(1978) 04 PAT CK 0016

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No''s. 283 to 288 of 1974

Purtabpore Company Ltd. APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 04-04-1978

Acts Referred:
Constitution of India, 1950 — Article 226, 227

Citation : (1978) 26 BLJR 450

Hon'ble Judges : S.K. Jha, J;S. Ali Ahmad, J

Bench : Division Bench

Judgement

S.K. Jha and S. Ali Ahmad, JJ.—In all these applications under Articles 226 and 227 of the Constitution of India common questions of law on more of less similar facts are involved. Hence, this common judgment.

2. The grievance of the petitioners, a public Limited Company, is against the order of the Certificate Officer, Chapra (respondent No. 6) by which he has re-opened the certificate cases in all these applications after they had been struck off on satisfaction and such a re-opening at the instance of the Government Pleader of Chapra was for recovery of interest and costs, as provided in Section 17 of the Bihar and Orissa Public Demands Recovery Act, 1914 (hereinafter to be referred to as the ''Act''). The petitioner has, accordingly, prayed for issuance of appropriate writs/directions quashing the order of the Certificate Officer re-opening the certificate cases, details whereof shall be given hereinafter, as also the appellate order of the Additional Collector of Saran, (respondent No. 5) exercising the powers of the Collector (respondent No. 4), the revisional order of the Commissioner (respondent No. 3) and the ultimate order of the Member, Board of Revenue (respondent No. 2), all of whom had affirmed the course adopted by the Certificate Officer. The impugned orders of the Certificate Officer in all these cases are those dated 20-1-1970 (annexure 5 in C.WJ.C. No. 286 of 1974) those of the Additional Collector in appeal dated 7-9-1971 (annexure 6), the revisional orders of the Commissioner dated 30-8-1972 (annexure 7) and

those of the Member, Board of Revenue dated 25/26th September, 1973 (annexure 8). Annexures 5, 6, 7 and 8 of C.W.J.C. No. 286 of 1974 are the same as the impugned orders in all the other cases.

3. The relevant facts, short as they are, relating to these cases may be summed up thus. The petitioner, engaged in running a sugar factory, was admittedly liable to pay purchase tax on the price of sugarcane for various crushing seasons.

In pursuance of Rule 46-A of the Bihar Sugar Factories Control Rules, 1938, as amended by a Notification dated 3-7-1961, a copy whereof has been parked annexure 3 to C.W.J.C. No. 286 of 1974, the State Government (respondent No. 1) through the Cane Commissioner (respondent No. 1), who was the competent authority, granted instalments to the petitioner to facilitate the payment of the dues. Admittedly, Rule 46-A as amended by annexure 3, provides for the payment of interest at the rate of 61/4 per cent per annum in addition to the principal amount due if the occupier of a factory fails to pay the frincipal amount in the manner specified in the notification (annexure 3) which also provides for five equal monthly instalments for the payment of the half amount due if half amount had already been paid in one lump sum before the instalments fell due to be paid. The petitioner did pay the dues in accordance with the instalments granted. C.W.J.C. 283 of 1974 arises out of certificate case No. 13 of 1966-67 for the dues relating the month of March, 1966. The certificate case was filed by the State of Bihar through the Cane Inspector, Chapra in the court of the Certificate Officer on 11-7-1966 for payment of Rs. 29,707,82 paise. The whole amount was paid in instalments by 14th of September, 1966 without the intervention of the Certificate Officer. In C.W.J.C. No. 284 of 1974, which arises from certificate case No. 14 of 1966-67 for the month of April, 1966, the requisition was filed on 11-7-1966 for a sum of Rs. 21,922,84 paise dnd the entire dues were paid in instalments ending on 14-9-1966. In C.WJ.C. No. 285 of 1974 arising out of certificate case No. 4 of 1964-65 for the crushing season 1962-63 the certificate case was filed on 13-8-1964 for a sum of Rs. 1,55,496.27 paise and in C.WJ.C. No. 287 of 1974 arising out of certificate case No. 5 of 1964-65 for the crushing season 1961-62 a requisition was filed on the same date, i.e., 13-8-1964 for a sum of Rs. 82,745.64 paise. The total amount involved in C.WJ.C. Nos. 285 and 287 was thus a sum of Rs. 2,38,241.91 paise, the entire amount having been paid by 9-5-1969, again in instalments. C.WJ.C. No. 286 of 1974 arises out of certificate case No. 8 of 1968-69 for the crushing season 1967-68. The total dues were Rs. 68,162.46 paise but the requisition was filed only for a sum of Rs. 34,081.22 paise, the rest amount having already been paid before filing of the requisition in the certificate case, which had already been started on 19-5-1968. Out of the total of Rs. 68,162.46 paise, the petitioner started payment from 15-12-1967, i.e., before the certificate case was launched and the entire amount was liquidated in instalments by 12-9-1968. In C.W. J.C. No. 288 of 1974 arising out of certificate case No. 4 of 1967-68 for the crushing season 1966-67, the total dues were Rs. 89,141.09 paise out of which requisition was filed on 3-4-1967 for a sum of Rs. 44,570.55 paise only, the balance having already been paid earlier. This entire amount again was paid in instalments, the last instalment having been paid on 15-9-1967.

4. On these facts, when the requisitions were filed by the Cane Inspector, Chapra for the State of Bihar (respondent No. 1), notice was duly issued, as it appears from the original records which have been produced before us, to the petitioner u/s 7 of the Act. The petitioner filed an objection stating therein that it had already made the payments in accordance with the agreement with the State Government through its duly authorised officers and that, therefore, the initiation of the certificate cases was unwarranted and illegal. A report was thereupon called from the Cane Inspector, Chapra, who ultimately sent, after repeated reminders, a report on 27-6-1969 intimating to the Certificate Officer that the petitioner had already made payments in these cases. Accordingly, on 28-6-1969, the Certificate Officer, accepting the request of the requisitioning officer, namely, the Cane Inspector for withdrawing the cases struck off all these certificate cases from the records on the ground that the entire dues had already been paid as was reported by the Requisitioning Officer. On 28-7-1969, however, learned Government Pleader, Chapra filed an application for reviving the certificate cases for realisation of the interest and costs in accordance with the provisions of Section 17 of the Act. The Certificate Officer acceded to the request of the learned Government Pleader and reviewing his earlier order striking off all the certificate cases, restored them and directed the petitioner to pay the costs and interest in accordance with the provisions of Section 17. The fact that the Requisitioning Officer, namely, the Cane Inspector, Chapra had submitted a report with regard to the satisfaction of the entire dues is borne out by the order sheet dated 27-6-1969 and 28-6-1969, a copy whereof has been marked annexure 4 to C.W.J.C. No. 286. In all the other cases also similar is the position. Quite a number of points were raised by the petitioner in appeal before the learned Collector (Additional Collector) and in revision before the Commissioner and Member Board of Revenue. We need not, however, detain ourselves over all the points that were raised before the authorities below. Suffice it to say that these cases can be disposed of on two short points alone.

5. It is evident from the facts narrated above that the payments made by the petitioner in satisfaction of the dues were made in accordance with the agreement with the Cane Commissioner and the cases were ordered by the Certificate Officer to be struck off on satisfaction at the request of the Requisitioning Officer, namely, the Cane Inspector, Chapra, through whom the Certificate holder, State of Bihar, had filed the certificate cases. The first and foremost question in these cases is as to whether the provisions of Section 17 of the Act can be pressed into service on behalf of the respondents, as has been done by all the courts below.

It would be noticed from the provisions of the Act that Part III of it deals with execution of certificates. Section 12 of the Act lays down the person who may execute the certificate and provides that a certificate filed u/s 4 or 6 may be executed by the Certificate Officer in whose office the original certificate is filed or the Certificate Officer to whom a copy of the certificate is transmitted, in accordance with the provisions of Section 13, Section 14 of the Act deals with the stage when a certificate may be executed and it enjoins that no step in execution of a certificate shall be taken until the period of thirty days has elapsed since the date of the service of the notice required by Sections 7 and 11, or when a petition has been duly filed u/s 9, until such petition has been heard and determined. Section 14 is saddled with a proviso which is irrelevant for our purpose. Then comes Section 15 which lays down the modes of execution. It is pertinent to notice here the exhaustive modes of execution which have been enumerated in Section 15, which provides that subject to such conditions and limitation 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 cases 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). The explanation appended to Section 15(c) leaves sufficient discretion in the Certificate Officer to refuse execution at the same time against both the person and the property of the certificate debtor. Section 16, thereafter, deals with sales of revenue paying estates or any share therein with which we are not concerned. Then comes the most vital section for the purpose of the instant cases, namely, Section 17 which lays down:

17. Interest, costs and charges recoverable--There shall be recoverable, in the proceedings in execution of every certificate filed under this Act,-

(a) interest upon the public demand to which the certificate relates, at the rate of 61/4 per centum per annum from the date of the signing of the certificate up to the date of realisation,

(b) such costs as are directed to be paid u/s 54, and

(c) all charges incurred in respect of-

(i) the service of notice u/s 7 and of warrants and other processes, and

(ii) all other proceedings taken for realising the demand.

Looking to the language of Section 17 it is manifest that the mandatory provision of the payment of interest in Clause (a) and the charges incurred under different heads in Clause (c) and the discretionary award of costs as contemplated by Clause (b) of Section 17 read with Section 54 of the Act can come into play and the same shall be recoverable only in the proceedings in execution of a certificate filed under this Act. The basic question to ask in such cases is whether the recovery has been made in the proceedings for execution of such a certificate. Has the Certificate Officer executed the certificate or started a proceeding in execution thereof ? Has any step in execution of a certificate been taken ? Has any of the modes of execution as contemplated by Section 15 of the Act been resorted to ? If the answer to these questions be in the affirmative--cadit queastio--interest under Clause (a) and other charges under clause(c) must be awarded and recovered, whereas the costs as envisaged in Clause (b) of Section 17 read with Section 54 of the Act may in the discretion of the Certificate Officer be so awarded and recovered. If on the contrary the answer, to these questions be in the negative, then there is no proceeding in execution of a certificate in which the mandatory provision of recovery of interest under Clause (a) or charges described in Clause (c) or the discretionary award of costs under Clause (b) of Section 17 read with Section 54 of the Act can be enforced. As we have already noticed above, in the instant cases the petitioner in consequence of the agreement, or, even if it be without any agreement, between the State of Bihar and the petitioner, the petitioner had voluntarily made payments liquidating the entire principal dues before any step in execution pr the certificates cold be taken by the Certificate Officer.

And, that too at the request and on the report of the Requisitioning Officer, namely, the Cane Inspector, who had rightly given the certificate officer to understand that the entire dues had been already paid by the petitions c. In such circumstances, where no coercive measure by taking steps for execution of the certificate has been resorted to the provisions of Section 17 cannot come into play. Once, therefore, on the report and at the instance of the Requisitioning Officer if the certificate cases had been struck off on satisfaction, it was not open to the Certificate Officer to revive these cases merely for the purpose of compelling the petitioner to pay interest and costs as envisaged in Section 17. There was absolutely no justification in law for invoking the provisions of Section 17 of the Act for the purpose of restoring the certificate cases to their original files merely for the enforcement of payment of interest and costs under section17. This chain of reasoning also finds support from the provisions of Rule 23 of the Rules in Schedule II of the Act which, according to Section 47 of the Act, have the same force as if they had been enacted in the body of the Act until altered or annulled in accordance with the provisions of Part V. Rule 23 of Schedule II lays down the procedure for removal of attachment on satisfaction or cancellation of certificate and provides that where the amount due, with costs and all charges and expenses resulting from the attachment of any property or incurred in order to a sale, are paid to the Certificate Officer (underlining by us), or the certificate is cancelled, the attachment shall be deemed to be withdrawn. It would thus be seen that the payment of these dues is to be made to the Certificate Officer once a coercive procedure by way of execution of the certificate has started. Thus, the provision of Rule 23 lends support to what we have noticed earlier in the provisions proceeding Section 17 of Part III of the Act. The demand of interest and costs, therefore, in these cases was wholly illegal and without jurisdiction, and the Certificate Officer could not restore those cases merely for the purpose of payment of interest and costs.

6. There is yet another aspect of the matter which lends support to the petitioner''s cases. In all these cases the Requisitioning Officer, as already stated

earlier, was the Cane Inspector, Chapra, who had also signed the requisitions as representing the certificate-holder, namely, State of Bihar. If the agent namely, the Cane Inspector, was acting for his principal. State of Bihar, which was the certificate-holder, and had requested for the withdrawal of the certificate cases on satisfaction, in our view, ex facie it was not within the jurisdiction of the Certificate Officer to restore the certificate cases merely at the instance of the learned Government Pleader. The principal, namely, the State of Bihar, would be as much bound by the acts of its agent, namely, the Cane Inspector, as if the principal itself had withdrawn the cases on satisfaction. The letter of the Cane Inspector stating that the entire dues had been satisfied must be deemed to be an acknowledgment by the principal certificate-holder for whom the was, acting. If there had been any breach of confidence by the agent, that would have been, in appropriate cases, a matter between the principal and the agent. But, in the view that we have taken with regard to first point, these are not such a type of cases in which it can be said that the agent, namely, the Cane Inspector; had in any way acted in breach of confidence of his principal certificate holder the State of Bihar.

7. In the view that we have taken with regard to the aforesaid two questions of law, we do not think that it is necessary to go into the other questions pressed by Mr. S.R. Sanyaly learned Counsel of the petitioner.

8. In the result, herefore, all these applications succeed. They are, accordingly allowed and the impugned orders passed by the Certificate Officer (respondent No. 6) the Additional Collector (respondent No. 5), learned Commissioner (respondent No. 3) and learned Member, Board of Revenue (respondent No. 2) are quashed in all these cases and it is directed that further proceedings in the certificate cases shall no longer be taken. The pending certificate cases, out of which these writ applications arise, are quashed. In the circumstances of the case, however, we make no order as to costs.