(1966) 06 CAL CK 0019

In the Calcutta High Court

Case No : Civil Rule No. 946 (W) of 1964

Chandi Charan Laha APPELLANT

Vs

Certificate Officer and Others RESPONDENT

Date of Decision : 23-06-1966

Acts Referred:

Bengal Public Demands Recovery Act, 1913 — Section 1, 2, 3, 39, 4

Citation : (1967) 19 STC 526

Hon'ble Judges : D. Basu, J

Bench : Single Bench

Advocate : Somendra Chand Bose, Kartick Chandra Banerjee, Bhagabati Prosad Banerjee and Sundarananda Pal, for the Appellant; N.C. Chakraborty and S.N. Dutta, for the Respondent

Judgement

D. Basu, J.—A very interesting question of law has been raised and ably argued in this case, namely, whether the Certificate Officer who has issued the certificate of which a copy is annexed to the petition (annexure ''A'') has jurisdiction to issue the certificate in question to recover the arrears of sales tax and penalty due from the petitioner for the four quarters ending Chaitra 1365 B.S., in view of the fact that the business in respect of which the sales tax was assessed is being carried on within the limits of the Presidency town of Calcutta and the assets of the certificate-debtor are also situated within that town, the certificate office being a certificate office of the District 24-Parganas, which, for administrative purposes, does not include the Presidency town of Calcutta. The manner in which dues under the Bengal Finance (Sales Tax) Act of 1941 have come to be realised by the certificate procedure is as follows : Section 11(4) of the Sales Tax Act provides-''"Any amount of tax or penalty which remains unpaid after the date specified in the said notice shall be recoverable as an arrear of land revenue as if it were payable to the Collector..." It is contended on behalf of the petitioner that since there is no definition of the word "Collector" in this Act, the meaning of that word must be found out from the definition of "Collector" in the Bengal General Clauses Act, 1890, Section 3(8) of which says-"Collector" shall mean, in Calcutta, the Collector of Calcutta, and elsewhere the Chief Officer in charge of the revenue administration of a district. It is urged that if the meaning of the above definition be applied to the provision in Section 11(4) then the Certificate Officer of 24-Parganas cannot enforce a demand which is not payable to the Collector of 24-Parganas, but payable to the Collector of Calcutta. But the jurisdiction of the Certificate Officer under the Bengal Public Demands Recovery Act is not necessarily confined to dues payable to the Collector of 24-Parganas. The Bengal Public Demands Recovery Act, 1913 (hereafter referred to as the Act) extends to the whole of West Bengal by virtue of the provision of Section 1(2) thereof, and Section 4 provides as follows:

When the Certificate Officer is satisfied that any public demand payable to the Collector is due, he may sign a certificate, in the prescribed form, stating that the demand is due, and shall cause the certificate to be filed in his office.

2. The expression "payable to the Collector" in Section 11(4) of the Sales Tax Act has, therefore, to be read together with that expression in Section 4 of the Act of 1913. The definition of "Collector" in the Bengal Public Demands Recovery Act, 1913, accordingly comes into play. It has however been urged by the learned Advocate for the petitioner that there was no definition of the word "Collector" in the Bengal Public Demands Recovery Act of 1913 when it was originally enacted and the definition in Section 3(3a) was inserted by the amendment Act of 1953. Not only in connection with this amendment, but in relation to the other amendments to this Act of 1913, to which we shall have presently to refer, it has been contended on behalf of the petitioner that the amendments subsequent to the enactment of the Bengal Finance (Sales Tax) Act of 1941, cannot be of any avail to the interpretation of the Act of 1941 according to the doctrine of legislation by incorporation. That doctrine, however, has no application to the instant case, because Section 11(4) does not specifically refer to the Bengal Public Demands Recovery Act of 1913 as such. It only says that the sales tax shall be recoverable as an arrear of land revenue. If that be so, whatever be the law under which arrears of land revenue can be recovered for the time being, shall be applicable to the recovery of dues u/s 11(4). In that view, there is no reason why the amendments made in the Act of 1913 subsequent to 1941, cannot be applied to interpret and administer the provision of Section 11(4) of the Sales Tax Act of 1941 to-day.

3. Coming now to the definition of "Collector" in Section 3(3a) as introduced in 1953, it is in these terms :

''Collector'' means the chief officer in charge of the revenue administration of a district and includes an Additional District Magistrate appointed under Sub-section (2) of Section 10 of the Code of Criminal Procedure, 1898.

4. If this definition stood as it is, there would still have been left some room for contending that this definition might refer to a district of the Province of Bengal as it was understood in the year 1913 or even in 1953 and thus exclude the

Presidency town of Calcutta which stood on a different historical basis. But that loop-hole has been plugged by the explanation to Section 3(3a) which was inserted in the Act by the West Bengal Act 3 of 1922, together with a definition of "Calcutta". The definition of "Calcutta" was introduced in Section 3(al) as "Calcutta means the area comprised within the local limits for the time being of the ordinary original civil jurisdiction of the High Court at Calcutta," and the explanation to Section 3(3a) is :- "For the purposes of this Act, the District of 24-Parganas shall be deemed to include Calcutta." The result of this amendment is that though the Presidency town of Calcutta stands within the original civil jurisdiction of the High Court, it is for all other purposes of the Act, a separate entity, standing outside the District of 24-Parganas. For the application of this Act of 1913 that distinction shall be obliterated and the District of 24-Parganas shall be taken or deemed to include the area of the Presidency town of Calcutta. If that be so, there is no difficulty in understanding the meaning of "Collector" in Section 11(4) of the Bengal Sales Tax Act of 1941. Reading all the foregoing provisions together, therefore, the Certificate Officer u/s 4 of the Act of 1913 is now competent to sign a certificate to recover any public demand which is payable either to the Collector of 24-Parganas or to the Collector of Calcutta.

5. It was further contended on behalf of the petitioner that though the Collector of 24-Parganas may himself sign a certificate in "respect of a demand relating to the Presidency town of Calcutta, and enforce it, any Certificate Officer who is not a Collector could not do so. Reference in this context has been made to the notification of the year 1875 by which the Collector of 24-Parganas was appointed to be the ex-officio Collector of Calcutta. It was held by a Division Bench in the case of Laduram Taparia Vs. D.K. Ghosh and Others, , that this notification was not sufficient to enlarge the meaning of the word "Collector" for the purpose of the Public Demands Recovery Act or to enlarge the powers of the Certificate Officer who was not a Collector under that Act. The situation has however changed since then in view of the amendments already referred to.

6. It had further been argued with reference to the Calcutta Land Revenue Act, 1850, which is a local Act passed by the Governor-General in India in Council. That statute lays down the procedure for the recovery of land revenue accruing within the city of Calcutta and it is contended that nothing in the Bengal Public Demands Recovery Act would alter that procedure, particularly in view of the provision in Section 55 of the Bengal Public Demands Recovery Act itself which provides as follows :-

The powers given by this Act shall be deemed to be in addition to, and not in derogation from, any powers conferred by any other Act now in force for the recovery of any dues, debt or demand to which the provisions of this Act are applicable, and except where expressly so provided, no legal remedy shall be affected by this Act.

7. It is true that the procedure for recovery of the arrears of land revenue is different in the two enactments of 1850 and 1913 and the rights and liabilities

arising therefrom are not the same. Nevertheless, what is provided in Section 55 is simple. This is that the powers conferred by the Act of 1913 shall not affect or take away the powers which have been already vested in the Collector of Calcutta by the Act of 1850. If that be so, the powers of the Certificate Officer under the Bengal Public Demands Recovery Act of 1913, which may be taken as additional powers in this behalf cannot be held to be not available because of the provisions of the existing law, namely, the Calcutta Land Revenue Act of 1850. In this connection the question of vires of the amendments of the Act of 1913 may be relevant. It was urged in paragraph 14(vi) of the petition that since the subject-matter comes within the Concurrent List, the Bengal Public Demands Recovery Act, 1913, could not amend, whether expressly or by implication, the provisions of the Calcutta Land Revenue Act, 1850, which is an existing Central Act relating to the same subject-matter. Even assuming that the said amendments of the Act of 1913 seek to repeal by implication the provisions of the Act of 1850, which is not the fact, the present contention cannot be accepted for the more vital reason that the subject-matter of the Bengal Public Demands Recovery Act of 1913 does not come in under the Concurrent List at all. It is a subject covered wholly by the State List under Entry No. 45 which says, "Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights and alienation of revenue." It would follow that in the exercise of this power the State Legislature is competent not only to legislate regarding land revenue, but also to provide now any other dues to the State which can be recovered as land revenue and in this case the dues concerned are covered by Entry No. 54 of the same list. Taking the two entries together the amendments of the Act of 1913 referred to me are clearly covered by the exclusive State List. Entry No. 43 of the Concurrent List which is the only entry which can be referred to on behalf of the petitioner, relates to a different subject altogether; it says "Recovery in a State of claims in respect of taxes and other public demand, including arrears of land revenue and sums recoverable as such arrears, arising outside that State." It is only when the amount sought to be recovered as public demand arises wholly within the State, nothing in the Concurrent List would come into operation; the exclusive power conferred by Entry No. 45 of List II was available for the purpose.

8. As regards procedure, it would be appropriate to refer to another provision which has been inserted into the Act by a notification on 23rd September, 1954, by the Board of Revenue in exercise of the powers conferred by Section 39 of the Act. Item No. 1A is as follows :

1A. The procedure and the rules to be followed in respect of certificates for arrears of sales tax shall be the same as those in the case of arrears of land revenue payable to the Collector.

9. So, whatever might have been the procedure laid down in the other Acts, once it is held that the amount of sales tax sought to be recovered is recoverable as arrears of land revenue payable to the Collector which follows from Section 11(4)

of the Sales Tax Act, 1941, there cannot be any doubt that that amount would be recoverable under the procedure laid down by the Act of 1913. In fine, I would like to add also that the Act of 1850 never intended to be exhaustive or exclusive to confer jurisdiction; it only confers certain powers on the Collector of Calcutta to levy the amounts of land revenue which were assessed u/s 2 of the same Act, by resorting to the special procedure laid down in Section 3. It is needless to point out after all this that the power of the Certificate Officer u/s 4 of the Act of 1913 has now extended also to the assets of a certificate-debtor which are situated within the Presidency town of Calcutta, because by the explanation to Section 3(3a), the limit of the District of 24-Parganas has been notionally extended to cover the area included within the town of Calcutta.

10. Having regard to all these considerations, I am of opinion that this petition must fail. The Rule is discharged accordingly. But in view of the nice questions of law involved, I make no order as to costs.

