedy of appeal which is efficacious, he may avail the remedy of appeal for redressal of his grievance, if so advised. During the pendency of the said writ petition, in the

assessment proceedings for the financial year 2001-2002, notices were issued to the petitioner and the petitioner filed Hazri on 18.3.2006 and the assessment order was passed on the same day, i.e. on 18.3.2006. As pointed out earlier in the Tabular Column, demand notice Nos. 545, 546 dated 22.3.2006 (Annexure - I/1, I/2) were issued and the same were received by the petitioner on 30.8.2007. As against the said assessment order/demand notices, the petitioner had not preferred any appeal as stipulated under Section 45 of the Bihar Finance Act.

9. Section 45 of the Bihar Finance Act provides right of appeal to any dealer objecting to an order of assessment or penalty or both passed by the prescribed authority against him or a person objecting to an order penalty passed against him or an order passed under Section 27 may appeal to the Joint Commissioner or the Deputy Commissioner specially authorized in this behalf. As per Rule 29 of the Bihar Sales Tax Rules, an appeal under Section 45 shall be in Form XVIII in case of an appeal against an order of assessment or an order imposing penalty and the memorandum of appeal shall be accompanied by:

(i) a certified copy of the order appealed against and the notice of demand, if any, served upon the appellant; and (ii) in case of an appeal against assessment, a receipt showing deposit into the Government Treasury of at least 20 per centum of the tax assessed or such amount of tax as the appellant may admit to be due from him, whichever is greater.

10. The grievance of the petitioner is that he was not served with the certified copy of the various assessment orders and therefore, the petitioner could not prefer appeal. The petitioner, therefore, seeks for quashing the demand notices as the 2nd respondent has not supplied certified copies of the assessment orders for the aforesaid period despite filing of appropriate applications (vide Annexure - 3 series - challans) for obtaining certified copies of the assessment orders.

11. Even at the outset, it is to be pointed out that though the petitioner appeared in the assessment proceedings, the petitioner did not bother to apply for the certified copies of the assessment orders for the years 2001-2002 immediately after passing of the assessment order on 18.3.2006. As pointed out above, demand notices dated 22.3.2006 (2001-2002), 20.6.2006 (2002-2003) were served upon the petitioner on 30.8.2007 and only thereafter on 30.8.2007, the petitioner seemed to have submitted application for issuance of certified copy of the assessment order for 2001-02 and 2002-03. Likewise for the financial years, 2003-2004, 2004-05 and 2005-06, demand notices were served on the petitioner on 11.12.2008 and 28.8.2009 and the petitioner filed application for obtaining certified copy of the assessment orders on 6.1.2009 and 30.10.2007 respectively. The petitioner on 7.12.2009, 9.8.2010 and 7.12.2010 in its letter-head paper sent reminders to the authorities for supply of certified copy of the assessment orders and complete order sheets for the period from 1994-1995, 1995-1996, 1996-97, 1997-1998, 1998-1999, 2001-2002 to 2005-2006. The grievance of the petitioner is that in spite of filing of application for issuance of

the certified copy of the assessment orders and sending reminders, the same were not supplied to the petitioner and therefore, in this writ petition, learned Senior Counsel sought for a direction to the respondents for supply of the certified copies of the assessment orders to the petitioner and also sought for grant of liberty to the petitioner to challenge the assessment orders in accordance with law so as to enable the petitioner to pursue the statutory remedy.

12. The respondents have submitted that certified copies of the assessment orders could not be supplied since the petitioner had not filed application for obtaining the certified copies in the prescribed Form, i.e. Board's Miscellaneous Form No. 124 and the application was not in the prescribed format. Board's Miscellaneous Form No. 124 has been annexed in the counter-affidavit, as per which the person concerned, for obtaining certified copy, has to fill up various columns thereon, inter alia, furnishing details of the case of proceeding in which such paper is to be found or was filed; ordinary searching fee deposited in court fee stamp; extra searching fee deposited in court fee in stamp; name of officer or department where the paper in question is to be found etc. and other details. Annexure 3 series are stated to be the challans for filing copy application for obtaining certified copies of the assessment orders. No material has been produced to show that the application for obtaining certified copies of the assessment orders were filed in the prescribed form/Board Miscellaneous Form No. 124. Annexure 3 series-challans - are filed for showing that applications were filed for obtaining certified copies of the assessment orders for the period 2001-02 to 2005-06. But the petitioner has sent reminders on 7.12.2009, 9.8.2010 and 7.12.2010 stating that the petitioner requires certified copies of the assessment order for the periods 1994-95 to 2005-06. When the petitioner has not filed appropriate application in the prescribed Form No. 124 for obtaining certified copies of the assessment order, the Department cannot be blamed for non-supply of the certified copies of the assessment orders.

13. It is pertinent to point out that while the petitioner was pursuing writ petition, W.P(C) No. 167/2005, the petitioner did not seem to have been diligent in pursuing his application for certified copies of the assessment orders. When there is delay and laches on the part of the petitioner, the Court will be loath to come to the aid of such person. Challenging the certificate proceeding and having not filed appropriate application in the prescribed Form, the petitioner cannot plead for showing indulgence. In fact, W.P(C) No. 167/2005 was dismissed on 22.12.2008 giving liberty to the petitioner to avail the statutory remedy of appeal for redressal of its grievance. Having not availed the statutory remedy of appeal, the petitioner cannot turn around and challenge the notices of demand on the ground that the certified copies of the assessment orders were not issued to him and the petitioner was not able to avail of the statutory remedy of appeal. Therefore, the petitioner cannot seek for a direction upon the respondents to issue certified copies of the assessment orders to pursue the statutory remedy of appeal.

14. Section 24 stipulates period of limitation for completion of the assessment proceedings. As per Section 24, except a proceeding under sub-section (5) of Section 17, Section 18 and sub-section (1) of Section 19, no proceeding for assessment of the tax payable by a dealer in respect of any period shall be initiated and completed except before expiry of four years from the expiry of such period.

15. Drawing our attention to the various dates, learned Senior Counsel submitted that for the financial year 2001-02, the assessment order is said to have been passed on 18.3.2006 and the demand notice was issued on 22.3.2006, whereas the demand notice is said to have been received by the petitioner only on 30.8.2007 and therefore, it is contended that it must be deemed that the order of assessment dated 18.3.2006 and the date of demand notice dated 22.3.2006 were ante-dated and that the same was passed without giving an opportunity of hearing to the assessee. It is further submitted that from the financial year 2001-02 - four year period expired on 31.3.2006, whereas the assessment order is said to have been passed just on the verge of expiry of four years on 18.3.2006 and the demand notice is said to have been received by the petitioner on 30.8.2007 beyond the stipulated period of four years and thus, an inference has to be drawn that the date of assessment order was antedated. It was also submitted that the date of order of assessment regarding financial year 2002-03 was dated 20th June, 2006 and that the same was said to have been received by the petitioner on 30.8.2007, which would also lead to an inference that the assessment orders of the proceedings were ante-dated. In support of his contention, learned Senior Counsel placed reliance on [1994] 93 STC 406(SC) (State of Andhra Pradesh v. Khetmal Parekh) and also on the decision of the Division Bench of this Court in W.P(T)1006/2010 (M/s. MECON Limited v. The State of Jharkhand & Ors.). In the said case State of Andhra Pradesh v. Khetmal Parekh, an assessment order passed in September, 1969 was sought to be revised by the Deputy Commissioner under Section 20(2) of the Andhra Pradesh General Sales Tax Act, 1957 and he passed an order prejudicial to the assessee and the order was said to have been made in January, 6, 1973 but it was served after the expiry of four years from the date of the assessment order, on the assessee on November, 21, 1973, 101/2 months later and there was no explanation by the Deputy Commissioner why the service of the order was so delayed. In such facts and circumstances of the case, Hon'ble Supreme Court held that there was no explanation by the Deputy Commissioner as to why the service of the order was so delayed. Likewise, in the facts and circumstances of the case and also upon perusal of the records in M/s. MECON Limited, the Division Bench of this Court followed the judgment of Hon'ble Supreme Court rendered in [1994] 93 STC 406(SC).

16. The case on hand is clearly distinguishable on facts. As pointed out earlier, challenging the order of the Deputy Commissioner-cum District Certificate Officer dated 25.11.2004 demanding payment of Rs. 7,50,059.99 relating to the financial year 2001-02, the petitioner has filed W.P(C) No. 167/2005 and the said

writ petition was pending for quite some time. In view of the pendency of the said writ petition, the Department might have waited to pass final order of assessment in assessment proceedings from 2001-02. Therefore, the case on hand cannot be said to be a case of non-explained delay for not earlier passing the assessment order and issuing notice of demand upon the petitioner only on 22.3.2006.

17. According to the respondents, on the basis of the aforesaid demand notices after adjusting the payments already made by the petitioner, several reminders were issued and served upon the petitioner to deposit the rest amount but the petitioner did not pay the amount. It was, therefore, necessary to initiate certificate case against the petitioner by the Deputy Commissioner of the Commercial Taxes, Pakur. After adjusting the several payments made by the petitioner, requisition for certificate was issued to the Certificate Officer, Pakur and the Certificate Officer issued notice under Section 7 of the PDR Act dated 14.3.2011 to the Directors of the petitioner-companies for realization of the alleged dues of Rs. 1,09,25,649/-. By perusal of the proceedings of the Certificate Officer, Pakur (Annexure - 4/15), it is seen that by the order dated 14.3.2011, the Certificate Officer issued notice under Section 7 of the PDR Act, giving a period of 30 days to the petitioner-company to file objection. On the date of hearing on 18.4.2011 before the Certificate Officer, the counsel for the petitioner stated that the petitioner is not satisfied with the assessment done by the Department. In the subsequent proceedings before the Certificate Officer, learned counsel for the petitioner appeared and took adjournment for filing objection. In Certificate Case No. 3/2010, the petitioner also filed detailed objection under Section 9 of the PDR Act raising all the contentious points and also stating about the Company Petition filed in the Calcutta High Court and prayed for dropping of the certificate proceeding. Challenging the certificate proceeding in Certificate Case No. 3/2010, earlier the petitioner and the petitioners in the other writ petitions also filed W.P.(C) No. 6254/2011, W.P.(C) No. 6314/2011 and W.P.(C) No. 6270/2011 and the same were lingering on file for about two years. On 19.3.2013 the petitioner sought permission to withdraw these writ petitions on the ground that sales tax demand notices were not under challenge in the writ petitions, rather certificate proceeding itself has been challenged. On such representation, the writ petitions were dismissed as withdrawn giving liberty to the petitioner to challenge the demand notices and in pursuance of the aforesaid liberty, the present writ petitions are filed.

18. Section 6 of the PDR Act provides that on receipt of any such requisition the Certificate Officer, if he is satisfied that the demand is recoverable and that recovery by suit is not barred by law, may sign a certificate, stating that the demand is due and shall cause the certificate to be filed in his office. Section 7 stipulates service of notice and copy of certificate on certificate debtor. Section 9 provides that the certificate-debtor may, within the prescribed period, file a petition in the prescribed form denying his liability in whole or in part. Section 10 casts statutory obligation upon the Certificate Officer to hear a petition, take

evidence (if necessary) and determine whether the certificate-debtor is liable for the whole or in part of the amount for which certificate was signed and may set aside, modify or vary the certificate accordingly. Thus, Section 10 contemplates hearing and determination of such petition. Section 60 provides for filing of appeal, form, procedure etc. in the appellate jurisdiction. Perusal of Section 60(1) makes it clear that against the original order passed by the Certificate Officer under the PDR Act, an appeal lies to the Collector. For filing appeal, the appellant has to deposit forty percent of the amount determined or such amount as the appellant admits to be due from him, whichever is greater. As per proviso to Section 60, no appeal against the order passed under Section 10 shall be entertained unless the appellate authority is satisfied that the appellant has paid 40% of the amount determined under that Section or such amount as the appellant admits to be due from him, whichever is greater.

19. For realization of the amount of Rs. 1,09,25,649/-, Certificate Case No. 3/2010 has been initiated. In the certificate proceedings, the petitioner has also filed detailed objections under Section 9 of the PDR Act. In terms of Section 10, it is for the Certificate Officer to hear the matter on merits and determine the petition. When the PDR Act stipulates a complete mechanism for hearing and determination of the petition and also filing of appeals, the writ court cannot entertain the writ petition, bypassing the efficacious alternative remedy available under the statute.

20. In *Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others*, , Hon"ble Supreme Court considered the question whether a petition under Article 226 of the Constitution should be entertained in a matter involving challenge to the order of assessment passed by the competent authority under the Central Sales Tax Act, 1956 and negated the same by the following observations:-

11. Under the scheme of the Act, there is a hierarchy of authorities before which the petitioners can get adequate redress against the wrongful acts complained of. The petitioners have the right to prefer an appeal before the Prescribed Authority under sub-section (1) of Section 23 of the Act. If the petitioners are dissatisfied with the decision in the appeal, they can prefer a further appeal to the Tribunal under sub-section (3) of Section 23 of the Act, and then ask for a case to be stated upon a question of law for the opinion of the High Court under Section 24 of the Act. The Act provides for a complete machinery to challenge an order of assessment, and the impugned orders of assessment can only be challenged by the mode prescribed by the Act and not by a petition under Article 226 of the Constitution. It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of.

21. The views expressed in *Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others*, were reiterated in *Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others*, in the following words:

3.Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where 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 bypass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged.

The same principle was enunciated in various decisions in Punjab National Bank Vs. O.C. Krishnan and Others, , C.C.T. Orissa and Others Vs. Indian Explosives Ltd., and United Bank of India Vs. Satyawati Tondon and Others, .

22. Thus, if the party is aggrieved by the order of the Certificate Officer, it is always open to him to pursue the remedy of appeal as per the provisions of Section 60 of the PDR Act. In our considered view, the petitioners have filed the writ petitions circumventing the procedures of the Bihar and Orissa Public Demands Recovery Act, 1914 and the provisions of the appeal thereon and by invoking the writ jurisdiction, the petitioners are directly trying to agitate the issues based on facts and on consideration of evidence. When efficacious alternative remedy is available to the petitioners, no relief can be granted to the petitioners in these writ petitions.

23. The contention of the petitioner is that since the Company Petition/winding up proceeding is pending against the petitioner in Calcutta High Court, vide Company Petition No. 314/2007 and the company has been ordered to be wound up in accordance with the provisions of the Companies Act, 1956, vide order dated 2.2.2013 and the Court directed the Official Liquidator to take possession and charge of the assets of the petitioner-company, the Department cannot initiate any proceedings for recovery of the tax due and therefore, the petitioner seeks for a direction that the remedy of the revenue lies before the Company Court where the winding up petition is pending.

24. The order of winding up of the petitioner company is subsequent to the initiation of the certificate proceedings. In fact, the petitioner, in objection under Section 9 of the PDR Act, has also indicated about the pendency of the winding up petition. It is for the petitioner to bring to the notice of the Certificate Officer regarding the winding up order passed on 2.2.2013 and merely on the ground of pendency of the winding up petition, the certificate proceedings cannot be quashed.

25. It must be remembered that the certificate proceeding is initiated by the

State for recovery of its tax along with interest/penalty under the Bihar and Orissa Public Demands Recovery Act, 1914 contains a detailed mechanism for redressal of the grievance of the petitioner by hearing the matter and also by filing of appeal. Such statutory procedure cannot be circumvented by entertaining writ petition under Article 226 of the Constitution of India. To entertain such writ petition would have serious adverse impact on the right of the State to recover its huge outstanding dues and therefore, the writ petition is liable to be dismissed.

26. In so far as other writ petitions, W.P(T) No. 1968/2013 and W.P(T) No. 1964/2013, are concerned, the point involved is one and same (except the Company Petition for winding up) and only the orders of assessment and the amount and the date of notices vary. In W.P(T) No. 1968/2013 (Vishal Industries) the requisition for the certificate was for an amount of Rs. 20,15,823/- in Certificate Case No. 04/2010 for the financial years 2001-02, 2003-04, 2002-03, 2004-05, 1997-98 and 2005-06. In W.P(T) No. 1964/2013 (Ravi Engineering Works), the requisition for the certificate was for an amount of Rs. 21,80,422.58 in Certificate Case No. 02/2010 for the financial years 1994-95, 1995-96, 1996-97, 1997-98, 2001-02, 2002-03, 2003-04, 2004-05, 1998-99 and 2005-06. Therefore, those two writ petitions, W.P(T) No. 1968/2013 and W.P(T) No. 1964/2013, are also liable to be dismissed.

In the result, all three writ petitions are dismissed.