
(1962) 09 CAL CK 0021
In the Calcutta High Court

SETHANI CHHOTI DEBI

APPELLANT

Vs

UNION OF INDIA AND OTHERS

RESPONDENT

Date of Decision : 26-09-1962

Acts Referred:

Bengal Public Demands Recovery Act, 1913 — Section 7
Income Tax Act, 1922 — Section 46(2)

Citation : 67 CWN 759 : (1964) 51 ITR 473

Hon'ble Judges : Chatterjee, J; Bachawat, J

Bench : Full Bench

Judgement

BACHAWAT J. - In these rules the petitioner asks for an order under article 227 of the Constitution of India quashing an order of attachment passed in Certificate Case No. 348/I. T. (C)/55-56 by the Certificate Officer, 24-Parganas, Alipore. The petitioner was assessed to Income Tax and super-tax for the assessment year 1951-52 amounting to Rs. 13,997-8-0. On a requisition made by the Income Tax Officer u/s 46 (2) of the Indian Income Tax Act, 1922, the Certificate Officer signed a certificate dated March 31, 1956, u/s 4 of the Bengal Public Demands Recovery Act, 1913, stating that the demand is due from the petitioner to the Union of India and on the same date directed the entry of the certificate in register X and the issue of a notice u/s 7 of the Act. A notice u/s 7 dated April 4, 1956, was served upon the petitioner on or about May 1, 1956. The certificate case was adjourned from time to time and on April 4, 1961, the Certificate Officer made an order for attachment of a sum of Rs. 2,366.40 nP. lying to the credit of the petitioners account with Messrs. Hindusthan Mercantile Bank of 201 Mahatma Gandhi Road, Calcutta. On May 23, 1961, the petitioner applied to the Certificate Officer for cancellation of the order for attachment on the ground that (a) the notice u/s 7 had not been served upon her and (b) further execution of the certificate was barred by the law of limitation. The petition was fixed for hearing on June 6, 1961. By his order dated June 6, 1961, the Certificate Officer dismissed the petition on the ground that (a) the petition was barred and (b) no one appeared in support of the petition at the time when it was taken up for

hearing. The order-sheet, however, noted that a lawyer appeared on behalf of the petitioner at 2 p.m. on the same date. An appeal preferred by the petitioner u/s 51 (1) (b) was dismissed by the Commissioner, Presidency Division, by his order dated May 1, 1961. The Commissioner held that (a) the notice u/s 7 was duly served upon the petitioner and that (b) the petition was time-barred. The point that the petition is liable to be dismissed on the ground that nobody appeared before the Certificate Officer is no longer pressed by the opposite parties. A revision petition preferred by the petitioner u/s 53 (1) was summarily dismissed by the Board of Revenue by its order dated November 2, 1961, without issuing any notice to the petitioner and fixing a date for hearing of the revision petition. The petitioner obtained this rule on February 27, 1962. The form of the certificate dated March 31, 1956, issued in this case is as follows : "I certify that the sums mentioned overleaf are due to the certificate-holder by the certificate-debtor(s) and that they are justly recoverable, the recovery by suit not being barred by law." The form of the certificate adopted in this case differs from the form prescribed at the relevant time by the rules in Schedule II of the Bengal Public Demands Recovery Act, 1913. On behalf of the petitioner it is contended before us that in view of the difference in the form actually used and the form prescribed at the relevant time, the certificate is invalid. The defect of form has not caused any prejudice to the petitioner. It is not disputed that the public demand amounting to Rs. 13,997-8-0 was justly due to the Union of India from the petitioner and that recovery of the claim was not barred by limitation on the date of the signing of the certificate. Besides, in view of the Bengal Public Demands Recovery (Validation of Certificates and Notices) Act, 1961 (West Bengal Act XI of 1961), the certificate cannot be deemed to be invalid and cannot be called in question merely on the ground of any defect, error or irregularity in the form thereof. For the reasons given in my judgment in C. R. Cases Nos. 4583-4586 of 1960 (N. C. Mukherjee & Company v. Union of India delivered today, I am of the opinion that (a) the defect of form does not invalidate the certificate (b) the certificate cannot be called in question in view of West Bengal Act XI of 1961 and (c) West Bengal Act XI of 1961 is a valid piece of legislation. It may be noted that this case and Civil Revision Cases Nos. 4583-4586 were heard analogously and identical arguments were advanced in all these cases on the question of the validity of West Bengal Act XI of 1961.

The certificate was signed on and was dated March 31, 1956, whereas the notice u/s 7 was signed on and was dated April 9, 1956. The petitioner contends that the certificate as also the notice u/s 7 are rendered invalid by reason of the fact that they were not signed on and do not bear the same date. We are unable to accept this contention. The notice u/s 7 need not be signed on the same date on which the certificate is signed. The notice was dated April 9, 1956, as it was signed on that date. A notice issued on April 9, 1956, could not be correctly dated March 31, 1956. The body of the notice stated that "a certificate..... has this day been filed in my office." The order dated March 31, 1956, directed the entry of the certificate in the register. But it is not known when the certificate

was actually entered in that register and was filed in the office of the Certificate Officer. Assuming that the certificate was filed in the office on March 31, 1956, and that the statement in the body of the notice that it was filed on April 9, 1956, was incorrect, I am of the opinion that this defect did not invalidate the notice for the reasons given in my judgment in *N. C. Mukherjee & Co. v. Union of India*. The defect has not caused any prejudice to the petitioner. From the copy of the certificate served upon the petitioner along with the notice, she could find that the certificate was signed on March 31, 1956. The defect, if any, is cured by the West Bengal Act XI of 1961.

On behalf of the petitioner it is next contended that the notice u/s 7 was not served upon her. The service return of the bailiff dated May 1, 1956, shows that the notice was accepted by the petitioners son, R. P. Dudhwala. The Commissioner rightly rejected the contention that the petitioner had no son by the name of R. P. Dudhwala. The Commissioner has found that the petitioner was duly served with the notice and we see no reason to interfere with that finding.

Rule 2 in Schedule II of the Bengal Public Demands Recovery Act, 1913, is as follows : "Service of a notice issued u/s 7, or under any other provision of this Act, shall be made by delivering or tendering a copy thereof, signed by the Certificate Officer or such ministerial officer as he authorises in this behalf, and sealed with the seal for the Certificate Officer." The original notice kept in the records of the office is signed by the Certificate Officer with his own hand. This notice was signed on the back by the petitioners son in token of acceptance of the service and the process-server's return of service is also endorsed on it. But the copy of the notice actually served on the petitioner bears a stamped facsimile signature of the Certificate Officer and is also sealed with the seal of the officer. It is contended that the service of the notice u/s 7 is rendered invalid by the fact that the Certificate Officer did not sign with his own hand the copy of the notice served upon the petitioner. We are unable to accept this contention.

The Bengal Public Demands Recovery Act, 1913, and the rules in Schedule II of the Act do not contain any definition of the word "sign". Section 3 (41) of the Bengal General Clauses Act (1 of 1899) contains the following definition : "sign with its grammatical variations and cognate expressions, shall, with reference to a person who is unable to write his name, include mark with its grammatical variations and cognate expressions." A similar definition of the word "sign" will be found in section 3 (56) of the Central General Clauses Act, 1897. Now a person can sign his name by using a pen and ink, but the use of pen and ink is not essential for a signature. He may well sign his name by stamping his facsimile signature with a rubber stamp. The impression of a facsimile signature is not a mere mark or symbol, it distinctly identifies the individual whose signature it purports to be. In order that a person may sign his name by stamping his facsimile signature, it is not necessary that he should be unable to write his name. In *Nirmal Chunder Bandopadhyaya v. Saratmoni Debya* a Division Bench of this court had occasion to consider section 50 of the Indian Succession

Act, 1856, which required that for the valid execution of the will "the testator shall sign or shall affix his mark to the will, or it shall be signed by some other person in his presence or by his direction". For a number of years the testator in that case had been in the habit of using a name stamp as he was unable to read or write. That name stamp used to be kept by a servant and under the testators direction used to be attached to any document or papers he wanted to sign. Under his direction the servant affixed the impression of his name stamp on the will. The Division Bench held that the will was duly executed. It is to be noted that if the impression of the name stamp were a mere mark, the will was not validly executed because u/s 50 of the Indian Succession Act, 1856, the mark could be affixed only by the testator. The execution of the will was held to be valid because by affixing the impression of the name stamp the servant had signed the will on behalf of the testator. In that case Ameer Ali and Pratt JJ. observed "we understand the word signing to mean the writing of the name of a person so that it may convey a distinct idea to somebody else that the writing indicated a particular individual whose signature or sign it purports to be. A mark is a mere symbol and does not convey any idea to a who notices it, often even to the person who makes it..... The use of a pen and ink does not seem to be necessary for the purpose of putting on the signature required. In the case of *Jenkyns v. Gaisford*, the judges indicate that the use of the pen and ink was not necessary for signing, and that argument may be well applied to this case also. A person may sign or put his name down by means of types, or, if he uses a facsimile for signing his name, he may use it for his signature."

In *Haraprosad Gain v. Gopal Chandra Gain*, a Division Bench of this court held that the notice u/s under section 7 of the Bengal Public Demands Recovery Act, 1913, was duly served though the notice bore only the lithographic signature of the Certificate Officer. Shurrawardy J. observed "I have not been able to discover and law under which it is incumbent on the Certificate Officer to sign the notice with his own hand." In spite of this decision another Division Bench in *Abanindra Kumar Maity v. A. K. Biswas*, held that the notice u/s 7 was invalid if it bore only a rubber stamp signature of the Certificate Officer and was not signed by him in his own hand. It is to be regretted that the Division Bench in this case dissented from the decision of the Division Bench in *Haraprosad Gain v. Gopal Chandra Gain*. In my opinion the case, *Haraprosad Gain v. Gopal Chandra Gain*, was correctly decided and we should follow that case in preference to the case, *Abanindra Kumar Maity v. A. K. Biswas*. I may add that in the instant case the point that the notice is invalid on this particular ground was not taken in the tribunals below. The point is taken for the first time in this court and for all that we know the Certificate Officer by his own hand affixed the name stamp on the copy of the notice delivered to the petitioner. The original notice signed by the petitioners son bears the manuscript signature of the Certificate Officer. These features of the instant case distinguish it from the decision in *Abanindra Kumar Maity v. A. K. Biswas*. The conflict of judicial opinion on this point was noticed by P. B. Mukharji J. in Matter No. 56 of 1957 (*Seth Ottanmal v. Certificate Officer*)

decided on February 12, 1958, and the learned judge refused to quash the certificate proceedings under article 226 of the Constitution on this ground as no question of jurisdiction was involved.

The petitioner next contends that execution of the certificate is barred by limitation. The Commissioner refused to entertain the objection on the ground that the objection petition was not filed in time. Now an objection petition u/s 9 of the Bengal Public Demands Recovery Act, 1913, denying his liability in whole or in part may be presented by the certificate debtor within thirty days from the date of the service of the notice u/s 7. The Commissioner to have thought that the present objection was a petition u/s 9 and as such was time-barred. In our opinion the Commissioner erred in dismissing the objection on this ground. The present objection does not deny the liability of the certificate-debtor in whole or in part for the public demand at the time when the certificate was filed. The present objection raises the question whether subsequent to the filing of the certificate the execution of the certificate has become barred by the law of limitation having regard to section 56 (2) of the Bengal Public Demands Recovery Act, 1913. The objection raises a question of discharge of a certificate duly filed under the Act due to the bar of limitation. The tribunals below are bound to hear and determine this objection u/s 37 of the Act. It is now shown that this objection is time-barred. In refusing to entertain the objection the ground that it was time-barred, the Commissioner refused to exercise a jurisdiction lawfully vested in him. By affirming the decision of the Commissioner, the Board of Revenue ought not to have dismissed the revision u/s 53 of the Act summarily without fixing a date of hearing and without issuing a notice to the petitioner. We express no opinion on the question whether execution of the certificate is barred by the law of limitation. The point should be determined by the Board of Revenue in accordance with law.

We pass the following order :

We adjudge and declare that the notice u/s 7 of the Bengal Public Demands Recovery Act, 1913, was duly served on the petitioner. The order of the Board of Revenue dated November 11, 1961, is hereby quashed and set aside and the matter is remitted to the Board of Revenue so that the Board of Revenue may decide the question whether execution of the certificate is barred by the law of limitation and thereafter dispose of the objection of the petitioner in accordance with law and in accordance with the observations made above. Each party will pay and bear her or its own costs.

CHATTERJEE J. - I agree.