CALCUTTA HIGH COURT

N.C. Mukherjee and Co

Vs.

Union of India

Civil Revn. Cases Nos. 4583, 4584, 4585 and 4586 of 1960

(R.S. Bachawat and P. Chatterjee, JJ.)

26.09.1962

JUDGMENT

R.S. Bachawat, J.

1. In these rules the petitioner firm seeks orders quashing and setting aside all proceedings in certificate cases Nos. 158, I T. (C) of 1955-56, 159 I.T.(C) of 1955-56, 160 I.T.(C) of 1955-56 and 161 I.T.(C) of I955-56 the respect of four certificates all dated March 29, 1956, signed by the certificate officer, 24 Parganas and filed in his office under Section 4 of the Bengal Public Demands Recovery Act, 1913 for recovery of the public demands due to the Union of India from the petitioner firm on account of excess profits tax assessed on the petitioner firm for the chargeable accounting periods ending March 31, 1942, March 31, 1943. March 31, 1944 and March 31, 1946. By his orders dated March 29, 1956 the certificate officer directed the entry of the certificates in Register X and the issue of notices under Section 7 of the Act. Notices under Section 7 dated April 16, 1956 were issued and served on the petitioner but upon objection filed under Section 9 the certificate officer by his orders dated December 20, 1956 directed the issue and service of fresh notices under Section 7. Fresh notices dated December 20, 1956 were issued and served on the petitioner. Thereupon the petitioner filed under Section 9 of the Act fresh petitions of objections dated January 27, 1957 and supplementary objections dated February 4, 1957. The certificate officer, Sri D.S.P. Mukherjee dismissed the objections by this order dated January 8, 1958. Appeals preferred by the petitioner under Section 51 were dismissed by the Commissioner, Presidency Division, by his order dated April 18, 1958 and revision petitions preferred by the petitioner under Section 53 were dismissed by the Board of Revenue by its order dated April 21, 1960. The petitioner obtained the present rules on November 28, 1960.

2. On behalf of the petitioner it is contended that Sri D.S.P. Mukherjee had no power to hear and dispose of the petition under Section 9 as he was not the successor in office of Sri B.K. Banerjee before whom the petition had been filed. This contention was raised for the first time before the Board of Revenue and the Board rightly rejected the contention on the ground that the plea involved new questions of fact and could not be entertained for the first time in revision.

3. The assessments of the excess profits tax were made by the Excess Profits Tax Officer on the

partners of the petitioner firm in the firm name and consequently the petitioner firm is shown as the certificate debtor in the certificates issued under Section 4 of the Bengal Public Demands Recovery Act, 1913. On behalf of the petitioner it is contended that the assessments of excess profits tax could not lawfully be made upon the partners of the petitioner firm in the firm name and that the assessments made and the notices of demand served on the petitioner firm and the certificates issued against them are invalid. There is no substance in this contention. Section 4 of the Excess Profits Tax Act, 1940 charged excess profits tax in respect of any business to which the Act applied. Section 13 provided for issue of notice for assessment upon any person engaged in the business. Sub-Section (1) of Section 14 provided for assessment of the tax. Sub-Section (2) of Section 14 provided that the tax payable in respect of any chargeable accounting period would be payable by the person carrying on the business in that period. Sub-Section (3) of Section 14 provided that

> "where two or more persons were carrying on the business jointly in the chargeable accounting period, the assessment shall be made upon them jointly and, in the case of a 'partnership, may be made in the partnership name."

The assessment of the excess profits tax could therefore be lawfully made upon the partners of the petitioner firm in their firm name. Section 21 of the Excess Profits Tax Act, 1940 provided inter alia that Sections 29, 45 and 46 of the Indian Income Tax Act, 1922 would apply with such modifications, if any, as might be prescribed as if the said provisions were provisions of the Excess Profits Tax Act and referred to excess profits tax instead of income tax. The proviso to Section 21 enacted that

> "the references in the said provision to the assessee shall be construed as references to a person to whose business this Act applies".

By the definition in Section 2(17) of the Act "person" included a Hindu undivided family. It is argued that having regard to the proviso to Section 21 read with Section 2(17) the assessees could only be the individual partners to whose business the Act applied, cannot accept this contention. This definition in Section 2(17) of the Act did not exclude the wider definition of "person" in Section 3(42) of the General Clauses Act. Where the partners of a firm are liable to be assessed jointly in the partnership name under Section 14(3), the partnership firm is the assessee within the meaning of the proviso to Section 21 of the Excess Profits Tax Act, 1940. and by Sections 29, 45 and 46 of the Indian Income-tax Act, 1922, read with Section 21 of the Excess Profits Tax Act, 1940 the notice of demand of the excess profits tax could be served upon the partnership firm in the firm name and on default of payment by the firm the Excess Profits Tax Officer could forward a requisition to the Collector for realizing the demand from the firm. The assessment, the notice of demand, the requisition for the certificates and the certificates in the name of the petitioner firm were therefore lawfully issued.

4. On behalf of the petitioner it was contended before the Certificate Officer that a large sum of money had been paid by the petitioner on account of the tax dues. The Certificate Officer and the Commissioner rightly rejected this contention as no challans showing the alleged payments were forthcoming. The petitioner now contends that the certificates should be set aside on the ground that on adjustment of accounts no money would be found due to the Union of India from the

petitioner and in this connection reliance is placed upon two letters dated July 23, 1958 and July 30, 1958 written by the Income-tax Officer to the Certificate Officer stating that the partners of the petitioner firm were entitled to considerable sums of money by way of refund and that a long time would be required for verification and requesting the Certificate Officer to stay the collection proceedings in the certificate cases in the meantime. Now the point in issue is whether the petitioner firm is liable to pay the whole or any part of the demands mentioned in the certificates. In this connection we have not been shown any order for refund passed under Section 48 of the Indian Income-tax Act, 1922 or under that section read with Section 21 of the Excess Profits Tax Act, 1940. It is not established that there is yet any ascertained sum of money presently payable to the petitioner on account of refund which can legally be set of against the tax demand of the Union of India. In view of Section 48(2) of the Indian Income-tax Act 1922 read with Section 21 of the Excess Profits Tax Act, the finality of the assessments to Excess Profits Tax Act is not affected by the pending proceedings for refund. The petitioner has not therefore established any ground for setting aside, varying or modifying the certificates under Section 10 of the Bengal Public Demands Recovery Act 1913. On behalf of the Union of India Mr. Pal has assured us that the Department still adheres to the stand taken in the two letters. It is to be observed that while the Department should be free to take all steps to see that execution of the certificates is not barred by limitation, immediate steps should be taken for the completion of the pending refund proceedings, if any, so that the moneys, if any, due to the petitioner firm on account of refund may be ascertained and the refund order, if any, in favor of the petitioner firm or its partners may be speedily issued.

5. On behalf of the petitioner it is next contended that the certificates are invalid because they did not specify (a) the dates of commencement of the chargeable accounting periods and (b) the Income-tax on the basis of which the excess profits tax was assessed. Now the 1st column of the certificates mentioned the name of the certificate holder, the 2nd column mentioned the amounts of the public demands, the 3rd column stated the name and address of the certificate debtor, the 4th column stated "Dt. NC-II Cal' by way of particulars of the demand. The 1st column of the several certificates also gave further particulars of the public demand respectively thus :- "C.H.P. 31-3-42/E.P. Tax", "C.H.P. 31-3-43/E.P. Tax, "C.H.P. 31-3-44/E.P. Tax" and "C.H.P. 31-3-46/E.P. Tax". The words "C.H.P." mean chargeable accounting period as defined in Section 2(6) of the Excess Profits Tax Act, 1940. By Section 2(1) of that Act "accounting period" means where the accounts of the business are made up for successive periods of twelve months, each of such periods and in any other case, such period as the Excess Profits Tax Officer might determine. The certificates plainly specify that the demands are on account of Excess Profits Tax assessed in respect of the chargeable accounting periods ending on the dates therein specified. The public demands are sufficiently identified and it was not necessary to specify explicitly the dates of the commencement of the chargeable accounting periods or to mention the Income-tax on the basis of which the excess profits tax is said to have been assessed. Where the public demand is otherwise sufficiently identified in the certificates, it is not necessary to give any further particulars of the demand in the fourth column. On this principle it was held that a certificate is not rendered invalid by an omission to state a period for which the Income-tax demand was due or to State that the Income-tax demand was in respect of concealed income : see the unreported decision in *Union of India v. Jeonlal Bhutoria*[1] or by an omission to state the income tax demand and the demand for penalty separately and by mentioning only "income tax for 1943-4" without stating that the demand1 comprised income-tax and penalty, see *Ajit Kumar Ganguly v. Union of India*[2], On the other hand it was held that the certificate was rendered invalid by an omission to

state the period for which the income-tax demand was due and to state that the assessment was for undisclosed income, see Abanindra. *Kumar Maity v. A.K. Biswas*[3], and see also *Satish Chandra Bhowmick v. Union of India*[4], In the last case Banerjee and Amaresh Roy, JJ. dissented from the unreported decision in Civil Revn. Case No. 734 of 1057, D/-3-6-1959 (Cal), but Banerjee, J. followed the unreported decision on another point in *Sm. Champa Kumari Singhi v. Addl. Member, Board of Revenue*[5], The judicial conflict of opinion is noticed in *N.C. Sen and B.C. Sen v. Income-tax Officer*[6], by P.B. Mukharji, J. who declined to express, any opinion in the matter having regard to the passing of West Bengal Act XI of 1961.

6. Like a demand for income tax, a demand for excess profits tax cannot be said to be due for any particular period and on this ground it has held in *Durga Prosad v. Secy. of State*[7], that the omission to mention a period for which the income tax was due did not invalidate the certificate in respect of income tax demand. This case was followed in the unreported Civil Revn. Case No. 734 of 1957, D/-3-6-1959 (Cal) where it was pointed out that in 58 Cal WN 573 : AIR 1954 Calcutta 355, the attention of the Division Bench giving a contrary decision was not drawn to the Privy Council decision.

7. The validity of the certificates is next attacked on the ground that they are not in the prescribed form. The wording of the certificates issued in the instant case are as follows :-

> "I certify that the sums mentioned, overleaf are due to the certificate-holder by the certificate-debtor (s) and that they are justly recoverable, the recovery by suit not being barred by law".

In the case of 65 Cal WN 324, such a certificate was held to be invalid on the ground that it was not in the prescribed form. The form of the certificate prescribed at the relevant time by Form No. 1 of the Appendix to the rules in Schedule II of the Public Demands Recovery Act, 1913 is as follows :-

> "I hereby certify that the above mentioned sum of Rs..... is due to the above named from the above named (if the certificate is signed on requisition sent under Section 5, add-) - I further certify that the above named sum of Rs.

is justly recoverable and that its recovery by suit is not barred by law. Dated this.....day of.....19 AB, certificate officer of.....".
Sections 4 and 6 of the Act require the certificate officer to sign certificates in the prescribed form. Section 39 empowers the Board of Revenue to make rules and by such rules to alter, add to or annul any of the rules in Schedule II and to prescribe the forms to be used under the Act. Rule 84 in Schedule II provides that the forms set forth in the appendix including the form relating to the certificate shall be used with such variation as

[1] Civil Revn. Case No. 734 of 1957, D/-3-6-1959 (Cal)
[2](1962) 46 ITR 104 (Cal)
[3]58 Cal WN 573 : AIR 1954 Cal 355
[4]65 Cal WN 324
[5](1962) 46 ITR 81 (Cal)
[6]66 WN 1065
[7]49 Cal WN 334

circumstances may require. The form of the certificate set forth in the Appendix should not therefore be lightly departed from. But it is plain that Rule 84 gives the certificate officer the

power to make necessary variation in the form without sacrificing its essential requirements, see (1962) 46 ITR 104 at p. 117 (Cal). A certificate which sufficiently identifies the certificate-debtor, the certificate-creditor and the public demand and which certifies that the demand is due to the creditor from the debtor and, when it is signed on requisition under Section 5 further certifies that the demand is recoverable and that its recovery by suit is not barred by any law, satisfies the test of a valid certificate given by Lord Davey in *Baijnath Sahai v. Ramgut Singh*[8], The certificate is invalid if it does not satisfy this test or if it is shown that the certificate officer did not apply his mind to the matters before him and did not satisfy himself that the demand is justly due and recoverable, see *Syed Mohiuddm v. Pirthichand Lal Choudhury*[9], and *Ali Miyon v. Wajaddirt Sikdar*[10], The certificates issued in the instant case satisfy the test of a valid certificate. On their face they show that the sums mentioned overleaf are due to a named certificate-holder by a named certificate-debtor and that the sums are justly recoverable, their recovery by suit not being barred by law. The materials on the record plainly show that the sums so mentioned are justly due to the Union of India from, the petitioner firm and that their recovery by suit is not barred by law. In the circumstances it cannot be said that the certificate Officer did not apply his mind to the matter. A certificate is not rendered invalid by a mere defect of form and even by an omission t0 fill up a blank, see *Haraprasad v. Gopal Chandra*[11], *Dhirendra Kumar Chandra v. Pramatha Nath Shaha*[12], explaining and distinguishing the decision in *Sudhir Chandra v. Sudhanshu Kumar*[13], A certificate cannot be pronounced to be invalid merely on the ground that it does not repeat the exact formula prescribed by the standard form. It is true that a certificate issued in a form identical with the form used in the instant case was held to be invalid in 65 Cal WN 324, but with respect we are unable to agree with that decision. In (1963) 46 ITR 104 (Cal) at pp. 113 and 117, another Division Bench of this High Court regretted this insistence on strict adherence to the prescribed form and pointed out that substantial compliance with the prescribed form is sufficient. The matter is now set at rest by West Bengal Act XI of 1961.

8. The certificate as also the notice under Section 7 are attacked on the ground that the notices under Section 7 were not signed by the Certificate Officer on the same date on which be filed the certificates and that this defect is fatal to the entire certificate proceedings. This contention is supported by the decision in 65 Cal WN 324. The form of the notice under Section 7 prescribed by Form No. 3 of the Appendix to the rules recites that "a certificate ..... has this day been filed in my office" and ends thus "dated this ..... day ..... 19 ..... A. B. Certificate Officer of ....." Now in the instant case the certificates are dated March 29, 1956 and by orders of the same date the Certificate Officer directed the entry of the certificates in Register X and the issue of the notices under Section 7. Notices under Section 7 dated April 16, 1956 were issued but those notices were subsequently set aside and by his orders dated December 20, 1956 the Certificate Officer directed the issue of fresh notices. Thereupon fresh notices under Section 7 dated December 20, 1956 were issued and served upon the petitioner. As fresh notices under Section 7 were signed on December 20, 1956 under orders passed on the same date they could not be dated March 29, 1956. A notice signed on December 20, 1956 could not correctly say that' it was signed on March 29, 1956. The real defect of the notices was that the body of the notices continued to say that the certificate had been filed this day, that is to say, on December 20, 1956 whereas in fact the certificates had been filed earlier. The Certificate Officer

[8] 23 Ind App 45 (PC)
[9] 19 Cal WN 1159: AIR 1915 Cal 444
[10] AIR 1925 Cal 383
[11] 31 Cal WN 299 : AIR 1927 Cal 315
[12] ILR (1946) 2 Cal 18
[13] 44 Cal WN 1097: AIR 1940 Cal 556

should have therefore amended the body of the notices so as to show that the certificates had been filed on March 29, 1956, but this defect has in no way prejudiced the petitioner. Copies of the certificate dated March 29, 1956 were served on the petitioner along with the notices under Section. The copies of the certificates show that the certificates were signed on March 29, 1956. Besides, before services of the notices dated December 20, 1956 the petitioner had filed petitions of objections under Section 9 and already knew of the date when the certificates had been filed. In the instant case fresh notices under Section 7 were issued after the notices under Section 7 previously issued had been set aside and this feature distinguishes the present case from the decision in 65 Cal WN 324. But with respect I cannot agree with that decision or its conclusion at p. 338 that the combined effect of the words in Section 7 and form 3 read with Rules 2, 3. 4, 5, 6, 7, 8 and 9 is that the notices under Section 7 must be signed by the certificate officer, on the date on which he files the certificates in his office and that the date borne in the notice must be the date on which the certificate is signed and filed. It is plain enough that a fresh notice issued under Section 7 after the first notice is set aside cannot be signed on the date on which the certificate was filed and cannot bear that date. If the notice under Section 7 is signed on the same day on which the certificate is filed the date given at the foot of the notice does not conflict with the statement in the body that the certificate has been filed in the office on the same date. But the notice under Section 7 need not be signed on the day on which the certificate is filed. If the notice is signed on a later date a recital in the body of the notice that the certificate has this day been filed in the office would be incorrect and the circumstances of the case therefore require that the body of the printed notice should be amended by giving the date on which the certificate was filed in the office. The absence of such amendment does not invalidate the notices issued in the instant case.

9. The true principle is that no certificate filed under Section 4 or Section 6 of the Bengal Public Demands Recovery Act, 1913 and no notice issued under Section 7 of that Act should be pronounced to be invalid merely on the ground of a defect, error or irregularity in the form thereof. The State Legislature has now intervened in the matter and by the Bengal Public Demands Recovery (Validation of Certificates and Notices) Act, 1961 (West Bengal Act XI of 1961) passed ion April 28, 1961, provided that notwithstanding any decision of any Court and notwithstanding anything to the contrary contained in the Bengal Public Demands Recovery Act, 1913 or in the rules made or forms prescribed there under no certificate filed under Section 4 or Section 6 of the Act and no notice served under Section 7 of the Act shall be deemed to be invalid or shall be called in question merely on the ground of defect, terror or irregularity in the form thereof. The certificates filed in the instant case cannot therefore be pronounced to be invalid merely on the ground that they are not in the prescribed form nor can the notices issued under Section 7 be pronounced to be invalid merely on the ground that they were not signed on and do not bear the date on which the certificates were filed. West Bengal Act XI of 1961 now supersedes the decisions of this Court which held that such certificates and notices could be pronounced to be invalid on those grounds and consequently though we are differing from those decisions we do not consider it necessary to refer this matter to a larger Bench.

10. On behalf of the petitioner it is next contended that the Bengal Public Demands Recovery Act, 1913 and West Bengal Act XI of 1961 are laws with respect to Entry 43 of the Concurrent List of the Constitution and in the alternative that they are not laws with respect to either the State List or the Concurrent List and that Consequently West Bengal Act XI of 1961 is invalid because (a) the assent of the President to the passing of the Act had not been obtained under Article

254(2) of the Constitution and alternatively because (b) the State Legislature was not competent to make the law. These points though not taken in the petition have been allowed to be raised in argument without any objection and the learned Advocate General has expressly invited this Court to decide both these points. It may be noted that in the affidavit-in-reply filed on behalf of the petitioner West Bengal Act XI of 1961 was challenged on the ground that it puts unreasonable restrictions on the fundamental rights of the petitioner but that point is not pressed in argument.

11. The West Bengal Act XI of 1961 is a piece of legislation dealing with certificates and notices issued under the Bengal Public Demands Recovery Act, 1913. Now if the West Bengal Public Demands Recovery Act, 1913 is a law with respect to one of the matters enumerated in the State List, it will follow that West Bengal Act XI of 1961 is also a law with respect to matters within the State List and the State Legislature would be competent to enact this law and also the law will not be invalid because the assent of the President under Article 254(2) of the Constitution has not been obtained.

12. Now plainly the Bengal Public Demands Recovery Act, 1913 is not a law with respect to Entry 43 of the Concurrent List; it is not a law with respect to recovery in the State of West Bengal of claims regarding public demands arising outside that State. Under the Bengal Public Demands Recovery Act, 1913 there can be no recovery in the State of West Bengal of claims in respect of public demands arising outside the State. Under Section 4 of the Act read with Section 3(33) the Certificate Officer may file a certificate for public demands payable to the Collector of the district where he holds office. Under Section 6 of the Act read with Section 5 the Certificate Officer may file a certificate in respect of a public demand payable to any person other than the Collector only if the public demand is payable within the district where he holds office, see. *The Secry of State v. Sadek Reza*[14]*,).* Consequently certificates under the Act can be filed only in respect of demands accruing or arising within the State. Each State has devised a machinery which it has considered suitable for the recovery of its own public demands. The Bengal Public Demands Recovery Act, 1913 is a State Law providing for speedy recovery of the public demands of the State of West Bengal see *Purushottam Govindji Halai v. B.M. Desai*[15]*,* at pp. 24-25. Section 46(2) of the Indian Income-tax Act, 1922 enables recovery of the arrears of Income-tax as if they are arrears of land revenue through the Collector on the requisition of the Income-tax Officer, but such requisition can be forwarded only to the Collector of the place where the demand is payable, see Bhattacharyya y. Commr. of I.T., (1956) 30 ITR 635 (Cal). If public demand arising within a State is sought to be recovered outside the State, such recovery may be made by recourse to the machinery of the Revenue Recovery Act, 1890 (Central Act I of 1890 under which on the requisition of

[14]44 Cal WN 901, at pp. 906, 909 : AIR 1941 Cal 167 at pp. 170-173

[15] AIR 1956 SC 20

the Collector of the district in which the arrears of land revenue accrued, the Collector of another district in India may recover the amount of the arrear as if it were an arrear of land revenue which has accrued in his own district. The Revenue Recovery Act, 1890, is therefore truly a law with respect to entry 43 of the Concurrent List. But the Bengal Public Demands Recovery Act, 1913 is not such a law, see (1962) 46 ITR 104, (Cal at pp. 114-117. Our attention is drawn to the legislative practice on the point and to the fact that the assent of the Governor General under Section 5 of the Indian Councils Act, 1892 was obtained to the passing of the Bengal Public Demands Recovery Act, 1913 and to the fact that the assent of the President under Article 254(2)

of the Constitution was obtained to the passing of the amending West Bengal Acts XV of 1955 and XV of 1957. The first two cases have been considered in the judgment in (1962) 46 ITR 104 at p. 116 (Cal). I may add that the assent of the President to the West Bengal Act XV of 1957 though not necessary might have been obtained by way of abundant caution.

13. It is not contended that the Bengal Public Demands Recovery Act, 1913 is a law with respect to any other entry in the Concurrent List or with respect to any of the specific entries to 96 in the Union List. Nevertheless it is contended that the Act is not a law with respect to any of the entries in the State List and that it is a law with respect to entry No. 97 of the Union List, i.e. with respect to a matter not enumerated either in the State List or in the Concurrent List. I am unable to accept this contention. Learned Advocate General contended that the Bengal Public Demands Recovery Act, 1913, is a law with respect to (a) land revenue, including assessment and collection of revenue and (b) administration of justice, constitution and organization of Revenue Court and procedure in Revenue Court enumerated in entries 3 and 45 of the State List. Let us examine this contention. The Bengal Public Demands Recovery Act, 1913, enables recovery of public demands referred to in schedule 1 of the Act. A reference to the schedule shows that under the Act there can be recovery of not only arrears of land revenue but also of (a) other revenue, (b) demands of the Government other than revenue, (c) demands due to persons other than the Government. The Act empowers Certificate Officers to sign and file certificates in respect of public demands. The Certificate Officer means a Collector, a Sub-Divisional Officer and any officer appointed by the Collector with the sanction of the Commissioner to perform the functions of the Certificate Officer under the Act. By Section 50 the Collector who is the chief officer-in-charge of the revenue administration of a district has power of general supervision and control over all Certificate Officers of the District. The Board of Revenue is the final revising authority under Section 43 and has by Section 39 large powers of making rules as to procedure.

14. The Certificate Officer may sign and file a certificate under Section 4 of the Act on being satisfied that a public demand is due to the Collector; and he may sign and file the certificate under Section 6 on being satisfied that a public demand payable to a person other than the Collector is recoverable and that recovery by suit is not barred by law. The certificate under Section 6 may be filed upon the requisition of such other person signed and verified in the prescribed manner, the requisition being chargeable with the amount of the Court fee payable on a plaint for recovery of the demand. At the stage of the signing and filing of the certificate the certificate debtor is not heard. But at a subsequent stage the debtor is entitled to file a petition under Section 9 denying his liability and by Section 10 the Certificate Officer is required to hear the petition, take evidence if necessary and determine whether the debtor is liable for the whole or any part of the amount for which the certificate was signed and he may modify or vary the certificate accordingly. Section 37 requires the Certificate Officer to determine all questions arising between the certificate holder and certificate debtor or their representatives relating to the making execution, discharge or satisfaction of the certificate and the confirmation or setting aside of a gale held in execution of the certificate. By Section 48 every Collector and Certificate Officer acting in discharge of his functions under the Act is deemed to be acting judicially within the meaning of the Judicial Officers Protection Act, 1850 and by Section 49 they have the powers of a civil Court for the purposes of receiving evidence, administering oaths and enforcing attendance of witnesses and compelling the production of documents. The orders passed under the Act are made subject to appeal, revision and review by Sections 51, 53 and 54. Appellate powers are given to the Collector, the Commissioner and the Board of Revenue and revisional

powers are given to the Commissioner and the Board of Revenue. By Section 56(2) certain provisions of the Indian Limitation Act, 1908 are made applicable to all proceedings under the Act as if a certificate filed under it were a decree of a civil Court. By Section 57 a Certificate Officer is deemed to be a Court and any proceeding before him is deemed to be a civil proceeding within the meaning of Section 14 of the Indian Limitation Act, 1908. It is plain that the Certificate Officer is charged with the duty to decide disputes in a judicial manner. The parties are entitled as a matter of right to adduce evidence and to be heard to support of their claim and objections. The officer is also under a duty to decide the matter before him on a consideration of the evidence adduced and in accordance with law. He has power to give decisions which of their own force bind the parties and he truly represents the judicial power of the State. The essential characteristics of a Court as distinguished from a tribunal discharging quasi-judicial functions are noticed and discussed in *Bharat Bank Ltd. v. Employees of Bharat Bank Ltd*[16]*.,* and *Virindar Kumar v. State of Punjab*[17]*.* In AIR 1950 Supreme Court 188 at p. 202, Mahajan, J. observed that a Board of Revenue has all the attributes of a Court of justice and falls within the definition of the word "Court" in matters where it adjudicates on rights of parties. On a review of the various provisions of the Act I am satisfied that the Certificate Officer, the Commissioner and the Board of Revenue in matters where they adjudicate on the rights of the parties, are revenue Courts within the meaning of Entry 3 of the State List. In this conclusion I am supported by the observation of Lahiri, J. in 58 Cal WN 573 at p. 585 : AIR 1954 Calcutta 355 at p. 361 that the Certificate Officer is a Court and by the decision in *Joy Durga Dassi. v. Sourish Chandra Roy*[18]*,* to the effect that a certificate filed by a Certificate Officer is a decision of a revenue Court and that a suit for declaration that the certificate is null and void or in the alternative for cancelling or modifying it is governed by Schedule II Article 17(1) of the Court-fees Act which provides inter alia for suits to alter or set aside a summary decision or order of a revenue Court. I am aware that in *Dwarakanath Mandal v. Srigobinda Chowdhury*[19]*,* a Division Bench of this Court held that a certificate Officer is not a Court with special jurisdiction and his decision cancelling a certificate on the ground that the demand was not recoverable did not operate as les judicata in a subsequent suit for recovery of the identical demand. In the instant case we arc not concerned with the question whether the decision of the Certificate Officer may operate as res judicata in a subsequent suit between the parties and, if so, in what circumstances. In the case last cited, B.B. Ghose, J. observed that the Certificate Officer cannot in any circumstances be considered as a Court and that the procedure of

[16] AIR 1950 SC 188; 1950 SCR 459 [18] AIR 1940 Cal 215
[17] AIR 1956 SC 153 [19] AIR 1929 Cal 1130

this officer is contrary to all sense of justice and the rules universally followed by a Court and that the procedure of an ex parte certificate and sentence followed by a trial on the challenge of the debtor is not the procedure of a Court of justice. But it is well to bear in mind that the object of this peculiar procedure is to enable speedy recovery of public, demands. Consistently with this object the procedure of revenue Courts is in many respects different from the procedure of the civil Courts. I may also observe that in England the Court of Exchequer was the first tribunal to break away from the curia regis and introduced a peculiarly efficacious procedure for the recovery of the monies due to the Crown. The Court of Exchequer entertained not only purely fiscal disputes, but also many pleas between subject and subject. A revenue Court, if so authorized by law, may entertain not only claim for revenue but also claim for other demands. In the instant case the true interpretation of the relevant entries in the Lists in Schedule VII of the Constitution is in issue. It is well settled that the entries in the Lists are fields of legislation and not powers and that the widest import and significance must be given to the language used in the

various entries, see *Balaji v. Income-tax Officer*[20], at p. 125. None of the entries in the Concurrent List nor any of the entries to 46 cover the subject-matter of legislation of the Bengal Public. Demands Recovery Act, 1913. The subject-matter of this legislation may come within the residual power in Article 248 and entry No. 97 in the Union List only as a last refuge when all the categories in the three Lists are absolutely exhausted, see *Subrahmanyam v. Mattuaswami*[21], at p. 55. I am satisfied that the Bengal Public Demands Recovery Act, 1913 does not fall within Article 248 or Entry 97 of the Union List.

15. In my opinion the Bengal Public Demands Recovery Act, 1913 may fairly he said to be a law with respect to administration of justice, constitution and organisation of revenue Courts and procedure of revenue Courts and with respect to land revenue including the collection of land revenue and is well covered by the entries 3 and 45 of the State List. The State Legislature is competent to make such a law. It follows that the West Bengal Act XI of 1961 is also a law with respect to the matters enumerated in Entries 3 and 45 of the State List and consequently the State Legislature has power to make this law. The West Bengal Act XI of 1961 is not a law with respect to any of the matters in the Union List or in the Concurrent List and consequently it cannot be pronounced to be invalid on the ground that the assent of the President to the passing of the Act under Article 254(2) of the Constitution has not been obtained.

16. No other ground has been urged in support of this Rule.

17. The Rule is discharged. There will be no order as to costs.

Chatterjee, J.

18. In this case a certificate under the Public Demands Recovery Act of 1913 has been challenged as invalid, illegal and improper. The Income-tax Officer concerned forwarded to the Collector, district 24-Parganas, a certificate under his signature specifying the amounts of arrears due from the assessee under Section 46(2) of the Income-tax Act. The amount under the aforesaid Section is recoverable as if it were an arrear of land revenue.

[20] AIR 1962 SC 123

[21] AIR 1941 FC 47

The Certificate Officer signed and filed a certificate within the meaning of the Public Demands Recovery Act on the receipt of a certificate of the Income-tax Officer within the meaning of Section 46(2) of the Income-tax Act.

19. This certificate is challenged as invalid, illegal and improper in these proceedings under Article 237 of the Constitution against an order of the Board of Revenue.

20. Applying the principles established in the case *Ledgard v. Bulls*[22], and in the case *Meenakshi Naidoo v. Subramaniya Sastri*[23], the validity of a certificate can be challenged on one of the four grounds, namely, (r) that the Certificate Officer was not competent to sign and file the certificate concerned; (2) the certificate in question related to demands other than public demands within, the meaning of Section 3(6) of thy West Bengal Public Demands Recovery Act; (3) that the certificate holder was no person in law and (4) the certificate debtor in question was no person in law.

21. No challenge has been made on any of the first three grounds. The challenge relates to the fourth ground. It is urged that the certificate debtor is a firm and under the provisions of the Bengal Public Demands Recovery Act a firm is no person. The definition of the word 'certificate-debtor' under Section 3(1) is as follows.

> "The 'certificate-debtor' means the person named as debtor in a certificate filed under this Act."

It is urged that a firm is not a person within the meaning of the Public Demands Recovery Act. The 'person' includes under the Bengal General Clauses Act a body of individuals and a firm is a body of individuals, who carry on business under a particular name or under a particular style. It cannot now be questioned that a firm is only a compendious mode of describing persons who carry on business under a common style. It may further be stated that the assessee was the firm and a firm could be assessed under the Excess Profits Tax Act and Income-tax Act. But it is urged that when a certificate is to be issued, the certificate would not include the name of the firm but should include the names of the partners of the firm. The definition of the word 'firm' under Section 4 of the Indian Partnership Act is,

> "Persons, who have entered into the partnership with one another, are called individually partners and collectively a firm and the name under which their business is carried on is called the firm name."

Therefore, when a proceeding is started against a firm, the proceeding is really started collectively against all the partners. There is no provision in the Act which forbids a certificate against the partners collectively in the firm name. I must, therefore, overrule this objection. In my opinion, it is only on the aforesaid grounds that a certificate can be challenged as invalid. Other grounds, relating to the form used, may be questions of illegality or impropriety of the certificate but would not touch the validity of the certificate. There has been a considerable divergence of opinion on this point; but because of Act XI of 1961 the question has lost its importance. As the point has been urged, I

[22]13 Ind App 134 (PC)
[23]14 Ind App 160 (PC)

would record my views with regard to such matters.

22. The legality and the propriety of the certificate has been challenged on the ground that the standard form as under the Act has not been adhered to. But Rule 84 provides that

> "the form set" forth in the appendix shall be used with such variations as circumstances may require."

The number of the certificate used is form No. 1027. The standard form in the appendix also refers to that number.

23. In the standard form after the tabular statement it is stated

> "I, hereby certify that the above-mentioned sum of Rs. is due from the above mentioned

etc."

Instead of word "above-mentioned" in the form No. 1 of the appendix the words "mentioned over-leaf" have been used and instead of giving the name of the certificate-holder and the certificate-debtor they have been described as certificate-holder and certificate-debtor. It is not difficult to see from form No. 1 of the appendix that it provides that the entire should be in one side of a sheet of paper. The tabular statement are to be tilled up in the upper part and the operative portion would come in the lower part. This requires a long sheet of paper. Instead of that, apparently for purposes of economizing paper they have used a smaller sheet of paper. On one side of it is the tabular portion and on the other side of it, is the operative portion of the certificate and that is why, instead of the word "above mentioned" the words "sums overleaf" have been used. The word "above-mentioned" had it been used, would have been meaningless, because there would be no portion above it; but there was something over-leaf and that is why the words "sums overleaf" have been used. It is thus clear, as the circumstances required economy of paper, the words "sums overleaf" were used instead of the word "above-mentioned" in terms of the aforesaid Rule 84. So far as the names they are not on the operative portion, but the tabular portion describes who was the certificate-debtor and who was the certificate-holder. Therefore, this variation, even if any, would be supported by Rule 84. I am of opinion that in a matter under Article 227 of the Constitution, the High Court should rather be concerned with the validity of the certificate than the propriety of the form of the certificate.

24. It has further been urged that the notice under Section 7, which was issued much later than the certificate, has invalidated the certificate which was signed and filed much earlier. The certificate itself includes the date of the certificate but in the notice under Section 7 it was stated that the certificate was signed on the same date on which the notice was issued. On a reading of the form concerned, it is clear that the notice under Section 7 is expected to be issued on the same date as the certificate is to be filed. In this case, the notice under Section 7 that is now in question, was not issued on the date the certificate was filed. It was issued later on and in the form of the notice under Section 7 the word 'today' was not struck out. This is the only error. I would again say that Rule 84 would authorize the Certificate Officer to strike out the word 'today' and insert therein the actual date of the certificate. But that was not done and, therefore, the certificate is challenged to be invalid. The certificate was issued earlier and the notice was issued subsequently. Therefore, the subsequent act, even if invalid or illegal, would not invalidate his earlier acts of drawing, signing and filing of a certificate. However, even if the notice is bad, that bad notice has served the purposes as much as a good notice would. Because of the notice, the certificate-, debtor has come to the Revenue Court and taken various objections, - really all objections that were open to him. Supposing this notice was bad, what the Court might have done was to cancel the previous notice and issue a fresh notice after striking out the word "today" and inserting the actual date of the certificate therein. The result would have been that the same notice would have gone again; some objections would have been urged again and for no useful purpose. This error in the notice under Section 7 is, in my opinion, at most an irregularity which does not affect the validity of the certificate and which does not affect the merit of the objections taken by the judgment-debtor. Therefore, there is no reason to interfere under Article 227 of the Constitution to cancel such a bad notice which has served all the purposes of a good and valid notice. I am, therefore, of opinion that neither the invalidity nor the illegality of the certificate in question has been established. The only question relating to the propriety of the notice under

Section 7 is a matter which does not affect the merits of the certificate or the objection and would be no ground for interference under Article 227 of the Constitution. As we have stated already, after Act XI of 1961 the question of form is immaterial. But we have recorded our findings as the points were urged. No useful purpose would be served in referring the matter to any Full Bench in view of Act XI of 1961.

25. The said Act, however, has been challenged. It is urged that the State legislature has no power to amend the provisions of the Bengal Public Demands Recovery Act except with the consent of the President as it is governed by item No. 43 of List No. III. Item No. 43 relates to recovery in a State of all claims arising outside that State. Under Section 42 of the Income-tax Act the amount is to be realized as if it were an arrear of land revenue or, in other words, as if it were an arrear of land revenue payable to the Collector, district 24 Paraganas. Therefore, the claim arises in the State and does not arise outside the State.

26. In my opinion, item No. 3 of List II completely covers the matter. List II item 3 is as follows :-

> "Administration of justice, constitution and organization of all Courts ..... procedure ..... in revenue Courts."

The question is whether the Certificate Officer is at all a Court within the meaning of the aforesaid item. It is urged that the Certificate Officer is not a Court within the meaning of that item but is merely a tribunal. We have been referred to Lord Sankey's judgment in 1931 AC 275 at p. 283, the same case as *Shell Co. of Australia v. Federal Commrs. of Taxation*[24]. It was held that the Board of Review under the Income-tax Art was not a judicial tribunal hut was an administrative tribunal. We have also been referred to the decision in *between Rharat Bank v. Employees of Bharat Bank*[25]. We have also been referred to the criticism of the judgment of Lord Sankev in "Justice and Administration of Law" 3rd Edn., page 8, by William A. Robson. The question here is whether the

[24]1930 All England Reporter 671
[25]1950 SCR 459

Certificate Officer, the Commission and the Board of Revenue are Courts within the meaning of item 3 Schedule III.

27. There are two items relating to Court in List II. Item No. 3 relates to administration of justice and constitution of all Courts except the Supreme Court and the High Court, procedure In. rent and Revenue Courts, fees taken in all Courts except the Supreme Court. Item No. 3 suggests that there are revenue Courts and all tribunals which deal with matters of revenue are not tribunals but may be Courts. The question is whether the Public Demands Recovery Act relates to any Revenue Court and whether the certificate office the Commissioner and the Board are Court within the meaning of item No. 3. Item 3 refers to constitution of Courts for purposes of administering justice and not to serve any particular purpose of a particular statute nor to serve the purposes of a particular group of statutes but with the avowed object of creating a forum for administration of justice between man and man and man and State. The Courts may be said to be the seats where judicial power of the sovereign is exercised, not with reference to any particular statute nor a particular group of allied statutes-but with regard to matters in general. In our

country Courts have been divided into three categories; - (i) Civil Courts, (ii) Criminal Courts and (iii) Revenue Courts apart from the Supreme Court and the High Courts. The Courts are halls of justice where justice is administered with reference either to civil matters or to criminal matters or to revenue matters in general and not limited to serve the purpose of any particular statute. In an industrial tribunal matters relating to Industrial Disputes Act and allied matters are decided but not all matters relating to industry and labour for the reason that there is another tribunal for workmen's compensation. After Courts are constituted under item 3 for purposes of administering justice, it is for the legislature to consider what jurisdiction and powers they would give to Courts so constituted. The subject-matter of that is item No. 65 in List II and there are corresponding, items in the other two lists. Hence when a Court is constituted by a State under item No. 3, the legislature invests that Court with jurisdiction and powers with reference to matters within their competency.

28. The State legislature has the power to legislate with regard to a particular matter and thus they have powers incidental thereto, including a power to constitute tribunal to serve the purposes of that statute. The State legislature has powers to legislate with regard to a particular matter, say, rent. They have also therefore, the incidental power to constitute tribunal for the control of point with regard to the premises under Premises Rent Control Act. As far as I can see, the tribunals are constituted for serving a particular purpose of a particular statute, but they are not the Seats where the judicial power of the sovereign is ordinary exercised. I would say with reference to the 1930 judgment of Lord Sankev in the case, 1930 All England Reporter 671 that the Boards of Appeals (and ?) the Boards of Review we constituted for the purpose of Income-tax and the allied Acts. It was not a Seat where justice was being administered with regard to the entire field covered by public demands or revenue but the field was limited with respect to one item or public demand, namely. Income-tax and allied matters. If we refer to the Went Bengal Public Demands Recovery Act, we will find from the Schedule therein that it refers practically to every demand of revenue which the State has or which the State may have. It covers a large number of items and as it can be found, items are bring added from time to time. The Public Demands Recovery Act regulates the procedure by which the revenue is realized in the State. The Certificate Officers have all the powers of a Civil Court for purposes of receiving evidence, administering oath, enforcing attendance of witnesses and compelling the production of documents under Section 49. The Indian Limitation Act applies to such proceedings as a civil proceeding. (Sections 56 and 57). The decision of the Certificate Officer is appealable under Section 51 : it is revisabie under Section 53. There may be a review under Section 54 and the decision of the Certificate Officer is final subject to the provisions of this Act as under Sections 34, 35 and 36. The decision of the revenue courts is final cannot be challenged in civil Courts except as provided in Section 37. I would, therefore, conclude that the Certificate Officer, the Collector, the Commissioners and the Board of Revenue while dealing with matters under the Public Demands Recovery Act are Courts within the meaning of item No. 3 and the Public Demands Recovery Act; the Board of Revenue has powers to deal with contempt as if it were a High Court under Section 7 of Act 11/1913 (The Board of Revenue Act). The powers, as stated above, of the revenue courts are not confined to particular items of revenue but to generally all matters of revenue, as may be gathered from the Schedule referred to above. I am, therefore, of opinion that the matter is covered by item No. 3 and Act XI of 1961 is a valid Act.

29. I, therefore, agree with the observations and to the order proposed by my Lord.
Rule discharged.