(1996) 08 PAT CK 0020

In the Patna High Court

Case No : C.W.J.C. No. 1531 of 1986

Satya Narain Jhunjhunwala APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 09-08-1996

Acts Referred:

Bihar and Orissa Public Demands Recovery Act, 1914 — Section 11, 3(5), 5, 5(2), 7
Constitution of India, 1950 — Article 142

Citation : (1996) 08 PAT CK 0020

Hon'ble Judges : A.K. Ganguly, J

Bench : Single Bench

Advocate : Ramesh Kumar Agrawal, for the Appellant; Veena Kumari Jaiswal, Shailesh Kumar Sinha and Kishore Kumar Sinha, for the Respondent

Final Decision : Allowed

Judgement

A.K. Ganguly, J.—This writ petition has been filed for quashing the entire certificate proceeding being Certificate Case No. 14-SBI/79-80 which was initiated on the requisition made by the Respondent No. 2, State Bank of India, Main Branch, Motihari, for recovery of the loans of the Bank from the Petitioner.

2. The facts of the case are as follows:

In the year 1974 the Petitioner obtained medium term loan granted by the State Bank of India, Main Branch, Motihari, pursuant to which a loan of Rs. 65,000/- was advanced to the Petitioner for purchase of a Hindustan Bed Ford Mini Bus bearing registration No. BRE 6163. The Petitioner''s case is that apart from the said loan amount, the Petitioner also invested a sum of Rs. 30,000/- from his own pocket.

3. Be that as it may, the Petitioner could not refund the said amount which was taken by him from the Respondent Bank. The Petitioner has alleged various reasons for such non-payment. This Court does not want to go into those questions whether the Petitioner is justified in not paying the amount which he

obtained from the Bank by way of loan.

4. The case has been argued by the learned Counsel for the respective parties only on the question of validity of the certificate proceeding.

5. On 15.5.1979 the Branch Manager of the Respondent Bank filed a requisition before the District Certificate Officer, Motihari (Respondent No. 3) for the recovery of the alleged loan amounting to Rs. 91,293.76 P a copy of the said requisition has been disclosed as Annexure-2 to this writ petition. Thereafter on the basis of the said requisition filed before the District Certificate Officer, Motihari, on 21.5.1979 a certificate case being Certificate Case No. 14-SBI/79-80 was registered.

6. The main ground on which the case has been argued by the learned Counsel for the Petitioner is that there is no requisition in the eye of law. In support of this submission, the Petitioner''s counsel has relied upon Section 5 of the Bihar and Orissa Public Demand Recovery Act, 1914 (hereinafter referred to as the said Act). Section 5 of the said Act provides for filing requisition for certificate in cases other than payment of public demand to the Collector. In this case reliance has been placed by the Petitioner''s counsel on Sub-section (2) of Section 5 of the said Act in order to contend that the certificate has not been issued in accordance with the requirement of Sub-section (2) of Section 5 of the said Act. Sub-section (2) of Section 5 of the said Act is set out below:

Every such requisition shall be signed and verified in the prescribed manner, and, except in such cases as may be prescribed, shall be chargeable with a fee of the amount which would be payable under the Court-fees Act, 1870 (VII of 1870) in respect of a plaint for the recovery of a sum of money equal to that stated in the requisition as being due.

7. With reference to Annexure-2 which is undoubtedly requisition in this case, learned Counsel for the Petitioner submitted that the said requisition has not been signed and verified in the prescribed manner and no Court fees has been paid on the said requisition. The word ''prescribed'' has been defined in Sub-section (5) of Section 3 of the said Act which means ''prescribed by rules''. Rule I of Schedule II of the said Act provides for signature and verification of requisitions of such certificate. Said Rule I of Schedule II of the said Act is set out below:

(1) Every requisition made u/s 5 shall be signed and verified at the foot by the person making it, or by some other person on his behalf who is proved to the satisfaction of the Certificate Officer to be acquainted with the facts of the case.

(2) The verification shall state that the person signing the requisition has been satisfied by enquiry that the amount stated in the requisition is actually due.

(3) The verification shall be signed by the person making it, and shall state the date on which it is signed.

8. It is an admitted position that in the instant case when the requisition for certificate was filed, there was no verification of the requisition. Therefore, the requisition was not filed ,in accordance with the requirements of Sub-section (2) of Sectbn 5 of the said Act. From the facts of this case it appears that such a requisition was filed on 15.5.1979 and on the basis of such requisition a certificate was issued by the District Certificate Officer, Motihari on 21st May, 1979. The Court fees was not paid at that point of time but the Court fee was paid on 25th April, 1981. The Petitioner raised all these objections before the Certificate Officer and the order dated 15.6.1985 would show that the said objections were considered by the Certificate Officer but no final order was passed. Therefore, on 9.9.1985 a petition u/s 11 of the said Act for the amendment of the requisition was filed by Anr. person, namely, S.N. Pandey seeking to amend the requisition. In the said amendment petition, it is alleged that due to mistake of Pleader''s Clerk, the verification portion was not mentioned in the requisition form. Such prayer was made u/s 11 of the said Act for amending the said requisition. It is further stated that the said prayer for amendment was within the period of limitation. The said petition dated 9.8.1985 was filed on 9.9.1985 on behalf of the Bank and on that petition being filed, the Impugned order was passed allowing the said amendment by an order dated 9.10.1985.

9. Now the question which falls for consideration is whether Section 11 of the said Act is attracted in the facts and circumstances of the instant case and whether the impugned order passed on 9.10.1985 allowing the amendment petition made by the Respondent Bank is valid In the eye of law. Section 11 of the said Act Is set out below:

11. Power to amend certificate by addition, omission or substitution of parties.- Subject to the law of limitation the Certificate Officer may at any time amend a certificate by the addition, omission or substitution of the name of any certificate-holder or certificate debtor or by the alteration of the amount claimed therein:

Provided that when any such amendment is made a fresh notice and copy shall be issued as provided in Section 7.

10. From the aforesaid Section 11 of the said Act, it is clear that the Certificate Officer can amend the certificate either by adding the name of the Certificate holder or the Certificate-debtor or by omitting the name of any certificate-holder or certificate-debtor or both or he can alter the amount claimed in the certificate either by increasing or decreasing the amount mentioned in the Certificate and can amend the Certificate. The said power is given to the Certificate Officer to amend the certificate by alteration of the names of the parties or the alteration of the amount therein but such power is also subject to the laws of limitation.

11. But in the instant case the attempt is made to amend the requisition by incorporating in it the verification which was not there in the original. This Court on a perusal of Section 11 of the said Act is of the view that the power u/s 11 of

the said Act is not attracted for amendment of the requisition for Certificate on the basis of which certificate has been issued.

12. It has been settled conclusively that the signature and verification on the requisition is a mandatory requirement(Hari Prasad Agarwalla Vs. The State of Bihar and Others,) and it is an admitted position that in the instant case the verification of the requisition was not done in accordance with the mode prescribed under the rules. The subsequent attempt to cure this inherent defect in the requisition after about six years of the filing of the original requisition on the strength of Section 11 of the said Act cannot revive the said certificate proceeding and does not and cannot cure the defect in the requisition. It is well known that the law relating to recovery of public demand is a special and a technical law and while construing such special and technical law, the Court should insist on following the procedural requirement very strictly. The law being drastic in nature, the vigil of the Court on the fulfilment of the statutory requirement must be strict. Judging by this standard, this Court cannot hold that in the instant case the provisions of Sub-section (2) of Section 5 of the said Act has been complied with.

13. Learned Counsel for the Respondent Bank has referred to two decisions of the Supreme Court in support of his contention that verification can be given subsequently and in exercise of inherent power, the Court can allow such amendment. The first decision on which reliance was placed by the learned Counsel for the Respondent Bank is in the case of Bhikaji Keshao Joshi and Another Vs. Brijlal Nandlal Biyani and Others, . Paragraph 6 of the said judgment was relied upon in support of the contention that it would be a wrong exercise of the discretionary power of the Court to dismiss an application on the sole ground of absence of date of verification. The said decision in the case of Bhikaji Keshao Joshi (supra) was rendered in connection with the proceeding arising out of Election Petition under The Representation of Peoples Act. The requirements of these provisions under the Representation of Peoples Act and the requirement under the present Act are totally different. Apart from that factually also there is substantial difference in the sense that in the case of Bhikaji Keshao Joshi (supra) what was lacking was the date of verification and not the verification itself and in the instant case the requisition is without any verification. Therefore, the ratio of the decision in the case of Bhikaji Keshao Joshi (supra) is not applicable in the facts of the present case.

14. Another case on which reliance was placed by the learned Counsel for the Respondent Bank is one in the case of The Newabganj Sugar Mills Co. Ltd. and Others Vs. The Union of India (UOI) and Others, In the said case the Court was considering the provisions of the Essential Commodities Act, 1955. In the said case the price of levy sugar was reduced by the Government. Challenging the said action of the Government the Mill owners obtained the stay of the Government Order and started charging excess price. There after the order of the Government was upheld by the High Court. The Court held that in the

circumstances of that case, the consumers who have paid the excess price must be re-paid the price which was paid by them in excess. In this connection, the learned Judges of the Supreme Court in the case of Nawabganj Sugar Mills (supra) referred to the concept of the inherent powers of the Court by holding that such doctrine of inherent power is based on necessity and as such it was held that since the claimants are poor people and the claim is small and if each claimant is remitted to an individual suit, the remedy will be illusory. In the particular facts of the case, the learned Judges of the Court gave direction for refund of the excess money paid by the small consumers. The Court was aware that they were evolving a procedure which is "somewhat un-conventional". The said, procedure was evolved by the Court having regard to public interest. This Court is of the view that the Hon''ble Supreme Court having regard to its jurisdiction under Article 142 of the Constitution can evolve such a procedure having regard to the over-bearing consideration of ''Public Interest''.

15. This Court cannot follow the ratio of the said judgment to the present case against the express provisions of the Statute. In the said decision In the case of Nawabganj Sugar Mills (supra) also the Hon''ble Supreme Court made it clear that "We cannot go against any statutory prescription" (paragraph 6) in invoking the doctrine of inherent power.

16. In the instant case, the provisions of Section 11 of the said Act are not attracted at all for the amendment of the requisition. Therefore, the impugned order dated 9.10.1985 as contained in Annexure-4/C is hereby quashed and the instant certificate proceeding is also quashed inasmuch as the same is initiated on the basis of an invalid requisition. This Court has not at all examined the question whether the Bank''s claim against the Petitioner is valid or genuine or not. Even if the certificate proceeding being certificate Case No. 14-SBI/79-80 is quashed, this will not prevent the Bank from filing an appropriate proceeding before an appropriate forum in accordance with law for the realisation of its dues.

17. This writ petition thus succeeds to the extent indicated above. There will be no order as to cost.

