
(2013) 01 KL CK 0016

In the High Court Of Kerala

Case No : Writ Petition (C) No. 18911 of 2009

Bhaskaran N.

APPELLANT

Vs

Director of Local Fund Audit and Others

RESPONDENT

Date of Decision : 17-01-2013

Acts Referred:

Citation : (2013) 2 KHC 4

Hon'ble Judges : Antony Dominic, J

Bench : Single Bench

Advocate : V.V. Raja and R. Ranjith, for the Appellant; Joseph George, Senior Government Pleader and T.S. Rajasenan, for the Respondent

Final Decision : Disposed Off

Judgement

Antony Dominic, J.—Petitioner was the Secretary of the Kulakkada Grama Panchayath during the period from 21/06/1997 to 18/11/1999. Subsequently, he retired from service on 31/10/2004. Ext. P1 is a circular issued by the Government of Kerala on 05/01/1998 regulating the mining of river sand and its distribution by the local bodies. In pursuance to Ext. P1, the District Collector issued circular Ext. P2 dated 31/03/1998 which inter alia laid down the procedure to be followed for fixing the value of river sand. Clause 4 of this Circular provides that 50% of the value realised, shall be paid to the workers and that out of the balance, 25% each shall be paid to the Local Authorities and to the River Management Fund. This appropriation of the sale proceeds is in line with Clause 7 of Ext. P1 circular.

2. Despite the above provisions of Exts. P1 and P2, on 02/02/1999, the third respondent Panchayath passed Exts. P3 to P5 resolutions. For the reasons mentioned therein, the Panchayath resolved that 90% of the sale proceeds will be distributed among the workers. Audit was conducted as provided u/s 215 of the Panchayath Raj Act and in Ext. P6 audit report, which was served on the petitioner, loss on account of Ext. P3 to P5 was quantified. Accordingly, the petitioner was called upon to submit his explanation. Ext. P7 is the explanation

submitted by the petitioner.

3. Thereafter, Ext. P8 surcharge certificate as provided u/s 215(a) of the Kerala Panchayath Raj Act was issued for the recovery of Rs. 6,16,282/- for the period 1998-1999. Subsequently, Ext. P9 erratum was issued reducing the liability to Rs. 4,43,875/-, the petitioner challenged the surcharge certificate by filing an appeal before the District Court. By Ext. P10 judgment, the District Court allowed the appeal and the matter was remitted with a direction to hear and pass fresh orders. Subsequently, the petitioner was given Ext. P13 enclosing audit reports for the period from 1997-1998 to 1999-2000. As per Ext P14, his liability was quantified at Rs. 75,98,165/-. In the meanwhile, second respondent considered the matter afresh as directed in Ext P10 judgment of the District Court and the objections raised by the petitioner were rejected.

4. Similarly, the objections raised against Ext. P14 were also rejected by Ext. P16. Ultimately, Ext. P18 liability certificate was issued indicating a liability of Rs. 88,65,287/-. Based on the above, Ext. P20 notice under Sections 34 of the Revenue Recovery Act was issued demanding Rs. 87,49,937/- and Ext. P21 is the resolution of the Kulakkada Grama Panchayath to recover the amount from the petitioner by Revenue Recovery proceedings. It is in these circumstances, the writ petition is filed challenging Exts. P6, P8, P9, P12, P13, P14, P16, P18, P20 and P21.

5. I heard the learned counsel for the petitioner and also the learned Senior Government Pleader appearing for the respondents.

6. The loss which is now sought to be recovered from the petitioner was allegedly caused on account of Exts. P3 to P5 resolutions passed by the Panchayath. According to the respondents, this resolution, is an illegal one in as much as the resolution to pay 90% of the sale proceeds to the workers was against the upper limit of 50% specified in Exts. P1 and P2. It is stated that when an illegal resolution is passed, the Secretary had the statutory duty under the proviso to Section 182(iii) to request the Panchayath to review the resolution and express his views at the time of its review and if the Panchayath upholds the decision to refer the matter to the Government. It is stated that the petitioner failed in discharging this statutory duty and therefore is liable to make good the loss suffered by the Government.

7. The proviso to Section 182(iii), which is relied on by the learned Government Pleader reads thus:

Provided that where the Secretary is of opinion that any resolutions passed by the Panchayat has not been legally passed or is in excess of the powers conferred by this Act or any other Act or is likely, to endanger human life, health or public safety, if implemented, he shall request in writing to the Panchayath, to review the resolution and express his views at the time of its review by the Panchayat and if the Panchayat upholds its previous decision, the matter shall be referred to the Government after intimation to the President and if no decision of

the Government is received within fifteen days, the said resolution shall be implemented and information thereof shall be given to the Government.

8. Reading of the proviso shows that where the Secretary is of the opinion that any resolution passed by the Panchayath has not been legally passed or is in excess of the parent Act or any other Act, he shall first request the Panchayath to review the decision. If the Panchayath still proceeds with the resolution, he has a duty to refer the matter to the Government. However, insofar as, this case is concerned, even if it is assumed that the resolution was an illegal one attracting the proviso to Section 182(iii), nobody has a case that the petitioner either requested for review of Exts. P3 to P5 or referred the matter to the Government. Even if this position is upheld, the question that is to be considered is what is the consequence of such his failure. Section 182 does not provide for the consequences of its non-compliance. If loss is caused on account of passing of an illegal resolution, the method by which such loss is to be recouped, is provided u/s 215 of the Panchayath Raj Act. Section 215 provides for accounts and audit and sub-section (9) provides for recovery of loss and this provision reads thus: The auditors shall, after giving a reasonable opportunity to the person concerned to explain his case, disallow every item of expenditure incurred contrary to law and surcharge the same on the person incurring, or authorising the incurring of, such expenditure and may charge against any person responsible therefore the amount of any deficiency, less or unprofitable outlay occasioned by the negligence or misconduct of that person or of any sum which ought to have been but is not brought into account by that person and shall, in very such case, certify the amount due from such person.

Provided that no surcharge under this sub-section shall be made after a period of four years from the date on which the expenditure in question was incurred.

If one is to go by this provision, words of this Section are clear that if loss is caused, all those who are responsible for the loss are equally liable. If that be the position, for the loss that was allegedly caused on account of the implementation of Exts. P3 to P5 resolutions, the Secretary alone could not have been proceeded against only on the ground that there has been a failure on his part in complying with the proviso to Section 182(iii). Instead, the authority should have proceeded against all those, who are responsible for the loss.

In that view of the matter, I am unable to sustain the recovery proceedings initiated against the petitioner alone. Therefore, I set aside the impugned proceedings and leave it open to the first respondent to take appropriate action for recovering the loss allegedly caused on account of the implementation of Exts. P2 to P5 from the persons, who are responsible for the same in accordance with the provisions of the Kerala Panchayath Raj Act and the Kerala Local Audit Fund Act, 1994.

The Writ Petition is disposed of as above.