
(1967) 12 PAT CK 0011
In the Patna High Court
Case No : S.A. No. 244 of 1963

Examiner of Local Accounts and Another	APPELLANT
Vs	
Sitaram Rungta	RESPONDENT

Date of Decision : 19-12-1967

Acts Referred:

Constitution of India, 1950 — Article 244
Government of India Act, 1935 — Section 92

Citation : (1968) 16 BLJR 530 : (1968) 1 PLJR 85

Hon'ble Judges : Ramratna Singh, J; Anwar Ahmad, J

Bench : Division Bench

Judgement

Ramratna Singh and Anwar Ahmad, JJ.—The facts giving rise to this appeal are these: The plaintiff respondent was the Vice Chairman of the Chaibassa Municipality from the 10th November, 1945 to 31st January, 1951. The accounts of the Municipality were audited some times after that under the Bihar and Orissa Local Fund Audit Act, 1925 (Bihar and Orissa Act 11 of 1925). The Auditor submitted a report (Ext. B) to the Examiner of Local Accounts, Bihar, at Ranchi (Appellant No. 1) stating that the Municipality had suffered a loss of Rs. 961/- and odd being arrears of taxes due, which became time barred on account of the negligence of the plaintiff while he was acting as Vice Chairman. The Examiner of Local Accounts served a notice (Ext. B/2) on him u/s 9(2)(b) of the said Act to show cause within a month as to why the said amount should not be recovered from him and credited to the Chaibassa Municipality Fund. The plaintiff respondent showed cause in writing through a letter dated the 22nd June, 1951 (Ext. B/I). The relevant portion of this document reads as follows:

That out of the total amount of Rs. 961/8/6 mentioned above a sum of Rs. 151/2/9 has already been realised and credited to Municipal fund and the balance is also being gradually realised.

That in this connection it may be noted that these amounts are accumulation of several years and realisation are being made from back dues. It would appear

from the Resolutions of the meetings and other records that proper warning was given to the Tax Daroga and Collecting Sarkars for realisation and there has been no negligence whatsoever on my part.

I would therefore, request that the surcharge notice issued against me may kindly be withdrawn. The cause shown by the plaintiff-respondent was rejected by the Examiner of Local Accounts and then the plaintiff preferred an appeal to the State Government u/s 11 of the said Act. With reference to the appeal, the Examiner of Local Accounts submitted to the State Government that out of Rs. 961/- and odd, and sum of Rs. 388/8/- had been realised by the end of October, 1955. In August, 1957, the Minister-In-charge of the Local Self Government, Bihar passed the following order on the plaintiff's petition of appeal dated the 28th November, 1954:

Shri S.R. Rungta, Ex-Vice-Chairman of Chaibassa Municipality has preferred an appeal against surcharge-order No. 82 of 1954-55 for recovery of Rs. 961/8/6 lost by the Board on account of time barred taxes. He has contended that he warned the Tax Daroga and the Collecting Sarkars for realisation of the dues and, if no coercive measures were taken, it was because of the fact that there was hardly any chance of success of legal processes.

The function of an executive head does not cease in merely warning the Tax Daroga and the Collecting Sarkars, but on seeing that no loss is caused to the Municipal fund by the negligence on the part of his subordinates, which he has, sufficiently, been empowered to deal with. It is also hardly tenable to argue that the dues could not have been realised by adhering to the coercive measures. He should have implemented the measures provided for in the Bihar and Orissa Municipal Act, 1922 for the realisation of the taxes within the period, they have not become time-barred.

The appeal, is, therefore, disallowed with the modification that the surcharge amount of Rs. 961/8/6 is reduced by Rs. 415/11/- which has since been realised. Thereafter the Examiner of Local Accounts issued requisition to the Collector of Singhbhum at Chaibassa (appellant No. 2) for the recovery of the amount of Rs. 545/13/9. A certificate proceeding was started thereafter at Chaibassa. The plaintiff preferred an objection before the Certificate Officer u/s 9 of the Bihar and Orissa Public Demands Recovery Act, but the same was rejected; and an appeal from the order of rejection was disallowed by the Additional Deputy Commissioner. Thereafter the suit out of which this appeal arises was instituted.

2. The learned Munsif found that major portion of Rs. 545/- and odd had since been realised and he found that the plaintiff was liable to pay only the balance amount of Rs. 187/11/-; and the suit was decreed in part accordingly. The plaintiff preferred an appeal against the judgment and decree of the learned Munsif and the learned Subordinate Judge of Chaibassa allowed the appeal and decreed the suit in full. He found that there was negligence or misconduct on the part of the plaintiff on account of which the Chaibassa Municipality suffered loss

in respect of the arrears of taxes which had become time barred; but at the same time he also found that the aforesaid Act of 1925 was not applicable in the District of Singhbhum during the relevant period and, therefore, the order of surcharge by the Examiner of Local Accounts and the order on appeal by the State Government were invalid and not binding on the plaintiff. He also took the view that the jurisdiction of the Civil Court was not barred, inasmuch as the plaintiff had not been given an opportunity to be heard by the Examiner of Local Accounts or by the appellate authority. Hence, the defendants of the suit preferred this appeal.

3. Mr. Lal Narain Sinha, who appeared for the appellants, did not challenge the findings of the trial court. The appellants are also satisfied with the findings that the plaintiff respondent is liable to pay only Rs. 187/11/- after realisation of the remaining amount out of the total amount for which the proceeding had been started. But Mr. Sinha challenged two findings of the lower appellate court on account of which the suit has been decreed in full by that court. These two findings are:

(1). The Act of 1925 was not applicable to Chaibassa during the relevant period.

(2). Principle of natural justice has been violated, inasmuch as the plaintiff had not been given proper opportunity to be heard by the Examiner of Local Accounts or by the Appellate authority.

4. The first finding of the court of appeal below is based on his finding that a notification applying the Act of 1925 to Chaibassa was necessary under the Scheduled District Act 1874, which was repealed some time in 1937 by the (Adaptation of Indian Laws) Order made under the Government of India Act, 1935. In other words, the court of appeal was of the view that a notification under the Act of 1874 applying the Act of 1925 was essential before action could be taken under the Act of 1925. Having heard learned Counsel for both sides, we are unable to agree with the court of appeal below. The preamble of the Scheduled District Act reads as follows:

"Whereas various parts of British India have never been brought within or have from time to time been removed from the operation of the general Acts and Regulations and the jurisdiction of the ordinary Courts of Judicature;

And whereas doubts have arisen in some cases as to which Acts or Regulations are in force in such parts, and in other cases as to what are the boundaries of such parts; And whereas among such parts are the territories specified in the first schedule hereto annexed, and it is expedient to provide readier means than now exist for ascertaining the enactments in force in such territories and the boundaries thereof, and for administering the law therein;

And whereas it is expedient to declare that certain Acts are in force in a tract of land lying between the Railway Station at Satna and eastern boundary of the Jabalpur Division.

It will appear from the preamble that the purpose of the Act was (a) to remove a doubt about applicability of the then existing enactments to certain tracts known as scheduled district (vide Section 1 of the Act), and (b) where an enactment: did not apply to a particular area, the Act of 1874 contained a power to make such enactments applicable to that area. In other words, there was no rule of interpretation in this Act like Section 92 of the Government of India Act, 1935, or Article 244 of the Constitution of India. Section 92 of the Government of India Act, 1935 laid down that no Act of the Central Legislature or Provincial Legislature made under that Act would apply to an excluded area or a partially excluded area, unless there were a notification to that effect by the Governor of the Province in which that area was situated. Article 244 of the Constitution of India read with the fifth and sixth schedules thereto contains provisions for the administration of Scheduled Areas and Tribal areas and laws applicable thereto. It may be mentioned here that certain backward areas were notified under Act of 1935 as excluded or partially excluded areas; and these expressions were omitted from the Constitution and instead certain areas were notified as scheduled areas and tribal areas after the commencement of the Constitution. In the Government of India Act, 1919, none of these expressions occurred, but Section 15 thereof spoke of backward areas". Section 3 of the Act of 1874 provides for a declaration regarding the applicability or otherwise of enactments by a notification in the Gazette apparently for the information of those affected thereby. Section 5 provides for extension to any of the Scheduled Districts or to any part of any District by a notification, of any enactment in force for the time being in any part of British India at the date of such extension. It is manifest from the foregoing provisions that, so far as enactments made after the commencement of the 1874 Act are concerned, it is really a question of interpreting the language of the particular enactment in question in order to find out the area of its operation. Section 1(2) of the Act of 1925 clearly provides that it extends to the whole of Bihar and Orissa including Santhal Parganas. The language is, therefore, clear that this Act applies to all the area included in the State of Bihar.

6. This is the contention of Mr. Lal Narain Sinha and it is supported not only by the language of the enactments mentioned earlier but also by two decisions, namely, Chakrapani (Counter-petitioner No. 1), Petitioner v. (Varahamma Petitioner) Respondent ILR 1895 Mad. 227, The Collector of Vizagapatam Vs. Krishna Chandra Kharasudha Patnaik and Others and The President, Agency District Borad and Another, . In the first case, the question was whether the Guardian and Wards Act, 1890, was in force in the Scheduled District of Vizagapatam, although no notification to that effect had been made under the Scheduled Districts Act. The answer given by the Bench of the Madras High Court was that the Act of 1890 was in force in that area as well even in the absence of such a notification. This decision was followed by a Full Bench of the Madras High Court in the second case, where again the question was whether the Indian Stamp Act of 1899 applied to the District of Vizagapatam even though there had

been no notification applying the same to that District under the Act of 1874. It was held that the Scheduled Districts Act did not apply to Acts of the Indian Legislature passed after that Act. No authority could be cited by Mr. J.C. Sinha on behalf of the respondent in support of the view that a notification under the Scheduled Districts Act of 1874 was necessary for the application of the Act of 1925 to Chaibassa. He did cite a decision, namely, in the matter of the petition of Padma Dat Joshi ILR All 348. But he had to concede during the argument that this decision of the Allahabad High Court is absolutely of no assistance in deciding the question before us.

7. We, therefore, agree with Mr. Lal Narain Sinha that no notification was necessary for the application of the provisions of the Act of 1925 to Chaibassa. Alternatively, Mr. Lal Narain Sinha argued that if a notification is necessary under the Act of 1874, a notification referred to in the judgments of the Court below may be construed as one under the Act of 1874. This is a Government of Bihar Finance Department Notification No. 171 F.R. dated the 21st May, 1925, published in the Gazette of Bihar by which the then Government of Bihar and Orissa declared that the accounts of the Municipalities and the District and Local Bodies constituted under the different Acts in the then province of Bihar and Orissa shall be subject to audit under the Act of 1925. This notification was in the exercise of the powers conferred by Section 3 of the Act of 1925. Mr. Sinha relied on a well known principle that the provision of law under which the power is purported to have been exercised is not material and, even though the provisions of law stated may be wrong, the power will be deemed to have been exercised under the appropriate provisions of law; and therefore, this notification shall be deemed to have been issued in exercise of the relevant power contained in the scheduled Districts Act. It is, however, not necessary for us to give any decision on this alternative argument, because we agree with Mr. Lal Narain Sinha that no notification under the Act of 1874 was necessary to apply the Act of 1925 to Chaibassa. It is, however remarkable that the Legislature has, by Section 3 of the 1925 Act, the provisions of which are not inconsistent with those contained in the Act of 1874, empowered the State Government" to declare by notification that the accounts of a local authority shall be subject to audit in all respect provided by or under the Act of 1925, and further that any provision in any other enactment inconsistent with or repugnant to the provisions of this Act or of any rule made thereunder shall to the extent of such inconsistency or repugnance, be deemed to have been repealed by this Act. The findings of the court of appeal below that a notification under the Act of 1874 is necessary in this case is therefore, set aside.

8. Regarding the second question, it is clear from the provisions of the Act of 1925 read with the aforesaid notification of the Finance Department that the accounts of the Chaibassa Municipality were liable to be audited. It is admitted that the accounts were in fact audited in respect of the period during which the respondent was a Vice Chairman of the Municipality. It is further admitted that on receipt of the Audit report the Examiner of Local Accounts gave the

respondent opportunity to show cause against the proposed surcharge as required by Section 9 of the Act of 1925 and the respondent did show cause in writing. He preferred an appeal u/s 11 of the Act against the order of the Examiner of Local Accounts and the State Government dismissed the appeal, subject to certain modification in the amount to be surcharged from him. He was, therefore, given sufficient opportunity to show cause at both the stages against the proposal for and order of, surcharge from him. Mr. J.C. Sinha could not cite any authority to support his contention that an oral hearing ought to have been given to the respondent by the Examiner of Local Accounts or the appellate authority in compliance with the principle of natural justice. He, however, submitted that the respondent ought to have been given an effective opportunity and that the opportunity given by the Examiner of Local Accounts, the written cause shown by him and the appeal preferred by him to the Government did not amount to an effective opportunity. We, however, unable to agree with him, because the respondent could have given all materials in support of his contention in the written cause shown by him to the Examiner of Local Accounts or even at a later stage in the petition of appeal filed by him before the Government. It is a fact that he could show in the present suit that a major portion of the amount surcharged had been realised; but there was nothing to prevent him from placing these materials or mentioning these materials in the written cause shown by him or in the petition of appeal. It was not a case where the Examiner of Local Accounts relied on any evidence or material not available in the records of the municipality. No witness was examined by him, nor the respondent offered to examine any witness or produce any documentary evidence. In such a case, therefore, the oral hearing of the respondent was not necessary for an effective opportunity. A decision cited by Mr. Sinha, namely, *Dhakeshwari Cotton Mills Ltd. v. Commissioner of Income Tax, West Bengal* AIR 1955 S.C. 65 is of no assistance, as the facts of that case were completely different. It was held by this Court in *Sheopujan Choudhury Vs. State of Bihar and Others*, that on the question whether a fair opportunity has been given, no general test can be formulated which would be applicable to all conditions. There is, however, authority for the view that, the principle would be satisfied, if the statute provides for an appeal to higher authority, or for making any formal representation to the authority before the order becomes finally operative. It was also observed that it is not a correct proposition to say that the principle of natural justice includes necessarily the right to oral hearing in every case; rather the principle only means that the party affected should be given sufficient opportunity to meet the case against him and not that he is necessarily entitled to an oral hearing. In the instant case, we are satisfied that the respondent was given sufficient opportunity to meet the proposal for surcharge and the principle of natural justice was not violated at all.

9. In view of the aforesaid findings, the judgment and decree of the court of appeal below are set aside and those of the trial court are restored. Parties will bear their own costs of this Court as also the cost of the court of appeal below.