(1970) 01 J&K CK 0002

In the Jammu And Kashmir High Court

Case No : Writ Petitions Nos. 108 and 109 of 1969

Harnam Singh, Khizan Chand APPELLANT

Vs

State of J&K and others RESPONDENT

Date of Decision : 27-01-1970

Acts Referred:

Jammu and Kashmir Land Revenue Act, 1996 — Section 90

Citation : AIR 1971 J&K 48 : (1971) KashLJ 1

Hon'ble Judges : Mian Jalal-Ud-Din, J

Bench : Single Bench

Advocate : R.S.Mehta, Amar Chand , Advocates appearing for the Parties

Judgement

(1) These two writ petitions have been posted for admission and raise common questions of fact and law,

(2) The petitioner in both the cases are mule operators and work for carrying goods from Kishtwar to the interior parts of Tehsil Kishtwar. They

have averred in their petitions that they whenever required by the Tehsildar Kishtwar, transport food grains on their flock of mules to the interior

parts of the Tehsil. The food grains were delivered by them at the fixed destination against payment of agreed freight. The Director Food and

Supplies purportedly acting under section 90 of the Land Revenue Act certified by the impugned order that amounts were due from the petitioners

for the cost of bags of wheat allegedly not delivered by the petitioners at the destination. The said order, however, does not refer to the period of

time when the alleged nondelivery took place; that no notice, whatsoever, was given to the petitioners for explaining their cases by the said

Director before determining the liability of the petitioners to pay the amount and before the issue of the certificates under Section 90 of the Land

Revenue Act The petitioners did deliver the food grains at the destination against payment of freight. The petitioners have challenged impugned

order and also the vires of Section 90 of the Act on the following grounds :

(a) That the said section confers an arbitrary power in the executive.

(b) That the said Act in general and Section 90 in particular prescribe no reasonable machinery for determination and fixation of liability before the

issue of a recovery certificate.

(c) That even if the impugned section is held intravires and implied limitation must be read in the exercise of the power in the sense that before

certifying the liability, all relevant considerations must be taken into account by the authorities and that a reasonable opportunity of explaining the

case may be given to the person asked to pay the amount.

(d) The Director of supplies has no jurisdiction to certify the amount recoverable under the Land Revenue Act. Therefore the proceedings are

without jurisdiction and

(e) In point of fact the alleged liability of the petitioners is based on no evidence. The books showing the alleged amount against the petitioners

have been tampered with.

(3) A notice was issued to the respondents to show cause as to why the petition be not admitted. In obedience to the said notice the Add.

Advocate General appeared on behalf of the respondents and he has contested the question of admission of the writ petition. As the matter

involved in both the petitions is identical therefore this single judgment will dispose both of them.

(4) Elaborate arguments were advanced on both sides relating to the question of maintainability and the admission of the writ petition.

(5) Learned counsel for the petitioners has in his arguments reiterated the grounds which have been urged by the petitioners in the writ petitions. It

is submitted that Section 90 of the Land Revenue Act gives an unfettered discretion to the authority to effect recoveries as arrears of Land revenue

and confers an arbitrary power in the executive in this behalf. That the Section envisages the employment of a coercive machinery for arbitrary

determination and fixation of liability,that the principles of natural justice have been violated in as much as no opportunity was given to the petitioners to explain their position before the impugned certificates were issued by the Director, that the certificate does not specify any date when

the amount was due and the Director of Supplies is not a competent authority to issue the impugned certificates and therefore the entire

proceedings are without jurisdiction. Further, no rules under Section 137 of the Land Revenue Act have been framed in this behalf In support of

the arguments advanced by the counsel for the petitioners reliance is placed en AIR 1969 Gujrat 349 As against this the learned Addl. Advocate

General has submitted that Section 90 of the Land Revenue Act does not confer any unfettered discretion on the authority, nor it be assumed that

the authority empowered to issue a certificate under the said Section would act arbitrary in the matter Section 90 is not ultra vires of the

Constitution. It is further submitted that these points have already been decided by a Division Bench of this court in a case reported as AIR 1969

J&K 52 (Abdul Samad Pandit Versus State). The Director of Food and Supplies is the competent authority to issue the certificates as under

KASHMIR BOOK OF FINANCIAL POWERS. These powers have been delegated to him by the Government. Therefore he is the person

empowered to act under Section 90 of the Land Revenue Act. It is also submitted that the petitioners were asked by means of a notice to make

payments which shows that the Director, Food and Supplies gave them time to answer the notice and o pay the amounts in questions and when

they failed to make payments, certificates were issued in terms of Section 90 of the Act. Under Section 72 of the Land Revenue Act the petitioners

have got a remedy to bring a suit against the Government in case they dispute their liability to pay the amount.

(6) I have considered the respective arguments of the learned counsel for the parties.

(7) The question whether Section 90 of the Jammu and Kashmir Land Revenue Act, (hereinafter called 'the Act') offends any of the provisions of

the Constitution was considered at length in AIR '69 (supra) and it was held by a Division Bench of this court that the said section did not violate

any of the provisions of the Constitution. Their Lordships proceeded to observe in that case that the demand on account of the arrears being in the

nature of public demand and its expedious realisations being necessary in the public interest, the provisions, for recovery of the 1 demand were based on intelligible deferential or reasonable classification having a clear nexus to the object sought to be obtained This authority furnishes

complete answer to the question raised at the bar regarding the, constitutional validity of Section 90 of the Act. I am therefore, unable to subscribe

to the view propounded by the learned counsel for the petitioners that Section 90 of the Act is ultra vires or confers an arbitrary power on the

authority.

(8) The next argument of the learned counsel for the petitioners is that even if section 90 of the Act is held intra vires an implied limitation must be

read in the Section that no certificate for the recovery could be issued unless an opportunity was given to the petitioners to explain their position.

This would be consistent with the principles of natural Justice which is germane to all the Acts passed, by the legislature. Because no opportunity

was afforded to the petitioners in this behalf, therefore the entire proceedings suffer from legal infirmity and the order of recovery is bad in law.

Reliance is placed on A. I. R. 1969 Gujrat (Supra) In order to appreciate the argument it is necessary to examine the language of Section 90 of the

Act and also the character of the order which is to be passed in terms of this section. In my opinion there is nothing in the Section which warrants

the adoption of the view that an opportunity is to be given to the person sought to be proceeded against to explain his position There is no

obligation cast on the authorities empowered to afford an opportunity to the defaulter to explain his position, before issuing a notice in terms of the

said section. Section 90 of the Act reads as follows.

An officer whose duty it is under any law or rule having the force of law to realize a sum of money and the same is lawfully recoverable as an

arrear of land revenue may request an Assistant Collector of the firt class under whose jurisdiction the person from whom it is recoverable resides

or holds any property to realize the same as arrears of land revenue. With such request such officer shall forward to the Assistant Collector a

Certificate showing the correct amount due upto the date of such certificate,

(9) These provisions do not envisage that the officer whose duty it is to realize the shortages has to embark upon any enquiry.

(10) Even assuming that an intention is to be read in the Section that a notice is necessary to be given, it is not, however, denied in the case that no

notice was sent to the petitioners to make payments. The very impugned certificates show that notices were sent to the petitioners. From this it

follows that an opportunity was given to the petitioners to make payment, and sending of notices before issuing of certificate implies that the

petitioners were called upon to appear and explain their position. The impugned certificate itself shows that notices were sent to the petitioners and

they were called upon to make payment, but they did nothing in this behalf. There upon proceedings under Section 90 of the Act were resorted to.

(1) It may be stated here that mere issuing of certificates and the realisation of the arrears does not put a seal on the claim of the petitioners to

dispute their liability to pay the amounts. They have got a remedy open under the law to bring a suit against the Government for recovering the

same. Thus they have got a remedy available under the law.

(12) Again, under Kashmir Book of Financial powers, Second Edition (1967) the Director of Food and Supplies Department has the power to

make recoveries from persons concerned on account of shortages in food grains (vide page 98 serial No 29 of the said book). Thus it is clear that

the' Director is the person empowered under Section 90 to issue certificates and it cannot, therefore, be said that the certificates have been issued

by an officer without jurisdiction.

(13) The question that no amount is due from the petitioners cannot be gone into in these proceedings as they are merely disputed facts which

cannot be gone into in these writ petitions.

(14) The result is that the petitions cannot be admitted. They are here by dismissed.

