

(2002) 02 AHC CK 0019

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 3177 of 2002

Smt. Rekha Srivastava

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 05-02-2002

Acts Referred:

Public Accountants Defaults Act, 1850 — Section 4

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 287A

Citation : AIR 2003 All 358 : (2002) 2 UPLBEC 1426

Hon'ble Judges : R.P. Misra, J;G.P. Mathur, J

Bench : Division Bench

Advocate : Kripa Shankar, for the Appellant;

Final Decision : Dismissed

Judgement

1. This writ petition under Article 226 of the Constitution has been filed for quashing of the recovery certificate dated 27-12-2001 issued against the petitioner directing her to deposit Rs. 42.900/-.

2. The petitioner claims to be a principal of an unaided institution known as G. Sahal Vidyalaya, Koila Nagar, Kanpur Nagar. The State Government gives scholarship to Scheduled Caste students who are studying even in the unaided institutions. A report was received that a substantial amount of money had been withdrawn by the alleged managers and principals of the institutions, which were actually not in existence, by submitting forged and fictitious documents showing disbursement of scholarship to Scheduled Caste students. An enquiry was conducted and then it was found between 1997-98 and 1999-2000 a sum of Rs. 1,75,32,660/- (Rs. One crore seventy five lakhs thirty two thousand six hundred and sixty) had been withdrawn by the managers and principals of such institutions which were not in existence in Kanpur City. An FIR was then lodged by Sri D.K. Singh, Zila Samaj Kalyan Adhikari, at P.S. Kotwali Nagar, Kanpur Nagar, on 9-9-2000, on the basis of which a criminal case was registered under Sections 420, 408, 409, 468 and 471, IPC. The petitioner is also named in the

FIR as she is a joint account holder of the account in which scholarship money was transferred and thereafter under her signature the money was withdrawn from the bank. The police after investigation submitted charge-sheet against the petitioner in the competent Court. The allegation against the petitioner is that she withdrew the amount from the bank under her signature and, thereafter, misappropriated the same. Thereafter, at the instance of the Zila Samaj Kalyan Adhikari (Social Welfare Officer), Kanpur Nagar, the Collector has issued a recovery certificate for recovery of Rs. 42,900/- from the petitioner as arrears of land revenue.

3. Learned counsel has submitted that there is no provision of law under which the amount may be recovered from the petitioner as arrears of land revenue. Learned Standing Counsel has, on the other hand submitted that in the facts and circumstances of the case, the amount can be recovered as arrears of land revenue under The Public Accountants Default Act, 1850 (Act 12 of 1850). Section 4 of the Act empowers the head of an office to proceed against any public accountant for any loss or defalcation in his accounts as if the amount thereof were an arrear of land revenue due to Government. Section 3 defines a "public accountant" and it means any person who as Official Assignee or Trustee, or as sarbarahkar, is entrusted with the receipt., custody or control of any moneys or securities for money or the management of any lands belonging to any other person or persons. There is no dispute that the Samaj Kalyan Vibhag (Social Welfare Department) gave money for disbursing scholarship to the Scheduled Caste students. The amount was transferred from the Government treasury to a joint account opened in the name of the manager and principal of the institution. The amount was withdrawn from there under the signature of the petitioner ostensibly for the purpose of disbursing the same to Scheduled Caste students. However, instead of actually giving the money to the students by way of scholarship, she misappropriated the same. When the money was transferred from Government treasury to the bank-account being operated by the principal and the manager of the institution, they were acting in the capacity of a trustee for actually disbursing the same to the Scheduled Caste students. The money was not meant to be retained or utilised personally by the manager or principal of the institution nor it could be utilised for any other purpose. They had to hold the money as trustees for the purpose of disbursing the same of the Schedule Caste students. Thus, there cannot be any doubt that the petitioner was a "public accountant" within the meaning of the Act. Consequently, it can be recovered as if it was an arrear of land revenue u/s 4 of the Act on account of loss of money. Thus, the contention of the learned counsel for the petitioner that the amount cannot be recovered as arrears of land revenue has no substance.

4. Learned counsel for the petitioner has placed reliance on a Division Bench decision in Bala Prasad Agnihotri v. U.P. State Public Service Tribunal(2001) 3 UPLBC 2059 : (2001 All LJ 1469), where an order for recovery of certain amount from a Government servant, who had defalcated the Government money, was quashed. The only reason given for quashing the order was that no statutory

provision had been shown to the Bench under which the amount could be recovered as arrears of land revenue. The other case relied upon by the learned counsel for the petitioner is P.C. Chaturvedi, (Contractor) v. The Collector, Mathura, 1996 Revenue Decision 81, where recovery proceedings initiated against a contractor at the instance of an executive engineer were quashed on the ground that Revenue Recovery Act, 1890, as amended by the Revenue Recovery (Uttar Pradesh) Amendment Act, 1965, did not empower the Collector to recover the amount. In both these decisions, the attention of the Bench was not drawn to the Public Accountant's Default Act, 1850, nor there is any reference to the aforesaid Act and, therefore, they cannot be of any assistance to the petitioner.

5. Learned counsel has next" submitted that the writ petitioner had not misappropriated the money but had actually disbursed the amount to the Scheduled Caste students. It is averred in the writ petition that a list of the students to whom scholarship money was disbursed has been furnished to the authorities. Neither the names nor the details of the students to whom the scholarship amount was disbursed has been given. The question whether Government money was actually disbursed to the Scheduled Caste students or the same was misappropriated is a pure question of fact, which cannot be adjudicated in the present proceedings under Article 226 of the Constitution. The procedure for recovery of the amount as arrears of land revenue is given in Section 279 of the U.P. Zamindari Abolition and Reforms Act. Section 287-A which finds place in the same chapter of the said Act reads as under :

"287-A. Payment under protest and suit for recovery.

(1) Whenever proceedings are taken under this Chapter against any person for the recovery of any arrears of land revenue, or for the recovery of any sum of money recoverable as arrears of land revenue he may pay the amount claimed under protest to the officer taking such proceedings, and upon such payment, the proceedings shall be stayed and the person against whom such proceedings were taken may sue the State Government in the Civil Court for the amount so paid, and in such suit the plaintiff may, notwithstanding anything contained in Section 278, give evidence of the amount, if any, which he alleges to be due from him.

(2) No protest under this section shall enable the person making the same to sue in the Civil Court, unless it is made at the time of payment in writing and signed by such person or by an agent duly authorised in this behalf."

6. The above quoted provision empowers the person from whom any amount of money has been recovered as arrears of land revenue to institute a civil suit where he can give evidence of the amount, if any, which he alleges to be due from him. There is no dispute here that the money from Government treasury was transferred to the joint account of the petitioner and, thereafter, it was withdrawn from there under her signature. The burden to establish that it was

actually disbursed to Scheduled Caste students is clearly upon her as the alleged disbursement is her own act where the department did not come into picture at all. Therefore, the petitioner after payment of the amount can Institute a suit where she can lead evidence to show that the entire amount which was transferred from the Government treasury to her account and was withdrawn by her was actually disbursed to the Scheduled Caste students by way of scholarship.

7. For the reasons mentioned above, we find no merit in the present writ petition, which is hereby dismissed summarily at the admission stage.