Supreme Court of India
Union Of India vs Jyoti Chit Fund & Finance & Ors on 22 March, 1976
Equivalent citations: 1976 AIR 1163, 1976 SCR (3) 763
Author: V Krishnaiyer
Bench: Krishnaiyer, V.R.

PETITIONER:
UNION OF INDIA

Vs.

RESPONDENT:
JYOTI CHIT FUND & FINANCE & ORS.

DATE OF JUDGMENT22/03/1976

BENCH:
KRISHNAIYER, V.R.
BENCH:
KRISHNAIYER, V.R.
CHANDRACHUD, Y.V.

CITATION:
1976 AIR 1163 1976 SCR (3) 763
1976 SCC (3) 607
CITATOR INFO :
R 1987 SC 808 (9,11)

ACT:
Provident Funds Act, 1925, Ss. 3 and 4-Provident fund and allied amounts fall due, whether exclusion from attachability continues-Objection to attachment taken pro bono publico by Union of India, if valid-'Locus standi', scope of.

HEADNOTE:
The appellant Union of India objected to the attachment of certain provident fund and pension dues held by it (on behalf of the Rajya Sabha Secretariat) in trust for the fourth respondent, an ex-employee of the Rajya Sabha Secretariat. The attachment was sought in satisfaction of a money-decree held by the first respondent. The High Court dismissed the appellant's Civil Revision petition upholding the decision of the executing court.

In appeal by special leave, the appellant contended before this Court that although a third party to the suit, the state had acted pro bono publico, by objecting to the illegality of the proposed attachment, and that it was a question of principle, affecting a wide circle of government servants. The respondent contended that the amounts having

already fallen due, had lost the character of provident fund or pension under Ss. 3 and 4, and had become attachable, and also that the government had no locus standi to object to the attachment.

Allowing the appeal, the Court

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HELD: (1) So long as the amounts are Provident Fund dues then, till they are actually paid to the government servant who is entitled to it on retirement or otherwise, the nature of the dues is not altered. The government is a trustee for those sums and has an interest in maintaining the objection in court, to attachment. [767D-E]

Union of India v. Radha Kissen Agarwalla & Anr. [1969] 3 S.C.R. 28, followed.

(2) Cases where public policy is involved and the court has a certain duty to observe statutory prohibitions, a wider concept of locus standi has to be taken. Any public authority interested in the matter, and not behaving as an officious busy-body may bring to the notice of the court the illegality of the steps it proposes to take. When the court's jurisdiction is so invoked, it may be exercised without insisting on some other directly affected party appearing to defend himself. [767F-G]

(3) The argument that the Rajya Sabha Secretariat is different from the Union of India, has the merit of novelty, little else. [767 G & 768H]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2179 of 1970.

Appeal by Special Leave from the Judgment and Order dated the 1st May, 1970 of the Delhi High Court in Civil Revision No. 26 of 1970.

G. L. Sanghi, Girish Chandra and S. P. Nayar for the Appellants.

K. B. Rohtagi, M. K. Garg, V. K. Jain and M. K. Rastogi for Respondent No. 1.

The Judgment of the Court was delivered by KRISHNA IYER, J.-The moral of this case is that a short cut may often be a wrong cut-in law, as in life. The ratio of this appeal is that technicality will not triumph in courts of law and justice, where substantial public policy is involved and it is such public policy which humanistically protects provident fund and pensionary dues of government servants from claims of judgment-creditors to attach in satisfaction of decrees.

The appellant, the Union of India, has come up in appeal, by special leave, challenging a laconic order of dismissal in Civil Revision made by the Delhi High Court, thus upholding the view of the executing court over-ruling the contention of the State, objecting to the attachment of certain

provident fund and pension dues held by Union of India (on behalf of the Rajya Sabha Secretariat) in trust for the judgment-debtor who had been employed in the Rajya Sabha Secretariat. The first court had held that the Union of India had no locus standi to object to the attachment by the decree-holder on the score that an outsider to the suit without 'interest in the attached money' has standing to intervene to dispute the attachability even if the sum was clearly immune to attachment in law. The relevant reasoning is in these terms:

> "It is not the case of the Union of India that Union of India has any interest in the attached property so as to entitle Union of India to make an application under Order 21, r. 58 CPC. In my opinion, if the attachment has been wrongly made it is for the judgment-debtor to make an application to the court for releasing the provident fund or the compulsory deposits from attachment."

The Court also expressed the view that it was premature to hold:

> "that attached money will fall within the definition of provident fund or compulsory deposit."

In fairness to the Subordinate Judge it must be said he did feel 'inclined to agree that provident fund and compulsory deposits are not liable to any attachment under any decree or order of the civil court.

The ground which weighed with the trial court and has won the approval of the High Court is that "the Government has no interest in the attached money and therefore no standing to come to court. The judgment-debtor may file objections for release of the attached money. The objections, if made, will be decided afresh on merits." It is apparent from this statement of facts that the courts below took the narrow view, with an escapist flavour which led to long litigation and large expense, that only the judgment-debtor and not the Government could raise objections regarding non-attachability of provident fund and pension amounts, as if Government were an officious intruder, bereft of any concern in the insultion of the amounts against execution of decrees of court.

The amount involved is small, but Shri Sanghi, for the appellant, contends that the question is one of principle and affects a wide circle of government servants. We agree and indeed appreciate the State's anxiety to fulfil the policy of the statute on behalf of the weaker-sections by taking up the burden on itself. May be, it is like a test case ventilating a cause in which a large number of employees may be vitally involved.

We may make it clear here that the stand taken by Shri Rohatgi, counsel for the respondent, is two-fold. He argues firstly that this amount in the hands of Government is admittedly being held on behalf of the Rajya Sabha Secretariat servant who has just retired and, therefore, has lost the character of provident fund or pension. The inhibition of attachment of provident fund and like amounts, even if valid, cannot apply to this class of sums which have suffered a metamorphesis. Secondly, the Government has no right to move the court raising objection to the attachment since the judgment-debtor is the only appropriate person who can do so. We disagree.

Processual law is neither petrified nor purblind but has simple mission-the promotion of justice. The court cannot content itself with playing umpire in a technical game of legal skills but must be activist in the cause of deciding the real issues between the parties. And one guiding principle is not to exaggerate the efficacy of procedural defects where issues of public concern are involved and a public authority vitally interested in the correct principle alerts the attention of the court to the problem. A broadened view of locus standi loads to the futility of technical flaws where larger issues are involved and that is the trend of modern processual jurisprudence. These general considerations were trite, yet too often ignored, and so need reiteration. Further, the consumers of justice can have scant respect for a procedural policy which is obsessed more with who sparks the plugs of the court system than with what the merits of the rights or wrongs of the relief are. A shift on the emphasis, away from technical legalistics, is overdue if the Judicature is not to aid its grave diggers. We express the view strongly so that hopefuls may be dissuaded from taking up court time by playing up technicalities.

We may now move on to a consideration of the basic contentions and, before that, the basic facts may be briefly set down. On March 31, 1967 a money decree for a little over Rs. 2,000/- was passed in Suit No. 516 of 1966 in favour of respondent No. 1 and against respondents 2 to 4 (who are ex parte). A warrant or attachment of the 'funds' of respondent No. 4, in the hands of the Rajya Sabha Secretariat, was sought and ordered. It reads:

> "To The Pay & Accounts Officer, Rajya Sabha Secretariat, New Delhi.
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> Whereas judgment-debtor No. 3, Shri S. Krishnaswamy, an ex-reporter has failed to satisfy a decree passed against him on the 31st day of March, 1967 in suit No. 516/66 in favour of M/s Jyoti Chit Fund and Finance P. Ltd., for Rs. 2193-50. It is ordered that the defendant judgment-debtor is hereby prohibited and restrained until the further order of this Court from receiving from the Pay and Accounts Officer the following property in possession of the said Pay and Accounts Officer that is to say Rs. 2193-50 to which the defendant judgment-debtor is entitled, subject to any claim of the said J. D. and the said Pay and Accounts Officer is hereby prohibited and restrained, until the further order of this court from delivering of the said property to any person.

Given under my hand and seal of the Court on 12th day of September 1968.

Sd/-

Sub-Judge 1st Class, Delhi."

On service of the attachment order, objection was raised by the appellant, Union of India, on January 30, 1969 on the score that provident fund amounts and pensionary benefits were not liable to attachment and therefore the order may be rescinded. The decree holder (respondent 1) successfully contested in the trial court and on the objection being over-ruled, the appellant moved the High Court. It may be stated, at this stage, that the trial Court did not actually investigate the

claim of the appellant as to whether the whole, or part of the amount sought to be attached, represented provident fund or pensionary benefits nor did the High Court go into the question. This means that even if we uphold the contention of the appellant, the case will have to go back for investigation on the merits We may formulate what has been indicated-the actual points urged before us by Shri Sanghi and vigorously controverted by Shri Rohtagi. (1) Is it permissible in law for amounts representing provident fund contributions and pensionary benefits to be attached, having due regard to ss. 3 and 4 of the Provident Funds Act, s. 11 of the Pensions Act and s. 60(1), provisos (g) and (k) of C.P.C.? (2) Is the Union of India entitled to move the Court and request it to investigate the question that the whole or part of the sum in its hands on account of the judgment-debtor as provident fund, compulsory deposits and pensionary benefits and, therefore, not liable to be attached, or is it out of bounds for a third party to the suit, like the Union of India, even if the step be taken pro bono publico by a relevant public authority, to invoke the jurisdiction of the Court in this behalf? (3) Is the Rajya Sabha Secretariat staff so totally separated from the Union of India that the latter cannot urge, in these proceedings, the claims belonging to employees of the said Secretariat in the civil court even if the attachment of the sums involved is contrary to law ? We are inclined to hold,, without hesitation that on all the points the appellant is bound to succeed. A bare reading of ss. 3 and 4 of the Provident Funds Act, 1925, read with s. 2(a) of that Act, will convince anyone that attachment of amounts bearing their description are prohibited. It will be a gross violation of legal mandates involving public interest if, in the teeth of such injunction, an attachment should still be ordered by a court.

The finer distinction sought to be made by Shri Rohatgi that because the appellant has already retired, therefore, the provident fund and allied amounts have already fallen due and have ceased to possess the complexion of sums 'by way of provident fund under ss. 3 and 4', is fallacious. On first principles and on precedent, we are clear in our minds that these sums, if they are of the character set up by the Union of India, are beyond the reach of the court's power to attach. Section 2

(a) of the Provident Funds Act has also to be read in this connection to remove possible doubts because this definitional clause is of wide amplitude. Moreover, s-60(1), provides (g) and (k), leave no doubt on the point of non- attachability. The matter is so plain that discussion is uncalled for.

We may state without fear of contradiction that provident fund amounts, pensions and other compulsory deposits covered by the provisions we have referred to, retain their character until they reach the hands of the employee. The reality of the protection is reduced to illusory formality if we accept the interpretation sought. We take a contrary view which means that attachment is possible and lawful only after such amounts are received by the employee. If doubts may possible be entertained on this question, the decision in Union of India v. Radha Kissen Agarwala & Anr. erases them. Indeed our case is an afortiori one, on the facts. A bare reading of Radha Kissen makes the proposition fool-proof that so long as the amounts are Provident Fund dues them, till they are actually paid to the government servant who is entitled to it on retirement or otherwise the nature of the dues is not altered. What is more, that case is also authority for the benignant view that the government is a trustee for those sums and has an interest in maintaining the objection in court to attachment. We follow that ruling and over-rule the contention.

It is possible to take a broad view that cases where public policy is involved and the court has a certain duty to observe statutory prohibitions, a wider concept of locus standi has to be taken. Any public authority interested in the matter and not behaving partially as an officious busy- body may bring to the notice of the court the illegality of the steps it proposes to take. When the court's jurisdiction is so invoked, it may be exercised without insisting on some other directly affected party, like the judgment-debtor in the instant case, appearing to defend himself.

The argument that the Rajya Sabha Secretariat is different from the Union of India is a new gloss which Shri Rohatgi has put upon his contention of locus standi. He has pressed into service Articles 300 and 98(2) of the Constitution of India, neither of which is helpful or applicable. This point has the merit of novelty, little else. Consequentially, we set aside the decision of the High Court and of the executing court, but this is not the end of the matter.

We direct the court of the Subordinate Judge to go into the merits of the objection raised by the Union of India as to whether the entire amount or any portion thereof held by it on behalf of the Rajya Sabha Secretariat staff, so far as the judgment-debtor in this case is concerned, represents provident fund and compulsory deposits or pensionary benefits, excluded from attachability in execution of civil decrees under the provisions already adverted to. If it is feasible to effect service of notice on the judgment-debtor, well and good, but if it is not, the court cannot absolve itself of the duty to investigate into the merits of the claim or character of the amounts, so long as the Union of India is ready to make good its contention.

The appeal is allowed with costs in this Court.

M.R. Appeal allowed.