

(1989) 07 OHC CK 0009
In the Orissa High Court
Case No : O.J.C. No. 785 of 1982

Utkal Distributors Private Ltd. and Another	APPELLANT
Vs	
The State of Orissa and Others	RESPONDENT

Date of Decision : 14-07-1989

Acts Referred:

Constitution of India, 1950 — Article 226
Orissa Public Demands Recovery Act, 1962 — Section 3, 5, 6, 8

Citation : (1989) 68 CLT 556

Hon'ble Judges : S.C. Mohapatra, J; K.C. Jagadev Ray, J

Bench : Division Bench

Advocate : S.C. Sinha, for the Appellant; Addl. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

S.C. Mohapatra, J.—In this application under Article 226 of the Constitution of India, Petitioner has assailed the certificate dated 22-6-1977 (Annexure-1), order of the Certificate Officer (Annexure-4) and the appellate order (Annexure-6).

2. Petitioner received a notice (Annexure-1) where Radhika Prasad Nanda, Managing Director was also described as a certificate debtor. Copy of the certificate (Annexure-2) was enclosed to the notice u/s 6 of the Orissa Public Demands Recovery Act, 1962 (hereinafter referred to as "the Act") Column 1 of the certificate where number of the certificate is required to be mentioned was blank. In column 2, State of Orissa was mentioned to be the certificate holder. Petitioner was mentioned to be the certificate debtor in column 3, Names of Radhika Prasad Nanda and Naba Kishore Mohanti were mentioned in column 4, as sureties. In column 5, the amount of public demand was mentioned to be Rs. 8,96,435.76 paise + interest " 9% per annum from 25-3-1968. Column 6 requiring further particulars of the Public Demand for which the certificate was signed was left blank. Surety No. 1 Radhika Prasad Nanda receiving notice as certificate debtor filed an application denying liability (Annexure-3). In paragraph

4, he took objection that the certificate Court has no jurisdiction in the absence of reason and also the details of the claim in the certificate. The other surety, Naba Kishore Mohanti also filed a petition denying liability as certificate debtor. On 11-12-1978, both the petitions, were rejected on the ground that denial of liability by both does not come within the scope of Section 8 of the Act. Two appeals were filed through two Advocates. Appellate authority (opposite party No. 2) treated the Petitioner as Appellant No. 1 through Managing Director Radhika Prasad Nanda and Naba Kishore Mohanti as Appellant No. 2 and heard both the appeals together. In a common appellate order (Annexure-5), appeals were dismissed. Thereafter, Petitioner has approached this Court.

3. Order dated 412.6-1977 of the certificate officer initiating a proceeding under the Act indicates that the same has been initiated on the basis of a requisition of the executive Engineer (R and B) Division against the Petitioner, its Managing Director R.P. Nanda and others. Being satisfied u/s 5 of the Act that the demand is recoverable and that the recovery by suit is not barred by law, certificate officer signed the certificate and directed issue of notice u/s 6 of the Act.

4. Recovery under the Act is not a normal process.

Before a certificate is signed judgment debtors have no opportunity of being heard by a certificate officer. Certificate is signed on satisfaction by the certificate officer ex parte. Certificate is to be filed in a statutory form as required under Sections 3 and 5. When such a certificate on being signed is filed it has the effect of a decree against the persons named as debtors in the certificate. On service of a copy of the certificate along with notice u/s 6 of the Act, property of the certificate debtor remains statutorily attached and it can be sold by the certificate officer for recovery of the dues. When such coercive power is given to an officer under the statute the requirements of statutory forms are matters of substance and are necessary to be complied with purpose of filling up the form supplying the requirements is that the person named as certificate debtor on reading the certificate finds if he who is the certificate creditor the sum for which he has been made liable and further particulars thereof, This is effect in the decision of the Privy Council reported in *Bajinath Sahai v. Ramgut Singh* 23 L.A. 45 (P.C.), followed by this Court in *Mahadev Lal Agarwala v. Certificate Officer, Sonapur* ILR 1958 Cutt. 315, Privy Council decision was also followed in *Saudamini Works through Manager T.P. Padhi v. State of Orissa* and Anr. ILR 1959 Cutt. 315 and in *M/s. Orissa Corporation Private Ltd., v. State of Orissa* and Ors. 1974 (I) C.W.R. 642.

5. *Mahadev tal Agarwala v. Certificate Officer, Sonpur*, (supra) name of the certificate debtor in the notice and in the certificate were different. It was held that omission of the name of the certificate debtor in the certificate is a material omission. In *Kapileswar Pradhan v. State of Orissa* and Ors. 38 (1972) C.L.T. 948, it was alleged that no notice in the assessment of compensation had ever been served upon the certificate debtor of which he came to- know for the first time in the certificate case. It was held that in such circumstances. certificate

should have been dear and details ought to have been properly provided and details as provided in column 6 of the certificate ought to have been filled up so as to give a clear picture of the particulars of the public demand for which the certificate was served. *Saudamini Works through Manager, T.P. Padhi v. State of Orissa and Anr. (supra)* was referred to with approval in the aforesaid decision. In *M/s. Orissa Corporation Private Ltd. v. State of Orissa and Ors. (supra)* in place of the State Government, Collector of Cuttack was described as the certificate holder. For this mistake the certificate officer was directed to file a fresh certificate in his own Court on the basis of the requisition which he had already received from the Collector showing the State of Orissa as certificate holder and directed that the proceeding would continue from that stage. In *Biswanath Bhukta Vs. Executive Officer, Talcher Municipality and Others*, it was held that interest claimed up to signing of the certificate is to be deleted.

6. On reference to the aforesaid decisions, it is clear that recovery of dues under the Act is not a normal process but is extraordinary and accordingly application of the law must be strictly examined. Since signing of a certificate is *ex parte* and amount of decree, Certificate Officer is required to be careful before signing the certificate to examine that all the particulars are properly filled in wherefrom the certificate debtor can get a clear picture of the dues recoverable from him. In case of any deficiency in the certificate which does not give a clear picture prejudice is caused to the certificate debtor to raise objection on the limited grounds provided for u/s 8 of the Act. Accordingly, recovery under such certificate is not to be allowed.

7. In the present case Petitioner alone is referred to as the certificate debtor in the certificate. In the notice, however Petitioner and R.P. Nanda, Managing Director have been shown to be the certificate debtors. Order-sheet reveals that the Executive Engineer in his requisition sought recovery from. (i) the Petitioner, (ii) R.P. Nanda, Managing Director and (iii) N.K. Mohanti, the Director. Thus, ministerial act of filling up the certificate has not been proper and the certificate officer has not examined the same before signing. The certificate was signed on 22-6-1977. Amount reflected in column 6 indicating interest at the rate of 9% per annum from 25-3-1968 is thus not correct. The total amount with interest should" have been calculated and mentioned in column 6. Since State of Orissa is the certificate holder in the present case further particulars were necessary to be mentioned indicating that it is to be paid to the Executive Engineer who sent the requisition. The nature of the dues to the Executive Engineer ought to have been mentioned also by giving breakups. Principal amount, interest thereon and basis for such claim by the Executive Engineer ought to have been clearly mentioned in column 6. Objection had been, taken by the Managing Director in Annexure-2 that the reasons and also the details of the claim having not been given in the certificate, the certificate Court had no jurisdiction to entertain the proceeding, This has not been properly considered either by the certificate officer or by the appellate authority.

8. For the aforesaid reasons, realisation of the dues under the aforesaid certificate is prejudicial to the Petitioner and accordingly, the order of the Certificate Officer (Annexure-4) and of the appellate authority (Annexure-5) cannot be sustained. They are, accordingly quashed, Certificate Officer is directed to correct the certificate and served a copy of the same on the certificate debtor by properly filling up all the columns in the certificate whereupon, the certificate debtor is to be given opportunity to file petition for objection as envisaged u/s 8 of the Act which is to be adjudicated in accordance with law by the Certificate Officer. Since the proceeding is of the year 1976 and about 12 years have now passed in the process of litigation of which seven years have been consumed in this Court, we direct that Petitioner shall appear before the Certificate Officer on 1st August, 1989 on which "date the Certificate Officer shall fixed date for supply of copy of the certificate properly filled in. Certificate Officer shall post the proceeding fixing the dates so that the proceeding can be completed by 31st March, 1990 at the latest.

9. In the result, writ application is allowed to the extent indicated, above, No costs, Requisites for issue of writ shall be filed by Monday failing which the writ application shall stand dismissed without further reference to Bench.

K.C. Jagadev Ray, J.

I agree.

Writ application allowed.