
(1960) 09 CAL CK 0024
In the Calcutta High Court

Satish Chandra Bhowmior

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 16-09-1960

Acts Referred:

Bengal Public Demands Recovery Act, 1913 — Section 10, 11, 14, 3(6), 38
Constitution of India, 1950 — Article 227

Citation : 65 CWN 324

Hon'ble Judges : Banerjee, J;Amaresh Roy, J

Bench : Division Bench

Advocate : Manindra Nath Ghosh and Probodh Kumar Das Gupta, for the Appellant; Balai Lal Pal, for the Respondent

Judgement

Amaresh Roy, J.—These three Rules were issued under Article 227 of the Constitution of India and they are directed against orders of the Board of Revenue, West Bengal, dismissing the petitioner's objection against the certificate proceedings and a common question of law regarding the validity of the certificate arises in each of the three cases. Civil Rule No. 2023 of 1960 arises out of a certificate proceeding for realisation of Rs. 11,597-11 as. as penalty imposed u/s 46(1) of the Income Tax Act for the year 1950-51 in respect of income in India and Pakistan and a certificate was purported to be signed for that amount but in the fourth column of the tabular statement of the certificate was mentioned only "section 46(1)" without giving any indication the section of which Act was meant. Upon the objections by the petitioner before us who was mentioned as the certificate-debtor before the Certificate Officer, that officer by his order dated the 21st December, 1957 overruled other objections of the petitioner but held that he was not in default in respect of Pakistan income and the income tax-officer was directed to specify the penalty imposed under the Indian Income Tax Act and the petitioner was directed to pay Rs. 1,000/- per month in the meantime. Against that order the petitioner took an appeal to the Commissioner, Presidency Division. That appeal was dismissed but the order of the certificate officer excluding the penalty in respect of Pakistan income was set

aside and the certificate officer was directed to amend the certificate by inserting the words "Indian Income Tax Act" after the figures "46(1)" and to issue fresh notice u/s 7 of the Public Demands Recovery Act. The petitioner then moved an application for revision u/s 53 of the Act before the Hon"ble Member, Board of Revenue. That application was rejected. Thereafter the petitioner moved this Court under Article 227 of the Constitution of India and obtained the Rule. The learned Advocate, Mr. Probodh Kumar Das Gupta, appearing for the petitioner before us attacked the validity of the certificate and also the legality of the certificate proceeding on three grounds. The first contention was that the purported certificate was in a form different from the form prescribed under the Bengal Public Demands Recovery Act and does not mention in the real certificate portion the amounts for which the certificate has been signed as is required by section 4 and the form prescribed under the Act. His second contention was that the tabular portion in form has not been filled in properly, giving the necessary particulars and, therefore, the certificate is not a proper certificate which can be executed under the Public Demands Recovery Act. His third contention was that in the notice u/s 7 the form prescribed by the Act requires the notice to be signed and issued on the day the certificate is filed in the office of the certificate officer and the form for such notices prescribed under the Act includes the words "this day" () in the text of the notice. The certificate officer has not complied with that requirement and has mutilated the form by scoring through the word in the Bengal form used by him and has signed the notice issued after correction of the certificate on a date different from the date of his filing the certificate.

2. In Rule No. 2024 a certificate was purported to have been signed and filed for recovery of Rs. 53,676-10as. as arrears of income tax and in respect of that also the proceedings before the certificate officer, the Commissioner of Presidency Division and the Board of Revenue took the similar course as in the other case and Mr. Prabodh Kumar Das Gupta appearing for the petitioner in this Rule complained of similar defects in the certificate and the notice u/s 7 of the Bengal Public Demands Recovery Act and also complained that the particulars that the demand was in respect of the tax imposed on alleged undisclosed income was not mentioned in the appropriate column in the tabular portion of the certificate.

3. In the Rule No. 4074 of 1959 the certificate was for realisation of Rs. 57,988/1 anna as income tax and supertax and the defects that were in the certificate and notice u/s 7 of the Bengal Public Demands Recovery Act were complained of by the learned Advocate Mr. Manindra Nath Ghose who appeared in support of this Rule. The questions that arise for decision in all the three cases are the same questions of law, regarding the jurisdiction of the certificate officer to execute in the certificate proceedings the certificate with such defects.

4. The main question is one of the fundamental importance and may be stated thus:

Can a certificate under the Bengal Public Demands Recovery Act which is not in form that has been prescribed under the rule-making powers given by that Act,

be executed under the Public Demands Recovery Act? Out of this question several ancillary questions have arisen and they are:-

(1) Has the administrative authorities power to alter the structure and condense the contents of the form prescribed by the Statutory Rules?

(2) Is the tabular part and the bottom portion both together, the "certificate" which is signed under sections 4 & 6 of the Act and executed u/s 11 of the Act, or the tabular portion is only the statements required to be given and the real certificate is what is contained under the tabular portion?

(3) What is the effect when any of the columns in the tabular portion is not filled in at all or when any of the columns is imperfectly or incompletely filled in or when the certificate portion does not mention the amount in figures but only refers to the amount mentioned overleaf?

(4) What is the force and effect of the words "this day" occurring in the form No. 3 for notice u/s 7 and what is the effect when the date of notice u/s 7 is not the same as the date of the certificate, copy of which is annexed to that notice?

5. To find answers to these questions it is necessary to advert to the provisions of Bengal Public Demands Recovery Act, 1913 and the scheme of that piece of legislation, in the context of the previous legislations on the same subject.

6. It is not necessary to probe deep into the ancient history of the Land Tenure System and the system that prevailed for recovery of land revenue in the distant past of our country and it will suffice our present purpose to look back to Act XI of 1859-a retrospect of a century. That Act was enacted upon the experience gathered from the operation of several Regulations and Acts that were passed following the Regulations I of 1793. Under those Regulations and Acts beginning with Regulation XIV of 1793 the defaulting proprietors were by gradual process exempted from summary imprisonment in the hands of the revenue authorities and the system of sales and attachment was introduced. How by the operation of that system during the era that ended with Act I of 1845, the mode of coercion for the recovery of land revenue was gradually changed to achieve the avowed principles of moderation and justice, but in reality turned out to be harsh and tyrannical, is known history. With Act XI of 1959 began the modern era in this respect, and that Act was passed to improve the law relating to sales of land for arrears of revenue and provided for mode of realisation of land revenue only. Difficulties were again encountered and steps were taken to mend those defects by enactments which were made to coexist with Act XI of 1859 and one such enactment on the subject that needs be mentioned is Act VII of 1868 which codified for the first time the law relating to the procedure for the recovery of State demands other than land revenue proper. In this Act the portion providing the certificate procedure was not separated and in the case of *Mohun Ram Jha v. Baboo Shib Dutt* (1) reported in 17 W.R. (Civil Rulings) at page 21 the learned Judges observed in the judgment delivered on 22nd December 1871 that it was clear from the provisions of Act VII of 1868 that they provide a new and less

summary mode of realising demands which were not really arrears of land revenue.

7. In 1880 the separation was made by Act VII of 1880 by which that portion of Act VII of 1868 which dealt with realisation of public demands was repealed and re-enacted in an amended form. Examination of the provisions of the Act VII of 1880 reveals that even thereunder, when the demand was not for land revenue proper, necessity of mentioning "nature and amount of arrears of demand" was insisted upon as was enjoined by section 5 of Act XX of 1859 in cases where the arrear was other than "those of current year or of the year immediately preceding."

8. The defects in Act VII of 1880 were sought to be removed by Act I of 1890 which is a Central Act passed by the Imperial Council and has remained in force. Thereafter Bengal Act I of 1895 which repealed Act VII of 1880 has been in its turn repealed and replaced by the present Act III of 1913.

9. What evolves from the examination of these legislations on this subject, is clear insistence of the legislature at all stages that "nature of the demands" and "period for which it is due" have to be specified and given notice of for enforcing the payment of the demand by summary procedure prescribed under these Acts. During the period of the operation of the present Act III of 1913 there have been several amendments of the Act and the form for certificate of demand has been also changed from time to time but in none of these amendments and changes of the form, the necessity of mentioning the particulars of the amount, period and nature of the demand has been done away with.

10. The present Act III of 1913 consolidates and amends the law relating to recovery of public demands in Bengal and by its definition in section 3(6) "Public Demand" means any arrear or money mentioned or referred to in Schedule I, and includes any interest which may, by law, be chargeable thereon up to the date on which the certificate is to be signed. A reference to Schedule I reveals that it includes not only arrears of revenue but also any money which is declared by any law for the time being in force to be recoverable or realisable as an arrear of revenue or land revenue and also any money which is declared by any enactment for the time being in force (i) to be a demand or a public demand and (ii) to be recoverable as arrears of demand or public demand. Therefore, under the provisions of this Act could be realised the moneys which may be due to the Government or person and the definition of "certificate holder" includes any person whose name is substituted or added as creditor by the certificate-officer. The scope of this law, therefore, is not limited to the realisation of moneys which are due to the Public Exchequer only, but also includes moneys due to persons and authorities to whom the benefit of this Act may be extended. It is common knowledge that it has been so extended to an enormous extent and there is no need to catalogue the items to which the Act now applies. A list is given in Schedule I of the Act itself and following that list a more elaborate list is given at page 81 of the West Bengal Certificate Manual published in 1953. Such being its

scope, in interpreting the provisions of the Act, one has necessarily to remember that it prescribes a summary procedure in substitution of the procedure of suit and execution of decree as provided in the Code of Civil Procedure. For true character of such legislation we may profitably refer to the observation of the Judicial Committee in the case of *Bajinath Sahai v. Ramgut Singh* (2) reported in L.R. 23 IA 45 at pages 53-54 where Lord Davey summarised the provisions of the previous Act VII of 1880 which contained provisions similar to those in the present Act, and observed :-

Then section 8 provides that "Subject to the provisions of this Act, every certificate made under the provisions of section 7 shall, as regards the remedies for enforcing the same, and so far only, have the force and effect of a decree of a civil court". Then section 10 provides that when the certificate is filed notice shall be given to the judgment-debtor, and upon service of the notice the certificate has the effect of binding the immovable property of the judgment-debtor.

Now, it is obvious that those are very stringent provisions. The proceeding in the first instance is apparently *ex parte*. The certificate is to be made by the Collector in a certain form and filed, and when the certificate is filed it has the effect of a decree against the persons named as d in the certificate so far as regards the remedies of enforcing it, and when served it also binds their immovable property... .if the certificate is to have the extraordinary effect of a decree against the persons named in it as debtors, and to have the effect of binding their immovable property, at least it should be in a form such as provided by the Act, which enables any person who reads it to see who the judgment-creditor is, what is the sum for which the judgment is given, and those particulars should be certified by the hand of the proper officer appointed by the Act for the purpose. If no certificate is given then the whole basis of the proceeding is gone. There is no judgment, there is nothing corresponding to a judgment or decree for payment of the amount, and there is no foundation for the sale. The authority to proceed to the sale is based on the certificate which is the effect, as already pointed out, of a judgment or a decree, and if no judgment or decree is given, and no certificate is filed having the force of a judgment or decree, there can be no valid sale at all.

11. This was the pronouncement by the High authority of the Judicial Committee in 1896 in respect of the Bengal Act VII of 1880 which is an early but not very distant predecessor of the present Public Demands Recovery Act (Act III of 1913). The judgment of the Privy Council dealt with the same subject and the summary of the law given in that judgment fully apply as a summary of the present Act as well. Only the numerical reference of the sections have changed, and some new provisions have been included.

12. We now come to the provisions of the present Act III of 1913. Section 4 prescribes the mode of filing of certificate for public demand payable to the Collector and directs that when the certificate officer is satisfied that any public demand payable to the Collector is due, he may sign a certificate in the

prescribed form stating that the demand is due.

13. Section 5 provides that when any public demand payable to any person other than the Collector is due such person may send written requisition in the prescribed form to the certificate officer.

14. Section 6 provides that on receipt of such requisition the certificate officer, if he is satisfied that the demand is recoverable and that recovery by suit is not barred by law, may sign a certificate in the prescribed form stating that the demand is due.....and shall cause the certificate to be filed in his office. This shows that signing a certificate and filing a certificate are two different acts of the certificate officer.

15. Section 7 provides that when a certificate has been filed in the office of the certificate officer u/s 4 or section 6, he shall cause to be served upon the certificate-debtor in the prescribed manner a notice in the prescribed form and a copy of the certificate.

16. The effect of the service of the notice of certificate is provided in section 8 of the Act and is akin to attachment of all immovable property belonging to the certificate debtor and situated in the district in which the certificate is filed and creating a first charge upon all immovable property of the certificate-debtor wherever situated. Next relevant provision is found in section 11 that a certificate filed under sections 4 and 6 may be executed and modes of execution are mentioned in section 14 of the Act and includes not only attachment and sale of any property and attachment of any decree but also by arresting certificate-debtor and detaining him in civil prison. Any two or all the modes may be simultaneously employed, although by explanation in that section the certificate officer has been given discretion to refuse execution at the same time against the person and property of the certificate-debtor.

17. The stringency of these provisions above summarised is patent, and when property, rights and liberty of citizen is put to the peril of such magnitude, it is in our view, the implicit duty of the Court to insist on strict compliance of the steps leading to such results. We are, therefore, of the view that for the validity of a certificate and legality of the certificate proceedings the necessity is not merely that the certificate is intelligible and procedure adopted is one of substantial compliance with law but the necessity is strict adherence to the every requirement of the Act which are the minimum guarantees that the legislature has prescribed in an astonishingly summary procedure. We have noticed above the historical development and enlargement of the scope of the Act much beyond land revenue or revenue proper to include other demands as well so that the summary procedure under the Act is now available to persons and authorities to whom the benefit of the Act has been extended. But even when demand sought to be realised is due to Government and the certificate creditor is "Collector" the same consideration of strict adherence should apply. Speedy realisation of the moneys due to Public Exchequer is of great importance no doubt, but no less, in

our view, is the adherence to the guarantees prescribed by Act of legislature for the protection of the rights and liberties of citizens.

18. We have already referred to the view of the Judicial Committee expressed in the case reported in (2) L.R. 23 IA 45 in this respect. That decision has been followed in several cases in this Court and recently it has been so followed by a Division Bench composed of Lahiri, J., as my Lord the Chief Justice then was, and Mitter, J., in a case that fell for the decision under the provisions of the present Act. It is in the case Abanindra Kumar Maity Vs. A.K. Biswas, and their Lordships have in that decision emphasised the necessity of strict adherence to the form prescribed for an effective certificate, and observed:

As the certificate is the foundation of the entire proceeding, we are constrained to hold that the entire proceeding is based on an invalid foundation and it is, therefore, liable to be quashed.

19. A long line of earlier decisions of this Court also followed that decision of the Privy Council and we may make reference to (4) Sudhir Chandra Chakravarty Vs. Sudhangshu Kumar Choudhury and Others, and also to Ali Miyan Vs. Wajaddin Sikdar and Another, , where Chakravartti, J. quoted a passage from a judgment of a Division Bench of this Court consisting of the Hon''ble Mr. Justice C. C. Ghosh and the Hon''ble Mr. Justice Panton in S. A. No. 1352 of 1921. So, we have a long line of authority pointing to the same direction. The learned advocate Mr. Balai Lal Pal, on behalf of the opposite party, Union of India, however, has contended that a contrary view has been taken recently in an unreported decision of this Court in (6) Civil Revision No. 734 of 1957 by a Division Bench composed of two learned judges, Bachawat, J. and Renupada Mukherjee, J. Judgment in that case was delivered by Bachawat, J. In that case, defects in the certificate complained of were all in the tabular portion of the certificate and no question of any defect in the certification portion of the form was raised. The passage relied on by Mr. Pal runs thus:

No doubt the contention of the Opposite Party is supported by the decision of a Division Bench of this Court in the case of Abanindra Kumar Maity Vs. A.K. Biswas, and the observation at page 578. With very great respect we are unable to concur in this judgment on this point. We notice that the decision of their Lordships of the Judicial Committee in 49 C.W.N, 334 (72 I.A. 114) was not brought to the attention of the Division Bench. We have come to conclusion that the decision in Abanindra Kumar Maity Vs. A.K. Biswas, on this point would have been otherwise had the ruling of the Privy Council been brought to the notice of the Division Bench. We have also come to conclusion that it was not necessary to mention in the certificate the date of demand under sections 29 and 45 of the Income Tax Act. The debt due to the Union is otherwise sufficiently indentified in the certificate.

20. Those were the observations in the judgment delivered by Bachawat, J., in with the omission to mention period for which the public demand is due in the

third column in the tabular portion of the certificate. His Lordship cited as authority the decision of the Judicial Committee reported in (7) 49 C.W.N, 334 Doorga Prosad Chamaria v. The Secretary of State which is also reported in 72 LA. 114. But the earlier decision of the Judicial Committee in the case of Baijnath Sahqi v. Ramgat Singh and others (2) reported in 23 LA. 45 was not placed before Bachawat, J., although that was the authority on which the decision reported in (S) Abanindra Kumar Maity Vs. A.K. Biswas, was based. It is necessary therefore to see if the later decision of the Privy Council reported in (7) 72 LA. 114, Doorga Prosad Chamaria v. Secretary of State, laid down a law different from the law laid down in the earlier Privy Council decision reported in 23 LA. 45, (2) Baijnath Sahai v. Ramgut Singh and others and if there is a conflict between the two Division Bench decisions of this Court on the point of law, we are concerned with the case before us. We may point out that in the case before us the main defect in the certificate is regarding the form itself and in the certification portion at the bottom of the form prescribed and not merely in the tabular portion of the form. Such defects Bachawat, J., in his judgment has himself observed, "requires very serious consideration" and his Lordship proceeded to say:-

The certificate filed under the Public Demands Recovery Act, 1913, must be in the prescribed form. The certificate must name the certificate-debtor. A certificate which is properly filed can be summarily executed. The certificate must on the face of it show who the certificate-debtor is.

21. On the facts of that case however his Lordship "came to the conclusion that the certificate cannot be pronounced to be invalid."

22. Therefore on the main point of law arising in the case before us there is no divergence of view between the decisions on the two Division Benches. Whether a particular defect appearing in a particular case shall have the effect of invalidating the certificate must depend on the facts and nature of defect in each case.

23. On the other defects in the tabular portion of the certificate however Bachawat, J., has expressly differed from the views of Lahiri, J. in the decision reported in (3) Abanindra Kumar Maity Vs. A.K. Biswas, as appears from the passage we have already quoted, and also other passage in the judgment of Bachawat, J.

24. We have given very serious consideration to those observations but with great respect to the learned Judge we are unable to agree with Bachawat, J. It appears that his Lordship has not considered the reasons given by Lahiri, J., nor has he considered that the decision in (3) Abanindra Kumar Maity Vs. A.K. Biswas, followed the earlier decision of the Privy Council in (2) 23 Indian Appeals page 45 and earlier decision of this Court. Sir John Beaumont, whose judgment in (7) 72 I.A. 114, Bachawat, J. was following, has neither noticed nor considered far less discussed or dissented from that earlier decision of the Privy Council in

(2) 23 I.A. 45. If the Division Bench (Bachawat and Renupada Mukherjee, JJ.) that decided the case of (6) Union of India v. Jeonlal Bhutoria was disagreeing on the points of law with the view of the earlier Division Bench (Lahiri and Mitter, JJ.) then we do not see how the latter Division Bench (Bachawat and Renupada Mukherjee, JJ.) could have avoided a reference to the Full Bench for decision of those points of law. Moreover, the judgment of his Lordship Bachawat, J., is based on an assumption appearing in the passage we have already quoted. With great respect we are unable to see how that assumption could be made because we are of the view that the decision in (3) Abanindra Kumar Maity Vs. A.K. Biswas, has followed the authority of Privy Council in (2) 23 I.A. 45 and there is nothing in the decision in Doorga Prosad Chamaria's case (7) 72 I.A. 114 that takes away or even minimises the definite principles laid down in the Privy Council decision reported in (2) 23 I.A. 45. It is true that the decisions of Privy Council are entitled to great respect, but when an earlier Privy Council decision lays down the law and legal principles by giving good reasons therefor and another Privy Council decision expresses a contrary view without adverting to the earlier decision at all, and without giving much reasons for its dictum then we prefer to follow the earlier one that has given reason. An ipse dixit emanating even from the Privy Council need not bind us from following an earlier Privy Council decision that has been followed consistently in this Court for well over 50 years.

25. In the case of Doorga Prosad Chamaria v. Secretary of State (7) reported in 72 I.A. 114 the main point was regarding procedure of "filing" of the certificate in the office of the certificate officer and it was held that it involves no formal or technical procedure. The other defects pleaded in that case were regarding entries in the tabular portion of the certificate, one in the name of the certificate-holder and the other omission to mention the period of demand. On those points no doubt Sir John Beaumont in his judgment held that the additional words mentioned after the name of the certificate-holder in the certificate in that case did not invalidate the certificate and also that income tax in law is not due for any particular period and therefore non-mention of the period in column 5 of the tabular portion of the certificate did not invalidate the certificate. But the defect in the form used or the defect in the real certification portion of the form were not amongst the issues involved in that case, and the Privy Council in that case was not considering the effect of any such defect in the back ground of the stringent provisions contained in that Act. A summary of the relevant provisions of the Act was given in that judgment but sections 8, 11 and 14 of the Act do not find place in that summary at all. Nor was the previous decision of the Privy Council reported in (2) 23 LA. 45 (Bajinath Sahai v. Ramgut Singh and others) either noticed or discussed. Having carefully examined the decision reported in (7) 72 I.A. 114, Doorga Prosad Chamaria v. Secretary of State, we have come to the conclusion that there is nothing in that judgment that either reverses or minimises in the least the principles enunciated by Lord Davey in the earlier decision. In our view the decision reported in (2) 23 LA. 45 still remains the

guiding authority on the subject and in view of that decision the judgment of Lahiri, J. in the case reported in (3) Abanindra Kumar Maity Vs. A.K. Biswas, could not have been otherwise even if (7) 72 LA. 114 had been cited before his Lordship.

26. In our view very good reasons in support of the view that found favour with Lahiri, J., in the case reported in (3) Abanindra Kumar Maity Vs. A.K. Biswas, can be seen in the Rules framed and the forms prescribed under the Act. The Rules in Schedule II of the Act, by the provision in sec. 38 of the Act, "shall have effect as if enacted in the body of the Act". By rule 84 the forms set forth in the Appendix to the Rules have been prescribed and, therefore, the forms have the effect of being parts of the Act itself as passed by the legislature. Form No. 1 which is the form for the certificate of public demand is one of these forms prescribed under Rule 84 and is printed at page 49 of the West Bengal Certificate Manual, 1953. That form has two parts. The top portion of the form is divided in 5 columns with appropriate headings for each of those columns. Headings of column 4 are in these terms:-

Amount of public demand including interest, if any, and including the fee paid u/s 5(2), if any, for which this certificate is signed, and period for which such demand is due.

27. A heading of column 5 is in these terms:

Further particulars of the public demand for which this certificate is signed.

28. Under the tabular portion with the columns as mentioned above, is the certificate proper and that portion reads thus:

I hereby certify that the above mentioned sum of Rs.....is due to the abovenamed.....from the abovenamed.....(if the certificate is signed on requisition sent u/s 5).

I further certify that the abovementioned sum of Rs.....is justly recoverable and that its recovery by suit is not barred by law.

Dated this.....day of.....19 .

A.B.

Certificate Officer of.....

29. This bottom portion, as can be seen, is the certification and the portion above it is only a tabular statement giving certain informations which includes in column 4 period for which such demand is due and in column 5 further particulars of the public demand. Sections 4 and 6 of the Act require those informations and particulars to be stated. These informations are essential parts of the scheme of the whole Act which operates in conjunction with other enactments that attract this Act. To give one illustration, section 46(2) of the Income Tax Act provides that the Income Tax Officer may forward to the

Collector a certificate and the Collector on receipt of such certificate shall proceed to recover from such assessee the amounts specified therein as if it were an arrear of land revenue. Sub-section (7) of the sec. 46 of the Income Tax Act provides that barring certain exceptions-

No proceedings for the recovery of any sum payable under this Act shall be commenced after the expiration of one year from the last day of the financial year in which any demand is made under this Act.

30. Therefore, for realisation of dues under the Income Tax Act by certificate proceeding, it can only be commenced within one year from the last day of the financial year in which the demand is made under the Income Tax Act and unless that information is mentioned in column 4 of the tabular portion of the form of the certificate of public demand it is not possible to know or ascertain if the certificate proceeding has been commenced in conformity with the provisions of sec. 46(7) of the Income Tax Act. Similar instances can be found in other Acts that provide that monies due under those Acts can be realised under Public Demands Recovery Act, 1913 and for those reasons we are of the view that the informations in column 4 must be held to be integral part of the scheme of the Act and cannot be done away with. Similarly the name and address of the certificate-debtor in column 3 is a necessity for stringent effect of the section 8 section 14 of the Act will avail on against the person or persons named therein and this column must be filled in with correctitude and definiteness.

31. The portion of the form that appears under the tabular part thereof being the true certification portion, the form has insisted and provided spaces for inclusion in that portion the exact sum that is to be realised by the certificate proceeding and also spaces for inclusion of the name of the certificate-holder to whom it is due, and name of the certificate-debtor from whom it is due, and two separate texts have been inserted in the form, the last portion being necessary to be added only when the certificate is signed on requisition u/s 5 and not otherwise. And this portion occurring below the tabular portion has to be filled in by the certificate officer under his own hand, because that is so to say, the decree portion of the form. Unless that formality is strictly adhered to, it does not conform to the requirement of either section 4 or section 6 and will not be a certificate that is executable u/s 11 of the Act. That is the importance of adhering to the form strictly.

32. The form for certificate has not remained always exactly the same although the essential contents were at all stages, similar. The corresponding form under Bengal Act VII of 1880 under the provisions of which Privy Council decided the case of Baijnath Sahai v. Ramgut Singh (2) reported in 23 Indian Appeals page 45 contained the headings:

"Names of debtors", "Residences of debtors", "Amount due to Government for which this notice is given" and "Nature of the demand made by Government for which this notice is given" and a certificate in Form No 2 under the Act reads

thus:

I hereby certify that the above mentioned sum of Rs.....is due to the Secretary of State for India in Council from the abovenamed....." It is to be noticed that the certificate under that Act also required mention of the sum due and name of the person from whom it is due.

33. Under Act III of 1913 the prescribed form which was in force at the time when the case of Hara Prasad Gain and Ors. v. Gopal Chandra Gain & Ors. reported in 31 C.W.N. 299 was decided by Suhrawardy and Graham, JJ. was somewhat different but it also included the columns in the tabular statement with the same headings as at present and under it the certificate portion of the form was as follows:

I hereby certify that the abovementioned "sum of Rs.....is due to the above.... from the defendants.... I further certify that the abovementioned sum of Rs.....is justly recoverable and that its recovery by suit is not barred by law.

34. In that form the certificate portion was in one paragraph but therein also it required to be mentioned the sum due, the name of the person to whom it was due and the name of the person from whom it was due.

35. The form of the certificate thereafter underwent a material change and the form prescribed is the Form No. 1 of the Appendix of Schedule II. The original Schedule II was substituted by the Schedule II introduced by the Board of Revenue Notification No. 3948 C.F. dated the 21st December, 1914 published in the Calcutta Gazette dated the 23rd December, 1914 Part I, page 351. u/s 39 of the Act the Board of Revenue may after previous publication and with the previous sanction of the State Government make rules regulating the procedure and forms being prescribed by Rule 84. It is therefore clear that the Board of Revenue has power to alter the forms also. But such alteration like alteration of the Rules can take effect u/s 10 of the Act only from the date of publication in the Official Gazette or from such other date as may be specified. The Form No. 1, we have above quoted, is the form that appears in the Government publication of the West Bengal Certificate Manual, 1953 and also in the Government Publication of the Bengal Public Demands Recovery Act published in September, 1954 and it is the Bengal Form No, 1027. The learned advocate for the petitioner, Mr. Das Gupta has produced before us a certified copy of Notification No. 16370 C. P. dated 28th December, 1955 published in Calcutta Gazette January 12th, 1956 by- which the Board of Revenue published for general information a Form No. 1 (Bengal Form No. 1027) which shall be deemed to have been substituted on and from 1st day of 1944. That form also contains the columns in the tabular portion but in the portion thereunder in the first paragraph the blank spaces for the names, of certificate holder and certificate debtor have been omitted, although the blank space for mentioning sum has been retained.

36. Present certificate proceedings were started in 1956 by filing certificates on 31-3-56. The learned advocate Mr. Balai Lal Pal appearing before us for the Union

of India has not contended before us that the Form No. 1 has been since changed by the Board of Revenue nor has he been able to produce, though asked, any changed form for certificate. Therefore, it must be held that Form No. 1 in the appendix to the Rules Schedule II of the Bengal Act III of 1913 as appears in the Notification No. 16370 C.P. dated 28th December 1955 is the form which is in force from 1944 up to the present time.

37. The form used in the case before us is different from the form No. 1 in the appendix, although the form used mentions that it is the Bengal Form No. 1027. The difference in the form used and the form prescribed appears in the most material part, that is, the certificate portion of the Form. Instead of the two paragraphs in the certificate portion of the prescribed form mentioning the sum due, in the form used it is one paragraph on the reverse of the form, and reads thus:

I certify that the sums mentioned overleaf are due to the certificate holder by the certificate holder (s) and that they are justly recoverable, the recovery by suit not being barred by law.

38. Thus in the form used in the certificate portion mention of the amount due has been omitted, and the text is not the same as in the prescribed form. This is a material change and at a portion of the form which, we have shown already, is the most important portion. We have also discussed above the necessity and importance of mentioning the sum due and the names of certificate-creditors and certificate-debtors in this portion which is the true certificate of the form. That being so, we are constrained to hold that the certificates signed and filed in these cases are not in the form prescribed by the Act and now in force. In this the contention of Mr. Das Gupta that the form used is a strange form of someone's invention in neglect of the form prescribed by the Act must be given effect to and the certificate proceedings purporting to execute certificates in that form must be held to be illegal and without jurisdiction on that ground alone.

39. That being so, it is not necessary for the disposal of the case to consider the other objections raised by Mr. Das Gupta. But as the point about mutilation of the form of notice required to be given u/s 7 of the Act has been fully argued on both sides and that also by itself has important bearing on the legality of the certificate proceedings, we think it proper to deal with that point also.

40. Section 7 of the Act provides:

When a certificate has been filed in the office of the certificate officer u/s 4 or section 6, he shall cause to be served upon the certificate-debtor in the prescribed manner a notice in the prescribed form and a copy of the certificate.

41. The form prescribed is the Form No. 3 and in material part of it reads:

You are hereby informed that a certificate against you for Rs.....due from you on account of.....has this day been filed in my office, under section.....of the Bengal Public Demands Recovery Act, 1913. If you deny your liability to pay the

said sum of Rs....you may, within thirty days from the service of this notice, file in my office a petition denying liability in whole or in part. If, within the said thirty days, you fail to file such a petition, or if you fail to show cause, or do not show sufficient cause, why such certificate should not be executed, it will be executed, under the provisions of the said Act, unless you pay Rs....(Rs.....on account of the demand and Rs.....on account of costs of realisation) into my office. Until the said amount is so paid, you are hereby prohibited from alienating your immovable property, or any part of it, by sale, gift, mortgage or otherwise. If you in the meantime conceal, remove or dispose of any part of your movable property, the certificate will be executed immediately.

42. A copy of the certificate abovementioned is hereby annexed.

43. You may remit the amount by money order, quoting the number and year of the certificate.

Dated this.....day of.....19 .

A.B.,

Certificate Officer of.....

44. In the Bengali translation which has been used in this case the words "this day" has been correctly rendered 45. Question is whether the word "when" in section 7 bears the meaning "any time after" or it, in conjunction with the word "this day" in Form No. 3, means "on the day" the certificate is filed. The learned Advocate Mr. Balai Lal Pal on behalf of the opposite party has drawn our attention to the words "cause to be served" in section 7, and has very cogently contended that if "when" would mean "on the day" then service of the notice will have to be achieved on that day. But the provisions in the Rules in Schedule II of the Act clearly indicate that such is not the requirement of the Act.

46. On the other hand, the form No. 3 prescribed by the same Rule (Rule 84) specifically say "this day". In our view the combined effect of the words in section 7 and Form 3 read with the Rules 2, 3, 4, 5, 6, 7, 8 and 9 is that the Notice u/s 7 must be signed by the certificate officer and on the date on which he files the certificate in his office; section 4 or 6 of the Act and the date borne on the Notice must be the date on which the certificate is signed and filed but it is not necessary to complete the service on that date and service can be effected under the Rules on other date. That will make the date of the Notice in conformity with the word "this day" in its text on the form prescribed.

47. But in this case we find from the record that the notices bear a date much later than the date on which the certificate was signed and filed by the certificate officer under sec. 4 of the Act and he with a view to make the text of the Notice conform to the date which it bears, scored through the word in text of the Bengali form used. We are clearly of the view that in doing so the certificate-officer acted beyond his powers and jurisdiction as he has none to alter or mutilate the Form prescribed by the Act. Therefore, we must hold that the Notice

was not a proper notice u/s 7 in the prescribed form and as notice in prescribed form is a necessity essential for a legal certificate proceeding, that defect by itself, and without more, is fatal to the proceeding. For the reasons stated above we make the Rules absolute and quash the certificate proceedings in each of the three cases but in the circumstances of the case we make no order as to costs in any of them.

Banerjee, J.

48. I agree with the Order.