(1999) 12 OHC CK 0013

In the Orissa High Court

Case No : O.J.C. No''s. 5029, 5193, 5194, 5582, 8366 and 14733 of 1998 and 734 of 1999

Sudhakar Pradhan APPELLANT

Vs

State of Orissa and Others RESPONDENT

Date of Decision : 15-12-1999

Acts Referred:
Orissa Public Demands Recovery Act, 1962 — Section 4, 8

Citation : (2000) 1 OLR 162

Hon'ble Judges : R.K. Patra, J;R.K. Dash, J

Bench : Division Bench

Advocate : A. Mukherjee, G. Mukherjee, P. Mukherjee, J. Rath and S. Patnaik, for the Appellant; A.G.A., for the Respondent

Judgement

R.K. Patra, J.—As common questions of law and facts have arisen in these writ petitions and parties being the same in all of them, they were heard together for the sake of convenience. We therefore intend to dispose of them by this common order.

2. The petitioner in each of the writ petitions seeks quashing of the concerned certificate proceeding initiated against him on the file of the Certificate Officer, Dhenkanal. We may now set out the relevant facts and circumstances. Although several grounds have been taken in support of the writ petitions, Shri Mukherjee in course of argument urged a sole point. We may make it clear that we have not expressed any opinion on the points not urged by the learned counsel which are available to him to be raised in future in case of necessity.

3. Shri Mukherjee submitted that the Certificate Proceedings have been initiated basing on the audit reports by which there was no determination of petitioner''s liability and, as such, the certificate proceedings for realisation of the disputed amount are without jurisdiction. In support of his submission, he placed reliance on the Finance Department Office Memorandum No. 321741 (460)-F dated 22.8.1991 which states, inter alia that findings in audit report does not impose

any liability on the Government servant concerned, unless the same is established in a departmental proceeding initiated against him under the Orissa Civil Service (Classification, Control and Appeal) Rules, 1962. According to Shri Mukherjee, no liability has yet been fixed on the petitioner in a departmental proceeding and, as such, the amount covered under the certificate cases cannot be taken to be the "Government dues".

4. Opposite party No. 3 is the Collector. Dhenkanal. He is the certificate holder. Counter affidavit has been filed on his behalf wherein it has been stated that the money due to the Government from the petitioner comes under the provisions of the Orissa Public Demands Recovery Act, 1962 (hereinafter referred to as ''the Orissa Act'') as the "arrears of land revenue" by virtue of Section 4 of the Public Accountants'' Default Act, 1850. The amount covered under the certificate proceedings has been found out by the final audit report which comes within the definition of ''Public Demand'' [vide Section 2 (g) of the Orissa Act read with Schedule-I (ix)]. It has been also stated that on the basis of the information lodged by the Collector in respect of interim audit report, criminal proceedings have been started against the petitioner. With regard to the disciplinary proceedings against the petitioner, it has been averred that the Collector has received Government concurrence under Rule 7 of the Orissa Civil Service (Pension) Rules, 1992 for taking disciplinary action against him as he has since retired from service and disciplinary proceedings are pending.

5. The petitioner was the Nazir in the Collectorate. It is not in dispute that the certificate proceedings have been initiated on the basis of the final audit reports. At this stage, we may refer to the provisions of the Public Accountants'' Default Act, 1850 as well as provisions of the Orissa Act relied on by the Certificate-holder in his counter affidavit. Section 3 of the Public Accountants'' Default Act, 1 850 defines "public accountant" to mean inter alia, any person who by reason of any office hold 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. Section 4 of the said Act states that the Head of the Office may proceed against a "public accountant" in his office for any loss or defalcation in his accounts as if the amount thereof were an arrear of land revenue due to the Government. This means that the amount of loss or defalcation in accounts has to be taken to be arrear of land revenue due to the Government. Section 2 (g) of the Orissa Act defines "Public Demand" to mean any arrear or money specified in Schedule-I. In the counter affidavit reliance has been placed on Item (ix) of Schedule I in support of the contention that the amount in the certificate cases is an arrear of land revenue and is recoverable as public demand under the provisions of the Orissa Act. Item (ix) of Schedule-I of the Orissa Act reads as follows :

"Any money which is recoverable under any law. custom or usage for the time being in force as an arrear revenue or land revenue or by the process authorised for the recovery of arrears of land revenue or of the public revenue or of Government revenue."

6. From the conjoint reading of the aforesaid provisions, it follows that the Head of the Office to which any public accountant belongs, would be competent to proceed against such public accountant for recovery of the amount of loss or defalcation in accounts by taking recourse to the provisions of the Orissa Act as if such amount is public demand. The petitioner was the Nazir and having regard to the duties and responsibilities of Nazir as indicated in Rules 48 and 50 of the Orissa Nizarat Manual, we are inclined to hold that he squarely comes within the definition of ''public accountant''.

7. The petitioner has not. yet filed a petition u/s 8 of the Orissa Act denying his liability before the Certificate Officer. By referring to the said provision (Section 8) Shri Mukherjee contended, that the scope of defence of a certificate debtor is restricted to only two grounds viz. (i) the certificate dues have been fully or partly paid and (ii) the certificate case does not relate to him and as such, the Certificate Officer will not consider the petitioner''s defence that the amount under consideration has not yet been determined. In view of such contention, it is necessary to refer to Section 8 of Orissa Act. Its relevant portion is extracted hereunder :

"Section 8. Filing of petition denying liability :

(1) ''The Certificate-debtor may......present to the Certificate Officer who is executing the certificate, a petition in the prescribed form......his liability only on the ground that -

(a) the certificate dues have been fully or partly paid: or

(b) the person on whom such notice has been served is not the person named as Certificate-debtor in the certificate :

Provided that a certificate debtor in respect of dues, other than those in relation to which the liability under any law for the time being in force is not open to question in a Civil Court may also deny his liability on any other ground."

Perusal of the aforesaid provision would show that the defence of a certificate debtor is not wholly shut out, as contended by Shri Mukherjee. Proviso to Sub-section (1) of Section 8 of the Act is a pointer in this regard. The scope of the proviso came to be considered by this Court in Kailash Chandra Behera v. Collector, Balasore (1986) 66 CLT 275. In that case a learned Single Judge held that u/s 8 of the Act, a certificate debtor can deny the liability by filing petition on the ground that the certificate dues have been duly or partly paid or on whom the certificate has been made is not the person as certificate- debtor in the certificate. If a certificate-debtor can challenge the liability on any ground in a Civil Court, he can also take the same as a ground in the application denying liability. He cannot however take these grounds if denial of liability is not open to be challenged in the Civil Court in view of the law under which the same is demanded. We respectfully concur with the aforesaid opinion expressed by the learned Single Judge.

8. In our considered opinion, besides the two grounds (viz. that the certificate dues have been fully or partly paid or the concerned certificate does not relate to him), he may also deny his liability in respect of the dues on any other ground except that ground which he cannot take in a Civil Court. May it be stated that there are number of special Statutes dealing with ouster of jurisdiction of Civil Court in relation to the subject-matter of dispute. No such provision was brought to our notice excluding the jurisdiction of the Civil Court with regard to the subject-matter of the present dispute. In absence of any provision ousting the jurisdiction of the Civil Court, it is open to the petitioner to challenge his liability before the Certificate Officer on the ground that merely on the basis of audit report no liability can be fixed which is now canvassed before us.

9. In the result, we dispose of all the writ petitions with the aforesaid observation and direction hereinafter mentioned :

(1) The petitioner is at liberty to file his petition denying his liability within 7th of January, 2000, if not already done: and

(2) The Certificate Officer will dispose of the petition, if filed, after giving due opportunity to the petitioner by a speaking order by 31.3.2000. If the petitioner does not co-operate in the proceeding, the Certificate Officer would be free to dispose of the matter according to law.

R.K. Dash, J.

I agree.