

Privy Council Appeal No. 43 of 1943

Bengal Appeal No. 12 of 1941

Doorga Prosad Chamaria - - - - - *Appellant*

v.

The Secretary of State - - - - - *Respondent*

FROM

**THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN
BENGAL**

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 18TH JANUARY, 1945

Present at the Hearing:

LORD RUSSELL OF KILLOWEN

LORD WRIGHT

LORD GODDARD

SIR MADHAVAN NAIR

SIR JOHN BEAUMONT

[*Delivered by* SIR JOHN BEAUMONT]

This is an appeal from the judgment and decree of the High Court at Calcutta, in its Civil Appellate Jurisdiction, dated the 16th January, 1941, by which the decree of the First Subordinate Court of Howrah, dated 31st July, 1936, was set aside.

The only question which arises in the appeal is whether a certificate dated 1st April, 1933, issued under the provisions of the Bengal Public Demands Recovery Act, 1913, is a valid certificate. The appellant in his case claims further that the certificate, if originally valid, became unenforceable by reason of matters which occurred after the filing of the suit; but their Lordships are of opinion that the relief claimed in this suit must be confined to matters existing at the date when the suit was instituted.

On the 27th February, 1933, the appellant was assessed to income-tax and super-tax by the Income-tax Officer, Howrah, under the provisions of the Indian Income-tax Act, 1922, for the years 1928-29, 1929-30 and 1930-31, the assessments being made under the provisions of section 23, sub-section 4. Notices of demand were issued and tax for the year 1928-29 was paid by the appellant, but the tax for the remaining two years remained due. Penalties were imposed by the Income-tax Officer under section 46, sub-section 1, Indian Income-tax Act, and certain recoveries were made. It is not necessary to consider these matters in detail since it is not the appellant's case that nothing was due from him at the date of the disputed certificate, and the exact amount due is not in issue in this appeal. On the 29th March, 1933, the Income-tax Officer, purporting to act under the power conferred by section 46, sub-section 2, of the Indian Income-tax Act addressed to the Collector a certificate certifying that the sum of Rs.3,86,529.1.0 due from the appellant on account of income-tax, super-tax and penalty was in arrear, and requesting the Collector to recover the amount as if it were an arrear of land revenue. The effect of this certificate was to make the claim against the appellant a public demand within the

meaning of the Bengal Public Demands Recovery Act, 1913, by virtue of section 3, sub-section 6, of the Act and clause 3 of schedule I.

The relevant provisions of the Bengal Public Demands Recovery Act, 1913, and the Rules made thereunder are as follows:—

Section 4 provides that when the Certificate Officer is satisfied that any public demand payable to the Collector is due he may sign a certificate in the prescribed form stating that the demand is due and cause the certificate to be filed in his office. Section 5 provides that when any public demand payable to any person other than the Collector is due, such person may send to the Certificate Officer a written requisition in the prescribed form. Section 6 provides for the recovery of a demand in respect of which a requisition has been made under section 5. Section 7 provides that when a certificate has been filed in the office of a Certificate Officer under section 4 or section 6, he shall cause to be served upon the certificate-debtor, in the prescribed manner, a notice in the prescribed form and a copy of the certificate. Section 9 enables the certificate-debtor within the time limited to present a petition to the Certificate Officer denying liability, in whole, or in part, and section 10 provides for the hearing of such petition. Section 34 empowers the certificate-debtor at any time within six months from the service upon him of the notice required by section 7 or if he files a petition under section 9 denying liability from the date of the determination of the petition to bring a suit in the Civil Court to have the certificate cancelled or modified. Section 35 states the grounds on which a certificate may be cancelled or modified by the Civil Court. By section 38 the rules in schedule II are given statutory effect.

Rule 79 provides that every Certificate Officer shall cause to be kept in his office a register of certificates filed in his office under the Act and shall cause particulars of all such certificates to be entered in such register, and rule 84 provides that the forms set forth in the appendix shall be used with such variations as circumstances may require.

On the 1st April, 1933, the Certificate Officer of Howrah signed a certificate, stated to be under sections 4 and 6 of the Bengal Public Demands Recovery Act. The certificate stated on its face that it was filed in the office of the Certificate Officer of Howrah, and followed the form given in the appendix to the Act. In the second column the name of the Certificate holder was stated to be "Income-tax officer, Howrah" and, in column 4, the amount of the demand was stated to be Rs.3,86,529.1.0 and in column 5 the particulars given were "Income-tax and penalty."

On the same day the Certificate Officer ordered the issue of notice under section 7 of the Act, and on the 1st May the appellant filed objections to the certificate proceedings under section 9 of the Act. On the 1st August the Certificate Officer passed orders holding the certificate to be invalid, but this order was set aside by the Collector on the 7th September, 1933, and the case was remanded to the Certificate Officer. The order of the Collector was finally upheld by the Commissioner on 18th December, 1933. On the 7th September, 1933, the Certificate Officer passed the following orders:—

Amend the Certificate and put down Secretary of State for Income-tax Officer, Howrah, in column 2 of the Certificate; and

Reduce the amount of the Certificate by Rs.3,875 as in the petition of 27th June, 1933.

Issue notice under section 7 of the Public Demands Recovery Act upon the debtor at once.

These orders were duly carried out, but the officer making the amendments seems to have understood the direction to put down Secretary of State for Income-tax Officer as meaning that the name of the Secretary of State was to be entered on behalf and not in the place of that of the Income-tax Officer. Accordingly in column 2 the name of the Certificate Officer was entered as "Secretary of State on behalf of Income-tax Officer, Howrah", and in column 4 the amount of the debt was reduced by Rs.3,875.

On the 17th February, 1934, this suit was filed and the relief claimed was (1) A declaration that the certificate lodged by the defendant before the Certificate Officer, Howrah, on the 1st April, 1933, was illegal and void and inoperative; (2) An injunction restraining the defendant from enforcing or attempting to enforce the said illegal certificate; (3) An account of all monies realised by the defendant under the said illegal certificate and refund thereof to the plaintiff; (4) Release from civil prison. It will be observed, therefore, that the relief claimed is limited to a declaration that the certificate of 1st April, 1933, is illegal void and inoperative and for consequential relief, but there is no claim for modification of the amount alleged to be due on the certificate if valid.

At the trial the Subordinate Judge at Howrah decreed the plaintiff's suit holding that the Certificate of 1st April, 1933, was void since no order was shown to have been made for its filing, and the name of the Certificate holder was wrongly given since the name of the Secretary of State should have appeared without qualification.

On appeal the High Court of Calcutta reversed this decision and dismissed the plaintiff's suit for reasons with which their Lordships are in substantial agreement.

The validity of the certificate has been challenged before the Board on four grounds:—

First it is said that the Certificate Officer did not cause the certificate to be filed in his office, since he offered no evidence of any order having been made directing the certificate to be filed.

In their Lordships' opinion there is no substance in this objection. When a statute directs a document to be filed in an office, the direction involves no formal or technical procedure. All that is required is that the document should be preserved in the office in such conditions that it can be produced when required. In the present case the certificate in question is stated on the face of it to have been filed; particulars of it were registered under rule 79; and it has been produced by the office, and the original was before their Lordships. In those circumstances, their Lordships hold it sufficiently proved that the Certificate Officer caused the certificate to be filed in his office and it is not necessary to have recourse to the presumption, arising under section 114, illustration " E " of the Indian Evidence Act.

The second objection is that there was no requisition under section 5. Their Lordships agree with the view taken by the High Court that the money was payable to the Collector and accordingly the certificate was issued under section 4 and not under section 6, and no requisition under section 5 was required.

The third objection relates to the name of the certificate holder as appearing in the certificate. It is admitted by the appellant that if the monies were payable to the Collector the name of the certificate holder should be the Secretary of State for India, but it is objected that the name should be without qualification, and that in the certificate in question the name is qualified by the words " On behalf of Income-tax Officer, Howrah." In their Lordships' opinion the addition of the words " on behalf of Income-tax Officer Howrah " does not in any way alter or qualify the name of the certificate holder which is given as the Secretary of State. The words do no more than indicate the nature of the demand for which the certificate is held, information more appropriate to be stated in column 5 than in column 2, but the inclusion of the words in their Lordships' opinion, has no effect whatever on the validity of the certificate.

The last objection to the certificate is that in column 4 no period for which the demand is due was stated as required by the heading to that column. In their Lordships' opinion, although income tax may be popularly described as due for a certain year, it is not in law so due. It is calculated and assessed by reference to the income of the assessee for a given year, but it is due when demand is made under section 29 and section 45. It then becomes a debt due to the Crown, but not for any particular period.

In the result their Lordships agree with the conclusion arrived at by the High Court of Calcutta and they will humbly advise His Majesty that this appeal be dismissed with costs.

In the Privy Council

DOORGA PROSAD CHARMARIA

2.

THE SECRETARY OF STATE

DELIVERED BY SIR JOHN BEAUMONT

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