
(2006) 11 PAT CK 0112
In the Patna High Court
Case No : C.W.J.C. No. 11950/06

Md. Abu Hasnain

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 28-11-2006

Acts Referred:

Bihar and Orissa Public Demands Recovery Act, 1914 — Section 10, 14, 15, 40, 7
Constitution of India, 1950 — Article 14, 19, 21, 300A

Citation : (2007) 1 BLJR 290 : (2007) 1 PLJR 797

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Advocate : K.K. Sinha, Partha Sarthy, for the Appellant; S.C. 17, for the Respondent

Final Decision : Allowed

Judgement

Navaniti Pd. Singh, J.—Heard.

2. This case shows the bizzare state of affairs prevailing at certain levels in the State and unfortunately caused by executive who though love to accept responsibility but hate to execute it responsibly.

3. The present writ application has been filed for quashing the detention of the petitioner in civil prison pursuant to the warrant issued on 2.8.2006 by the Certificate Officer, Barh (Patna) in Certificate Case No. 2 of 2006-2007 instituted at the behest of the Punjab National Bank, Barh and for release of the petitioner from civil prison to enable him to file his objection to the certificate proceedings which in law he is entitled to do.

4. Heard Shri Partha Sarthy, learned Counsel in support of the writ application and Shri Amanullah, learned S.C. 17 appearing for the State. No one appears for respondent No. 3-Punjab National Bank though the name of their counsel Shri Sunil Kumar Singh No. 1 appear who has been served with a copy of the writ application.

5. The short point raised that certificate proceedings were initiated by the Punjab National Bank, Barh, against the petitioner and was registered on 10.6.2006. Notice was directed to be issued in this regard as contemplated by Section 7 of the Public Demands Recovery Act, 1914(hereinafter referred to as "the Act"). The copy of the notice with service report has been annexed as Annexure 2.

6. The service report shows that the notice was served on the brother of the petitioner on 16.7.2006. Learned Counsel for the State states that probably the notice was served on the petitioner witnessed by his brother.

7. Be that as it may, it cannot be disputed that the notice was not served prior to 16.7.2006. u/s 9 of the Act, a certificate debtor has one month's time statutorily to file his objection and, therefore, he had time at least up to 16.8.2006 to file his objection. The Certificate Officer notes in his order dated 14.7.2006 that the service report of notice not received. On the next date i.e. 2.8.2006 he notes that the service report has been received, but the certificate debtor is not present, the requisitioning Bank is present and mechanically then proceeded to issue the distress warrant and post the case for 14.8.2006. Immediately thereafter the petitioner is arrested and on 14.8.2006 produced before the Certificate Officer. The petitioner's prayer for release is refused and he is remanded to civil custody by order dated 14.8.2006. It is this action that is challenged in the present proceedings.

8. From the facts stated it would be seen that in law, the petitioner had time at least up to 15.8.2006 to file his objection throwing the statutory provisions to wind, therefore, taken into custody in a most mechanical, unlawful and illegal manner even before the said date. This is clearly a case of illegal detention and shows the high handedness of the Certificate Officer.

9. This Court has repeatedly held that resort to detention though available in law has to be taken as a last resort as it has severe manifestations. Some of those decisions are: Ashok Kumar Singh Vs. The State of Bihar and 2 Ors. , a Division Bench judgment of this Court, and a recent decision in the case of Dasharath Sharma Vs. The State of Bihar and Others, .

10. Noticing the aforesaid fact in order dated 27.9.2006 this Court has noted that Court would proceed against the Certificate Officer for disregard to law and as directed counter affidavit to be filed on behalf of the Certificate Officer, in question, and the respondent-bank.

11. A counter affidavit has been filed on behalf of the Certificate. Officer and the Bank.

12. It is admitted that it is on 10.6.2006 that notices were issued in the certificate proceedings. It is further admitted that it is on 16.7.2006 that the process server finally served the notices. It is said that as the notices had been served on 16.7.2006 and on the next date i.e. 2.8.2006 none appeared. Therefore, immediately distress warrants were issued in the name of the

petitioner, who was then arrested and produced before the Certificate Court on 14.8.2006 by village Choukidar and as he did not deposit any amount he was remanded to Barh jail.

13. The question, therefore, is firstly whether the action of the Certificate Officer in issuing distress warrant and getting the petitioner arrested can be said to be in accordance with law or is a clear abuse of process of court and authority and secondly, whether there was any legal justification for issuing distress warrant and warrant of arrest immediately on the date when the Certificate Officer expected the petitioner to appear.

14. In order to deal with the first issue I have indicated the dates above. The provisions of the Act are unambiguous. Section 9 of the Act is quoted hereunder:

9. Filing of petition denying liability.- (1) The certificate-debtor may, within thirty days from the service of the notice required by Section 7, or where the notice has not been duly served then within thirty days from the execution of any process for enforcing the certificate, present to the Certificate Officer in whose office the certificate is filed or to the Certificate Officer who is executing the certificate, a petition, in the prescribed form, signed and verified in the prescribed manner, denying his liability in whole or in part.

15. A reference to the said Section would clearly show that the objection has to be filed within thirty days from service of notice. This provision is plain in simple english and is unambiguous. There cannot be any confusion in any mind if he read the same as to its import, yet the Certificate Officer appears to be a law unto himself and took a front as to why a person did not appear. Without waiting any further he then issued distress warrant. It would, therefore, be clear that distress warrant was issued in even less time than one month time statutorily provided u/s 9. The service report further reveals that the service report of notice clearly mentions that the petitioner had received notices but it was got signed by his brother. To my mind, such a service report ought not to have been accepted as we are dealing with a serious matter. No application was filed by any one showing any jointness between the petitioner and his brother. The petitioner admittedly did not sign the notice anywhere. The process server did not file any affidavit in support of the service, yet it was blindly accepted as validly served.

16. In that view of the matter I have no option but to hold that issuance of distress warrants even before one month period as expired from service of notice (validity of which is challenged but not being gone into) was clearly in conflict with the statutory provision aforesaid and is abuse of power and authority. It has been held repeatedly by judgments from the Privy Council to the Federal Court to the Apex Court and to this Court in relation to this Public Demand Recovery Act that the provisions are stringent and with very serious consequences and therefore, unscrupulously compliance of statutory provision is required. It is virtually an ex parte decree put in execution. I need not dwell upon the various cases where for various reasons like improper signature of Certificate Officer or

absence of signature or date in the requisition, wrong form used and such other things, this Court has held the proceedings itself to be void. The reason what is for unscrupulous adherence to the procedure is because that was only safeguard available to a person proceeded against. The present case would show the total disregard to the procedure established by law. This, in my view, is clear case of abuse of authority for which in the counter affidavit on behalf of the Certificate Officer neither any justification has been given nor any regret shown.

17. It is high time when this Court strictly enforcing accountability amongst the executive. In the case of Common Cause A Registered Society Vs. Union of India and others, their Lordships have held thus:

... It is high time that the public servants should be held personally responsible under the Constitution for their mala fide acts in the discharge of their functions as public servants. This Court in Lucknow Development Authority v. M.K. Gupta, approved "Misfeasance in public officers" as a part of the Law of Tort. Public Servants may be liable in damages for malicious, deliberate or injurious wrongdoing.

... No public servant can say "you may set aside an order on the ground of malafide but you cannot hold me personally liable". No public servant can arrogate to himself the power to act in a manner which is arbitrary.

18. I, therefore, hold the Certificate Officer to be personally liable for illegal detention of the petitioner and direct that the State should pay a cost of Rs. 20,000/- (twenty thousand) to the petitioner within one month.

19. Coming to the question of issuance of distress warrant in straightway as a consequence of certificate debtor not appearing I find that there is no justification for such an action under the law again.

20. Law clearly provides that once a certificate is issued and objection decided in terms of Section 10 of the Act then the certificate has to be put in execution in terms of Section 14 of the Act. The mode and manner in execution is specified in Section 15 of the Act.

15. Modes of execution.- Subject to such conditions and limitations as may be prescribed, a Certificate Officer may order execution of a certificate-

(a) by attachment, and sale, if necessary, of any property, or, in the case of immovable property, by sale without previous attachment, or

(b) by arresting the certificate-debtor and detaining him in civil prison, or

(c) by both of the methods mentioned in Clauses (a) and (b).

21. It would be seen that from Section 15 it appears that one of the modes of execution is by arresting certificate-debtor and detaining him in civil prison but that is not the only mode. When first provided is that the certificate is to be executed by attachment and sale, if necessary, of any property, or in the case of

immovable property by sale without previous attachment thereof. A reference to the statutory rules framed therein would show that what is intended is that it is only after failing to get any response by way of attachment or otherwise, the provision of detention could be invoked.

22. I say this because statutory rules as framed under the Act would show this. Even when he wants to arrest i.e. issuance of distress warrant/body warrant Rule 53 give a discretion on the Certificate Officer but before issuing warrant for the arrest of certificate debtor the Certificate Officer may issue a notice calling upon him to appear before the Certificate Officer and show cause why he should not be committed to prison. This is minimal the safeguard that is available to a citizen against otherwise extra ordinary power.

23. Further in a civilized society in my view no person can be committed to prison for failing to pay his civil debts merely because he is unable to pay his civil debts. If that be the import of Section 15 and Act which was made almost 100 years back then clearly that provision is ultra vires the provision of Constitution. In my view, that is not the position. The power to arrest and commit to a person to civil prison in a proceeding under Public Demand Recovery Act can only be resorted, as a preventive measure that is if the Certificate Court is satisfied that the certificate-debtor is taking action to defraud the creditor and in defiance to the injunction as contained in Section 8 of the Act is trying to sale property or hide property to defeat the creditor then he can be detained but merely because a person is unable to pay his civil debts he cannot be imprisoned. This view of my is further substantiated by provision of Section 40 of the Act which clearly provides that no detention in civil prison can be authorised for a period of more than six months. To my mind it clearly shows that in any event a certificate debtor is imprisoned for six months still if he is unable to pay debts he then cannot be imprisoned. He could be imprisoned if he violates law. Failure to pay debts is not violation of law. It is violation of an agreement. This Court, as noticed above, has repeatedly held that the executives are abusing the provisions and I may only add that end does not always justifying the means. May be by these highly arbitrary action the recovery may increase but that in a democratic society governed by rule of law cannot be countenance at least by this Court. Articles 14, 19, 21 and 300A are still part of the Constitution. No executive authority, at all, high and mighty is above law.

24. I, therefore, hold that issuance of distress warrant itself was clearly abuse of process of court but as for illegal order of detention a compensation has already been awarded no further compensation need be awarded for this illegal unauthorised action.

25. This writ application is allowed in terms aforesaid.