
(1976) 06 CAL CK 0005
In the Calcutta High Court

The Employees State Insurance Corporation, West Bengal	APPELLANT
Vs	
Modern India Construction Company Ltd.	RESPONDENT

Date of Decision : 23-06-1976

Acts Referred:

Bengal Public Demands Recovery Act, 1913 — Section 37, 4, 53, 53(1)
Employees State Insurance Act, 1948 — Section 73D
Revenue Recovery Act, 1890 — Section 3, 5

Citation : (1976) 06 CAL CK 0005

Hon'ble Judges : M.M. Dutt, J

Bench : Single Bench

Advocate : K. Dutt and Debesh Mukherjee, for the Appellant; Ranjit Kumar Banerjee, Asoke Kumar Sen Gupta, J.K Gupta Roy and Apurbalal Bose, for the Respondent

Judgement

M.M. Dutt, J.—In this Rule, the petitioner, the Employees State Insurance Corporation, West Bengal, has challenged the propriety of the decisions of the Commissioner, Presidency Division and the Board of Revenue, West Bengal, who are respectively the respondents nos.8 and 9, holding inter alia that the Certificate Officer had no jurisdiction to start the certificate proceeding at the instance of the petitioner for the recovery of the employee's special contribution from the respondent No.1 Messrs. Modern India Construction Company Ltd. and its Directors and Manager, payable under the Employees' State Insurance Act, 1948.

2. The Regional Director of the petitioner made a request in writing to the Collector of 24-Parganas under S.5 of the Revenue Recovery Act, 1890 for the recovery of the sum of Rs.18,247.05 due to the petitioner from the respondent No.1 company and its Directors and manager on account of employer's special contribution. The said request of the Regional Director of the petitioner was sent by the Collector to the Certificate Officer. The Certificate Officer issued a certificate signed by him and started a proceeding being Case No.844 of 1967-68 for the recovery of the said sum. The certificate debtors, namely, the respondent

no.1 and its Directors and Manager appeared in the certificate proceeding and filed a petition of objection under S. 37 of the Bengal Public Demands Recovery Act (hereinafter referred to as the Bengal Act). In the said petition of objection, the jurisdiction of the Certificate Officer to start such proceeding was challenged. The petitioner opposed the said petition of objection of the certificate debtors. The Certificate Officer by his order dated November 11, 1968 rejected the said petition of objection. Against that order, the certificate debtors preferred a revision petition before the Additional District Magistrate, 24-Parganas, but the said revision petition was rejected by him by his order dated May 27, 1969. Thereafter, the certificate debtors moved a second revision petition before the respondent No.8, the Commissioner of Presidency Division under S. 53 of the Bengal Act. This time the certificate debtors succeeded, for it was held by the respondent no.8 that the Certificate Officer had no jurisdiction to entertain a requisition from the Collector and issue a certificate and proceed to execute the same. Being aggrieved by the said order of the respondent no.8, the petitioner moved the Board of Revenue under S. 53(1) of the Bengal Act. But the Board of Revenue took the same view as that of the respondent no.8 and rejected the revision petition of the petitioner.

3. The point involved in this Rule is whether the Certificate Officer had jurisdiction to issue the certificate after a request was made to the Collector by the petitioner under the under S. 5 of the Revenue Recovery Act. In order to consider that point, it is necessary to refer to some of the provisions of the Revenue Recovery Act. Section 3 of the said Act provides as follows:

(1) Where an arrear of land-revenue, or a sum recoverable as an arrear of land-revenue is payable to a Collector by a defaulter being or having property in a district other than that in which the arrear accrued or the sum is payable the Collector may send to the Collector of that other district a certificate in the form as nearly as may be of the Schedule, stating -

(a) the name of the defaulter and such other particulars as may be necessary for his identification, and

(b) the amount payable by him and the account on which it is due.

(2) The certificate shall be signed by the Collector making it or by any other officer to whom such Collector may, by order in writing delegate this duty, and, save as otherwise provided by this Act, shall be conclusive proof of the matters therein stated.

(3) The Collector of the other district shall, on receiving the certificate, proceed to recover the amount stated therein as if it were an arrear of land-revenue which had accrued in his own district.

4. Sub-section (1) of the S. 4 provides that when proceedings are taken against a person under the last foregoing section for the recovery of an amount stated in certificate that person may if he denies his liability to pay the amount or any part

thereof and pays the same under protest made in writing at the time of payment and signed by him or his agent, institute a suit for the repayment of the amount or the part thereof so paid. Section 5 is as follows:

Where any sum is recoverable as an arrear of land-revenue by any public officer other than the Collector or by any local authority, the Collector of the district in which the office of that officer is situate shall, on the request of the officer or authority, proceed to recover the sum as if it were an arrear of land-revenue which had accrued in his own district, and may send a certificate of the amount to be recovered to the Collector of another district under the foregoing provisions of this Act, as if the sum were payable to himself.

5. Section 3 applies to a case where an arrear of land-revenue or a sum recoverable as an arrear of land-revenue is payable to the Collector and it provides for the recovery of the sum against a person who has property in a district other than the district in which the arrear accrues or the sum is payable. Section 5 applies to a case where any sum is recoverable as an arrear of land-revenue by any public officer other than the Collector or by any local authority and it consists of two parts. Under the first part, the Collector may proceed to recover the sum as if it were an arrear of land-revenue which had accrued in his own district. Under the second part, the Collector may send a certificate of the amount to be recovered to the Collector of another district under the foregoing provisions as if it were payable to himself. When a person is liable to pay the sum which is recoverable as arrears of land-revenue has property in the district in which the office of the public officer or authority is situate, there will be no necessity for the Collector of that district to send a certificate of the amount to be recovered, to the Collector of another district. The Collector may himself proceed to recover the amount. If, however, there is no such property in the district in which the arrear of land-revenue is deemed to have accrued, in that case, the Collector of that district will have to proceed under S. 3 of the said Act. In the instant case, however, by the deeming provision of S.5, after the request was made by the Regional Director of the petitioner to the Collector, the sum payable by the respondent no.1 company on account of the employer's special contribution became recoverable by the Collector as an arrear of land revenue, as if it had accrued in his own district. It transpires that the Collector of 24-Parganas sent the written request of the petitioner to the Certificate Officer of the district of 24-Parganas. The Certificate Officer signed the certificate and started a proceeding against the certificate debtors. It is contended on behalf of the certificate debtors that the Certificate Officer had no jurisdiction to entertain such a request or requisition of the petitioner or of the Collector. It is argued on their behalf that it was the Collector to whom the request was made was alone competent to sign the certificate and proceed to recover the sum. It is said that the sum recoverable is not payable to the Collector and as no requisition was made by the petitioner to the Certificate Officer under S. 5 of the Bengal Act, the Certificate Officer had no jurisdiction to issue a certificate on the mere asking of the Collector.

6. Under S. 4 of the Bengal Act, a certificate can be signed by the Certificate Officer if he is satisfied that the public demand is payable to the Collector. Under S. 5 of the said Act, the Certificate Officer can issue a certificate only on the requisition of the person, other than the Collector, to whom the public demand is payable. Under the Bengal Act, the Certificate Officer also includes the Collector of the district. The requisition under S. 5 of the Bengal Act has to be made in the form as prescribed by that Act. In the instant case, no requisition has been made in the prescribed form but a mere request has been made by the Regional Director of the petitioner to the Collector of the district in which the office of the petitioner is situated. The request has been made under S. 5 of the Revenue Recovery Act and not under S. 5 of the Bengal Act. Therefore, neither the Collector nor the Certificate Officer could proceed under S. 5 of the Bengal Act.

7. The Revenue Recovery Act has made provisions for the recovery of any public demand payable to the Collector when the demand has to be recovered by the execution of a certificate in another district. It has not, however, specifically provided how the Collector of the district in which a public demand not payable to him is deemed to accrue, that is, a case which is contemplated by the first part of S. 5 of the Revenue Recovery Act. Although under the first part the Collector has been authorized to proceed to recover, no provision has been made how and in what manner he will proceed. Unless the sum is payable or deemed to be payable to the Collector, he cannot proceed to recover the sum either under the Bengal Act or under the Revenue Recovery Act. Necessarily, a question arises whether under the first part of S. 5 of the Revenue Recovery Act the arrear of land-revenue is deemed to be payable to the Collector of the district to whom a request is made. Under S. 73D of the Employees' State Insurance Act, the employer's special contribution may be recovered as if it were an arrear of land-revenue. Under S. 5 of the Revenue Recovery Act, the Collector has been authorized to recover the sum as if it were an arrear of land-revenue which had accrued in his own district and he may send a certificate of the amount to be recovered, to the Collector of another district under the provision of S.3, as if the sum were payable to himself. So far as the second part is concerned, there is no difficulty, for when the Collector has to send a certificate to another district the amount recoverable shall be deemed to be payable to himself for the purpose of attracting the provision of S. 3 which, as already stated, applies only to a case where the sum recoverable is payable to the Collector. It is said that the Collector may himself issue a certificate as a Certificate Officer under S. 5 of the Bengal Act; but there is also one difficulty, namely, that the requisition has to be made in the prescribed form under the Bengal Act. In my opinion, S.5 of the Revenue Recovery Act should be liberally construed, for otherwise when the Collector is not to send a Certificate to the Collector of another district because of the existence of property in his own district from which the sum may be recovered, he will not be able to proceed to recover the sum. This is not the intention of the legislature. The clause "as if the sum were payable to himself" occurring at the end of S. 5 will also apply to the first part of S. 5 when the sum recoverable is

deemed to be an arrear of land-revenue, as if it had accrued in the Collector's own district. In my view, this is a reasonable interpretation of the first part of S. 5.

8. For the foregoing reasons, the sum recoverable in the instant case is deemed to be payable to the Collector. As soon as the request was made to the Collector by the Regional Director of the petitioner, S. 5 of the Revenue Recovery Act came into operation and the sum recoverable was to be treated as the sum payable to the Collector. The said written request was forwarded by the Collector to the Certificate Officer and the latter was competent to issue the certificate under S.4 of the Bengal Act in respect of the dues on account of the employer's special contribution of the respondent no.1 company as the sum payable to the Collector. The Certificate Officer, in order to be satisfied that the sum is payable to the Collector, has to consider whether the sum is recoverable as a public demand and whether such sum is payable to the Collector as an arrear of land-revenue. In view of S. 73D of the Employees' State Insurance Act, there can be no doubt that the sum is recoverable as an arrear of land-revenue and as request has been made to the Collector on behalf of the petitioner, by virtue of the deeming provision of S. 5 of the Revenue Recovery Act, the sum is to be deemed payable to the Collector. Therefore, all the materials for the satisfaction of the Certificate Officer are present for the issue of the certificate. In my opinion, the Certificate Officer acted quite within his jurisdiction and in accordance with the provision of S. 4 of the Bengal Act in signing the certificate in respect of the sum due by the respondent no.1 company to the petitioner as the sum deemed to be payable to the Collector. Some decisions have been cited at the Bar, but it is not necessary to consider the same, for all of them relate to S. 3 of the Revenue Recovery Act. The point that is involved in this Rule is really a point of first impression and it has been frankly conceded to at the Bar that there is no decision on the point. Before I part with this case, it may be recorded that the certificate debtors have since paid the sum of Rs.14, 53 10 and the payment of the sum has been admitted on behalf of the petitioner. Further, it may be stated that some arguments have been advanced on behalf of the parties relating to the new S. 3A of the Revenue Recovery Act, but in my opinion, that section has no bearing on the point discussed above.

9. For the reasons aforesaid, I direct that a writ in the nature of the Certiorari issue quashing the impugned orders of the respondents nos. 8 and 9. The respondent no.6, the Certificate Officer, shall now proceed with the certificate proceeding in accordance with law.

10. The Rule is made absolute, but there will be no order as to costs.

11. As prayed for by Mr. Sen Gupta, learned Advocate appearing on behalf of the respondent no.1 Company, let the operation of this judgment remain stayed for a period of four weeks from date so as to enable the said respondent to prefer an appeal against this judgment.