(2009) 11 AHC CK 0008

In the Allahabad High Court

Case No : Writ Petition Nos. 4828 to 4831 & 5175 (MB) of 2006

Sneh Lata Misra & etc. APPELLANT

Vs

Collector, District Ambedkar Nagar & Ors. RESPONDENT

Date of Decision : 25-11-2009

Acts Referred:

Public Accountants Defaults Act, 1850 — Section 4
Uttar Pradesh Public Moneys (Recovery of Dues) Act, 1972 — Section 3

Citation : (2009) 11 AHC CK 0008

Hon'ble Judges : Rajiv Sharma, J and Satish Chandra, J

Final Decision : Dismissed

Judgement

Rajiv Sharma, and Satish Chandra, JJ.—Heard Sri S.M. Shukla and Sri A.R. Masoodi, learned counsel for the petitioner and Sri N.C. Mehrotra, learned Additional Chief Standing Counsel, for the State.

2. All these writ petitions have been filed under Article 226 of the Constitution of India and as issues raised in all these writ petitions are identical, request has come forward to treat writ petition No. 4828 (MB) of 2009 as the leading case and to decide all these writ petitions together, on the arguments advanced in leading writ petition.

3. Brief background of the case as is reflected from the record are that Padmawati Devi Balika Inter College, Gayatripuram, Surhurpur, district Ambedkar Nagar [hereinafter referred to as ''the Institution'' for the sake of brevity] being a privately managed unaided Intermediate Institution and recognized under the provisions of U.P. Intermediate Education Act, 1921, was established in the year 1999. The Institution is imparting education to girls students of nearby villages. The Social Welfare Department and Backward Classes Welfare Department granted scholarship to be distributed amongst the girls students of the Institution. The said amount was deposited by the Institution in its account bearing No. 5/7691. Thereafter, a circular was issued on 9.11.2004, requiring the students who were to be benefited by the scholarships to open their respective

accounts in Punjab National Bank, Surhurpur Branch and the same was affixed on the Notice Board.

4. Since the number of beneficiaries of the scholarships was quite large, as such, the Manager of the said Bank expresses his inability to open the large number of Bank Account and it is in this background the students who were to be benefited by the scholarships requested the Principal through various applications that the amount of scholarships be distributed in cash. Accordingly, the Principal of the Institution, vide letter dated 27.2.2005, wrote a letter to the Manager of the Institution, for passing appropriate order. Consequently, the matter of disbursement of the amount of scholarship was considered by the Manager of the Institution in its meeting dated 12.3.2005 and it was decided that a three member committee be constituted for the said purpose and it was also decided that in presence of the members of the said Committee, the Principal and coaccount holder, namely, Sri Ram Sagar Yadav would draw the amount and disbursed the same in cash at the rate prescribed to the students. It was also decided that after the end of session i.e. after 30.5.2005, no amount of scholarship will be distributed in cash and the entire amount would be distributed through cheques only.

5. In pursuant to the resolution dated 12.3.2005, the amount of scholarship was paid in cash to the students till 30.5.2005 and thereafter those students who could not be paid their scholarship were paid through cheques and a utility certificate was also sent to the District Inspector of Schools, Ambedkar Nagar. The same was duly signed by the District Inspector of Schools on 9.5.2005, pertaining to an amount of Rs.5,58,000/ alleged to be distributed amongst 775 girls students eligible for scholarship. Similarly, another utility certificate of an amount of Rs.6,93,980/ was also sent on 8.7.2005 which was again countersigned by the District Inspector of Schools, Ambedkar Nagar. The said amount was distributed amongst 785 eligible girls students pursuing studies in Class XI and XII. Further, two utility certificates, one amounting to Rs.4,00,960/ and another amounting to Rs.2,87,040/ distributed amongst 557 girls students of Class IX and X belonging to Other Backward Classes and 374 students of Class IX & X belonging to reserved category of Scheduled Castes were also countersigned by the District Inspector of Schools, Ambedkar Nagar. Thus, the total amount for which the utility certificate has been countersigned by the District Inspector of Schools, Ambedkar Nagar comes out to be Rs.23,99,980/

6. It has been alleged that on account of local political equations, certain disgruntled elements in the neighbouring area bear grudge and enmity against the Management of the Institution and out of their zeal to give lesson to the Management, such elements conspired and in an incident of criminal assault on the employees of the institution, the documents of the institution was destroyed. Accordingly, the Manager of the Institution lodged a First Information Report against Sri Anil Kumar Yadav son of Sri Ram Bahal Yadav, Sri Sita Ram Yadav son of Sri Bipat and Sri Soni Sharma. In the aforesaid incident, all the almirah and

boxes wherein the documents relating to admission of students, attendance register of the students as well as that those of teachers and the scholarship register were destroyed. After investigation, a chargesheet against the aforesaid persons has been filed in the Court of Judicial Magistrate, Ambedkar Nagar and cognizance has also been taken of the said case.

7. It has further been alleged that all the accused persons and the other political persons have been successful in their bid and it is in this background, a First Information Report was lodged on 28.12.2005 under Section 409 IPC. Thereafter, the District Social Welfare Officer sent a recovery certificate to the Collector/ District Magistrate, Ambedkar Nagar vide his letter dated 22.4.2006, requesting therein that the said recovery certificate is being sent under the provisions of Section 2 (Ka) of the Act, 1972. Through the said letter, the District Welfare Officer, Ambedkar Nagar has requested to recover a total amount of Rs.20,06,340/ from the petitioner and the coaccount holder Sri Ram Sagar Yadav. Similarly, a recovery certificate has also been sent by the District Backward Class Welfare Officer, Ambedkar Nagar to Collector/District Magistrate, Ambedkar Nagar on 19.4.2006 for recovering an amount of Rs.8,60, 960 from the petitioner and the Manager of the Institution. On the basis of the aforesaid letter and the recovery certificate issued by the District Welfare Officer and the District Backward Class Welfare Officer, Ambedkar Nagar, the Tehsildar, Tehsil Jalalpur, district Ambedkar Nagar issued the impugned demand notice to the petitioner.

8. Feeling aggrieved by the aforesaid action, the petitioner preferred these writ petitions inter alia on the grounds that the provisions of U.P. Public Moneys (Recovery of Dues) Act, 1972 [hereinafter referred to as ''Act 1972'' for the sake of brevity] are not applicable in the instant case. Further, the impugned action on the part of the respondents in fastening the liability of the amount in question without conducting any enquiry or without associating the petitioner in any enquiry and without giving any opportunity of hearing is absolutely unlawful and is in violation of principles of natural justice.

9. Learned counsel for the petitioner submits that impugned recovery cannot be permitted to be made under the provisions of aforesaid Act 1972 insofar as Section 3 of the Act, 1972 clearly provides that the amount can be recovered as an arrears of land revenue on the recovery certificate being sent by person authorized to do so only against a person who is a party to an agreement relating to loan, advance or grant relating to credit in respect of or relating to hirepurchase of goods by the State Government or the Corporation by way of financial assistance or he is a party to an agreement relating to loan etc. because of such a person by a Bank, Company or Government under a State sponsored Scheme. It further provides that recovery can be made in case there is an agreement relating to a grant given by the State Government or a Corporation in respect of a loan raised by an industry or in case of an agreement which provides that any money payable to the State Government shall be recoverable as arrears

of land revenue.

10. Submission is that the amount of Scholarship does not fall in either of the category, referred to above, which is recoverable as envisaged under Section 3 of the Act, 1972. The institution was only entrusted to disburse the amount of scholarship payable to the students. As the provisions of the Act, 1972 are not applicable in the instant case, therefore, issuance of recovery certificate under the said provision is absolutely without jurisdiction.

11. Learned counsel for the petitioner vehemently argued that before saddling the petitioner with the liability of the amount, no inquiry of any nature associating the petitioner or any member of the Management or even the student has been held. He also submits that the provisions of the Act, 1972 can be pressed into service only in case of a loan or advance relating to a credit or a grant given by the State Government or in case there exists some agreement which provides that any money payable to the State Government shall be recoverable as arrears of land revenue. In the absence of any condition being fulfilled in the instant case, as provided under Section 3 of the Act, 1972, the impugned recovery is not referable to the provisions of the Act, 1972.

12. Learned counsel for the petitioner next argued that the Government Order dated 16.8.2004 in question, provides a complete scheme for the purposes of sanction of scholarship and distribution thereof. The sanction and distribution of scholarship in the educational institutions of rural areas is dealt with under Para7 of the Government Order dated 16.8.2004, according to which the sanction of scholarship is made by the Committee of which Gram Pradhan is the Chairman. As far as verification of the distribution of scholarship is concerned, the responsibility rests upon the UpPradhan and Gram Panchayat Adhikari for verification. So far as the distribution of scholarship is concerned, in this regard, a Committee comprising of the Principal and two senior most Teachers is provided. A composite reading of the Government Order makes it clear that the role of Gram Pradhan is merely to countersign the distribution of scholarship as verified by UpPradhan and Gram Panchayat Adhikari. There is no provision in the Government Order conferring any power upon any authority to forward a recovery certificate as against the members of the Sanction Committee or Distribution Committee for realization of scholarship money as arrears of land revenue collectively or individually. The Government Order, however, provides for recovery of scholarship derived by a student on the basis of forged and false documents as arrears of land revenue.

13. Learned counsel for the petitioner submits that the sanction of the scholarship was made on the basis of the list of students as forwarded by the Principal. Once the scholarship is sanctioned on the basis of a list drawn by the Principal of the Institution concerned and there is no complaint regarding distribution of the same, no liability can be fastened upon the petitioner. The fixation of liability upon the petitioner and its recovery without affording any opportunity and without there being any justifiable basis is per se illegal and

without authority of law.

14. On the other hand, learned counsel for the respondents submits that by means of Government Order dated 16th August, 2004, a scheme was launched by the Government for providing financial assistance to the students of different section of the Society and for that purpose, a detailed guidelines for disbursement of the scholarship and other related aspect of the scheme was mentioned therein. In column 6.3, which deals with the sanction and disbursement of the scholarship, it has been clearly provided that with regard to the students of Class Ist to 8th, the scholarship will be disbursed in cash, whereas in respect of students of Class 9th and above, the same shall be distributed through the account of the concerned beneficiaries. However, in respect of students of General Category candidate, the mode of payment from Class Ist to 8th is cash payment, whereas from 9th to 10th, the same is through their Bank Account. In respect of general category candidates, students of higher secondary classes i.e. above 10th, the following provision for disbursement of the scholarship has been indicated in the aforesaid Government Order :

15. As per the other conditions, which have been provided that if anyone has obtained the scholarship by furnishing a false declaration, the same shall be recovered from him as arrears of land revenue. Thus, from the perusal of the aforesaid relevant provisions of the Government Order, it would become clear that there is no provision in the said Government Order for making cash payment in respect of the students of Class9th and above and all the payment sought to be made through the Bank Account to the concerned beneficiaries and at the same time, the competent authority is within its jurisdiction to recover the amount in question from the erring persons as arrears of land revenue. After examining, it was found that irregularity has been committed in disbursement of scholarship, the competent authorities have issued recovery certificate against the petitioner at the strength of which the citation in question has been issued against the petitioner. The authorities who have issued recovery certificates are fully competent to recover the amount in question from the petitioner as arrears of land revenue as the petitioner has deliberately diverted the amount to his own use against the guidelines issued vide Government Order dated 16th August, 2004 contained in CAI to the counter affidavit.

16. Learned Additional Chief Standing Counsel vehemently asserted that the Institution is not running for the last nineteen years, rather the Institution in question was in function for the last eight to nine years and this is a recognized and unaided institution and further there are other recognized institution in the nearby vicinity of this Institution. The Institution is being run on the land of the Gaon Sabha and this fact was concealed by the Institution authorities from the educational authorities and against this act of the Institution, necessary exercise is under process for withdrawl of its recognition at the level of U.P. Board.

17. Learned Additional Chief Standing Counsel, while clarifying the position, submitted that after due inquiry, it was revealed that the amount of scholarship

has been distributed by the petitioner contrary to the guidelines issued vide Government Order dated 16th August, 2004 and as such, recovery proceeding against the petitioner has been initiated by the Tehsil authorities after the amount in question having been certified by the competent authority with the issuance of recovery certificate to this effect and as such, the answering respondents are within their power and the authority to proceed against the petitioner for recovery of amount in question by means of impugned citation.

18. Learned Additional Chief Standing Counsel also pointed out that once it has been established in inquiry that the amount of scholarship has been distributed by the petitioner in cash ignoring the guidelines issued in the Government Order dated 16.8.2004 and it has not been disputed by the petitioner in the writ petition that substantive part of the scholarship was distributed in cash, there was no necessity to hold further inquiry in the matter and upon being satisfied that the amount has been distributed ignoring the guidelines issued in this regard, the competent authority was well within its jurisdiction to proceed against the petitioner for recovery of the amount in question as arrears of land revenue.

19. Learned Additional Chief Standing Counsel has also asserted that the petitioner cannot escape their liability in respect of the amount in question which has been allegedly distributed by the petitioner in a manner not permissible under the law in order to facilitate the embezzlement of the amount in question. He submits that annexure No. 2 and 3 to the writ petition are fabricated and false document, which were never issued by the Office of answering respondent and at no point of time were officially communicated to the office of answering respondent and a perusal of the same would again reveal that it was not issued or referable to any provisions of the Government Order thereby relaxing the mode of distribution of scholarship in cash to the beneficiaries. Thus, the entire exercise has been undertaken by the petitioner in order to dupe the amount of scholarship and diverted it to their personal use.

20. Learned Additional Chief Standing Counsel further submits that Annexure 7 and 11 of the writ petition related to the utility certificate of the scholarship in question have not been issued by the Office of answering respondent, rather the same have been fabricated by the Principal and Manager of the Institution in order to prepare the ground to plunder the Government money with their trick and mischief.

21. Admittedly, a scheme was launched by the Government for providing financial assistance to the students of different section of the Society and for that purpose, a detailed guidelines for disbursement of the scholarship and other related aspect of the scheme was mentioned in Government Order dated 16th August, 2004. In column 6.3, it has been specifically provided that with regard to the students of Class Ist to 8th, the scholarship will be disbursed in cash, whereas in respect of students of Class 9th and above, the same shall be distributed through the account of the concerned beneficiaries. However, in

respect of students of General Category candidate, the mode of payment from Class Ist to 8th is cash payment, whereas from 9th to 10th, the same is to be paid only through their Bank Account. Moreover, for distribution of scholarship, a Committee comprising of the Principal and two senior most Teachers were made.

22. So far the plea of the petitioner that recovery cannot be made from the petitioner as arrears of land revenue, it is relevant to refer Rule 3, 4 and 5 of the Public Accountants Default Act, 1850, which is meant for avoiding loss by the default of Public Accountants. Rules 3 and 5 of the Public Accountants Default Act, 1850 reads as under :

"3. Public Account defined. For the purpose of Sections 1 and 2 of this Act, the express "public accountant" means any person who as Official Assignee or Trustee or as Sarbarakar, is entrusted with the receipt, custody or control of any moneys or securities for money, or the management of any land belonging to any other person or persons, and for the purpose of Sections 4 and 5 of this Act, the expression shall also include any person who, by reason for any office held by him in the service of the Central Government or the Government of a State, is entrusted with the receipt, custody or control of any moneys or securities for money, or the management of any lands belonging to such Government.

4. Prosecution of accountants and sureties. The person or persons at the head of office to which any public accountant belongs may proceed against any such accountant and his sureties for any loss or defalcation in his accounts as if the amount thereof were an arrear of land revenue due to Government.

5. Enactments applied to proceedings by and against accountants. All Regulations and Acts now or hereinafter to be in force for the recovery of arrears of land revenue due to Government, and for recovery of damages by any person wrongfully proceeded against for any such arrears shall apply, with such changes in the forms of procedure as are necessary to make them applicable to the case, to the proceedings against any by such public accountant."

23. Thus, a bare perusal of the aforesaid Rules, it reflects that a Government servant whose duties include receiving and handling of money is a public accountant withing the meaning of this Act, and the amount of loss caused by default of such servant may be recovered as arrears of land revenue. But, if such duties do not include handling of moneys, action under the provisions of this Act is not possible. Section 4 of the Act empowers the head of an office to proceed against any public accountant for any loss or defalcation in his/her 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 Social Welfare Department gave money for disbursing scholarship to the eligible students of various sections. The amount was transferred from the Government treasury to a

joint account opened in the name of the principal of the institution. The amount was withdrawn from the accounts under the signatures of the petitioner ostensibly for the purpose of disbursing the same to the students of various section. However, instead of actually giving the money to the students as scholarship, the petitioner misappropriated the same. When the money was transferred from Government treasury to the bankaccount being operated by the Principal of the institution, he was acting in the capacity of a trustee for actually disbursing the same to students of various section. The money was not meant to be retained or utilised personally by the member of the managing committee or the 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 to the students of various sections. Thus, there cannot be any doubt that the petitioner was "public accountant" within the meaning of the Act. Consequently, it can be recovered as if it was an arrear of land revenue under Section 4 of the Act on account of loss of Government 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 and is rejected.

24. The question whether Government money, was actually disbursed to the students of various section 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 Land Reforms Act. Section 287A which finds place in the same chapter of the said Act reads as under:

"287A. 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 authorized in this behalf."

25. 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 account of the petitioner and, thereafter, it was withdrawn from there under his signature. The burden to establish that it was actually disbursed to the students of various section is clearly upon them as the alleged

disbursement is their own act where the department did not come to picture at all. Therefore, the petitioner after payment of the amount can institute a suit where he can lead evidence to show that the entire amount which was transferred from the Government treasury to his account and was withdrawn by him was actually disbursed to the students of various section by way of scholarship.

26. For the reasons mentioned above, we find no merit in these writ petitions, which are hereby dismissed.

