
(1988) 07 GAU CK 0019
In the Gauhati High Court
Case No : Civil Rule No. 148 of 1978

Md.Anwarulla

APPELLANT

Vs

Assam Board of Revenue & Others

RESPONDENT

Date of Decision : 28-07-1988

Acts Referred:

Bengal Public Demands Recovery Act, 1913 — Section 3(vi)
Constitution of India, 1950 — Article 226, 226

Citation : (1988) 2 GLR 424

Hon'ble Judges : B.L.Hansaria, J and S.N.Phukan, J

Bench : Division Bench

Advocate : K.Sarma, J.Singh, C.K.S.Barua, B.N.Sarma, Advocates appearing for Parties

Judgement

Hansaria, J.—A proceeding under the Bengal Public Demand Recovery Act, 1913, hereinafter referred to as the Act, was initiated against the petitioner to realise a sum of Rs. 61,103. 25 which was said to be outstanding on account of incomplete work done by the petitioner. The contractual work with which the proceeding is related was undertaken sometime in 1966 and the aforesaid amount was said to be payable to the Superintending Engineer, Public Works Department. A certificate proceeding under the Act however came to be drawn up sometime in 1977 After notice of certificate proceeding was received by the petitioner, one of the points urged was that the alleged demand was not a "public demand" within the meaning of the Act. This is one of the specific pleas taken in the objection which was filed before the Certificate Officer vide Annexure4. The Certificate Officer, however, did not decide this point vide his order passed on 14. 7. 77. This led the petitioner to approach the learned Assam Board of Revenue under section 51 of the Act. The learned Board has also not dealt with this point in the impugned judgment. Hence, the approach to this Court under Article 226 of the Constitution.

2. Shri Sarma appearing for the petitioner has contended that the certificate

Officer had no jurisdiction at all to entertain the matter inasmuch as the demand in question cannot be regarded as "public demand" within the meaning of the Act which has defined "public demand" in its section 3(vi) to mean "any arrear of money mentioned or referred to in Schedule I.. "Reference to the Schedule shows that the only para which can be attracted, as fairly admitted by Shri Singh, is para 9 which reads :

"Any money payable to an officer of the Government or any local authority, in respect of which the person liable to pay the same has agreed, by a written instrument duly registered that it shall be recoverable as a public demand."

3. There is no material before us at all to show that the requirements of para 9 are satisfied in the present case inasmuch as (1) there is no written instrument; (2) duly registered and stating: (3) that the money payable shall be recoverable as a public demand. In fact, there is no written agreement at all between the parties. This being the position, we are satisfied that the amount in question, even if the same has remained payable to the Superintending Engineer, Public Works Department, cannot be regarded as a "public demand" as defined in the Act.

4. Shri Singh contends that even if the aforesaid be the position, the petitioner's only remedy was to approach the Civil Court to get the certificate cancelled or modified as visualised by section 34 of the Act. Sri Sarma has however contended that approach to civil court was not permissible to raise the aforesaid point inasmuch as by virtue of what has been stated in section 35 of the Act, the Certificate could not have been cancelled on the aforesaid ground. To appreciate this submission, we may note section 35 of the Act.

"35. Grounds for cancellation or modification of certificate by Court.

(1) No certificate duly filed under this Act shall be cancelled by a Civil Court, except on one of the following grounds, namely :

(a) that the amount stated in the certificate actually paid or discharged before the signing of the certificate;

(b) that no part of the amount stated in the certificate was due by the certificate debtor to the certificate holder ; or

(c) that, in case of fines imposed, or costs, charges, expenses, damages, duties or fees adjudged, by a Collector or a public officer under any law or any rule having the force of law, the proceedings of such Collector or public officer were not in substantial conformity with the provisions of such law or rule, and that in consequence the certificate debtor suffered substantial injury from some error, defect or irregularity in such proceedings.

(2) No certificate duly filed under this Act shall be modified by a Civil Court, except on one of the following grounds, namely :

(i) that a portion of the alleged debts was not due : or

(ii) that the certificate debtor has not received credit for any portion which he has paid.

(3) Nothing contained in this section shall interfere with the ordinary original jurisdiction of the High Court of Assam or with the jurisdiction of the Calcutta Court of Small Causes."

The aforesaid provisions of law clearly bears out the submission of Shri Sarma. We may also point out that section 35(3) has not interfered with the ordinary original jurisdiction of this Court in entertaining an application of the present nature, as the payment in question cannot be regarded as public demand and as approach to the Civil Court would have yielded no fruits in view of what has been stated in section 35 of the Act. We are, therefore, of the clear opinion that the learned Certificate Officer had no jurisdiction to proceed with the recovery and we further state that there was no bar in the petitioner's approaching this Court contending that the Certificate Officer had no jurisdiction to entertain the matter.

5. In view of what is stated above, the proceedings before the Certificate Officer is quashed and the petition is allowed.

6. Before parting with the records we may note the submission of Shri Singh that para 9 of the Schedule I needs amendment. It is for the lawmakers to decide this aspect of the matter and if they feel that to realise Government money the provisions of the Act are required to be pressed into service, it would be open to the legislature to take such action as deemed fit and proper by it. We may also state that it would be open to the Government to approach the Civil Court to realise the amount in question subject to any objection regarding limitation. If and when Civil Court would be approached by the Government, it would also examine the question of condoning the delay, if any.