PATNA HIGH COURT

Sawar Mal

Vs

State Bank of India

Civil Writ Jurn. Cases Nos. 3310 of 1985, 1807, 3568 and 5997 of 1983, 2632 and 5792 of 1985

(S.S. Sandhawalia, C.J. and Ram Nandan Prasad, J.)

02.05.1986

JUDGEMENT

S.S. Sandhawalia, C.J.

1. Whether Article 15 (inserted by Bihar Act of 1974) of Schedule I of the Bihar and Orissa Public Demands Recovery Act, is beyond the competence of the State Legislature, is the significant common question in this set of 6 writ petitions, placed for an authoritative decision by a Division Bench.

2. The matrix of facts may be briefly noted from *(Sawar Mal Choudhary v. The State Bank of India and others[1]).* The petitioner purchased a truck under the educated employment scheme, which was financed partly by the State Bank of India, Katihar Branch, by raising a loan of rupees one lac. An agreement was duly executed between the petitioner and the State Bank of India, through a hypothecation deed and it is admitted that the petitioner had made certain payments towards the loan advanced by the respondent State Bank of India. Apparently, on the failure of the petitioner to make repayment of the loan, the respondent Bank sent a requisition, under the Bihar and Orissa Public Demands Recovery Act (hereinafter referred to as the Act), on the 26th April, 1984, on the basis of which a Certificate Case No. 5 of 1984 was registered. The service of notice under Section 7 was duly made on the petitioner and he filed objections challenging the authority of the Bank to realise the loan in question. All the objections were rejected by the Certificate Officer, and an order for issuance of warrant for arrest against the petitioner was passed on the 10th of November, 1984. Allegations are made that the Bank had failed to pay the requisite court-fees in accordance with the provisions of Section 5 of the Act, and that the requisition, contained in Annexure-'1', was not duly filled up, as prescribed.

3. The somewhat hypertechnical sketchy averments made in the original writ petition stand stoutly controverted in the counter-affidavit of the respondent State Bank of India. Therein it has been averred that the requisite court-fee amount of Rs. 4,929.80 paise has been duly paid and that the requisition in Form 2 was duly sent to the Certificate Officer by the Branch Manager, duly filled in, and signed. The allegations
in paragraphs Nos. 10 to 13 of the writ petition have been denied. Similarly, in the counter-

affidavit filed on behalf of Respondent No. 2, the District Certificate Officer, Katihar, the allegations in the Writ petition have been controverted.

4. However, subsequently, on the 16th of Dec. 1985, a supplementary petition had been moved on behalf of the petitioner, laying a challenge to the constitutionality of Article 15 of Schedule I to the Act. It is the claim that the said article is not covered by Entry 43 of List II of the Seventh Schedule to the Constitution of India, and, consequently, the Bihar Legislature had no competence to enact Bihar Act of 1974. It is the case that the impugned Article 15 of Schedule I pertains to Banking, which is exclusively a Central subject, by virtue of Entry 45 of List I of the Seventh Schedule to the Constitution. In the supplementary affidavit, reference has been made to the other connected writ petitions, which stand admitted on the identical issue of the vires of Article 15 of Schedule I to the Act.

5. In view of the patent significance of the question raised and the obvious urgency of the matter, these connected set of writ petitions have been directed to be expeditiously heard by a Division Bench, and, that is how they are before us.

6. Inevitably, in the context of a pristinely legal challenge on the ground of incompetency of the State legislatures, the issue must necessarily turn on the language of the relevant constitutional and statutory provisions. However, before one adverts to them and analyses the same, it is apt to have a bird's eye view of the legislative history. The predecessor statute herein is the Bengal Public Demands Recovery Act, 1913 (Act 3 of 1913). The Bihar and Orissa Public Demands Recovery Act, 1914 (Act 4 of 1914) was notified in the gazette on the 1st of July, 1914. Plainly enough, it is a pre-Constitution legislation which has held the field for now 72 years. Schedule I to the said Act is an integral part of the statute framed with particular reference to Section 3(6) and proviso (b) to Section 43 of the Act. It would appear that originally it had fourteen Articles therein. Admittedly, the impugned Article 15 thereof was inserted by Third Ordinance No. 110 dated the 26th of Aug. 1973 which was subsequently followed by the amending Act 4 of 1974 which indeed is in *pari materia* with the provisions of the said Ordinance. It would thus appear that the provisions of Article 15 have also so far held the ground for the last 14 years without any meaningful constitutional challenge.

7. However, learned counsel for the petitioners have, with vigour and vehemence, assailed the relevant part of the impugned Article 15. To appreciate the rival contentions, it becomes necessary to quote the constitutional and the statutory provisions in extenso at the very outset :-

> "The Constitution of India.
>
> Seventh Schedule
> (Article 246)
> List I - Union List.
> x x x x x x
> 45. Banking.
> x x x x x x

List III - Concurrent List.

x x x x x x

> 43. Recovery in a State of claims in respect of taxes and other public demands, including arrears of land-revenue and sums recoverable as such arrears, arising outside that State.
> x x x x x x"
> Section 316) of the Act reads as under -
> "3. Definitions.- In this Act, unless there is anything repugnant in the subject or context :-
> x x x x x x
> (6) 'public demand' means any arrears or money mentioned or referred to in Schedule I, and includes any interest which may, by law, be chargeable thereon up to the date on which a certificate is signed under Part II;
> x x x x x x x"
> Article 15 of Schedule I to the Act runs as follows :-
> "15. Any money payable to -
> (i) State Bank of India constituted under the State Bank of India Act, 1955 (No. 23 of 1955); or
> (ii) a Bank specified in column (2) of the first schedule to the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970 (Act V of 1970); or
> (iii) a company or a corporation or a statutory body, including a registered society carrying on financial transaction, owned by or in which, Government has a majority of shares or which, is managed by an authority appointed under any law for the time being in force; or
> (iv) the Bihar State Electricity Board, in respect of which the person liable to pay the same has agreed, by a written instrument that it shall be recoverable as public demand".

For the sake of clarity it may perhaps be noticed at the very outset that the challenge in these petitions has been focused only on the first two categories of Article 15, namely, with regard to monies payable to the State Bank of India or banks specified in column (2) of the first Schedule of the Banking Companies (Acquisition and Transfer of Undertaking Act, 1970.

8. Before us the rival stands were primarily rested on entry 45 of the Union List I as against entry 43 of the Concurrent List III. Inevitably, in a way the import of these legislative entries is what we are called upon to construe and though the matter is well settled, yet it is somewhat necessary to hearken broadly to the approach for the true construction of these legislative entries. By now it is established beyond cavil that the entries in the legislative list should not be read in a narrow restricted or pedantic sense. Each general word therein should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it. The widest possible construction according to the ordinary meaning must be put upon the words used therein. If authority is needed for this well settled proposition, there is no dearth therefor and a reference could be made to *Navinchandra Mafatlal v. Commr. of Income-tax, Bombay City*[2] and *Sri Ram Ram Narain Medhi v. State of Bombay*[3]

9. The core of the argument of Mr. Trivedi, who opened the attack on behalf of the petitioners in challenging the first two clauses of Article 15 of the Schedule is that these primarily pertain to banking. It is pointed out that by virtue of entry 45 of the Union List I banking is a completely central subject. Learned counsel relied on Section 5(b) of the Banking Regulation Act, 1949, which attempts some definition of this wide ranging term as under :-

> "5. Interpretation. - In this Act unless there is anything repugnant in the subject or context,-
> x x x x x x
> (b) 'banking' means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawal by cheque, draft, order or otherwise;
> x x x x x x x"

On the aforesaid premises it was sought to be argued that the State Bank of India and the other nationalised banks were primarily doing the business of banking by borrowing and lending money, and, therefore, every legislation appertaining thereto could be covered by Entry 45 of Union List I and was thus within the domain of Parliament alone. It was his case that any intrusion in this arena is beyond the pale of State Legislatures.

10. To appreciate the aforesaid argument in proper perspective, the relevant part of the scheme of the statute deserves notice in passing. This again has to be viewed in the context of the fact that the phrase 'public demand' is not defined either in the Constitution or in the Seventh Schedule thereto pertaining to the legislative entries, nor in the Central General Clauses Act or the Bihar and Orissa General Clauses Act. Indeed, no definition of this phrase, apart from the one in the Act itself, to which reference follows hereafter, could be brought to our notice. That the phrase 'public demand' intrinsically is one of the widest amplitude cannot be denied. It is against this background that one has to construe the definition given in Section 3(6) of the Act. Significantly the constitutionality of this wide ranging definition has not even remotely been challenged before us and perhaps could not possibly be so done. Once that extensive definition is accepted then moneys due to the State Bank of India, which is nothing but a limb or instrumentality of the State, and equally the nationalised Banks, would clearly come within the wide ranging ambit of 'public demand'. Now in the Act Sub-Section (6) of Section 3 has in terms defined public demand for its purposes. This definition is by direct reference to Schedule I. The said Schedule then has its heading as 'Public Demands' and at the same time makes express reference to Section 3(6). It is thus manifest that Section 3(6) and Schedule I are one integral whole, which have to be construed as part and parcel of each other.

But what perhaps calls for pointed notice in this context is that under the Act the definition and the concept of 'public demand' becomes one of the widest amplitude. Even in its ordinary common parlance and dictionary meaning the public demand is a wide ranging concept. However, even this has been further and deliberately expanded by the legislature to include within its sweep any arrears or monies which may come to be mentioned or referred to in Schedule I including any interest accruing thereon. It deserves highlighting that Section 3(6) is not merely an inclusive definition but expressly says that 'public demand' means whatever may be specified in Schedule I. In the result, even the broad sweep of public demand is further

widened by the statute herein and, in any view, designedly. In logical essence it leads to the result that for the purposes of this Act, a public demand is only that arrears or money which finds place in Schedule I even by reference. It seems that the legislature has deliberately not attempted to define 'public demand' or limiting the same. Thus it may well be that something which may otherwise appear to be a public demand would be excluded from the sweep of the Act if it is not included or does not find reference in Schedule I. In the converse, whatever arrears or money which the legislature chooses to incorporate in Schedule I becomes by virtue of the definition under Section 3(6) a public demand for which recovery can be made under the Act. The scheme of the definition under Section 3(6) of the Act and the frame of Schedule I complementary thereto thus becomes the key to the interpretation of these provisions.

11. Once the aforesaid view is taken, the somewhat diffused arguments raised in this context fall into their proper place. Therefore, merely legislating on what the legislature thinks as a public demand and providing for its recovery is not an exercise in banking. If the framers of the law are of the view that arrears or money due to the State Bank of India (which admittedly has been for a long time an entirely State enterprise), and equally to the banks nationalised later, is a public demand worthy of expeditious recovery then it cannot be easily said that this exercise is one of banking simpliciter. That the legislature in its wisdom may think that arrears or monies due to this class of banks should be recovered with the same expedition as his extended to money and other less significant public demands under Articles 1 to 14 of the same Schedule would not, in my view, imply any intrusion into the pristine field of banking. By way of example, the new Article 15 also provides for recovery of sums due to the Bihar State Electricity Board if it has been so agreed but it can hardly be said that this would be legislation with regard to electricity. All such provisions plainly are in respect of that which, in the eye of law and the intent of legislature, is a public demand deserving expeditious recovery as against the other tardy processes of the law. Swift recovery of public demands or monies is not necessarily banking. To reiterate and, if necessary, to repeat, there is not only no constricted definition of 'public demand' in Section 3(6) but indeed it is deliberately extended and expanded one by virtue thereof. The legislature has not chosen to put 'public demand' in the Procrustean Bed of a straitjacketed definition but on the contrary has left its doors wide open to include any arrears or monies which the legislature in its wisdom may choose to place in Schedule I. To put it conversely, by a deeming fiction any arrears or money mentioned or referred to in Schedule I *ipso facto* becomes a public demand recoverable under the Act. It had to be conceded that recoveries under Articles 1 to 14 of the Schedule pertaining to monies due to the State or its organs or legal authorities or co-operative societies, etc. are not seriously challengeable. If that is so, one fails to see how recoveries of arrears or monies due to entirely State owned or nationalised banks can be on a radically different footing. Mr. Trivedi, the learned counsel for the petitioners, has fairly conceded that there was no decision or authority in favor of the somewhat extreme stand he had taken in this context. The submission must, therefore, be rejected both on principle and on the plain language of the statute.

12. Mr. Thakur Prasad, the learned counsel for the petitioners in C.W.J.C. 5997 of 1983, had then sought to make flanking attacks from different angles. He sought to place reliance on entries 43 and 45 of List II (State List) which are in the following terms :-

> "43. Public debt of the State."
> 45. Land revenue, including the assessment and collection of revenue, the maintenance of

land records, survey for revenue purposes and records of rights, and alienation of revenues."

The contention raised was that the State Legislature could under the Act recover only that which was due either as a public debt or land revenue of the State. According to the Counsel, under the Act public demand has to be confined to what is due to the State of Bihar and not to any other person unless expressly warranted and specified by another Central statute. Reliance was sought to be placed on passing observations in *Kanhaiyalal Dabriwala v. State of Bihar*[4], which pertained wholly to the issue of court-fees payable by a Bank in certificate proceedings.

13. The argument aforesaid seems to stem from some misapprehension or fallacy with regard to what is a public debt as against a public demand. The two phrases are certainly not synonymous. It is somewhat simplistic to equate the wide ranging varied public demand with the public debt of the State and there is no warrant for such a proposition. Neither principle nor precedent could be cited for any such contention. As noticed already, under the Act, public demand is what is mentioned or referred to in Schedule I and in the converse any arrears or monies placed by the legislature in the said Schedule would become a public demand. These are, therefore, in a way convertible term. As noticed already, the legislature has not chosen to spell out any intrinsic definition of 'public demand' but by a circular definition has extended its meaning to whatever is contained in the Schedule. Equally, it is not possible to say that barring public debt of the State the only other public demand is the land revenue due to State Governments. Nothing, therefore, seems to flow both on principle or the language of Entries 43 and 45 of List II of the Seventh Schedule. It cannot possibly be said that only land revenue or collection of revenue and public debt of the State can be the only public demands under the Act. Indeed this stand receives the lie direct from some of the other articles in Schedule I of the Act. For instance, Article 14 pertains to recoveries in favor of co-operative societies. Again Article 9 is in the terms following :

"Any money payable to a servant of the Government or any local authority, in respect of which the person liable to pay the same has agreed, by a written instrument duly registered that it shall be recoverable as a public demand."

Equally, Article 10 is with regard to stamp duty under the Estates Partition Act, 1897. It bears pointed notice that the Indian Stamp Act is a Central Act. Yet recoveries thereunder are authorised by this article. All these would clearly indicate that the various articles in Schedule I are not pointedly confined only to either public debt or the State demands or to land revenue alone. These articles extend to other wide ranging fields as well. Construing the in *pari materia* provisions of the Bengal Public Demands Recovery Act, 1913, which, as already noticed, is the predecessor statute, the Division Bench of the Calcutta High Court, in *N.C. Mukherjee and Co. v. Union of India*[5] had observed as under :-

"The Bengal Public Demands Recovery Act, 1913, enables recovery of public demands referred to in Schedule I 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."

An identical view has then been recently taken in *Harish Tara Refractories (P) Ltd. v. Certificate Officer*[6]

> "In the First Schedule, along with the arrears of revenue and other moneys due to the State, a number of items have been included which are not moneys payable to the State at all. Rule 8 relates to rent payable in respect of property belonging to a private individual which is under the charge of or is managed by any Court of Wards or the Revenue Authorities on behalf of that private individual. Rule 9 is in respect of money payable to a servant of the Government or of any local authority. Rule 12 is in respect of any money awarded as compensation under Section 2 of the Bengal Land Revenue Sales Act, 1868 and Rule 14 relates to any money ordered by Liquidator appointed under Section 42 of the Co-operative Societies Act, 1912, to be recovered as a contribution to the assets of a Society or as the costs of liquidation.
>
> Therefore, it is clear that 'public demands' under the Bihar and Orissa Public Demands Recovery Act, 1914, include not only moneys, payable to the State but also moneys which cannot ordinarily be regarded as public demands.
>
> Having regard to the provisions and also the scheme of the Bihar and Orissa Public Demands Recovery Act, it is not possible to uphold the contention that the money payable to the State Bank of India not being a 'public demand' could not be realised under the Bihar and Orissa Public Demands Recovery Act. In this connection, it should also be borne in mind that the State Bank of India is a body fully owned and controlled by the Central Government. It was
>
> nationalised for public purpose and it is managed by or on behalf of the Government of India for the benefit of the public. It is not an independent body like the British Broadcasting Corporation. It was held by a Division Bench of the Bombay High Court in the case of *State Bank of India v. Kalpaka Transport Co. Pvt. Ltd*[7]. that the State Bank of India was an agency of the Government."

I am inclined to agree unreservedly with the aforesaid enunciation, and, also for the
added reasons given earlier, it has to be held that 'public demand', both generically as also with regard to what is included in Schedule I to the Act, is not to be constricted only to either the public debt of the State or demands due to the State or its land revenue collections only.

14. Another limb of the aforesaid contention was that the recoveries which do not come within the ambit of Entries 43 and 45 of the two Lists can only be made if another Central statute independently provides for such recovery thereunder as a public demand recoverable under the respective State Statute. To buttress this contention, reference was made to Section 47(2) of the Income-tax Act, 1922, which was later substituted by Sections 222 and 223 of the 1961 Act. Similar or identical provisions were sought to be referred to as Section 8 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, Section 8 of the Payment of Gratuity Act, Section 142 of the Customs Act and a number of other statutes as well. In the light of the aforesaid provisions the submission of the learned Counsel was that the Banking Companies Act,

1949, and the subsequent Banking Regulation Act have no such provision authorising the collection of amounts due to banks as public demand. This, according to Counsel, being an imperative requirement, in its absence the State Legislature could not legislate for recoveries pertaining to Bank dues. In sum, the submission is that in respect of a Central subject, the Central statute itself must provide for its recovery under the State statutes pertaining to public demand recoveries. Reference was made to clauses (2) and (3) of Article 246 of the Constitution which pertain to the exclusive powers of legislation of the Parliament and State Legislatures and to Article 254 with regard to inconsistency between laws made by either of them. Reliance was attempted to be placed on *Purushottam Govindji Halai v. Additional Collector of Bombay*[8]

15. The aforesaid contention, though it might bring credit to the ingenuity of the learned Counsel, is nevertheless untenable on a close analysis. Merely because a Central statute may expressly authorise recoveries under the respective State statutes for public demands, it cannot possibly be said that it would bar the State legislatures themselves from doing so by their own mandate. This is not, indeed, one-way street, but a broader highway. It is plain that with regard to money recoveries under Central statutes the Centre may not have the machinery or the authorities for such recoveries in all the States within the Union. It may, therefore, well fall back on and authorise such a recovery under the State statutes with regard to public demands within their respective jurisdictions which may already be in existence. Such Central recoveries
would otherwise not be included in the Schedules as public demands of the respective State statutes. Therefore, inevitably, where it is so desired, they have to be authorised or included within the ambit of such public demands by the Central Legislature itself. This, however, can possibly be no ground for creating a bar against the State Legislatures themselves for making such recoveries or include them in the category or list of public demands recoverable under their own State statute. Indeed, the contention of Mr. Thakur Prasad may well boomerang upon him. On his own stand, recoveries of public demands, falling squarely under the exclusively Central legislation, are permissible under the different State statute pertaining to recoveries of
public demands. The Constitution Bench, in *Purushottam Govindji Halai v. Additional Collector of Bombay*[9] had in terms upheld the recoveries of the arrears of Central income-tax under the Bombay City Land Revenue Act and other State legislations for recoveries of public demands in their respective territories. If that be so, it may well be said that, if Central revenue and demands can be validly authorized to be recovered by the machinery provided by the State statutes for recoveries of public demands, it would be more so within the province of State Legislatures themselves to define and include what they deem to be a public demand and to then authorize its recoveries under the respective statutes. Therefore, the contention of the learned Counsel for the petitioners, far from aiding them, would lend positive support to the other side, because the converse would equally be true and the State Legislature, consequently, would be also entitled to legislate and declare as to what are public demands and the mode and methods of their recoveries in their respective statutes. The submis Thakur Prasad must, therefore, necessarily fail.

16. Mr. Thakur Prasad raised yet another ingenious argument with regard to Entry 43 in the Concurrent List III. He very fairly conceded that apart from this Entry 43, there is no other entry for recovery of public demands either in the State List II or in the Union List I. Admittedly, in all the three Lists in the Seventh Schedule this is the only entry pertaining to recoveries of public demands. However, he ingeniously contended that this entry pertains only to recovery of public demands outside the State and had no application within it. Reliance was placed on passing observations in the Full Bench judgement in *P.R. Krishna Rao v. Municipal Sales Tax Officer,*

Ernakulam[10] and *Ms N.C. Mukherjee and Co. v. The Union of India*[11]

17. The contention that Entry 43 of the concurrent list pertains only to recoveries of taxes and public demands outside the State's jurisdiction appears to me as wholly untenable on principle and the language of Entry 43 of List III itself. It is the admitted position that in the whole gamut of the Seventh Schedule there is no other entry for the recovery of public demands. On principle, therefore, it looks inconceivable that the framers of the Constitution, when contemplating the recovery of public demands, would make provision for such recoveries outside the State but none at all for similar recoveries within the State itself. Plainly enough, the major burden of recoveries of State taxes and their public demands arises within their own territories and not outside it. Such recoveries beyond the jurisdiction would normally be few and more in the nature of an exception to the rules. To attribute to the framers of the Constitution any
designed anomaly that whilst providing for recoveries of public demands they altogether omitted such recoveries within the State and confined themselves only to outside the State, seems to me as wholly unwarranted. Therefore, it must be held that Entry 43 of the concurrent list pertains both to the recoveries of taxes and other public demands within and without the respective States.

18. A close analysis of the language of Entry 43 including the aid of the punctuation therein would itself indicate that as the solitary entry on the subject it covers both recoveries within and without the State. The opening part of the entry is unqualified and talks of recovery in a State of claims in respect of taxes and other public
demands. When this is read plainly it is obvious that no such limitation of such recoveries being entirely outside jurisdiction would arise. It is only as an inclusive provision that it has further added that arrears of land revenue and sums recoverable as such arrears, arising outside that State, would also be within the ambit. The latter part of Entry 43 is thus an extension of the power to recover public demands outside the State as well and not an abridgement of the larger and general power already conferred to recover taxes and other public demands.

19. Yet again, one has to remand oneself that Entry 43 occurs in the concurrent list. Therefore, it is applicable both to the State as also to the Central or Parliamentary legislation. If this entry is read, as advocated by the petitioners, then in its application to the Central claims for taxes and public demands, it would mean that such recoveries have to be made outside the territories of India. I do not think that in its application to the Union, Entry 43 is intended for any such extra territorial legislation in other countries. Indeed, on the stand taken on behalf of the petitioners, Entry 43 in its application to the Union would raise anomalous, if not mischievous, results, which have to be avoided.

20. Mr. K.P. Varma, learned Counsel for the respondent State Bank of India, highlighted that even the petitioners had conceded that under Entry 43 State would be entitled to recover public demands arising outside the State. Consequently, it was undisputed that this entry in fact squarely covers the field of recoveries of public demands. The sole question that would remain on the language of Entry 43 would, therefore, be, whether the words, "arising outside that State" at the end of the said entry, were intended to abridge the power of recovery of public demands or to enlarge or extend it even to the demands arising outside the State. Mr. Verma rightly posed a question that if Entry 43 authorises recoveries of public demands even outside the State, what possible bar there could be for the self-same recoveries within the territories of such States themselves. He rightly pointed out that such recoveries within the State territories were implicit

and inherent to the situation and thus, 'outside that State' was only by way of enlargement and extension. Learned Counsel also pinpointed that the entry did not employ the word 'only' to qualify such demands arising outside the State. According to Mr. Varma, and, in our view rightly, this was clearly a clause enlarging the basic provision of the entry within the State to include within its sweep such recoveries outside the State as well.

21. Undoubtedly, an observation in *P.R. Krishna Rao v. Municipal Sales Tax Officer, Ernakulam* (supra)(FB) does lend a handle to the contention raised by Mr. Thakur Prasad. However, on this aspect the reasoning of the judgement is questionable. A close perusal of the judgement would indicate that the primal question therein was whether Entry 43 is confined to claims which arose subsequent to the Constitution or whether it extends to the claims that had already arisen before the Constitution of India was promulgated. Indeed, the question whether such recoveries are to be made within the State or outside it was not even remotely in the ken of the Full Bench. Nonetheless, in the course of the discussion, there is an isolated line, observing so on apparently a superficial reading of that entry. This, according to me, is plainly an obiter dictum. There is neither any reasoning therefore, nor any principle or precedent is cited in its support. It would seem passingly strange that this entry, which is the only one providing for public demands, pertains to demands outside the State whilst admittedly no other entry provides for recoveries of public demands within the State itself. There seems no warrant for reading an inclusive provision in an inverted manner by holding that what in included therein by way of extension or enlargement is meant to be the only provision and the basic power of making such recoveries within its own territory is excluded. With the deepest deference on this specific point, I would wish to record my dissent from the solitary and isolated observation in the Full Bench judgment, which, as noticed earlier, is otherwise an obiter dictum.

22. Similar fallacy seems also to have crept in the case of *N.C. Mukherjee and Co. v. Union of India* (supra). Therein also the basic question at issue was not even remotely whether Entry 43 of the concurrent list pertains to recoveries of public demands only outside the State or within it. Nevertheless, in the very opening of paragraph 12 of the report it was observed that "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 the State." This observation plainly enough begs the very question that is at issue. One fails to see how it is plain or axiomatic that Entry 43 of the concurrent list pertains exclusively to recoveries outside the State and not within. Indeed it can be said that on a plain grammatical construction, Entry 43 may extensively cover both the demands within no without the State. There is again no reasoning or principle or authority cited for an observation which was considered merely axiomatic, and, as has been shown above, was not at all warranted. With the deepest deference on this aspect, I would respectfully differ from the observations in N.C. Mukherjee and Co's case (supra).

23. To conclude on this aspect, I am inclined to hold that Entry 43 of the concurrent list envisages within its wide sweep recoveries in respect of taxes and public demands both within and without the State.

24. Mr. G.C. Bharuka, learned counsel for the petitioners in Civil Writ Jurisdiction Case No. 1807 of 1983 however, tried to assail the impugned provisions of Article 15 of the Schedule from a somewhat different angle. By reference to the Stroud's Dictionary and Black Dictionary he

reiterated the stand that money-lending was an intrinsic and integral part of the Banking business, and, consequently, recoveries of such moneys lent was inherently and absolutely a banking transaction. On that premise, it was contended that these transactions can come within the ambit of legislation only under Entry 45 of List I. Therefore, Parliamentary legislation alone and in particular, provisions in the Banking Act or in the Banking Companies Regulation Act only can authorize such recoveries. Reliance was placed on Entry, 95 of List I, Entry 65 of List II and Entry 46 of List III of the Seventh Schedule to the Constitution, which, in almost identical terms pertain to the jurisdiction and power of all courts (except the Supreme Court) with respect to any of the matters in the respective lists. Herein the core of the contention of the learned Counsel was that in each case the jurisdiction and power of all such courts had to be circumscribed by the subjects contained in each of the lists. Therefore, the Certificate Officer, being a revenue court of limited jurisdiction, the State legislature cannot confer or enlarge its powers or jurisdiction to recover something which is governed by the entry pertaining to Banking, namely, Entry 45 of List I. In sum, the submission was that the Union or the States can confer jurisdiction and powers on their respective courts only with regard to the matters contained in the subjects in their respective lists and cannot intrude in the fields reserved for each other. Counsel attempted to place reliance on *State of Bombay v. Narottamdas Jethabhai*[12]

25. The somewhat involved contention of Mr. G.C. Bharuka appears to me as suffering from the fallacy of begging the very question that is at issue. It assumes or proceeds on the premise that recoveries of monies due to the State Bank of India or the nationalised banks are stricto sensu banking exclusively and cannot be a public demand. Now admittedly the State Bank of India and the nationalised banks are virtually limbs and instrumentality of the State itself. One fails to see how monies due to such like wholly State owned bodies are in a way not owed to the State itself or on any case cannot assume the character at least of a public demand when widely construed. This aspect has been dealt with some detail in the opening part of this judgement in Paras 9 to 11 and it would be wasteful to tread the same ground again. It must, therefore, be held that recoveries of monies due to the State Bank of India or the State owned banks would come well within she ambit of public demand and are not exclusively and entirely banking stricto sensu.

26. In repelling the aforesaid contention of Mr. Bharuka, the firm stand of Mr. K.P. Varma, learned Counsel appearing for the respondent State Bank of India, was that the recoveries of monies due to the State owned Banks was primarily and purely a matter of procedure and inevitably these matters could, therefore, be left to the State Governments and their civil or revenue Courts. It was highlighted that it remains undisputed that the Certificate Officer, who authorises the recoveries of public demands is a Court, and, in any case, would undoubtedly come within the ambit of revenue Courts. Consequently, the State Government would have undoubtedly the legislative power to govern the procedure and matters before the Certificate Officer. Both Entry 11A and Entry 13 of List III may, therefore, also come in play because they govern civil procedure as well. Further, because the Court of the Certificate Officer is a Court created by the State Government under its statute, the State Legislature, under Entry 11A or Entry 13 would not be barred from either legislating
about the same or adding to the list of recoveries through such a Certificate Officer. Mr. Varma, in the alternative, therefore, canvassed for the acceptance of the view in *Harish Tara Refractories (P.) Limited v. Certificate Officer* (supra), holding that entry 11 A and Entry 13 of List II also sanctified the enactment of Article 15 of Schedule I to the Act.

27. As is manifest from the gravamen of the discussions in this judgement, the primary contest herein was betwixt Entry 45 of the Union List I as against Entry 43 of the Concurrent List III. I have already held that monies due to the State owned banks would come well within the ambit of public demands and equally their recovery both within and outside the State, by virtue of Entry 43 of the Concurrent List III. However, no serious challenge could be laid before us to the detailed reasoning in *Harish Tara Refractories (P.) Limited v. Certificate Officer* (supra) deriving the sanction for Article 15 of Schedule I from Entries 11A and 13 of the Concurrent List
III. In the alternative, therefore, I find no reason to differ from the said judgement either, and, the stand of the respondents based thereon may also be well accepted as an additional ground for sustaining the competency of the State legislature to enact Article 15 of Schedule I to the Act. The contention of Mr. Bharuka, therefore, must be rejected.

28. Lastly, one must notice, in fairness to Mr. Varma, his firm stand that even on the doctrine of pith and substance, Article 15 of the Schedule I would come well within the ambit of Entry 43 of the Concurrent List III. He rightly pointed out that by now it is well settled that entries in the lists are not meticulously exclusive and may well overlap each other. The recovery of monies due State owned banks is in pith and substance a public demand and even if these incidentally overlap an element of banking, it would squarely remain within the sweep of Entry 43 of the Concurrent List. Even accepting the argument of the petitioners at the highest, merely because such a recovery may marginally trench on the subject of banking, it would, in no way, detract from its validity because in pith and substance this still remains to be public demand as such.

29. The aforesaid contention is plainly meritorious. It is by now settled beyond cavil that if the impugned legislation is in pith and substance within the sweep of a legislative Entry, the same would not be invalidated merely because of the fact that it incidentally transgresses into the subjects in a rival List. This has been so held way back in 1940 by the Federal Court, in *Subramanyam Chettiar v. Muthuswamy Goundan*[13], which was expressly approved and applied by the Judicial Committee in *Prafulla Kumar v. Bank of Commerce, Khulna*[14], The Final Court has reiterated this in the undermentioned terms in the *State of Rajasthan v. G. Chawla*[15],:-

> "After the dictum of Lord Selborne in *Queen-Empress v. Burah*[16], oft-quoted and applied, it must be held as settled that the legislatures in our country possess plenary powers of legislation. This is so even after the division of legislative powers, subject to this that the supremacy of the legislatures is
> confined to the topics mentioned as Entries in the List conferring respectively powers on them. These Entries, it has been ruled on many an occasion, though meant to be mutually exclusive, are sometimes not really so. They occasionally overlap, and are to be regarded as enumeratio simplex of broad categories. Where in an organic instrument such enumerated powers of legislation exist and there is a conflict between rival Lists, it is necessary to examine the impugned legislation in its pith and substance, and, only if that pith and substance falls substantially within an entry or entries conferring legislative power, is the legislation valid, a slight transgression upon a rival List notwithstanding."

29A. In the light of the aforesaid authoritative enunciation, even on the doctrine of pith and substance, it must be held that Article 15 of Schedule I of the Act, would well remain within the

wide sweep of Entry 43 of the Concurrent List III, despite any alleged incidental and marginal intrusion in the field of Banking.

30. To finally conclude, the answer to the question posed at the very outset is rendered in the negative and it is held that Article 15 of Schedule I to the Bihar and Orissa Public Demands Recovery Act is within the competence of the State Legislature by virtue of Entry 43 of the Concurrent List III. In the alternative, it is equally well within the ambit of Entries 11A and 13 of the said List as well. The challenge to the constitutionality of the said article has consequently to be repelled.

31. Once it is held as above and the common pristinely legal issue stands settled, a weighty and impassable primary objection has been forcefully and vehemently raised on behalf of the respondents. It was argued that the Act itself provides effective remedies by way of statutory appeal, revision and even a review in unequivocal terms. It was contended that herein inevitably with regard to the case on merits issues of fact may well arise which can only be determined aptly in the aforesaid forums provided by the legislature. Learned counsel for the respondents reiterated that no adequate ground for bypassing or short-circuiting the remedies provided by statute has been made out here.

32. The submission aforesaid appears to us as plainly meritorious. Reference to Section 60 of the Act would make it manifest that a statutory appeal from any original order made under this Act stands duly provided. If such order is made by an Assistant Collector or a Deputy Collector or by a Certificate Officer not being the Collector then it lies to the Collector and in the event of such original order being made by the Collector himself, it would lie to the Commissioner. The five Sub-Sections of Section 60 provide for the forum, procedure, limitation, transfer, stay, etc., in the appellate jurisdiction. In particular it may be noticed that interim relief has also been taken care of by Sub-Section (5) which, in term, lays down that pending decision of any appeal, the execution may be stayed if the appellate authority so directs. What next meets the eye is the fact that though a bar is created against second appeals by Section 61, the same is softened by expressly providing in Section 62 for statutory revision against the appeal or original order as well. Therein power has been conferred on the Collector to revise any order passed by a Certificate Officer, Assistant Collector or a Deputy Collector and further on the Commissioner to revise an order passed by the Collector and lastly the Board of Revenue itself for revising any order passed by the Commissioner under the Act. Yet again a power of review has then been provided by the succeeding Section 63 itself for correcting any mistakes or error either in the making of the certificate or even in the course of any proceeding under the Act. Thus there appears to be no manner of doubt that the legislature has itself been very solicitous in providing for procedure under the Act and creating statutory forums for appeals, revisions and reviews.

33. Faced with the uphill task of by passing the numerous statutory remedies aforesaid, the learned counsel for the petitioners attempted to clutch at a straw for contending that these were either ineffective or illusory. The submission was sought to be rested first on the second proviso to Sub-Section (1) of Section 60 (inserted by the amending Act of 1974) which provides that the appellant must pay 40 per cent of the amount due or such amount as the appellant admits to be due from him whichever is greater as a condition for preferring the appeal. Reference was also made to analogous provision for revision in the first proviso to Section 62 which requires a deposit of 40 per cent of the certificate dues before the entertainment of the revision petition

thereunder. On the basis of the aforesaid provisions, learned counsel for the petitioners took the somewhat tall stand that in fact there was no worthwhile remedy by way of appeal or revision if it is hedged in by the conditions of deposit.

34. The stand taken on behalf of the petitioners has only to be noticed and rejected It may perhaps be first highlighted that under Section 62 providing for a revision what is required is not a double deposit and the second proviso thereto makes it clear that no certificate debtor shall be called upon to do so if he has already deposited this amount at an earlier stage. It would follow therefrom that where the certificate debtor has once made the deposit at the appellate stage, there is no further impediment in his way of the same nature for referring a revision. This apart, it seems to be well settled by precedent that merely providing for a condition for deposit for regulating the right of appeal or revision in no way renders it either illusory, ineffective or something which can be ignored or bypassed. It is unnecessary to elaborate this aspect on principle because, to my mind, it appears to be covered by binding authority. In *Anant Mills v. State of Gujarat*[17], Khanna, J., speaking for the Court, observed as follows :-

> "The right of appeal is the creature of a statute. Without a statutory provision creating, such a right the person aggrieved is not entitled to file an appeal. We fail to understand as to why the legislature while granting the right of appeal cannot impose conditions for the exercise of such right. In the absence of any special reasons there appears to be no legal or constitutional impediment to the imposition of such conditions.....
> Likewise, it is permissible to enact a law that no appeal shall lie against an order relating to an assessment to tax unless the tax had been paid. Such a provision was on the statute book in Section 30 of the Indian Income-tax Act, 1922. The proviso to that Section provided that - 'no appeal shall lie against an order under Sub-Section (1) of Section 46 unless the tax had been paid.' Such
> conditions merely regulate the exercise of the right of appeal so that the same is not abused by a recalcitrant party and there is no difficulty in the enforcement of the order appealed against in case the appeal is ultimately dismissed. It is open to the legislature to impose an accompanying liability upon a party upon whom a legal right is conferred or to prescribe conditions for the exercise of the right."

35. This identical point was also the subject matter of consideration by the Division Bench in *Sri Chand v. State of Haryana*[18], After an exhaustive discussion of principle and precedent, it was held therein as under :-

> "Once it is held, as it necessarily must be that the right of appeal stems merely from its conferment by the legislature then it is equally evident that the same authority may regulate, impair or hedge it down with onerous conditions. This position, apart from being clear on principle, is equally covered by binding precedent.....
> On this aspect, therefore, there is no choice but to conclude that the legislature is perfectly within its right to regulate the right of appeal conferred by it by imposing conditions or restrictions on its exercise."

35A. In the light of the aforesaid authoritative enunciations the submission on behalf of the petitioners must be rejected and it has to be held that the right of appeal and revision conferred by Sections 60 and 62 of the Act are adequate and effective statutory remedies provided by the legislature.

36. As the last throw of the gambler, it was then contended on behalf of the petitioners that even though the Act has provided for an appeal, revision and review, the same would be no bar for entertaining and adjudicating the same matter in the writ jurisdiction. It was submitted that the legal issue having been heard and determined, the merits must also be similarly decided. Reliance was placed on *Ram and Shyam Company v. State of Haryana*[19], and observations of learned single Judges and Division Benches of this Court to the effect that the existence of an alternative remedy is not an inflexible legal bar for the exercise of writ jurisdiction.

36A. In view of the aforesaid submission, the fact situation in this set of cases may well be referred to. These were admitted primarily on the pristinely legal point whether Article 15 of Schedule I of the Act was beyond the competence of the State Legislature. That question plainly pertaining to the vires of the statute could not be heard in the appellate or the revisional forums below. Even otherwise this significant issue merited an authoritative and early decision by the High Court. The admission orders in this context are instructive. The common legal issue having been settled, there now appears not the least reason why the statutory remedies of appeal and revision should be bypassed. We are inclined to the view that within this jurisdiction the matter has now been concluded by the recent Full Bench judgement in *Dinesh Pd. Mandal v. State of Bihar*[20], In view of this, it seems not only unnecessary but indeed
wasteful to refer to passing observations in the earlier single Bench or Division Bench authorities on the point. It is well settled that once a point of law has been pronounced upon by a Full Bench, any observations contrary thereto by smaller Benches cannot hold the field and must be presumed to be wrongly decided. In Dinesh Pd. Mandal's case the identical issue whether the alternative remedies provided under the statute have to be exhausted before seeking the relief in the writ jurisdiction under Article 226 of the Constitution was directly the subject matter of adjudication. Therein after an exhaustive discussion and relying on *Union of India v. T.R. Varma*[21], *A.V. Venkateswaran v. Ram Chand Sobhraj Wadhwani*[22], *Premier Automobiles Ltd. v. Kamalakar Santaram Wadke*[23], *Basanta Kr. Sarkar v. Eagle Rolling Mills Ltd*[24]. and *Basanta Kumar Sarkar v. Eagle Rolling Mills Ltd.*[25], it was held as under :-

> "Therefore, the salutary rule is that the writ Court would entertain the matter only if the adequate and efficacious remedies have been first resorted to and exhausted. The failure to observe that rule can only be at the peril of crushing
> the extraordinary jurisdiction itself and ultimately rendering it inefficacious, because it is, and was never intended, to replace or substitute the ordinary legal remedies expressly provided by the Legislature. Therefore, on principle itself resort to the extraordinary jurisdiction, permissible only after resorting to the alternative remedy where available.
> .....
> Unless the extraordinary remedy of the writ jurisdiction is to be hamstrung and indeed rendered nugatory by making it a substitute for the ordinary statutory remedy, the distinction between the two has to be firmly maintained. The writ jurisdiction is not the

> remedy of the first instance where others exist. It is the remedy of the last resort. If the Legislature, in its wisdom, provides a statutory remedy, it is not for the High Courts to override and nullify that mandate";
> and it was then concluded -
> "In consonance with the above, the answer to Question II must be rendered in the affirmative, and it is held that the suitor must exhaust the remedies under the Act before seeking relief in the writ jurisdiction, unless the monstrosity of the situation or other exceptional circumstances cry out for interference by the writ Court at the very threshold."

In the context of the aforesaid authoritative enunciation, nothing at all could be pointed out on behalf of the petitioners which could even remotely indicate a situation so monstrous as to cry out for interference as an exceptional measure by the writ Court at the very threshold.

37. In fairness to the learned counsel for the petitioners, reference must be made to *Ram and Shyam Company v. State of Haryana*[26], Their Lordships therein were moved primarily by what they called the fact situation therein. It was held that for all practical purposes the impugned action therein was of the Chief Minister of the State and therefore a provision providing for a statutory appeal to the State Government was on the face of it illusory. It was rightly observed as under :-

> "To whom do you appeal in a State administration against the decision of the Chief Minister ? The cliche of appeal from Caesar to Caesar's wife can only be bettered by appeal from one's own order to oneself. Therefore this is a case in which the High Court was not at all justified in throwing out the petition on the untenable ground that the appellant had an effective alternative remedy. The High Court did not pose to itself the question, who would grant relief when the impugned order is passed at the instance of the Chief Minister of the State. To whom did the High Court want the appeal to be filed over the decision of the Court Minister ? There was no answer and that by itself without anything more would be sufficient to set aside the judgement of the High Court."

From the above, it is plain that the aforesaid case is clearly distinguishable. No such situation arises herein and we have already held that the statutory remedies provided are both effective and adequate. Counsel's reliance on this judgement is thus not well based. In any case, the observations of the larger Bench in *Assistant Collector of Central Excise, Chandan Nagar, West Bengal v. Dunlop India Ltd*[27]., appear to us as now rendering the issue beyond the pale of controversy. Whilst reiterating the stringent observations in *Titaghur Paper Mills Co. Ltd. v. State of Orissa*[28], it was held as under :-

> "Article 226 is not meant to short circuit or circumvent statutory procedure. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury

> and the vindication or public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged."

In the light of the above we find ourselves wholly unable to resort to a practice which their Lordships have, in categoric terms, so strongly discouraged. The contention of the learned counsel for the petitioners, therefore, must necessarily be rejected,

38. In the light of the aforesaid discussion and findings all the six writ petitions are hereby dismissed without any order as to costs and the petitioners are relegated to the statutory remedies provided under the Act.

39. Some apprehension was then voiced on behalf of the petitioners that the remedies

provided by the statute may now have become barred by limitation. This fear is also not otherwise well founded. Section 65 of the Act expressly extends the application of the Indian Limitation Act to proceedings therein. Sub-section (2) in term provides as under :-

> "Except as declared in Sub-section (1), or as otherwise provided in this Act, the provisions of the Indian Limitation Act, 1908, shall apply to all proceedings under this Act as if a certificate filed hereunder were decree of a Civil Court."

In the light of the above, it would be plain that Section 5 of the Limitation Act would be equally attracted and it would have been open for the petitioner to seek condonation of delay, inter alia, on the ground of having *bona fide* prosecuted a remedy elsewhere. However, to avoid the least possibility of prejudice on this score, we direct that if, so advised, the petitioners resort to the statutory remedies available to them within one month from today, no technical pleas of limitation would be raised against them.

Petition dismissed.

Cases Referred.

[1] Civil Writ Jurisdiction Case No. 3310 of 1985
[2] AIR 1955 SC 58
[3] AIR 1959 SC 459
[4]1982 PLJR 257
[5] AIR 1964 Cal 165
[6] AIR 1985 Cal 56
[7] AIR 1979 Bom 250

[8] AIR 1956 SC 20
[9] AIR 1956 SC 20
[10] AIR 1954 Trav Co. 218
[11] AIR 1964 Cal 165
[12] AIR 1951 SC 69
[13] AIR 1941 FC 47
[14] AIR 1947 PC 60
[15] AIR 1959 SC 544
[16](1878) 3 AC 889
[17] AIR 1975 sc 1234
[18] AIR 1979 Pun and Har 19
[19] AIR 1985 sc 1147
[20]1985 BBCJ 79
[21] AIR 1957 sc 882
[23] AIR 1975 SC 2238
[22] AIR 1961 SC 1506
[24] AIR 1964 SC 1260
[25] ILR (1961) 40 Pat 193
[26] AIR 1985 SC 1147
[27] AIR 1985 SC 330
[28] AIR 1983 SC 603