
(2003) 07 KL CK 0037
In the High Court Of Kerala
Case No : O.P. No. 10196 of 2003

Binoy Peter

APPELLANT

Vs

Secretary, Keerampara Grama Panchayat

RESPONDENT

Date of Decision : 03-07-2003

Acts Referred:

Kerala Panchayat Raj Act, 1994 — Section 276, 276(5)

Citation : (2003) 3 KLT 163

Hon'ble Judges : M. Ramachandran, J

Bench : Single Bench

Advocate : George Abraham, for the Appellant; Renu D.P., Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

M. Ramachandran, J.—The petitioner is aggrieved about Ext. P4, whereunder the Secretary of the Keerampara Grama Panchayat (1st respondent herein) had advised him that as the appeal is not in consonance with law, it cannot be considered. The petitioner submits that the appeal had been submitted before the Panchayat Committee and not to the Secretary. He also refers to the circumstance that the Kerala Panchayat Raj (Taxation, Levy & Appeal) Rules, 1996 provides that assessment of tax has to be carried out by the Standing Committee and in this case there was irregularity in that tax has been assessed by the Secretary of the Panchayat. Of course an appeal had been filed to the Committee and a marginal reduction was granted, but the petitioner submits that his right of an appeal to the Panchayat Committee cannot be curtailed in any manner and Ext. P4, to the above extent, is bad in law.

2. Notice has been taken to a Panchayat, but there is no response forthcoming. There appears to be some confusion harboured by the Panchayat in the matter. By S.R.O. No. 110/96, effective from 29.11.1996, the Kerala Panchayat Raj (Taxation, Levy and Appeal) Rules, 1996 came into force. These are brought about by Government in exercise of rule making powers conferred by Section

254 of the Act. The Rules were extension of Sections 210 and 241 of the Act, which respectively related to the powers of the Panchayat for assessment of taxes and cess, and the power for entry and inspection to properties, including building, so as to oversee whether in the matter of construction/ user, compliance with the directions of licence and grants were duly being observed.

3. Effective from 1.4.1996, by SRO No. 313/96, the Kerala Panchayat Raj (Building Tax and Surcharge) Rules, 1996 had come, and this was in exercise of powers u/s 254 read with Sections 203 and 208 of the Act. The above sections authorised the Panchayat for levying property tax in respect of buildings within the limits of the Panchayat and levy of surcharge thereon, respectively. When the issue is considered, necessarily the impact of the rules will have to be borne in mind, and the procedure prescribed to be followed by Section 276 of the Act".

4. By SRO 313/96, the Standing Committee is given power to issue notice to the assessee calling up details. Power of inspection to its members is also spoken to. With the help of officers, the annual rental value, thereafter could be determined by the Standing Committee. In case a building belongs to member of Standing Committee, Panchayat is the body entitled to fix the tax. Under Rule 6(2), power of fixation of tax is vested with the Standing Committee. This has to be done with the assistance of the Secretary or other concerned officers of the Panchayat. The tax fixed is to be brought into the records maintained, under the signature of the Chairman. The authority who is conferred powers for grant of remissions also is the Standing Committee. Thus the authority for fixing the tax is the Standing Committee, including that of the quinquennial revisions,

5. Section 276 of the Act specifies the authorities for the purpose of appeals and revisions. Generally, in respect of proceedings of Secretary or President, an appeal lies to the Panchayat Committee. Proviso to the rule says that in case of an appeal in respect of tax, the appeal lies to the Standing Committee.

6. Under Sub-section (5) in respect of an appellate decision of the Panchayat or Standing Committee, a revision lies to the Tribunal constituted. It is submitted at the bar, that a Tribunal is yet to be constituted. When the decision is by the Standing Committee, therefore, I think it would be appropriate that the Panchayat Committee decides the appeal. Apparently the Rules have been framed which may give an indication that full impact of the recitals of Section 276 of the Act has not been taken notice of.

7. Now we, may take notice of SRO No. 110/96 also. Under Rule 3, Panchayat is authorised to pass resolutions, introducing tax proposals. In respect of new proposals, due publication is mandatory. Assessment rights have to be maintained by the Secretary. Rule 6 is specific that the assessment of tax is the prerogative of the Standing Committee. Under Rule 7, Panchayat Committee also has been conferred with powers for interfering in the matter as the situation may require, Rule 10 is unambiguous that the appeal against the assessment of Standing Committee lies to the Panchayat. A further appeal therefrom lies to the

statutory authority notified under Rule 12.

8. At this juncture, we may also refer to another head of authorised tax, brought by SRO 15/96, viz., profession tax. Here also, the Standing Committee is given power to levy such tax. Therefore, it could be safely assumed that the general provision (SRO 110/96) can be considered as the governing rules, the proviso to Rule 276 of course prescribes that the Standing Committee is to be reckoned as the Appellate Authority in taxation matters. However, I do not think that the rules have to be redrafted for the said reason alone, as the present procedure for assessment appears to be equitable and fair, and in fact was a departure from the earlier procedure which was in vogue.

9. By Ext. P4, the petitioner has been advised that the application to the President is not in accordance with law, and the Panchayat Committee had, by resolution No. 48 dated 12.08.2002 decided not to take it up for consideration. However, the petitioner cannot be penalised for the procedural irregularities committed by the Panchayat or its Secretary.

10. I am not, as at present, examining the allegations against the Secretary of the Panchayat, though the petitioner has a case that the knowledgeable Secretary is nevertheless giving wrong advice to the lady President, and is functioning as a super power. The petitioner, however, is entitled to know about the yardsticks and parameters of taxation policy resolved by the Panchayat. He has also a right not to be discriminated.

11. In the aforesaid circumstances, since the tax has been prescribed by the Secretary unauthorisedly, though the Standing Committee has sat in judgment over it, I have to hold that Ext. P4 is to be set aside. I direct the Panchayat to entertain the appeal (Ext. P3) and should examine any other grievances highlighted so as to instill confidence in the citizen. It is to be considered appropriately. Demand of tax in respect of the petitioner's building is to be made only after passing orders on the appeal. Before deciding the appeal, if requested for, petitioner should be given copies of the resolutions, which would have dealt with the policy of the Panchayat in imposition and levy of taxes.

12. The Original Petition is allowed. The petitioner has been constrained to undergo agony and ill-treatment, and the Panchayat should take care to see that they have to act as public servants and riot masters. A citizen has a right to know, right to be heard, and a right to not to be discriminated, and the benefit of decentralisation attempted to be brought about in the matter of administration should not be converted to an empty slogan.