

(1998) 09 AHC CK 0083

Allahabad High Court

Case No: C.M.W.P. No. 7376 of 1990

Subhash Chand

APPELLANT

Vs

Collector, Etawah and others

RESPONDENT

Date of Decision: Sept. 23, 1998

Acts Referred:

- Constitution of India, 1950 - Article 141, 226
- Uttar Pradesh Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961 - Section 142, 143, 144, 145, 146
- Uttar Pradesh Land Revenue Act, 1901 - Section 183
- Uttar Pradesh Public Moneys (Recovery of Dues) Act, 1972 - Section 155, 3(1), 3(4)
- Uttar Pradesh Town Areas Act, 1914 - Section 20, 21
- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 287A

Citation: (1999) 1 AWC 582

Hon'ble Judges: R.K. Mahajan, J; B.K. Roy, J

Bench: Division Bench

Advocate: M.M.D. Agrawal, for the Appellant; S.C., Pradeep Kumar and Nagendra Singh Chaudhary, for the Respondent

Final Decision: Dismissed

Judgement

R.K. Mahajan, J.

This writ petition has been filed for issuance of a writ in the nature of certiorari quashing the certificate for recovery (Annexure-1 to the writ petition) issued by Atirikt Mukhya Adhikari, Zila Parishad. Etawah in respect of Theka Transport Tehbazari, Vedpura Cattle Market 1986-87.

2. The main question which arose for consideration is whether the contract dues (contract money) in auction bid accepted in favour of the petitioner for collecting money on account of fee realised for loading and unloading of the trucks in cattle fair held in the Zila Parishad land vested in the Panchayat can be recovered as

arrears of land revenue, and can in such circumstances writ of certiorari be issued for quashing of request made by respondent to realise the amount through the Collector as arrears of land revenue or should the petitioner resort to filing of a civil suit.

3. It appears that Mukhya Adhikari, Zila Parishad. Etawah published an auction notice for the Theka of Transport Tehbazari 1986-87 of the whole of village Vedpura in Dainik Deshdharam Newspaper dated 8.6.1986 for auction on 12.6.1986 inviting intended bidders to take part in the auction. The total area included Plot Nos. 110A, 101, 112Ka, 102Ka, 112Kha and 100Ba and Plot Nos. 89, 91, 92 and 92, as mentioned in para 2 of petition, situated at village Vedpura, district Etawah. The petitioner in pursuance of auction notice Annexure-2 to the petition offered the highest bid of Rs. 7,00,000 in the auction which was held on 12.6.1986. It is further alleged that he has deposited 1/4th of the auction amount. There is no dispute that an approval letter was sent and Theka was accepted in favour of the petitioner on 19.6.1986 and the petitioner also deposited the balance amount of Rs. 5,25,000 in pursuance of letter, Annexure-3 to the writ petition within a week of the receipt of the letter. It appears that some litigation was started by one All Hasan as mentioned in paragraph 5 of the writ petition, vide Writ Petition No. 7006 of 1986 wherein it was ordered that Zila Parishad. Etawah shall not require the trucks which transport catties to and from plot Nos. 101A, 101, 112Ka, 102Ka, 103, 112Kha and 100Ba of village Vedpura in Mela area to pay Tehbazari and prohibiting placing of any barrier on Etawah-Mainpurt road.

4. The petitioner had full knowledge of this litigation. He further averred that the petitioner submitted a representation as mentioned in the writ petition that he has suffered a loss on account of realisation of money by All Hasan and prayed that compensation be given to him to the extent of Rs. 5,40,000 and this amount be adjusted towards Theka amount. The petitioner has also mentioned in paragraph Nos. 11 and 12 that due to non-placing of barrier he was suffering loss on account of the litigation filed by one Indra Pal Yadav. In other words his plea is that he could not realise Tehbazari on account of orders passed by the Hon'ble High Court in writ petition mentioned earlier. He further alleged that . various applications were submitted to the respondents for remission of the loss caused on account of aforesaid litigation and he sent another representation. It is further alleged in paragraph No. 20 of the writ petition that petitioner has paid Rs. 4,25,000. It is also alleged by the petitioner that Respondent No. 2 asked him to withhold a sum of Rs. 1,50,000 regarding loss suffered by the petitioner but it is surprising that the recovery of Rs. 2,75,000 was issued and coercive methods are used to realise the Theka money" despite representations regarding adjustment of the amount suffered by way of loss. The main plea of the petitioner is that this amount is not recoverable by way of arrears of land revenue as it is a contractual amount and there are various Division Benches decisions of this High Court that In such matters recovery certificate under U. P. Public Moneys (Recovery of Dues) Act. 1972 read

with Rules, cannot be issued.

5. Mr. M. M. D. Agrawal, learned counsel for the petitioner submitted as under. Firstly, he submits that a "dues" on account of contract money cannot be recovered as arrears of land revenue. Secondly, he submits that the provision of the Uttar Pradesh Zila Parishads (Recovery of Arrears of Tax and Rent of Land) Rules, 1975 cannot be followed for realising the amount and recovery certificate is void. Thirdly, his submission is that there are catena of judicial precedents as-- [Surendra Kumar Rai Vs. Zilla Parishad, Jhansi and others](#), ; Raj Bahadur Singh v. Collector, Etawah-cum-District Magistrate, Etawah and another 1985 UPLBEC 680; Bhagwati Prasad Paliwal v. Town Area Committee, Kurera, District Hamirpur (1991) 2 UPLBEC 1315 ; [Mahesh Chandra Vs. The Zila Panchayat, Mainpuri](#), ; Aangad Pandey v. Town Area Committee, Kurera 1980 ALJ 1036 ; and Chiranji Lal v. Collector and others 1973 ALJ 164.

6. Mr. Chaudhary. learned counsel for the respondents referred following citations for consideration, namely, [Pandit Ram Narain Vs. The State of Uttar Pradesh and Others](#), and another Judgment of this Court delivered on 14.7.1998 by Division Bench in the case of Harendra Pal Singh v. District Magistrate/Collector, Budaun and others. Civil Misc. Writ Petition No. 22007 of 1998. Mr. Chaudhary has submitted that the amount "due" is public amount on account of a Theka which is a statutory "dues" and in case the respondents take recourse to civil court then no public dues can be realised for decades. He further submitted that u/s 148 read with Section 161 of the U. P. Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961 amount can be realised. He has also invited our attention to Section 159 of the Act and Rules framed under the U.P. Zila Parishads (Recovery of Arrears of Tax and Rent on Land) Rules, 1975. in fact when we were hearing arguments we have given time to the learned counsel for the petitioner to see whether Section 161 has been considered in the judgments which have been cited. He told frankly that this Section has not been considered.

7. Mr. Chaudhary submits that in counter-affidavit the respondents have denied that any loss was suffered on account of the stay of the High Court and ultimately that writ petition filed by Ali Hasan was dismissed and subject-matter/area of that writ petition was different. He further submits that the petitioner wanted to manipulate the entire receipt of area and in fact he had taken Theka of Vedpura Cattle Market only. In counter-affidavit it is also alleged that subject-matter area was different. Annexure-20 of the writ petition is a fabricated and forged document showing that there were no dues.

8. Now we proceed to record our reasons quoting the provisions of the Act and thereafter distinguishing the Division Bench judgments. In our considered view the judgments cited are per incuriam.

9. The doctrine of per incuriam is well explained in [State of U.P. and Another Vs. Synthetics and Chemicals Ltd. and Another](#), . The relevant paragraph No. 40 of this judgment runs as follows :

""Incuria" literally means "carelessness". In practice per incuriam appears to mean per ignoratium. English Courts have developed this principle in relation of the rule of stare decisis. The "quotable in law" is avoided and ignored if it is rendered. "In ignoratium of a statute or other binding authority" (Young v. Bristol Aeroplane Co. Ltd.). Same has been accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law. In Jaisri Sahu v. Rajdewan Dubey, this Court while pointing out the procedure to be followed when conflicting decisions are placed before a Bench extracted a passage from Halsbury's Laws of England incorporating one of the exceptions when the decision of an appellate court is not binding."

10. It is not settled principle of law and judicial jurisprudence that no case is authority for another case. Every case has its own facts. The facts have to be analysed in the light of the facts of each case and then law is to be applied. It is also seen whether there is a violation of the statute in the light of the facts or not. The precedents are only a guidelines for interpretation of the statute. Generally we are aware of the principle that Division Bench judgments are binding on us while sitting on Division Bench and they are to be respected regarding the interpretation of law but if on facts the judgments are not applicable and a particular section has not been brought into notice, i.e. Section 161 of the Act at the time of rendering aforesaid judgments. It escaped to the notice of the Benches the provisions of Section 161 of the Act. In that eventuality doctrine of per incuriam would apply, as such. Section 161 of the Act never fell into consideration for interpretation of law in those judgments. We, therefore, hold that Division Benches judgments are per incuriam. The ratio is distinguishable on facts.

11. Now we would like to proceed with the language of Section 161 of the Act which is quoted with advantage :

"Recovery of dues of (Kshettra Panchayats)--Any sum due to a (Kshettra Panchayat) under this Act or under any rule or bye-law made thereunder and declared by this Act or such rule or bye-law to be recoverable in the manner provided by this Chapter shall, mutatis mutandis, be recovered as provided in this Chapter."

(1. Subs. by U. P. Act No. IX of 1994).

12. It is not disputed that the fee can be realised from transport agencies to bring catties from different places for loading and unloading on a land which vests in the Zila Parishad. The only question which has been raised is that it cannot be recovered as arrears of land revenue. The Zila Parishad in its wisdom in order to avoid headache to collect fee from so many transactions by way of sale and purchase of bringing cattle from different transport agencies gave a Theka to the petitioner on

lump sum amount. In fact the petitioner took the "Theka" at his own risk and loss and the Theka money is a fee recoverable from the petitioner- Thekedar.

13. Now we would like to quote Sections 142 and 143 of the Act which runs as follows :

"142. Fee for use otherwise than under a lease of property of a (Zila Panchayat) or a (Kshettra Panchayat).--(1) A (Zila Panchayat) or a (Kshettra Panchayat) may charge fees to be fixed by bye-laws or by public auction or by agreement for the use or occupation (otherwise than under a lease) of any immovable property vested in, or entrusted to the management of the (Zila Panchayat) or the (Kshettra Panchayat) as the case may be, including any public road or place of which it allows the use or occupation whether by allowing a projection thereon or otherwise.

(2) Such fees may either be levied along with the fees charged u/s 143 for the sanction, licence or permission or may be recovered in the manner prescribed by Chapter VIII.

143. Licence fee etc.--A (Zila Panchayat) or a (Kshettra Panchayat) may charge a fee to be fixed by bye-law for the licence, sanction or permission which it is entitled or required to grant by or under this Act."

14. Bye-laws has been framed by the Zila Parishad with the sanction of Competent Authority. Clause 7 of the bye-law is quoted below :

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The above quoted provision can be translated as under :

"For the occasions of Special Fairs/Festivals, the Chairman or the Chief Executive Officer of aforesaid District Boards can specify particular places and can enhance the fee provided in the attached list for those specified places in the events of failure of Tenders and Negotiations.

By the order dated 8.12.1984 of the District Magistrate/Chairman of the District Board passed under aforementioned sub-clause of Clause 7 it has been decided that in all Cattle Fairs of the district, the Tehbazari fee for loading and unloading of catties on trucks will be charged at the rate of 10% of the total fare of the truck in place of its existing rate of Rs. 20 per truck, from the date of said order and that this fee can be realised at any place from the trucks which load or unload the catties

from Fair/Markets of Parishad."

The bye-laws read with other charging Sections give full authority to the respondents to realise the Tehbazari fee. Section 145 of the Act also makes interesting reading subject to any Rule made by the State Government in this behalf that a (Zila Panchayat) or Kshettra Panchayat may impose in any market established, maintained or managed by it any one or more of the following fees or tolls :--

(a) licence fees on brokers, commission agents, weighmen or measures practising their calling within such markets ;

(b) toll on vehicles pack animals or porters bringing goods for sale into such a market;

(c) market fee for the right to expose goods for sale in such market or for the use of any building or structure therein :

(d) fees on the registration of animals in market :

15. Section 146 of the Act further lays down that any unpaid fees and tolls referred to in Sections 144 and 145 may be recovered in the manner prescribed in Chapter VIII. Chapter VIII mentioned recovery of taxes and other dues in view of the taxes of.

16. Section 159 of the Act is also quoted with advantage. It runs as follows :

"159. Recovery of rent on land.--Where any sum is due on account of rent from a person to a (Zila Panchayat) in respect of land vested in or entrusted to the (Zila Panchayat) the (Zila Panchayat) subject to and in accordance with rules made in this behalf may recover any such arrears as arrears of land revenue."

17. Now we straightaway proceed to rules framed under the provisions of U. P. Zila Parishads (Recovery of Arrears of Tax and Rent on Land) Rules 1975 (see Sections 237, 158 and 159 of the U. P. Kshettra Samitis and Zila Parishads Adhinlyam, 1961). The resolution of Zila Parishad provides that a Zila Parishad shall take reasonable steps for the expeditious recovery of arrears of circumstances and property tax or of rent due from a person in respect of land vested in or entrusted to the management of the Zila Parishad, by issue of distress warrant and sale of property, but when it is satisfied that such steps have not been successful, it may, by resolution, decide to recover the same as arrears of land revenue. Along with it, it would not be fair if we do not quote Section 158 which though has not been quoted during the course of arguments. Section 158 of the Act is quoted for advantage :

"158. Alternative power of bringing suit or recovering as arrears of land revenue.--

(1) Instead of proceeding by distress and sale or in case of failure to realise thereby the whole or any part of the demand, the (Zila Panchayat) may sue the person liable to pay the same in any Court of competent jurisdiction."

18. This section postulates so many circumstances and option has been given to file, a suit in the civil court and not straightaway to the Zila Panchayat.

19. We would also like to invite attention of Section 3 of the U. P. Public Monies (Recovery of Dues) Act. 1972. Proviso (4) of Section 3 is quoted below for advantage :

"In the case of any agreement referred to in sub-section (1) between any persons referred to in that sub-section and the State Government or the Corporation, no arbitration proceedings shall lie at the Instance of either party either for recovery of any sum claimed to be due under the said sub-section or for disputing the correctness of such claim :

Provided that whenever proceedings are taken against any person for the recovery of any such sum he may pay the amount claimed under protest to the officer taking such proceedings, and upon such payment the proceedings shall be stayed and the person against whom such proceedings were taken may make a reference under or otherwise enforce an arbitration agreement in respect of the amount so paid, and the provisions of Section 183 of the Uttar Pradesh Land Revenue Act. 1901 or Section 287A of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950. as the case may be, shall mutatis mutandis apply in relation to such reference or enforcement as they apply in relation to any suit in the civil court."

20. It obviously means that if the petitioner has any grievance he can file a suit by way of depositing the amount in dispute under protest till the decision of the suit takes place.

21. We would like to explain the meaning of phrase "any sum due" as mentioned in Section 155 of the Act. According to Stroud's Judicial Dictionary, Volume II, Edition 1972 844 DUE (1) A debt is "due" when it is payable. (2) "Due" may mean immediately payable (its common signification), or a debt contracted but payable in future. (3) A debt is still "due" notwithstanding that the statute of Limitations may have run against it, for that statute only bars the remedy and does not extinguish the debt ;

In "The Concise Oxford Dictionary" Ninth Edition "Due" has been defined to mean as owing or payable as a debt or an obligation.

22. In our view the Theka money due is on account of Tehbazari fee payable to the Zila Parishad. The Zila Parishad in order to managing itself realisation of the Tehbazari fee has given it on Theka of the petitioner. It has passed its headache or burden to the Thekedar. The loss and profits are his responsibility. The Theka money flows from Tehbazari fee therefore how could it be taken away from the scope and ambit of the Act. In our view it has a direct nexus with the Tehbazari fee. We have to consider the substance and not the form while interpreting the document.

23. The Legislature has used the phraseology "any sum due" in Section 161 of U. P. Kshettra Panchayats and Zila Panchayats Adhiniyam, 1961. Similarly, the Legislature

has used the phraseology "any sum due" in Section 159 also of the said Act. Thus, a combined reading of both these statutory provisions, i.e. Sections 159 and 161 of the said Act makes it crystal clear that the phraseology "any sum due" has been used by the Legislature in such a comprehensive sense that it covers in its widest amplitude any sum due under the Act or under any rule/bye-law framed thereunder and therefore, any such sura would be recoverable as arrears of land revenue, i.e. in the manner as provided under Chapter VIII of the said Act. Accordingly we are of the considered view that the term "any sum due" in the facts and circumstances of present case, would include the Theka money, i.e. the amount due from the Thekedar towards the Tehbazari fee or licence fee. This is the harmonious construction of the two provisions. The Legislature has used the term "mutatis mutandis" in Section 161 of the Act which means in the given context that the provisions of Chapter VIII would apply to deal the recovery of taxes and certain other claims. The Legislature has purposely used the terms "certain other claims" which includes any sum due. The mode of recovery provided by the Legislature is to recover as arrears of land revenue is a speedy and expeditious mode of recovery and we cannot question the wisdom of the Legislature in providing such a speedy and effective mode of recovery. It is very interesting aspect of the matter to note in the instant case. that the recovery certificate issued by the Atirikt Mukhya Adhikari, the respondent No. 3 to Collector Etawah attached as Annexure-1 to the writ petition has been challenged by means of this writ petition. A bare perusal of Annexure-1 shows that the amount of Rs. 2,75,000 which was sought to be recovered was shown as the amount due to the Zila Parishad. The relevant portion of Annexure-1 reads as under :

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24. After hearing the learned counsel for the parties we are of the view that the amount in question can be recovered as arrears of land revenue and it is unfortunate that public money is not being paid by the petitioner. We are also of the view that the submissions raised by Mr. Agarwal that it cannot be recovered as arrears of land revenue are of no substance and we are also of the view that the petitioner introduced some pleas of the writ petition filed by one Sri Ali Hasan which is of no relevance in this petition as the land was different and the scope of that writ petition was different. It was regarding validity of fee.

25. We have considered the aforementioned judgments referred by the learned counsel for the petitioner first in Surendra Kumar Rai (supra)--the question of Section 161 was never discussed in this case. Similarly in Raj Bahadur Singh (supra)--it deals with U. P. Town Area Act. Bhagwati Prasad (supra)--it also deals with U. P. Town Area Act (Sections 20 and 21} Angad Pandey (supra)--it also deals with U. P. Town Area Committee and money dues which cannot be recovered as arrears of land revenue and it was held that any amount due to the Thekedar in view of the contractual term cannot be recovered as arrears of tax. Similarly in Umesh Chandra (supra)--it was observed that amount of Rs. 5,500 can be recovered u/s 158 of the Act as it is due to a Contractor and cannot be recovered under U. P. Moneys Recoveries of Dues Act as it is not tax or rent.

26. In other words the consistent view was that it is a contractual amount between the Contractor and Zila Panchayat and has no link with the fee. On the aforesaid facts we do not accept the ratio as Section 161 did not fall for consideration in those judgments.

27. We are of the considered view that the plea raised by the petitioner that the money due cannot be recovered as arrears of land revenue and should not be ordinarily entertained in writ proceedings. We refuse to exercise, in the facts and circumstances, our discretion under Article 226 of the Constitution of India.

28. In view of the aforesaid discussion we dismiss this writ petition and reject the compromise petition.