
(1954) 03 CAL CK 0019
In the Calcutta High Court
Case No : Civil Revision Case No. 654 of 1953

Lt. Col. D.N. Bhattacharya	Vs	APPELLANT
Union of India (UOI)		RESPONDENT

Date of Decision : 04-03-1954

Acts Referred:

Constitution of India, 1950 — Article 227
General Clauses Act, 1897 — Section 3(10)
Income Tax Act, 1922 — Section 34, 46(2), 46(5), 48(2)
Public Demands Recovery Act — Section 37, 7, 9

Citation : (1956) 1 ILR (Cal) 242

Hon'ble Judges : Lahiri, J; Guha, J

Bench : Division Bench

Advocate : Jyotish Chandra Pal, for the Appellant; Balai Lal Pal, for the Respondent

Judgement

Lahiri, J.—This Rule has been obtained by the Petitioner under Article 227 of the Constitution of India, for quashing a certificate proceeding pending against him before the Certificate Officer, 24-Pargamds for the realisation of unpaid income tax on the ground that the proceeding is void an initio.

2. The facts which are not disputed may be briefly stated as follows. The Petitioner was assessed on an income of Rs. 27,162 for the year 1946-1947. Subsequently, this assessment was re-opened u/s 34 of the Indian income tax Act, and he was assessed on an income of Rs. 7,46,476 and his tax liability was determined at Rs. 6,53,638 and odd. The Petitioner filed an appeal against this assessment which is said to be still pending. On May 25, 1951, the income tax Officer acting u/s 46(2) of the Indian income tax Act forwarded a certificate to the Collector of 2A-Pargands specifying the amount due from the Petitioner and, on the basis of the certificate thus forwarded, a proceeding under the Public Demands Recovery Act was started against the Petitioner by the Certificate Officer, 24-Pargands. The notice u/s 7 of the Public Demands Recovery Act was served on the Petitioner on July 11, 1951, and on August 14, 1951, the Petitioner

filed an objection challenging the validity of the certificate. The Petitioner's objection is that the certificate u/s 46(2) of the Indian income tax Act should have been forwarded to the Collector of Calcutta and not to the Collector of 24-Pargands and as in the present case the certificate was forwarded to the Collector of 24-Pargands, the proceeding started by him is without jurisdiction. The objection of the Petitioner has been overruled by the authorities below and against those orders the Petitioner has obtained the present Rule.

3. Mr. Jyotish Chandra Pal, appearing in support of the Rule, has argued that the word "Collector" in Section 46(2) of the Indian income tax Act means the Collector of the place where the default is made and as in the present case the default was admittedly made in Calcutta, the certificate should have been forwarded to the Collector of Calcutta. Reference has also been made to Section 3(10) of the Indian General Clauses Act which provides that the Collector of the Presidency town of Calcutta means the Collector of Calcutta. Section 48(2) of the Indian income tax Act does not specify to which Collector the income tax Officer is to forward the certificate. It has, however, been held in the case of the Secretary of State for India in Council v. Syed Sadek Reza (1940) 44 C.W.N. 901, decided by Nasim Ali and Rau, JJ., that the jurisdiction of the Certificate Officer does not depend upon the situation of the property of the certificate debtor but upon the place where the demand is payable. This being a decision of a Division Bench is binding on us. As in the present case the demand was admittedly payable in Calcutta, there can be no doubt that it was the Collector of Calcutta who had jurisdiction of receive the certificate u/s 46(5) of the Indian income tax Act.

4. The next question is whether the proceeding has become invalid by reason of the fact that the certificate was forwarded to the Collector of 24-Pargands. It appears that by a notification, dated May 31, 1875, published in the Calcutta Gazette on June 9, 1875, the Collector of 24-Pargands was appointed to be the ex officio Collector of Calcutta. The exact language of the notification is as follows: "The 31st May 1875.-The Collector "of the 24-Parganas is appointed to be ex officio Collector of "Calcutta." The plain meaning of this notification, in our opinion, is that the Collector of the 24-Parganas is, by virtue of his office, authorised to function as the Collector of Calcutta. The certificate u/s 46(2) of the Indian income tax Act in the present case was forwarded "to the Collector 24-Parganas. "Alipore." As under the notification quoted above, the Collector of 24-Parganas was, by virtue of his office, authorised to function as the Collector of Calcutta, we think that the Collector of 24-Parganas had jurisdiction to receive the certificate forwarded to him as Collector of Calcutta. We cannot hold that simply because in the certificate the Collector of 24-Parganas was not also described as the Collector of Calcutta, he had no jurisdiction to receive the certificate. The plain meaning of the expression "ex officio" is "by virtue of his office".

5. In our opinion, therefore, the Collector of 24-Parganas, as such, had

jurisdiction to receive the certificate in his capacity as the Collector of Calcutta. The view which we have taken of the effect of this notification receives some support from the decision of this Court in the case of Hari Charan Singh v. Chandra Kumar Dey ILR (1907) Cal. 787, 806. At p. 806, Woodroffe, J., makes the following observation:

Secondly, it is said that the Certificate Officer of 24-Parganas had no jurisdiction as regards immovable property in Calcutta. This, however, is not so as the Collector of 24-Parganas is ex officio Collector of Calcutta.

6. This decision was affirmed on appeal by MacLean, C.J., sitting with Harington and Fletcher, JJ., in Hari Charan Singh v. Chandra Kumar Dey ILR (1907) Cal. 286. So, both upon a plain reading of the notification, as well as upon authorities, we hold that the Collector of 24-Parganas had jurisdiction to receive the certificate which was forwarded to him in the present case by the income tax Officer u/s 46(2) of the Indian income tax Act.

7. Mr. Jyotish Chandra Pal, appearing in support of the Rule, has relied upon the decision of the Supreme Court in the case of Commissioner of Agricultural Income Tax, Bengal Vs. Sri Keshab Chandra Mandal, , which lays down that if a return under the Bengal Agricultural income tax Act is not signed by the Assessee himself but by somebody acting on his behalf, that is not a proper signature and the return containing such a signature is not a valid return under the Act. In our opinion, this decision has no bearing upon the point which arises for our consideration in this case. In the present case, we have to consider the effect of the notification by which the Collector of 24-Parganas was appointed ex officio Collector of Calcutta and the decision relied upon by Mr. Pal affords no guidance on that point. We are, therefore, unable to accept the point urged before us by Mr. Jyotish Chandra Pal in support of the Rule.

8. Mr. Jyotish Chandra Pal also relied upon the decision of this Court in the case of Manindra Nath Mwkherji v. Saraswati Dasi ILR (1890) Cal. 125, 129, for the proposition that if a Deputy Collector is appointed to discharge the functions of a Collector he may not be the Collector of the district. At p. 129 of the Report their Lordships made the following observation:

...to gazette an officer to perform the functions of a Collector under Bengal Act VII of 1880 will not make him the Collector of the district as required by Section 7. It may make him a Collector or one of the Collectors of the district but it will not make him the Collector of the district which expression evidently refers to the officer specially appointed and gazetted by the Lieutenant-Governor to act as such.

9. It appears from this part of the judgment that the question in every case will have to be decided upon the terms of appointment of the particular officer. If in the case before us the Collector of 24-Parganas had been appointed by notification to perform the functions of the Collector of Calcutta it might probably have been said that the officer to whom the certificate should have been

forwarded was the Collector of 24-Parganas acting as the Collector of Calcutta, but having regard to the terms of appointment in the present case, we do not think that it was necessary for the income tax Officer to describe the Collector of 24-Parganas as the Collector of Calcutta because the Collector of 24-Parganas was, by virtue of his own office, performing the functions of the Collector of Calcutta.

10. Mr. Balai Lal Pal, appearing on behalf of the opposite party, raised a point to the effect that the application filed by the Petitioner before the Certificate Officer challenging the validity of the certificate is also barred by limitation. This point though not raised before the Certificate Officer and the Additional Collector on appeal was raised before the Commissioner of the Presidency Division and accepted by him. Mr. Balai Lal Pal's argument is that the application which was filed by the Petitioner challenging the jurisdiction of the Collector of 24-Parganas to receive the certificate was really an application u/s 9 of the Public Demands Recovery Act and as such it is barred by the special rule of limitation of thirty days provided for in that section. Mr. Jyotish Chandra Pal, on the other hand, contends that the application filed by the Petitioner was not one u/s 9 of the Public Demands of Recovery Act but u/s 37 of the said Act. Although in view of our decision on the main point raised on behalf of the Petitioner it is not necessary for us to go into this question, we may observe that the application u/s 9 of the Public Demands Recovery Act must be an application denying the liability of the certificate debtor in whole or in part whereas the application u/s 37 may relate to the making, execution, discharge or satisfaction of a certificate. In the case before us, it is to be noticed that the Petitioner does not raise the question that he is not liable to pay the whole or any part of the demand but he challenges the jurisdiction of the Collector of 24-Parganas to receive the certificate and to start a certificate proceeding against. Such an application, in our opinion, seems to relate to the making of a certificate within the meaning of Section 37 of the Public Demands Recovery Act and not to the question of the liability of the Petitioner. For this reason, we are unable to accept the argument of Mr. Balai Lal Pal to the effect that the application filed by the Petitioner is barred by limitation.

11. For these reasons, we think that the decision arrived at by the authorities below is right and this Rule is discharged with costs.

Guha, J.

12. I agree.