

(1962) 11 AHC CK 0021

In the Allahabad High Court

Case No : Civil Revision No. 1099 of 1957 against an order of the District Judge of Kumaun in Civil Suit No. 46 of 1952, allowing an application of the Income Tax officer and directing payment into the Treasury of a sum lying in deposit in the court

PREM BALLABH KHULBE

APPELLANT

Vs

Income Tax OFFICER, A-WARD, BAREILLY.

RESPONDENT

Date of Decision : 08-11-1962

Acts Referred:

Constitution of India, 1950 — Article 366, 372
Income Tax Act, 1961 — Section 46

Citation : (1964) 54 ITR 637

Final Decision : Dismissed

Judgement

This is a revision petition against the order of the District Judge, Kumaun, allowing the application of the Income Tax Officer, praying that the sum of Rs. 12,237-13-6 lying in deposit in the Government Treasury in respect of tax demands outstanding against the firm and the partners which far exceed the amount lying in deposit with the court.

A civil suit for rendition of accounts was filed in the court of the District Judge. A final decree was passed by the District Judge on the 30th November, 1955. Rs. 12,237-13-6 were lying in deposit in the court as a result of the sale of certain movable of the firm. It was held that each of the four partners of the firm was entitled to one-fourth share therein subject to the claim of the Income Tax department and the sales tax department against the firm. It was further ordered that, inasmuch as the claims of the taxing departments far exceeded the deposit in court, no party to the suit shall be allowed to withdraw any part of the deposit till the claim of the taxing department is either withdrawn or reduced. Thereupon, the Income Tax Officer, A-Ward, Bareilly, by means of two letters, one dated 11th December, 1956, and the other dated 19th February, 1957, applied to the District Judge praying that the sum of Rs. 12,237-13-6 lying in deposit in the court be deposited in the Government Treasury towards the

payment of Income Tax dues against the parties to the suit.

Notices were issued to all the parties to show cause why the prayer made by the Income Tax Officer be not granted. There was no objection from the judgment-debtor but the plaintiff-decree holder objected on the ground that section 46 of the Income Tax Act, 1922, required that the recovery should be made through the Collector and, in present case, as the demand had been made directly by the Income Tax Officer concerned it could not be entertained. The District Judge found as a fact that the claim for Income Tax against the four partners of the firm far exceeded the amount lying in deposit in the court to the credit of the parties to the suit and that there was no allegation or suggestion by any party that the Income Tax assessment was under appeal or likely to be reduced. The learned District Judge rejected the contention holding that the normal procedure was that the Income Tax dues were to be realised as arrears of land revenue through the Collector, vide section 46(2) of the Income Tax Act, but in view of section 46(5A) it was open to the Income Tax Officer not to proceed through the Collector but to serve the court with a written notice to pay the money lying in deposit in court into the Government Treasury. In the result he directed the amount lying in despite with the request made by the Income Tax Officer. Hence this revision.

Mr. Jagdish Swarup, learned Counsel for the petitioner, has contended, firstly, that the provisions of section 46(5A) have no application as the court is not a person to whom the Income Tax Officer can issue a notice under sub-section (5A) of section 46. Secondly, that the provisions of the Explanation to section 46(7) referred to any other law for the time being in force relating to the recovery of debts due to the Government and there was, according to him, no other law in force other than that provided in section 46 and as such a mere application to a court to pay the amount of the assessee lying with it was invalid and, lastly, that the Government had, after the coming into force of the Constitution of India, no priority in respect of its debts and unless the Government obtained a decree the provisions of Order 21 of the CPC could not come into play.

The contentions cannot be acceded to. The modes and time of recovery provided in section 46 are by no means exhaustive. Section 46(2) enables the Income Tax Officer to forward to the Collector a certificate under his signature specifying the amount of arrears due from an assessee and the Collector on receipt of such certificate shall proceed to recover from such assessee the amounts specified as if it were an arrear of land revenue and the proviso thereto enables the Collector apart from the provisions of the Land Revenue Act and the Revenue Recovery Act to have all the powers of a civil court in the execution of decrees for the purpose of the recovery of the amount due as tax. The material portion of the Explanation to sub-clause (7) of section 46 runs as follows :

".... and for the removal of doubts it is hereby declared that the several modes of recovery specified in this section are neither mutually exclusive, nor affect in any

way any other law for the time being in force relating to the recovery of debts due to Government, and it shall be lawful for the Income Tax Officer, if for any special reasons to be recorded he so thinks fit, to have recourse to any such mode of recovery notwithstanding that the tax due is being recovered from an assessee by any other mode."

The Explanation, therefore, makes the position perfectly clear that upon an assessment having been made and a demand created, a debt undoubtedly comes into existence and becomes due to the Government, and in such a case the Government is not bound to act under the provisions of section 46 for the recovery of the tax due it is still open to it to have recourse to any other mode of recovery open to it under the law.

The next question, which arises in this connection is whether it is open to the Government to make an application to a court which has some moneys belonging to the assessee, who is in default, lying with it and whether the court can on such an application deposit the money in the Government Treasury on the request of the Income Tax Officer. This question came up for consideration before a Full Bench of the Madras High Court in the case of *Manickam Chettiar v. Income Tax Officer*. That was a case which had come in before a single judge by way of revision and as the question was one of importance it was referred to a Full Bench. Two questions referred were :

"(1) Whether the Governments claim was entitled to a priority ?

(2) Whether as a matter of procedure the petition by the income tax Officer to the civil court was sustainable ?"

The learned Chief Justice who delivered the leading judgment of the Bench took the view that section 46 did not impose a bar to an application being made to a civil court which had moneys of the assessee lying with it. The argument that the provisions of the CPC required that a decree should first be obtained before attachment of execution could be claimed was repelled on the ground that the argument ignored the special position of the Crown, the special circumstances and the courts inherent powers. As the Crown had priority in payment of debts due to it, it was entitled to a prior payment over all unsecured creditors and, therefore, he saw no reason why the Crown should not be allowed to apply to the court for an order directing its debt to be paid out of the money in court belonging to the debtor without having to file a suit. To ask the Crown to file a suit in such circumstances would be a sheer waste of time of the parties and the court. It was further laid down that the inherent powers of the court could be invoked for the making of such an application a petition of this nature.

The Bombay High Court in *Governor-General in Council v. Chhotalal Shivdas* followed the Madras Full Bench. Reference was also made to section 73(3) of the Council Procedure Code which provides that nothing in that section affects any right of the Government and by necessary implication there was an express and the court in whose hands any assets of the debtor are lying is bound as a court

of equity and justice to respect the priority of the Government if it is brought to its notice. It was held :

"There is nothing in the CPC to prevent the court from treating any letter of request as an application to further substantial justice and from exercising the inherent powers vested in it to do what is just and right. As the priority is there, I do not think any technical irregularity, if any, in making the claim should come in the way of the courts discharge of its duty."

Some doubt appears to have been entertained by Chakravarti C.J. in Builders Supply Corporation v. Union of India in regard to the correctness of the decision of the Madras High Court, but the question was not going into as it was unnecessary for the purposes of that case. There are, therefore, decisions of two courts and there being no decision to the contrary, I would hold that the application submitted by the Income Tax Officer had rightly been entertained by the District Judge.

Mr. Jagdish Swarup did not cite any authority for the proposition that Government after the coming into force of the constitution of India had lost the priority in respect of its debts as against other unsecured creditors. There is, however, the aforesaid Calcutta case in Builders Supply Corporation, which has expressly dealt with this point. Before the Lordships of the Calcutta High Court the similar contention was disposed of thus :

"The only argument advanced in support of that contention was that the article 372(1) of the constitution was the only article by which all the law in force in the territory of India immediately before the commencement of the Constitution had been kept alive, but the definition of law in force as given in Explanation I to the article, or the definitions of assisting law in article 366(10), did not include any such principle. It is true that neither of the definitions covers a doctrine or principle of law which is not an enactment by any authority, but it ought not to be overlooked that the definitions are not exhaustive. All that they say is that the expression law in force in one case and existing law in the other shall include certain matters. The main provision of article 372(1), however, draws in all the law in force in India immediately before the commencement of the Constitution and quite obviously it covers all the laws in force in fact. I have already shown that the principle of priority of debts due to the state had been a part of the law uniformity current in India before the commencement of the constitution and I am therefore of opinion that the language of article 372(1) must be construed as having brought it over to India under the Constitution. It can hardly be said that the Crown's prerogative was a right personal to the Monarch who held the Crown and since the form of the present Government of India is not monarchical but republican there cannot possibly be any prerogative right, consistently with a Constitution which has an elected President at its head. This argument may plausibly be advanced under the provision contained in article 372(1) that the law previously in force shall continue to be so, subject to the other provision of this Constitution, and it may be said that the other

provisions of the Constitution and indeed, the whole concept underlying it militates against a theory of the head of the state enjoying prerogative rights. Such an argument would, in my view, be fallacious, because although the Crown's prerogative in England might have been a personal right in ancient theory and may historically have arisen out of the feudal character of the State organisation, there can be no doubt that it has since come to be equated with the rights enjoyed by the Government of the days as representing the State. The old Explanation of the Crown's priority, given in Coke on Littleton, is that it attaches to certain debts, because they are debts due to flow into the public treasury. The justification of the priority, therefore, is that the debts to which it attached feed and public funds and the reason why they are preferred to debts owed to private individuals is that the needs of the State are supreme and the necessity of keeping the State functioning is the first necessity of any organised society. This conception of the priority of State debts is equally valid in the case of State which are republican in form, because they also require funds to maintain themselves and to perform the high functions which are among the responsibilities of any State. I do not therefore think that the principle of the priority of State debts can be said to be repugnant to the provisions of our Constitutions. The principle must therefore be held to have crossed over the dividing line between Crown-rules and Republican India and become a part of the law of the latter."

I am in respectful agreement with the view so expressed. I would hold that the Government continued to have priority in respect of its debts as against other unsecured creditors.

For the reasons given above the petition is dismissed with costs.

Petition dismissed.