(1981) 08 PAT CK 0012

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 610 of 1978

Kanhaiyalal Dabriwala APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 18-08-1981

Acts Referred:

Bihar and Orissa Public Demands Recovery Act, 1914 — Section 5, 5(2)

Citation : (1983) 54 CompCas 258 : (1982) PLJR 257

Hon'ble Judges : M.P. Varma, J;B.P. Singha, J

Bench : Division Bench

Advocate : G.C. Bharuka, Navaniti Prasad Singh, A.K. Jain and B.K. Bariar, for the Appellant; B.P. Gupta and B.N. Gupta, for the Respondent

Judgement

1. This is an application under Articles 226 and 227 of the Constitution for issuance of a writ of certiorari quashing a certificate proceeding including the requisitions as contained in annexs. 1, 2, 3, 5 and 6 and also for quashing the order contained in annex. 8. The short facts leading to this applicacation are as follows:

2. Under an agreement dated November 24, 1970, the petitioner took a loan of Rs. 40,000 from the United Commercial Bank, Jogbani Branch, for the purpose of setting up an industry. The mill could not be properly and profitably run, but the petitioner made certain payments towards the loan between September 11, 1970, and July 21, 1971. He received legal notice dated April 15, 1975, for repayment of the entire dues from the bank. It appears that the bank sent a requisition under the Bihar and Orissa Public Demands Recovery Act, 1974 (hereinafter referred to as "the Act"), on December 17, 1975, on the basis of which a Certificate Case No. 184/U. BaDk/75-76 was registered. This requisition was sent to the Certificate Officer, Purnea. As the jurisdiction over the case was that of the Certificate Officer, Araria, the requisition was transferred to Araria Court wherein again another written requisition addressed to the Certificate Officer, Araria, in Form I of Schdule 2 of the Rules was filed and another

certificate case seems to have been registered bearing Certificate Case No. 184/ U Bank/75-76

3. ---- ---------------- for the same dues. The petitioner was served with a notice and be filed certain objections challenging the authority of the bank to realise the loan in question under the provisions of the Act. Ultimately, it appears that the plants and machineries of the petitioner''s mill were attached and by an order dated November 18, 1976, it was directed to issue notice to effect auction sale of the attached properties. However, on an application made by the petitioner, the Certificate Officer heard the parties and by his order dated December 18, 1976, he rejected the objections of the petitioner. Some other steps seem to have been taken on behalf of the petitioner to which we are not concerned. Ultimately, the petitioner filed an application before the Collector which was registered as Certificate Revision Case No. 248 of 1977-78. The respondent-Collector by his order dated March 4, 1978, dismissed the petition with an observation that the petitioner should first deposit 40 per cent, of the dues and then come up in appeal when his objections could be properly taken into consideration. The main objections which were taken by the petitioner before the Collector were that the bank was required to pay court-fee in accordance with the provisions of Section 5 of the Act. The other objection was that the requisition should have been in Form 2 instead of Form 1. On the second question the learned Collector found in favour of the petitioner that the requisition should have been in Form 2 and not in Form 1. But on the first question the learned Collector found against the petitioner and held that the loans advanced by the bank after the nationalisation became public demands and were payable to the Government and, therefore, court fee was not necessary to be paid.

4. The records of this case were called for and after perusing the same, Mr. Bharuka, learned counsel appearing on behalf of the petitioner, did not pursue the question regarding the filing of the requisition in Form 1 or 2. It is, therefore, not necessary to go into that question.

5. Mr. Bharuka strongly submitted that the dues of a nationalised bank cannot become public demands and are not payable to the Collector and, therefore, the bank must pay court-fee before the certificate proceeding can proceed. Section 5 of the Act provides that when any public demand payable to any person other than the Collector is due, such person may send to the Certificate Officer a written requisition in the prescribed form. Sub-section (2) of Section 5 provides that in such cases court-fee shall have to be paid. It reads as follows :

"Every such requisition shall be signed and verified in the prescribed manner, and, except in such cases as may be prescribed, shall be chargeable with a fee of the amount which would be payable under the Court-fees Act, 1870, in respect of a plaint for the recovery of a sum of money equal to that stated in the requisition as being due".

6. It is clear that every requisition made u/s 5 of the Act except in such cases

where it is exempted shall be chargeable with fee of the amount which would have been payable under the Court-fees Act in respect of a plaint for the recovery of a sum of money. From the notes appended to Section 5 of the Act it will appear that requisition made in respect of public demands payable to Government shall not be chargeable with any court-fee. The Collector seems to have taken the view that after the banks were nationalised, the loans advanced by them became public demands and are payable to the Government. The learned Collector was entirely wrong in taking this view. The loans advanced by the nationalised banks cannot be said to be payable to the Government. The banks are corporate bodies and are not departments of the Government and, therefore, the loans advanced by them cannot be said to be payable to the Government. Learned counsel appearing on behalf of the State also submitted that such loans advanced by the backs cannot be said to "be payable to the Government and for realisation of such loans court-fee must be paid. Learned counsel appearing on behalf of the bank also could not dispute this proposition. In such a situation, we hold that in the present case, where the requisition is by a bank, the certificate proceedings cannot proceed unless the court-fee has been paid in accordance with the provisions of Section 5(2) of the Act. It has not been shown to us that there is any exemption granted to this bank from payment of court-fee.

7. In view of the stand taken by learned counsel appearing on behalf of the petitioner in respect of the requisition, we do not consider that annexs. 1, 2, 3, 5 and 6 can be quashed. We, however, quash that part of the order contained in annex. 8 by which the learned Collector has held that the court-fee is not necessary to be paid in the present case. In our opinion, the certificate proceeding before the Certificate Officer, Araria, cannot proceed unless the court-fee is paid in accordance with law subject to the limitation, if any.

8. This application is accordingly disposed of. There shall be no order as to costs.