

Supreme Court of India

Harish Tara Refractories (P) Ltd. vs Certificate Officer, Sader ... on 11 July, 1994

Equivalent citations: 1994 (3) SCALE 269, (1994) 5 SCC 324

Bench: K Singh, A Anand

ORDER

1. We have pronounced judgment today in C.A. Nos. 2620-64 of 1981. For the reasons recorded therein these transferred cases have to be dismissed. We may, however, briefly deal with the controversy involved in these cases.

2. Bihar and Orissa Public Demands Recovery Act, 1914 (the Bihar Act) was amended by Act IV of 1974 thereby incorporating "any money payable to the State Bank of India" within the list of Public Demands set out in Schedule 1 to the Bihar Act. In these transferred cases the only point argued before us was that the Bihar Legislature had no legislative competence to enact law providing for recovery of bank dues as arrears of land revenue.

3. We may refer to the facts relating to Transferred Case No. 40 of 1989. Harish Tara Refractories (P) Ltd., had entered into several agreements with the State Bank of India, Main Branch, Ranchi. The case of the bank is that there were various dealings and transactions between the parties and large sums of money became due and payable by the company. According to the bank the admitted liability of the company as on October 1, 1979 was Rs. 31, 18, 993.55. Since the repayment of the loan was not made despite repeated demands the Manager of the bank sent a requisition for a certificate under the Bihar Act for recovery of the outstanding loan amount together with interest. The Certificate Officer issued a certificate under Sections 4 and 6 of the Bihar Act. The Certificate was challenge by the Company by way of writ petition before the Calcutta High Court, inter alia, of the ground that the Bihar Legislature had no legislative competence to enact the law permitting recovery of the bank dues as arrears of land revenue. It was argued that Bihar Act was a legislation relating to "banking" in respect of which only the Parliament can make law under Entry 45 List I Seventh Schedule Constitution of India. Suhas Chandri Sen, J. dealt with the points raised before him in a lucid manner with utmost clarity, learned Judge referred to the judgment of a Division Bench of the Calcutta High Court in Mukherjee and Co. v. Union of India and came to the conclusion that the provisions of the Bihar Act and of the Bengal Public Demands Recovery Act of 1913 were almost identical and as such the Certificate Officer under the Bihar Act exercising the judicial powers of the State. The learned Judge followed the judgment this Court in State of Bombay v. Narothamdas Jethabai and Anr. 1951 SCR 51 and held as under:

Administration of justice; Constitution and organisation of all Courts, except the Supreme Court and the High Court" has now been brought under Entry 11A of the Concurrent List. It is no more the exclusive power of the State Legislature to legislate on these matters. But "Administration of justice" is certainly a subject on which the State Legislature can legislate. In view of the interpretation given to this phrase by the Supreme Court, this power must necessarily include the power of enlarging or diminishing the jurisdiction of the Courts. The Bihar Legislature by the Amending Act IV of 1974 has merely enlarged the jurisdiction of the Certificate Officer so as to enable the State Bank of India and other Banks specified in the Schedule to take recourse to the speedier remedy provided under the

Bihar and Orissa Public Demands Recovery Act. Possibly, this was done to enable the Banks to avoid the proverbial law's delay and to realise their claims speedily by the expeditious remedy provided by that Act. Whatever may be the reason for passing this legislation there cannot be any doubt that the amendment clearly comes under the Entry 11A of the Concurrent List. The Amending Act 4 of 1974 has merely brought a dispute relating to money payable to the State Bank of India within the jurisdiction of the Certificate Officer. In effect, what has been done is to enlarge the jurisdiction of the Revenue Court.

4. The learned Judge dealt with the argument that the impugned provision of the Bihar Act was in relation to banking and, therefore, the Bihar Legislature has encroached upon the field reserved for the Parliament and rejected the same on the following reasoning.-1 "Banking" has been kept in the Union List in the Seventh Schedule under Entry 45. The banking laws have not set up any special Court or laid down any procedure for resolving disputes arising between a Bank and its customers. These disputes to the established Civil Court and also by following the procedure that have been laid down. As has been noted earlier in the judgment that establishment of Courts and laying down of the procedure to be followed in those Courts come within the ambit of the legislative competence of the State Legislatures. In pith and substance, the State Legislature has merely enlarged the jurisdiction of an existing Courts to entertain and try certain types of cases relating to banks. Before this amendment was made, a Bank had to file a suit in a civil Court in the ordinary way for realisation of money due to it. The amendment enable the Bank to approach the Certificate Officer and avail of the speedier remedy of that Court. The purpose of the amendment is quite clear. The law has been passed only to make the speedy remedy of the Certificate proceedings available to the Banks. As I have held earlier that it is competent for the State Legislature to enlarge the jurisdiction of a Court and also to legislate on matters of procedure. It is true that "Banking" comes under the Union List; but that does not mean any legislation which affect the Banks in any way must be passed by the Parliament. I have held earlier in the judgment that the impugned legislation comes squarely within entries 11A and 13 of the Concurrent List. Even if the legislation incidentally trenches upon the field reserved for the Central Legislature it will not be bad on that account. This principle of law has been emphasised by the Supreme Court in a number of cases....

It is well settled that Entries in the three Lists should be construed liberally. It is possible, and it is very often the case, that in passing a legislation which is within its competence, a Legislature may incidentally encroach upon the field which has been earmarked in another List exclusively for the Parliament. But that by itself will not make the legislation void, the test is to find out whether the legislation comes within any specific Entry of the State List or the Concurrent List. If in pith and substance, it is a legislation in respect of a matter which comes within the ambit of the power of the State Legislature, then even though, it incidentally trenches upon a field reserved for the Parliament, the legislation will not be bad. In the instant case, there is an additional fact that the Act was reserved and has received the assent of the President....

In my opinion, the legislation comes squarely within Entries 11A and 13 of the Concurrent List. In pith and substance, the Amending Act 4 of 1974 passed by the Bihar Legislature had the effect of merely enlarging the jurisdiction of the Certificate Officer. By this amendment, the Bihar Legislature made an already existing speedy procedure of a Court established by it available to the State Bank of

India and some other Banks. This legislation was within the competence of the Bihar Legislature and will not be bad even if it incidentally trenches upon the field reserved for the Parliament under List I of the Seventh Schedule.

5. We agree with the above quoted reasoning and the conclusions reached by the learned Judge of the Calcutta High Court and approve the same.

6. In *Sawar Mal Choudhary and Ors. v. State Bank of India and Ors.* the Patna High Court had an occasion to deal with the same point. S.S. Sandhawalia, CJ who spoke for the Bench posed the question before the Bench in the following terms:

Whether -Article 15 (inserted by Bihar Act of 1974) of Schedule 1 of the Bihar and Orissa Public Demands Recovery Act, is beyond the competence of the State Legislature, is the significant common question in this set of 6 writ petitions, placed for an authoritative decision by a Division Bench.

Primarily relying on Entry 43 List III Schedule 7 Constitution of India the Bench answered the question in the negative. The Bench, however, noticed the judgment of the Calcutta High Court in *Harish Tara Refractories's* case and observed as under:

In repelling the aforesaid contention of Mr. Bharuka, the firm stand of Mr. K.P Verma, learned Counsel appearing for the respondent State Bank of India was that the recoveries of monies due to the State owned Banks was primarily and purely a matter of procedure and inevitably these matters could, therefore, be left to State Governments and their civil and revenue Courts. It was highlighted that it remains undisputed that the Certificate Officer, who authorises the recoveries of, public demands is a Court, and, in any case, would undoubtedly come within the ambit of revenue Court. Consequently, the State Government would have undoubtedly the legislative power to govern the procedure and matters before the Certificate Officer. Both Entry 11A and Entry 13 of List III may, therefore, also come play because they govern civil procedure as well. Further, because Court of the Certificate Officer is a Court created by the State Government under its statute, the State Legislature under Entry 11A or Entry 13 would not be barred from either legislating about the same or adding to the list of recoveries through such a Certificate Officer. Mr. Varma, in the alternative, therefore, canvassed for the acceptance off the view in *Harish Tara Refractories (P) Ltd. v. Certificate Officer* (AIR 1985 Calf 56) (supra), holding that Entry 11A and Entry 13 of List II also sanctified the enactment of Article 15 of Schedule 1 to the Act.

As is manifest from the gravamen of the discussions in this judgment, the primary contest herein was between Entry 45 of the Union List I as against Entry 43 of the Concurrent List III. I have already held that monies due to the State owned banks would come well within the ambit of public demands and equally their | recovery both within and outside the State, by virtue of Entry 43 of the Concurrent List III. However, no serious challenge would be laid before us to the detailed reasoning in *Harish Tara Refractories (P) Ltd. v. Certificate Officer* (supra) deriving f the sanction for Article 15 of Schedule 1 from Entries 11A and 13 of the Concurrent I List III. In the alternative, therefore, I find no reason to differ from the said judgment' either, and, the stand of the respondents based

thereon may also be well accepted as an additional ground for sustaining the competency of the State legislature to enact Article 15 of Schedule 1 to the Act. The contention of Mr. Bharuka, therefore, must be rejected.

We do not express any opinion on the interpretation given by the Division Bench off Patna High Court to Entry 43 of List III. We, however, uphold the judgment of the Division Bench on the reasoning quoted above based on Entries 11A and 13 List III.

7. For the reasons given above we uphold the judgment of the Calcutta High in Harish Tara Refractories (P) Ltd. v. The Certificate Officer and Ors. (supra) and of the Patna High Court in Sawar Mai Choudhary and Ors. v. State Bank of India and Ors.(supra) and as such dismiss the transferred cases. The writ petitions/appeals filed by petitioners in the transferred cases in the High Court shall stand dismissed with costs. We quantify the costs as Rs. 5000/- to be paid by each of the petitioners in these transfer cases.