(2009) 11 AP CK 0051

In the Andhra Pradesh High Court

Case No : Writ Petition No. 19247 of 2008

Ariselli Srinivasa Rao APPELLANT

Vs

State of A.P. and Others RESPONDENT

Date of Decision : 13-11-2009

Acts Referred:
Andhra Pradesh Panchayat Raj Act, 1994 — Section 104, 104(1), 104(2)

Citation : (2011) 1 ALD 286 : (2010) 1 ALT 291

Hon'ble Judges : N.V. Ramana, J

Bench : Single Bench

Advocate : Kuriti Bhaskara Rao, for the Appellant; G.P. for Respondent Nos. 1 to 3, M. Prabhakar Rao, SC for Gram Panchayat for Respondent No 4 and S.V.S. Chowdary, for the Respondent

Final Decision : Dismissed

Judgement

N.V. Ramana, J.—The petitioner states that he was declared as the highest bidder for collection of Asseelu in Hiramandalam Market Yard, auctioned by respondent No. 4-Gram Panchayat for the year 2006-07 and that thereupon, he entered into an agreement with respondent No. 4-Gram Panchayat on 31-03-2006 for collecting the Asseelu. According to him, as per the provisions of Section 104 of the A.P. Panchayat Raj Act, 1994 (hereinafter referred to as ''the Act''), he is entitled to collect fee from the goods and other vehicles entering the area of Hiramandalam Gram Panchayat.

2. However, he states that contrary to the provisions of Section 104 of the Act, respondent No. 4-Gram Panchayat, based on the orders dated 25-04-2003 of respondent No. 1 Government, the orders dated 25-04-2006 of respondent No. 2-District Collector and the orders dated 01-05-2006 of respondent No. 3-District Panchayat Officer, issued orders dated 03-05-2006, directing him not to collect Asseelu/Octroi/Rusumu from the vehicles that are being used in the construction of Vamsadhara Project. As the said order of respondent No. 4-Gram Panchayat, curtailed his right to collect Asseelu from the vehicles that are used in the

construction of Vamsadhara Project, he filed writ petition in W.P. No. 14099 of 2006 questioning the said order of respondent No. 4-Gram Panchayat.

3. This Court, while admitting the above writ petition, vide orders dated 12-10-2006, suspended the order of respondent No. 4-Gram Panchayat. Later by order dated 07-12-2006, this Court disposed of the writ petition itself holding that the petitioner is entitled to collect Asseelu as per the provisions of Section 104 of the Act. As the official respondents failed to implement the order dated 07-12-2006 passed by this Court by directing respondent No. 5-Contractor to pay Asseelu, the petitioner filed contempt case in C.C. No. 278 of 2007, and this Court by order dated 17-09-2007, upon perusing the counters of the respondents therein, closed the same.

4. According to the petitioner, the orders issued by respondent No. 1-Government in Memo dated 25-04-2003, prohibiting collection of Asseelu from certain vehicles plying in a Gram Panchayat area, runs contrary to the provisions of Section 104 of the Act, in that respondent No. 1-Government, has no jurisdiction or power to pass orders restricting the revenue of a Gram Panchayat. Hence, he submitted that the consequential orders passed by respondent Nos. 2 to 4, dated 25-04-2006, 01-05-2006 and 03-05-2006, including incorporation of a new clause in the tender notifications, issued for the years 2007-08 and 2008-09 by respondent No. 4-Gram Panchayat, prohibiting collection of Asseelu from respondent No. 5-Contractor, is illegal and cannot be sustained.

5. Hence, the petitioner filed the present writ petition questioning the orders issued by respondent No. 1-Government in the said Memo dated 25-04-2003, the orders dated 25-04-2006, issued by respondent No. 2-District Collector, the orders dated 01-05-2006 issued by respondent No. 3-District Panchayat Officer and the order dated 03-05-2006, issued by respondent No. 4-Gram Panchayat, prohibiting collection of Asseelu from respondent No. 5-Contractor, as illegal and arbitrary and contrary to the provisions of Section 104 of the Act, and consequently to direct respondent No. 5-Contractor to pay Asseelu for the vehicles plied by him for the period from 12-10-2006 (the date on which this Court granted stay of operation of the order dated 03-05-2006) to 31-03-2007 (the date on which the contract expired) at the rates fixed by respondent No. 4-Gram Panchayat.

6. The learned Counsel for the petitioner submitted that the petitioner is the highest bidder for collection of Asseelu for the year 2006-07, and as per the provisions of the Section 104 of the Act, the petitioner is entitled to collect Asseelu from the vehicles entering the area of the Gram Panchayat, and particularly when there is no clause in the agreement entered into by the petitioner with respondent No. 4-Gram Panchayat, prohibiting collection of Asseelu from the vehicle owners.

7. The learned Counsel for the petitioner submitted that the petitioner being the highest bidder for collection of Asseelu in Hiramandalam Market Yard for the year

2006-07, as per the provisions of Section 104 of the Act, and the agreement entered into by the petitioner with respondent No. 4-Gram Panchayat, is entitled to collect Asseelu from the vehicles entering the area of respondent No. 4-Gram Panchayat. However, contrary to the provisions of Section 104 of the Act, respondent No. 1-Government have issued orders in Memo dated 25-04-2003, based on which respondent Nos. 2 to 4, namely the District Collector, District Panchayat Officer and the Executive Officer of the Gram Panchayat, have issued orders dated 25-04-2006, 01-05-2006 and 03-05-2006 respectively, prohibiting collection of Asseelu from respondent No. 5-Contractor, which are illegal and arbitrary.

8. He submitted that respondent No. 1-Government have no power or jurisdiction to issue orders, restricting the revenues of a Gram Panchayat, much less without amending Section 104 of the Act, and therefore, the orders dated 25-04-2003, issued by respondent No. 1-Government, being in contravention of the provisions of Section 104 of the Act, are liable to be set aside, and for the very same reason, the consequential orders dated 25-04-2006, 01-05-2006 and 03-05-2006, issued by respondent Nos. 2 to 4, are also liable to be set aside.

9. He further submitted that in the absence of any clause in the agreement prohibiting collection of Asseelu from respondent No. 5-Contractor, respondent Nos. 2 to 4, based on the orders dated 25-04-2003 respondent No. 1-Government, could not have issued orders dated; 25-04-2006, 01-05-2006 and 03-05-2006, prohibiting collection of Asseelu by the petitioner from respondent No. 5-Contractor much less contrary to the agreement entered into by the petitioner with respondent No. 4-Government, nor could have respondent No. 4-Gram Panchayat, incorporated a new clause in the subsequent tender notifications for the years 2007-08 and 2008-09, prohibiting collection of Asseelu from respondent No. 5-Contractor, for it is contrary to the provisions of Section 104 of the Act.

10. He submitted that the petitioner questioned the orders dated 01-05-2006 and 03-05-2006, issued by respondent Nos. 3 and 4 in W.P. No. 14099 of 2006, and the said orders having been stayed by this Court by orders dated 12-10-2006, the petitioner is entitled to collect Asseelu from respondent No. 5-Contractor from the said date fill the expiry of the contract period for the year 2006-07 on 31-03-2009, as the impugned orders are illegal and arbitrary and contrary to the provisions of Section 104 of the Act, 1994, they be set aside and respondent No. 5-Contractor be directed to pay the Asseelu for the period from 12-10-2006 to 31-03-2007.

11. On behalf of respondent Nos. 1 to 3, respondent No. 3, namely the District Panchayat Officer, filed counter. The learned Government Pleader for Panchayat Raj reiterating the counter averments submitted that some of lorry owners submitted representation dated 21-04-2003 to the Chief Secretary, Government of Andhra Pradesh, stating that some of the Contractors are collecting Octroi/ Asseelu/Rusumu from the goods vehicle owners who are not involved in trading

in a Gram Panchayat area. Upon considering their representation, respondent No. 1-Government, issued orders in Memo dated 25-04-2003, ordering not to collect Octroi/Asseelu/Rusumu from the goods vehicle owners who are not involved in trading within the area specified by the Gram Panchayat for business and the same was communicated to all the District Panchayat Officers. He submitted that respondent No. 5-Contractor was awarded Vamsadhara Project contract, and as in the execution of the project, he transports construction material in his lorries/ vehicles, which pass through the area of respondent No. 4-Gram Panchayat area, and as the transportation does not involve in any trade by him in the area of respondent No. 4-Gram Panchayat, respondent No. 3-District Panchayat Officer, issued orders dated 01-05-2006 directing respondent No. 4-Gram Panchayat, not to collect Asseelu from respondent No. 5-Contractor in respect of the vehicles used by him in the construction of Vamsadhara Project and which pass through the area of Gram Panchayat. He submitted that the orders dated 25-04-2003, issued by respondent No. 1-Government do not contravene the provisions of Section 104 of the Act, inasmuch as the said order, nowhere directed not to collect Asseelu from the vehicles which bring goods or animals for sale in the premises specified in terms of Section 104 of the Act, and therefore, no interference is called for therewith, and prayed that the writ petition be dismissed.

12. On behalf of respondent No. 4-Gram Panchayat, its Executive Officer/ Panchayat Secretary, filed counter. The learned Standing Counsel for respondent No. 4-Gram Panchayat reiterating the counter averments submitted that as per the provisions of Section 104 of the Act, the petitioner is entitled to collect Asseelu from the vehicles which enter the market place for unloading the goods that are brought to sale, and he cannot collect Asseelu from the vehicles that pass through the Gram Panchayat road. The vehicles used by respondent No. 5-Contractor, for transporting construction material for Vamsadhara Project, do not unload any goods or material in the market area of respondent No. 1-Gram Panchayat, for any business/trade purpose, and therefore, the orders dated 03-05-2006, issued by respondent No. 4-Gram Panchayat, based on the orders dated 01-05-2006 and 25-04-2006 of the District Panchayat Officer and the District Collector, who issued the same, based on the orders issued by respondent No. 1-Government in their Memo dated 25-04-2003, cannot be found fault with, and prayed that the writ petition be dismissed.

13. Respondent No. 5-Contractor also filed counter. The learned Counsel representing him reiterating the counter averments submitted that as per the provisions of Section 104 of the Act, the petitioner is entitled to collect Asseelu from the vehicles that carry goods for sale in the specified markets of Gram Panchayat area. The vehicles of respondent No. 5-Contractor are used only for carrying sand/rubble/earth etc., for Vamsadhara Project, the vehicles only pass through area of respondent No. 4-Gram Panchayat and they do not stop or load/ unload any goods within the market area, much less carry them for any sale in the market area, and in fact, the loading/unloading of the construction material

is done outside the jurisdiction of respondent No. 4-Gram Panchayat, and therefore, the impugned orders, passed by respondent Nos. 1 to 4, prohibiting collection of Asseelu from respondent No. 5-Contractor cannot be faulted. Hence, he prayed that the writ petition be dismissed.

14. Heard the learned Counsel for the petitioner, the learned Government Pleader for respondent Nos. 1 to 3, the learned Standing Counsel for respondent No. 4-Gram Panchayat and the learned Counsel for respondent No. 5-Contractor.

15. In the light of the arguments advanced, the only question that arises for consideration is whether the orders issued by respondent No. 1-Government in Memo dated 25-04-2003, based on which respondent Nos. 2 to 4 issued consequential orders dated 25-04-2006, 01-05-2006 and 03-05-2006, prohibiting collection of Asseelu by the petitioner from respondent No. 5-Contractor in respect of the vehicles used by him for transporting construction material for Vamsadhara Project, are illegal and arbitrary and contrary to the provisions of Section 104 of the Act?

16. The fact that the petitioner is entitled to collect Asseelu/Octroi/Rusumu as per the provisions of Section 104 of the Act, is not disputed by the respondents. However, the petitioner contends that the impugned order dated 25-03-2003, issued by respondent No. 1-Government, based on which respondent Nos. 2 to 4 issued consequential orders dated 25-04-2006, 01-05-2006 and 03-05-2006, is illegal and arbitrary, inasmuch as the said order restricted his right to collect Asseelu as per the provisions of Section 104 of the Act, from respondent No. 5-Contractor, in respect of the vehicles used by him for transporting construction material for Vamsadhara Project. To consider this contention, it would be appropriate to make a reference to the provisions of Section 104 of the Act, which deals with Public Markets. The said provision reads as follows:

Public Markets:- (1) The Gram Panchayat may provide places for use as public markets, and with the sanction 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 market;

(c) fees on vehicles including motor vehicles as defined in the Motor Vehicles Act, 1988 (Central Act 59 of 1988) or pack-animals bringing or persons or carrying, any goods for sale in such market;

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

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

17. A bare reading of the above provision would make it explicit that under Sub-section (1) of Section 104 of the Act, the Gram Panchayat may provide places for use of public markets, which can be closed with the sanction of the Commissioner, and under Sub-section (2), subject to the rules, the Gram Panchayat, is empowered to levy one or more of the fees mentioned in clauses (a) to (e), namely, fees for the use of or right to expose goods for sale; use of shops, stalls, pens or stands; fees on motor vehicles or pack-animals bringing or persons or carrying, any goods for sale; fees on animals brought for sale into or sold and; licence fee on brokers, commission agents, weighmen and measures practicing their calling, in any public market at the rates that may be prescribed.

18. The right of the petitioner to collect/levy Asseelu in a market area falling within its jurisdiction, is circumscribed by the provisions of Section 104(2) of the Act, in that the petitioner, is entitled to collect Asseelu in respect of goods that are exposed for sale in a market area, for using shops, stalls, pens or stands in a market area, vehicles that bring pack-animals or persons or carrying goods for sale into the market area, animals that are brought for sale into or sold in such market area, and is also entitled to collect licence fee from brokers, commission agents, weighmen and measures practicing their calling in such market.

19. Admittedly, respondent No. 5-Contractor, by use of his vehicles, transports construction material for construction of Vamsadhara Project. It is the case of respondent No. 5-Contractor that to reach the site of Vamsadhara Project, the vehicles have to necessarily pass through the jurisdiction of respondent No. 4-Gram Panchayat, and that his vehicles do not enter the market area of respondent No. 4-Gram Panchayat, for the purpose of any sale or do any business activity or indulge in sale of any goods etc., in the market area of respondent No. 4-Gram Panchayat, as provided in Section 104(2) of the Act, in respect of which activities, the petitioner is entitled to collect/levy of Asseelu. It is the case of the respondent No. 5-Contractor that for the purpose of transporting construction material to Vamsadhara Project site, he uses many vehicles and that he conducts umpteen number of trips every day, passing through the jurisdiction of respondent No. 4-Gram Panchayat. As the vehicles of the respondent No. 5-Contractor, merely pass through the jurisdiction of respondent No. 4-Gram Panchayat while transporting the construction material to Vamsadhara Project site, and do not enter the market area of respondent No. 4-Gram Panchayat, for the purpose of doing any business activity, no exception can be taken to the orders issued by respondent No. 1-Government, based on which respondent Nos. 2 to 4 issued consequential orders, prohibiting collection of Asseelu from respondent No. 5-Contractor, particularly when the petitioner as per the provisions of Section 104(2) of the Act, is entitled to collect/levy Asseelu only in respect of vehicles entering the market area of respondent No. 4-Gram Panchayat for the purpose of doing sale or business, and further when such orders do not restrict the right of the petitioner to collect/levy Asseelu as per the

provisions of Section 104(2) of the Act, in respect of activities that are being carried on in the market area, and further when such orders are issued keeping in view the number of vehicles which the petitioner is required to ply for transporting the construction material to the Vamsadhara Project site, which is being constructed for the benefit of the general public.

20. For the foregoing reasons, I find no reason whatsoever to interfere with the impugned order issued by respondent No. 1-Government as also the consequential orders, issued by respondent Nos. 2 to 4, prohibiting collection of Asseelu from respondent No. 5-Contractor in respect of the vehicles being used by him for transporting construction material to Vamsadhara Project site.

21. Hence, the writ petition is dismissed. No costs.

