

(1958) 02 CAL CK 0018
In the Calcutta High Court
Case No : Matter No. 56 of 1957

Seth Ottanmal

APPELLANT

Vs

Certificate Officer and Addl. District Magistrate, 24 Parganas
and Another

RESPONDENT

Date of Decision : 12-02-1958

Acts Referred:

Bengal Public Demands Recovery Act, 1913 — Section 34, 35, 35(2), 38, 51
Constitution of India, 1950 — Article 226

Citation : 67 CWN 547

Hon'ble Judges : P.B. Mukharji, J

Bench : Single Bench

Advocate : R.C. Deb, for the Appellant; E.R. Meyer and Samaren Sen, for the Respondent

Final Decision : Dismissed

Judgement

P.B. Mukharji, J.—This is an application by Ottanmal, Karta of the Hindu undivided family Rai Bahadur Seth Teomal under Article 226 of the Constitution. It is directed against certain certificate proceedings for the recovery of income tax dues. Mr. R.C. Deb, learned Counsel for the applicant, has argued only one point in this petition. The point is that the notices dated the 29th January, 1957 annexed to the petition cannot be enforced because the claim therein is barred by limitation. These notices dated the 29th January 1957 were issued u/s 7 of the Public Demands Recovery Act.

2. Mr. Deb has abandoned all other points in the petition because they are covered by the results of the proceeding u/s 66 (2) of the Income tax Act. He has also not pressed before me any question with regard to the notice u/s 46(5A) of the income tax Act. These concessions are therefore recorded.

3. The first point on this application is to determine whether the notices u/s 7 of the Public Demands Recovery Act and dated 29th January, 1957 are illegal and void as alleged in paragraph 13 of the petition. These notices are attacked by Mr.

Deb on two grounds. His first ground is that the notices are bad because they were not signed by the Certificate Officer or any responsible officer authorised by him but bore only rubber stamp signature of the Certificate Officer. This point is taken in paragraph 11 of the petition. His second point is that the claim made in those notices are barred by limitation. His argument is that these notices have been issued three years after the filing of the certificates. The certificates in this case were filed on the 31st March, 1951 and 31st March, 1952. Thereafter, on the 8th April, 1952 notices u/s 7 of the Public Demands Recovery Act were issued. It must be emphasized here that it was these notices dated the 8th April, 1952 which are alleged not to have been signed by the Certificate Officer himself or by any responsible officer authorised by him but bore only the rubber stamp signature. The present notices were issued on the 29th January, 1957 on which the plea for limitation is based.

4. The learned counsel for the applicant supports his first objection that the sets of notices dated the 8th April, 1952 were not signed by the Certificate Officer in his own hand by reference to the recent decision of Lahiri and Mitter, JJ., in Civil Revisional jurisdiction in (6) Abanindra Kumar Maity Vs. A.K. Biswas, . It is held there that it is the duty of the Certificate Officer to sign the notice u/s 7 by his own hand or by one authorised by him as required by rule 2 of Schedule 2 of the rules made u/s 38 of the Public Demands Recovery Act, and therefore, where it was not so signed but bore his rubber stamp signature only, the certificate was held to be invalid. This decision was given on the 7th/8th January, 1953.

5. It is unfortunate that this Division Bench disagreed with another previous decision of the Division Bench in (2) Haraprasad Gain v. Gopal Chandra Gain, reported in 31 C.W.N. 299. That decision held that the certificate could not be held to be invalid on the ground that the notices were not signed by the Certificate Officer. In fact the learned Judges held there-

There is no law under which it is incumbent on the Certificate Officer to sign the notice with his own hand.

6. I should have thought that the Division Bench in (1) Abanindra Kumar Maity's case if it wanted to disagree with the previous decision of another Division Bench should have referred the case to a Full Bench, under the Rules of the Court. That course not being followed, to day, the result, therefore, is that there are two decisions of the Division Bench of this Court directly contradicting each other on this point. Having regard to the view that I have taken of this application, it is not for me to say which of the two Division Bench decisions I should prefer to follow. I shall be content by saying that this conflict of decisions should in near future be settled by a larger Bench for the guidance of the Administration.

7. The second objection of the applicant is based on limitation. Section 56(1) of the Bengal Public Demands Recovery Act, 1913 provides that sections 6 to 9 of the Indian Limitation Act, 1908 shall not apply to suits, appeals or applications under this Act. Then in section 56 (2) of the Act it is provided that except as

declared in Sub-section (1), the provisions of the Indian Limitation Act, 1908, shall apply to all proceedings under this Act as if a certificate filed hereunder were a decree of a Civil Court. Mr. Deb, therefore, argues that as the Certificates were dated the 31st March, 1951 and 31st March, 1952, they all became barred by the 29th January, 1957 when fresh notices u/s 7 of the Bengal Public Demands Recovery Act were issued because under Article 182 of the Limitation Act a limitation period of only three years is provided.

8. The express mandate of section 56(2) of the Bengal Public Demands Recovery Act is that the provisions of the Indian Limitation Act, subject to the exception mentioned there, shall apply to all proceedings as if the certificate were a decree of a Civil Court. It therefore follows that the starting point of limitation contemplated is the filing of the certificate. If that be so, then a curious situation arises. If Mr. Deb is right that the first notices dated the 8th April, 1952 were invalid on the ground that they were not signed by the Certificate Officer with his own hand then according to the decision of (1) Abanindra Kumar Maity Vs. A.K. Biswas, the certificate is invalid altogether and therefore the filing of any such invalid certificate is itself an invalid and innocuous act. That would seem, to bring in the consequence that the limitation has not even started to run. In that view, the objection of limitation vanishes by reason of Mr. Deb's own arguments.

9. But Mr. Meyer appearing for the Income Tax authorities has argued that even under Article 182 of the Limitation Act, the claim of the income tax Department is not barred by limitation on the ground of the specific provision contained in the 5th clause in the right-hand column of Article 182 of the Indian Limitation Act defining the starting point of limitation. This provides the starting point of the period of three years. It says-

(Where the application next hereinafter mentioned has been made) the date of the final order passed on an application made in accordance with law to the proper Court for execution, or to take some step-in-aid of execution of the decree or order.

10. On the basis of this provision Mr. Meyer argues that the date of the final order was the 29th January, 1957 when the Certificate Officer passed the following order :

Heard the learned lawyer appearing on behalf of the Certificate-debtor. He produces the notice served on him u/s 7 of the Public Demands Recovery Act. It bears the rubber-stamp signature of the Certificate Officer. This is contrary to the decision of the High Court reported in 58 C.W.N. The notice therefore has not been a legal one. As the case is still pending, the defect is removed and issue a fresh notice u/s 7 of the Public Demands Recovery Act for 28.2.57.

11. The original records showing this order is produced before this Court and I direct that a copy of this order be filed as an exhibit with the records of this application.

12. Now, if the notice u/s 7 of the Public Demands Recovery Act is regarded as the first in execution of a certificate which is considered to be a decree, then it is clear that rightly or wrongly that application for execution was pending because the first sets of notices u/s 7 of the Public Demands Recovery Act were issued as early as the 8th April, 1952 and those notices were within time because the certificates had been filed in the previous March of 1951 and 1952. This application was pending until 29th January, 1957 when on the application of the certificate-debtor as appearing from the order which I have just quoted, fresh notices were issued because of the decision of *Abanindra Kumar Maity Vs. A.K. Biswas*, . Therefore, "the date of the final order passed on an application made in accordance with law to the proper Court for execution" as appearing in clause 5 of the third column of Art. 182 of the Limitation Act in this case would be 29th January 1957. That will mean that there is three years' time to run from the 29th January, 1957. Therefore, the claim is not barred by limitation under Art. 182 of the Limitation Act. I am of the opinion that this argument is sound and must be accepted.

13. This disposes of the applicant's objections to the order on the merits of limitation.

14. But I must before I conclude record the serious objections taken by Mr. Samaren Sen, learned Counsel appearing for the Certificate Officer. Mr. Sen argues with considerable ability that this application must fail on preliminary grounds. The two objections of the petitioner namely (1) that notices u/s 7 of the Public Demands Recovery Act bore no manuscript signature of the Certificate Officer and (2) that the claim made under the notices were barred by limitation, are both points on merits and therefore no question of jurisdiction is involved. It is, therefore contended by Mr. Sen that this Court should not interfere at all under Art. 226 of the Constitution. Rightly or wrongly the Certificate Officer has come to a decision both on the question of limitation and on the question of notice. This Court does not interfere under Article 226 of the Constitution with a mere erroneous decision in law of an erring authority unless there is a question of jurisdiction involved. The Supreme Court has finally settled this law in (3) *Basappa v. Nagappa*, 1954 S.C.A. 620 and in (4) *Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others*, .

15. Mr. Deb in answer to this argument contended that a notice u/s 7 of the Public Demands Recovery Act must be a notice according to the statute and the claim contained therein must be within the limitation u/s 56 (2) of the Public Demands Recovery Act. If the Certificate Officer failed to take cognisance of these requirements of the statute, then by misconstruing the statute he assumed jurisdiction and therefore the decision should be corrected by a writ under Art. 226 of the Constitution. I am entirely unable to accept Mr. Deb's submission on this point. The question of limitation may be a technical question but it is always a question on merit. Such questions of limitation are being decided every day by subordinate authorities. Erroneous decisions on limitation by them are corrected

in appeal or in revision but not by a writ under Art. 226 of the Constitution. Similarly the question whether the notice was correctly signed within the meaning of the Act is also a question on the merits of interpretation where no jurisdictional facts are involved. To concede to Mr. Deb's argument will be to say that every misinterpretation of a statutory expression leads to an error of jurisdiction. That, in my view, would be a wholly unsound conclusion. A plaint, for instance, is required under the CPC to be properly signed. If an improperly signed plaint is filed and entertained before a lower Court, then on the argument of Mr. Deb, this becomes at once a question of jurisdiction where this Court should interfere by a writ under Art. 226 of the Constitution and not a mere erroneous decision in law which it is always taken to be and corrigible by appeal and revision and not by writ interference under the Constitution. It appears to me to be an impossible conclusion. I, therefore, hold that the two objections (1) of limitation and (2) of improper signature or invalid signature do not involve questions of jurisdiction and therefore I decline to use Article 226 of the Constitution to issue any writ.

16. The applicant has ample remedies under the Public Demands Recovery Act. Section 34 of the Act provides for a suit in a Civil Court to have the certificate cancelled or modified. Section 35 of the Act specifies the grounds for cancellation or modification of a certificate by the Civil Court. Section 35 (2) expressly provides that a certificate can be modified by a Civil Court on the ground that a portion of the alleged debt was not due. That provision would enable the applicant to urge the point of limitation that the debt is not due any longer but is barred by limitation.

17. Besides, section 51 of the Public Demands Recovery Act provides for an appeal from an original order made under the Act enabling an appeal from the Certificate Officer to the Collector and thereafter from the Collector to the Commissioner and finally from the Commissioner to the Board of Revenue u/s 53 of the Ant. The applicant has not chosen any of these remedies where he could have got the facts more clearly established and relief obtained.

18. This is all the more important because Mr. Sen argues that Schedule 2, rule 2 of the Public Demands Recovery Act deals with the mode of service of a notice but really is not a rule with regard to the validity of the notice or the requirement of how the notice should be signed. Breach of rule 2, Schedule 2 could at best mean that the service was not proper. But Mr. Sen argues with considerable force that breach of rule 2, Schedule 2 is at best an irregularity and it can be waived. Impropriety or irregularity of service can always be waived, because service is intended to ensure due notice. It is his submission, although his client has not used any affidavit, that pursuant to these notices which are challenged as invalid, the applicant had in fact appeared and paid money thereunder as will appear from the records of certificate proceedings. In fact in the decision in (2) Haraprasad Gain v. Gopal Chandra Gain, 31 C.W.N. 299, it was held that the absence of proof of substantial injury, such irregularities do not render the

proceedings invalid. This question whether there was waiver or not could easily have been agitated if the applicant proceeded by way of appeal under sections 51 and 53 of the Public Demands Recovery Act. Premature application against administrative decisions or quasi-judicial decisions suffers from the handicap that the records are not as full as they should be and therefore it is mistaken wisdom to always circumvent the statutory procedure and appeal to the Constitution.

19. Finally, Mr. Sen argues that this Rule must be discharged on the simple ground that the rule is entirely misconceived because of the mistake that the petitioner has made in prayer a(1) of the petition. There the petitioner has sought a rule for cancellation or recall of "the notice dated the 2nd March, 1957 referred to in paragraph 9 hereof". Now the Rule also has been issued in terms of that language. But there are no notices dated the 2nd March 1957 and there is no such reference to such notices in paragraph 9 of the petition. Actually it is a mistake for paragraph 13 and the date is not the 2nd March, 1957 but 29th January, 1957. It cannot be overemphasised that petitions under the Constitution for a Writ should be carefully drafted and with at least some reasonable precision. The Rule, therefore, must fail. I dismiss the application and discharge the Rule but without costs. Interim orders, if any, are vacated.