IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP-14776-2013
Date of Decision 10.11.2016

Dr.Harish Garg

...Petitioner

Versus

Chd.Admn. and others

...Respondents

Coram: Hon'ble Mr.Justice G.S.Sandhawalia

Present :- Mr.M.S.Cheema, Advocate
for the petitioner.
Mr.Vikas Chatrath, Advocate and
Ms.Neeru Thakur, Advocate for the respondents.

G.S.Sandhawalia, J (Oral)

The petitioner challenges the demand notices raised by the respondent-college-Government Medical College and Hospital, Sector 32, Chandigarh for Rs.5 lakh which was issued on 24.07.2012, 14.08.2012 and 28.02.2013 (Annexures P/5, P/7 and P/8). The amount is claimed on the fact that petitioner had joined the MD/ (Microbiology) course and left it before its completion. Challenge has also been raised to the notice (Annexure P/9) issued by the Assistant Collector Grade-I, Chandigarh whereby recovery is sought to be made under the provisions of *Punjab Land Revenue Act, 1887* (in short the 'Act').

In the said notice, the petitioner has been asked to deposit the amount by a particular date, failing which recovery by way of warrant of arrest or attachment of property would be resorted to. There is no dispute regarding the fact that the petitioner had taken admission in the said course. It is case of the respondent that as per the terms and conditions of the prospectus, if candidate leaves the said course before the expiry of the course, he will be liable to pay of Rs.5 lakh as compensation *for* losses incurred by the respondent institute due to mid term departure (Annexure P/4). It is the case of the respondents that petitioner had joined on 30.06.2012 (Annexure R-1) and information was given on 10.07.2012 (Annexure P/4) regarding the surrender of the said course which led to the issuance of the notice. The amount claimed is on the basis of affidavit dated 05.03.2012 (Annexure R/5) which was submitted by the petitioner at the time of applying for admission.

Counsel for the petitioner has also referred to clause 29 of the prospectus. The terms of the prospectus provided that a contract bond/indemnity bond had to be executed by the candidate who joined the said course, and he would be liable to pay a sum of Rs.5 lakh in case he leaves the course before its completion. The same reads as under:-

> *"Contract*
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> *Each Junior Resident will be on contract service for a period of three years and will be required to execute a contract bond on a non-judicial stamp paper of Rs.10/-.Copy of language of the bond to be executed can be collected from Academic Section of the college. The bond, duly completed in all respects, shall be required to be submitted at the time of joining alongwith Indemnity bond.*
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> *Any candidate who opts for confirmed seat in the counselling-cum-interview, his/her original certificates will be retained upto the finalization of the admission schedule. The same will be returned after the completion of the time schedule of admission. The attested photocopies of the*

> *complete set of required certificates will also be submitted after confirming the seat at the time of admission.*
> *If any candidate who joins the MD/ MS course, leaves the said course before the expiry of course, he/she shall be liable to pay a sum of Rs.5,00,000 (Rs. Five lac only) as compensation for losses incurred by the GMCH due to such midstream departure."*

It is not disputed that in pursuance of the admission before the indemnity bond could be executed, the petitioner had already left the institute since he had only studied for the 10 days. The resort in such circumstances to the recovery under the Act by way of summary procedure, is untenable. Sections 67 of the Act provides the procedure by which recovery can be effected which reads as under:-

> "67. Processes for recovery of arrears: - Subject to the other provisions of this Act, an arrear of land-revenue may be recovered by any one or more of the following processes, namely: -
> (a) by service of writ of demand on the defaulter;
> (b) by arrest and detention of his person;
> (c) by distress and sale of his movable property and uncut or ungathered crops;
> (d) by transfer of the holding in respect of which the arrear is due;
> (e) by attachment of the estate or holding in respect of which the arrear is due;
> (f) by annulment of the assessment of that estate or holding;
> (g) by sale of that estate or holding;
> (h) by proceeding against other immovable property of the defaulter;"

Reading of the Section would go on to show that the recovery and arrears of land revenue can be done by various methods. Section 3 sub clauses (6) and (7) of the Act, provides the definition of land revenue and the arrears which reads as under:-

"(6) "land-revenue" includes assigned land-revenue and any sum payable in respect of land, by way of quit rent or of commutation for service, to the [1] {Government} or to a person to whom the [2] {Government} has assigned the right to receive the payment.

(7) "arrear of land-revenue" means land revenue which remains unpaid after the date on which it becomes payable"

Counsel for the petitioner has referred to the Annexures to submits that he was the last candidate admitted, and also on the last date, there was no other candidate available, thereafter. Therefore, no loss has been caused to the respondent as the seats were anyways going vacant.

Counsel for the respondents, on the other hand, submits that the prospectus/hand book, has force of law, therefore, as such, is binding upon the petitioner. However, he was not in a position to show that how any recovery could be effected by resorting to the summary method under the Act in the absence of the amount having been determined, as per law, and whether the demand on the basis of affidavit, could be tenable.

The issue of resorting to the summary procedure, is covered against the respondents keeping in view the principle laid down in *The Ferozabad Fisheremen Cooperative Society* vs. *State of Punjab*, 2014 (4) PLR 309. In the said case, the dispute pertaining to the licence fee which was the recoverable from the society who was the successful bidder. The Collector had directed to recover the amount, and issued notices which had been impugned in the civil suit. Finding was recorded that defendant was not entitled to recover the amount without getting it adjudicated from the Court or authority of competent jurisdiction. The said view was upheld by this Court by framing substantial question of law that whether the Collector can issue a recovery notice without adjudication of the amount and affording opportunity of hearing to the plaintiff. The relevant observation reads as under:-

> *"13. I am of the opinion that the demand issued by the Collector for recovery cannot be sustained and must be set aside, however, it will be open to the Collector to proceed afresh in accordance with law after affording opportunity of hearing. Admittedly there is no adjudication by the Collector before rasing the demand. Collector cannot act in a coercive manner for effecting recovery as he is required to make adjudication with regard to amount after affording opportunity of hearing to the plaintiff.*
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> *14 Further perusal of record shows that notice dated 22.04.1982 was issued to Sh. Jagdish Lal, one of the functionaries of the plaintiff society by the Assistant Director Fisheries (Conservation), Kapurthala, wherein it is mentioned that fishing lease of Kapurthala District for the year 1981-82 given to the plaintiff has been cancelled due to failure to pay first and second instalments as due on 01.12.1981 and 20.03.1982. It is further mentioned in the notice that fishing rights of the notified waters of Kapurthala District would be put to re-auction. This notice cannot be treated as sufficient compliance of the principles of natural justice. Once State Government came to conclusion that some loss has been caused to the State then it must give the details of the loss caused and submit to the person who is a successful bidder in the auction affording him opportunity to defend and thereafter any recovery notice can be issued. Opportunity of hearing to the party is a necessity before adjudication of the claim. So the first question is answered in favour of the appellant.*
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> *xx xx xx xx*
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> *19 Processes for recovery of arrears as land revenue are of drastic character. The same is clear from the provisions of Section 67 of the Punjab Land Revenue Act, which includes arrest and detention of the defaulter, distress and sale of is immovable property. Under Section 158 of the Punjab Land Revenue Act, a civil Court shall not exercise*

jurisdiction, inter alia, over any claim connected with or arising out of the collection by the Government or the enforcement by the Government of any process for the recovery of land revenue or any sum recoverable as arrear of land revenue.

20. The contention of the learned State counsel appears to be tempting, however, it needs to be seen whether this is sustainable in the present case. I have already recorded a finding that without any adjudication recovery notice was issued. A subject cannot be deprived of his right to resort to ordinary Courts of law. Exclusion of the jurisdiction of the civil Courts is not to be inferred by ratiocination resting on any statutory rules. It is a firmly established principle that a person cannot be deprived of his right to resort to the Court of law except by express enactment. The summary remedy under Section 67 of the Punjab Land Revenue Act is restricted to sums legally recoverable i.e. the sums which were admitted or approved to be due and could not be extended to the sums which were alleged or claimed to be due. In this case, recovery is on account of breach of contract and the resultant loss caused to the State but the same has not been determined in accordance with law. No opportunity of hearing was provided to the appellant before determining the amount. No calculation was submitted to the appellant; as such the demand is certainly illegal. When the demand itself is illegal, jurisdiction of the civil Court is not excluded. It is within the powers of the civil Court to examine whether the demand is legal and valid and is in accordance with law. The Act does not provide for exclusion of the jurisdiction of the civil Court if the demand itself is illegal. Since it has been held as aforesaid that demand itself is illegal then the jurisdiction of the civil Court is not barred. Therefore, the question whether the civil Court has jurisdiction is answered in affirmative."

Keeping in view the above observation, it can be safely held that the amount can be recovered by filing appropriate proceedings as various remedies are available to the respondents. It is needless to say that the petitioner also gets an appropriate chance to contest the same on merits.

Reference can also be made to the observations of this Court in CWP-24317-13 titled as "*Vivek Dureja* Vs. *The Punjab State Transmission Corporation Ltd. and others*', decided on 28.01.2016 wherein also the Corporation had sought to recover the amount which pertained to the enforcement of surety bond. The Corporation had thus, been relegated to the remedy of the civil court keeping in view of the provisions of section 74 of the Contract Act, 1872. The observations read as under:-

> *"The intermingled issue which arises is that whether any order has been passed by the Corporation which would entitle the petitioner to a cause of action. The Corporation is to recover the amount in accordance with law which is by filing a civil suit in order to encash the bond or surety which has been given and the undertaking which has been given.*
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> *For this, the Corporation will necessarily have to resort to its remedy in accordance with law. In such circumstances, it is always open to the employees/ex-employees to defend the action of the Corporation by taking the pleas which they are now seeking to raise. It is settled principle that where there is an alternative and efficacious remedy provided, this Court will again not, at the first instance, also adjudicate upon the issue.*
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> *It is apparent that as per Section 74 of the Indian Contract Act, 1872, where any party quantifies a damage or penalty for the breach of the contract, the Court would have to see whether such compensation is reasonable regarding the facts and circumstances of the case."*

In similar circumstances, this Court in CWP-15654-2013 titled as *Dr.Bhavar Tushar Dattatraya and others* *Vs.* *State of Punjab and others,* decided on 30.03.2016, has held that holding back of the original documents, is not tenable on account of the State seeking its right to enforce the surety bond. The relevant portion of the judgment reads as under:-

> *"11. Accordingly, this Court is of the view that the same principle would apply in the present set of cases, specially in view of the undertaking now given by the State. Accordingly, the present writ petitions are disposed of with liberty to the State to avail alternative remedy of recovery by resorting to file*

> *civil proceedings. It is, however made clear that merely because of filing of the suits or a decision to file a suit would not be a ground to withhold any original documents of the petitioners. Similarly, any retiral benefits of the sureties, who have signed on the bonds, would not be withheld on the same principle, as the State would also have the same right of recovery against those sureties also."*

Without commenting on the merits of the case pertaining to the right of recovery, if any, of the respondent, this Court is of the opinion that the resort as such to the summary procedure by resorting to the provision of the Act is not tenable.

Accordingly, this Court is of the opinion that show cause notices under proceedings before the concerned collector are not maintainable, are quashed. However, it is made clear that it is open for the respondents to agitate their claim before the court of competent jurisdiction.

In view of the above, the respondents will return the original certificates, if any, to the petitioner within a period of two weeks from the date of receipt of the certified copy of the order.

10.11.2016 [**G.S. SANDHAWALIA**]
sd **JUDGE**

Whether speaking/reasoned: *Yes/No*
Whether Reportable: *Yes/No*