

Ram Narayan Agarwal and Others

Vs

State of Uttar Pradesh and Others

Writ Petitions Nos. 1110, 2035, 4759 and 6431 of 1980; 92, 140, 152, 400, 421, 497, 1366, 4719, 6931, 8054-58, 7483 and 8458 of 1981 and 871-73, 2362, 2621-22, 4053 and 5695 of 1982

(E. S. Vankataramiah, A. N. Sen, R. B. Mirsa JJ)

23.08.1983

JUDGMENT

VENKATARAMIAH, J. –

1. The common question which arises for consideration in all these petitions relates to the validity of the action taken by the authorities concerned against the petitioners for recovering the arrears of tax due and payable by them under the U.P. Sales Tax Act, 1948 by the arrest and detention in civil prison of the petitioners in accordance with Section 279(1)(b) read with Section 281 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as 'the U.P. ZALR Act') and the Rules made thereunder.

2. It is alleged that the petitioners had committed default in payment of the tax payable by them under the U.P. Sales Tax Act and warrants of arrest had either been issued or were about to be issued by the concerned Revenue Officers for the arrest and detention of the petitioners in the course of the recovery proceedings. Sub-section (8) of section 8 of the U.P. Sales Tax Act, 1948 provides that any tax or other dues payable to the State Government under the Act or any amount or money which a person is required to pay to the assessing authority under sub-section (3) of Section 8 thereof or for which he is personally liable to the assessing authority under sub-section (6) of that section shall be recoverable as arrears of land revenues. Section 33 of the U.P. Sales Tax Act, 1948 further provides that in respect of any sum recoverable under that Act as arrears of land revenue the assessing authority may forward to the Collector a certificate under his signature specifying the sum due. Such certificate is required to be treated as conclusive evidence of the existence of the liability of its amount and of the person who is liable and the Collector on receipt of the certificate may proceed to recover from such person the amount specified therein as if it were an arrear of land revenue. It is further provided that without prejudice to the powers conferred by Section 33, the Collector shall, for the purposes of recovering the amount specified in the certificate, have also all the powers which a Collector has under the Revenues Recovery Act, 1890 and a civil court has under a Code of Civil Procedure, 1908 for the purpose of recovery of an amount due under a decree. The Examination to Section 33 provides that the expression 'Collector' includes an additional Collector or any other officer authorised to exercise the power of a Collector under the law relative to land revenue for the time being in force in the State. Rule 50 of the U.P. Sales Tax Rules, 1948 provides that where a dealer or a person fails to deposit the tax or any other amount payable by him under the U.P. Sales Tax Act, 1948 within the period fixed in that behalf, the same may be recovered as arrear of land revenue. Section 5 of the Revenue Recovery Act, 1890 as in force in the state Uttar Pradesh) reads :

5. Recovery by Collectors of sums recoverable as arrears of revenue on the certificates of public officers and local authorities. - (1) Where any sum is recoverable as an arrear of land revenue by any public officer other than a Collector or by any local authority, such officer or authority may send to the Collector of the district in which the office of that officer or authority is situate or of any other district in Uttar Pradesh where the defaulter is or has property, a certificate in such form as may be prescribed by rules made in this behalf.

(2) Save as otherwise provided in this Act, the certificate shall be conclusive of matters therein stated.

(3) The Collector shall, on receipt of the certificate under sub-section (1), proceed to recover the amount stated therein as if the sum were payable to himself.

(4) The provisions of Section 4 shall have effect in relation to such certificate as if it were a certificate sent under sub-section (1) of Section 3.

3. In the State of Uttar Pradesh the relevant provisions relating to the procedure for recovery of arrears of land revenue are to be found in Section 279 and other cognate provisions in Chapter X of the U.P. ZALR Act.

4. Section 279 of the U.P. ZALR Act reads thus :

279. Procedure for recovery of an arrear of land revenue. - (1) An arrear of land revenue may be recovered by any one or more of the following processes :

(a) by serving a writ of demand or a citation to appear on any defaulter,

(b) by arrest and detention of his person,

(c) by attachment and sale of his movable property including produce,

(d) by attachment of the holding in respect of which the arrears is due,

(e) by lease or sale of the holding in respect of which the arrear is due,

(f) by attachment and sale of other immovable property of the defaulter, and

(g) by appointing a receiver of any property, movable or immovable of the defaulter.

(2) The costs of any of the processes mentioned in sub-section (1) shall be added to and be recoverable in the same manner as the arrear of land revenue.

5. Clause (b) of sub-section (1) of Section 279 of the U.P. ZALR Act referred to above authorities the recovery of land revenue by the arrest and detention of the person who has committed the default. Section 281 of U.P. ZALR Act reads thus :

281. Arrest and detention. - Any person who has defaulted in the payment of an arrear of land revenue may be arrested and detained in custody up to a period not exceeding 15 days unless the arrears [including costs, if any, recoverable under sub-section (2) of Section 279] are sooner paid :

Provided that no woman or minor shall be liable to arrest or detention under this section :

Provided further that no person shall be liable to arrest or detention for an arrear in respect of a holding of which he is not the bhumidhar merely because of his joint responsibility for payment of land revenue under Section 243.

6. Rules 247 to 253 of the U.P. Zamindari Abolition and Land Reforms Rules, 1952 (hereinafter referred to as 'the U.P. ZALR Rules') framed by the State Government in exercise of its power conferred by the U.P. ZALR Act contain the procedure to be followed while recovering the arrears of the land revenue by the arrest and detention of the defaulter. It is sufficient to set out Rules 247, 247(A), 247(B) and 251 for purposes of this judgment. They read thus :

247. Process under Section 281 (arrest and detention) may be issued by the Collector, the Assistant Collector in charge of the sub-division, or the tahsildar. If the tahsildar issues such process against a defaulter residing in another tahsil within the district, he may do so either direct or through the tahsildar of such other tahsil.

247-A. The warrant of arrest may be executed by any one of the process-serves referred to in Rule 244 or an Amin or any other officer whose name is entered in the warrant of arrest. Where the person authorised to execute the warrant is a process-server who has not furnished any security to Government, an Amin shall be deputed to accompany such process-server.

247-B. (1) Where a defaulter at the time of his arrest pays the entire amount of arrears specified in the warrant of arrest along with the process-fee referred to in Rule 248 to the process-server, the Amin or the officer, as the case may be, empowered in the said warrant to receive such arrears and process-fee, he shall not be arrested, and if arrested shall be released and a receipt for the amount so paid shall be issued to him on the spot in Z.A. Forms 64 by the process-server, Amin or officer, as the case may be.

(2) The amount of arrears and the process-fee paid by the defaulter shall immediately be deposited in the tahsil in the same manner as a land revenue collection is deposited. The fact of payment of the aforesaid amounts as also the reference of the Receipt No. and Book No. of the receipt issued to the defaulter shall also be noted down on the warrant which shall then be put up before the officer issuing the warrant of arrest who shall ensure that the amounts noted on the warrant have been duly deposited in the Tahsil.

251. (1) Whenever a tahsildar causes a defaulter to be arrested, he shall without delay report the fact for the information of the Collector and Assistant Collector in charge of the sub-division.

(2) After arrest a defaulter shall be brought without delay before the officer, who issued the warrant and shall not be detained in custody unless there is reason to believe that the process of detention will compel the payment of the whole or a substantial portion of the arrear. If an order for detention is passed, it shall specify the date on which the detention will cease if the arrear is not sooner paid.

(3) If the officer who issued the warrant sees fit, when the defaulter is produced before him to give him further time, to pay the arrears, instead of detaining him, he may release the defaulter on his undertaking to pay the arrear within the period fixed. Should it become necessary to arrest the defaulter again, a fresh warrant in Z.A. Form 70 shall invariably be issued, and a separate fee levied. When a warrant has been once executed by the arrest of the defaulter, the same warrant cannot be executed a second time.

7. The first contention urged before us on behalf of the petitioners is that the above-mentioned process of arrest and detention of a defaulter in the course of the tax recovery proceedings is opposed in Articles 14, 19(1)(d) and 21 of the Constitution. It is contended that the said procedure is arbitrary, unreasonable and unfair. In support of the above contention reliance is placed on Article 11 of the International Covenant on Civil and Political Rights which reads : 'No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation' and the decision of this Court in *Jolly George Varghese v. Bank of Cochin* [(1980) 2 SCR 913 : (1980) 2 SCC 360 : AIR 1980 SC 470 : (1982) 52 Com Cas 70]. In so far as the international covenant referred to above is concerned, it has to be observed that it has not been made yet a part of our municipal law and secondly it relates to a debt due under contractual obligation. We have here a case involving public dues payable under a statute. Even in England where the process of arrest and detention of a debtor is abolished in the case of other kinds of debts, it is still retained in the case of maintenance orders and of certain tax liabilities. (See the Debtors Act, 1869 as amended by the Debtors Act of 1878 read with the Administration of Justice Act, 1970.) In so far as the decision of this Court in the case of *Jolly George Varghese* [(1980) 2 SCR 913 : (1980) 2 SCC 360 : AIR 1980 SC 470 : (1982) 52 Com Cas 70] is concerned, it may be noted that it was a case governed by Section 51 of the Code of Civil Procedure, 1908. There is, however, no doubt as observed in that case that the procedure adopted by an authority issuing the warrant of arrest should be fair and reasonable. But the Court left open the question whether Section 51 of the Code of Civil Procedure was unconstitutional or not.

8. We shall now examine the provisions, the validity of which is under attack. Section 279 of the U.P. ZALR Act prescribes the different processes that may be taken out against a defaulter who is in arrears of land revenue and clause (b) of sub-section (1) thereof prescribes the arrest and detention of the defaulter himself as one of such processes. With regard to the determination of the question whether a restriction imposed by a statutory provision on the fundamental right guaranteed under Article 19(1)(d) of the Constitution is reasonable or not there are now well established norms. It is settled by a long line of decisions of this Court that the restriction must not be arbitrary or excessive in nature so as to be beyond the requirement of the general public. The Court should strike a just balance between freedom contained in Article 19(1)(d) of the Constitution and the social interest to be protected. No universal rule can be laid down in this regard. The changing social conditions, the values of human life, the prevailing social philosophy and all the surrounding circumstances should be taken into consideration. In a case like this where public dues are to be collected some amount of coercion is necessary to make a recalcitrant defaulter who has means to pay or who has fraudulently secreted his assets to screen them from being proceeded against to pay up the dues. In one of the earliest decisions i.e. *State of Madras v. V.G. Row* [1952 SCR 597 : AIR 1952 SC 196 : 1952 SCJ 253] this Court observed at page 607 thus :

It is important...to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. The

nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict. In evaluating such elusive factors and forming their own conception of what is reasonable, in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the judges participating in the decision should pay an important part, and the limit to their interference with legislative judgment in such cases can only be dictated by their sense of responsibility and self-restraint and the sobering reflection that the Constitution is meant not only for people of their way of thinking but for all, and that the majority of the elected representatives of the people have, in authorising the imposition of the restrictions, considered them to be reasonable.

9. This view is followed in many later decisions. The Law Commission in its 54th Report submitted in the year 1973 after examining in detail the provisions for arrest and detention of a judgment-debtor in execution of a decree passed by a civil court contained in Section 51 of the Code of Civil Procedure in the light of the international covenant referred to above observed that this mode of recovery should not be given up. In its Report, the Law Commission observed :

Situation in Section 51(b).

1-E-12. Perhaps, it could be argued that imprisonment of the judgment-debtor in the situation in Section 51, proviso, clause (b) causes hardship. That clause applies where the judgment-debtor (i) has the means and refuses or neglects to pay or (ii) has had the means and has refused or neglected to pay. The essential condition in either case is the possession of means, coupled with contemporaneous failure or neglect to pay. Imprisonment, if it follows in such cases, is not based on mere non-payment, nor on mere inability to pay, but is confined to cases where a person is able to pay and dishonestly makes default in payment.

1-E-13. It will, thus, be seen that the provisions as to arrest do not violate the provision in the International Covenant, as they are not based on mere non-fulfilment of a contract. Further, even apart from their consistency with the Covenant, they are justifiable on principle because the conduct which attracts their operation is dishonest. Technically, no crime is committed, as there is no bodily harm to the decree-holder or direct harm to society. But, to deprive another person of his lawful dues when one has the means to pay is, in the special situations to which Section 51, proviso, is confined ultimately causing harm to society, which suffers if an individual member suffers by reason of the dishonest conduct of another member.

Present law sufficiently restrictive.

1-E-14. We are, therefore, of the view that so far as the cases in which arrest may be ordered are concerned the law in India is sufficiently restrictive, except in two respects, which we shall presently discuss. This mode of execution should not, therefore, be totally abolished.

The situations mentioned in the proviso to Section 51 - which is the section dealing with arrest in execution of decrees for payment of money - are those which indicate

fraud or clandestine designs on the part of the judgment-debtor. Mere inability to perform the obligation to repay a loan (or other monetary obligation) does not result in imprisonment.

10. The foregoing shows that in the contemporary Indian conditions the process of arrest and detention of a judgment-debtor or a defaulter to enforce payment of the amount due from him is not altogether unreasonable. It cannot be held to be unconstitutional if there are sufficient safeguards which make the process conform to reasonable standards.

11. Section 281 of the U.P. ZALR Act prescribes the maximum period for which a defaulter can be detained for non-payment of land revenue as fifteen days unless the arrears [including costs, if any, recoverable under Section 279(2)] are sooner paid. A woman or a minor cannot be arrested and detained for recovery of revenue arrears. So also a defaulter who is not a bhumidhar of the holding in question cannot be arrested or detained when the arrears are in respect of the said holding for payment of which he is jointly responsible. The first safeguard prescribed by law in respect of the process of arrest and detention therefore relates to the period of detention and the exemption of certain persons from being arrested and detained. The second safeguard prescribed by the law in question is contained in Rule 251 of the U.P. ZALR Rules. Sub-rule (1) of Rule 251 requires that wherever the process for arrest is issued by a tahsildar, the tahsildar should without delay report the fact to the concerned Collector and Assistant Collector. Sub-rule (2) of Rule 251 requires the production of the defaulter who is arrested before the officer who issued the warrant without delay and that such defaulter should not be detained in custody unless there is reason to believe that the process of detention will compel the payment of the whole or a substantial portion of the arrear. Under this sub-rule there is necessity to enquire into the question whether the detention of the defaulter would be productive of payment of the arrear or a substantial portion thereof. The officer concerned is, therefore, required to decide on the basis of the material before him and any evidence tendered or submission made by the defaulter whether there is any justification for detaining him and it is only after he is satisfied that the detention of the defaulter will compel him to make the payment of the whole or a substantial part of the arrear he can order his detention. If he is not so satisfied the officer is under an obligation to release him. Sub-rule (3) of Rule 251 also empowers the officer who issued the warrant, if he considers it fit to do so, to release the defaulter on his undertaking to pay the arrear within the period fixed and to direct the arrest of the defaulter again, if necessary.

12. It is argued on behalf of the petitioners that since under Rule 251 of the U.P. ZALR Rules an enquiry is contemplated after the defaulter is arrested and produced before the officer and not before his arrest and since such procedure is not in conformity with the provisions contained in corresponding law in force in other States or in Section 51 of the Code of Civil Procedure which require an enquiry to be made before the issue of the warrant of arrest, Rule 251 should be held to be unconstitutional. It is necessary to observe here that each State is well within its right to devise its own machinery for the recovery of its own public demands and that no person belonging to one State can complain that the law of his State is more rigorous than that of the neighbouring State or the procedure prescribed by the Code of Civil Procedure for execution of decrees. (See *Purshottam Govindji Halai v. B. M. Desai Additional Collector of Bombay* [(1955) 2 SCR 887 : AIR 1956 SC 20 : 1956 SCJ 75]). We are not concerned here in examining whether the safeguards against arbitrary arrest correspond to the safeguards contained in the Code of Civil Procedure or in any other law. We are primarily concerned with the question whether the safeguards contained in Rule 251 of the U.P. ZALR Rules are fair, reasonable and not arbitrary and satisfy the minimum constitutional requirements having regard to the nature of the arrear, the prevailing conditions in our society and

other relevant matters. In this case we are concerned with the process employed for recovery of public dues after the period prescribed for payment of such dues is over. It is seen that the defaulter has adequate opportunity to satisfy the officer concerned that there is no justification to order his detention.

13. This Court had occasion to consider a similar question in *Collector of Malabar v. Erimal Ebrahim Hajee* [1957 SCR 970 : AIR 1957 SC 688 : (1957) 32 ITR 124]. In that case the Income Tax Officer had forwarded a certificate under Section 46(2) of the Indian Income Tax Act to the Collector for recovering the arrears of income-tax from the assessee as if they were arrears of land revenue. The Collector proceeded under Section 48 of the Madras Revenue Recovery Act, 1864 and had the assessee arrested and confined in jail. Upon a petition for a writ of habeas corpus the High Court of Madras ordered the release of the assessee holding that Section 48 of the Madras Revenue Recovery Act, 1864 and Section 46(2) of the Indian Income Tax Act, 1922 were ultra vires. The Collector appealed to this Court. Allowing the appeal, this Court held that impugned provisions were not violative of Article 14, 19, 21 and 22 of the Constitutions. The Court also rejected the plea of the assessee that the arrest was by way of punishment and held that it was only a coercive process used for recovering arrears of tax. This Court observed at pages 978-79 thus :

There is not a suggestion in the entire section that the arrest is by way of punishment for mere default. Before the Collector can proceed to arrest the defaulter, not merely must the condition be satisfied that the arrears cannot be liquidated by the sale of the property of the defaulter but the Collector shall have reason to believe that the defaulter is wilfully withholding payment, or has been guilty of fraudulent conduct in order to evade payment. When dues in the shape of money are to be realised by the process of law and not by voluntary payment, the element of coercion in varying degrees must necessarily be found at all stages in the mode of recovery of the money due. The coercive element, perhaps in its severest form, is the act of arrest in order to make the defaulter pay his dues. When the Collector has reason to believe that withholding of payment is wilful, or that the defaulter has been guilty of fraudulent conduct in order to evade payment, obviously, it is on the supposition that the defaulter can make the payment, but is wilfully withholding it, or is fraudulently evading payment. In the Act there are several sections (e.g. Sections 16, 18 and 21) which prescribed, in unambiguous language, punishment to be inflicted for certain acts done. It is clear, therefore, that where the Act intends to impose a punishment or to create an offence, it employs a language entirely different to that to be found in Section 48. We are of the opinion, therefore, that where an arrest is made under Section 48 after complying with its provisions, the arrest is not for any offence committed or a punishment for defaulting in any payment. The mode of arrest is no more than a mode for recovery of the amount due.

14. Even though the pattern of the legislation involved in the above case was slightly different from the pattern of law involved in this case, the above observations appear to be relevant to consider the question whether the process of arrest and detention can be used at all for recovering the revenue arrears.

15. The High Court of Allahabad (through R. S. Pathak, J. as he then was) in *Sangam Lal Gupta v. S.T.O.* [1969 All LJ 257] has also taken the view while dealing with a similar set of provisions which had been promulgated under the U.P. Land Revenue Act, 1901 that the said provisions did not amount to imposition of any unreasonable restrictions on the liberty of the defaulters who were

ordered to be arrested and detained pursuant to the said provisions in the course of recovery of revenue due from them. The authority concerned is expected to use his discretion in each case in adopting any one or more of the several processes mentioned in Section 279 of the U.P. ZALR Act for the purpose of recovering the public dues.

16. It is alternatively urged that the procedure under Section 51 of the Code of Civil Procedure in terms would be applicable to the issue of warrant of arrest under Section 281 of the U.P. ZALR Act in view of Section 33 of the U.P. Sales Tax Act and Section 341 of the U.P. ZALR Act. The proviso to Section 33 of the U.P. Sales Tax Act no doubt says that without prejudice to the powers conferred under that section the Collector shall also have the powers of a civil court for the purpose of recovery of an amount due under a decree. This proviso does not impose any further restriction on the power of the Collector under Section 281 of the U.P. ZALR Act and the Rules made thereunder. It only empowers the Collector, if he chooses to do so, to exercise the powers under the Code of Civil Procedure. The procedure prescribed by Section 281 of U.P. ZALR Act and the Rules made thereunder constitutes a complete code on the process of arrest and detention of a defaulter and it is not modified of any of the provisions of the Code of Civil Procedure. It may be noted that where the procedure relating to execution mentioned in the Code of Civil Procedure is to be adopted, U.P. ZALR Act has made an express reference on it in Section 282(2) which deals with attachment and sale of movable property by providing that every attachment and sale under Section 282 shall be made according to the law in force for the time being for the attachment and sale of movable property in execution of a decree of a civil court. In Section 282(3) of the U.P. ZALR Act there is reference to Section 60 of the Code of Civil Procedure which exempts certain kinds of property from attachment and sale. There is no similar provision governing the process of arrest and detention. Section 341 of the U.P. ZALR Act states that unless otherwise expressly provided by or under that Act the provisions of the Code of Civil Procedure would apply to the proceedings under that Act. As mentioned earlier there are express provisions in the U.P. ZALR Act and the Rules made thereunder governing the process of arrest and detention. Hence Section 51 of the Code of Civil Procedure cannot be relied on. We may observe here that the defaulter has to be ordinarily saved with a writ of demand under Section 280 before any other process is adopted for recovery of arrears of land revenue. Rule 242 of the U.P. ZALR Rules provides that ordinarily the process under Section 280, that is, a writ of demand or citation should issue before any other process is resorted to. It follows that ordinarily the defaulter would be made known that a certificate had been issued for recovery of arrears of land revenue from him. Having given our anxious consideration to the question, we are of the view that the provisions of Section 51 of the Code of Civil Procedure would not in terms be applicable to the process of arrest and detention under the U.P. ZALR Act. The decision of the Allahabad High Court *Seth Banarsi Das Gupta v. State of U.P.* [1975 RD 246] which says that the procedure under Section 51 of the Code of Civil Procedure would apply to the case in terms does not lay down the law correctly. We may, however, make it clear that a writ of demand or citation ordinarily should be issued to the defaulter before resorting to the drastic process of issuing an arrest warrant under Section 281 of the U.P. ZALR Act. Even if a formal writ of demand is not issued, it is implicit in the nature of the process to be issued under Section 281 of the U.P. ZALR Act that the defaulter concerned should have prior notice of the issue of the certificate for recovery to enable him to pay up the amount demanded to avoid of arrest. On a careful consideration of the submissions made before us we are of the view that the impugned procedure contained in the U.P. ZALR Act and the Rules made thereunder is not violative of Articles 14, 19(1)(d) and 21 of the Constitution.

17. The next point urged on behalf of the petitioners, however, appears to be a substantial one. Even though Rule 251 of the U.P. ZALR Rules requires an enquiry to be held by the officer who issued

the warrant into the question whether the detention of the defaulter would compel him to pay the arrear or a substantial portion thereof, admittedly no such inquiry is held in any of these case. Hence the petitioners cannot be detained pursuant to any warrant of arrest already issued. We have, therefore, to quash the warrants which are already issued in these cases and direct that the petitioners against whom such warrants have been issued should not be detained pursuant thereto. We make an order accordingly. This order is made without prejudice to the power of the authorities concerned to realise the arrears by arresting and detaining the defaulters in accordance with law by passing fresh orders in the light of the above decision.

18. It is stated that the petitioners in some of these petitions have filed appeals or some other petitioners under the U.P. Sales Tax Act against the orders of assessment and that such appeals or petitions are still pending. We do not express any opinion on the merits of those appeals or other petitions. They may be disposed of according to law by the concerned authorities.

19. The petitions are accordingly allowed in part. No costs.

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