CALCUTTA HIGH COURT

Coal Products Private Ltd

Vs

Income-Tax Officer

(T.K. Basu, J.)

14.07.1969

JUDGMENT

T.K. Basu, J.

1. The petitioner, Coal Products Private Ltd., challenges in this application a notice dated the 22nd February, 1967, issued by the Income-tax Officer, "M" Ward, Companies District II, Calcutta, to the Secretary, Coal Board, Government of India,

2. The material portion of the impugned notice, which is one under Section 226(3) of the Income-tax Act, 1961 (hereinafter referred to as "the Act"), is in the following terms :

> "A sum of Rs. 12,94,782.43 is due from M/s. Coal Products Pvt. Ltd. Nutandanga, Burdwan, Calcutta, Add. 1195 C.R. Avenue, Calcutta, on account of income-tax/super-tax/penalty/interest/fine. You are hereby required under Section 226(3) of the Income-tax Act, 1961, to pay forthwith any amount due from you to or held by you for, or on account of the said M/s. Coal Products Pvt. Ltd., upto the amount of arrears shown above, and also request you to pay any money which subsequently became due from you to him/them or which you may subsequently hold for or on account of him/them up to the amount of arrears still remaining unpaid, forthwith on the money becoming due or being held by you as aforesaid as such payment is required to meet the amount due by the taxpayer in respect of arrears of income-tax/super-tax/penalty/interest/fine, I am to say that any payment made by you in compliance with this notice is in law deemed to have been under the authority of the taxpayer and ray receipt will constitute a good and sufficient discharge of your liability to the person to the extent of the amount referred to in the receipt"

3. The principal contention urged by Mr. Sankar Ghosh appearing on behalf of the petitioner is that the money which is due or may become due from the Coal Board to the petitioner-company

is by way of assistance for certain specific purposes. The Coal Board is a statutory authority set up under the provisions of the Coal Mines (Conservation and Safety) Act, 1952. The powers of the Board to utilise the money received by it are limited by the provisions of the above Act. It has no power to utilise the money for any other purpose.

4. In support of this contention, Mr. Ghosh draws my attention to Section 12 of the above Act which is in the following terms :

> "12. Money received by the Board to be credited to the fund.--(1) The sum referred to in Section 11 and any other money rectived by the Board shall be credited to a fund to be called the Coal Mines Safety and Conservation Fund which shall be applied by the Board, in such manner and subject to such conditions as may be prescribed to-
>
> (a) meeting the expenses in connection with the administration of the Board and the furtherance of the objects of this Act;
>
> (b) the grant of stowing materials and other assistance for stowing operations to the owners, agents or managers of coal mines ;
>
> (c) the execution of stowing and other operations in furtherance of the objects of this Act;
>
> (d) the prosecution of research work connected with safety in coal mines or conservation and utilisation of coal;
>
> (e) meeting the cost of administering the fund and the expenses in connection with advisory committees ;
>
> (f) the grant to State Governments, research organisations, local authorities and owners, agents or managers of coal mines of money in aid of any scheme approved by the Central Government in furtherance of the objects of this Act;
>
> (g) any other expenditure which the Central Government directs to be defrayed out of the Fund.
>
> (2) The Board shall keep accounts of the Fund, and such accounts shall be examined and audited by the Comptroller and Auditor-General of India at such times and in such manner as he deems fit and the report of the Comptroller and Auditor-General of India shall be laid, as soon as may be, before Parliament."

5. My attention is also drawn to rules 49, 52 and 54 of the Coal Mines (Conservation and Safety)

Rules, 1954, which are in the following terms :

"49. Purposes for which assistance may be granted.--(1) The Board may grant assistance from the Fund to any owner, agent or manager of a coal mine-

(a) for stowing or other protective measures which are required to be undertaken by an order issued under Sub-section (3) of Section 13 or Sub-rule (2) of Rule 35 or Sub-rule (3) of Rule 40 ;

(b) for any measures which in the opinion of the Board are essential for the effective prevention of the spread of fire to or inundation by water of any coal mine from an area adjacent to it;

(c) for stowing for conservation of coal or washing coal which is required to be undertaken by an order under Rule 36 or 37 ;

(d) for the following measures voluntarily undertaken by the owner, agent or manager of the coal mine :--

(i) stowing operations in the interest of safety or conservation of coal,

(ii) any process of washing or cleaning coal which reduces its ash content and also improves its qualities, or

(iii) any other measures for safety in coal mines or for conservation of coal,

(e) for any other measures undertaken by the owner, agent or manager of a coal mine under the order of the Board to ensure conservation of coal.

(2) The Board may grant assistance to the owner of any steel work, blast furnace or coke plant for blending of coal undertaken under the orders of the Board.

(3) The Board may grant assistance to the owner, agent or manager of a coal mine which is specially handicapped by adverse factors rendering its working uneconomic but which, in the opinion of the Central Government, should be maintained in production for the purposes- of ensuring the conservation of coal. In such cases assistance shall be granted by the Board-

(i) with due regard to the circumstances of each case ;

(ii) only in respect of such adverse factors as may, from time to time, be specified by the Central Government as entitling a coal mine to receive assistance and published by the Board in the Official Gazette for general information; and

(iii) in accordance with such procedure as may be determined and not exceeding such rates as

may be fixed, by the Central Government, from time to time :

Provided that the existence or otherwise of adverse factors in any coal mine, the extent to which such adverse factors render the working of the coal nine uneconomic, and the amount of assistance, if any, to be granted to the coal mine, shall be determined by the Central Government."

"52. Form of assistance.--The Board may grant assistance from the fund, at its discretion, in each case in one or more of the following ways :

(i) by the grant of stowing materials ;

(ii) by the loan of stowing plant or such other plant as the Board may decide ;

(iii) by making monetary grants ;

(iv) by the grant of loan for meeting either wholly or in part expenses of the purchase and installation of stowing plant in coal mines, blending plant or washing plant or any other plant for the beneficiation of coal."

"54. Conditions attaching to the grant of the assistance.--Before granting assistance under these rules, the Board shall specify the conditions to be fulfilled by the owner, agent or manager of the mine to whom assistance is proposed to be granted, and secure the acceptance in writing, by such owner, agent or manager of the mine, of such conditions."

6. On the strength of the above provisions of the above Act and the Rules, it is contended that the purpose for which the money belonging to the Coal Board can be utilised and assistance granted to a recipient must be connected with the object of stowing and other safety operations and conservation of coal mines. The Coal Board is not free to grant any assistance to any party for any purpose which is not connected with the above objects. Similarly, the allottee of the grant is not free to spend the money for any purpose other than those connected with the above objects. My particular attention was drawn to Rule 54 of the Rules which provides that the Board shall specify the conditions to be fulfilled by the owner, agent or manager of the mine to whom assistance is granted and shall secure the acceptance in writing from such person of such conditions.

7. Mr. Gouri Mitter, appearing on behalf of the revenue, raised the contention at the initial stage of the hearing that there was no material before the court to show that any such condition had been attached to the grant in the present case. On the basis of the pleadings before me, Mr. Mitter sought to argue that once the money was granted to the allottee, viz., the petitioner, it was free to

utilise the money in any manner it liked. In other words, the grant was not imprest with any particular purpose or purposes.

8. Considering the state of the materials before me on this aspect of the matter, I granted leave to the petitioner to file a further affidavit in these proceedings disclosing the nature of the grant from the Coal Board to the petitioner and also whether any conditions were attached to such grant.

9. Pursuant to the leave granted by me, an affidavit has been affirmed on behalf of the petitioner-company by Ram Avatar Jalan on 13th November, 1968. From the said affidavit it appears that the usual procedure is for the petitioner-company to make an application before the beginning of the financial year for monetary assistance from the Coal Board towards the stowing in the interest of safety and conservation of coal mines. A specimen copy of such application has been annexed to the said affidavit. It further appears that the application is sanctioned by the Board, subject to the acceptance of the conditions laid down therein. The sanction specifically states that the assistance is to be granted by the Board towards the cost of stowing. It is further stated that the assistance should be sanctioned, subject to the fulfilment, in the opinion of the Board, inter alia, of the conditions that the assistance given will be utilised for the purpose for which it is granted It further appears that the petitioner had, in respect of the years in which the grants, have been sanctioned, accepted the terms and conditions as laid down in the sanction.

10. In that view of the matter, it is evident that the grants in the instant case were clearly subject to the condition that it would be utilised for the purpose of stowing and other connected operations in the coal mines

11. Coming to the law on the subject, Mr. Ghosh contended, in the first place, that proceedings under Section 226(3) of the Act were in the nature of garnishes proceedings. In support of this proposition, Mr. Ghosh relied on a number of authorities of the Supreme Court and other courts. It is not necessary to deal with the authorities, as this proposition was not disputed on behalf of the revenue.

12. Mr. Ghosh next contended that proceedings under Section 226(3) of the Act being in the nature of garnishee proceedings, the general law with regard to garnishee proceedings should be applied. He drew my attention in this connection to a decision of the English court in the case of In re General Horticultural Company : Ex parte Whitehouse, [1886] 32 Ch. D. 512 (Ch. D.). In that case, it has been held by Chitty J. that garnishee orders and attachment of debts can only charge what the judgment-debtor can himself honestly deal with.

13. This English decision has been followed by our court in the case of Amarendra Nath Laha v.

S. Banerjee, AIR 1924 Cal 1068 In this Calcutta case, it has been held that the decree-holders cannot by means of attachment stand in a better position as regards the garnishee than as regards the judgment-debtor. In other words, the decree-holders can only obtain from the garnishee what the judgment-debtor can honestly give them.

14. My attention was next drawn to a decision of the English Court of Appeal in the case of Davis v. Freethy, [1890] 24 Q.B.D. 519(C.A.). In that case, following the decision in In re General Horticultural Company : Ex parte Whitehouse , it was held that under an attachment order, the garnishee would be liable to hand over so much of the property which the judgment-debtor could honestly deal with without interfering with the interests of third parties.

15. Relying on the above decision, Mr. Ghosh contended that in the present case, since the assistance from the Coal Board was received for particular purpose, the petitioner who stands in a position comparable to that of a judgment-debtor under the general law, was not free to pay any part of such assistance towards the discharge of his income-tax liabilities. Such a payment would inevitably lead to a breach of the conditions which have been attached to the grant of assistance and which have been accepted by the petitioner-company. Since the petitioner-company itself could not pay any part of this money to the income-tax department, Mr. Ghose contended that revenue could not stand in a better position with regard to the Coal Board whose position is comparable to that of a garnishee under the general law. Consequently, the income-tax department could not call upon the Coal Board to pay any part of the money which was due and payable by the Board to the petitioner-company as and by way of assistance.

16. Before I deal with another aspect of this contention, it would be useful to set out the material parts of Section 226(3) of the Act which are in the following terms :

"226. (3)(i) The Income-tax Officer may, at any time or from time to time, by notice in writing require any person from whom money is due or may become due to the assessee or any person who holds or may subsequently hold money for or on account of the assessee, to pay to the Income-tax Officer either forthwith upon the money becoming due or being held or at or within the time specified in the notice (not being before the money becomes due or is held) so much of the money as is sufficient to pay the amount due by the assessee in respect of arrears or the whole of the money when it is equal to or less than that amount."

17. This Sub-section of Section 226 of the Act, it may be noted, corresponds to Section 46(5A) of the Indian Income-tax Act, 1922, now repealed.

18. The provisions of Section 46(5A) of the repealed Act came up for consideration before the Madras High Court in the case of Buddha Pictures v. Fourth Income-tax Officer, City Circle V,

Madras . In that case, one T.S. Baliah, a cinema artist, was in arrears of income-tax to the extent of Rs. 46,819.15 prior to the 18th June, 1959. On the 18th June, 1959, the Income-tax Officer issued a notice on Buddha Pictures; a firm of film producers, stating that the remuneration payable by the said firm to Baliah stood attached and that it should be credited to the Government. The firm sent a reply on June 26, 1959, stating that it had not engaged Baliah and had no contract with him. Nothing happened for two years and, in the meantime, income-tax payable by Baliah amounted to Rs. 86,111.12. On March 21, 1961, the Income-tax Officer sent a further notice to the firm under Section 46(5A) of the repealed Act attaching all payments due to Baliah.

19. On 28th March, 1960, a date between the service of the first and second notices, the petitioner entered into a contract with Baliah for playing in a film for a consolidated remuneration of Rs. 20,000. This amount was paid to Baliah between 28th March, 1960, and 18th March, 1961, prior to the issue of the second notice.

20. By a communication dated April 26, 1961, the Income-tax Officer alleged that the aforesaid payment of Rs. 20,000 made to Baliah was in violation of the first notice issued on June 18, 1959, and called upon the firm to pay the sum of Rs. 20,000 to the income-tax department.

21. The firm of Buddha Pictures applied before the Madras High Court for a writ of mandamus directing the income-tax department to forbear from collecting the sura of Rs. 20,000 paid to Baliah after the first notice.

22. Dealing with the contention that the demand for payment of Rs. 20,000 by the income-tax department from Buddha Pictures was not sustainable, Jagadisan J. observed as follows :

"The debate before us has very largely centered upon the proper interpretation of the words 'any person from whom money is due or may become due to the assessee'. It is common ground in the present case that the petitioner was not holding and did not subsequently hold money for or on account of the assessee. Now what does the expression 'may become due' mean ? Can it be understood as money which would become payable by the garnishee to the assessee in future after the service of the notice as a result of a pre-existing liability, or, would it also cover a case where the liability itself comes into existence after the service of such a notice ? The assessee's contention is that the words describe a class of cases which can be compendiously described as debitum in praesenti solven-

dum in futuro and that their meaning should not be extended beyond such categories of cases. The department, however, contends that the words must be given their plain grammatical meaning and that, therefore, 'may become due' would sufficiently cover even a case where a

relationship of debtor and creditor is established after proceedings are initiated under Section 46(5A). .....

In common parlance the word 'due' is associated only with a liability to pay or an obligation to do. It would be wholly inappropriate to describe an unborn future obligation or liability as something which is due. The relevant provision in the statute, with which we are dealing, is intended only to collect the amount due to the department from persons who are liable to pay to the assessee. The liability to pay may be forthwith as on the date of the receipt of the notice or it may be that such liability would mature after the notice. But, in any event, the essential criterion is that, on the date of the service of notice, the person should be under an existing obligation to pay amounts to the assessee. Any other interpretation of the provision is likely to hamper the normal freedom of contract which citizens do possess in spite of taxing enactments. Any notice issued by the department under Section 46(5A) upon an alleged garnishee cannot hang upon him like a Damocles' sword and prevent him from entering into any contract with the assessee thereafter and from paying him any money under that contract. In our opinion, such a position cannot be envisaged and it is certainly not warranted by the language of the enactment.....

An Act cannot be so construed unless the words are compelling and do not admit of any doubt, so as to deprive parties of ordinary private rights. Express and unequivocal language would be necessary to achieve that result. The court should, not impute to the legislature the object of destroying rights by a side wind. Therefore rights, whether public or private are not to be taken away or even hampered by mere implication from the language used in a statute .....

If the statute is clear and unambiguous, the problem of interpretation is solved, as the court cannot hold that the legislature speaking through the language of the enactment says something but means a different thing. But if, however, the statutory provision is indefinite or obscure, the legislative intent has to be ascertained by resorting to various aids. Where a literal meaning leads to absurdity or contradiction, the spirit prevails over the letter. In such cases the presumption is that the legislature did not intend to lay down a measure which is oppressive and unreasonable to an uncommon degree. We would, therefore, prefer the view that the words 'may become due' mean 'may become payable' and not 'may become entitled'. This would be a just and fair interpretation, harmonious with the scheme of collection of tax."

23. My attention was next drawn to a decision of the Supreme Court on appeal from the above decision of the Madras High Court in the case of Income-tax Officer, Madras v. Buddha Pictures, of the report Sikri J. observed as follows :

"The learned counsel for the appellant contends that Section 46(5A) applies in four sets of

circumstances :

(1) when money is due from a person to the assessee;

(2) when money may become due to the assessee;

(3) when a person holds money for an assessee; and (4) when a person may hold money on account of the assessee.

24. He says that there is no reason for cutting down the words in categories (2) and (4); the words are plain and they do not suggest that at the time of notice a relationship, which may result in money being owed or being held on account of the assessee, should subsist. In our view, if the assessee has no subsisting relationship with a person it would be speculative to think that that person may get into relationship with the assessed and start owing money to him or start holding money for him. We can hardly believe that the legislature framed this Sub-section on speculative considerations. It seems to us that the legislature contemplated a subsisting relationship of which the Income-tax Officer gets information and which could reasonably lead to recovery of arrears. Theoretically, it would be possible for an assessee to enter into a relationship with almost anybody, say, in the town in which he resides. We can hardly imagine that it was expected that the Income-tax Officer would issue notices to all the residents of a locality or a town to pay money in case they begin to hold or owe money to the assessee.

25. It seems to us that the High Court was right in holding that what was contemplated was the subsistence of a similar relationship as between a garnishee and the assessee. This construction of the Sub-section is strengthened by the last paragraph in Section 46(5A). A person to whom the notice has been issued has only to object that the sum demanded or part thereof is not due to the assessee or that he does not hold any money on account of the assessee. He has not to say that he is not likely to owe or to hold money. It seems to us that the expressions 'may become due' or 'may subsequently hold money' suggest, in the context, a subsisting relationship between the person served with a notice and the assessee, e. g., assessee's employer or banker, or debtor, or a person paying annuity to him ; they do not suggest a bank with which he has never dealt, a person he has never lent money to or dealt with, or all persons who may possibly in the future employ an assessee out of job or work. If the contention of the department were to be accepted, the Income-tax Officer could send a circular letter under Section 46(5A) in respect of all defaulters to all possible employers or traders. This would cast enormous burden on persons receiving such notices. We cannot sustain a construction which could lead to such results. We agree with the conclusion arrived at by the High Court."

26. Relying on the above two decisions, Mr. Ghosh contended that although the words of Section

46(5A) of the repealed Act which, I have said, corresponds to Section 226(3) of the Act, are of the widest amplitude, the courts have cut down the plain meaning of the words on the ground that any other construction would deprive the parties of their ordinary private rights and would destroy such rights by a side wind. According to this contention, where giving a literal meaning to the words employed in a fiscal statute, would lead to au absurdity of construction or destruction of private rights or rights of third parties, I should adopt the same approach as was adopted by the Madras High Court and the Supreme Court and hold that although the money payable by the Coal Board may come within the literal meaning of the words "money is due" or "may become due" to the assessee, those words should be given a restricted meaning in the facts and circumstances of the present case.

27. In my view, this contention of Mr. Ghosh should be accepted. To adopt a literal meaning of the words and to hold that this money which is payable by the Coal Board to the petitioner-company as and by way of assistance could be paid by the Board to the income-tax department, a construction which the revenue invites me to adopt, would lead to an absurdity. In my view, such payment by the Coal Board to the revenue would result in a breach of the statutory obligations of the board with regard to the utilisation of its fund as laid down in Section 12 of the Coal Mines (Conservation and Safety) Act, 1952, Such a construction is not permissible in view of the principles laid down by the Madras High Court and the Supreme Court in the cases cited above.

28. I also accept the contention of Mr. Ghosh that the petitioner was not entitled to pay any part of the assistance received from the Coal Board towards the discharge of its income-tax liabilities. Consequently, the revenue cannot be in a better position with regard to the Coal Board and call upon it to pay any part of the amounts which are due or which may become due to the petitioner-company as and by way of assistance, towards payment of the income-tax liabilities of the petitioner-company. To adopt any other construction would, in my view, lead to the Coal Board committing breach of its statutory duties as also the petitioner-company committing, a breach of the conditions which are attached to the grant of assistance from the Coal Board.

29. I, therefore, hold that the revenue is not entitled to call upon the Coal Board to pay any money which is due or payable of may become due or payable by the Coal Board to the petitioner-company.

30. In that view of the matter, this contention of Mr. Ghosh succeeds and the impugned notice must be held to be void.

31. Mr. Ghosh next contended that the impugned notice should have been addressed to the Coal Board itself and not to its Secretary to whom it has been addressed. It is argued that such a mode

of address to the Secretary of the Coal Board is in violation of the provisions of Section 282 of the Act.

32. Before I deal with this contention, it may be useful to set out Section 282(2) which is in the following terms :

"Any such notice or requisition may be addressed-

(a) in the case of a firm or a Hindu undivided family, to any member of the firm or to the manager or any adult member of the family ;

(b) in the case of a local authority or company, to the principal officer thereof ;

(c) in the case of any other association or body of individuals, to the principal officer or any member thereof ;

(d) in the case of any other person (not being an individual), to the person who manages or controls his affairs."

33. Mr. Mitter, on behalf of the revenue, contended that this was a case which came under Section 282(2)(d) and the Coal Board was "any other person" within the meaning of that Sub-section. According to Mr. Mitter, since the notice was addressed to the Secretary who is a person, who manages or controls the affairs of the Board, the mode of address of the impugned notice should be held to be in compliance with the provisions of Section 282(2)(d) of the Act.

34. In my view this contention of Mr. Mitter should be accepted. It appears from Rule 13(2) of the Coal Mines (Conservation and Safety) Rules, 1954, that the Secretary of the Coal Board is a principal executive officer of the Board. That being so, it must be held that he is a person who manages and controls the affairs of the Board subject to the direction of the Chairman of the Board.

35. As such, the notice addressed to the Secretary, in my view, does not violate the provisions of Section 282 of the Act. This contention of Mr. Ghosh is therefore, rejected.

36. Lastly, Mr. Ghosh contended that a notice under Section 226(3) of the Act cannot be issued in respect of any tax due under the Indian Income-tax Act, 1922, now repealed. In view of my finding on the first point, it is not necessary to express any opinion on this aspect of the matter.

37. In the result, this application succeeds and the Rule is made absolute. There will be a writ in the nature of mandamus directing the respondents to forthwith recall, cancel and withdraw the

notice dated 25th February, 1967, and a writ in the nature of prohibition restraining the respondents from giving any effect to the said notice in any manner whatsoever. The respondents would, however, be at liberty to proceed according to law. There will be no order as to costs.

38. The operation of my order is stayed for a fortnight from date.