

J.N. Raina Vs State of Haryana and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Nov. 27, 2002

Citation: (2003) 1 RCR(Civil) 804

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

Bench: Single Bench

Advocate: D.V. Gupta, for the Appellant; Rakesh Deswal, Asstt. A.G. for Respondent No. 1 and Puneet Gupta, for the Respondent

Final Decision: Dismissed

Judgement

M.M. Kumar, J.

This petition filed under Article 226 of the Constitution seeks a writ of certiorari for quashing order dated 17th June,

1982, Annexure P-2 issued by the Collector, Chandigarh to the Collector, Delhi for effecting recovery from the petitioner as he had stood as a

guarantor for the loan advanced to M/s. Excelsior Plants Corporation Limited, New Delhi.

2. The facts in brief are that on 30th August, 1972 a loan was advanced to M/s Excelsior Plants Corporation Limited and a bond of guarantee was

executed by the petitioner ensuring that in case there is a default by principal debtor, the loan will be recoverable from him. To this effect a bond of

guarantee was duly executed by the petitioner in favour of respondent No. 2. After various steps having been taken, it was concluded that the

amount was not recoverable from the principal debtor and a recovery certificate was issued on 21st May, 1982 by the Collector, Chandigarh to

the Collector, Delhi for effecting recovery from the petitioner to the tune of Rs. 17,89,402.19 paise as was due on that date. He approached this

Court challenging the constitutional validity of the Haryana Public Money (Recovery of Dues) Act, 1979 (for brevity, "1979 Act"). The Motion

Bench on 21st October, 1982 stayed the recovery on furnishing of security by the petitioner to the satisfaction of the Assistant Collector, Delhi.

Eventually, the petition was admitted on 6th January, 1983 and the interim directions were affirmed.

3. Respondent Nos. 1 and 2 filed the written statement in which a categorical stand has been taken that constitutional validity of an identical

legislation was examined by the Supreme Court in the case of Director of Industries, U.P. and Others Vs. Deep Chand Agarwal, and therefore,

the provision is liable to be upheld. On merits too, the claim made by the petitioner has been opposed.

4. Learned State counsel has pointed out that constitutional validity of 1979 Act has been examined by a Division Bench of this Court in the case

of Vivek Sarin and Others Vs. State of Haryana and Others, . He has argued that the petition involved only the question of constitutional validity of

1979 Act under which notice of recovery Annexure P.2 dated 17th June, 1982 has been issued to the petitioner.

5. Sh. D.V. Gupta, learned counsel for the petitioner has not disputed the statement made by the learned State counsel and has conceded that if

the constitutional validity of 1979 Act is upheld, then no other question would arise for consideration.

6. After hearing learned counsel for the parties, I am of the considered view that the Division Bench of this Court in the case Vivek Sarin (supra)

has considered the question as to whether the 1979 Act ultra vires the constitution of India or otherwise void. Examining the competence of the

State Legislature to pass a legislation for speedy recovery of certain classes of dues, the Division Bench held that 1979 Act was referable to Entry

43 in List II and the question of repugnancy as contemplated by Article 254(2) of the Constitution would not arise. The views of their Lordships of

the Division Bench read as under;-

What is the position in the present case? The State Financial Corporation Act, 1951, is clearly referable to Entry 43 in List I. So far as the State

law is concerned, it was enacted ""to provide for the speedy recovery of certain classes of dues"". In the Statement of Objects and Reasons, it was

specifically mentioned that certain industrial concerns had been defaulting in the repayment of loans advanced by the Haryana State Financial

Corporation. This has resulted in accumulation of heavy arrears. It was to ensure quick recoveries that the bill was presented.

This Act provides that where sum is recoverable from a defaulter by the State Government or by a Corporation, the named authority shall send ""a

certificate to the Collector mentioning the sum due from the defaulter and requesting that such sum together with the cost of proceedings be

recovered as if it were an arrears of revenue."" The jurisdiction of the Civil Court to adjudicate upon such a case has been excluded. By virtue of

Entry 43, the State Legislature is competent to legislate in respect of ""public debt of the State"". The State law is calculated to ensure a quick

recovery of the public dues. The impugned legislation squarely falls within Entry 43. In fact, a similar legislation viz. the U.P. Public Monies

(Recovery of Dues) Act has already been upheld by their Lordships of the Supreme Court in Director of Industries, U.P. and Others Vs. Deep

Chand Agarwal, . It was emphasised by their Lordships that ""money advanced by the State Government has got to be recovered expeditiously so

that fresh advance may be made from the State Government. It is with the object of avoiding the usual delay involved in the disposal of suits in civil

Courts and providing for an expeditious remedy, the Act has been enacted". Section 3 which was almost in similar terms was upheld by their

Lordships.

Thus, the State Legislation was clearly within the competence of the Legislature. Consequently, it is not ultra vires.

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This contention is misconceived. The Central Legislation is referable to Entry 43 in List I. The State Legislation is referable to Entry 43 in List II.

Neither of two Statutes relates to any matter in List III. Consequently, the question of repugnancy or application of the provisions of Article 254(2)

of the Constitution does not arise. Still further, the State Legislation is only calculated to supplement and advance the object of the 1951 Act.

Equally, by virtue of Section 46B of the 1951 Act, the provision are ""in addition to and not in derogation of any other law for the time being

applicable to an industrial concern"". Even provisions of Section 32G specially provide that the amount due to the Financial Corporation can be

recovered as arrears of land revenue. A Full Bench of the Allahabad High Court had considered a similar issue in Krishna Utensils, Rampur Vs.

State Financial Corporation and Others, . Their Lordships were pleased to uphold the provisions of Section 3 and had negatived the challenge to

the Statute. The position in the present case is similar. We are in respectful agreement with the view expressed by their Lordships of the Allahabad

High Court.

In our view, the provisions of the State Act are clearly referable to Entry 43 in List-II. Thus it is not ultra vires. Furthermore, the Central and State

Acts do not relate to any matter covered by List-III. Thus, there is no repugnancy or violation of Article 254(2). The provisions of the State Act

are in pith and substance supplemental to and not in derogation of the Central Act. There is no substantial encroachment.

7. In view of the above, it is well settled that 1979 Act is not unconstitutional nor it is a piece of legislation which is beyond the competence of

State Legislature. Therefore, the writ petition is liable to be dismissed.

8. No other point has been raised.

9. For the reasons stated above, the writ petition fails and the same is dismissed.