

CALCUTTA HIGH COURT

Ladhuram Taparia

Vs

D.K. Ghose

(Chakravarti, C.J. K Dasgupta, J.)

17.04.1957

JUDGMENT

Chakravarti, C.J.

1. A firm, assessed to income-tax, contends in this appeal that, the proceedings for the recovery of the tax, initiated against it, are altogether bad and that the four objections taken by it before the learned trial Judge should have all been allowed, instead of being turned down, as they were, The assessment itself is not in question in this appeal. We are informed that the appellant has preferred an appeal to the Supreme Court against the order of the Income-tax Appellate Tribunal and that that appeal is pending. The questions raised in the present appeal are limited to the validity of the certificate proceedings commenced against the appellant and the authority of the officer who is carrying on those proceedings.

2. The material facts are as follows. The firm is said to have been formed on 28th of February, 1941, though the instrument of partnership was executed on 16th of October, following Registration of the firm under the Partnership Act was duly made. The first assessment, which was for the assessment year 1941-43. was made on the basis that the firm was a registered firm and the assessments for the two subsequent years were also made on the same basis. On 9th of July, 1947, the firm submitted its return for the assessment year 1945-46 and the total income shown by that return was Rs. 33,105/-. By an amended return filed on 26th of January, 1948. the income-was raised to Rs. 33,308/-. The Income-tax Officer made his assessment on 29th of March. 1950, but in doing so, he refused renewal of registration and determined the assessable income at Rs. 10,23,888/- as against the returned income of Rs. 33,308/- The tax payable on the income, so determined, was Rs. 8,67,239-10-0. By a notice dated 30th of March, 1950, issued under Section 29 of the Income-tax Act. the firm was called upon to pay the tax assessed on or before 20th of April, 1950.

3. The firm preferred an appeal, both against the order of assessment and the order refusing renewal of registration, but it did not remain content with pursuing these remedies provided for by the Act itself. On 20th of July, 1950, it moved this Court under Article 226 of the Constitution and appears to have obtained a Rule. An interim order was also made on 26th of February, 1951 whereby the Income-tax Officer was restrained from enforcing the demand pending the disposal of the Rule. The latter order was subsequently modified on 2nd of March, 1951 and the Income-tax Office was permitted to send a certificate under Section 46 (2) of the Act, because unless proceedings for recovery were commenced within one year from the last day of the financial year in which the demand had been made, the tax would become irrecoverable, and in the event of the Rule being discharged, grave prejudice would be caused to the revenue. Upon obtaining a modification of the stay order, the Income-tax Officer forward-

ed a certificate under Section 46 (2) of the Act to the Collector, 24-Parganas, on 26th of March, 1951, but at the same time informed the Collector that in view of the stay order, the certificate was not to be executed until further notice. The debt mentioned in the certificate was Rs. 8,67,239-10-0. On 31st of March, 1951, one Mr. K. P. Nayak, a Certificate Officer, 24-Parganas, appears to have signed and filed a certificate under Section 4 of the Public Demands Recovery Act in his Office and initiated a proceeding, registered as Proceeding No. 2927 I. T. of 1950-51. No further action was taken, but, on the other hand, the proceedings were stayed till 17th of July, 1952.

4. In the meantime, an order in favour of the firm appears to have been made on its application under Article 226, but on 17th of January, 1952, the order was set aside on appeal. Thereafter, on 16th of July, 1952, the Income-tax Officer made a request to the Certificate Officer to proceed with the enforcement of the certificate. On 18th of July next, the Certificate Officer directed Issue of a notice under Section 7 of the Public Demands Recovery Act and a notice actually issued on 24th of July following. It was signed by one S. C. Das Gupta, described as the Certificate Officer of the 24-Parganas, but the signature was a rub-ber-stamped signature.. Whether Mr. K. P. Nayak had, in the meantime, been transferred or he had retired or ceased to be a Certificate Officer does not appear, but no point was made of the fact that it was Mr. S. C. Das Gupta who signed the notice under Section 7. The notice was served on the firm on 1st of August, 1952. On being served with the notice under Section 7, the firm filed its objection under Section 9 of the Public Demands Recovery Act on 19th of August, 1952 and denied liability for the tax debt claimed. While that objection was pending, the firm's appeals against the assessment and the refusal of registration were disposed of by the Appellate Assistant Commissioner by an order passed on 29th of November, 1952. The refusal of registration was upheld, but the assessment was reduced by Rs. 10,756/-. By a letter dated 10th of April, 1953, the Income-tax Officer informed the

Certificate Officer of the reduction of the assessment from Rs. 8,67,239-10-0 to Rs. 8,56,987-13-0.

5. The proceeding was so long in the hands of Mr. S. C. Das Gupta. On 9th of October. 1953, one Mr. D. K. Ghosh, a retired member of the Indian Administrative Service, was appointed "Certificate Officer and Additional District" Magistrate (ex-officio), 24-Parganss. in connection with the disposal of pending Income-tax Certificate cases in the said district, with effect from the date on which he takes over charees." In due course, Mr. Ghose assumed charge of his office as Additional District Magistrate and Certificate Officer and by an order passed on 11th of November, 1953. he withdrew the present certifice case to his own file. On 27th November following, he amended the certificate by substituting Rs. 8.56.987-13-0 for the original figure of Rs. 8.67.239-10-0 as the amount of the certificate demand.

6. On 13th of February. 1954, two other notifications were issued by which Mr. Ghose was again appointed to certain offices. By Notification No. 476GA/5C-21/54, he was vested with the powers of a Magistrate of the First Class and by Notification No. 477GA/5C-21/54. he was appoint-

ed to act "as an Additional District Magistrate, 24-Parganas, until further orders." By the second notification it was further directed that during the period Mr. Ghose remained employed in the office to which he was being appointed, he would have all the powers of a District Magistrate under the Criminal Procedure Code and all other laws in force in the District of 24-Parganas.

7. In the meantime, the firm had preferred -a further appeal to the Income-tax Appellate Tribunal. The Tribunal disposed of that appeal on 28th of April, 1954 and directed a reduction of the assessable income by Rs 1,39,538/-. The effect, of that reduction was worked- out by the Income-tax Office in due course and by a letter dated 14th of June, 1954, he informed the Certificate Officer that the tax demand had been further reduced to Rs. 7.23,990-10-0. He also requested the Certificate Officer to substitute the reduced figure for the figure which had previously been substituted for the original figure. There appears to have been a second communication to the same effect on 9th of July, 1954.

8. On 12th of July, 1954, Mr. Ghose heard certain objections. He had previously heard the firm's objection under Section 9 on 5th of July, 1954, but on 12th of July he had before him another petition of objection in which certain fresh points had been taken. It appears that on the date of the previous hearing, the firm itself had brought it to the notice of the Certificate Officer that the Appellate Tribunal had further reduced the tax assessed and had excluded the Income of certain other firms which had been taken by the Income-tax Officer as the income of the present firm.

The firm's Advocate had thereupon been directed to file a copy of the Tribunal's order and the order recorded by the Certificate on 12th of July, 1954, shows that a copy had been filed as directed- It was thus not merely the Income-tax Officer, but the firm also who was asking the Certificate Officer to take note of the reduction of the demand. On hearing the parties, the Certificate Officer directed that the certificate should be amended so as to show the total demand as Rs. 7.23.9PO-10-0 and the composition of that amount as indicated by the Certificate Officer was also to be shown. At the hearing on 12th of July, 1954, the lawyer for the firm also pointed out that the notice under Section 7, already served on his client, was not a proper notice, because the signature of the Certificate Officer was in rubber stamp and; therefore, the position in law was that his client had never been served with a proper notice under Section 7 at all. The Certificate Officer accepted that contention and directed the issue of a fresh notice. In pursuance of that direction, a fresh notice under Section 7 was issued on the following day. It was signed by Mr. D. K. Ghose.

91. The fresh notice under Section 7 together with a copy of the certificate, dated 31st of March, 1951, was served on the firm on 11th of August, 1954. A week later, on 17th of August, 1954, to be precise, the Certificate Officer issued a number of notices to various parties under Section 46 (5A) of the Income-tax Act. By a letter dated 28th of August, 1954, the firm asked the Income-tax Officer to withdraw those notices, but, naturally, the request was not complied with. On 3rd of September, 1954, the firm sent a letter to the Income-tax Officer demanding justice and on 6th of September following, it filed an objection under Section 9 in reply to the fresh notice under Section 7 dated 13th of July, 1954. On the very next day, before the objection under Section 9 had been heard and disposed of, the firm moved this Court a second time un-

der Article 2.6 of the Constitution and obtained a Rule on the Certificate Officer, the Income-tax Officer and the State of West Bengal, requiring them to show cause why a writ of certiorari should not issue, asking the Certificate Officer to quash all proceedings in the certificate case and to forbear and refrain from proceeding with the said proceeding otherwise, why the Income-tax Officer should not be directed to withdraw or cancel the notices issued under Section 46 (5A) and why a writ of mandamus should not issue, directing the Certificate Officer and the Income-tax Officer to recall or cancel respectively the notice dated 13th of July, 1954 and the notices issued under Section 46 (5A). At the final hearing of the Rule which took place on 13th of May, 1956, it was discharged. Thereupon, the present appeal was filed on 25th of August, 1955.

10. As I have already stated, the objections raised on behalf of the firm are four in number. They were all repelled by the learned trial Judge, but repeated in the argument before us, although not perhaps in precisely the same form. It will be convenient to take them in the order in which they were urged.

11. It was contended, in the first place, that the Certificate Officer who had taken over the proceeding from the Officer who had initiated it, had never been properly appointed and," therefore, he Was exercising a jurisdiction which he had never acauired. The point sought to be made was that When by the notification dated 9th of October, 1953, Mr. D. K. Ghose was employed as a Certificate Officer and Additional District Magistrate, he was appointed an Additional District Magistrate without having been previously appointed a Magistrate of the First Class. His appointment as Additional District Magistrate was thus invalid, in view of the provisions of Section 10(2) of the Criminal Procedure Code and consequently if he never became an Additional District Magistrate, he could not properly be vested with the powers of a Certificate Officer. Sinha J., accepted that contention and held that the first appointment of Mr. D. K. Ghose was invalid, as contended by the appellant and cbnsequently all that he had done with respect to the proceedings before the date of his second appointment was void and of no effect. Mr. Meyer, who appeared for the respondents, contended before us, though somewhat faintly, that even the first appointment of Mr. D. K. Ghose was a valid appointment, because his appointment as an Additional District Magistrate implied and carried with it an appointment as a Magistrate of the First Class. That contention, in my view, is not tenable, because under Section 10 (2) of the Criminal Procedure Code, the State Government can only appoint "any Magis-trate of the first class" to be an Additional District Magistrate, so that the person appointed an Additional District Magistrate is required to be already a Magistrate of the First Class at the date of his appointment. Even assuming that Mr. Ghose's appointment as an Additional District Magistrate carried the implication for which Mr. Meyer contended, the appointment would at best be a case of simultaneous appointment as a Magistrate of the First Class and an Additional District Magistrate which would not satisfy the statute. The decision of the learned trial Judge that the first appointment of Mr. D. K. Ghose was wholly invalid is, in my view, clearly right.

12. There was, however, as I have already Indicated, a second appointment of Mr. Ghose to the same office. The learned trial Judge has held that the second appointment was free from the irregularity which had affected the first appoint-ment. A Notification, No. 476-GA was issue first and by. it Mr. Ghose was vested with the powers of a Magistrate of the First Class and a second Notification No. 477/GA was issued next, but on the same day and by that notification Mr. Ghose was appointed to act as an Additional District Magistrate, 34-Parganas, with all the powers of a District Magistrate. A person who had already been appointed a Magistrate of the First Class was thus appointed an Additional District-Magistrate and thereby the requirements of Section 10 (2) of the Criminal Procedure Code were completely satisfied. It was contended that even the first notification of the 13th of February, 1964, did not appoint Mr. Ghose a Magistrate of the First Class, but merely Vested him with the powers of such a Magistrate, but, I think, that objection was rightly overruled by the. learned trial Judge. In my view, the appointment of Mr.

D. K. Ghose as an Additional District Magistrate by the notification of the 13th of February, 1954, was perfectly regular.

13. Once it is found that Mr. Ghose was validly appointed an Additional District Magistrate, his acquisition of the status of a Certificate Officer follows from the provisions of the Public Demands Recovery Act itself. Under Section 3 (3a) "Collector" includes "an Additional District Magistrate". It follows that having been appointed an Additional District Magistrate, Mr. Ghose became a Collector in the eye of the Act. Under Section 3 (3). "Certificate Officer" means inter alia "a Collector". Having become a Collector under the provisions, of Section 3 (3a) by virtue of his appointment as an Additional Dist. Magistrate Mr. Ghose thus became a Certificate Officer under the provisions of Section 3 (3). It can, therefore, by no means be said that even after his second appointment as an Additional District Magistrate, Mr. Ghose never acquired the status of a Certificate Officer and was never validly appointed as such. Indeed, in view of the provisions of the Public Demands Recovery Act, no special appointment as Certificate Officer was required to make Mr. Ghose a Certificate Officer after he had been appointed an Additional District Magistrate.

14. Before the learned trial Judge, some reference seems to have been made to the definition of 'Collector' in the Bengal General Clauses Act. It is not easy to see for what purpose the definition in the General Clauses Act was invoked. The Public Demands Recovery Act now gives its own definition of 'collector' and if it does, It is not only inappropriate but altogether wrong to import the definition given in the Bengal General Clauses Act. The definitions in the General Clauses Act are, as the prefatory words of the definition-section make it clear, to be adopted, only when there is nothing repugnant in the subject-matter or the context in the Act to which the definition is sought to be applied. There can be nothing more repugnant to a definition than another definition. When a Bengal Act has a definition of its own of a particular term, there can be no justification. nor any necessity for having recourse to the General Clauses Act for the definition of the same term. Sinha J., does not seem to have considered the reference to the definition given in the Bengal Gen. Clauses Act irrelevant, but he was able to hold that even if that definition applied, Mr. Ghose had become a Collector by virtue of his appointment as an Additional District Magistrate. According to the definition in the Bengal General Clauses Act 'Collector' means, so far as Calcutta is concerned, the Collector of Calcutta. By a notification dated 31st of May, 1875, the Collector of 24-Parganas was appointed to be the ex-officio Collector of Calcutta. It follows that by virtue of his appointment as an Additional District Magistrate of 24-Parganas, taken along with the Notification of 31st of May, 1875, Mr. Ghose became the ex-officio Collector of Calcutta and, therefore, a Collector as defined in the Bengal General Clauses Act. I think, however, that even if Mr. Ghose became a Collector as contemplated by the Bengal

General Clauses Act, that status is immaterial for the purposes of the present case, because the question to be decided is not whether he became a Collector, as defined in the Bengal General Clauses Act, but whether he became a Collector as defined in the Public Demands Recovery Act. That is because only, a Collector, as defined in the Public Demands Recovery Act, is a Certificate Officer under the provisions of Section 3 (3) of that Act.

15. I can, however, think of a reason for going beyond the definition of 'Collector' as given in the Public Demands Recovery Act, and that would be for the purpose of seeing whether the certificate under Section 46 (2) of the Act was sent by the Income-tax Officer to the proper authority. Under Section 46 (2) of the Income-tax Act, the Income-tax Officer may forward a certificate "to the Collector". The word 'Collector' there appears in a Central Act and it is not defined in the Act itself. Reference has therefore to be made for ascertaining the true meaning of the term to the definition contained in the Indian General Clauses Act which, it appears, is the same as that given in the Bengal General Clauses Act. In the petition under Article 226 filed on behalf of the firm, it seems to have been suggested that the certificate under Section 46 (2) was never sent to any Collector, because, by reason of the definition given in the Ind. Gen. Clauses Act. the Collector would have to be the Collector of Calcutta, but there was, in the first place, no Collector of Calcutta and, secondly, the certificate had in fact been sent to the Collector of 24-Parganas. That objection is completely met by the notification of the 31st of May, 1875. I do not know whether any point was raised before Sinha. J., as regards the status of the officer to whom the certificate under Section 46 (2) had been sent. but his judgment gives no indication that any such point, was raised. If the sole point raised was about the status of the officer who was dealing with the certificate under the Public Demands Recovery Act, the reference to the definition given in the Bengal General Clauses Act was, as I have already pointed out, unnecessary and inappropiate. The provisions of the Public Demands Recovery Act suffice to establish that Mr. Ghose was and continued [to be] a Certificate Officer, properly and validly exercising the powers of that office since the date of his second appointment as Additional District Magistrate. The first objection raised on behalf of the firm must, therefore, be overruled, as it was by the learned trial Judge.

16. In connection with the objection that Mr. Ghose had never been validly appointed a Certificate Officer, a subsidiary point was sought to be taken before us. It was contended, that assuming that he had become a Collector as also a Certificate Officer by virtue of his second appointment as an Additional District Magistrate, he had no jurisdiction to withdraw the case from the file of the Certificate Officer who was dealing with it to his own file. The point as taken in the petition was directed solely against the order dated the 11th of November, 1953, by which Mr. Ghose withdrew the case to his own file from that of Mr. S. C. Das Gupta. That was the only

order of withdrawal alleged and sought to be impeached and the ground upon which the order of withdrawal was attacked as passed without jurisdiction was that Mr. Ghose had never been validly appointed an Additional District Magistrate. The various reasons for which the order of withdrawal was said to have been illegal and invalid are all set out in paragraph 23 of the petition and they all branch out of the basic contention that Mr. Ghose's appointment as an Additional District Magistrate was invalid. Indeed, even the fact of the second appointment was nowhere mentioned in the petition and we are informed that the notifications relating to that appointment were produced by the firm at the hearing of the appeal for the purpose of showing that Government themselves regarded the first appointment as invalid. Nowhere in the petition was it alleged that there was any second order of withdrawal after the second appointment of Mr. Ghose, nor was it made a ground of attack upon the proceedings that even if Mr. Ghose came to be a validly appointed Collector, he had no power to withdraw the case from another Certificate Officer. In that state of the facts, Mr. Meyer very properly contended before Us that if it had been alleged in the petition that there had been a second order of withdrawal, the respondents might have shown whether there was or was not such an order; and if it had been taken as a ground of objection that even a Collector, validly appointed to his office, could not withdraw a certificate case from another Certificate Officer, the respondents might have made the necessary enquiries and shown that there was some rule or administrative order or some other reason by or for which the withdrawal was justified, if there was a withdrawal. It will be remembered that the original order of appointment purported to appoint Mr. Ghose a Certificate Officer "in connection with the disposal of pending Income-tax Certificate cases" in 24-Parganas. Mr. Meyer contended that although those words were not repeated in the second order of appointment, there might have been a similar allotment of duty or powers by a separate order even on the second occasion or it might have been shown, if such was the fact, that after he had been appointed a second time, there was no other Certificate Officer at the station and being the sole Certificate Officer, the case naturally went to him.

17. In my view, the objection taken by Mr. Meyer is a proper objection and must be upheld. The argument before us assumed that there had been a second order of withdrawal and it was said that even if it was to be conceded that Mr. Ghose had at last become a properly appointed Collector, he could still have no jurisdiction to withdraw the case. As I have already pointed out, there is nothing whatever to show that there had been a second order of withdrawal, but there have been such an order and since the question was never raised in the petition, the matter had never been investigated. If there was a second order of withdrawal, justification for it would have to be found in the provision of the Act or the Rules framed under it or in administrative orders, if such orders are relevant. It may be recalled in this connection that under Section 10 (2) of the Criminal Procedure Code an Additional District Magistrate is to have only such powers of a District

Magistrate under the Code or under any other law for the time being in force, as the State Government may direct. It is true that under the provisions of the Public Demands Recovery Act, an Additional District Magistrate becomes a Certificate Officer and acquires the powers of that office by virtue of a statute and it would thus appear that with regard to such powers, he does not require any conferment of power under Section 10 (2) of the Code, but it is not altogether clear whether Government may not still give some direction as regards the exercise of the power by way of allotment of a particular group of cases or otherwise. I am not for one moment laying down as a decision that Government can do any such thing, but am merely pointing out the various possibilities which would have to be considered and explored, if the question was to be properly answered. Mr. Meyer relied upon Section 50 of the Public Demands Recovery Act which gives a general power of supervision and control to the Collector. It is not also altogether irrelevant to refer to the provisions of Section 46 (2) of the Income-tax Act itself which says that the Income-tax Officer shall forward his certificate to the Collector "and the Collector, on receipt of such certificate, shall proceed to recover from such assessee the amount specified therein as if it were an arrear of land revenue." It was held by the Judicial Committee in the case of *Doorga Prosad v. Secy, of State*, (1945) 13 ITR 285: (AIR 1945 PC 62) (A), that the debt under an Income-tax certificate is a debt payable to the Collector himself and not a debt payable to some other authority and, therefore, the certificate should be filed under Section 4 of the Public Demands Recovery Act and not under Section 6. It is, therefore, possible to say, in view of the provisions of Section 46 (2) of the Income-tax Act, that the Collector re-tains' his Jurisdiction up to the last to recover the amount of the tax from the debtor and that he has always the jurisdiction to withdraw a certificate proceeding relating to such a debt to his own file, even if he may not have a general jurisdiction. If the question had been a pure question of law,' it might have been allowed to be raised even in appeal, but, as I have pointed Out, various possibilities as to the factual position are conceivable and, in my view, it would be altogether wrong to proceed to decide a question which was never raised in the pleadings and in regard to which the actual facts have neither been investigated nor been found. There appears to have been a casual reference before the learned Judge to the power of the Collector to transfer a case which he did not seriously entertain and which he disposed of by saying that it was a matter of administrative arrangement. That casual reference does not obviate the difficulty in the appellant's way constituted by the fact that it never raised the question in the petition, but, on the other hand, proceeded on the footing that if a person was properly appointed a Collector, he would have jurisdiction to withdraw a case and that Mr. Ghose had no jurisdiction to withdraw the proceeding in the present case, only because he had never been validly appointed a Collector. In my view, the appellant can derive no benefit from the subsidiary point it sought to raise.

18. The next point taken was that the certificate proceedings were bad, because the amount of the

demand, now sought to be realised, had never become payable. It was contended that a certificate could be forwarded under Section 46 (2) of the Act only when an assessee was in default and that under the provisions of Section 45, he could be in default only if he failed to pay the amount specified in a notice of demand under Section 29 or in an order under Section 31 or Section 33, within the time, at the place and to the person mentioned in the notice or order or where no time was mentioned, on or before the first day of the second month following the date of the service of the notice or order. In order that an amount of tax could be said to have become payable and a default could be said to have been committed in respect of its payment, it was necessary to show that the amount had been specified either in a notice under Section 29 or in the appellate order, passed either by the Appellate Assistant Commissioner or by the Appellate Tribunal and it had further to be shown that the time and the place of the required payment as also the authority to whom the payment was to be made had all been mentioned either in the notice or in the order. In the present case, the order of the Appellate Tribunal did not indicate either the amount of the tax which it found to be chargeable, nor the time within which, nor the place at which, nor the person to whom, the tax was to be paid. No second notice of demand under Section 29 had been issued and served on the appellant. The amount of the tax assessed could not, therefore, be said to have become due and payable and no default could be said to have been committed in respect of its payment so as to have given rise to a right in the Income-tax Officer to sign and forward a certificate under Section 46 (2). The proposition of law put forward on behalf of the appellant was that where an assessment was reduced in appeal, but the appellate order did not contain any of the particulars mentioned in Section 45, a fresh notice of demand under Section 29 was required to be issued in order to make the tax assessed due and payable and where no such notice was issued, no default in respect of its payment could be said to have been committed. Justifying the signing of a certificate under Section 46 (2) could in law be said to have been committed. In my view, this contention of the appellant is not tenable. It is true that by reason of the failure to adjust Section 45 to the amendment of s. 29, the position with regard to a notice of demand is in a somewhat confused state, but that confusion does not affect the question which calls for decision in the present case. Before its amendment, Section 29 required the Income-tax Officer to serve a notice of demand only when a certain sum had been determined to be payable under Section 23 or when an order had been passed under Sub-section (2) of Section 25 or Section 28. In other words, the application of Section 29 was limited to the amount payable under an assessment order or under an order of penalty. The appellate orders passed when Section 29 was expressed in that form, used to specify the particulars set out in Section 45. The position now, however, has changed since the amendment of Section 29, As the section now stands, it requires the Income-tax Officer to serve a notice "when any tax, penalty or Interest is due in consequence of any order passed under or in pursuance of this Act." When the application of Section 29 was extended to "any order" passed in pursuance of the Act, it became unnecessary to retain in Section 45 the reference to the orders under Section 31 and 33, because a

notice under Section 29 could be given in all cases and since that notice could and would contain all the particulars, it would not be necessary to incorporate the particulars in the orders under Sections 31 and 33. We are, however, not concerned with any question of adjustment between Section 29 and Section 45. The short question before us is having regard to the fact that the original assessment was reduced by the Appellate-Assistant Commissioner & further reduced by the Appellate Tribunal and having regard to the fact that the order of the Appellate Tribunal did not either specify the tax payable or the time within which, the place at which and the person to whom it was to be paid, was it necessary under the law to serve on the appellant firm a second notice of demand under Section 29 before the reduced amount of the tax could be due and payable and in order that any default in respect of its payment could at all be committed?

19. In my view, where a proper notice of demand has already been given in respect of the tax determined by the assessment order and the subsequent appellate orders have only reduced the amount of the tax and not enhanced it, it is not necessary that a second notice of demand under Section 29 should be served on the assessee. It has been found in the present case that after the amount of the tax had been reduced, the Income-tax Officer not only intimated the reduction to the Certificate Officer, but also informed the appellant firm. It was also the appellant firm itself which brought the reduction to the notice of the Certificate Officer. Nothing further than the intimation given to the Certificate Officer and the appellant firm was, in my view, required under the law. The notice of demand as served upon the appellant firm required it to pay a sum of Rs. 8,67,239-10-0 on or before the 20th of April 1950. The next reduction was to a sum of Rs. 8,56,987-13-0. The last reduction was to a sum of Rs. 7,23,990-10-0 and that is the sum which is now being sought to be realised by means of the certificate proceeding. The demand for Rs. 8,67,239-10-0 comprised within it a demand for Rs. 7,23,990-10-0 and so far as the liability to pay that sum within the 20th of April, 1950, is concerned, it was in no way affected by the subsequent orders of the appellate authorities. In any event, even according to the order of the last appellate Tribunal, the appellant firm was always liable to pay a sum of Rs. 7,23,990-10-0 and that sum it had been required to pay by a proper notice of demand within a certain time. That amount, therefore, became payable upon the service of the notice of demand and not having been paid within the time given, a default in respect of it arose. It is true that the certificate signed by the Income-tax Officer is in respect of a larger sum, but so far as it is a certificate in respect of Rs. 7,23,990-10-0, it remains valid and the only effect of the reduction is that the demand in respect of the difference between Rs. 8,67,239-10-0 and the sum now claimed has been eliminated. I am unable to see how that reduction or elimination of the amount of the difference between the sum now claimed and the larger sum mentioned in the notice of demand can affect the validity of the certificate or the demand so far as it is limited to Rs. 7,23,990-10-0.

20. In support of its contention, the appellant firm relied on two decisions of this Court. Of them, particularly, reliance was placed on a decision by myself, sitting with Lahiri, J., in the case of Metropolitan Structural Works Ltd. v. Union of India, . The decision of Bose J., In the case of Calcutta Cloth Agency v. The Certificate Officer, 24-Farganas, Civil Rule No. 1260 of 1955, p/- 14-2-1956 (Cal) (C). (unreported) which followed our decision, as the learned Judge understood it, was also cited. In my view, the decision was completely misunderstood.

21. The contention of the assessee in the case cited was exactly the opposite of the contention of the assessee before us. Whereas the assessee here is contending that whenever the tax, as assessed by the Income-tax Officer is re-

duced on appeal, a second notice of demand under Section 29 is obligatory, if the appellate order does not mention the particulars specified in Section 45, the assessee in the case cited contended that a second notice in such circumstances was not even permissible. The question before us in the earlier case was a question of limitation. The assessment, as made by the Income-tax Officer, had been reduced by the Appellate Assistant Commissioner and further reduced by the Appellate Tribunal. The Income-tax. Officer, who had served a notice of demand in accordance with his own assessment order, served a second notice as soon as the Appellate Assistant Commissioner gave his decision and he served a third notice after the decision of the Appellate Tribunal. Thereafter, he took action under Section 46 (2) of the Income-tax Act and it appeared that the proceedings initiated by the certificate sent to the Collector were perfectly within time, if the one year, as contemplated by Section 46 (7), was computed from the last day of the financial year in which the third demand was made, but not within time, if computed from the last day of financial year in which the first demand had been made. The contention of the assessee was that the Income-tax Act contemplates only one notice of demand under Section 29 and recovery proceedings had to be initiated within the time limited by Section 46 (7), as computed by reference to the date of that notice. The Income-tax Officer, it was further contended, had no jurisdiction to grant himself successive extensions of time by issuing successive notices of demand as soon as a fresh order was made by one appellate authority or another. In those circumstances, the Court had to decide whether the second and the third notices issued by the Income-tax Officer were unwarranted by law and the answer given was that they were not unwarranted. "The real point, however, is, "I observed", whether a second or a third notice of demand is at all permissible under Section 29, even when an assessment is altered in a first 01 a second appeal." The question, therefore, was not whether a second or a third notice was compulsorily required by law, but whether a second or a third notice was permissible. It was contended that there was no necessity to issue a second or a third notice even when the income, as assessed by the Income-tax Officer, was reduced by an appellate authority and it was with

reference to that contention that I observed that the necessity of issuing a fresh notice of demand In, those circumstances was beyond dispute, inasmuch as soon as the amount of the tax was reduced', the first notice of demand, if left as it was, became inappropriate. To say that was not to say that a necessary modification of the demand could only be made by issuing a second notice under Section 29 and could not be made in any other way, or, to put it in other words, It was not to say that the necessity of issuing a fresh notice of demand was an Invariable and imperative necessity. I pointed out that Section 29 spoke of tax etc. "due in consequence of any order passed under or in pursuance of this Act" and not "due in consequence of any assessment order." It was thus permissible under the section to issue a notice of demand in respect of tax due in consequence of an appellate order, as had been done in the case and, if it was permissible to issue such a notice of demand, it was consequentially permissible to compute the period of limitation prescribed by Section 46 (7) by reference to the date of such notice. I am altogether unable to see how that decision can be construed as having laid down that whenever an assessment order was modified by an appellate order, an obligation arose to issue a second notice of demand under Section 29, if the modified amount was sought to be made payable and if it was sought to establish that a default in respect of the modified demand has been committed. The decision of Bose, J., as I have already pointed out, adds nothing to our decision, but merely reads it in the sense of having laid down that in every case of a modification of the assessment order, a second notice of demand was imperatively required by the Act. With respect, that reading of our decision was a misreading. The other decision relied upon on behalf of the appellant is the case of Kilburn Properties Ltd. Calcutta v. Commr. of Income-tax, Bengal, Calcutta, , which is really not a decision at all. It was merely stated in the course of a narration of the facts that the assessment had been modified on appeal and, therefore, a fresh notice of demand would have to be served. No reasons were given and, in fact, the question was not in issue before the learned Judges at all.

22. I am, however, prepared to say that when the amount of tax as assessed by the Income-tax Officer is enhanced on appeal, a second notice of demand, in respect of the amount by which the original assessment is enhanced is necessary. That is because unless a second notice with respect to that amount is given there will not be any demand in respect of that amount at all. But far different is the case-where the amount of the original assessment is reduced on appeal. In such a case, by being asked to pay the larger amount mentioned in the notice of demand issued in accordance with the assessment order, the assessee has also been asked to pay the smaller amount to which the assessment is subsequently reduced in appeal, because the latter is included in the former. As soon as the notice of demand was served upon him, a liability arose to pay every pice of the demand so long as the demand stood. If subsequently the remand is modified on appeal and the amount of the tax payable is reduced, all that; happens is the liability sought to

be imposed By the notice of demand, in respect of the amount by which the assessment is reduced, is found to have never been a liability at all, taut the liability in respect of the remainder which stands unaffected by the appellate order remains. It is perfectly true, as was contended on behalf of the appellant firm, that in order that an amount of tax assessed may become due and payable by the assessee, there must be a notice of demand in respect of it, but where a notice of demand has, in fact, been issued in respect of a larger amount, as determined by the assessment order, it has been issued even in respect of the smaller amount which is ultimately found to be the tax properly payable That being so, the assessee was under an obligation to pay it by the date fixed and if he did not pay it by that date, he became a defaulter. That, it appears to me, is the position if the matter is looked at from the point of view of Section 29. I am leaving aside the case of Sections 31 and 33, for orders under those sections do not nowadays ever mention any of the particulars specified in Section 45. Looked at from the point of view of the certificate, the position when the debt mentioned in the original certificate is reduced on appeal is that, to the extent of the reduction, the debt is wiped out and the demand cancelled. If the reduction is brought to the notice of the Certificate Officer and the certificate is consequentially amended, as it can be amended under Section 10 of the Public Demands Recovery Act at any stage of the proceedings, all that the law requires is satisfied. That waa the view taken by the Allahabad High Court in the case of *The Municipal Board, Agra v. Commr. of Income-tax, U. P. No. 2, ,* and in that view I respectfully agree. The second objection raised on behalf of the appellant firm must, therefore, also fail.

23. The third objection was that simultaneous proceedings under Section 46 (2) and Section 46 (5A) were incompetent. The. point seems to have been urged before the learned trial Judge on the footing that as soon as an Income-tax Officer signed and forwarded a certificate to the Collector, he lost his administrative seisin over the matter and could not simultaneously initiate and pursue other proceedings on his own account in respect of the same debt. The mischief of a multiplicity of proceedings appears to have also been raised on. The learned Judge did not accept either of those contentions and held on a construction of Section 46 that exercise of power under Section 46 (2) did not exclude the exercise of power under Section 46(5A). I agree with the learned Judge in the view taken by him. I would be prepared to agree with the learned Judge in the view taken by him, even if the matter fell to be Judged by the terms of Section 46 alone, because it seems to me that the scope of Section 46 (2) and the powers, of the Collector or a Certificate Officer with respect to a certificate forwarded under that section are not co-extensive with the scope and the powers contemplated by Section 48 (5A). The utmost that the Collector or a Certificate Officer can do under Section 46 (2), read with the Public Demands Recovery Act, with respect to persons from whom money is due to the certificate debtor, is to prevent them from making any payment to him. If they pay to the Collector or the Certificate Officer, he may

also grant them a valid acquittance, but there does not seem to be any power to compel such persons to pay the money owing by them to the Certificate debtor and it is that power which is conferred on the Income-tax Officer by Section 46 (5A). It is, however, not necessary in the facts of the present case to defend the notices issued under Section 46 (5A) by reference to the scope of the section, because the explanation to Sub-section (7) of the section furnishes a complete answer to the contention of the appellant firm. That explanation was added by the Income-tax Amendment Act (XXV of 1953) with effect from the 1st of April, 1952, so that it was in force on the 17th of August, 1954, when the orders under Section 46 (5A) were made. The Explanation says, inter alia, that the "several modes of recovery specified in this section (that is Section 46) are neither mutually exclusive, nor * * * and it shall be lawful for the Income-tax Officer, if for any special reasons to be recorded he so thinks fit, to have recourse to any such mode of recovery notwithstanding that the tax due is being recovered from an assessee by any other mode."

M. Meyer informed us that at the hearing before the learned Judge, his attention was drawn to the Explanation and it was also brought to his notice that in fact the Income-tax Officer had recorded his reasons in writing, as required by The Explanation, before he took action under Section 46 (5A). Unfortunately, the learned Judge had made no reference to the Explanation or to the recorded reasons in his Judgment. The learned junior Advocate for the appellant firm admitted before us that the Explanation had been referred to and that the learned Judge had also been shown some order recorded by the Income-tax Officer, but he said that he did not know what that order contained. I do not consider it very natural, if the explanation was referred to and if it was contended that the Income-tax Officer had in fact recorded his reasons in writing, that those representing the appellant firm should not have known what the order of the Income-tax Officer, shown to the learned Judge, contained. Be that as it may, as both sides agreed that the learned Judge had been shown an order purporting to be an order recorded by the Income-tax Officer, we asked Mr. Das, the learned senior Advocate for the appellant firm, if he would object to our seeing the order for ourselves. Mr. Das at once stated that he would not have the slightest objection to our seeing the order and would indeed desire us to see it. Thereupon, the file was produced before us and we found that, under the date 9-8-1954 occurred the following :--

"From the C. O.'s order datted 12-7-1954 it is seen that the old 'notice under Section 7 of the P. D. R. Act was found to be irregular and a fresh notice has been recently issued. It will not therefore be possible to recover the taxes through O. O. expeditiously.

Issue notice under Section 46 (5A) to the Liquidator, B. T. A., 35, Chittaranjan Avenue with copy to the assessee.

I shall direct issue of some other Section 46 (5A) notices very shortly."

24. it will thus appear that the Income-tax Officer applied his mind to the question and when he found that the original notice issued under Section 7 was defective and, therefore, a great deal of delay would occur in recovering the tax through the certificate proceedings, he decided that a special reason existed for which it would be expedient and indeed necessary to pursue other modes of recovery and to proceed under Section 46 (5A) of the Act. In those circumstances, it appears to me it is altogether unarguable that the action taken by the Income-tax Officer under Section 46 (5A) was irregular or not warranted by law.

25. The last contention was that Sections 51 and 63 of the Public Demands Recovery Act were ultra vires" the Constitution, because as respects the right of appeal, they introduced a classification amongst the certificate-debtors and such classification did not rest on any reasonable basis. I think what the learned Counsel meant was that: the two sections were repugnant to Article 14 of the Constitution and, Therefore, void and not that they were ultra vires. Be that as it may, the basis of the contention was that under Section 51 of the Acr. an appeal lay to the Collector from any original order, passed by either an Assistant Collector or a Deputy Collector or a Certificate Officer and from an original order passed by the Collector. an appeal lay to the Commissioner. Under Section 53, the Collector can revise any order of an Assistant Collector or a Deputy Collector or a Certificate Officer; the Commissioner can revise an order of the Collector; and the Board of Revenue can revise an order of the Commissioner. It was contended that certificate debtors whose cases were dealt with by an Assistant Collector or a Deputy Collector or a Certificate Officer had a right of appeal to the Collector and a right of two further revisions, one by the Commissioner and one by the Board of Revenue, even if they systematically failed, whereas debtors whose cases were dealt with by a Collector, in the first, instance, had only one right of appeal to the Commissioner and one right of revision by the Board of Revenue. A provision which enabled certificate debtors to be compartmentalised in that way with respect to the right of appeal was not based on any rational criterion of classification, properly related to the object of the provision. It also operated to the prejudice of certificate debtors whose cases were dealt with in the first instance, by the Collector.

26. I confess I am altogether unable to see the relevancy of this point in the facts of the present case. This is not a case where the appellant firm wished to prefer an appeal and its appeal had come to be dealt with by an authority other than the authority who would have dealt with it, if the original order was made by some other officer. Why then the appellant firm should have thought of raising this question, remains wholly obscure. There is a slight indication in one part of the learned trial Judge's judgment that the point sought to be made was that inasmuch as Mr. D. K. Ghose, a Collector, had withdrawn the case to his own file, the appellant firm had lost a right of

appeal to the Collector and, therefore, the withdrawal was bad. Assuming the withdrawal was bad for that reason, I am unable to see how the position of the appellant firm is advanced by establishing that Sections 51 and 53 of.

the Act are void. If they are void, the result would be that the Act would contain no provision for any appeal or revision at all, but how the establishment of that position would assist the, appellant firm is not clear to me. It does not seem to have been contended on behalf of the respondents that the appellant firm had rights of appeal and revision under the Public Demands Recovery Act itself and; therefore, its application under Article 226 ought not to be entertained. If that objection had been raised and it was said in reply that the so-called rights of appeal or revision under the Act were illusory, the relevant provisions being repugnant to the Constitution and, therefore, void, an intelligible meaning could have been found for the contention. No such objection was, however, raised and the appellant firm does not seem to have raised its fourth point in answer to any such objection.

It, therefore, appears to me that the point does not require to be considered in this case, as it is altogether irrelevant. Even if it be relevant, I do not see how the two impugned sections can be said to be repugnant to Article 14 of the Constitution on the ground that they discriminate unreasonably between certificate-debtor & certificate debtor. No one has a vested right in a right of appeal. It often happens that officers of different grades have concurrent jurisdiction in respect of the same matter and the further remedies against the decisions given by them differ according as a matter is dealt with by an officer of one grade or an officer of another. In themselves, the sections do not discriminate between debtor and debtor, because they do not direct which class of debtors shall be dealt with by officers of a subordinate rank and which class of debtors shall be dealt with by superior officers.

All that can be said is that they provide an opportunity for executive or administrative discrimination and the discrimination lies not in the provisions of the Act themselves, but in the possibility of administrative discrimination in the application of the Act. Even so. I think the point is without substance in the facts of the present case. The appellant never tried to refer any appeal under the Public Demands Recovery Act.

Its point appears to be that if its case had been dealt with by a Certificate-officer or an Assistant or a Deputy Collector, he would have decided against it and then it would be able to appeal to the Collector, who, as an appellate authority, might have given it relief, which he might not give as a tribunal of first instance. The argument is almost ludicrous, but, as I have already indicated, I am altogether unable to see why we should engage in this case in a discussion of the validity of Sections 51 and 53.

27. The above are all the questions canvassed in the present appeal. On all of them the appellant firm fails.

28. The appeal is accordingly dismissed with costs.

29. Certified for two counsel.

30. Das Gupta, J.

I agree.