

**(2000) 02 AHC CK 0034**

**Allahabad High Court**

**Case No:** C.M.W.P. No. 6002 of 1988

Lalit Mohan

APPELLANT

Vs

State of Uttar Pradesh and  
others

RESPONDENT

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**Date of Decision:** Feb. 8, 2000

**Acts Referred:**

- Civil Services (Classification, Control and Appeal) Rules - Rule 351A, 470, 49
- Public Accountants Defaults Act, 1850 - Section 3

**Citation:** AIR 2000 All 197 : (2000) 2 AWC 874 : (2000) 2 UPLBEC 1070

**Hon'ble Judges:** Lakshmi Bihari, J; Binod Kumar Roy, J

**Bench:** Division Bench

**Advocate:** Jitendra Pande and R.G. Padia, for the Appellant; H.R. Misra, S.C., for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

Binod Kumar Roy and Lakshmi Bihari, JJ.

The petitioner, who at the relevant time was appointed on ad hoc basis as Sales Point Supervisor in the Agriculture Department and posted in Babaganj Block and given charge of Fatuhabad Seed Store, has come up with two fold prayers : (i) to quash the citation dated 22.12.1987 issued by the Assistant Collector and Tehsitdar. Tehsil Phulpur, district Allahabad as contained in Annexure 4 [wrongly mentioned in the prayer portion as the order dated 22.12.1987) asking him to pay a sum of Rs. 5.226.81 plus interest plus collection charges allegedly and (ii) to command the respondents not to adopt any coercive measure compelling him to pay the amount in question.

2. Having regard to the submissions made at the Bar by Dr. R. G. Padia, learned senior counsel appearing on behalf of the petitioner and Sri. H. R. Mishra, learned standing counsel appearing on behalf of the respondents, the only moot question

which arises and requires our answer is as to whether the word "moneys" or "securities for money" mentioned in Section 3 of the Public Accounts" Default Act, 1850. under which action has been taken by the respondents, according to Sri Mishra. will include seed and fertilizers which were put in the custody of the petitioner?

3. According to Dr. Padia. this question stands answered In favour of the petitioner by a Division Bench of our Court in *State of U. P. v. Girja Dayal Srivastava*. 1988 (56) FLR 383. The relevant part of the judgment relied upon by Dr. Padia reads thus :

"The section speaks of an official assignee, trustee or sarbarakhar and any person who by reason of any office held by him in the service of the Central Government or the Government of State, is entrusted with receipt, custody or control of any moneys or securities for money or the management of any lands belonging to such Government. The petitioner did not belong to the first three classes, the question is, does he belong to the fourth class? In order to place him in that class, it shall have to be found that he is a person who by reason of the office held by him, was entrusted with the receipt, custody or control of any moneys or securities for money or the management of any lands belonging to such Government. The nature of the functions of the petitioner, by virtue of his office, would appear from the charges framed against him in the disciplinary enquiry proceedings and the post which he held. It would appear from the judgment of the Public Services Tribunal that the petitioner was an Assistant Agriculture Inspector in Grade III and had been charged on five counts : (1) credit sale against rules, (2) shortage of stock (3) misappropriation of Government stock, (4) flouting of departmental instructions, and (5) dereliction of duty. There is nothing on the record to show that as an Assistant Agriculture Inspector, Grade III, he was entrusted with receipt, custody or control of any moneys or securities for money ; of course, he was not concerned with the management of any lands belonging to State Government. None of the five heads of charges against the petitioner relate to "any moneys or securities for money" within the meaning of Section 3 of the Act. Credit sales, prima facie, could not imply receipt of money, no money could have passed in a credit sale. Shortage and misappropriation of Government Stocks Is not the same thing as shortage or misappropriation of money or securities for money. Learned counsel for the parties have not invited our attention to any ruling on the subject. A decision of Punjab and Haryana High Court in the case of *Kundan Lal v. Collector. Gurdaspur* (5), has come to our notice. The petitioner there was a Wasil Baki Nawis and it had been conceded by the State Government that the duties of the office of the petitioner did not include the duty of receiving or handling any money. A contention was raised before the Court that if, nevertheless, the petitioner had, contrary to the requirement of duties of his office, actually received money and embezzled it, he should be deemed to have been a public accountant within the meaning of Section 3 of the Act. The Court repelled the contention and it was observed that the scheme of the Act showed that its provisions were intended to apply to only Government servants who

were expected to come into possession or control of money by reason of their office. It is clear to us from the material on record that the petitioner could not be said to have been entrusted with the receipt, custody or control of any moneys or securities for money within the meaning of Section 3 of the Public Accountants' Default Act, 1850. We, therefore, hold that the amount could not be realised from the petitioner as the arrears of land revenue.

The ordinary procedure for imposition of pecuniary liability and for recovery thereof is the process of civil court ; the process of recovery as arrears of land revenue is an exception to the ordinary process. The right of recovery as arrears of land revenue must be shown to be permitted by a statutory provision including statutory rules. In respect of Government servants, the loss caused to the Government may be recovered from their salary under Rule 49 of the Civil Services (Classification, Control and Appeal) Rules, 1930. as applicable in U. P., it may also be recovered from their pension under Rule 351A or 470 of the Civil Services (Classification, Control and Appeal) Rules, 1930, as applicable in U. P. Learned counsel for the State has not been able to show that there is any other Act, Rule or Statutory Provision under which the amount in question would be recovered as arrears of land revenue. Writ Petition No. 2620 of 1985, therefore, should also succeed."

4. Sri H. R. Mishra. learned standing counsel, on the other hand, contended as follows : The word "trustee" appears to have been misinterpreted by the Division Bench. He placed reliance on a decision of the Hon"ble Supreme Court in [P.K. Chinnasamy Vs. Government of Tamil Nadu and Others](#), . According to Sri Mishra. the word "money", in the facts of circumstances of a case like the instant one, should not be given a restrictive meaning. In any view of the matter, the facts are such that we should not exercise our discretionary jurisdiction.

5. The Black's Law Dictionary Fifth Edition defines the word "money" thus : "In usual and ordinary acceptation, it means coins and paper currency used as circulating medium of exchange, and does not embrace notes, bonds, evidences of debt, or other personal or real estate. Lane v. Railey 280 Ky 319 : 133 SW 2d 74. 79. 81. See also currency, current money ; Fiat money , Legal tender ; Near money ; Scrip ; Wampum. A medium of exchange authorised or adopted by a domestic or foreign Government as a part of its currency U.C.C. S 1-201 (24)."

5.1. Stroud's Judicial Dictionary. Fifth Edition defines it as follows : ""Money" as currency and not as medals, seems to me to have been well defined by Mr. Walker in Money, Trade and Industry, as : That passes freely from hand to hand throughout the community. In final discharge of debts and full payment for commodities : being accepted equally without reference to the character or credit of the person who offers it. and without the intention of the person who receives it to consume it or apply it to any other use than in turn to tender it to others in discharge of debts or payment for commodities" (per Darling. J., Moss v. Hancock, (1899) 2QB 111) Cp. CASH.

But the word "money" in our language answers to the Barbarian's Latin word "moneta", and is a genus that comprehends two species, viz., Ready money and money due, i.e., the money in testator's own hands, or his money in the hands of any body else" (per Gilbert C.B., Re Shelmer, Gilb. Eq. Rep. 202}."

5-2. In this backdrop, we hold that the articles which were in custody of the petitioner undoubtedly was property, but it cannot be held that they were money as envisaged u/s 3 of the Act aforementioned.

6. True it is that in Chinnasamy the Apex Court has held as follows :

"Every public officer is a trustee and in respect of the office he holds and the salary and other benefits which he draws, he is obliged to render appropriate service to the State. The scheme postulates that every public officer has to be given some posting commensurate to his status and circumstances should be so created that he would be functioning so as to render commensurate service in lieu of the benefits received by him from the State, if an officer does not behave as required of him under the law he is certainly liable to be punished in accordance with law."

7. Thus, we hold that the damages caused by the petitioner in relation to the seeds and fertilizers could not be recovered under the provisions of the Act aforementioned.

8. Since the action of the respondents by resorting to the provisions of the Act is not permissible, we shall not refuse to exercise our discretion.

9. In the result, we quash the impugned citation and restrain the respondents from realising the amount in question from the petitioner under the provisions of the Act aforementioned clarifying that it would be open to the respondents to take resort to any legal action which may authorise them to do so.

10. This writ petition is dismissed to the extent indicated but with cost.

11. The office is directed to hand over a copy of this judgment to Mr. Mishra within two weeks.