

(1979) 09 MP CK 0016

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 562 of 1975

Chatur Singh Thakur

APPELLANT

Vs

Additional Collector, Durg and others

RESPONDENT

Date of Decision : 07-09-1979

Acts Referred:

Constitution of India, 1950 — Article 226
Public Accountants Defaults Act, 1850 — Section 1, 2, 3, 4, 5
Revenue Recovery Act, 1890 — Section 3(1), 4, 5

Citation : (1980) JLJ 405

Hon'ble Judges : S.K. Seth, J; M.L. Malik, J

Bench : Division Bench

Advocate : S.C. Dutt, for the Appellant; J.M. Sood, Government Advocate for State, for the Respondent

Final Decision : Dismissed

Judgement

M.L. Malik, J.—In pursuance of the Revenue Recovery Certificate purported to have been issued by the Additional Collector, Durg, u/s 13 (1) of the Revenue Recovery Act, 1890 (Annexure "A"), proceedings have been initiated for recovery of Rs. 82,900.30 Nps. against the petitioner in the Court of Additional Tahsildar, Durg. The Additional Tahsildar has issued the demand notice vide Annexure "B" and has attached lands and houses said to have been purchased benami by the petitioner in the name of his wife, and other close relations by name Saraswatibai, Sudhabai and Sarjabai. The petitioner has come to this Court for a writ of certiorari to quash the Recovery Certificate and the proceedings initiated on its basis.

2. The facts may be briefly stated : The petitioner was a Lower Division Clerk in the Land Diversion Section of the Collectorate, Durg. According to the respondents' Return, one of the duties assigned to the petitioner was to prepare bills. He was thus in charge of the Accounts and Establishment. During the period between 1-3-1972 to 26-6-1973, the total sanctioned strength of Chainmen and

peons was ten i. e. 8+2 and for the period between 27-6-1973 to 30-11-1974, the strength was six, i.e. 4+2. The petitioner prepared bills showing the strength much above the sanctioned number and instead of routing the bills through the Superintendent, Land Records (Diversion), submitted them directly to the Officer-in-Charge i.e. Deputy Collector and then got them passed by the Treasury Officer. The Treasury Officer, on the belief of correctness of the bills or on representations made by the petitioner, without verifying the sanctioned strength, passed the bills as submitted. The District Nazir, one Dhansingh, as the story goes, was in league with the petitioner. He drew the amount from the Bank on the basis of those false bills and instead of disbursing the amount himself, got the same disbursed through the petitioner. The Nazir and the petitioner jointly managed to forge bogus receipts for bogus persons in whose names the bills were prepared and thus embezzled during the relevant period as per casual checking a sum of Rs. 80055.50 nps. (In the Supplementary Return filed by the respondents, the auditors, who checked the accounts, found the defalcation swelling to Rs. 4,51,517.65 Nps.).

3. A report was lodged at the police station and investigation is reported to be pending. The petitioner was put under suspension. The petitioner, as the enquiries conducted by Officers revealed, had purchased property benami in the names of his wife, brother, brother's wife and mother. The assets so collected were disproportionate to the legitimate income of the petitioner and even that of the relations mentioned. It was evident that the property was purchased out of the defalcated money. Lest, the petitioner dissipated the property, the Collector issued the Revenue Recovery Certificate which he could do under the provisions of the Public Accountants' Defaults Act, 1850. The petitioner, according to the respondents, squarely fell within the definition of the expression "Public Accountant" as given in the Act. The Act provided for recovery of the defalcated amount as if it was arrears of land revenue. The provisions of the M. P. Land Revenue Code, 1959, could, therefore, be invoked for the purposes of such recovery.

4. The petitioner's contention is that he was not a Public Accountant within the definition given in the Act nor would provisions of the Public Accountants' Defaults Act apply to him. That the Revenue Recovery Certificate issued by the Collector was beyond his authority and all proceedings taken for recovery were illegal and void. That except for preparation of bills, he did nothing. It was the Nazir who submitted the bills to the Treasury and received the amount from the Bank. It was he who disbursed the amount to the employees. The petitioner says that it was no part of his job to receive the money or to disburse it to the payees. That principles of natural justice were not followed. No notice was ever given to the petitioner to show cause. The amount said to have been defalcated had been arbitrarily and unilaterally determined without giving any opportunity to the petitioner to contest. The Revenue Recovery Certificate would be void for that reason.

5. Parties are not one in the statement of facts. Whereas the respondents state that the petitioner not only prepared bills and got them passed by the Treasury Officer but also disbursed the amount to the payees after the Nazir received the amount from the Bank, the petitioner says that he did not handle cash at all; he just prepared the bills. The facts are thus misrepresented or suppressed. This Court in its writ jurisdiction, does not investigate the disputed facts. Relief under Article 226 of the Constitution could, therefore, be refused on this short ground. However, we thought it wise to proceed on the assumption that the facts stated in the Return of the respondents were true and that the petitioner though a Lower Division Clerk, was not only preparing the bills but was also disbursing the money after it was received from the Bank, to the employees. Admittedly, the petitioner was not an Accountant who had given security for due discharge of the trust of his office. Whether by receiving MONEY for disbursement and by disbursing the same, he would become a "Public Accountant" as defined in section 3 of the Public Accountants' Defaults Act, is the question. "Public Accountant" has been defined thus:

Sec. 3: "Public Accountant" defined for the purposes of sections 1 and 2 of the Act, the expression "public accountant" means any person who as Official Assignee or Trustee or as Sarbarahkar is entrusted with the receipt, custody or control of any moneys or securities for money, or the management of any lands belonging to any other person or persons and for the purposes of sections 4 and 5 of this Act, the expression shall also include any person who by reason of any office held by him in the service of the Central Government or the Government of a State, is entrusted with the receipt, custody or control of any moneys or securities for money, or the management of any lands belonging to such Government.

Section 4 which authorises the head of the Office to prosecute the accountant for any loss or defalcation as if the amount thereof were an arrear of land revenue, reads as under:

The person or persons at the head of the Office to which any public accountant belongs may proceed against any such public accountant and his sureties for any loss or defalcation in his accounts, as if the amount thereof were an arrear of land revenue due to Government.

6. The definition of "Public Accountant" as the latter part of the section would indicate, includes any person who by reason of his Office held by him in the service of the State, is entrusted with the receipt, custody or control of any money belonging to the State. The petitioner, Lower Division Clerk as he was, held Office in the service of the State and he received money for disbursement. As soon as the money is entrusted to him and he receives its custody and control, he becomes a Public Accountant for the purposes of prosecution u/s 4, in case loss or defalcation is detected in his accounts. The expression "shall also include" makes the definition prima facie extensive. The meaning is enlarged. It is not necessary that the person, who is entrusted with receipt, custody or

control of money, should have been appointed as accountant as such and should have been required to give security u/s 2. A person, who by reason of any office held by him in State Service, is entrusted with receipt of money, he is accountable for loss or defalcation as if he is a Public Accountant.

7. To explain, if the accountant of the office is on leave and the work is entrusted to a clerk and he handles money, it would be absurd to say that in case defalcation were committed by the Accountant, he could be proceeded against u/s 4, but the clerk, who worked as a substitute, would not be prosecuted u/s 4 though he was entrusted with the receipt, custody or control over the moneys. The natural import of the latter part of section 3 is to include every such person who by virtue of his office in the State Service, comes to be entrusted with money.

8. It follows, therefore, that the Head of the Office to which the Public Accountant belonged, could proceed for recovery of the loss or defalcation as if the amount thereof were an arrear of land revenue due to the Government. A wrong reference to section 3(1) of the Revenue Recovery Act under which the certificate purports to have been issued, would not invalidate the attachment and other proceedings commenced by the Tahsildar if power to issue the certificate could be justified under some other provision, as in the present case to the Public Accountants' Defaults Act.

9. The determination of the amount of defalcation has been done in the present case by the Head of the Office through enquiry conducted without the petitioner participating in it. No notice was given to him to show cause. The certificate was not issued by the Collector after giving notice to the petitioner and after holding an enquiry in his presence. The question is whether the certificate would be rendered invalid because the rules of natural justice had been violated and no enquiry was held.

10. A similar question arose for consideration in *Prabhakar Vishnu Naik Vs. Union of India*, . In that case, a Sub-Post Master had defalcated some amount and the Head of the Office got a Revenue Recovery Certificate issued for recovery of the loss as determined by the Department. This is what Patel J., said in paras 9 and 10:

Evidently, section 5 of the Revenue Recovery Act does not require that before the Collector issues a certificate he must give notice to the defaulting officer and hold an inquiry and thereafter issue the certificate. This is for an understandable reason. In a case, where the amount is due and claimed by the Union, the defaulting Officer is entitled to question that amount by a suit as provided by section 4 of the said Act. He would then have a full-fledged trial. No doubt, the condition is that he must deposit the amount. That also is understandable. A suit may take years together for trial and the Government would be kept out of the money for considerably long time as has happened in the present case.

The third contention is that the certificate is invalid because the rules of natural

justice are violated, in that no inquiry was held. The answer is as in the above paragraph. Moreover, the learned Joint Judge has pointed out that when the demand was made by the Mamlatdar from the appellant, he applied to the Mamlatdar to stay the proceedings. The Mamlatdar intimated to him that if he wanted stay of further proceedings he should approach the Superintendent of Posts and Telegraphs and represent his case. Admittedly, the appellant did not approach the Superintendent. If at all, therefore, he has lost the opportunity of contesting the claim, he must thank himself. If he had approached the Superintendent, the latter would have heard him and thereafter if he showed that a lesser amount had to be recovered from him, the Superintendent would have altered the demand. Apart from this, on payment of the amount claimed from him which in this case is comparatively small, the appellant could have got a full trial on merits.

11. The Revenue Recovery Act or the Public Accountants' Defaults Act do not provide for the nature of enquiry to be held before a certificate is issued. Two courses are open to the defaulter as indicated in Prabhakar's case either to approach the Head of the Department to permit him to explain the accounts and to satisfy by evidence or otherwise that he had not defalcated the amount or that his liability was for a lesser amount or to file a Civil Suit and get the liability determined. It follows that as an interim measure, he can as well apply to the Court for an injunction restraining sale of the property till determination of his liability. The Revenue Recovery Certificate issued under proper authority, Patel J. held, is not rendered invalid just because the liability of the defaulter has been unilaterally determined since his participation in the determination of liability is never denied.

12. The contrary authority of the Kerala High Court may as well be noticed. In Annamma Kunjamma and Others Vs. State of Travancore-Cochin and Another, the placitum reads:

It is a fundamental principle of jurisprudence that no person shall be condemned unheard and that in the absence of any specific rules, the decision of a Tribunal, Authority or Court must conform to the principles of natural justice.

Because of the defilement alleged to have been caused to a temple by one Y the Devaswam Department had performed certain expiatory ceremonies. The Dept. then moved the Revenue Department for recovery of those expenses from the assets of Y, whose death had taken place in the meanwhile. The Department had not disclosed to the heirs of "Y" any information about the alleged defilement of the temple nor were they given any opportunity to rebut claims of the Devaswam Department. The property of Y was sold in Court auction and in the suit for cancellation of the sale:

Held, that in passing an order behind the back of the heirs the Tribunal i. e. the Devaswam Commissioner, violated the fundamental rules of natural justice and as such, the said order was illegal, void and of no effect. It followed that the

proceedings taken under the Revenue Recovery Act in pursuance of a void order were equally illegal and unsustainable and not binding on the heirs or their properties.

13. We are not called upon to give our opinion on this disputed question since the learned Government Advocate assured us that the recovery proceedings would be held in abeyance till the defaulter is heard by the Head of the Office for which due notice shall be given to him. It is only after he is heard, further proceedings shall be taken. Rules of natural justice, the learned Government Advocate said, shall be followed.

14. We do not think it necessary, therefore, to interfere with the proceedings already taken. The petition is dismissed with no order as to costs. The security amount be refunded to the petitioner.

OPINION

Seth J.

1. I have carefully gone through the order prepared by my learned brother Malik J., and I am in full agreement with him that as at the stage of hearing the learned Government Advocate has given an assurance that the proceedings would be held in abeyance till the petitioner is heard by the head of the office, for which due notice shall be given to him, the writ petition in question has become unnecessary at this stage and the same for that reason has to be dismissed with no order as to costs.

2. This separate opinion, however, becomes necessary because, in my opinion, in the facts and circumstances of the case, the petitioner cannot be held to be a "Public Accountant" within the meaning of the Public Accountants' Defaults Act, 1850 for the purposes of sections 4 and 5 of the said Act.

3. In my opinion, a definite conclusion as regards the nature of duties performed by the petitioner can be easily reached on the basis of the relevant allegations made by the petitioner in his petition and respondents in their return. The petitioner, in para 2 of his petition, has stated that he was working as a Lower Division Clerk under the Superintendent of Land Records in the Land Diversion Office, Durg, during the relevant period. In para 6 of his petition, he has further stated that in the Land Diversion Office in question, he, as a Lower Division Clerk, was entrusted with the preparation of pay bills of the staff and the Division Office and that as soon as the bills were prepared by him, they were submitted to the Officer-in-Charge, the Deputy Collector, under whose instructions the petitioner prepared the same. The Officer-in-Charge used to pass the said bills and sign them and then send them to the District Nazir for submission to the Treasury for passing and drawing the amount from the bank. After drawing the amount from the bank, it was the responsibility of the District Nazir himself to disburse the same to the employees concerned. The petitioner was responsible neither for receiving the amount of the pay bills from the bank, nor for the

disbursing the same to the payees mentioned in the said bills. The petitioner has further stated that he as a matter of fact also never received any amount either from the bank or from any other source and as such the question of any embezzlement, defalcation or misappropriation of any money by him did not arise. The petitioner has stated that he was neither entrusted with any cash on behalf of the respondents, nor he was in charge of any stores or materials which could have been converted into cash.

4. In their return, as originally filed, the respondents did not dispute the position that the petitioner was working as a Lower Division Clerk in the Land Diversion Office which formed part of Collectorate, Durg. According to the respondents, the pay bills should have been routed through the Superintendent Land Records, Diversion, and then submitted to the Deputy Collector who was the Officer-in-Charge and after obtaining the signatures of the Officer-in-Charge, the said bills should have been submitted to the Treasury for being passed. According to them, the petitioner submitted the pay bill directly to the Officer-in-Charge and then took them to the Treasury, got them passed by the Treasury Officer, who on the belief or representation made by the petitioner, passed the same from time to time without examining the sanctioned strength and the sanctioned amount in relation to them. The bills so passed were taken to bank and the money withdrawn by the District Nazir. The respondents did not dispute the position that it was the duty, of the District Nazir to disburse the amount individually to the employees whose names appeared as payees in the bills. What the respondents contended was that the Nazir was in league with the petitioner and instead of himself making payment individually to the employees concerned handed over the amount to the petitioner and both jointly managed to procure bogus receipts in the name of bogues persons in whose names the bills were prepared and the amount drawn. In their rejoinder dated 11-12-1976, the respondents again said very clearly that, "Dhansingh, the then District Nazir, was in league with the petitioner.....Although the petitioner was not authorised to present the bills in the Treasury and draw the amount from the bank, he played the main role in the whole episode". It is interesting to note that it was only after the present petition was partly heard by this Court and the respondents realised that the recovery in question being made under the provisions of the Revenue Recovery Act could be justified only under the provisions of the Public Accountant's Defaults Act, 1850, that the respondents sought leave to substitute the following reply to ground "B" of the petition--"It is submitted that the petitioner who was at the relevant time working in the Land Diversion Section of the Collectorate was also in-charge of accounts and establishment. One of his duties was to prepare bills. It is submitted that this petition relates to recovery proceedings initiated against the petitioner by the Collector who had issued a certificate of recovery of defalcated sum under the provisions of Revenue Recovery Act. It is further submitted that such a certificate can be issued in view of the provisions of the Public Accountants' Defaults Act, 1850. A perusal of sections 3 and 4 of the said Act would show that the petitioner was a Public Accountant, within the

definition as contained therein and as such he was proceeded against for the recovery of loss or defalcation committed by him for its recovery as arrears of land revenue". In reply to the above amendment, the petitioner emphatically denied that he was incharge of Accounts and Establishment.

5. From the abovesaid allegations contained in the petition and return, it is clear that it was an admitted position between the parties that the petitioner had been during the relevant period working as a Lower Division Clerk in the Land Diversion Office of the Collectorate. Durg, It was further an admitted position that as a Lower Division Clerk, it was one of the duties of the petitioner to prepare the pay bills of the staff and forward the said bills through the Officer-in-Charge to the District Nazir for submission to the Treasury. It was also an admitted position that it was the duty of the Nazir to draw the money and disburse the amounts to the employees concerned individually and that the petitioner was not authorised to do anything relating to the said matters.

6. The Public Accountants' Defaults Act, 1850, was enacted for better avoidance of loss through the default of public accountants. Section 1 of the said Act provides that every public accountant shall give security for due discharge of the trust of his office, and for due account of all the moneys, which shall come into his possession and control, by reason of his office. Section 2 of the said Act relates to the amount of security required to be given by a public accountant. Section 3 of the Act defines the term "Public Accountant" and states that, "for the purposes of sections 1 and 2 of this Act", the expression "Public Accountant" means any person who as Official Assignee or Trustee, or as a Sarvarahkar, is entrusted with the receipt, custody or control of any moneys or securities for money, or the management of any lands belonging to any other person or persons, and for the purposes of sections 4 and 5 of this Act, the expression shall also include any person who, by reason of any office held by him in the service of the Central Government or the Government of State, is entrusted with the receipt, custody or control of any moneys or securities for money, or the management of any lands belonging to such Government. Section 4 of the Act relates to prosecution of accountants and sureties and provides that the person or persons at the head of the office to which any public accountant belongs, may proceed against any such public accountant and his sureties for any loss or defalcation in his accounts as if the amount thereof were an arrear of land revenue due to the Government. Section 5 of the Act provides, that all Regulations and Act now or hereafter to be in force for the recovery of arrears of land-revenue due to Government, and for recovery of damages by any person wrongfully proceeded against for any such arrears shall apply, with such changes in the forms of procedure as are necessary to make them applicable to the case, to the proceedings against and by such public accountant.

7. In the present case, it is clear that the petitioner was neither an official assignee, nor a trustee, nor a Sarvarakar and as such, the first main clause of the definition of the term "Public Accountant" given in section 3 of the Public

Accountants" Defaults Act, 1850, was not applicable to him. The only question that remains to be considered is whether the petitioner could be said to be a person who, by reason of "any office held by him" in the service of the State Government, was entrusted with the receipt, custody or control of any money belonging to the State Government and was thus still a "Public Accountant" within the meaning of the second inclusive clause of the definition of the said term contained in section 3 for the purposes of sections 4 and 5 of the said Act. In the said connection, it is to be noted that the use of the phrase "any office held by him" in the clause in question indicates that there must be an office which exists independently of the holder of the office. See : Kanta Kathuria v. Manak Chand A I R 1979 S C 694. In the case of the petitioner, it was nowhere pointed out by the respondents that there was any "office" held by the petitioner. Again, the second requirement, as contained in the said definition clause was that by reason of the office held by him, the person concerned must be entrusted with the receipt, custody or control of any money. In the present case, it was an admitted position that the duties of the petitioner did not include receiving and handing of any money. It was further an admitted position that it was in fact the duty of the Nazir to present the bills in the Treasury, to draw the amount and disburse the same to the employees concerned individually and that the petitioner was not authorised to do anything as regards the said matters. In the abovesaid circumstances, when the petitioner was otherwise clearly not a person who was to be entrusted with the receipt, custody or control of any moneys, the unauthorised act of the Nazir concerned of handing over the moneys illegally to the petitioner for ulterior purposes could not constitute entrustment to the petitioner with the receipt, custody or control of the money, within the meaning of the abovesaid clause in the definition of the term "Public Accountant."

8. In Kundan Lal v. The Collector, Gurdaspur and others 71 Punj. LR 749 where a similar question had arisen, a Single Bench of the Punjab High Court (R.S. Narula, J., as he then was), has to say this about the interpretation of the relevant part of the definition of the term "Public Accountant" contained in section 3 of the Public Accountants' Defaults Act, 1850.

.....It was, however, contended that if the petitioner had contrary to the requirements of the duties of his office, actually received money and embezzled it, he should be deemed to have been a "public accountant" within the meaning of section 3 of the Act. I have not been able to agree with this contention. The scheme of the Act shows that its specific provisions are intended to apply to only "Government servants" who are expected to come into possession or control of money by reason of their office. It cannot, for example, be successfully urged that if a peon of a Government treasury receives from intended depositors the amounts which are expected to be put in the treasury, he should be deemed to be a "public accountant" within the meaning of section 3 of the Act, merely because he is a public servant and did actually receive the amounts.....

The view taken by me above for holding that the petitioner, in the facts and

circumstances of the case, could not be said to be a "Public Accountant" within the meaning of the abovesaid Act, finds support from the abovesaid decision of the Punjab High Court.

9. It may be stated that a mere vague statement made by the respondents in the amended reply to ground B of the petition to the effect that the petitioner was incharge of accounts and establishment does not have any effect on the conclusion reached by me above. In order that the petitioner could be said to be covered by the relevant clause of the definition of the term "Public Accountant" given in the Act, it was necessary for the respondents to specify not only as to what "office" was held by the petitioner but also to state as to how by reason of the said office, the petitioner was entrusted with the receipt, custody or control of any moneys belonging to the State Government. The particulars in the said regard are meaningfully lacking in the abovesaid statement of the respondents.

10. I, therefore, respectfully differing from my learned brother, Malik, J. find that the petitioner was not a "Public Accountant" within the meaning of Public Accountants" Defaults Act, 1850 and, therefore, no proceedings for recovering the alleged amount of loss or defalcation in the accounts could be taken against him as an arrear of land revenue due to the State Government u/s 4 of the said Act.

11. While parting I may make it clear that in case the allegations made by the respondents against the petitioner in their return are true, the respondents are not precluded from taking appropriate action against the petitioner under the relevant provisions of the civil and penal laws, which provisions are also quite sufficient to protect the financial interest of the respondents, if any, during the pendency of such action.

12. However, as already stated above, I agree with my learned brother, Malik, J., that in view of the assurance given by the learned Government Advocate, the petition in question has become unnecessary at this stage and it is as such liable to be dismissed with no order as to costs.