
(1964) 02 CAL CK 0001
In the Calcutta High Court
Case No : Civil Revision No. 3164 of 1960

Tangail Textiles Ltd.

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 17-02-1964

Acts Referred:

Bengal Public Demands Recovery Act, 1913 — Section 34
Constitution of India, 1950 — Article 14
Rehabilitation Finance Administration Act, 1948 — Section 15
Revenue Recovery Act, 1890 — Section 4

Citation : AIR 1965 Cal 220

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

Bench : Single Bench

Advocate : A.P. Chatterjee, for the Appellant; P.K. Roy and Debi Prosad Pal for Nos. 1, 2 and 3 and N.C. Chakravarti and Smriti Kumar Roy Chaudhury for Nos. 4 and 5, for the Respondent

Final Decision : Dismissed

Judgement

P.B. Mukharji, J.—This is an application by the petitioner company Tangail Textile Ltd. under Article 226 of the Constitution against the Union of India, the Chief Administrator, Rehabilitation Finance Administration, the Rehabilitation Finance Administration and the Certificate Officers of Districts Nadia and 24-Parganas of this State. The Rule is directed against the order to proceed against the petitioner under the Public Demands Recovery Act for realisation of a loan of Rs. 80,000/-. In fact two Certificates have been filed in this case for the total sum of Rs. 203401.62 nP. by the Union of India through the Rehabilitation Finance Administration with the Certificate Officer of Nadia as well as the Certificate Officer of 24-Parganas at Alipore and the Certificate has been filed against the guarantors of the Company, viz, (1) Aravinda Ghosh, (2) Kulundu Chandra Roy and (3) Santosh Chandra De Talukdar. These two certificates are dated 26th December, 1959 and 20th June, 1959. They appear as annexures to the petition.

2. The petitioner Company was promoted by displaced persons from East

Pakistan and is running a Powerloom Factory at Fulia Rehabilitation Colony in the district of Nadia. The Factory was initially started with a loan of Rs. 40,000/- granted by the Rehabilitation Finance Administration on two mortgage deeds executed between the petitioner Company and the respondent Administration on the 27th August, 1952. Then the petitioner Company took a further loan of Rs. 40,000/- from the respondent Administration through another agreement dated the 10th February, 1954. There was a Supplementary deed of Mortgage dated the 26th November, 1956, incorporating the second loan of Rs. 40,000/-. It appears that the petitioner Company continued to make applications for further loans. As it appears from paragraphs 9 and 10 of the petition itself the petitioner Company after getting the licence applied for a farther loan of Rs. 7,00,000/- to the respondent Administration on or about the 20th April, 1955. The petitioner Company on the 30th April, 1955 and nth May, 1955 made further application to the respondent Administration for a further loan of Rs. 7,00,000/-. The respondent Administration on. of about 13th June 1955 turned down and rejected the petitioner's application for the loan of Rs. 7,00,000/-.

3. It is not necessary, having regard to the actual point raised and argued before me to refer to the. details, of the correspondence and requests for further, loans mentioned in the petition. All that is necessary now to say is that the respondent Administration pressed the petitioner Company for repayment of the earlier dues, of Rs. 80,000/-. By a letter dated 22nd December, 1958 the respondent Administration represented to the petitioner Company complaining that its representative was not allowed inspection of the account books of the petitioner company; that the proposal for the sake of the surplus machinery of the concern also had not been submitted; and that arrears of instalments stood at Rs. 56,143.62 nP. and another instalment of Rs. 15,115/- would fall due on 1st January, 1959 bringing the total dues to Rs. 71,257.62 nP. In that letter it was clearly stated that if the petitioner company did not come, to any amicable settlement and produce the accounts for inspection by the end of the month, the entire loan would be recalled and the case referred to the Collector to realise the entire amount as arrears of land revenue.

4. The only ground, Mr. Chatterjee, learned Advocate appearing for the petitioner Company, has pressed before me is that Section 15 of the Rehabilitation Finance Administration Act is ultra vires of Article 14 of the Constitution because it creates unreasonable discrimination amongst debtors of the Administration to proceed against persons by certificate procedure in addition to or as an alternative to the procedure by Civil suit. Therefore; it is contended by him that it is ultra vires Article 14 of the Constitution in so far as it places the Rehabilitation Finance Administration in an unreasonably favourable category as distinguished from other creditors.

5. In support of this argument Mr. Chatterjee has relied on the Special Bench decision of this Court in S.M. Nawab Ariff v. The Corporation of Calcutta, reported in 64 Cal WN 1: (ATR 1960 Cal 159 SB). In that case by a majority of 2 to 1 the

Bench decided that the procedure of distraint as provided u/s 237 of the Calcutta Municipal Act was more onerous than the alternative procedure by way of suit u/s 251 thereof and therefore the law as laid down in Section 237 of the Calcutta Municipal Act being more discriminatory was violative of Article 14 of the Constitution and so, void under Article 13 of the Constitution. There the competition was between the procedure of distraint and the procedure by suit. It is at once to be noticed that the distraint there was entirely summary procedure and it was carried out by the Corporation Administration itself without going through any independent agencies, a point which would here be relevant later on for distinction.

6. Mr. Chatterjee on behalf of the petitioner Company has also relied on the decision of *Suraj Mall Mohta and Co. Vs. A.V. Visvanatha Sastri and Another*, . It was held there that Section 5(4) of the Taxation on Income (Investigation Commission) Act, 1947, violated against Article 14 of the Constitution and was, therefore, void. Section 5(4) of that Act was materially and significantly different from. Section 15 of the Rehabilitation Finance Administration Act, 1948, with which I am concerned in the present application. The gist of Section 5(4) of the Validity of Taxation on Income (Investigation Commission) Act was that if in the course of investigation into any case or points in a case referred to it under Sub-section (1), the Commission has reason to believe (a) that some person other than the person whose case was being investigated had evaded payment of taxation on income, or (b) that some points other than those referred to it by the Central Government in respect of any case also require investigation, it might make a report to the Central Government stating its reasons for such belief and, on receipt of such report the Central Government shall, notwithstanding anything contained in Sub-section (i) of that Act, forthwith refer to the Commission for investigation of the case of such other person or such additional points as might be indicated in that report. Among the reasons given in that judgment of the Supreme Court, there was one that the investigator and the Judge in that situation u/s 5(4) of that Act were rolled into one. Not only was the language of Section 5(4) of that Act different from the language of the Act that I have to consider in this case, it is also clear that there also the agency was not independent of the administration concerned.

7. Lastly Mr. Chatterjee for the petitioner Company refers to the decision of the Supreme Court in *J. Pandurangarao Vs. Andhra Pradesh Public Service Commission*, , on the principles of classification and specially the observations there at page 271 in paragraph 7 thereof. The question there arose out of a Government Rule for recruitment of a District Munsif providing for several qualifications. One of them was that the applicant should be practising as an Advocate of the Andhra High Court and the other was that he must be actually practising in Courts of civil or criminal jurisdiction in India for a period not less than three years. It was held there that the expression "the High Court" in the context meant the Andhra High Court and not any High Court in India, and as this rule had introduced a classification between one class of Advocates and the

rest it was held that such classification was irrational. The Rule 12(h) and the corresponding portion of paragraph 4A(1) of the notification based on it were unconstitutional and ultra vires. The question before me is distinguishable from the question decided there.

8. Having distinguished the cases relied on by Mr. Chatterjee it is now necessary to state and formulate the question in the present application. Section 15(a) of the Rehabilitation Finance Administration Act, 1948 is challenged on the ground that it violates Article 14 of the Constitution and is therefore, void on the ground of discrimination and inequality. This impugned section reads as follows: "If the amount of loan or any instalment thereof or interest thereon which is due, in accordance with the terms of the contract or under the provisions of Section 14, has not been repaid the Administration may,--

(a) without prejudice to any other remedy provided by law, recover such loan instalment or interests" as arrears of land revenue, or

(b) take charge of the business or industry of the borrower on such terms" and conditions" as it may deem fit."

9. Mr. Chatterjee's point of challenge is confined to. Section 15(b) of this Act. It is contended by him that competitive, remedies; are placed in the hands, of the Administration without laying down any guide. In other words, it is said, that the Administration can pick and choose between different, debtors and apply one. remedy against one and. another, remedy against another although they belong to the same class of debtors, of the Administration. The argument sounds plausible and has apparent attraction.

10. Article 14 of the Constitution provides that the state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. The question is, whether Section 15(a) of the Act is a breach of this, doctrine of equality guaranteed as a fundamental right by the. Constitution. To determine this, question, it will be appropriate, in my view, first to have a broad reference to the main features of this Act.

11. The preamble of this Rehabilitation Finance Administration Act shows that its purpose is to give, financial assistance on reasonable terms to displaced persons to enable them to settle in business or industry. For this, purpose the Scheme is for establishment and incorporation by the Central Government of a Corporation called the Rehabilitation Finance Administration for giving such financial assistance. This. Corporation is a body corporate known by the name of the Rehabilitation Finance Administration with perpetual succession and a common seal and with power to acquire, hold and transfer property, subject of course to provisions of the Act, and can sue and be sued. The Administration shall have its head office at Delhi and may, with the previous approval of the Central Government, open branches at such places in India as it may consider necessary to discharge effectively its functions under the Act. The Administration consists of the following members, namely:

(a) a Chairman to be appointed by the Central Government who is called the Chief Administrator;

(b) three officials appointed by the Central Government;

(c) three non-officials nominated" by the Central Government.

The Central Government is given power to constitute the Advisory Board to advise the Administration on matters of policy and may where necessary constitute a Regional Committee to advise each branch of the Administration. The Central Government may from time to time advance money to the Administration for its business, the aggregate amount of which shall not exceed twelve crores and fifty lakhs of rupees. All moneys belonging to the Administration shall be deposited in the Reserve Bank of India or any agents thereof or invested in such securities as may be approved by the Central Government.

11a. Section 12 of the Act provides for the business of the Administration. One such business with which we are concerned in the present application is advance of loans.

12. It is provided in Section 13(5) of the Act that

"The assets created from the loan shall, notwithstanding any law or usage to the contrary be deemed to be mortgaged to the Administration for the repayment of the loan together with the interest thereof and the amount of the loan and! the interest thereon shall be first charge on such assets."

It is also further provided by Sub-section (6) thereof that

"The Administration may also take such further security for any loan as it may consider necessary,"

12a. Section 14 of the Act gives power to the Administration to call for repayment before agreed period in certain circumstance"s. Then follows Section 15 which provides for mode of recovery.

13. From the above review of the whole statute in the present case and its context and its purpose it is clear that this is not a case where the State imposes any tax or obligation upon any person without a choice. It only creates an agency for lending money to displaced persons for the purpose mentioned in the statute. A displaced person may avail himself of the statute and borrow money from the agency created by the statute. But the displaced person is not compelled, forced or obliged to borrow money from this agency alone. He can go to other creditors and other agencies but what the statute provides is that if a displaced person comes to the Administration created by the statute for loan then the terms of the Administration for that loan are as provided in the statute. Therefore, a displaced person when he borrows money from the Administration does so openly and voluntarily on the terms publicly provided in the statute. One of the express terms in the statute is Section 15(a) of the Act providing that the

amount of loan which has not been repaid can be recovered by the Administration as arrears of land revenue without prejudice to any other remedy provided by law. It is therefore, not a case at all of discrimination. A borrower who borrows money on the basis of these terms cannot, in my view, complain that the remedies of the creditor are more liberal than the remedies of the other creditors who are outside the Act. He has openly, voluntarily and without compulsion taken the loan on such express term. The terms of a loan even amongst private persons and agencies are not similar but valid. But in spite of varying terms such agreements have not been declared to be void on the ground of discrimination. Some loans or mortgage deeds may provide that if the amount is due and remains unpaid for some time a Receiver will be forthwith appointed. Others may provide otherwise. That in my view is not a discrimination which can be called unconstitutional. It may, however, be said that so far as the private persons or agencies are concerned they are in a better position to arrange their terms with greater freedom than the case of a public Administration such as the one created by this statute. I shall now examine that aspect of the problem.

14. Certainly the Rehabilitation Finance Administration, a Corporation created by the statute is a class by itself. It is not like an ordinary creditor. It will be seen from the analysis of the statute I have made above that it deals with public funds and it gives facilities to a specified class of borrowers and not all borrowers. Both the creditor and the borrower under this Act belong to a special class. The borrower has to be a displaced person wanting to be settled in business or trade. Therefore, that class of borrowers may be classified separate from other borrowers. That is a reasonable classification with intelligible and reasonable differentia. The creditor or the lending agency in this case is a public Administration manned by majority of persons appointed by the Central Government and even the non-official part of the Administration is nominated by the Central Government. It is the Central Government which advances money for the business of the Administration. That money also will have to be deposited in the Reserve Bank of India or invested in security with the approval of the Central Government. All these features go to show that the Rehabilitation Finance Administration is a creditor of a public character and is a class by itself and can be rationally separated from the other class of creditors. That also is reasonable classification with intelligible and rational differentia. In such a contest, therefore, I do not consider that additional remedy as given to such a creditor to recover money from such a special class of borrower, is at all discriminatory so as to violate Article 14 of the Constitution. These additional remedies provided by Section 15 of the Rehabilitation Finance Administration Act can be justified on the basis of reasonable classification. These principles of classification which I have just discussed above do not, in my view, make Section 15 discriminatory so far as it says that without prejudice to any other remedy provided by law such an Administration, can recover from such a borrower the loan as arrears of land revenue. I am, therefore, of opinion that Section 15(a) of the Act does not violate Article 14 of the Constitution I therefore hold it to be constitutionally valid.

15. I shall pursue this point a little further. As pointed out by the Supreme Court in Pannalal Binraj Vs. Union of India (UOI), , the position is as follows. In the words of Bhagwati, J. at p. 687 (of SCA) : (at p. 410 of AIR) :

"In other words, the discretion vested has to be looked at from two points of view, viz., (1) does it admit of the possibility of any real and substantial discrimination, and (2) does it impinge on a fundamental right guaranteed by the Constitution? Article 14 can be invoked only when both these conditions are satisfied. Applying this test, it is clear that the discretion which is vested in the Commissioner of Income Tax or the Central Board of Revenue, as the case may be, u/s 5 (7-A) is not at all discriminatory,"

Again, the Supreme Court in Lachhman Das on Behalf of Firm Tilak Ram Ram Bux Vs. State of Punjab and Others, in discussing the question of the Patiala State Bank observed at page 233 as follows:

"On the principles stated above we are of the opinion that the Patiala State Bank is a class by itself and it will be within the power of the State to enact a law with respect to it. We are also of the opinion that the differentia between the Patiala State Bank and the other Banks has a rational bearing on the object of the legislation. If the funds of the Patiala State Bank are State funds, a law which assimilates the procedure for the determination and recovery of amounts due to the Bank from its customers to that prescribed for the determination and recovery of arrears of revenue must be held to have a just and reasonable relation to the purpose of the legislation."

The Supreme Court in support of this view refers to its own decision in Manna Lal and Another Vs. Collector of Jhalawar and Others, . The point argued in that case was similar to the point which Mr. Chatterjee urged before me. It was said in those cases that the Act made distinction between the other Bankers and the Government as a banker in respect of the recovery of moneys due. The Supreme Court held that the Government even as a banker could be legitimately put in a separate class and that the dues of the Government of a State were the dues of the entire people of the State. Therefore, their recovery as arrears of land revenue would not be discriminatory and not violate Article 14 of the Constitution, It was noticed in Lachhman Dass case that there was wide difference between the Patiala State Bank procedure and the procedure open to other Banks. At page 232 Venkatarama Aiyar, J. of the Report already stated above observed:

"In the case of Banks other than the Patiala State Bank a dispute between a Bank and its customers has to be settled under the ordinary law by resort to Courts or to arbitration and a decree passed in those proceedings has to be realised in accordance with the procedure prescribed in the Code of Civil Procedure. But under the impugned Act and the rules a dispute between the Patiala State Bank and its customers has to be decided by the authorities constituted thereunder and the jurisdiction of the Civil Courts is barred with

respect to it. The procedure prescribed for the determination of the dispute under the Act and the Rules is a special one widely different from that which is followed by the Civil Courts. Then again when the Bank obtains a decree it can be realised by a summary process as arrears of revenue and not according to the mode prescribed for realisation of decrees under the Civil Procedure Code. There is thus a substantial difference between the rights of a customer who deals with the Patiala State Bank and one who deals with the other Banks. This differentiation is arbitrary and has no rational relation to the objects of the legislation and so it is violative of Article 14."

But the Supreme Court on the principles indicated above negated that contention and overruled it.

16. On the very same principle and on the same ratio decidendi I hold that Section 15 of the Rehabilitation Finance Administration Act and its Sub-clauses (a) and (b) are not unconstitutionally discriminatory and do not violate Article 14 of the Constitution because this discrimination is based on reasonable and justified classification.

17. Before leaving this point it will be relevant to refer briefly to two other decisions of the Supreme Court. One is *Budhan Choudhry and Others Vs. The State of Bihar*, where it was held that the ultimate decision whether a person charged u/s 366 should be tried by the Court of Session or by a Magistrate u/s 30 of the Criminal Procedure Code did not depend merely on the whim or idiosyncracies of the police or the executive Government but depended ultimately on the proper exercise of judicial discretion by the Magistrate concerned and therefore, was not violative of Article 14 of the Constitution, At p. 179 (of SCA): (at p. 194 of AIR) the Supreme Court in *Chat* case observed as follows:

""The section only authorises the State Government to invest certain Magistrates with power Co try all offences not punishable with death and this authority the State can exercise only in the specified places. If the State invests any Magistrate with powers u/s 30 anybody who commits any offence not punishable with death and triable by a Court of Session u/s 28 read with the second schedule is also liable to be tried by the Section 30 Magistrate. The risk of such liability falls alike upon all persons committing such an offence. Therefore, there is no discrimination In the section itself."

18. The other Supreme Court decision is *Nav Rattanmal and Others Vs. The State of Rajasthan*, which generally discussed this question in relation to the statutes of limitation and the privileges of the State in that connection. Here again Ayyangar, J. delivering the judgment of the Supreme Court, observed at pages 1707-8 as follows:

"These matters apart, the ratio underlying the special provisions for summary recovery of amounts due to Government without resort to suits by a procedure not available for enforcing the dues of private individuals like the "Revenue Recovery Acts" and "Public Demands Recovery Acts" which have been on the

statute book for over a century is also similar, viz., the interest of the public and of the community in realising what is due to it expeditiously; and the constitutional validity of such provisions have been sustained by this Court. In *Purshottam Govindji Halai Vs. Shree B.M. Desai, Additional Collector of Bombay and Others*, this Court held that Section 13 of the Bombay Land Revenue Act, 1876, by virtue of which a person had been arrested in pursuance of a warrant issued for recovery of a demand certified u/s 46 (2) of the Indian Income Tax Act did not offend Article 14 of the Constitution. Similarly, in *The Collector of Malabar, Kozhikode and Another Vs. Erimal Ebrahim Hajee*, the arrest of a defaulter in respect of an Income Tax demand u/s 48 of the Madras Revenue Recovery Act was held not to offend Article 14 of the Constitution. Perhaps another decision of this Court of more immediate relevance, in which the point now raised that there is no rational basis for distinguishing between the claims of the Government and the claims of private individuals was considered and negated, is that in *Manna Lal and Another Vs. Collector of Jhalawar and Others*, . In this last case it was urged before this Court that the summary mode of recovery of amounts due to the Government for which provision was made by the Rajasthan Public Recovery Act there impugned--a mode of recovery which was not available to the private citizen--contravened the equal protection of the laws guaranteed by Article 14 and this contention was repelled. The argument of learned Counsel for the appellants has therefore to be rejected both on the ground of principle as well as on the ratio underlying the decisions of this Court."

19. On these authorities the position seems to me to be quite well settled and now clear. No doubt, an Administration like the Rehabilitation Finance Administration under the Rehabilitation Finance Administration Act, 1948 is not the State or the Government itself, but that does not make the multiple remedies and their choice constitutionally bad. A summary procedure to recover the loan as arrears of land revenue in the context of the Rehabilitation Finance Administration Act as discussed above is not discriminatory at all. Section 15 of the Act says that this is without prejudice to any other remedy provided by law. The discretion is certainly and rightly left with the Administration as creditor. It may in certain cases be quite justified in exercising its discretion to proceed against a borrower by way of a suit or by other remedies provided by law. That does not make Section 15 of the Act itself unconstitutional or violate Article 14 of the Constitution.

20. Mr. Chatterjee has tried to argue before me that Revenue Recovery Act and the Public Demands Recovery Act are onerous. He has also referred to my decision in *Ram Ranjan Rakshit Vs. The Chief Administrator, Rehabilitation Finance Administration, New Delhi and Others*, . That decision does not help the petitioner in this case. The Public Demands Recovery Act is not so summary a procedure as discussed there, for it gives opportunities almost at every stage to the borrower. So far as the Revenue Recovery Act is concerned, there is no doubt significant difference between the certificate under the Revenue Recovery Act and the certificate under the Public Demands Recovery Act which is discussed in

that decision at page 133 but that is not the point here. It is true a certificate under the Revenue Recovery Act is u/s 3(3) thereof "conclusive proof" of the matters therein stated and it is not so in the case of a certificate under the Public Demands Recovery Act. But then the right of suit u/s 4 of the Revenue Recovery Act is much wider than in the case of a Public Demand's Recovery Act. There again Mr. Chatterjee argues that u/s 4 of the Revenue Recovery Act before a person can file such a suit he has to pay the money under protest in writing which creates a great hardship. But comparison between different methods of recovery provided by different statutes cannot be made and cannot be weighed" in a fine scale of balance point for point and provision for provision to discover breach of Article 14 of the Constitution. The payment of money under protest does not mean u/s 4 of the Revenue Recovery Act that the creditor gets it, but is only intended as a protection for the public revenues or public moneys. If the borrower wins u/s 4 of the Revenue Recovery Act he will be repaid. Hair-splitting distinction between the relative advantages and disadvantages of methods of recovery under (1) Revenue Recovery Act, (2) Public Demands Recovery Act and (3) ordinary mortgage suit or other procedures in this connection does not seem to me to be proper or appropriate, for expounding the great constitutional doctrine of equality of law or equal protection of laws. But this much is certain that neither of these procedures is as summary as a distraint by the Corporation as indicated above, and I am therefore of opinion that the principle laid down in S.M. Nawab Ariff Vs. Corporation of Calcutta and Others, cannot be made applicable here.

21. For the reasons stated above I discharge the Rule and dismiss this application with costs, hearing fee being assessed at 3 g. ms.