(2006) 12 AP CK 0010

In the Andhra Pradesh High Court

Case No : Writ Petition No. 14099 of 2006

Ariselli Srinivasa Rao APPELLANT

Vs

District Collector and Others RESPONDENT

Date of Decision : 07-12-2006

Acts Referred:

Andhra Pradesh Panchayat Raj Act, 1994 — Section 104, 104(2), 194

Citation : (2007) 2 ALD 478 : (2007) 3 ALT 124

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : Kuriti Bhaskara Rao, for the Appellant; Government Pleader, for Respondent Nos. 1 and 2 and M. Prabhakar Rao, SC, for the Respondent

Judgement

P.S. Narayana, J.—Heard Sri Kuriti Bhaskara Rao, Counsel representing the writ petitioner, the learned Assistant Government Pleader for Panchayat Raj representing respondents 1 and 2 in the writ petition and Sri M. Prabhakar Rao, the earned Counsel representing the 3rd respondent and Sri I. Gopal Reddy, the earned Counsel representing the 4th respondent who was impleaded as per order dated 16-11-2006 in W.P.M.P. No. 29640/2006.

2. Respondents 1 and 2 filed WVMP No. 2415/2006 to vacate the interim order in W.P.M.P. No. 17573/2006 dated 12-10-2006. W.V.M.P. No. 2382/2006 is filed by the proposed party, the present 4th respondent who came on record to vacate the said interim order. A reply affidavit also was filed by the writ petitioner. At the request of the Counsel representing the respective parties, the writ petition itself is being disposed of finally.

3. Sri Kuriti Bhaskara Rao, the learned Counsel representing the writ petitioner had taken this Court through the averments made in the affidavit filed in support of the writ petition and would contend that without prior notice or without any resolution, the terms and conditions agreed upon cannot be varied and in that view of the matter the writ petitioner is put to serious loss by virtue of the impugned order and hence the same had been questioned. The earned Counsel

also had taken this Court through the contents of the impugned order and also the other relevant material placed before this Court and would submit that in the facts and circumstances inasmuch as the 2nd respondent made this order without authority the same is liable to be quashed.

4. The learned Assistant Government Pleader for Panchayat Raj had taken this Court through the contents of the counter-affidavit and also Section 104 of A.P. Panchayat Raj Act 1994, hereinafter in short referred to as "Act" for the purpose of convenience and would maintain that in the light of the specific stand taken in the counter-affidavit, it cannot be said that the impugned action is without authority or without jurisdiction. The earned Counsel also would submit that the petitioner is not entitled to collect aaseelu beyond what had been specified in Section 104 of the Act referred to supra and also the memo which had been specified in the counter-affidavit.

5. Sri M. Prabhakar Rao, the earned Counsel representing the 3rd respondent would contend that even otherwise in the notification itself right had been reserved to alter the conditions, if necessary and in the light of the facts and circumstances the petitioner is entitled to collect only such amounts to which he may be entitled to as per law and nothing beyond thereto.

6. Sri I. Gopal Reddy, the earned Counsel representing the 4th respondent would submit that in the facts and circumstances of the case, in the light of the specific stand taken by this proposed party-4th respondent, the petitioner is not entitled to collect aaseelu from the vehicles passing through the Gram Panchayat unless and until the conditions specified in Section 104 of the Act are satisfied.

7. Heard the Counsel.

8. The writ petition is filed for a writ of mandamus declaring the action of the 2nd respondent in passing the order dated 1-5-2006 vide proceedings No. 1047/06 E and consequential order of the 3rd respondent vide Letter No. 45/06 dated 3-5-2006 as bad and illegal, arbitrary, violative u/s 194 of the Act and violative of the terms and conditions of agreement with the 3rd respondent dated 31-3-2006 by the petitioner and the same are liable to be set aside in the interest of justice.

9. It is stated that the 3rd respondent-Gram Panchayat conducted auction on 21-3-2006 in the presence of villagers as well as other participants in respect of daily collection of Hiramandalam Market Yard for the year 2006-2007 and the petitioner had been the highest bidder and the total amount is Rs. 3,00,000/- and further the 3rd respondent accepted the said offer and accordingly on 31-3-2006 a resolution was passed and the petitioner deposited an amount of Rs. 75,025/- and the 3rd respondent directed him to deposit an amount of Rs. 25,008/- by 10th of every month. It is also stated that the 3rd respondent Gram Panchayat had published a notification dated 1-4-2002 regarding the daily collection or asseelu from market yard u/s 104 of the Act and as per the rates fixed in the notification. It is also further stated that the petitioner is entitled to

collect the same and accordingly the petitioner had been collecting the same and remitting to the 3rd respondent Gram Panchayat at the rate of Rs. 25,008/- per month and so far the petitioner had not violated the terms and conditions as per the agreement dated 31-3-2006. Further specific stand is taken that as per Section 104 of the Act, the petitioner is entitled to collect fee from the goods vehicles and other vehicles within the area of Hiramandalam Gram Panchayat. It is also further stated that by the proceedings No. 45/06 dated 3-5-2006 the 3rd respondent-Gram Panchayat was made not to collect the aaseelu or octroi or rusumu from the vehicles which are participating in the Vamsadhara Project Phase II and Stage II from 4-5-2006 in pursuance of the orders of the 2nd respondent in Proc. No. 1047/06 E dated 1-5-2006. It is also further stated that the 3rd respondent had issued the present order in contravention of the agreement already entered into and due to the same the petitioner is sustaining heavy loss. It is also further stated that the petitioner received the above impugned order in the month of May 2006 and the petitioner explained his financial problems in the event of implementation of the order of the respondents but 3rd respondent did not heed the request and directed the petitioner not to collect any aaseelu from the vehicles participated in Vamsadhara Project, Phase II, Stage II of Hiramandalam area and if the petitioner is not inclined to do so, the agreement would be cancelled. Several other factual details had been narrated in the affidavit filed in support of the writ petition.

10. In the counter-affidavit filed by the 2nd respondent specific stand was taken that according to Section 104(2)(c) of the Act, the fee would not be levied on animals or motor vehicles passing through the market.

11. It may be appropriate to have a look at Section 104 of the Act dealing with Public Markets and the said provision reads as hereunder:

(1) The Gram Panchayat may provide places for use as public markets and, with the Section of the Commissioner, close any such market or part thereof.

(2) Subject to such rules as may be prescribed the Gram Panchayat may levy one or more of the following fees in any public market at such rates, not exceeding the maximum rates, if any prescribed in this behalf, as the Gram Panchayat may think fit--

(a) fees for the use of, or for the right to expose goods for sale in, such market;

(b) fees for the use of shops, stalls, pens or stands in such markets;

(c) fees on vehicles including motor vehicles as defined in Motor Vehicles Act, 1988 or pack-animals bringing or persons carrying, any goods for sale in such markets;

(d) fees on animals brought for sale into or sold in such markets;

(e) licence fees on brokers, commission agents, weighmen and measures practising their calling in such market.

It is stated that the Government issued a Memo No. 7701/Pts.III/A 1/2003-1 dated 25-4-2003 of PR&RD Department wherein a decision had been taken not to collect octroi or asseelu or rusumu by the Gram Panchayat from the goods vehicles owners and that all the District Panchayat Officers of the State had been instructed to ensure that the Gram Panchayat in their jurisdiction shall not collect octroi or aaseelu or rusumu from the goods vehicles owners and the Memo dated 25-4-2003 had been communicated to all the Gram Panchayats in the entire State for implementation. It is further stated that as the writ petitioner is the auction purchaser in respect of daily collection of Hiramandalam Market Yard for the year 2006-07, undoubtedly he is entitled to collect aaseelu or rusumu from the vehicles within the Market Yard, but the goods vehicles have to pass through Hiramandalam Gram Panchayat area and the said vehicles do not stop or load/ unload goods within the market area. The vehicles are just passing through the Gram Panchayat and goods vehicles unload the goods outside the jurisdiction of Hiramandalam Gram Panchayat. Thus the petitioner is not entitled to demand and collect aaseelu or rusumu and octroi as per the decision taken by the Government much prior to the petitioner''s contract in 2003 itself and even as per Section 104(2)(c) of the Act. Further it is stated that the 2nd respondent issued orders vide L.Dis. No. 1047/06 E dated 1-5-2006 on the basis of the Memo No. 7702/Pts.lII/Al/2003-1 dated 25-4-2003 of PR&RD Department that Hiramandalam Gram Panchayat shall not collect aaseelu or rusumu from the motor vehicles which are passing through the said Gram Panchayat and the said orders had been communicated to the petitioner. Thus the writ petitioner has no jurisdiction or power to collect aaseelu or rusumu. In view of the provisions of Section 104 of the Act aforesaid and as stated above the vehicles carrying goods for sale in the Hiramandalam Market Yard are alone liable to pay the fees. Thus, the right of the writ petitioner to collect aaseelu or rusumu or fees in respect of vehicles bringing or carrying on goods for sale is restricted within the Hiramandalam Gram Panchayat area only. Hence the action of the 2nd respondent in directing the 3rd respondent not to collect aaseelu or rusumu in respect of vehicles moving for the purposes of Vamsadhara Project is just, valid and in accordance with the provisions of the Act and the Rules under the Act. It is further stated that it is necessary that the authorities of the Gram Panchayat are bound to implement the direction of the Government in order to maintain proper work and therefore neither the Gram Panchayat nor the petitioner/auction purchaser is not entitled or eligible to collect aaseelu or rusumu from the vehicles which are passing through the Hiramandalam Market Yard, Hiramandalam, Srikakulam District.

12. Counter-affidavit is filed on behalf of 3rd respondent also wherein the 3rd respondent had averred that it is a fact that the right to collect aaseelu in daily market was put to public auction on 21-3-2006 and the petitioner is the highest bidder and his offer was accepted. As per the terms and conditions of the notification the writ petitioner is allowed to collect market fee from the persons who will conduct business in the market area, bus stand area, cart stands,

streets and road margins. In other words, the petitioner is entitled to collect aaseelu from the persons who are doing business of their choice within the area of daily market yard, bus stand, cart stand, streets and road margins of the village only. It was never notified that the petitioner can collect aaseelu from the goods vehicles or other vehicles passing through the village. In view of the exemption given by the Government in respect of the goods vehicle from paying aaseelu the same was not notified in the notification dated 21-3-2006. Apart from that it was specifically notified at Item No. 26 of the notification that the Gram Panchayat is reserving its right to modify the conditions in future if necessary and to implement the same. As per condition No. 26 of the notification, the Gram Panchayat is empowered to impose new conditions or to alter the existing conditions in the interest of public or to implement the directions of the higher authorities. Even in the notification it was nowhere stated that the petitioner is entitled to collect aaseelu from the vehicles passing through the village and inasmuch as permitted to collect aaseelu from the goods vehicles as there is a ban on collection of aaseelu from the goods vehicles as notified by the Government vide notification dated 25-8-2003. Hence it is absolutely incorrect to say that the petitioner is entitled to collect aaseelu from the goods vehicles and other vehicles. It is further stated that it is a fact that the District Panchayat Officer directed the Gram Panchayat not to collect tax or rusumu from the vehicles carrying raw material like sand and stones for construction of Vamsadhara Project vide his proceedings dated 1-5-2006. In view of the directions of the District Panchayat Officer, the impugned proceedings had been issued implementing the orders of the Government as provided under Clause 26 of the notification. Therefore there is no irregularity or illegality in issuing the impugned proceedings. Apart from that the exempted vehicles are not conducting any business within the limits of the village except passing through the village with raw material. Therefore the petitioner is not entitled to collect rusumu from those vehicles.

13. The 4th respondent filed a counter-affidavit narrating several factual details virtually taking the same stand which had been taken by the 2nd respondent in the writ petition. A reply affidavit in detail had been filed again reiterating the same stand taken in the affidavit filed in support of the writ petition.

14. It is no doubt true that it is contended that the 3rd respondent Gram Panchayat had reserved the right to alter the terms and conditions in the case of need, but however having entered into a contract the 3rd respondent-Gram Panchayat is bound by the terms and conditions of the contract. But however, in the light of the Memo referred to supra and also the specific provision Section 104 of the Act specified above, it is needless to say that the 3rd respondent-Gram Panchayat can only enter into an agreement in accordance with the said provision referred to supra and the Memo issued in this regard and not beyond thereto. It is also made clear that the writ petitioner is entitled to collect aaseelu no doubt as per the terms and conditions of the agreement entered by the writ petitioner in between him and the 3rd respondent-Gram Panchayat only in

accordance with the provisions of Section 104 of the Act referred to supra and not beyond thereto. No doubt certain submissions were made that the writ petitioner was not put on notice before making the impugned proceedings and the said action is not supported by any resolution of the Gram Panchayat. When a specific statutory provision is available on the statute book governing the field, these aspects may not assume much importance. It is needless to say that the parties are governed by the agreement and also the parties are governed by the specific provision Section 104 of the aforesaid said Act. It is made clear that the petitioner is entitled to collect aaseelu as per the provisions of Section 104 of the Act referred to supra and the Memo specified supra and beyond thereto it is made clear that the writ petitioner is not entitled to collect any further amounts whatsoever.

15. It had been pointed out that upto some extent the instructions issued under the Memo are not in consonance with Section 104 of the Act referred to supra. It is needless to say that if the Memo or any portion thereof is contrary to the statutory provisions, the same may have to be held to be invalid. However, inasmuch as the Memo as such had not been challenged, this Court is not expressing any further opinion relating thereto. But however, it is made clear that the petitioner is entitled to collect aaseelu only in accordance with Section 104 of the Act referred to supra.

16. With the above clarification, the writ petition is disposed of. No order as to costs.

