(1988) 07 OHC CK 0027

In the Orissa High Court

Case No : O.J.C. No. 2501 of 1981

Sachindranath Das APPELLANT

Vs

Sales Tax Officer and Others RESPONDENT

Date of Decision : 06-07-1988

Acts Referred:
Constitution of India, 1950 — Article 227

Citation : (1988) 66 CLT 616 : (1989) 74 STC 93

Hon'ble Judges : V. Gopalaswamy, J;K.P. Mohapatra, J

Bench : Division Bench

Advocate : G.N. Mohapatra, for the Appellant; A.B. Misra, Standing Counsel (C.T.) and D.P. Sahu, for the Respondent

Final Decision : Dismissed

Judgement

K.P. Mohapatra, J.—The petitioner has challenged annexure 1, a requisition for certificate by opposite party No. 1, annexure 2, a certificate of public demand under the Orissa Public Demands Recovery Act, 1962 (hereinafter referred to as "the Act"), annexure 3, the appellate order passed by opposite party No. 4 and the review order passed by opposite party No. 1 in the certificate proceeding on 29th March, 1980.

2. Facts stated in the writ petition are narrated in brief. The petitioner was a registered dealer under the Orissa Sales Tax Act carrying on business of supply of machineries and equipments. He closed down his business by making an application to opposite party No. 1 on 4th September, 1972. To the best of his memory he had no sales tax dues outstanding on him. On 30th March, 1977 opposite party No. 1 submitted a requisition for certificate under the Act stating therein that a sum of Rs. 26,295.34 was outstanding against him as arrears of sales tax dues for quarters ending with 30th June, 1964 up to 30th September, 1972. On the basis of requisition a certificate proceeding was drawn up against him and a certificate of public demand (annexure 2) was drawn up by opposite party No. 3. It is averred that annexures 1 and 2 suffer from the following

defects :

(i) the requisition was vague and indefinite. It did not indicate details so as to enable opposite party No. 3 to apply his mind to form an opinion about the correctness of the demand.

(ii) in annexure 2, the Government of Orissa, opposite party No. 2, was described as the certificate-holder which was wrong and

(iii) the columns in annexure 2 were not properly filled in.

After receipt of the notice, the petitioner raised objections and denied his liability. On 15th March, 1979 opposite party No. 3 considered the objections and overruled them and finally on 14th September, 1979 issued a warrant of attachment of moveables belonging to the petitioner. He preferred an appeal which was dismissed by opposite party No. 4 on 21st November, 1979 as being barred by limitation. The petitioner thereafter again approached opposite party No. 3 by way of a petition for review, but on 29th March, 1980 opposite party No. 3 rejected the review petition and directed issuance of proclamation for sale of Immovable properties belonging to the petitioner. Thereafter, the petitioner filed O.J.C. No. 755 of 1980 in this Court which directed opposite party No. 4 to rehear the appeal which had been dismissed by order dated 21st November, 1979. Opposite party No. 4 reheard the appeal and by order (annexure 3) dismissed the same. Thereafter, notice (annexure 4) was served on the petitioner for payment of total dues of Rs. 36,841.57.

3. Opposite parties Nos. 2 to 4 in their counter-affidavit stated that the certificate proceeding was drawn up in accordance with law on the requisition of opposite party No. 1 (annexure 1). There was no manner of defect in drawing up the certificate of demand (annexure 2). The petitioner did not produce proof that arrears of sales tax dues were not outstanding against him and that he had cleared up the same. No part of the claim was barred by limitation. The petitioner cannot avoid payment of the amount demanded which is the revenue of the State Government.

4. At the outset I would dispose of a petition for amendment of the writ petition filed as late as on 24th June, 1988. The writ petition was filed on 20th October, 1981. The petition for amendment was filed almost seven years after. This apart, the facts sought to be introduced by the proposed amendment were argued which shall be dealt with. For these reasons, at this belated stage, I do not consider it expedient to allow the amendment petiton which is accordingly rejected.

5. Mr. G.N. Mohapatra, learned counsel appearing for the petitioner, contended that calculation of the certificate demand at Rs. 26,295.34 is an arithmetical mistake. The correct amount is Rs. 25,295.34. Further in the last but one paragraph of annexure 2 the blank has not been filled up by mentioning the amount sought to be recovered from the petitioner. As these were material

defects in the certificate of demand, it is liable to be quashed. In support of his contention he placed reliance on ILR (1958) Cut 315 (Mahadeblal Agarwalla v. Certificate Officer, Sonepur) 37 (1972) CLT 948 (Kapileswar Pradhan v. State of Orissa) 1974 (1) CWR 642 (Orissa Corporation Private Ltd. v. State of Orissa) and 65 (1988) CLT 505 (Bhagaban Charan Nayak v. State of Orissa). In the case of Mahadeblal Agarwalla ILR (1958) Cut 315 it was held that under the Bihar and Orissa Public Demands Recovery Act certain forms have been prescribed to be followed and conformed. These forms are not mere technicalities but are matters of substance. In that particular case the certificate-debtor was described differently in the copy of the certificate annexed to the notice and so it was held that on the face of it the defect was material irregularity. In the case of Kapileswar Pradhan 37 (1972) CLT 948 it was held that the certificate issued should always be in proper form and all particulars of the public demand should be clearly stated in it. In that particular case details of the demand raised were not clear and, therefore, the certificate was not sustained. In the case of Orissa Corporation Private Ltd. 1974 (1) CWR 642 it was held that proceedings under the Act are very strict in nature. Mistake in the form in regard to a material particular vitiates the proceeding. In the case of Bhagaban Charan Nayak 65 (1988) CLT 505 the legal proposition laid down in the case of Mahadeblal Agarwalla ILR (1958) Cut 315 and some other cases was reiterated. But in that case the certificate furnished by the Certificate Officer was defective because, it was not properly filled in by stating the amount due as well as the name of the person from whom the dues were to be realised. So, the certificate was quashed. There is no doubt that a certificate of demand is to be strictly construed. The form of the certificate must be duly and completely filled in without keeping any lacuna. If there will be any material defect in the certificate, it is liable to be quashed. In this case, however, I find no lacuna in the certificate (annexure 2) except the arithmetical error which in my considered opinion is not a material defect, because the amount of tax dues, the interest and penalty have been clearly and completely stated in the certificate itself. The certificate below annexure 2 also does not point to a material defect except the arithmetical error. The name of the certificate-debtor, namely, the petitioner, has also been correctly described. Arrears of sales tax dues being public revenue, the State Government of Orissa has been correctly described as the certificate creditor. Therefore, in the form and in substance there is no material defect in the certificate (annexure 2) so that it shall be liable to be quashed. The contentions of Mr. Mohapatra is, therefore, untenable.

6. Mr. Mohapatra next urged that the demand for first two or three quarters of the year 1964 was barred by limitation. This point was agitated before opposite party No. 4 and he has recorded a positive finding that no part of the demand was barred by limitation. It is to be remembered that this Court under Article 227 of the Constitution of India in its supervisory jurisdiction will not act as a court of appeal and will not interfere with the findings of fact of a court or tribunal unless it is palpably on the face of it perverse (see Mohd. Yunus Vs.

Mohd. Mustaqim and Others, . Mr. A.B. Misra, learned Standing Counsel for the Sales Tax Department, pointed out that on the face of it, the order of opposite party No. 4 cannot be said to be perverse and based on no material. In the aforesaid view of the matter, therefore, it is not possible to interfere with the order (annexure 3). The contention of Mr. Mohapatra has no force.

7. Before I close, I find it significant to note that the petitioner has produced no documents in order to satisfy the conscience of this Court that the sales tax dues are not outstanding. On the other hand, he has taken the vague and unsustainable plea that all papers pertaining to sales tax were destroyed in a flood in the year 1973. Such a plea cannot be entertained by this Court when called upon to exercise its extraordinary jurisdiction. On the other hand, the requisition (annexure 1) and the certificate of demand (annexure 2) are based on public records maintained in due course of official business which cannot be disbelieved without there being any material to the contrary. It is also to be emphasised that a person should not be allowed to avoid payment of the legitimate dues of Government which is public revenue on a vague and unsustainable plea.

8. For the aforesaid reasons, I do not find any material to interfere. The writ petition is accordingly dismissed. There shall be no order as to costs.

V. Gopalaswamy, J.

9. I agree.

